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Parts 400 to 629

Revised as of July 1, 2006

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of general applicability and future effect

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Cite this Code: CFR

*To cite the regulations in
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part and section num-
ber. Thus, 32 CFR 501.1
refers to title 32, part
501, section 1.*

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

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

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CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I). A list of CFR titles, chapters, and parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

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The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the “Contents” entries in the daily Federal Register.

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

July 1, 2006.

THIS TITLE

Title 32—NATIONAL DEFENSE is composed of six volumes. The parts in these volumes are arranged in the following order: parts 1–190, parts 191–399, parts 400–629, parts 630–699, parts 700–799, and part 800 to End. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 2006.

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

For this volume, Cheryl E. Sirofchuck was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.

Title 32—National Defense

(This book contains parts 400 to 629)

Part

SUBTITLE A—DEPARTMENT OF DEFENSE (CONTINUED)

CHAPTER V—Department of the Army 501

ABBREVIATIONS USED IN THIS CHAPTER:

AGCT = *Army General Classification Test*. AGO = *Adjutant General's Office*. APP = *Army Procurement Procedure*. AR = *Army Regulations*. ASPR = *Armed Services Procurement Regulations*. ATC = *Air Transport Command*. A. W. = *Articles of War*. AWOL = *Absent Without Leave*. Comp. Gen. = *Comptroller General*. OCF = *Office, Chief of Finance*. ROTC = *Reserve Officer's Training Corps*. ZI = *Zone of Interior*.

Subtitle A—Department of
Defense (Continued)

CHAPTER V—DEPARTMENT OF THE ARMY

(Parts 400 to 629)

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SUBCHAPTER A—AID OF CIVIL AUTHORITIES AND PUBLIC RELATIONS

PARTS 400–500 [RESERVED]

PART 501—EMPLOYMENT OF TROOPS IN AID OF CIVIL AUTHORITIES

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- 501.2 Emergency.
- 501.3 Command authority.
- 501.4 Martial law.
- 501.5 Protection of Federal property.
- 501.6 End of commitment.
- 501.7 Loan of military resources to civil authorities.

AUTHORITY: Secs. 331, 332, 333, and 3012, 70A Stat. 15, 157; 10 U.S.C. 331, 332, 333, 3012.

SOURCE: 34 FR 14126, Sept. 6, 1969, unless otherwise noted.

§ 501.1 Basic policies.

(a) The protection of life and property and the maintenance of law and order within the territorial jurisdiction of any State are the primary responsibility of State and local civil authorities. Generally, Federal Armed Forces are committed after State and local civil authorities have utilized all of their own forces and are unable to control the situation, or when the situation is beyond the capabilities of State or local civil authorities, or when State and local civil authorities will not take appropriate action. Commitment of Federal Armed Forces will take place only—

(1) Under the provisions of this part, and

(2) When the Secretary of the Army, pursuant to the orders and policies of the Secretary of Defense and the President, has generally or specifically so ordered, except in cases of emergency (§ 501.2).

(b) The Secretary of the Army has been designated as the Executive Agent for the Department of Defense in all matters pertaining to the planning for, and deployment and employment of military resources in the event of civil disturbances. The Department of the Army is responsible for coordinating the functions of all the Military Serv-

ices in this activity for the Executive Agent. The Secretaries of the other Military Services are responsible for providing such assistance as may be requested by the Executive Agent.

(c) Persons not normally subject to military law taken into custody by the military forces incident to the use of Armed Forces, as contemplated by this part, will be turned over, as soon as possible, to the civil authorities. The Army will not operate temporary confinement/detention facilities unless local facilities under the control of city, county, and State governments and the U.S. Department of Justice cannot accommodate the number of persons apprehended or detained. Further, this authority may be exercised only in the event Federal Armed Forces have been committed under the provisions of this part and only with the prior approval of the Department of the Army. When the requirement exists for the Army to operate such facilities, the provisions of Army confinement regulations will apply to the maximum extent feasible under the circumstances.

(d) Whenever military aid is requested by civil authorities in the event of civil disturbances within the States of Alaska, or Hawaii, the Commonwealth of Puerto Rico, or U.S. possessions and territories, the commander of the unified command concerned coordinates the provision of such aid.

(e) Units and members of the Army Reserve on active duty may be employed in civil disturbance operations in the same manner as active forces. Units and members of the Army Reserve may be ordered to active duty for this purpose by the President as provided by law. Members of the Army Reserve, with their consent, may be ordered to active duty for civil disturbance operations under the provisions of 10 U.S.C. 672.

§ 501.2 Emergency.

(a) In cases of sudden and unexpected invasion or civil disturbance, including

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civil disturbances incident to earthquake, fire, flood, or other public calamity endangering life or Federal property or disrupting Federal functions or the normal processes of Government, or other equivalent emergency so imminent as to make it dangerous to await instructions from the Department of the Army requested through the speediest means of communications available, an officer of the Active Army in command of troops may take such action, before the receipt of instructions, as the circumstances of the case reasonably justify. However, in view of the availability of rapid communications capabilities, it is unlikely that action under this authority would be justified without prior Department of the Army approval while communications facilities are operating. Such action, without prior authorization, of necessity may be prompt and vigorous, but should be designed for the preservation of law and order and the protection of life and property until such time as instructions from higher authority have been received, rather than as an assumption of functions normally performed by the civil authorities.

(b) Emergency firefighting assistance may be provided pursuant to agreements with local authorities; emergency explosive ordnance disposal service may be provided in accordance with paragraph 18, AR 75-15.

§501.3 Command authority.

(a) In the enforcement of the laws, Federal Armed Forces are employed as a part of the military power of the United States and act under the orders of the President as Commander in Chief. When commitment of Federal Armed Forces has taken place, the duly designated military commander at the objective area will act to the extent necessary to accomplish his mission. In the accomplishment of his mission, reasonable necessity is the measure of his authority, subject of course, to instructions he may receive from his superiors.

(b) Federal Armed Forces committed in aid of the civil authorities will be under the command of, and directly responsible to, their military and civilian superiors through the Department

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of the Army chain of command. They will not be placed under the command of an officer of the State Defense Forces or of the National Guard not in the Federal service, or of any local or State civil official; any unlawful or unauthorized act on the part of such troops would not be excusable on the ground that it was the result of an order received from any such officer or official. As directed by the Army Chief of Staff, military commanders will be responsive to authorized Federal civil officials.

§501.4 Martial law.

It is unlikely that situations requiring the commitment of Federal Armed Forces will necessitate the declaration of martial law. When Federal Armed Forces are committed in the event of civil disturbances, their proper role is to support, not supplant, civil authority. Martial law depends for its justification upon public necessity. Necessity gives rise to its creation; necessity justifies its exercise; and necessity limits its duration. The extent of the military force used and the actual measures taken, consequently, will depend upon the actual threat to order and public safety which exists at the time. In most instances the decision to impose martial law is made by the President, who normally announces his decision by a proclamation, which usually contains his instructions concerning its exercise and any limitations thereon. However, the decision to impose martial law may be made by the local commander on the spot, if the circumstances demand immediate action, and time and available communications facilities do not permit obtaining prior approval from higher authority (§501.2). Whether or not a proclamation exists, it is incumbent upon commanders concerned to weigh every proposed action against the threat to public order and safety it is designed to meet, in order that the necessity therefor may be ascertained. When Federal Armed Forces have been committed in an objective area in a martial law situation, the population of the affected area will be informed of the rules of conduct and other restrictive measures the military is authorized to enforce. These will normally be announced by

proclamation or order and will be given the widest possible publicity by all available media. Federal Armed Forces ordinarily will exercise police powers previously inoperative in the affected area, restore and maintain order, insure the essential mechanics of distribution, transportation, and communication, and initiate necessary relief measures.

§ 501.5 Protection of Federal property.

The right of the United States to protect Federal property or functions by intervention with Federal Armed Forces is an accepted principle of our Government. This form of intervention is warranted only where the need for protection exists and the local civil authorities cannot or will not give adequate protection. This right is exercised by executive authority and extends to all Federal property and functions.

§ 501.6 End of commitment.

The use of Federal Armed Forces for civil disturbance operations should end as soon as the necessity therefor ceases and the normal civil processes can be restored. Determination of the end of the necessity will be made by the Department of the Army.

§ 501.7 Loan of military resources to civil authorities.

(a) The Department of the Army in certain limited situations can lend military equipment to civil law enforcement authorities in the event of civil disturbances. Such loans of equipment are limited to those necessary to meet an urgent need during an actual civil disturbance (except as provided in paragraph (b) of this section) and the loans are considered to be a temporary emergency action. Civil law enforcement authorities are to be encouraged to procure their own equipment for police use since, even though requests are handled expeditiously, normally some time will elapse before the military equipment can be in the hands of the civil law enforcement authorities. Law enforcement authorities are to be cautioned not to rely on the loan of military equipment in the event of a civil disturbance in their locality because the availability of military equipment

for civilian use is contingent upon military requirements for the Department of the Army resources.

(b) A loan agreement will be executed with the civil authority in each case. The agreement will indicate that the property may be retained by the civil authorities only for the duration of the civil disturbance, but for not more than 15 days; however, should the civil disturbance exceed 15 days the approving authority may extend the agreement for another 15-day period. It is recognized that there is often a substantial leadtime before equipment procured by civil law enforcement authorities will be delivered to them. For this reason loans of equipment beyond the 15-day limit are authorized when a request is made in anticipation of imminent threatened civil disturbance and the civil authority requesting the loan has initiated procurement action for equipment substantially similar to the military property requested. Loans may be approved for terms of up to 90 days pending delivery to the civil authority of its own equipment and renewed by the approving authority for another 90-day period if necessary.

(c) Each loan agreement will contain provisions for a cash bond, performance bond, or the equivalent equal to the value of the loaned equipment, as a condition to making the loan; waiver of the requirement to post bond will be approved only by the Department of the Army. With the prior concurrence of the Department of the Army, the bond will be forfeited in the event the equipment is not returned at the time specified. However, the forfeiture of the bond will not constitute a sale of the equipment, and the borrower will not be relieved of his obligation to return the loaned equipment. Loan agreements will clearly state the expenses and obligations assumed by the civil authority.

PART 502—RELIEF ASSISTANCE

DISASTER RELIEF

Sec.

502.1 Purpose and applicability.

502.2 Definitions.

502.3 Provisions of disaster relief legislation and Executive orders and other authorities.

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502.4 Department of Defense policies and delegation of authority.

502.5 Department of the Army policies and designation of responsibilities.

RELIEF SHIPMENTS

502.11 Commercial freight shipments of supplies by voluntary non-profit relief agencies.

AUTHORITY: Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012.

SOURCE: 31 FR 7966, June 4, 1966, unless otherwise noted.

DISASTER RELIEF

§ 502.1 Purpose and applicability.

(a) Sections 502.1 through 502.5 contain Department of the Army policy and responsibilities for operations involving participation in natural disaster relief activities.

(b) Sections 502.1 through 502.5 are applicable in the 48 contiguous States and the District of Columbia, and where not in conflict with public law or other proper authority, have equal application to Alaska, Hawaii, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands. Within the latter areas, the commander of the unified command concerned is responsible for emergency employment of military resources in disaster relief.

(c) Policy and guidance for related type emergencies involving employment of Army resources are contained in AR 600-50 (Civil Disturbances), AR 500-70 (Civil Defense), and AR 420-90 (Fire Prevention and Protection).

(d) The provisions of §§ 502.1 through 502.5 apply generally except as otherwise covered in directives of Chief of Engineers pertinent to the Civil Works Program.

§ 502.2 Definitions.

For the purpose of §§ 502.1 through 502.5 the following definitions apply:

(a) *Natural disaster*. All domestic emergencies except those created as a result of enemy attack or civil disturbance.

(b) *Major disaster*. Any disaster caused by flood, drought, fire, earthquake, storm, hurricane, or other catastrophe, which in the determination of the President, is or threatens to be, of such severity and magnitude as to

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warrant disaster assistance by the Federal Government under the provisions of Pub. L. 875 (see § 502.3(a)) to supplement the efforts and available resources of State and local governments in alleviating the damage, hardship or suffering caused thereby.

(c) *Imminent seriousness*. An emergency condition of immediate urgency in which it would be dangerous to delay necessary action by waiting for instructions from higher authority despite the fact such instructions are requested through command channels by the most expeditious means of communication available.

(d) *Military resources*. Includes personnel, equipment, and supplies of Department of Defense agencies including the Army, Navy, Air Force, Marine Corps, and Defense Supply Agency.

(e) *State*. Includes any State in the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(f) *Local government*. Includes any county, city, village, town, district, or other political subdivision of any State, or the District of Columbia.

(g) *Federal agency*. Includes any departmental, independent establishment, government corporation, or other agency of the executive branch of the Federal Government, excepting, however, the American National Red Cross.

(h) *Office of Emergency Planning (OEP)*. The Federal Executive agency in the Executive Office of the President responsible for coordinating Federal assistance for major disasters in behalf of the President.

(i) *Office of Civil Defense (OCD)*. The office under the Secretary of the Army responsible for plans and preparations for civil defense.

(j) *American National Red Cross (ANRC)*. The national organization of the Red Cross organized to undertake activities for the relief of persons suffering from disaster as stated in section 3 of the Act of January 5, 1905, chapter 23, as amended (36 U.S.C. 3), entitled "An Act To Incorporate the American National Red Cross."

(k) *DOD components*. Army, Navy, Air Force, Marine Corps, Defense Supply

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Agency, and other Department of Defense agencies.

§ 502.3 Provisions of disaster relief legislation and Executive orders and other authorities.

The following guidelines are pertinent to disaster relief action.

(a) Public Law 875, 81st Congress, as amended, 42 U.S.C. 1855-1855g (Federal Disaster Act of 30 September 1950), hereinafter referred to as Pub. L. 875, which provides for supplementary Federal assistance to State and local governments in major disasters, and for other purposes.

(b) Executive Order 10427 dated January 16, 1953, as amended, which delegates to the Director, OEP the authority to direct and coordinate other Federal agencies in rendering assistance to State and local governments under provisions of Pub. L. 875.

(c) Executive Order 10737, dated October 29, 1957, which amends Executive Order 10427 to include authority for the reimbursement of any Federal agency, subject to the concurrence of the Director of the Bureau of the Budget, for authorized expenditures for funds allocated by the President for use in assistance to a specific State.

(d) Executive Order 11051 dated September 27, 1962, which specifically prescribes the responsibility of the Director, OEP as set forth in Executive Orders 10427 and 10737.

(e) Federal assistance is authorized under provisions of Pub. L. 875 only after the President has declared the specific disaster as defined in the Act. Such declaration is made after a request for Federal assistance by the Governor of the State (or the Board of Commissioners of the District of Columbia), through the appropriate OEP Regional Office Director.

(f) Section 5 of the Act of August 18, 1941, ch. 377, as amended, 33 U.S.C. 701n; is commonly known and hereinafter referred to as Public Law 99 (Pub. L. 99). It provides basic guidance for the applicable emergency activities of the Corps of Engineers. The law provides discretionary authority for expenditures for flood emergency preparation; flood fighting and rescue operations, and emergency repair or restoration of flood control works and Federal shore

protection or hurricane flood protection works. Administration of Pub. L. 99 is under the direction of the Secretary of the Army and the supervision of the Chief of Engineers. No declaration of a major disaster is required.

(g) Existing statutes and Executive orders do not in any way limit Federal agencies from taking necessary action in accordance with existing policy and statutory authority in the event of a disaster which will not brook delay in the commencement of Federal assistance or other Federal action and/or pending the designation by the President of a major disaster.

(h) The American National Red Cross is charged in accordance with its Charter, with continuing a system of national and international relief with voluntary service and financing, which in effect supports official disaster relief action.

§ 502.4 Department of Defense policies and delegation of authority.

(a) Responsibility for alleviating disaster conditions rests primarily with individuals, families, private industry, local and State governments, the American National Red Cross, and those Federal agencies having special statutory responsibilities.

(b) DOD components are authorized to assist civilian authorities as necessary or as directed by competent authority.

(c) Where the disaster is of such imminent seriousness that delay in awaiting instructions from higher authority is unwarranted, a military commander will take such action as may be required and justified under the circumstances to save human life, prevent immediate human suffering, or mitigate major property damage or destruction. The commander will immediately report to higher authority the action taken and request appropriate guidance.

(d) DOD components have been directed to develop, as appropriate, contingency plans for major disaster operations and insure that these are coordinated with appropriate civil authorities at State and local level.

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(e) DOD components overseas will participate in foreign disaster relief operations as directed by unified commanders.

(f) The Department of the Army has been directed to assume responsibility for military support in disasters within the continental United States (48 contiguous States and the District of Columbia). This includes responsibility for effective utilization, coordination, and control of resources made available by the Department of the Navy, the Department of the Air Force, and other DOD components as appropriate.

(g) The Department of the Navy has been directed to coordinate with the Department of the Army in planning and supporting civil authorities in disaster relief operations.

(h) The Department of the Air Force has been directed to coordinate with the Department of the Army in planning and supporting civil authorities in disaster relief operations including activities of the Civil Air Patrol.

(i) The Joint Chiefs of Staff have been directed to issue instructions to appropriate unified commanders to insure proper planning and use of military resources for disaster relief operations in Alaska, Hawaii, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

§ 502.5 Department of the Army policies and designation of responsibilities.

(a) Military commanders will conduct relief operations in the event of emergency as described in § 502.4(c), or when directed by higher military authority or by direction of OEP under Pub. L. 875.

(b) Use of military resources and other military participation in disaster relief will be on a minimum essential basis and terminated at the earliest practicable time. Military assistance in rehabilitation following a disaster is not authorized, except as directed by the OEP, or in support of emergency operations conducted by the Corps of Engineers as authorized by law.

(c) Federal troops used in disaster relief activities will be under command of, and directly responsible to, their military superiors.

(d) National Guard forces, if not in active Federal service, will remain under control of the State governor and will be considered part of the local resources available to civil authorities. Federally owned National Guard equipment may accompany a unit when ordered into disaster relief operations by a governor.

(e) The Commanding General, U.S. Continental Army Command (CG USCONARC) is delegated responsibility for the conduct of Army support activities. Specifically he—

(1) Is, under the provisions of §§ 502.1 through 502.5, assigned responsibility for the conduct of military disaster relief in the 48 contiguous States and the District of Columbia.

(2) Will be prepared to conduct disaster relief operations as appropriate in Mexico or Canada upon direction of the Department of the Army.

(3) Will coordinate and insure establishment of joint control of the disaster relief efforts of all DOD components. In local disasters not warranting a declaration of a major disaster, local civil authorities can be expected to make appeals for assistance direct to installations or activities other than those operated by the Department of the Army.

(4) Will report to the Deputy Chief of Staff for Military Operations by the fastest electrical means when resources of DOD components are committed to disaster relief or when disaster conditions prevail that make commitment of DOD resources imminent.

(5) Will, as appropriate, furnish available personnel and resources to District and Division Engineers of the Corps of Engineers prosecuting a flood fight under provisions of Pub. L. 99, or acting in response to a disaster relief directive from OEP under provisions of Pub. L. 875.

(6) Will establish and maintain liaison with the Directors of OEP and OCD, the American National Red Cross, and such other Federal, State, and local governmental agencies as are necessary to discharge responsibilities under §§ 502.1 through 502.5.

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(7) Has full authority to approve or disapprove personal requests for military assistance made by a State governor or a member of Congress. This authority will not be delegated lower than ZI army commanders. Information on such requests and action taken will be furnished to Deputy Chief of Staff for Military Operations, Department of the Army, Washington, DC, 20310.

(8) Will insure that ZI army commanders have an effective natural disaster information plan for use in the event of military operations. The plan should provide for early dispatch of information personnel to the scene.

(f) ZI army commanders are specifically charged, under the overall direction of CG USCONARC, with supporting disaster relief operations, and they—

(1) Will establish and maintain, as appropriate, liaison with Regional Directors, OEP and OCD, area offices of the American National Red Cross and other Federal, State, and local governmental agencies.

(2) Will establish and maintain, as necessary, working relationships with appropriate DOD component headquarters, class II installations and Division/District Engineers to insure coordination of the overall military disaster relief effort within the Army area and will secure necessary information from such installations as required for reports.

(3) Will assume control of resources made available by class II installations and activities for disaster assistance. If class II installation or activity resources are required but have not been made available by the activity commander, the ZI army commander will forward a request with justification through command channels to the Deputy Chief of Staff for Military Operations, Department of the Army. In those cases where commanders are unable to communicate with Headquarters, Department of the Army, and where in the opinion of the ZI army commander concerned, the extreme emergency warrants the temporary use of such resources, he will direct their use and report this action through command channels to the Deputy Chief of Staff for Military Operations.

(4) Will, upon request, make resources available to District and Division Engineers performing a flood fight under provisions of Pub. L. 99 and/or support the Corps of Engineers response to directive from OEP under provisions of Pub. L. 875.

(5) Will coordinate the military relief effort with assistance provided by the Corps of Engineers under statutory authorities of the Chief of Engineers or as directed by the OEP under Pub. L. 875.

(g) Class II installation and activity commanders are responsible for supporting disaster relief efforts under the provisions of §§ 502.1 through 502.5, and they—

(1) Will take action in local disasters of imminent seriousness as appropriate. Such action will be reported concurrently to his headquarters and to the respective ZI army commander.

(2) Will, upon the request of the ZI army commander, designate those resources under their control which can be made immediately available for disaster relief operations. Only such resources will be placed under the operational control of the ZI army commander or Division/District Engineer conducting relief operations.

(h) The Chief of Engineers is responsible for the provision of disaster assistance by applicable Division and District Engineers when required by disaster of imminent seriousness and as authorized by statutory authorities or as directed by the OEP under Pub. L. 875. He will—

(1) Insure that Division and District Engineers establish and maintain appropriate liaison with ZI army commanders, regional Directors of OCD and OEP, the American National Red Cross, and other Federal, State and local governmental agencies as necessary to discharge assigned responsibilities.

(2) Furnish the ZI army commanders concerned all pertinent information on floods or other natural disasters including activities undertaken by the Corps of Engineers. Information furnished will be by the fastest electrical means and consistent with reporting requirements placed on ZI army commanders.

(3) Insure that Engineers preplanned procedures for disaster operations are

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coordinated among Division/District Engineers and the ZI army commanders, and include provisions covering flood emergencies.

RELIEF SHIPMENTS

§ 502.11 Commercial freight shipments of supplies by voluntary non-profit relief agencies.

(a) *Scope of section.* Provided in this section are the rules under which the Department of the Army, in order to further the efficient use of United States voluntary contributions for relief in the foreign country hereinafter named, will pay ocean freight charges from United States ports to designated foreign ports of entry on supplies donated to or purchased by United States voluntary nonprofit relief agencies registered with and recommended by the Advisory Committee on Voluntary Foreign Aid (called "the Committee" in this section), for distribution in the Ryukyu Islands.

(b) *Agencies within scope of this section.* Any United States voluntary nonprofit relief agency may make application to the Chief of Civil Affairs, Department of the Army, Washington, DC 20310, for reimbursement of ocean freight charges on shipments of supplies donated to or purchased by it for distribution within the foreign country listed in paragraph (a) of this section, *Provided:*

(1) The agency is registered with and recommended by the Committee to the Department of the Army;

(2) The supplies are within the general program and projects of the agency as previously submitted to and approved by the Committee, and are essential in support of such programs and projects;

(3) The agency's representatives to whom the supplies are consigned for distribution abroad are acceptable to the Committee;

(4) The Committee has notified the Department of the Army that:

(i) The agency is not engaged in commercial or political activities;

(ii) Contributions to the agency are eligible for tax exemption under income tax laws;

(iii) The agency is directed by an active and responsible board of American

citizens who serve without compensation;

(iv) The accounts of the agency are regularly audited by a certified public accountant;

(v) The agency currently reports its activities and operations to the Committee including its budget and reports of income and expenditures, its transfer of funds, and its exports of commodities and such other information as the Committee may deem necessary, and such reports are open for public inspection;

(vi) The general program and projects by countries of operation of the agency have been approved by the Committee to permit the coordination of private agency programs with each other and with the programs of the Department of the Army in the Ryukyu Islands;

(vii) The Government of the country in which the supplies are distributed affords appropriate facilities for the necessary and economic operation of the agency's general program and projects;

(viii) The supplies are free of customs duties, other duties, tolls, and taxes;

(ix) The agency has assumed responsibility for noncommercial distribution of the supplies free of cost to the person or persons ultimately receiving them and distribution of the supplies is supervised by United States citizens, and such operations are appropriately identified as to their American character.

(c) *Manner of payment of ocean freight charges.* (1) The Department of the Army will reimburse agencies qualified under this section, to the extent of ocean freight charges paid by them for shipments made in conformity with this section: *Provided,* That application for such reimbursement on shipments must be submitted to the Department within thirty days of date of shipment, together with receipted invoices for such charges, supported by ocean bills of lading, showing that such charges are limited to the actual cost of transportation of the supplies from end of ship's tackle at the United States port of loading to end of ship's tackle at port of discharge, correctly assessed at the time of loading by the carrier for freight on a weight, measurement or

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unit basis, and free of any other charges.

(2) The voluntary non-profit relief agencies which qualify under this section may apply to the Office of the Chief of Civil Affairs, Department of the Army, Washington, DC 20310, for authorization to make shipments via Military Sea Transportation Service vessels, in conformity with this section. Upon approval of the request, the Chief of Civil Affairs will issue a Department of Army Approved Part Program authorizing shipment from a designated Port of Embarkation to end of ship's tackle at port of discharge, and including fund citation for reimbursement of Chief of Transportation. All costs of inland transportation are to be borne by the voluntary agencies.

(d) *Refund by agencies.* Any agency reimbursed under this section will refund promptly to the Department of the Army upon demand the entire amount reimbursed (or such lesser amount as the Department may demand) whenever it is determined that the reimbursement was improper as being in violation of any of the provisions of the Foreign Assistance Act of 1948, any acts amendatory thereof or supplemental thereto, any relevant appropriation acts, or any rules, regulations or procedures of the Department of the Army.

(e) *Saving clause.* The Secretary of the Army may waive, withdraw, or amend at any time or from time to time any or all of the provisions of this section.

(Interpret or apply Title II, sec. 112, 75 Stat. 719, 22 U.S.C. 2366 note)

[27 FR 177, Jan 6, 1962]

PART 504—OBTAINING INFORMATION FROM FINANCIAL INSTITUTIONS

Sec.
504.1 General.

504.2 Procedures.

APPENDIX A TO PART 504—REQUEST FOR BASIC IDENTIFYING ACCOUNT DATA—SAMPLE FORMAT.

APPENDIX B TO PART 504—CUSTOMER CONSENT AND AUTHORIZATION FOR ACCESS—SAMPLE FORMAT.

APPENDIX C TO PART 504—CERTIFICATE OF COMPLIANCE WITH THE RIGHT TO FINAN-

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APPENDIX D TO PART 504—FORMAL WRITTEN REQUEST FOR ACCESS—SAMPLE FORMAT.

APPENDIX E TO PART 504—CUSTOMER NOTICE OF FORMAL WRITTEN REQUEST—SAMPLE FORMAT.

AUTHORITY: 12 U.S.C. 3401 *et seq.*, Pub. L. 95-630, unless otherwise noted.

SOURCE: 70 FR 60723, Oct. 19, 2005, unless otherwise noted.

§ 504.1 General.

(a) *Purpose.* This part provides DA policies, procedures, and restrictions governing access to and disclosure of financial records maintained by financial institutions during the conduct of Army investigations or inquiries.

(b) *Applicability and scope.* (1) This part applies to the Active Army, the Army National Guard of the United States (ARNGUS)/Army National Guard (ARNG), and the United States Army Reserve unless otherwise stated.

(2) The provisions of 12 U.S.C. 3401 *et seq.* do not govern obtaining access to financial records maintained by financial institutions located outside of the territories of the United States, Puerto Rico, the District of Columbia, Guam, American Samoa, or the Virgin Islands. The procedures outlined in § 504.2(d)(4) will be followed in seeking access to financial information from these facilities.

(3) This part also applies to financial records maintained by financial institutions as defined in § 504.1(c)(1).

(c) *Explanation of terms.* (1) For purposes of this part, the following terms apply:

(i) Financial institution. Any office of a—

(A) Bank.

(B) Savings bank.

(C) Card issuer as defined in section 103 of the Consumers Credit Protection Act (15 U.S.C. 1602(n)).

(D) Industrial loan company.

(E) Trust company.

(F) Savings association.

(G) Building and loan association.

(H) Homestead association (including cooperative banks).

(I) Credit union.

(J) Consumer finance institution.

(ii) This includes only those offices located in any State or territory of the

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United States, or in the District of Columbia, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(2) *Financial record.* An original record, its copy, or information known to have been derived from the original record held by a financial institution, pertaining to a customer's relationship with the financial institution.

(3) *Person.* An individual or partnership of five or fewer individuals. (Per DODD 5400.12.)

(4) *Customer.* Any person or authorized representative of that person—

(i) Who used or is using any service of a financial institution.

(ii) For which a financial institution is acting or has acted as a fiduciary for an account maintained in the name of that person.

(5) *Law enforcement inquiry.* A lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, a criminal or civil statute or any regulation, rule, or order issued pursuant thereto.

(6) *Army law enforcement office.* Any army element, agency, or unit authorized to conduct investigations under the Uniform Code of Military Justice or Army regulations. This broad definition of Army law enforcement office includes military police, criminal investigation, inspector general, and military intelligence activities conducting investigations of suspected violations of law or regulation.

(7) *Personnel security investigation.* An investigation required to determine a person's eligibility for access to classified information, assignment or retention in sensitive duties, or other designated duties requiring such investigation. Personnel security investigation includes investigations of subversive affiliations, suitability information, or hostage situations conducted to make personnel security determinations. It also includes investigations of allegations that—

(i) Arise after adjudicative action, and

(ii) Require resolution to determine a person's current eligibility for access to classified information or assignment or retention in a sensitive position. With DA, the Defense Investigative Service conducts personnel security investigations.

(d) *Policy—(1) Customer consent.* It is DA policy to seek customer consent to obtain a customer's financial records from a financial institution unless doing so would compromise or harmfully delay a legitimate law enforcement inquiry. If the person declines to consent to disclosure, the alternative means of obtaining the records authorized by this part will be used. (See § 504.2 (c) through (g).)

(2) *Access requests.* Except as provided in paragraph (d)(3) of this section and §§ 504.1(f)(1), 504.2(g) and 504.2(j), Army investigative elements may not have access to or obtain copies of the information in the financial records of any customer from a financial institution unless the financial records are reasonably described and the—

(i) Customer has authorized such disclosure (§ 504.2(b));

(ii) Financial records are disclosed in response to a search warrant which meets the requirements of § 504.2(d);

(iii) Financial records are disclosed in response to a judicial subpoena which meets the requirements of § 504.2(e); or

(iv) Financial records are disclosed in response to a formal written request which meets the requirements of § 504.2(f).

(3) *Voluntary information.* Nothing in this part will preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying an Army investigative element that such institution, or officer, employee or agent has information which may be relevant to a possible violation of any statute or regulation.

(e) *Authority.* (1) Law enforcement offices are authorized to obtain records of financial institutions per this part, except as provided in § 504.2(e).

(2) The head of a law enforcement office of field grade rank or higher (or an equivalent grade civilian official) is authorized to initiate requests for such records.

(f) *Exceptions and waivers.* (1) A law enforcement office may issue a formal written request for basic identifying account information to a financial institution as part of a legitimate law enforcement inquiry. The request may be issued for any or all of the following identifying data:

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- (i) Name.
- (ii) Address.
- (iii) Account number.
- (iv) Type of account of any customer or ascertainable group of customers associated with a financial transaction or class of financial transactions.

(2) A request for disclosure of the above specified basic identifying data on a customer's account may be issued without complying with the customer notice, challenge, or transfer procedures described in § 504.2. However, if access to the financial records themselves is required, the procedures in § 504.2 must be followed. (A sample format for requesting basic identifying account data is in app. A.)

(3) This part will not apply when financial records are sought by the Army under the Federal Rules for Civil Procedure, Criminal Procedure, Rules for Courts-Martial, or other comparable rules of other courts in connection with litigation to which the Government and the customer are parties.

(4) No exceptions or waivers will be granted for those portions of this part required by law. Submit requests for exceptions or waivers of other aspects of this part to HQDA OPMG (DAPM-MPD-LE), Washington, DC 20310-2800.

§ 504.2 Procedures.

(a) *General.* A law enforcement official seeking access to a person's financial records will, when feasible, obtain the customer's consent. This section also sets forth other authorized procedures for obtaining financial records if it is not feasible to obtain the customer's consent. Authorized procedures for obtaining financial records follow. All communications with a U.S. Attorney or a U.S. District Court, as required by this part, will be coordinated with the supporting staff judge advocate before dispatch.

(b) *Customer consent.* (1) A law enforcement office may gain access to or a copy of a customer's financial records by obtaining the customer's consent and authorization in writing. (See app. B to this part for a sample format.) Any consent obtained under the provisions of this paragraph must—

- (i) Be in writing, signed, and dated.
- (ii) Identify the particular financial records being disclosed.

(iii) State that the customer may revoke the consent at any time before disclosure.

(iv) Specify the purpose of disclosure and to which agency the records may be disclosed.

(v) Authorize the disclosure for a period not over 3 months.

(vi) Contain a "Statement of Customer Rights Under the Right to Financial Privacy Act of 1978" (12 U.S.C. 3401 *et seq.*) (app. B).

(2) Any customer's consent not containing all of the elements listed in paragraph (a) of this section will not be valid.

(3) A copy of the customer's consent will be made a part of the law enforcement inquiry file.

(4) A certification of compliance with 12 U.S.C. 3401 *et seq.* (app. C), along with the customer's consent, will be provided to the financial institution as a prerequisite to obtaining access to the financial records.

(c) *Administrative summons or subpoena.* The Army has no authority to issue an administrative summons or subpoena for access to financial records.

(d) *Search warrant.* (1) A law enforcement office may obtain financial records by using a search warrant obtained under Rule 41 of the Federal Rules of Criminal Procedure in appropriate cases.

(2) No later than 90 days after the search warrant is served, unless a delay of notice is obtained under § 504.2(i), a copy of the search warrant and the following notice must be mailed to the customer's last known address:

Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (office/agency/unit) on (date) for the following purpose: (state purpose). You may have rights under the Right to Financial Privacy Act of 1978.

(3) Search authorization signed by installation commanders or military judges will not be used to gain access to financial records from financial institutions in any State or territory of the United States.

(4) Access to financial records maintained by military banking contractors in overseas areas or by other financial

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institutions located on DOD installations outside the United States, Puerto Rico, the District of Columbia, Guam, American Samoa, or the Virgin Islands is preferably obtained by customer consent.

(i) In cases where it would not be appropriate to obtain this consent or such consent is refused and the financial institution is not otherwise willing to provide access to its records, the law enforcement activity may seek access by use of a search authorization. This authorization must be prepared and issued per AR 27-10, Military Justice.

(ii) Information obtained under this paragraph should be properly identified as financial information. It should be transferred only where an official need-to-know exists. Failure to do so, however, does not render the information inadmissible in courts-martial or other proceedings.

(iii) Law enforcement activities seeking access to financial records maintained by all other financial institutions overseas will comply with local foreign statutes or procedures governing such access.

(e) *Judicial subpoena.* Judicial subpoenas—

(1) Are those subpoenas issued in connection with a pending judicial proceeding.

(2) Include subpoenas issued under Rule for Courts-Martial 703(e)(2) of the Manual for Courts-Martial and Article 46 of the Uniform Code of Military Justice. The servicing staff judge advocate will be consulted on the availability and use of judicial subpoenas.

(f) *Formal written request.* (1) A law enforcement office may formally request financial records when the records are relevant to a legitimate law enforcement inquiry. This request may be issued only if—

(i) The customer has declined to consent to the disclosure of his or her records, or

(ii) Seeking consent from the customer would compromise or harmfully delay a legitimate law enforcement inquiry.

(2) A formal written request will be in a format set forth in appendix D of this part and will—

(i) State that the request is issued under the Right to Financial Privacy Act of 1978 and this part.

(ii) Described the specific records to be examined.

(iii) State that access is sought in connection with a legitimate law enforcement inquiry.

(iv) Describe the nature of the inquiry.

(v) Be signed by the head of the law enforcement office or a designee (persons specified in § 504.1(e)(2)).

(3) At the same time or before a formal written request is issued to a financial institution, a copy of the request will be personally served upon or mailed to the customer's last known address unless a delay of customer notice has been obtained under § 504.2(i). The notice to the customer will be—

(i) In a format similar to appendix E of this part.

(ii) Personally served at least 10 days or mailed at least 14 days before the date on which access is sought.

(4) The official who signs the customer notice is designated to receive any challenge from the customer.

(5) The customer will have 10 days to challenge a notice request when personal service is made, and 14 days when service is by mail.

(6) The head of the law enforcement office initiating the formal written request will set up procedures to ensure that no access to financial records is attempted before expiration of the above time periods—

(i) While awaiting receipt of a potential customer challenge, or

(ii) While awaiting the filing of an application for an injunction by the customer.

(7) Proper preparation of the formal written request and notice to the customer requires preparation of motion papers and a statement suitable for court filing by the customer. Accordingly, the law enforcement office intending to initiate a formal written request will coordinate preparation of the request, the notice, motion papers, and sworn statement with the supporting staff judge advocate. These documents are required by statute; their preparation cannot be waived.

(8) The supporting staff judge advocate is responsible for liaison with the

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proper United States Attorney and United States District Court. The requesting official will coordinate with the supporting staff judge advocate to determine whether the customer has filed a motion to prevent disclosure of the financial records within the prescribed time limits.

(9) The head of the law enforcement office (§504.2(f)(2)(v)) will certify in writing (see app. C) to the financial institution that such office has complied with the requirements of 12 U.S.C. 3401 *et seq.*—

(i) When a customer fails to file a challenge to access to financial records within the above time periods, or

(ii) When a challenge is adjudicated in favor of the law enforcement office. No access to any financial records will be made before such certification is given.

(g) *Emergency access.* Section 504.2(g)(2)(3) provides for emergency access in such cases of imminent danger. (No other procedures in this part apply to such emergency access.)

(1) In some cases, the requesting law enforcement office may determine that a delay in obtaining access would create an imminent danger of—

- (i) Physical injury to a person,
- (ii) Serious property damage, or
- (iii) Flight to avoid prosecution.

(2) When emergency access is made to financial records, the requesting official (§504.1(e)(2)) will—

(i) Certify in writing (in a format similar to that in app. C) to the financial institution that the provisions of 12 U.S.C. 3401 *et seq.* have been complied with as a prerequisite to obtaining access.

(ii) File with the proper court a signed, sworn statement setting forth the grounds for the emergency access within 5 days of obtaining access to financial records.

(3) After filing of the signed, sworn statement, the official who has obtained access to financial records under this paragraph will as soon as practicable—

(i) Personally serve or mail to the customer a copy of the request to the financial institution and the following notice, unless a delay of notice has been obtained under §504.2(i):

Records concerning your transactions held by the financial institution named in the attached request were obtained by (office/agency/unit) under the Right to Financial Privacy Act of 1978 on (date) for the following purpose: (state with reasonable detail the nature of the law enforcement inquiry). Emergency access to such records was obtained on the grounds that (state grounds).

(ii) Ensure that mailings under this section are by certified or registered mail to the last known address of the customer.

(h) *Release of information obtained from financial institutions*—(1) *Records notice.* Financial records, to include derived information, obtained under 12 U.S.C. 3401 *et seq.* will be marked as follows:

This record was obtained pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.*, and may not be transferred to another Federal agency or department outside DOD without prior compliance with the transferring requirements of 12 U.S.C. 3412.

(2) *Records transfer.* (i) Financial records originally obtained under this part will not be transferred to another agency or department outside the DOD unless the transferring law enforcement office certifies their relevance in writing. Certification will state that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry within the jurisdiction of the receiving agency or department. To support this certification, the transferring office may require that the requesting agency submit adequate justification for its request. File a copy of this certification with a copy of the released records.

(ii) Unless a delay of customer notice has been obtained (§504.2(i)), the transferring law enforcement office will, within 14 days, personally serve or mail the following to the customer at his or her last known address—

(A) A copy of the certification made according to §504.2(h)(2)(i) and

(B) The following notice, which will state the nature of the law enforcement inquiry with reasonable detail:

Copies of, or information contained in, your financial records lawfully in possession of the Department of the Army have been furnished to (state the receiving agency or

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department) pursuant to the Right to Financial Privacy Act of 1978 for (state the purpose). If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Financial Privacy Act of 1978 or the Privacy Act of 1974.

(iii) If a request for release of information is from a Federal agency authorized to conduct foreign intelligence or foreign counterintelligence activities (Executive Order 12333) and is for purposes of conducting such activities by these agencies, the information will be released without notifying the customer, unless permission to provide notification is given in writing by the requesting agency.

(iv) Financial information obtained before the effective date of the Financial Privacy Act of 1978 (March 10, 1979) may continue to be provided to other agencies according to existing procedures, to include applicable Privacy Act System Notices published in AR 340-21 series.

(3) *Precautionary measures.* Whenever financial data obtained under this part is incorporated into a report of investigation or other correspondence, precautions must be taken to ensure that—

(i) The report or correspondence is not distributed outside of DOD except in compliance with paragraph (h)(2)(ii)(B) of this section.

(ii) The report or other correspondence contains the following warning restriction on the first page or cover:

Some of the information contained herein (cite specific paragraphs) is financial record information which was obtained pursuant to the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.* This information may not be released to another Federal agency or department outside the DOD without compliance with the specific requirements of 12 U.S.C. 3412 and AR 190-6.

(i) *Delay of customer notice procedures*—(1) *Length of delay.* The customer notice required by formal written request (§ 504.2(f)(3)), emergency access (§ 504.2(g)(3)), and release of information (§ 504.2(h)(2)(iii)) may be delayed for successive periods of 90 days. The notice required for search warrant (§ 504.2(d)(2)) may be delayed for one period of 180 days and successive periods of 90 days.

(2) *Conditions for delay.* A delay of notice may only be made by an order of an appropriate court. This will be done when not granting a delay in serving the notice would result in—

(i) Endangering the life or physical safety of any person.

(ii) Flight from prosecution.

(iii) Destruction of or tampering with evidence.

(iv) Intimidation of potential witnesses.

(v) Otherwise seriously jeopardizing an investigation or official proceeding or unduly delaying a trial or ongoing official proceeding to the same degree as the circumstances in § 504.2(i)(2)(i) through (iv).

(3) *Coordination.* When a delay of notice is appropriate, the law enforcement office involved will consult with the supporting staff judge advocate before attempting to obtain such a delay. Applications for delay of notice should contain reasonable detail.

(4) *After delay expiration.* Upon the expiration of a delay of notice under above and required by—

(i) Section 504.2(d)(2), the law enforcement office obtaining financial records will mail to the customer a copy of the search warrant and the following notice.

Records or information concerning your transactions held by the financial institution named in the attached search warrant were obtained by this (agency or office) on (date). Notification was delayed beyond the statutory 180-day delay period pursuant to a determination by the court that such notice would seriously jeopardize an investigation concerning (state with reasonable detail). You may have rights under the Right to Financial Privacy Act of 1978.

(ii) Section 504.2(f)(3), the law enforcement office obtaining financial records will serve personally or mail to the customer a copy of the process or request and the following notice:

Records or information concerning your transactions which are held by the financial institution named in the attached process or request were supplied to or requested by the Government authority named in the process or request on (date). Notification was withheld pursuant to a determination by the (title of the court so ordering) under the Right to Financial Privacy Act of 1978 that

such notice might (state reason). The purpose of the investigation or official proceeding was (state purpose with reasonable detail).

(iii) Section 504.2(g)(3), the law enforcement office obtaining financial records will serve personally or mail to the customer a copy of the request and the notice required by §504.2(g)(3).

(iv) Section 504.2(h)(2), the law enforcement office transferring financial records will serve personally or mail to the customer the notice required by §504.2(f)(3). If the law enforcement office was responsible for obtaining the court order authorizing the delay, such office shall also serve personally or by mail to the customer the notice required in §504.2(f)(3).

(j) *Foreign intelligence and foreign counterintelligence activities.* (1) Except as indicated below, nothing in this regulation applies to requests for financial information in connection with authorized foreign intelligence and foreign counterintelligence activities as defined in Executive Order 12333. Appropriate foreign intelligence and counterintelligence directives should be consulted in these instances.

(2) However, to comply with the Financial Privacy Act of 1978, the following guidance will be followed for such requests. When a request for financial records is made—

(i) A military intelligence group commander, the chief of an investigative control office, or the Commanding General (CG) (or Deputy CG), U.S. Army Intelligence and Security Command, will certify to the financial institution that the requesting activity has complied with the provisions of 12 U.S.C. 3403(b).

(ii) The requesting official will notify the financial institution from which records are sought that 12 U.S.C. 3414(a)(3) prohibits disclosure to any person by the institution, its agents, or employees that financial records have been sought or obtained.

(k) *Certification.* A certificate of compliance with the Right to Financial Privacy Act of 1978 (app. C) will be provided to the financial institution as a prerequisite to obtaining access to financial records under the following access procedures:

- (1) Customer consent (§504.2(b)).

- (2) Search warrant (§504.2(d)).
- (3) Judicial subpoena (§504.2(e)).
- (4) Formal written request (§504.2(f)).
- (5) Emergency access (§504.2(g)).
- (6) Foreign intelligence and foreign counterintelligence activities (§504.2(j)).

APPENDIX A TO PART 504—REQUEST FOR BASIC IDENTIFYING ACCOUNT DATA—SAMPLE FORMAT

(Official Letterhead)

(Date) _____

Mr./Mrs. _____
Chief Teller (as appropriate), First National Bank, Little Rock, AR 72203.

Dear Mr./Mrs. _____: In connection with a legitimate law enforcement inquiry and pursuant to section 3414 of the Right to Financial Privacy Act of 1978, section 3401 *et seq.*, Title 12, United States Code, you are requested to provide the following account information: (name, address, account number, and type of account of any customer or ascertainable group of customers associated with a certain financial transaction or class of financial transactions as set forth in §504.1(f)).

I hereby certify, pursuant to section 3403(b) of the Right to Financial Privacy Act of 1978, that the provisions of the Act have been complied with as to this request for account information.

(Official Signature Block) _____

Under section 3417(c) of the Act, good faith reliance upon this certification relieves your institution and its employees and agents of any possible liability to the subject in connection with the disclosure of the requested financial records.

APPENDIX B TO PART 504—CUSTOMER CONSENT AND AUTHORIZATION FOR ACCESS—SAMPLE FORMAT

Pursuant to section 3404(a) of the Right to Financial Privacy Act of 1978, I, (name of customer), having read the explanation of my rights on the reverse side, hereby authorize the (name and address of financial institution) to disclose these financial records: (list of particular financial records) to (Army law enforcement office) for the following purpose(s): (specify the purpose(s)).

I understand that this authorization may be revoked by me in writing at any time before my records, as described above, are disclosed, and that this authorization is valid for no more than 3 months from the date of my signature.

Date: _____

Signature: _____
 (Typed name)

(Mailing address of customer)

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Statement of Customer Rights Under the Right to Financial Privacy Act of 1978

Federal law protects the privacy of your financial records. Before banks, savings and loan associations, credit unions, credit card issuers, or other financial institutions may give financial information about you to a Federal agency, certain procedures must be followed.

Consent to Financial Records

You may be asked to consent to the financial institution making your financial records available to the Government. You may withhold your consent, and your consent is not required as a condition of doing business with any financial institution. If you give your consent, it can be revoked in writing at any time before your records are disclosed. Furthermore, any consent you give is effective for only 3 months and your financial institution must keep a record of the instances in which it discloses your financial information.

Without Your Consent

Without your consent, a Federal agency that wants to see your financial records may do so ordinarily only by means of a lawful subpoena, summons, formal written request, or search warrant for that purpose. Generally, the Federal agency must give you advance notice of its request for your records explaining why the information is being sought and telling you how to object in court. The Federal agency must also send you copies of court documents to be prepared by you with instructions for filling them out. While these procedures will be kept as simple as possible, you may want to consult an attorney before making a challenge to a Federal agency's request.

Exceptions

In some circumstances, a Federal agency may obtain financial information about you without advance notice or your consent. In most of these cases, the Federal agency will be required to go to court for permission to obtain your records without giving you notice beforehand. In these instances, the court will make the Government show that its investigation and request for your records are proper. When the reason for the delay of notice no longer exists, you will usually be notified that your records were obtained.

Transfer of Information

Generally, a Federal agency that obtains your financial records is prohibited from transferring them to another Federal agency unless it certifies in writing the transfer is proper and sends a notice to you that your records have been sent to another agency.

Penalties

If the Federal agency or financial institution violates the Right to Financial Privacy Act, you may sue for damages or seek compliance with the law. If you win, you may be repaid your attorney's fee and costs.

Additional Information

If you have any questions about your rights under this law, or about how to consent to release your financial records, please call the official whose name and telephone number appears below:

(Last Name, First Name, Middle Initial)

Title (Area Code) (Telephone Number)

(Component activity, address)

APPENDIX C TO PART 504—CERTIFICATE OF COMPLIANCE WITH THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978—SAMPLE FORMAT

(Official Letterhead)

Mr./Mrs. _____
Manager, Army Federal Credit Union, Fort Ord, CA 93941.

Dear Mr./Mrs. _____: I certify, pursuant to section 3403(b) of the Right to Financial Privacy Act of 1978, section 3401 *et seq.*, Title 12, United States Code, that the applicable provisions of that statute have been complied with as to the (customer's consent, search warrant or judicial subpoena, formal written request, emergency access, as applicable) presented on (date), for the following financial records of (customer's name):

(Describe the specific records)

(Official Signature Block)

Pursuant to section 3417(c) of the Right to Financial Privacy Act of 1978, good faith reliance upon this certificate relieves your institution and its employees and agents of any possible liability to the customer in connection with the disclosure of these financial records.

APPENDIX D TO PART 504—FORMAL WRITTEN REQUEST FOR ACCESS—SAMPLE FORMAT

(Official Letterhead)

(Date) _____
Mr./Mrs. _____
President (as appropriate), City National Bank and Trust Company, Altoona, PA 16602.

Dear Mr./Mrs. _____: In connection with a legitimate law enforcement inquiry and pursuant to section 3402(5) and section 3408 of the Right to Financial Privacy Act of 1978, section 3401 *et seq.*, Title 12, United

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States Code, and Army Regulation 190-6, you are requested to provide the following account information pertaining to (identify customer);

b. File the motion and statement by mailing or delivering them to the clerk of any one of the following United States District Courts:

(Describe the specific records to be examined)

(List applicable courts)

The Army has no authority to issue an administrative summons or subpoena for access to these financial records which are required for (describe the nature or purpose of the inquiry).

c. Mail or deliver a copy of your motion and statement to the requesting authority: (give title and address).

d. Be prepared to come to court and present your position in further detail.

A copy of this request was (personally served upon or mailed to) the subject on (date) who has (10 or 14) days in which to challenge this request by filing an application in an appropriate United States district court if the subject desires to do so.

You do not need to have a lawyer, although you may wish to employ one to represent you and protect your rights.

If you do not follow the above procedures, upon the expiration of (10 days from the date of personal service) (14 days from the date of mailing) of this notice, the records or information requested therein may be made available.

Upon expiration of the above mentioned time period and in the absence of any filing or challenge by the subject, you will be furnished a certification certifying in writing that the applicable provisions of the Act have been complied with prior to obtaining the requested records. Upon your receipt of a Certificate of Compliance with the Right to Financial Privacy Act of 1978, you will be relieved of any possible liability to the subject in connection with the disclosure of the requested financial records.

These records may be transferred to other Government authorities for legitimate law enforcement inquiries, in which event you will be notified after the transfer if such transfer is made.

3 Enclosures (see para ____)

(Signature) _____

(Official Signature Block) _____

PART 505—THE ARMY PRIVACY PROGRAM

APPENDIX E TO PART 504—CUSTOMER NOTICE OF FORMAL WRITTEN REQUEST—SAMPLE FORMAT

Sec.

505.1 General information.

505.2 Individual rights of access and amendment.

505.3 Disclosure of personal information to other agencies and third parties.

505.4 Recordkeeping requirements under the Privacy Act.

505.5 Exemptions.

(Official Letterhead)

(Date) _____

Mr./Ms. _____

1500 N. Main Street, Washington, DC 20314.

Dear Mr./Ms. ____: Information or records concerning your transactions held by the financial institution named in the attached request are being sought by the (agency/department) in accordance with the Right to Financial Privacy Act of 1978, section 3401 *et seq.*, Title 12, United States Code, and Army Regulation 190-6, for the following purpose(s):

APPENDIX A TO PART 505—EXAMPLE OF SYSTEM OF RECORDS NOTICE

APPENDIX B TO PART 505—EXAMPLE OF REPORT FOR NEW SYSTEM OF RECORDS

APPENDIX C TO PART 505—PROVISIONS OF THE PRIVACY ACT FROM WHICH A GENERAL OR SPECIFIC EXEMPTION MAY BE CLAIMED

APPENDIX D TO PART 505—GLOSSARY OF TERMS

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

SOURCE: 50 FR 42164, Oct. 18, 1985, unless otherwise noted.

(List the purpose(s))

If you desire that such records or information not be made available, you must do the following:

a. Fill out the accompanying motion paper and sworn statement or write one of your own—

(1) Stating that you are the customer whose records are being requested by the Government.

(2) Giving the reasons you believe that the records are not relevant or any other legal basis for objecting to the release of the records.

§ 505.1 General information.

(a) *Purpose.* This regulation sets forth policies and procedures that govern personal information kept by the Department of the Army in systems of records.

(b) *References*—(1) *Required publications.* (i) AR 195-2, Criminal Investigation Activities. (Cited in § 505.2(j))

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(ii) AR 340-17, Release of Information and Records from Army Files. (Cited in §§ 505.2(h) and 505.4(d))

(iii) AR 430-21-8, The Army Privacy Program; System Notices and Exemption Rules for Civilian Personnel Functions. (Cited in § 505.2(i))

(iv) AR 380-380, Automated System Security. (Cited in § 505.4(d) and (f))

(2) *Related publications.* (A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.)

(i) DOD Directive 5400.11, DOD Privacy Program.

(ii) DOD Regulation 5400.11-R, DOD Privacy Program.

(iii) Treasury Fiscal Requirements Manual. This publication can be obtained from The Treasury Department, 15th and Pennsylvania Ave., NW, Washington, DC 20220

(c) *Explanation of abbreviations and terms.* Abbreviations and special terms used in this regulation are explained in the glossary.

(d) *Responsibilities.* (1) The Director of Information Systems for Command, Control, Communications, and Computers (DISC4) is responsible for issuing policy and guidance for the Army Privacy Program in consultation with the Army General Counsel.

(2) The Commander, U.S. Army Information Systems Command is responsible for developing policy for and executing the Privacy Act Program under the policy and guidance of the DISC4.

(3) Heads of Joint Service agencies or commands for which the Army is the Executive Agent, or otherwise has responsibility for providing fiscal, logistical, or administrative support, will adhere to the policies and procedures in this regulation.

(4) Commander, Army and Air Force Exchange Service (AAFES), is responsible for the supervision and execution of the privacy program within that command pursuant to this regulation.

(e) *Policy.* Army Policy concerning the privacy rights of individuals and the Army's responsibilities for compliance with operational requirements established by the Privacy Act are as follows:

(1) Protect, as required by the Privacy Act of 1974 (5 U.S.C. 552a), as

amended, the privacy of individuals from unwarranted intrusion. Individuals covered by this protection are living citizens of the United States and aliens lawfully admitted for permanent residence.

(2) Collect only the personal information about an individual that is legally authorized and necessary to support Army operations. Disclose this information only as authorized by the Privacy Act and this regulation.

(3) Keep only personal information that is timely, accurate, complete, and relevant to the purpose for which it was collected.

(4) Safeguard personal information to prevent unauthorized use, access, disclosure, alteration, or destruction.

(5) Let individuals know what records the Army keeps on them and let them review or get copies of these records, subject to exemptions authorized by law and approved by the Secretary of the Army. (See § 505.5.)

(6) Permit individuals to amend records about themselves contained in Army systems of records, which they can prove are factually in error, not up-to-date, not complete, or not relevant.

(7) Allow individuals to ask for an administrative review or decisions that deny them access to or the right to amend their records.

(8) Maintain only information about an individual that is relevant and necessary for Army purposes required to be accomplished by statute or Executive Order.

(9) Act on all requests promptly, accurately, and fairly.

(f) *Authority.* The Privacy Act of 1974 (5 U.S.C. 552a), as amended, is the statutory basis for the Army Privacy Program. Within the Department of Defense, the Act is implemented by DOD Directive 5400.11 and DOD 5400.11-R. The Act Assigns—

(1) Overall Government-wide responsibilities for implementation to the Office of Management and Budget.

(2) Specific responsibilities to the Office of Personnel Management and the General Services Administration.

(g) *Access and Amendment Refusal Authority (AARA).* Each Access and Amendment Refusal Authority (AARA) is responsible for action on requests for

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access to, or amendment of, records referred to them under this part. The officials listed below are the only AARA for records in their authority. Authority may be delegated to an officer or subordinate commander. All delegations must be in writing. If an AARA's delegate denies access or amendment, the delegate must clearly state that he or she is acting on behalf of the AARA and identify the AARA by name and position in the written response to the requester. Denial of access or amendment by an AARA's delegate must have appropriate legal review. Delegations will not be made below the colonel (06) or GS/GM-15 level. Such delegations must not slow Privacy actions. AARAs will send the names, offices, telephone numbers of their delegates to the Director of Information Systems for Command, Control, Communications and Computers, Headquarters, Department of the Army, ATTN: SAIS-IDP, Washington, DC 20310-0107; and the Department of the Army Privacy Review Board, Crystal Square 1, Suite 201, 1725 Jefferson Davis Highway, Arlington, VA 22202.

(1) The Administrative Assistant to the Secretary of the Army (AASA) for records of the Secretariat and its serviced activities, to include the personnel records maintained by the General Officer Management Office, personnel records pertaining to Senior Executive Service personnel serviced by the Office of the Secretary of the Army (OSA), and Equal Employment Opportunity (EEO) records from offices serviced by the OSA. The AASA will also serve as AARA for those records requiring the personal attention of the Secretary of the Army.

(2) The Inspector General (TIG) for TIG investigative records.

(3) The president or executive secretary of boards, councils, and similar bodies established by the Department of the Army to consider personnel matters, including the Army Board of Correction of Military Appeals, for records under their purview.

(4) The Deputy Chief of Staff for Personnel (DCSPER) for records of active and former non-appropriated fund employees (except those in the Army and Air Force Exchange Service), alcohol and drug abuse treatment records, be-

havioral science records, recruiting, Armed Services Vocational Aptitude Battery (ASVAB), equal opportunity, Junior Reserve Officers' Training Corps (ROTC), Senior ROTC Instructor, military academy cadet, selection, promotion, and reduction boards; special review boards; professional staff informational records; and entrance processing records (when records pertain to those not entering active duty).

(5) The Deputy Chief of Staff for Operations and Plans (DCSOPS) for military police records and reports and prisoner confinement and correctional records.

(6) Chief of Engineers (COE) for records pertaining to civil work (including litigation), military construction, engineer procurement, other engineering matters not under the purview of another AARA, ecology, and contractor qualifications.

(7) The Surgeon General (TSG) for medical records, except properly part of the Official Personnel Folder (OPM/GOVT-1 system of records).

(8) Chief of Chaplains (CCH) for ecclesiastical records.

(9) The Judge Advocate General (TJAG) for legal records under TJAG responsibility.

(10) Chief, National Guard Bureau (NGB) for personnel records of the Army National Guard.

(11) Chief, Army Reserve (CAR) for personnel records of Army retired, separated and reserve military personnel members.

(12) Commander, United States Army Material Command (USAMC) for records of Army contractor personnel of the Army Material Command.

(13) Commander, United States Army Criminal Investigation Command (USACIDC) for criminal investigation reports and military police reports included therein.

(14) Commander, United States Total Army Personnel Command (PERSCOM) for personnel and personnel related records of Army members on active duty and current Federal appropriated fund civilian employees. (Requests from former civilian employees to amend a record in any OPM system of records such as the Official Personnel Folder should be sent to the Office of

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Personnel Management, Assistant Director for Workforce Information, Compliance and Investigations Group, 1900 E Street, NW., Washington, DC 20415-0001.

(15) Commander, U.S. Army Community and Family Support Center (USACFSC) for records relating to morale, welfare and recreation activities; community life programs; family action programs, retired activities, club management, Army emergency relief, consumer protection, retiree survival benefits, and records dealing with Department of the Army relationships and social security veteran's affairs, United Service Organizations, U.S. Soldiers' and Airmen's home and American Red Cross.

(16) Commander, U.S. Army Intelligence and Security Command (INSCOM) for intelligence, investigative and security records; foreign scientific and technological information; intelligence training, mapping and geodesy information; ground surveillance records; intelligence threat assessments; and missile intelligence data relating to tactical land warfare systems.

(17) Commander, Army and Air Force Exchange Service (AAFES) for records pertaining to employees, patrons, and other matters which are the responsibility of the Exchange Service.

(18) Commander, Military Traffic Management Command (MTMC) for transportation records.

(19) Director of Army Safety for safety records.

(20) Commander, U.S. Army Information Systems Command (USAISC) for records which do not fall within the functional area of another AARA.

(h) *Department of the Army Privacy Review Board.* The Department of the Army Privacy Review Board acts on behalf of the Secretary of the Army in deciding appeals from refusal of the appropriate AARAs to amend records. Board membership is comprised of the AASA, the Commander, USAISC, Pentagon, and TJAG, or their representatives. The AARA may serve as a non-voting member when the Board considers matters in the AARA's area of functional specialization. The Commander, USAISC, Pentagon, chairs the Board and provides the recording secretary.

(i) *Privacy Official.* (1) Heads of Army Staff agencies and commanders of major Army commands and subordinate commands and activities will designate a privacy official who will serve as a staff adviser on privacy matters. This function will not be assigned below battalion level.

(2) The privacy official will ensure that (i) requests are processed promptly and responsively, (ii) records subject to the Privacy Act in his/her command/agency are described properly by a published system notice, (iii) privacy statements are included on forms and questionnaires that seek personnel information from an individual, and (iv) procedures are in place to meet reporting requirements.

[50 FR 42164, Oct. 18, 1985, as amended at 58 FR 51012, Sept. 30, 1993]

§ 505.2 Individual rights of access and amendment.

(a) *Access under the Privacy Act.* Upon a written or oral request, an individual or his/her designated agent or legal guardian will be granted access to a record pertaining to that individual, maintained in a system of records, unless the record is subject to an exemption and the system manager has invoked the exemption (see § 505.5), or the record is information compiled in reasonable anticipation of a civil action or proceeding. The requester does not have to state a reason or otherwise justify the need to gain access. Nor can an individual be denied access solely because he/she refused to provide his/her Social Security Number unless the Social Security Number was required for access by statute or regulation adopted prior to January 1, 1975. The request should be submitted to the custodian of the record.

(b) *Notifying the individual.* The custodian of the record will acknowledge requests for access within 10 work days of receipt. Records will be provided within 30 days, excluding Saturdays, Sundays, and legal public holidays.

(c) *Relationship between the Privacy Act and the Freedom of Information Act.* A Privacy Act request for access to records should be processed also as a Freedom of Information Act request. If

all or any portion of the requested material is to be denied, it must be considered under the substantive provisions of both the Privacy Act and the Freedom of Information Act. Any withholding of information must be justified by asserting a legally applicable exemption in each Act.

(d) *Functional requests.* If an individual asks for his/her record and does not cite, or reasonably imply, either the Privacy Act or the Freedom of Information Act, and another prescribing directive authorizes release, the records should be released under that directive. Examples of functional requests are military members asking to see their Military Personnel Records Jacket, or civilian employees asking to see their Official Personnel Folder.

(e) *Medical records.* If it is determined that releasing medical information to the data subject could have an adverse affect on the mental or physical health of that individual, the requester should be asked to name a physician to receive the record. The data subject's failure to designate a physician is not a denial under the Privacy Act and cannot be appealed.

(f) *Third party information.* Third party information pertaining to the data subject may not be deleted from a record when the data subject requests access to the record unless there is an established exemption (see §505.5(d)). However, personal data such as SSN and home address of third parties in the data subject's record normally do not pertain to the data subject and therefore may be withheld. Information about the relationship between the data subject and the third party would normally be disclosed as pertaining to the data subject.

(g) *Referral of records.* Requests for access to Army systems of records containing records that originated with other DOD Components or Federal agencies which claimed exemptions for them will be coordinated with or referred to the originator for release determination. The requester will be notified of the referral.

(h) *Fees.* Requesters will be charged only for the reproduction of requested documents. Normally, there will be no charge for the first copy of a record provided to the individual whose record

it is. Thereafter, fees will be computed as set forth in AR 340-17.

(i) *Denial of access.* (1) The only officials authorized to deny a request from a data subject for records in a system of records pertaining to that individual are the appropriate Access and Amendment Refusal Authorities (see §505.1(f)), or the Secretary of the Army, acting through the General Counsel. Denial is appropriate only if the record:

(i) Was compiled in reasonable anticipation of a civil action or proceeding, or

(ii) Is properly exempted by the Secretary of the Army from the disclosure provisions of the Privacy Act (see §505.5), there is a legitimate governmental purpose for invoking the exemption, and it is not required to be disclosed under the Freedom of Information Act.

(2) Requests for records recommended to be denied will be forwarded to the appropriate AARA within 5 work days of receipt, together with the request, disputed records, and justification for withholding. The requester will be notified of the referral.

(3) Within the 30 work day period (see §505.2(b)), the AARA will give the following information to the requester in writing if the decision is to deny the request for access:

(i) Official's name, position title, and business address;

(ii) Date of the denial;

(iii) Reasons for the denial, including citation of appropriate section(s) of the Privacy Act and this regulation;

(iv) The opportunity for further review of the denial by the General Counsel, Office, Secretary of the Army, The Pentagon, Washington, DC 20310, through the AARA within 60 calendar days. (For denials made by the Army when the record is maintained in one of OPM's government-wide systems of records, notices for which are described at appendix B, AR 340-21-8, an individual's request for further review must be addressed to the Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415-0001.)

(j) *Amendment of records.* (1) Individuals may request the amendment of

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their records, in writing, when such records are believed to be inaccurate as a matter of fact rather than judgment, irrelevant, untimely, or incomplete.

(2) The amendment procedures are not intended to permit challenge to a record that records an event that actually occurred nor are they designed to permit collateral attack upon that which has been the subject of a judicial or quasi-judicial action. Consideration of request for an amendment would be appropriate if it can be shown that circumstances leading up to the event that is recorded on the document were challenged through administrative procedures and found to be inaccurately described, that the document is not identical to the individual's copy, or that the document was not constructed in accordance with the applicable recordkeeping requirements prescribed. For example, the amendment provisions do not allow an individual to challenge the merits of an adverse action. However, if the form that documents the adverse action contains an error on the fact of the record (e.g., the individual's name is misspelled, an improper date of birth or SSN was recorded), the amendment procedures may be used to request correction of the record.

(3) US Army Criminal Investigations Command reports of investigation (records in system notices AO501.08e Informant Register, AO508.11b Criminal Information Reports and Cross Index Card Files, and AO508.25a Index to Criminal Investigative Case Files) have been exempted from the amendment provisions of the Privacy Act. Requests to amend these reports will be considered under AR 195-2 by the Commander, US Army Criminal Investigations Command, action by the Commander, US Army Criminal Investigation Command will constitute final action on behalf of the Secretary of the Army under that regulation.

(4) Records accessioned into the National Archives are exempted from the Privacy Act provision allowing individuals to request amendment of records. Most provisions of the Privacy Act apply only to those systems of records which are under the legal control of the originating agency; e.g., an agen-

cy's current operating files or records stored at a Federal records center.

(k) *Procedures.* (1) Requests to amend a record should be addressed to the custodian or system manager of that record. The request must reasonably describe the record to be amended and the changes sought (*i.e.*, deletion, addition, amendment). The burden of proof rests with the requester; therefore, the alteration of evidence presented to courts, boards, and other official proceedings is not permitted. (An individual acting for the requester must supply a written consent signed by the requester.)

(2) The custodian or system manager will acknowledge the request within 10 work days and make final response within 30 work days.

(3) The record for which amendment is sought must be reviewed by the proper system manager or custodian for accuracy, relevance, timeliness, and completeness so as to assure fairness to the individual in any determination made about that individual on the basis of that record.

(4) If the amendment is proper, the custodian or system manager will physically amend the record by adding or deleting information, or destroying the record or a portion of it, and notify the requester of such action.

(5) If the amendment is not justified, the request and all relevant documents, including the reasons for not amending, will be forwarded to the appropriate AARA within 5 work days and the requester so notified.

(6) The AARA, on the basis of the evidence, either will amend the record and notify the requester and the custodian of that decision, or will deny the request and inform the requester:

(i) Of reasons for not amending; and
(ii) Of his/her right to seek further review by the DA Privacy Review Board (through the AARA).

(7) On receipt of an appeal from a denial to amend, the AARA will append any additional records or background information that substantiates the refusal or renders the case complete and, within 5 work days of receipt, forward the appeal to the DA Privacy Review Board.

(8) The DA Privacy Review Board, on behalf of the Secretary of the Army,

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will complete action on a request for further review within 30 work days of its receipt by the AARA. The General Counsel may authorize an additional 30 days when unusual circumstances and good cause so warrant. The Board may seek additional information, including the appellant's official file, if deemed relevant and necessary to deciding the appeal.

(i) If the Board determines that amendment is justified, it will amend the record and notify the requester, the AARA, the custodian of the record, and any prior recipients of the record.

(ii) If the Board denies the request, it will obtain the General Counsel's concurrence. Response to the appellant will include reasons for denial and the appellant's right to file a statement of disagreement with the Board's action and to seek judicial review of the Army's refusal to amend.

(9) Statements of disagreement will be an integral part of the record to which it pertains so the fact that the record is disputed is apparent to anyone who may have access to, use of, or need to disclose from it. The disclosing authority may include a brief summary of the Board's reasons for not amending the disputed record. The summary will be limited to the reasons stated to the individual by the Board.

(1) *Privacy case files.* Whenever an individual submits a Privacy Act request, a case file will be established; see system notice AO240.01DAAG. In no instance will the individual's request and Army actions thereon be included in the individual's personnel file. The case file will comprise the request for access/amendment, grants, refusals, coordination action, and related papers. This file will not be used to make any determinations about the individuals.

§ 505.3 Disclosure of personal information to other agencies and third parties.

(a) *Disclosure without consent.* The Army is prohibited from disclosing a record from a system of records without obtaining the prior written consent of the data subject, except when disclosure is:

(1) To those officers and employees of the Department of Defense who have a

need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act (see § 505.3(c) for information normally releasable);

(3) Permitted by a routine use that has been published in the FEDERAL REGISTER;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to title 13 of the United States Code;

(5) To a recipient who has provided the Army with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record that has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for determination of such value by the Administrator of the General Services Administration (GSA), or designee. (Records sent to Federal Records Centers for storage remain under Army control; these transfers are not disclosures and do not therefore need an accounting.)

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Army element which maintains the record. The request must specify the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health and safety of an individual. Upon such disclosure, notification will be transmitted to the last known address of such individual;

(9) To either House of Congress, or to a committee or subcommittee to the extent that the subject matter falls within the jurisdiction of the committee or subcommittee;

(10) To the Comptroller General, or any authorized representative in the

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course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order signed by a judge of a court of competent jurisdiction. (Reasonable efforts must be made to notify the individual if the legal process is a matter of public record); or

(12) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (originally codified at 31 U.S.C. 952(d); recodified at 31 U.S.C. 3711(f), the name, address, SSN, other information identifying the individual; amount, status, and history of the claim, and the agency or program under which the case arose may be disclosed in this instance.

(b) *Blanket routine use disclosures.* In addition to the routine uses in each system notice, the following blanket routine uses apply to all records from systems of records maintained by the Army except those which state otherwise.

(1) *Law enforcement.* Relevant records maintained to carry out Army functions may be referred to Federal, State, local, or foreign law enforcement agencies if the record indicates a violation or potential violation of law. The agency to which the records are referred must be the appropriate agency charged with the responsibility of investigating or prosecuting the violation or charges, with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

(2) *Disclosure when requesting information.* A record may be disclosed to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, to obtain information relevant to an Army decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(3) *Disclosure of requested information.* If the information is relevant and necessary to the requesting agency's decision, a record may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance

of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) *Congressional inquiries.* Disclosure from a system of records maintained by the Army may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

(5) *Private relief legislation.* Relevant information in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget (OMB) review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process.

(6) *Disclosures required by international agreements.* A record may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities. These disclosures are in compliance with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of DOD military and civilian personnel.

(7) *Disclosure to State and local taxing authorities.* Any information normally contained in Internal Revenue Service Form W-2 which is maintained in a record from a system of records of the Army may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements under 5 U.S.C., sections 5516, 5517, and 5520 only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use complies with Treasury Fiscal Requirements Manual, Sec. 5060.

(8) *Disclosures to the Office of Personnel Management.* A record may be disclosed to the Office of Personnel Management (OPM) concerning information on pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to

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carry out its legally authorized government-wide personnel management functions and studies.

(9) *Disclosure to National Archives and Records Administration.* A record may be disclosed to the National Archives and Records Administration in records management inspections conducted under authority of title 44 U.S.C., sections 2904 and 2906.

(10) *Disclosure to the Department of Justice for Litigation.* A record may be disclosed as a routine use to any component of the Department of Justice, when—

(i) The agency, or any component thereof, or

(ii) Any employee of the agency in his or her official capacity, or

(iii) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or

(iv) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which it is collected.

(11) *Disclosure for Agency use in Litigation.* A record may be disclosed in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when—

(i) The agency, or any component thereof, or

(ii) Any employee of the agency in his or her official capacity, or

(iii) Any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee, or

(iv) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that their use of such records is relevant and necessary to the litigation, provided; however,

that in each case, the agency determines that disclosure of the records to the court or adjudicative body is a use of the information contained in the records that is compatible with the purpose for which it is collected.

(c) *Disclosure to third parties.* Personal information which may be disclosed under the Freedom of Information Act:

(1) On military personnel: Name, rank, date of rank, gross salary, present and past duty assignments, future assignments that are officially established, office or duty telephone number, source of commission, promotion sequence number, awards and decorations, military and civilian educational level, duty status at any given time.

(2) On civilian employees: Name, present and past position titles, grades, salaries, duty stations that include office or duty telephone numbers. However, disclosure of this information will not be made where the information requested is a list of present or past position titles, grades, salaries, and/or duty stations and, as such, is:

(i) Selected to constitute a clearly unwarranted invasion of personal privacy. For example, the nature of the request calls for a response that would reveal more about the employee than the five enumerated items;

(ii) Would be protected from mandatory disclosure under an exemption of the Freedom of Information Act.

(iii) In addition to the information in § 505.3(c)(2) above, the following information may be made available to a prospective employer of a current or former Army employee: Tenure of employment, civil service status, length of service in the Army and the Government and, date and reason for separation shown on the Notification of Personnel Action, SF 50.

(d) *Accounting of disclosure.* (1) An accounting of disclosure is required whenever a record from an Army system of records is disclosed to someone other than the data subject, except when that record:

(i) Is disclosed to officials within the Department of Defense who have a need for it in the performance of official business;

(ii) Is required to be disclosed under the Freedom of Information Act.

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(2) Since the characteristics of records maintained within the Army vary widely, no uniform method for keeping the disclosure of accounting is prescribed. For most paper records, the accounting may be affixed to the record being disclosed. It must be a written record and consist of:

- (i) Description of the record disclosed;
- (ii) Name, position title, and address of the person to whom disclosure was made;
- (iii) Date, method, and purpose of the disclosure; and
- (iv) Name and position title of the person making the disclosure.

(3) Purpose of the accounting of disclosure is to enable an individual:

- (i) To ascertain those persons/agencies that have received information about the individual, and
- (ii) To provide a basis for informing recipients of subsequent amendments or statements of dispute concerning the record.

(4) When an individual requests such an accounting, the system manager or designee shall respond within 10 work days and inform the individual of the items in § 505.3(d)(2) above.

(5) The only basis for not furnishing the data subject an accounting of disclosures are if disclosure was made for law enforcement purposes under 5 U.S.C. 552a(b)(7), or the disclosure was from a system of records for which an exemption from 5 U.S.C. 552a(c)(3) has been claimed (see appendix C to this part).

[50 FR 42164, Oct. 18, 1985, as amended at 58 FR 51013, Sept. 30, 1993]

§ 505.4 Recordkeeping requirements under the Privacy Act.

(a) *Systems of records.* (1) Notices of all Army systems of records are required by the Act to be published in the FEDERAL REGISTER. An example is at appendix A to this part. When new systems are established, or major changes occur in existing systems, which meet the criteria of OMB Guidelines summarized at § 505.4(f)(2), advance notice is required to be furnished OMB and the Congress before the system or proposed changes become operational.

(2) Uncirculated personal notes, papers and records which are retained at the author's discretion and over which the Army exercises no control or dominion are not considered Army records within the meaning of the Privacy Act. Individuals who maintain such notes must restrict their use of memory aids. Disclosure from personal notes, either intentional or through carelessness, remove the information from the category of memory aids and the notes then become subject to the provisions of the Act.

(3) Only personal information as is relevant and necessary to accomplish a purpose or mission of the Army, required by Federal statute or Executive Order of the President, will be maintained in Army systems of records. Statutory authority, or regulatory authority to establish and maintain a system of records does not convey unlimited authority to collect and maintain all information which may be useful or convenient. The authority is limited to relevant and necessary information.

(4) Except for statistical records, most records could be used to determine an individual's rights, benefits, or privileges. To ensure accuracy, personal information to be included in a system of records will be collected directly from the individual if possible. Collection of information from third parties should be limited to verifying information for security or employment suitability or obtaining performance data or opinion-type evaluations.

(b) *Privacy Act Statement.* Whenever personal information is requested from an individual that will become part of system of records retrieved by reference to the individual's names or other personal identifier, the individual will be furnished a Privacy Act Statement. This is to ensure that individuals know why the information is collected so they can make an informed decision on whether or not to furnish it. As a minimum, the Privacy Act Statement will include the following information in language that is explicit and easily understood and not so lengthy as to deter an individual from reading it:

(1) Cite the specific statute or Executive Order, including a brief title or

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subject, that authorizes the Army to collect the personal information requested. Inform the individual whether or not a response is mandatory or voluntary, and any possible consequences of failing to respond.

(2) Cite the principal purpose(s) for which the information will be used; and

(3) Cite the probable routine uses for which the information may be used.

This may be a summary of information published in the applicable system notice. The above information normally should be printed on the form used to record the information. In certain instances, it may be printed in a public notice in a conspicuous location such as check-cashing facilities; however, if the individual requests a copy of its contents, it must be provided.

(c) *Social Security Number (SSN)*. Executive Order 9397 authorizes the Department of the Army to use the SSN as a system of identifying Army members and employees. Once a military member or civilian employee of the Department of the Army has disclosed his/her SSN for purposes of establishing personnel, financial, or medical records upon entry into Army service or employment, the SSN becomes his/her identification number. No other use of this number is authorized. Therefore, whether the SSN alone is requested from the individual, or the SSN together with other personal information, the Privacy Act Statement must make clear that disclosure of the number is voluntary. If the individual refuses to disclose his/her SSN, the Army activity must be prepared to identify the individual by alternate means.

(d) *Safeguarding personal information*.

(1) The Privacy Act requires establishment of appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records and to protect against any threats or hazards to the subjects security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness.

(2) At each location, and for each system of records, an official will be designated to safeguard the information in that system. Consideration must be given to sensitivity of the data, need for accuracy and reliability in oper-

ations, general security of the area, cost of safeguards, etc. See AR 380-380.

(3) Ordinarily, personal information must be afforded at least the protection required for information designated "For Official Use Only" (see Chapter IV, AR 340-17). Privacy Act data will be afforded reasonable safeguards to prevent inadvertent or unauthorized disclosure of record content during processing, storage, transmission, and disposal.

(4) No comparisons of Army records systems with systems of other Federal or commercial agencies (known as "matching" or "computer matching" programs) will be accomplished without prior approval of the Assistant Chief of Staff for Information Management (DAIM-RMS-S), Alex, VA 22331-0301.

(e) First Amendment rights. No record describing how an individual exercises rights guaranteed by the First Amendment will be kept unless expressly authorized by Federal statute, by the individual about whom the record pertains, or unless pertinent to and within the scope of an authorized law enforcement activity. Exercise of these rights includes, but is not limited to, religious and political beliefs, freedom of speech and the press, and the right of assembly and to petition.

(f) *System notice*. (1) The Army publishes in the FEDERAL REGISTER a notice describing each system of records for which it is responsible. A notice contains:

(i) Name and location(s) of the records;

(ii) Categories of individuals on whom records are maintained;

(iii) Categories of records in the system;

(iv) Authority (statutory or Executive Order) authorizing the system;

(v) Purpose(s) of the system;

(vi) Routine uses of the records, including the categories of users and the purposes of such uses;

(vii) Policies and practices for storing, retrieving, accessing, retaining, and disposing of the records;

(viii) Position title and business address of the responsible official;

(ix) Procedures an individual must follow to learn if a system of records contains a record about the individual;

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(x) Procedures an individual must follow to gain access to a record about that individual in a system of records, to contest contents, and to appeal initial determinations;

(xi) Categories of sources of records in the system;

(xii) Exemptions from the Privacy Act claimed for the system. (See example notice at appendix A to this part.)

(2) New, or altered, systems which meet the requirements below, require a report to the Congress and the Office of Management and Budget. A new system is one for which no system notice is published in the FEDERAL REGISTER. An altered system is one that:

(i) Increases or changes the number or types of individuals on whom records are kept so that it significantly alters the character and purpose of the system of records.

(ii) Expands the types of categories of information maintained.

(iii) Alters the manner in which records are organized, indexed, or retrieved so as to change the nature or scope of those records.

(iv) Alters the purposes for which the information is used, or adds a routine use that is not compatible with the purpose for which the system is maintained.

(v) Changes the equipment configuration on which the system is operated so as to create potential for either greater or easier access.

(3) Report of a new or altered system must be sent to HQDA (DAIM-RMS-S) at least 120 days before the system or changes become operational, and include a narrative statement and supporting documentation.

(i) The narrative statement must contain the following items:

(A) System identification and name;

(B) Responsible official;

(C) Purpose(s) of the system, or nature of changes proposed (if an altered system);

(D) Authority for the system;

(E) Number (or estimate) of individuals on whom records will be kept;

(F) Information of First Amendment activities;

(G) Measure to assure information accuracy;

(H) Other measures to assure system security; (Automated systems require risk assessment under AR 380-380.)

(I) Relations to State/local government activities. (See example at appendix B to this part.)

(4) Supporting documentation consists of system notice for the proposed new or altered system, and proposed exemption rule, if applicable.

(g) *Reporting requirements.* (1) The annual report required by the Act, as amended by Pub. L. 97-375, 96 Stat. 1821, focuses on two primary areas:

(i) Information describing the exercise of individuals' rights of access to and amendment of records.

(ii) Changes in, or additions to, systems of records.

(2) Specific reporting requirements will be disseminated each year by The Assistant Chief of Staff for Information Management (DAIM-RMS-S) in a letter to reporting elements.

(h) *Rules of conduct.* System managers will ensure that all personnel, including government contractors or their employees, who are involved in the design, development, operation, maintenance, or control of any system of records, are informed of all requirements to protect the privacy of individuals who are subjects of the records.

(i) *Judicial sanctions.* The Privacy Act has both civil remedies and criminal penalties for violations of its provisions:

(1) Civil remedies: An individual may file a civil suit against the Army if Army personnel fail to comply with the Privacy Act.

(2) Criminal penalties: A member or employee of the Army may be guilty of a misdemeanor and fined not more than \$5,000 for willfully:

(i) Maintaining a system of records without first meeting the public notice requirements of publishing in the FEDERAL REGISTER;

(ii) Disclosing individually identifiable personal information to one not entitled to have it;

(iii) Asking for or getting another's record under false pretense.

§ 505.5 Exemptions.

(a) *Exempting systems of records.* The Secretary of the Army may exempt Army systems of records from certain

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requirements of the Privacy Act. There are two kinds of exemptions: General and specific. The general exemption relieves systems of records from most requirements of the Act; the specific exemptions from only a few. See appendix C to this part.

(b) *General exemptions.* Only Army activities actually engaged in the enforcement of criminal laws as their primary function may claim the general exemption. To qualify for this exemption, a system must consist of:

(1) Information compiled to identify individual criminals and alleged criminals, which consists only of identifying data and arrest records; type and disposition of charges; sentencing, confinement, and release records; and parole and probation status;

(2) Information compiled for the purpose of criminal investigation including efforts to prevent, reduce, or control crime and reports of informants and investigators associated with an identifiable individual; or

(3) Reports identifiable to an individual, compile at any stage of the process of enforcement of the criminal laws, from arrest or indictment through release from supervision.

(c) *Specific exemptions.* The Secretary of the Army has exempted all properly classified information and a few systems of records that have the following kinds of information, from certain parts of the Privacy Act. The Privacy Act exemption cite appears in parentheses after each category.

(1) Classified information in every Army system of records. This exemption is not limited to the systems listed in Sec. 505.5(d). Before denying as individual access to classified information, the Access and Amendment Refusal Authority must make sure that it was properly classified under the standards of Executive Orders 11652, 12065, or 12958 and that it must remain so in the interest of national defense of foreign policy. (5 U.S.C. 552a(k)(1).)

(2) Investigatory data for law enforcement purposes (other than that claimed under the general exemption). However, if this information has been used to deny someone a right, privilege or benefit to which the individual is entitled by Federal law, it must be released, unless doing so would reveal the

identity of a confidential source. (5 U.S.C. 552a(k)(2).)

(3) Records maintained in connection with providing protective services to the President of the United States or other individuals protected pursuant to Title 18 U.S.C., section 3056. (5 U.S.C. 552a(k)(3).)

(4) Statistical data required by statute and used only for statistical purposes and not to make decisions on the rights, benefits, or entitlements of individuals, except for census records which may be disclosed under Title 13 U.S.C., section 8. (5 U.S.C. 552a(k)(4).)

(5) Data compiled to determine suitability, eligibility, or qualifications for Federal service, Federal contracts, or access to classified information. This information may be withheld only to the extent that disclosure would reveal the identity of a confidential source. (5 U.S.C. 552a(k)(5).)

(6) Testing material used to determine if a person is qualified for appointment or promotion in the Federal service. This information may be withheld only if disclosure would compromise the objectivity or fairness of the examination process. (5 U.S.C. 552a(k)(6).)

(7) Information to determine promotion potential in the Armed Forces. Information may be withheld, but only to the extent that disclosure would reveal the identity of a confidential source. (5 U.S.C. 552a(k)(7).)

(d) *Procedures.* When a system manager seeks an exemption for a system of records, the following information will be furnished to the Director of Information Systems for Command, Control, Communications and Computers, Washington, DC 20310-0107; applicable system notice, exemptions sought, and justification. After appropriate staffing and approval by the Secretary of the Army, a proposed rule will be published in the FEDERAL REGISTER, followed, by a final rule 60 days later. No exemption may be invoked until these steps have been completed.

(e) *Exempt Army records.* The following records may be exempt from certain parts of the Privacy Act:

(1) *System identifier:* A0020-1a SAIG

(i) *System name:* Inspector General Records.

(ii) *Exemptions:* (A) 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 such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

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

(C) Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f).

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

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

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

(C) From subsection (e)(1) because in the course of criminal investigations information is often obtained concerning the violations of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this valuable information is retained since it can aid in estab-

lishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

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

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

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

(G) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army'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 this 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 in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

(2) [Reserved]

(3) *A0025-55 TAPC.*

(1) *System name:* Freedom of Information Act Program Files.

(ii) *Exemption:* During the processing of Freedom of Information Act (FOIA) requests exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those "other" systems of

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records are entered into this system, the Department of the Army claims the same exemptions for the records from those "other" systems that are entered into this system, as claimed for the original primary system of which they are a part.

(iii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iv) *Reasons:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(4)A0027-1DAJA.

(i) *System name:* General Legal Files.

(ii) *Exemption:* All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), (k)(6), and (k)(7) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), and (f).

(iii) *Authority:* 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), (k)(6), and (k)(7).

(iv) *Reasons:* Various records from other exempted systems of records are sometimes submitted for legal review or other action. A copy of such records may be permanently incorporated into the General Legal Files system of records as evidence of the facts upon which a legal opinion or review was

based. Exemption of the General Legal Files system of records is necessary in order to ensure that such records continue to receive the same protection afforded them by exemptions granted to the systems of records in which they were originally filed.

(5) *System identifier:* A0027-10a DAJA

(i) *System name:* Prosecutorial Files.

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

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

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

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

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

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

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(E) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

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

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

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

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

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue

search authorizations and could reveal investigative techniques and procedures.

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

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

(M) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy Regulation (this part 505), 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 this 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 in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

(6) *System identifier:* A0027-10b DAJA

(i) *System name:* Courts-Martial Records and Reviews.

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

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

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

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

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

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

(E) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

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

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

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

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

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

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

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

(M) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Army will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Army's Privacy Regulation (this part 505), 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 this 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 in this paragraph. The decisions to release information from these systems will be made on a case-by-case basis.

(7) *A0190-5DAMO*.

(i) *System name*: Vehicle Registration System (VRS).

(ii) *Exemption*: All portions of this system of records which fall within the scope of 5 U.S.C. 552a(j)(2) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

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

(iv) *Reasons*: (A) From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f) and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from other requirements.

(B) From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with signifi-

cant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(C) From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

(D) From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(E) From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

(8) *A0190-9DAMO*.

(i) *System name*: Absentee Case Files.

(ii) *Exemption*: All portions of this system of records which fall within the scope of 5 U.S.C. 552a(j)(2) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

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

(iv) *Reasons*: (A) From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f) and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally

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related to an investigation. Exemption from access necessarily includes exemption from other requirements.

(B) From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(C) From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

(D) From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(E) From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

(9) A0190-14DAMO.

(i) *System name:* Registration and Permit Files.

(ii) *Exemption:* All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2) may be exempt from the provisions of 5 U.S.C. 552a(c)(3).

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

(iv) *Reasons:* From subsection (c)(3) because the release of accounting of disclosures would place the subject of an investigation on notice that he or she is under investigation and provide him or her with significant information concerning the nature of the investigation thus resulting in a serious impediment to criminal law enforcement investigations, activities or the compromise of properly classified material.

(10) A0190-30DAMO.

(i) *System name:* Military Police Investigator Certification Files.

(ii) *Exemption:* All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2), (k)(5), and (k)(7) may be exempt from the provisions of 5 U.S.C. 552a(d), (e)(4)(G), (e)(4)(H), and (f).

(iii) *Authority:* 5 U.S.C. 552a(k)(2), (k)(5) and (k)(7).

(iv) *Reasons:* From subsections (d), (e)(4)(G), (e)(4)(H), and (f) because disclosure of portions of the information in this system of records would seriously impair selection and management of these uniquely functioning individuals; hamper the inclusion of comments, reports and evaluations concerning the performance, qualifications, character, actions, and propensities of the agency; and prematurely compromise investigations which either concern the conduct of the agent himself or herself, or investigations wherein he or she is integrally or only peripherally involved. Additionally, the exemption from access necessarily includes exemptions from the amendment and the agency procedures that would otherwise be required to process these types of requests.

(11) A0190-40DAMO.

(i) *System name:* Serious Incident Reporting Files.

(ii) *Exemption:* All portions of this system of records which fall within the scope of 5 U.S.C. 552a(j)(2) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

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

(iv) *Reasons:* (A) From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f) and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual

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investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

(B) From subsection (c)(3) because of the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(C) From subsection (e)(2) because in a criminal or other law enforcement investigation, they require that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

(D) From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(E) From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and be revealing investigative techniques, procedures or evidence.

(12) *System identifier:* A0190-45 DAMO

(i) *System name:* Offense Reporting System (ORS)

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

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

(iv) *Reason:* (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for

this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

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

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

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

(E) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

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

(G) From subsections (e)(4)(G) and (H) because this system of records is

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exempt from individual access pursuant to subsection (j)(2) of the Privacy Act of 1974.

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

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

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

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

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

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

to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

(13) *System identifier:* A0190-47 DAMO.

(i) *System name:* Correctional Reporting System (CRS).

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

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

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necessary for effective law enforcement.

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

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

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

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

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

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

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

(G) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such

information can only be determined in a court of law. The restrictions of subsection (e) (5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

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

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

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

(14) *A0195-2aUSACIDC*.

(i) *System name*: Source Register.

(ii) *Exemption*: All portions of this system of records which fall within the scope of 5 U.S.C. 552a(j)(2) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(5), (e)(8), (f), and (g).

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

(iv) *Reasons*: (A) From subsection (c)(3) because release of accounting of disclosures would provide the informant with significant information concerning the nature of a particular investigation, the internal methods and techniques involved in criminal investigation, and the investigative agencies (state, local or foreign) involved in a particular case resulting in a serious compromise of the criminal law enforcement processes.

(B) From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because disclosure of portions of the information in this system of records would seriously impair the prudent and efficient handling of these uniquely functioning individuals; hamper the inclusion of comments and evaluations concerning the performance qualification, character, identity, and propensities of the informant; and prematurely compromise criminal investigations which

either concern the conduct of the informant himself or investigations wherein he/she is integrally or only peripherally involved. Additionally, the exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records and civil liability predicated upon agency compliance with specific provisions of the Privacy Act.

(C) From subsection (d), (e)(4)(G), (e)(4)(H), and (f) are also necessary to protect the security of information properly classified in the interest of national defense and foreign policy.

(D) From subsection (e)(1) because the nature of the criminal investigative function creates unique problems in prescribing what information concerning informants is relevant or necessary. Due to close liaison and existing relationships with other Federal, state, local and foreign law enforcement agencies, information about informants may be received which may relate to a case then under the investigative jurisdiction of another Government agency but it is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of both the USACIDC and other agencies. Additionally, the failure to maintain all known information about informants could affect the effective utilization of the individual and substantially increase the operational hazards incumbent in the employment of an informant in very compromising and sensitive situations.

(E) From subsection (e)(2) because collecting information from the informant would potentially thwart both the criminal investigative process and the required management control over these individuals by appraising the informant of investigations or management actions concerning his involvement in criminal activity or with USACIDC personnel.

(F) From subsection (e)(3) because supplying an informant with a form containing the information specified could result in the compromise of an investigation, tend to inhibit the cooperation of the informant, and render

ineffectual investigative techniques and methods utilized by USACIDC in the performance of its criminal law enforcement duties.

(G) From subsection (e)(5) because this requirement would unduly hamper the criminal investigative process due to type of records maintained and necessity for rapid information retrieval and dissemination. Also, in the collection of information about informants, it is impossible to determine what information is then accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation or contact brings new details to light. In the criminal investigative process, accuracy and relevance of information concerning informants can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting information relating to informant's actions and would impede the development of criminal intelligence necessary for effective law enforcement.

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

(15)A0195-2bUSACIDC.

(i) *System name:* Criminal Investigation and Crime Laboratory Files.

(ii) *Exemption:* All portions of this system of records which fall within the scope of 5 U.S.C. 552a(j)(2) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

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

(iv) *Reasons:* (A) From subsection (c)(3) because the release of accounting of disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning coordinated investigative effort and techniques and the nature of the investigation, resulting in a serious

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impediment to criminal law enforcement activities or the compromise of properly classified material.

(B) From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because access might compromise on-going investigations, reveal classified information, investigatory techniques or the identity of confidential informants, or invade the privacy of persons who provide information in connection with a particular investigation. The exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records, and civil liability predicated upon agency compliance with those specific provisions of the Privacy Act. The exemption from access necessarily includes exemption from other requirements.

(C) From subsection (e)(1) because the nature of the investigative function creates unique problems in prescribed specific perimeters in a particular case as to what information is relevant or necessary. Also, due to close liaisons and working relationships with other Federal, state, local, and foreign law enforcement agencies, information may be received which may relate to a case then under the investigative jurisdiction of another Government agency but it is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of both the USACIDC and other agencies.

(D) From subsection (e)(2) because collecting information from the subject of criminal investigations would thwart the investigative process by placing the subject of the investigation on notice thereof.

(E) From subsection (e)(3) because supplying an individual with a form containing the information specified could result in the compromise of an investigation, tend to inhibit the cooperation of the individual queried, and render ineffectual investigation techniques and methods utilized by USACIDC in the performance of their criminal law enforcement duties.

(F) From subsection (e)(5) because this requirement would unduly hamper the criminal investigative process due

to the great volume of records maintained and the necessity for rapid information retrieval and dissemination. Also, in the collection of information for law enforcement purposes, it is impossible to determine what information is then accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. In the criminal investigation process, accuracy and relevance of information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

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

(16) *A0195-6USACIDC.*

(i) *System name:* Criminal Investigation Accreditation and Polygraph Examiner Evaluation Files.

(ii) *Exemption:* All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2), (k)(5), or (k)(7) may be exempt from the provisions of 5 U.S.C. 552a(d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

(iii) *Authority:* 5 U.S.C. 552a(k)(2), (k)(5), and (k)(7).

(iv) *Reasons:* (A) From subsections (d), (e)(4)(G), (e)(4)(H), and (f) because disclosure of portions of the information in this system of records would seriously impair the selection and management of these uniquely functioning individuals; hamper the inclusion of comments, reports and evaluations concerning the performance, qualifications, character, action and propensities of the agent; and prematurely compromise investigations with either concern the conduct of the agent himself or investigations wherein he or she is integrally or only peripherally involved. Additionally, the exemption from access necessarily includes exemptions from the amendment and the

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agency procedures which would otherwise be required to process these types of requests.

(B) From subsection (e)(1) because the failure to maintain all known information about agents could affect the effective utilization of the individual and substantially increase the operational hazards incumbent in the employment of agents in very compromising and sensitive situations.

(17) *A0210-7DAMO*.

(i) *System name*: Expelled or Barred Person Files.

(ii) *Exemption*: All portions of this system of records which fall within the scope of 5 U.S.C. 552a(j)(2) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

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

(iv) *Reasons*: (A) From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f) and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

(B) From subsection (c)(3) because of the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(C) From subsection (e)(2) because in a criminal or other law enforcement investigation, they require that information be collected to the greatest ex-

tent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

(D) From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(E) From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and be revealing investigative techniques, procedures or evidence.

(18) *System identifier*: A0025 JDIM

(i) *System name*: HQDA Correspondence and Control/Central Files System.

(ii) *Exemptions*: Documents within this system of records are generated by other elements of the Department of the Army or are received from other agencies and individuals. Because of the broad scope of the contents of this system of records, and since the introduction of documents is largely unregulatable, specific portions or documents that may require an exemption can not be predetermined. Therefore, and to the extent that such material is received and maintained, selected individual documents may be exempt.

(A) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(B) 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 such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(C) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(D) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

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

(F) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(G) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(H) Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a (k)(1) through (k)(7) from subsections (c)(3), (d), (e)(1), (e)(4)(G) and (H), and (f).

(iii) *Authority:* 5 U.S.C. 552a(k)(1) through (k)(7).

(iv) *Reasons:* (A) From subsection (c)(3) because the release of the disclosure accounting could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation and the fact that they are subjects of the investigation. It could permit the subject of an investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (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 of apprehension, and would present a serious impediment to law enforcement.

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

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

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

(19) *System identifier:* A0340-21 TAPC

(i) *System name:* Privacy Case Files.

(ii) *Exemption:* During the processing of a Privacy Act request (which may include access requests, amendment requests, and requests for review for initial denials of such requests), exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Department of the Army hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(iii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iv) Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to

national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(20) *System identifier and name:* A0195-2c USACIDC DoD, DoD Criminal Investigation Task Force (CITF) Files.

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

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

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

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

(C) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique

problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity that may relate to the jurisdiction of other cooperating agencies.

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

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

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

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

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

(I) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the

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agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

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

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

(21) *A0351-12DAPE.*

(i) *System name:* Applicants/Students, U.S. Military Academy Prep School.

(ii) *Exemption:* All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(5) and (k)(7) may be exempt from the following provision of 5 U.S.C. 552a(d).

(iii) *Authority:* 5 U.S.C. 552a(k)(5) and (k)(7).

(iv) *Reasons:* It is imperative that the confidential nature of evaluation mate-

rial on individuals, furnished to the US Military Academy Preparatory School under an express promise of confidentiality, be maintained to ensure the candid presentation of information necessary in determinations involving admission to or retention at the United States Military Academy and suitability for commissioned military service.

(22) *A0351-17aUSMA.*

(i) *System name:* U.S. Military Academy Candidate Files.

(ii) *Exemption:* All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(5), (k)(6), or (k)(7) may be exempt from the provisions of 5 U.S.C. 552a(d).

(iii) *Authority:* 5 U.S.C. 552a(k)(5), (k)(6) and (k)(7).

(iv) *Reasons:* (A) From subsection (d) because access might reveal investigatory and testing techniques. The exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records, and civil liability predicated upon agency compliance with those specific provisions of the Privacy Act.

(B) Exemption is necessary to protect the identity of individuals who furnished information to the United States Military Academy which is used in determining suitability, eligibility, or qualifications for military service and which was provided under an express promise of confidentiality.

(C) Exemption is needed for the portion of records compiled within the Academy which pertain to testing or examination material used to rate individual qualifications, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(D) Exemption is required for evaluation material used by the Academy in determining potential for promotion in the Armed Services, to protect the identity of a source who furnished information to the Academy under an express promise of confidentiality.

(23) *A0351-17bUSMA.*

(i) *System name:* U.S. Military Academy Personnel Cadet Records.

(ii) *Exemption:* All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(5) or (k)(7)

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may be exempt from the provisions of 5 U.S.C. 552a(d).

(iii) *Authority*: 5 U.S.C. 552a(k)(5) and (k)(7).

(iv) *Reasons*: It is imperative that the confidential nature of evaluation and investigatory material on candidates, cadets, and graduates, furnished to the United States Military Academy under promise of confidentiality be maintained to insure the candid presentation of information necessary in determinations involving admissions to the Military Academy and suitability for commissioned service and future promotion.

(24) *A0380-13DAMO*.

(i) *System name*: Local Criminal Intelligence Files.

(ii) *Exemption*: All portions of this system of records which fall within the scope of 5 U.S.C. 552a(j)(2) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

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

(iv) *Reasons*: (A) From subsections (e)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

(B) From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus result-

ing in a serious impediment to law enforcement investigations.

(C) From subsection (e)(2) because, in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

(D) From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(E) From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

(25) *A0380-67DAMI*.

(i) *System name*: Personnel Security Clearance Information Files.

(ii) *Exemption*: All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(1), (k)(2), or (k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

(iii) *Authority*: 5 U.S.C. 552a(k)(1), (k)(2), or (k)(5).

(iv) *Reasons*: The material contained in this record system contains data concerning sensitive sources and operational methods whose dissemination must be strictly controlled because of national security intelligence considerations. Disclosure of documents or the disclosure accounting record may compromise the effectiveness of the operation, and negate specialized techniques used to support intelligence or criminal investigative programs, or otherwise interfere with the orderly conduct of intelligence operations or criminal investigations.

(26) *A0381-20bDAMI*.

(i) *System name*: Counterintelligence/Security Files.

(ii) *Exemption*: All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(1), (k)(2), and

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(k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (d)(5), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f).

(iii) *Authority:* 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5).

(iv) *Reasons:* (A) From subsection (c)(3) because disclosing the agencies to which information from this system has been released could inform the subject of an investigation of an actual or potential criminal violation, or intelligence operation or investigation; or the existence of that investigation or operation; of the nature and scope of the information and evidence obtained as to his/her activities or of the identity of confidential sources, witnesses, and intelligence personnel and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation; endanger the physical safety of confidential sources, witnesses, intelligence personnel, and their families; lead to the improper influencing of witnesses; the destruction of evidence or the fabrication of testimony and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified and sensitive sources, information, and operational methods and could constitute an unwarranted invasion of the personal privacy of others.

(B) From subsection (d)(1) through (d)(5) because granting access to records in this system of records could inform the subject of a counterintelligence operation or investigation of an actual or potential criminal violation or the existence of that operation or investigation; of the nature and scope of the information and evidence obtained as to his/her activities; or of the identity of confidential sources, witnesses and intelligence personnel and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an operation or investigation; endanger the physical safety of confidential sources, witnesses, intelligence personnel and their families; lead to the improper influencing of witnesses; the destruction of evidence or

the fabrication of testimony and disclose investigative techniques and procedures. In addition, the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation or operation. Relevance and necessity are often questions of judgement and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation or operation, the investigator may obtain information which is incidental to the main purpose of the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation or operation, the investigator may obtain information concerning violations of laws other than those which are within the scope of his/her jurisdiction. In the interest of effective intelligence operations and law enforcement, military intelligence agents should retain information, since it is an aid in establishing patterns of criminal or intelligence activity and provide valuable leads for other law enforcement or intelligence agencies.

(D) From subsection (e)(4)(G), (e)(4)(H), and (f) because this system or records is being exempt from subsections (d) of the Act, concerning access to records. These requirements are inapplicable to the extent that this system of records will be exempt from subsections (d)(1) through (d)(5) of the Act. Although the system would be exempt from these requirements, the Deputy Chief of Staff for Intelligence has published information concerning its notification, access, and contest procedures because under certain circumstances, the Deputy Chief of Staff

for Intelligence could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

(E) From subsection (e)(4)(I) because it is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources and witnesses and to avoid the disclosure of investigative techniques and procedures. Although the system will be exempt from this requirement, the Deputy Chief of Staff for Intelligence has published such a notice in broad, generic terms.

(27) *A0381-100aDAMI.*

(i) *System name:* Intelligence/Counter-intelligence Source Files.

(ii) *Exemption:* All portions of this system of records that fall within the scope of 5 U.S.C. 552a(k)(1), (k)(2), or (k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (d)(5), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f).

(iii) *Authority:* 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5).

(iv) *Reasons:* (A) From subsection (c)(3) because disclosing the agencies to which information from this system has been released could reveal the subject's involvement in a sensitive intelligence or counterintelligence operation or investigation of an actual or potential criminal violation, or intelligence operation or investigation; or the existence of that investigation or operation. Granting access to such information could seriously impede or compromise an investigation or operation; endanger the physical safety of participants and their families, confidential sources, witnesses, intelligence personnel, and their families; and lead to the improper influencing of witnesses; the destruction of evidence or the fabrication of testimony and disclose investigative techniques and procedures.

(B) From subsection (d)(1) through (d)(5) because granting access to records could inform the subject of an intelligence or counterintelligence operation or investigation of an actual or potential criminal violation or the existence of that operation or investigation; or the nature and scope of the information and evidence obtained, or of the identity of confidential sources,

witnesses and intelligence personnel. Granting access to such information could seriously impede or compromise an operation or investigation; endanger the physical safety of confidential sources, witnesses, intelligence personnel and their families; lead to the improper influencing of witnesses; the destruction of evidence or the fabrication of testimony; disclose investigative techniques and procedures; invade the privacy of those individuals involved in intelligence programs and their families; compromise and thus negate specialized techniques used to support intelligence programs; and interfere with and negate the orderly conduct of intelligence and counter-intelligence operations and investigations. In addition, the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation or operation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation or operation, the investigator or operative may obtain information which is incidental to the main purpose of the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation or operation, the investigator may obtain information concerning violations of law other than those which are within the scope of his/her jurisdiction. In the interest of effective intelligence operations and law enforcement, military intelligence agents should retain information, since it is an aid in establishing patterns of criminal or intelligence activity and provides valuable

leads for other law enforcement or intelligence agencies.

(D) From subsection (e)(4)(G), (e)(4)(H), and (f) because this system of records is being exempt from subsection (d) of the Act concerning access to records. These requirements are inapplicable to the extent that this system of records will be exempt from subsections (d)(1) through (d)(5) of the Act. Although the system would be exempt from these requirements, the Deputy Chief of Staff for Intelligence has published information concerning its notification, access, and contest procedures because under certain circumstances, the Deputy Chief of staff for Intelligence could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

(E) From subsection (e)(4)(I) because it is necessary to protect the confidentiality of sources of information, to protect the privacy and physical safety of participants and their families, confidential sources, and witnesses and to avoid the disclosure of specialized techniques and procedures. Although the system will be exempt from this requirement, the Deputy Chief of Staff for Intelligence has published such a notice in broad generic terms.

(28) *A0381-100bDAMI*

(i) *System name:* Technical Surveillance Index.

(ii) *Exemption:* All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (d)(5), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

(iii) *Authority:* 5 U.S.C. 552a(k)(1), (k)(2) or (k)(5).

(iv) *Reasons:* (A) From subsection (c)(3) because disclosing the identities of agencies to which information from this system has been released could inform the subject of an investigation of an actual or potential criminal violation or intelligence operation; of the existence of that investigation or operation; of the nature and scope of the information and evidence obtained as to his/her activities or of the identify of confidential sources, witnesses, and intelligence or law enforcement personnel and could provide information

to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation; endanger the physical safety of confidential sources, witnesses, intelligence or law enforcement personnel, and their families; lead to the improper influencing of witnesses; the destruction of evidence or the fabrication of testimony and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified and sensitive sources and operational methods and could constitute an unwarranted invasion of the personal privacy of others.

(B) From subsection (d)(1) through (d)(5) because granting access to records in this system of records could inform the subject of an investigation of an actual or potential criminal violation; of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his/her activities; or of the identity of confidential sources, witnesses and intelligence or law enforcement personnel and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation; endanger the physical safety of confidential sources, witnesses, intelligence or law enforcement personnel and their families; lead to the improper influencing of witnesses; the destruction of evidence or the fabrication of testimony and disclose investigative techniques and procedures. In addition, granting access to such information could disclose classified, sensitive sources and operational methods and could constitute an unwarranted invasion of the personal privacy of others.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation or operation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation or operation, the investigator may obtain information which is incidental to

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the main purpose of the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation or operation, the investigator may obtain information concerning violation of laws other than those which are within the scope of his/her jurisdiction. In the interest of effective intelligence operations and law enforcement, criminal law enforcement investigators and military intelligence agents should retain this information, since it can aid in establishing patterns of criminal or intelligence activity and can provide valuable leads for other law enforcement or intelligence agencies.

(D) From subsections (e)(4)(G) and (e)(4)(H) because this system of records is being exempt from subsections (d) of the Act, concerning access to records, these requirements are inapplicable to the extent that this system of records will be exempt from subsections (d)(1) through (d)(5) of the Act. Although the system would be exempt from these requirements, the Deputy Chief of Staff for Intelligence and the U.S. Army Criminal Investigations Command have published information concerning its notification, access, and contest procedures for their respective areas because, under certain circumstances, the Deputy Chief of Staff for Intelligence or the U.S. Army Criminal Investigations Command could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

(E) From subsection (e)(4)(I) because it is necessary to protect the confidentiality of the sources of information, to protect the privacy and physical safety of confidential sources and witnesses and to avoid the disclosure of investigative techniques and procedures. Although the system will be exempt from this requirement, the Deputy Chief of Staff for Intelligence and the U.S. Army Criminal Investigations Command have published such a notice in broad, generic terms.

(29) *System identifier:* A0601-141 DASG.

(i) *System name:* Applications for Appointment to Army Medical Department.

(ii) *Exemption:* Investigatory material compiled solely for the purpose of de-

termining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(d).

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

(iv) *Reasons:* It is imperative that the confidential nature of evaluations and investigatory material on applicants applying for enlistment furnished to the US Army Recruiting Command under an express promise of confidentiality, be maintained to insure the candid presentation of information necessary in determinations of enlistment and suitability for enlistment into the United States Army.

(30) *A0601-210aUSAREC.*

(i) *System name:* Enlisted Eligibility Files.

(ii) *Exemption:* All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(5) may be exempt from the provisions of 5 U.S.C. 552a(d).

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

(iv) *Reasons:* It is imperative that the confidential nature of evaluations and investigatory material on applicants applying for enlistment furnished to the US Army Recruiting Command under an express promise of confidentiality, be maintained to insure the candid presentation of information necessary in determinations of enlistment and suitability for enlistment into the United States Army.

(31) *System identifier:* A0601-222 USMEPCOM

(i) *System name:* Armed Services Military Accession Testing

(ii) *Exemption:* Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service or military service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process. Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(d).

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

(iv) *Reasons*: An exemption is required for those portions of the Skill Qualification Test system pertaining to individual item responses and scoring keys to preclude compromise of the test and to insure fairness and objectivity of the evaluation system.

(32) *System identifier*: A0608-18 DASG.

(i) *System name*: Army Family Advocacy Program (FAP) Files

(ii) *Exemptions*: (A) 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 such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

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

(C) Therefore, portions of the system of records may be exempt pursuant to 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f).

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

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

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

present a serious impediment to law enforcement.

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

(D) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (k)(2) and (k)(5) of the Privacy Act of 1974.

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

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

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

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(33) A0614-115DAMI.

(i) *System name:* Department of the Army Operational Support Activities.

(ii) *Exemption:* All portions of this system of records that fall within the scope of 5 U.S.C. 552a(k)(1), (k)(2), or (k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (d)(5), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f).

(iii) *Authority:* 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5).

(iv) *Reasons:* (A) From subsection (c)(3) because disclosing the agencies to which information from this system has been released could reveal the subject's involvement in a sensitive intelligence or counterintelligence operation or investigation of an actual or potential criminal violation, or intelligence operation or investigation; or the existence of that investigation or operation. Granting access to such information could seriously impede or compromise an investigation or operation; endanger the physical safety of participants and their families, confidential sources, witnesses, intelligence personnel, and their families; and lead to the improper influencing of witnesses; the destruction of evidence or the fabrication of testimony and disclose investigative techniques and procedures.

(B) From subsection (d)(1) through (d)(5) because granting access to records could inform the subject of an intelligence or counterintelligence operation or investigation of an actual or potential criminal violation or the existence of that operation or investigation; of the nature and scope of the information and evidence obtained, or of the identity of confidential sources, witnesses and intelligence personnel. Granting access to such information could seriously impede or compromise an operation or investigation; endanger the physical safety of confidential sources, witnesses, intelligence personnel and their families; lead to the improper influencing of witnesses; the destruction of evidence or the fabrication of testimony; disclose investigative techniques and procedures; invade the privacy of those individuals involved in intelligence programs and their families; compromise and thus negate specialized techniques used to

support intelligence programs; and interfere with and negate the orderly conduct of intelligence and counterintelligence operations and investigations. In addition, the agency is required to protect the confidentiality of sources who furnished information to the Government under an expressed promise of confidentiality or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. This confidentiality is needed to maintain the Government's continued access to information from persons who otherwise might refuse to give it.

(C) From subsection (e)(1) because it is not always possible to detect the relevance of specific information in the early stages of an investigation or operation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation or operation, the investigator or operative may obtain information which is incidental to the main purpose of the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation or operation, the investigator may obtain information concerning violations of law other than those which are within the scope of his/her jurisdiction. In the interest of effective intelligence operations and law enforcement, military intelligence agents should retain information, since it is an aid in establishing patterns of criminal or intelligence activity and provides valuable leads for other law enforcement or intelligence agencies.

(D) From subsection (e)(4)(G), (e)(4)(H), and (f) because this system or records is being exempt from subsections (d) of the Act, concerning access to records. These requirements are inapplicable to the extent that this system of records will be exempt from subsections (d)(1) through (d)(5) of the Act. Although the system would be exempt from these requirements, the Deputy Chief of Staff for Intelligence has published information concerning its notification, access, and contest

procedures because under certain circumstances, the Deputy Chief of Staff for Intelligence could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

(E) From subsection (e)(4)(I) because it is necessary to protect the confidentiality of sources of information, to protect the privacy and physical safety of participants and their families, confidential sources, and witnesses and to avoid the disclosure of specialized techniques and procedures. Although the system will be exempt from this requirement, the Deputy Chief of Staff for Intelligence has published such a notice in broad, generic terms.

(f) *Exempt OPM records.* Three Office of Personnel Management systems of records apply to Army employees, except for nonappropriated fund employees. These systems, the specific exemptions determined to be necessary and proper, the records exempted, provisions of the Privacy Act from which exempt, and justification are set forth below:

(1) *Personnel Investigations Records (OPM/CENTRAL-9).* All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), (k)(5), and (k)(6) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. The specific applicability of the exemptions to this system and the reasons for the exemptions are as follows:

(i) Personnel investigations may obtain from another Federal agency properly classified information which pertains to national defense and foreign policy. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C. 552a(d).

(ii) Personnel investigations may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), e.g., investigations into the administration of the merit system. Application of exemption (k)(2) may be necessary to preclude the data

subject's access to or amendment of such records, under 552a(c)(3) and (d).

(iii) Personnel investigations may obtain from another Federal agency information that relates to providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18. Application of exemption (k)(3) may be necessary to preclude the data subject's access to and amendment of such records under 5 U.S.C. 552a(d).

(iv) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (4). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject, and access to and amendment of records. These exemptions are claimed because this system contains investigatory material compiled solely for the purpose of determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of material would reveal the identity of source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to or amendment of the record, or access to the accounting of disclosures of the record.

(v) All material and information in the records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or exemption process.

(2) *Recruiting, Examining, and Placement Records (OPM/GOVT-5).*

(i) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. These exemptions are claimed because this system contains investigative material compiled solely for the purpose of determining the appropriateness of a request for approval of an objection to an eligible's qualification for employment in the Federal service. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to the accounting of disclosures of the record.

(ii) All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) are exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the subject. The exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualification for appointment or promotion in the Federal service and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(3) *Personnel Research Test Validation Records (OPM/GOVT-6)*. All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and

fairness of the testing or examination process.

[61 FR 43657, Aug. 26, 1996, as amended at 62 FR 48480, Sept. 16, 1997; 64 FR 45877, Aug. 23, 1999; 65 FR 6895, Feb. 11, 2000; 66 FR 55876, Nov. 5, 2001; 67 FR 17618, Apr. 11, 2002; 68 FR 25817, May 14, 2003; 70 FR 49487, Aug. 24, 2005]

APPENDIX A TO PART 505—EXAMPLE OF
SYSTEM OF RECORDS NOTICE

A0319.01DACA

System name:

Out-of-Service Accounts Receivables.

System location:

US Army Finance and Accounting Center,
Ft Benjamin Harrison, IN 46249.

Categories of individuals covered by the system:

Separated and retired military/civilian personnel and others indebted to the US Army.

Categories of records in the system:

Records of current and former military members and civilian employees' pay accounts showing entitlements, deductions, payments made, and any indebtedness resulting from deductions and payments exceeding entitlements. These records include, but are not limited to:

a. Individual military pay records, substantiating documents such as military pay orders, pay adjustment authorizations, military master pay account printouts from the Joint Uniform Military Pay System (JUMPS), records of travel payments, financial record data folders, miscellaneous vouchers, personal financial records, credit reports, promissory notes, individual financial statements, and correspondence;

b. Application for waiver of erroneous payments or for remission of indebtedness with supporting documents, including, but not limited to statements of financial status (personal income and expenses), statements of commanders and/or accounting and finance officers, correspondence with members and employees;

c. Claims of individuals requesting additional payments for service rendered with supporting documents including, but not limited to, time and attendance reports, leave and earnings statements, travel orders and/or vouchers, and correspondence with members and employees;

d. Delinquent accounts receivable from field accounting and finance officers including, but not limited to, returned checks, medical services billings, collection records, and summaries of the Army Criminal Investigations Command and/or Federal Bureau of Investigation reports;

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e. Reports from probate courts regarding estates of deceased debtors;

f. Reports from bankruptcy courts regarding claims of the United States against debtors.

Authority for maintenance of the system:

31 U.S.C., section 3711; 10 U.S.C., section 2774; and 12 U.S.C., section 1715.

Purpose:

To process, monitor, and post-audit accounts receivable, to administer the Federal Claims Collection Act, and to answer inquiries pertaining thereto.

Routine users of records maintained in the system, including categories of users and the purposes of such uses:

Information may be disclosed to:

US Department of Justice/US Attorneys: For legal action and/or final disposition of the debt claims. The litigation briefs (comprehensive, written referral recommendations) will restructure the entire scope of the collection cases.

Internal Revenue Service: To obtain locator status for delinquent accounts receivables; (Automated controls exist to preclude redisclosure of solicited IRS address data); and/or to report write-off amounts as taxable income as pertains to amounts compromised and accounts barred from litigation due to age.

Private Collection Agencies: For collection action when the Army has exhausted its internal collection efforts.

Disclosure to Consumer Reporting Agencies:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) when an individual is responsible for a debt to the US Army, provided the debt has been validated, is overdue, and the debtor has been advised of the disclosure and his rights to dispute, appeal or review the claim; and/or whenever a financial status report is requested for use in the administration of the Federal Claims Collection Act. Claims of the United States may be compromised, terminated or suspended when warranted by information collected.

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

Storage:

Paper records in collection file folders and bulk storage; card files, computer magnetic tapes and printouts; microfiche.

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Retrievability:

By Social Security Number, name, and substantiating document number; conventional indexing is used to retrieve data.

Safeguards:

The US Army Finance and Accounting Center employs security guards. An employee badge and visitor registration system is in effect. Hard copy records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Computerized records are accessed by custodian of the records system and by persons responsible for servicing the record system in the performance of their official duties. Certifying finance and accounting officers of debts have access to debt information to confirm if the debt is valid and collection action is to be continued. Computer equipment and files are located in a separate secured area.

Retention and disposal:

Individual military pay records and accounts receivables are converted to microfiche and retained for 6 years. Destruction is by shredding. Retention periods for other records vary according to category, but total retention does not exceed 56 years; these records are sent to the Federal Records Center, General Services Administration at Dayton, Ohio; destruction is by burning or salvage as waste paper.

System manager(s) and address:

Commander, US Army Finance and Accounting Center Indianapolis, IN 46249.

Notification procedure:

Individuals desiring to know whether this system of records contains information about them should contact the System Manager, ATTN: FINCP-F, furnishing full name, Social Security Number, and military status or other information verifiable from the record itself.

Record access procedures:

Individuals seeking access to records in this system pertaining to them should submit a written request as indicated in "Notification procedure" and furnish information required therein.

Contesting record procedures:

The Army's rules for access to records and for contesting and appealing initial determinations are contained in Army Regulation 340-21 (32 CFR part 505).

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Record source categories:

Information is received from Department of Defense staff and field installations, Social Security Administration, Treasury Department, financial organizations, and automated system interface.

Systems exempted from certain provisions of the act:

None.

APPENDIX B TO PART 505—EXAMPLE OF REPORT FOR NEW SYSTEM OF RECORDS

Narrative Statement

1. *System Identification and Name:* A0404.02DAJA, Courts-Martial Files.

2. *Responsible Official:* Mr. James D. Kemper, US Army Legal Services Agency, Office of The Judge Advocate General, Room 204B, Nassif Building, Falls Church, VA 22041.

3. *Purpose of the System:* Records of trial by court-martial are necessary for the purpose of legal review and final action in court-martial cases. After completion of appellate review, they protect each accused against a subsequent trial for the same offense(s).

4. *Authority for the System:* Title 10 U.S.C., Chapter 47, Section 865 states that, in the case of a general court-martial or when sentence that includes a bad conduct discharge is approved by the convening authority in a special court-martial, the record will be sent to The Judge Advocate General. All other special and summary court-martial records will be reviewed by a Judge Advocate.

5. *Number (or estimate) of individuals on whom records will be maintained:* Approximately 7,000,000.

6. *Information on First Amendment Activities:* The system contains no information on First Amendment activities per se; however, the system may include records of trial in which the charged misconduct was an activity arguably protected by the First Amendment.

7. *Measures to Assure Information Accuracy:* In a trial by court-martial, the accused has a unique opportunity to assure that his record is accurate, relevant, timely, and complete as it is made. He has the right to be present at trial, to be represented by counsel in general and special courts-martial and to consult with counsel prior to a summary courts-martial to review and challenge all information before it is introduced into evidence, to cross-examine all witnesses against him, to present evidence in his behalf, and in general and special courts-martial, to review and comment upon the record of trial before the convening authority's action.

8. *Other Measures to Assure System Security:* As courts-martial records reflect criminal proceedings ordinarily open to the public, copies are normally releasable to the public pursuant to the Freedom of Information Act.

However, access to the original records is limited to authorized individuals. Security measures consist of standard physical security devices and civilian and military guards.

9. *Relationship to State/Local Government Activities:* None.

10. *Supporting Documentation:* Proposed system notice and proposed exemption rule are at Encl 1 and 2 respectively.

APPENDIX C TO PART 505—PROVISIONS OF THE PRIVACY ACT FROM WHICH A GENERAL OR SPECIFIC EXEMPTION MAY BE CLAIMED

Exemption		Section of the Privacy Act
(j)(2)	(k)(1-7)	
No	No	(b)(1) Disclosures within the Department of Defense.
No	No	(2) Disclosures to the public.
No	No	(3) Disclosures for a "Routine Use."
No	No	(4) Disclosures to the Bureau of Census.
No	No	(5) Disclosures for statistical research and reporting.
No	No	(6) Disclosures to the National Archives.
No	No	(7) Disclosures for law enforcement purposes.
No	No	(8) Disclosures under emergency circumstances.
No	No	(9) Disclosures to the Congress.
No	No	(10) Disclosures to the General Accounting Office.
No	No	(11) Disclosures pursuant to court orders.
No	No	(12) Disclosure to consumer reporting agencies.
No	No	(c)(1) Making disclosure accountings.
No	No	(2) Retaining disclosure accountings.
Yes	Yes	(c)(3) Making disclosure accounting available to the individual.
Yes	No	(c)(4) Informing prior recipients of corrections.
Yes	Yes	(d)(1) Individual access to records.
Yes	Yes	(2) Amending records.
Yes	Yes	(3) Review of the Component's refusal to amend a record.
Yes	Yes	(4) Disclosure of disputed information.
Yes	Yes	(5) Access to information compiled in anticipation of civil action.
Yes	Yes	(e)(1) Restrictions on collecting information.
Yes	No	(e)(2) Collecting directly from the individual.
Yes	No	(3) Informing individuals from whom information is requested.
No	No	(e)(4)(A) Describing the name and location of the system.
No	No	(B) Describing categories of individuals.
No	No	(C) Describing categories of records.
No	No	(D) Describing routine uses.
No	No	(E) Describing records management policies and practices.

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Exemption		Section of the Privacy Act
(j)(2)	(k)(1-7)	
No	No	(F) Identifying responsible officials.
Yes	Yes	(e)(4)(G) Procedures for determining if a system contains a record on an individual.
Yes	Yes	(H) Procedures for gaining access.
Yes	Yes	(I) Describing categories of information sources.
Yes	No	(e)(5) Standards of accuracy.
No	No	(e)(6) Validating records before disclosure.
No	No	(e)(7) Records of First Amendment activities.
No	No	(e)(8) Notification of disclosure under compulsory legal process.
No	No	(e)(9) Rules of conduct.
No	No	(e)(10) Administrative, technical and physical safeguards.
No	No	(11) Notice for new and revised routine uses.
Yes	Yes	(f)(1) Rules for determining if an individual is subject of a record.
Yes	Yes	(f)(2) Rules for handling access requests.
Yes	Yes	(f)(3) Rules for granting access.
Yes	Yes	(f)(4) Rules for amending records.
Yes	Yes	(f)(5) Rules regarding fees.
Yes	No	(g)(1) Basis for civil action.
Yes	No	(g)(2) Basis for judicial review and remedies for refusal to amend.
Yes	No	(g)(3) Basis for judicial review and remedies for denial of access.
Yes	No	(g)(4) Basis for judicial review and remedies for other failure to comply.
Yes	No	(g)(5) Jurisdiction and time limits.
Yes	No	(h) Rights of legal guardians.
No	No	(i)(1) Criminal penalties for unauthorized disclosure.
No	No	(2) Criminal penalties for failure to publish.
No	No	(3) Criminal penalties for obtaining records under false pretenses.
Yes	No	(j) Rulemaking requirement.
N/A	No	(j)(1) General exemption for the Central Intelligence Agency.
N/A	No	(j)(2) General exemption for criminal law enforcement records.
Yes	N/A	(k)(1) Exemption for classified material.
N/A	N/A	(k)(2) Exemption for law enforcement material.
Yes	N/A	(k)(3) Exemption for records pertaining to Presidential protection.
Yes	N/A	(k)(4) Exemption for statistical records.
Yes	N/A	(k)(5) Exemption for investigatory material compiled for determining suitability for employment or service.
Yes	N/A	(k)(6) Exemption for testing or examination material.
Yes	N/A	(k)(7) Exemption for promotion evaluation materials used by the Armed Forces.
Yes	No	(l)(1) Records stored in GSA records centers.
Yes	No	(l)(2) Records archived before September 27, 1975.
Yes	No	(l)(3) Records archived on or after September 27, 1975.

Exemption		Section of the Privacy Act
(j)(2)	(k)(1-7)	
Yes	No	(m) Applicability to government contractors.
Yes	No	(n) Mailing lists.
Yes	No	(o) Reports on new systems.
Yes	No	(p) Annual report.

APPENDIX D TO PART 505—GLOSSARY OF TERMS

Section I

Abbreviations

AAFES
Army and Air Force Exchange Service
AARA
Access and Amendment Refusal Authority
ACSIM
Assistant Chief of Staff for Information Management
DA
Department of the Army
DOD
Department of Defense
GAO
General Accounting Office
GSA
General Services Administration
JUMPS
Joint uniform military pay system
MACOM
Major Army command
MPMIS
Military Police management information system
NARS
National Archives and Records Service
NGB
National Guard Bureau
OMB
Office of Management and Budget
OPM
Office of Personnel Management
SSN
Social Security Number

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TAG

The Adjutant General

TIG

The Inspector General

TJAG

The Judge Advocate General

USACIDC

U.S. Army Criminal Investigation Command

Section II

Terms

ACCESS

The review of a record or obtaining a copy of a record or parts thereof in a system of records.

AGENCY

The DOD is a single agency for the purpose of disclosing records subject to The Privacy Act of 1974. For other purposes, including access, amendment, appeals from denials of access or amendment, exempting systems of records, and record-keeping for release to non-DOD agencies, the DA is an agency.

ACCESS AND AMENDMENT REFUSAL AUTHORITY

The Army Staff agency head or major Army commander designated sole authority by this regulation to deny access to, or refuse amendment of, records in his or her assigned area or functional specialization.

CONFIDENTIAL SOURCE

A person or organization that has furnished information to the Federal Government under an express promise that its identity would be withheld, or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

DATA SUBJECT

The individual about whom the Army is maintaining information in a system of records.

DISCLOSURE

The furnishing of information about an individual by any means, to an organization, Government agency, or to an individual who is not the subject of the record, the subject's designated agent or legal guardian. Within the context of the Privacy Act and this regulation, this term applies only to personal information that is a part of a system of records.

INDIVIDUAL

A living citizen of the United States or an alien admitted for permanent residence. The Privacy Act rights of an individual may be exercised by the parent or legal guardian of a minor or an incompetent. (The Privacy Act confers no rights on deceased persons, nor may their next-of-kin exercise any rights for them.)

MAINTAIN

Collect, use, maintain, or disseminate.

OFFICIAL USE

Any action by a member or employee of DOD that is prescribed or authorized by law or a regulation and is intended to perform a mission or function of the Department.

PERSONAL INFORMATION

Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life.

PRIVACY ACT REQUEST

A request from an individual for information about the existence of, or for access to or amendment of, a record about him or her that is in a system of records. The request must cite or implicitly refer to the Privacy Act.

RECORD

Any item, collection, or grouping of information about an individual that—

a. Is kept by the Government including, but not limited to, an individual's home address, home telephone number, SSN, education, financial transactions, medical history, and criminal or employment history.

b. Contains an individual's name, identifying number, symbol, or other individual identifier such as a finger, voice print, or a photograph.

ROUTINE USE

Disclosure of a record outside DOD without the consent of the subject individual for a use that is compatible with the purpose for which the information was collected and maintained by DA. The routine use must be included in the published system notice for the system of records involved.

STATISTICAL RECORD

A record maintained only for statistical research or reporting purposes and not used in whole or in part in making determinations about specific individuals.

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SYSTEM MANAGER

The official responsible for policies and procedures for operating and safeguarding a system or records. This official is located normally at Headquarters, DA.

SYSTEM OF RECORDS

A group of records under the control of DA from which information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual. System notices for all systems of records must be published in the FEDERAL REGISTER. (A grouping or files series of records arranged chronologically or subjectively that is not retrieved by individual identifier is not a system of records, even though individual information could be retrieved by such an identifier, such as through a paper-by-paper search.)

PART 507—MANUFACTURE AND SALE OF DECORATIONS, MEDALS, BADGES, INSIGNIA, COMMERCIAL USE OF HERALDIC DESIGNS AND HERALDIC QUALITY CONTROL PROGRAM

Subpart A—Introduction

- Sec.
- 507.1 Purpose.
- 507.2 References.
- 507.3 Explanation of abbreviations and terms.
- 507.4 Responsibilities.
- 507.5 Statutory authority.

Subpart B—Manufacture and Sale of Decorations, Medals, Badges, and Insignia

- 507.6 Authority to manufacture.
- 507.7 Authority to sell.
- 507.8 Articles authorized for manufacture and sale.
- 507.9 Articles not authorized for manufacture or sale.

Subpart C—Commercial Use of Heraldic Designs

- 507.10 Incorporation of designs or likenesses of approved designs in commercial articles.
- 507.11 Reproduction of designs.
- 507.12 Possession and wearing.

Subpart D—Heraldic Quality Control Program

- 507.13 General.
- 507.14 Controlled heraldic items.
- 507.15 Certification of heraldic items.
- 507.16 Violations and penalties.

507.17 Procurement and wear of heraldic items.

507.18 Processing complaints of alleged breach of policies.

AUTHORITY: 10 U.S.C. 3012, 18 U.S.C. 701, 18 U.S.C. 702

SOURCE: 63 FR 27208, May 18, 1998, unless otherwise noted.

Subpart A—Introduction

§ 507.1 Purpose.

This part prescribes the Department of the Army and the Air Force policy governing the manufacture, sale, reproduction, possession, and wearing of military decorations, medals, badges, and insignia. It also establishes the Heraldic Item Quality Control Program to improve the appearance of the Army and Air Force by controlling the quality of heraldic items purchased from commercial sources.

§ 507.2 References.

Related publications are listed in paragraphs (a) through (f) of this section. (A related publication is merely a source of additional information. The user does not have to read it to understand this part). Copies of referenced publications may be reviewed at Army and Air Force Libraries or may be purchased from the National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

- (a) AFI 36-2903, Dress and Personal Appearance of Air Force Personnel.
- (b) AR 360-5, Public Information.
- (c) AR 670-1, Wear and Appearance of Army Uniforms and Insignia.
- (d) AR 840-1, Department of the Army Seal, and Department of the Army Emblem and Branch of Service Plaques.
- (e) AR 840-10, Heraldic Activities, Flags, Guidons, Streamers, Tabards and Automobile Plates.
- (f) AFR 900-3, Department of the Air Force Seal, Organizational Emblems, Use and Display of Flags, Guidons, Streamers, and Automobile and Aircraft Plates.

§ 507.3 Explanation of abbreviations and terms.

- (a) *Abbreviations.* (1) AFB—Air Force Base.
- (2) DA—Department of the Army.

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(3) DCSPER—Deputy Chief of Staff for Personnel.

(4) DSCP—Defense Supply Center Philadelphia.

(5) DUI—distinctive unit insignia.

(6) ROTC—Reserve Officers' Training Corps.

(7) SSI—shoulder sleeve insignia.

(8) TIOH—The Institute of Heraldry.

(9) USAF—United States Air Force.

(b) *Terms*—(1) *Cartoon*. A drawing six times actual size, showing placement of stitches, color and size of yarn and number of stitches.

(2) *Certificate of authority to manufacture*. A certificate assigning manufacturers a hallmark and authorizing manufacture of heraldic items.

(3) *Hallmark*. A distinguishing mark consisting of a letter and numbers assigned to certified manufacturers for use in identifying manufacturers of insignia.

(4) *Heraldic items*. All items worn on the uniform to indicate unit, skill, branch, award or identification and a design has been established by TIOH on an official drawing.

(5) *Letter of agreement*. A form signed by manufacturers before certification, stating that the manufacturer agrees to produce heraldic items in accordance with specific requirements

(6) *Letter of authorization*. A letter issued by TIOH that authorizes the manufacture of a specific heraldic item after quality assurance inspection of a preproduction sample.

(7) *Tools*. Hubs, dies, cartoons, and drawings used in the manufacture of heraldic items.

§ 507.4 Responsibilities.

(a) *Deputy Chief of Staff for Personnel (DCSPER), Army*. The DCSPER has staff responsibility for heraldic activities in the Army.

(b) *The Director, The Institute of Heraldry (TIOH)*. The Director, TIOH, will—

(1) Monitor the overall operation of the Heraldic Quality Control Program.

(2) Authorize the use of insignia designs in commercial items.

(3) Certify insignia manufacturers.

(4) Inspect the quality of heraldic items.

(c) *The Commander, Air Force Personnel Center, Randolph AFB, TX 78150–*

4739. The Commander has staff responsibility for heraldic activities in the Air Force.

(d) *The Chief, Air Force Personnel Center Commander's Programs Branch (HQ AFPC/DPSFC), 550 C Street West, Suite 37, Randolph AFB, TX 78150–4739*. The Chief, Commander's Programs Branch is responsible for granting permission for the incorporation of certain Air Force badges and rank insignia designs in commercial items.

(e) *Commander, Air Force Historical Research Agency (AFHRA/RSO), Maxwell AFB, AL 36112–6424*. The Commander, AFHRA/RSO, is responsible for granting permission for use of the Air Force seal, coat of arms, and crest.

(f) *Commanders*. Commanders are responsible for purchasing heraldic items that have been produced by manufacturers certified by TIOH. Commanders will ensure that only those heraldic items that are of quality and design covered in the specification and that have been produced by certified manufacturers are worn by personnel under their command.

§ 507.5 Statutory authority.

(a) The wear, manufacture, and sale of military decorations, medals, badges, their components and appurtenances, or colorable imitations of them, are governed by section 704, title 18, United States Code (18 U.S.C. 704).

(b) The manufacture, sale, possession, and reproduction of badges, identification cards, insignia, or other designs, prescribed by the head of a U.S. department or agency, or colorable imitations of them, are governed by Title 18, United States Code, Section 701 (18 U.S.C. 701).

(c) This part incorporates the statutory provisions.

Subpart B—Manufacture and Sale of Decorations, Medals, Badges, and Insignia.

§ 507.6 Authority to manufacture.

(a) A certificate of authority to manufacture heraldic articles may be granted by the Institute of Heraldry.

(1) Certificates of authority will be issued only to companies who have manufacturing capability and agree to manufacture heraldic items according

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to applicable specifications or purchase descriptions.

(2) The certificate of authority is valid only for the individual or corporation indicated.

(3) A hallmark will be assigned to each certified manufacturer. All insignia manufactured will bear the manufacturer's hallmark.

(b) A certificate of authority may be revoked or suspended under the procedures prescribed in subpart D of this part.

(c) Manufacturers will submit a preproduction sample to TIOH of each item they manufacture for certification under the Heraldic Quality Control Program. A letter of certification authorizing manufacture of each specific item will be issued provided the sample meets quality assurance standards.

(d) A copy of the certified manufacturers list will be furnished to the Army and Air Force Exchange Service and, upon request, to Army and Air Force commanders.

§ 507.7 Authority to sell.

No certificate of authority to manufacture is required to sell articles listed in § 507.8 of this part; however, sellers are responsible for insuring that any article they sell is manufactured in accordance with Government specifications using government furnished tools, bears a hallmark assigned by TIOH, and that the manufacturer has received a certification to manufacture that specific item prior to sale.

§ 507.8 Articles authorized for manufacture and sale.

(a) The articles listed in paragraphs (a) (1) through (10) of this section are authorized for manufacture and sale when made in accordance with approved specifications, purchase descriptions or drawings.

(1) All authorized insignia (AR 670-1 and AFI 36-2903).

(2) Appurtenances and devices for decorations, medals, and ribbons such as oak leaf clusters, service stars, arrowheads, V-devices, and clasps.

(3) Combat, special skill, occupational and qualification badges and bars.

(4) Identification badges.

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(5) Fourrageres and lanyards.

(6) Lapel buttons.

(7) Decorations, service medals, and ribbons, except for the Medal of Honor.

(8) Replicas of decorations and service medals for grave markers. Replicas are to be at least twice the size prescribed for decorations and service medals.

(9) Service ribbons for decorations, service medals, and unit awards.

(10) Rosettes.

(11) Army emblem and branch of service plaques.

(b) Variations from the prescribed specifications for the items listed in paragraph (a) of this section are not permitted without prior approval, in writing, by TIOH.

§ 507.9 Articles not authorized for manufacture or sale.

The following articles are not authorized for manufacture and sale, except under contract with DSCP:

(a) The Medal of Honor.

(b) Service ribbon for the Medal of Honor.

(c) Rosette for the Medal of Honor.

(d) Service flags (prescribed in AR 840-10 or AFR 900-3).

(e) Army seal.

(f) Commercial articles for public sale that incorporate designs or likenesses of decorations, service medals, and service ribbons.

(g) Commercial articles for public sale that incorporate designs or likenesses of designs of insignia listed in § 507.8 of this part, except when authorized by the Service concerned.

Subpart C—Commercial Use of Heraldic Designs

§ 507.10 Incorporation of designs or likenesses of approved designs in commercial articles.

The policy of the Department of the Army and the Department of the Air Force is to restrict the use of military designs for the needs or the benefit of personnel of their Services.

(a) Except as authorized in writing by the Department of the Army or the Department of the Air Force, as applicable, the manufacture of commercial articles incorporating designs or likenesses of official Army/Air Force

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heraldic items is prohibited. However, certain designs or likenesses of insignia such as badges or organizational insignia may be incorporated in articles manufactured for sale provided that permission has been granted as specified in paragraphs (a) (1) and (2) of this section.

(1) *Designs approved for use of the Army.* The Director, The Institute of Heraldry, 9325 Gunston Road, Room S-112, Fort Belvoir, VA 22060-5579, is responsible for granting permission for the incorporation of certain Army insignia designs and the Army emblem in commercial articles manufactured for sale. Permission for such use will be in writing. Commanders of units authorized a SSI or DUI may authorize the reproduction of their SSI or DUI on commercial articles such as shirts, tie tacks, cups, or plaques. Permission for use of a SSI or DUI will be submitted in writing to the commander concerned. Authorization for incorporation of designs or likenesses of designs in commercial items will be granted only to those manufacturers who agree to offer these items for sale only to Army and Air Force Exchange Service and outlets that sell primarily to military personnel and their dependents.

(2) *Designs approved for use of the Air Force.* Headquarters, Air Force Personnel Center, Chief, Commander's Programs Branch (HQ AFPC/DPSFC), 550 C Street West, Suite 37, Randolph AFB, TX 78150-4739, is responsible for granting permission for the incorporation of certain Air Force designs for commercial articles manufactured for sale. The Commander, Air Force Historical Research Agency, AFHRA/RSO, Maxwell AFB, AL 36112-6678, is responsible for granting permission for the incorporation of the coat of arms, crest, seal and organizational emblems. Such permission will be in writing. Authorization for incorporation of designs or likenesses of designs in commercial items will be granted only to those manufacturers who agree to offer these items for sale only to the Army and Air Force Exchange Service, or to those outlets that sell primarily to military personnel and their dependents.

(b) In the case of the Honorable Service lapel button, a general exception is

made to permit the incorporation of that design in articles manufactured for public sale provided that such articles are not suitable for wear as lapel buttons or pins.

§ 507.11 Reproduction of designs.

(a) The photographing, printing, or, in any manner making or executing any engraving, photograph, print, or impression in the likeness of any decoration, service medal, service ribbon, badge, lapel button, insignia, or other device, or the colorable imitation thereof, of a design prescribed by the Secretary of the Army or the Secretary of the Air Force for use by members of the Army or the Air Force is authorized provided that such reproduction does not bring discredit upon the military service and is not used to defraud or to misrepresent the identification or status of an individual, organization, society, or other group of persons.

(b) The use for advertising purposes of any engraving, photograph, print, or impression of the likeness of any Department of the Army or Department of the Air Force decoration, service medal, service ribbon, badge, lapel button, insignia, or other device (except the Honorable Service lapel button) is prohibited without prior approval, in writing, by the Secretary of the Army or the Secretary of the Air Force except when used to illustrate a particular article that is offered for sale. Request for use of Army insignia in advertisements or promotional materials will be processed through public affairs channels in accordance with AR 360-5, paragraph 3-37.

(c) The reproduction in any manner of the likeness of any identification card prescribed by Department of the Army or Department of the Air Force is prohibited without prior approval in writing by the Secretary of the Army or Secretary of the Air Force.

§ 507.12 Possession and wearing.

(a) The wearing of any decoration, service medal, badge, service ribbon, lapel button, or insignia prescribed or authorized by the Department of the Army and the Department of the Air Force by any person not properly authorized to wear such device, or the use of any decoration, service medal,

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badge, service ribbon, lapel button, or insignia to misrepresent the identification or status of the person by whom such is worn is prohibited. Any person who violates the provision of this section is subject to punishment as prescribed in the statutes referred to in § 507.5 of this part.

(b) Mere possession by a person of any of the articles prescribed in § 507.8 of this part is authorized provided that such possession is not used to defraud or misrepresent the identification or status of the individual concerned.

(c) Articles specified in § 507.8 of this part, or any distinctive parts including suspension ribbons and service ribbons) or colorable imitations thereof, will not be used by any organization, society, or other group of persons without prior approval in writing by the Secretary of the Army or the Secretary of the Air Force.

Subpart D—Heraldic Quality Control Program

§ 507.13 General.

The heraldic quality control program provides a method of ensuring that insignia items are manufactured with tools and specifications provided by TIOH.

§ 507.14 Controlled heraldic items.

The articles listed in § 507.8 of this part are controlled heraldic items and will be manufactured in accordance with Government specifications using Government furnished tools or cartoons. Tools and cartoons are not provided to manufacturers for the items in paragraphs (a) through (e) of this section. However, manufacture will be in accordance with the Government furnished drawings.

(a) Shoulder loop insignia, ROTC, U.S. Army.

(b) Institutional SSI, ROTC, U.S. Army.

(c) Background trimming/ashes, U.S. Army.

(d) U.S. Air Force organizational emblems for other than major commands.

(e) Hand embroidered bullion insignia.

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§ 507.15 Certification of heraldic items.

A letter of certification to manufacture each heraldic item, except those listed in § 507.14 (a) through (e) of this part, will be provided to the manufacturer upon submission of a preproduction sample. Manufacture and sale of these items is not authorized until the manufacturer receives a certification letter from TIOH.

§ 507.16 Violations and penalties.

A certificate of authority to manufacture will be revoked by TIOH upon intentional violation by the holder thereof of any of the provisions of this part, or as a result of not complying with the agreement signed by the manufacturer in order to receive a certificate. Such violations are also subject to penalties prescribed in the Acts of Congress (§ 507.5 of this part). A repetition or continuation of violations after official notice thereof will be deemed prima facie evidence of intentional violation.

§ 507.17 Procurement and wear of heraldic items.

(a) The provisions of this part do not apply to contracts awarded by the Defense Personnel Support Center for manufacture and sale to the U.S. Government.

(b) All Army and Air Force service personnel who wear quality controlled heraldic items that were purchased from commercial sources will be responsible for ensuring that the items were produced by a certified manufacturer. Items manufactured by certified manufacturers will be identified by a hallmark and/or a certificate label certifying the item was produced in accordance with specifications.

(c) Commanders will ensure that only those heraldic items that are of the quality and design covered in the specifications and that have been produced by certified manufacturers are worn by personnel under their command. Controlled heraldic items will be procured only from manufacturers certified by TIOH. Commanders procuring controlled heraldic items, when authorized by local procurement procedures, may forward a sample insignia to TIOH for quality assurance inspection if the

commander feels the quality does not meet standards.

§ 507.18 Processing complaints of alleged breach of policies.

The Institute of Heraldry may revoke or suspend the certificate of authority to manufacture if there are breaches of quality control policies by the manufacturer. As used in this paragraph, the term quality control policies include the obligation of a manufacturer under his or her "Agreement to Manufacture," the quality control provisions of this part, and other applicable instructions provided by TIOH.

(a) *Initial processing.* (1) Complaints and reports of an alleged breach of quality control policies will be forwarded to the Director, The Institute of Heraldry, 9325 Gunston Road, Room S-112, Fort Belvoir, VA 22060-5579 (hereinafter referred to as Director).

(2) The Director may direct that an informal investigation of the complaint or report be conducted.

(3) If such investigation is initiated, it will be the duty of the investigator to ascertain the facts in an impartial manner. Upon conclusion of the investigation, the investigator will submit a report to the appointing authority containing a summarized record of the investigation together with such findings and recommendations as may be appropriate and warranted by the facts.

(4) The report of investigation will be forwarded to the Director for review. If it is determined that a possible breach of quality control policies has occurred, the Director will follow the procedures outlined in paragraphs (b) through (g) of this section.

(b) *Voluntary performance.* The Director will transmit a registered letter to the manufacturer advising of the detailed allegations of breach and requesting assurances of voluntary compliance with quality control policies. No further action is taken if the manufacturer voluntarily complies with the quality control policies; however, any further reoccurrence of the same breach will be considered refusal to perform.

(c) *Refusal to perform.* (1) If the manufacturer fails to reply within a reasonable time to the letter authorized by paragraph (b) of this section, or refuses

to give adequate assurances that future performance will conform to quality control policies, or indicates by subsequent conduct that the breach is continuous or repetitive, or disputes the allegations of breach, the Director will direct that a public hearing be conducted on the allegations.

(2) A hearing examiner will be appointed by appropriate orders. The examiner may be either a commissioned officer or a civilian employee above the grade of GS-7.

(3) The specific written allegations, together with other pertinent material, will be transmitted to the hearing examiner for introduction as evidence at the hearing.

(4) Manufacturers may be suspended for failure to return a loaned tool without referral to a hearing specified in paragraph (c)(1) of this section; however, the manufacturer will be advised, in writing, that tools are overdue and suspension will take effect if not returned within the specified time.

(d) *Notification to the manufacturer by examiner.* Within a 7 day period following receipt by the examiner of the allegations and other pertinent material, the examiner will transmit a registered letter of notification to the manufacturer informing him or her of the following:

(1) Specific allegations.

(2) Directive of the Director requiring the holding of a public hearing on the allegations.

(3) Examiner's decision to hold the public hearing at a specific time, date, and place that will be not earlier than 30 days from the date of the letter of notification.

(4) Ultimate authority of the Director to suspend or revoke the certificate of authority should the record developed at the hearing so warrant.

(5) Right to—

(i) A full and fair public hearing.

(ii) Be represented by counsel at the hearing.

(iii) Request a change in the date, time, or place of the hearing for purposes of having reasonable time in which to prepare the case.

(iv) Submit evidence and present witnesses in his or her own behalf.

(v) Obtain, upon written request filed before the commencement of the hearing, at no cost, a verbatim transcript of the proceedings.

(e) *Public hearing by examiner.* (1) At the time, date, and place designated in accordance with paragraph (d) (3) of this section, the examiner will conduct the public hearing.

(i) A verbatim record of the proceeding will be maintained.

(ii) All previous material received by the examiner will be introduced into evidence and made part of the record.

(iii) The Government may be represented by counsel at the hearing.

(2) Subsequent to the conclusion of the hearing, the examiner will make specific findings on the record before him or her concerning each allegation.

(3) The complete record of the case will be forwarded to the Director.

(f) *Action by the Director.* (1) The Director will review the record of the hearing and either approve or disapprove the findings.

(2) Upon arrival of a finding of breach of quality control policies, the manufacturer will be so advised.

(3) After review of the findings, the certificate of authority may be revoked or suspended. If the certificate of authority is revoked or suspended, the Director will—

(i) Notify the manufacturer of the revocation or suspension.

(ii) Remove the manufacturer from the list of certified manufacturers.

(iii) Inform the Army and Air Force Exchange Service of the action.

(g) *Reinstatement of certificate of authority.* The Director may, upon receipt of adequate assurance that the manufacturer will comply with quality control policies, reinstate a certificate of authority that has been suspended or revoked.

PART 508—COMPETITION WITH CIVILIAN BANDS

AUTHORITY: Secs. 3012, 3634, 70A Stat. 157, 207; 10 U.S.C. 3012, 3634.

§ 508.1 Utilization of Army bands.

(a) *General.* Participation of Army bandsmen in performances off military reservations will not interfere with the customary employment and regular en-

gagement of local civilians in the respective arts, trades, or professions. Such participation will not directly or indirectly benefit or appear to benefit or favor any private individual, commercial venture, sect, or political or fraternal group, except as may be specifically authorized by the Secretary of Defense. The authority to determine whether the use of an Army band at a public gathering is prohibited by this section is delegated to major commanders.

(b) *Suitability.* Commanders authorizing participation by Army bands (except the U.S. Army Band and the U.S. Army Field Band) in their official capacities and in the performance of official duties will be guided by the following conditions of suitability:

(1) When participation is an appropriate part of official occasions attended by the senior officers of the Government or the Department of Defense in their official capacities and in the performance of official duties.

(2) For parades and ceremonies which are incident to gatherings of personnel of the Armed Forces, veterans, and patriotic organizations.

(3) At public rallies and parades intended to stimulate national interest in the Armed Forces and/or to further the community relation program.

(4) For fund drives for officially recognized Armed Forces relief agencies or charitable organizations such as the Red Cross when the proceeds are donated to such agencies.

(5) For athletic contests in which one or more Armed Forces teams are participating.

(6) In connection with recruiting activities for the Armed Forces.

(7) At official occasions and free social and entertainment activities held on or off Armed Forces installations, provided that such free social entertainment activities are conducted exclusively for the benefit of personnel of the Armed Forces and their guests.

[25 FR 10700, Nov. 9, 1960]

PART 510—CHAPLAINS

AUTHORITY: R.S. 1125; 10 U.S.C. 238.

§510.1 Private ministrations, sacraments, and ordinances.

Chaplains will conduct or arrange for appropriate burial services at the interment of members of the military service, active and retired, and for members of their families upon request. A chaplain may perform the marriage rite, provided he complies with the civil law of the place where the marriage is to be solemnized and provided all parties concerned have complied with the requirements of the denomination the chaplain represents and with any directives which may have been issued by the military command or higher headquarters. The scope of the chaplains' work will include such ministrations as are held by some denominations or religious bodies as sacraments and by others as rites or ordinances. Chaplains will administer or arrange for rites and sacraments for military personnel and civilians under military jurisdiction according to the respective beliefs and conscientious practices of all concerned.

[16 FR 12931, Dec. 27, 1951]

PART 513—INDEBTEDNESS OF MILITARY PERSONNEL

Sec.

513.1 General.

513.2 Administrative procedures for processing complaints.

513.3 Administrative and punitive actions.

513.4 Conditions creditors must meet before getting help in debt processing.

513.5 Procedures governing nonactive duty or discharged personnel.

APPENDIX A TO PART 513—REFERENCES

APPENDIX B TO PART 513—STANDARDS OF FAIRNESS

APPENDIX C TO PART 513—GLOSSARY

AUTHORITY: 10 U.S.C. 3012.

SOURCE: 51 FR 7268, Mar. 3, 1986, unless otherwise noted.

§513.1 General.

(a) *Purpose.* This regulation prescribes Department of the Army (DA) policy, responsibilities, and procedures in handling debt claims against soldiers.

(b) *References.* Required and related publications and prescribed and referenced forms are listed in appendix A.

(c) *Explanation of abbreviations and terms.* Abbreviations and special terms used in this regulation are explained in the glossary.

(d) *Responsibilities.* (1) The Deputy Chief of Staff for Personnel will set policy on processing debt claims against soldiers.

(2) The Commanding General, U.S. Army Community and Family Support Center (CG, USACFSC) will—

(i) Set procedures for processing debt claims against soldiers.

(ii) Process debt claims received at USACFSC regarding soldiers.

(iii) Carry out the objectives of this regulation to protect the rights of the soldier, his or her family members, and the interests of the Army.

(iv) Advise and assist the directors of Headquarters, Department of the Army (HQDA) agencies, commanders of the major Army commands, and other commanders on matters pertaining to indebtedness of soldiers.

(3) Officers having general court-martial jurisdiction will—

(i) Ensure special emphasis on the indebtedness issue is given in command information programs. This includes soldiers being informed of their responsibility to manage their personal affairs satisfactorily and pay their debts promptly. Also, inform soldiers of the possible consequences of failure to pay their debts.

(ii) Take action on requests to file unfavorable information in a soldier's official personnel file. (See §513.3.)

(4) First level field grade commanders will monitor instances of soldiers' repeated failure to pay debts that are brought to their attention. These commanders will take action, when proper.

(5) Immediate commanders will—

(i) Ensure that soldiers are informed of the following:

(A) DA policy on indebtedness.

(B) The possible consequences of failure to pay their debts.

(ii) Manage the processing of debt claims per the terms of this regulation.

(iii) Answer all correspondence received from CG, USACFSC and other DA officials.

(iv) Answer all correspondence received directly from claimants and third parties (for example, Members of

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Congress). The commander will not include unreleasable information without the soldier's written consent. This complies with the Privacy Act of 1974. (See AR 340-21.) Commanders should ask the Staff Judge Advocate (SJA) for guidance in unusual or difficult situations.

(v) Inform the first level field grade commander of instances of soldiers' repeated failure to pay their debts. Also, point out actions taken or contemplated to correct the situation.

(vi) Refer correspondence or queries received from news media organizations to the unit, installation, or command public affairs officer for response.

(6) The unit, installation, or command public affairs officer will—

(i) Answer correspondence and queries received from news media organizations.

(ii) Coordinate with the SJA before making any response.

(e) *Policy.* (1) Soldiers are required to manage their personal affairs satisfactorily and pay their debts promptly. Failure to do so damages their credit reputation and affects the Army's public image. The Army, however, has no legal authority to force soldiers to pay their debts. Also, the Army cannot divert any part of a soldier's pay even though payment of the debt was decreed by a civil court. Only civil authorities can enforce payment of private debts.

(2) Debt claims against corporations and organizations to which a soldier belongs, or of which a soldier is an officer, will not be processed under this regulation. In this situation, the matter should be pursued in civil court. If a judgment is received specifically against the soldier, then this regulation will apply.

(3) Creditors who follow §513.4 will have their debt complaints processed.

(4) Requests for help that do not follow §513.4 will be returned without action with an explanation as discussed in §513.4(d).

(5) The Army will revoke debt processing privileges for creditors who—

(i) Refuse to abide by this regulation.

(ii) Try to use the Army as a debt collection agency. (See §513.4(e)).

(6) The Army does not try to judge or settle disputed debts, or admit or deny whether claims are valid. The Army will not tell claimants whether any adverse action has been taken against a soldier as a result of the claim.

(7) If a soldier is not trying to resolve unpaid debts promptly or complaints of repeated failure to pay debts are received, commanders will consider the actions shown below. (See §§513.2(a)(3)(xv) and 513.3.)

(i) Making the failure a matter of permanent record.

(ii) Denial of reenlistment (enlisted personnel).

(iii) Administrative separation from the Service.

(iv) Punishment under the Uniform Code of Military Justice (UCMJ). When proper, such misconduct may be charged under articles 92, 123, 133, or 134 of the UCMJ.

(8) Checks that are dishonored for any reason remain proof of indebtedness until—

(i) Made good.

(ii) Proven to be the error of the financial institution on which drawn, or the error of any other person or institution; such action then absolves the soldier of fault. (See §513.2(c).)

(9) When necessary, commanders and soldiers are urged to seek help from the SJA.

(f) *Banks and credit unions.* (1) Banks and credit unions located on military bases must apply Department of Defense (DOD) Standards of Fairness (app B) before making loans or credit agreements. Banks and credit unions that do not meet this requirement will be denied help in processing debt complaints.

(2) If soldiers are referred to off-base branches of an on-post bank or credit union, the branches also must comply with the Standards of Fairness before making loans or credit agreements.

(3) Interest rates and service charges for loans made by oversea military banking facilities are set by DOD.

(g) *Fair Debt Collection Practices Act* (section 1692, title 15, *United States Code* (15 U.S.C. 1692)). (1) A debt collector may not contact any person other than the soldier, his or her lawyer or legal counsel, or the creditor about any debt collection. The debt collector, however,

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may contact the employer if he or she has a written and signed consent from the soldier, or a court order permitting contact. The written consent must include the debt collector's name. It is illegal for debt collectors to use another name when collecting debts.

(2) Debt collectors who have obtained the needed written consent or court order and who have followed §513.4 will have their debt complaints processed.

(3) Creditors who collect only on their own behalf are exempt from the Act.

(h) *Individual repayment plan of the Bankruptcy Act.* Chapter XIII of the Bankruptcy Act (11 U.S.C. 1301, *et seq.*) provides for the protection and relief of individuals with a regular income. It also sets rules for paying debts under the supervision of U.S. Federal District Courts. Care must be taken not to confuse "bankruptcy" and "individual repayment plans" in order not to infringe on the rights of the soldier.

(i) *Locator service.* (1) Installations will honor requests for central locator service by a banking office (AR 210-135) or credit union (AR 210-24) located on a military installation. This service will be free when banking offices and credit unions cite AR 37-60. This service will be used to locate persons for settling accounts, checks that did not clear, and delinquent loans. The U.S. Army Finance and Accounting Center (USAFAC), Indianapolis, IN 46249-1016, will assist these banking offices and credit unions to locate soldiers who cannot be located locally.

(2) Current military addresses for all soldiers may be obtained by writing the Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249-5301. All requests must include the soldier's full name, rank, and social security number (SSN). They should include the date and place of birth if the SSN is not known. A check or money order for \$3.50 payable to the Treasurer of the United States must be enclosed with each request. (See AR 37-60.)

(3) A debt collector should not write to the U.S. Army Enlisted Records and Evaluation Center (USAEREC) if he or she knows the soldier is represented by a civilian lawyer or military legal

counsel. However, the debt collector may write to USAEREC if he or she—

(i) Does not know or cannot easily find out the name and address of the lawyer or legal counsel.

(ii) Does not receive a response from the lawyer or legal counsel.

(4) If a debt collector writes to USAEREC, a postcard cannot be used. Also, the request cannot state that the locator service is being sought in order to collect a debt. These actions would violate the Fair Debt Collection Practices Act (§513.1(g)).

[51 FR 7269, Mar. 3, 1986; 51 FR 8824, Mar. 14, 1986, as amended at 51 FR 17961, May 16, 1986]

§513.2 Administrative procedures for processing complaints.

(a) *Commander's actions.* Upon receipt of a debt complaint, the commander will—

(1) Review the case to ensure that the terms of this regulation have been met.

(2) Consult the SJA if needed.

(3) Take the following actions:

(i) If any of the terms of §513.4(c) have not been met by the creditor, return the complaint. Tell the writer that no action will be taken until those terms are met.

(ii) Upon receipt of subsequent inquiries from USACFSC, Members of Congress, or any other source, inform the writer that—

(A) The creditor has been told that his or her request lacked data or documentation.

(B) The commander regrets that he or she cannot process the complaint until the creditor supplies the necessary data.

(C) A reply previously has been made to the creditor. Enclose a copy of the reply.

(iii) If the creditor refuses or repeatedly fails to comply with any of these requirements, refer the complete case through channels to the Commander, USACFSC, ATTN: DACF-IS-PA, ALEX VA 22231-0522. If it is believed the creditor's debt processing privileges should be revoked, include a recommendation stating the reasons.

(iv) If the soldier was not given full disclosure information when the debt was incurred, refer him or her to the SJA office. The SJA office will advise if the soldier has a right to file suit

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against the creditor. The soldier may be entitled to twice the amount of the finance charge, for a minimum of \$100 up to a maximum of \$1,000, plus court costs and lawyer fees. This does not apply to debts incurred before 30 June 1969.

(v) If in doubt as to the legality of the contract, consult the SJA. This action is to ensure that the contract terms do not violate Federal and State laws.

(vi) Accept as valid proof, claims based on court judgments, orders, or decrees.

(vii) If the debt or the amount of the debt is disputed or denied by the soldier, reply directly to the creditor. Tell him or her that Army policy requires that disputed debts be settled by civil courts. Do not, in the reply, try to judge or settle any disputed debts, or admit or deny the validity of the claim.

(viii) If the creditor has met all the requirements discussed in §513.4, interview the soldier.

(A) Ensure that the soldier is properly advised of his or her rights under the Privacy Act of 1974. DA Form 4817-R (Consent/Nonconsent To Disclose Personal Information) will be completed.

(B) Notify the soldier of the debt complaint.

(C) Explain that the Army requires that soldiers pay their debts promptly. Failure to do so damages credit reputations and affects the Army's public image. Also, explain that the willful failure to resolve unpaid debts may result in administrative or punitive actions as described in §513.3.

(D) Tell the soldier of his or her legal rights and duties. If appropriate, advise the soldier of his or her rights under article 31, UCMJ. Also, inform the soldier that counseling service is available under the Legal Assistance Program (AR 27-3).

(E) Review all available facts including the soldier's defenses, rights, and counterclaims.

(F) Urge the soldier to seek budget counseling and consumer protection advice, if proper. These services may be obtained from on-post credit unions, Army Community Service Program Counselors (AR 608-1), or through fi-

nancial management seminars or workshops.

(G) Help the soldier in settling or in liquidating the debt. Give the soldier a copy of DA Pam 360-520 if proper. Answer any questions that he or she might have.

(H) Have the soldier sign a statement allowing or forbidding release of information to the claimant (DA Form 4817-R). AR 340-17 and AR 340-21, paragraph 3-3 govern this.

(I) Ask the soldier about his or her intentions. Give the soldier the chance to furnish a voluntarily signed statement admitting or denying the complaint or declining to do either.

(ix) Advise the claimant promptly that the soldier has been told of the complaint.

(x) Summarize the soldier's intentions if the soldier allows release of the information.

(xi) If proper, advise the claimant that indebtedness disputes must be resolved in a civil court of competent jurisdiction.

(xii) Ask the claimant to write, if necessary, directly to the soldier or his or her commander.

(xiii) Retain the statement allowing or forbidding release of information to the claimant with the case file for future reference. (See §513.3)

(xiv) Monitor actions closely to ensure promises made to claimants are being met.

(xv) Consider administrative or punitive action, if proper (See §§513.1(e)(7) and 513.3.)

(xvi) Inform the first level field grade commander of instances of soldiers' repeated failure to pay their debts. Also, point out actions taken or contemplated to correct the situation.

(b) *Procedures for routing debt complaints.* (1) Send debt complaints through proper channels to the soldier's commander for action.

(2) If the soldier is a patient attached to a medical holding detachment (MHD), the complaint will be sent there for action. The commander of the MHD will take action per this regulation.

(3) The command receiving the complaint will acknowledge the letter and tell the writer of the referral. DA Form

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209 (Delay, Referral, or Follow-Up Notice) may be used for this purpose.

(4) All correspondence to the President, received from outside of DOD, will be processed per AR 1-9.

(5) Send complaints to the soldier's new duty station if the soldier has been reassigned. Advise the claimant of the soldier's reporting date and the unit address to which correspondence should be sent.

(6) See §513.5 for procedures governing processing of claims for non-active duty or discharged personnel.

(c) *Processing debt complaints based on dishonored checks.* (1) Writing checks against an account with no or not enough funds is a serious matter. It may be a misdemeanor or a felony. This depends on the amount of the check and the laws or statutes of the jurisdiction where the check is presented for payment. The soldier is responsible for making sure that money is in his or her bank account to cover checks written on that account. Writing bad checks may result in disciplinary or administrative action. Whether or not such action is taken, a dishonored check for not enough funds remains proof of an indebtedness except as provided in §513.1(e)(8).

(2) Commanders must answer all check complaints, other than those discussed in §513.2(c)(3), even if such complaints concerns checks errors caused by oversight or negligence. (AR 210-60 outlines ways for handling dishonored checks written on Army installations and in Army facilities.)

(3) Checks made good within 5 days of notice do not require any action if the complaint is based on—

- (i) Bank or Government error.
- (ii) Failure to date the check.
- (iii) Inconsistent or not legible amounts shown on the check.
- (iv) Lack of legible signature.

(4) Bad checks written by family members are not processed under this regulation except in the following instance. The SJA finds that these checks stand for debts for which the soldier may be held personally liable under Federal or State laws (for example, checks written for necessities such as rent, utilities, or food).

(d) *Inquiries from USACFSC or DA officials.* The commander must—

(1) Give USACFSC or DA officials complete data on all inquiries.

(2) Seek the advice of the SJA before replying to a court order if necessary.

(3) State "not applicable" to items that do not apply.

(4) If applicable, advise USACFSC or DA officials—

(i) Whether the soldier acknowledges the debt.

(ii) Of the corrective action taken (to include the amounts and dates payments will be made).

(iii) Of the method of payment (for example, personal check).

(iv) Whether the soldier allowed or forbade release of the information given. (See DA Form 4817-R.)

(v) Whether the soldier is following the terms of a court order.

(vi) Whether the soldier's actions follow Army policy as stated in this regulation.

(vii) In the reply, include your name, unit address, and your automatic voice network (AUTOVON) number. If no AUTOVON Number is available, include a commercial or other number where the unit can be reached.

(5) Return to USACFSC or DA officials inquiries received after the soldier has been transferred. Include a copy of his or her permanent change of station orders.

[51 FR 7270, Mar. 3, 1986; 51 FR 8824, Mar. 14, 1986]

§513.3 Administrative and punitive actions.

(a) *Considerations.* Commanders will not tolerate irresponsibility, neglect, dishonesty, or evasiveness. Failure to pay debts promptly and honorably may require disciplinary or administrative action. If a soldier is not trying to resolve unpaid debts promptly or complaints of repeated failure to pay debts are received, commanders will consider—

(1) Making it a matter of permanent record (§513.3(b)).

(2) Denial of reenlistment (enlisted members) (AR 601-280).

(3) Administrative separation from the Service (AR 635-100 or AR 635-200).

(4) Punishment under the UCMJ. (See §513.1(e)(7).)

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(b) *Official personnel files.* (1) The Army requires that all-inclusive information of the qualifications of its soldiers be on file. This prevents selection of soldiers for positions of leadership, trust, and responsibility whose qualifications are questionable.

(2) Documents/records created or received in connection with debt complaints will be filed per AR 600-37 and the Army Functional Files System (AR 340-2 and AR 340-18).

(3) The soldier may show his or her negligence, disregard, or unwillingness to resolve the matter by repeatedly failing to pay his or her debts. In these cases, the commander will decide whether to place a letter of reprimand, admonition, or censure in the soldier's official personnel files. AR 600-37, chapter 2, governs action taken to file unfavorable information.

(4) If information does not merit filing in the soldier's official personnel files, the commander will—

- (i) Continue to monitor the situation.
- (ii) Furnish further guidance and help.
- (iii) Consider later action (§513.3(b)(3)) if warranted by further evidence.

§513.4 Conditions creditors must meet before getting help in debt processing.

(a) *Statutory and other regulatory requirements.* (1) The Truth-in-Lending Act, Pub. L. 90-321 (15 U.S.C. 1601), lists the general disclosure rules that must be met by creditors. It does not cover private parties who extend credit only rarely to help a person. (See §513.4(f)(1)).

(2) Federal Reserve Board Regulation Z (12 CFR part 226) lists specific disclosure rules for all credit transactions under the Truth-in-Lending Act.

(3) Certain States have rules that may apply to credit transactions in lieu of Federal Reserve Board Regulation Z. However, the Federal Reserve Board must first decide if the State sets largely the same rules and enforcement measures. States currently exempted from Regulation Z are Connecticut, Maine, Massachusetts, Oklahoma, and Wyoming.

(4) DOD Standards of Fairness (app B) define fair and just dealings with

soldiers. DA Pam 360-520, chapter 4, contains simplified explanations of these standards. Note that certain debt complaints are exempt (§513.4(f)).

(5) Certificate of Compliance certifies the creditor has complied with the full disclosure requirements of Federal or State laws and regulations, State laws regarding contact with the employer of the debtor, and the application of the Standards of Fairness to the consumer credit transaction.

(6) Full disclosure information shows what the soldier should know about contract terms.

(7) The Fair Debt Collection Practices Act contains other conditions a creditor must meet. (See §513.1(g)).

(b) *State laws.* Florida, Louisiana, Maryland, Massachusetts, New York, North Carolina, and Wisconsin have passed laws that forbid creditors from contacting employers. This includes commanders, unless certain conditions are met. These conditions are the reduction of a debt to court judgment or the written permission of a debtor. The judgment must conform to the Soldiers' and Sailors' Civil Relief Act of 1940, as amended (50 U.S.C. app, section 501 *et seq.*, (1970)) if applicable. (See DA Pam 27-166.) Other States may enact similar laws; if they do, the same conditions will apply. Creditors wanting to make use of the debt processing privilege must first certify their compliance with the relevant State's law about contact with an employer. These laws, however, do not apply if the debtor is located in a State that has not passed such a law.

(c) *Debt processing.* (1) Creditors, other than private parties described in 513.4(f)(1), must send—

(i) A signed copy of the Certificate of Compliance with DOD Standards of Fairness (app B) showing compliance with one of the following:

- (A) The Truth-in-Lending Act.
- (B) Federal Reserve Board Regulation Z.
- (C) State regulations.

(ii) A true copy of the signed contract.

(iii) The general and specific disclosure information given the soldier before signing the contract.

(iv) A copy of a judgment or written permission from the soldier allowing

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the creditor to contact his or her employer about the debt, if applicable. (See §513.4(b)).

(v) Photocopies of actual correspondence or documentary proof showing that every effort has been made to get payment by direct contact with the soldier. The creditor must give the soldier a chance to answer each inquiry. (Forty-five days for those in the contiguous 48 States and the District of Columbia; 60 days for all others.)

(2) Foreign-owned companies having debt complaints must send—

(i) A true copy of the terms of the debt.

(ii) A certification that they have met the DOD Standards of Fairness.

(iii) An English translation of the above (if not already in English).

(iv) Documentation as in §§513.4(c)(1)(iv) and (v).

(3) Creditors not subject to Regulation Z, such as public utility companies, will send a certification with their request. It must state that no interest, finance charge, or other fee exceeds that permitted by the laws of the State in which the service was requested.

(4) Creditors not subject to the Truth-in-Lending Act must send—

(i) Legible copies of actual correspondence. (See §513.4(c)(1)(v)).

(ii) Documentary proof showing that every effort has been made to get the payment by direct contact with the soldier.

(5) Creditors who have followed these terms may contact the soldier's commander for help. If the commander is contacted, the creditor must give the commander a chance to answer the inquiry. (Forty-five days for those in the contiguous 48 States and the District of Columbia; 60 days for all others.) If unsuccessful, after reasonable efforts to collect the debt, creditors may request help from USACFSC. In such cases, the information must be the same as that sent the commander. (See §513.4(c)(6)). The request should be sent to the Commander, USACFSC, ATTN: DACF-IS-PA, ALEX VA 22331-0522.

(6) All requests for help must include—

(i) The soldier's full name, rank, and SSN.

(ii) Date and place of birth, if SSN is not known.

(iii) The amount and date of the original debt.

(iv) The terms of payment.

(v) The balance due.

(vi) Documents described in §513.4(c)(1) through (4) which apply.

(7) Separate letters should be written on each account for prompt and efficient processing.

(8) Letters lacking data will be returned for added documents.

(d) *Debt complaints returned to creditors without action.* Requests for help in processing debt complaints will be returned without action with an explanation if—

(1) Creditors did not enclose the following:

(i) Documents showing compliance with the Truth-in-Lending Act, Federal Reserve Board Regulation Z, or State regulation.

(ii) Signed copies of the Certificate of Compliance with DOD Standards of Fairness.

(iii) A completed copy of form with the Full Disclosure Information. (See §513.4(a)(6).)

(iv) Signed copies of the contract.

(v) Legible copies of actual correspondence or documentary proof showing that every effort has been made to get the payment by direct contact with the soldier. (See §513.4(c)(1)(v).)

(2) The soldier is located in a State whose laws forbid creditors from contacting employers.

(3) The claim is obviously false or misleading.

(4) The finance charge does not conform to the State law where the contract is signed.

(5) A U.S. company operating overseas exceeds the lowest interest rate of the State or States where chartered or doing business in the United States.

(6) The contract or loan agreement provides that the debtor must pay the creditor's attorney fees, unless the following limitations in §513.4(d)(6) (i) through (iii) are included. No attorney's fee may be charged for services done by a salaried employee of the creditor.

(i) The fees will have to be paid only in the event of a default by the soldier.

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(ii) The fees will have to be paid only if a lawsuit is filed.

(iii) The fees will not exceed 20 percent of the amount found due.

(7) A penalty for prepayment has been charged.

(8) A charge has been made for an insurance premium without satisfactory proof of—

(i) A policy or insurance certificate having been issued.

(ii) Delivery of a policy or certificate to the soldier within 30 days of issuance.

(9) The late charge is in excess of 5 percent of the late payment, or \$5, whichever is the lesser amount. Only one late charge may be made for any late installment. Late charges will not be made where an allotment has been timely filed, but payment has been delayed.

(10) The creditor has not given the soldier a chance to answer a previous inquiry. (Forty-five days for those in the contiguous 48 States and the District of Columbia; 60 days for all others.)

(11) The claimant is a debt collector without a court order or a signed letter of consent by the soldier. (See §513.1(g).)

(12) The debt is covered by an order of a bankruptcy court.

(e) *Cancellation of debt processing privilege.* (1) Creditors who refuse or fail repeatedly to follow these terms will be referred through channels to the Commander, USACFSC, Attn: DACF-IS-PA, Alex, Va 22331-0522, by the commander.

(2) The CG, USACFSC will—

(i) Cancel debt processing privileges if the queries clearly show that the creditor is—

(A) Not conforming with this regulation.

(B) Trying to make unreasonable use of the debt processing privilege.

(C) Trying to use the Army as a collection agency.

(ii) Inform commanders worldwide by electrical message that the debt processing privilege of a specific creditor has been revoked.

(iii) Inform the creditor that his or her debt processing privilege has been revoked and state the reasons for this action.

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(f) *Exemptions from Full Disclosure and Standards of Fairness.* The debt complaints discussed below are exempt from the Full Disclosure and Standards of Fairness. This does not prevent the debtor from questioning service charges and negotiating a fair and reasonable settlement.

(1) Claims from private parties selling personal items (for example, car, furniture, appliances) on a one-time basis.

(2) Claims from companies or individuals giving services in which credit is given only to help the soldier (for example, utilities, milk, laundry, medical, and related services).

(3) Claims by endorsers, comakers, or lenders who intend only to help the soldier in getting credit. These claims, however, may not benefit the above through receipt of interest or otherwise.

(4) Contract for the purchase, sale, or rental of real estate.

(5) Claims in which the total unpaid amount does not exceed \$50.

(6) Claims based on a revolving or open-end credit account. The account must show—

(i) The periodic interest rate and the equivalent annual rate.

(ii) The balance to which the interest is applied to compute the charge.

(7) Claims as security liens on real property (for example, a house). This does not include improvements or repairs.

(8) Attorneys representing parties under §513.4(f) (1) through (7).

§513.5 Procedures governing non-active duty or discharged personnel.

(a) *Procedures governing nonactive duty personnel.* (1) Debt complaints against former soldiers or others not on active duty will be sent to the Commander, U.S. Army Reserve Personnel Center (ARPERCEN), ATTN: DARP-PSE-VS, 9700 Page Boulevard, St. Louis, MO 63132-5200.

(2) After ARPERCEN verifies the status, the following officials will act as prescribed below.

(i) Chief, National Guard Bureau, Wash DC 20310-2500, for soldiers of the Army National Guard.

(ii) The area commander concerned for Ready Reservists assigned to troop program units under their control. (See AR 140-1, para 1-6.)

(iii) ARPERCEN for nonunit soldiers assigned to Control Groups of the Ready Reserve, Standby Reserve, and Retired Reserve.

(3) The officials cited in §513.5(a)(2) will ensure that debt complaints are delivered to the person concerned, using military channels. When the complaint cannot be delivered through military channels, it will be sent to the last known mailing address of the person by certified mail, using PS Form 3811 (Return Receipt, Registered, Insured, and Certified Mail). It should be marked Return Receipt Requested—Deliver to Addressee Only. This form is available at U.S. post offices.

(4) After delivery of correspondence, the responsible official will advise the claimant—

(i) Of the date and method of delivery.

(ii) That the military department does not control the personal affairs of nonactive duty personnel. These personnel usually are in a civilian status and are not subject to military discipline. Therefore, the matter has been left to the person's discretion.

(iii) Of the person's mailing address only if the conditions in §513.5(c) are met.

(b) *Procedures governing discharged personnel.* (1) Debt complaints against persons who have been discharged from the service (that is, those now holding no military status) will be sent to ARPERCEN.

(2) ARPERCEN will return the correspondence, and all accompanying documentation, and advise the claimant—

(i) That the person is no longer a member of the Army or the Reserve Components.

(ii) Of the date of discharge.

(iii) That the Army no longer has control or authority over the discharged personnel. Therefore, the Army can take no further action in this matter.

(iv) Of the person's mailing address only if the conditions in §513.5(c) are met.

(c) *Conditions for disclosing mailing address.* Nonactive duty and discharged personnel's mailing addresses will not be disclosed unless—

(1) The person consents in writing to the release of his or her address.

(2) The claimant sends a court order directing the release of the address.

(3) Any other reason that does not constitute a violation of the Privacy Act of 1974.

(d) *Retired personnel.* (1) The claimant may be advised that correspondence may be sent to the retired person as follows:

(i) Place correspondence in a stamped envelope with the retired person's name typed or printed on the envelope.

(ii) Place a stamped envelope in a second envelope and mail to Commander, ARPERCEN, Attn: DARP-PSE-VS, 9700 Page Boulevard, St. Louis, MO 63131-5200.

(2) ARPERCEN will forward the correspondence to the retired person, but cannot release the address per provisions of the Privacy Act of 1974.

APPENDIX A TO PART 513—REFERENCES

Section I

Required Publications.

AR 340-2

Maintenance and Disposition of Records in TOE Units of the Active Army, the Army Reserve and the National Guard. (Cited in §513.3(b)(2)).

AR 340-17

Release of Information and Records from Army Files. (Cited in §513.2(a)(3)(viii)(H)).

AR 340-18

The Army Functional Files System. (Cited in §513.3(b)(2)).

AR 340-21

The Army Privacy Program. (Cited in §§513.1(d)(5)(iv) and 513.2(a)(3)(viii)(H)).

AR 600-37

Unfavorable Information. (Cited in §513.3(b)(2) and (3)).

DA Pam 27-166

Soldiers' and Sailors' Civil Relief Act. (Cited in §513.4(b)).

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DA Pam 360-520

Credit: Master or Servant. (Cited in §§513.2(a)(3)(viii)(G) and 513.4(a)(4).

Uniform Code of Military Justice. (Cited in §§513.1(e)(7)(iv), 513.2(a)(3)(viii)(D) and 513.3(a)(4).

Section II

Related Publications.

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 1-9

White House Liaison, Communications, and Inspections.

AR 11-2

Internal Control Systems.

AR 27-3

Legal Assistance.

AR 37-60

Pricing for Materiel and Services.

AR 140-1

USAR—Mission, Organization, and Training.

AR 210-24

Credit Unions.

AR 210-60

Control and Prevention of Abuse of Check Cashing Privileges.

AR 210-135

Banking Service on Army Installations.

AR 601-280

Army Reenlistment Program.

AR 608-1

Army Community Service Program.

AR 608-99

Family Support, Child Custody, and Paternity.

AR 635-100

Officer Personnel (Separations).

AR 635-200

Enlisted Personnel (Separations).

DODD 1344.9

Indebtedness of Military Personnel.
Federal Reserve Board Regulation Z Truth in Lending.

Section III

Prescribed Forms.

DA Form 4817-R

Consent/Nonconsent to Disclose Personal Information. (Cited in §§513.2(a)(3)(viii) (A) and (H), and 513.2(d)(4)(iv)).

Section IV

Referenced Forms.

DA Form 209

Delay, Referral, or Follow-Up Notice.

PS Form 3811

Return Receipt, Registered, Insured, and Certified Mail.

APPENDIX B TO PART 513—STANDARDS OF FAIRNESS

B-1. No finance charge contracted for, made, or received under any contract shall be in excess of the charge which could be made for such contract under the law of the place in which the contract is signed in the United States by the military member.

a. In the event a contract is signed with a U.S. company in a foreign country, the lowest interest rate of the State or States in which the company is chartered or does business shall apply.

b. However, interest rates and service charges applicable to overseas military banking facilities will be established by the Department of Defense.

B-2. No contract or loan agreement shall provide for an attorney's fee in the event of default unless suit is filed, in which event the fee provided in the contract shall not exceed 20 percent of the obligation found due. No attorney fees shall be authorized if the attorney is a salaried employee of the holder.

B-3. In loan transactions, defenses which the debtor may have against the original lender or its agent shall be good against any subsequent holder of the obligation. In credit transactions, defenses against the seller or its agent shall be good against any subsequent holder of the obligation, provided that the holder had actual knowledge of the defense or under conditions where reasonable inquiry would have apprised the holder of this fact.

B-4. The military member shall have the right to remove any security for the obligation beyond State or national boundaries if the military member or family moves beyond such boundaries under military orders and notifies the creditor, in advance of the removal, of the new address where the security will be located. Removal of the security shall not accelerate payment of the obligation.

B-5. No late charge shall be made in excess of 5 percent of the late payment, or \$5 whichever is the lesser amount, or as provided by law or applicable regulatory agency determination. Only one late charge may be made for any tardy installment. Late charges will not be levied where an allotment has been timely filed, but payment of the allotment has been delayed. Late charges by overseas banking facilities are a matter of contract with the Department of Defense. Late charges by Federal credit unions are set at 20 percent of the interest due with a minimum of not less than 5 cents.

B-6. The obligation may be paid in full at any time or through accelerated payments of any amount. There shall be no penalty for prepayment and in the event of prepayment that portion of the finance charges which has inured to the benefit of the seller of the creditor shall be prorated on the basis of the charges which would have been ratably payable had finance charges been calculated and payable as equal periodic payments over the terms of the contract and only the prorated amount to the date of prepayment shall be due. As an alternative the "Rule of 78" may be applied.

B-7. If a charge is made for loan insurance protection, it must be evidenced by delivery of a policy or certificate of insurance to the military member within 30 days.

B-8. If the loan or contract agreement provides for payments in installments, each payment, other than the down payment, shall be in equal or substantially equal amounts, and installments shall be successive and of equal or substantially equal duration.

B-9. If the security for the debt is repossessed and sold in order to satisfy or reduce the debt, the repossession and resale will be governed by the laws of the State in which the security is requested.

B-10. A contract for personal goods and services may be terminated at any time before delivery of the goods or services without charge to the purchaser. However, if goods made to the special order of the purchaser result in reproduction costs, or require preparation for delivery, such additional costs will be listed in the order form or contract.

a. No termination charge will be made in excess of this amount. Contracts for delivery at future intervals may be terminated as to the undelivered portion.

b. The purchaser shall be chargeable only for that proportion of the total cost which the goods or services delivered bear to the total goods called for by the contract. (This is in addition to the right to rescind certain credit transactions involving a security interest in real estate provided by Pub. L. 90-321, "Truth-in-Lending Act," section 125 (15 U.S.C. 1601 (1976)) and the Federal Reserve

Board Regulation Z (12 CFR part 226 and §§226.3, 226.9 (1978)).

APPENDIX C TO PART 513—GLOSSARY

Section I—Abbreviations

ARNGUS: Army National Guard of the United States
 ARPERCEN: U.S. Army Reserve Personnel Center
 AUTOVON: automatic voice network
 DA: Department of the Army
 DOD: Department of Defense
 HQDA: Headquarters, Department of the Army
 MHD: medical holding detachment
 SJA: staff judge advocate
 SSN: social security number
 UCMJ: Uniform Code of Military Justice
 USACFSC: U.S. Army Community and Family Support Center
 USAEREC: U.S. Army Enlisted Records and Evaluation Center
 USAFAC: U.S. Army Finance and Accounting Center
 USAR: U.S. Army Reserve
 U.S.C. U.S. Code

Section II—Terms

Check: A written order, usually on a standard printed form, directing a bank or credit union to pay money.
 Creditor: Any person or business that offers or extends credit, or to whom or to which a debt is owed. This term includes lending institutions (such as centralized charge systems) which, although not parties to the original transactions, seek help in collecting debts.
 Debt: Any legal debt acknowledged by the soldier, or in which there is no reasonable dispute as to the facts or law, or which has been reduced to judgment.
 Debt collector: Any person or business that solely collects debts owed to another person or business. (A debt collector is not a creditor.)
 Disputed debt: Any debt, not reduced to a judgment, in which there is a genuine dispute between the parties as to the facts or law relating to the debt which would affect the obligation the soldier to pay.
 Family member: As used in this regulation, an individual who qualifies for dependency benefits under certain conditions as set by Army regulations. (For example, spouse or unmarried child, to include stepchildren, and adopted or illegitimate children.)
 Judgment: Any decision given by a court of justice or other competent tribunal as a result of proceedings instituted therein. As defined, a judgment includes any administrative enforcement order (Vollstreckungsanordnung) issued by the German federal post office (Deutsche Bundespost) regarding unpaid telephone

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bills. Such orders come within the coverage of this regulation regardless of where the soldier is stationed.
Soldier: Commissioned and warrant officers and enlisted personnel.

[51 FR 7275, Mar. 3, 1986; 51 FR 8824, Mar. 14, 1986]

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AUTHORITY: 5 U.S.C. 552; 10 U.S.C. 218, 1037, 1089, 1552, 1553, 2036; 18 U.S.C. 219, 3401; 28 U.S.C. 50, 513, 515, 543; 31 U.S.C. 3729 and 41 U.S.C. 51; 42 U.S.C. 290, 2651; 43 U.S.C. 666

SOURCE: 59 FR 38236, July 27, 1994, unless otherwise noted.

Subpart A—General

§ 516.1 Purpose.

(a) This part prescribes policies and procedures for the following:

(1) Defensive and affirmative litigation in Federal and state civilian courts where the Army or DOD has an interest in the matter.

(2) Proceedings before Federal or state administrative bodies, such as utility rate commissions.

(3) Release of official information and testimony by DA personnel with regard to litigation.

(4) Remedies for procurement fraud and corruption.

(5) Environmental civil litigation and administrative proceedings.

(6) Proceedings before the Office of Special Counsel.

(b) This regulation does not apply to DA or DOD proceedings such as court-martial or administrative boards.

§ 516.2 References.

Applicable publications and forms are listed in appendix A to this part.

§ 516.3 Explanation of abbreviations and terms.

(a) The Glossary contains explanations of abbreviations and terms.

(b) The masculine gender has been used throughout this regulation for simplicity and consistency. Any reference to the masculine gender is intended to include women.

§ 516.4 Responsibilities.

(a) United States Department of Justice (DOJ). DOJ will defend litigation in domestic and foreign courts, against the United States, its agencies and instrumentalities, and employees whose official conduct is involved. The various U.S. Attorney Offices, under the oversight of the Attorney General, will conduct much of the representation.

(b) The Judge Advocate General (TJAG). Subject to the ultimate control of litigation by DOJ (including the various U.S. Attorney Offices), and to the general oversight of litigation by the Army General Counsel, TJAG is responsible for litigation in which the Army has an interest except with respect to proceedings addressed in paragraph (i) of this section, only TJAG (or

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Chief, Litigation Division) will communicate to DOJ the Army's position with regard to settlement of a case.

(c) Assistant Judge Advocate General For Civil Law and Litigation (AJAG-CL). Responsible to TJAG for litigation issues; supervises Chief, Litigation Division.

(d) Chief, Litigation Division. Reports to AJAG-CL and is responsible for the following:

(1) Supervising litigation in which the Army has an interest.

(2) Acting for TJAG and Secretary of the Army on litigation issues, including the authority to settle or compromise cases, subject to the supervision of TJAG and AJAG-CL.

(3) Delegating cases if appropriate.

(4) Serving as primary contact with DOJ on litigation.

(5) Accepting service of process for DA and for the Secretary of the Army in his official capacity. See 32 CFR §257.5).

(e) Special Assistant U.S. Attorneys (SAUSAs) and DOJ Special Attorneys. Army judge advocates and civilian attorneys, when appointed as SAUSAs under 28 U.S.C. 543, will represent the Army's interests in either criminal or civil matters in Federal court under the following circumstances:

(1) Felony and misdemeanor prosecutions in Federal court. Army attorneys, at the installation level, after being duly appointed (See AR 27-10), will prosecute cases, in which the Army has an interest, in Federal court. Army attorneys who prosecute criminal cases will not represent the United States in civil litigation without authorization from Chief, Litigation Division.

(2) SAUSAs for civil litigation. By assignment of TJAG and upon the approval of the U.S. Attorney, Judge Advocates will serve within a U.S. Attorney's office to represent the government in litigation in which the Army or DOD has an interest. These Judge Advocates have the same general authority and responsibility as an Assistant U.S. Attorney.

(3) Special Attorneys assigned to DOJ. By assignment of TJAG and with the concurrence of the appropriate DOJ official, Judge Advocates will work as Special Attorneys for DOJ. Special At-

torneys are authorized to represent the United States in civil litigation in which the Army or DOD has an interest.

(f) Attorneys at Army activities or commands. SJAs or legal advisers, or attorneys assigned to them, will represent the United States in litigation only if authorized by this regulation or delegated authority in individual cases by the Chief, Litigation Division.

(g) Commander, U.S. Army Claims Service (USARCS). The Commander, USARCS, and USARCS attorneys, subject to AR 27-20, Chapter 4, will maintain direct liaison with DOJ in regard to administrative settlement of claims under the Federal Tort Claims Act.

(h) Chief, Contract Law Division, OTJAG. The Chief, Contract Law Division, attorneys assigned to the Contract Law Division, and other attorneys designated by the Chief, Contract Law Division, in litigation involving taxation, will represent DA in negotiation, administrative proceedings, and litigation, and maintain liaison with DOJ and other governmental authorities.

(i) Legal Representatives of the Chief of Engineers. The Office of Chief Counsel, attorneys assigned thereto, and other attorneys designated by the Chief Counsel will maintain direct liaison with DOJ and represent DA in litigation and administrative proceedings arising from the navigation, civil works, Clean Water Act 404 permit authority, environmental response activities, and real property functions of the U.S. Army Corps of Engineers.

(j) Chief Trial Attorney, Contract Appeals Division, USALSA. The Chief Trial Attorney, attorneys assigned to the Contract Appeals Division, and attorneys designated by the Chief Trial Attorney will represent the government before the Armed Services Board of Contract Appeals and the General Services Board of Contract Appeals. They will maintain direct liaison with DOJ concerning appeals from ASBCA and GSBCA decisions. The Chief Trial Attorney has designated COE attorneys to act as trial attorneys in connection with COE contract appeals.

(k) Chief, Regulatory Law Office, USALSA. The Chief, Regulatory Law

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Office, attorneys assigned to the Regulatory Law Office, and other attorneys designated by the Chief, will represent DA consumer interests in regulatory matters before state and Federal administrative agencies and commissions, including but not limited to proceedings involving rates and conditions for the purchase of services for communications (except long-distance telephone), transportation, and utilities (gas, electric, water and sewer). They will maintain direct liaison with DOJ for communications, transportation, and utilities litigation.

(l) Chief, Intellectual Property Law Division, USALSA. The Chief, Intellectual Property Law Division, and the attorneys assigned thereto will represent DA in matters pertaining to patents, copyrights, and trademarks. They will maintain direct liaison with DOJ concerning intellectual property issues.

(m) Chief, Labor and Employment Law Office, OTJAG. The Chief, Labor and Employment Law Office, attorneys assigned thereto, and attorneys identified as labor counselors will represent DA in matters pertaining to labor relations, civilian personnel, and Federal labor standards enforcement before the following: Federal Labor Relations Authority; Merit Systems Protection Board; Equal Employment Opportunity Commission; Department of Labor; National Labor Relations Board; and, state workmen's compensation commissions. In the event any individual mentioned in this subparagraph intends to make a recommendation to DOJ concerning an appeal of any case to a U.S. Court of Appeals, such recommendation will first be coordinated with Litigation Division.

(n) Chief, Procurement Fraud Division, USALSA. The Chief, Procurement Fraud Division, attorneys assigned thereto, and other attorneys designated by the Chief will represent DA in all procurement fraud and corruption matters before the Army suspension and debarment authority and before any civil fraud recovery administrative body. They will maintain liaison and coordinate remedies with DOJ and other agencies in matters of procurement fraud and corruption.

(o) Chief, Environmental Law Division, USALSA. The Chief, Environmental Law Division, attorneys assigned thereto, and other attorneys designated by the Chief, ELD, will maintain direct liaison with DOJ and represent DA in all environmental and natural resources civil litigation and administrative proceedings involving missions and functions of DA, its major and subordinate commands, installations presently or previously managed by DA, and other sites or issues in which DA has a substantial interest, except as otherwise specifically provided in this part.

(p) Chief, Criminal Law Division, OTJAG. The Chief, Criminal Law Division, will have general oversight of felony and magistrate court prosecutions conducted by Army lawyers acting as Special Assistant U.S. Attorneys. (See subpart G of this part). The Chief will coordinate with DOJ and other governmental agencies concerning the overall conduct of these prosecutions.

[59 FR 38236, July 27, 1994; 59 FR 45974, Sept. 6, 1994]

§516.5 Restriction on contact with DOJ.

(a) General rule. Except as authorized by TJAG, the General Counsel, the Chief of Litigation Division, or this regulation, no Army personnel will confer or correspond with DOJ concerning legal proceedings in which the Army has an interest.

(b) Exceptions. This prohibition does not preclude contact with DOJ required by the Memorandum of Understanding between DOJ and DOD relating to the investigation and prosecution of certain crimes. (See AR 27-10, para 2-7). In addition, an installation SJA or legal adviser is expected to maintain a working relationship with the U.S. Attorney in each district within his geographical area. An SJA or legal adviser should request the U.S. Attorney to advise him immediately when litigation involving DA or its personnel is served on the U.S. Attorney.

[59 FR 38236, July 27, 1994; 59 FR 45974, Sept. 6, 1994]

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§516.6 Appearance as counsel.

(a) General. Military personnel on active duty and DA civilian personnel will not appear as counsel before any civilian court or in any preliminary proceeding, for example, deposition, in litigation in which the Army has an interest without the prior written approval of TJAG, except under the following conditions:

(1) The appearance is authorized by this regulation.

(2) The individual is a party to the proceeding.

(3) The appearance is authorized under an expanded legal assistance program (See AR 27-3).

(4) The individual is a judge advocate assigned or detailed by TJAG to DOJ to represent the United States in civil or criminal cases, for example, a Special Assistant U.S. Attorney, or an attorney assigned to Litigation Division.

(b) Procedure. All requests for appearance as counsel will be made through Litigation Division to the Personnel, Plans and Training Office, OTJAG. Requests for DA military or civilian attorneys to appear in any civilian court or proceeding on behalf of a soldier who is also facing UCMJ action will be delivered to the SJA, legal adviser, or Regional Defense Counsel, as appropriate. The SJA or legal adviser will forward the request to Litigation Division with an evaluation of the case and recommendation. Regional Defense Counsel should send requests for USATDS counsel to Chief, USATDS, who will forward the request to Litigation Division. Privileged or otherwise sensitive client information should only be submitted through USATDS channels.

§516.7 Mailing addresses.

Mailing addresses for organizations referenced in this regulation are in appendix B to this part.

Subpart B—Service of Process

§516.8 General.

(a) Defined. Process is a legal document that compels a defendant in an action to appear in court or to comply with the court's demands, for example, in a civil case a summons or subpoena,

or in a criminal case, a warrant for arrest, indictment, contempt order, subpoena, or summons. Service of process is the delivery of the document to a defendant to notify him of a claim or charge against him.

(b) Policy. DA personnel will follow the guidance of this chapter when civil officials attempt to serve civil or criminal process on individuals on Federal property.

(c) Procedures. Provost marshals shall ensure that installation law enforcement personnel are adequately trained to respond to situations which arise with regard to service of civil and criminal process. SJAs or legal advisers shall provide guidance to law enforcement personnel in these matters.

§516.9 Service of criminal process within the United States.

(a) Surrender of personnel. Guidance for surrender of military personnel to civilian law enforcement officials is in Chapter 7 of AR 630-10 and AR 190-9. Army officials will cooperate with civilian law enforcement authorities who seek the surrender of a soldier in connection with criminal charges. Special rules apply when a bail bondsman or other surety seeks custody of a soldier.

(b) Requests for witnesses or evidence in criminal proceedings. See subpart G to this part.

[59 FR 38236, July 27, 1994; 59 FR 45975, Sept. 6, 1994]

§516.10 Service of civil process within the United States.

(a) Policy. DA officials will not prevent or evade the service or process in legal actions brought against the United States or against themselves in their official capacities. If acceptance of service of process would interfere with the performance of military duties, Army officials may designate a representative to accept service. DA personnel sued in their individual capacity should seek legal counsel concerning voluntary acceptance of process.

(b) Request for witnesses or evidence in civil proceedings. See subpart G to this part.

(c) Process of Federal courts. Subject to reasonable restrictions imposed by the commander, civil officials will be

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permitted to serve Federal process. (See Fed. R. Civ. P. 4, 45).

(d) Process of state courts.

(1) In areas of exclusive Federal jurisdiction that are not subject to the right to serve state process, the commander or supervisor will determine whether the individual to be served wishes to accept service voluntarily. A JA or other DA attorney will inform the individual of the legal effect of voluntary acceptance. If the individual does not desire to accept service, the party requesting service will be notified that the nature of the exclusive Federal jurisdiction precludes service by state authorities on the military installation.

(2) On Federal property where the right to serve process is reserved by or granted to the state, in areas of concurrent jurisdiction, or where the United States has only a proprietary interest, Army officials asked to facilitate service of process will initially proceed as provided in the preceding subparagraph. If the individual declines to accept service, the requesting party will be allowed to serve the process in accordance with applicable state law, subject to reasonable restrictions imposed by the commander.

(e) Process of foreign courts. A U.S. District Court may order service upon a person who resides in the judicial district of any document issued in connection with a proceeding in a foreign or international tribunal. (28 U.S.C. 1696). In addition, the U.S. State Department has the power to receive a letter rogatory issued by a foreign or international tribunal, to transmit it to a tribunal, officer or agency in the United States, and to return it after execution. (28 U.S.C. 1781). Absent a treaty or agreement to the contrary, these provisions will govern.

(f) Seizure of personal property. State and Federal courts issue orders (for example, writ of attachment) authorizing a levy (seizure) of property to secure satisfaction of a judgment. DA personnel will comply with valid state or Federal court orders commanding or authorizing the seizure of private property to the same extent that state or Federal process is served.

[59 FR 38236, July 27, 1994; 59 FR 45975, Sept. 6, 1994]

§ 516.11 Service of criminal process outside the United States.

Army Regulation 630-10 and international treaties, such as status of forces agreements, govern the service of criminal process of foreign courts and the surrender of soldiers to foreign civilian law enforcement officials.

§ 516.12 Service of civil process outside the United States.

(a) Process of foreign courts. In foreign countries service of process issued by foreign courts will be made under the law of the place of service, as modified by status of forces agreements, treaties or other agreements. In foreign areas under exclusive U.S. jurisdiction, service of process issued by foreign courts will be made under the law specified by appropriate U.S. authority.

(b) Process of Federal courts. Service of process on U.S. citizens or residents may be accomplished under the following provisions: The Hague Convention, reprinted in 28 USCA Federal Rules of Civil Procedure, following Rule 4; Fed. R. Civ. P. 4(i); 28 USC 1781 and 1783; and, the rules of the Federal court concerned. If a DA official receives a request to serve Federal process on a person overseas, he will determine if the individual wishes to accept service voluntarily. Individuals will be permitted to seek counsel. If the person will not accept service voluntarily, the party requesting service will be notified and advised to follow procedures prescribed by the law of the foreign country concerned.

(c) Process of state courts. If a DA official receives a request to serve state court process on a person overseas, he will determine if the individual wishes to accept service voluntarily. Individuals will be permitted to seek counsel. If the person will not accept service voluntarily, the party requesting service will be notified and advised to follow procedures prescribed by the law of the foreign country concerned. (See, for example, The Hague Convention, reprinted in 28 USCA Federal Rules of Civil Procedure, following Rule 4).

(d) Suits against the United States. DA personnel served with foreign civil process will notify the appropriate SJA or legal adviser, who will return the

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document to the issuing authority explaining the lack of authority to accept service for the United States. Service on the United States must be made upon DOJ through established diplomatic channels.

§516.13 Assistance in serving process overseas.

(a) Europe. For information and assistance concerning service of process of persons assigned to or accompanying U.S. Forces in Europe, contact the Foreign Law Branch, International Law Division, Office of The Judge Advocate, Headquarters U.S. Army, Europe, and Seventh Army, Unit 29351, (Heidelberg, Germany) APO AE 09014.

(b) Korea. For information and assistance concerning service of process of persons assigned to or accompanying U.S. Forces in Korea, contact Staff Judge Advocate, US Forces Korea (Seoul, Republic of Korea), APO AP 96205.

(c) Panama, Central and South America. For information and assistance concerning service of process of persons assigned to or accompanying forces in the U.S. Army Southern Command, contact Staff Judge Advocate, HQ, US Army South, Fort Clayton, Panama, APO AA 34004-5000.

§516.14 Service of process on DA or Secretary of Army.

The Chief, Litigation Division, shall accept service of process for Department of the Army or for the Secretary of the Army in his official capacity.

Subpart C—Reporting Legal Proceedings to HQDA

§516.15 General.

(a) Legal proceedings requiring reporting. Actions must be taken upon commencement of litigation or administrative proceedings in which the United States has an interest. Typically, the Secretary of the Army, DA, the United States, or DA personnel are named as defendant in a lawsuit or as respondent in an administrative proceeding. A nonexclusive listing of cases in which the United States has an interest include the following:

(1) Suits for damages, injunctive relief, or other action filed against the

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government or against DA personnel in their official capacity.

(2) Suits alleging individual liability arising from performance of official duties by DA personnel.

(3) Actions affecting DA operations or activities or which might require official action by DA personnel.

(4) Actions arising out of DA contracts, subcontracts, or purchase orders wherein the government might be required to reimburse a contractor for litigation expenses.

(5) Bankruptcy proceedings in which the United States or its instrumentalities may have an interest, including bankruptcies involving government contractors.

(b) Command and agency responsibility. Commanders and supervisors of Army units, installations, or organizations will ensure reports required by this section are promptly submitted.

(c) Reports to HQDA. Reports required by this regulation will be made telephonically or mailed to the responsible organization at DA. Appendix B to this part contains mailing addresses for these offices. Except in the situations described below, reports required by this chapter will be made to Litigation Division:

(1) Actual or potential litigation (or administrative infringement claims) involving patents, copyrights, or trademarks will be made to Intellectual Property Law Division.

(2) Reports of pending or prospective litigation involving taxation will be made to Contract Law Division.

(3) Communications, transportation, and utility services reports will be made to Regulatory Law Office.

(4) Reports involving environmental and natural resource litigation and administrative proceedings will be made to Environmental Law Division.

(5) Potential civil recovery reports in cases of procurement fraud and corruption will be made to Procurement Fraud Division.

(6) Reports involving the felony prosecution program and magistrate court prosecutions will be made to Criminal Law Division, OTJAG.

(7) Cases before the Armed Services Board of Contract Appeals and the

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General Services Board of Contract Appeals will be made to Contract Appeals Division.

(d) Classified information. Information required by this regulation will be submitted in an unclassified form if possible. If downgrading or declassification is not feasible, the classified material should be separated from the report and forwarded under separate cover.

(e) Other reporting requirements. Reports required by this chapter are in addition to and do not satisfy any other reporting requirement, such as the following: notifying the FBI of offenses pursuant to AR 27-10; submitting serious incident reports pursuant to AR 190-40; reporting procurement fraud or other irregularities per Defense Federal Acquisition Regulation Supplement, section 209.406-3 (48 CFR 209.406-3); reporting the exercise of criminal jurisdiction by foreign tribunals over U.S. personnel pursuant to AR 27-50; or, reporting bankruptcies per AR 37-103.

(f) Reports control exemption. The reports required herein are exempt from reports control under AR 335-15, paragraphs 3-3a(5) and 5-2e(4).

§ 516.16 Individual and supervisory procedures upon commencement of legal proceedings.

(a) Individual procedures. DA personnel served with civil or criminal process concerning a proceeding in which the United States has an interest (§ 516.15) will immediately inform their supervisor and furnish copies of process and pleadings. There is no requirement to notify supervisors of purely private litigation.

(b) Supervisory procedures. When supervisors learn that legal proceedings in which the United States has an interest have commenced, the supervisor will forward a copy of all process and pleadings, along with other readily available information, to the SJA or legal adviser. If no legal officer is available locally, the documents will be forwarded to the SJA or legal adviser of the next higher headquarters.

§ 516.17 SJA or legal adviser procedures.

(a) Immediate notice to HQDA. When an SJA or legal adviser learns of litigation in which the United States has an interest, and it appears that HQDA is not aware of the action, the SJA or legal adviser will telephonically notify the responsible HQDA office. (See § 516.15(c)). Immediate notice is particularly important when litigation involves one of the following: a lawsuit against an employee in his individual capacity; a motion for a temporary restraining order or preliminary injunction; a habeas corpus proceeding; a judicial or administrative proceeding involving less than 60 days to file an answer; and, actions with possible Congressional, Secretarial, or Army Staff interest. For legal proceedings instituted in foreign tribunals, the SJA or legal adviser will also notify the major overseas commander concerned and the appropriate U.S. Embassy or Legation. A telephonic report to HQDA should include the following:

- (1) Title or style of the proceeding.
- (2) Full names and addresses of the parties.
- (3) Tribunal in which the action is filed, date filed, docket number, when and on whom service of process was made, and date by which pleading or response is required.
- (4) Nature of the action, amount claimed or relief sought.
- (5) Reasons for immediate action.

(b) Transmission of process, pleadings, and related papers. Unless instructed otherwise by HQDA, the SJA or legal adviser will FAX or mail HQDA a copy of all process, pleadings, and related papers. Use of express mail or overnight delivery service is authorized.

(c) Notice to U.S. Attorney. If the legal proceeding is instituted in the United States, the SJA or legal adviser, unless instructed otherwise by HQDA, will notify the appropriate U.S. Attorney and render assistance as required.

§ 516.18 Litigation alleging individual liability.

See subpart D for procedures to follow when DA personnel, as a result of

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performance of official duties, are either sued in their individual capacities or face criminal charges.

§ 516.19 Injunctive relief.

(a) General. Plaintiffs may attempt to force government action or restraint in important operational matters or pending personnel actions through motions for temporary restraining orders (TRO) or preliminary injunctions (PI). Because these actions can quickly impede military functions, immediate and decisive action must be taken.

(b) Notification to HQDA and U.S. Attorney. The SJA or legal adviser will immediately notify Litigation Division or other appropriate office at HQDA when a motion for TRO or PI has been, or is about to be, filed. The SJA or legal adviser will also notify the responsible U.S. Attorney.

(c) Actions by SJA or legal adviser. The SJA or legal adviser will assist the DOJ or DA attorney responsible for the litigation. Installation attorneys or support personnel should begin accumulating relevant documentary evidence and identifying witnesses. If requested, installation attorneys will prepare a legal memorandum concerning the motion, giving particular attention to the following issues relevant to a court granting injunctive relief:

- (1) Plaintiff's likelihood of success on the merits.
- (2) Whether plaintiff will be irreparably harmed if injunctive relief is not granted.
- (3) Harm to defendant and other parties if injunctive relief is granted.
- (4) The public interest.

§ 516.20 Habeas Corpus.

(a) General. A soldier may file a writ of habeas corpus to challenge his continued custody (usually in a post court-martial situation) or retention in the Army. As is the case with injunctive relief in the preceding paragraph, installation SJAs and legal advisers must take immediate action.

(b) Notification to Litigation Division and U.S. Attorney. The SJA or legal adviser will notify Litigation Division and the responsible U.S. Attorney's Office immediately upon learning that a petition for writ of habeas corpus has

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been filed. All relevant documentary evidence supporting the challenged action should be assembled immediately.

(c) *Procedures in habeas corpus.* Upon the filing of a petition for a writ of habeas corpus, the court will dismiss the petition, issue the writ, or order the respondent to show cause why it should not be granted. If a writ or order to show cause is issued, the SJA or legal adviser should be prepared to assist the responsible Litigation Division or DOJ attorney in preparing a return and answer. If so directed, the SJA will also prepare a memorandum of points and authorities to accompany the return and answer. The government's response should cover the following: whether the Army has custody of petitioner; whether respondent and petitioner are within the judicial district; and, whether appellate or administrative remedies have been exhausted.

(d) *Writs or orders issued by state courts.* No state court, after being judicially informed that a petitioner is in custody under the authority of the United States, should interfere with that custody or require that petitioner be brought before the state court. A deserter, apprehended by any civil officer having authority to apprehend offenders under the laws of the United States or of any state, district, territory, or possession of the United States, is in custody by authority of the United States. If a writ of habeas corpus is issued by a state court, the SJA or legal adviser will seek guidance from Litigation Division.

(e) *Foreign court orders.* A foreign court should not inquire into the legality of restraint of a person held by U.S. military authority. If a foreign court issues any process in the nature of a writ of habeas corpus, the SJA or legal adviser will immediately report the matter to the appropriate U.S. forces commander and to Litigation Division.

§ 516.21 Litigation against government contractors.

(a) General. A contract might require that the government reimburse a contractor (or subcontractor) for adverse judgments or litigation expenses. Unless a contractor or subcontractor facing a lawsuit requests representation

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by DOJ, the Army presumes the contractor will obtain private counsel to defend the case. If the contract so allows, however, the contractor may request and HQDA may recommend that DOJ represent the contractor if it is in the best interests of the United States.

(b) *Actions by SJA or legal adviser.* If a contractor or subcontractor faces litigation and the underlying contract with the government requires reimbursement for adverse judgments or costs of the litigation, the SJA or legal adviser, through the contracting officer, should determine if the contractor desires representation by DOJ. If so, the contractor or authorized agent will sign a request for representation. (See figure D-3, appendix G, of this part.) The SJA or legal adviser will determine whether, in his opinion, representation by DOJ should be granted. He will prepare a memorandum to support his recommendation, especially concerning any issue regarding the government's obligation to reimburse the contractor under the contract. The SJA or legal adviser will forward his memorandum, along with the contractor's request, to Litigation Division.

(c) *Actions by Litigation Division.* The Chief, Litigation Division, will evaluate the submission and decide if it is in the Army's best interest that the request be granted. He will prepare a memorandum supporting his decision and send the packet to DOJ. The Chief's decision constitutes the final DA position on the matter. If DOJ grants the contractor's request, the Chief, Litigation Division, will ensure that the contractor is notified through the SJA or legal adviser and the contracting officer.

(d) *Private Counsel.* A contractor represented by DOJ may ask that private counsel assist the DOJ attorney in the litigation. The DOJ attorney will remain in control of the litigation, and the fees for private counsel will not be reimbursable except under unusual circumstances. The contractor must seek both DOJ and DA approval to employ private counsel when DOJ representation has been granted. Even if DOJ and DA grant authority to employ private counsel, the contracting officer will determine whether a contractor will be

reimbursed under the contract for private counsel.

(e) *Settlement.* The contractor, unless the contract specifies otherwise, will ultimately decide whether to compromise a suit. Reimbursement under the contract is determined by the contracting officer, with the advice of his attorney.

§ 516.22 Miscellaneous reporting requirements.

SJAs or legal advisers will comply with the directives cited below concerning actual or prospective litigation involving the following types of cases:

(a) Taxation.

(1) Contractor transactions. (FAR and DFARS, 48 CFR parts 29 and 229).

(2) Army and Air Force Exchange Service (AAFES) activities. (AR 60-20).

(3) Purchase or sale of alcoholic beverages. (AR 215-2).

(4) Nonappropriated fund and related activities. (AR 215-1).

(b) Tort and contract claims, insurance and litigation involving non-appropriated fund activities. (AR 215-1).

(c) Annexation of Army lands. (AR 405-25).

(d) Communications, transportation, and utility services administrative proceedings. Any contracting officer or other Army official responsible for the acquisition of communications, transportation, utilities (gas, electric, water and sewer), or military mail services, who becomes aware of any action or proceeding of interest to the Army, will promptly refer the matter to the SJA or legal adviser, who will take the actions prescribed in § 516.17 of this part. Examples of actions requiring referral follow: new or amended rates, regulations, or conditions of service; applications for authority to discontinue or initiate service; changes in electromagnetic patterns causing adverse communications interference; or, zoning proposals affecting historic or aesthetic preservation. In addition, the SJA or legal adviser will transmit the following to Regulatory Law Office:

(1) The names and addresses of any parties intervening and the substance of their positions.

(2) Names of government users affected by any change.

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(3) Copy of any proposed rates, rules, or regulations.

(4) A recommendation whether the Army should intervene in the action or proceeding. If intervention is recommended, provide a memorandum to support the recommendation.

(e) Legal proceedings overseas. Foreign communications, transportation, and utility service proceedings need not be reported. In other legal proceedings instituted in a foreign country, the SJA or legal adviser will take the actions prescribed in §516.17 of this part.

(f) Maritime claims. Admiralty and maritime claims within the purview of Chapter 8, AR 27-20, which have been investigated and processed under AR 55-19 or other applicable regulations, will be referred to USARCS.

(g) Army and Air Force Exchange Service litigation. The SJA or legal adviser will send a copy of all documents relating to litigation against AAFES to General Counsel, AAFES, P.O. Box 660202, Dallas, TX 75266-0202.

(h) Bankruptcy. Reports of bankruptcy or insolvency proceedings shall be made in accordance with this regulation and AR 37-103.

§516.23 Litigation reports.

The SJA or legal adviser will prepare a litigation report when directed by HQDA. The report will contain the following sections: Statement of Facts; Setoff or Counterclaim; Responses to Pleadings; Memorandum of Law; Witness List; and, Exhibits.

(a) Statement of Facts. Include a complete statement of the facts upon which the action and any defense thereto are based. Where possible, support facts by reference to documents or witness statements. Include details of previous administrative actions, such as the filing and results of an administrative claim. If the action is predicated on the Federal Tort Claims Act, include a description of the plaintiff's relationship to the United States, its instrumentalities, or its contractors. Also include a statement whether an insurance company or other third party has an interest in the plaintiff's claim by subrogation or otherwise and whether there are additional claims related to the same incident.

(b) Setoff or Counterclaim. Discuss whether setoff or counterclaim exists. If so, highlight the supportive facts.

(c) Responses to Pleadings. Prepare a draft answer or other appropriate response to the pleadings. (See figure C-1, to this part). Discuss whether allegations of fact are well-founded. Refer to evidence that refutes factual allegations.

(d) Memorandum of Law. Include a brief statement of the applicable law with citations to legal authority. Discussions of local law, if applicable, should cover relevant issues such as measure of damages, scope of employment, effect of contributory negligence, or limitations upon death and survival actions. Do not unduly delay submission of a litigation report to prepare a comprehensive memorandum of law.

(e) Potential witness information. List each person having information relevant to the case and provide an office address and telephone number. If there is no objection, provide the individual's social security account number, home address, and telephone number. This is "core information" required by Executive Order No. 12778 (Civil Justice Reform). Finally, summarize the information or potential testimony that each person listed could provide.

(f) Exhibits.

(1) Attach a copy of all relevant documents. This is "core information" required by Executive Order No. 12778 (Civil Justice Reform). Unless otherwise directed by HQDA, each exhibit should be tabbed and internally paginated. References to exhibits in the litigation report should be to page numbers of particular exhibits.

(2) Copies of relevant reports of claims officers, investigating officers, boards or similar data should be attached, although such reports will not obviate the requirement for preparation of a complete litigation report.

(3) Prepare an index of tabs and exhibits.

(4) Where a relevant document has been released pursuant to a FOIA request, provide a copy of the response, or otherwise identify the requestor and the records released.

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(g) Distribution and number of copies. Unless HQDA directs otherwise, SJAs or legal advisers will mail (first class) an original and one copy of the litigation report to the responsible HQDA office (See § 516.15 of this part) and one copy to the U.S. Attorney’s Office handling the case. If possible, record the litigation report onto a magnetic diskette, using either Word-Perfect, Enable, or ACSII, and send it to Litigation Division.

§ 516.24 Preservation of evidence.

Because documents needed for litigation or administrative proceedings are subject to routine destruction, the SJA or legal adviser will ensure that all relevant documents are preserved.

§ 516.25 DA Form 4.

(a) *General.* The DA Form 4 (See figure C-2, appendix G, of this part) is used to authenticate Army records or documents. Documents attached to a properly prepared and sealed DA Form 4 are self-authenticating. (See Fed. R. Evid. 902).

(b) *Preparation at the installation level.* A DA Form 4 need not be prepared until the trial attorney presenting the government’s case identifies documents maintained at the installation level which he will need at trial. Once documents are identified, the custodian of the documents will execute his portion of the DA Form 4. (See figure C-2, appendix G, of this part). The custodian certifies that the documents attached to the DA Form 4 are true copies of official documents. Documents attached to each form should be generally identified; each document need not be mentioned specifically. Only the upper portion of the form should be executed at the local level.

(c) *Actions at HQDA.* Upon receipt of the DA Form 4 with documents attached thereto, HQDA will affix a ribbon and seal and deliver it to the Office of the Administrative Assistant to the Secretary of the Army. That office will place the official Army seal on the packet.

§ 516.26 Unsworn declarations under penalty of perjury.

(a) General. Under the provisions of 28 U.S.C. 1746, whenever any matter is

required or permitted to be established or proven by a sworn statement, oath or affidavit, such matter may also be established or proven by an unsworn written declaration under penalty of perjury. Because such declaration does not require a notary or other official to administer oaths, individuals preparing statements for use in litigation should consider using this format. (See figure C-3, appendix G, of this part).

(b) When executed within the United States. Place the following at the end of the witness statement:

I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. 1746).
Executed on

(Date) (Signature)

(c) When executed outside the United States. Place the following at the end of the witness statement:

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. (28 U.S.C. 1746).
Executed on

(Date) (Signature)

Subpart D—Individual Liability

§ 516.27 Scope.

This subpart guidance when DA personnel, as a result of the performance of their official duties, are either sued in their personal capacity, or are charged in a criminal proceeding. Examples of civil actions alleging individual liability include the following: a medical malpractice lawsuit against health care providers; suits resulting from motor vehicle accidents; constitutional torts; or, common law torts such as assault, libel, or intentional infliction of emotional distress. Likewise, state or Federal criminal charges can arise from the performance of official duties, including environmental crimes or motor vehicle accidents.

§ 516.28 Policy.

(a) General. Commanders, supervisors, and SJAs or legal advisers will give highest priority to compliance with the requirements of this chapter with regard to current or former DA personnel who face criminal charges or

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civil litigation in their individual capacity as a result of performance of their official duties.

(b) DOJ policy on representation. If in the best interest of the United States, upon request of the individual concerned, and upon certification by his agency that he was acting within the scope of his employment, DOJ may represent present and former DA personnel sued individually as a result of actions taken within the scope of their employment. Representation can be declined for a variety of reasons, including but not limited to the following: the employee was not acting within the scope of his office; there is a conflict of interest; or, actions were not taken in a good faith effort to conform to law.

§516.29 Federal statutes and regulations.

(a) Federal Tort Claims Act (FTCA). (28 U.S.C. 1346(b), 2671-2680). A waiver of sovereign immunity which, with certain exceptions, makes the United States liable for tort claims in the same manner as a private individual.

(b) Federal Employees Liability Reform and Tort Compensation Act of 1988 (FELRTCA or the Westfall Act, Pub. L. No. 100-694, 102 Stat. 4563 (1988) (codified at and amending 28 U.S.C. 2671, 2674, 2679). FELRTCA, by amending the Federal Tort Claims Act, makes the FTCA the exclusive remedy for common law tort claims arising from actions taken by Federal employees acting within the scope of employment. The law was passed to eliminate problems caused by *Westfall v. Erwin*, 484 U.S. 292 (1988).

(c) 10 U.S.C. 1089 (Defense of certain suits arising out of medical malpractice). This provision, commonly referred to as the Gonzales Act, makes the FTCA the exclusive remedy for suits alleging medical malpractice against a military health care provider.

(d) 28 CFR 50.15 (Representation of Federal officials and employees by Department of Justice attorneys [. . .] in civil, criminal, and congressional proceedings in which Federal employees are sued, subpoenaed, or charged in their individual capacities). These DOJ regulations set out the policy and procedures for requesting representation

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in individual liability cases. See also 28 CFR part 15 (Defense of Certain Suits Against Federal Employees, etc.).

(e) 28 CFR 50.16 (Representation of Federal employees by private counsel at Federal expense).

§516.30 Procedures for obtaining certification and DOJ representation.

(a) SJA or legal adviser procedures. When an SJA or legal adviser learns of a criminal charge or of a lawsuit alleging individual liability against DA personnel as a result of performance of official duties, he will take the following actions:

(1) Immediately notify Litigation Division and the appropriate U.S. Attorney and FAX or express deliver copies of process and pleadings to each office. Where time for response is limited, request that the U.S. Attorney either petition the court for an extension of time, or provide temporary counsel and representation pending formal approval.

(2) Investigate whether the employee was acting within the scope of his office or employment. Obtain, if possible, statements from the defendant, supervisors, and witnesses.

(3) Advise the individual defendant of the rights and conditions set out in 28 CFR 50.15, which include the following:

(i) His right to request representation by a DOJ attorney and, in appropriate cases, certification that he was acting within the scope of employment. (See 28 U.S.C. 2679; 28 CFR 50.15).

(ii) The right to request private counsel at government expense, subject to the availability of funds. (See 28 CFR 50.16).

(iii) That the United States is not obligated to pay or indemnify defendant for any judgment rendered against him in his individual capacity.

(4) If the defendant desires certification or DOJ representation, have him sign a request. (See figure D-1, appendix G, of this part). Obtain a signed scope of employment statement from the defendant's supervisor. (Figure D-2, appendix G, of this part).

(5) Prepare a report with, at a minimum, the following information: facts surrounding the incident for which defendant is being sued and those relating to scope of employment; the SJA's

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or legal adviser's conclusions concerning scope of employment; and, a recommendation whether certification by the Attorney General or representation by a DOJ attorney should be granted.

(6) In cases involving National Guard personnel, address also the following: whether defendant was acting in a state (Title 32 U.S.C.) or Federal (Title 10 U.S.C.) capacity during relevant periods (include orders); if defendant was acting under state authority, is it nevertheless in the interest of the United States to represent the individual; any impact on policies or practices of DA, the National Guard Bureau, or DOD; whether the relief requested can be granted only by a Federal officer or agency; and, whether Federal law or regulation required actions by state officials.

(7) Send the report, request for representation, and scope of employment statements to Chief, Litigation Division.

(b) Chief, Litigation Division, procedures. The Chief, Litigation Division, will review the report and evidence regarding representation and scope of employment and will determine whether certification and representation are appropriate. He will send his recommendation to the appropriate U.S. Attorney or office within DOJ. The Chief, Litigation Division, will notify the defendant of DOJ's decision.

§ 516.31 Private counsel at government expense.

(a) General. DA personnel, sued in their individual capacity or facing criminal charges as a result of performance of official duties, have no right to employ a private sector counsel at government expense or to expect reimbursement for the same. For proceedings in the United States, a request for employment of counsel at government expense may be approved by DOJ, contingent among other things upon availability of funds and a determination that employment of private counsel at government expense is in the best interests of the United States. (See 28 CFR 50.16). Special rules apply in overseas areas. (See paragraph (e) of this section).

(b) Individual request procedures. The individual will prepare a request that private counsel be employed for him at government expense. The request must also contain the following statement: "I understand that the United States is not required to employ private counsel on my behalf, and that I may be responsible for expenses incurred prior to proper authorization by the Department of the Army or the Department of Justice."

(c) Supervisory and legal adviser procedures. The request will be submitted through the individual's supervisors, who will make a recommendation and forward the packet to the local SJA or legal adviser. The SJA or legal adviser will prepare his own recommendation and forward the matter to Litigation Division.

(d) Chief, Litigation Division, procedures. If the Chief, Litigation Division, determines that the request for private counsel is meritorious, he will prepare an appropriate recommendation and forward the packet to Civil Division, DOJ, for final approval.

(e) Special actions in foreign countries. Employment of private counsel in foreign proceedings is governed by AR 27-50 (Status of Forces Policies, Procedures, and Information). Under the authority of 10 U.S.C. 1037, soldiers, as well as employees or those accompanying the armed forces overseas, may be granted individual counsel in civil and criminal proceedings, under the criteria of AR 27-50.

§ 516.32 Requests for indemnification.

(a) *Policy*. An individual liable for a judgment rendered against him in his individual capacity has no right to reimbursement from DA. DA will consider, however, a request for indemnification from DA personnel where conduct within the scope of official duties has resulted in personal liability and indemnification is in the best interests of the United States. Indemnification is strictly contingent upon an appropriation to pay the judgment, as well as availability of such funds.

(b) *Individual request procedures*. An individual against whom an adverse judgment has been rendered may request indemnification. The request

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must include, at a minimum, the following: how the employee was acting within the scope of his employment; whether the requestor has insurance or any other source of indemnification; and, how reimbursement is in the best interests of the United States. The request must also contain the following statements: "I understand that acceptance of this request for indemnification for processing by DA does not constitute an acceptance of any obligation to make such a payment. I also understand that payment is contingent on availability of funds and that it will only be made if such is determined to be in the best interests of the United States." The individual should attach a copy of relevant documents, for example, court's opinion, judgment, and other allied papers.

(c) *Supervisory and SJA procedures.* The request for indemnification will be submitted through supervisory channels to the local SJA or legal adviser. Each supervisor will make a recommendation on the propriety of reimbursement.

(d) *Chief, Litigation Division, procedures.* Requests for indemnification will be forwarded to Chief, Litigation Division. The Chief, Litigation Division, will examine the submission and, after consultation with DOJ or other agencies, forward the packet with his recommendation to the Army General Counsel. The General Counsel will obtain a final decision by the Secretary of the Army or his designee on the matter. There is no administrative appeal of the Secretary's (or his designee's) decision.

Subpart E—Legal Proceedings Initiated by the United States Medical Care and Property Claims

§516.33 General.

(a) Authorities.

(1) Federal Medical Care Recovery Act (42 U.S.C. 2651). The act provides for the recovery of medical care expenses incurred because of a tortfeasor's actions.

(2) Federal Claims Collection Act (31 U.S.C. 3711). The act provides for the collection of claims for money or prop-

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erty arising from the activities of Federal agencies.

(3) Third-party Collection Program (10 U.S.C. 1095). The statute provides for collection of reasonable costs of health-care services, provided in facilities of the uniformed services to covered beneficiaries, from private insurers or third-party payers. In accordance with DOD Instruction 6010.15, "Third Party Collection (TPC) Program," 7 March 1991, the authority to settle or waive a DOD claim under the act is delegated to TJAG or to his designee.

(4) Executive Order No. 12778, (56 FR 55195; 3 CFR, 1991 Comp. p. 359), Civil Justice Reform. This order establishes several requirements on Federal agencies involved in litigation or contemplating filing an action on behalf of the United States.

(5) AR 27-20, Claims. Chapter 14 (Affirmative Claims) contains comprehensive guidance for Recovery Judge Advocates (RJAs) in the administrative determination, assertion, collection, settlement, and waiver of claims in favor of the U.S. for property damage and for medical care claims.

(b) Duties and Procedures. In accordance with Chapter 14, AR 27-20, Commander, USARCS, has supervisory responsibility over the administrative processing of property and medical care claims by RJAs. The Commander, U.S. Army Health Services Command (HSC), has supervisory responsibility over the Third Party Collection Program (TPCP). The HSC TPCP Implementation Plan effects DOD Instruction 6010.15 and establishes procedures for processing TPC claims. Litigation Division, in conjunction with DOJ and U.S. Attorneys, is responsible for pursuing, through litigation, claims not resolved administratively. DOJ is ultimately responsible for initiating litigation for the United States. (28 U.S.C. 515).

(c) Assertion of claims on behalf of the United States by private attorneys. The Army incurs potentially recoverable expenses when it provides medical care to soldiers or dependents injured by tortfeasors (for example, a soldier is hospitalized after an automobile accident). When injured personnel employ a private attorney to sue the tortfeasor,

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it may be in the Government's best interests to enter into an agreement with the private attorney to include the Army's medical care claim.

(d) Statute of limitations. There is a three year statute of limitations for actions in favor of the U.S. for money damages founded upon tort. (28 U.S.C. 2415(b)). Limitations periods can vary, however, depending upon the theory of liability and the jurisdiction involved. RJAs must be alert to the applicable period of limitations. A case referred for litigation should arrive at Litigation Division at least 6 months before the expiration of the limitations period.

(e) Reporting of recoveries. Amounts recovered through litigation will be reported to USARCS by Tort Branch, Litigation Division, or, where referred directly to a U.S. Attorney or the Nationwide Central Intake Facility (NCIF), by the responsible RJA.

§ 516.34 Referral of medical care and property claims for litigation.

(a) *Criteria for referral.* The RJA will forward the claims file and a litigation report (See § 516.35 of this part) through USARCS to Litigation Division when the claim has not been resolved administratively and any of the following conditions exist:

- (1) The claim exceeds \$5,000;
- (2) It involves collection from the injured party or his attorney;
- (3) The claim raises an important question of policy; or,
- (4) There is potential for a significant precedent.

(b) *Alternative methods.* When none of the conditions cited in the preceding subparagraph are present, the RJA may refer the claim directly to the U.S. Attorney for the district in which the prospective defendant resides. Similar property claims may be referred through USARCS to DOJ's Nationwide Central Intake Facility (NCIF) rather than directly to the U.S. Attorney. Notice of all such referrals shall be provided through USARCS to Tort Branch, Litigation Division. The RJA should be ready to provide support to the U.S. Attorney if requested.

(c) *Closing Files.* A file referred directly to the U.S. Attorney will be closed if the U.S. Attorney determines

further action is unwarranted. If the RJA disagrees, the file should be forwarded with the RJA's recommendation through USARCS to Litigation Division.

§ 516.35 Preparation of claims for litigation.

(a) *General.* In preparing a referral for litigation the RJA will ensure the file contains at least the following:

(1) A litigation report (See § 516.23 of this part) that demonstrates a factual basis for the claim and a theory of recovery under applicable state law. (See Fed. R. Civ. P. 11)

(2) Copies of all medical records and bills reflecting the reasonable value of the medical care furnished to the injured party, including DA Form 2631-R (Medical Care-Third Party Liability Notification), and DA Form 3154 (MSA Invoice and Receipt). These documents should be authenticated as necessary on a DA Form 4.

(3) Copies of all documents necessary to establish the value of lost or damaged property.

(b) *Transmittal letter.* The letter of transmittal referring the claim for litigation should briefly summarize the facts giving rise to the claim and the collection actions previously taken by the Army and the injured party.

ASSERTION OF OTHER CLAIMS

§ 516.36 Referral to Litigation Division.

(a) *General.* The majority of cases filed on behalf of the United States will fall under this subpart E. All other civil cases which cannot be resolved administratively or by direct referral to DOJ will be forwarded through channels to Litigation Division with a litigation report. (See § 516.23 of this part).

(b) *Government contractors.* It may be in the Government's best interest to authorize a Government contractor, whose contract provides for the reimbursement of necessary legal expenses, to employ private counsel to initiate legal proceedings against a third party. To obtain authorization to employ private counsel in such instances the contractor should follow the procedures in § 516.21(c) of this part.

§516.37 Proceedings to repossess government real property or quarters or to collect delinquent rent.

(a) *General.* U.S. Attorneys are authorized to accept a Federal agency's request for the following purposes: to initiate an action to recover possession of real property from tenants, trespassers, and others; to enjoin trespasses on Federal property; and, to collect delinquent rentals or damages for use and occupancy of real property for amounts less than \$200,000.

(b) *Procedures.* When eviction or an action to collect delinquent rent is necessary, the SJA or legal adviser will notify General Litigation Branch, Litigation Division, of the situation. If approved by Litigation Division, the SJA or legal adviser may ask the U.S. Attorney to file suit. A copy of the complaint will be sent to Litigation Division. DOJ can take action to evict the occupants for violation of the terms of occupancy and collect delinquent rent or other charges. Once the matter has been referred to the U.S. Attorney, payments for rent should be sent to the U.S. Attorney. (See AR 210-50, chap 2.)

Subpart F—Environmental Litigation

§516.38 Scope.

This subpart contains guidance, policies, and procedures applicable to all environmental and natural resources civil litigation and administrative proceedings involving missions and functions of DA, its major and subordinate commands, all installations presently or previously managed by DA, and all other sites or issues in which DA has a substantial interest. In this chapter, "litigation" includes civil administrative proceedings.

§516.39 Duties and procedures.

(a) *Water rights.* Environmental Law Division will conduct direct liaison with DOJ and will represent DA in State and Federal litigation relating to availability and allocation of surface and ground water and the establishment and protection of water rights for Army military installations and activities. This will include litigation in State general adjudications of water

rights under the McCarran Amendment, 43 U.S.C. 666, for Army military installations and activities. Such litigation relating solely to COE civil works projects or activities will be handled by attorneys under the technical supervision of the Chief Counsel, COE. With respect to any general adjudication which could affect the civil works or real property functions of COE, The Judge Advocate General, acting through the Chief, Environmental Law Division, and Chief Counsel, COE, will jointly determine which office should maintain primary direct liaison with DOJ and will scope and execute appropriate coordination with each other and with the General Counsel with respect to that litigation.

(b) *Navigable waters.* The Chief Counsel, COE, will conduct direct liaison with DOJ and represent DA in civil litigation involving activities in or across navigable waters of the United States or other activities regulated under the Rivers and Harbors Act of 1899, 33 U.S.C. 401 *et seq.*

(c) *Waters of the United States.* The Chief Counsel, COE, will conduct direct liaison with DOJ and represent DA in civil litigation involving The Clean Water Act section 404 (See 33 U.S.C. 1344) permit authority of COE over the discharge of dredged or fill material into waters of the United States.

(d) *Enforcement.* Environmental Law Division will conduct direct liaison with DOJ and represent DA in all civil litigation involving citizen or State enforcement of applicable State, Federal and local requirements respecting the control or abatement of pollution and involving the management of hazardous wastes, with respect to the missions and functions of, and Federal facilities owned or controlled by, DA, except for civil works facilities.

(e) *Environmental response.*

(1) Except as provided in (a)(2) of this section. Environmental Law Division will conduct direct liaison with DOJ and represent DA in all civil litigation seeking declaratory or injunctive relief or involving claims of Army liability for the costs of response at Federal facilities currently owned or controlled by DA and at other sites where the Army is a potentially responsible party.

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(2) The Chief Counsel, COE, will conduct direct liaison with DOJ and represent DA in all civil litigation seeking declaratory or injunctive relief or involving claims of Army liability for the costs of response at civil works facilities, at former defense sites or at other sites where the Army is a potentially responsible party due to the response actions of the COE or its contractors.

(f) Fish and Wildlife, and Plants. Environmental Law Division will conduct direct liaison with DOJ and represent DA in civil litigation involving citizen or State enforcement of applicable State, Federal, and local laws governing conservation of plant, fish, and wildlife resources at Federal facilities owned or controlled by DA, except that such litigation relating solely to the real estate, civil works, navigation and Clean Water Act section 404 (See 33 U.S.C. 1344) permit functions and activities of the COE will be handled by attorneys under the technical supervision of the Chief Counsel, COE.

(g) Toxic torts.

(1) Except as otherwise provided in this part, Environmental Law Division will conduct direct liaison with DOJ and represent DA in all civil litigation involving claims of tort liability for exposure to environmental contamination emanating from Federal facilities owned or controlled by DA.

(2) Litigation Division will conduct liaison with DOJ and represent DA in civil litigation involving claims of tort liability for singular and discrete incidents of exposure to environmental contamination emanating from any Federal facility owned or controlled by DA.

(3) The Chief Counsel, COE, will conduct direct liaison with DOJ and will represent DA in civil litigation involving claims of tort liability for exposure to environmental contamination (including singular and discrete incidents) emanating from any civil works activities under the jurisdiction of the Secretary of the Army.

(4) The Chief Counsel, COE, and Chief, Environmental Law Division, will confer and jointly determine which office will conduct direct liaison with DOJ and represent DA in civil

litigation involving all other claims of toxic tort liability.

Subpart G—Release of Information and Appearance of Witnesses Scope

§ 516.40 General.

(a) Introduction. This subpart implements DOD Directive 5405.2 (See appendix C to this part and 32 CFR part 97). It governs the release of official information and the appearance of present and former DA personnel as witnesses in response to requests for interviews, notices of depositions, subpoenas, and other requests or orders related to judicial or quasi-judicial proceedings. Requests for records, if not in the nature of legal process, should be processed under AR 25-55 (The Department of the Army Freedom of Information Act Program) or AR 340-21 (The Army Privacy Program). This subpart pertains to any request for witnesses, documents, or information for all types of litigation, including requests by private litigants, requests by State or U.S. attorneys, requests by foreign officials or tribunals, subpoenas for records or testimony, notices of depositions, interview requests, civil cases, criminal proceedings, private litigation, or litigation in which the United States has an interest.

(b) Definitions. (See appendix F to this part).

§ 516.41 Policy.

(a) *General Rule.* Except as authorized by this subpart, present or former DA personnel will not disclose official information (See appendix F—Glossary) in response to subpoenas, court orders, or requests.

(b) *Exception.* Present or former DA personnel may disclose official information if they obtain the written approval of the appropriate SJA, legal adviser, or Litigation Division.

(c) *Referral to deciding official.* If present or former DA personnel receive a subpoena, court order, request for attendance at a judicial or quasi-judicial proceeding, or request for an interview related to actual or potential litigation, and it appears the subpoena, order, or request seeks disclosures described in a above, the individual

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should immediately advise the appropriate SJA or legal adviser. If the SJA or legal adviser cannot informally satisfy the subpoena, order, or request in accordance with §§ 516.43 through 516.50 of this subpart, he should consult with Litigation Division.

(d) *Requesters' responsibilities.* Individuals seeking official information must submit, at least 14 days before the desired date of production, a specific written request setting forth the nature and relevance of the official information sought. (Requesters may be referred to this subpart G). Subject to §516.47(a), present and former DA personnel may only produce, disclose, release, comment upon, or testify concerning those matters specified in writing and properly approved by the SJA, legal adviser, or Litigation Division. (See United States ex. rel. Touhy v. Ragen, 340 U.S. 462 (1951)).

(e) *Litigation in which the United States has an interest.* If a subpoena, order, or request relates to litigation in which the United States has an interest and for which litigation responsibility has not been delegated, the SJA or legal adviser will coordinate with Litigation Division under §516.42.

(f) *Motions to stay or quash subpoenas.* A subpoena should never be ignored, and an SJA or legal adviser should seek assistance from Litigation Division or the U.S. Attorney's office whenever necessary. If a response to a subpoena or order is required before a release determination can be made or before Litigation Division or the U.S. Attorney can be contacted, the SJA or legal adviser will do the following:

(1) Furnish the court or tribunal a copy of this regulation (32 CFR part 516, subpart G) and applicable case law (See United States ex. rel. Touhy v. Ragen, 340 U.S. 462 (1951));

(2) Inform the court or tribunal that the requesting individual has not complied with this Chapter, as set out in 32 CFR 97 & 516, or that the subpoena or order is being reviewed;

(3) Seek to stay the subpoena or order pending the requestor's compliance with this chapter or final determination by Litigation Division; and,

(4) If the court or other tribunal declines to quash or stay the subpoena or order, inform Litigation Division im-

mediately so a decision can be made whether to challenge the subpoena or order. If Litigation Division decides not to challenge the subpoena or order, the affected personnel will comply with the subpoena or order. If Litigation Division decides to challenge the subpoena or order, it will direct the affected personnel to respectfully decline to comply with the subpoena or order. (See United States ex. rel. Touhy v. Ragen, 340 U.S. 462 (1951)).

(g) *Classified or sensitive information.* Only Litigation Division may authorize the release of official information or appearance of DA personnel as witnesses in litigation involving terrorism, espionage, nuclear weapons, or intelligence sources and methods.

(h) *Requests for Inspector General records or testimony.* IG records, and information obtained through performance of IG duties, are official information under the exclusive control of the Secretary of the Army. (See AR 20-1, Chapter 3.) IG records frequently contain sensitive official information that may be classified or obtained under guarantees of confidentiality. When justification exists, DA attorneys will seek court protection from disclosure of IG records and information. No DA personnel will release IG records or disclose information obtained through performance of IG duties without the approval of The Secretary of the Army, The Inspector General, TIG Legal Advisor, or Chief, Litigation Division. When IG personnel receive a subpoena, court order, request for attendance at a judicial or quasi-judicial proceeding, or a request for an interview which the IG reasonably believes is related to actual or potential litigation concerning IG records or related information, they should immediately notify the Inspector General Legal Adviser or the Chief, Litigation Division. IG personnel will follow the guidance of this subpart concerning actions to be taken regarding disclosure and testimony.

§516.42 Reference to HQDA.

(a) *General.* If the SJA or legal adviser is unable to resolve the matter, it will be referred for approval or action by Litigation Division under this chapter, by the most expeditious means, to General Litigation Branch, Litigation

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Division, with the following exceptions:

(1) Those involving a case assigned to another branch of Litigation Division will be submitted to that branch (appendix B to this part).

(2) Those involving affirmative litigation (for example, medical care recovery or Army property damage or loss cases) under subpart E will be submitted to Tort Branch.

(3) Those involving patents, copyrights, privately developed technical information, or trademarks will be submitted to Intellectual Property Law Division.

(4) Those involving taxation will be submitted to Contract Law Division.

(5) Those involving communication, transportation, or utility service proceedings will be submitted to the Regulatory Law Office.

(6) Those involving environmental matters will be submitted to the Environmental Law Division.

(7) Those involving contract appeals cases before the ASBCA will be submitted to the Contract Appeals Division.

(8) Those involving procurement fraud, including Qui Tam cases, will be submitted to the Procurement Fraud Division.

(b) *Information to be submitted.* When referring matters pursuant to paragraph (a) of this section, the following data should be provided:

(1) Parties (named or prospective) to the proceeding, their attorneys, and case number, where appropriate.

(2) Party making the request (if a subpoena, indicate moving party) and his attorney.

(3) Name of tribunal in which the proceeding is pending.

(4) Nature of the proceeding.

(5) Date of receipt of request or date and place of service of subpoena.

(6) Name, grade, position, and organization of person receiving request or served with subpoena.

(7) Date, time, and place designated in request or subpoena for production of information or appearance of witness.

(8) Nature of information sought or document requested, and place where document is maintained.

(9) A copy of each document requested. Contact the appropriate office at HQDA if this would be burdensome and unnecessary to a decision whether to release, redact, or withhold a particular document.

(10) Name of requested witness, expected testimony, requested appearance time and date, and whether witness is reasonably available.

(11) Analysis of the problem with recommendations.

RELEASE OF RECORDS IN CONNECTION WITH LITIGATION

§ 516.43 Release of Army and other agency records.

(a) *Preservation of originals.* To preserve the integrity of DA records, DA personnel will submit properly authenticated copies rather than originals of documents or records for use in legal proceedings, unless directed otherwise by Litigation Division. (See 28 U.S.C. 1733.)

(b) *Authentication of copies.* Copies of DA records approved for release can be authenticated for introduction in evidence by use of DA Form 4. (See § 516.25 for instructions.)

(1) Records maintained in U.S. Army Engineer Districts and Divisions will be forwarded to HQDA (CECC-K), WASH DC 20314-1000.

(2) All other records will be forwarded to the appropriate office at HQDA (See § 516.42).

(c) *Fees and charges.* AR 37-60 prescribes the schedule of fees and charges for searching, copying, and certifying Army records for release in response to litigation-related requests.

(d) *Release of records of other agencies.* Normally an individual requesting records originating in agencies outside DA (that is, FBI reports, local police reports, civilian hospital records) that are also included in Army records should be advised to direct his inquiry to the originating agency.

§ 516.44 Determination of release authorization.

(a) *Policy.* DA policy is to make official information reasonably available for use in Federal and state courts and by other governmental bodies unless

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the information is classified, privileged, or otherwise protected from public disclosure.

(b) *Releasability factors.* In deciding whether to authorize release of official information, the deciding official should consider the following:

(1) Has the requester complied with DA policy governing the release of official documents in §516.41(d) of this part.

(2) Is the request unduly burdensome or otherwise inappropriate under the applicable court rules?

(3) Is the disclosure appropriate under the rules of procedure governing the matter in which the request arose?

(4) Would the disclosure violate a statute, executive order, regulation, or directive?

(5) Is the disclosure appropriate under the relevant substantive law concerning privilege?

(6) Would the disclosure reveal information properly classified pursuant to the DOD Information Security Program under AR 380-5, unclassified technical data withheld from public release pursuant to 32 CFR §250, or other matters exempt from unrestricted disclosure?

(7) Would disclosure interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, disclose trade secrets or confidential commercial or financial information, or, otherwise be inappropriate under the circumstances?

(8) Would the disclosure violate any person's expectation of confidentiality or privacy?

§516.45 Records determined to be releasable.

If the deciding official, after considering the factors set forth in §536.44, determines that all or part of requested official records are releasable, copies of the records should be furnished to the requester.

§516.46 Records determined not to be releasable.

(a) General. If the deciding official, after considering the factors in §516.44, determines that all or part of requested official records should not be released,

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he will promptly communicate directly with the attorney or individual who caused the issuance of the subpoena, order, or request and seek to resolve the matter informally. If the subpoena or order is invalid, he should explain the basis of the invalidity. The deciding official should also explain why the records requested are privileged from release. The deciding official should attempt to obtain the agreement of the requester to withdraw the subpoena, order, or request or to modify the subpoena, order, or request so that it pertains only to records which may be released. (See figure G-1, appendix G, of this part.)

(b) Information protected by the Privacy Act.

(1) A subpoena duces tecum or other legal process signed by an attorney or clerk of court for records protected by the Privacy Act, 5 U.S.C. 552a, does not justify the release of the protected records. The deciding official should explain to the requester that the Privacy Act precludes disclosure of records in a system of records without the written consent of the subject of the records or "pursuant to the order of a court of competent jurisdiction." (See 5 U.S.C. 552a(b)(11)). An "order of the court" for the purpose of subsection 5 U.S.C. 552a(b)(11) is an order or writ requiring the production of the records, signed by a judge or magistrate.

(2) Unclassified records otherwise privileged from release under 5 U.S.C. 552a may be released to the court under either of the following conditions:

(i) The subpoena is accompanied by an order signed by a judge or magistrate, or such order is separately served, that orders the person to whom the records pertain to release the specific records, or that orders copies of the records be delivered to the clerk of court, and indicates that the court has determined the materiality of the records and the nonavailability of a claim of privilege.

(ii) The clerk of the court is empowered by local statute or practice to receive the records under seal subject to request that they be withheld from the parties until the court determines whether the records are material to the

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issues and until any question of privilege is resolved.

(iii) Subpoenas for alcohol abuse or drug abuse treatment records must be processed under 42 U.S.C. 290dd-3 and 290ee-3, and Public Health Service regulations published at 42 CFR 2.1–2.67.

(iv) Upon request, SJAs and legal advisers may furnish to the attorney for the injured party or the tortfeasor's attorney or insurance company a copy of the narrative summary of medical care that relates to a claim under subpart E of this part. If additional medical records are requested, only those that directly pertain to the pending action will be furnished. If furnishing copies of medical records would prejudice the cause of action, the matter will be reported to Litigation Division.

(c) Referral to Litigation Division. If the SJA or legal adviser is not able to resolve a request for Army records informally, he should contact Litigation Division.

(1) Litigation Division may respond to subpoenas or orders for records privileged from release by informing the local U.S. Attorney about the subpoena and requesting that office file a motion to quash the subpoena or a motion for a protective order. The records privileged from release should be retained by the custodian pending the court's ruling upon the government's motion.

(2) When a motion to quash or for a protective order is not filed, or the motion is unsuccessful, and the appropriate DA official has determined that no further efforts will be made to protect the records, copies of the records (authenticated if necessary) will be submitted to the court (or to the clerk of court) in response to the subpoena or order.

(d) Classified and privileged materials. Requests from DOJ, U.S. Attorneys, or attorneys for other governmental entities for records which are classified or otherwise privileged from release will be referred to Litigation Division. (See § 516.41(g).)

DA PERSONNEL AS WITNESSES IN PRIVATE LITIGATION

§ 516.47 Response to subpoenas, orders, or requests for witnesses.

(a) *Policy.* The involvement of present or former DA personnel in private litigation is solely a personal matter between the witness and the requesting party, unless one or more of the following conditions apply:

(1) The testimony involves official information. (See appendix F—Glossary to this part).

(2) The witness is to testify as an expert.

(3) The absence of the witness from duty will seriously interfere with the accomplishment of a military mission.

(b) *Former DA personnel.* Former DA personnel may freely respond to requests for interviews and subpoenas except in instances involving official information (paragraph (a)(1) of this section) or concerning expert testimony prohibited by § 516.49. In those instances, the subject of the request or subpoena should take the action specified in §§ 516.41(c) and 516.42.

(c) *Present DA personnel.* Present DA personnel will refer all requests for interviews and subpoenas for testimony in private litigation through their supervisor to the appropriate SJA or legal adviser.

(d) *Discretion to testify.* Any individual not wishing to grant an interview or to testify concerning private litigation may seek the advice of an Army attorney concerning the consequences, if any, of refusal. Any individual not authorized to consult with Army counsel should consult with private counsel, at no expense to the government.

§ 516.48 Official information.

(a) In instances involving § 516.47(a)(1), the matter will be referred to the SJA or legal adviser serving the organization of the individual whose testimony is requested, or to HQDA pursuant to § 516.47(a). The deciding official will determine whether to release the information sought under the principles established in § 516.44. If funding by the United States is requested, see § 516.55(d).

(b) If the deciding official determines that the information may be released,

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the individual will be permitted to be interviewed, deposed, or to appear as a witness in court provided such interview or appearance is consistent with the requirements of §§516.49 and 516.50. (See, for example, figure G-2, appendix G, to this part). A JA or DA civilian attorney should be present during any interview or testimony to act as legal representative of the Army. If a question seeks information not previously authorized for release, the legal representative will advise the witness not to answer. If necessary to avoid release of the information, the legal representative will advise the witness to terminate the interview or deposition, or in the case of testimony in court, advise the judge that DOD directives and Army regulations preclude the witness from answering without HQDA approval. Every effort should be made, however, to substitute releasable information and to continue the interview or testimony.

§516.49 Expert witnesses.

(a) *General rule.* Present DA personnel will not provide, with or without compensation, opinion or expert testimony either in private litigation or in litigation in which the United States has an interest for a party other than the United States. Former DA personnel will not provide, with or without compensation, opinion or expert testimony concerning official information, subjects, or activities either in private litigation or in litigation in which the United States has an interest for a party other than the United States. (See figure G-3, appendix G of this part). An SJA or legal adviser is authorized to deny a request for expert testimony, which decision may be appealed to Litigation Division.

(b) *Exception to the general prohibition.* If a requester can show exceptional need or unique circumstances, and the anticipated testimony will not be adverse to the interests of the United States, Litigation Division may grant special written authorization for present or former DA personnel to testify as expert or opinion witnesses at no expense to the United States. In no event may present or former DA personnel furnish expert or opinion testimony in a case in which the United

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States has an interest for a party whose interests are adverse to the interests of the United States.

(c) *Exception for AMEDD personnel.* Members of the Army medical department or other qualified specialists may testify in private litigation with the following limitations (See figure G-4, appendix G, of this part):

(1) The litigation involves patients they have treated, investigations they have made, laboratory tests they have conducted, or other actions taken in the regular course of their duties.

(2) They limit their testimony to factual matters such as the following: their observations of the patient or other operative facts; the treatment prescribed or corrective action taken; course of recovery or steps required for repair of damage suffered; and, contemplated future treatment.

(3) Their testimony may not extend to expert or opinion testimony, to hypothetical questions, or to a prognosis.

(d) *Court-ordered expert or opinion testimony.* If a court or other appropriate authority orders expert or opinion testimony, the witness will immediately notify Litigation Division. If Litigation Division determines it will not challenge the subpoena or order, the witness will comply with the subpoena or order. If directed by Litigation Division, however, the witness will respectfully decline to comply with the subpoena or order. (See *United States ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951)).

(e) *Expert witness fees.* All fees tendered to present DA personnel as an expert or opinion witness, to the extent they exceed actual travel, meals, and lodging expenses of the witness, will be remitted to the Treasurer of the United States.

§516.50 Interference with mission.

If the absence of a witness from duty will seriously interfere with the accomplishment of a military mission, the SJA or legal adviser will advise the requesting party and attempt to make alternative arrangements. If these efforts fail, the SJA or legal adviser will refer the matter to Litigation Division.

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LITIGATION IN WHICH THE UNITED STATES HAS AN INTEREST

§ 516.51 Response to subpoenas, orders, or requests for witnesses.

(a) Referral to a deciding official. Requests, subpoenas, or orders for official information, interviews or testimony of present or former DA personnel in litigation or potential litigation in which the United States has an interest, including requests from DOJ, will be resolved by the SJA or legal adviser pursuant to the principles of this subpart. Litigation Division will be consulted on issues that cannot be resolved by the SJA or legal adviser.

(b) Reassignment of witnesses. When requested by the U.S. Attorney, the SJA or legal adviser will ensure that no witnesses are reassigned from the judicial district without advising the DOJ attorney. If a witness is vital to the government's case and trial is imminent, the SJA or legal adviser should make informal arrangements to retain the witness in the command until trial. If this is not feasible, or if a satisfactory arrangement cannot be reached with the DOJ attorney, the SJA or legal adviser should notify Litigation Division.

§ 516.52 Expert witnesses.

Requests for present or former DA personnel as expert or opinion witnesses from DOJ or other attorneys representing the United States will be referred to Litigation Division unless the request involves a matter that has been delegated by Litigation Division to an SJA or legal adviser. In no event, may present or former DA personnel furnish expert or opinion testimony in a case in which the United States has an interest for a party whose interests are adverse to the interests of the United States.

§ 516.53 News media and other inquiries.

News media inquiries regarding litigation or potential litigation will be referred to the appropriate public affairs office. DA personnel will not comment on any matter presently or potentially in litigation without proper clearance. Local public affairs officers will refer press inquiries to HQDA

(SAPA), WASH DC 20310-1500, with appropriate recommendations for review and approval by the Office of the Chief of Public Affairs. All releases of information regarding actual or potential litigation will be coordinated with Litigation Division prior to release.

STATUS, TRAVEL, AND EXPENSES OF WITNESSES

§ 516.54 Witnesses for the United States.

(a) Status of witness. A military member authorized to appear as a witness for the United States, including those authorized to appear under § 516.55(d), will be placed on temporary duty. If USAR or NG personnel are requested as witnesses for the United States, and if their testimony arises from their active duty service, they should be placed on active duty to testify. The status of a civilian employee will be determined under Federal Personnel Manual 630, subchapter 10. DA personnel who appear as necessary witnesses for a party asserting the government's claim for medical care expenses are witnesses for the United States.

(b) Travel arrangements. Travel arrangements for witnesses for the United States normally are made by DOJ through Litigation Division for other than local travel. Litigation Division will issue instructions for this travel, including fund citation, to the appropriate commander. A U.S. Attorney, or an attorney asserting the government's medical care claim under subpart E, may make arrangements for local travel through the SJA or legal adviser for attendance of a witness who is stationed at an installation within the same judicial district, or not more than 100 miles from the place where testifying. Other requests, including those under § 516.55(d), will be referred to Litigation Division. The instructions from Litigation Division, or the request from the U.S. Attorney or the attorney asserting the government's claim, will serve as a basis for the issuance of appropriate travel orders by the local commander.

(c) Travel and per diem expenses. The witness' commander or supervisor should ensure the witness has sufficient funds to defray expenses. The

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SJA or legal adviser will provide assistance.

(1) Where local travel is performed at the request of a U.S. Attorney and the testimony does not involve information acquired in the performance of duties, transportation arrangements and any per diem expenses are the responsibility of the U.S. Attorney.

(2) An attorney asserting the government's medical care or property claim may be required to advance local travel expense money to the witness requested and to include these in recoverable costs where the government's claim is not large enough to justify expenditures of government travel funds.

(3) Other local travel and per diem expense for cases involving Army activities or claims are proper expenses of the command issuing the orders.

(4) Litigation Division will furnish travel expense and per diem funds for other than local travel and will receive reimbursement from DOJ or other government agencies as appropriate.

§516.55 Witnesses for a State or private litigant.

(a) *Status of witness.* If authorized to appear as a witness for a state or private litigant, and the testimony to be given relates to information obtained in the performance of official duties, a military member will attend in a permissive TDY status. If authorized to appear as a witness, but the testimony does not relate to information obtained in the performance of official duties, a military member may be granted a pass or permissive TDY under AR 630-5, or be required to take ordinary leave. The status of a civilian employee will be determined under 5 CFR Chapter I.

(b) *Travel arrangements.* The requesting party or state agency will make all travel arrangements for attendance of DA personnel authorized to appear as witnesses for a state or private litigant. The local commander may issue appropriate orders when necessary.

(c) *Travel expenses.* The United States may not pay travel, meals, and lodging expenses of the witness, other than normal allowances for subsistence pursuant to the DOD Military Pay and Allowances Entitlements Manual. These expenses are solely a matter between

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the witness and the party seeking his appearance. Witnesses ordinarily should be advised to require advance payment of such expenses. Military personnel authorized to appear in a pass or permissive TDY status are not entitled to receive witness attendance fees, but may accept travel, meals, and lodging expense money from the requesting litigant. All witness fees tendered the military member, to the extent they exceed such actual expenses of the member, will be remitted to the Treasurer of the United States. A civilian employee authorized to appear in his or her official capacity will accept the authorized witness fees, in addition to the allowance for travel and subsistence, and make disposition of the witness fees as instructed by his or her personnel office.

(d) *Funding by the United States.* Requests for DA personnel to appear at government expense as witnesses in state or local proceedings for a party other than the United States, including cases involving domestic violence or child abuse, will be referred to Litigation Division. Litigation Division may authorize travel and per diem expenses under §516.54 when the case is one in which the United States has a significant interest.

§516.56 Witnesses before foreign tribunals.

(a) *Referral to the SJA.* Requests or subpoenas from a foreign government or tribunal for present DA personnel stationed or employed within that country to be interviewed or to appear as witnesses will be forwarded to the SJA of the command exercising general court-martial jurisdiction over the unit to which the individual is assigned, attached, or employed. The SJA will determine the following:

(1) Whether a consideration listed in §516.47(a)(1) through (a)(3) applies.

(2) Whether the information requested is releasable under the principles established in §516.43 through §516.46.

(3) Whether the approval of the American Embassy should be obtained because the person is attached to the Embassy staff or a question of diplomatic immunity may be involved.

(b) *United States has an interest in the litigation.* If the SJA determines that the United States has an interest in the litigation, the commander may authorize the interview or order the individual's attendance in a temporary duty status. The United States will be deemed to have an interest in the litigation if it is bound by treaty or other international agreement to ensure the attendance of such personnel.

(c) *United States has no interest in the litigation.* If the SJA determines that the United States does not have an interest in the litigation, the commander may authorize the interview or the appearance of the witness under the principles established in § 516.47 through § 516.50.

(d) *Witnesses located outside the requester's country.* If the requested witness is stationed in a country other than the requester's, the matter will be referred to Litigation Division.

Subpart H—Remedies in Procurement Fraud and Corruption

§ 516.57 Purpose.

This subpart delineates the policies, procedures, and responsibilities for reporting and resolving allegations of procurement fraud or irregularities (PFI) within DA. It implements DOD Directive 7050.5. (See appendix D to this part.)

§ 516.58 Policies.

(a) Procurement fraud and irregularities will be promptly and thoroughly addressed whenever encountered. Reports will be initiated in a timely manner and will be supplemented as appropriate.

(b) Investigations will be monitored to see that interim corrective action is taken and that final action is taken as expeditiously as possible.

(c) This regulation establishes the Procurement Fraud Division (PFD), U.S. Army Legal Services Agency, as the single centralized organization within the Army to coordinate and monitor criminal, civil, contractual, and administrative remedies in significant cases of fraud or corruption relating to Army procurement.

(d) The key elements of the Army's procurement fraud program follow:

centralized policy making and program direction; fraud remedies coordination; decentralized responsibility for operational matters, such as reporting and remedial action; continuous case monitorship by PFD from the initial report until final disposition; and, command-wide fraud awareness training.

(e) Remedies for PFI will be pursued in a timely manner and properly coordinated with other agencies. Every effort will be made to support criminal investigation and prosecution of fraudulent activity.

(f) A specific remedies plan will be formulated for each significant case of fraud or corruption involving procurement.

(g) Coordination on the status and disposition of cases will be maintained between PFD, OTJAG, PFI Coordinators at MACOMs, and Procurement Fraud Advisers at subordinate commands. Coordination of procurement and personnel actions will be accomplished with investigative agencies as required by those agencies.

(h) Training which relates to fraud and corruption in the procurement process is a significant element of this program.

§ 516.59 Duties and procedures.

(a) TJAG has overall responsibility for the coordination of remedies in procurement fraud and corruption within the Army. This responsibility has been delegated to PFD. Functions of PFD will include the following:

(1) Serving as the single centralized organization in the Army to monitor the status of, and ensure the coordination of, criminal, civil, contractual, and administrative remedies for each significant case of fraud or corruption.

(2) Receiving reports of procurement fraud and corruption from any source including, but not limited to the following: DOD criminal investigative organizations; audit agencies; contracting officers; inspectors general of the executive branch; correspondence from the public; and, commanders. This provision does not repeal any other reporting requirement but establishes PFD as a recipient of PFI information at the earliest possible time.

(3) Establishing a monitoring system within OTJAG for all cases of fraud

and corruption that relate to Army procurement.

(4) Discussing regularly with the U.S. Army Criminal Investigation Command (USACIDC) or the assigned DOD criminal investigative organization the current status of significant fraud or corruption cases and their coordination with prosecutive authorities.

(5) Ensuring that all criminal, civil, contractual, and administrative remedies are considered in each significant fraud or corruption case and that timely and applicable remedies are undertaken by commanders, contracting officers, and suspension and debarment authorities. For example, consideration of suspension or debarment of a contractor or individual should normally be initiated within 30 days of indictment or conviction.

(6) Coordinating, as appropriate, with other DOD components affected by a significant fraud or corruption case being monitored by the Army.

(7) Developing, with the responsible DOD investigative organization, Procurement Fraud Coordinators and Advisers, and other involved agencies, a specific comprehensive remedies plan for each significant fraud or corruption case.

(8) Coordinating remedies with DOJ. In the case of ongoing criminal investigations, coordinate remedies through, or with the prior knowledge of, the DOD criminal investigative organization responsible for the case.

(9) In significant fraud or corruption cases, identifying and documenting any known adverse impact on a DOD mission, and including the information in any remedies plan.

(10) Providing the appropriate DOD criminal investigative organization with information concerning final remedies as a result of an investigation by that organization.

(11) Receiving notifications from criminal investigative agencies concerning substituted, defective, and counterfeit hardware in which a serious hazard to health, safety or operational readiness is indicated; ensuring that appropriate safety, procurement and program officials are informed in accordance with enclosure 3 of DOD Directive 7050.5. PFD will specifically ensure that contract reviews (DD 350 re-

ports) and adverse impact statements (See §516.64(c)(2)) are prepared, and that such information is used to determine if further inquiry is warranted to prevent reoccurrence and to detect other possible fraud. Impact statements will not be released to prosecutive agencies until reviewed by PFD. When appropriate, PFD will coordinate with other DOD agencies to establish a lead agency for victim impact statements in multi-DOD agency cases.

(b) The Commanding General, USACIDC, will take the following actions:

(1) Notify PFD of any investigations involving fraud or corruption related to procurement activities.

(2) Notify other DOD component criminal investigative organizations when investigations involving fraud or corruption affect that component. This includes evidence of fraud by a contractor, subcontractor, or employee of either, on current or past contracts with, or affecting, that component.

(3) Notify the Defense Investigative Service of any investigations that develop evidence which affects DOD cleared industrial facilities or personnel.

(4) Determine the effect on any ongoing investigations or prosecutions of any criminal, civil, contractual, or administrative actions being considered by a centralized organization and advise of any adverse impact.

(5) Promptly provide commanders, contracting officers, Procurement Fraud Advisers, and suspension and debarment authorities, when needed to allow consideration of applicable remedies, any court records, documents, or other evidence of fraud or corruption from ongoing or completed criminal investigations. In cases of indictment or conviction of a contractor or individual, the information will be provided in time for initiation, if appropriate, of suspension or debarment action within 30 days of the indictment or conviction.

(6) Provide prosecutive authorities and centralized organizations with timely information on the adverse impact on a DOD mission of fraud or corruption that relates to DOD procurement activities. This information will be obtained from individuals such as

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the head of the contracting agency, appropriate commanders, and staff agencies. Some examples of adverse impact on a DOD mission are endangerment of personnel or property, monetary loss, compromise of the procurement process, or reduction or loss of mission readiness.

(7) Discuss regularly with Procurement Fraud Advisers the status of significant investigations of fraud or corruption and their coordination with prosecutive authorities and provide documents and reports resulting from the investigations.

(c) Commanders of service schools conducting procurement or procurement-related training (such as The Judge Advocate General's School, the U.S. Military Police School, and the U.S. Army Logistics Management Center) will ensure the following:

(1) All procurement and procurement-related training includes a period of instruction on fraud and corruption in the procurement process. The length of the period of instruction will be appropriate to the duration and nature of the training.

(2) Training materials are developed to support that training.

(3) Training materials developed will be sent to MACOM PFI Coordinators.

(d) MACOM commanders and heads of contracting activities will ensure the following:

(1) Substantial indications of fraud or corruption relating to Army contracts or Army administered contracts are reported promptly to the supporting USACIDC element and the Procurement Fraud Division.

(2) Information provided includes reports by contracting officers under DFARS 209.406-3.

§516.60 Procurement fraud and irregularities programs at MACOMs.

(a) Command counsel and SJAs at MACOMs will develop a program and appoint an attorney as PFI Coordinator for their command. Chief counsel and SJAs at commands with procurement advisory responsibility will appoint an attorney as a Procurement Fraud Adviser (PFA) to manage the PFI program at their installations as well.

(b) Provision may be made for activities not having sufficient attorney assets to obtain assistance from nearby installations that have a PFA.

(c) Reports and recommendations will be transmitted through command channels to the PFI coordinator for the affected MACOM.

(d) Command counsel, chief counsel, and SJAs will exercise supervisory authority to ensure effective operation of the fraud program and coordination of remedies within their organizations.

(e) The MACOM PFI Coordinator will have overall responsibility for the design and implementation of the MACOM's procurement fraud program.

(f) PFAs and PFI Coordinators will coordinate with the appropriate local CID or Defense Criminal Investigative Service (DCIS) activity to assure the prompt notification and coordination of all Procurement Fraud cases.

§516.61 Reporting requirements.

(a) Typical fraud indicators during the procurement cycle are listed in figure D-1, appendix G, to this part. The mere presence of one or more of these indicators does not, by itself, require reporting under paragraph b of this section. Reports should be submitted if there is a reasonable suspicion of procurement fraud or irregularity or the procuring agency refers the matter for investigation.

(b) "Procurement Flash Reports" will be transmitted by FAX directly to PFD whenever a PFI Coordinator or PFA receives notice of a PFI involving the Army. To facilitate filing, a separate sheet should be used for each case reported. These reports will provide a succinct summary of the following available information:

- (1) Name and address of contractor.
- (2) Known subsidiaries of parent firms.
- (3) Contracts involved in potential fraud.
- (4) Nature of potential fraud.
- (5) Summary of pertinent facts.
- (6) Possible damages.
- (7) Investigative agencies involved.
- (8) Local PFAs (name and phone numbers).

Any of the above categories that cannot be completed will be annotated as "unknown at present."

(c) When a report is required by DFARS or is requested by PFD, the provisions of DFARS 209.406-3 (48 CFR 209.406-3) will be followed. That paragraph provides the basic content and format for PFI reports.

(d) All personnel will cooperate to ensure that investigations and prosecutions of procurement fraud are completed in a timely and thorough manner. Requests for assistance from federal prosecutors should be processed through the local PFA whenever possible. Requests for federal investigators will be processed through the supporting USACIDC and the PFA will be notified. When the conduct of criminal investigations and prosecutions conflict with the progress of procurements, reasonable deference will be given to criminal investigators and prosecutors whenever possible. Any serious conflict that cannot be resolved at a local level will be immediately reported to the PFI Coordinator or PFD for action.

(e) PFI Coordinators and PFAs may request access to information obtained during criminal investigations that is not protected by Fed. R. Crim. P. 6(e) and use this information to assist them in taking appropriate administrative, contractual, and civil remedies. Requests for this information should be made directly to the appropriate federal investigative agency. The investigative organization may withhold requested information if release would compromise an investigation. Difficulties in obtaining information which cannot be resolved locally will be referred to PFD for appropriate action.

(f) USACIDC will notify, in writing, local PFAs as well as PFD within 30 days, of initiation of a significant investigation of fraud or corruption related to Army procurement activities. Such notification will include the following:

- (1) Case title.
- (2) USACIDC Report of Investigation number.
- (3) Responsible investigative agency or agencies.
- (4) Office of primary responsibility.
- (5) Date opened.
- (6) Summary of facts.
- (7) Suspected offense.

(g) The transmission of the information in f above may be delayed if the Commanding General, USACIDC, or the head of another DOD criminal investigation organization determines the transmission would compromise the success of any case or its prosecution. The prosecutive authorities dealing with the case will be consulted, when appropriate, in making such determinations.

(h) USACIDC will obtain the following information at the earliest possible point in an investigation of fraud or corruption that relates to DOD procurement activities, whenever possible without reliance on grand jury subpoenas:

- (1) The individuals suspected to be responsible.
- (2) The suspected firm's organizational structure.
- (3) The firm's financial and contract history.
- (4) The firm's organizational documents and records.
- (5) Statements of witnesses.
- (6) Monetary loss to the government.
- (7) Other relevant information.

This information will be provided to PFD or other cognizant DOD centralized organization.

(i) PFD will provide written notification to the Defense Investigative Service of all suspension or debarment actions taken by the Army.

§516.62 PFD and HQ USACIDC coordination.

PFD and HQ USACIDC will coordinate as follows:

(a) Discuss the status of significant procurement fraud or corruption investigations being conducted by USACIDC and possible remedies. These discussions should take place on a regular basis.

(b) Discuss the coordination of possible criminal, civil, contractual, or administrative remedies with prosecutive authorities.

(c) PFD will maintain liaison with other DOD centralized organizations and will coordinate remedies with those centralized organizations affected by a significant investigation of fraud or corruption that relates to DOD procurement activities.

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(d) Ascertain the effect on any ongoing investigation of the initiation of civil, contractual, or administrative remedies as follows:

(1) PFD will maintain liaison with USACIDC and other DOD criminal investigative organizations in order to determine the advisability of initiating any civil, contractual, or administrative actions.

(2) USACIDC will advise PFD of any adverse effect on an investigation or prosecution by the initiation of civil, contractual, or administrative actions.

§ 516.63 Coordination with DOJ.

(a) PFD will establish and maintain liaison with DOJ and the Defense Procurement Fraud Unit on significant fraud and corruption cases to accomplish the following:

(1) Monitor criminal prosecutions.

(2) Initiate litigation for civil recovery.

(3) Coordinate administrative or contractual actions while criminal or civil proceedings are pending.

(4) Coordinate settlement agreements or proposed settlements of criminal, civil, and administrative actions.

(5) Respond to DOJ requests for information and assistance.

(b) In cases where there is an ongoing criminal investigation, coordination with DOJ by any member of the Army normally will be accomplished by or through USACIDC or the cognizant DOD criminal investigative organization, or with the investigative organization's advance knowledge. This does not apply to the routine exchange of information between government attorneys in the course of civil litigation or the routine referral of cases to DOJ for civil recovery.

(c) Initial contact by any attorney associated with the U.S. Army with a U.S. Attorney's office or DOJ, whether initiated by the Army attorney or not, will be reported to PFD. Activity after the initial contact will only be reported to PFD when the Army attorney feels there has been a significant event in the case. If the Army attorney is not a PFI Coordinator or a PFA, the matter should be referred to one of these two attorneys as soon as possible. Routine exchanges between Army attorneys and U.S. Attorney's offices or DOJ

do not need to be brought to the attention of PFD.

§ 516.64 Comprehensive remedies plan.

(a) A specific, comprehensive remedies plan will be developed in each significant investigation involving fraud or corruption that relates to Army procurement activities. When possible, these plans should be forwarded with the DFARS 209.406-3 reports. In no case, however, should the report be delayed an appreciable time pending completion of the plan. The format for a remedies plan is at figure H-2, appendix G, to this part.

(b) The plan will be developed initially by the PFA with the participation of the appropriate criminal investigators and other relevant personnel such as the contracting officer. In significant cases the PFA should also coordinate a remedies plan early with PFD. Defective product/product substitution remedies plans must comply with the requirements of appendix D to this part.

(c) A comprehensive remedies plan will include at a minimum the following information and considerations:

(1) Summary of allegations and investigative results.

(2) Statement of any adverse impact on a DOD mission. DOD investigative organizations, commanders, or procurement officials will also provide this information to prosecutive authorities to enhance prosecution of offenses or to prepare a victim impact statement pursuant to Fed. R. Crim. P. 32(c)(2).

(3) The impact upon combat readiness and safety.

(4) Consideration of each criminal, civil, contractual, and administrative remedy available, and documentation of those remedies, either planned, in progress, or completed.

(5) Restrictions on the pursuit of any remedies such as grand jury information or possible compromise of the investigation.

(d) When remedies plans are received by PFD they will be coordinated with the headquarters of the appropriate DOD criminal investigative organization involved.

(e) Testing necessary to support the investigation and remedies plan should

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comply with figure H-3, appendix G, to this part.

§516.65 Litigation reports in civil recovery cases.

(a) All substantiated PFI cases will be evaluated by PFAs to determine whether it is appropriate to recommend civil recovery proceedings.

(b) Recovery should be considered under both statutory and common law theories, including but not limited to the following:

- (1) False Claims Act, 31 USC 3729.
- (2) Anti-Kickback Act, 41 USC 51.
- (3) Sherman Act, 15 USC 1-7.
- (4) Racketeer Influenced and Corrupt Organizations Act, 18 USC 1961-1968.
- (5) Common law fraud.
- (6) Unjust enrichment.
- (7) Constructive trust.

(8) Cases where contracts have been procured in violation of the conflict of interest statute, 18 USC 218. See *K&R Engineering Co. v. United States*, 616 F.2d 469 (Ct. Cl., 1980).

(c) When civil recovery appears possible, PFD should be consulted to determine if a litigation report is necessary. If requested by PFD, the report should summarize the available evidence and applicable theories of recovery and be prepared under §516.23 of this part. To avoid unnecessary duplication of effort, recovery reports may include and make liberal references to other reports previously prepared on a given case such as the DFARS 209.406-3 (48 CFR 209.406-3) report.

(d) The MACOM PFI coordinator and PFA will monitor all civil fraud recovery efforts throughout the command and will provide training and technical assistance as required. Status reports of all civil fraud recovery efforts will be provided through channels as required by PFD.

§516.66 Administrative and contractual actions.

(a) The following remedial options should be considered in response to confirmed fraudulent activity:

- (1) Contractual.
 - (i) Termination of contract for default.
 - (ii) Nonaward of contract based upon a finding of contractor nonresponsibility. (If this appears to be a valid op-

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tion, a DFARS 209.406-3 (48 CFR 209.406-3) report must be prepared where contractor nonresponsibility is based on lack of integrity).

- (iii) Rescission of contract.
 - (iv) Revocation of acceptance.
 - (v) Use of contract warranties.
 - (vi) Withholding of payments to contractor. In the case of withholding pursuant to DFARS 2032.173, the Chief, PFD, is the Army Remedy Coordinating Official.
 - (vii) Offset of payments due to contractor from other contracts.
 - (viii) Revocation of facility security clearances.
 - (ix) Increased level of quality assurance.
 - (x) Refusal to accept nonconforming goods.
 - (xi) Denial of claims submitted by contractors.
 - (xii) Removal of contract from automated solicitation or payment system.
- (2) Administrative.
 - (i) Change in contracting forms and procedures.
 - (ii) Removal or reassignment of government personnel.
 - (iii) Review of contract administration and payment controls.
 - (iv) Revocation of warrant of contracting officer.
 - (v) Suspension of contractor.
 - (vi) Debarment of contractor.
 - (b) In cases which are pending review or action by DOJ, PFAs should coordinate with the DOJ attorney handling the case prior to initiating any contractual or administrative remedy. In the case of ongoing criminal investigations, this coordination will be accomplished through the appropriate DOD criminal investigation organization.

§516.67 Overseas cases of fraud or corruption.

(a) Commanders of overseas major commands will establish procedures, similar to this regulation and consistent with the DFARS, and regulations and directives of their respective unified commands, for reporting and coordination of available remedies in overseas procurement fraud and corruption cases involving foreign firms and individuals. Overseas major commands will also maintain liaison with

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PFD and provide periodic reports of remedies coordination results.

(b) Overseas suspension and debarment actions are governed by DFARS 209.403 (48 CFR 209.403). The names of all firms and individuals suspended or debarred will be expeditiously forwarded to PFD for inclusion on the List of Parties Excluded From Federal Procurement or NonProcurement Programs.

(c) Overseas cases of fraud or corruption related to the procurement process that involve U.S. firms or U.S. citizens may be referred to PFD for coordination of remedies under this regulation.

§ 516.68 Program Fraud Civil Remedies Act (PFCRA).

(a) PFCRA was enacted on 21 October 1986 (Public Law 99-509) and implemented by DOD on 30 August 1988 (DOD Directive 5505.5). (See appendix E to this part.)

(b) PFCRA expands the capability of the government to deter and recover losses from false, fictitious or fraudulent claims and statements. It is also applicable to program fraud and provides an administrative remedy in addition to those otherwise available to the Army in procurement fraud or pay and entitlements fraud cases.

(c) As part of the Army implementation, the Secretary of the Army's duties and responsibilities under PFCRA as Authority Head are delegated to the Army General Counsel. The Chief, Intellectual Property Law Division, is the Army's Reviewing Official within the meaning of PFCRA. Army implementation also requires DA to follow the policies and procedures prescribed in enclosure 2 of DOD Directive 5505.5. (See appendix E to this part.)

(d) The DOD Inspector General (IG) is the Investigating Official within DOD. The duties of this position will be performed by the Assistant IG For Investigations. This individual is vested with the authority to investigate all allegations of liability under PFCRA. That authority includes the power to task subordinate investigative agencies to review and report on allegations that are subject to PFCRA. If the Investigative Official concludes that an action under PFCRA is warranted in an

Army case, the official will submit a report containing the findings and conclusions of such investigation through PFD to the Army Reviewing Official.

(e) Pursuant to DOD IG guidance, USACIDC will forward appropriate cases that appear to qualify for resolution under PFCRA to the Investigating Official in a timely manner. Additionally, USACIDC will forward current information regarding the status of remedies pending or concluded. USACIDC may obtain remedies information by coordinating with PFD and the cognizant command.

(f) In pay and entitlement or transportation operation fraud cases, USACIDC will coordinate with the Office of the Secretary of the Army, Financial Management, Review and Oversight Directorate (SAFM-RO), to determine the status of any pending or proposed action under the Debt Collection Act. This information, in addition to information obtained under § 517.68(e), will be forwarded with appropriate cases to the Investigating Official.

(g) In those cases where the Investigating Official has submitted a report to the Army Reviewing Official for action under PFCRA, PFD will, at the direction of the Reviewing Official, prepare all legal memoranda as necessary to transmit the Reviewing Official's intention to issue a complaint. As part of this responsibility PFD will do the following: coordinate with the affected command or agency to ensure that all appropriate remedies have been considered; evaluate the overall potential benefits to the Army; and, ensure that action under PFCRA is not duplicative of other remedies already taken. In order to fully supplement the Reviewing Official's file, PFD may request a litigation report.

(h) PFD will coordinate all cases involving transportation operations emanating from Military Traffic Management Command (MTMC) activity, under the military transportation exception to the FAR, and all cases involving pay and entitlements fraud with SAFM-RO, for comments and recommendations. These matters will be forwarded with the case file to the Reviewing Official.

(i) If the Attorney General approves the issuance of a complaint, PFD, at

the direction of the Army Reviewing Official, shall prepare the complaint and all necessary memoranda as required. PFD shall also designate attorneys to represent the Authority in hearings under PFCRA.

Subpart I—Cooperation With the Office of Special Counsel

§516.69 Introduction.

This subpart prescribes procedures for cooperation with the Office of Special Counsel (OSC) when OSC is investigating alleged prohibited personnel practices or other allegations of improper or illegal conduct within DA activities.

§516.70 Policy.

(a) DA policy follows:

(1) Civilian personnel actions taken by management officials, civilian and military, will conform to laws and regulations implementing established merit system principles and will be free of any prohibited personnel practices.

(2) Management officials will take vigorous corrective action when prohibited personnel practices occur. Disciplinary measures under AR 690-700, Chapter 751, may be initiated after consultation and coordination with appropriate civilian personnel office and labor counselor.

(b) DA activities will cooperate with OSC in the following ways:

(1) Promoting merit system principles in civilian employment programs within DA.

(2) Investigating and reporting allegations of improper or illegal conduct forwarded to the activity by HQDA.

(3) Facilitating orderly investigations by the OSC of alleged prohibited personnel practices and other matters assigned for investigation to the OSC, such as violations of the Whistleblower Protection Act of 1989, the Freedom of Information Act, or the Hatch Act.

§516.71 Duties.

(a) *DA General Counsel.* The DA General Counsel is responsible for the following:

(1) Provide overall guidance on all issues concerning cooperation with OSC, including the investigation of al-

leged prohibited personnel practices and allegations of improper or illegal conduct.

(2) Review for adequacy and legal sufficiency each OSC report of investigation that must be personally reviewed by the Secretary of the Army.

(3) Ensure compliance with the Civil Service Reform Act of 1978 by obtaining a suitable investigation of allegations of improper or illegal conduct received from OSC. This includes compliance with time limits for reporting results of the investigation and personal review of the report by the Secretary of the Army when required.

(4) Forward to the DOD Inspector General (DODIG) copies of each allegation of improper or illegal conduct referred to DA by OSC.

(5) Delegate to The Judge Advocate General the authority to act on behalf of the DA General Counsel in all OSC investigations of prohibited personnel practices.

(6) Act upon requests for counsel from “accused” or “suspected” employees.

(b) *Chief, Labor and Employment Law Office.* The Chief, Labor and Employment Law Office, OTJAG (DAJA-LE) is responsible for the following:

(1) Act for TJAG as the Senior Management Official in cooperating with OSC. As Senior Management Official, the Chief, DAJA-LE, through TJAG, will be responsible to the DA General Counsel for administration of the policies and procedures contained in this chapter.

(2) Promptly inform the DA General Counsel of any OSC investigation and consult with the DA General Counsel on any legal or policy issue arising from an OSC investigation.

(3) Serve as the HQDA point of contact in providing assistance to OSC.

(4) Act as DA attorney-of-record in administrative matters initiated by OSC before the MSPB which arise from an OSC investigation. As DA attorney-of-record, the Chief, DAJA-LE, will file necessary pleadings and make necessary appearances before the MSPB to represent DA interests.

(5) Monitor ongoing OSC investigations within DA.

(6) Ensure that appropriate DA personnel are fully apprised of their

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rights, duties and the nature and basis for an OSC investigation.

(7) Review and prepare recommendations to the General Counsel concerning any OSC recommended corrective action referred to DA. Such review and recommendations will address whether disciplinary action should be taken against DA civilian employees or military members, and whether the information warrants referral to appropriate authorities for corrective and disciplinary action.

(8) Seek OSC approval of DA proposed disciplinary action against an employee for an alleged prohibited personnel practice or other misconduct which is the subject of or related to any OSC investigation.

(9) Review and prepare recommendations for DA General Counsel concerning requests for counsel, to include identifying available DA attorneys to act as individual representatives. Upon approval of DA General Counsel, appoint DA civilian and military attorneys, to include attorneys from the U.S. Army Materiel Command and the Corps of Engineers, to represent individual military members or employees.

(10) Determine, to the extent practicable, whether an investigation is being or has been conducted which duplicates, in whole or in part, a proposed or incomplete OSC investigation, and convey that information to the OSC whenever it might avoid redundant investigative efforts.

(11) Provide guidance and assistance to activity Labor Counselors in fulfilling their duties as Liaison Officers.

(c) *Activity Labor Counselor.* The activity Labor Counselor will do the following:

(1) Act as Liaison Officer for OSC investigations arising within the command, activity or installation serviced by the Labor Counselor's client Employment Office.

(2) Promptly inform the MACOM labor counselor and the Chief, DAJA-LE, of any OSC inquiry or investigation.

(3) Act as the legal representative of the command, activity, or installation.

(4) Assist the OSC investigator with administrative matters related to the investigation, such as requests for witnesses and documents.

(5) Process all OSC requests for documents.

(6) Make appropriate arrangements for OSC requests to interview civilian employees and military members.

(7) Ensure that personnel involved are advised of the nature and basis for an OSC investigation, the authority of the OSC, and their rights and duties.

(8) Consult with the Chief, DAJA-LE, on policy and legal issues arising from the OSC investigation.

(9) Keep the Chief, DAJA-LE, informed of the status of the OSC investigation.

(10) Act as agency representative before the MSPB in actions initiated by employees (individual right of action appeals).

§ 516.72 Procedures.

(a) Witnesses and counsel for consultation.

(1) DA military and civilian managers, supervisors, and employees who are requested by OSC for an interview will be made available in accordance with arrangements the Labor Counselor will establish. Requests for the testimony of IGs will be coordinated with the Inspector General Legal Office, SAIG-ZXL, DSN 227-9734 or Commercial (703) 697-9734.

(2) The Labor Counselor will ensure that witnesses are aware of their obligation to answer OSC questions, their potential to be considered "suspects" in OSC investigations, and their right to the assistance of counsel during interviews with OSC representatives. If the requested witness is not an "accused" or "suspected" individual and the witness asks for assistance of counsel, a DA attorney will be made available for the limited purpose of consultation regarding the witness' rights and obligations. An attorney-client relationship will not be established. (See appendix F to this part).

(3) The Labor Counselor will arrange for individual counsel for consultation from local assets. If local assets are not sufficient, assistance may be requested from other DOD activities in the area or from HQDA, DAJA-LE. DA attorneys tasked to consult with one or more witnesses individually will not be tasked to represent the DA activity concerned.

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(4) The Labor Counselor, as the legal representative of the activity, is precluded from assisting or representing individual witnesses during OSC interviews.

(b) “Accused” or “suspected” DA personnel and counsel for representation.

(1) If the OSC identifies a DA civilian employee or a military member as an “accused” or “suspected” individual, or if the Labor Counselor concludes that an individual is a “suspect,” the Labor Counselor will inform the individual. The Labor Counselor also will advise the individual of the availability of counsel for representation upon approval by DA General Counsel. (See Glossary, Counsel for Representation).

(2) If the “suspected” individual desires legal representation by DA, the individual must request counsel by submitting a written request through DAJA-LE to DA General Counsel. (See figure I-1, appendix G, to this part).

(3) During the investigation but prior to DA General Counsel approval of the request for counsel, an “accused” or “suspected” individual will be provided the assistance of counsel for consultation in the same manner as any other OSC requested witness. “Accused” or “suspected” individuals who do not request counsel for representation will be provided counsel for consultation in the same manner as any other OSC requested witness.

(4) If the DA General Counsel approves the request for counsel, the Chief, DAJA-LE, will appoint a DA attorney to represent the individual. This appointment may be made telephonically but will be confirmed in writing. The Chief, DAJA-LE, will make appropriate coordination with MACOM SJAs and command counsel to confirm availability of the attorney.

(5) An attorney appointed by DA may represent a civilian employee in any proceeding initiated by OSC before the MSPB. However, counsel provided by DA may not represent the employee in any proceeding initiated by DA, in any appeal from a final decision by the MSPB, or in any collateral proceeding before any forum other than the MSPB.

(6) OSC may not bring a disciplinary action before the MSPB against a mili-

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tary member. Accordingly, DA counsel will not be required to represent the military member in any MSPB disciplinary proceeding. However, counsel may represent the member during the OSC investigation with the understanding that the evidence obtained by OSC may be referred to the member’s command for possible disciplinary action under the UCMJ or appropriate regulations. If DA initiates action against the military member for misconduct disclosed in the OSC investigation, the member will obtain counsel as provided under the UCMJ or relevant regulations.

(c) Records.

(1) OSC requests for records must be in writing. The Labor Counselor will assist OSC representatives in identifying the custodian of specific records sought during the inquiry.

(2) Generally, requested records should be furnished to OSC representatives if such records would be released under AR 25-55 or AR 340-21 to other government agencies in the normal course of official business. Records constituting attorney work product should not be released without approval of the Chief, DAJA-LE. IG records will not be released without the approval of the Inspector General. (AR 20-1). The Labor Counselor should seek guidance from the Chief, DAJA-LE, if there is any doubt concerning the release of records.

(3) If, after completion of the OSC investigation, the OSC files a complaint against DA or a DA employee, release of records and other information will be accomplished pursuant to MSPB rules of discovery (5 CFR part 1201, subpart B).

(d) Funding. The command, activity, or installation within which the allegations of misconduct arose will provide funding for travel, per diem and other necessary expenses related to the OSC investigation. These expenses may include appropriate funding for witnesses, counsel for consultation and DA General Counsel approved counsel for representation.

§516.73 Assistance from HQDA.

Labor Counselors may seek guidance on questions arising from implementation of this chapter by calling the

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Chief, DAJA-LE, DSN 225-9476/9481 or Commercial (703) 695-9476/9481.

Subpart J—Soldiers Summoned To Serve on State and Local Juries

§ 516.74 General.

(a) This subpart implements 10 U.S.C. § 982 and DOD Directive 5525.8. It establishes Army policy concerning soldiers on active duty who are summoned to serve on state and local juries.

(b) This subpart does not apply to Army National Guard soldiers in an annual training or full-time AGR (Active Guard Reserve) status under Title 32, U.S. Code. Soldiers in a Title 32 status must refer to their respective state law for relief from state or local jury duty.

§ 516.75 Policy.

(a) Active duty soldiers should fulfill their civic responsibility by serving on state and local juries, so long as it does not interfere with military duties.

(b) The following active duty soldiers are exempt from complying with summons to serve on state and local juries:

(1) General officers.

(2) Commanders.

(3) Active duty soldiers stationed outside the United States, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the Virgin Islands.

(4) Active duty soldiers in a training status.

(5) Active duty soldiers assigned to forces engaged in operations.

(c) Other active duty soldiers may be exempted from serving on local juries if compliance with such summons would have either of the following effects:

(1) It would unreasonably interfere with performance of the soldier's military duties; or,

(2) It would adversely affect the readiness of a summoned soldier's unit, command, or activity.

§ 516.76 Exemption determination authority.

(a) The commander exercising special court-martial convening authority (SPCMCA) over a unit has the authority to determine whether a soldier of that unit, who has been served with a summons, is exempt from serving on a

state or local jury unless that authority has been limited or withheld in accordance with paragraph (b) or (c) of this section. This authority may not be delegated to a subordinate commander who does not exercise SPCMCA.

(b) A commander superior to the SPCMCA, who also exercises SPCMCA or general court-martial convening authority (GCMCA) over a unit, may limit or withhold the exemption determination authority of subordinate commanders.

(c) A GCMCA, who orders a unit or soldier assigned to one command to be attached or detailed to another command for disciplinary purposes (for example, "for administration" or "for administration of military justice"), may reserve exemption determination authority to the commander exercising SPCMCA in the chain of command to which the unit or soldier is assigned rather than the chain of command to which the unit or soldier is attached or detailed.

§ 516.77 Procedures for exemption.

(a) Active duty soldiers served with a summons to serve on a state or local jury will promptly advise their commander and provide copies of pertinent documents.

(b) Unit commanders will evaluate the summons considering both the individual soldier's duties and the unit mission. Coordination with the servicing judge advocate or legal adviser and with the appropriate state or local official may be necessary to determine any impact on the soldier's duties or on unit readiness.

(1) If the soldier is not exempt under § 516.75 (b) or (c), the commander will process the soldier for permissive TDY in accordance with AR 630-5, Leaves and Passes.

(2) If the soldier is exempt under § 516.75 (b) or (c), the commander will forward the summons and any related documentation, with recommendations, through the chain of command to the commander with exemption determination authority over the soldier concerned.

(c) The commander with exemption determination authority over the soldier concerned will determine whether

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the soldier is exempt. His determination is final.

(d) The exemption determination authority will notify responsible state or local officials whenever a soldier summoned for jury duty is exempt. The notification will cite 10 U.S.C. 982 as authority.

§516.78 Status, fees, and expenses.

(a) Soldiers who are required to comply with summons to serve on state or local juries will be placed on permissive TDY under the provisions of AR 630-5.

(b) Jury fees accruing to soldiers for complying with the summons to serve on state and local juries must be turned over to the appropriate finance office for deposit into the U.S. Treasury. Commands will establish procedures with local authorities and their servicing finance and accounting activity to ensure that such jury fees are so deposited. Soldiers, however, may keep any reimbursement from state or local authority for expenses incurred in the performance of jury duty, including transportation, meals, and parking.

APPENDIX A TO PART 516—REFERENCES

Publications referenced in this part can be obtained at the National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Required Publications

- AR 25-55, The Department of the Army Freedom of Information Act Program. (Cited in §§516.40, 516.72)
- AR 27-10, Military Justice. (Cited in §516.4)
- AR 27-20, Claims. (Cited in §§516.4, 516.33, 516.22)
- AR 27-60, Patents, Inventions, and Copyrights.
- AR 37-60, Pricing for Material and Services. (Cited in §516.43.)
- AR 37-103, Finance and Accounting for Installations: Disbursing Operations. (Cited in §516.22.)
- AR 60-20, Operating Policies. (Cited in §516.22.)
- AR 190-9, Absentee Deserter Apprehension Program and Surrender of Military Personnel to Civilian Law Enforcement Agencies. (Cited in §516.9)
- AR 210-47, State and Local Taxation of Lessee's Interest in Wherry Act Housing (Title VIII of the National Housing Act).
- AR 215-1, Administration of Army Morale, Welfare, and Recreation Activities and

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- Nonappropriated Fund Instrumentalities. (Cited in §516.22.)
- AR 215-2, The Management and Operation of Army Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities. (Cited in §516.22.)
- AR 310-1, Publications, Blank Forms, and Printing Management.
- AR 340-21, The Army Privacy Program. (Cited in §§516.40, 516.72.)
- AR 380-5, Department of the Army Information Security Program.
- AR 405-25, Annexation. (Cited in §516.22.)
- AR 630-5, Leaves and Passes. (Cited in §§516.55, 516.77, 516.78.)
- AR 630-10, Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings. (Cited in §516.9)

Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand the regulation.

- AR 20-1, Inspector General Activities and Procedures. (Cited in §§516.41, 516.72.)
- AR 27-1, Judge Advocate Legal Service.
- AR 27-3, Legal Assistance. (Cited in §516.6.)
- AR 27-10, Military Justice. (Cited in §§516.4, 516.5, 516.15.)
- AR 27-50, Status of Forces Policies, Procedures, and Information. (Cited in §516.15.)
- AR 37-104-3, Military Pay and Allowances Procedures.
- AR 37-105, Finance and Accounting for Installations: Civilian Pay Procedures.
- AR 55-19, Marine Casualties. (Cited in §516.22.)
- AR 190-29, Misdemeanors and Uniform Violation Notices Referred to U.S. Magistrates or District Courts.
- AR 190-40, Serious Incident Report. (Cited in §516.15.)
- AR 210-50, Family Housing Management. (Cited in §516.37.)
- AR 335-15, Management Information Control System. (Cited in §516.15.)
- AR 600-40, Apprehension, Restraint, and Release to Civil Authorities.
- AR 600-50, Standards of Conduct for Department of the Army Personnel.
- AR 690-700, Personnel Relations and Services. (Cited in §516.70.)

Prescribed Form

- DA Form 4, Department of the Army Certification for Authentication of Records. (Prescribed in §516.25, 516.35.)

Referenced Forms

- DA Form 2631-R, Medical Care-Third Party Liability Notification.
- DA Form 3154, MSA Invoice and Receipt.

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APPENDIX B TO PART 516—MAILING ADDRESSES

The following is a list of frequently referred to Department of the Army Services/Divisions/Offices and their mailing addresses:

- COMMANDER (JACS-Z), U.S. ARMY CLAIMS SERVICE, OTJAG, BUILDING 4411, ROOM 206, LLEWELLYN AVENUE, FORT GEORGE G. MEADE, MD 20755-5360
- (1) PERSONNEL CLAIMS AND RECOVERY DIVISION (JACS-PC), U.S. ARMY CLAIMS SERVICE, OTJAG, BUILDING 4411, ROOM 206, LLEWELLYN AVENUE, FORT GEORGE G. MEADE, MD 20755-5360
 - (2) TORT CLAIMS DIVISION (JACS-TC), U.S. ARMY CLAIMS SERVICE, OTJAG, BUILDING 4411, ROOM 206, LLEWELLYN AVENUE, FORT GEORGE G. MEADE, MD 20755-5360
- CONTRACT APPEALS DIVISION, HQDA(DAJA-CA), 901 NORTH STUART STREET, ARLINGTON, VA 22203-1837
- CONTRACT LAW DIVISION, THE JUDGE ADVOCATE GENERAL, 2200 ARMY PENTAGON, WASHINGTON, DC 20310-2200
- CRIMINAL LAW DIVISION, THE JUDGE ADVOCATE GENERAL, 2200 ARMY PENTAGON, WASHINGTON, DC 20310-2200
- ENVIRONMENTAL LAW DIVISION, HQDA(DAJA-EL), 901 NORTH STUART STREET, ARLINGTON, VA 22203-1837
- LABOR AND EMPLOYMENT LAW DIVISION, THE JUDGE ADVOCATE GENERAL, 2200 ARMY PENTAGON, WASHINGTON, DC 20310-2200,
- LITIGATION DIVISION, HQDA(DAJA-LT), 901 NORTH STUART STREET, ARLINGTON, VA 22203-1837
- (1) CIVILIAN PERSONNEL BRANCH, HQDA(DAJA-LTC), 901 NORTH STUART STREET, ARLINGTON, VA 22203-1837
 - (2) GENERAL LITIGATION BRANCH, HQDA(DAJA-LTG), 901 NORTH STUART STREET, ARLINGTON, VA 22203-1837
 - (3) MILITARY PERSONNEL BRANCH, HQDA(DAJA-LTM), 901 NORTH STUART STREET, ARLINGTON, VA 22203-1837
 - (4) TORT BRANCH, HQDA(DAJA-LTT), 901 NORTH STUART STREET, ARLINGTON, VA 22203-1837
- PERSONNEL, PLANS, AND TRAINING OFFICE, THE JUDGE ADVOCATE GENERAL, 2200 ARMY PENTAGON, WASHINGTON, DC 20310-2200
- PROCUREMENT FRAUD DIVISION, HQDA(DAJA-PF), 901 NORTH STUART STREET, ARLINGTON, VA 22203-1837
- INTELLECTUAL PROPERTY DIVISION, HQDA(JALS-IP), 901 NORTH STUART STREET, ARLINGTON, VA 22203-1837

- REGULATORY LAW OFFICE, HQDA(JALS-RL), 901 NORTH STUART STREET, ARLINGTON, VA 22203-1837
- THE JUDGE ADVOCATE GENERAL, 2200 ARMY PENTAGON, WASHINGTON, DC 20310-2200
- THE AJAG FOR CIVIL LAW & LITIGATION, THE JUDGE ADVOCATE GENERAL, 2200 ARMY PENTAGON, WASHINGTON, DC 20310-2200
- U.S. ARMY TRIAL DEFENSE SERVICE, HQDA(JALS-TD), NASSIF BUILDING, FALLS CHURCH, VA 22041-5013

APPENDIX C TO PART 516—DEPARTMENT OF DEFENSE DIRECTIVE 5405.2, RELEASE OF OFFICIAL INFORMATION IN LITIGATION AND TESTIMONY BY DoD PERSONNEL AS WITNESSES

Department of Defense Directive

July 23, 1985, Number 5405.2, GC, DOD

Subject: Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses

References:

- (a) Title 5, United States Code, Sections 301, 552, and 552a
- (b) Title 10, United States Code, Section 133
- (c) DoD Directive 5220.6, "Industrial Personnel Security Clearance Program," December 20, 1976
- (d) DoD Directive 5200.1-R, "Information Security Program Regulation," August 1982, authorized by DoD Directive 5200.1, June 7, 1982
- (e) DoD Directive 5230.25, "Withholding of Unclassified Technical Data from Public Disclosure," November 6, 1984
- (f) DoD Instruction 7230.7, "User Charges," January 29, 1985
- (g) DoD Directive 5400.7-R, "DoD Freedom of Information Act Program," December 1980, authorized by DoD Directive 5400.7, March 24, 1980

A. Purpose

Under Section 301 reference (a) and reference (b), this Directive establishes policy, assigns responsibilities, and prescribes procedures for the release of official DoD information in litigation and for testimony by DoD personnel as witnesses during litigation.

B. Applicability and Scope

1. This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components"), and to all personnel of such DoD Components.

2. This Directive does not apply to the release of official information or testimony by DoD personnel in the following situations:

a. Before courts-martial convened by the authority of the Military Departments or in administrative proceedings conducted by or on behalf of a DoD Component;

b. Pursuant to administrative proceedings conducted by or on behalf of the Equal Employment Opportunity Commission (EEOC) or the Merit Systems Protection Board (MSPB), or pursuant to a negotiated grievance procedure under a collective bargaining agreement to which the Government is a party;

c. In response to requests by Federal Government counsel in litigation conducted on behalf of the United States;

d. As part of the assistance required in accordance with the Defense Industrial Personnel Security Clearance Program under DoD Directive 5220.6 (reference (c)); or

e. Pursuant to disclosure of information to Federal, State, and local prosecuting and law enforcement authorities, in conjunction with an investigation conducted by a DoD criminal investigative organization.

3. This Directive does not supersede or modify existing laws or DoD programs governing the testimony of DoD personnel or the release of official DoD information during grand jury proceedings, the release of official information not involved in litigation, or the release of official information pursuant to the Freedom of Information Act, 5 U.S.C. Section 552 (reference (a)) or the Privacy Act, 5 U.S.C. Section 552a (reference (a)), nor does this Directive preclude treating any written request for agency records that is not in the nature of legal process as a request under the Freedom of Information or Privacy Acts.

4. This Directive is not intended to infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States in appropriate cases.

5. This Directive does not preclude official comment on matters in litigation in appropriate cases.

6. This Directive is intended only to provide guidance for the internal operation of the Department of Defense and is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law against the United States or the Department of Defense.

C. Definitions

1. Demand. Subpoena, order, or other demand of a court of competent jurisdiction, or other specific authority for the production, disclosure, or release of official DoD information or for the appearance and testimony of DoD personnel as witnesses.

2. DoD Personnel. Present and former U.S. military personnel; Service Academy cadets and midshipmen; and present and former civilian employees of any Component of the Department of Defense, including non-appropriated fund activity employees; non-U.S. nationals who perform services overseas, under the provisions of status of forces agreements, for the United States Armed Forces; and other specific individuals hired through contractual agreements by or on behalf of the Department of Defense.

3. Litigation. All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before civilian courts, commissions, boards (including the Armed Services Board of Contract Appeals), or other tribunals, foreign and domestic. This term includes responses to discovery requests, depositions, and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving litigation.

4. Official Information. All information of any kind, however stored, that is in the custody and control of the Department of Defense, relates to information in the custody and control of the Department, or was acquired by DoD personnel as part of their official duties or because of their official status within the Department while such personnel were employed by or on behalf of the Department or on active duty with the United States Armed Forces.

D. Policy

It is DoD policy that official information should generally be made reasonably available for use in Federal and state courts and by other governmental bodies unless the information is classified, privileged, or otherwise protected from public disclosure.

E. Responsibilities

1. The General Counsel, Department of Defense (GC, DoD), shall provide general policy and procedural guidance by the issuance of supplemental instructions or specific orders concerning the release of official DoD information in litigation and the testimony of DoD personnel as witnesses during litigation.

2. The Heads of DoD Components shall issue appropriate regulations to implement this Directive and to identify official information that is involved in litigation.

F. Procedures

1. Authority To Act

a. In response to a litigation request or demand for official DoD information or the testimony of DoD personnel as witnesses, the

General Counsels of DoD, Navy, and the Defense Agencies; the Judge Advocates General of the Military Departments; and the Chief Legal Advisors to the JCS and the Unified and Specified Commands, with regard to their respective Components, are authorized—after consulting and coordinating with the appropriate Department of Justice litigation attorneys, as required—to determine whether official information originated by the Component may be released in litigation; whether DoD personnel assigned to or affiliated with the Component may be interviewed, contacted, or used as witnesses concerning official DoD information or as expert witnesses; and what, if any, conditions will be imposed upon such release, interview, contact, or testimony. Delegation of this authority, to include the authority to invoke appropriate claims of privilege before any tribunal, is permitted.

b. In the event that a DoD Component receives a litigation request or demand for official information originated by another Component, the receiving Component shall forward the appropriate portions of the request or demand to the originating Component for action in accordance with this Directive. The receiving Component shall also notify the requestor, court, or other authority of its transfer of the request or demand.

c. Notwithstanding the provisions of paragraphs F.1.a. and b., the GC, DoD, in litigation involving terrorism, espionage, nuclear weapons, intelligence means or sources, or otherwise as deemed necessary, may notify Components that GC, DoD, will assume primary responsibility for coordinating all litigation requests and demands for official DoD information or the testimony of DoD personnel, or both; consulting with the Department of Justice, as required; and taking final action on such requests and demands.

2. Factors To Consider

In deciding whether to authorize the release of official DoD information or the testimony of DoD personnel concerning official information (hereinafter referred to as “the disclosure”) pursuant to paragraph F.1., DoD officials should consider the following types of factors:

a. Whether the request or demand is unduly burdensome or otherwise inappropriate under the applicable court rules;

b. Whether the disclosure, including release in camera, is appropriate under the rules of procedure governing the case or matter in which the request or demand arose;

c. Whether the disclosure would violate a statute, executive order, regulation, or directive;

d. Whether the disclosure, including release in camera, is appropriate or necessary under the relevant substantive law concerning privilege;

e. Whether the disclosure, except when in camera and necessary to assert a claim of privilege, would reveal information properly classified pursuant to the DoD Information Security Program under DoD 5200.1-R (reference (d)), unclassified technical data withheld from public release pursuant to DoD Directive 5230.25 (reference (e)), or other matters exempt from unrestricted disclosure; and

f. Whether disclosure would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, disclose trade secrets or similarly confidential commercial or financial information, or otherwise be inappropriate under the circumstances.

3. Decisions on Litigation Requests and Demands

a. Subject to paragraph F.3.e., DoD personnel shall not, in response to a litigation request or demand, produce, disclose, release, comment upon, or testify concerning any official DoD information without the prior written approval of the appropriate DoD official designated in paragraph F.1. Oral approval may be granted, but a record of such approval shall be made and retained in accordance with the applicable implementing regulations.

b. If official DoD information is sought, through testimony or otherwise, by a litigation request or demand, the individual seeking such release or testimony must set forth, in writing and with as much specificity as possible, the nature and relevance of the official information sought. Subject to paragraph F.3.e., DoD personnel may only produce, disclose, release, comment upon, or testify concerning those matters that were specified in writing and properly approved by the appropriate DoD official designated in paragraph F.1. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

c. Whenever a litigation request or demand is made upon DoD personnel for official DoD information or for testimony concerning such information, the personnel upon whom the request or demand was made shall immediately notify the DoD official designated in paragraph F.1. for the Component to which the individual contacted is or, for former personnel, was last assigned. In appropriate cases, the responsible DoD official shall thereupon notify the Department of Justice of the request or demands. After due consultation and coordination with the Department of Justice, as required, the DoD official shall determine whether the individual is required to comply with the request or demand and shall notify the requestor or the court or other authority of the determination reached.

d. If, after DoD personnel have received a litigation request or demand and have in

turn notified the appropriate DoD official in accordance with paragraph F.3.c., a response to the request or demand is required before instructions from the responsible official are received, the responsible official designated in paragraph F.1. shall furnish the requestor or the court or other authority with a copy of this Directive and applicable implementing regulations, inform the requestor or the court or other authority that the request or demand is being reviewed, and seek a stay of the request or demand pending a final determination by the Component concerned.

e. If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the request or demand in response to action taken pursuant to paragraph F.3.d., or if such court or other authority orders that the request or demand must be complied with notwithstanding the final decision of the appropriate DoD official, the DoD personnel upon whom the request or demand was made shall notify the responsible DoD official of such ruling or order. If the DoD official determines that no further legal review of or challenge to the court's ruling or order will be sought, the affected DoD personnel shall comply with the request, demand, or order. If directed by the appropriate DoD official, however, the affected DoD personnel shall respectfully decline to comply with the demand. See United States ex rel. *Touhy v. Ragen*, 340 U.S. 462 (1951).

4. Fees

Consistent with the guidelines in DoD Instruction 7230.7 (reference (f)), the appropriate officials designated in paragraph F.1. are authorized to charge reasonable fees, as established by regulation and to the extent not prohibited by law, to parties seeking, by request or demand, official DoD information not otherwise available under the DoD Freedom of Information Act Program (reference (g)). Such fees, in amounts calculated to reimburse the Government for the expense of providing such information, may include the costs of time expended by DoD employees to process and respond to the request or demand; attorney time for reviewing the request or demand and any information located in response thereto and for related legal work in connection with the request or demand; and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. See *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340 (1978).

5. Expert or Opinion Testimony

DoD personnel shall not provide, with or without compensation, opinion or expert testimony concerning official DoD information, subjects, or activities, except on behalf of the United States or a party represented by the Department of Justice. Upon a showing

by the requestor of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the Department of Defense or the United States, the appropriate DoD official designated in paragraph F.1. may, in writing, grant special authorization for DoD personnel to appear and testify at no expense to the United States. If, despite the final determination of the responsible DoD official, a court of competent jurisdiction, or other appropriate authority, orders the appearance and expert or opinion testimony of DoD personnel, the personnel shall notify the responsible DoD official of such order. If the DoD official determines that no further legal review of or challenge to the court's order will be sought, the affected DoD personnel shall comply with the order. If directed by the appropriate DoD official, however, the affected DoD personnel shall respectfully decline to comply with the demand. See United States ex rel. *Touhy v. Ragen*, 340 U.S. 462 (1951).

G. Effective Date and Implementation

This Directive is effective immediately. Forward two copies of implementing documents to the General Counsel, DoD, within 120 days.

Signed by William H. Taft, IV
Deputy Secretary of Defense.

APPENDIX D TO PART 516—DEPARTMENT OF DEFENSE DIRECTIVE 7050.5, COORDINATION OF REMEDIES FOR FRAUD AND CORRUPTION RELATED TO PROCUREMENT ACTIVITIES

Department of Defense Directive

June 7, 1989, Number 7050.5, IG, DOD

Subject: Coordination of Remedies for Fraud and Corruption Related to Procurement Activities

References:

- (a) DoD Directive 7050.5, subject as above, June 28, 1985 (hereby canceled)
- (b) Public Law 97-291, "The Victim and Witness Protection Act of 1982," October 12, 1982
- (c) Defense FAR Supplement (DFARS), Subpart 4.6, "Contract Reporting"
- (d) DoD Instruction 4105.61, "DoD Procurement Coding Manual," May 4, 1973
- (e) DoD 4105.61-M, "Procurement Coding Manual" (Volume I), October 1988, authorized by DoD Instruction 4105.61 May 4, 1973

A. Reissuance and Purpose

This Directive reissues reference (a) to update policies, procedures, and responsibilities for the coordination of criminal, civil, administrative, and contractual remedies stemming from investigation of fraud or corruption related to procurement activities.

More effective and timely communication of information developed during such investigations will enable the Department of Defense to take the most appropriate of the available measures.

B. Applicability

This Directive applies to the Office of the Secretary of Defense (OSD); the Inspector General, Department of Defense (IG, DoD); the Military Departments; the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

C. Definitions

1. *DoD Criminal Investigative Organizations.* Refers to the U.S. Army Criminal Investigation Command; the Naval Investigative Service Command; the U.S. Air Force Office of Special Investigations; and the Defense Criminal Investigative Service, Office of the IG, DoD (OIG, DoD).

2. *Significant.* Refers to all fraud cases involving an alleged loss of \$100,000, or more; all corruption cases related to procurement that involved bribery, gratuities, or conflicts of interest; and any investigation into defective products or product substitution in which a SERIOUS HAZARD to health, safety, or operational readiness is indicated, regardless of loss value.

D. Policy

It is DoD policy that:

1. Each of the DoD Components shall monitor, from its inception, all significant investigations of fraud or corruption related to procurement activities affecting its organizations, for the purpose of ensuring that all possible criminal, civil, administrative, and contractual remedies in such cases are identified to cognizant procurement and command officials and that appropriate remedies are pursued expeditiously. This process shall include appropriate coordination with all other affected DoD Components.

2. All investigations of fraud or corruption related to procurement activities shall be reviewed to determine and implement the appropriate contractual and administrative actions that are necessary to recover funds lost through fraud or corruption and to ensure the integrity of DoD programs and operations.

3. Appropriate civil, contractual, and administrative actions, including those set forth in enclosure 1, shall be taken expeditiously. During an investigation and before prosecution or litigation, and when based in whole or in part on evidence developed during an investigation, such actions shall be taken with the advance knowledge of the responsible DoD criminal investigative organization and, when necessary, the appropriate legal counsel in the Department of Defense

and the Department of Justice (DoJ). When appropriate, such actions shall be taken before final resolution of the criminal or civil case.

E. Responsibilities

1. The *Heads of DoD Components* shall:

a. Establish a centralized organization (hereafter referred to as "the centralized organization") to monitor and ensure the coordination of criminal, civil, administrative, and contractual remedies for each significant investigation of fraud or corruption related to procurement activities affecting the DoD Component.

b. Establish procedures requiring the centralized organization to discuss regularly with the assigned DoD criminal investigative organization(s) such issues as the current status of significant investigations and their coordination with prosecutive authorities.

c. Establish procedures requiring that all coordination involving the DoJ, during the pendency of a criminal investigation, is accomplished by or with the advance knowledge of the appropriate DoD criminal investigative organization(s).

d. Establish procedures to ensure appropriate coordination of actions between the centralized organizations of any DoD Components affected by a significant investigation of fraud or corruption related to procurement activities.

e. Establish procedures to ensure that all proper and effective civil, administrative, and contractual remedies available to the Department of Defense are, when found applicable and appropriate, considered and undertaken promptly by the necessary DoD officials (e.g., commanders, programs officials, and contracting officers). This includes initiation of any suspension and debarment action within 30 days of an indictment or conviction. The centralized organization shall ensure that all proposed actions are coordinated with appropriate investigative organization.

f. Establish procedures to ensure that a specific comprehensive remedies plan is developed for each significant investigation involving fraud or corruption related to procurement activities. These procedures shall include the participation of the appropriate DoD criminal investigative organization in the development of the plan.

g. Establish procedures to ensure that in those significant investigations of fraud or corruption related to procurement activities when adverse impact on a DoD mission can be determined, such adverse impact is identified and documented by the centralized organization. This information is to be used by the centralized organization of the DoD Component concerned in development of the remedies plan required in paragraph E.1.f., above, and shall be furnished to prosecutors

as stated in paragraph E.2.e., below. The information shall also be used by the centralized organizations in development and preparation of "Victim Impact Statements" for use in sentencing proceedings, as provided for P.L. 97-291 (reference (b)). Some examples of adverse impact on a DoD mission are as follows:

- (1) Endangerment of personnel or property.
- (2) Monetary loss.
- (3) Denigration of program or personnel integrity.
- (4) Compromise of the procurement process.
- (5) Reduction or loss of mission readiness.

h. Ensure training materials are developed on fraud and corruption in the procurement process, and that all procurement and procurement-related training includes a period of such instruction appropriate to the duration and nature of the training.

i. Establish procedures enabling the centralized organization to ensure that safety and readiness issues are examined and appropriately dealt with for all cases in which a notice is required under paragraph E.2.i., below. The minimum procedures to be followed by the centralized organization are in enclosure 3.

j. Ensure that appropriate command, procurement, and investigative organizations are provided sufficient information to determine if further inquiry is warranted on their part to prevent reoccurrence and detect other possible fraud within their activity.

2. The *Secretaries of the Military Departments* and the *Inspector General, Department of Defense (IG, DoD)*, or their designees, shall establish procedures that ensure that their respective criminal investigative organizations will:

a. Notify, in writing, the centralized organization for the affected DoD Component of the start of all significant investigations involving fraud or corruption that are related to procurement activities. Initial notification shall include the following elements:

- (1) Case title.
- (2) Case control number.
- (3) Investigative agency and office of primary responsibility.
- (4) Date opened.
- (5) Predication.
- (6) Suspected offense(s).

b. Notify expeditiously the Defense Investigative Service (DIS) of any investigations that develop evidence that would impact on DoD-cleared industrial facilities or personnel.

c. Discuss regularly with the centralized organization such issues as the current status of significant investigations and their coordination with prosecutive authorities. If the DoD criminal investigative organization has prepared any documents summarizing the current status of the investigation, such documents shall be provided to the central-

ized organization. Completed reports of significant investigations also should be provided to the centralized organization.

d. Provide to the appropriate procurement officials, commanders, and suspension and debarment authorities, when needed to allow consideration of applicable remedies, any court records, documents, or other evidence of fraud or corruption related to procurement activities. Such information shall be provided in a timely manner to enable the suspension and debarment authority to initiate suspension and debarment action within 30 days of an indictment or conviction.

e. Provide expeditiously to prosecutive authorities the information regarding any adverse impact on a DoD mission, that is gathered under paragraph E.1.g., above, for the purpose of enhancing the prosecutability of a case. Such information also should be used in preparing a victim impact statement for use in sentencing proceedings as provided for in Public Law 97-291.

f. Gather, at the earliest practical point in the investigation, without reliance on grand jury subpoenas whenever possible, relevant information concerning responsible individuals, the organizational structure, finances, and contract history of DoD contractors under investigation for fraud or corruption related to procurement activities, to facilitate the criminal investigation as well as any civil, administrative, or contractual actions or remedies that may be taken. Some available sources of such information are listed in enclosure 2.

g. Provide timely notice to other cognizant DoD criminal investigative organizations of evidence of fraud by a contractor, subcontractor, or employees of either, on current or past contracts with, or affecting, other DoD Components.

h. Ascertain the impact upon any ongoing investigation or prosecution of civil, contractual, and administrative actions being considered and advise the appropriate centralized organization of any adverse impact.

i. Obtain a DD 350 report in every investigation into defective products or product substitution in which a SERIOUS HAZARD to health, safety, or operational readiness is indicated. Timely notification shall be made to the centralized organization of each DoD Component that is identified as having contract actions with the subject of the investigation.

j. Obtain a DD 350 report in all significant fraud investigations, as defined in subsection C.2. above, whether or not the case involved defective products or product substitution. Timely notification shall be made to the centralized organization of each DoD Component that is identified as having contract actions with the subject of the investigation.

3. The *Inspector General, Department of Defense (IG, DoD)*, shall:

a. Develop training materials relating to fraud and corruption in procurement related activities which shall be utilized in all procurement related training in conjunction with training materials developed by the DoD Components. (See paragraph E.1.h., above.)

b. Establish procedures for providing to the DoD criminal investigative organizations, through the Office of the Assistant Inspector General for Auditing (OAIG-AUD), reports of data contained in the Individual Procurement Action Report (DD Form 350) System.

F. Procedures

Transmissions of information by DoD criminal investigative organizations required by subsection E.2., above, shall be made as expeditiously as possible, consistent with efforts not to compromise any ongoing criminal investigation. The transmission of the information may be delayed when, in the judgment of the head of the DoD criminal investigative organization, failure to delay would compromise the success of any investigation or prosecution. The prosecutive authorities dealing with the investigation shall be consulted, when appropriate, in making such determinations.

G. Effective Date and Implementation

This Directive is effective immediately. Forward two copies of implementing documents to the Inspector General, Department of Defense, within 120 days.

Donald J. Atwood,
Deputy Secretary of Defense.

Enclosures—3

1. Civil Contractual and Administrative Actions That Can Be Taken in Response to Evidence of Procurement Fraud
2. Sources of Information Relating to Government Contractors
3. Actions to be Taken in Product Substitution Investigations

Civil, Contractual, and Administrative Actions That Can Be Taken in Response to Evidence of Procurement Fraud

A. Civil

1. Statutory

- a. False Claims Act (31 USC 3729 *et seq.*).
- b. Anti-Kickback Act (41 USC 51 *et seq.*).
- c. Voiding Contracts (18 USC 218).

d. Truth in Negotiations Act (10 USC 2306(f)).

e. Fraudulent Claims-Contract Disputes Act (41 USC 604)

2. Nonstatutory

- a. Breach of contract.
- b. Breach of warranty.
- c. Money paid under mistake of fact.
- d. Unjust enrichment.
- e. Fraud and/or Deceit.
- f. Conversion.
- g. Rescission and/or Cancellation.
- h. Reformation.
- i. Enforcement of performance bond/guarantee agreement.

3. Contractual

- a. Termination of contract for default.
- b. Termination of contract for convenience of Government.
- c. Termination for default and exemplary damages under the gratuities clause.
- d. Rescission of contract.
- e. Contract warranties.
- f. Withholding of payments to contractor.
- g. Offset of payments due to contractor from other contracts.
- h. Price reduction.
- i. Correction of defects (or cost of correction).
- j. Refusal to accept nonconforming goods.
- k. Revocation of acceptance.
- l. Denial of claims submitted by contractors.
- m. Disallowance of contract costs.
- n. Removal of the contractor from automated solicitation or payment system.

4. Administrative

- a. Change in contracting forms and procedures.
- b. Removal or reassignment of Government personnel.
- c. Review of contract administration and payment controls.
- d. Revocation of warrant contracting officer.
- e. Suspension of contractor and contractor employees.
- f. Debarment of contractor and contractor employees.
- g. Revocation of facility security clearances.
- h. Nonaward of contract based upon a finding of contractor nonresponsibility.
- i. Voluntary refunds.

SOURCES OF INFORMATION RELATING TO GOVERNMENT CONTRACTORS

Type of information	Possible source
Location, dollar value, type, and number of current contracts with the Department of Defense.	a. DD Form 350 Report. ¹ b. Defense Logistics Agency's (DLA) "Contract Administration Defense Logistics Agency's (DLA) Contract Administration Report (CAR Report) on contracts DLA administers.

SOURCES OF INFORMATION RELATING TO GOVERNMENT CONTRACTORS—Continued

Type of information	Possible source
2. Financial status of corporation, history of corporation, owners, and officers.	a. Dunn and Bradstreet Reports. b. Corporate filings with local secretaries of the State, or corporate recorders. c. Securities and Exchange Commission (public corporations). d. Small Business Administration (SBA) (small businesses). e. General Accounting Office (bid protests, and contractors indebted to the Government). f. Armed Services Board of Contract Appeals (ASBCA) or court litigation. g. List of Contractors Indebted to the United States (maintained, published and distributed by the U.S. Army Finance and Accounting Center, Indianapolis, Indiana 46249).
3. Security clearance background information on facility and officers.	a. Defense Investigative Service.
4. Performance history of contractor	a. Local contracting officers. b. Defense Contract Administration Service preaward surveys. c. SBA Certificate of Competency records.
5. Name, location, offense alleged, and previous investigative efforts involving DLA-awarded or DLA-administered contracts.	DLA Automated Criminal Case Management System. (Available through field offices of the DLA Counsel's office.)
6. Bid protests, litigation, and bankruptcy involving DLA-awarded or DLA-administered contracts.	Field offices of the DLA Counsel's office.

¹ A determination as to the contract history of any DoD contractor with contracts in excess of \$25,000 annually can be made through a review of the "Individual Procurement Action Report" (DD Form 350) system, as prescribed by Subpart 4.6 of the DoD FAR Supplement, DoD Instruction 4105.61, and DoD 4105.61-M (references (c), (d), and (e)).

ACTIONS TO BE TAKEN IN PRODUCT SUBSTITUTION INVESTIGATIONS

A. The centralized organization, in all cases involving allegations of product substitution in which a **SERIOUS HAZARD** to health, safety, or operational readiness is indicated shall:

1. Review the notice of the case immediately after receiving it from the Defense criminal investigative organization. Review the notice to determine any potential safety or readiness issues indicated by the suspected fraud.
2. Notify all appropriate safety, procurement, and program officials of the existence of the case.
3. Obtain a complete assessment from safety, procurement, and program officials of the adverse impact of the fraud on DoD programs and operations.
4. Ensure that the DoD Component provides the Defense criminal investigative organization with full testing support to completely identify the defective nature of the substituted products. Costs associated with the testing shall be assumed by the appropriate procurement program.
5. Prepare a comprehensive impact statement describing the adverse impact of the fraud on DoD programs for use in any criminal, civil, or contractual action related to the case.

B. In all cases involving allegations of product substitution that affect more than one DoD Component, that centralized organizations of the affected DoD Components shall identify a lead Agency. The lead centralized organization shall ensure that information on the fraud is provided to the cen-

tralized organization of all other affected DoD Components. The lead centralized organization shall ensure compliance with the requirements of section A., above. The lead centralized organization shall then be responsible for preparing a comprehensive "Victim Impact Statement" as required by paragraph E.1.g. of this Directive.

C. In all cases involving allegations of product substitution, the Defense Criminal Investigative Organization shall:

1. Immediately notify the appropriate centralized organization of the beginning of the case.
2. Continue to provide to the centralized organization any information developed during the course of the investigation that indicates substituted products have been, or might be, provided to the Department of Defense.
3. Ensure that any request for testing of substituted products is provided to the centralized organization.

APPENDIX E TO PART 516—DEPARTMENT OF DEFENSE DIRECTIVE 5505.5, IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT

DOD Directive 5505.5 is contained in 32 CFR part 277.

APPENDIX F TO PART 516—GLOSSARY

Abbreviations

- AAFES: Army and Air Force Exchange Service
- AMEDD: Army Medical Department

Department of the Army, DoD

Pt. 516, App. F

AFARS: Army Federal Acquisition Regulation Supplement
ASBCA: Armed Services Board of Contract Appeals
AUSA: Assistant United States Attorney
CFR: Code of Federal Regulations
COE: United States Army Corps of Engineers
DA: Department of the Army
DFARS: Defense Federal Acquisition Regulation Supplement
DOD: Department of Defense
DOJ: Department of Justice. In this regulation, reference to DOJ means either United States Attorneys' Offices or The (main) Department of Justice in Washington, DC
DCIS: Defense Criminal Investigative Service
e.g.: An abbreviation for *exempli gratia*, meaning "for example"
et seq.: An abbreviation for *et sequentes*, meaning "and the following"
FAR: Federal Acquisition Regulation
FAX: Facsimile Transmission
FBI: Federal Bureau of Investigation
Fed. R. Civ. P.: Federal Rules of Civil Procedure
Fed. R. Crim. P.: Federal Rules of Criminal Procedure
FOIA: Freedom of Information Act
GAO: General Accounting Office
HQDA: Headquarters, Department of the Army
i.e.: An abbreviation for *id est*, meaning "that is"
IG: Inspector General
JA: Judge Advocate
MACOM: Major Command
MSPB: Merit Systems Protection Board
NAF: Nonappropriated Fund
OTJAG: Office of The Judge Advocate General
OSC: Office of Special Counsel
PFA: Procurement Fraud Advisor
PFCRA: Program Fraud Civil Remedies Act
PFD: Procurement Fraud Division
PFI: Procurement Fraud or Irregularities
RJA: Recovery Judge Advocate
SAUSA: Special Assistant U.S. Attorney
SJA: Staff Judge Advocate
TDY: temporary Duty
TJAG: The Judge Advocate General
UCMJ: Uniform Code of Military Justice
USACIDC: U.S. Army Criminal Investigation Command
USALSA: U.S. Army Legal Services Agency
USARCS: U.S. Army Claims Service
USATDS: U.S. Army Trial Defense Service
USMA: United States Military Academy
U.S.C.: United States Code

Terms

Active Duty

Full-time duty in the active military service of the United States. Includes: full-time training duty; annual training duty; active

duty for training; attendance, while in the active military service, at a school designated as a Service School by law or by the Secretary of the military department concerned; and, attendance, while in the active military service, at advanced civil schooling and training with industry. It does not include full-time National Guard duty under Title 32, United States Code.

Army Activities

Activities of or under the control of the Army, one of its instrumentalities, or the Army National Guard, including activities for which the Army has been designated the administrative agency, and those designated activities located in an area in which the Army has been assigned single service claims responsibility by DOD directive.

Army Property

Real or personal property of the United States or its instrumentalities and, if the United States is responsible therefore, real or personal property of a foreign government which is in the possession or control of the Army, one of its instrumentalities, or the Army National Guard, including property of an activity for which the Army has been designated the administrative agency, and property located in an area in which the Army has been assigned single service claims responsibility.

Centralized Organization

That organization of a DOD component responsible for coordinating and monitoring of criminal, civil, contractual, and administrative remedies relating to contract fraud. For DOD components other than the Army, the Centralized organizations are as follows: the Office of General Counsel, Department of the Air Force; the Office of the Inspector General, Department of the Navy; and the Office of General Counsel, Defense Logistics Agency.

Claim

The Government's right to recover money or property from any individual, partnership, association, corporation, governmental body, or other legal entity (foreign and domestic) except an instrumentality of the United States. A claim against several joint debtors or tortfeasors arising from a single transaction or incident will be considered one claim.

Claims Officer

A commissioned officer, warrant officer, or qualified civilian employee designated by the responsible commander and trained or experienced in the conduct of investigations and the processing of claims.

Corruption

Practices that include, but are not limited to, solicitation, offer, payment, or acceptance of bribes or gratuities; kickbacks; conflicts of interest; or unauthorized disclosure of official information related to procurement matters.

Counsel for Consultation

An attorney, provided by DA at no expense to the military member or civilian employee, who will provide legal advice to the witness concerning the authority of OSC, the nature of an OSC interview and their individual rights and obligations. The counsel may accompany the witness to the interview and advise the witness during the interview. No attorney-client relationship is established in this procedure.

Counsel for Representation

An attorney, provided by DA at no expense to the military member or civilian employee, who will act as the individual's lawyer in all contacts with the MSPB and the OSC during the pendency of the OSC investigation and any subsequent OSC initiated action before the MSPB. An attorney-client relationship will be established between the individual and counsel for representation.

DA Personnel

- DA personnel includes the following:
- a. Military and civilian personnel of the Active Army and The U.S. Army Reserve.
 - b. Soldiers of the Army National Guard of the United States (Title 10, U.S.C.) and, when specified by statute or where a Federal interest is involved, soldiers in the Army National Guard (Title 32, U.S.C.). It also includes technicians under 32 U.S.C. 709(a)(d).
 - c. USMA cadets.
 - d. Nonappropriated fund employees.
 - e. Foreign nationals who perform services for DA overseas.
 - f. Other individuals hired by or for the Army.

Debarment

Administrative action taken by a debarment authority to exclude a contractor from Government contracting and Government-approved subcontracting for a specified period.

Deciding Official (Chapter 7)

SJA, legal adviser, or Litigation Division attorney who makes the final determination concerning release of official information.

DOD Criminal Investigation Organizations

Refers to the USACIDC; the Naval Investigative Service; the U.S. Air Force Office of Special Investigations; and the Defense

Criminal Investigative Service, Office of the Inspector General, DOD.

Fraud

Any intentional deception of DOD (including attempts and conspiracies to effect such deception) for the purpose of inducing DOD action or reliance on that deception. Such practices include, but are not limited to, the following: bid-rigging; making or submitting false statements; submission of false claims; use of false weights or measures; submission of false testing certificates; adulterating or substituting materials; or conspiring to use any of these devices.

Improper or Illegal Conduct

- a. A violation of any law, rule, or regulation in connection with Government misconduct; or
- b. Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

Information Exempt From Release To The Public

Those categories of information which may be withheld from the public under one or more provisions of law.

Judge Advocate

An officer so designated (AR 27-1).

Legal Adviser

A civilian attorney who is the principal legal adviser to the commander or operating head of any Army command or agency.

Litigation

Legal action or process involving civil proceedings, *i.e.*, noncriminal.

Litigation in Which The United States Has an Interest

- a. A suit in which the United States or one of its agencies or instrumentalities has been, or probably will be, named as a party.
- b. A suit against DA personnel and arises out of the individual's performance of official duties.
- c. A suit concerning an Army contract, subcontract, or purchase order under the terms of which the United States may be required to reimburse the contractor for recoveries, fees, or costs of the litigation.
- d. A suit involving administrative proceedings before Federal, state, municipal, or foreign tribunals or regulatory bodies that may have a financial impact upon the Army.
- e. A suit affecting Army operations or which might require, limit, or interfere with official action.
- f. A suit in which the United States has a financial interest in the plaintiff's recovery.

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g. Foreign litigation in which the United States is bound by treaty or agreement to ensure attendance by military personnel or civilian employees.

Medical Care

Includes hospitalization, outpatient treatment, dental care, nursing service, drugs, and other adjuncts such as prostheses and medical appliances furnished by or at the expense of the United States.

Misdemeanor

An offense for which the maximum penalty does not exceed imprisonment for 1 year. Misdemeanors include those offenses categorized as petty offenses (18 USC §3559).

Official Information

All information of any kind, however stored, that is in the custody and control of the Department of Defense, relates to information in the custody and control of the Department, or was acquired by DoD personnel as part of their official duties or because of their official status within the Department while such personnel were employed by or on behalf of the Department or on active duty with the United States Armed Forces.

Operating Forces

Those forces whose primary missions are to participate in combat and the integral supporting elements thereof. Within DA, the operating forces consist of tactical units organized to conform to tables of organization and equipment (TOE).

Personnel Action

These include—

- a. Appointment.
- b. Promotion.
- c. Adverse action under 5 U.S.C. 7501 *et seq.* or other disciplinary or corrective action.
- d. Detail, transfer, or reassignment.
- e. Reinstatement.
- f. Restoration.
- g. Reemployment.
- h. Performance evaluation under 5 U.S.C. 4301 *et seq.*
- i. Decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other personnel action.
- j. Any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

Private Litigation

Litigation other than that in which the United States has an interest.

Process

The legal document that compels a defendant in an action to appear in court; e.g., in a civil case a summons or subpoena, or in a criminal case, a warrant for arrest, subpoena or summons.

Prohibited Personnel Practice

Action taken, or the failure to take action, by a person who has authority to take, direct others to take, recommend, or approve any personnel action—

- a. That discriminates for or against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation, as prohibited by certain specified laws.
- b. To solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests, or is under consideration for, any personnel action, unless the recommendation or statement is based on the personal knowledge or records of the person furnishing it, and consists of an evaluation of the work performance, ability, aptitude, or general qualifications of the individual, or an evaluation of the character, loyalty, or suitability of such individual.
- c. To coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity.
- d. To deceive or willfully obstruct any person with respect to such person's right to compete for employment.
- e. To influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.
- f. To grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.
- g. To appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in 5 U.S.C. 3110) of the employee, if the position is in the agency in which the employee is serving as a public official or over which the employee exercises jurisdiction or control as an official.
- h. To take or fail to take a personnel action with respect to any employee or applicant for employment as a reprisal for being a whistleblower, as defined below.

i. To take or fail to take a personnel action against an employee or applicant for employment as a reprisal for the exercise of any appeal right granted by law, rule, or regulation.

j. To discriminate for or against any employee or applicant for employment on the basis of conduct that does not adversely affect the performance of the employee or applicant or the performance of others.

k. To take or fail to take any other personnel action if the taking of, or failure to take, such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in 5 U.S.C. 2301.

Prosecutive Authorities

These include—

- a. A U.S. Attorney;
- b. A prosecuting attorney of a State or other political subdivision when the U.S. Attorney has declined to exercise jurisdiction over a particular case or class of cases; and
- c. An SJA of a general court-martial convening authority considering taking action against a person subject to the UCMJ.

Recovery JA

A JA or legal adviser responsible for assertion and collection of claims in favor of the United States for property claims and medical expenses.

Significant Case of Fraud and Corruption

A procurement fraud case involving an alleged loss of \$100,000 or more; all corruption cases related to procurement that involve bribery, gratuities, or conflicts of interest; any defective products or product substitution in which a serious hazard to health, safety or operational readiness is indicated, regardless of loss value; and, any procurement fraud case that has received or is expected to receive significant media coverage.

Staff Judge Advocate

An officer so designated (AR 27-1). The SJA of an installation, a command or agency reporting directly to HQDA, or of a major subordinate command of the U.S. Army Materiel Command, and the senior Army JA assigned to a joint or unified command.

Subpoena

A process to cause a witness to appear and give testimony, e.g., at a trial, hearing, or deposition.

Suspension

Administrative action taken by a suspending authority to temporarily exclude a contractor from Government contracting and Government-approved subcontracting.

Suspension and Debarment Authorities

Officials designated in DFARS, section 9.403, as the authorized representative of the Secretary concerned.

Tortfeasor

A wrongdoer; one who commits a tort.

APPENDIX G TO PART 516—FIGURES

This appendix contains figures cited or quoted throughout the text of this part.

Figure C-1. Sample Answer to Judicial Complaint, With Attached Certificate of Service

In the United States District Court for the Southern District of Texas Corpus Christi Division, No. C-90-100

John Doe, Plaintiff v. Togo D. West, Jr., Secretary of the Army, Defendant.

First Affirmative Defense

The Complaint is barred by laches.

Figure C-3. Sample Answer to Judicial Complaint, with attached Certificate of Service. This is intended to be used as a guide in preparing a draft Answer as part of a Litigation Report.

Answer

For its answer to the complaint, defendant admits, denies and alleges as follows:

1. Admits.
2. Denies.
3. Denies.
4. The allegations contained in paragraph 4 are conclusions of law to which no response is required; to the extent they may be deemed allegations of fact, they are denied.
5. Denies the allegations contained in the first sentence of paragraph 5; admits the allegations contained in the second sentence of paragraph 5; denies the remainder of the allegations in paragraph 5.
6. Denies the allegations in paragraph 6 for lack of knowledge or information sufficient to form a belief as to their truth.
7. Denies each allegation in the complaint not specifically admitted or otherwise qualified.

Prayer for Relief

The remainder of plaintiff's Complaint contains his prayer for relief, to which no answer is required. Insofar as an answer is required, denies that plaintiff is entitled to any relief whatsoever.

Defendant respectfully prays that the Court dismiss plaintiff's Complaint and award to defendant costs and such further relief as the Court deems proper.

Respectfully submitted,
Ronald M. Ford,
United States Attorney.

Department of the Army, DoD

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Roy A. Andersen,
Assistant United States Attorney, 606 N.
Carancaua, Corpus Christi, Texas 78476, (512)
884-3454.

Captain Christopher N. Jones,
Department of the Army, Office of the Judge,
Advocate General, 901 N. Stuart St., Suite
400, Arlington, Virginia 22203-1837, (703)
696-1666.

Certificate of Service

I hereby certify that a true and correct copy of Defendant's Answer has been placed in the mail, postage prepaid, this ___ day of _____, 1991, addressed to plaintiff's counsel as follows: Mr. Eugene Henderson, 777 Fourth Street, Corpus Christi, TX 78888.

Roy A. Andersen,
Assistant United States Attorney.

SAMPLE DA FORM 4

Figure C-3. Unsworn Declaration Under Penalty of Perjury Executed Within the United States

Declaration Under Penalty of Perjury

I am Private Paul Jones, currently assigned to Company B, 4th Battalion, 325th Parachute Infantry Regiment, Fort Bragg, North Carolina. I have personal knowledge of the following matters.

On the evening of 3 June 1970, I was present at the company party at Lake Popolopen when the accident occurred. I saw a bright, full moon that evening.

I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. §1746).

Executed on: _____
Paul Jones,
Private, U.S. Army.

Figure D-1. Format for a Request for a Representation Using an Unsworn Declaration Under Penalty of Perjury Executed Within the United States

Request for Representation

I request that the Attorney General of the United States, or his agent, designate counsel to defend me in my official and individual capacities in the case of *John Doe v. Private Paul Jones*, now pending in the U.S. District Court for the Eastern District of North Carolina. I have read the complaint filed in this case and I declare that all my actions were performed in my official capacity, within the scope of my official duties, and in a good faith belief that my actions conformed to the law. I am not aware of any pending related criminal investigation.

I understand the following: if my request for representation is approved, I will be represented by a U.S. Department of Justice attorney; that the United States is not required to pay any final adverse money judg-

ment rendered against me personally, although I can request indemnification; that I am entitled to retain private counsel at my own expense; and, that the Army expresses no opinion whether I should or should not retain private counsel.

I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. §1746).

Executed on: _____
Paul Jones,
Private, U.S. Army.

Figure D-2. Format for Scope of Employment Statement Using an Unsworn Declaration Under Penalty of Perjury Executed Outside the United States

Declaration

I am currently the Commander of HHC, 6th Armored Division, Bad Vilbel, Germany. I have read the allegations concerning Private Paul Jones in the complaint of *John Doe v. Private Paul Jones*, now pending in the U.S. District Court for the Eastern District of North Carolina.

At all times relevant to the complaint, I was Private Jones' company commander. His actions relevant to this case were performed within the scope of his official duties as Assistant Charge of Quarters, Company B, 4th Battalion, 325th Parachute Infantry Regiment, Fort Bragg, North Carolina.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. (28 U.S.C. §1746).

Executed on: _____
John Smith,
Captain, Infantry.

Figure D-3. Format for Contractor Request for Representation

Request for Representation

I am the President of the XYZ Corporation. I request the Attorney General of the United States designate counsel to defend me and my company in *Doe v. XYZ, Inc.*, now pending in the U.S. District Court for the Eastern District of North Carolina.

I understand that the assumption by the Attorney General of the defense of this case does not alter or increase the obligations of the United States under United States Contract No. WP-70-660415.

I further agree that such representation will not be construed as waiver or estoppel to assert any rights which any interested party may have under said contract.

Executed on: _____
D.D. Tango,
President, XYZ, Inc.

Figure G-1. Sample "Touhy" Compliance Letter

Department of the Army, Office of the Staff
Judge Advocate, Fort Smith, North Da-
kota 84165, 15 April 1993

Mr. T. Hudson Taylor,
Attorney At Law, 105 Hay Street, Whynot, ND
84167

Dear Mr. Taylor: We have learned that you subpoenaed Captain Roberta Selby to testify at a deposition in the case *Kramer v. Kramer*, currently filed in state court, and that you directed her to bring her legal assistance file concerning her client, SSG Kramer.

Under 32 CFR §§97.6(c), 516.35, and 516.40, the Army must authorize the appearance of its personnel or the production of official documents in private litigation. In this case, the Army cannot authorize Captain Selby to appear or produce the requested file absent the following:

You must request in writing her appearance and the production of the file in accordance with Department of Defense directives, 32 CFR §97.6(c), and Army regulations, 32 CFR §§516.34-516.40. The request must include the nature of the proceeding, 32 CFR §516.34(b), and the nature and relevance of the official information sought. *Id.* §516.35(d). We cannot act on your request until we receive the required information. *See, for example, United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951); *Boron Oil Co. v. Downie*, 873 F.2d 67 (4th Cir. 1989); *United States v. Bizzard*, 674 F.2d 1382 (11th Cir. 1982); *United States v. Marino*, 658 F.2d 1120 (6th Cir. 1981); *United States v. Allen*, 554 F.2d 398 (10th Cir. 1977).

To overcome Federal statutory restrictions on the disclosure of the requested file imposed by the Privacy Act, 5 U.S.C. §552a, you must provide either a written release authorization signed by the individual to whom the file pertains (that is, SSG Kramer) or a court ordered release signed by a judge of a court of competent jurisdiction. A subpoena signed by a clerk of court, notary, or other official is insufficient. *See, for example, Doe v. DiGenova*, 779 F.2d 74 (DC Cir. 1985).

In this case, because of the attorney-client relationship between Captain Selby and SSG Kramer, you must produce a written waiver of the attorney-client privilege from SSG Kramer. Because the privilege may protect both documents and testimony, Captain Selby may not divulge such information without SSG Kramer's consent. *See, for example, Rule of Professional Conduct for Army Lawyers* 1.6(a).

In addition to the above requirements, Captain Selby's supervisor must approve her absence from duty. *See* 32 CFR §516.43. In this regard, we suggest you take the deposition at Fort Smith. In any event, however, you or your client must pay all travel expenses, as this is purely private litigation and witness' appearance must be at no expense to the United States. *See id.* §516.48(c).

Finally, if Captain Selby does appear as a witness, she may only give factual testimony. She may not testify as an opinion or expert witness. This limitation is based on Department of Defense and Army policy that generally prohibits Government employees from appearing as expert witnesses in private litigation. *See id.* §§97.6(e), 516.42.

Our sole concern in this matter is to protect the interests of the United States Army; the Army will not block access to witnesses or documents to which you are lawfully entitled. So that the Army can adequately protect its interests in this matter, I request that you respond to this letter by 27 April 1993. If you have any questions, please call CPT Taylor at 919-882-4500.

Sincerely,
Robert V. Jackansi,
Major, JA, Chief, Administrative Law.

Figure G-2. Sample Fact Witness Approval Letter

Department of the Army, Office of the Staff
Judge Advocate, Fort Smith, North Da-
kota 84165, 15 April 1993

Mr. T. Hudson Taylor,
Attorney At Law, 105 Hay Street, Whynot, ND
84167

Dear Mr. Taylor: This letter responds to your request to interview and depose Captain Buzz Sawyer as a witness in *Morgan v. Jones*. Subject to the following conditions, your request is approved.

This grant of authority is limited to factual testimony only. Captain Sawyer may not testify as an expert witness. This limitation is based on Army policy prohibiting Government employees from appearing as expert witnesses in private litigation. *See* 32 CFR §516.42. Captain Sawyer may not provide official information that is classified, privileged, or otherwise protected from public disclosure.

The decision whether to testify in private litigation is within the discretion of the prospective witness. This authorization is also subject to the approval of the witness' supervisors to be absent during the period involved. Finally, because this is private litigation, the witness' participation must be at no expense to the United States. *See* 32 CFR §516.48.

If you have any questions, please call CPT Taylor at 919-882-4500.

Sincerely,
Robert V. Jackansi,
Major, JA, Chief, Administrative Law

Figure G-3. Sample Expert Witness Denial Letter

Department of the Army, Office of the Staff
Judge Advocate, Fort Smith, North Da-
kota 84165, 15 April 1993

Mr. T. Hudson Taylor,

Department of the Army, DoD

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Attorney At Law, 105 Hay Street, Whynot, ND 84167

Dear Mr. Taylor: This responds to your request for Mr. Charles Montrose to appear as an expert witness in private litigation: *Smithers v. ABC Video*. For the following reasons, the request is denied.

Army Regulation 27-40 forbids Army personnel from providing expert testimony in private litigation, with or without compensation, except under the most extraordinary circumstances. See 32 CFR §§97.6(e), 516.42. Several reasons support the exercise of strict control over such witness appearances.

The Army policy is one of strict impartiality in litigation in which the Army is not a named party, a real party in interest, or in which the Army does not have a significant interest. When a witness with an official connection with the Army testifies, a natural tendency exists to assume that the testimony represents the official view of the Army, despite express disclaimers to the contrary.

The Army is also interested in preventing the unnecessary loss of the services of its personnel in connection with matters unrelated to their official responsibilities. If Army personnel testify as expert witnesses in private litigation, their official duties are invariably disrupted, often at the expense of the Army's mission and the Federal taxpayer.

Finally, the Army is concerned about the potential for conflict of interest inherent in the unrestricted appearance of its personnel as expert witnesses on behalf of parties other than the United States. Even the appearance of such conflicts of interest seriously undermines the public trust and confidence in the integrity of our Government.

This case does not present the extraordinary circumstances necessary to justify the requested witness' expert testimony. You have demonstrated no exceptional need or unique circumstances that would warrant (his or her) appearance. The expert testimony desired can be secured from non-Army sources. Consequently, we are unable to grant you an exception to the Army's policy.

If you have any questions, please call me or CPT Taylor at 919-882-4500.

Sincerely,
Robert V. Jackansi,
Major, JA, Chief, Administrative Law.

Figure G-4. Sample of Doctor Approval Letter

Department of the Army, Office of the Staff Judge Advocate, Fort Smith, North Dakota 84165, 15 April 1993

Mr. T. Hudson Taylor,
Attorney At Law, 105 Hay Street, Whynot, ND 84167

Dear Mr. Taylor: This responds to your request to depose Dr. (MAJ) J. McDonald, Fort

Smith Medical Treatment Facility. Pursuant to 32 CFR §§516.33-516.49, you may depose him subject to the following conditions:

He may testify as to his treatment of his patient, Sergeant Rock, as to related laboratory tests he may have conducted, or other actions he took in the regular course of his duties.

He must limit his testimony to factual matters such as his observations of the patient or other operative facts, the treatment prescribed or corrective action taken, course of recovery or steps required for treatment of injuries suffered, or contemplated future treatment.

His testimony may not extend to hypothetical questions or to a prognosis. He may not testify as an "expert." This limitation is based on Department of Defense and Army policy prohibiting present or former military personnel and Army civilian employees from providing opinion or expert testimony concerning official information, subjects, or activities in private litigation. See 32 CFR §§97.6(e), 516.42.

The witnesses may not provide official information that is classified, privileged, or otherwise protected from public disclosure. To protect the Army's interests, CPT Taylor or another Army attorney will be present during the depositions.

To overcome restrictions imposed by the Privacy Act, 5 U.S.C. §552a, Dr. McDonald may not discuss matters derived from the patient's medical records absent the patient's written consent or a court order signed by a judge. A subpoena issued by someone other than a judge or magistrate is insufficient. See *Doe v. DiGenova*, 779 F.2d 74 (D.C. Cir. 1985); *Stiles v. Atlanta Gas Light Co.*, 453 F. Supp. 798 (N.D. Ga. 1978).

The decision whether to testify in private litigation is within the discretion of the witness, subject to the approval of his supervisors to be absent during the period involved.

Finally, because this is private litigation, the witnesses' participation must be at no expense to the United States. See 32 CFR §516.48.

If you have any questions, please call me or CPT Taylor at 919-882-4500.

Sincerely,
Robert V. Jackansi,
Major, JA, Chief, Administrative Law.

Figure H-1. Procurement Fraud Indicators

Procurement Fraud Indicators

1. During the identification of the government and services.
 - a. Need determinations for items currently scheduled for disposal or reprourement, or which have predetermined reorder levels.
 - b. Excessive purchase of "expendables" such as drugs or auto parts.
 - c. Inadequate or vague need assessment.

d. Frequent changes in the need assessment or determination.

e. Mandatory stock levels and inventory requirements appear excessive.

f. Items appear to be unnecessarily declared excess or sold as surplus, while same items are being reprocured.

g. It appears that an item or service is being purchased more as a result of aggressive marketing efforts rather than in response to a valid requirement.

h. Need determination appears to be unnecessarily tailored in ways that can only be met by certain contractors.

i. Items and services are continually obtained from the same source due to an unwarranted lack of effort to develop second sources.

2. During the development of the statements of work and specifications.

a. Statements of work and specifications appear to be intentionally written to fit the products or capabilities of a single contractor.

b. Statements of work, specifications, or sole source justifications developed by or in consultation with a preferred contractor.

c. Information concerning requirements and pending contracts is released only to preferred contractors.

d. Allowing companies and industry personnel who participated in the preparation of bid packages to perform on subsequent contracts in either a prime or subcontractor capacity.

e. Release of information by firms or personnel participating in design or engineering to companies competing for prime contract.

f. Prequalification standards or specifications appear designed to exclude otherwise qualified contractors or their productions.

g. Requirements appear split up to allow for rotating bids, giving each contractor his or her "fair share."

h. Requirements appear split up to meet small purchase requirements (that is, \$25,000) or to avoid higher levels of approval that would be otherwise required.

i. Bid specifications or statement of work appear inconsistent with the items described in the general requirements.

j. Specifications appear so vague that reasonable comparisons of estimate would be difficult.

k. Specifications appear inconsistent with previous procurements of similar items of services.

3. During the presolicitation phase.

a. Sole source justifications appear unnecessary or poorly supported.

b. Statements justifying sole source or negotiated procurements appear inadequate or incredible.

c. Solicitation documents appear to contain unnecessary requirements which tend to restrict competition.

d. Contractors or their representatives appear to have received advanced information related to the proposed procurement on a preferential basis.

4. During the solicitation phase.

a. Procurement appears to be processed so as to exclude or impede certain contractors.

b. The time for submission of bids appears to be unnecessarily limited so that only those with advance information have adequate time to prepare bids or proposals.

c. It appears that information concerning the procurement has been revealed only to certain contractors, without being revealed to all prospective competitors.

d. Bidders conferences are conducted in a way that apparently invites bid rigging, price fixing, or other improper collusion between contractors.

e. There is an apparent intentional failure to fairly publish notice of the solicitation.

f. Solicitation appears vague as to the details such as time, place and manner, of submitting acceptable bids.

g. There is evidence of improper communications or social contract between contractors and government personnel.

h. Controls over the number and destination of bid packages sent to interested bidders appear inadequate.

i. Indications that government personnel or their families may own stock or have some other financial interest in either a contractor or subcontractor.

j. Indications that government personnel are discussing possible employment for themselves or a family member with a contractor or subcontractor or indications that a proposal for future employment from a contractor or subcontractor to a government employee or his or her family members has not been firmly rejected.

k. Indications that any contractor has received special assistance in preparation of his or her bid or proposal.

l. It appears that a contract is given an expressed or implied reference to a specific subcontractor.

m. Failure to amend solicitation to reflect necessary changes or modifications.

5. During the submission of bids and proposals.

a. Improper acceptance of a late bid.

b. Documents, such as receipts, appear falsified to obtain acceptance of a late bid.

c. Improperly attempting to change a bid after other bidders prices are known.

d. Indications that mistakes have been deliberately planted in a bid to support correction after bid opening.

e. Withdrawal by a low bidder who may later become a subcontractor to a higher bidder who gets the contract.

f. Apparent collusion or bid rigging among the bidders.

g. Bidders apparently revealing their prices to each other.

- h. Required contractor certifications appear falsified.
- i. Information concerning contractor's qualifications, finances, and capabilities appears falsified.
- 6. During the evaluation of bids and proposals.
 - a. Deliberately losing or discarding bids of certain contractors.
 - b. Improperly disqualifying the bids or proposals of certain contractors.
 - c. Accepting apparently nonresponsive bids from preferred contractors.
 - d. Unusual or unnecessary contacts between government personnel and contractors during solicitation, evaluation, and negotiation.
 - e. Any apparently unauthorized release of procurement information to a contractor or to non-government personnel.
 - f. Any apparent favoritism in the evaluation of the bid or proposal of a particular contractor.
 - g. Apparent bias in the evaluation criteria or in the attitude or actions of the members of the evaluation panel.
- 7. During contract formation and administration.
 - a. Defective pricing by the contractor usually associated with submitting false cost and pricing data under the Truth in Negotiation Act.
 - b. Cost/Labor mischarging.
 - c. Product substitution.
 - d. Progress payment fraud. For more details on these subjects see DA PAM 27-153, Contract Law, paragraph 23-5.

Figure H-2. Guide for Preparing Remedies Plan

Guide for Preparing a Remedies Plan

(Date of Plan)

Section I (Administrative Data)

- A. Subject of Allegation.
- B. Principal Investigative Agency.
- C. Investigative Agency File Number.
- D. Subject's Location.
- E. Location Where Offense Took Place.
- F. Responsible Action Commander.
- G. Responsible MACOM.
- H. Contract Administrative Data (If Applicable):
 - 1. Contract Number.
 - 2. Type of Contract.
 - 3. Dollar Amount of Contract.
 - 4. Period of Contract.
- I. Principal Case Agent (Name and Telephone Number).
- J. Civilian Prosecutor (If Applicable) (Name, Address, and Telephone Number).
- K. Is Grand Jury Investigating This Matter? If So, Where is Grand Jury Located?
- L. Audit Agency Involved (If Applicable). Name and Telephone Number of Principal Auditor.

M. Suspense Date for Update of This Plan.

Section II (Summary of Allegations and Investigative Results to Date)

(Provide sufficient detail for reviewers of the plan to evaluate the appropriateness of the planned remedies. If information is "close-hold" or if grand jury secrecy applies, so state.)

Section III (Adverse Impact Statement)

(Describe any adverse impact on the DA/DOD mission. Adverse impact is described in DOD Directive 7050.5, paragraph E.1.g. Identify impact as actual or potential. Describe the impact in terms of monetary loss, endangerment to personnel or property, mission readiness, etc. This information should be considered in formulating your remedies as described below and provided to prosecutors for their use in prosecution of the offenses.)

Section IV (Remedies Taken and/or Being Pursued)

A. Criminal Sanctions. (As a minimum, address the following: Are criminal sanctions appropriate? If so, which ones? If not, why not? Has the local U.S. Attorney or other civilian prosecutor been notified and briefed? What actions have been taken or are intended? If and when action is complete, describe action and final results of the action. Other pertinent comments should be included.)

B. Civil Remedies. (As a minimum address the following: Which civil remedies are appropriate? Has the local U.S. Attorney or other civilian prosecutor been notified and briefed? How, when, where and by whom are the appropriate civil remedies implemented? If and when action is completed, describe action and final results. Other pertinent comments should be included.)

C. Contractual/Administrative Remedies. (As a minimum, address the following: Are contractual and administrative remedies appropriate? If so, which ones? If not, Why? If contractual or administrative remedies are considered appropriate, describe how, when, and by whom the remedies are implemented. If and when action is completed, describe action and results of the action. Other pertinent comments should be included.)

D. Restrictions on Remedies Action. (Comment as to why obvious remedies are not being pursued. For example, the U.S. Attorney requests suspension action held in abeyance pending criminal action.)

Section V (Miscellaneous Comments/
Information)

Section VI (Remedies Plan Participants)

(Record the name, grade, organization, and telephone number of all Remedies Plan participants.)

Section VII (MACOM Coordination
Comments)

(Record the name, grade, office symbol, and telephone number of all MACOM officials providing coordination comments; record the date when comments are submitted and append to the Remedies Plan the signed comments provided.)

MACOM Focal Point

(Record the name, grade, office symbol, and telephone number of the MACOM focal point.)

Section VIII (Coordination/Comments)

(Record the name, grade, organization, office symbol, and telephone number of all officials with whom you have coordinated the Remedies Plan or who have provided comments on your plan; append any comments provided to the Remedies Plan.)

*Figure H-3. Guide for Testing Defective Items
Under Criminal or Civil Investigation*Testing Defective Items Under Criminal or
Civil Investigation

1. Under no circumstances is testing to proceed unless the command has committed sufficient funding to cover the entire cost of the projected testing.

2. No testing will be initiated unless there has been a written request for the testing to the appropriate Procurement Fraud Advisor or a criminal investigator or Assistant United States Attorney or Department of Justice Attorney (AUSA is used in these procedures to indicate either an AUSA or Department of Justice attorney). If they have not already done so, criminal investigators should be requested to coordinate their testing requests with the AUSA overseeing the investigation.

3. Barring extraordinary circumstances, only one test will be conducted to support the criminal and civil recovery efforts of a procurement fraud/irregularity matter. Early coordination with the Civil Division of Department of Justice or the local United States Attorneys Office is necessary to ensure that testing funds are not wasted.

4. The request for testing should include a clear, concise statement of the purpose of the testing to include a statement of the allegations made and the contact number(s) involved. *Any test plan which requires destructive testing must be approved by the AUSA.*

5. No testing will be initiated unless a test plan has been developed which states the following:

- a. the contract number(s) involved
- b. the National Stock Number (NSN) of the item to be tested
- c. the purpose of the testing
- d. the alleged defect or the contractual requirement violated
- e. the CID report of investigation (ROI) number or the DCIS case number
- f. cost of the test (a cost proposal should be an attachment to the test plan)
- g. where the test will be conducted
- h. how the test will be conducted
- i. the name and telephone number of the test team leader
- j. the names of all test team members
- k. the approximate dates of the testing
- l. the date that completion of the test is required
- m. a clear statement of the desired product (that is test report, raw data, analysis of results, evaluation of test results)
- n. the PRON to fund the testing
- o. a retention plan.

6. The test plan shall be coordinated with the concurrence received in advance from the appropriate personnel in the Procurement Directorate, Product Assurance and Test Directorate, the Procurement Fraud Advisor, and the investigator/AUSA requesting the test. No testing will be initiated until the criminal investigator/AUSA who requested the testing has approved the test plan.

7. If the items tested are to be retained as evidence, the criminal investigator should arrange for retention of the evidence. While the Command will support evidence retention, this is primarily the responsibility of the criminal investigators. Agents should be advised that putting items in Code L or similar non-use status is insufficient to protect it from being released to the field. *A decision not to retain the tested items as evidence must have the approval of the AUSA.*

8. All items to be tested should be from a statistically valid random sample. The sample should conform with the inspection requirements of the contract or be in conformance with a random sample specifically developed for the instant test plan. It is recommended that a statistician be consulted to determine the feasibility of a random sample specifically created to support the test plan.

9. Results of testing should be available to Command and DA personnel for appropriate contractual and administrative remedies.

Any request for testing results that indicates that dissemination of the testing results will be limited by Rule 6(e) of the Federal Rules of Criminal Procedure is to be forwarded through the MACOM or AMC Procurement Fraud Coordinator to DA Procurement Fraud Division prior to the initiation of any testing.

10. Resolution of problems associated with testing requests should be conducted at the local level. In AMC the authority to refuse a testing request resides with the Office of Command Counsel. Any disputes which cannot be resolved at the local level will be forwarded to the AMC or MACOM Procurement Fraud Coordinator for resolution. This includes disputes regarding funding or any time sensitive issues.

11. Second requests for testing of the same item due to a change in the investigative plan require coordination by the PFA with the investigator and AUSA overseeing the investigation to determine the deficiencies in the earlier test. Disputes which cannot be resolved between the AUSA, PFA, and investigator regarding testing are to be forwarded simultaneously to the MACOM Procurement Fraud Coordinator and PFD for resolution. The procedures established in paragraphs 5 and 6 apply for second requests for testing with the additional requirement that the Assistant United States Attorney must be requested to approve the test plan.

Figure I-1. Guide for Seeking Legal Advice and Representation Before Office of Special Counsel

Guide for Seeking Legal Advice and Representation Before Office of Special Counsel

1. Overview

a. DA employees or military members asked to provide information (testimonial or documentary) to OSC may obtain legal advice through the Labor Counselor from DA attorneys concerning their rights and obligations. This includes assistance at any interviews with OSC investigators. However, an attorney-client relationship will not be established unless the employee or military member—

(1) Is suspected or accused by the OSC of committing a prohibited personnel practice or other illegal or improper act; and

(2) Has been assigned counsel by the DA General Counsel.

b. Any military member or employee who reasonably believes that he or she is suspected or has been accused by OSC of committing a prohibited personnel practice or other illegal or improper act may obtain legal representation from DA. The counsel assigned will be from another DOD component whenever a DA attorney is likely to face a conflict between the attorney's ethical obligation to the client and DA, or when

the suspected or accused individual has requested representation from another DOD component. Outside legal counsel may be retained by DA on behalf of the member or employee under unusual circumstances and only with the personal approval of the DOD General Counsel.

c. The DA General Counsel will determine whether a conflict is likely to occur if a DA attorney is assigned to represent a military member or civilian. If the DA General Counsel determines a conflict may occur, or if the suspected or accused employee has requested representation from another DOD component, the DA General Counsel will seek the assistance of another General Counsel in obtaining representation outside DA.

2. Requests for Representation

a. To obtain legal representation, military members or civilian employees must—

(1) Submit a written request for legal representation through the Labor and Employment Law Office, Office of the Judge Advocate General, Department of the Army, to DA General Counsel, explaining the circumstances that justify legal representation. Copies of all process and pleadings served should accompany the request.

(2) Indicate whether private counsel, at personal expense, has been retained.

(3) Obtain written certification from their supervisor that—

(a) They were acting within the scope of official duties; and

(b) DA has not initiated any adverse or disciplinary action against them for the conduct being investigated by the OSC.

b. Requests for DA legal representation must be approved by the DA General Counsel.

c. The conditions of legal representation must be explained and accepted in writing by the member or employee.

3. Limitations on Representation

a. DA will not provide legal representation with respect to a DA initiated disciplinary action against a civilian employee for committing or participating in a prohibited personnel practice or for engaging in illegal or improper conduct. This prohibition applies regardless of whether the participation or conduct is also the basis for the disciplinary action proposed by the OSC.

b. In certain situations, counsel provided by DA may be limited to representing the individual only with respect to some of the pending matters, if other specific matters of concern to the OSC or MSPB do not satisfy the requirements contained in this regulation.

4. Attorney-Client Relationship

a. An attorney-client relationship will be established and continued between the suspected or accused individual and assigned DA counsel.

b. In representing a DA employee or military member, the DA attorney designated as counsel will act as a vigorous advocate of the individual's legal interests before the OSC or MSPB. The attorney's professional responsibility to DA will be satisfied by fulfilling this responsibility to the employee or military member. Legal representation may be terminated only with the approval of the DA General Counsel and normally only on the basis of information not available at the time the attorney was assigned.

c. The attorney-client relationship may be terminated if the assigned DA counsel determines, with the approval of the DA General Counsel, that—

(1) The military member or civilian employee was acting outside the scope of his or her official duties when engaging in the conduct that is the basis for the OSC investigation or charge; and

(2) Termination is not in violation of the rules of professional conduct applicable to the assigned counsel.

d. The DA attorney designated as counsel may request relief from the duties of representation or counseling without being required to furnish explanatory information that might compromise confidential communications between the client and the attorney.

b. Requests for clarification of both questions and answers are appropriate to avoid misinterpretation.

c. Means to ensure verifications of an interview by OSC investigators are appropriate, whether or not the military member or civilian employee is accompanied by counsel. Tape recorders may only be used for this purpose when—

(1) The recorder is used in full view.

(2) All attendees are informed.

(3) The OSC investigator agrees to record the proceeding.

d. Any errors that appear in a written summary of an interview prepared by the investigator should be corrected before the member or employee signs the statement. The military member or civilian employee is not required to sign any written summary that is not completely accurate. A military member or civilian employee may receive a copy of the summary as a condition of signing.

5. Funding

This regulation authorizes cognizant DA officials to approve requests from military members or civilian employees for travel, per diem, witness appearances, or other departmental support necessary to ensure effective legal representation by the designated counsel.

6. Status

A military member's or civilian employee's participation in OSC investigations, MSPB hearings, and other related proceedings will be considered official departmental business for time and attendance requirements and similar purposes.

7. Advice to Witnesses

The following advice to military members and civilian employees questioned during the course of an OSC investigation may be appropriate in response to these frequent inquiries:

a. A witness may decline to provide a "yes" or "no" answer in favor of a more qualified answer when this is necessary to ensure accuracy in responding to an OSC interviewer's question.

PART 518—THE FREEDOM OF INFORMATION ACT PROGRAM

Subpart A—General Provisions

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APPENDIXES TO PART 518

APPENDIX A TO PART 518—REFERENCES.

APPENDIX B TO PART 518—ADDRESSING FOIA REQUESTS.

AUTHORITY: 5 U.S.C. 551, 552, 552a, 5101–5108, 5110–5113, 5115, 5332–5334, 5341–42, 5504–5509, 7154; 10 U.S.C. 130, 1102, 2320–2321, 2328; 18 U.S.C. 798, 3500; 31 U.S.C. 3710; 35 U.S.C. 181–188; 42 U.S.C. 2162; 44 U.S.C. 33; and Executive Order 12600.

SOURCE: 71 FR 9222, Feb. 22, 2006, unless otherwise noted.

Subpart A—General Provisions

§518.1 Purpose.

This part provides policies and procedures for implementation of the Freedom of Information Act (5 U.S.C. 552, as amended) and Department of Defense Directive (DoDD) 5400.7 and promotes uniformity in the Department of Defense (DoD) Freedom of Information Act (FOIA) Program. This Army regulation implements provisions for access and release of information from all Army information systems (automated and manual) in support of Army Information Management (AR 25–1).

§518.2 References.

Required and related publications are listed in Appendix A of this part.

§518.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this part are explained in the glossary of AR 25–55.

§518.4 Responsibilities.

(a) The Administrative Assistant to the Secretary of the Army (AASA) is responsible for issuing policy and establishing guidance for the Army FOIA Program. AASA has the responsibility to approve exceptions to this regulation that are consistent with controlling law and regulations. AASA may delegate the approval authority, in writing, to a division chief, under its supervision, within that agency in the grade of O6 or civilian equivalent.

(b) The Administrative Assistant to the Secretary of the Army, (AASA), The Records and Programs Agency, (RPA), Records Management and Declassification Agency (RMDA), is responsible for developing and recommending policy to AASA concerning the Army FOIA program and overall execution of the program under the policy and guidance of AASA.

(c) The Chief of Information Officer (CIO), G6 will provide oversight of the FOIA program as necessary in compliance with Federal Statutes, regulations, Office of Management and Budget (OMB), and the Office of Secretary of Defense (OSD).

(d) Heads of Army Staff agencies, field operating agencies, major Army commands (MACOMS), and subordinate commands are responsible for the supervision and execution of the FOIA program in functional areas and activities under their command.

(e) Heads of Joint Service agencies or commands for which the Army is the Executive Agent, or otherwise has responsibility for providing fiscal, logistical, or administrative support, will adhere to the policies and procedures in this regulation.

(f) Commander, Army and Air Force Exchange Service (AAFES), is responsible for the supervision of the FOIA program within that command pursuant to this part.

§518.5 Authority.

(a) This part governs written FOIA requests from members of the public. It does not preclude the release of personnel or other records to agencies or individuals in the Federal Government for use in official work.

(b) Soldiers and civilian employees of the Department of the Army (DA) may, as private citizens, request DA or other agencies' records under the FOIA. They must prepare requests at their own expense and on their own time. They may not use Government equipment, supplies, or postage to prepare personal FOIA requests. It is not necessary for soldiers or civilian employees to go through the chain of command to request information under the FOIA.

(c) Requests for DA records processed under the FOIA may be denied only in accordance with the FOIA (5 U.S.C.

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552(b)), as implemented by this part. Guidance on the applicability of the FOIA is also found in the Federal Acquisition Regulation (FAR).

(d) Release of some records may also be affected by the programs that created them. They are discussed in the following regulations:

(1) AR 20-1 (Inspector General activities and procedures);

(2) AR 27-10 (military justice);

(3) AR 27-20 (claims);

(4) AR 27-40 (litigation: release of information and appearance of witnesses);

(5) AR 27-60 (intellectual property);

(6) AR 36-2 (Government Accounting Office audits);

(7) AR 40-66, AR 40-68, and AR 40-400 (medical records);

(8) AR 70-31 (technical reports);

(9) AR 20-1, AR 385-40 and DA Pam 385-40 (aircraft accident investigations);

(10) AR 195-2 (criminal investigation activities);

(11) AR 190-45 (Military Police records and reports);

(12) AR 360-1 (Army public affairs: public information, general policies on release of information to the public);

(13) AR 380-5 and DoD 5200.1-R (national security classified information);

(14) AR 380-5 paragraph 7-101e (policies and procedures for allowing persons outside the Executive Branch to do unofficial historical research in classified Army records);

(15) AR 380-10 (Technology Transfer for disclosure of information and contacts with foreign representatives);

(16) AR 381-45 (U.S. Army Intelligence and Security Command investigation files);

(17) AR 385-40 (safety reports and records);

(18) AR 600-8-104 (military personnel information management records);

(19) AR 600-85 (alcohol and drug abuse records);

(20) AR 608-19 (family advocacy records); and

(21) AR 690 (series civilian personnel records, FAR, DoD Federal Acquisition Regulation Supplement (DFARS) and the Army Federal Acquisition Regulation Supplement (AFARS) procurement matters).

§518.6 Public information.

(a) *Public information.* The public has a right to information concerning the activities of its Government. Army policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A record requested by a member of the public who follows rules established by proper authority in DA shall not be withheld in whole or in part unless the record is exempt from mandatory partial or total disclosure under the FOIA. As a matter of policy, Army activities shall make discretionary disclosures of exempt records or information only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information. Activities must be prepared to present a sound legal basis in support of their determinations. In order that the public may have timely information concerning Army activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information that would not be withheld under the FOIA should continue to be honored through appropriate means without requiring the requester to invoke the FOIA.

(b) *FOIA handbook.* The Department of the Army Freedom of Information Act/Privacy Act (DA FOIA/PA) Office shall prepare, in addition to FOIA regulations, a handbook for the use of the public in obtaining information from its organizations. This handbook will be a short, simple explanation of what the FOIA is designed to do, and how a member of the public can use it to access government records. The DA FOIA/PA Office handbook will explain

the types of records that can be obtained through FOIA requests, why some records cannot, by law, be made available, and how the Army activity determines whether or not the record can be released. The handbook will also explain how to make a FOIA request, how long the requester can expect to wait for a reply, and appeal rights. The handbook will supplement other information locator systems, such as the Government Information Locator Service (GILS), and explain how a requester can obtain more information about those systems. The handbook will be available on paper and through electronic means and contain the following additional information, complete with electronic links to the below elements: the location of reading room and the types and categories of information available; the location of the World Wide Web page; a reference to the Army FOIA regulation and how to obtain a copy; a reference to the Army FOIA annual report and how to obtain a copy; and the location of the GILS page. The DA FOIA handbook, "A Citizen's Guide to Request Army Records Under the Freedom of Information Act (FOIA)," can be accessed on-line at <http://www.rmda.belvoir.army.mil/>. "The Major Automated Information Systems Descriptions" can be accessed at <http://www.defenselink.mil/pubs/foi>.

(c) *Control system.* A request for records that invokes the FOIA shall enter a formal control system designed to ensure accountability and compliance with the FOIA. Any request for Army records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this part, unless otherwise required.

§518.7 FOIA terms defined.

(a) *FOIA request.* A written request for Army records that reasonably describes the record(s) sought, made by any person, including a member of the public (U.S. or foreign citizen/entity), an organization, or a business, but not including a Federal Agency or a fugitive from the law, that either explicitly or implicitly invokes the FOIA, DoDD 5400.7, DoD 5400.7-R, this part, or Army Activity supplementing regulations or instructions. All requesters should also indicate a willingness to

pay fees associated with the processing of their request. Requesters may ask for a waiver of fees, but should also express a willingness to pay fees in the event of a waiver denial. Written requests may be received by postal service or other commercial delivery means, by facsimile, or electronically (such as e-mail). Requests received by facsimile or electronically must have a postal mailing address included since it may not be practical to provide a substantive response electronically. The request is considered properly received, or perfected, when the conditions in this paragraph have been met and the request arrives at the FOIA office of the Activity in possession of the records.

(b) *Agency record.* The products of data compilation, such as all books, papers, maps, photographs, and 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 United States Government under Federal law in connection with the transaction of public business and in DA possession and control at the time the FOIA request is made.

(1) The following are not included within the definition of the word "record": Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence; Anything that is not a tangible or documentary record, such as an individual's memory or oral communication; 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. Personal papers fall into three categories: Those created before entering Government service; private materials brought into, created, or received in the office that were not created or received in the course of transacting Government business; and work-related personal papers that are not used in the transaction of Government business in accordance with Public Law 86-36, National Security Information Exemption.

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(2) A record must exist and be in the possession and control of DA at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create or compile a record to satisfy a FOIA request.

(3) Hard copy or electronic records that are subject to FOIA requests under 5 U.S.C. 552 (a)(3), and that are available to the public through an established distribution system such as the Government Printing Office (GPO), FEDERAL REGISTER, National Technical Information Service (NTIS), or the Internet, normally need not be processed under the provisions of the FOIA. If a request is received for such information, Army Activities shall provide the requester with guidance, inclusive of any written notice to the public, on how to obtain the information. However, if the requester insists that the request be processed under the FOIA, then the request shall be processed under the FOIA. If there is any doubt as to whether the request must be processed, contact DA, FOIA/PA Office.

(c) *Army activity.* A specific area of organizational or functional responsibility within DA, authorized to receive and act independently on FOIA requests.

(d) *Initial denial authority (IDA).* An official who has been granted authority by the Secretary of the Army to deny records requested under the FOIA based on one or more of the nine categories of exemptions from mandatory disclosure. An IDA also: Denies a fee category claim by a requester; denies a request for expedited processing due to demonstrated compelling need; denies a request for a waiver or reduction of fees; reviews a fee estimate; and confirms that no records were located in response to a request.

(e) *Appellate authority.* The Secretary of the Army or designee having jurisdiction for this purpose over the record, or any of the other adverse determinations. The DA appellate authority is the Office of the Army General Counsel (OGC).

(f) *Administrative appeal.* A request by a member of the general public, made under the FOIA, asking the appellate authority of the Army to reverse a decision to: Withhold all or part of a re-

quested record; deny a fee category claim by a requester; deny a request for expedited processing due to demonstrated compelling need; deny a request for waiver or reduction of fees; deny a request to review an initial fee estimate; and confirm that no records were located during the initial search. Requesters also may appeal the failure to receive a response determination within the statutory time limits, a fee estimate, and any determination that the requester believes is adverse in nature.

(g) *Public interest.* The interest in obtaining official information that sheds light on an activity's performance of its statutory duties because the information falls within the statutory purpose of the FOIA to inform citizens about what their Government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens accumulated in various governmental files that reveals nothing about an agency's or official's own conduct.

(h) *Electronic record.* Records (including e-mail) that are created, stored, and retrievable by electronic means.

(i) *Federal agency.* As defined by 5 U.S.C. 552 (f)(1), a Federal agency is any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

(j) *Law enforcement investigation.* An investigation conducted by a command or activity for law enforcement purposes relating to crime, waste, fraud or national security. Such investigations may include gathering evidence for criminal prosecutions and for civil or regulatory proceedings.

§518.8 Freedom of Information requirements.

(a) *Compliance with the FOIA.* Army personnel are expected to comply with the FOIA, this part, and Army FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the Army FOIA Program and to create conditions that will promote public trust.

(b) *Openness with the public.* The DA shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(1) *Operations Security (OPSEC).* DA officials who release records under the FOIA must also consider OPSEC. The Army implementing directive is AR 530-1.

(2) *DA Form 4948-R.* This form lists references and information frequently used for FOIA requests related to OPSEC. Persons who routinely deal with the public (by telephone or letter) on such requests should keep the form on their desks as a guide.

(c) *Avoidance of procedural obstacles.* Army Activities shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DA records promptly. The Army shall provide assistance to requesters to help them understand and comply with procedures established by this part and any supplemental regulations published by the Army Activities. Coordination of referral of requests with DA FOIA/PA Office should be made telephonically in order to respond to the requester in a timelier manner. Requests will not be mailed to the DA FOIA/PA Office for disposition or coordination with other IDAs.

(d) *Prompt action on requests and final response determinations.* Generally, when a member of the public complies with the procedures established in this part or instructions for obtaining DA records, and after the request is received by the official designated to respond, Army Activities shall endeavor to provide a final response determination within the statutory 20 working days. If a significant number of requests, or the complexity of the requests prevent a final response determination within the statutory time period, Army Activities shall advise the requester of this fact, and explain how the request will be responded to within its multitrack processing system. A final response determination is notifi-

cation to the requester that the records are released or partially released, or will be released on a certain date, or the records are withheld under an appropriate FOIA exemption, or the records cannot be provided for one or more of the other reasons. Interim responses acknowledging receipt of the request, negotiations with the requester concerning the scope of the request, the response timeframe, and fee agreements are encouraged; however, such actions do not constitute a final response determination pursuant to the FOIA. If a request fails to meet minimum requirements as set forth, Activities shall contact the requester and inform the requester what would be required to perfect or correct the request, or to limit the scope to allow for the most expeditious response. The statutory 20 working day time limit applies upon receipt of a perfected or correct FOIA request. Before mailing a final response determination and those records or portions thereof deemed releasable, records custodians will obtain a written legal opinion from their servicing judge advocate concerning the releasability of the requested records. The legal opinion must cite specific exemptions, appropriate justification, and identify if the records were processed under the FOIA, PA (including the applicable systems notice), or both.

(1) *Multi-track processing.* When an Army Activity has a significant number of pending requests that prevents a response determination being made within 20 working days, the requests shall be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the requests, and whether the request qualifies for expedited processing. Army Activities may establish as many processing queues as they wish; however, as a minimum, three processing tracks shall be established, all based on a first-in, first-out concept, and rank ordered by the date of receipt of the request. One track shall be a processing queue for simple requests, one track for complex requests, and one track shall be a processing queue for expedited processing. Determinations as to whether a request is simple or complex shall be made by each Army Activity.

Army Activities shall provide a requester whose request does not qualify for the fastest queue an opportunity to limit the scope of the request in order to qualify for the fastest queue. This multitrack processing system does not obviate an Activity's responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(2) *Expedited processing.* A separate queue shall be established for requests meeting the test for expedited processing. Expedited processing shall be granted to a requester after the requester requests such and demonstrates a compelling need for the information. Notice of the determination as to whether to grant expedited processing in response to a requester's compelling need shall be provided to the requester within 10 calendar days after receipt of the request in the Army Activity's office that will determine whether to grant expedited processing. Once the Army Activity has determined to grant expedited processing, the request shall be processed as soon as practicable. Actions by Army Activities to initially deny or affirm the initial denial on appeal of a request for expedited processing and a failure to respond in a timely manner shall be subject to judicial review. Initial determination of denials of expedited processing will be immediately forwarded to the IDA for action. If the IDA upholds the denial, the requester will be informed of his or her right to appeal.

(i) *Imminent threat.* Compelling need means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(ii) *Alleged Federal Government activity.* Compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. An individual primarily engaged in disseminating information means a person whose primary activity involves publishing or otherwise disseminating information to the public. Representatives of the news media would normally qualify as individuals primarily

engaged in disseminating information. Other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public.

(iii) *General public interest.* Urgently needed means that the information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. However, information of historical interest only or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the news breaking nature of the information.

(iv) *Certified statement.* A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of his or her knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

(v) *Other reasons for expedited processing.* Another reason that merits expedited processing by Army FOIA offices is an imminent loss of substantial due process rights. A demonstration of imminent loss of substantial due process rights shall be made by a statement certified by the requester to be true and correct to the best of his or her knowledge. The statement mentioned in paragraph (iv) of this section must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access. Once the decision has been made to expedite the request for this reason, the request may be processed in the expedited processing queue behind those requests qualifying for compelling need.

(vi) *Administrative appeals.* These same procedures also apply to requests for expedited processing of administrative appeals.

(e) *Use of exemptions.* It is Army policy to make records publicly available, unless the record qualifies for exemption under one or more of the nine exemptions. Discretionary releases of information protected under the FOIA

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should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information. When Army activities determine to withhold information using one of the nine exemptions, the Department of Justice (DOJ) will defend the position unless it is found to be lacking a Sound Legal Basis for denial.

(1) Parts of a requested record may be exempt from disclosure under the FOIA. The proper DA official may delete exempt information and release the remainder to the requester. The proper official also has the discretion under the FOIA to release exempt information when appropriate; he or she must exercise this discretion in a reasonable manner, within regulations consistent with current policy considerations. The excised copies shall clearly reflect the denied information by the use of brackets, indicating the removal of information. Bracketed areas must be sufficiently removed so as to reveal no information. The best means to ensure illegibility is to cut out the information from a copy of the document and reproduce the appropriate pages.

(2) If the document is declassified, all classification markings shall be lined through with a single black line, which will allow the markings to be read. The document shall then be stamped "Unclassified."

(f) *Public domain.* Nonexempt records released under the authority of this part are considered to be in the public domain. Such records may also be made available in the DA reading room in paper form, as well as electronically, to facilitate public access. Exempt records disclosed without authorization by the appropriate Army FOIA official do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

(g) *Creating a record.* A record must exist and be in the possession and control of DA at the time of the search to be considered subject to this part and the FOIA. There is no obligation to

create or compile a record to satisfy a FOIA request. An Army Activity, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee that would be charged for providing the existing record. Fee assessments shall be in accordance with subpart F of this part.

(1) Concerning electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, Army Activities should apply a standard of reasonableness.

(2) If the capability exists to respond to the request, and the effort would be a business as usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach. As used in this sense, a significant expenditure of resources in both time and/or manpower that would cause a significant interference with the operation of the Army Activity's automated information system would not be a business as usual approach.

(h) *Description of requested record.* Identification of the record desired is the responsibility of the requester. The requester must provide a description of the desired record that enables the Government to locate the record with a reasonable amount of effort. In order to assist Army Activities in conducting more timely searches, requesters should endeavor to provide as much identifying information as possible. When an Army Activity receives a request that does not reasonably describe the requested record, it shall contact the requester and afford the requester the opportunity to perfect the request. Army Activities are not obligated to act on the request until the requester

perfects the request. When practicable, Army Activities shall contact the requester to aid in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act. DA FOIA officials will reply to unclear requests by: Describing the defects in the requests; explaining the types of information described below, and ask the requester for such information; and explaining that no action will be taken on the request until the requester replies to the letter.

(1) The following guidelines are provided to deal with generalized requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories: Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date of record creation, and originator; Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(2) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit an organized, non random search based on the Army Activity's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit an inference of the Category I elements needed to conduct such a search.

(3) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records in a PA system of records that can be retrieved by personal identifiers need be searched. However, if an Army Activity has reason to believe that records on the requester may exist in a record system other than a PA system, the Army Activity shall search that system under the provisions of the FOIA. In either case, Army Activities may request a reasonable description of the records desired before searching for such records under the provisions of the FOIA and the PA. If the record is re-

quired to be released under the FOIA, the Privacy Act does not bar its disclosure.

(4) The previous guidelines notwithstanding, the decision of the Army Activity concerning reasonableness of description must be based on knowledge of its files. If the description enables Army Activity personnel to locate the record with reasonable effort, the description is adequate. The fact that a FOIA request is broad or burdensome in its magnitude does not, in and of itself, entitle an Army Activity to deny the request on the ground that it does not reasonably describe the records sought. The key factor is the ability of the Army Activity's staff to reasonably ascertain and locate which records are being requested.

(i) *Referrals.* The Army FOIA referral policy is based upon the concept of the originator of a record making a release determination on its information. If an Army Activity receives a request for records originated by another Army Activity, it will contact the Army Activity to determine if it also received the request, and if not, obtain concurrence from the other Army Activity to refer the request. An Army Activity shall refer a FOIA request for a classified record that it holds to another Army Activity, DoD Component, or agency outside the DoD, if the record originated in another Army Activity or DoD Component or outside agency, or if the classification is derivative. In this situation, provide the record and a release recommendation on the record with the referral action. In either situation, the requester shall be advised of the action taken, unless exempt information would be revealed. While referrals to originators of information result in obtaining the best possible decision on release of the information, the policy does not relieve Army Activities from the responsibility of making a release decision on a record should the requester object to referral of the request and the record. Should this situation occur, Army Activities shall still coordinate with the originator of the information prior to making a release determination. A request received by an Army Activity having no records responsive to a request shall be referred routinely to another Army Activity, if

the other Army Activity has reason to believe it has the requested records. Prior to notifying a requester of a referral to another Army Activity, the Army Activity receiving the initial request shall consult with the other Army Activity to determine if that Army Activity's association with the material is exempt. If the association is exempt, the Army Activity receiving the initial request will protect the association and any exempt information without revealing the identity of the protected Army Activity. The protected Army Activity should be responsible for submitting the justifications required in any litigation. Any Army Activity receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester. Army Activities making referrals of requests for records shall include with the referral, a point of contact by name, a telephone number, and an e-mail address. If the office receiving the FOIA request does not know where the requested records are located, that activity will contact the DA, FOIA/PA Office, to determine the office where the request should be referred.

(1) An Army Activity shall refer for response directly to the requester a FOIA request for a record that it holds to another Army Activity or agency outside the Army, if the record originated in the other Army Activity or outside agency. Whenever a record or a portion of a record is referred to another Army Activity or to a Government Agency outside of the Army for a release determination and direct response, the requester shall be informed of the referral, unless it has been determined that notification would reveal exempt information. Referred records shall only be identified to the extent consistent with security requirements.

(2) An Army Activity may refer a request for a record that it originated to another Army Activity or agency when the other Army Activity or agency has a valid interest in the record, or the record was created for the use of the other Army Activity or agency. In such situations, provide the record and a release recommendation on the record with the referral action. Include a point of contact with the telephone

number. An example of such a situation is a request for audit reports prepared by the U.S. Army Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor shall be at the discretion of the contracting officer. A FOIA request shall be referred to the appropriate Army Activity and the requester shall be notified of the referral, unless exempt information would be revealed. Another example is a record originated by an Army Activity or agency that involves foreign relations, and could affect an Army Activity or organization in a host foreign country. Such a request and any responsive records may be referred to the affected Army Activity or organization for consultation prior to a final release determination within DA.

(3) Within DA, an Army Activity shall ordinarily refer a FOIA request and a copy of the record it holds but that originated with another Army Activity or that contains substantial information obtained from another Army Activity, to that Activity for direct response, after direct coordination and obtaining concurrence from the Activity. The requester then shall be notified of such referral. Army Activities shall not, in any case, release or deny such records without prior consultation with the other Army Activity.

(4) Army Activities that receive referred requests shall answer them in accordance with the time limits established by the FOIA, this part, and their multitrack processing queues, based upon the date of initial receipt of the request at the referring Activity or agency.

(5) Agencies outside DA that are subject to the FOIA.

(i) An Army Activity may refer a FOIA request for any record that originated in an agency outside DA or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the Army Activity must respond to the request.

(ii) An Army Activity shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records

that are on loan to DA for a specific purpose, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside agency desires anonymity, an Army Activity may only respond directly to the requester after coordination with the outside agency.

(6) Army Activities that receive requests for records of the National Security Council (NSC), the White House, or the White House Military Office (WHMO) shall process the requests. Army records in which the NSC or White House has a concurrent reviewing interest, and NSC, White House, or WHMO records discovered in Army Activity's files shall be forwarded through DA, FOIA/PA Office, to the Washington Headquarters Services, Office For Freedom of Information and Security Review (OFOISR). The OFOISR shall coordinate with the NSC, White House, or WHMO and return the records to the originating agency after coordination.

(7) To the extent referrals are consistent with the policies expressed by this section, referrals between offices of the same Army Activity are authorized.

(8) On occasion, the DA receives FOIA requests for Government Accountability Office (GAO) records containing Army information. Even though the GAO is outside the Executive Branch, and not subject to the FOIA, all FOIA requests for GAO documents containing Army information received either from the public or on referral from the GAO shall be processed under the provisions of the FOIA.

(j) *Authentication.* Records provided under this part shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function. This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. Army Activities may charge for the service at a rate of \$5.20 for each authentication.

(k) *Records management.* FOIA records shall be maintained and disposed of in accordance with the National Archives and Records Administration (NARA)

General Records Schedule and DoD Component records schedules.

(1) *Record-keeping requirements in accordance with the Army Records Information Management System (ARIMS).* The records listed below are required by ARIMS in the conduct of the daily business of the Army to provide adequate and proper documentation to protect the rights and interests of individuals and the Federal Government. The full description of the records and their disposition is found at <https://www2.arims.army.mil>.

(1) FOIA requests, access, and denials;

(2) FOIA administrative files;

(3) FOIA appeals;

(4) FOIA controls;

(5) FOIA reports;

(6) Access to information files;

(7) Safeguarded nondefense information releases;

(8) Nonsafeguarded information releases;

(9) Unauthorized disclosure reports;

(10) Acknowledgement; and

(11) Initial Denial Authority designations/appointments.

(m) *Relationship between the FOIA and the Privacy Act (PA).* Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records, nor are all of them aware of appeal procedures. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the below guidelines are provided to ensure that requesters receive the greatest amount of access rights under both Acts.

(1) If the record is required to be released under the FOIA, the PA does not bar its disclosure. Unlike the FOIA, the PA applies only to U.S. citizens and aliens lawfully admitted for permanent residence.

(2) Requesters who seek records about themselves contained in a PA system of records and who cite or imply only the PA, will have their requests processed under the provisions of both the PA and the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1) and if the records, or any portion thereof, are exempt under the FOIA, the requester

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shall be so advised with the appropriate PA and FOIA exemption. Appeals shall be processed under both Acts.

(3) Requesters who seek records about themselves that are not contained in a Privacy Act system of records and who cite or imply the PA will have their requests processed under the provisions of the FOIA, since the PA does not apply to these records. Appeals shall be processed under the FOIA.

(4) Requesters who seek records about themselves that are contained in a PA system of records and who cite or imply the FOIA or both Acts will have their requests processed under the provisions of both the PA and the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1) and if the records, or any portion thereof, are exempt under the FOIA, the requester shall be so advised with the appropriate PA and FOIA exemption. Appeals shall be processed under both Acts.

(5) Requesters who seek access to agency records that are not part of a PA system of records, and who cite or imply the PA and FOIA, will have their requests processed under the FOIA since the PA does not apply to these records. Appeals shall be processed under the FOIA. Requesters who seek access to agency records and who cite or imply the FOIA will have their requests and appeals processed under the FOIA.

(6) Requesters shall be advised in the final response letter, which Act(s) was (were) used, inclusive of appeal rights as outlined in paragraphs (m)(1) through (5) of this section.

(n) *Non-responsive information in responsive records.* Army Activities shall interpret FOIA requests liberally when determining which records are responsive to the requests, and may release non-responsive information. However, should Army Activities desire to withhold non-responsive information, the following steps shall be accomplished:

(1) Consult with the requester, and ask if the requester views the information as responsive, and if not, seek the requester's concurrence to delete the non-responsive information without a

FOIA exemption. Reflect this concurrence in the response letter.

(2) If the responsive record is unclassified, and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all non-responsive and responsive information that is not exempt. For non-responsive information that is exempt, notify the requester that even if the information were determined responsive, it would likely be exempt under (state appropriate exemption(s)). Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

(3) If the responsive record is classified, and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all unclassified responsive and non-responsive information that is not exempt. The classified, non-responsive information need not be reviewed for declassification at this point. Advise the requester that even if the classified information were determined responsive, it would likely be exempt under 5 U.S.C. 552(b)(1), and other exemptions if appropriate. Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

(o) *Honoring form or format requests.* Army Activities shall provide the record in any form or format requested by the requester if the record is readily reproducible in that form or format. Army Activities shall make reasonable efforts to maintain their records in forms or formats that are reproducible. In responding to requests for records, Army Activities shall make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of the Army Activities' automated information system. Such determinations shall be made on a case-by-case basis.

Subpart B—FOIA Reading Rooms**§ 518.9 Reading room.**

(a) *Reading room location.* The DA shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the records described in paragraphs (b)(1) through (4) of this section. In addition to the records described, DA may elect to place other records in their reading room, and also make them electronically available to the public. The Army may share reading room facilities with DoD Components if the public is not unduly inconvenienced, and also may establish decentralized reading rooms. When appropriate, the cost of copying may be imposed on the person requesting the material in accordance with the provisions of subpart F of this part. The Army FOIA Public Reading Room is operated by the DA, FOIA/PA Office.

(b) *Record availability.* The FOIA requires that records described in 5 U.S.C. 552(a)(2)(A), (B), (C), and (D) created on or after November 1, 1996, shall be made available electronically, as well as in hard copy in the FOIA reading room for inspection and copying, unless such records are published and copies are offered for sale. All portions determined to be exempt in accordance with 5 U.S.C. 552 (reference (a)) shall be deleted from all 5 U.S.C. 552(a)(2) records made available to the general public. In every case, justification for the deletion must be fully explained in writing, and the extent of such deletion shall be indicated on the record that is made publicly available, unless such indication would harm an interest protected by an exemption under which the deletion was made. If technically feasible, the extent of the deletion in electronic records or any other form of record shall be indicated at the place in the record where the deletion was made. However, the Army may publish in the FEDERAL REGISTER a description of the basis upon which it will delete identifying details of particular types of records to avoid clearly unwarranted invasions of privacy, or competitive harm to business submitters. In appropriate cases, the Army may refer to this description rather than write a separate justification for each deletion.

5 U.S.C. 552(a)(2)(A), (B), (C), and (D) records are:

(1) *(a)(2)(A) records.* Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications;

(2) *(a)(2)(B) records.* Statements of policy and interpretations that have been adopted by the agency that are not published in the FEDERAL REGISTER; and

(3) *(a)(2)(C) records.* Administrative staff manuals and instructions, or portions thereof that establish Army policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the Army. Examples of manuals and instructions not normally made available are:

(i) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases; and

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and intelligence activities.

(4) *(a)(2)(D) records.* Those 5 U.S.C. 552(a)(3) records, which because of the nature of the subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. These records are referred to as FOIA-processed (a)(2) records.

(i) Army Activities shall decide on a case by case basis whether records fall into this category, based on previous experience of the Army Activity with similar records; particular circumstances of the records involved, including their nature and the type of information contained in them; or the identity and number of requesters and whether there is widespread press, historic, or commercial interest in the records.

(ii) This provision is intended for situations where public access in a timely

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manner is important, and it is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. Army Activities may remove the records from this access medium when the appropriate officials determine that access is no longer necessary.

(iii) Should a requester submit a FOIA request for FOIA-processed (a)(2) records, and insist that the request be processed, Army Activities shall process the FOIA request. However, Army Activities have no obligation to process a FOIA request for 5 U.S.C. 552(a)(2)(A), (B), and (C) records because these records are required to be made public and not FOIA-processed under paragraph (a)(3) of the FOIA.

§ 518.10 “(a)(2)” materials.

(a) The DA FOIA/PA Office shall maintain in the facility an index of materials described in paragraphs (b)(1) through (4) of § 518.9, that are issued, adopted, or promulgated after July 4, 1967. No “(a)(2)” materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967 need not be indexed, but must be made available upon request if not exempted under this part.

(b) The DA FOIA/PA Office shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of “(a)(2)” materials or supplements thereto unless it publishes in the FEDERAL REGISTER an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in subpart F of this part.

(c) Each index of “(a)(2)” materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material.

Case name and numbering arrangements, however, may also be included for Army convenience.

(d) A general index of FOIA-processed (a)(2) records shall be made available to the public, both in hard copy and electronically.

§ 518.11 Other materials.

(a) Any available index of Army material published in the FEDERAL REGISTER, such as material required to be published by section 552(a)(1) of the FOIA, shall be made available in the Army FOIA Public Reading Room, and electronically to the public.

(b) Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, “(a)(1)” materials shall, when feasible, be made available to the public in FOIA reading rooms for inspection and copying, and by electronic means. Examples of “(a)(1)” materials are descriptions of an agency’s central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

Subpart C—Exemptions

§ 518.12 General.

Records that meet the exemption criteria of the FOIA may be withheld from public disclosure and need not be published in the FEDERAL REGISTER, made available in a library reading room, or provided in response to a FOIA request.

§ 518.13 FOIA exemptions.

The following types of records may be withheld in whole or in part from public disclosure under the FOIA, unless otherwise prescribed by law. A discretionary release of a record to one requester shall prevent the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. However, a FOIA exemption may be invoked to withhold information that is similar or related to that which has been the subject of a discretionary release. In applying exemptions, the identity of the

requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest. However, if the subject of the record is the requester for the record and the record is contained in a PA system of records, it may only be denied to the requester if withholding is both authorized by AR 25-71 and by a FOIA exemption.

(a) *Number 1 (5 U.S.C. 552 (b)(1))*. Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations, such as DoD 5200.1-R. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1-R apply. If the information qualifies as exemption 1 information, there is no discretion regarding its release. In addition, this exemption shall be invoked when the following situations are apparent:

(1) The fact of the existence or non-existence of a record would itself reveal classified information. In this situation, Army Activities shall neither confirm nor deny the existence or non-existence of the record being requested. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist, and a "refusal to confirm or deny" when a record does exist will itself disclose national security information.

(2) Compilations of items of information that are individually unclassified may be classified if the compiled information reveals additional association or relationship that meets the standard for classification under an existing executive order for classification and DoD 5200.1-R, and is not otherwise revealed in the individual items of information.

(b) *Number 2 (5 U.S.C. 552(b)(2))*. Those related solely to the internal personnel rules and practices of the DoD or any

of its Components. This exemption has two profiles, high (b)(2) and low (b)(2). Activities are encouraged to consult the DA, FOIA/PA Office, and the U.S. DoJ "Freedom of Information Act Guide & Privacy Act Overview" for a more in depth discussion on the legal history of the use of the low (b)(2) exemption. When only a minimal Government interest would be affected (administrative burden), Army Activities shall apply the sound legal basis standard regarding disclosure of the information. Army Activities shall apply the low 2 exemption as applicable.

(1) Records qualifying under high (b)(2) are those containing or constituting statutes, rules, regulations, orders, manuals, directives, instructions, security classification guides, and sensitive but unclassified information related to America's homeland security and critical infrastructure information the release of which would allow circumvention of these records thereby substantially hindering the effective performance or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records of a significant function of the DA. Examples include:

(i) Those operating rules, guidelines, and manuals for Army investigators, inspectors, auditors, or examiners that must remain privileged in order for the Army Activity to fulfill a legal requirement;

(ii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion; and

(iii) Computer software, the release of which would allow circumvention of a statute, DoD or Army rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be closely examined to ensure a circumvention possibility exists.

(2) Records qualifying under the low (b)(2) profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order

to disclose the records. Examples include rules of personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings. Army Activities shall apply the low 2 exemption as applicable.

(c) *Number 3 (5 U.S.C. 552(b)(3))*. Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. The DA, FOIA/PA Office, maintains a list of (b)(3) statutes used within the DoD, and provides updated lists of these statutes to Army Activities on a periodic basis. A few examples of such statutes are:

(1) Personnel in Overseas, Sensitive, or Routinely Deployable Units: non-disclosure of personally identifying information, 10 U.S.C. 130(b). Additionally, the names and duty addresses (postal and/or e-mail) of Army military and civilian personnel who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy and may also be withheld in accordance with FOIA Exemption 3. Names and duty addresses (postal and/or e-mail) published in telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under this exemption, in accordance with 10 U.S.C. 130 'Personnel in Overseas, Sensitive, or Routinely Deployable Units';

(2) Classification and Declassification of Restricted Data, 42 U.S.C. 2162;

(3) Disclosure of Classified Information, 18 U.S.C. 798(a);

(4) Authority to Withhold from Public Disclosure Certain Technical Data, 10 U.S.C. 130 and DoDD 5230.25;

(5) Confidentiality of Medical Quality Assurance Records: Qualified Immunity for Participants, 10 U.S.C. 1102(f);

(6) Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information, 10 U.S.C. 128;

(7) Protection of Intelligence Sources and Methods, 50 U.S.C. 403-3(c)(6);

(8) Prohibition on Release of Contractor Submitted Proposals, 10 U.S.C. 2305(g);

(9) Restrictions on Disclosing and Obtaining Contractor Bid or Proposal Information or Source Selection Information, 41 U.S.C. 423; and

(10) Secrecy of Certain Inventions and Filing Applications in a Foreign Country, 35 U.S.C. 181-188. Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(d) *Number 4 (5 U.S.C. 552(b)(4))*. Those containing trade secrets or commercial or financial information that an Army Activity receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information, impair the Government's ability to obtain necessary information in the future, or impair some other legitimate Government interest. Commercial or financial information submitted on a voluntary basis, absent any exercised authority prescribing criteria for submission is protected without any requirement to show competitive harm. If the information qualifies as exemption 4 information, there is no discretion in its release. Examples include:

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals set forth in or incorporated by reference in a contract entered into between the Army Activity and the offeror that submitted the proposal, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data. Additionally, when

the provisions of 10 U.S.C. 2305(g) and 41 U.S.C. 423 are met, certain proprietary and source selection information may be withheld under exemption 3;

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

(3) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged;

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the DA;

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress;

(6) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320-2311 and DoD Federal Acquisition Regulation Supplement (DFARS), subpart 27.4. Technical data developed exclusively with Federal funds may be withheld under Exemption Number 3 if it meets the criteria of 10 U.S.C. 130 and DoDD 5230.25;

(7) Computer software, which is copyrighted in accordance with 17 U.S.C. 106, 'Exclusive rights in Copyrighted Works, the disclosure of which would have an adverse impact on the potential market value of a copyrighted work; and

(8) Proprietary information submitted strictly on a voluntary basis, absent any exercised authority prescribing criteria for submission. Examples of exercised authorities pre-

scribing criteria for submission are statutes, Executive Orders, regulations, invitations for bids, requests for proposals, and contracts. Submission of information under these authorities is not voluntary.

(e) *Number 5 (5 U.S.C. 552(b)(5))*. Those containing information considered privileged in litigation, primarily under the deliberative process privilege. Except as provided in paragraphs (e)(1) through (5) of this section, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters that are reflected in deliberative records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e)), or within or among Army Activities. In order to meet the test of this exemption, the record must be both deliberative in nature, as well as part of a decision-making process. Merely being an internal record is insufficient basis for withholding under this exemption. Also potentially exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege. Discretionary disclosure decisions should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information.

(1) Examples of the deliberative process include:

(i) The non-factual portions of staff papers, to include after-action reports, lessons learned, and situation reports containing staff evaluations, advice, opinions, or suggestions;

(ii) Advice, suggestions, or evaluations prepared on behalf of the DA by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations;

(iii) Those non-factual portions of evaluations by DoD Component personnel of contractors and their products;

(iv) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or

functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions;

(v) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interest;

(vi) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more Army Activities, when these records have traditionally been treated by the courts as privileged against disclosure in litigation; and

(vii) Planning, programming, and budgetary information that is involved in the defense planning and resource allocation process.

(2) If any such intra- or inter-agency record or reasonably segregable portion of such record hypothetically would be made available routinely through the discovery process in the course of litigation with the Army, then it should not be withheld under the FOIA. If, however, the information hypothetically would not be released at all, or would only be released in a particular case during civil discovery where a party's particularized showing of need might override a privilege, then the record may be withheld. Discovery is the formal process by which litigants obtain information from each other for use in the litigation. Consult with legal counsel to determine whether exemption 5 material would be routinely made available through the discovery process.

(3) Intra- or inter-agency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through discovery, and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(4) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(5) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(f) *Number 6 (5 U.S.C. 552(b)(6))*. Information in personnel and medical files, as well as similar personal information in other files, and lists of personally identifying information of Army personnel, that, if disclosed to a requester, other than the person about whom the information is about, would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of Records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties. If the information qualifies as exemption 6 information, there is no discretion regarding its release.

(1) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(i) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information; and

(ii) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(2) Army components shall ordinarily withhold lists of names (including active duty military, civilian employees, contractors, members of the National

Guard and Reserves, and military dependents) and other personally identifying information, including lists of e-mail addresses of personnel currently or recently assigned within a particular component, unit, organization, or office within the Army. Home addresses, including private e-mail addresses, are normally not releasable without the consent of the individuals concerned. This includes lists of home addresses and military quarters' addresses without the occupant's name.

(i) *Privacy Interest.* A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

(ii) The right to privacy of deceased persons is not entirely settled, but the majority rule is that death extinguishes their privacy rights. However, particularly sensitive, graphic, personal details about the circumstances surrounding an individual's death may be withheld when necessary to protect the privacy interests of surviving family members. Even information that is not particularly sensitive in and of itself may be withheld to protect the privacy interests of surviving family members if disclosure would rekindle grief, anguish, pain, embarrassment, or cause a disruption of their peace of minds. Additionally, the deceased's social security number should be withheld since it is used by the next of kin to receive benefits. Disclosures of the deceased's social security number may be made to the immediate next of kin.

(iii) A clearly unwarranted invasion of the privacy of third parties identified in a personnel, medical or similar record constitutes a basis for deleting those reasonably segregable portions of that record. When withholding third party personal information from the subject of the record and the record is contained in a Privacy Act system of records, consult with legal counsel.

(iv) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, Army Activities shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a "Glomar" response, and exemption 6 must be cited in the response. Additionally, in order to ensure personal privacy is not violated during referrals, Army Activities shall coordinate telephonically or in person with other Army Activities or DoD Components or Federal Agencies before referring a record that is exempt under the "Glomar" concept. See *Phillippi v. CIA*, 546 F.2d 1009 (DC Cir. 1976).

(v) A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information. Refusal to confirm or deny should not be used when:

(A) The person whose personal privacy is in jeopardy has provided the requester a waiver of his or her privacy rights;

(B) The person initiated or directly participated in an investigation that lead to the creation of an agency record seeks access to that record; or

(C) The person whose personal privacy is in jeopardy is deceased, the Agency is aware of that fact, and disclosure would not invade the privacy of the deceased's family.

(g) *Number 7 (5 U.S.C. 552(b)(7)).* Records or information compiled for law enforcement purposes, *i.e.*, civil, criminal, or military, including the implementation of Executive Orders or regulations issued pursuant to law. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes. With the exception of parts (C) and (F), this exemption is discretionary. If information qualifies as exemption (7)(C) or

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(7)(F) information, there is no discretion in its release.

(1) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(i) Could reasonably be expected to interfere with law enforcement proceedings (5 U.S.C. 552(b)(7)(A));

(ii) Would deprive a person of the right to a fair trial or to an impartial adjudication (5 U.S.C. 552(b)(7)(B));

(iii) Could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a living person, or to surviving family members of an individual identified in such a record (5 U.S.C. 552(b)(7)(C));

(iv) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, Activities shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a "Glomar" response, and exemption (7)(C) must be cited in the response. Additionally, in order to ensure personal privacy is not violated during referrals, Army Activities shall coordinate with other Army Activities or DoD Components or Federal Agencies before referring a record that is exempt under the "Glomar" concept;

(v) A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information;

(vi) Refusal to confirm or deny should not be used when the person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or the person whose personal privacy is in jeopardy is deceased, and the Agency is aware of that fact and disclosure would not invade the privacy of the deceased's family;

(vii) Could reasonably be expected to disclose the identity of a confidential

source, including a source within DoD, a State, local, or foreign agency or authority, or any private institution that furnishes the information on a confidential basis; and could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation (5 U.S.C. 552(b)(7)(D));

(viii) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law (5 U.S.C. 552(b)(7)(E)); or

(ix) Could reasonably be expected to endanger the life or physical safety of any individual (5 U.S.C. 552(b)(7)(F)).

(2) Some examples of exemption 7 are:

(i) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related Government litigation or adjudicative proceedings;

(ii) The identity of firms or individuals being investigated for alleged irregularities involving contracting with the DoD when no indictment has been obtained or any civil action filed against them by the United States; and

(iii) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within an Army Activity or a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within an Army Activity or a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(3) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500), is not diminished.

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(4) Excluded from exemption 7 are two situations applicable to DoD. (Activities considering invoking an exclusion based on the following scenarios should first consult through legal counsel, to the DoJ, Office of Information and Privacy (DoJ OIP).

(i) Whenever a request is made that involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Activities may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such a situation, the response to the requester will state that no records were found.

(ii) Whenever informant records maintained by a criminal law enforcement organization within an Army Activity or a DoD Component under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the Activity may treat the records as not subject to the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to 5 U.S.C. 552(b)(7), the response to the requester will state that no records were found.

(h) *Number 8 (5 U.S.C. 552 (b)(8))*. Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) *Number 9 (5 U.S.C. 552 (b)(9))*. Those containing geological and geophysical information and data (including maps) concerning wells.

Subpart D—For Official Use Only

§ 518.14 General.

Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public

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because disclosure would cause harm to an interest protected by one or more FOIA exemptions 2 through 9 (see Subpart C of this part) shall be considered as being for official use only (FOUO). No other material shall be considered FOUO and FOUO is not authorized as an additional form of classification to protect national security interests. Additional information on FOUO and other controlled, unclassified information may be found in DoD 5200.1-R, "Information Security Program" or by contacting the DA FOIA/PA Office.

Subpart E—Release and Processing Procedures

§ 518.15 General provisions.

(a) Since the policy of the DoD is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for an Army record made under the provisions of 5 U.S.C. 552 (a)(3) of the FOIA may be denied only when:

(1) The record is subject to one or more of the exemptions of the FOIA;

(2) The record has not been described well enough to enable the Army Activity to locate it with a reasonable amount of effort by an employee familiar with the files; or

(3) The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the Army Activity concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request, or a statement certifying under the penalty of perjury that their identity is true and correct may be required. Additionally, written consent of the subject of the record is required for disclosure from a PA system of records, to include the subject's attorney.

(4) Release of information under the FOIA can have an adverse impact on OPSEC. The Army implementing directive for OPSEC is AR 530-1. It requires that OPSEC points of contact be named for all HQDA staff agencies and for all commands down to battalion level. The FOIA official for the staff

agency or command will use DA Form 4948-R to announce the OPSEC/FOIA advisor for the command. Persons named as OPSEC points of contact will be OPSEC/FOIA advisors. Command OPSEC/FOIA advisors should implement the policies and procedures in AR 530-1, consistent with this part and with the following considerations:

(i) Documents or parts of documents properly classified in the interest of national security must be protected. Classified documents may be released in response to a FOIA request only under AR 380-5, Chapter III. AR 380-5 provides that if parts of a document are not classified and can be segregated with reasonable ease, they may be released, but parts requiring continued protection must be clearly identified.

(ii) The release of unclassified documents could violate national security. When this appears possible, OPSEC/FOIA advisors should request a classification evaluation of the document by its proponent under AR 380-5, paragraphs 2-204, 2-600, 2-800, and 2-801. In such cases, other FOIA exemptions may also apply.

(iii) A combination of unclassified documents, or parts of them, could combine to supply information that might violate national security if released. When this appears possible, OPSEC/FOIA advisors should consider classifying the combined information per AR 380-5, paragraph 2-211.

(iv) A document or information may not be properly or currently classified when a FOIA request for it is received. In this case, the request may not be denied on the grounds that the document or information is classified except in accordance with Executive Order 12958 as amended, section 1.6(d), and AR 380-5, paragraph 2-204, and with approval of the Army OGC.

(5) OPSEC/FOIA advisors will; advise persons processing FOIA requests on related OPSEC requirements; help custodians of requested documents prepare requests for classification evaluations; and help custodians of requested documents identify the parts of documents that must remain classified under this section and AR 380-5.

(6) OPSEC/FOIA advisors do not, by their actions, relieve FOIA personnel and custodians processing FOIA re-

quests of their responsibility to protect classified or exempted information.

(b) The provisions of the FOIA are reserved for persons with private interests as opposed to U.S. Federal Agencies seeking official information. Requests from private persons will be made in writing, and should clearly show all other addressees within the Federal Government to which the request was also sent. This procedure will reduce processing time requirements, and ensure better inter- and intra-agency coordination. However, if the requester does not show all other addressees to which the request was also sent, Army Activities shall still process the request. Army Activities should encourage requesters to send requests by mail, facsimile, or by electronic means. Disclosure of records to individuals under the FOIA is considered public release of information, except as provided in this paragraph. DA officials will release the following records, upon request, to the persons specified below, even though these records are exempt from release to the general public. The statutory 20 working day limit applies.

(1) *Medical records.* Commanders or chiefs of medical treatment facilities will release information:

(i) On the condition of sick or injured patients to the patient's relatives to the extent permitted by law and regulation.

(ii) That a patient's condition has become critical to the nearest known relative or to the person the patient has named to be informed in an emergency.

(iii) That a diagnosis of psychosis has been made to the nearest known relative or to the person named by the patient.

(iv) On births, deaths, and cases of communicable diseases to local officials (if required by local laws).

(v) Copies of records of present or former soldiers, dependents, civilian employees, or patients in DA medical facilities will be released to the patient or to the patient's representative on written request. The attending physician can withhold records if he or she thinks that release may injure the patient's mental or physical health; in that case, copies of records will be released to the patient's next of kin or

legal representative or to the doctor or dentist chosen by the patient. If the patient is adjudged insane, or dies, the copies will be released, on written request, to the patient's next of kin or legal representative.

(vi) Copies of records may be given to a Federal or State hospital or penal institution if the person concerned is an inmate or patient there.

(vii) Copies of records or information from them may be given to authorized representatives of certain agencies. The National Academy of Sciences, the National Research Council, and other accredited agencies are eligible to receive such information when they are engaged in cooperative studies, with the approval of The Surgeon General of the Army. However, certain information on drug and alcohol use cannot be released. AR 600-85 covers the Army's substance abuse program.

(viii) Copies of pertinent parts of a patient's records can be furnished to the staff judge advocate or legal officer of the command in connection with the Government's collection of a claim. If proper, the legal officer can release this information to the tortfeasor's insurer without the patient's consent.

NOTE: Information released to third parties must be accompanied by a statement of the conditions of release. The statement will specify that the information not be disclosed to other persons except as privileged communication between doctor and patient.

(2) *Military personnel records.* Military personnel records will be released under these conditions:

(i) DA must provide specific information about a person's military service (statement of military service) in response to a request by that person or with that person's written consent to his or her legal representative;

(ii) Papers relating to applications for, designation of beneficiaries under, and allotments to pay premiums for, National Service Life Insurance or Serviceman's Group Life Insurance will be released to the applicant or to the insured. If the insured is adjudged insane (evidence of an insanity judgment must be included) or dies, the records will be released, on request, to designated beneficiaries or to the next of kin;

(iii) Copies of DA documents that record the death of a soldier, a depend-

ent, or a civilian employee will be released, on request, to that person's next of kin, life insurance carrier, and legal representative. A person acting on behalf of someone else concerned with the death (e.g., the executor of a will) may also obtain copies by submitting a written request that includes evidence of his or her representative capacity. That representative may give written consent for release to others; or

(iv) Papers relating to the pay and allowances or allotments of a present or former soldier will be released to the soldier or his or her authorized representative. If the soldier is deceased, these papers will be released to the next of kin or legal representatives.

(3) *Civilian personnel records.* Civilian Personnel Officers (CPO) with custody of papers relating to the pay and allowances or allotments of current or former civilian employees will release them to the employee or his or her authorized representative. If the employee is deceased, these records will be released to the next of kin or legal representative. However, a CPO cannot release statements of witnesses, medical records, or other reports or documents pertaining to compensation for injuries or death of a DA civilian employee.

(4) *Accused persons.* Release of information to the public concerning accused persons before determination of the case. Such release may prejudice the accused's opportunity for a fair and impartial determination of the case. The following procedures apply:

(i) The following information concerning persons accused of an offense may be released by the convening authority to public news agencies or media. The accused's name, grade or rank, unit, regular assigned duties, and other information as allowed by AR 25-71, paragraph 3-3a. The substance or text of the offense of which the person is accused. The identity of the apprehending or investigating agency and the length or scope of the investigation before apprehension. The factual circumstances immediately surrounding the apprehension, including the time and place of apprehension, resistance, or pursuit. The type and place of custody, if any;

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(ii) *Information that will not be released.* Before evidence has been presented in open court, subjective observations or any information not incontrovertibly factual will not be released. Background information or information relating to the circumstances of an apprehension may be prejudicial to the best interests of the accused, and will not be released unless it serves a law enforcement function. The following kinds of information will not be released: Observations or comments on an accused's character and demeanor, including those at the time of apprehension and arrest or during pretrial custody. Statements, admissions, confessions, or alibis attributable to an accused, or the fact of refusal or failure of the accused to make a statement. Reference to confidential sources, investigative techniques and procedures, investigator notes, and activity files. This includes reference to fingerprint tests, polygraph examinations, blood tests, firearms identification tests, or similar laboratory tests or examinations. Statements as to the identity, credibility, or testimony of prospective witnesses. Statements concerning evidence or argument in the case, whether or not that evidence or argument may be used at the trial. Any opinion on the accused's guilt. Any opinion on the possibility of a plea of guilty to the offense charged, or of a plea to a lesser offense;

(iii) *Other considerations.* Photographing or televising the accused. DA personnel should not encourage or volunteer assistance to news media in photographing or televising an accused or suspected person being held or transported in military custody. DA representatives should not make photographs of an accused or suspect available unless a law enforcement function is served. Requests from news media to take photographs during courts-martial are governed by AR 360-1;

(iv) *Fugitives from justice.* This section does not restrict the release of information to enlist public aid in apprehending a fugitive from justice; or

(v) *Exceptional cases.* Permission to release information from military personnel records to public news agencies or media may be requested from The

Judge Advocate General (TJAG). Requests for information from military personnel records will be processed according to this part.

(5) *Litigation, tort claims, and contract disputes.* Release of information or records under this section are subject to the time limitations prescribed by the FOIA. The requester must be advised of the reasons for nonrelease or referral.

(i) *Litigation.* Each request for a record related to pending litigation involving the United States will be referred to the staff judge advocate or legal officer of the command. He or she will promptly inform the Litigation Division, U.S. Army Legal Services Agency (USALSA), of the substance of the request and the content of the record requested. (Mailing address: U.S. Army Litigation Center, 901 N. Stuart Street, Arlington, VA 22203-1837. If information is released for use in litigation involving the United States, the Chief, Army Litigation Division (AR 27-40, para 1-4d) must be advised of the release. He or she will note the release in such investigative reports. Information or records normally exempted from release (*i.e.*, personnel and medical records) may be releasable to the judge or court concerned, for use in litigation to which the United States is not a party. Refer such requests to the local staff judge advocate or legal officer, who will coordinate it with the Litigation Center, USALSA.

(ii) *Tort claims.* A claimant or a claimant's attorney may request a record that relates to a pending administrative tort claim filed against the DA. Refer such requests promptly to the claims approving or settlement authority that has monetary jurisdiction over the pending claim. These authorities will follow AR 27-20. The request may concern an incident in which the pending claim is not as large as a potential claim; in such a case, refer the request to the authority that has monetary jurisdiction over the potential claim. A potential claimant or his or her attorney may request information under circumstances clearly indicating that it will be used to file a tort claim, though none has yet been filed. Refer such requests to the staff judge advocate or legal officer of the command.

That authority, when subordinate, will promptly inform the Chief, U.S. Army Claims Service (USACS), of the substance of the request and the content of the record. (Mailing address: U.S. Army Claims Service, ATTN: JACS-TCC, Fort George G. Meade, MD 20755-5360. IDA officials who receive requests will refer them directly to the Chief, USACS. They will also advise the requesters of the referral and the basis for it. The Chief, USACS, will process requests according to this part and AR 27-20, paragraph 1-10.

(iii) *Contract disputes.* Each request for a record that relates to a potential contract dispute or a dispute that has not reached final decision by the contracting officer will be treated as a request for procurement records and not as litigation. However, the officials will consider the effect of release on the potential dispute. Those officials may consult with the USALSA, Contract Appeals Division. (Mailing address: U.S. Army Legal Services Agency, ATTN: JALS-CA, 901 North Stuart Street, Arlington, VA 22203. If the request is for a record that relates to a pending contract appeal to the Armed Services Board of Contract Appeals, or to a final decision that is still subject to appeal (*i.e.*, 90 days have not lapsed after receipt of the final decision by the contractor) then the request will be: Treated as involving a contract dispute; and referred to the USALSA, Contract Appeals Division.

(6) *Special nuclear material.* Dissemination of unclassified information concerning physical protection of special nuclear material.

(i) Unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material, is prohibited under 10 U.S.C. 128.

(ii) This prohibition shall be applied by the Deputy Chief of Staff, G-3 as the IDA, to prohibit the dissemination of any such information only if and to the extent that it is determined that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and se-

curity by significantly increasing the likelihood of illegal production of nuclear weapons, theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(iii) In making such a determination, Army personnel may consider what the likelihood of an illegal production, theft, diversion, or sabotage would be if the information proposed to be prohibited from dissemination were at no time available for dissemination.

(iv) Army personnel shall exercise the foregoing authority to prohibit the dissemination of any information described so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security, and upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons, theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(v) Army employees shall not use this authority to withhold information from the appropriate committees of Congress.

(7) *Names and duty addresses.* Lists of names, including telephone directories, organizational charts, and/or staff directories published by installations or activities, and other personally identifying information will ordinarily be withheld when requested under the FOIA. This does not preclude a discretionary release of names and duty information of personnel who, by the nature of their position and duties, frequently interact with the public, such as general officers, public affairs officers, and other personnel designated as official command spokespersons. The IDA for telephone directories is delegated to the DA, FOIA/PA Office. Public Affairs Offices may, after careful analysis, release information determined to have legitimate news value, such as notices of personnel reassignments to new units or installations within the continental United States, results of selection/promotion boards, school graduations/completions, and

awards and similar personal achievements. They may release the names and duty addresses of key officials, if such release is determined to be in the interests of advancing official community relations functions.

(c) *Requests from government officials.* Requests from officials of State or local Governments for Army Activity records shall be considered the same as any other requester. Requests from members of Congress not seeking records on behalf of a Congressional Committee, Subcommittee, either House sitting as a whole, or made on behalf of their constituents shall be considered the same as any other requester. Requests from officials of foreign governments shall be considered the same as any other requester; however, Army Intelligence elements are statutorily prohibited from releasing records responsive to requests made by any foreign government or a representative of a foreign government. Requests from officials of foreign governments that do not invoke the FOIA shall be referred to appropriate foreign disclosure channels and the requester so notified.

(d) *Privileged release outside of the FOIA to U.S. government officials.* Records exempt from release to the public under the FOIA may be disclosed in accordance with Army regulations to agencies of the Federal Government, whether legislative, executive, or administrative, as follows:

(1) In response to a request of a Committee or Subcommittee of Congress, or to either House sitting as a whole in accordance with DoDD 5400.4. The Army implementing directive is AR 1-20. Commanders or chiefs will notify the Chief of Legislative Liaison of all releases of information to members of Congress or staffs of congressional committees. Organizations that in the normal course of business are required to provide information to Congress may be excepted. Handle requests by members of Congress (or staffs of congressional committees) for inspection of copies of official records as follows:

(i) National security classified records, follow AR 380-5;

(ii) Civilian personnel records, members of Congressional Committees, Subcommittees, or Joint Committees

may examine official personnel folders to the extent that the subject matter falls within their established jurisdictions, as permitted by 5 CFR 297.401(i);

(iii) *Information related to disciplinary action.* This paragraph refers to records of trial by courts-martial; nonjudicial punishment of military personnel under the Uniform Code of Military Justice, Article 15; nonpunitive measures such as administrative reprimands and admonitions; suspensions of civilian employees; and similar documents. If DA has specific instructions on the request, the following will apply. Subordinate commanders will not release any information without securing the consent of the proper installation commander. The installation commander may release the information unless the request is for a classified or "FOUO" document. In that case the commander will refer the request promptly to the Chief of Legislative Liaison for action, including the recommendations of the transmitting agency and copies of the requested records with the referral.

(iv) *Military personnel records.* Only HQDA can release information from these records. Custodians will refer all requests from Congress directly and promptly to the Chief of Legislative Liaison, HQDA, Washington DC 20310-1600.

(v) *Criminal investigation records.* Only the Commanding General, U.S. Army Criminal Investigation Command (USACIDC), can release any USACIDC-originated criminal investigation file. For further information, see AR 195-2.

(vi) *Other exempt records.* Commanders or chiefs will refer requests for all other categories of exempt information directly to the Chief of Legislative Liaison. They will include a copy of the material requested and, as appropriate, recommendations concerning release or denial.

(vii) *All other records.* The commander or chief with custody of the records will furnish all other information promptly; to other Federal Agencies, both executive and administrative, as determined by the head of an Army Activity or designee; or in response to an order of a Federal court, Army Activities shall release information along with a description of the restrictions on its release to the public;

(viii) *Disciplinary actions and criminal investigations.* Requests for access to, or information from, the records of disciplinary actions or criminal investigations will be honored if proper credentials are presented. Representatives of the Office of Personnel Management may be given information from personnel files of employees actually employed at organizations or activities. Each such request will be considered on its merits. The information released will be the minimum required in connection with the investigation being conducted.

(ix) *Other types of requests.* All other official requests received by DA elements from agencies of the executive branch (including other military departments) will be honored, if there are no compelling reasons to the contrary. If there are reasons to withhold the records, the requests will be submitted for determination of the propriety of release to the appropriate addresses shown in Appendix B of this part.

(2) Army Activities shall inform officials receiving records under the provisions of this section that those records are exempt from public release under the FOIA. Army Activities also shall advise officials of any special handling instructions. Classified information is subject to the provisions of DoD 5200.1-R, and information contained in Privacy Act systems of records is subject to DoD 5400.11-R.

(e) *Consultation with affected DoD component.* (1) When an Army Activity receives a FOIA request for a record in which an affected Army or DoD organization (including a Combatant Command) has a clear and substantial interest in the subject matter, consultation with that affected Army or DoD organization is required. As an example, where an Army Activity receives a request for records related to DoD operations in a foreign country, the cognizant Combatant Command for the area involved in the request shall be consulted before a release is made. Consultations may be telephonic, electronic, or in hard copy.

(2) The affected Activity shall review the circumstances of the request for host-nation relations, and provide, where appropriate, FOIA processing assistance to the responding DoD Component

regarding release of information. Responding Army Activities shall provide copies of responsive records to the affected DoD Component when requested. The affected DoD Component shall receive a courtesy copy of all releases in such circumstances.

(3) Nothing in §518.19 shall impede the processing of the FOIA request initially received by an Army Activity.

§518.16 Initial determinations.

(a) *Initial denial authority.* The DA officials are designated as the Army's only IDAs. Only an IDA, his or her delegate, or the Secretary of the Army can deny FOIA requests for DA records. Each IDA will act on direct and referred requests for records within his or her area of functional responsibility. (See the proper AR in the 10 series for full discussions of these areas. Included are records created or kept within the IDA's area of responsibility; records retired by, or referred to, the IDA's headquarters or office; and records of predecessor organizations. If a request involves the areas of more than one IDA, the IDA to whom the request was originally addressed will normally respond to it; however, the affected IDAs may consult on such requests and agree on responsibility for them. IDAs will complete all required coordination at initial denial level. This includes classified records retired to the NARA when a mandatory declassification review is necessary. Requests and/or responsive documents should not be sent to the DA FOIA/PA Office for initial denial authority or to forward to other offices within the DA.

(b) FOIA requesters may ultimately appeal if they are dissatisfied with adverse determinations. It is crucial to forward complete packets to the IDAs. Ensure cover letters list all attachments and describe from where the records were obtained, *i.e.*, a PA system of records (including the applicable systems notice), or other. If a FOIA action is complicated, include a chronology of events to assist the IDA in understanding what happened in the course of processing the FOIA request. If a file does not include documentation described below, include the tab,

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and insert a page marked "not applicable" or "not used." The order and contents of FOIA file attachments follow: (Tab A or 1) The original FOIA request and envelope (if applicable); (Tab B or 2) The response letter; (Tab C or 3) Copies of all records entirely released, single-sided; (Tab D or 4) Copies of administrative processing documents, including extension letters and "no records" certificates, in chronological order; (Tab E or 5) Copies of all records partially released or entirely denied, single-sided. For partially released records, mark in yellow highlighter (or other readable highlighter) those portions withheld; and (Tab F or 6) Legal opinions(s).

(c) The initial determination of whether to make a record available or grant a fee waiver upon request may be made by any suitable official designated by the Army Activity in published regulations. The presence of the marking "FOUO" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under this part is applicable and should be invoked. IDAs may delegate all or part of their authority to a division chief under its supervision within the Agency in the grade of 05/civilian equivalent. Requests for delegation authority below this level must be submitted, after coordination, to the DA FOIA/PA Office, with detailed justification, for approval. Such delegations must not slow FOIA actions. If an IDA's delegate denies a FOIA or fee waiver request, the delegate must clearly state that he or she is acting for the IDA and identify the IDA by name and position in the written response to the requester. IDAs will send only the names, offices, and telephone numbers of their delegates to the DA, FOIA/PA Office. IDAs will keep this information current.

(d) The officials designated by Army Activities to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matters that are considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or par-

tially withhold a record, if it appears that the withholding action may be challenged in the media. A FOIA release or denial action, appeal, or court review may generate public or press interest. In such case, the IDA (or delegate) should consult the Chief of Public Affairs or the command or organization PAO. The IDA should inform the PAO contacted of the issue and obtain advice and recommendations on handling its public affairs aspect. Any advice or recommendations requested or obtained should be limited to this aspect. Coordination must be completed within the statutory 20 working day FOIA response limit. (The point of contact for the Army Chief of Public Affairs is HQDA (SAPA-OSR), Washington DC 20310-1500). If the request involves actual or potential litigation against the United States, release must be coordinated with The Judge Advocate General (TJAG).

(e) The following officials are designated IDAs for the areas of responsibility outlined below:

(1) The Administrative Assistant to the Secretary of the Army is authorized to act for the Secretary of the Army on requests for all records maintained by the Office of the Secretary of the Army and its serviced activities as well as requests requiring the personal attention of the Secretary of the Army. This also includes civilian Equal Employment Opportunity (EEO) actions. (See DCS, G-1 for military Equal Opportunity (EO) actions). The Administrative Assistant to the Secretary of the Army has delegated its authority to the Chief Attorney and Legal Services Directorate, U.S. Army Resources & Programs Agency. (See DCS, G-1 for military Equal Opportunity (EO) actions).

(2) The Assistant Secretary of the Army (Financial Management and Comptroller) is authorized to act on requests for finance and accounting records. Requests for CONUS finance and accounting records should be referred to the Defense Finance and Accounting Service (DFAS). The Chief Attorney and Legal Services Directorate, acts on requests for non-finance and accounting records of the Assistant Secretary of the Army (Financial Management and Comptroller).

(3) The Assistant Secretary of the Army (Acquisition, Logistics, & Technology) is authorized to act on requests for procurement records other than those under the purview of the Chief of Engineers and the Commander, U.S. Army Materiel Command. The Chief Attorney and Legal Services Directorate, acts on requests for non-procurement records of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).

(4) The Deputy Assistant Secretary of the Army (Civilian Personnel Policy)/Director of Civilian Personnel, Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs) is authorized to act on requests for civilian personnel records, personnel administration and other civilian personnel matters, except for EEO (civilian) matters which will be acted on by the Administrative Assistant to the Secretary of the Army. The Deputy Assistant Secretary of the Army (Civilian Personnel Policy)/Director of Civilian Personnel has delegated this authority to the Chief, Policy and Program Development Division.

(5) The Chief Information Officer, G-6 is authorized to act on requests for records pertaining to Army Information Technology, command, control communications and computer systems and the Information Resources Management Program (automation, telecommunications, visual information, records management, publications and printing).

(6) The Inspector General is authorized to act on requests for all Inspector General Records.

(7) The Auditor General is authorized to act on requests for records relating to audits done by the U.S. Army Audit Agency under AR 10-2. This includes requests for related records developed by the Audit Agency.

(8) The Director of the Army Staff is authorized to act on requests for all records of the Chief of Staff and its Field Operating Agencies. The Director of the Army Staff has delegated its authority to the Chief Attorney and Legal Services Directorate, U.S. Army Resources & Programs Agency. The Chief Attorney and Legal Services Director, U.S. Army Resources & Programs Agency acts on requests for

records of the Chief of Staff and its Field Operating Agencies. (See TJAG for the (GOMO) actions).

(9) The Deputy Chief of Staff, G-3 is authorized to act on requests for records relating to International Affairs policy, planning, integration and assessments, strategy formulation, force development, individual and unit training policy, strategic and tactical command and control systems, nuclear and chemical matters, use of DA forces.

(10) The Deputy Chief of Staff, G-8 is authorized to act on requests for records relating to programming, material integration and externally directed reviews.

(11) The Office of the Deputy Chief of Staff, G-1 is authorized to act on the following records: Personnel board actions, Equal Opportunity (military) and sexual harassment, health promotions, physical fitness and well being, command and leadership policy records, HIV and suicide policy, substance abuse programs except for individual treatment records which are the responsibility of the Surgeon General, retiree benefits, services, and programs, (excluded are individual personnel records of retired military personnel, which are the responsibility of the U.S. Army Human Resources Command-St. Louis (AHRC-STL), DA dealings with Veterans Affairs, U.S. Soldier's and Airmen's Home, retention, promotion, and separation; recruiting and MOS policy issues, personnel travel and transportation entitlements, military strength and statistics, The Army Librarian, demographics, and Manprint.

(12) The Deputy Chief of Staff, G-4 is authorized to act on requests for records relating to DA logistical requirements and determinations, policy concerning materiel maintenance and use, equipment standards, and logistical readiness.

(13) The Chief of Engineers is authorized to act on requests for records involving civil works, military construction, engineer procurement, and ecology; and the records of the U.S. Army Engineer divisions, districts, laboratories, and field operating agencies.

(14) The Surgeon General, Commander, U.S. Army Medical Command,

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is authorized to act on requests for medical research and development records, and the medical records of active duty military personnel, dependents, and persons given physical examination or treatment at DA medical facilities, to include alcohol and drug treatment/test records.

(15) The Chief of Chaplains is authorized to act on requests for records involving ecclesiastical relationships, rites performed by DA chaplains, and nonprivileged communications relating to clergy and active duty chaplains' military personnel files.

(16) The Judge Advocate General is authorized to act on requests for records relating to claims, courts-martial, legal services, administrative investigations, and similar legal records. TJAG is also authorized to act on requests for the GOMO actions and records described elsewhere in this regulation, especially if those records relate to litigation in which the United States has an interest. In addition, TJAG is authorized to act on requests for records that are not within the functional areas of responsibility of any other IDA, including, but not limited to requests for records for Commands, and activities.

(17) The Chief, National Guard Bureau, is authorized to act on requests for all personnel and medical records of retired, separated, discharged, deceased, and active Army National Guard military personnel, including technician personnel, unless such records clearly fall within another IDA's responsibility. This authority includes, but is not limited to, National Guard organization and training files; plans, operations, and readiness files; policy files, historical files, files relating to National Guard military support, drug interdiction, and civil disturbances; construction, civil works, and ecology records dealing with armories, facilities within the States, ranges, etc. Equal Opportunity investigative records; aviation program records and financial records dealing with personnel, operation and maintenance, and equipment budgets.

(18) The Chief of Army Reserve is authorized to act on requests for all personnel and medical records of retired, separated, discharged, deceased, and re-

serve component military personnel, and all U.S. Army Reserve (USAR) records, unless such records clearly fall within another IDA's responsibility. Records under the responsibility of the Chief of Army Reserve include records relating to USAR plans, policies, and operations; changes in the organizational status of USAR units; mobilization and demobilization policies, active duty tours, and the Individual Mobilization Augmentation program.

(19) The Commander, United States Army Materiel Command (AMC) is authorized to act on requests for the records of AMC headquarters and to subordinate commands, units, and activities that relate to procurement, logistics, research and development, and supply and maintenance operations.

(20) The Provost Marshal General (PMG) is authorized to act on all requests for provost marshal activities and law enforcement functions for the army, all matters relating to police intelligence, physical security, criminal investigations, corrections and internment (to include confinement and correctional programs for U.S. prisoners, criminal investigations, provost marshal activities, and military police support. The PMG is responsible for the Office of Security, Force Protection, and Law Enforcement Division and is the functional proponent for AR 190-series (Military Police) and 195-series (Criminal Investigation), AR 630-10 Absent Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings, and AR 633-30, Military Sentences to Confinement.

(21) The Commander, U.S. Army Criminal Investigation Command (USACIDC), is authorized to act on requests for criminal investigative records of USACIDC headquarters, its subordinate activities, and military police reports. This includes criminal investigation records, investigation-in-progress records, and all military police records and reports.

(22) The Commander, United States Army Human Resources Command (USAHRC), is authorized to act on requests for military personnel files relating to active duty (other than those

of reserve and retired personnel) military personnel matters, personnel locator, physical disability determinations, and other military personnel administration records; records relating to military casualty and memorialization activities; heraldic activities, voting, records relating to identification cards, naturalization and citizenship, commercial solicitation, Military Postal Service Agency and Army postal and unofficial mail service.

(23) The Commander, USARC-StL has been delegated authority to act on behalf of the USAHRC for requests concerning all personnel and medical records of retired, separated, discharged, deceased, and reserve component military personnel, unless such records clearly fall within another IDA's authority. The authority does not include records relating to USAR plans, policies, and operations; changes in the organizational status of USAR units, mobilization and demobilization policies; active duty tours, and the individual mobilization augmentation program.

(24) The Assistant Chief of Staff for Installation Management (ACSIM) is authorized to act on requests for records relating to planning, programming, execution and operation of Army installations. This includes base realignment and closure activities, environmental activities other than litigation, facilities and housing activities, and installation management support activities.

(25) The Commander, United States Army Intelligence and Security Command, is authorized to act on requests for intelligence and security records, foreign scientific and technological records, intelligence training, intelligence threat assessments, and foreign liaison information.

(26) The Commander, U.S. Army Safety Center, is authorized to act on requests for Army safety records.

(27) The Commander, United States Army Test and Evaluation Command (ATEC), is authorized to act on requests for the records of ATEC headquarters, its subordinate commands, units, and activities that relate to test and evaluation operations.

(28) The General Counsel, Army and Air Force Exchange Service (AAFES),

is authorized to act on requests for AAFES records, under AR 60-20/AFR 147-14.

(29) Special IDA authority for time-event related records may be designated on a case-by-case basis. These will be published in the FEDERAL REGISTER. You may contact the DA, FOIA/PA Office to obtain current information on special delegations.

(f) *Reasons for not releasing a record.* The following are reasons for not complying with a request for a record under 5 U.S.C. 552(a)(3).

(1) *No records.* A reasonable search of files failed to identify responsive records. The records custodian will prepare a detailed no records certificate. This certificate must include, at a minimum, what areas or offices were searched and how the search was conducted (manually, by computer, etc.). The certificate will be signed by the records custodian and will include his or her grade and title. The original certificate will be forwarded to the IDA. Preprinted "check-the-block" or "fill-in-the-blank" no records certificates are not authorized.

(2) *Referrals.* The request is transferred to another Army Activity or DoD Component, or to another Federal Agency.

(3) *Request withdrawn.* The request is withdrawn by the requester.

(4) *Fee-related reason.* The requester is unwilling to pay fees associated with a request; the requester is past due in the payment of fees from a previous FOIA request; or the requester disagrees with the fee estimate.

(5) *Records not reasonably described.* A record has not been described with sufficient particularity to enable the Army or DoD Component to locate it by conducting a reasonable search.

(6) *Not a proper FOIA request for some other reason.* The requester has failed unreasonably to comply with procedural requirements, other than fee-related, imposed by this part or Army Activity supplementing regulations.

(7) *Not an agency record.* The information requested is not a record within the meaning of the FOIA and this part.

(8) *Duplicate request.* The request is a duplicate request (e.g., a requester asks for the same information more than once). This includes identical requests

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received via different means (e.g., electronic mail, facsimile, mail, and courier) at the same or different times.

(9) *Other (specify)*. Any other reason a requester does not comply with published rules other than those outlined in paragraphs (f)(1) through (8) of this section.

(10) *Partial or total denial*. The record is denied in whole or in part in accordance with procedures set forth in the FOIA.

(g) *Denial tests*. To deny a requested record that is in the possession and control of an Army Activity, it must be determined that the record is exempt under one or more of the exemptions of the FOIA. An outline of the FOIA's exemptions is contained in subpart C of this part.

(h) *Reasonably segregable portions*. Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. Unless indicating the extent of the deletion would harm an interest protected by an exemption, the amount of deleted information shall be indicated on the released portion of paper records by use of brackets or darkened areas indicating removal of information. In no case shall the deleted areas be left "white" without the use of brackets to show the bounds of deleted information. In the case of electronic deletion, or deletion in audiovisual or microfiche records, if technically feasible, the amount of redacted information shall be indicated at the place in the record such deletion was made, unless including the indication would harm an interest protected by the exemption under which the deletion is made. This may be done by use of brackets, shaded areas, or some other identifiable technique that will clearly show the limits of the deleted information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

(i) *Response to requester*. Whenever possible, initial determinations to release or deny a record normally shall

be made and the decision reported to the requester within 20 working days after receipt of a proper request by the official designated to respond. When an Army Activity has a significant number of pending requests which prevent a response determination within the 20 working day period, the requester shall be so notified in an interim response, and advised whether their request qualifies for the fast track or slow track within the Army Activity's multitrack processing system. Requesters who do not meet the criteria for fast track processing shall be given the opportunity to limit the scope of their request in order to qualify for fast track processing.

(1) When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

(2) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based, inclusive of a brief statement describing what the exemption(s) cover. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable Executive Order criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the Army Activity. The IDA will inform the requester of his or her right to appeal, in whole or part, the denial of the FOIA or fee waiver request and that the appeal must be sent through the IDA to the Secretary of the Army (ATTN: OGC).

(3) The final response to the requester should contain information

concerning the fee status of the request, consistent with the provisions of subpart F, of this part. When a requester is assessed fees for processing a request, the requester's fee category shall be specified in the response letter. Activities also shall provide the requester with a complete cost breakdown (e.g., 115 pages of office reproduction at \$0.15 per page; 5 minutes of computer search time at \$43.50 per minute, 3 hours of professional level search at \$44 per hour, etc.) in the response letter.

(4) The explanation of the substantive basis for a denial shall include specific citation of the statutory exemption applied under provisions of this part; e.g., 5 U.S.C. 552 (b)(1). Merely referring to a classification; to a "FOUO" marking on the requested record; or to this part or an Army Activity's regulation does not constitute a proper citation or explanation of the basis for invoking an exemption.

(5) When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(6) When denying a request for records, in whole or in part, an Army Activity shall make a reasonable effort to 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 in some other reasonable form of estimation, unless the volume is otherwise indicated through deletions on records disclosed in part.

(7) When denying a request for records in accordance with a statute qualifying as a FOIA exemption 3 statute, Army Activities shall, in addition to stating the particular statute relied upon to deny the information, also state whether a court has upheld the decision to withhold the information under the particular statute, and a concise description of the scope of the information being withheld.

(j) *Extension of time.* In unusual circumstances, when additional time is needed to respond to the initial request, the Army Activity shall acknowledge the request in writing with-

in 20 working days, describe the circumstances requiring the delay, and indicate the anticipated date for a substantive response that may not exceed 10 additional working days, except as provided below:

(1) With respect to a request for which a written notice has extended the time limits by 10 additional working days, and the Activity determines that it cannot make a response determination within that additional 10 working day period, the requester shall be notified and provided an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request. Refusal by the requester to reasonably modify the request or arrange for an alternative time frame shall be considered a factor in determining whether exceptional circumstances exist with respect to Army Activity's request backlogs. Exceptional circumstances do not include a delay that results from predictable activity backlogs, unless the Army Activity demonstrates reasonable progress in reducing its backlog.

(2) Unusual circumstances that may justify delay are: The need to search for and collect the requested records from other facilities that are separate from the office determined responsible for a release or denial decision on the requested information; the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are requested in a single request; and the need for consultation, which shall be conducted with all practicable speed, with other agencies having a substantial interest in the determination of the request, or among two or more Army Activities or DoD Components having a substantial subject-matter interest in the request.

(3) Army Activities may aggregate certain requests by the same requester, or by a group of requesters acting in concert, if the Army Activity reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances set forth in paragraph (j)(2) of this section, and the requests

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involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated. If the requests are aggregated under these conditions, the requester or requesters shall be so notified.

(4) In cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. Army Activities are reminded that the requester still retains the right to treat this delay as a de facto denial with full administrative remedies. Only the responsible IDA can extend it, and the IDA must first coordinate with the OGC.

(5) As an alternative to the taking of formal extensions of time the negotiation by the cognizant FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

(k) *Misdirected requests.* Misdirected requests shall be forwarded promptly to the Army Activity or other Federal Agency with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the Army Activity that manages the records requested.

(1) *Records of non-U.S. Government source.* When a request is received for a record that falls under exemption 4, that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, the source of the record or information [also known as "the submitter" for matters pertaining to proprietary data under 5 U.S.C. 552, FOIA, Exemption (b)(4)] and E.O. 12600], shall be notified promptly of that request and afforded reasonable time (14 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice

is required for those FOIA requests for data not deemed clearly exempt from disclosure under exemption (b)(4) of 5 U.S.C. 552, The FOIA. If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. The final decision to disclose information claimed to be exempt under exemption (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under FOIA. When a substantial issue has been raised, the Army Activity may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an agency determination. When the source seeks a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the submitter shall be promptly notified of this action.

(1) If the submitted information is a proposal in response to a solicitation for a competitive proposal, and the proposal is in the possession and control of DA (see 10 U.S.C. 2305(g)), the proposal shall not be disclosed, and no submitter notification and subsequent analysis is required. The proposal shall be withheld from public disclosure pursuant to 10 U.S.C. 2305(g) and exemption (b)(3) of the FOIA. This statute does not apply to bids, unsolicited proposals, or any proposal that is set forth or incorporated by reference in a contract between an Army Activity and the offeror that submitted the proposal. In such situations, normal submitter notice shall be conducted except for sealed bids that are opened and read to the public. The term, proposal, means information contained in or originating from any proposal, including a technical, management, or cost

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proposal submitted by an offeror in response to solicitation for a competitive proposal, but does not include an offeror's name or total price or unit prices when set forth in a record other than the proposal itself. Submitter notice, and analysis as appropriate, are required for exemption (b)(4) matters that are not specifically incorporated in 10 U.S.C. 2305(g).

(2) If the record or information was submitted on a strictly voluntary basis, absent any exercised authority that prescribes criteria for submission, and after consultation with the submitter, it is absolutely clear that the record or information would customarily not be released to the public, the submitter need not be notified. Examples of exercised authorities prescribing criteria for submission are statutes, Executive Orders, regulations, invitations for bids, requests for proposals, and contracts. Records or information submitted under these authorities are not voluntary in nature. When it is not clear whether the information was submitted on a voluntary basis, absent any exercised authority, and whether it would customarily be released to the public by the submitter, notify the submitter and ask that it describe its treatment of the information, and render an objective evaluation. If the decision is made to release the information over the objection of the submitter, notify the submitter and afford the necessary time to allow the submitter to seek a restraining order, or take court action to prevent release of the record or information.

(3) The coordination provisions of this section also apply to any non-U.S. Government record in the possession and control of the Army or DoD from multi-national organizations, such as the North Atlantic Treaty Organization (NATO), United Nations Commands, the North American Aerospace Defense Command (NORAD), the Inter-American Defense Board, or foreign governments. Coordination with foreign governments under the provisions of this section may be made through Department of State, or the specific foreign embassy.

(m) *File of initial denials.* Copies of all initial withholdings or denials shall be maintained by each Army Activity in a

form suitable for rapid retrieval, periodic statistical compilation, and management evaluation. Records denied for any of the reasons contained in §518.20 shall be maintained for a period of six years to meet the statute of limitations requirement. Records will be maintained in accordance with AR 25-400-2.

(n) *Special mail services.* Army Activities are authorized to use registered mail, certified mail, certificates of mailing, and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence. The requester shall be notified that they are responsible for the full costs of special services.

(o) *Receipt accounts.* The Treasurer of the United States has established two accounts for FOIA receipts, and all money orders or checks remitting FOIA fees should be made payable to the U.S. Treasurer. These accounts shall be used for depositing all FOIA receipts, except receipts for industrially funded and non-appropriated funded activities. Components are reminded that the below account numbers must be preceded by the appropriate disbursing office two digit prefix. Industrially funded and non-appropriated funded activity FOIA receipts shall be deposited to the applicable fund.

(1) Receipt Account 3210 Sale of Publications and Reproductions, FOIA. This account shall be used when depositing funds received from providing existing publications and forms that meet the Receipt Account Series description found in Federal Account Symbols and Titles. Deliver collections within 30 calendar days to the servicing finance and accounting office.

(2) Receipt Account 3210 Fees and Other Charges for Services, FOIA. This account is used to deposit search fees, fees for duplicating and reviewing (in the case of commercial requesters) records to satisfy requests that could not be filled with existing publications or forms.

§518.17 Appeals.

(a) *General.* If the official designated by the Army Activity to make initial determinations on requests for records declines to provide a record because

the official considers it exempt under one or more of the exemptions of the FOIA, that decision may be appealed by the requester, in writing, to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a fee category claim by a requester, disapproval of a request for waiver or reduction of fees, disputes regarding fee estimates, review on an expedited basis a determination not to grant expedited access to agency records, for no record determinations when the requester considers such responses adverse in nature, not providing a response determination to a FOIA request within the statutory time limits, or any determination found to be adverse in nature by the requester. Upon an IDA's receipt of a no records determination appeal, the IDA will direct the records custodian to conduct another records search and certify, in writing, that it has made a good faith effort that reasonably could be expected to produce the information requested. If no records are again found, the original no records certificate will be forwarded to the IDA for inclusion in the appeals packet. When denials have been made under the provisions of the FOIA and the PA, and the denied information is contained in a PA system of records, appeals shall be processed under both the FOIA and the PA. If the denied information is not maintained in a PA system of records, the appeal shall be processed under the FOIA. If a request is merely misaddressed, and the receiving Army Activity or DoD Component simply advises the requester of such and refers the request to the appropriate Army or DoD Component, this shall not be considered a no record determination.

(1) Appeals of adverse determinations from denial of records or "no record" determination, received by Army IDAs must be forwarded through the denying IDA to the Secretary of the Army (ATTN: OGC). On receipt of an appeal, the IDA will—

(i) Send the appeal to the Office of the Secretary of the Army, OGC, to-

gether with a copy of the documents that are the subject of the appeal. The cover letter will list all attachments and describe from where the records were obtained, i.e., a PA system of records (including the applicable systems notice, or other. If a file does not include documentation described below, include the tab, and insert a page marked "not applicable" or "not used." The order and contents of FOIA file attachments follow: (Tab A or 1) The original FOIA request and envelope (if applicable); (Tab B or 2) The IDA denial letter; (Tab C or 3) Copies of all records entirely released, single-sided; (Tab D or 4) Copies of administrative processing documents, including extension letters and "no records" certificates, in chronological order; (Tab E or 5) Copies of all records partially denied or completely denied, single-sided. For records partially denied, mark in yellow highlighter (or other readable highlighter) those portions withheld; and (Tab F or 6) Legal opinions(s); and

(ii) Assist the OGC as requested during his or her consideration of the appeal.

(2) Appeals of denial of records made by the OGC, AAFES, shall be made to the Secretary of the Army when the Commander, AAFES, is an Army officer. Appeals of denial of records made by the OGC, AAFES, shall be made to the Secretary of the Air Force when the Commander is an Air Force officer.

(b) *Time of receipt.* A FOIA appeal has been received by an Army Activity when it reaches the office of an appellate authority having jurisdiction, the OGC. Misdirected appeals should be referred expeditiously to the OGC.

(c) *Time limits.* The requester shall be advised to file an appeal so that it is postmarked no later than 60 calendar days after the date of the initial denial letter. If no appeal is received, or if the appeal is postmarked after the conclusion of this 60-day period, the case may be considered closed. However, exceptions to the above may be considered on a case-by-case basis. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the date of the final response. Records that are denied shall

be retained for a period of six years to meet the statute of limitations requirement. Final determinations on appeals normally shall be made within 20 working days after receipt. When an Army Activity has a significant number of appeals preventing a response determination within 20 working days, the appeals shall be processed in a multitrack processing system, based at a minimum, on the three processing tracks established for initial requests. All of the provisions of the FOIA apply also to appeals of initial determinations, to include establishing additional processing queues as needed.

(d) *Delay in responding to an appeal.* If additional time is needed due to the unusual circumstances the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request. If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The Army Activity will continue to process the case expeditiously.

(e) *Response to the requester.* When the appellate authority (OGC) makes a final determination to release all or a portion of records withheld by an IDA, a written response and a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees. Final refusal of an appeal must be made in writing by the appellate authority or by a designated representative. The response, at a minimum, shall include the following:

(1) The basis for the refusal shall be explained to the requester in writing, both with regard to the applicable statutory exemption or exemptions in-

voked under provisions of the FOIA, and with respect to other appeal matters;

(2) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification;

(3) The final denial shall include the name and title or position of the official responsible for the denial;

(4) In the case of appeals for total denial of records, the response shall advise the requester that the information being denied does not contain meaningful portions that are reasonably segregable;

(5) When the denial is based upon an exemption 3 statute, the response, in addition to citing the statute relied upon to deny the information, shall state whether a court has upheld the decision to withhold the information under the statute, and shall contain a concise description of the scope of the information withheld; or

(6) The response shall advise the requester of the right to judicial review.

(f) *Consultation.* Final refusal involving issues not previously resolved or that the Army Activity knows to be inconsistent with rulings of other DoD Components ordinarily should not be made before consultation with the Army OGC. Tentative decisions to deny records that raise new or significant legal issues of potential significance to other Agencies of the Government shall be provided to the Army OGC.

§518.18 Judicial actions.

(a) This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind the DA or DoD to particular judicial interpretations or procedures. A requester may seek an order from a U.S. District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or

an appellate designee or when the Army Activity has failed to respond within the time limits prescribed by the FOIA and in this part.

(b) The requester may bring suit in the U.S. District Court in the district, in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

(c) The burden of proof is on the Army Activity to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

(d) When an Army Activity has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, to include negotiating with the requester to modify the scope of their request, the court may retain jurisdiction and allow the Activity additional time to complete its review of the records.

(1) If the court determines that the requester's complaint is substantially correct, it may require the U. S. to pay reasonable attorney fees and other litigation costs.

(2) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether Army Activity personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit Systems Protection Board shall conduct an investigation to determine whether or not disciplinary action is warranted. The Army Activity is obligated to take the action recommended by the special counsel.

(3) The court may punish the responsible official for contempt when an Army Activity fails to comply with the court order to produce records that it determines have been withheld improperly.

(e) *Non-U. S. Government source information.* A requester may bring suit in an U.S. District Court to compel the release of records obtained from a non-government source or records based on information obtained from a non-government source. Such source shall be

notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the Army Activity shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

(f) *FOIA litigation.* Personnel responsible for processing FOIA requests at the DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. Whenever a complaint under the FOIA is filed in an U.S. District Court, the Army Activity named in the complaint shall forward a copy of the complaint by any means to HQDA, OTJAG (DAJA-LT), with an information copy to the Army OGC. In the DA, HQDA OTJAG (DAJA-LT), WASH D.C. 20310-2210 is also responsible for forwarding this information to the Office of the Army OGC and to the DA FOIA/PA Office.

(1) *Bases for FOIA Lawsuits.* In general, there are four categories of complaints in a FOIA lawsuit: failure to respond to a request within time frames established in the FOIA statute; challenge to the adequacy of search for responsive records; challenge to application of a FOIA Exemption; and procedural challenges, such as application of waiver of fees. The guidance below is intended to cover all categories of complaints. In responding to litigation support requests, bear in mind the type of complaint that has given rise to the lawsuit and provide information, which addresses the specific reason(s) for the complaint.

(2) *Responsibility for FOIA litigation.* For the Army, under the general oversight of the OGC, FOIA litigation is the responsibility of the General Litigation Branch, Army Litigation Division. If you are notified of a FOIA lawsuit involving the Army, contact the General Litigation Branch immediately at: U.S. Army Litigation Center, General Litigation Branch (JALS-LTG), 901 North Stuart Street, Suite 700, Arlington, VA 22203-1837. The General Litigation Branch will provide guidance on gathering information and assembling a

litigation report necessary to respond to FOIA litigation.

(3) *Litigation reports for FOIA lawsuits.* As with any lawsuit, the Army Litigation Division and DOJ will require a litigation report. This report should be prepared with the assistance, and under the supervision of, the legal advisor. For general guidance on litigation reports, see Army Regulation 27-40, paragraph 3-9. Unlike the usual 60-day time period to respond to complaints under the Federal Rules of Civil Procedure, complaints under the FOIA must be answered within 30 days of the service of the complaint. Therefore, it is imperative to contact the Litigation Division immediately and to begin preparing the litigation report without delay.

(4) *Specific guidance for FOIA litigation reports.* The following is specific guidance for preparing a litigation report in FOIA Litigation. The required material should be indexed and assembled under the following categories:

(i) *Statement of facts.* (Tab A). Provide a chronological statement of all facts related to the FOIA request, beginning with receipt of the request, responses to the request, and searches for responsive records. The statement of facts should refer to supporting enclosed exhibits whenever possible.

(ii) *Responses to pleadings.* (Tab B). If you have been provided a copy of the complaint, provide a line-by-line answer to the factual statements in the pleadings, along with recommendations on whether to admit or deny the allegation.

(iii) *Memorandum of law.* (Tab C). No memorandum of law is necessary in FOIA lawsuits. If records were withheld, provide a written statement explaining the FOIA Exemption used to withhold the information and the rationale for its application in the particular facts of your case. Include here a copy of any legal review regarding the withholding of the records.

(iv) *Potential witness information.* (Tab D). List the names, addresses, telephone number, facsimile number and e-mail addresses of all potential witnesses. At a minimum, this must include all of the following: the FOIA Officer or Coordinator or other person responsible for processing FOIA requests;

the individual(s) who actually conducted the search for responsive records; the legal advisor(s) who reviewed or provided advice on the request; and the point of contact at any office or agency to which the FOIA request was referred.

(v) *Exhibits.* (Tab E). Provide copies of all correspondence regarding the FOIA request. This includes all correspondence between the agency and the requester, including any enclosures; any referrals or forwarding of the request to other agencies or offices; copies of all documents released to the requester pursuant to the request in litigation. If any information is withheld or redacted, provide a complete copy of all withheld information. Identify withheld information by placing brackets around all information withheld and note in the margins of the document the specific FOIA exemption applied to deny release of the document; all records and correspondence forwarded to the IDA, if applicable; all appeals by the requester; if the withheld document is classified, provide a summary of each document withheld. The Summary of classified documents should include the following:

(A) The classification of the document;

(B) The date of the document;

(C) The number of pages of the document;

(D) The author or creator of the document;

(E) The intended or actual recipient of the document;

(F) The subject of the document and an unclassified description of the document sufficient to inform the court of the nature of the contents of the document; and

(G) An explanation of the reason for withholding, including the specific provision(s) of Executive Order 12,958 which permit classification of the information.

(vi) *Draft declarations.* (Tab F). A declaration is a statement for use in litigation made under penalty of perjury pursuant to specific statutory authority (28 U.S.C. 1746) which need not be notarized. Declarations may be used by the Army to support a motion to dismiss or to grant summary judgment. Depending on the basis for the lawsuit,

with the assistance of their legal advisor, witnesses should prepare a draft declaration to be included with the litigation report.

(vii) The following is some general guidance on the content of a declaration in FOIA litigation. Identify the declarant and describe his or her qualifications and responsibilities as they relate to the FOIA; provide a statement indicating that the declarant is familiar with the specific request and the general subject matter of the records; include a statement of the searcher's understanding of the exact nature of the request, including any modification (narrowing or expanding the search based on communications with the requester); generally, the factual portion of the declaration should be organized as a chronological statement beginning with receipt of the request; provide a specific description of the system of records searched; and provide a description of procedures used to search for the requested records, (manual search of records, computer database search, etc.). This portion of the declaration is especially important when no records are found. The declaration must reflect an adequate and reasonable search for records in locations where responsive records are likely to be found.

(5) *Special guidance for initial denial authorities.* If any information was withheld, the IDA or person with specific knowledge of the withholding must provide a specific statement of any Exemptions to the FOIA, which were applied to the records.

(i) *Withheld records.* For withheld records, describe in reasonably specific detail all records or parts of records withheld. If the number of records is extensive, use an index of the records and consider numbering the documents to facilitate reference. It is also permissible (and frequently helpful) to include redacted portions of records withheld as attachments or exhibits to the declarations.

(ii) *Exemptions.* Include in the declaration a specific statement demonstrating that all the elements of each FOIA exemption are met.

(iii) *Segregation.* The FOIA requires that all information not subject to an exemption to the FOIA, which can be

reasonably segregated from exempt information, must be released to FOIA requesters. In any instance where an entire document is withheld, the individual authorizing the withholding must specifically address that segregation and release of non-exempt material was not possible without rendering the record essentially meaningless. If applicable, this issue must be specifically addressed in the declaration.

(iv) *Sound Legal Basis.* Army policy promotes careful consideration of FOIA requests and discretionary decisions to disclose information protected under the FOIA. Discretionary disclosures should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information. The decision to withhold records, in whole or in part, otherwise exempt from disclosure under the FOIA must exhibit a sound legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records.

Subpart F—Fee Schedule

§ 518.19 General provisions.

(a) *Authorities.* The FOIA, as amended; the Paperwork Reduction Act (44 U.S.C. 35), as amended; the PA of 1974, as amended; the Budget and Accounting Act of 1921 and the Budget and Accounting Procedures Act, as amended (see 31 U.S.C.); and 10 U.S.C. 2328).

(b) *Application.* The fees described in this Subpart apply to FOIA requests, and conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as DoD 7000.14-R, which does not supersede the collection of fees under the FOIA. Nothing in this subpart shall supersede fees chargeable under a statute specifically providing

for setting the level of fees for particular types of records. A “statute specifically providing for setting the level of fees for particular types of records” (5 U.S.C. 552 FOIA, (a)(4)(A)(vi)) means any statute that enables a Government Agency such as the GPO or the NTIS, to set and collect fees. Components should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

(1) The term “direct costs” means those expenditures an Activity actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

(2) The term “search” includes all time spent looking, both manually and electronically, for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the record to determine if it, or portions thereof are responsive to the request. Activities should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the Activity and the requester. For example, Activities should not engage in line-by-line searches, when duplicating an entire document known to contain responsive information, would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is not search time, but review time.

(3) The term “duplication” refers to the process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper

copy, microfiche, audiovisual, or machine-readable documentation (e.g., magnetic tape or disc), among others. Every effort will be made to ensure that the copy provided is in a form that is reasonably useable, the requester shall be notified that the copy provided is the best available and that the Activity’s master copy shall be made available for review upon appointment. For duplication of computer-stored records, the actual cost, including the operator’s time, shall be charged. In practice, if an Activity estimates that assessable duplication charges are likely to exceed \$25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with Activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(4) The term “review” refers to the process of examining documents located in response to a FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the initial review. Activities may not charge for reviews required at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption, which is subsequently determined not to apply, may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

(c) *Fee restrictions.* No fees may be charged by any Army Activity if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Activities shall provide the first two hours of search time, and the first one hundred

pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved two hours and fifteen minutes of search time, and resulted in one hundred and twenty-five pages of documents, an Activity would determine the cost of only ten minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than the cost to the Activity for billing the requester and processing the fee collected, no charges would result.

(1) Requesters receiving the first two hours of search and the first one hundred pages of duplication without charge are entitled to such only once per request. Consequently, if an Activity, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another Army Activity or DoD Component, or another Federal Agency for action their portion of the request, the referring Activity shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

(2) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Activity of receiving and recording a remittance, and processing the fee for deposit in the Department of Treasury's special account. The cost to the Department of Treasury to handle such remittance is negligible and shall not be considered in the Activity's determinations.

(3) For the purposes of these restrictions, the word "pages" refers to paper copies of a standard size, which will normally be "8½ × 11" or "11 × 14". Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction.

(4) In the case of computer searches, the first two free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal \$40.00 (two hours of equivalent

search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time. In the event the direct operating cost of the hardware configuration cannot be determined, computer search shall be based on the salary scale of the operator executing the computer search.

(d) *Fee waivers.* Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters when the Activity determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of DA and is not primarily in the commercial interest of the requester.

(1) When assessable costs for a FOIA request total \$15.00 or less, fees shall be waived automatically for all requesters, regardless of category.

(2) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis. Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government."

(i) Activities should analyze whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of DA or DoD. Requests for records in the possession of the Army or DoD, which were originated by non-government organizations and are sought for their intrinsic content, rather than informative value, will likely not contribute to public understanding of the operations or activities of either DA or DoD. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding an Army or DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of either DA or DoD; however, the age of a particular record shall not be the sole criteria for denying relative

significance under this factor. It is possible to envisage an informative issue concerning the current activities of DA or DoD, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of DA or DoD.

(ii) The informative value of the information to be disclosed requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of DA or DoD. While the subject of a request may contain information that concerns operations or activities of DA or DoD, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a previously released record that has been heavily redacted, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of DA or DoD must be approached with caution, and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative, or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of DA or DoD.

(iii) The contribution to an understanding of the subject by the general public is likely to result from disclosure that will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigence are insufficient without dem-

onstrating the capacity to further disclose the information in a manner that will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(iv) Activities must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding, which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public? A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. Activities shall not make value judgments as to whether the information is important enough to be made public.

(3) Disclosure of the information "is not primarily in the commercial interest of the requester."

(i) If the request is determined to be of a commercial interest, Activities should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, Activities may draw inference from the requester's identity and circumstances of the request. Activities are reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must clearly override any personal or non-profit interest.

(ii) Once a requester's commercial interest has been determined, Activities should then determine if the disclosure would be primarily in that interest. This requires a balancing test between

the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research, may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(4) Activities are reminded that the factors and examples used in this section are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, Activities should rule in favor of the requester.

(5) In addition, the following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(i) A record is voluntarily created to prevent an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested; or

(ii) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g., \$15.00—\$30.00).

(e) *Fee assessment.* Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

(1) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, Activities shall adhere to the following procedures:

(i) Each request must be analyzed to determine the category of the requester. If the Activity determination regarding the category of the requester is different than that claimed by the requester, the Activity should notify the requester to provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (*i.e.*, 30 calendar days), the Activity shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination. The requester should be advised that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the Activity;

(ii) Requesters should submit a fee declaration appropriate for the below categories. Commercial requesters should indicate a willingness to pay all search, review and duplication costs. Educational or Noncommercial Scientific Institution or News Media requesters should indicate a willingness to pay duplication charges, if applicable, in excess of 100 pages if more than 100 pages of records are desired. All other requesters should indicate a willingness to pay assessable search and duplication costs;

(iii) Activities must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among Activities, and that an estimate is often difficult to obtain prior

to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should Activities' actual costs exceed the amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement;

(iv) No Army Activity may require advance payment of any fee; *i.e.*, payment before work is commenced or continued on a request, unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.00. As used in this sense, a timely fashion is 30 calendar days from the date of billing (the fees have been assessed in writing) by the Activity;

(v) Where an Activity estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250.00, the Activity shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment;

(vi) Where a requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 calendar days from the date of the billing), the Activity may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, and to make an advance payment of the full amount of the estimated fee before the Activity begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717, and confirmed with respective Finance and Accounting Offices;

(vii) After all work is completed on a request, and the documents are ready for release, Activities may request payment before forwarding the documents, particularly for those requesters who have no payment history, or for those requesters who have failed previously to pay a fee in a timely fashion (*i.e.*, within 30 calendar days from the date of the billing);

(viii) The administrative time limits of the FOIA will begin only after the Activity has received a willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate); and

(ix) Activities may charge for time spent searching for records, even if that search fails to locate records responsive to the request. Activities may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure. In practice, if the Activity estimates that search charges are likely to exceed \$25.00, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with Activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(2) *Commercial requesters.* Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought.

(i) The term "commercial use" request refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, Activities must determine the use to which a requester will put the documents requested. Moreover, where an Activity has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Activities should seek additional clarification before assigning the request to a specific category.

(ii) When Activities receive a request for documents for commercial use, they should assess charges, which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to two hours of free search

time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

(3) *Educational institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the records sought. The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate high education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. Fees shall be waived or reduced in the public interest if the criteria above have been met.

(4) *Non-commercial scientific institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought. The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(5) Activities shall provide documents to requesters for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in these categories, requesters must show that the request is being

made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly (from an educational institution) or scientific (from a non-commercial scientific institution) research.

(6) *Representatives of the news media.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought.

(i) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but Activities may also look to the past publication record of a requester in making this determination.

(ii) To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (e) (6) (i) of this section, and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper

for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(iii) “Representative of the news media” does not include private libraries, private repositories of Government records, information vendors, data brokers or similar marketers of information whether to industries and businesses, or other entities.

(7) *All other requesters.* Activities shall charge requesters who do not fit into any of the categories, fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought. Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. Activities are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest as defined in paragraph (6) (ii) in this section.

(f) *Aggregating requests.* Except for requests that are for a commercial use, an Activity may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When an Activity reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had

been made to avoid fees. For requests made over a longer period, however, such a presumption becomes harder to sustain and Activities should have a solid basis for determining that aggregation is warranted in such cases. Activities are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may Activities aggregate multiple requests on unrelated subjects from one requester.

(g) *Debt Collection Act of 1982 (Pub. L. 97-365).* The Debt Collection Act provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Activities may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717. Activities should verify the current interest rate with respective Finance and Accounting Offices. After one demand letter has been sent, and 30 calendar days have lapsed with no payment, Activities may submit the debt to respective Finance and Accounting Offices for collection pursuant to the Debt Collection Act.

(h) *Computation of fees.* The fee schedule shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized. The appropriate fee category of the requester shall be applied before computing fees. DD Form 2086 (Record of Freedom of Information (FOI) Processing Cost) will be used to annotate fees for processing FOIA information.

(i) *Refunds.* In the event that an Activity discovers that it has overcharged a requester or a requester has overpaid, the Activity shall promptly refund the charge to the requester by reimbursement methods that are agreeable to the requester and the Activity.

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§ 518.20

§ 518.20 Collection of fees and fee rates.

(a) *Collection of fees.* Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the Activity, or the Activity has determined that the fee will be in excess of \$250.

(b) *Search time—(1) Costs for manual searches.*

Type	Grade	Hourly rate (\$)
Clerical	E9/GS 8 and below ...	20
Professional	1-06/GS 9-GS 15	44
Executive	07/ST/SL/SES-1 and above.	75
Contractor .....	.....	44

(2) *Computer search.* Fee assessments for computer search consists of two parts; individual time (hereafter referred to as human time), and machine time.

(i) *Human time.* Human time is all the time spent by humans performing the necessary tasks to prepare the job for a machine to execute the run command. If execution of a run requires monitoring by a human, that human time may be also assessed as computer search. The terms “programmer/operator” shall not be limited to the traditional programmers or operators. Rather, the terms shall be interpreted in their broadest sense to incorporate any human involved in performing the computer job (e.g. technician, administrative support, operator, programmer, database administrator, or action officer).

(ii) *Machine time.* Machine time involves only direct costs of the Central Processing Unit (CPU), input/output devices, and memory capacity used in the actual computer configuration. Only this CPU rate shall be charged. No other machine related costs shall be charged. In situations where the capability does not exist to calculate CPU time, no machine costs can be passed on to the requester. When CPU calcula-

tions are not available, only human time costs shall be assessed to requesters. Should Army Activities lease computers, the services charged by the lesser shall not be passed to the requester under the FOIA.

(c) *Duplication costs.*

Type	Cost per page (cents)
Pre-printed material .....	.02
Office Copy .....	.15
Microfiche .....	.25
Computer copies (tapes, discs or printouts).	Actual cost of duplicating the tape, disc or printout (includes operator's time and cost of the medium)

(d) *Review time costs (in the case of commercial requesters).*

Type	Grade	Hourly rate (\$)
Clerical	E9/GS 8 and below ...	20
Professional	01-06/GS 9-GS 15 ...	44
Executive	07/ST/SL/SES-1 and above.	75
Contractor .....	.....	44

(e) *Audiovisual documentary materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality. Army audiovisual materials are referred to as “visual information.”

(f) *Other records.* Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

(g) *Costs for special services.* Complying with requests for special services is at the discretion of the Activities. Neither the FOIA, nor its fee structure cover these kinds of services. Therefore, Activities may recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for one or more of the following services:

- (1) Certifying that records are true copies; and/or
- (2) Sending records by special methods such as express mail, etc.

§ 518.21

§ 518.21 Collection of fees and fee rates for technical data.

(a) *Fees for technical data.* Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information. Army Activities shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full costs shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable for other types of information released under the FOIA. DD Form 2086-1 will be used to annotate fees for technical data. The form is available through normal publication channels.

(b) *Waiver.* Activities shall waive the payment of costs described in paragraph (a.) of this section, which are greater than the costs that would be required for release of this same information if the request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or determine whether it is capable of submitting an offer

to provide the product to which the technical data relates to the United States or a contractor with the United States. However, Activities may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(1) The release of technical data is requested in order to comply with the terms of an international agreement; or,

(2) The Activity determines that such a waiver is in the interest of the United States.

(c) *Fee rates—(1) Costs for a manual search of technical data.*

Type	Grade	Hourly rate (\$)
Clerical	E9/GS 8 and below ...	13.25
Minimum Charge		8.30

Notes: Professional and Executive (To be established at actual hourly rate prior to search. A minimum charge will be established at 1/2 hourly rates.

(2) Computer search is based on the total cost of the cpu, input-output devices, and memory capacity of the actual computer configuration. The wage for the computer operator and/or programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search.

(d) *Duplication costs for technical data.*

Type	Cost (\$)
Aerial photograph, maps, specifications, permits, charts, blueprints, and other technical engineering documents	2.50
Engineering data (microfilm).	
a. Aperture cards	
Silver duplicate negative, per card .....	.75
When key punched and verified, per card .....	.85
Diaz duplicate negative, per card .....	.65
When key punched and verified, per card .....	.75
b. 35 mm roll film, per frame .....	.50
c. 16 mm roll film, per frame .....	.45
d. Paper prints (engineering drawings), each	1.50
e. Paper reprints of microfilm indices, each	.10

(e) *Review time costs of technical data.*

Type	Grade	Hourly rate (\$)
Clerical	E9/GS 8 and below	13.25

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Type	Grade	Hourly rate (\$)
Minimum Charge	8.30

Notes: Professional and Executive (To be established at actual hourly rate prior to search. A minimum charge will be established at 1/2 hourly rates.

(f) *Other technical data records.* Charges for any additional services not specifically consistent with Volume 11A of DoD 7000.14-R, shall be made by Activities at the following rates:

Type	Cost (\$)
1. Minimum charge for office copy (up to six images)	3.50
2. Each additional image .....	.10
3. Each typewritten page	3.50
4. Certification and validation with seal, each	5.20
5. Hand-drawn plots and sketches, each hour or fraction thereof	12.00

Subpart G—Reports

§ 518.22 Reports control.

(a) *General.* (1) The Annual FOIA Report is mandated by the statute and reported on a fiscal year basis. Due to the magnitude of the requested statistics and the need to ensure accuracy of reporting, Army Activities shall track this data as requests are processed. This will also facilitate a quick and accurate compilation of statistics. Army Activities shall forward their report to DA, FOIA/PA Office, no later than October 15 following the fiscal year's close. It may be submitted electronically and via hard copy accompanied by a computer diskette. In turn, DA and DoD will produce a consolidated report for a submission to the Attorney General and ensure that a copy of the consolidated report is placed on the Internet for public access.

(2) Existing Army standards and registered data elements are to be utilized to the greatest extent possible in accordance with the provisions of DoD 8320.1-M, "Data Administration Procedures."

(3) The reporting requirement outlined is assigned Report Control Symbol DD-DA&M(A)1365, FOIA Report to Congress.

(b) *Reporting time.* Each DA IDA shall prepare statistics and accumulate paperwork for the preceding fiscal year on those items prescribed for the an-

nual report. The IDAs will follow guidelines below and submit the information to the DA, FOIA/PA Office, on or before the 15th day of each October.

(1) Each reporting activity will submit the information requested on the DD Form 2564, "Annual Report Freedom of Information Act." The form is available through normal publication channels.

(2) Each IDA will submit the information requested on the DD Form 2564, excluding items 3, 4, and 9c.

(3) The Judge Advocate General (DAJA) and Chief of Engineers (COE) will submit the information requested on the Form DD 2564, item 9c.

(4) The General Counsel (SAGC) will submit the information requested on the DD Form 2564, items 3 and 4.

(5) The DA, FOIA/PA Office will compile the data submitted in the Army's Annual Report. This report will be submitted to the DoD Office for Freedom of Information and Security Review on or before the 30th day of each November.

§ 518.23 Annual report content.

The current edition of DD Form 2564 shall be used to submit Activity input. Instructions for completion follows:

(a) *ITEM 1 Initial Request Determinations.* Please note that initial PA requests, which are also processed as initial FOIA requests, are reported here.

(1) *Total requests processed.* Enter the total number of initial FOIA requests responded to (completed) during the fiscal year. This should include pending cases at the end of the prior fiscal year, Total Actions is the sum of Items 1b through 1e, on the DD Form 2564. This total may exceed Total Requests Processed.

(2) *Granted in full.* Enter the total number of initial FOIA requests responded to that were granted in full during the fiscal year. (This may include requests granted by your office, yet still requiring action by another office).

(3) *Denied in part.* Enter the total number of initial FOIA requests responded to and denied in part based on one or more of the FOIA exemptions. (Do not report "Other Reason Responses" as a partial denial here, unless a FOIA exemption is also used).

(4) *Denied in full.* Enter the total number of initial FOIA requests responded to and denied in full based on one or more of the FOIA exemptions. (Do not report “Other Reason Responses” as denials here, unless a FOIA exemption is also used).

(5) *“Other Reason” responses.* Enter the total number of initial FOIA requests in which you were unable to provide all or part of the requested information based on an “Other Reason” response.

(6) *Total actions.* Enter the total number of FOIA actions taken during the fiscal year. This number will be the sum of items 1b, through 1e. Total Actions must be equal to or greater than the number of Total Requests Processed.

(b) *ITEM 2 Initial Request Exemptions and Other Reasons.* (1) *Exemptions invoked on initial request determinations.* Enter the number of times an exemption was claimed for each request that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of (3) and (4), above. The (b)(7) exemption is reported by subcategories (A) through (F): (A) Interfere with Enforcement; (B) Fair Trial Right; (C) Invasion of Privacy; (D) Protect Confidential Source; (E) Disclose Techniques, and (F) Endanger Life or Safety.

(2) *“Other Reasons” cited on initial determinations.* Identify the “Other Reason” response cited when responding to a FOIA request and enter the number of times each was claimed.

(i) *No records.* Enter the number of times a reasonable search of files failed to identify records responsive to subject request.

(ii) *Referrals.* Enter the number of times a request was referred to another DoD Component or Federal Agency for action.

(iii) *Request withdrawn.* Enter the number of times a request and/or appeal was withdrawn by a requester.

(iv) *Fee-related reason.* Requester is unwilling to pay the fees associated with a request; the requester is past due in the payment of fees from a previous FOIA request; or the requester disagrees with a fee estimate.

(v) *Records not reasonably described.* Enter the number of times a FOIA request could not be acted upon since the record had not been described with sufficient particularity to enable the Army Activity to locate it by conducting a reasonable search.

(vi) *Not a proper FOIA request for some other reason.* Enter the number of times the requester has failed unreasonably to comply with procedural requirements, other than fee-related imposed by this part or an Army Activity’s supplementing regulation.

(vii) *Not an agency record.* Enter the number of times a requester was provided a response indicating the requested information was not a record within the meaning of the FOIA and this part.

(viii) *Duplicate request.* Record number of duplicate requests closed for that reason (e.g., request for the same information by the same requester). This includes identical requests received via different means (e.g., electronic mail, facsimile, mail, and courier) at the same or different times.

(ix) *Other (specify).* Any other reason a requester does not comply with published rules, other than those reasons outlined in paragraphs (b)(2)(i) through (viii) of this section.

(x) *Total.* Enter the sum of paragraphs (b)(2)(i) through (ix) of this section, in the block provided on the form (total other reasons). This number will be equal to or greater than the number in item 1e on the report form, since more than one reason may be claimed for each “Other Reason” response.

(3) (b)(3) *Statutes invoked on initial determinations.* Identify the number of times you have used a specific statute to support each (b)(3) exemption. List the statutes used to support each (b)(3) exemption; the number of instances in which the statute was cited; note whether or not the statute has been upheld in a court hearing; and provide a concise description of the material withheld in each individual case by the statute’s use. Ensure you cite the specific sections of the acts invoked. The total number of instances reported will be equal to or greater than the total number of (b)(3) exemptions listed in Item 2a on the report form.

(c) *ITEM 3 Appeal Determinations.* Please note that PA appeals, which are also processed as FOIA appeals, are reported here.

(1) *Total appeal responses.* Enter the total number of FOIA appeals responded to (completed) during the fiscal year.

(2) *Granted in full.* Enter the total number of FOIA appeals responded to and granted in full during the year.

(3) *Denied in part.* Enter the total number of FOIA appeals responded to and denied in part based on one or more of the FOIA exemptions. (Do not report "Other Reason Responses" as a partial denial here, unless a FOIA exemption is used also.)

(4) *Denied in full.* Enter the total number of FOIA appeals responded to and denied in full based on one or more of the FOIA exemptions. (Do not report "Other Reason Responses" as denials here, unless a FOIA exemption is used also.)

(5) *"Other Reason" responses.* Enter the total number of FOIA appeals in which you were unable to provide the requested information based on an "Other Reason" response.

(6) *Total actions.* Enter the total number of FOIA appeal actions taken during the fiscal year. This number will be the sum of items 3b, through 3e, and should be equal to or greater than the number of Total Appeal Responses, item 3a on the report form.

(d) *ITEM 4 Appeal Exemptions and Other Reasons—(1) Exemptions invoked on appeal determinations.* Enter the number of times an exemption was claimed for each appeal that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of items 3c, and 3d on the report form. Note that the (b)(7) exemption is reported by subcategory (A) through (F): (A) Interfere with Enforcement; (B) Fair Trial Right; (C) Invasion of Privacy; (D) Protect Confidential Source; (E) Disclose Techniques, and (F) Endanger Life or Safety.

(2) *"Other Reasons" cited on appeal determinations.* Identify the "Other Reason" response cited when responding to a FOIA appeal and enter the number of times each was claimed. This number

may be equal to or possibly greater than the number in item 3e on the report form, since more than one reason may be claimed for each "Other Reason" response.

(3) *(b)(3) Statutes invoked on appeal determinations.* Identify the number of times a specific statute has been used to support each (b)(3) exemption identified in item 4a on the report form DD 2564. List the statutes used to support each (b)(3) exemption; the number of instances in which the statute was cited; note whether or not the statute has been upheld in a court hearing; and provide a concise description of the material withheld in each individual case by the statute's use. Ensure citation to the specific sections of the statute invoked. The total number of instances reported will be equal to or greater than the total number of (b)(3) exemptions listed in Item 4a on the report form.

(e) *ITEM 5 Number and Median Age of Initial Cases Pending:*

(1) *Total initial cases pending:*

(i) *Beginning and ending report period:* Midnight, 2400 hours, September 30, of the Preceding Year—or—0001 hours, October 1, is the beginning of the report period. Midnight, 2400 hours, is the close of the reporting period.

(ii) The number for the beginning report period must be the same number reported as of the end of the report period from the previous report.

(2) *Median age of initial requests pending:* Report the median age in days (including holidays and weekends) of initial requests pending.

(3) *Examples of median calculation.* (i) If given five cases aged 10, 25, 35, 65, and 100 days from date of receipt as of the previous September 30th, the total requests pending is five (5). The median age (days) of open requests is the middle, not average value, in this set of numbers (10, 25, 35, 65, and 100), 35 (the middle value in the set).

(ii) If given six pending cases, aged 10, 20, 30, 50, 120, and 200 days from date of receipt, as of the previous September 30th, the total requests pending is six (6). The median age (days) of open requests 40 days (the mean [average] of the two middle numbers in the set, in this case the average of middle values 30 and 50).

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(4) *Accuracy of calculations.* Activities must ensure the accuracy of calculations. As backup, the raw data used to perform calculations should be recorded and preserved. This will enable recalculation of median [and mean values] as necessary. Activities may require subordinate elements to forward raw data, as deemed necessary and appropriate.

(5) *Average.* If an Activity believes that “average” (mean) processing time is a better measure of performance, then report “averages” (means) as well as median values (e.g., with data reflected and plainly labeled on plain bond as an attachment to the report). However, “average” (mean) values will not be included in the consolidated Army report unless all Activities report it.

(f) *ITEM 6 Number of Initial Requests Received During the Fiscal Year.* Enter the total number of initial FOIA requests received during the reporting period (fiscal year being reported).

(g) *ITEM 7 Types of Requests Processed and Median Age.* Information is reported for three types of initial requests completed during the reporting period: Simple; Complex; and Expedited Processing. The following items of information are reported for these requests:

(1) *Total number of initial requests.* Enter the total number of initial requests processed [completed] during the reporting period (fiscal year) by type (Simple, Complex and Expedited Processing) in the appropriate row on the form.

(2) *Median age (days).* Enter the median number of days [calendar days including holidays and weekends] required to process each type of case (Simple, Complex and Expedited Processing) during the period in the appropriate row on the form.

(3) *Example.* Given seven initial requests, multitrack—simple completed during the fiscal year, aged 10, 25, 35, 65, 79, 90 and 400 days when completed. The total number of requests completed was seven (7). The median age (days) of completed requests is 65, the middle value in the set.

(h) *ITEM 8 Fees Collected From the Public.* Enter the total amount of fees collected from the public during the

fiscal year. This includes search, review and reproduction costs only.

(i) *ITEM 9 FOIA Program Costs—(1) Number of full time staff.* Enter the number of personnel your agency had dedicated to working FOIA full time during the fiscal year. This will be expressed in work-years [man-years]. For example: “5.1, 3.2, 1.0, 6.5, et al.”

TABLE 7-1.—SAMPLE COMPUTATION OF WORK YEARS FOR FULL TIME STAFF

Employee	Number of months worked	Work-years	Note
Smith, Jane.	6	.50	Hired full time at middle of fiscal year
Public, John Q..	4	.34	Dedicated to full time FOIA processing last quarter of the fiscal year
Brown, Tom.	12	1.00	Worked FOIA full time all fiscal year
Totals	22	1.84	

(2) *Number of part time staff.* Enter the number of personnel your agency had dedicated to working FOIA part time during the fiscal year. This will be expressed in work-years [man-years]. For example: “5.1, 3.2, 1.0, 6.5, et al.”

TABLE 7-2.—COMPUTATION OF WORK YEARS FOR PART TIME STAFF

Employee	Number of months worked	Work-years	Note
Public, John Q..	200	.1	Amount of time devoted to part time FOIA processing before becoming full time FOIA processor in previous example
White, Sally.	400	.2	Processed FOIAs part time while working as paralegal in General Counsel's Office
Peters, Ron.	1,000	.5	Part time employee dedicated to FOIA processing
Totals	1,600/2,000 (hours worked in a year) equals 0.8 work-years		

(3) *Estimated litigation cost.* Report your best estimate of litigation costs

for the FY. Include all direct and indirect expenses associated with FOIA litigation in U.S. District Courts, U.S. Circuit Courts of Appeals, and the U.S. Supreme Court.

(4) *Total program cost.* Report the total cost of FOIA program operation within your agency. Include your litigation costs in this total. While you do not have to report detailed cost information as in the past, you should be able to explain the techniques by which you derived your agency's total cost figures if the need arises.

(i) Before the close of each fiscal year, the DoD OFOISR will dispatch the latest OSD Composite Rate Chart for military personnel to DoD Components. This information may be used in computing military personnel costs.

(ii) Army Activities should compute their civilian personnel costs using rates from local Office of Personnel Management (OPM) Salary Tables and shall add 16% for benefits.

(iii) Data captured on DD Form 2086, and DD Form 2086-1, shall be summarized and used in computing total costs.

(iv) An overhead rate of 25% shall be added to all calculated costs for supervision, space, and administrative support.

(j) *ITEM 10 Authentication.* The official that approves the agency's report submission to DA will sign and date; enter typed name and duty title; and provide both the agency's name and phone number for questions about the report. The consolidated Annual FOIA Report will be made available to the public in electronic format by DoD.

APPENDIX A TO PART 518— REFERENCES

(a) *References.*

- (1) AR 1-20 Legislative Liaison;
- (2) AR 20-1 Inspector General Activities and Procedures;
- (3) AR 25-1 The Army Information Management;
- (4) AR 25-11 Record Communications and the Privacy Communications System;
- (5) AR 25-400-2 The Army Records Information Management System (ARIMS);
- (6) AR 27-20 Claims;
- (7) AR 36-2 Audit Reports and Follow-up;
- (8) AR 40-66 Medical Record Administration and Health Care Documentation;
- (9) AR 40-68 Quality Assurance Administration;

- (10) AR 40-400 Patient Administration;
- (11) AR 195-2 Criminal Investigation Activities;
- (12) AR 25-71 The Army Privacy Program;
- (13) AR 360-1 The Army Public Affairs Program;
- (14) AR 380-5 Department of the Army Information Security Program;
- (15) AR 381-10 U.S. Army Intelligence Activities;
- (16) AR 381-12 Subversion and Espionage Directed Against The U.S. Army (SAEDA);
- (17) AR 381-20 The Army Counterintelligence Program;
- (18) AR 530-1 Operations Security (OPSEC);
- (19) AR 600-85 Army Substance Abuse Program; and
- (20) AR 608-18 The Army Family Advocacy Program.

(b) *Related publications.* A related publication is merely a source of additional information. The user does not have to read it to understand this part.

- (1) AR 10-5 Headquarters, Department of the Army;
- (2) AR 27-10 Military Justice;
- (3) AR 27-40 Litigation;
- (4) AR 27-60 Intellectual Property;
- (5) AR 60-20 Army and Air Force Exchange Service Operating Policies AFR 147-14;
- (6) AR 70-31 Standards for Technical Reporting;
- (7) AR 190-45 Law Enforcement Reporting;
- (8) AR 380-10 Foreign Disclosure and Contacts with Foreign Representatives;
- (9) AR 381-45 Investigative Records Repository;
- (10) AR 385-40 Accident Reporting and Records;
- (11) DA Pam 25-30 Consolidated Army Publications and Index Forms;
- (12) DA Pam 25-51 The Army Privacy Program—System of Records Notices and Exemption Rules;
- (13) DoD Directive 5100.3 Support of the Headquarters of Combatant and Subordinate Joint Commands, November 15, 1999;
- (14) DoD Directive 5230.24 Distribution Statements on Technical Documents, March 18, 1987;
- (15) DoD Directive 5230.25 Withholding of Unclassified Technical Data From Public Disclosure, November 6, 1984;
- (16) DoD Directive 5230.9 Clearance of DoD Information for Public Release, April 9, 1996;
- (17) DoD Directive 5400.4 Provision of Information to Congress, January 30, 1978;
- (18) DoD Directive 5400.7 DoD Freedom of Information Act (FOIA) Program, September 29, 1997;
- (19) DoD Directive 5400.11 DOD Privacy Program, December 13, 1999;
- (20) DoD Directive 7650.1 Government Accountability Office (GAO) and Comptroller General Access to Records, September 11, 1997;

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(21) DoD Directive 7650.2 Government Accountability Office Reviews and Reports, July 13, 2000;

(22) DoD Directive 8910.1 Management and Control of Information Requirements, June 11, 1993;

(23) DoD Federal Acquisition Regulation Supplement (DFARS), Part 227 Patents, Data, and Copyrights. See also 48 CFR part 227;

(24) Department of Defense Financial Management Regulation (Reimbursable Operations, Policy and Procedures) Volume 11A, April 2003 authorized by DoD Instruction 7000.14, DoD Financial Management Policy and Procedures, November 15, 1992;

(25) DoD Instruction 5400.10 OSD Implementation of DoD Freedom of Information Act Program, January 24, 1991;

(26) DoD 5200.1-R Information Security Program, January 1997, authorized by DoD Directive 5200.1, December 13, 1996, DoD Information Security Program;

(27) DoD 5400.7-R DoD Freedom of Information Act Program, September 4, 1998;

(28) DoD 5400.11-R Department of Defense Privacy Program, August 1983, authorized by DoD Directive 5400.11, December 13, 1999, DoD Privacy Program;

(29) Executive Order 12600 Predisclosure Notification Procedures for Confidential Commercial Information, June 23, 1987, 52 FR 23781;

(30) Public Law 86-36 National Security Information Exemption, Codified at 50 U.S.C. 402, as amended;

(31) Public Law 104-191 Health Insurance Portability and Accountability Act of 1996, Codified at 42 U.S.C. 1171-1179, as amended;

(32) Section 822 of the National Defense Authorization Act for FY 90 and 91 (Pub. L. 101-189, November 29, 1989: 103 Stat. 1382, 1503);

(33) 5 U.S.C. 551-559, Administrative Procedures Act;

(34) 5 U.S.C. 552, as amended: public information; agency rules, opinions, orders, records, and proceedings. (FOIA);

(35) 5 U.S.C. 552a, as amended: records about individuals. (PA of 1974);

(36) 10 U.S.C. 128, Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information;

(37) 10 U.S.C. 130, Authority to Withhold from Public Disclosure Certain Technical Data;

(38) 10 U.S.C. 130(b), Personnel in Overseas, Sensitive, or Routinely Deployable Units: nondisclosure of personally identifying information;

(39) 10 U.S.C. 1102(f), Confidentiality of Medical Quality Assurance Records: Qualified Immunity for Participants;

(40) 10 U.S.C. 2305(g) Prohibition on Release of Contractor Proposals;

(41) 10 U.S.C. 2320-2321, Rights in Technical Data;

(42) 10 U.S.C. 2328, Release of Technical Data under Freedom of Information Act: Recovery of Costs;

(43) 17 U.S.C. 106, Exclusive Rights in Copyrighted Works;

(44) 18 U.S.C. 798, Disclosure of Classified Information;

(45) 18 U.S.C. 3500, The Demands for Production of Statements and Reports of Witnesses (The Jencks Act);

(46) 31 U.S.C. 3717, Interest and Penalty on Claims;

(47) 32 CFR part 518, The Army FOIA Program;

(48) 35 U.S.C. 181-188, Secrecy of Certain Inventions and Filing of Application in Foreign Country;

(49) 41 U.S.C. 423, Restrictions on Disclosing and Obtaining Contractor Bid or Proposal Information or Source Selection Information;

(50) 42 U.S.C. 2162, Classification and Declassification of Restricted Data;

(51) 44 U.S.C. 3301-3324, Disposal of Records;

(52) 45 CFR part 164, Security and Privacy of Individually Identifiable Health Information; and

(53) 50 U.S.C. 403-3, War and National Defense, Protection of Intelligence Sources and Methods.

**APPENDIX B TO PART 518—
ADDRESSING FOIA REQUESTS**

(a) *General.* Army records may be requested from those Army officials who are listed in 32 CFR part 518 (see appendix A). Contact the DA FOIA/PA Office, to coordinate the referral of requests if there is uncertainty as to which Army activity may have the records. Send requests to particular installations or organizations as follows:

(1) Current publications and records of DA field commands, installations, and organizations. See also: <http://books.army.mil/>.

(2) Send the request to the commander of the command, installation, or organization, to the attention of the FOIA Official.

(3) Consult AR 25-400-2 (ARIMS) for more detailed listings of all record categories kept in DA offices.

(4) Contact the installation or organization public affairs officer for help if you cannot determine the official within a specific organization to whom your request should be addressed.

(b) *Department of the Army publications.* Send requests for current administrative, training, technical, and supply publications to the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. NTIS handles general public requests for unclassified, uncopyrighted, and nondistribution-restricted Army publications not sold through the Superintendent of Documents.

(c) *Military personnel records.* Send requests for military personnel records of information as follows:

(1) Army Reserve personnel not on active duty and retired personnel—Commander, U.S. Army Human Resources Command, St. Louis, 1 Reserve Way, St. Louis, MO 63132-5200.

(2) Army officer personnel discharged or deceased after July 1, 1917 and Army enlisted personnel discharged or deceased after November 1, 1912—Director, National Personnel Records Center, 9700 Page Ave., St. Louis, MO 63132-5100.

(3) Army personnel separated before the dates specified in paragraph (2), above—Old Military and Civilian Records Unit (Archives 1), National Archives and Records Administration, Washington, DC 20408-0001.

(4) Army National Guard officer personnel—Chief, National Guard Bureau. Army National Guard enlisted personnel—Adjutant General of the proper State.

(5) Active duty commissioned and warrant officer personnel—Commander, U.S. Army Human Resources Command, ATTN: AHRC-FOI, Alexandria, VA 22332-0404. Active duty enlisted personnel—Commander, U.S. Army Enlisted Records and Evaluation Center, ATTN: PCRE-RP, 8899 East 56th Street, Indianapolis, IN 46249-5301.

(d) *Medical records.*

(1) Medical records of non-active duty military personnel. Use the same addresses as for military personnel records.

(2) Medical records of military personnel on active duty. Address the medical treatment facility where the records are kept. If necessary request locator service.

(3) Medical records of civilian employees and all dependents. Address the medical treatment facility where the records are kept. If the records have been retired, send requests to the Director, National Personnel Records Center, Civilian Records Facility, 111 Winnebago St., St. Louis, MO 63118-4199.

(e) *Legal records.*

(1) Records of general courts-martial and special courts-martial in which bad conduct discharge was approved. For cases not yet forwarded for appellate review, apply to the staff judge advocate of the command having jurisdiction over the case. For cases forwarded for appellate review and for old cases, apply to the U.S. Army Legal Services Agency, ATTN: JALS-CCO, 901 North Stuart Street, Arlington, VA 22203.

(2) Records of special courts-martial not involving a bad conduct discharge. These records are kept for 10 years after completion of the case. If the case was completed within the past three years, apply to the staff judge advocate of the headquarters where it was reviewed. If the case was completed from 3 to 10 years ago, apply to the National Personnel Records Center (Military Records), 9700 Page Ave., St. Louis, MO

63132-5100. If the case was completed more than 10 years ago, the only evidence of conviction is the special courts-martial order in the person's permanent records.

(3) Records of summary courts-martial. Locally maintained records are retired 3 years after action of the supervisory authority. Request records of cases less than 3 years old from the staff judge advocate of the headquarters where the case was reviewed. After 10 years, the only evidence of conviction is the summary courts-martial order in the person's permanent records.

(4) Requests submitted under paragraphs (e) (2) and (3), of this appendix. These requests will be processed in accordance with subpart E of this part. The IDA is The Judge Advocate General, HQDA (DAJA-CL), Washington, DC 20310-2200.

(5) Administrative settlement of claims. Apply to the Chief, U.S. Army Claims Service, ATTN: JACS-TC, Building 4411, Llewellyn Avenue, Fort George G. Meade, MD 20755-5360.

(6) Records involving debarred or suspended contractors. Apply to U.S. Army Legal Services Agency (JALS-PF), 901 North Stewart Street, Arlington, VA 22203.

(7) Records of all other legal matters (other than records kept by a command, installation, or organization staff judge advocate). Apply to HQDA (DAJA-AL), Washington, DC 20310-2200.

(f) *Civil works program records.* Civil works records include those relating to construction, operation, and maintenance for the improvement of rivers, harbors, and waterways for navigation, flood control, and related purposes, including shore protection work by the Army. Apply to the proper division or district office of the Corps of Engineers. If necessary to determine the proper office, contact the Commander, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, ATTN: CECC-K, Washington, DC 20314-1000.

(g) *Civilian personnel records.* Send requests for personnel records of current civilian employees to the employing installation. Send requests for personnel records of former civilian employees to the Director, National Personnel Records Center, Civilian Records Facility, 111 Winnebago St., St. Louis, MO 63118-4199.

(h) *Procurement records.* Send requests for information about procurement activities to the contracting officer concerned or, if not feasible, to the procuring activity. If the contracting officer or procuring activity is not known, send inquiries as follows:

(1) Army Materiel Command procurement: Commander, U.S. Army Materiel Command, ATTN: AMCID-F, 5001 Eisenhower Ave., Alexandria, VA 22333-0001.

(2) Corps of Engineers procurement: Commander, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, ATTN: CECC-K, Washington, DC 20314-1000.

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(3) All other procurement: HQDA (DAJA-KL), 2200 Army Pentagon, Washington, DC 20310-2200.

(i) *Criminal investigation files.* Send requests involving criminal investigation files to the Commander, U.S. Army Criminal Investigation Command, ATTN: CICR-FP, 6010 6th St., Bldg. #1465, Ft. Belvoir, VA 22060-5585. Only the Commanding General, USACIDC, can release any USACIDC-originated criminal investigation file.

(j) *Personnel security investigation files and general Army intelligence records.* Send requests for personnel security investigation files, intelligence investigation and security records, and records of other Army intelligence matters to the Commander, U.S. Army Intelligence and Security Command, ATTN: IAMG-CIC-FOI/PO, 4552 Pike Road, Fort George G. Meade, MD 20755-5995.

(k) *Inspector General records.* Send requests involving records within the Inspector General system to HQDA (SAIG-ZXL), 1700 Army Pentagon, Washington, DC 20310-1700. AR 20-1 governs such records.

(l) *Army records in Government records depositories.* Non-current Army records are in the National Archives of the United States, Washington, DC 20408-0001; in Federal Records Centers of NARA; and in other records depositories. Requesters must write directly to the heads of these depositories for copies of such records. A list of pertinent records depositories is published in AR 25-400-2, table 10-1.

PART 519—PUBLICATION OF RULES AFFECTING THE PUBLIC

Subpart A—General

- Sec.
- 519.1 Purpose.
- 519.2 Explanation of terms.
- 519.3 Responsibilities.
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Subpart B—Information To Be Published in the Federal Register

- 519.8 General.
- 519.9 Information to be published.
- 519.10 Requirements pertaining to the information to be published.
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- 519.12 Exceptions.
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- 519.15 General.
- 519.16 Applicability.
- 519.17 Procedures when proposing rules.
- 519.18 OMB Control Number.
- 519.19 Consideration of public comment.
- 519.20 Procedures when publishing adopted rules.
- 519.21 Submission of petitions.
- 519.22 Cases in which public comment is impractical.

AUTHORITY: Sec. 3012, Pub. L. 84-1028, 70A Stat. 157, (10 U.S.C. 3013); sec. 3, Pub. L. 79-404, 60 Stat. 238, (5 U.S.C. 552).

SOURCE: 69 FR 47766, Aug. 6, 2004, unless otherwise noted.

Subpart A—General

§ 519.1 Purpose.

This part prescribes procedures and responsibilities for publishing certain Department of the Army policies, practices and procedures in the FEDERAL REGISTER as required by statute, and for inviting public comment thereon, as appropriate. This regulation implements portions of the Administrative Procedure Act (APA), 5 U.S.C. 551; Freedom of Information Act (FOIA), 5 U.S.C. 552(a)(1), as implemented by 32 CFR Part 336; Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), as implemented by 1 CFR Chapter 1; Congressional Review Act (CRA), 5 U.S.C. Chapter 8; Executive Order 12866 of September 30, 1993; and DODD 5025.1, DOD Directives System.

[69 FR 47766, Aug. 6, 2004; 69 FR 51569, Aug. 20, 2004]

§ 519.2 Explanation of terms.

(a) *Rule.* The whole or a part of any Department of the Army Statement (regulation, circular, directive, or other media) of general or particular applicability and future effect, which is designed to implement, interpret, or prescribe law or policy or which describes the organization, procedure, or practice of the Army.

(b) **FEDERAL REGISTER.** A document published daily, Monday through Friday (except holidays), by the Office of the Federal Register, to inform the

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public about the regulations of the executive branch and independent administrative agencies of the U.S. Government. The FEDERAL REGISTER includes Presidential proclamations, Executive orders, Federal agency documents having general applicability and legal effect or affecting the public, and documents required to be published by Act of Congress.

(c) *Code of Federal Regulations.* The annual codification of rules published by each Federal Agency. It is divided into 50 titles representing broad subject areas for each Federal Agency and these titles are further subdivided into Chapters, Subchapters, Parts, and Subparts. Army documents are published in Title 32, National Defense, Title 33, Navigation and Navigable Waters, and Title 36, Parks, Forests, and Public Property. (The FEDERAL REGISTER and the Code of Federal Regulations must be used together to determine the latest version of any given rule.)

(d) *Closed meeting.* A meeting that is closed to the public.

(e) *Open meeting.* A meeting that is open to the public.

§519.3 Responsibilities.

(a) The Administrative Assistant to the Secretary of the Army (AASA) acts as the regulatory officer and has oversight of the Army Federal Regulatory Program and Unified Agenda. The AASA coordinates with Assistant Secretary of the Army (Civil Works) (ASA (CW)) and the Deputy Chief of Staff, G-1 (DCS, G-1) to ensure the regulatory requirements and functions are properly executed.

(b) The ASA (CW) submits the annual Regulatory Plan and semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions to the AASA as required by Executive Order 12866 and 5 U.S.C. 601, *et seq.*

(c) The DCS, G-1 develops policy and direction for the Rulemaking Program for the Department of the Army.

(d) The U.S. Army Records Management and Declassification Agency (RMDA) is responsible for policies concerning Department of the Army announcements and rules (proposed, interim, and final) published in the FEDERAL REGISTER, and for ensuring Army

compliance with this part. The RMDA will—

(1) Assist the officials listed in Table 1 of this section in the performance of their responsibilities.

(2) Represent the Army in submitting to the Office of the Federal Register (OFR) any matter published per this part.

(3) Submit the annual Regulatory Plan and semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions to the AASA as required by Executive Order 12866 and 5 U.S.C. 601, *et seq.*

(4) Submit a copy of published final rules (and certain analyses related to the rule, as appropriate) to both Houses of Congress and to the General Accounting Office (GAO), per the CRA.

(e) The U.S. Army Corps of Engineers (USACE) will—

(1) Represent the Army in submitting to the OFR only those Civil Works Program rules (proposed, interim, and final) codified in Title 33, Navigation and Navigable Waters, and Title 36, Parks, Forests, and Public Property of the CFR, subject to the terms of this part.

(2) Submit a copy of published final rules (and certain analyses related to the rule, as appropriate) to both Houses of Congress and to the General Accounting Office (GAO), per the CRA.

(3) When submitting rules codified in Titles 33 and 36 of the CFR, USACE may coordinate directly with OFR (in lieu of RMDA) but must otherwise comply with the provisions of this part. In determining the applicability of this regulation to its rulemaking activities, Army Civil Works rulemaking proponents may replace “RMDA” with “USACE,” wherever it appears in the text of this part.

(f) The officials listed in Table 1 of this section (hereinafter referred to as proponents) are responsible for:

(1) Ensuring maximum practicable participation of the public in the formulation of Army rules that affect the public by allowing public comments in proposed rules. Where deemed appropriate by the Army proponents, the public should participate in consensual mechanisms, such as negotiated rulemaking.

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(2) Determining which matters within their areas of jurisdiction must be published in accordance with §§ 519.8 through 519.14, and for submission actions specified in §§ 519.15 through 519.22.

(g) Legal officers and staff judge advocates supporting the proponents will provide legal advice and assistance in connection with proponent responsibilities contained herein.

TABLE 1—RULEMAKING PROPONENTS

Official	Area of jurisdiction
Administrative Assistant to the Secretary of the Army	Immediate Office of the Secretary of the Army and the Office of the Administrative Assistant.
Director of the Army staff	Elements, Office of the Chief, U.S. Army.
Head of each Army staff agency	Headquarters of the agency and its field operating and staff agencies (including the Installation Management Agency (IMA)).
Commander, MACOM	Headquarters of MACOM and all subordinate activities and units.
RMDA	All other Army elements not covered above.

§ 519.4 Designation of Rulemaking Coordinators.

The officials listed in Table 1 of § 519.3 will designate Rulemaking Coordinators to perform the duties prescribed by §§ 519.15 through 519.22 of this part for their areas of functional responsibility. At the time of designation, RMDA (AHRC-PDD-RP) will be informed of the name and telephone number of the designated individual. The designee will perform the following duties:

- (a) Ensure that all rules and notices to be published comply with the FEDERAL REGISTER format.
- (b) Transmit material to RMDA (AHRC-PDD-RP) and provide RMDA with the name, office symbol, and telephone number of the action officer for each rule or general notice for inclusion in the FEDERAL REGISTER.
- (c) Coordinate with Publication Control Officers to ensure submission of Statements of Compliance required by § 519.5.
- (d) Notify RMDA (AHRC-PDD-RP), 7701 Telegraph Road, Alexandria, VA 22315-3860, when a regulation published in the FEDERAL REGISTER becomes obsolete or is superseded by another regulation.

§ 519.5 Statement of compliance.

In order to ensure compliance with this part, no rule will be issued unless there is on file with RMDA (AHRC-PDD-RP) a statement to the effect that it has been evaluated under the provisions of this part.

If the proponent determines that the provisions of this part are inapplicable, such determination will be explained in the statement.

§ 519.6 Submission of publications for printing.

When Army-wide publications or directives are transmitted to the Director, U.S. Army Publishing Directorate (USAPD) for publication, the DA Form 260 (Request for Printing of Publication) or other transmittal paper will contain a statement that the directive has been processed for publication in the FEDERAL REGISTER or that it falls within the exempted category. USAPD will not publish any rule unless this statement is on DA Form 260. A copy of DA Form 260 may be submitted to RMDA (AHRC-PDD-RP) in lieu of the statement required by § 519.5.

§ 519.7 Regulatory review.

- (a) Proponents of Army regulations will participate in the regulatory process and adhere to the regulatory process as prescribed in this regulation when reviewing their existing publications. This review will follow the same procedural steps outlined for the development of new regulations.
 - (b) In selecting regulations to be reviewed, proponents will consider such criteria as:
 - (1) The requirement for the regulation.
 - (2) Costs and benefits of the regulation to include both quantifiable measures (to the fullest extent that these

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can be usefully estimated) and qualitative measures.

(3) The type and number of complaints or suggestions received.

(4) Burdens imposed directly or indirectly by the regulation to both the public and other government entities.

(5) Elimination of inconsistent, incompatible, overlapping or duplicative regulations.

(6) Length of time since the regulation has been reviewed for scientific, technological, economical, or administrative changes.

Subpart B—Information To Be Published in the Federal Register

§519.8 General.

The Administrative Procedure Act, as amended by the Freedom of Information Act, requires that certain policies, practices, procedures, and other information concerning the Department of the Army be published in the FEDERAL REGISTER for the guidance of the public. In addition, various statutory and nonstatutory authorities, as applicable, may require certain actions and studies be performed in conjunction with the publication of the regulation. In general, this information explains where, how, and by what authority the Army performs any of its functions that affect the public. This subpart describes what information must be published and the effect of failing to publish it.

§519.9 Information to be published.

In deciding which information to publish, consideration must be given to the fundamental objective of informing all interested persons of how to deal effectively with the Department of the Army. Subject to the exceptions provided in §519.12, information to be currently published will include:

(a) Descriptions of the Army's central and field organization and the established places at which, the officers from whom, and the methods whereby, the public can obtain information, make submittals or requests, or obtain decisions.

(b) The procedures by which the Army conducts its business with the public, both formally and informally.

(c) Rules of procedures, descriptions of forms available or the places at which forms can be obtained, and the instructions as to the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of applicability to the public adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Army.

(e) Documents that confer a right or privilege on a segment of the public or have a direct or substantial impact on the public or any significant portion of the public.

(f) Documents that prescribe a course of conduct that must be followed by persons outside the government to avoid a penalty, or secure a right or privilege.

(g) Documents that impose an obligation on the general public or members of a class persons outside the U.S. Government.

(h) Rules (significant) that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way, the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, tribal governments or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken by another agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, loan programs or the rights and obligations thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles of Executive Order 12866.

(i) Open, partially-closed, and closed meetings that require members to take action on behalf of the Army where such deliberations determine or result in the joint conduct or disposition of Army business. Meetings will be published a minimum of 15 calendar days prior to date of meeting or as prescribed by the appropriate statute. Sunshine Act meetings are published in compliance with 5 U.S.C. 552b(e)(3); attendance at these meetings may be restricted for reasons of national security or for reasons indicated in 5 U.S.C.

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552b(c). Notice of Sunshine Act meetings must be published at least one week prior to the date of the meeting (5 U.S.C. 552b(e)).

(j) Notices of establishment or renewal of advisory committees in accordance with their directives, statutory and/or nonstatutory authority.

(k) Public information collection requirements in compliance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*)

(1) Descriptions of particular programs, policy, or procedures in detail such as—

- (1) Decisions and ruling;
 - (2) Grant application deadlines;
 - (3) Availability of Environmental Impact Statements;
 - (4) Delegations of authority;
 - (5) Issuance or revocation of licenses; and
 - (6) Hearings and investigations.
- (m) Each amendment, revision, or repeal of the foregoing.

§519.10 Requirements pertaining to the information to be published.

The following procedures will be completed before submitting rules/regulations for publication—

(a) An economic analysis (EA) of the proposed or existing regulation. The EA should assess the effects of the regulation on the State, local, and tribal governments, and the private sector. An EA threshold of an annual effect on the economy of \$100 million or more has been established for all regulations (Executive Order 12866.)

(b) Regulations containing collection of information requirements will be forwarded through the DCS, G-1 (DAPE-ZXI-RM) to OMB prior to publication as a proposed rule in the FEDERAL REGISTER. In addition, the proponent will address any collection of information comments filed by the Director, OMB, or the public in the final rule.

(c) Statutory and nonstatutory authorities mandate regulatory review of all Department of the Army proposed, interim, final, and withdrawn rules/regulations. The results are published in the semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions. Under the requirements of regu-

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latory review, the proponent will notify RMDA (AHRC-PDD-RP) when—

- (1) Drafting a regulation that would affect the public.
- (2) Reviewing regulations for revision or rescission.
- (3) Rescinding a regulation.

§519.11 Incorporation by reference.

(a) Incorporation by reference allows the proponent to comply with the requirements to publish regulations in the FEDERAL REGISTER by referencing materials published elsewhere (e.g., materials that may be purchased from the Government Printing Office (GPO) or depository libraries or are available for review at Army installations). Incorporated material has the same force and legal effect as any other properly issued regulation. Before a document can be incorporated by reference, the proponent must determine that it is available to the public (*see* 5 U.S.C. 552(a) and 1 CFR Part 51).

(b) Material is eligible for incorporation by reference if it—

- (1) Is published data, criteria, standards, specifications, techniques, illustrations or similar materials.
- (2) Is reasonably available to and usable by the class of persons affected by the publication.
- (3) Does not reduce the usefulness of the FEDERAL REGISTER publication system.
- (4) Benefits the Federal Government and members of affected classes.
- (5) Substantially reduces the volume of material published in the FEDERAL REGISTER.

(c) Incorporation by reference is not acceptable as a complete substitute for promulgating in full the material required to be published. It can, however, be utilized to avoid unnecessary repetition of published information already reasonably available to the class of persons affected. Examples include:

- (1) Construction standards issued by a professional association of architects, engineers, or builders;
- (2) Codes of ethics issued by professional organizations; and,
- (3) Forms and formats publicly or privately published and readily available to the person required to use them.

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(d) Proposals for incorporation by reference will be submitted to RMDA (AHRC-PDD-RP) (by letter) giving an identification and subject description of the document statement of availability, indicating the document will be reasonably available to the class of persons affected, where and how copies may be purchased or examined, and justification for the requirement to incorporate by reference. The request will be submitted to RMDA (AHRC-PDD-RP) at least 25 working days before the proposed date for submission of the incorporation by reference notice for the FEDERAL REGISTER. The 25-working day period begins when RMDA receives the request.

(e) RMDA will consult with the Director, OFR concerning each specific request and will notify the proponent of the outcome of the consultation.

(f) The proponent will submit to RMDA (AHRC-PDD-RP) a general notice upon approval from the Director, OFR to the proposal for incorporation by reference.

(g) Requirements for updating material incorporated by reference:

(1) An amendment to the CFR must be published in the FEDERAL REGISTER.

(2) The proponent must provide RMDA (AHRC-PDD-RP) a copy of the incorporated material, as amended or revised, to submit to the OFR.

(3) RMDA will notify the Director, OFR of the changes.

(h) The proponent will notify RMDA (AHRC-PDD-RP) within 10 working days if the rule does not go into effect or when the rule containing the incorporation by reference is removed.

§ 519.12 Exceptions.

(a) The Army shall not publish rules in the FEDERAL REGISTER that:

(1) Involve any matter pertaining to a military or foreign affairs function of the United States which has been determined under the criteria of an Executive Order or statute to require a security classification in the interests of national defense or foreign policy.

(2) Involve any matter relating to Department of the Army Management, personnel, or public contracts, including nonappropriated fund contracts.

(3) Constitute interpretive rules, general statements of policy or rules of organization, procedure or practice.

(4) Merely interpret a rule already adopted by a higher element within the Department of the Army or by the Department of Defense.

(b) A rule issued at the installation level that affects only the people near a particular post does not ordinarily apply to the general public, so the Army does not usually publish it in the FEDERAL REGISTER.

(c) It is not necessary to publish in the FEDERAL REGISTER any information which comes within one or more of the exemptions to the FOIA, 5 U.S.C. 552(b), as implemented by AR 25-55, para. 3-200.

§ 519.13 Procedures.

All matters to be published in accordance with this part will be submitted to the RMDA (AHRC-PDD-RP) in the proper format prescribed in § 519.17. As provided in § 519.3(e), Army Civil Works proponents who are proposing rules for publication in Titles 33 and 36 of the CFR may submit the required documents directly to the OFR but must otherwise comply with the provisions of this part.

§ 519.14 Effect of not publishing.

Except to the extent that a person has actual and timely notice thereof, the Army cannot require the general public to comply with, or be adversely affected by, a policy or requirement, as determined in § 519.9, until it is published in the FEDERAL REGISTER.

Subpart C—Inviting Public Comment on Certain Proposed Rules and Submission of Petitions

§ 519.15 General.

Public comment must be sought on certain proposed rules which are required to be published in accordance with § 519.9. All regulations affecting the public will be forwarded to RMDA (AHRC-PDD-RP) for review and coordination with OMB. This subpart sets forth the criteria and procedures for inviting public comment before publication.

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§ 519.16 Applicability.

(a) These provisions apply only to those Department of the Army rules or portions thereof that:

(1) Are promulgated after September 7, 2004;

(2) Must be published in the FEDERAL REGISTER in accordance with § 519.9;

(3) Have a substantial and direct impact on the public or any significant portion of the public; and

(4) Do not merely implement a rule already adopted by a higher element within the Department of the Army or by the Department of Defense.

(b) Unless otherwise required by law, the requirement to invite advance public comment on proposed rules does not apply to those rules or portions thereof that:

(1) Do not come within the purview of paragraph (a) of this section;

(2) Involve any matter relating to a military or foreign affairs function of the United States that has been determined under the criteria of an Executive Order or statute to require a security classification in the interests of national defense or foreign policy;

(3) Involve any matter relating to Department of the Army management, personnel, or public contracts, e.g., Armed Services Procurement Regulation, including nonappropriated fund contracts;

(4) Constitute interpretative rules, general statements of policy or rules of organization, procedure or practice; or

(5) The proponent of the rule determines for good cause that inviting public comment would be impracticable, unnecessary, or contrary to the public interest. This provision will not be utilized as a convenience to avoid the delays inherent in obtaining and evaluating prior public comment. See also § 519.22.

§ 519.17 Procedures when proposing rules.

(a) A description of the proposed rule will be forwarded to RMDA (AHRC-PDD-RP) for regulatory and OMB review. The RMDA will provide a Regulation Identifier Number (RIN) used to identify and report the rule in the Unified Agenda to the proponent once OMB has approved the rule for publication in the Proposed Rules section of

the FEDERAL REGISTER. Proposed rules that have unresolved issues will not be published in the FEDERAL REGISTER.

(b) The preamble and the proposed rule will be prepared by the proponent. Preparation of the preamble and the proposed rule will be in accordance with guidance contained in the FEDERAL REGISTER Handbook on Document Drafting.

(c) Public comment will be invited within a designated time, not less than 60 days, prior to the intended adoption of the proposed rule.

(d) Rulemaking proponents will submit the original and three copies of the proposed rule and the preamble in the prescribed format to RMDA (AHRC-PDD-RP). The RMDA will ensure that the approved rules comply with executive and legislative requirements, and have the necessary coordination with OMB prior to publication. Upon OMB approval, the RMDA will certify and submit the documents to the Office of the Federal Register for publication as a proposed, interim, or final rule, as applicable.

(e) If no action has occurred within 1 year of publication, the proposed rule will be considered for withdrawal, unless the proponent provides justification to RMDA (AHRC-PDD-RP). If the proponent determines that the proposed rule must be withdrawn, the proponent will submit a document to RMDA (AHRC-PDD-RP) to be published in the FEDERAL REGISTER withdrawing the proposed rule. The withdrawal of the proposed rule will be reported in the next edition of the Unified Agenda.

(f) Civil Works projects under the ASA (CW) will submit updated and proposed Unified Agenda items to AASA.

§ 519.18 OMB Control Number.

Each rule OMB reviews under the Paperwork Reduction Act is assigned an OMB control number which becomes its identifier throughout its life.

§ 519.19 Consideration of public comment.

(a) Following publication of a notice of proposed rulemaking, all interested persons will be given an opportunity to participate (60 days) in the rulemaking through the submission of written

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data, views and arguments to the proponent of the proposed rulemaking concerned.

(b) If the proponent of the rule determines that it is in the public interest, a hearing or other opportunity for oral presentation of view may be allowed as a means of facilitating public comment. Informal consultation by telephone or otherwise can also be utilized to facilitate presentation of oral comments by interested persons. All hearings or other oral presentations will be conducted by the proponent of the rule in a manner prescribed by him/her. A hearing file will be established for each hearing. The hearing file will include:

- (1) Public notices issued;
- (2) Request for the hearing;
- (3) Data or material submitted in justification thereof;
- (4) Materials submitted in opposition to the proposed action;
- (5) Hearing transcript; and
- (6) Any other material as may be relevant or pertinent to the subject matter of the hearing.

(c) There is no requirement to respond either orally or in writing, individually to any person who submits comments with respect to a proposed rule. The proponent of the rule, however, can do so as a matter within his/her discretion.

§519.20 Procedures when publishing adopted rules.

(a) After careful consideration of all relevant material submitted, the proponent of the rule will make such revisions in the proposed rule as necessary in light of the comments received.

(b) If it is impractical for the rule proponent to finalize the rule after the comment period, due to extensive unresolved issues, the proponent will publish a document withdrawing the proposed rule.

(c) The proponent will prepare a preamble for publication with the final rule. The proponent will discuss in the preamble the comments received in response to the proposed rule and the decision to accept or reject the comments in the revision to the proposed rule. Preparation will be in accordance with guidance contained in the FEDERAL REGISTER Handbook on Document Drafting.

(d) The original and three copies of the preamble and revised rule will be forwarded to RMDA (AHRC-PDD-RP) in the proper format. The RMDA will then prepare the required certification and submit the documents to the Office of the Federal Register for publication in the form of an adopted rule.

(e) The proponent will provide to RMDA (AHRC-PDD-RP), a copy of the final rule, a completed OMB Form "Submission of Federal Rules Under the Congressional Review Act" (available at <http://www.whitehouse.gov/WH/EOP/OMB> and <http://www.gao.gov>), and a concise statement about the rule within 14 days of publication date in the FEDERAL REGISTER. The proponent will identify whether it is a major or a substantive/nonsignificant rule, its proposed effective date, significant issues of interest, and a cost-benefit analysis of the rule, as applicable. The RMDA will submit a copy of all final rules to both Houses of Congress and the Government Accounting Office (GAO) per CRA.

(f) Army Civil Works rulemaking proponents, when proposing rules governed by §519.3(e) of this regulation, may forward the documents prescribed in paragraphs (d) and (e) of this section directly to the OFR. Army Civil Works proponents are responsible for submitting a copy of the final rules to Congress and GAO in accordance with paragraph (e) of this section.

§519.21 Submission of petitions.

Each proponent of a rule will grant to any interested person the right to submit a written petition calling for the issuance, amendment, or repeal of any rule to which this part applies or would apply if issued, as specified in §519.16. Any such petition will be given full and prompt consideration by the proponent. If compatible with the orderly conduct of public business, the appropriate official may, at his discretion, allow the petitioner to appear in person for the purpose of supporting this petition. After consideration of all relevant matters by the proponent, the petitioner will be advised in writing by the proponent of the disposition of any petition, together with the reasons

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supporting that disposition. This provision does not apply to comments submitted on proposed rules in §519.19.

§519.22 Cases in which public comment is impractical.

(a) Whenever a rulemaking proponent determines for good cause that inviting public comment regarding a proposed rule would be impractical, unnecessary, or contrary to the public interest, he will prepare a brief statement of the reasons supporting this determination for incorporation in the preamble to the adopted rule. The preamble and adopted rule will then be published as outlined in §519.20(c) and (d).

(b) Alternatively, the proponent may request RMDA (AHRC-PDD-RP) (by letter) to adopt and publish in the FEDERAL REGISTER a separate rule exempting from the prepublication notice provisions of this regulation those specific categories of rules that the rulemaking proponent has determined that public comment would be unnecessary, impractical, or contrary to the public interest. The request to RMDA will contain an explanation of the reasons why the proponent believes that a particular category of rule or rules should not be published in proposed form for public comment and a legal review by the proponent's servicing legal office. If RMDA in coordination with the Office of Army General Counsel, agrees that public comment should not be invited with respect to the cited category, the proponent will adopt and publish a separate rule in the FEDERAL REGISTER exempting such rule or rules from the requirements of this part. This separate rule will include an explanation of the basis for exempting each particular category from the provisions of this part.

PART 525—ENTRY AUTHORIZATION REGULATION FOR KWAJALEIN MISSILE RANGE

Sec.

- 525.1 General.
- 525.2 Background and authority.
- 525.3 Criteria.
- 525.4 Entry authorization (policy).
- 525.5 Entry authorization (procedure).

AUTHORITY: 44 U.S.C. 1681, 50 U.S.C. 797, 18 U.S.C. 1001, and E.O. 11021.

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SOURCE: 48 FR 34028, July 27, 1983, unless otherwise noted.

§525.1 General.

(a) *Purpose.* This regulation prescribes policies and procedures governing entry of persons, ships, and aircraft into the Kwajalein Missile Range (KMR), Kwajalein Atoll, Marshall Islands.

(b) *Scope.* (1) This regulation is applicable to all persons, ships and aircraft desiring entry into KMR.

(2) The entry authorizations issued under this authority are limited to KMR and do not apply to entry to any other areas of the Marshall Islands.

(3) In addition to the controls covered by this regulation movement within the Kwajalein Missile Range, the territorial sea thereof and airspace above, is subject to local control by the Commander, Kwajalein Missile Range, and as installation commander.

(4) This regulation is not applicable to entry authorized by the President of the United States pursuant to the United Nations (U.N.) Charter and to Article 13 of the Trusteeship Agreement for the Former Japanese Mandated Islands.

(c) *Explanation of terms*—(1) *Department of Defense.* A department of the executive branch of the U.S. Government which includes the Departments of the Army, the Navy, and the Air Force.

(2) *Entry Authorization.* Authorization by designated authority for a person, a ship, or an aircraft to enter Kwajalein Missile Range, the surrounding territorial sea, and the airspace above.

(3) *National Range Commander.* The Commander, Ballistic Missile Defense Systems Command, is the National Range Commander.

Address: National Range Commander, Kwajalein Missile Range, Ballistic Missile Defense Systems Command, ATTN: BDMSC-R, P.O. Box 1500, Huntsville, Alabama 35807.
Electrical Address: CDRBMDSCOM HUNTSVILLE AL//BMDSC-R//.

(4) *Commander. KMR.* The Commander of the Kwajalein Missile Range is located at Kwajalein Island, Republic of the Marshall Islands.

Address: Commander, Kwajalein Missile Range, P.O. Box 26, APO San Francisco 96555.

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Electrical Address: CDRKMR MI //BMDSC-RK//

(5) *Excluded person.* A person who has been notified by the National Range Commander or the Commander, KMR, that authority for said person to enter Kwajalein Missile Range or to remain in Kwajalein Missile Range has been denied or revoked.

(6) *Unauthorized person.* A person who does not hold a currently valid entry authorization for the Kwajalein Missile Range and does not possess entry rights under authority of paragraph 4-1.a.

(7) *Aliens.* Persons who are neither citizens of, nor nationals of, nor aliens to the United States of America.

(8) *Permanent resident aliens.* Persons who are not citizens of the United States of America but who have entered the United States under an immigrant quota.

(9) *Military installation.* A military (Army, Navy, Air Force, Marine Corps, and/or Coast Guard) activity ashore, having a commanding officer, and located in an area having fixed boundaries, within which all persons are subject to military control and to the immediate authority of a commanding officer.

(10) *Public ship or aircraft.* A ship, boat, or aircraft owned by or belonging to a Government and not engaged in commercial activity.

(11) *Kwajalein Missile Range.* Kwajalein Missile Range is defined as all those defense sites in the Kwajalein Atoll, Marshall Islands, including airspace and adjacent territorial waters, to which the United States Government has exclusive rights and entry control by agreement with the Trust Territory of the Pacific Islands and the Republic of the Marshall Islands.

(12) *Territorial waters.* In accordance with title 19, chapter 3, section 101 of the Code of the Trust Territory of the Pacific Islands territorial waters mean, "that part of the sea comprehended within the envelope of all arcs of circles having a radius of three marine miles drawn from all points of the barrier reef, fringing reef, or other reef system of the Trust Territory, measured from the low water line, or, in the absence of such a reef system, the distance to be measured from the low

water line of any island, islet, reef, or rocks within the jurisdiction of the Trust Territory."

(13) *Kwajalein Missile Range Airspace.* The air lying above the Kwajalein Atoll, including that above the territorial waters.

(14) *Trust Territory Republic of the Marshall Islands Registry.* Registration of a ship or aircraft in accordance with the laws of the Trust Territory of the Pacific Islands or the Republic of the Marshall Islands.

(15) *U.S. Registry.* Registration of a ship or aircraft in accordance with the laws and regulations of the United States.

(16) *U.S. Armed Forces.* Military personnel of the Department of Defense and the United States Coast Guard.

(17) *Principal.* A resident of Kwajalein Missile Range who is authorized to have his or her dependent(s) reside or visit with him (her) on Kwajalein Missile Range.

(18) *Dependent.* (i) Spouse of principal.

(ii) Unmarried child of principal less than 21 years of age.

(iii) Sponsored individual meeting the dependency criteria of section 152, Internal Revenue Code (26 U.S.C. 152), and approved by the Commander, Kwajalein Missile Range.

§ 525.2 Background and authority.

(a) *Background.* (1) Certain areas, due to their strategic nature or for purposes of defense, have been subjected to restrictions regarding the free entry of persons, ships, and aircraft. Free entry into the areas listed and defined in this regulation, and military installations contiguous to or within the boundaries of defense site areas, is subject to control as provided for in the Executive Order 11021 of May 7, 1962 and Departments of Interior and Defense Agreement effective July 1, 1963, or other regulations. Such restrictions are imposed for defense purposes because of the unique strategic nature of the area and for the protection of the United States Government military bases, stations, facilities, and other installations, and the personnel, property, and equipment assigned to or located therein. Persons, ships, and aircraft are excluded from KMR unless and until they

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are granted permission to enter under applicable regulations.

(2) The control of entry into or movement within KMR by persons, ships, or aircraft will be exercised so as to protect fully the physical security of, and insure the full effectiveness of, bases, stations, facilities, other installations, and individuals within KMR. However, unnecessary interference with the free movement of persons, ships, and aircraft is to be avoided.

(3) This regulation will be administered to provide the prompt processing of all applications and to insure uniformity of interpretation and application insofar as changing conditions permit.

(4) In cases of doubt, the determination will be made in favor of the course of action which will best serve the interests of the United States and national defense as distinguished from the private interests of an individual or group.

(b) *Authority.* (1) The Trust Territory of the Pacific Islands is a strategic area administered by the United States under the provisions of the Trusteeship Agreement for the Former Japanese Mandated Islands, approved by the United Nations April 2, 1947. Congress, by 48 U.S.C. Sec. 1681, gave responsibility for this area to the President. By Executive Order 11021, the President delegated this authority to the Secretary of Interior. By agreement between the Secretary of Interior and Secretary of Defense, the Navy became responsible for all entry control July 1, 1963. With approval of the Secretary of Defense and Director of the Office of Territories, the authority to control entry into KMR was transferred to the Army in July of 1964.

(2) The authority of the Department of the Army to control entry of persons, ships, and aircraft into Kwajalein Missile Range is exercised through the Commander, Ballistic Missile Defense Systems Command, who is the National Range Commander.

(3) Penalties are provided by law for:

(i) Violation of regulations imposed for the protection or security of military or naval aircraft, airports, air facilities, vessels, harbors, ports, piers, waterfront facilities, bases, forts, posts, laboratories, stations, vehicles,

equipment, explosives, or other property or places subject to the jurisdiction of, administration of, or in the custody of the Department of Defense (sec. 21 of the Internal Security Act of 1950 (50 U.S.C. 797) and Department of Defense Directive 5200.8 of 29 July 1980.

(ii) Knowingly and willfully making a false or misleading statement or representation in any matter within the jurisdiction of any department or agency of the United States (18 U.S.C. 1001).

§ 525.3 Criteria.

(a) *General.* (1) Entry authorizations may be issued only after the National Range Commander, the Commander, KMR, or a duly authorized subordinate has determined that the presence of the person, ship, or aircraft will not, under existing or reasonably foreseeable future conditions, endanger, place an undue burden upon, or otherwise jeopardize the efficiency, capability or effectiveness of any military installation located within Kwajalein Missile Range or areas contiguous thereto. Factors to be considered shall include, but not be limited to, the true purpose of the entry, the possible burdens or threats to the defense facilities which the presence of the ship, aircraft, or the individual or individuals involved impose or might reasonably be expected to impose on those islands in the Kwajalein Atoll under U.S. Army jurisdiction.

(2) Request for entry authorizations will be evaluated and adjudged as to whether the entry at the time and for the purpose stated will or will not be inimical to the purposes of U.S. national defense.

(b) *Aliens and permanent resident aliens.* (1) Entry of aliens for employment or residence (except as specified in paragraph 3-2.b.) in an area entirely within the borders of Kwajalein Missile Range is not authorized except when such entry would serve the interests of the U.S. Government, and then only for specified periods and under prescribed conditions. Entry application shall include the name and nationality of the person desiring entry.

(2) Alien and immigrant spouses and dependents of U.S. citizen sponsors or

principals assigned to Kwajalein Missile Range may be granted entry authorization by the National Range Commander so long as U.S. sponsor or principal remains on duty or resides within Kwajalein Missile Range.

(c) *Excluded persons.* Excluded persons, as defined in 1-3.e., are normally prohibited from entering Kwajalein Missile Range. Excluded persons may enter Kwajalein Missile Range only when a bona fide emergency exists and the Commander, Kwajalein Missile Range, grants permission for them to enter or transit the Kwajalein Missile Range. While they are within the jurisdiction of the Commander, Kwajalein Missile Range, they will be subject to such restrictions and regulations as he may impose.

(d) *Unauthorized persons.* Persons not authorized to enter Kwajalein will not normally be allowed to debark from authorized ships or aircraft at Kwajalein Island or other islands in the Kwajalein Atoll to which the U.S. Government has lease rights, except that continuing aircraft passengers may be allowed at the discretion of the Commander, Kwajalein Missile Range, to debark during aircraft ground time to remain within specified portions of the terminal building designated by the Commander, Kwajalein Missile Range. In emergency situations, entry of unauthorized personnel may be granted by the Commander, Kwajalein Missile Range.

(e) *Entrance to other areas of the Trust Territory.* No person, unless a citizen, national, or permanent resident alien of the Marshall Islands, will be permitted to debark at Kwajalein Missile Range for the purpose of transiting to areas under the jurisdiction of the Republic of the Marshall Islands without possessing a permit issued by its Chief of Immigration.

Address: Chief of Immigration, Office of the Attorney General, Republic of the Marshall Islands, Majuro, MI 96960.

(f) *Unauthorized marine vessels and aircraft.* No unauthorized marine vessel or aircraft shall enter Kwajalein Missile Range unless a bona fide emergency exists and the Commander, Kwajalein Missile Range, has granted such permission. The Commander, Kwajalein Missile Range, shall use all means at

his disposal to prevent unauthorized vessels and aircraft from entering Kwajalein Missile Range. Unauthorized marine vessels and aircraft will be seized for prosecution along with the crew, passengers, and cargo.

(g) *Military areas.* Entries authorized under this instruction do not restrict the authority of the Commander, Kwajalein Missile Range, to impose and enforce proper regulations restricting movement into or within portions of Kwajalein Missile Range reserved for military operations.

(h) *Waivers.* No one except the National Range Commander, or his duly authorized representative, has authority to waive the requirements of this regulation. Any waiver shall be in writing and signed.

(i) *Security clearances.* Organizations, including U.S. Government contractors, responsible for the assignment of personnel to KMR on either a temporary or permanent basis will comply with security clearance requirements for the assignment. A copy of the security clearance notification will be forwarded to Cdr, BMDSCOM, ATTN: BMDSC-AU.

§ 525.4 Entry authorization (policy).

(a) *Personnel.* (1) Persons in the following categories may enter Kwajalein Missile Range without obtaining specific entry authorization provided the Commander, Kwajalein Missile Range, is notified of impending entry 14 days prior to entry date:

(i) Personnel being assigned to Kwajalein Missile Range as permanent-party and traveling on official orders.

(ii) Personnel being temporarily assigned to Kwajalein Missile Range and who are traveling on official orders.

(iii) Dependents of permanent-party personnel who are *accompanying* their sponsors and are traveling on official orders.

(iv) Crew members on ships and aircraft authorized to enter Kwajalein Missile Range.

(2) Persons in the following categories will submit request for entry authorization to the Commander, Kwajalein Missile Range, ATTN: BMDSC-RKE-S:

(i) Dependents of KMR-based permanent-party personnel for the purpose of

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joining their sponsors (already stationed at KMR) on either a permanent or temporary basis.

(ii) Citizens, nationals and permanent resident aliens of the Republic of the Marshall Islands except those who deplaned for the purpose of transiting Kwajalein Defense Site.

(iii) Citizens of the Trust Territory of the Pacific Islands.

(iv) U.S. citizen employees and officials of the Trust Territory of the Pacific Islands.

(3) All other personnel, except news media representatives, will submit request for entry authorization to the National Range Commander, BMDSCOM, ATTN: BMDSC-R (electrical address: CDRBMDSCOM HUNTSVILLE AL//BMDSC-RA//).

(4) All requests and notifications will include the following data (as applicable):

(i) Full name(s).

(ii) Citizenship.

(iii) Organization.

(iv) Purpose of entry.

(v) Point of contact at Kwajalein Missile Range.

(vi) Inclusive dates of stay.

(vii) Return address.

(viii) Proof of security clearance (if access to classified information is required).

(5) News media representatives require authority from the National Range Commander to visit Kwajalein Missile Range (news media representatives wishing to transit Kwajalein Island to visit any island not within the Kwajalein Missile Range must obtain entry authorization from the Republic of the Marshall Islands and present same to the air carrier at the point of departure to Kwajalein Island). Requests should be addressed to the National Range Commander, BMDSCOM, ATTN: BMDSC-S (electrical address: CDRBMDSCOM HUNTSVILLE AL//BMDSC-S//) and contain the following information:

(i) Name.

(ii) Date and place of birth.

(iii) Citizenship.

(iv) Organization(s) represented.

(v) Objective(s) of visit.

(vi) Desired and alternative arrival and departure dates.

(vii) Address(es) and telephone number(s) for additional information and/or reply.

(b) *Ship*. (1) Ships or other marine vessels in the following categories, except those which have been denied entry or have had a prior entry authorization revoked, may enter the Kwajalein Missile Range territorial waters upon request to and approval of the Commander, Kwajalein Missile Range:

(i) U.S. private ships which are:

(A) Under charter to the Military Sealift Command, or

(B) Employed exclusively in support of and in connection with a Department of Defense construction, maintenance, or repair contract.

(ii) Trust Territory of the Pacific Islands/RMI ships which have been approved by the resident representative on Kwajalein.

(iii) Any ship in distress.

(iv) U.S. public ships which are providing a service to the Kwajalein Atoll in accordance with their agency responsibilities.

(2) All other ships or marine vessels must obtain an entry authorization from the National Range Commander before entering the Kwajalein Atoll territorial sea. The entry authorization application should reach the National Range Commander at least 14 days prior to the desired entry date and should include the following information:

(i) Name of ship.

(ii) Place of registry and registry number.

(iii) Name, nationality, and address of operator.

(iv) Name, nationality, and address of owner.

(v) Gross tonnage of ship.

(vi) Nationality and numbers of officers and crew (include crew list when practicable).

(vii) Number of passengers (include list when practicable).

(viii) Last port of call prior to entry into area for which clearance is requested.

(ix) Purpose of visit.

(x) Proposed date of entry and estimated duration of stay.

(xi) Whether ship is equipped with firearms or photographic equipment.

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(xii) Whether crew or passengers have in their possession firearms or cameras.

(3) Entry authorizations may be granted for either single or multiple entries.

(4) Captains of ships and/or marine vessels planning to enter Kwajalein Missile Range shall not knowingly permit excluded persons to board their vessels.

(5) U.S. public ships which are authorized to enter defense areas by the controlling Defense Department agency may enter the Kwajalein Atoll territorial sea without the specific approval of either the National Range Commander or the Commander, KMR, provided that the Commander, KMR, is notified as far in advance of the impending entry as is consistent with the security requirements pertaining to such movement.

(c) *Aircraft.* (1) Aircraft in the following categories, except those aircraft which have been denied entry or have had a prior entry authorization revoked, may enter Kwajalein Atoll airspace upon request and approval of the Commander, KMR:

(i) U.S. private aircraft which are under charter to the Military Airlift Command.

(ii) Public aircraft of the Trust Territory of the Pacific Islands/RMI which have been approved by the resident representative on Kwajalein.

(iii) Private aircraft registered with and approved by the Commander, KMR, which are based on Kwajalein Island.

(iv) Any aircraft in distress.

(v) Private aircraft operated by a common carrier which is providing scheduled air service to or through the Kwajalein Atoll under a current license issued by the Department of the Army.

(vi) U.S. public aircraft which are providing a service to the Kwajalein Atoll in accordance with their agency responsibilities.

(2) All aircraft, except those categorized in paragraph 4-3.a., must obtain an entry authorization from the National Range Commander before entering Kwajalein Atoll airspace. The entry authorization application should reach the National Range Commander at least 14 days prior to the desired

entry date and should include the following information:

(i) Type and serial number of aircraft.

(ii) Nationality and name of registered owner.

(iii) Name and rank of senior pilot.

(iv) Nationality and number of crew (include crew list when practicable).

(v) Number of passengers (include list when practicable).

(vi) Purpose of flight.

(vii) Plan of flight route, including the point of origin of flight and its designation and estimated date and times of arrival and departure of airspace covered by this procedure.

(viii) Radio call signs of aircraft and radio frequencies available.

(ix) Whether aircraft is equipped with firearms or photographic equipment.

(x) Whether crew or passengers have in their possession firearms or cameras.

(3) Entry authorizations may be granted for either single or multiple entries.

(4) Captains of aircraft planning to enter Kwajalein Missile Range airspace shall not knowingly permit excluded persons to board their aircraft.

(5) U.S. public aircraft which are authorized to enter defense areas by the controlling Defense Department agency may enter the Kwajalein Atoll airspace with the specific approval of either the National Range Commander or the Commander, KMR, provided that the Commander, KMR, is notified as far in advance of the impending entry as is consistent with the security requirement pertaining to such movements.

§ 525.5 Entry authorization (procedure).

(a) *Processing.* (1) Upon receipt of an application, the appropriate officer (either the National Range Commander, the Commander, Kwajalein Missile Range or the designated representative) shall take the following actions:

(i) Determine that the entry of the applicant is, or is not, in accordance with the criteria set forth in chapter 3. After having made a determination, the reviewing authority shall either:

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(A) Issue an entry authorization as requested, or with modifications as circumstances require; or

(B) Deny the request and advise the applicant of his/her right to appeal in accordance with the provisions of paragraph 5-2.

(ii) If the reviewing authority feels that additional information is required before reaching a decision, the reviewing authority will request that information from the applicant and then proceed as in paragraph 5-1.a.(1).

(iii) If, after having obtained all pertinent information, the reviewing authority cannot reach a decision, he/she will forward the application to the next higher headquarters. A statement containing the following information shall accompany the application:

(A) A summary of the investigation conducted by the reviewing organization.

(B) The reason the application is being forwarded.

(C) Appropriate comments and/or recommendations.

(2) All applicants will be kept fully informed of actions/decisions pertaining to his/her application. Normally a response will be forwarded to the applicant within ten working days after receipt of an application. When the National Range Commander responds to an application, he/she will send a copy of that response to the Commander, KMR. When the Commander, Kwajalein Missile Range, responds to an application, and the National Range Commander has an interest in the visit, the Commander, KMR, will concurrently send a copy of that response to the National Range Commander.

(3) Entry authorizations shall state the purpose for which the entry is authorized and such other information and conditions as are pertinent to the particular authorization.

(b) *Revocations.* (1) Entry authorizations may be revoked by the National Range Commander or the Commander, Kwajalein Missile Range, for mis-

conduct, or termination of status, or upon being advised of the discovery of information which would have been grounds for denial of the initial request. Such a revocation will be confirmed in writing to the holder of an entry authorization. When an entry authorization is revoked, a one-way permit will be normally issued as appropriate, to permit the ship, aircraft, or person to depart the area.

(2) When Commander, Kwajalein Missile Range revokes an entry authorization, he shall forward a copy of such revocation with supporting documentation to the National Range Commander.

(c) *Appeals.* (1) Appeals from entry denial or revocation by Commander, Kwajalein Missile Range will be filed with the National Range Commander. An appeal shall contain a complete statement of the purpose of the proposed entry and a statement or reasons why the entry should be authorized, or why revocation of entry authorization should not be enforced.

(2) Final appeal letters will be forwarded promptly by the National Range Commander to the BMD Program Manager with an indorsement setting forth in detail the facts and circumstances surrounding the action taken.

(d) *Renewals.* Entry authorizations having been granted and utilized may be extended or renewed upon request at the expiration of the period for which the entry was originally authorized or extended provided the justification for remaining in the area or for making a reentry meets the criteria set forth in this procedure. It shall be the responsibility of every applicant to depart Kwajalein Missile Range upon expiration of the time prescribed in the entry authorization, unless such authorization has been extended or renewed. Failure to comply herewith will be considered as evidence or violation of this procedure and may result in denial of future authorizations.

SUBCHAPTER B—CLAIMS AND ACCOUNTS

PART 534—MILITARY COURT FEES

Sec.

534.1 General.

534.2 Allowable expenses for reporters.

534.3 Allowable expenses for witnesses.

534.4 Other fees.

AUTHORITY: Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012.

CROSS REFERENCE: General Accounting Office, see 4 CFR chapter I.

SOURCE: 26 FR 9989, Oct. 25, 1961, unless otherwise noted.

§ 534.1 General.

(a) *Applicability.* This part applies to court reporters and interpreters appointed under the Uniform Code of Military Justice, Article 28 (10 U.S.C. 828), and witnesses both in Government employ and those not in Government employ when subpoenaed to appear before a court.

(b) *Use of term "court".* The term "court" as used in this part will be construed to include court-martial, court of inquiry, military commission, or retiring board. "Military commission" includes any United States tribunal, by whatever name described, convened in the exercise of military government, martial law, or the laws of war.

§ 534.2 Allowable expenses for reporters.

(a) *General.* Reporters appointed under the Uniform Code of Military Justice, Article 28, are entitled to payment for their services in such capacity at the rates specified in paragraphs (b) through (i) of this section, or at such lower rates as may be stated in the appointing instrument.

(b) *Per diem pay.* A reporter is entitled to a per diem payment of not to exceed \$5 for each day or fraction thereof in attendance at court. Only one such payment is authorized for any 1 day even if the reporter attends two or more courts. For the purpose of this payment, the day ends at midnight and any fraction will be considered a whole day.

(c) *Hourly pay.* A reporter is entitled to an hourly payment of not to exceed 50 cents for each hour, or fractional part equal to or greater than one-half hour, actually spent in court during the trial or hearing. A fractional part of an hour, less than one-half hour, will be disregarded, except that if the total time in attendance in one day or at one court in one day is less than 1 hour, such time will be considered as 1 hour. Time will be computed separately for each day if only one court is attended in such day. If more than one court is attended in 1 day, time in attendance at each court will be computed separately. The hourly pay is in addition to the per diem prescribed in paragraph (b) of this section.

(d) *Piece-work pay—(1) Rates.* In addition to per diem and hourly pay prescribed in paragraphs (b) and (c) of this section, a reporter will be paid on a piece-work basis for transcribing notes and copy work based on the following rates:

(i) Transcribing notes and making that portion of the original record which is required to be typewritten—25 cents for each 100 words.

(ii) Each carbon copy of the record when authorized by the convening authority—10 cents for each 100 words.

(iii) Copying papers material to the inquiry—15 cents for each 100 words.

(iv) Each carbon copy of the papers referred to in paragraph (d)(1)(iii) of this section when ordered by the court for its use—2 cents for each 100 words.

(2) *Counting number of words.* The certifying officer may determine the total number of words by counting the words on a sufficient number of pages to arrive at a fair average of words per page and multiplying such average by the total number of pages. Abbreviations "Q" and "A" for "Questions" and "Answer" and all dates such as "25th" and "1957" will each be counted as one word. Punctuation marks will not be counted as words.

(e) *Mileage.* A reporter is entitled to 8 cents a mile for travel from his home or usual place of employment to the court and for his return journey, computed on the basis of the Rand McNally

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Standard Highway Mileage Guide. Mileage is not authorized for return trips each night unless the sessions of the court are held on nonconsecutive days. The fact that a reporter may serve two or more courts in the same day does not warrant a duplication of his mileage allowance.

(f) *Allowance in lieu of subsistence*—(1) *General.* When the official of the court having control in such matters keeps the reporter at his own expense away from his usual place of employment for 24 hours or more on public business referred to the court, a per diem allowance of not to exceed \$4 in lieu of subsistence will be paid to the reporter for himself. A like allowance when ordered by the court will be paid to the reporter for each necessary assistant. The fact that a reporter returns each night to his home does not preclude the view that he is kept away from his usual place of employment for 24 hours. Service as reporter before two or more courts in the same day does not warrant duplication of the per diem allowance in lieu of subsistence.

(2) *Computation.* The time for which the per diem allowance for expenses is to be paid will be computed in the manner prescribed in § 534.3(b)(3) for a civilian witness not in Government employ.

(g) *Allowance for constructive attendance.* A reporter duly employed but who after arrival at court performs no service because of adjournment is entitled to mileage; to a day's pay as prescribed in paragraph (c) of this section; and also to the per diem allowance prescribed in paragraph (f) of this section if kept away from his usual place of employment for 24 hours.

(h) *Detail of enlisted members.* Enlisted members may be detailed to serve as stenographic reporters for military courts, boards, and commissions, but will receive no extra pay for such service.

(i) *Persons receiving pay from Government.* Compensation for clerical duties performed for a court will not be paid to a person who is in the pay of the Government, except retired military members to the extent permitted under the dual compensation laws.

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§ 534.3 Allowable expenses for witnesses.

(a) *Military members*—(1) *On active duty.* Members in the military service, on active duty, when required to appear as witnesses before courts will receive the appropriate travel and transportation allowances prescribed in chapter 4, Joint Travel Regulations.

(2) *Retired members.* Retired military members, not on active duty, when called as witnesses (other than expert witnesses), are entitled for their services as such to the mileage and other fees prescribed in paragraph (b)(3) of this section, for civilian witnesses not in Government employ.

(b) *Civilians*—(1) *General.* (i) Persons not subject to military law when called as witnesses are entitled to the fees and mileage allowed to witnesses attending courts of the United States.

(Article 47, Uniform Code of Military Justice (10 U.S.C. 847; 1 Comp. Gen. 347))

(ii) When the court is sitting in a foreign country, the oversea commander within whose command the court is convened will fix fees and allowances to be paid to witnesses, not in excess of maximum rates permitted to witnesses attending the courts of the United States or the courts of the foreign country, whichever rates may be higher.

(2) *In Government employ.* Any officer or employee of the United States or any agency thereof, summoned as a witness on behalf of the United States, shall be paid his necessary expenses incident to travel by common carrier, or, if travel is made by privately owned automobile, mileage at a rate not to exceed 10 cents per mile, together with a per diem allowance not to exceed the rate of \$12 a day.

(62 Stat. 950, 63 Stat. 103, 704, 69 Stat. 394; 28 U.S.C. 1823(a))

(3) *Not in Government employ*—(i) *Excluding Alaska and Canal Zone.* A witness attending in any court of the United States or before a United States commissioner or person taking his deposition pursuant to any order of the court of the United States, will receive \$4 for each day's attendance and for the time necessarily occupied in going to

and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who are not salaried employees of the Government and who are not in custody and who attend at point so far removed from their respective residences as to prohibit return thereto from day to day will be entitled to an additional allowance of \$8 per day for expenses of subsistence including the time necessarily occupied in going to and returning from the place of attendance. In lieu of the mileage allowance provided for herein, witnesses who are required to travel between the Territories, possessions, or to and from the continental United States, will be entitled to the actual expenses of travel at the lowest first-class rate available at the time of reservation for passage, by means of transportation employed. When a witness is detained in prison for want of security for his appearance, he will be entitled, in addition to his subsistence, to a compensation of \$1 a day.

(ii) *In Alaska and Canal Zone.* (a) In Alaska such witnesses are entitled to the witness fees and mileage prescribed for witnesses before the United States district court in the judicial division in which the trial or hearing is held. Fees vary in the different judicial divisions.

(b) In the Canal Zone such witnesses are entitled to the witness fees and mileage as are prescribed for witnesses before the United States court in the Canal Zone.

(c) Responsible officers in Alaska and in the Panama Canal Zone will keep informed as to the fees payable in United States courts in those places.

(c) *Mileage*—(1) *General.* A civilian witness not in Government employ, when furnished transportation in kind by the Government, is entitled to 8 cents per mile less the cost of transportation furnished. A civilian witness residing within the jurisdiction of the court, who is subpoenaed and attends the trial in obedience to such subpoena, is entitled to mileage between his residence and the place of trial, regardless of whether both are in the same city.

(2) *Computation.* Mileage at the rate of 8 cents per mile will be computed on the basis of the Rand McNally Stand-

ard Highway Mileage Guide regardless of the mode of transportation used.

(d) *Subsistence per diem allowance*—(1) *When payable.* The subsistence per diem allowance is payable only when the place of trial is so far removed from the place of residence as to prohibit return of the witness thereto from day to day and such fact is properly certified. (See 6 Comp. Gen. 835.)

(2) *Computation.* In computing the subsistence per diem allowance prescribed in paragraph (b)(3)(i) of this section, the calendar day beginning at midnight is the unit, and the subsistence per diem allowance accrues from the time it is necessary for the witness to leave his home in order to arrive at the place of trial at the appointed time until the time he could arrive at his home by first available transportation after his discharge from attendance, any fractional part of a day under such transportation to be regarded as a day for per diem purposes. (See 5 Comp. Gen. 1028, as modified by 6 Comp. Gen. 480 and 6 id. 835.)

(e) *Attendance fees*—(1) *Attendance at more than one case on same day.* A person attending as a witness in more than one case on the same day under a general subpoena to appear and testify is entitled to only one per diem for each day's attendance. If separate subpoenas are issued in each case, the defendants being different, the witness is entitled to separate per diem for actual attendance in each case. The duplication of fees on account of attendance as witness in more than one case on the same day does not apply to the 8-cent mileage allowance and does not apply to the per diem on \$8 in lieu of subsistence.

(2) *Attendance before officer taking deposition.* A witness who is required to appear before an officer (civil or military) empowered to take depositions and there to give testimony under oath to be used before a court is entitled for such service and for the necessary travel incident thereto, including return travel, to the allowances prescribed in paragraphs (a) and (b) of this section, the same as though his appearance were before a court. (See 8 Comp. Gen. 18.)

(3) *Attendance before military courts or boards of limited jurisdiction.* A subpoena

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or other compulsory process addressed to a civilian by a military court or board which has not express statutory authority to issue such process, such as a board of officers convened to investigate and report upon the facts connected with the death of an enlisted member while on temporary duty, is void. Civilian witnesses who appear before such a board in response to such void process must be regarded as having done so voluntarily and are not entitled to witness fees, in the absence of a specific appropriation therefor. (See 8 Comp. Gen. 64.)

(4) *Computation.* The provisions of paragraph (d)(2) of this section are equally applicable for computation of the attendance fee.

(f) *Expert*—(1) *Fees paid.* An expert witness employed in accordance with Manual for Courts-Martial, 1951, paragraph 116, may be paid compensation at the rate prescribed in advance by the official empowered to authorize his employment. (See 11 Comp. Gen. 504.) In the absence of such advance authorization no fees, other than ordinary witness fees, may be paid for the employment of an individual as an expert witness. (See paragraph 116, Manual for Courts-Martial (Executive Order 10214).)

(2) *Limitations.* (i) An expert while employed on behalf of the Government is an officer or employee of the United States within the laws affecting traveling and subsistence expenses of officers and employees of the Government generally. His traveling allowances are therefore subject to the limitations prescribed in the Travel Expense Act of 1949 (63 Stat. 166; 5 U.S.C. 835-842) and the Standardized Government Travel Regulations. (See 6 Comp. Gen. 712.)

(ii) There is no authority for payment by the Government of fees to an expert, who was employed by an officer or employee of the Government to aid in the performance of his duties, other than an expert witness who actually appears as such (paragraph (b)(2) of this section).

(iii) A retired officer, not on active duty, employed as an expert witness is not entitled to any compensation in addition to his retired pay for such service. The traveling allowances of such a retired officer, so employed, are

subject to the limitations prescribed in the Travel Expense Act of 1949 and the Standardized Government Travel Regulations. (See 6 Comp. Gen. 712.)

(g) *Witness not subpoenaed*—(1) *Compelled to testify.* A person who, although not subpoenaed, is present at trial or hearing before a court or other body authorized to compel the attendance of witnesses by compulsory process, and who is compelled or required to testify at such hearing, is entitled to fees and mileage allowances payable to witnesses.

(2) *Voluntarily testifies.* A person who was neither subpoenaed nor requested to appear as a witness, but who voluntarily requested and was granted permission to testify to certain matters considered pertinent to an inquiry being conducted, is not entitled to mileage and witness fees. (See 9 Comp. Gen. 255.)

§ 534.4 Other fees.

(a) *Service of subpoena.* Fees or compensation for the service of a subpoena by a civilian are not prescribed by the laws of the United States. Fees and mileage allowed by the local law for similar services may be paid. If no specific fee or mileage is fixed by local law, reasonable allowances may be paid. (See Dig. Op. JAG, 1912-40, sec. 379.)

(b) *Taking of depositions*—(1) *Fees of civil officers.* A civil officer before whom a deposition is taken may be paid the fees allowed by law of the place where the deposition is taken (or a reasonable fee if no specific fee is fixed by local laws), but no mileage or other allowance for travel of the civil officer to the witness is provided for or authorized by law. (See 2 Comp. Gen. 65.)

(2) *Travel of witnesses.* If the witness and the civil officer before whom the deposition is to be taken do not reside at the same place, the witness should be required to perform the necessary travel, and he is entitled to mileage or other travel allowance therefor as prescribed in § 534.3(e)(2).

(3) *Oaths in matters of military administration.* Where the service of one of the officers designated in the Uniform Code of Military Justice, Article 136, is not available, fees may be paid to civil officers for administering oaths in matters

relating to military administration, subject to the conditions indicated in paragraph (b)(1) of this section.

(c) *Interpreters.* An interpreter appointed under the Uniform Code of Military Justice, Article 28 (10 U.S.C. 828), is entitled for his services as such to the allowances prescribed for witnesses (§534.3).

(d) *Furnishing copies of official records or documents.* The fees provided by the local laws may be paid to the proper officials for furnishing such certified copies of public records or documents and expenses in connection with the procurement of photostatic copies, photographs, and negatives as are required by the court.

(e) *Attendance upon civil courts—(1) Cases involving performance of official duties.* A military member on active duty or a civilian in Government employ appearing on behalf of the United States in cases arising out of the performance of their official duties is entitled to transportation and per diem as prescribed in §534.3(a)(1) and (b)(1). Payment may be made by Department of the Army finance and accounting officers and will be charged to Department of the Army appropriations available for travel expenses of military personnel and civilian employees.

(2) *Cases involving other than performance of official duties.* A military member on active duty or a civilian in Government employ appearing on behalf of the United States in cases involving other than the performance of their official duties is entitled to transportation or transportation allowances and per diem as may be prescribed by The Attorney General. The subpoena or letter requesting attendance will specify the rates payable and will cite the appropriation chargeable. Payment may be made by a Department of the Army finance and accounting officer and reimbursement obtained from the Department of Justice.

(3) *Cases in which civilians not in Government employ are called as witnesses.* Payments to civilians out of Government employ will not be made by Department of the Army finance and accounting officers. Such payments will be made by the Department of Justice.

PART 536—CLAIMS AGAINST THE UNITED STATES

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AUTHORITY: 10 U.S.C. 939, 2733, 2734, 2734a, 2736, 2737, 3012, 4801 through 4804, and 4806; 28 U.S.C. 1346(b), 2401(b), 2402, 2671 through 2680; and 32 U.S.C. 715.

SOURCE: 54 FR 43892, Oct. 27, 1989, unless otherwise noted.

Subpart A—General Provisions

§ 536.1 Purpose and scope.

(a) *Purpose.* Part 536 prescribes policies and procedures to be followed in the filing, investigation, processing and administrative settlement of Department of Army (DA) generated non-contractual claims. Sections 536.1 through 536.13 contain general instructions and guidance for the investigation and processing of claims and apply to all claims unless other laws or regulations specify other procedures. They are intended to ensure that incidents that may result in claims are promptly and efficiently investigated under supervision adequate to ensure a sound basis for official action and that all claims resulting from such incidents are expeditiously settled. The Secretary of the Army has delegated authority to The Judge Advocate General (TJAG) to assign areas of responsibility and designate functional responsibility for claims purposes. TJAG has delegated authority to the Commander, U.S. Army Claims Service (USARCS) to carry out these responsibilities. USARCS is the agency through which the Secretary of the Army and TJAG discharge their responsibilities for claims administration. The proper mailing address of USARCS is Com-

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mander, U.S. Army Claims Service, Office of The Judge Advocate General, Fort George G. Meade, Maryland 20755–5360.

(b) *Scope—(1) Applicability.* (i) Sections 536.20 through 536.35 apply in the settlement of claims under the Military Claims Act (MCA) (10 U.S.C. 2733) for personal injury, death or property damage that was either caused by members or employees of the DA acting within the scope of their employment or otherwise incident to noncombat activities of the DA.

(ii) Section 536.40 sets forth the procedures to be followed and the standards to be applied in the processing of claims cognizable under Article 139, Uniform Code of Military Justice (UCMJ) (10 U.S.C. 939) for property willfully damaged or wrongfully taken or withheld by members of the DA.

(iii) Section 536.50 governs the administrative settlement of claims under the Federal Tort Claims Act (FTCA) (28 U.S.C. 1346(b), 2671–2680) for personal injury, death or property damage caused by the negligent act or omissions of members or employees of the DA while acting within the scope of their employment.

(iv) Section 536.60 provides the procedures to be followed in the settlement of claims under the Army Maritime Claims Settlement Act (10 U.S.C. 4801–4804, 4806) for damage caused by a vessel of or in the service of the Army.

(v) Sections 536.70 through 536.81 provide instructions for settlement of claims under the National Guard Claims Act (NGCA) (32 U.S.C. 715) for personal injury, death or property damage that was either caused by a member or employee of the Army National Guard (ARNG) while in training or duty under Federal law, and acting within the scope of their employment; or otherwise incident to noncombat activities of the ARNG not in active Federal service.

(vi) Sections 536.90 through 536.97 provide instructions for settlement of claims under 10 U.S.C. 2737 for personal injury, death or property damage (not cognizable under any other law) incident to the use of Government property by members or employees of the DA.

(2) *Nonappropriated fund activities.* Claims arising from acts or omissions of employees of nonappropriated fund activities within the United States, its Territories, and possessions, are processed in the manner prescribed by applicable regulations. In oversea areas, such claims will be processed in accordance with treaties or agreements between the United States and foreign countries with respect to the settlement of claims arising from acts or omissions of military and civilian personnel of the United States in such countries, or in accordance with applicable regulations as appropriate.

(3) *Nonapplicability.* Sections 536.1 through 536.13 do not apply to:

(i) Contractual claims which are under the provisions of Public Law 85-804, 28 August 1958 (72 Stat. 972) and AR 37-103, AR 37-103 and other Army Regulations referenced herein are available thru: National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161, or other regulations including acquisition regulations.

(ii) Maritime claims (§ 536.60).

§ 536.2 Information and assistance.

(a) Government personnel may not represent any claimant or receive any payment or gratuity for services rendered. They may not accept any share or interest in a claim or assist in its presentation, under penalty of Federal criminal law (18 U.S.C. 203, 205). They are prohibited from disclosing information which may be the basis of a claim, or any evidence of record in any claims matter, except as prescribed in §§ 518.1 through 518.4 of this chapter or other pertinent regulations. A person lacking authority to approve or disapprove a claim may not advise a claimant or his representative as to the disposition recommended.

(b) The prohibitions against furnishing information and assistance do not apply to the performance of official duty. Any person who indicates a desire to file a claim against the United States will be instructed concerning the procedure to follow. He will be furnished claim forms, and, when necessary, will be assisted in completing the forms and assembling evidence. He will not be assisted in determining

what amount to claim. In the vicinity of a field exercise, maneuver, or disaster, information may be disseminated concerning the right to present claims, the procedure to be followed, and the names and locations of claims officers, and engineer repair teams. When the government of a foreign country in which the U.S. Armed Forces are stationed has assumed responsibility for the settlement of certain claims against the United States, officials of that country will be furnished pertinent information and evidence so far as security considerations permit.

§ 536.3 Definitions and explanations.

The following terms as used in §§ 536.1 through 536.13 and the matters referred to in § 536.1(b) will have the meanings here indicated:

(a) *Affirmative Claims.* The government's statutory right to recover money, property, or repayment in kind incurred as a result of property loss, damage, or destruction by any individual, partnership, association or other legal entity, foreign or domestic, except an instrumentality of the United States. Also, the Government's statutory right to recover the reasonable medical costs expended for hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) incurred under circumstances creating tort liability upon some third person.

(b) *Civilian Employees.* Civilian employee means a person whose activities the Government has the right to direct and control, not only as to the result to be accomplished but also as to the means used; this includes, but is not limited to, full-time Federal civilian officers and employees. The term should be distinguished from the term "independent contractor" for whose actions the Government generally is not liable. The determination of who is a civilian employee is a Federal question determined under Federal law and not under local law.

(c) *Claim.* A demand for payment of a specified sum of money (other than the ordinary obligations incurred for services, supplies or equipment) and, unless otherwise specified in this regulation, in writing and signed by the claimant

or a properly designated representative.

(d) *Claim file.* The claim, report of the claims officer or other report of investigation, supporting documentation, and pertinent correspondence.

(e) *Claim approval authority.* Except for claims under 10 U.S.C. 939, 31 U.S.C. 3721, and treaties or international agreements such as the North Atlantic Treaty Organization (NATO), Status of Forces Agreement (SOFA), and subject to any limitations found in specific provisions of these regulations, the authority to approve and pay a claim in the amount presented or in a lesser amount upon the execution of a settlement agreement by the claimant. A person with approval authority may not disapprove a claim in its entirety nor make a final offer, subject to any limitations found in specific provisions of this regulation.

(f) *Claim settlement authority.* The authority to approve a claim, to deny a claim in its entirety, or to make a final offer subject to any limitations found in specific provisions of this regulation.

(g) *Claims attorney.* DA or DOD civilian attorney assigned to a judge advocate or legal office, who has been designated by the Commander, USARCS.

(h) *Claims judge advocate.* An officer of the Judge Advocate General's Corps designated by a command or staff judge advocate (SJA) to be in immediate charge of claims activities of the command.

(i) *Claims Officer.* A commissioned officer, warrant officer, or qualified civilian employee detailed by the commander of an installation or unit who is trained or experienced in the investigation of claims.

(j) *Claimant.* An individual, partnership, association, corporation, country, state, territory, or other political subdivision of such country; does not include the U.S. Government or any of its instrumentalities, except as prescribed by statute. Indian tribes are not proper party claimants but individual Indians can be claimants.

(k) *Combat activities.* Activities resulting directly or indirectly from action by the enemy, or by U.S. Armed Forces engaged in, or in immediate

preparation for, impending armed conflict.

(l) *Disaster.* A sudden and extraordinary calamity occasioned by activities of the Army, other than combat, resulting in extensive civilian property damage or personal injuries and creating a large number of potential claims.

(m) *Federal agency.* A federal agency includes the executive departments and independent establishments of the United States and corporations acting as instrumentalities or agencies of the United States but does not include any contractor with the United States.

(n) *Final offer.* An offer of payment by a settlement authority in full and final settlement of a claim which, if not accepted, constitutes a final action for purposes of filing suit under § 536.50 or filing an appeal under §§ 536.20 through 536.35 and 536.70 through 536.81, provided such offer is made in writing and meets the other requirements of a final action as set forth in this regulation.

(o) *Government vehicle.* A vehicle owned or on loan to any agency of the Government of the United States or privately owned, and operated by members or civilian employees of the DA in the scope of their office or employment with the Government of the United States including vehicles being operated on joint operations of the U.S. Armed Forces.

(p) *Medical claims judge advocate.* A judge advocate (JA) assigned to an Army Medical Center, under an agreement between TJAG and The Surgeon General, to perform the primary duty of investigating and processing medical malpractice claims.

(q) *Medical claims investigator.* A senior legal specialist or qualified civilian assigned to assist a medical claims JA on a full-time basis. A medical claims investigator is authorized to administer oaths under the provisions of Article 136(b)(6), UCMJ, 10 U.S.C. 936(b)(6) when performing investigative duties.

(r) *Medical malpractice claim.* A claim arising out of substandard or inadequate care of an Army patient.

(s) *Military personnel.* Military personnel means members of the DA on active duty for training, or inactive duty training as defined in AR 310-25 and 10 U.S.C. 101(22), 101(23), and 101(30).

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This includes members of the District of Columbia ARNG while performing active duty or training under 32 U.S.C. 316, 502, 503, 504 or 505.

(t) *Noncombat activities.* A noncombat activity arises from authorized activities essentially military in nature, having little parallel in civilian pursuits and which historically have been considered as furnishing a proper basis for payment of claims, such as practice firing of missiles and weapons, training and field exercises, and maneuvers, including, in connection therewith, the operation of aircraft and vehicles, and use and occupancy of real estate, and movement of combat or other vehicles designed especially for military use. Activities incident to combat, whether in time of war or not, and use of military personnel and civilian employees in connection with civil disturbances, are excluded.

(u) *Personal property.* Property consisting solely of corporeal personal property, that is, tangible things. Personal property does not consist of the loss or forfeiture of a security deposit or a contingent financial benefit.

§ 536.4 Treaties and international agreements.

(a) The governments of some foreign countries have by treaty or agreement waived or assumed, or may hereafter waive or assume, certain claims against the United States. In such instances claims will not be settled under laws or regulations of the United States.

(b) The prohibition stated in paragraph (a) of this section is not applicable to claims within the purview of Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty or similar type agreements which normally will be investigated and settled as therein provided.

§ 536.5 Claims.

(a) *Who may present.* (1) A claim may be presented by the owner of the property, or in his name by a duly authorized agent or legal representative. As used in this regulation an owner includes the following:

(i) *For real property.* The mortgagor, or the mortgagee, if he or she can

maintain a cause of action in the local courts involving a tort to that specific property. When notice of divided interests in real property is received, the claim should, if feasible, be treated as a single claim or a release from all interests must be obtained.

(ii) *For personal property.* A bailee, leasee, mortgagee, and conditional vendor, or others having title for purposes of security only, are not proper claimants unless specifically authorized by the statute and implementing regulations in question. If more than one party has a real interest in the property, all must join in the claim or a release from all interests must be obtained.

(2) A claim for personal injury may be presented by the injured person or duly authorized agent or legal representative.

(3) A claim based on death may be presented by the executor or administrator of the deceased's estate, or by any person determined to be legally or beneficially entitled. The amount allowed will, to the extent practicable, be apportioned among the beneficiaries in accordance with the law applicable to the incident.

(4) A claim for medical, hospital, or burial expenses may be presented by any person who by reason of family relationship has in fact incurred the expenses for which the claim is made. However, for claims cognizable under the provisions of the FTCA, see § 536.50, and for claims cognizable under the provisions of the Nonscope of Employment Claims Act, see §§ 536.90 through 536.97.

(5) A claim presented by an agent or legal representative will be made in the name of the claimant and signed by the agent or legal representative showing the title or capacity. Written evidence of the authority of such person to act is mandatory except when controlling law does not require such evidence.

(6) A claim normally will include all damages that accrue by reason of the incident. Where the same claimant has a claim for damage to or loss of property and a claim for personal injury or a claim based on death arising out of

the same incident, each of the foregoing or any combination of them ordinarily represent only an integral part or parts of a single claim or cause of action. Under §§ 536.20 through 536.35 and the Foreign Claims Act (FCA) (10 U.S.C. 2734), a single claimant is entitled to be compensated only one time for all damages or injuries arising out of an incident.

(b) *Subrogation.* A claim may be presented by a subrogee in his own name if authorized by the law of the place where the incident giving rise to the claim occurred, provided subrogation is not barred by the regulation applicable to the type of claim involved.

(1) The claims of the subrogor (insured) and subrogee (insurer) for damages arising out of the same incident constitute separate claims, and it is permissible for the aggregate of such claims to exceed the monetary jurisdiction of the approving or settlement authority.

(2) A subrogor and a subrogee may file a claim jointly or individually. A fully subrogated claim will be paid only to the subrogee. Whether a claim is fully subrogated is a matter to be determined by local law. Some jurisdictions permit the property owner to file for property damage even though the owner has been compensated for the repairs by an insurer. In such instances a release should be obtained from both parties in interest or be released by both of them. The approved payment in a joint claim will be by joint check which will be sent to the subrogee unless both parties specify otherwise. If separate claims are filed, payment will be by check issued to each claimant to the extent of his undisputed interest.

(3) Where a claimant has made an election and accepted workmen's compensation benefits, both statutory and case law of the jurisdiction should be scrutinized to determine to what extent the claim of the injured party against third parties has been extinguished by acceptance of compensation benefits. While it is infrequent that the claim is fully extinguished, it is true in some jurisdictions, and the only proper party claimant is the workmen's compensation carrier. Even where the injured party's claim has not been fully extinguished, most jurisdictions pro-

vide that the compensation insurance carrier has a lien on any recovery from the third party, and no settlement should be reached without approval by the carrier where required by local law. Additionally, claims from the workmen's compensation carrier as subrogee or otherwise will not be considered payable where the United States has paid the premiums, directly or indirectly, for the workmen's compensation insurance. Applicable contract provisions holding the United States harmless should be utilized.

(4) Whether medical payments paid by an insurer to its insured can be subrogated depends on local law. Some jurisdictions prohibit these claims to be submitted by the insurer notwithstanding a contractual provision providing for subrogation. Therefore, local law should be researched prior to deciding the issue, and claims forwarded to higher headquarters for adjudication should contain the results of said research. Such claims, where prohibited by state law, will also be barred by the Antiassignment Act.

(5) Care will be exercised to require insurance disclosure consistent with the type of incident generating the claim. Every claimant will, as a part of his claim, make a written disclosure concerning insurance coverage as to:

- (i) The name and address of every insurer;
- (ii) The kind and amount of insurance;
- (iii) Policy number;
- (iv) Whether a claim has been or will be presented to an insurer, and, if so, the amount of such claims; and
- (v) Whether the insurer has paid the claim in whole or in part, or has indicated payment will be made.

(6) Each subrogee must substantiate his interest or right to file a claim by appropriate documentary evidence and should support the claim as to liability and measure of damages in the same manner as required of any other claimant. Documentary evidence of payment to a subrogor does not constitute evidence either of liability of the Government or of the amount of damages. Approving and settlement authorities will make independent determinations upon the evidence of record and the law.

(7) Subrogated claims are not cognizable under §§ 536.90 through 536.97 and the FCA (10 U.S.C. 2734).

(c) *Transfer and assignments.* (1) Except as they occur by operation of law or after a voucher for the payment has been issued, unless within the exceptions set forth by statute (see 31 U.S.C. 3727 and AR 37-107), the following are null and void—

(i) Every purported transfer or assignment of a claim against the United States, or of any part of or interest in a claim, whether absolute or conditional.

(ii) Every power of attorney or other purported authority to receive payment of all or part of any such claim.

(2) The purposes of the Antiassignment Act are to eliminate multiple payment of claims, to cause the United States to deal only with original parties, and to prevent persons of influence from purchasing claims against the United States.

(3) In general, this statute prohibits voluntary assignments of claims with the exception of transfers or assignments made by operation of law. The operation of law exception has been held to apply to claims passing to assignees because of bankruptcy proceedings, assignments for the benefit of creditors, corporate liquidations, consolidations or reorganizations, and where title passes by operation of law to heirs or legatees. Subrogated claims which arise under a statute are not barred by the Antiassignment Act. For example, subrogated worker's compensation claims are cognizable when presented by the insurer.

(4) Subrogated claims which arise pursuant to contractual provisions may be paid to the subrogee if the subrogated claim is recognized by state statute or decision. For example, an insurer under an automobile insurance policy becomes subrogated to the rights of a claimant upon payment of a property damage claim. Generally, such subrogated claims are authorized by state law and are therefore not barred by the Antiassignment Act.

(5) Before claims are paid, it is necessary to determine whether there may be a valid subrogated claim under Federal or State statute or subrogation contract held valid by State law. If

there may be a valid subrogated claim forthcoming, payment should be withheld for this portion of the claim. If it is determined that claimant is the only proper party, full settlement is authorized.

(d) *Action by claimant—(1) Form of claim.* The claimant will submit his claim using authorized official forms whenever practicable. A claim is filed only when the elements indicated in § 536.3(c) have been supplied in writing by a person authorized to present a claim, unless the claim is cognizable under a regulation that specifies otherwise. A claim may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a).

(2) *Signatures.* (i) The claim and all other papers will be signed in ink by the claimant or by his duly authorized agent. Such signature will include the first name, middle initial, and surname. A married woman must sign her claim in her given name, for example, "Mary A. Doe," rather than "Mrs. John Doe."

(ii) Where the claimant is represented, the supporting evidence required by paragraph (a)(5) of this section will be required only if the claim is signed by the agent or legal representative. However, in all cases in which a claimant is represented, the name and address of the representative will be included in the file together with copies of all correspondence and records of conversations and other contacts maintained and included in the file. Frequently, these records are determinative as to whether the statute of limitations has been tolled.

(3) *Presentation.* The claim should be presented to the commanding officer of the unit involved, or to the legal office of the nearest Army post, camp, or station, or other military establishment convenient to the claimant. In a foreign country where no appropriate commander is stationed, the claim should be submitted to any attache of the U.S. Armed Forces. Claims cognizable under Article VIII of the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty, Article XVIII of the Treaty of Mutual Cooperation and Security between the

United States and Japan regarding facilities and areas and the Status of United States Armed Forces in Japan (Japan SOFA) or other similar treaty or agreement are filed with designated claims officials of the receiving State.

(e) *Evidence to be submitted by claimant.* The claimant should submit the evidence necessary to substantiate his claim. It is essential that independent evidence be submitted which will substantiate the correctness of the amount claimed.

(f) *Statute of limitations—(1) General.* Each statute available to the Department of the Army for the administrative settlement of claims, except the Maritime Claims Settlement Act (10 U.S.C. 4802), specifies the time during which the right to file a claim must be exercised. These statutes of limitations, which are jurisdictional in nature, are not subject to waiver unless the statute expressly provides for waiver. Specific information concerning the period for filing under each statute is contained in the appropriate implementing sections of this regulation.

(2) *When a claim accrues.* A claim accrues on the date on which the alleged wrongful act or omission results in an actionable injury or damage to the claimant or his decedent. Exceptions to this general rule may exist where the claimant does not know the cause of injury or death; that is, the claim accrues when the injured party, or someone acting on his or her behalf, knows both the existence and the cause of his or her injury. However, this exception does not apply when, at a later time, he or she discovers that the acts inflicting the injury may constitute medical malpractice. (See *United States v. Kubrick*, 444 U.S. 111, 100 S. Ct. 352 (1979).) The discovery rule is not limited to medical malpractice claims; it has been applied to diverse situations involving violent death, chemical and atomic testing, and erosion and hazardous work environment. In claims for indemnity or contribution against the United States, the accrual date is the time of the payment for which indemnity is sought or on which contribution is based.

(3) *Effect of infancy, incompetency or the filing of suit.* The statute of limitations for administrative claims is not

tolled by infancy or incompetency. Likewise, the statute of limitations is not tolled for purposes of filing an administrative claim by the filing of a suit based upon the same incident in a Federal, State, or local court against the United States or other parties.

(4) *Amendment of Claims.* A claim may be amended by the claimant at any time prior to final agency action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). A claim may be amended by changing the amount, the bases of liability, or elements of damages concerning the same incident. Parties may be added only if the additional party could have filed a joint claim initially. If the additional party had a separate cause of action, his claim may not be treated as an amendment but only as a separate claim and is thus barred if the statute of limitations has run. For example, if a claim is timely filed on behalf of a minor for personal injuries, a subsequent claim by a parent for loss of services is considered a separate claim and is barred if it is not filed prior to the running of the statute of limitations. Another example is where a separate claim is filed for loss of services or consortium by a spouse arising out of injuries to the husband or wife of the claimant. On the other hand, if a claim is timely filed by an insured for the deductible portion of the property damage, a subsequent claim by the insurer based on payment of property damage to its insured may be filed as an amendment even though the statute of limitations has run, unless final action has been taken on the insured's claim.

(5) *Date of receipt stops the running of the statute.* In computing the time to determine whether the period of limitations has expired, exclude the first day and include the last day, except when it falls on a nonworkday such as Saturday, Sunday, or a legal holiday, in which case it is to be extended to the next workday.

(g) *By the command concerned—(1) General.* If the claim is of a type and amount within the jurisdiction of the claims office of the command concerned and the claim is meritorious in the amount claimed, it will be approved and paid. If a claim in an

amount in excess of the monetary jurisdiction of the claims office is meritorious in a lesser amount within its jurisdiction, the claim may be approved for payment provided the amount offered is accepted by the claimant in settlement of the claim. If the claim is not of a type within the jurisdiction of the claims office, or if the claimant will not accept an amount within its jurisdiction, the claim with supporting papers and a recommendation for appropriate action will be forwarded to the next higher claims authority. If the claim is determined to be not meritorious, it will be disapproved provided the claims office has settlement authority for claims of the type and amount involved. Prior to the disapproval of a claim under a particular statute, a careful review should be made to ensure that the claim is not properly payable under a different statute or on another basis.

(2) *Claims within settlement authority of USARCS or the Attorney General.* A copy of each of the following types of claims will be forwarded immediately to the Commander, USARCS:

(i) One that appears to be of a type that must be brought to the attention of the Attorney General in accordance with his or her regulations;

(ii) One in which the demand exceeds \$15,000; or

(iii) One which is a claim under the FTCA (§ 536.50) where the total of all claims, arising from a single incident, actual or potential, exceeds \$25,000. USARCS is responsible for the monitoring and settlement of such claims and will be kept informed on the status of the investigation and processing thereof. Direct liaison and correspondence between the USARCS and the field claims authority or investigator is authorized on all claims matters, and assistance will be furnished as required. The field claims office will provide USARCS duplicates of all documentation as it is added to the field file. This will include all correspondence, memoranda, medical reports, reports, evaluations, and any other material relevant to the investigation and processing of the claim.

(3) *Claims involving privately owned vehicles.* In areas where the FTCA (§ 536.50) is applicable, any claim except

those under 31 U.S.C. 3721, arising out of an accident involving a privately owned vehicle driven by a member of the DA, or by ARNG personnel as defined in § 536.71, based on an allegation that the privately owned vehicle travel was within the scope of employment, should be forwarded without adjudication directly to the Commander, USARCS. Additional information is provided in §§ 536.20 through 536.35, 536.90 through 536.97.

(4) *Claims within the exclusive jurisdiction of USARCS.* Authority to settle the following claims has been delegated to the Commander, USARCS, only:

(i) Claims of under Article VIII of the Agreement Regarding the Status of Forces Parties to the North Atlantic Treaty and other treaties or international agreements where the United States is the Receiving State;

(ii) Claims under § 536.60 (Maritime claims not arising out of civil works activities) except as delegated to overseas command claims services;

(iii) Industrial security claims, DoD Directive 5220.6, 12 August 1985; and

(iv) Claims of the U.S. Postal Service. Files of these claims will be forwarded directly to the Commander, USARCS, with the report of investigation and supporting papers, including a memorandum of opinion.

(5) *Maritime claims.* (i) A copy of a claim arising out of damage, loss, injury, or death which originates on navigable waters and is not considered cognizable under the Army Maritime Claims Settlement Act (10 U.S.C. 4802-4804) will be forwarded immediately to the Commander, USARCS or appropriate overseas command claims service. A determination will be made as to whether the claim must be processed under the Suits in Admiralty Act or the Public Vessels Act or may be considered administratively.

(ii) If a maritime claim cannot be settled administratively, the claimant will be advised that he must file a suit.

(iii) If it is determined that both administrative and judicial remedies are available, the claim may be processed administratively and the claimant advised of the need to file a suit within 2 years of the date of occurrence if he chooses his judicial remedy.

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(iv) If the claim is for damage to property, or injury to person, consummated on land, a claimant who makes an oral inquiry or demand will be advised that no suit can be filed until a period of six months has expired after a claim in writing is submitted.

(v) If it is determined by the Commander, USARCS, that a claim, apparently maritime in nature, is not within the maritime jurisdiction, the claimant will be so advised, and the claim will be returned for processing under the appropriate section of this regulation.

(h) *By district or division engineer.* The district or division engineer area claims office will take the action of an initial claims authority. Files of unpaid claims should be forwarded directly to USARCS. An information copy will be sent to the next higher engineer authority unless such requirement is waived.

(i) *By higher settlement authority.* A higher claims settlement authority may take action with respect to a claim in the same manner as the initial claims office. However, if it is determined that any further attempt to settle the claim would be unwarranted, the claim will be forwarded to the Commander, USARCS, with recommendations.

§ 536.6 Determination of liability.

(a) In the adjudication of tort claims, the liability of the United States generally is determined in accordance with the law of the State or country where the act or omission occurred, except that any conflict between local law and the applicable United States statute will be resolved in favor of the latter. However, in claims by inhabitants of the United States arising in foreign countries, liability is determined in accordance with general principles of tort law common to the majority of American jurisdictions as evidenced by Federal case law and standard legal publications, except as it applies to absolute liability. Where liability is not clear or other issues exist, settlements should truly reflect the uncertainties in the adjudication of such issues. Compromise settlements are encouraged provided agreement can be reached that reflects the reduced

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value of the damages as measured against the full value or range of value if such uncertainties or issues did not exist and were it possible for the claimant to successfully litigate the claim.

(b) *Quantum exclusion.* The costs of filing a claim and similar costs, for example, court costs, bail, interest, inconvenience expenses, or costs of long distance telephone calls or transportation in connection with the preparation of a claim, are not proper quantum elements and will not be allowed.

§ 536.7 Incident to service exclusionary rule.

(a) *General.* A claim for personal injury or death of a member of the Armed Forces of the United States or a civilian employee of the United States that accrued incident to his service is not payable under this regulation. A claim for property damage that accrued incident to the service of a member of the Armed Forces may be payable under 31 U.S.C. 3721 or §§ 536.20 through 536.35 depending on the facts.

(b) *Property damage claims.* A claim for damage to or loss of personal property of a claimant who is within one of the categories of proper party claimants under 31 U.S.C. 3721, which is otherwise cognizable under 31 U.S.C. 3721, must first be considered thereunder. If a claim is not clearly compensable under 31 U.S.C. 3721, and it arises incident to a noncombat activity of the DA or was caused by a negligent or wrongful act or omission of military personnel or civilian employees of the Department of Defense (DOD), it may be cognizable under either §§ 536.20 through 536.35 or § 536.50. The claim, if meritorious in fact, will probably be payable under one authorization or another regardless of whether the claim accrued incident to the service of the claimant.

(c) *Personal injury and death claims.* (1) Only after the death or personal injury (which is the subject of the claim) has been determined to have not been incurred incident to the member's service should §§ 536.20 through 536.35 and § 536.50 be studied to determine which, if either, provides a proper basis for settlement of the claim. In any event, the rule in *U.S. v. Brooks*, 176 F.2d 482 (4th Cir. 1949) requiring setoff of

amounts obtained through military or veterans' compensation systems against amounts otherwise recoverable will be followed. Other Government benefits, funded by general treasury revenues and not by the claimant's contributions, may also be used as a setoff against the settlement. (See, *Overton v. United States*, 619 F.2d 1299 (8th Cir. 1980)).

(2) As the incident to service issue is determinative as to whether this type of claim may be processed administratively at all, the applicable law and facts should be carefully considered before deciding that injury or death was not incident to service. Such claims also are often difficult to settle on the issue of quantum and thus more likely to end in litigation. Moreover, the United States may well elect to defend the lawsuit on the basis of the incident to service exclusion, and this defense could be prejudiced by a contrary administrative determination that a service member's personal injuries or death were not incident to service. Doubtful cases will be forwarded to the Commander, USARCS without action along with sufficient factual information to permit a determination of the incident to service question.

§ 536.8 Use of appraisers and independent medical examinations.

(a) *Appraisers.* Appraisers should be used in all claims where an appraisal is reasonably necessary and useful in effectuating the administrative settlement of the claims. The decision to use an appraiser is at the discretion of DA.

(b) *Independent medical examinations.* In claims involving serious personal injuries, for example, normally those cases in which there is an allegation of temporary or permanent disability, the claimant should be examined by an independent physician, or other medical specialist, depending upon the nature and extent of the injuries. The decision to conduct an independent medical examination is at the discretion of DA.

§ 536.9 Effect on award of other payments to claimant.

The total award to which the claimant (and subrogee) may be entitled normally will be computed as follows:

(a) Determine the total of the loss or damage suffered.

(b) Deduct from the total loss or damage suffered any payment, compensation, or benefit the claimant has received from the following sources:

(1) The U.S. or ARNG employee/member who caused the damage.

(2) The U.S. or ARNG employee's/member's insurer.

(3) Any person or agency in a surety relationship with the U.S. employee; or

(4) Any joint tortfeasor or insurer, to include Government contractors under contracts or in jurisdictions where it is permissible to obtain contribution or indemnity from the contractor in settlement of claims by contractor employees and third parties.

(5) Any advance payment made pursuant to § 536.13.

(6) Any benefit or compensation based directly or indirectly on an employer-employee relationship with the United States or Government contractor and received at the expense of the United States including but not limited to medical or hospital services, burial expenses, death gratuities, disability payment, or pensions.

(7) The State (Commonwealth, etc.) whose employee or ARNG member caused or generated an incident that was a proximate cause of the resulting damages.

(8) Value of Federal medical care.

(9) Benefits paid by the Veterans Administration (VA) that are intended to compensate the same elements of damage. When the claimant is receiving money benefits from the VA under 38 U.S.C. 351 for a non-service connected disability or death based on the injury that is the subject of the claim, acceptance of a settlement or an award under the FTCA (§ 536.50) will discontinue the VA monetary benefits until the amount that would have otherwise been received in VA monetary benefits is equal to the total amount of the agreement or award including attorney fees. While monetary benefits received under 38 U.S.C. 351 must be discontinued as above, medical benefits, that is, VA medical care may continue provided the settlement or award expressly provides for such continuance and the appropriate VA official is informed of such continuance.

(10) When the claimant is receiving money benefits under 38 U.S.C. 410(b) for non-service connected death, arising from the injury that is the subject of the claim, acceptance of a settlement or award under the FTCA (§ 536.50) or under any other tort procedure will discontinue the VA benefits until the amount that would have otherwise been received in VA benefits is equal to the amount of the total settlement or award including attorney fees. The discontinuation of monetary benefits under 38 U.S.C. 410(b) has no effect on the receipt of other VA benefits. The claimant should be informed of the foregoing prior to the conclusion of any settlement and thus afforded an opportunity to make appropriate adjustment in the amount being negotiated.

(11) Value of other Federal benefits to which the claimant did not contribute, or at least to the extent they are funded from general revenue appropriation.

(12) Collateral sources where permitted by State law (for example, State or Federal workers' compensation, social security, private health, accident, and disability benefits paid as a result of injuries caused by a health care provider).

(c) No deduction will be made for any payment the claimant has received by way of voluntary contributions, such as donations of charitable organizations.

(d) Where a payment has been made to the claimant by his insurer or other subrogee, or under workmen's compensation insurance coverage, as to which subrogated interests are allowable, the award based on total damages will be apportioned as their separate interests are indicated (see § 536.5(b)).

(e) After deduction of permissible collateral and non-collateral sources, also deduct that portion of the loss or damage believed to have been caused by the negligence of the claimant, third parties whose negligence can be imputed to the claimant, or joint tortfeasors who are liable for their share of the negligence (for example, where some form of the Uniform Contribution Among Joint Tortfeasors Act has been passed).

(f) Claims with more than one potential source of recovery. (1) The Government seeks to avoid multiple recovery, that is, claimants seeking recovery from more than one potential source, and to minimize the award it must make. The claims investigation should therefore identify other parties potentially liable to the claimant and/or their insurance carriers; indicate the status of any claims made or include a statement that none has been made so that it can be assured there is only one recovery and the Government does not pay a disproportionate share. Where no claim has been made by the claimant against others potentially liable, if applicable State law grants the Government the right to indemnity or contribution, and it is felt the Government may be entitled to either under the facts developed by the claims investigation, the claims officer or attorney should formally notify the other parties of their potential liability, the Government's willingness to share information, and its expectation of shared responsibility for any settlement. Furthermore, the claimant may be receiving or entitled to receive benefits from collateral and non-collateral sources, which can be deducted from the total loss or damage. Accordingly, a careful review must be made of applicable State laws regarding joint and several liability, indemnity, contribution, comparative negligence, and the collateral source doctrine.

(2) If a demand by a claimant or an inquiry by a potential claimant is directed solely to the Army, in a situation where it appears that the responsible Army employee may have applicable insurance coverage, inquiry should be made of the employee as to whether he has liability insurance.

(i) If so, determine if the insurer has made or will make any payment to claimant. Under applicable State law, the United States may be an additional named insured entitled to coverage under the employee's liability policy. (See 16 ALR3d 1411; *United States v. State Farm Mutual Ins. Co.*, 245 F. Supp. 58 (D. Ore. 1965.)) Therefore, where there may be applicable insurance coverage, there should be a review of the policy language together with the rules and regulations of the State insurance

regulatory body to determine whether the United States comes within the definition of “insured,” and whether the exclusion of the United States from policy coverage conforms with state law and policy.

(ii) If the employee refuses to cooperate in providing this information, he or she should be advised to comply with the notice requirements of the insurance policy and to request the insurance carrier contact the claims officer or attorney. In addition, other sources of information, such as vehicle registration records, will be checked to ascertain the employee’s insurer. The case should be followed to ascertain whether the employee’s insurer has made or will make any payment to the claimant before deciding whether to settle the claim against the Government. Normally, the award, if any, to the claimant will be reduced by the amount of the payment of the employee’s insurance carrier.

(3) If the employee is the sole target of the claim and Army claims authorities arrange to have the claim made against the Government, the member or employee should be required to notify his or her insurance carrier according to the policy and inform DA claims authorities as to the details of the insurance coverage, including the name of the insurance carrier. Except when the “Drivers Act” is applicable, the insurance carrier is expected to participate in the negotiation of the claims settlement and to pay its fair share of any award to the claimant.

(4) Where the responsible Army employee is “on loan” to another employer other than the United States, for example, civilian institution for ROTC instructor, or performing duties for a foreign government, inquiry should be made to determine whether there is applicable statutory or insurance coverage concerning the acts of the responsible employee and contribution or indemnification sought, as appropriate. In the case of foreign governments, applicable treaties or agreements are considered controlling.

(5) A great many claims cognizable under the FTCA (§536.50) are now settled on a compromise basis. A major consideration in many such settlements is the identification of other

sources of recovery. This is true in a variety of factual situations where there is a potential joint tortfeasor; for example, multi-vehicle accidents with multiple drivers and guest passengers, State or local government involvement, contractors performing non-routine tasks for the Government, medical treatment rendered to a claimant by non-Government employees, or incidents caused by a member or employee of the military department of a State or Commonwealth with whom the DA does not have a cost-sharing agreement. The law of the jurisdiction regarding joint and several liability, indemnity and contribution may permit shared financial responsibility, but even in jurisdictions which do not permit contribution, a compromise settlement can often be reached with the other tortfeasor’s insurance company paying a portion of the total amount of the claim against the Government. For these reasons, every effort should be made to identify the insurance of all potential tortfeasors involved and the status of any claims made, and to demand contribution or indemnity where there is a substantial reason to believe that liability for the loss or damage should be shared.

(6) Whenever a claim is filed against the Government under a statute which does not permit the payment of a subrogated interest, it is important to ensure that full information is obtained from the claimant regarding insurance coverage, if any, since it is the clear legislative intent of such statutes that insurance coverage be fully utilized before using appropriated funds to pay the claims.

§ 536.10 Settlement agreement.

(a) *General.* Except under 31 U.S.C. 3721, if a claim is determined to be meritorious in an amount less than claimed, or if a claim involving personal injuries or death is approved in full, a settlement agreement will be obtained prior to payment. Acceptance by a claimant of an award constitutes a full and final settlement and release of any and all claims against the United States and against the military or civilian personnel whose act or omission gave rise to the claim.

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(b) *Claims involving workmen's compensation carriers.* The settlement of a claim involving a claimant who has elected to receive workmen's compensation benefits under local law may require the consent of the workmen's compensation carrier and in certain jurisdictions the State agency with authority over workmen's compensation awards. Accordingly, claims approval and settlement authorities should be aware of local requirements.

§ 536.11 Appeals and notification to claimant as to denial of claims.

(a) *General.* The nature and extent of the written notification to the claimant as to the denial of his claim should be based on whether the claimant has a judicial remedy following denial or whether he has an administrative recourse to appeal.

(b) *Final Actions under the Federal Tort Claims Act (28 U.S.C. 2671-2680) § 536.50.* If the settlement authority has information available which could possibly be a persuasive factor in the decision of the claimant as to whether to resort to litigation, such information may be orally transmitted to the claimant and, in appropriate cases, released under normal procedures in accordance with AR 340-17. However, the written notification of the denial should be general in nature; for example, denial on the weaker ground of contributory negligence should be avoided, and the inclination should be to deny on the basis that the claimant was solely responsible for the incident. The claimant will be informed in writing of his right to bring an action in the appropriate United States District Court not later than 6 months after the date of mailing of the notification.

(c) *Denials under the MCA (10 U.S.C. 2733) §§ 536.20 through 536.35 and the NGCA (32 U.S.C. 715) §§ 536.70 through 536.81.* Claims disapproved under these statutes are subject to appeal and the claimant will be so informed. Also, the notice of disapproval will be sufficiently detailed to provide the claimant with an opportunity to know and attempt to overcome the basis for the disapproval. The claimant should not be afforded a valid basis for claiming surprise when an issue adverse to him

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is asserted as a basis for denying his appeal.

(d) *Denials on jurisdictional grounds.* Regardless of the nature of the claim presented or the statute under which it may be considered, claims denied on jurisdictional grounds which are valid, certain, and not easily overcome and in which for this reason no detailed investigation as to the merits of the claim is conducted, should contain in the denial letter a general statement to the effect that the denial on such grounds is not to be construed as an expression of opinion on the merits of the claim or an admission of liability. If sufficient factual information is available to make a tentative ruling on the merits of the claim, liability may be expressly denied.

(e) *Where claim may be considered under more than one statute.* In cases in which it is doubtful as to whether the MCA (§§ 536.20 through 536.35) or the NGCA (§§ 536.70 through 536.81) or the FTCA (§ 536.50) is the appropriate statute under which to consider the claim, the claimant will be advised of the alternatives, for example, the right to sue or the right to appeal. Similarly, a claimant may be advised of his alternative remedies when the claimant is a military member and the issue of "incident to service" is not clear.

§ 536.12 Effect of payment.

Acceptance of an award by the claimant, except for an advance payment, constitutes for the United States, and for the military member or civilian employee whose act or omission gave rise to the claim, a release from all liability to the claimant based on the act or omission.

§ 536.13 Advance payments.

(a) *Purpose.* This section implements the Act of 8 September 1961 (75 Stat. 488, 10 U.S.C. 2736), as amended by Public Law 90-521 (82 Stat. 874), Public Law 98-564 (98 Stat. 2918) and Public Law 100-456. No new liability is created by 10 U.S.C. 2736, which merely permits partial advance payments on meritorious claims as specified in this section.

(b) *Conditions for advance payment.* An advance payment not in excess of \$100,000 is authorized in the limited

category of claims resulting in immediate hardship arising from incidents that are payable under the provisions of §§ 536.20 through 536.35, 536.70 through 536.81, or the FCA (10 U.S.C. 2734). An advance payment is authorized only under the following circumstances:

(1) The claim must be determined to be cognizable and meritorious under the provisions of either §§ 536.20 through 536.35, and 536.70 through 536.81, or the FCA (10 U.S.C. 2734).

(2) There exists an immediate need of the person who suffered the injury, damage, or loss, or of the family of a person who was killed, for food, clothing, shelter, medical or burial expenses, or other necessities, and other resources for such expenses are not reasonably available.

(3) The payee, so far as can be determined, would be a proper claimant, as is the spouse or next of kin of a claimant who is incapacitated.

(4) The total damage sustained must exceed the amount of the advance payment.

(5) A properly executed advance payment acceptance agreement has been obtained.

Subpart B—Claims Arising From Activities of Military or Civilian Personnel or Incident to Non-combat Activities

§ 536.20 Statutory authority.

The statutory authority for §§ 536.20 through 536.35 is contained in the Act of 10 August 1956 (70A Stat. 153, 10 U.S.C. 2733) commonly referred to as the Military Claims Act (MCA), as amended by Public Law 90-522, 26 September 1968 (82 Stat. 875), Public Law 90-525, 26 September 1968 (82 Stat. 877), Public Law 91-312, 8 July 1970 (84 Stat. 412) and Public Law 93-336, 8 July 1974 (88 Stat. 291); and the Act of 8 September 1961 (75 Stat. 488, 10 U.S.C. 2736), as amended by Public Law 90-521, 26 September 1968 (82 Stat. 874) and Public Law 98-564, 30 October 1984 (98 Stat. 2918).

§ 536.21 Definitions.

The definitions of terms set forth in § 536.3 are applicable to §§ 536.20 through 536.35.

§ 536.22 Scope.

Sections 536.20 through 536.35 are applicable in all places and prescribe the substantive bases and special procedural requirements for the settlement of claims against the United States for death, personal injury, or damage to or loss or destruction of property caused by military personnel or civilian employees of the DA acting within the scope of their employment, or otherwise incident to the noncombat activities of the DA, provided such claim is not for personal injury or death of a member of the Armed Forces or Coast Guard or a civilian officer or employee whose injury or death is incident to service.

§ 536.23 Claims payable.

(a) *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage to or loss of real or personal property is payable under §§ 536.20 through 536.35 when—

(1) Caused by an act or omission determined to be negligent, wrongful, or otherwise involving fault of military personnel or civilian officers or employees of the Army acting within the scope of their employment, or

(2) Incident to the noncombat activities of the Army.

(b) *Property.* The loss or damage to property which may be the subject of claims under §§ 536.20 through 536.35 includes—

(1) Real property used and occupied under a lease, express or implied, or otherwise (for example, in connection with training, field exercises, or maneuvers). An allowance may be made for the use and occupancy of real property arising out of trespass or other tort, even though claimed as rent.

(2) Personal property bailed to the Government under an agreement, express or implied, unless the owner has expressly assumed the risk of damage or loss. Some losses may be payable using Operations and Maintenance, Army funds. Clothing damage or loss claims arising out of the operation of an Army Quartermaster laundry are

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considered to be incident to service and are payable only if claimant is not a proper claimant under 31 U.S.C. 3721.

(3) Registered or insured mail in the possession of the Army, even though the loss was caused by a criminal act.

(c) *Effect of FTCA.* A claim arising in the United States may be settled under §§ 536.20 through 536.35 only if the FTCA (28 U.S.C. 2671-2680), § 536.50, has been judicially determined not to be applicable to claims of this nature, or if the claim arose incident to noncombat activities.

(d) *Advance payments.* Advance payments under 10 U.S.C. 2736, as amended, in partial payment of meritorious claims to alleviate immediate hardship are authorized.

§ 536.24 Claims not payable.

A claim is not payable under §§ 536.20 through 536.35 which—

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

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

(c) Is purely contractual in nature.

(d) Arises from private as distinguished from Government transactions.

(e) Is based solely on compassionate grounds.

(f) Is for war trophies or articles intended directly or indirectly for persons other than the claimant or members of his or her immediate family, such as articles acquired to be disposed of as gifts or for sale to another, voluntarily bailed to the Army, or is for precious jewels or other articles of extraordinary value voluntarily bailed to the Army. The preceding sentence is not applicable to claims involving registered or insured mail. No allowance will be made for any item when the evidence indicates that the acquisition, possession, or transportation thereof was in violation of DA directives.

(g) Is for rent, damage, or other payments involving the acquisition, use, possession, or disposition of real property or interests therein by and for the DA, except as authorized by § 536.23(b)(1). Real estate claims founded upon contract are generally processed under AR 405-15.

(h) 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 governing statute (10 U.S.C. 2733); 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. When a claim is considered to be not payable for the reasons stated in this paragraph, it will be forwarded for appropriate action to the Commander, USARCS, together with the recommendations of the responsible claims office.

(i) If presented by a national, or a corporation controlled by a national, or a country at war or engaged in armed conflict with the United States, or of any country allied with such enemy country unless the settlement authority having jurisdiction over the claim 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.

(j) Is for personal injury or death of a member of the Armed Forces or Coast Guard or a civilian employee thereof which is incident to his or her service (10 U.S.C. 2733(b)(3)).

(k) The types of claims not payable under the FTCA (see § 536.50(j)) are also not payable under §§ 536.20 through 536.35 with the following exceptions:

(1) The foreign country exclusion in 28 U.S.C. 2680(k) does not apply to claims under §§ 536.20 through 536.35.

(2) The *Feres* bar in § 536.50(j)(1) does not apply to claims under §§ 536.20 through 536.35, but see the exclusion in paragraph (j) of this section.

§ 536.25 Claims also cognizable under other statutes.

(a) *General.* Claims based upon a single act or incident cognizable under §§ 536.20 through 536.35, which are also cognizable under the FTCA (28 U.S.C. 2671-2680) § 536.50, the Army Maritime Claims Settlement Act (10 U.S.C. 4801-04, 4806) § 536.60, the FCA (10 U.S.C. 2734), or title 31, U.S.C. section 3721 (Personnel Claims), will be considered

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first under the latter statutes. If not payable under any of those latter statutes, the claim will be considered under §§ 536.20 through 536.35.

(b) *Claims in litigation.* Disposition under §§ 536.20 through 536.35 of any claim of the type covered by this section that goes into litigation in any State or Federal court under any State or Federal statute or ordinance will be suspended pending disposition of such litigation and the claim file will be forwarded to the Commander, USARCS. The Commander, USARCS, in coordination with the U.S. Department of Justice, may determine that final disposition under §§ 536.20 through 536.35 during pendency of the litigation is in the best interests of the United States. This section will also apply to any litigation brought against any agent of the United States in his or her individual capacity which is based upon the same acts or incidents upon which a claim under §§ 536.20 through 536.35 is based.

§ 536.26 Presentation of claims.

(a) *When claim must be presented.* A claim may be settled under §§ 536.20 through 536.35 only if presented in writing within 2 years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented not later than 2 years after war or armed conflict is terminated. As used in this section, a war or armed conflict is one in which any Armed Force of the United States is engaged. The dates of commencement and termination of an armed conflict must be as established by concurrent resolution of Congress or by determination of the President.

(b) *Where claim must be presented.* A claim must be presented to an agency or instrumentality of the DA. However, the statute of limitations is tolled if a claim is filed with another agency of the Government and is forwarded to the DA within 6 months, or if the claimant makes inquiry of the DA concerning his or her claim within 6 months after it was filed with another agency of the Government. If a claim is received by an official of the DA who is not a claims approval or settlement au-

thority under §§ 536.20 through 536.35, the claim will be transmitted without delay to the nearest claims office or JA office for delivery to such an authority.

§ 536.27 Procedures.

So far as not inconsistent with §§ 536.20 through 536.35, the procedures set forth in §§ 536.1 through 536.13 will be followed. Subrogated claims will be processed as prescribed in § 536.5(b).

§ 536.28 Law applicable.

(a) As to claims arising in the United States, its territories, commonwealths, and possessions, the law of the place where the act or omission occurred will be applied in determining liability and the effect of contributory negligence on claimant's right to recover damages.

(b) In claims arising in a foreign country, liability of the United States will be assessed by reference to general principles of tort law common to the majority of United States jurisdictions. Absolute liability and similar theories are not a basis for liability under this section. Damages will be determined under § 536.29. If the negligence of the claimant was a partial cause of the injury, loss or damage, recovery will be barred if the negligence of the claimant is greater than that of the United States. In traffic accident cases, questions of negligence, and the degree of the claimant's comparative negligence, will be evaluated based on the traffic and vehicle safety laws and regulations of the country in which the accident occurred, but only to the extent they are not specifically superseded or preempted by the United States military traffic regulations.

§ 536.29 Compensation for property damage, personal injury, or death.

(a) *Measure of damages for property claims—(1) General.* The measure of damages in property claims arising in the United States or its possessions will be determined in accordance with the law of the place where the incident occurred. The measure of damages in property claims arising overseas will be determined in accordance with general principles of United States tort law.

(2) *Proof of damage.* The information listed below (similar to that required by 28 CFR 14.4(c)) will be submitted by a claimant to substantiate a claim.

- (i) Proof of ownership.
- (ii) Detailed statement of amount claimed for each item of property.
- (iii) Itemized receipt of estimate for all repairs.
- (iv) Statement giving date of purchase, price and, where not economically repairable, the salvage value.

(3) *Appraisals.* The assistance of appraisers should be used in all claims where, in the opinion of the claims officer, an appraisal is reasonably necessary and useful in reaching an administrative settlement of claims.

(b) *Measure of damages in injury or death claims arising in the United States or its possessions.* Where an injury or an injury resulting in death arises within the United States or its possessions, the measure of damages will be determined in accordance with the law of the State or possession wherein the injury arises.

(1) The information listed below (similar to that required by 28 CFR 14.4(a)) will be submitted by a claimant to substantiate a wrongful death claim.

- (i) Authenticated death certificate or other competent evidence showing date and cause of death and age of decedent.
- (ii) Decedent's employment and occupation at time of death, including salary or earnings and duration of last employment or occupation.
- (iii) Names, addresses, birthdates, kinship and marital status of survivors.
- (iv) Identification of persons dependent on decedent for support at time of death and the degree of support provided.
- (v) Decedent's general physical and mental condition at time of death.
- (vi) Itemized bills or receipt for medical and burial expenses.
- (vii) If damages for pain and suffering are claimed, a physician's statement specifying the injuries suffered, duration of pain and suffering, drugs administered and decedent's physical condition between time of injury and time of death.

(2) The information listed below (similar to that required by 28 CFR 14.4(b)) will be submitted by a claimant

to substantiate a personal injury claim.

- (i) Written report by attending the physician or dentist setting forth the:
 - (A) Nature and extent of injury;
 - (B) Nature and extent of treatment;
 - (C) Degree of temporary or permanent disability;
 - (D) Prognosis;
 - (E) Period of hospitalization; and
 - (F) Diminished earning capacity.
- (ii) Itemized bills or receipts for medical, dental and hospital expenses.
- (iii) If the prognosis includes future treatment, a statement of expected expenses for such treatment.
- (iv) If the claim includes lost time from employment, a statement by the employer showing the actual time lost and wages and/or salary lost.
- (v) If the claim includes lost income by a self-employed claimant, documentary evidence of such loss.

(c) *Measure of damages in injury or death claims arising in foreign countries.*

(1) Subject to the limitations in § 636.29e, where an injury, or injury resulting in death arises in a foreign country, the measure of damages will be determined in accordance with established principles of general maritime law (see generally, *Moragne v. United States Lines, Inc.*, 398 U.S. 375 (1970), as interpreted by Federal Court decisions). Where general maritime law provides no interpretation of allowable damages under a particular theory of liability (e.g., wrongful birth), damages will be determined in accordance with general principles of United States tort law.

(2) The information listed in § 536.29(b) (1) and (2), as appropriate, will be submitted by the claimant to substantiate a claim.

(3) A claimant who suffers serious personal injury, resulting in temporary or permanent disability should be examined by an independent physician or other medical specialist (See § 536.8(b)).

(d) *Failure to substantiate a claim.* (1) The government is not obligated to take final action on a claim until it has been supported by the claimant with specific facts substantiated by appropriate documentary evidence, reports of investigation, medical records or witness statements. Upon request, the claimant must:

- (1) Subject to the limitations in § 636.29e, where an injury, or injury resulting in death arises in a foreign country, the measure of damages will be determined in accordance with established principles of general maritime law (see generally, *Moragne v. United States Lines, Inc.*, 398 U.S. 375 (1970), as interpreted by Federal Court decisions). Where general maritime law provides no interpretation of allowable damages under a particular theory of liability (e.g., wrongful birth), damages will be determined in accordance with general principles of United States tort law.
- (2) The information listed in § 536.29(b) (1) and (2), as appropriate, will be submitted by the claimant to substantiate a claim.
- (3) A claimant who suffers serious personal injury, resulting in temporary or permanent disability should be examined by an independent physician or other medical specialist (See § 536.8(b)).
- (d) *Failure to substantiate a claim.* (1) The government is not obligated to take final action on a claim until it has been supported by the claimant with specific facts substantiated by appropriate documentary evidence, reports of investigation, medical records or witness statements. Upon request, the claimant must:

(2) The information listed in § 536.29(b) (1) and (2), as appropriate, will be submitted by the claimant to substantiate a claim.

(3) A claimant who suffers serious personal injury, resulting in temporary or permanent disability should be examined by an independent physician or other medical specialist (See § 536.8(b)).

(d) *Failure to substantiate a claim.* (1) The government is not obligated to take final action on a claim until it has been supported by the claimant with specific facts substantiated by appropriate documentary evidence, reports of investigation, medical records or witness statements. Upon request, the claimant must:

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(i) Provide the documentation required by paragraphs (a), (b) and (c) of this section;

(ii) Undergo necessary medical examinations;

(iii) Permit questioning of the claimant, his or her witness, and treating medical personnel;

(iv) Submit an expert opinion in a professional negligence action.

(2) Failure to comply with these requirements may provide a basis for denial of a claim, in full or in part.

(e) *Damages not payable.* The following damages are not payable in any claim arising under the Military Claims Act:

(1) Punitive or exemplary damages, including damages punitive in nature under 28 U.S.C. 2674.

(2) Interest on any claim settlement.

§ 536.30 Structured settlements.

(a) The use of the structured settlement device by approval and settlement authorities is encouraged in all appropriate cases. A structured settlement should not be used when contrary to the desires of the claimant.

(b) Notwithstanding the above, the Commander, USARCS may require or recommend to higher authority that an acceptable structured settlement be made a condition of award notwithstanding objection by the claimant or his or her representative where—

(1) Necessary to ensure adequate and secure care and compensation to a minor or otherwise incompetent claimant over a period of years;

(2) Where a trust device is necessary to ensure the long-term availability of funds for anticipated further medical care;

(3) Where the injured party's life expectancy cannot be reasonably determined.

§ 536.31 Claims over \$100,000.

Claims cognizable under 10 U.S.C. 2733 and §§ 536.20 through 536.35, which are meritorious in amounts in excess of \$100,000, will be forwarded to the Commander, USARCS who will negotiate a settlement subject to approval by the Secretary of the Army or designee, or require the claimant to state the lowest amount that will be acceptable and provide appropriate justification. Ten-

der of a final offer by the Commander, USARCS constitutes an action subject to appeal. The Commander, USARCS will prepare a memorandum of law with recommendations and forward the claim to the Secretary of the Army, or designee, for final action. The Secretary or designee will either disapprove the claim or approve it in whole or in part.

§ 536.32 Settlement procedures.

(a) *Procedures.* Approval and settlement authorities will follow the procedures set forth in §§ 536.1 through 536.13 in paying, denying or making final offers on claims. A copy of the notification will be forwarded to Commander, USARCS. The settlement authority will notify the claimant by certified mail (return receipt registered) of a denial or final action and the reason therefore. The letter of notification will inform the claimant of the following:

(1) He or she may appeal, and that no form is prescribed for the appeal.

(2) The title of the authority who will act on the appeal and that the appeal will be addressed to the settlement authority who last acted on the claim.

(3) The claimant must fully set forth the grounds for appeal, or state that he or she appeals on the basis of the record as it exists at the time of denial or final offer.

(4) The appeal must be postmarked not later than 60 days after receipt of notice of action on the claim. If the 60th day falls on a day on which the post office is closed, the next day on which it is open for business will be considered the final day of the appeal period. The 60 day appeal period starts on the day following claimant's receipt of the letter from the settlement authority informing the claimant of the action taken and of the appellant rights. For good cause shown, the Commander, USARCS, or designee, or the chief of a command claims service (if the appellate authority), may extend the time for appeal, but normally such extension will not exceed 90 days.

(5) Where a claim for the same injury has been filed under the FTCA and the denial or final offer applies equally to such claim, the letter of notification must advise the claimant that any suit

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brought as to any portion of the claim under the FTCA must be brought not later than 6 months from the date of mailing of the notice of denial or final offer. Further, the claimant must be advised that if suit is brought, action on any appeal will be held in abeyance pending final determination of such suit.

(b) *Action on appeal.* (1) The appeal will be examined by the settlement authority who last acted on the claim, or his or her successor, to determine if the appeal complies with the requirements of this section. The settlement authority will also examine the claims investigative file and decide whether additional investigation is required; ensure all allegations or evidence presented by the claimant, agent or attorney are documented in the file; and that all pertinent evidence is included in the file. If the claimant states that he or she appeals but does not submit supporting materials within the 60 day appeal period or an approved extension thereof, the appeal will be treated as being on the record as it existed at the time of denial or final offer. Unless action under paragraph (b)(2) of this section is taken; the claim with complete investigative file including any additional investigation required and a memorandum of opinion will be forwarded to the appropriate appellate authority for necessary action on the appeal.

(2) If the evidence in the file, including information submitted by the claimant with the appeal and any necessary additional investigation, indicates that the appeal should be granted, in whole or in part, the settlement authority who last acted on the claim or his or her successor will attempt to settle the claim. If settlement cannot be reached, the appeal will be forwarded in accordance with paragraph (b)(1) of this section.

(3) As to an appeal that requires action by TJAG, The Assistant Judge Advocate General (TAJAG), or the Secretary of the Army, or designee, the Commander, USARCS may take the action in paragraph (b)(2) of this section or forward the claim together with a recommendation for action. All matters submitted by the claimant will be forwarded and considered.

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(4) Since an appeal under this authority is not an adversary proceeding, no form of hearing is authorized. A request by the claimant for access to documentary evidence in the claims file to be used in considering the appeal should be granted unless access is not permitted by law or regulation.

§ 536.33 Attorney fees.

In the settlement of any claim under §§ 536.20 through 536.35, attorney fees shall not exceed 20 percent of the final cost to the United States of the award.

§ 536.34 Payment of costs, settlements, and judgments related to certain medical and legal malpractice claims.

(a) Costs, settlements, or judgments cognizable under 10 U.S.C. 1089(f) for personal injury or death caused by any physician, dentist, nurse, pharmacist, or paramedical, or other supporting personnel (including medical and dental technicians, nurse assistants, and therapists) of DA should be forwarded to Commander, USARCS, for action and will be paid, provided:

(1) The alleged negligent or wrongful actions or omissions arose in performance of medical, dental or related health care functions (including clinical studies and investigations) within the scope of employment; and

(2) Such personnel provide prompt notification and delivery of all process served or received, provide such other documents, information, and assistance as requested, and cooperate in the defense of the action on the merits. (See DoD Directive 6000.6.)

(b) Costs, settlements, and judgments cognizable under 10 U.S.C. 1054(f) for damages for injury or loss of property caused by any attorney, paralegal, or other member of a legal staff within the DA should be forwarded to Commander, USARCS, for action and will be paid, provided:

(1) The alleged negligent or wrongful actions or omissions arose in connection with providing legal services while acting within the scope of the person's duties or employment, and

(2) Such personnel provide prompt notification and delivery of all process served or received, provide such other documents, information and assistance

as requested, and cooperate in the defense of the action on the merits. (See DoD Directive 6000.6.)

§ 536.40 Claims under Article 139, Uniform Code of Military Justice.

(a) *Statutory authority.* The authority for this section is Article 139, Uniform Code of Military Justice (10 U.S.C. 939) which provides for redress of damage to property willfully damaged or destroyed, or wrongfully taken, by members of the armed forces of the United States.

(b) *Purpose.* This section sets forth the standards to be applied and the procedures to be followed in the processing of claims for damage, loss or destruction of property owned by or in the lawful possession of an individual, whether civilian or military, a business, a charity, or a State or local government, where the property was wrongfully taken or willfully damaged by military members of DA. Claims cognizable under other claims statutes may be processed under this section.

(c) *Effect of disciplinary action.* Administrative action under Article 139 and this section is entirely separate and distinct from disciplinary action taken under other articles of the UCMJ or other administrative actions. Because action under Article 139 and this section requires independent findings on issues other than guilt or innocence, the mere fact that a soldier was convicted or acquitted of charges is not dispositive of a claim under Article 139.

(d) *Claims cognizable.* Claims cognizable under Article 139, UCMJ are limited to—

(1) *Claims for property willfully damaged.* Willful damage is damage which is inflicted intentionally, knowingly, and purposefully without justifiable excuse, as distinguished from damage caused inadvertently or thoughtlessly through simple or gross negligence. Damage, loss, or destruction of property caused by riotous, violent, or disorderly acts, or by acts of depredation, or through conduct showing reckless or wanton disregard of the property rights of others may be considered willful damage.

(2) *Claims for property wrongfully taken.* A wrongful taking is any unauthorized taking or withholding of prop-

erty, not involving the breach of a fiduciary or contractual relationship, with the intent to temporarily or permanently deprive the owner or person lawfully in possession of the property. Damage, loss, or destruction of property through larceny, forgery, embezzlement, fraud, misappropriation, or similar offense may be considered wrongful taking.

(e) *Claims not cognizable.* Claims not cognizable under this section and Article 139 include—

(1) Claims resulting from negligent acts.

(2) Claims for personal injury or death.

(3) Claims resulting from acts or omissions of military personnel acting within the scope of their employment.

(4) Claims resulting from the conduct of reserve component personnel who are not subject to the UCMJ at the time of the offense.

(5) Subrogated claims, including claims by insurers.

(f) *Limitations on assessments—(1) Time Limitations.* To be considered, a claim must be submitted within 90 days of the incident out of which the claim arose, unless the special court-martial convening authority (SPCMCA) acting on the claim determines that good cause has been shown for the delay.

(2) *Limitations on amount.* No soldier's pay may be assessed more than \$5,000 on a single claim without the approval of the Commander, USARCS, or designee. If the commander acting on the claim determines that an assessment against a soldier in excess of \$5,000 is meritorious, he or she will assess the pay of that soldier in the amount of \$5,000 and forward the claim to the Commander, USARCS, with his or her recommendation as to the additional amount which should be assessed.

(3) *Direct damages.* Assessments are limited to direct damages for the loss of or damage to property. Indirect, remote, or consequential damages may not be considered under this section.

(g) *Procedure.* Area claims offices and claims processing offices with approval authority are responsible for publicizing the Article 139 program and maintaining a log for Article 139 claims presented in their areas (see

Personnel Claims Adjudication appendix G, Claims Manual). Area claims offices and claims processing offices with approval authority are required to monitor action taken on Article 139 claims and ensure that time requirements are met. If assessment action on a particular claim will be unduly delayed, the office may consider the claim under 31 U.S.C. 3721 and chapter 11 of this regulation if it is otherwise cognizable under the authority. The office will counsel the claimant to repay any overpayment if the Article 139 claim is later successful (see para 11-2e).

(1) *Form of a claim and presentment.* A claim must be presented by the claimant or his or her authorized agent orally or in writing. The claim must be reduced to writing, signed, and for a definite sum in U.S. dollars within 10 days after oral presentment.

(2) *Action upon receipt of a claim.* Any officer receiving a claim will forward it within 2 working days to the SPCMCA over the soldier or soldiers against whom the claim is made. If the claim is made against soldiers under the jurisdiction of more than one such convening authority who are under the same general court-martial convening authority, the claim will be forwarded to that general court-martial convening authority, who will designate one SPCMCA to investigate and act on the claim as to all soldiers involved. If the claim is made against soldiers under the jurisdiction of more than one SPCMCA at different locations and not under the same general court-martial convening authority, the claim will be forwarded to the SPCMCA whose headquarters is closest to the situs of the incident, who will investigate and act on the claim as to all soldiers involved. If a claim is made against a member of one of the other military Services, the claim will be forwarded to the commander of the nearest major Army command (MACOM) of that Service.

(3) *Action by the SPCMCA.* Within 4 working days of receipt of a claim, the SPCMCA will appoint an investigating officer to investigate the claim, using the procedures of this section supplemented by the procedures of AR 15-6. The claims officer of a command, if he or she is a commissioned officer, may

be appointed as the investigating officer.

(4) *Action by the investigating officer.* The investigating officer will provide notification to the soldier against whom the claim is made.

(i) If the soldier indicates a desire to make voluntary restitution, the investigating officer may, with the convening authority's concurrence, delay proceedings until the end of the next pay period to accomplish this. If the soldier makes payment to the claimant's full satisfaction, the claim will be dismissed.

(ii) In the absence of full restitution, the investigating officer will determine whether the claim is cognizable and meritorious under the provisions of Article 139 and this chapter and the amount to be assessed each offender. This amount will be reduced by any restitution accepted by the claimant from an offender in partial satisfaction. Within 10 working days or such time as the SPCMCA may provide, the investigating officer will make findings and recommendations and submit these to the SPCMCA. The investigating officer will also provide a copy of his or her findings and recommendations to any soldier against whom an assessment is recommended.

(iii) If the soldier is absent without leave so that he or she cannot be provided with notification, the Article 139 claim may be processed in the soldier's absence. If an assessment is approved, a copy of the claim and SPCMCA approval will be forwarded by transmittal letter to the servicing finance and accounting office (FAO) for offset input against the soldier's pay account. In the event the soldier is dropped from the rolls, the servicing FAO will forward the assessment documents to Commander, U.S. Army Finance and Accounting Center, attn: Department 40, Indianapolis, Indiana 46249.

(5) *Legal review.* After completion of the investigating officer's report, the SPCMCA will refer the claim to the area claims office or claims processing office servicing his or her command to review for legal sufficiency and advice. That office will furnish within 5 working days or such time as the SPCMCA will provide a written opinion as to—

(i) Whether the claim is cognizable under the provisions of Article 139 and this chapter.

(ii) Whether the findings and recommendations are supported by evidence.

(iii) Whether there has been substantial compliance with the procedural requirements of Article 139, this chapter, and AR 15-6.

(6) *Final action.* After considering the advice of the claims office, the SPCMCA will disapprove the claim or approve the claim in an amount equal to or less than the amount recommended by the investigating officer. The SPCMCA will notify the claimant, and any soldier subject to his or her jurisdiction, of the determination and the right to request reconsideration. The SPCMCA will then suspend action on the claim for 10 working days pending receipt of a request for reconsideration unless he or she determines that this delay will result in substantial injustice. The SPCMCA will direct the servicing finance officer for the soldier or soldiers against whom assessments are approved to withhold such amount from the soldier or soldiers up to \$5000. For any soldier not subject to the SPCMCA's jurisdiction, the SPCMCA will forward the claim to that commander who does exercise special court-martial jurisdiction over the soldier for collection action.

(7) *Assessment.* Subject to any limitations provided in appropriate regulations, the servicing finance officer will withhold the amount directed by the SPCMCA and pay it to the claimant. The SPCMCA's assessment is not subject to appeal and is conclusive on any finance officer. If the servicing finance officer finds that the required amount cannot be withheld because he or she does not have custody of the soldier's pay record or because the soldier is in a no pay due status, the servicing finance officer will promptly notify the SPCMCA of this in writing.

(8) *Post settlement action.* After action on the claim is completed, the claims office servicing the command which took final action will forward one copy of the claim together with a cover sheet and all attachments, to include information that money has or has not been withheld and paid to the claimant

by the servicing finance officer, through any command claims service, to the Commander, USARCS.

(9) *Remission of indebtedness.* Title 10, United States Code, section 4837(d), which authorizes the remission and cancellation of indebtedness of an enlisted person to the United States or its instrumentalities, is not applicable and may not be used to remit and cancel indebtedness determined as a result of action under Article 139.

(h) *Reconsideration*—(1) *General.* Although Article 139 does not provide for a right of appeal, either the claimant or a soldier whose pay is assessed may request the SPCMCA or a successor in command to reconsider the action. A request for reconsideration will be submitted in writing and will clearly state the factual or legal basis for the relief requested. The SPCMCA may direct that the matter be reinvestigated.

(2) *Reconsideration by the original SPCMCA.* The original SPCMCA may reconsider the action so long as he occupies that position, regardless of whether a soldier whose pay was assessed has been transferred. If the original SPCMCA determines that the action was incorrect, he or she may modify it subject to paragraph (h)(4) of this section. If a request for reconsideration is submitted more than 15 days after notification was provided, however, the SPCMCA should only modify the action on the basis of fraud, substantial new evidence, errors in calculation, or mistake of law.

(3) *Reconsideration by a successor in command.* Subject to paragraph (h)(4) of this section, a successor in command may only modify an action on the basis of fraud, substantial new evidence, errors in calculation or mistake of law apparent on the face of the record.

(4) *Legal review and action.* Prior to modifying the original action, the SPCMCA will have the claims office render a legal opinion and fully explain his or her basis for modification as part of the file. If a return of assessed pay is deemed appropriate, the SPCMCA should request the claimant to return the money, setting forth the basis for the request. There is no authority for repayment from appropriated funds.

(5) *Disposition of files.* After completing action on reconsideration, the

SPCMCA will forward a copy of the reconsideration action to the Commander, USARCS, and retain one or more additional copies with the claim file.

§ 536.50 Claims based on negligence of military personnel or civilian employees under the Federal Tort Claims Act.

(a) *Authority.* The statutory authority for this chapter is the FTCA (60 Stat. 842, 28 U.S.C. 2671-2680), as amended by the Act of 18 July 1966 (Pub. L. 89-506; 80 Stat. 306), the Act of 16 March 1974 (Pub. L. 93-253; 88 Stat. 50), and the Act of 29 December 1981 (Pub. L. 97-124), and as implemented by the Attorney General's Regulations (28 CFR 14.1-14.11).

(b) *Scope.* This section prescribes the substantive basis and special procedural requirements for the administrative settlement of claims against the United States under the FTCA and the implementing Attorney General's Regulations based on death, personal injury, or damage to or loss of property which accrue on or after 18 January 1967. If a conflict exists between the provisions of this section and the provisions of the Attorney General's Regulations, the latter govern.

(c) *Claims payable.* Unless otherwise prescribed, claims for death, personal injury, or damage to or loss of property (real or personal) are payable under this section when the injury or damage is caused by negligent or wrongful acts or omissions of military personnel or civilian employees of the DA or the DoD while acting within the scope of their employment under circumstances in which the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. The FTCA is a limited consent to liability without which the United States is immune. Similarly, there is no Federal cause of action created by the Constitution which would permit a damage recovery because of the Fifth Amendment or any other constitutional provision. Immunity must be expressly waived, as by the FTCA.

(d) "Employee of the Government" (28 U.S.C. 2671) includes the following

categories of tortfeasors for which the DA is responsible:

(1) Military personnel (members of the Army), including but not limited to:

(i) Members on full-time active duty in a pay status, including—

(A) Members assigned to units performing active service.

(B) Members serving as ROTC instructors. (Does not include Junior ROTC instructors unless on active duty.)

(C) Members serving as National Guard instructors or advisors.

(D) Members on duty or in training with other Federal agencies, for example, Nuclear Regulatory Commission, National Aeronautics and Space Administration, Departments of Defense, State, Navy, or Air Force.

(E) Members assigned as students or ordered into training at a non-Federal civilian educational institution, hospital, factory, or other industry. This does not include members on excess leave.

(F) Members on full-time duty at nonappropriated fund activities.

(G) Members of the ARNG of the United States on active duty.

(ii) Members of reserve units during periods of inactive duty training and active duty training, including ROTC cadets who are reservists while they are at summer camp.

(iii) Members of the ARNG while engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, or 505 for claims arising on or after 29 December 1981.

(2) Civilian officials and employees of both the DOD and the DA (there is no practical significance to the distinction between the terms "official" and "employee") including but not limited to—

(i) Civil Service and other full-time employees of both DOD and DA paid from appropriated funds.

(ii) Contract surgeons (10 U.S.C. 1091, 4022) and consultants (10 U.S.C. 1091) where "control" is exercised over physician's day to day practice.

(iii) Employees of nonappropriated funds if the particular fund is an instrumentality of the United States and thus a Federal agency. In determining whether or not a particular fund is a "Federal agency," consider whether

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the fund is an integral part of the DA charged with an essential DA operational function and the degree of control and supervision exercised by DA personnel. Members or users, as distinguished from employees of non-appropriated funds, are not considered Government employees. The same is true of family child care providers. However, claims arising out of the use of certain nonappropriated fund property or the acts or omissions of family child care providers, may be payable from such funds under chapter 12, AR 27-20, as a matter of policy, even when the user is not within the scope of employment and the claim is not otherwise cognizable under any other claims authorization.

(iv) Prisoners of war and interned enemy aliens.

(v) Civilian employees of the District of Columbia National Guard, including those paid under "service contracts" from District of Columbia funds.

(vi) Civilians serving as ROTC instructors paid from Federal funds.

(vii) National Guard technicians employed under 32 U.S.C. 709(a) for claims accruing on or after 1 January 1969 (Pub. L. 90-486, 13 August 1968; 82 Stat. 755).

(3) Persons acting in an official capacity for the DOD or the DA whether temporarily or permanently in the service of the United States with or without compensation including but not limited to—

(i) "Dollar a year" personnel.

(ii) Members of advisory committees, commissions, boards or the like.

(iii) Volunteer workers in an official capacity acting in furtherance of the business of the United States. The general rule with respect to volunteers is set forth in 31 U.S.C. 665(b), which provides that, "No officer or employee of the United States shall accept voluntary service for the United States or employ personal service in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property." (5 U.S.C. 3111(c) specifically provides that student volunteers employed thereunder shall be considered Federal employees for purposes of claims under the FTCA. The same classification is applied by 10 U.S.C. 1588 to museum

and family support program volunteers.) The DA is permitted to accept and use certain volunteer services in Army family support programs. (10 U.S.C. 1588).

(iv) Loaned servants. Employees who are permitted to serve another employer may be considered "loaned servants," provided the borrowing employer has the power to discharge the employee, to control and direct the employee, and to decide how he will perform his tasks. Whoever has retained those powers is liable for the employee's torts under the principle of respondeat superior. Where those elements of direction and control have been found, the United States has been liable, for example, for the torts of Government employees loaned for medical training and emergency assistance, and county and state employees discharging Federal programs.

(e) "Scope of employment" means acting in "line of [military] duty" (28 U.S.C. 2671) and is determined in accordance with principles of respondeat superior under the law of the jurisdiction in which the act or omission occurred. Determination as to whether a person is within a category listed in paragraph (d)(3) of this section will usually be made together with the scope determination. Local law should always be researched, but the novel aspects of the military relationship should be kept in mind in making a scope determination.

(f) "Line of duty" determinations under AR 600-8-1 are not determinative of scope of employment. "Joint venture" situations are likely to be frequent where the Federal employee is performing federally assigned duties but is under actual direction and control of a non-Federal entity, for example, a Federal employee in training at a non-Federal entity or ROTC instructors at civilian institutions. This could also occur where the employee is working for another Federal agency. Furthermore, dual purpose situations are commonplace where benefits to the Government and the member or employee may or may not be concurrent, for example, use of privately owned vehicles at or away from assigned duty station, or permanent change of station with delay en route. (See §§ 536.90

through 536.97 for the handling of certain claims arising out of nonscope activities of members of the Army.)

(g) *Law applicable.* The whole law of the place where the act or omission occurred, including choice of law rules, will be applied in the determination of liability and quantum. Where there is a conflict between the local law and an express provision of the FTCA, the latter governs.

(h) *Subrogation.* Claims involving subrogation will be processed as prescribed in § 536.5(b), except where inconsistent with the provisions of this section or the Attorney General's regulations.

(i) *Indemnity or contribution—(1) Sought by the United States.* If the claim arises under circumstances in which the Government is entitled to contribution or indemnity under a contract of insurance or the applicable law governing joint tortfeasors, the third party will be notified of the claim, and will be requested to honor its obligation to the United States or to accept its share of joint liability. If the issue of indemnity or contribution is not satisfactorily adjusted, the claim will be compromised or settled only after consultation with the Department of Justice as provided in 28 CFR 14.6.

(2) *Claims for indemnity or contribution.* Claims for indemnity or contribution from the United States will be compromised or settled under this section, if liability exists under the applicable law, provided the incident giving rise to such claim is otherwise cognizable under this section. As to such claims where the exclusivity of the FECA may be applicable, see 5 U.S.C. 8101-8150.

(3) *ARNG vehicular claims.* When a vehicle used by the ARNG, or a privately owned vehicle operated by a member or employee of the ARNG, is involved in an incident under circumstances which make this section applicable to the disposition of administrative claims against the United States and results in personal injury, death, or property damage, and a remedy against the State or its insurer is indicated, the responsible area claims authority will monitor the action against the State or its insurer and encourage direct settlement between the claimant and the State or its insurer. Where the State is

insured, direct contact with State or ARNG officials rather than the insurer is desirable. Regular procedures will be established and followed wherever possible. Such procedures should be agreed on by both local authorities and the appropriate claims authorities subject to concurrence by Commander, USARCS. Such procedures will be designed to ensure that local authorities and United States authorities do not issue conflicting instructions for processing claims and that whenever possible and in accordance with governing local and Federal law, a mutual arrangement for disposition of such claims as in paragraph (i)(4) of this section is worked out. Amounts recovered or recoverable by claimant from any insurer (other than claimant's insurer who has obtained no subrogated interest against the United States) will be deducted from the amount otherwise payable.

(4) *Claims arising out of training activities of ARNG personnel.* Contribution may be sought from the state involved where it has waived sovereign immunity or has private insurance which would cover the incident giving rise to the particular claim. Where the state involved rejects the request for contribution, the file will be forwarded to the Commander, USARCS. The Commander, USARCS, is authorized to enter into an agreement with a State, territory, or commonwealth to share settlement costs of claims generated by the ARNG personnel or activities of that political entity.

(j) *Claims not payable.* The exclusions contained in 28 U.S.C. 2680 are applicable to claims herein. Other types of claims are excluded by statute or court decisions, including, but not limited to, the following:

(1) Claims for the personal injury or death of a member of the Armed Forces of the United States incurred incident to service, or for damage to a member's property incurred incident to service. *Feres v. United States*, 340 U.S. 135 (1950). Currently the most significant justification for the incident to service doctrine is the availability of alternative compensation systems, and the fear of disrupting the military command relationship. Other supportive factors often cited by the courts are

the service member's duty status, location, and receipt of military benefits at the time of the incident.

(i) The exception applies to members of the Army, Navy, Air Force, Marine Corps, and Coast Guard, including the Reserve Components of the Armed Forces. (See 10 U.S.C. 261.) The exception also applies to service members on the Temporary Disability Retired List, and on convalescent leave, to service academy cadets, to members of visiting forces in the United States under the SOFA between the parties to the North Atlantic Treaty Organization or similar international agreements, and to service members on the extended enlistment program.

(ii) The incident to service doctrine has been extended to derivative claims where the directly injured party is a service member. Third party indemnity claims are barred.

(2) Claims for the personal injury or death of a Government employee for whom benefits are provided by the Federal Employees Compensation Act (5 U.S.C. 8101-8150). Who is a government employee under the Act is defined in the Act itself (5 U.S.C. 8101), but is not limited to Federal Civil Service employees. The term "government employee" can include certain ROTC cadets (5 U.S.C. 8140) and state or local law enforcement officers engaged in apprehending a person for committing a crime against the United States (5 U.S.C. 8191), certain nurses, interns or other health care personnel, e.g., student nurses, etc. (5 U.S.C. 5351, 8144) and certain Army Community Service Volunteers (10 U.S.C. 1588). This Act provides that benefits paid under the Act are exclusive and instead of all other liability of the United States, including that under a Federal tort liability statute (5 U.S.C. 8116(c)). It extends to derivative claims, to subsequent malpractice for treatment of a covered injury, to injuries for which there is no scheduled compensation, and to employee harassment claims for which other remedies are available (42 U.S.C. 2000e). The exception does not bar third party indemnity claims. When there is doubt as to whether or not this exception applies, the claim should be forwarded through claims

channels to the Commander, USARCS, for an opinion.

(3) Claims for the personal injury or death of an employee, including non-appropriated fund employees, for whom benefits are provided by the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901-950). An employee of a nonappropriated fund instrumentality is covered by that Act (5 U.S.C. 8171). This is the exclusive remedy for covered employees, similar to the exclusivity of the FECA.

(4) Claims for the personal injury or death of any employee for whom benefits are provided under any workmen's compensation law, if the premiums of the workmen's compensation insurance are retrospectively rated and charged as an allowable, allocable expense to a cost-type contract. If, in the opinion of an approval or settlement authority, the claim should be considered payable, for example, the injuries did not result from a normal risk of employment or adequate compensation is not payable under workmen's compensation laws, the file will be forwarded with recommendations through claims channels to the Commander, USARCS, who may authorize payment of an appropriate award.

(5) Claims for damage from or by flood or flood waters at any place. 33 U.S.C. 702c. This exception is broadly construed and includes multi-purpose projects and all phases of construction and operation.

(6) Claims based solely upon a theory of absolute liability or liability without fault. Either a "negligent" or "wrongful" act is required by the FTCA, and some type of malfeasance or nonfeasance is required. *Dalehite v. United States*, 346 U.S. 15 (1953); *Laird v. Nelms*, 406 U.S. 797 (1972). Thus, liability does not arise by virtue either of United States ownership of an inherently dangerous commodity or of engaging in extra-hazardous activity.

(k) *Procedures*—(1) *General*. Unless inconsistent with the provisions of this section, the procedures for the investigation and processing of claims set forth in §§ 536.1 through 536.13 will be followed.

(2) *Claims arising out of tortious conduct by ARNG personnel as defined in paragraph (d)(1)(iii) of this section*—(i)

Notification. The procedures prescribed in § 536.75, will be followed in ARNG claims arising under the FTCA.

(ii) *Claims against the U.S. Government received by agencies of the State.* These claims will be expeditiously forwarded through the State adjutant general to the appropriate U.S. Army area claims office in whose geographic area the incident occurred.

(3) *Statute of Limitations.* (i) To be settled under this section, a claim against the United States must be presented in writing to the appropriate Federal agency within 2 years of its accrual.

(ii) For statute of limitations purposes, a claim will be deemed to have been presented when the appropriate Federal agency as defined in § 536.3(m) receives from a claimant, his or her duly authorized agent, or legal representative an executed SF 95 or written notification of an incident, together with a claim for money damages, in a sum certain, for damage to or loss of property or personal injury or death. For Federal tort claims arising out of activities of the ARNG, receipt of a written claim by any fulltime officer or employee of the ARNG will be considered proper receipt.

(iii) A claim received by an official of the DOD will be transmitted without delay to the nearest Army claims processing office or area claims office. Inquiries concerning applicability of the statute of limitations to claims filed with the wrong Federal agency will be referred to USARCS for resolution.

(4) *Claims within settlement authority of USARCS or the Attorney General.* A copy of each claim which must be brought to the attention of the Attorney General in accordance with his or her regulations (28 CFR 14.6), or one in which the demand exceeds \$15,000 or the total amount of all claims, actual or potential, from a single incident exceeds \$25,000, will be forwarded immediately to the Commander, USARCS. Subsequent documents should be forwarded or added in accordance with § 536.5(h)(2). USARCS is responsible for the monitoring and settlement of such claims and will be kept informed of the status of the investigation and processing thereof. Direct liaison and correspondence between USARCS and the

field claims authority or investigator is authorized on all claims matters, and assistance will be furnished as required.

(5) *Non-Army claims.* Claims based on acts or omissions of employees of the United States, other than military and civilian personnel of the DA, civilian personnel of the DOD, and employees of nonappropriated fund activities of the DA, will be transmitted forthwith to the nearest official of the employing agency, and the claimant will be advised of the referral.

(6) *Acknowledgment of claim.* (i) The claimant and his or her attorney will be kept informed by personal contact, telephonic contact, or mail of the receipt of his or her claim and the status of the claim. Formal acknowledgment of the claim in writing is required only where the claim is likely to result in litigation or is presented in an amount exceeding \$15,000. In this event, the letter of acknowledgment will state the date of receipt of the claim by the first agency of the Army receiving the claim.

(ii) If it is reasonably clear to the office acknowledging receipt that a claim filed under the FTCA is not cognizable thereunder; for example, it is a maritime claim under § 536.60, or it falls under §§ 536.20 through 536.35 or §§ 536.70 through 536.81, the acknowledgment will contain a statement advising the claimant of the statute under which his or her claim will be processed. If it is not clear which statute applies, a statement to that effect will be made, and the claimant will be promptly advised on his or her remedy when a decision is made. However, all potential maritime claims will be handled in accordance with § 536.5(h)(5).

(iii) When a claim has been amended as set forth in § 536.5(f)(4), the amendment will be acknowledged in all cases. Additionally, the claimant will be informed that the amendment constitutes a new claim insofar as concerns the 6 months in which the DA is granted the authority to make a final disposition under 28 U.S.C. 2675(a) and the claimant's option thereunder will not accrue until 6 months after the filing of the amendment.

(iv) When a claim is improperly presented, is incomplete or otherwise does

not meet the requirements set forth in §536.5(d), the claimant or his or her representative will be promptly informed in writing of the deficiencies and advised that a proper claim must be filed within the 2 year statute of limitations.

(7) *Investigation.* Claims cognizable under this section will be investigated and processed on a priority basis in order that settlement if indicated may be accomplished within the 6 months prescribed by statute.

(8) *Advice to claimant.* (i) A full explanation of claims procedures and of the rights of the claimant will be made to the extent necessitated by the amount and nature of the claim.

(ii) In a case where litigation is likely, or where this course of action is preferred by the claimant, and it appears to be a proper case for administrative settlement, the claimant will be advised as to the advantages of administrative settlement. If the claim is within the jurisdiction of a higher settlement authority, the claim will be discussed with such authority prior to the furnishing of such advice. The claimant should be familiarized with all aspects of administrative settlement procedures including the administrative channels through which his claim must be processed for approval. He or she may be advised that administrative processing can result in more expeditious processing, whereas litigation may take considerable time, particularly in jurisdictions with crowded dockets.

(iii) If appropriate, he or she may be informed that a tentative settlement can be reached for any amount above \$25,000, subject to approval by the Attorney General. He or she should be advised that administrative filing of the claim protects him under the statute of limitations for purpose of litigation; suit can be filed within 6 months after the date of mailing of notice of final denial by the DA, thus potentially allowing negotiations to continue indefinitely. An attorney representing a claimant should be advised of the limitations on fees for purposes of administrative settlement (20 percent) and litigation (25 percent). The attorney may also be advised that there is no jury trial under the FTCA.

(9) *Notification to claimant of action on claim.* (i) The filing of an administrative claim and its denial are prerequisite to filing suit. Any suit must be filed not later than 6 months after notification by certified or registered mail of the denial of the administrative claim. Failure of a settlement authority to take final action on a properly filed claim within 6 months may be treated by the claimant as a final denial for the purposes of filing suit. If the claimant has provided insufficient documentation to permit evaluation of the claim, written notice should be given to this effect. Since administrative settlements are a voluntary process, the preferred method of negotiating is to attempt to exchange information on an open basis.

(ii) Upon final denial of a claim, or upon rejection by the claimant of a partial allowance, and further efforts to reach a settlement are not considered feasible (§536.5(h)(1)), the settlement authority will inform the claimant of the action on his claim by certified or registered mail. Notification will be made as set forth in §536.11(b).

(iii) If a claim has been presented to the DA and, also, to other Federal agencies, without any notification to the DA of this fact, final action taken by the DA prior to that of any other agency is conclusive on a claim presented to other agencies, unless another agency decides to take further action to settle the claim. Such agency may treat the matter as a reconsideration under 28 CFR 14.9(b), unless suit has been filed. The foregoing applies likewise to DA claims in which another Federal Agency has already taken final action.

(iv) If, after final denial by another agency, a claim is filed with the DA, the new submission will not toll the 6 months limitation for filing suit, unless the DA treats the second submission as a request for reconsideration under paragraph (k)(9)(iv)(A) of this section.

(A) *Reconsideration.* (1) While there is no appeal from the action of an approving or settlement authority under the FTCA and this section, an approving or settlement authority may reconsider a claim upon request of the claimant or someone acting in his behalf. Even in

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the absence of such a request, an approving or settlement authority may on his own initiative reconsider a claim. He may reconsider a claim which he previously disapproved in whole or in part (even where a settlement agreement has been executed) when it appears that his original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. If he determines that his original action was incorrect, he will modify the action and, if appropriate, make a supplemental payment. The basis for a change in action will be stated in a memorandum included in the file.

(2) A successor approving or settlement authority may also reconsider the original action on a claim but only on the basis of fraud, substantial new evidence, errors in calculation or mistake (misinterpretation) of law.

(3) A request for reconsideration must be submitted prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 U.S.C. 2401(b). Upon timely filing, the appropriate authority shall have 6 months from the date of filing in which to make a final disposition of the request, and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of the request.

(4) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief. Following completion of any investigation or other action deemed necessary for an informed disposition of the request, the approving or settlement authority will reconsider the claim and attempt to settle it by granting such relief as may appear warranted. When further settlement efforts appear unwarranted, the entire file with a memorandum of opinion will be referred through claims channels to the Commander, USARCS, and the claimant informed of such referral.

(B) [Reserved]

§ 536.60 Maritime claims.

(a) *Statutory authority.* Administrative settlement or compromise of admiralty and maritime claims in favor of and against the United States by the Secretary of the Army or his designee is authorized by the Army Maritime

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Claims Settlement Act (10 U.S.C. 4801-04, 4806, as amended).

(b) *Related statutes.* The Army Maritime Claims Settlement Act is supplemented by the following statutes under which suits in admiralty may be brought: the Suits in Admiralty Act of 1920 (41 Stat. 525, 46 U.S.C. 741-752); the Public Vessels Act of 1925 (43 Stat. 1112, 46 U.S.C. 781-790); the Act of 1948 Extending the Admiralty and Maritime Jurisdiction (62 Stat. 496, 46 U.S.C. 740). Similar maritime claims settlement authority is exercised by the Department of the Navy under 10 U.S.C. 7365, 7621-23 and by the Department of the Air Force under 10 U.S.C. 9801-9804, 9806.

(c) *Scope.* 10 U.S.C. 4802 provides for the settlement or compromise of claims for—

(1) Damage caused by a vessel of, or in the service of, the DA or by other property under the jurisdiction of the DA;

(2) Compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the DA or to other property under the jurisdiction of the DA; or

(3) Damage caused by a maritime tort committed by any agent or employee of the DA or by property under the jurisdiction of the DA.

(d) *Claims exceeding \$500,000.* Claims against the United States settled or compromised in a net amount exceeding \$500,000 are not payable hereunder, but will be investigated and processed under this section, and, if approved by the Secretary of the Army, will be certified by him to Congress.

(e) *Claims not payable.* A claim is not allowable under this section which:

(1) Is for damage to, or loss or destruction of, property, or for personal injury or death, resulting directly or indirectly from action by the enemy, or by U.S. Armed Forces engaged in armed combat, or in immediate preparation for impending armed combat.

(2) Is for personal injury or death of a member of the Armed Forces of the United States or a civilian employee incurred incident to his service.

(3) Is for personal injury or death of a Government employee for whom benefits are provided by the FECA (5 U.S.C. 8101-8150).

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(4) Is for personal injury or death of an employee, including non-appropriated fund employees, for whom benefits are provided by the Longshoremen's and Harbor Workers' Compensation Act (44 Stat. 1424, 33 U.S.C. 901).

(5) Has been made the subject of a suit by or against the United States, except as provided in subparagraph (h)(2) of this section.

(6) Arises in a foreign country and was considered by the authorities of a foreign country and final action taken thereon under Article VIII of the NATO Status of Forces Agreement, Article XVIII of the Treaty of Mutual Cooperation and Security between the United States and Japan regarding facilities and areas and the Status of United States Armed Forces in Japan, or other similar treaty or agreement, if reasonable disposition was made of the claim.

(f) *Claims under other laws and regulations.* (1) Claims of military personnel and civilian employees of the DOD and the Army, including military and civilian officers and crews of Army vessels, for damage to or loss of personal property occurring incident to their service will be processed under the provisions of the Military Personnel and Civilian Employees' Claims Act (31 U.S.C. 3721).

(2) Claims which are within the scope of this section and also within the scope of the FCA (10 U.S.C. 2734) may be processed under that statute when specific authority to do so has been obtained from the Commander, USARCS. The request for such authority should be accompanied by a copy of the report of the incident by the Marine Casualty Investigating Officer, or other claims investigator.

(g) *Subrogation.* (1) An assurer will be recognized as a claimant under this section to the extent that it has become subrogated by payment to, or on behalf of, its assured, pursuant to a contract of insurance in force at the time of the incident from which the claim arose. An assurer and its assured may file a claim either jointly or separately. Joint claims must be asserted in the names of, and must be signed by, or on behalf of, all parties; payment then will be made jointly. If separate claims are filed, payment to each party will be limited to the extent of such party's undisputed interest.

(2) For the purpose of determining authority to settle or compromise a claim, the payable interests of an assurer (or assurers) and the assured represent merely separable interests, which interests in the aggregate must not exceed the amount authorized for administrative settlement or compromise.

(3) The policies set forth in paragraphs (g) (1) and (2) of this section with respect to subrogation arising from insurance contracts are applicable to all other types of subrogation.

(h) *Limitation of settlement.* (1) The period for effecting an administrative settlement under the Army Maritime Claims Settlement Act is subject to the same limitation as that for beginning an action under the Suits in Admiralty Act; that is, a 2-year period from the date of the origin of the cause of action. The claimant must have agreed to accept the settlement, and it must be approved for payment by the Secretary of the Army or his designee prior to the end of such period; otherwise, thereafter the cause of action ceases to exist, except under the circumstances set forth in paragraph (h)(2) of this section. The presentation of a claim, or its consideration by the DA, neither waives nor extends the 2-year limitation period.

(2) In the event that an action has been filed in a U.S. district court before the end of the 2-year statutory period, an administrative settlement may be negotiated by the Commander, USARCS, with the claimant, even though the 2-year period has elapsed since the cause of action accrued, provided the claimant obtains the written consent of the appropriate office of the Department of Justice charged with the defense of the complaint. Payment may be made upon dismissal of the complaint.

(3) When a claim under this section, notice of damage, invitation to a damage survey, or other written notice of an intention to hold the United States liable is received, the receiving installation, office, or person immediately will forward such document to the Commander, USARCS. USARCS will

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promptly advise the claimant or potential claimant in writing of the comprehensive application of the time limit.

(4) When a claim under this section for less than \$10,000 is presented to a Corps of Engineers office and thus may be appropriate for action by the Corps of Engineers pursuant to the delegation of authority set forth in paragraph (i)(2) of this section, the receiving Corps of Engineers office will promptly advise the claimant in writing of the comprehensive application of the time limit (unless such has already been done by USARCS).

(i) *Delegation of authority.* (1) Where the amount to be paid is not more than \$10,000, claims under this section may be settled or compromised by the Commander, USARCS, chief of overseas command claims service, or his designee.

(2) When a claim under this section arises from a civil works activity of the Corps of Engineers, engineer area claims offices are delegated authority to approve and pay in full, or in part, subject to the execution of an appropriate settlement agreement, claims presented for \$10,000 or less, and compromise and pay claims regardless of the amount claimed, provided an award of \$10,000 or less is accepted by the claimant in full satisfaction and final settlement of the claim, subject to such limitations as may be imposed by the Chief of Engineers. Meritorious claims arising from civil works activities of the Corps of Engineers will be paid from Corps of Engineers funds.

Subpart C—Claims Arising From Activities of National Guard Personnel While Engaged in Duty or Training

§ 536.70 Statutory authority.

The statutory authority for this chapter is contained in the Act of 13 September 1960 (74 Stat. 878, 32 U.S.C. 715), commonly referred to as the National Guard Claims Act (NGCA), as amended by Public Law 90-486, 13 August 1968 (82 Stat. 756), Public Law 90-525, 26 September 1968 (82 Stat. 877), Public Law 91-312, 8 July 1970 (84 Stat. 412), and Public Law 93-336, 8 July 1974, (88 Stat. 291); and the Act of 8 Sep-

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tember 1961 (75 Stat. 488, 10 U.S.C. 2736) as amended by Public Law 90-521, 26 September 1968 (82 Stat. 874), Public Law 97-124, 29 December 1981 (95 Stat. 1666), and Public Law 98-564, 30 October 1984 (98 Stat. 2918).

§ 536.71 Definitions.

For purposes of §§ 536.70 to 536.81 the following terminology applies:

(a) *ARNG personnel.* A member of the ARNG engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or 709.

(b) *Claimant.* An individual, partnership, association, corporation, country, State, Commonwealth, territory or a political subdivision thereof, or the District of Columbia, presenting a claim and meeting the conditions set forth in § 536.5. The term does not include the U.S. Government, any of its instrumentalities, except as prescribed by statute, or a State, commonwealth, territory or the District of Columbia which maintains the unit to which the ARNG personnel causing the injury or damage are assigned. This exclusion does not ordinarily apply to a unit of local government which does not control the ARNG organization involved. As a general rule, a claim by a unit of local government other than a State, commonwealth or territory will be entertained unless the item claimed to be damaged or lost was procured or maintained by State, commonwealth, or territorial funds.

§ 536.72 Scope.

(a) Sections 536.70 through 536.81 apply in all places and set forth the procedures to be followed in the settlement and payment of claims for death, personal injury, or damage to or loss or destruction of property caused by members or employees of the ARNG, or arising out of the noncombat activities of the ARNG when engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or 709, provided such claim is not for personal injury or death of a member of the Armed Forces or Coast Guard, or a civilian officer or employee whose injury or death is incident to service.

(b) A claimant dissatisfied with an administrative settlement under §§ 536.70 through 536.81 as the result of

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activities of the ARNG of a State, Commonwealth, or territory is not entitled to judicial relief in an action against the United States. Whether he or she has a legal cause of action or may file an administrative claim against such a political entity depends upon controlling local law.

(c) Claims arising out of activities of the ARNG when performing duties at the call of the governor of a State maintaining the unit are not cognizable under §§ 536.70 through 536.81 or any other law, regulation or appropriation available to the Army for the payment of claims. Such claims should be returned or referred to the authorities of the State for whatever action they choose to take, and claimants should be informed of the return or referral. Care should be taken to determine the status of the unit and members at the time the claims incident occurred, particularly in civil emergencies as units called by the governor are sometimes “federalized” during the call-up. If the unit was “federalized” at the time the claim incident occurred, the claim will be cognizable under §§ 536.20 through 536.35, 536.50, or 536.90 through 536.97 or other sections pertaining to the Active Army.

§ 536.73 Claims payable.

(a) *Tort claims.* All claims for personal injuries, death, or damage to or loss of real or personal property, arising out of incidents occurring on or after 29 December 1981, based on negligent or wrongful acts or omissions of ARNG personnel acting within the scope of employment, within the United States while engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or 709 will be processed under the FTCA, § 536.50. Such claims arising before 29 December 1981 will, except as modified herein, be processed and settled in accordance with the provisions of §§ 536.20 through 536.35.

(b) *Noncombat activities.* A claim incident to the noncombat activities of the ARNG while engaged in duty or training under 32 U.S.C. 316, 502, 503, 504, 505, or 709 may be settled under §§ 536.70 through 536.81. “Noncombat activities” are defined in § 536.3.

(c) *Subrogated claims.* Subrogated claims will be processed as prescribed in § 536.5(b).

(d) *Advance payments.* Advance payments in partial settlement of meritorious claims to alleviate immediate hardship are authorized as provided in § 536.13.

§ 536.74 Claims not payable.

The type of claims listed in § 536.24 as not payable are also not payable under §§ 536.70 through 536.81.

§ 536.75 Notification of incident.

Except where claims are regularly paid from State sources, for example, insurance, court of claims, legislative committee, etc., the appropriate adjutant general will ensure that each incident which may give rise to a claim cognizable under §§ 536.70 through 536.81 is reported immediately by the most expeditious means to the area claims office in whose geographic area the incident occurs or to a claims processing office designated by the area claims office. The report will contain the following information:

- (a) Date of incident.
- (b) Place of incident.
- (c) Nature of incident.
- (d) Names and organizations of ARNG personnel involved.
- (e) Names of potential claimant(s).
- (f) A brief description of any damage, loss, or destruction of private property, and any injuries or death of potential claimants.

§ 536.76 Claims in which there is a State source of recovery.

Where there is a remedy against the State, as a result of either waiver of sovereign immunity or where there is liability insurance coverage, the following procedures apply:

(a) Where the State is insured, direct contact with State or ARNG officials rather than the insurer is desirable. Regular procedures will be established and followed wherever possible. Such procedures should be agreed on by both local authorities and the appropriate claims authorities subject to concurrence by the Commander, USARCS.

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Such procedures will be designed to ensure that local authorities and U.S. authorities do not issue conflicting instructions for processing claims, and whenever possible and in accordance with governing local and Federal law, a mutual arrangement for disposition of such claims as in paragraph (c) of this section is worked out. Amounts recovered or recoverable by claimant from any insurer (other than claimant's insurer who has obtained no subrogated interest against the United States) will be deducted from the amount otherwise payable.

(b) If there is a remedy against the State or its insurer, the claimant may be advised of that remedy. If the payment by the State or its insurer does not fully compensate claimant, an additional payment may be made under §§ 536.70 through 536.81. If liability is clear and claimant settles with the State or its insurer for less than the maximum amount recoverable, the difference between the maximum amount recoverable from the State or its insurer and the settlement normally will be also deducted from the payment by the United States.

(c) If the State or its insurer desires to pay less than their maximum jurisdiction or policy limit on a basis of 50 percent or more of the actual value of the entire claim, any payment made by the United States must be made directly to the claimant. This can be accomplished by either having the United States pay the entire claim and have the State or its insurer reimburse its portion to the United States, or by having each party pay its agreed share directly to the claimant. If the State or its insurer desires to pay less than 50 percent of the actual value of the claim, the procedure set forth in paragraph (d) of this section will be followed.

(d) If there is a remedy against the State and the State refuses to make payment, or there is insurance coverage and the claimant has filed an administrative claim against the United States, forward file with a memorandum of opinion to the Commander, USARCS, including information as to the status of any judicial or administrative action the claimant has taken against the State or its insurer. The

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Commander, USARCS, will determine whether the claimant will be required to exhaust his remedy against the State or its insurer, or whether the claim against the United States can be settled without such requirement. If the Commander, USARCS, determines to follow the latter course of action, he will also determine whether an assignment of the claim against the State or its insurer will be obtained and whether recovery action will be taken. The State or its insurer will be given appropriate notification in accordance with State law necessary to obtain contribution of indemnification.

§ 536.77 Claims against the ARNG tortfeasor individually.

The procedures set forth in § 536.9(f) are applicable. With respect to claims arising before 29 December 1981, an ARNG driver acting pursuant to the authorities cited in § 536.73(a) is not protected by the provisions of the Drivers Act (28 U.S.C. 2670(b)) and the driver may be sued individually in State court. When this situation occurs, it should be monitored closely by ARNG authorities. If possible an early determination will be made as to whether any private insurance of the ARNG tortfeasor is applicable. Where such insurance is applicable and the claim against the United States is of doubtful validity, final actions will be withheld pending resolution of the demand against the ARNG tortfeasor. If, in the opinion of the claims approving or settlement authority, such insurance is applicable and the claim against the United States is payable in full or in a reduced amount, settlement efforts will be made either together with the insurer or singly by the United States. Any settlement will not include amounts recovered or recoverable as in § 536.9. If the insurance is not applicable, settlement or disapproval action will proceed without further delay.

§ 536.78 When claim must be presented.

A claim may be settled under §§ 536.70 through 536.81 only if presented in writing within 2 years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within 2 years after it

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accrues, and if good cause is shown, the claim may be presented not later than 2 years after war or armed conflict is terminated. As used in this section, a war or armed conflict is one in which any Armed Force of the United States is engaged. The dates of commencement and termination of an armed conflict must be established by concurrent resolution of Congress or by determination of the President.

§ 536.79 Where claim must be presented.

A claim must be presented to the appropriate Federal agency. Receipt of a written claim by any full time officer or employee of the National Guard will be considered receipt. However, the statute of limitations is tolled if a claim is filed with a State agency, the claim purports to be under the NGCA and it is forwarded to the Army within 6 months, or the claimant makes inquiry of the Army concerning the claim within 6 months. If a claim is received by a DA official who is not a claims approval or settlement authority, the claim will be transmitted without delay to the nearest approval or settlement authority.

§ 536.80 Procedures.

(a) The form of a claim under §§ 536.70 through 536.81 will be as described in § 536.5 (d) and (e).

(b) So far as they are not inconsistent with §§ 536.70 through 536.81, the guidance set forth in §§ 536.10 through 536.12 will be followed in processing a claim under §§ 536.70 through 536.81.

(c) The following provisions are applicable to claims under §§ 536.70 through 536.81 and are hereby incorporated by reference:

- (1) § 536.28 (applicable law);
- (2) § 536.29 (determination of quantum);
- (3) § 536.31 (claims over \$100,000);
- (4) § 536.32 (settlement procedures);
- (5) § 536.33 (attorney fees).

§ 536.81 Settlement agreement.

Procedures concerning settlement agreements will be in accordance with § 536.10, except that the agreement will be modified to include a State and its National Guard in most cases. A copy of the agreement will be furnished to

State authorities and the individual tortfeasor.

Subpart D—Claims Incident to Use of Government Vehicles and Other Property of the United States Not Cognizable Under Other Law

§ 536.90 Statutory authority.

The statutory authority for §§ 536.90 through 536.97 is contained in the act of 9 October 1962 (76 Stat. 767, 10 U.S.C. 2737). This statute is commonly called the "Nonscope Claims Act." For the purposes of §§ 536.90 through 536.97, a Government installation is a facility having fixed boundaries owned or controlled by the Government, and a vehicle includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land (1 U.S.C. 4).

§ 536.91 Scope.

(a) Sections 536.90 through 536.97 prescribe the substantive bases and special procedural requirements for the administrative settlement and payment, in an amount not more than \$1,000, of any claim against the United States not cognizable under any other provision of law for damage to or loss of property, or for personal injury or death, caused by military personnel or civilian employees of the DA or by civilian employees of the DoD incident to the use of a United States vehicle at any place or incident to the use of other United States property on a Government installation.

(b) Any claim in which there appears to be a disputed issue relating to whether the employee was acting within the scope of employment will be considered under §§ 536.20 through 536.35, § 536.50, or §§ 536.70 through 536.81 as applicable. Only when all parties, to include an insurer, agree that there is no "in scope" issue will §§ 536.90 through 536.97 be used.

§ 536.92 Claims payable.

(a) *General.* A claim for personal injury, death, or damage to or loss of property, real or personal, is payable under §§ 536.90 through 536.97 when

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(1) Caused by the act or omission, negligent, wrongful, or otherwise involving fault, of military personnel of the DA or the ARNG, or civilian employees of the DA or the ARNG—

(i) Incident to the use of a vehicle of the United States at any place.

(ii) Incident to the use of any other property of the United States on a Government installation.

(2) The claim may not be settled under any other claims statute and claims regulation available to the DA for the administrative settlement of claims.

(3) The claim has been determined to be meritorious, and the approval or settlement authority has obtained a settlement agreement in an amount not in excess of \$1,000 in full satisfaction of the claim prior to approval of the claim for payment.

(b) *Personal injury or death.* A claim for personal injury or death is allowable only for the cost of reasonable medical, hospital, or burial expenses actually incurred and not otherwise furnished or paid by the United States.

(c) *Property loss or damage.* A claim for damage to or loss of property is allowable only for the cost of reasonable repairs or value at time of loss, whichever is less.

§ 536.93 Claims not payable.

A claim is not allowable under §§ 536.90 through 536.97 that—

(a) Results wholly or partly from the negligent or wrongful act of the claimant, his or her agent or employee. The doctrine of comparative negligence is not applicable.

(b) Is for medical, hospital, and burial expenses furnished or paid by the United States.

(c) Is for any element of damage pertaining to personal injuries or death other than provided in § 536.92(b). All other items of damage, for example, compensation for loss of earnings and services, diminution of earning capacity, anticipated medical expenses, physical disfigurement, and pain and suffering, are not payable.

(d) Is for loss of use of property or for the cost of a substitute property, for example, a rental.

(e) Is legally recoverable by the claimant under an indemnifying law or

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indemnity contract. If the claim is legally recoverable in part, that part recoverable by the claimant is not payable.

(f) Is a subrogated claim.

§ 536.94 When claim must be presented.

A claim may be settled under §§ 536.90 through 536.97 only if it is presented in writing within 2 years after it accrues.

§ 536.95 Procedures.

So far as not inconsistent with §§ 536.90 through 536.97, the procedures for the investigation and processing of claims contained in §§ 536.1 through 536.13 will be followed.

§ 536.96 Settlement agreement.

A claim may not be paid under §§ 536.90 through 536.97 unless the amount tendered is accepted by the claimant in full satisfaction. A settlement agreement (§ 536.10) is required before payment.

§ 536.97 Reconsideration.

(a) An approval or settlement authority may reconsider the quantum of a claim upon request of the claimant or someone acting in his behalf. In the absence of such a request, an approval or settlement authority may on his own initiative reconsider the quantum of a claim. Reconsideration may occur even in a claim which was previously disapproved in whole or in part (even though a settlement agreement has been executed) when it appears that his or her original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. If he or she determines that the original action was incorrect, he or she will modify the action and, if appropriate, make a supplemental payment. If the original action is determined correct, the claimant will be so notified. The basis for either action will be stated in a memorandum included in the file.

(b) An approval or settlement authority may reconsider the applicability of §§ 536.90 through 536.97 to a claim upon request of the claimant or someone acting in his behalf, or on his own initiative. Such reconsideration may

occur even though all parties had previously agreed per § 536.91(b) when it appears that this agreement was incorrect in law or fact based on the evidence of record at the time of the agreement or subsequently received. If he or she determines the agreement to be incorrect, the claim will be reprocessed under the applicable sections of this regulation. If he or she determines the agreement to have been correct, that is, that §§ 536.90 through 536.97 are applicable, he or she will so advise the claimant. This advice will include reference to any appeal or judicial remedies available under the section which the claimant alleges the claim should be processed under.

(c) A successor or higher approval or settlement authority may also reconsider the original action on a claim as in paragraph (a) or (b) of this section, but only on the basis of fraud substantial new evidence, errors in calculation or mistake (misinterpretation) of law.

(d) A request for reconsideration should indicate fully the legal or factual basis asserted as grounds for relief.

PART 537—CLAIMS ON BEHALF OF THE UNITED STATES

Subpart A—Claims for Damage to or Loss or Destruction of Army (DA) Property

Sec.

537.1 General.

537.2 Recovery of property unlawfully detained by civilians.

537.6 Maritime casualties; claims in favor of the United States.

537.7 Maritime claims.

Subpart B—Claims for the Reasonable Value of Medical Care Furnished by the Army

537.21 General.

537.22 Basic considerations.

537.23 Predemand procedures.

537.24 Post demand procedures.

AUTHORITY: 10 U.S.C. 3012; sections 537.21 through 537.24 issued under 42 U.S.C. 2651-2653;

SOURCE: 54 FR 43914, Oct. 27, 1989, unless otherwise noted.

Subpart A—Claims for Damage to or Loss or Destruction of Army (DA) Property

§ 537.1 General.

(a) *Purpose.* This section prescribes, within the limitations indicated in AR 27-20 (AR 27-20 and other Army Regulations referenced herein are available thru: National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161), and in paragraph (b) of this section, the procedures for the investigation, determination, assertion, and collection, including compromise and termination of collection action, of claims in favor of the United States for damage to or loss or destruction of Department of the Army (DA) property.

(b) *Applicability and scope.* (1) Other regulations establish systems of property accountability and responsibility; prescribe procedures for the investigation of loss, damage, or destruction by causes other than fair wear and tear in the service; and provide for the administrative collection of charges against military and civilian personnel of the United States, contractors and common carriers, and other individuals and legal entities from whom collection may be made without litigation. When the investigation so prescribed results in preliminary indication of pecuniary liability, and no other method of collection is provided, the matter is referred for action under this section. This relationship exists with regard to—

(i) Property under the control of the DA.

(ii) Property of the Defense Logistics Agency in the custody of the DA.

(iii) Property of nonappropriated funds of the DA (except Army and Air Force Exchange Service property unless a special agreement exists). See AR 215-1 and AR 215-2.

(iv) Federal property made available to the Army National Guard (ARNG).

(2) This section does not apply to—

(i) Claims arising from marine casualties.

(ii) Claims for damage to property funded by civil functions appropriations.

(iii) Claims for damage to property of the DA and Air Force Exchange Service.

(iv) Reimbursements from agencies and instrumentalities of the United States for damage to property.

(v) Collection for damage to property by offset against the pay of employees of the United States, or against amounts owed by the United States to common carriers, contractors, and States.

(vi) Claims by the United States against carriers, warehousemen, insurers, and other third parties for amounts paid in settlement of claims by members and employees of the Army, or the Department of Defense (DOD), for loss, damage, or destruction of personal property while in transit or storage at Government expense.

(3) The commander of a major overseas command, as defined in paragraph (c)(5) of this section, is authorized to establish procedures for the processing of claims in favor of the United States for loss, damage, or destruction of property which may, to the extent deemed necessary, modify the procedures prescribed herein. Two copies of all implementing directives will be furnished Commander, U.S. Army Claims Service (USARCS). Procedures will be prescribed—

(i) To carry out the provisions of DOD Directive No. 5515.8, assigning single service claims responsibility.

(ii) To carry out provisions of treaties and other international agreements which limit or provide special methods for the recovery of claims in favor of the United States.

(c) *Definitions.* For the purpose of this section only, the following terms have the meaning indicated:

(1) *Claim.* The Government's right to compensation for damage caused to Army property.

(2) *Prospective defendant.* An individual, partnership, association, corporation, governmental body, or other legal entity, foreign or domestic, except an instrumentality of the United States, against whom the United States has a claim.

(3) *Damage.* A comprehensive term, including not only damage to, but also loss or destruction of Army property.

(4) *DA property.* Real or personal property of the United States or its instrumentalities and, if the United States is responsible therefor, real or personal property of a foreign government, which is in the possession or under the control of the DA, one of its instrumentalities, or the ARNG, including that property of an activity for which the Army has been designated the administrative agency, and that property located in an area in which the Army has been assigned single service claims responsibility by appropriate DOD directive.

(5) *Major overseas command.* U.S. Army Europe; U.S. Army Forces Southern Command; Eighth U.S. Army, Korea; Western Command; and any command outside the continental limits of the contiguous States specially designated by The Judge Advocate General (TJAG) under the provisions of AR 27-20.

(6) *Area Claims Office.* The principal office for the investigation, assertion, adjudication and settlement of claims, staffed with qualified legal personnel under the supervision of a Staff Judge Advocate (SJA) or Command Judge Advocate or Corps of Engineers district or Command Legal Counsel under provisions of AR 27-20.

(7) *Recovery judge advocate (RJA).* A JAGC officer or legal adviser responsible for assertion and collection of claims in favor of the United States for medical expenses and property damage.

(d) *Limitation of time.* The Act of July 18, 1966 (80 Stat. 304, 28 U.S.C. 2415) established a 3-year statute of limitations, effective July 19, 1966, upon actions in favor of the United States for money damages founded upon a tort. In computing periods of time excluded under 28 U.S.C. 2416, the RJA concerned shall be deemed the official charged with responsibility and will ensure that action may be brought in the name of the United States within the limitation period.

(e) *Foreign prospective defendants.* Except as indicated below, claims within the scope of this section against foreign prospective defendants will be investigated, processed, and asserted without regard to the nationality of the prospective defendant. Claims against an international organization,

a foreign government or a political subdivision, agency, or instrumentality thereof, or against a member of the armed forces or an official or civilian employee of such international organization or foreign government, will not be asserted without prior approval of TJAG. Investigation and report thereof, together with recommendations regarding assertion and enforcement, will be forwarded through command channels to Commander, USARCS, unless the provisions of applicable agreements, or regulations in implementation thereof, negate the requirement for such investigation and report.

(f) *Standards of liability.* (1) The Government's right to compensation for damage caused to Army property will be determined in accordance with the law of the place in which the damage occurred, unless other law may properly be applied under conflict of law rules.

(2) To the extent that the prospective defendant's liability is covered by insurance, liability will be determined without regard to standards of pecuniary liability set forth in other regulations. If no insurance is available, claims will be asserted under this section against military and civilian employees of the United States and of host foreign governments only where necessary to complete the collection of charges imposed upon such persons under the standards established by other regulations.

(g) *Concurrent claims under other regulations.* (1) Claims for damage to DA property and claims for medical care cognizable under §§ 537.21 through 537.24 arising from the same incident will be processed under the sections applicable to each.

(2) If the incident giving rise to a claim in favor of the United States also gives rise to a potential claim or suit against the United States, the claim in favor of the Government will be asserted and otherwise processed only by an RJA who has apparent authority to take final action on the claim against the Government.

(h) *Repayment in kind.* The RJA who asserts a claim under this section may accept, in lieu of full payment of the claim, the restoration of the property to its condition prior to the incident

causing the damage, or the replacement thereof. Acceptability of these methods of repayment is conditioned upon the certification of the appropriate staff officer responsible for maintenance, such as is described for motor vehicles in AR 735-5, before a release may be executed. The authority conferred by this paragraph is not limited to incidents involving motor vehicles.

(i) *Delegation of authority.* Subject to the provisions of paragraph (k) of this section, the authority conferred by AR 27-20, to compromise claims and to terminate collection action, with respect to claims that do not exceed \$20,000, exclusive of interest, penalties and administrative fees, is further delegated as follows:

(1) An Area Claims Office, as defined in paragraph (c)(6) of this section, is authorized to:

(i) Compromise claims, provided the compromise does not reduce the claim by more than \$10,000.

(ii) Terminate collection action, provided the uncollected amount of claim does not exceed \$10,000.

(2) The SJA, or if so designated, the chief of the Command Claims Service of a major overseas command, as defined in paragraph (c)(5) of this section, is authorized to:

(i) Compromise claims, not over \$20,000 without monetary limitations.

(ii) Terminate collection action, provided the uncollected amount of the claim does not exceed \$20,000.

(j) *Compromise and termination of collection action.* (1) The authority delegated in paragraph (j) of this section to compromise claims will be exercised in accordance with the standards set forth in 4 CFR part 104.

(2) The authority delegated in paragraph (j) of this section to terminate collection action will be exercised in accordance with the standards set forth in 4 CFR part 104.

(3) A debtor's liability to the United States arising from a particular incident shall be considered as a single claim in determining whether the claim is not more than \$20,000, exclusive of interest, penalties and administrative fees for the purpose of compromise, or termination of collection action.

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(4) Only the Department of Justice may approve claims involving:

(i) Compromise or waiver of a claim asserted for more than \$20,000 exclusive of interest, penalties and administrative fees.

(ii) Settlement actions previously referred to the Department.

(iii) Settlement where a third party files suit against the United States or the individual federal tortfeasor arising but of the same incident.

(k) *Releases.* The RJA who receives payment of the claim in full, or who receives full satisfaction of an approved compromise settlement, is authorized to execute a release. A standard form furnished by the prospective defendant or his insurer may be executed, provided no indemnity agreement is included.

(l) *Receipts.* The RJA may execute and deliver to a prospective defendant a receipt for payment in full, installment payment or an offered compromise payment, subject to approval of the SJA. DA Form 2135-R (Receipt for Payment for Damage to or Loss of Government Property) be used.

§ 537.2 Recovery of property unlawfully detained by civilians.

Whenever information is received that any property belonging to the military service of the United States is unlawfully in the possession of any person not in the military service, the procedures contained in AR 735-11, Para. 3-15, Unit Supply UPDATE 10, should be followed.

§ 537.6 Maritime casualties; claims in favor of the United States.

See 32 CFR 536.60, which covers claims on behalf of the United States as well as claims against the United States.

§ 537.7 Maritime claims.

(a) *Statutory authority.* Administrative settlement or compromise of admiralty and maritime claims in favor of and against the United States by the Secretary of the Army or his designee, under the direction of the Secretary of Defense, is authorized by Army Maritime Claims Settlement Act of 1956 (70A Stat. 270), as amended (10 U.S.C. 4801-4804, 4806).

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(b) *Related statutes.* This statute authorizes the administrative settlement or compromise of maritime claims and supplements the following statutes under which suits in admiralty may be brought; the Suits in Admiralty Act of 1920 (41 Stat. 525, 46 U.S.C. 741-752); the Public Vessels Act of 1925 (43 Stat. 1112, 46 U.S.C. 781-790); the Extension of the Admiralty Act of 1948 (62 Stat. 496, 46 U.S.C. 740). Similar maritime claims settlement authority is exercised by the Department of the Navy under title 10, United States Code (U.S.C.), sections 7365, 7621-7623, and by the Department of the Air Force under 10 U.S.C. 9801 through 9804, 9806.

(c) *Scope.* (1) Section 4803 of title 10, U.S.C., provides for the settlement or compromise of claims of a kind that are within the admiralty jurisdiction of a district court of the United States and of claims for damage caused by a vessel or floating object to property under the jurisdiction of the DA or property for which the Department has assumed an obligation to respond in damages, where the net amount payable to the United States does not exceed \$500,000.

(2) Section 4804 of title 10, U.S.C., for the settlement or compromise of claims in any amount for salvage services (including contract salvage and towage) performed by the DA for any vessel. The amounts of claims for salvage services are based upon per diem rates for the use of salvage vessels and other equipment; and materials and equipment damaged or lost during the salvage operation. The sum claimed is intended to compensate the United States for operational costs only, reserving, however, the right of the Government to assert a claim on a salvage bonus basis, in accordance with commercial practice, in an appropriate case.

(d) *Amounts exceeding \$500,000.* Maritime claims in favor of the United States, except claims for salvage services, may not be settled or compromised under this section at a net amount exceeding \$500,000 payable to the United States. However, all such claims otherwise within the scope of this section will be investigated and reported to the Commander, USARCS.

(e) *Civil works activities.* Rights of the United States to fines, penalties, forfeitures, or other special remedies in connection with the protection of navigable waters, the control and improvement of rivers and harbors, flood control, and other functions of the Corps of Engineers involving civil works activities, are not dealt with in this section. However, claims for money damages which are civil in nature, arising out of civil works activities of the Corps of Engineers and otherwise under this section, for which an adequate remedy is not available to the Chief of Engineers, may be processed under this section.

(f) *Delegation of authority.* Where the amount to be received by the United States is not more than \$10,000, claims under this section, except claims for salvage services, paragraph (c)(2) of this section, may be settled or compromised by the Commander, USARCS, or designee, subject to such limitations as may be imposed by the Commander, USARCS and by engineer area claims offices, subject to such limitations as may be imposed by the Chief of Engineers.

(g) *Demands.* Demand for the payment of claims in favor of the United States under this section may be made by the Commander, USARCS, or designee.

Subpart B—Claims for the Reasonable Value of Medical Care Furnished by the Army

§ 537.21 General.

(a) *Authority.* The regulations in §§ 537.21 through 537.24 are in implementation of the Act of September 25, 1962 (76 Stat. 593, 42 U.S.C. 2651-3), Executive Order Number 11060 (27 FR 10925), and Attorney General's Order Number 289-62, as amended (28 CFR part 43), providing for the recovery of the reasonable value of medical care furnished or to be furnished by the United States to a person on account of injury or disease incurred after December 31, 1962, under circumstances creating a tort liability upon some third person.

(b) *Applicability and scope.* (1) Sections 537.21 through 537.24 apply to all claims for the reasonable value of medical services furnished by or at the ex-

pense of the Army which result from incidents occurring on or after March 1, 1969. Cases which arise from incidents occurring prior to that date:

(i) And which are the responsibility of an SJA or JA who is designated an RJA will be processed under §§ 537.21 through 537.24;

(ii) And which are the responsibility of an SJA or JA not so designated will be processed under the predecessor regulation until either completed or transferred.

(2) The procedures prescribed herein are to be employed within the DA for the investigation, determination, assertion, and collection, including compromise and waiver, in whole or in part, of claims in favor of the United States for the reasonable value of medical services furnished by or at the expense of DA. TJAG provides general supervision and control of the investigation and assertion of claims arising under the Federal Medical Care Recovery Act.

(3) In Continental U.S., Army SJA's and RJA's will be assigned responsibility under §§ 537.21 through 537.24 on a geographical area basis.

(4) The commander of any major overseas command specified in paragraph (c)(5) of this section is authorized to modify the procedures prescribed herein to accommodate any special circumstances which may exist in the command.

(5) Claims for medical care furnished by the DA on a reimbursable basis (see table 1, AR 40-3) ordinarily will be forwarded for processing directly to the Federal department or agency responsible for reimbursement.

(c) *Definitions.* For the purpose of §§ 537.21 through 537.24 only, the following terms have the meaning indicated.

(1) *Claim.* The Government's right to recover from a prospective defendant the reasonable value of medical care furnished to each injured party.

(2) *Medical care.* Includes hospitalization, out-patient treatment, dental care, nursing service, drugs, and other adjuncts such as prostheses and medical appliances furnished by or at the expense of the United States.

(3) *Injured party.* The person who received an injury or contracted a disease which resulted in the medical care. Such person may be an active duty or retired member, a dependent, or any other person who is eligible for medical care at DA expense. See section III, AR 40-3, and §§577.60 through 577.71 of this chapter.

(4) *Prospective defendant.* A person other than the injured party. An individual partnership, association, corporation, governmental body, or other legal entity, foreign or domestic, against whom the United States has a claim.

(5) *Major overseas command.* U.S. Army Forces Southern Command; the U.S. Army, Europe; Eighth U.S. Army, Korea; Western Command; and any command outside the continental limits of the contiguous states specially designated by TJAG under the provisions of AR 27-20.

(6) *Recovery judge advocate.* A JAGC officer or legal adviser responsible for assertion and collection of claims in favor of the United States for medical expenses.

§ 537.22 Basic considerations.

(a) *The right of recovery—(1) Applicable law.* The right of the United States to recover the reasonable value of medical care furnished or to be furnished an injured party is based on the Federal Medical Care Recovery Act. It accrues simultaneously with the accrual of the injured party's right to recover damages from the prospective defendant but is independent of any claim which the injured person may have against the prospective defendant. Recovery is allowed only if the injury or diseases resulted from circumstances creating a tort liability under the law of the place where the injury occurred.

(2) *Time limitation.* The Act of 18 July 1966 (28 U.S.C. 2415 *et seq.*) establishes a 3-year statute of limitation upon actions in favor of the United States for money damages founded upon a tort. The RJA will take appropriate steps within the limitation period to assure that necessary legal action is not barred by the statute.

(3) *Amount.* The Government's right of recovery is limited to amounts expended or to be expended by the United

States for medical care from other than Federal sources, and to amounts determined by the rates established by the Office of Management and Budget for medical care from Federal sources, less any amounts reimbursed by the injured party.

(b) *Certain prospective defendants—(1) U.S. Government agencies.* No claim will be asserted against any department, agency, or instrumentality of the United States.

(2) *U.S. personnel.* Claims against a member of the uniformed services; or an employee of the United States, its agencies or instrumentalities; or a dependent of a service member or an employee will not be asserted unless the prospective defendant has the benefit of liability insurance coverage or was guilty of gross negligence or willful misconduct. If simple negligence occurring in the scope of a member's or employee's employment is the basis of the claim, no claim will be asserted if such claim is excluded from the coverage of the liability insurance policy involved. No claim, in the absence of specific statutory authorization, will be made directly against a member or employee, or his or her dependents for injuries sustained to himself or herself through acts of simple negligence, gross negligence, or willful misconduct.

(3) *Government contractors.* Claims, the cost or expense of which may be reimbursable by the United States under the terms of a contract, will not be asserted against a contractor without the prior approval of USARCS. Such claims will be investigated and the report thereof, which will include citation to the specific contract clauses involved and recommendations regarding assertion will be forwarded through command channels to Commander, USARCS.

(4) *Foreign persons.* Claims within the scope of §§537.21 through 537.24 against foreign prospective defendants will be investigated, processed, and asserted without regard to the nationality of the prospective defendant, unless such action is precluded by treaty or international agreement. Claims against an international organization, or foreign government, will be investigated and

reports thereof, together with recommendations regarding assertion and enforcement, will be forwarded through command channels to Commander, USARCS.

(5) *National Guard Members.* Claims arising from the tortious conduct of NG members will be investigated and if assertion appears appropriate, a recommendation shall be made to Commander, USARCS.

(c) *Concurrent claims under other regulations—(1) Section 537.1.* Claims for medical care and claims for damage to DA property arising from the same incident will be processed by the RJA in accordance with §537.1(g). If an RJA lacks settlement authority sufficient to settle a concurrent claim under §537.1, he may request additional authority under that section from the appropriate major overseas command SJA or area claims authority, who may delegate such additional authority in an amount not exceeding his own settlement authority. Where time is of the essence, telephonic delegations of authority are encouraged, provided they are confirmed in a writing which will be made a part of the case file.

(2) *Counterclaims.* Claims for medical care and claims against the United States which arise from the same incident will be processed by the RJA in accordance with §537.1(g)(2). If an RJA lacks authority sufficient to settle the claim against the Government, he will coordinate his action with that claims echelon which has the necessary authority to settle the particular claim against the United States.

§ 537.23 Predemand procedures.

(a) *Relations with the injured party—*

(1) *Advice.* The injured party, or, in appropriate cases, his guardian, next-of-kin, personal representative, or the executor or administrator of his estate, will be advised of the following:

(i) That under the Act of September 25, 1962 (76 Stat. 593, 42 U.S.C. 2651-3, the United States may be entitled to recover the reasonable value of medical care furnished or to be furnished him in the future from the person or persons who injured him, or who were otherwise responsible for his injury or disease; and

(ii) That if he is otherwise entitled to legal assistance under AR 27-3, he should seek guidance from a legal assistance officer regarding any claim he may have for personal injury; and

(iii) That he is required to cooperate in the prosecution of all actions of the United States against the person or persons who injured him; and

(iv) That he is required to furnish a complete statement regarding the facts and circumstances surrounding the incident which resulted in the injury or disease; and

(v) That he is required to furnish information concerning any legal action brought or to be brought by or against the prospective defendant, or to furnish the name and address of the attorney representing him; and

(vi) That he should not execute a release or settle any claim which he may have as a result of his injury without first notifying the RJA.

(2) *Statement.* A written statement will be obtained from the injured party, or his representative, in which he acknowledges receipt of the advice in paragraph (a)(1) of this section, and provides the information required by paragraphs (a)(1) (iv) and (v) of this section. If the injured party or representative fails or refuses to furnish necessary information or cooperation, the originator of the notification of potential claims may be requested to withhold records as to medical history, diagnoses, findings, and treatment, from the injured party or anyone acting on his behalf pending compliance with the requirements in paragraph (a)(1) of this section. Mere refusal by the injured party or his representative to include the Government's claim in his claim is not sufficient basis, by itself, for this action.

(b) *Determination and assertion—(1) Liability.* The RJA will review all the evidence including any claims officer's report of investigation and, after assuring completeness of the file, will make a written determination as to the liability of the prospective defendant and note his reasons for such determination.

(2) *Value.* If the RJA determines that the prospective defendant is liable, he will also ascertain the reasonable value

of medical care furnished or to be furnished to the injured party, in accordance with § 537.22(a)(3) and rates established by the Office of Management and Budget. When a military member has been retained in a military hospital for administrative reasons, or where the patient was absent from the hospital or was in a purely convalescent status, the amount of the claim will be recomputed to apply the outpatient rate, if under circumstances warranting only outpatient treatment in a civilian hospital or eliminate such periods altogether if the injured party received no treatment during those periods. In making these determinations the RJA will coordinate with the registrar or other responsible official of the hospital or medical unit in his area of responsibility.

(3) *Amount.* In the event of doubt concerning the extent of medical care furnished or to be furnished an injured party, the RJA will assert the claim in an indefinite amount. Demand will be made in a definite amount at the earliest possible date, based on an estimate of a reasonable value of medical care to be furnished, if appropriate. The RJA will assure that the file contains complete statements of the value of medical care furnished, including all charges by civilian physicians, medical technicians and civilian hospitals.

§ 537.24 Post demand procedures.

(a) *Coordination with the injured party's claim.* (1) Every effort will be made to coordinate action to collect the claim of the United States with the injured party's action to collect his own claim for damages, in order that the injured party's recovery for his damages, other than the reasonable value of medical care furnished or to be furnished by the United States, is not prejudiced by the Government's claim.

(2) Attorneys representing an injured party may be authorized to assert the claim on behalf of the government as an item of special damages with the injured party's claim or suit except where prohibited by law. Any agreement to this effect will be in writing, and the agreement should expressly recognize the fact that counsel fees may be neither paid by the Government (5 U.S.C. 3106) nor computed on

the basis of the Government's portion of the recovery. The agreement must also require the Government's permission to settle its claim.

(3) If the injured party, denies or his attorney or legal representative, fails or refuses to cooperate in the prosecution of the claim of the United States, independent collection action will be vigorously pursued.

(b) *Independent collection action.* Unless suit between the injured party and the prospective defendant is pending, all available administrative collection procedures will be followed prior to reference of the claim to the Department of Justice under paragraph (e) of this section. Direct contact with the prospective defendant's insurer, if known, is desirable. If the prospective defendant is an uninsured motorist, timely and appropriate action will be taken to collect the claim, or to request suspension of driving and registration privileges under the applicable uninsured motorist fund statute, or to seek compensation from the victim's insurer, or otherwise under financial responsibility laws.

(c) *Delegation of authority.* Subject to the provisions of paragraphs (d) and (e) of this section, authority to compromise or waive, in whole or in part, claims of the United States not in excess of \$40,000 exclusive of interest penalties and administrative fees is delegated as follows. The Area Claims Office as defined in paragraph (c)(6) of section 537.1 is authorized to:

(1) Compromise claims, provided the compromise does not reduce the claim by more than \$15,000 in any claim not asserted for more than \$25,000; and

(2) Waive claims for the convenience of the Government (but not on account of undue hardship upon the injured party) provided the uncollected amount of the claim does not exceed \$15,000 in any claim not asserted for more than \$25,000; and

(3) Redelegation in an amount not to exceed \$5,000 compromise authority to any claim processing office with approval authority is permitted.

(d) *Compromise and waiver of claims—*
(1) *General.* A debtor's liability to the United States arising from a particular incident will be considered as a single claim in determining whether the

claim is not more than \$40,000, for the purpose of compromise or waiver. Claims not resolved within the delegation of authority stated in this section or referred to the Department of Justice, will be forwarded to Commander, USARCS. A claim file forwarded to higher authority will contain a memorandum of opinion supported by necessary exhibits.

(2) *Compromise.* (i) The authority delegated in paragraph (c) of this section to compromise claims will be exercised in accordance with standards set forth in 4 CFR 103. When available funds are insufficient to satisfy both the claim of the United States and that of the injured party, the claim of the United States will be compromised to the extent required to achieve an equitable apportionment of the available funds.

(ii) If appropriate, a request by the injured party or his attorney for waiver on the ground of undue hardship may be treated initially as a suggestion for compromise with the tortfeasor, and the compromised amount of the claim of the United States will be determined. In such cases, RJA's may make offers of compromise within their delegated authority. RJA's may also make counteroffers within their delegated authority to offers of compromise beyond their delegated authority. If settlement within the limits of delegated authority is not achieved, the claim will be referred to higher authority.

(iii) When time is a factor, SJA or major overseas command staff JA's may make telephonic delegation within their compromise authority on a case by case basis. When such verbal delegations are made, they will be confirmed in writing and the writing included in the case file.

(3) *Waiver.* (i) The authority delegated in paragraph (c) of this section to waive claims for the convenience of the Government will be exercised in accordance with standards set forth in 4 CFR part 103.

(ii) If the injured party or his attorney requests waiver of the full or any compromised amount of the claim on the ground of undue hardship, and the request may not be appropriately treated under paragraph (d)(2)(ii) of this section, the file will be forwarded

to appropriate major overseas command claims authority or Commander, USARCS. For the purpose of evaluation of the request for waiver, the file will include detailed information concerning the reasonable value of the injured party's claim for permanent injury, pain and suffering, decreasing earning power, and other items of special damages, pension rights, and other Government benefits accruing to the injured party; and the present and prospective assets, income, and obligations of the injured party, and those dependent on him.

(iii) In the event an affirmative determination is made by TJAG that, as a result of the collection of the Government's claim the injured party has suffered an undue hardship, the RJA will be authorized to direct issuance of the amount waived to the injured party.

(4) A file forwarded to higher authority for waiver of compromise consideration will contain a memorandum by the RJA giving his assessment of the case and his recommendation with regard to the approval or denial of the requested compromise or waiver.

(e) *Only the Department of Justice may approve claims involving.* (1) compromise or waiver of a claim asserted for more than \$40,000 exclusive of interest, penalties or administrative fees,

(2) Settlement actions previously referred to the Department,

(3) Settlement where a third party files suit against the United States on the injured party arising out of the same incident.

PART 538—MILITARY PAYMENT CERTIFICATES

Sec.

538.1 Definitions.

538.2 Use of military payment certificates.

538.3 Restrictions on possession and use.

538.4 Convertibility of military payment certificates.

538.5 Conversion of invalidated military payment certificates.

538.6 Claims.

AUTHORITY: Sec. 3, 58 Stat. 821, as amended; 31 U.S.C. 492c.

SOURCE: 44 FR 76784, Dec. 28, 1979, unless otherwise noted.

§ 538.1

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§ 538.1 Definitions.

(a) *United States dollar instruments.* For the purpose of this section, United States dollar instruments include the following:

(1) United States Treasury checks (standard dollar checks) drawn on the Treasurer of the United States by authorized finance and accounting officers.

(2) Travelers' checks issued by the American Express Company; Bank of America, National Trust and Savings Association; Mellon National Bank and Trust Company; Citibank of New York; Thomas Cook and Son (Bankers) Ltd.; and the First National Bank of Chicago, when expressed in United States dollars.

(3) United States military disbursing officers' payment orders.

(4) American Express Company money orders, when expressed in United States dollars, and United States postal money orders.

(5) Telegraphic money orders, when expressed in United States dollars.

(b) *Military Payment Certificate (MPC).* The military payment certificate is an instrument, denominated in U.S. dollars and fractions thereof, that may be used as the official medium of exchange in U.S. military establishments located in overseas areas when such areas are designated as "Military Payment Certificate Areas."

(c) *Authorized Personnel.* As used herein, the term "authorized personnel" means all individuals authorized to purchase goods, supplies and services from U.S. Government sponsored and controlled facilities located and operated in an MPC area.

§ 538.2 Use of military payment certificates.

(a) *Areas in which used.* Military payment certificates are to be used only in the Department of Defense by authorized personnel in designated MPC areas. A Military Payment Certificate Area is a particular foreign country(s), or a specific area within a foreign country, that has been officially authorized for designation as an MPC area.

(b) *Disbursement of military payment certificates.* Military payment certificates will be disbursed to authorized

personnel for all items of pay and allowances and for all other authorized payments to individuals in and under the Department of Defense.

(c) *Facilities in which used.* Military payment certificates are the only authorized medium of exchange in the following facilities:

(1) Army, Navy, and Air Force sales and services installations and activities.

(2) Theaters and other entertainment facilities operated by Department of Defense.

(3) Officers' and enlisted personnel messes and clubs, including American Red Cross installations.

(4) Army, Navy, and Air Force postal installations for purchase of postal money orders and stamps, and cashing of postal money orders.

(5) Contribution to all authorized charitable appeals, church collections, and chaplain's funds when remittance is to be forwarded to the United States through Department of Defense channels.

(6) Payments to all travel agencies, radio, cable, telegraph, and telephone companies, and all other similar facilities when remittance is to be forwarded to the United States through Department of Defense channels.

(7) All other official agencies, quasi-official and private agencies of or working in behalf of United States Army Forces providing goods, services, and facilities to members of the United States Armed Forces.

§ 538.3 Restrictions on possession and use.

(a) *Possession or use prohibited.* Possession or use of military payment certificates is prohibited unless acquired in accordance with §§ 538.1 through 538.4 and such additional regulations as may be issued by the major overseas commander concerned.

(b) *Not to violate directives.* Acquisition, possession, and use of military payment certificates incident to normal legitimate transactions within the Department of Defense must not violate Department of the Army or major overseas command directives or the Uniform Code of Military Justice.

(c) *Acceptance, transfer, or exchange.* Under no circumstances will military

payment certificates be accepted from, transferred to, or exchanged for persons other than authorized personnel. Military payment certificates will not be accepted or exchanged after the date specified by the Secretary of the Army as the last day for their acceptance or exchange.

(d) *Transmission through mail.* Individuals are prohibited from transmitting military payment certificates through the mail to any areas other than those designated as an MPC area. Military payment certificates may be transmitted to authorized personnel or official agencies by mail within or between designated MPC areas.

§ 538.4 Convertibility of military payment certificates.

(a) *For authorized personnel.* Authorized personnel having in their possession military payment certificates that were acquired legitimately may exchange those certificates for U.S. currency, coin, or dollar instruments, including U.S. Treasury dollar checks under the following conditions:

(1) Upon departure for the United States.

(2) When traveling under competent orders to areas where military payment certificates are not designated for use.

(3) When traveling under competent orders to military payment certificate areas where finance and accounting officers, Class "B" Agent Officers, including military attache agent officers, or exchange facilities are not readily available to the traveler.

(b) The provisions of this section will not be construed as authorizing finance and accounting officers or their agents in areas outside of military payment certificate areas to convert military payment certificates for authorized personnel returning from MPC areas. Such exchange must be made prior to departure from the MPC area.

(c) *Conversion of Military Payment Certificates suspected of being acquired illegitimately.* Military payment certificates will not be converted for any holder under circumstances where there are reasonable grounds to believe that the holder was not an authorized person at the time of acquisition or that the certificates were acquired by

the holder, or by another with the holder's knowledge, from a person not authorized to possess or use them. Amounts of certificates exceeding those which the holder would normally acquire or hold under applicable circumstances as prescribed by local regulations will not be approved for conversion unless the holder shows by a preponderance of evidence that they were acquired legitimately. Where there are reasonable grounds to believe that the military payment certificates were not acquired legitimately, they will be impounded and retained pending an administrative determination as to the source of acquisition. If it is determined that the individual concerned was not an authorized person at the time of acquisition, the certificates will be confiscated and the dollar proceeds deposited in the Treasury to the General Fund (Miscellaneous) Receipt Account 211099, "Fines, penalties and forfeitures not otherwise classified." If it is determined that the individual concerned was an authorized person at the time of acquisition, or that the certificates belong to an authorized person, the certificates or their dollar value will be returned to the owner unless there are reasonable grounds to believe the certificates were acquired by the holder or another with the holder's knowledge from an unauthorized person. If it is determined that the certificates were acquired from an unauthorized person, the certificates will be confiscated and the dollar proceeds deposited in the Treasury to the General Fund (Miscellaneous) Receipt Account 211099, "Fines, penalties and forfeitures not otherwise classified." Collection vouchers affecting these deposits will cite claimants' names and sufficient information to permit ready identification of the deposits in order to facilitate the processing of any subsequent claims for amounts so deposited.

(d) *Transactions with disbursing officers of other services.* Dollar instruments may be exchanged for military payment certificates or military payment certificates for dollar instruments in transactions with Navy and Air Force disbursing officers and their agents. Major overseas commanders may specifically authorize such transactions with other disbursing officers of the

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United States Government and their agents.

§ 538.5 Conversion of invalidated military payment certificates.

(a) *When converted.* Time limit on filing claims for the conversion of invalidated Series 461, 471, 472, 481, 521, 541, 591, 611, 641, 651, 661, 681, and 692 expires on 30 September 1980.

(b) *When found in effects of deceased personnel.* Invalidated series of military payment certificates in amounts not in excess of \$500, found in the effects of deceased personnel or personnel in a missing status, will be converted into a Treasury check. Such military payment certificates will be converted only if date of death or entry into missing status was prior to the date the series of military payment certificates was withdrawn from circulation. The Treasury check will be disposed of in accordance with regulations governing disposition of effects of deceased or missing personnel. Amounts in excess of \$500 will be forwarded by the summary court officer to the U.S. Army Finance and Accounting Center for decision regarding exchange of such certificates.

(c) *Disposition when received with claim.* Under no circumstances will in-

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validated series of military payment certificates received with claims for conversion be taken up in the accounts of the finance and accounting officer. Such certificates will be held in safekeeping until decision is made. If the claim is disapproved, the certificates will be returned to the claimant. In the event these certificates are again received by the finance and accounting officer as undeliverable and reasonable efforts fail to locate the claimant, the certificates will be held for a period of 6 months after which time the proceeds of the certificates will be deposited in the Treasury to the General Fund (Miscellaneous) Receipt Account 211060, "Forfeitures of unclaimed money and property."

§ 538.6 Claims.

Claims for conversion of military payment certificates, as well as claims arising out of the refusal of the overseas command to convert military payment certificates, will be referred to the U.S. Army Finance and Accounting Center, ATTN: FINCY-D, Indianapolis, Indiana 46249. The U.S. Army Finance and Accounting Center will adjudicate and make final determination on all claims.

SUBCHAPTER C—MILITARY EDUCATION

PART 542—SCHOOLS AND COLLEGES

Sec.

- 542.1 Purpose.
- 542.2 Applicability.
- 542.3 Definitions.
- 542.4 Objectives.
- 542.5 Policies.
- 542.6 Responsibilities.
- 542.7 Program information.

AUTHORITY: 10 U.S.C. 2031 and 4651.

SOURCE: 44 FR 51219, Aug. 31, 1979, unless otherwise noted.

§ 542.1 Purpose.

This regulation prescribes policies for administering the Junior Reserve Officers' Training Corps (JROTC) and the National Defense Cadet Corps (NDCC).

§ 542.2 Applicability.

This regulation applies to the Department of the Army (including the corps and their units), schools, and personnel associated with applying for these programs.

§ 542.3 Definitions.

The following terms apply to the JROTC and NDCC programs:

(a) *Junior Reserve Officers' Training Corps (JROTC)*. The organization of units established by the Department of the Army (under 10 U.S.C 2031) at public and private secondary schools to conduct student leadership training. Also, a general term used:

(1) To describe all JROTC training conducted at secondary schools.

(2) To denote the members, instruction, and other related matters.

(b) *National Defense Cadet Corps (NDCC)*. Students taking part in leadership studies at any school under 10 U.S.C. 4651 and as prescribed by the Secretary of the Army. Used in a broad sense to refer to the program and related matters.

(c) *Leadership Development (LD) Program*. The JROTC curriculum which consists of a 4- or 3-year program of instruction (LD-1, -2, -3, and -4).

(d) *Military Science (MS)*. The Senior ROTC curriculum which consists of

two courses—the basic course (MS-I and MS-II) and the advanced course (MS-III and MS-IV).

(e) *Region commander*. The commanding general of a US Army ROTC Region who is responsible for the operation, training, and administration of the ROTC program within his/her geographical area. Region commanders are located at:

(1) US Army First ROTC Region, Fort Bragg, NC 28307.

(2) US Army Second ROTC Region, Fort Knox, KY 40121.

(3) US Army Third ROTC Region, Fort Riley, KS 66442.

(4) US Army Fourth ROTC Region, Fort Lewis, WA 98433.

(5) The Commander-in-Chief, US Army Europe and Seventh Army, APO New York 09102.

§ 542.4 Objectives.

The Army JROTC/NDCC objectives are to develop in each cadet—

- (a) Good citizenship and patriotism.
- (b) Self-reliance, leadership, and responsiveness to constituted authority.
- (c) The ability to communicate well both orally and in writing.
- (d) An appreciation of the importance of physical fitness.
- (e) A respect for the role of the US Army in support of national objectives.
- (f) A knowledge of basic military skills.

§ 542.5 Policies.

(a) The Junior Reserve Officers' Training Corps and the National Defense Cadet Corps programs are designed for physically fit citizens attending participating schools. They provide meaningful leadership instruction of benefit to the student and of value to the Armed Forces. The programs provide unique educational opportunities for young citizens through their participation in a Federally-sponsored course while pursuing a normal civilian education. Students will acquire:

- (1) An understanding of the fundamental concept of leadership, military art and science,

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(2) An introduction to related professional knowledge, and

(3) An appreciation of requirements for national security. The dual roles of citizen/soldier and soldier/citizen are studied.

(b) Participants in either of the programs will acquire relevant knowledge and develop personally. Schools conducting these programs will offer their students the challenge of intellectual inquiry under the direction of instructors who are experienced leaders. (JROTC instructors are active duty or retired members of the US Army. NDCC schools may employ retired or Reserve members.) These programs provide an atmosphere designed to develop the qualities of leadership. Through classroom and other activities, the students will acquire the knowledge, self-discipline, patriotism, sense of responsibility, and responsiveness to constituted authority which will better prepare them for the future. These programs will enable cadets to better serve their country as leaders, as citizens, and in military service should they enter it.

(c) The programs were set up as part of the National Defense Act of 1916. The principle of maintaining national programs of training for the young citizens attending school was validated during congressional hearings preceding passage of the ROTC Vitalization Act of 1964. The JROTC and NDCC are not, of themselves, officer-producing programs but should create favorable attitudes and impressions toward the Services and toward careers in the Armed Forces. JROTC/NDCC cadets may qualify for an advantageous position in the Senior ROTC and for a higher pay grade upon enlistment in a Regular or Reserve component of the Armed Forces.

(d) Participation in JROTC/NDCC does not obligate the student to perform military or any other Federal service. Although all qualified students of JROTC/NDCC host schools are encouraged to take part in these programs, they are not required by Federal law to do so. State, community, or school authorities decree whether students must be in the programs.

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§ 542.6 Responsibilities.

(a) *The Commanding General, US Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332*, is responsible for administering the Army JROTC/NDCC programs and announcing policy changes.

(b) *The Commanding General, US Army Training and Doctrine Command, Ft. Monroe, VA 23651*, is responsible for managing the JROTC/NDCC except for those functions and responsibilities retained by Headquarters, Department of the Army.

(c) *Region commanders* are responsible for operating and administering the JROTC/NDCC training conducted within their areas.

§ 542.7 Program information.

(a) The JROTC/NDCC is organized into units at public and private secondary schools. The NDCC differs from the JROTC in that NDCC instructors must be provided by the school. Although these instructors are subject to Army approval, there is no cost-sharing arrangement as exists for JROTC. Also schools or students must provide uniforms, if desired, in the NDCC program. Schools desiring to conduct either program must apply to the region commander of the area in which the school is located. To participate in the program a school must maintain an enrollment in the unit of at least one hundred physically fit students who are at least 14 years of age and meet one of the following accreditation standards:

(1) Be accredited by a nationally recognized accrediting agency.

(2) Be accredited by a State, State educational agency, or State university.

(3) Have attained a preaccreditable status of reasonable assurance subject to attainment and maintenance of a status listed above within 5 years of initial academic enrollment of students.

(b) Students who desire to enroll and continue as a member of the JROTC/NDCC program must:

(1) Be enrolled in and attending full-time a regular course of instruction at a JROTC/NDCC institution.

(2) Be a citizen of the United States.

(3) Be at least 14 years of age.

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(4) Meet the physical fitness standards prescribed by the school.

PARTS 543–544 [RESERVED]

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APPENDIX D TO PART 552—UNAUTHORIZED ACTIVITIES IN FORT LEWIS MANEUVER AREAS

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 3012, 15 U.S.C. 1601; 18 U.S.C. 1382; 31 U.S.C. 71; 40 U.S.C. 258a; 41 U.S.C. 14; 50 U.S.C. 797.

Subpart A—Use of Department of the Army Real Estate Claims Founded Upon Contract

§ 552.16 Real estate claims founded upon contract.

(a) *Purpose.* This regulation provides guidance in investigating and processing contractual claims involving real estate which are to be settled and adjusted by the General Accounting Office (GAO) according to the authority in paragraph (c) of this section. It is applicable to the active Army, Army National Guard, and the US Army Reserve.

(b) *Applicability.* This regulation applies to the following classes of contractual claims.

(1) Rent and payments for janitor, custodial, utility, and other similar contractual services.

(2) Damages founded upon express or implied contract.

(3) Permanent or recurring damages to real property situated in the United States or its territories, resulting in the Government taking of an interest in real estate for which compensation must be made according to the Fifth Amendment to the Constitution.

(c) *Statutory provision (except as otherwise provided by law).* All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the GAO (31 U.S. Code 71). The GAO discharges its settlement and adjusting responsibilities—

(1) Through the audit of transactions after payment.

(2) By adjudication before payment is made or denied.

(d) *Claims not payable.* The classes of claims that are not payable according to the authority in paragraph (c) of this section are—

(1) Damages to real property sounding in tort and not constituting a taking.

(2) Damages arising in foreign countries which could not be settled under chapter 10, AR 27-20, if otherwise applicable, because they—

(i) Result from combat activities.

(ii) Are waived or assumed by a foreign government.

(iii) Are brought by a foreign national excluded in paragraph 10-8b(1), AR 27-20.

(3) Claims which must be settled by some other procedure according to statute, determination of GAO, or provision in the contract on which the claim is founded.

(e) *Claims payable under contract.* When claims are founded on express or legally implied provisions of an existing written contract, and if liability and the amount thereof are certain and agreed between the parties, they should be paid according to the contract or supplemental agreement thereto. Rental claims based on still-continuing Government use and occupancy not under lease may be avoided by negotiation of a lease effective from the date Government occupancy begins.

(f) *Claims cognizable under other regulations.* (1) The procedure believed to be in the best interest of the Government should be followed if a claim under this regulation is also cognizable under—

(i) Chapter 3, AR 27-20 as a claim for damages incident to noncombat activities of the Army.

(ii) Chapter 10, AR 27-20 as a foreign claim.

(2) If a real estate claim under this regulation includes an incidental claim for damages to personal property not founded on contract, the entire claim may be—

(i) Processed under this regulation.

(ii) Processed separately under other regulations, believed to be in the best interest of the Government.

(g) *Claims to be submitted.* Section 5 of title 4, GAO Manual for Guidance of Federal Agencies (cited as 4 GAO 5.1) lists the following categories of claims of a contractual nature to be submitted for settlement (letters of transmittal will indicate the applicable category):

(1) Claims involving doubtful questions of law or fact. This will include any claims based upon a taking and

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contractual claims which could be settled administratively except for the doubt.

(2) Claims required by statute, regulation, or decision of the Comptroller General to be submitted.

(3) Reclaims of items for which payment under contract has been administratively denied, unless it is determined administratively that the action taken was clearly in error and properly can be corrected by the agency which denied the claim.

(4) Claims barred by statute of limitation. These claims may be forwarded without investigation, except when needed to establish time of accrual.

(h) *Time for filing claims.* Claims cognizable by GAO are barred if not received in that office within 6 years after the date of accrual. A claim which may be barred in the near future should be transmitted directly, preferably within 4 years of the date of accrual, to GAO for filing, with a request that it be returned for further processing.

(i) *Procedures.* (1) Claims for investigation and report will be forwarded to the office of the Division of District Engineer having real estate responsibility over the area in which the involved real property is located. In the absence of such an office, the claims will be forwarded to the command responsible for the lease or other contract on which the claim is founded.

(2) The responsible office—

(i) Will appoint a claims officer to conduct the investigation and prepare the report as outlined in AR 27-20.

(ii) When appropriate, may request a command more conveniently located to appoint the claims officer.

(iii) Will have a staff attorney or staff judge advocate review the completed report.

(iv) Will approve or disapprove the report.

(v) Will forward the report (in three copies) through channels to the Chief of Engineers (HQDA DAEN-REM) WASH DC 20314).

(3) The report will include—

(i) The original signed claim, preferably but not necessarily on Standard Form 95 (Claim for Damage or Injury). It will be itemized when applicable, and for a sum certain.

(ii) Any supporting evidence the claimant desires to submit.

(iii) A certified voucher, stating the citation of funds to be charged if the responsible office submitting the claim recommends payment in whole or in part.

(4) The letter of transmittal will include—

(i) A brief statement of the essential facts giving rise to the claim.

(ii) The category in paragraph (g) under which the claim is forwarded for settlement by GAO under 31 U.S. Code 71.

(iii) A recommendation for allowance or disallowance with justification.

(iv) Fiscal information required by paragraph 11-51, AR 37-103, including a citation of funds to be charged if payment is made.

(v) A statement that the claim has not been and will not be paid except according to certification in the name of the Comptroller General.

(31 U.S.C. 71)

[44 FR 37911, June 29, 1979]

Subpart B—Post Commander

§ 552.18 Administration.

(a) *Purpose.* This section outlines the duties and prescribes the general authority and general responsibilities of an installation commander.

(b) *Applicability.* The regulations in this section are applicable to installations in the United States, and where appropriate, to oversea installations. Oversea commanders should consult with the appropriate judge advocate to determine to what extent the provisions of treaties or agreements, or the provisions of local law may make inapplicable, in whole, or in part, the provisions of these regulations.

(c) *General.* The installation commander is responsible for the efficient and economical operation, administration, service, and supply of all individuals, units, and activities assigned to or under the jurisdiction of the installation unless specifically exempted by higher authority. Activities will be designated as "attached activities" only when specifically designated by higher authority. The installation commander will furnish base operation

support to all Army tenant activities except when the Department of the Army has given approval for the tenant to perform base operation functions. Reimbursement for such support will be in accordance with applicable regulations.

(d) *Motor vehicle and traffic regulations.* See AR 190-5, Motor Vehicle Traffic Supervision; AR 190-5-1, Registration of Privately Owned Motor Vehicles; AR 190-29, Minor Offenses and Uniform Violation Notices—Referred to US District Courts; AR 210-4, Carpooling and Parking Controls; AR 230-14, Registration and Licensing of Non-appropriated Fund Owned Vehicles; AR 385-55, Prevention of Motor Vehicle Accidents; and AR 600-55, Motor Vehicle Driver-Selection, Testing, and Licensing. A copy of the above documents may be obtained by writing to Headquarters, Department of the Army (DAAG-PAP-W), Washington, DC 20314.

(e) *Firearms.* The installation commander will publish regulations on the registration of privately owned firearms. See AR 608-4, Control and Registration of War Trophies and War Trophy Firearms. A copy of the above document may be obtained by writing to Headquarters, Department of the Army (DAAG-PAP-W), Washington, DC 20314.

(f) *Entry, exit, and personal search.* The installation commander will establish rules that govern the entry into and exit from the installation and the search of persons and their possessions as listed in paragraphs (f) (1), (2), and (3) of this section.

(1) The installation commander may direct authorized guard personnel, while in the performance of assigned duty, to search persons (including military personnel, employees, and visitors), and their possessions (including vehicles) when entering, during their stay, or when leaving facilities for which the Army has responsibility. These searches are authorized when based on probable cause that an offense has been committed or on military necessity. Instructions of commanders regarding searches should be specific and complete. When the person to be searched is a commissioned officer, or a warrant officer, the search should be conducted in private by or under the supervision of a commissioned officer,

unless such is precluded by the exigencies of the situation. When the person to be searched is a noncommissioned officer, the search should be conducted in private by or under the supervision of a person of at least equal grade, unless such is precluded by the exigencies of the situation. If the situation precludes search by or under the supervision of an officer (or noncommissioned officer, as appropriate), the person conducting the search will notify a responsible commissioned officer (or noncommissioned officer, as appropriate), as soon as possible. Persons who are entering the installation should not be searched over their objection, but they may be denied the right of entry if they refuse to consent to the search. All persons entering facilities should be advised in advance (by a prominently displayed sign, AR 420-70, (Buildings and Structures)), that they are liable to search when entering the installation, while within the confines of the installation, or when leaving (AR 190-22, Search, Seizure and Disposition of Property). A copy of the above documents may be obtained by writing to headquarters, Department of the Army (DAAG-PAP-W), Washington, DC 20314.

(2) The installation commander may authorize and control hunting and fishing on a military installation under installation rules in accordance with applicable Federal, State, and local laws and Army regulations, and in harmony with cooperative plans with appropriate State and Federal conservation agencies (AR 420-74, Natural Resources—Land, Forest, and Wildlife Management). To detect violations of these rules, special guards may be posted and authorized to search persons (or possessions, including vehicles of individuals), based on military necessity. The installation commander may eject violators of game laws or post regulations and prohibit their reentry under 18 U.S.C. 1382. Violations of State laws which apply to military reservations according to the provisions of section 13, title 18, U.S.C. (Assimilative Crimes Acts), may be referred to the United States Magistrate in accordance with AR 190-29, Minor Offenses and Uniform Violation Notices—Referred to United

States District Courts. Reports of violations of game laws will be reported to Federal or State authorities. An installation commander may not require membership in a voluntary sundry fund activity as a prerequisite to hunting and fishing on the installation. Accounting for the collection and spending of fees for hunting and fishing permits is outlined in chapter 12, AR 37-108, General Accounting and Reporting for Finance and Accounting Offices. A copy of the above documents may be obtained by writing to Headquarters, Department of the Army (DAAG-PAP-W), Washington, DC 20314.

(3) When the installation commander considers that the circumstances warrant its use, DA Form 1818 (Individual Property Pass), will be used to authorize military and civilian personnel to carry Government or personal property onto an installation or to remove it from an installation.

(4) Commanders will establish procedures to ensure that when blind persons are otherwise authorized to enter military facilities, their accompanying seeing-eye or guide dogs will not be denied entry. Such facilities include, but are not limited to: Cafeterias, snack bars, AAFES exchanges, retail food sales stores, medical treatment facilities, and recreational facilities. Seeing-eye or guide dogs will remain in guiding harness or on leash and under control of their blind masters at all times while in the facility. For purposes of safety and to prevent possible agitation of military police working dogs, seeing-eye or guide dogs will not be allowed in or around working dog kennels and facilities.

(g) *Official Personnel Register.* DA Form 647 (Personnel Register), is a source document that will be used at the lowest level of command having responsibility for strength accounting. The official register will be used for registering military personnel on arrival at or on departure from Army installations on permanent change of station, leave, or temporary duty. DA Form 647 may also be used for recording passes, visitors, etc. Registration of visits of less than 12 hours will be at the discretion of the commander except that registrations will be required when visits are at a place where United

States troops are on duty in connection with a civil disorder.

(h) *Outside employment of DA Personnel.* See paragraph 2-6, AR 600-50 Standards of Conduct for Department of the Army Personnel. A copy of this document may be obtained by writing to Headquarters, Department of the Army (DAAG-PAP-W), Washington, DC 20314.

(i) *Preference to blind persons in operating vending stands.* As used in paragraphs (i) (1), (2), and (3) of this section, the term "vending stand" includes shelters, counters, shelving, display and wall cases, refrigerating apparatus, and other appropriate auxiliary equipment necessary for the vending of merchandise. The term "vending machine" means any coin-operated machine that automatically vends or delivers tangible personal property.

(1) The installation commander will give preference to blind persons when granting permission to civilians to operate vending stands on installations where stands may be operated properly and satisfactorily by blind persons licensed by a State agency. Legal authority for such action is contained in the Randolph-Sheppard Vending Stand Act (20 U.S.C. 2-107 *et seq.*). Commanders will cooperate with the appropriate State licensing agency in selecting the type, location, or relocation of vending stands to be operated by licensed blind persons, except that preference may be denied or revoked if the commander determines that—

(i) Existing security measures relative to location of the vending stand or to the clearance of the blind operator cannot be followed.

(ii) Vending stand standards relating to appearance, safety, sanitation, and efficient operation cannot be met.

(iii) For any other reasons which would adversely affect the interests of the United States or would unduly inconvenience the Department of the Army. Issuance of such a permit will not be denied because of loss of revenue caused by granting a rent-free permit for operating a vending stand to a blind person. However, the permit will not be granted if in the opinion of the responsible commander such action would reduce revenue below the point necessary for maintaining an adequate morale

and recreation program. The commander should consider the fact that funds derived from certain non-appropriated fund activities such as post exchanges, motion picture theaters, and post restaurants are used to supplement appropriated funds in conducting the morale and recreation program.

(2) The preference established in paragraph (1)(1) of this section will be protected from the unfair or unreasonable competition of vending machines. No vending machine will be located within reasonable proximity of a vending stand that is operated by a licensed blind person if the vending machine vends articles of the same type sold at the stand, unless local needs require the placement of such a machine. If such is the case, the operation of, and income from the machine, will be assumed by the blind vending stand operator.

(3) So far as is practicable, goods sold at vending stands that are operated by the blind will consist of newspapers, periodicals, confections, tobacco products, articles that are dispensed automatically or are in containers or wrappings in which they were placed before they were received by the vending stand, and other suitable articles that may be approved by the installation commander for each vending stand location.

(4) If the commanders and State licensing agencies fail to reach an agreement on the granting of a permit for a vending stand, the revocation or modification of a permit, the suitability of the stand location, the assignment of vending machine proceeds, the methods of operation of the stand, or other terms of the permit (including articles which may be sold), the State licensing agency may appeal the disagreement, through channels, to the Secretary of the Army. Appeals will be filed by State licensing agencies with the installation commander who will conduct a complete investigation and will give the State licensing agency an opportunity to present information. The report of investigation with the appeal will be forwarded through channels to Headquarters, Department of the Army (DAPE-ZA), Washington, DC 20310, as soon as possible. A final decision by the

Secretary of the Army will be rendered within 90 days of the filing of the appeal to the installation commander. Notification of the decision on the appeal and the action taken will be reported to the State licensing agency, the Department of Health, Education, and Welfare, and the Department of Defense (Manpower, Reserve Affairs, and Logistics).

(j) [Reserved]

(k) *Request from private sector union representatives to enter installations.* (1) When labor representatives request permission to enter military installations on which private contractor employees are engaged in contract work to conduct union business during working hours in connection with the contract between the government and the contractor by whom union members are employed, the installation commander may admit these representatives, provided—

(i) The presence and activities of the labor representatives will not interfere with the progress of the contract work involved; and

(ii) The entry of the representatives to the installation will not violate pertinent safety or security regulations.

(2) Labor representatives are not authorized to engage in organizing activities, collective bargaining discussions, or other matters not directly connected with the Government contract on military installations. However, the installation commander may authorize labor representatives to enter the installation to distribute organizational literature and authorization cards to employees of private contractors, provided such distribution does not—

(i) Occur in working areas or during working times;

(ii) Interfere with contract performance;

(iii) Interfere with the efficient operation of the installation; or

(iv) Violate pertinent safety or security considerations.

(3) The determination as to who is an appropriate labor representative should be made by the installation commander after consulting with his/her labor counselor or judge advocate. Nothing in this regulation, however, will be construed to prohibit private contractors' employees from

distributing organizational literature or authorization cards on installation property if such activity does not violate the conditions enumerated in paragraph (k)(2) of this section. Business offices or desk space for labor organizations on the installation is not authorized to be provided for solicitation of membership among contractors' employees, collection of dues, or other business of the labor organization not directly connected with the contract work. The providing of office or desk space for a contractor is authorized for routine functions by the working steward whose union duties are incidental to his/her assigned job and connected directly with the contract work.

(4) Only the installation commander or a contracting officer can deny entry to a labor representative who seeks permission to enter the installation in accordance with paragraph (k) of this section. If a labor representative is denied entry for any reason, such denial will be reported to the Labor Advisor, Office of the Assistant Secretary of the Army (IL&FM), Washington, DC 20310. This report will include the reasons for denial, including—

(5) The provisions of paragraphs (k), (1), (2), (3), and (4) of this section on organizations representing private contractors' employees should be distinguished from activities involving organization and representation of Federal civilian employees. See CPR 711 for the functions, duties and obligations of an installation commander regarding Federal civilian employee unions.

(1) *Publication of telephone directories.* See chapter 5, AR 105-23. A copy of this document may be obtained by writing to Headquarters, Department of the Army (DAAG-PAP-W), Washington, DC 20314.

(m) *Observance of labor laws on military installations.* (1) Installation and activity commanders will ensure that all his/her employers on the installation or activity are apprised of their obligation to comply with Federal, State, and local laws, including those relating to the employment of child labor. When an employer who is operating on the installation or activity is responsible to an authority other than the installation or activity commander, the commander will direct

that the authority's representative apprise the employer of his/her obligations regarding labor law. This applies to employers in all activities, including nonappropriated fund activities established as Federal instrumentalities according to AR 230-1, Nonappropriated Fund System, concessionaires of such activities, and other private employers. A copy of the above document may be obtained by writing to Headquarters, Department of the Army (DAAG-PAP-W), Washington, DC 20314.

(2) Installation commander will cooperate fully with state or other governmental officials who bring to their attention complaints that children are employed on military installations or reservations under conditions that are detrimental to their health, safety, education, and well-being.

(n) *Hitchhiking.* Hitchhiking is prohibited by the Army. This does not preclude acceptance of offers of rides voluntarily made by individuals or properly accredited organizations nor does it preclude the use of properly authorized and established share-the-ride or similar stations which may be sanctioned by local military authorities. For personal safety, personnel should exercise caution at facilities, for example, by accepting rides only from persons they know or by traveling in groups. Similarly, drivers should use discretion when offering rides to personnel at share-the-ride stations. Drivers are prohibited from picking up hitchhikers.

(o) *Employment of civilian food service personnel.* See AR 30-1, The Army Food Service Program. A copy of this document may be obtained by writing to Headquarters, Department of the Army (DAAG-PAP-W), Washington, DC 20314

[44 FR 7948, Feb. 8, 1979, as amended at 45 FR 73037, Nov. 4, 1980]

§ 552.19 Hunting and fishing permits.

All permits to hunt, catch, trap, or kill any kind of game animal, game or nongame bird, or to fish on a military reservation or the waters thereof will be issued by the commanding officer.

[13 FR 6058, Oct. 15, 1948]

Subpart C—Entry Regulations for Certain Army Training Areas in Hawaii

§ 552.25 Entry regulations for certain Army training areas in Hawaii.

(a) *Purpose.* (1) This regulation establishes procedures governing the entry onto certain Army training areas in Hawaii as defined in paragraph (d) of this section.

(2) These procedures have been established to prevent the interruption of the use of these Army training areas by any person or persons. The continued and uninterrupted use of these training areas by the military is vital in order to maintain and to improve the combat readiness of the U.S. Armed Forces. In addition, conditions exist within these training areas which could be dangerous to any unauthorized persons who enter these areas.

(b) *Applicability.* The procedures outlined in this regulation apply to all individuals except for soldiers and Army civilians of the United States who in performance of their official duties enter the training areas defined in paragraph (d) of this section.

(c) *References.* Related publications are listed below:

(1) Executive Order No. 11166 of 15 August 1964. (3 CFR, 1964-1965 Comp., pp 219-220).

(2) Executive Order No. 11167 of 15 August 1964. (3 CFR, 1964-1965 Comp., pp 220-222).

(3) Title 18, United States Code, section 1382.

(4) Internal Security Act of 1950, section 21 (50 U.S.C. 797).

(d) *Definition.* For the purpose of this regulation, "certain Army training areas in Hawaii" are defined as follows:

(1) Makua Valley, Waianae, Oahu, Hawaii: That area reserved for military use by Executive Order No. 11166 (paragraph (c)(1) of this section).

(2) Pohakuloa Training Area, Hawaii: That area reserved for military use by Executive Order No. 11167 (paragraph (c)(2) of this section).

(e) *Procedures.* (1) Except for soldiers and Army civilians of the United States in the performance of their duties, entry onto Army training areas described in paragraph (d) of this section for any purpose whatsoever with-

out the advance consent of the Commander, United States Army Support Command, Hawaii, or his authorized representative, is prohibited (paragraph (c)(3) and (c)(4) of this section).

(2) Any person or group of persons desiring the advance consent of the Commander, United States Army Support Command, Hawaii, shall, in writing, submit a request to the following address: Commander, USASCH, ATTN: Chief of Staff, Fort Shafter, Hawaii 96858-5000.

(3) Each request for entry will be considered on an individual basis weighing the operational and training commitments of the area involved, security, and safety with the purpose, size of party, duration of visit, destination, and the military resources which would be required by the granting of the request.

(f) *Violations.* (1) Any person entering or remaining upon any training area described in paragraph (d) without the advance consent of the Commander, USASCH, or his authorized representative, shall be subject to the penalties prescribed by paragraph (c)(3) of this section, which provides in pertinent part: "Whoever, within the jurisdiction of the United States, goes upon any military, naval * * * reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined not more than \$500.00 or imprisoned not more than 6 months or both."

(2) Moreover, any person who willfully violates this regulation is subject to a fine not to exceed \$5,000.00 or imprisonment for not more than 1 year or both as provided in paragraph (c)(4) of this section.

(3) In addition, violation of this regulation by persons subject to the Uniform Code of Military Justice (10 U.S.C. 801-940) is a violation of Article 92 of the Uniform Code of Military Justice.

[52 FR 44393, Nov. 19, 1987]

Subpart D—Acquisition of Real Estate and Interest Therein

SOURCE: 22 FR 9284, Nov. 21, 1957, unless otherwise noted.

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§ 552.30 Purpose.

The regulations in §§ 552.30 to 552.39 set forth the authority, policy, responsibility, and procedure for the acquisition of real estate and interests therein, for use for military purposes by the Department of the Army. The regulations of §§ 552.30 to 552.39 do not apply to Civil Works Projects which are under the supervision of the Chief of Engineers.

§ 552.31 Definitions.

As used in §§ 552.30 to 552.39, the following definitions apply:

(a) *Real estate.* Real estate includes lands and interests therein, leaseholds, standing timber, buildings, improvements, and appurtenances thereto owned by the United States and under the control of the Department of the Army. It also includes piers, docks, warehouses, rights-of-way, and easements, whether temporary or permanent, and improvements permanently attached to and ordinarily considered real estate. It does not include machinery, equipment, or tools which have not been affixed to or which have been severed or removed from any such lands or buildings or may be so severed or removed without destroying the usefulness of the structures.

(b) *Installation.* An installation is real estate and the improvements thereon which is under the control of the Department of the Army, at which functions of the Department of the Army are carried on, and which has been established by order of the Department of the Army. Real estate and the improvements thereon utilized by posts, camps, airfields, hospitals, depots, arsenals, industrial facilities, cemeteries, etc., generally will be designated as an installation where located separately, but where located contiguously or on the same reservation the combined property will usually be designated as one installation and the separate functions will be designated as activities at that installation. As used in the regulations in §§ 552.30 to 552.39, the term "installation" will include installations, subinstallations, and separate locations housing an activity.

(c) *Subinstallation.* A subinstallation is real estate and the improvements thereon which is under the control of

the Department of the Army, at which functions of the Department of the Army are carried on, and which has been assigned as a subinstallation by Department of the Army authority. Subinstallations are attached to installations for command and administrative purposes, although they are located separately.

(d) *Activity.* An activity is a function or a group of related functions which may be carried on at an installation, a subinstallation, or a separate location which has not been designated as a Department of the Army installation or subinstallation.

(e) *Command installation.* A command installation is any installation of the Department of the Army, including nonmanufacturing arsenals, primarily used or useful for activities of the Army other than for the production of materiel, munitions, or supplies.

(f) *Industrial installation.* Any unit of real property under control of the Department of the Army (including structures on land owned by or leased to the United States, substantially equipped with production utilities and maintenance machinery, tools, equipment, and including housing and other supporting facilities built as an integral part of the installation) designed for the production of equipment, supplies, or materials for military use; or for the processing, production, or manufacturing of components of such items.

(g) *Lease.* A lease is a conveyance of an interest in real estate for a term of years, revocable at will, or as otherwise provided in the instrument in consideration of a return of rent.

(h) *License.* A license is a bare authority to do a specified act or acts upon the land of the licensor without possessing or acquiring any estate therein.

(i) *Easement.* An easement is a conveyance of an interest in real estate for the purpose or purposes specified in the grant.

§ 552.32 Authority to acquire real estate and interests therein.

While the Federal Government has the inherent power to acquire land for its constitutional purposes, this power can be exercised only at the discretion

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of Congress (Van Brocklin v. Tennessee, 117 U.S. 151; 29 L. Ed. 845; 6 S. Ct. 670). No land shall be purchased on account of the United States, except under a law authorizing such purchase (R. S. 3736; 41 U.S.C. 14). No real estate not in Federal ownership shall be acquired by a military department, except as such acquisition is or shall be expressly authorized by law (section 501(b), Act July 27, 1954; Pub. L. 534, 83d Congress; 68 Stat. 560).

§ 552.33 Estates and methods of acquisition.

(a) Title to non-Government-owned real estate will be by purchase, condemnation, donation (when the authorization act specifies donation), and exchange (when the authorization act specifies exchange).

(b) Easements in non-Government-owned real estate are the same as in paragraph (a) of this section.

(c) Licenses in non-Government-owned real estate are generally by donation, although a nonrevocable license might be acquired by purchase.

(d) Leaseholds in non-Government-owned real estate will be by negotiation or condemnation. Leaseholds may give the Government exclusive use or may give the Government co-use with the owner for specific purposes.

(e) Jurisdiction over Government-owned real estate will be by transfer, reassignment, withdrawal, and reservation.

(f) Permits to use Government-owned real estate will be by instrument issued by another Government department or agency. Although in the nature of a license (may be revocable or nonrevocable), the instrument is designated as a "permit", since it relates to Government-owned real estate, to distinguish it from a "license" relating to non-Government-owned real estate.

(g) Recapture of use of former Government-owned real estate which was disposed of subject to a "National Security Clause," a "National Emergency Clause," or a similar provision will be by letter from the Chief of Engineers to the owner of the property, based upon a directive from the Secretary of the Army or his designee.

(h) Revestment of title to former Government-owned real estate which

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was disposed of subject to a reverter provision, such as a "National Defense Purpose Clause" will be by letter to the owner by the official of the department designated in the conveyance by the Government.

(i) Procurement of options on real estate which is "suitable and likely to be required" in connection with a military public works project, prior to express authorization by law for the acquisition of said real estate will be by negotiation.

(j) Extinguishment of third party interests in lands owned or controlled by the United States, such as outstanding oil, gas, and other mineral rights; grazing rights; timber rights; water rights; and easements for rights-of-way for highways, railroads, power lines, communication lines, water lines, and sewer lines will be the same as prescribed in paragraph (a) of this section. Payment for extinguishment of grazing rights or licenses on public domain or other property owned by or under the control of the United States is made pursuant to Act July 9, 1942; 56 Stat. 654; as amended by Act May 28, 1948; 62 Stat. 277; and as further amended by Act October 29, 1949; 63 Stat. 996 (43 U.S.C. 315q and r).

§ 552.34 Policies relative to new acquisition.

(a) *Present holdings inadequate for essential mission.* No request to acquire real estate by transfer from Navy or Air Force or from another Government agency, or by purchase, lease or condemnation will be considered or approved unless it is established that:

(1) The activity to be accommodated is essential to an assigned mission.

(2) Real property under the control of the Army is inadequate to satisfy these requirements.

(3) No real property under the control of the Navy or Air Force or other Federal agencies is suitable and available for use by the Army on a permit or joint use basis.

(b) *Order of priority for method of acquisition.* If the activity qualifies as essential to an assigned mission but the need cannot be filled by the use of other Army property or other Federal property on a permit or joint use basis,

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the following alternatives will be considered in the order listed:

(1) Donation or long-term nominal rental lease.

(2) Transfer from Navy or Air Force. Acquisition of lands excess to the requirements of other military departments.

(3) Recapture of use.

(4) Public Domain. Withdrawal from the public domain for military use. (Pub. L. 85-337, Feb. 28, 1958 (72 Stat. 28) requires that an Act of Congress be obtained to withdraw, reserve, or restrict for defense purposes more than 5,000 acres of the public domain.)

(5) Acquisition by exchange. Exercise of existing authorities for the exchange of Government-owned real property for non-Government-owned real property that is by type or location adaptable to the military need.

(6) Transfer from other Federal agencies. Acquisition of lands excess to the requirement of Federal agencies other than military departments.

(7) Acquisition by purchase, lease or condemnation.

(c) *Current requirements given preference.* In considering the use of Army real property by another military department, current requirements will, in the absence of unusual circumstances, be given preference over future needs and mobilization requirements. If the current requirement will not continue through mobilization, care must be exercised to avoid modification of the property in a manner that would prevent its timely return to the holding department to meet the mobilization requirement. If it is contemplated that the current requirement will continue through mobilization, the property may be modified as required and the mobilization plans of the military departments concerned should be changed accordingly.

(d) *Firm requirements and minimum acquisition.* Requirements in each individual case will be firmly determined and only the minimum amount of property necessary will be acquired.

(e) *Factors considered insufficient justification for acquisition by lease.* Desirability of location in an urban area, reduced travel time for employees or business representatives, nominal savings in transportation costs, environ-

mental considerations (such as noise or traffic), or desirability of single unit offices instead of split locations in close proximity will not be considered sufficient justification for acquiring leased space or facilities when Government-owned property is available. For exceptions, see paragraph (f) of this section.

(f) *Special location considerations.* Acquisition of title or a leasehold interest in real property may be justified where it is demonstrated that the function to be accommodated is an essential activity and the geographic location thereof in other than Government-owned space is vital to the accomplishment of the assigned mission. Examples that may fall in this group are recruiting stations (exclusive of kindred examining and induction units), airbases, air defense sites, and sites for construction of facilities for Reserve Components of the Armed Forces.

(g) *Army Reserve training sites.* In general, title to lands will not be acquired for exclusive use as training sites. Training sites will be acquired by one of the following means in the order listed:

(1) Use of lands under the control of the Department of the Army regardless of the agency maintaining jurisdiction, to include class II and industrial installations and other Reserve Component facilities, see title 10 U.S.C. 2331 and 2237.

(2) Use of reservoir lands of Civil Works Projects. By informal agreement with the Resident Engineer or Manager (when training activities do not involve exclusive use, construction, or destruction of vegetation) or by permit from the District Engineer (for other activities when such activities are compatible with the operation and maintenance of the project and will not endanger the use by the general public of public access areas).

(3) Use of lands, by permit or otherwise, under the control of the other military departments.

(4) Use of lands by permit of other Government-owned land, including the public domain.

(5) Use by license or nominal rental lease of local, county, or State-owned public lands.

(6) Use of privately owned land by short-term co-use lease under the authority granted in § 552.39.

(7) Use of non-Government-owned land by lease.

(8) Acquisition of lands excess to the requirements of the other military departments.

(9) Acquisition of lands excess to the requirements of Federal agencies other than the military departments.

(10) Acquisition of the non-Government-owned land.

(11) As a rule of thumb, lands will not be acquired for training from any source when the value of the land exceeds that of rural farm land in the area.

(h) *Public notice and release of information relative to proposed real estate acquisitions.* It is the policy of the Department of the Army to give notice to the public and to release information to the public as early as possible (at the site selection stage) and as completely as possible, consistent with existing regulations. Even though opposition may develop in some cases because of early release of information as to proposed acquisitions, application of this policy should more often result in favorable public relations, general public support of proposed acquisitions, and material assistance in the selection of sites which will fulfill the military requirement and still have the least impact on the civilian economy. This policy will permit consideration of public preferences in the establishment of military facilities. Section 302 of the Act of July 14, 1960; Pub. L. 86-645, which is applicable to military as well as water resources public works projects, provides for dissemination of information on large new installations.

(1) *Restrictions relating to Agency Budget Estimates and Presidential Budget Recommendations.* Bureau of the Budget Circular No. A-10, as revised, places restrictions on disclosure of Agency Budget Estimates and Presidential Budget Recommendations. It provides that budget recommendations and estimates are administratively confidential until made public through formal transmittal of the budget to Congress. Public notice and release of information relative to proposed real property acquisitions will, therefore, exclude

any information as to whether the proposed acquisition has been included in a pending budget not yet formally transmitted to the Congress or is to be included in a future budget. Public notice and release of information will be on the basis of "advance planning."

(2) *General application and exceptions.* Non-Government-owned real property generally is acquired by negotiations, based on its fair market value as established by Government appraisal and regardless of who the owner is, how much the owner paid for the property, and how long the owner has owned the property. For this reason, public notice and release of information should not tend normally to increase the value of the land involved or create speculation therein. Experience has proved that interest of the Government in specific real property normally tends to discourage trafficking therein. Though normally the release of information should not result in subsequent disadvantage to the Government, information will not be released in any specific case where it might have that result. AR 345-15 applies to the acquisition of real property only in those instances in which the release of advance information on proposed plans might provide undue discriminatory advantage to private or personal interests.

(3) *Application to Army Reserve facilities.* During the preliminary site selection stage for Army Reserve facilities, the Army commander's representative will contact responsible local public officials to explain the nature of the proposed facility and to obtain their concurrence in the Army's acquisition and use of the site tentatively selected. Such a statement, including the names and titles of officials contacted, will be furnished by the Army commander to the District Engineer for inclusion in the Real Estate Planning Report. Release of information on Army Reserve centers will be made only by an authorized representative of the Army commander.

(i) *Use of unappropriated and nonnavigable water.* It is the policy of the Department of the Army to utilize unappropriated and nonnavigable water upon or under lands under jurisdiction in such a manner as is consonant with

the purposes of water laws which have been enacted by the several States.

(j) *Permanent construction.* If permanent construction, defined as that which produces a building suitable and appropriate to serve a specific purpose for a maximum period of time (at least 25 years) and with a minimum of maintenance, is to be constructed by the Government, the Government must either hold or acquire title to the land (inclusive of all mineral rights and improvements) or a permanent easement interest, with the following exceptions:

(1) *Right of reuse by exercise of National Security Clause.* Property, including land or buildings, over which the Government currently holds the right of reuse by exercise of the National Security Clause.

(2) *Right of reuse by exercise of National Emergency Use Provision.* Property, including land or buildings, over which the Government holds the right of reuse by exercise of a National Emergency Use Provision. Inasmuch as such rights inure to the Government only during the period or periods of national emergency as may be declared by the President or the Congress and are extinguished by the termination thereof, every effort will be made to negotiate a lease covering such property under terms that would provide for the right of continuous possession by the Government for a minimum of 25 years.

(3) *Rights-of-way.* Property required as a site for installation of utility lines and necessary appurtenances thereto, provided a long-term easement or lease can be secured at a consideration of \$1 per term or per annum.

(4) *Airbase.* Property required for airbases, provided such property can be acquired by lease containing provisions for:

(i) Right of continuous use by the Government under firm term or right of renewal, for a minimum of 50 years.

(ii) A rental consideration of \$1 per term or per annum.

(iii) Reserving to the Government title to all improvements to be placed on the land and the right to dispose of such improvements by sale or abandonment.

(iv) Waiver by the lessor of any and all claims for restoration of the leased premises.

(v) Use of the property for "Government purposes" rather than for a specific purpose.

(5) *Reserve Components facilities.* Property required for facilities for the Reserve Components of the Armed Forces, provided such property can be acquired by lease containing provisions detailed in paragraphs (j)(4) (i), (ii), (iii), and (iv) of this section. When possible the insertion in a lease of provision restricting the use of the land to a specific purpose will be avoided; use of a term as "Government purposes" should be employed whenever possible.

(6) *Air defense sites.* Property required for air defense sites provided such property can be acquired by lease containing provisions detailed in paragraphs (j)(4) (i), (ii), and (iv) of this section and in addition thereto a right of continuous use by the Government under a firm term or right of renewal for as long as required for defense purposes.

(7) *Exception by Assistant Secretary of Defense (Installations and Logistics).* Where leases (for airbases, facilities for Reserve Components of the Armed Forces, or air defense sites) can be obtained containing some but not all of the above-listed provisions or where leases (for all other types of installations upon which permanent construction is to be placed by the Government) can be obtained containing similar provisions and it is considered to be to the best interest of the Government to acquire a lesser interest than fee title, it will be necessary to obtain approval from the Assistant Secretary of Defense (Installations and Logistics) prior to placing permanent construction thereon.

(8) *Construction projects not in excess of \$25,000.* Construction projects estimated to cost not in excess of \$25,000 will not be considered as permanent construction for purposes of applying the above policy.

(9) *Industrial installations.* See paragraph (l) of this section.

(k) *No permanent construction.* Where temporary construction or no construction is to be placed by the Government, acquisition of a lesser interest

(leasehold, easement, license, as appropriate) will generally be considered to be in the best interest of the Government, with the following exceptions:

(1) *Cost of construction.* Where any proposed temporary construction to be placed by the Government has an estimated cost equal to or in excess of the current market value of the property.

(2) *Rent plus restoration.* Where the calculated period of required use is of sufficient duration that the sum expended for rentals over this period plus restoration, if required, would exceed 50 percent of the current market value of the property. (Apply calculated period of required use or 20 years, whichever is less.)

(3) *Easement costing 75 percent of fee value.* Where the cost of acquiring an easement right exceeds 75 percent of the current fair market value of the property.

(1) *Industrial installations—(1) Definitions.* Industrial facilities as used herein are defined as plants, buildings, utilities, improvements, and additions and appurtenances thereto used for military production and related purposes, including testing and development. Nonseverable industrial facilities as used herein are defined as industrial facilities located on other than Government-owned land, and which, after erection or installation, cannot be removed without substantial loss of value or damage thereto, or to the premises where installed.

(2) *Policy.* Industrial facilities will be located on land owned by the Government or in which the Government has a permanent, disposable interest. Nonseverable industrial facilities will be located on land in which the Government has a disposable interest equal in term to the estimated useful life of the facilities, unless the Head of a Procuring Activity, with consideration to any nonrecoverable costs involved, determines that such location is not feasible. If the Head of a Procuring Activity makes this determination, he may authorize the location of such facilities on other land, provided:

(i) The estimated useful life of the facilities will not extend beyond the contract under which the facilities are installed or the completion of the work for which the facilities are provided; or

(ii) The contractor agrees to purchase the facilities upon the end of the facilities contract at the acquisition cost of the facilities, less depreciation; or

(iii) The Secretary approves other provisions as being in the interest of national defense.

(iv) If location on land in which the Government does not have a disposable interest, as above set out, is authorized under paragraphs (1)(2)(i), (ii), or (iii) of this section, the Government must have the right to abandon the facilities in place, with no obligation to restore or rehabilitate the facilities or the premises on which they are located.

(m) *Commercial and industrial type facilities—(1) Policy.* Privately owned or Government-owned and privately operated commercial and industrial type facilities will be used to the greatest extent practicable, recognizing the basic military necessity for integrated, self-sustaining units responsible to command and the necessity for operating anywhere in the world. It is the policy of the Department of the Army not to engage in the operation of industrial or commercial type facilities unless it can be demonstrated that it is necessary for the Government itself to perform the required work or service.

(2) *Definition.* Commercial and industrial type facilities are defined as those devoted to an activity which normally might be performed by private industry (except commissaries, post exchanges, and nonappropriated fund activities) including, but not limited to, warehouses, motor repair shops, bakeries, laundries, and drycleaning facilities.

(n) *Department of Defense policy relative to liaison with Governor of Commonwealth of Puerto Rico.* By letter dated August 19, 1953, the Secretary of Defense informed the Governor of the Commonwealth of Puerto Rico that the Department of Defense would establish liaison with the Governor to coordinate all military requirements for land acquisition in Puerto Rico. By memorandum dated August 19, 1953, the Secretary of Defense instructed that such liaison would be established under the direction of the Department of the Army, in coordination with the other interested services. On September 8,

1953, the Department of the Army requested the Commander in Chief, Caribbean Command, to establish such liaison. Liaison is being maintained locally between the Commandant of the Caribbean Sea Frontier and the Chairman of the Puerto Rico Planning Board. The liaison applies to the proposed acquisition of title or any interest in land which is other than (Federal) Government-owned land. In all cases, liaison action will be initiated during the advance planning or site selection stages. The purpose is to give Puerto Rican officials advance notice of military real property requirements and to give them an opportunity to suggest suitable alternatives in an effort to improve public relations with Puerto Rican officials, landowners, and the general public.

[27 FR 6140, June 29, 1962]

§ 552.35 Rights-of-entry for survey and exploration.

(a) *Voluntary.* Where it is necessary to enter upon non-Government-owned real estate during site selection, particularly for the purpose of conducting topographic surveys and test borings, the appropriate division or district engineer will negotiate rights-of-entry for survey and exploration. The instrument is in the nature of a license which does not convey an interest in land but precludes the entry from being a trespass. Since the entry is for a limited purpose and for a relatively short period of time, the landowner is not offered rental for the privileges requested. Where the landowner insists upon payment for the privileges requested, district engineers are authorized to negotiate short-term co-use leases, within the limits of existing regulations.

(b) *Involuntary.* Where rights-of-entry for survey and exploration or short-term co-use leases cannot be negotiated, the right-of-entry may be obtained through the institution of proceedings for the condemnation of a short-term co-use leasehold interest. This action is taken only where it can be shown that the entry is imperative and that it is impossible to negotiate a voluntary right-of-entry or short-term co-use lease.

§ 552.36 Rights-of-entry for construction.

(a) *When authorized.* Rights-of-entry for construction will be obtained by the district engineer only after a real estate directive or authorization to lease has been issued and then only when the construction schedule does not allow sufficient time to complete negotiations for an option to purchase or for a lease, as appropriate.

(b) *Involuntary.* Where a right-of-entry for construction cannot be negotiated, under the circumstances set forth in paragraph (a) of this section, a right-of-entry will be obtained through the institution of proceedings for the condemnation of fee title, an easement interest, or a leasehold interest, as appropriate.

§ 552.37 Acquisition by Chief of Engineers.

(a) *Statutory authority.* The Chief of Engineers, under the direction of the Secretary of the Army, is charged with the acquisition of all real estate for the use of the Department of the Army (10 U.S.C. 3038).

(b) *Scope of responsibility.* This authority is exercised by the Chief of Engineers, acting for the Secretary of the Army, in the acquisition of all real estate and interests therein for the use of the Department of the Army in continental United States, Territories, possessions, and the Commonwealth of Puerto Rico.

(c) *Delegated authority.* The Chief of Engineers or his duly authorized representative has authority to approve, for the Secretary of the Army:

(1) Fee, easement, and license acquisitions which do not exceed \$5,000 for any one parcel and which constitute small tracts of additional land needed in connection with projects for which final Department of the Army, Department of Defense, and/or Congressional approval has been obtained, or which constitute rights-of-way for roads, railroads, and utility lines necessary to the construction, maintenance, and operation of an approved project.

(2) Leasehold acquisition where the estimated annual rental for any single leasehold does not exceed \$25,000 and the acquisition is not controversial,

unusual, or inconsistent with Department of Army policies.

(3) Renewal or extension of leaseholds.

(4) Acquisition by permit of the right to use real property of another Government department or agency, except as to “general purpose” space from the General Services Administration and the Post Office Department and all space in the metropolitan District of Columbia area.

(d) *Minor boundary changes.* The Chief of Engineers, in accomplishing acquisition in accordance with Department of Defense and Department of the Army policies and with real estate directives and authorizations to lease issued by the Secretary of the Army or his designee, is authorized to make minor boundary changes to avoid severance damages, by including or excluding small tracts of land which will not decrease the usefulness of the area for the purpose for which it is being acquired.

(e) *Responsibility for all negotiations.* To avoid any possibility of misunderstanding by property owners and resultant embarrassment to the Department of the Army, under no circumstances will commitments be made either by negotiation or by dissemination of information to property owners, by any authority other than the Chief of Engineers. This is not intended to restrict the public notice and release of general information as set forth in § 552.34(h).

(f) *Approval of title.* The written opinion of the Attorney General, in favor of the validity of the title, will be obtained for any site or land purchased by the United States. Unless expressly waived by the pertinent authorization act or other act of Congress, this opinion will be obtained prior to the expenditure of public money upon such site or land (section 355, as amended, of the Revised Statutes; 50 U.S.C. 175) except:

(1) Easements acquired for military purposes. (By agreement with the Attorney General, his opinion is obtained only in acquiring easements at a cost in excess of \$100.)

(2) Leases and licenses.

(3) Jurisdiction of Government-owned land by transfer or use of Government-owned land by permit.

(g) *Furnishing title evidence.* The Chief of Engineers, acting under the authority of the Secretary of the Army, will procure any evidence of title required by the Attorney General. The expense of procurement, except where otherwise authorized by law or provided by contract, may be paid out of the appropriations for the acquisition of land or out of the appropriations made for the contingencies of the Department of the Army (section 355, as amended, of the Revised Statutes; 50 U.S.C. 175).

(h) *Condemnation—(1) General.* Fee title, easements, or leasehold interests may be acquired by the exercise of right of eminent domain through the institution of condemnation proceedings. These proceedings are instituted in the United States District Courts by the Attorney General, based upon requests from the Secretary of the Army. Normally, condemnation proceedings are instituted only after agreement cannot be reached with landowners or other parties in interest as to the value of the real property or interest therein to be acquired by the Government; where there are title defects which do not permit acquisition by purchase or lease, as appropriate; or where construction schedules or occupancy dates do not allow the Chief of Engineers sufficient time to conduct normal negotiations for options to purchase or lease.

(2) *Vesting of title or other interest in the United States.* Under a condemnation proceeding, title, or other interest condemned vests in the United States upon entry of final judgment in the proceeding. Where it is necessary to have title or other interest vested in the United States at an earlier date, a Declaration of Taking, signed by the Secretary of the Army, may be filed in the proceeding, with the petition or at any time before final judgment. Upon the filing of the Declaration of Taking and deposit in the court of the amount of estimated compensation, title or other interest condemned vests in the United States (Act of February 26, 1931; 46 Stat. 1421; 40 U.S.C. 258a).

[22 FR 9284, Nov. 21, 1957, as amended at 27 FR 6142, June 29, 1962]

§ 552.38 Acquisition of maneuver agreements for Army commanders.

(a) *Authorization.* After a maneuver is authorized by the Department of the Army, the Army commander will select the specific areas desired for use.

(b) *Real estate coverage.* Real estate coverage will be in the form of agreements with landowners, granting the right to conduct maneuvers at a given time or periodically. Short-term leases for exclusive use may also be acquired for special areas (such as headquarters areas, radio relay sites, base camp sites, field hospital sites, and supply dumps) and buildings needed for warehouses, ordnance shops and similar purposes directly related to the maneuver. Permits will also be obtained to cover the use of lands under the jurisdiction of another Government department or agency.

(c) *Responsibility for negotiation and restoration.* The appropriate division or district engineer will be responsible for negotiating maneuver agreements and short-term leases and, after the maneuver is completed, will be responsible for negotiating restoration settlements and/or releases, as appropriate.

§ 552.39 Acquisition of short-term leases by local commanding officers.

Local commanding officers are authorized, without approval by higher authority, to make leases of camp sites, buildings, and grounds, for troops; office and storage space for small detachments; garage or parking space; space for recruiting stations; and land or space for similar purposes, provided:

(a) Funds are available to the local commanding officer,

(b) Rental consideration conforms to the prevailing rate in the locality,

(c) The premises are to be occupied not longer than 3 months or in the case of Reserve training sites, not more than 90 days per year,

(d) Rental for the entire period of occupancy does not exceed \$500, and

(e) Clearance is made with the General Services Administration, where required.

[22 FR 9284, Nov. 21, 1957, as amended at 23 FR 10536, Dec. 31, 1958]

Subpart E—Solicitation on Military Reservations

AUTHORITY: Sections 552.50 through 552.83 issued under 15 U.S.C. 1601.

SOURCE: 45 FR 73037, Nov. 4, 1980, unless otherwise noted.

§ 552.50 Purpose.

This regulation—

(a) Prescribes general policy on the solicitation and sale of all goods, services, and commodities, including all types of insurance, on military installations. These are sold or solicited by dealers, tradesmen, and their agents.

(b) Prescribes procedures for suspension of solicitation privileges.

(c) Prescribes policies and procedures for investigative and enforcement actions.

(d) Permits representatives of credit unions, banks, and approved non-profit associations to conduct national educational programs on—

(1) Insurance, estate planning, savings, and budgeting, and

(2) The protection and remedies afforded consumers under the Truth-in-Lending Act.

§ 552.51 Applicability.

(a) This regulation applies to—

(1) All Department of the Army military and civilian personnel, including Army National Guard and Army Reserve personnel on active duty or annual training.

(2) Individuals seeking to conduct commercial solicitation on military installations, including controlled housing areas. They will also be governed by regulations and controls of the local commander and, in overseas areas, by regulations of the unified or specified commander. They must also observe applicable laws, regulations, and agreements of the host country.

(b) The provisions of this regulation do not apply to—

(1) Commercial companies that furnish services to military installations (such as deliveries of milk, bread, and laundry) when they are authorized by the installation commander.

(2) An individual who sells his own personal property or privately owned dwelling.

§ 552.52 Explanation of terms.

(a) *Agent*. Anyone who solicits the ordering or purchasing of goods, services, or commodities in exchange for money. “Agent” includes an individual who receives remuneration as a salesman for an insurer or whose remuneration is dependent on volume of sales or the making of sales.

(b) *Solicitation*. The conduct of any private business, including the offering and sale of insurance on a military installation, whether initiated by the seller or the buyer. (Solicitation on installations is a privilege as distinguished from a right, and its control is a responsibility vested in the installation commander, subject to compliance with applicable regulations.)

(c) *Door-to-door solicitation*. A sales method whereby an agent proceeds randomly or selectively from household to household without specific prior appointments or invitations. Door-to-door solicitation is not permitted on Army installations.

(d) *Specific appointment*. A pre-arranged appointment that has been agreed upon by both parties and is definite as to place and time.

(e) *Insurer*. Any company or association engaged in the business of selling insurance policies to Department of Defense (DOD) personnel.

(f) *Insurance carrier*. An insurance company issuing insurance through an association or reinsuring or coinsuring such insurance.

(g) *Insurance policy*. A policy or certificate of insurance issued by an insurer or evidence of insurance coverage issued by a self-insured association.

(h) *DOD personnel*. Unless stated otherwise, such personnel means all active duty officer and enlisted members, and civilian employees of the Armed Forces. This includes Government employees of all the offices, agencies, and departments carrying on functions on a Defense installation, including non-appropriated fund instrumentalities.

§ 552.53 Regulatory requirements.

Commanders may issue regulations governing solicitation within their commands and on their installations. These regulations will avoid discriminatory requirements which could eliminate or restrict competition.

When there is a clear need to prescribe more restrictive requirements for solicitation than those in this regulation or the regulations of the major commander, these additional requirements or restrictions must first be reviewed and confirmed by The Adjutant General Center (DAAG-PSI), or by the overseas commander.

§ 552.54 Solicitation.

The installation commanders may permit solicitation and transaction of commercial business on military installations. These solicitations and transactions must conform to installation regulations (CONUS and overseas) and must not interfere with military activities. No person may enter an installation and transact commercial business as a matter of right.

§ 552.55 Restrictions.

To maintain discipline; protect property; and safeguard the health, morale, and welfare of his personnel, the installation commander may impose reasonable restrictions on the character and conduct of commercial activities. Members of the Armed Forces must not be subjected to fraudulent, usurious, or unethical business practices. Reasonable and consistent standards must be applied to each company and its agents in their conduct of commercial transactions on the installation.

§ 552.56 Licensing requirements.

To transact personal commercial business on military installations in the United States, its territories, and the Commonwealth of Puerto Rico, individuals must present, on demand, to the installation commander, or his designee, documentary evidence that the company and its agents meet the licensing requirements of the State in which the installation is located. They must also meet any other applicable regulatory requirements imposed by civil authorities (Federal, State, county, or municipality). For ease of administration, the installation commander will issue a temporary permit to agents who meet these requirements.

§ 552.57 Authorization to solicit.

(a) Solicitation must be authorized by the installation commander. A specific appointment must be made with the individual and must be conducted in family quarters or in other areas designated by the installation commander. Before issuing a permit to solicit, the commander will require and review a statement of past employment. The commander will also determine, if practicable, whether the agent is employed by a reputable firm.

(b) Certain companies seeking solicitation privileges on military installations may arrange personal demonstrations of their products at social gatherings and advise potential customers on their use. If these added services are provided, even though the merchandise sold by these companies is similar to that stocked by the post exchange, the installation commander may authorize solicitation privileges. Requests for this type of solicitation privilege will be coordinated with the local Army and Air Force Exchange Service representative. See paragraph 3-2, Army Regulation 60-10.

§ 552.58 Other transactions.

Commercial transactions with other than individuals (such as non-appropriated fund activities) are restricted to the office of the custodian of the specific fund activity. Business will be conducted during normal duty hours.

§ 552.59 Granting solicitation privileges.

(a) Authorizations (permits) to solicit on Army installations will be in writing and will be valid for periods of 1 year or less.

(b) Particular caution must be taken when granting solicitation permission. The impression that permission is official indorsement or that the Department of the Army favors, sponsors, or recommends the companies, agents, or the policies offered for sale must not be conveyed. As continuing policy, the Department of the Army does not indorse any seller or product.

§ 552.60 Supervision of on-post commercial activities.

(a) *General.* (1) Installation commanders will ensure that all agents are given equal opportunity for interviews, by appointment, at the designated areas.

(2) DOD personnel will not act in any official or business capacity, either directly or indirectly, as liaison with agents to arrange appointments.

(3) Home address of members of the command or unit will not be given to commercial enterprises or individuals engaged in commercial solicitation, except when required by Army Regulation 340-17 and Army Regulation 340-21. The written consent of the individual must be obtained first.

(b) *Hours and location for solicitation.* (1) Military personnel and their dependents will be solicited individually, by specific appointment, and at hours designated by the installation commander or his designee. Appointments will not interfere with any military duty. Door-to-door solicitation without a prior appointment, including solicitation by personnel whose ultimate purpose is to obtain sales (e.g., soliciting future appointments), is prohibited. Solicitors may contact prospective clients initially by methods such as advertising, direct mail, and telephone.

(2) Commanders will provide one or more appropriate locations on the installation where agents may interview prospective purchasers. If space and other factors dictate limiting the number of agents who may use designated interviewing areas, the installation commander may publish policy covering this matter.

(c) *Regulations to be read by solicitors.* A conspicuous notice of installation regulations will be posted in a form and a place easily accessible to all those conducting on-post commercial activities. Each agent authorized to solicit must read this notice and appropriate installation regulations. Copies will be made available on installations. When practicable, as determined by the installation commander, persons conducting on-base commercial activities will be furnished a copy of the applicable regulations. Each agent seeking a permit must acknowledge, in writing,

that he has read the regulations, understands them, and further understands that any violation or non-compliance may result in suspension of the solicitation privilege for himself, his employer, or both.

(d) *Forbidden solicitation practices.* Installation commanders will prohibit the following:

(1) Solicitation during enlistment or induction processing or during basic combat training, and within the first half of the one station unit training cycle.

(2) Solicitation of "mass," group, or "captive" audiences.

(3) Making appointments with or soliciting of military personnel who are in an "on-duty" status.

(4) Soliciting without an appointment in areas used for housing or processing transient personnel, or soliciting in barracks areas used as quarters.

(5) Use of official identification cards by retired or Reserve members of the Armed Forces to gain access to military installations to solicit.

(6) Offering of false, unfair, improper, or deceptive inducements to purchase or trade.

(7) Offering rebates to promote transaction or to eliminate competition. (Credit union interest refunds to borrowers are not considered a prohibited rebate.)

(8) Use of any manipulative, deceptive, or fraudulent device, scheme, or artifice, including misleading advertising and sales literature.

(9) Any oral or written representations which suggest or appear that the Department of the Army sponsors or endorses the company or its agents, or the goods, services, and commodities offered for sale.

(10) Commercial solicitation by an active duty member of the Armed Forces of another member who is junior in rank or grade, at any time, on or off the military installation (Army Regulation 600-50).

(11) Entry into any unauthorized or restricted area.

(12) Assignment of desk space for interviews, except for specific pre-arranged appointments. During appointments, the agent must not display desk or other signs announcing the

name of the company or product affiliation.

(13) Use of the "Daily Bulletin" or any other notice, official, or unofficial, announcing the presence of an agent and his availability.

(14) Distribution of literature other than to the person being interviewed.

(15) Wearing of name tags that include the name of the company or product that the agent represents.

(16) Offering of financial benefit or other valuable or desirable favors to military or civilian personnel to help or encourage sales transactions. This does not include advertising material for prospective purchasers (such as pens, pencils, wallets, and notebooks, normally with a value of \$1 or less).

(17) Use of any portion of installation facilities, to include quarters, as a showroom or store for the sale of goods or services, except as specifically authorized by regulations governing the operations of exchanges, commissaries, non-appropriated fund instrumentalities, and private organizations. This is not intended to preclude normal home enterprises, providing State and local laws are complied with.

(18) Advertisements citing addresses or telephone numbers of commercial sales activities conducted on the installation.

(e) *Business reply system.* Agents who desire to use a business reply card system will include the information on the card which a military member can complete to indicate where and when the member can meet the agent to discuss the subject. The meeting place should be that established in accordance with paragraph (b)(2) of this section, if the meeting is to be on the installation. This procedure should assist in removing any impression that the agent or his company are approved by the Department of the Army. It should further prevent an undesirable situation (e.g., military personnel paged on a public address system or called by a unit runner to report to the orderly room).

§ 552.61 Products and services offered in solicitation.

Products and services, including life insurance, offered and sold on Army installations must comply with the laws

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of the States (and other civil jurisdictions) in which the installations are located. If a dispute or complaint arises, the applicable State will make the determination (§ 552.56).

§ 552.62 Advertising rules and educational programs.

(a) The Department of the Army expects that commercial enterprises soliciting military personnel through advertisements appearing in unofficial military publications will voluntarily observe the highest business ethics in describing both the goods, services, and commodities and the terms of the sale (such as guarantees and warranties). If not, the publisher of the military publication will request the advertiser to observe them. The advertising of credit will conform to the provisions of the Truth-in-Lending Act, as implemented by Regulation Z, published by the Federal Reserve Board (12 CFR part 226).

(b) Commanders will provide appropriate information and educational programs to provide members of the Army with information pertaining to the conduct of their personal commercial affairs (e.g., the protections and remedies offered consumers under the Truth-in-Lending Act, insurance, Government benefits, savings, estate planning, and budgeting). The services or representatives of credit unions, banks, and nonprofit military associations approved by HQDA may be used for this purpose provided their programs are entirely educational. Under no circumstances will the services of commercial agents, including loan or finance companies and their associations, be used for this purpose. Educational materials prepared or used by outside organizations or experts in this field may be adapted or used with applicable permission, provided the material is entirely educational and does not contain applications or contract forms.

§ 552.63 "Cooling off" period for door-to-door sales.

The Federal Trade Commission Rule, 16 CFR part 429, p. 233, effective 7 June 1974, pertains to a cooling off period for door-to-door sales. The rule applies to any sale, lease, or rental of consumer goods or services with a purchase price

of \$25 or more, whether under single or multiple contracts, in which the seller or business representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The purpose of the law is to allow the consumer the right to cancel a transaction at any time prior to midnight of the third business day after the date of the transaction. When any door-to-door sale or transaction takes place anywhere on or off the installation (other than the seller's place of business) the consumer must be provided with a full and complete receipt or copy of a contract pertaining to the sale at the time of its execution which shall include the "cancellation statements" as required by the FTC rule.

§ 552.64 Sound insurance underwriting and programing.

The Department of the Army encourages the acquisition of a sound insurance program that is suitably underwritten to meet the varying needs of the individual and is within his financial means. Accordingly, insurance agents may conduct personal business on an installation, when feasible, with disinterested third-party counseling provided, interviewing hours set aside, and facilities supplied. However, the privilege of insurance solicitation on installations is conditioned on full compliance with this regulation and on the clear understanding that permission is not indorsement of the company or the policies offered for sale.

§ 552.65 Command supervision.

(a) All insurance business conducted on Army installation will be by appointment. When setting up the appointment, insurance agents must identify themselves to the prospective purchaser as an agent for a specific insurance company.

(b) Department of Defense personnel are expressly prohibited from representing any insurance company or dealing either directly or indirectly with any insurance company or any

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recognized representative of an insurance company as an agent or in any official or business capacity for the solicitation of insurance to personnel on a military installation with or without compensation.

(c) In addition to the forbidden practices, installation commanders will prohibit the following:

(1) The use of a commercial insurance agent as a participant in any military-sponsored education or orientation program.

(2) The designation or announcement of any agent as "Battalion Insurance Advisor," "Unit Insurance Counselor," "SGLI Conversion Consultant," or similar quasi-official titles.

§ 552.66 Actions required by agents.

(a) The agent must know that—

(1) Soldiers to be solicited are in grades E-1, E-2, or E-3, and

(2) The solicitation of these members is restricted to specified times and locations designated by the installation commander.

(b) Agents must leave information on the policy applied for with each member in grades E-1, E-2, and E-3 who applies for insurance and the unit insurance officer or counselor. Agents must complete DA Form 2056 (Commercial Insurance Solicitation Record). Blank DA Forms 2056 (not allotment forms) will be available to insurance agents on request. In the "Remarks" section of DA Form 2056, agents will include all pertinent information and a clear statement that dividends are not guaranteed if the presentation refers to dividends.

§ 552.67 Life insurance policy content.

Insurance policies offered and sold on Army installations must—

(a) Comply with the insurance laws of the States or country in which the installations are located. The applicable State insurance commissioner will determine such compliance if there is a dispute or complaint.

(b) Contain no restrictions because of military service or military occupational specialty of the insured, unless restrictions are clearly indicated on the face of the policy.

(c) Plainly indicate any extra premium charges imposed because of mili-

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tary service or military occupational specialty.

(d) Not vary in the amount of death benefit or premium based on the length of time the policy has been in force, unless it is clearly described therein.

(e) For purposes of paragraphs (b) through (d) of this section, be stamped with an appropriate reference on the face of the policy to focus attention on any extra premium charges imposed and on any variations in the amount of death benefit or premium based on the length of time the policy has been in force.

(f) Variable life insurance policies may be offered provided they meet the criteria of the appropriate insurance regulatory agency and the Securities and Exchange Commission.

(g) Show only the actual premiums payable for life insurance coverage.

§ 552.68 Minimum requirements for agents.

(a) In the United States, its territories, and the Commonwealth of Puerto Rico, agents may be authorized to solicit on an installation provided—

(1) Both the company and its agents are licensed in the State in which the installation is located. "State" as it pertains to political jurisdictions includes the 50 States, territories, and the Commonwealth of Puerto Rico.

(2) The application to solicit is made by an accredited company (§ 552.69).

(b) On Army military installation in foreign areas.

(1) An agent may solicit business on U.S. military installations in foreign areas if—

(i) The company he represents has been accredited by DOD;

(ii) His name is on the official list of accredited agents maintained by the applicable major command;

(iii) His employer, the company, has obtained clearance for him from the appropriate overseas commanders; and

(iv) The commanding officer of the military installation on which he desires to solicit has granted him permission.

(2) To be employed for overseas solicitation and designated as an accredited agent, agents must have at least 1 year

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of successful life insurance underwriting in the United States or its territories. Generally, this is within the 5 years preceding the date of application.

(3) General agents and agents will represent only one accredited commercial insurance company. The overseas commander may waive this requirement if multiple representation can be proven to be in the best interest of DOD personnel.

(4) An agent must possess a current State license. The overseas commander may waive this requirement on behalf of an accredited agent who has been continuously residing and successfully selling life insurance in foreign areas and forfeits his eligibility for a State license, through no fault of his own, due to the operation of State law or regulation governing domicile requirements, or requiring that the agent's company be licensed to do business in that State. The request for a waiver will contain the name of the State and jurisdiction, which would not renew the agent's license.

(5) An agent, once accredited in an overseas area, may not change his affiliation from the staff of one general agent to another, unless the losing company certifies, in writing, that the release is without justifiable prejudice. Unified commanders will have final authority to determine justifiable prejudice.

(6) Where the accredited insurer's policy permits, an overseas accredited life insurance agent, if duly qualified to engage in security activities either as a registered representative of a member of the National Association of Securities Dealers or an associated person of a broker/dealer registered with the Securities and Exchange Commission only, may offer life insurance and securities for sale simultaneously. In cases of commingled sales, the allotment of pay for the purchase of securities cannot be made to the insurer.

(7) Overseas commanders will exercise further agent control procedures as necessary.

§ 552.69 Application by companies to solicit on military installations in the United States, its territories, or the Commonwealth of Puerto Rico.

Before a company may be accredited to solicit on a military installation, the commander must receive a letter of application, signed by the company's president or vice president. It must be understood that a knowing and willful false statement is punishable by fine or imprisonment (18 U.S.C. 1001). The letter of application will—

(a) Report the States in which the company is qualified and licensed to sell insurance.

(b) Give the name, complete address, and telephone number of each agent who will solicit on the installation if approval is granted; the State in which licensed; the date of licensing and the expiration date; and a statement of agreement to report all future additions and separations of agents employed for solicitation on the installation.

(c) List all policies and their form numbers that are to be offered for purchase on the installation. Application will be offered for purchase and that these policies meet the requirements of § 552.67(d).

Attest that—

(1) The privilege of soliciting the purchase of life insurance is not currently suspended or withdrawn from the company by any of the military departments.

(2) The privilege of soliciting the purchase of life insurance is not currently suspended or withdrawn by any Armed Forces installations from any of the agents named.

(3) The company and the agent named have proper and currently validated licenses as required by § 552.68.

(4) The company assumes full responsibility for its agents complying with this regulation and with any regulations published by the installation commander.

§ 552.70 Applications by companies to solicit on installations in foreign countries.

(a) Each May and June only, DOD accepts applications from commercial

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life insurance companies for accreditation to solicit the purchase of commercial life insurance on installations in foreign countries for the fiscal year beginning the following October.

(b) Information about permission to solicit on installations outside the United States (exclusive of its territories and the Commonwealth of Puerto Rico) is contained in instructions issued by DOD. Applications and any correspondence relating thereto should be addressed to Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics), ATTN: Directorate, Personnel Services, ODASD(MPP), WASH DC 20301.

(c) Advice of action taken by DOD is announced annually by letters sent to overseas commanders as soon as practicable after 15 September. The list of companies and agents may vary from year to year.

§ 552.71 Associations—general.

The recent growth of quasi-military associations offering various insurance plans to military personnel is recognized. Some associations are not organized within the supervision of insurance laws of either the Federal or State Government. While some are organized for profit, others function as nonprofit associations under Internal Revenue Service regulations. Regardless of how insurance plans are offered to members, the management of the association is responsible for assuring that all aspects of its insurance programs comply fully with the instructions of this regulation.

§ 552.72 Use of the allotment of pay system.

(a) Allotments of military pay will be made in accordance with Army Regulation 37-104-3. Allotments will not be made to an insurer for the purchase of a commingled sale (e.g., retirement plans, securities).

(b) Under no circumstances will agents have allotment forms in their possession or attempt to assist or coordinate the administrative processing of such forms.

(c) For personnel in grades E-1, E-2, and E-3, at least 7 days should elapse between the signing of a life insurance application or contract and the certifi-

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cation of an allotment. The purchaser's commanding officer may grant a waiver of this requirement for good cause, such as the purchaser's imminent permanent change of station.

§ 552.73 Minimum requirements for automobile insurance policies.

Policies sold on installations by both accepted and accredited insurers will meet all statutory and regulatory requirements of the State or host nation in which the installation is located. Policies will not be issued in amounts lower than the minimum limits prescribed by these authorities. In addition, policies will—

(a) Clearly identify the name of the insurer and the full address.

(1) Applications without the name and address of the insurer underwriting the insurance may be used; the names of sales or underwriting agents alone is not sufficient.

(2) Post office box addresses are not an acceptable address.

(b) Provide bodily injury and property damage liability coverage for all drivers authorized by the named insured to operate the vehicle. Military indorsements, excluding persons other than the named insured, whether in the military or not, are not acceptable.

(c) Not contain unusual limitations or restrictions, including, but not limited to, the following:

(1) Limitations specifying that coverage is afforded only when the insured vehicle is operated in the designated geographic areas in the United States (e.g., coverage applicable only on a military reservation). If the installation is located within the United States, the standard provision limiting coverage to the United States and Canada is acceptable.

(2) Coverage limited to exclude liability for bodily injury to passengers and guests if such a liability exists as a matter of law.

§ 552.74 Grounds for suspension.

The installation commander will deny or revoke permission of a company and its agents to conduct commercial activities on the installation if

it is in the best interests of the command. The grounds for taking this action will include, but will not be limited to, the following:

(a) Failure of company to meet the licensing and other regulatory requirements prescribed in § 552.56.

(b) An agent or representative engaged in any of the solicitation practices prohibited by this regulation.

(c) Substantiated adverse complaints or reports about the quality of the goods, services, or commodities and the manner in which they are offered for sale.

(d) Personal misconduct by agents or representatives while on the military installation.

(e) The possession of or any attempt to obtain allotment forms, or to assist or coordinate the administrative processing of such forms.

(f) Knowing and willful violation of the Truth-in-Lending Act or Federal Regulation Z.

(g) Failure to incorporate and abide by the Standards of Fairness policies. (See § 552.83.)

§ 552.75 Factors in suspending solicitation privileges.

In suspending privileges for cause, the installation commander will determine whether to limit suspension to the agent alone or to extent it to the company he represents. This decision will be based on the circumstances of the particular case. Included are—

(a) The nature of the violations and their frequencies;

(b) The extent to which other agents of the company have engaged in these practices;

(c) Previous warnings or suspensions; and

(d) Other matters that show the company's guilt or failure to take reasonable corrective or remedial action.

§ 552.76 Preliminary investigation.

When unauthorized solicitation practices have apparently occurred, an investigating officer will be appointed (Army Regulation 15-6). The investigating officer will gather sworn statements from all interested parties who have any knowledge of the alleged violations.

§ 552.77 Suspension approval.

The installation commander will personally approve all cases in which solicitation privileges have been denied or suspended for cause. This includes agents, companies, or other commercial enterprises. Authority to temporarily suspend solicitation privileges for 30 days or less while an investigation is conducted may be delegated by the commander to the installation solicitation officer or other designee. Exception to this time frame must be approved by The Adjutant General (DAAG-PSI) or by the overseas commander. The commander will make the final determination.

§ 552.78 "Show cause" hearing.

Before suspending the solicitation privilege, the company and the agent will have a chance to show cause why the action should not be taken. "Show cause" is an opportunity for the company, the agent, or both to present facts informally on their behalf. The company and agent will be notified, by letter, far in advance of the pending hearing. If unable to notify the agent directly or indirectly of the hearing, then the hearing may proceed.

§ 552.79 Suspension action.

(a) When suspended for cause, immediately notify the company and the agent, in writing, of the reason. When the installation commander determines that suspension should be extended throughout the Department of the Army (whether for the agent or his company), send the case to HQDA (DAAGPSI) WASH DC 20314. Provide all factors on which the commander based his decision concerning the agent or company (exempt report, para 7-20, Army Regulation 335-15). This notification should include—

(1) Copies of the "show cause" hearing record or summary,

(2) The installation regulations or extract,

(3) The investigation report with sworn statements by all personnel affected by or having knowledge of the violations,

(4) The statement signed by the agent as required in § 552.60(c).

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(5) Notification letters sent to the company and the agent advising of suspension of installation solicitation privileges, and

(6) If the agent failed to respond to notification of the hearing, a copy of the letters sent to him and the company offering them the opportunity to be heard.

(b) If the grounds for suspension bear significantly on the eligibility of the agent or company to hold a State license or to meet other regulatory requirements, notify the appropriate State or local civil authorities.

§ 552.80 Suspension period.

All solicitation privileges suspended by installation commanders will be for a specific time. Normally, it will not exceed 2 years. When the suspension period expires, the agent may reapply for permission to solicit at the installation authorizing the denial or suspension. Requests for suspension periods in excess of 2 years will be sent with the complete case to HQDA (DAAG-PSI) WASH DC 20314, for approval. Lesser suspension may be imposed pending decision.

§ 552.81 Agents or companies with suspended solicitation privileges.

Quarterly, HQDA will publish the names of agents and companies whose solicitation privileges have been suspended throughout the Department of the Army. If no change has occurred in the latest quarter, no list will be published.

§ 552.82 Exercise of "off limits" authority.

(a) In appropriate cases, installation commanders may have the Armed Forces Disciplinary Control Board investigate reports that cash or consumer credit transactions offered military personnel by a business establishment off post are usurious, fraudulent, misleading, or deceptive. If it is found that the commercial establishment engages in such practices; that it has not taken corrective action on being duly notified; and that the health, morale, and welfare of military personnel would be served, the Armed Forces Disciplinary Control Board may recommend that the offending business es-

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tablishment be declared "off limits" to all military personnel. The procedures for making these determinations are in Army Regulation 190.24.

(b) On finding that a company transacting cash or consumer credit with members of the Armed Forces, nationwide or internationally, is engaged in widespread usurious, fraudulent, or deceptive practices, the Secretary of the Army may direct Armed Forces Disciplinary Control Boards in all geographical areas where this occurred to investigate the charges and take appropriate action.

§ 552.83 Standards of fairness.

(a) No finance charge contracted for, made, or received under any contract shall be in excess of the charge which could be made for such contract under the law of the place in which the contract is signed in the United States by the serviceman. In the event a contract is signed with a United States company in a foreign country, the lowest interest rate of the state or states in which the company is chartered or does business shall apply.

(b) No contract or loan agreement shall provide for an attorney's fee in the event of default unless suit is filed in which event the fee provided in the contract shall not exceed 20 percent of the obligation found due. No attorney's fees shall be authorized if he is a salaried employee of the holder.

(c) In loan transactions, defenses which the debtor may have against the original lender or its agent shall be good against any subsequent holder of the obligation. In credit transactions, defenses against the seller or its agent shall be good against any subsequent holder of the obligation provided that the holder had actual knowledge of the defense or under condition where reasonable inquiry would have apprised him of this fact.

(d) The debtor shall have the right to remove any security for the obligation beyond State or national boundaries if he or his family moves beyond such boundaries under military orders and notifies the creditor, in advance of the removal, of the new address where the security will be located. Removal of the security shall not accelerate payment of the obligation.

(e) No late charge shall be made in excess of 5 percent of the late payment, or \$5 whichever is the lesser amount. Only one late charge may be made for any tardy installment. Late charges will not be levied where an allotment has been timely filed, but payment of the allotment has been delayed.

(f) The obligation may be paid in full at any time or through accelerated payments of any amount. There shall be no penalty for prepayment and in the event of prepayment, that portion of the finance charges which have insured to the benefit of the seller or creditor shall be prorated on the basis of the charges which would have been ratably payable had finance charges been calculated and payable as equal periodic payments over the term of the contract, and only the prorated amount to the date of prepayment shall be due. As an alternative, the "Rule of 78" may be applied, in which case its operation shall be explained in the contract.

(g) No charge shall be made for an insurance premium or for finance charges for such premium unless satisfactory evidence of a policy, or insurance certificate where State insurance laws or regulations permit such certificates to be issued in lieu of a policy, reflecting such coverage has been delivered to the debtor within 30 days after the specified date of delivery of the item purchased or the signing of a cash loan agreement.

(h) If the loan or contract agreement provides for payments in installments, each payment, other than the down payment, shall be in equal or substantially equal amounts, and installments shall be successive and of equal or substantially equal duration.

(i) If the security for the debt is repossessed and sold in order to satisfy or reduce the debt, the repossession and resale will meet the following conditions:

(1) The defaulting purchaser will be given advance written notice of the intention to repossess;

(2) Following repossession, the defaulting purchaser will be served a complete statement of his obligations and adequate advance notice of the sale;

(3) He will be permitted to redeem the item by payment of the amount due before the sale, or in lieu thereof submit a bid at the sale;

(4) There will be a solicitation for a minimum of three sealed bids unless sold at auction;

(5) The party holding the security, and all agents thereof are ineligible to bid;

(6) The defaulting purchaser will be charged only those charges which are reasonably necessary for storage, reconditioning, and resale; and

(7) He shall be provided a written detailed statement of his obligations, if any, following the resale and promptly refunded any credit balance due him, if any.

(j) A contract for personal goods and services may be terminated at any time before delivery of the goods or services without charge to the purchaser. However, if goods made to the special order of the purchaser result in preproduction costs, or require preparation for delivery, such additional costs will be listed in the order form or contract. No termination charge will be made in excess of this amount. Contracts for delivery at future intervals may be terminated as to the undelivered portion, and the purchaser shall be chargeable only for that proportion of the total cost which the goods or services delivered bear to the total goods called for by the contract. (This is in addition to the right to rescind certain credit transactions involving a security interest in real estate provided by section 125 of the Truth-in-Lending Act, Pub. L. 90-321 (15 U.S.C. 1601) and § 226.9 of Regulation Z (12 CFR part 226).

Subpart F—Fort Lewis Land Use Policy

SOURCE: 51 FR 11723, Apr. 7, 1986, unless otherwise noted.

§ 552.84 Purpose.

(a) This regulation establishes procedures governing entry upon the Army training areas on Ft. Lewis, WA, designated in § 552.84(c) of this section.

(b) These procedures have been established to ensure proper use of these Army training areas. Uninterrupted

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military use is vital to maintain and improve the combat readiness of the US Armed Forces. In addition, conditions exist within these training areas which could be dangerous to any unauthorized persons who enter.

(c) This regulation governs all use of the Ft Lewis Military Reservation outside cantonment areas, housing areas, Gray Army Airfield, Madigan Army Medical Center, and recreational sites controlled by the Director of Personnel and Community Activities (DPCA). The areas governed are designated on the overprinted 1:50,000 Ft Lewis Special Map as Impact Areas, lettered Close-In Training Areas (CTAs), or numbered Training Areas (TAs), and are hereafter referred to as the range complex. A full sized map is located at the Ft Lewis Area Access Office, Bldg. T-6127.

§ 552.85 Applicability.

This regulation is applicable to all military and civilian users of the range complex.

§ 552.86 References.

(a) AR 405-70 (Utilization of Real Estate).

(b) AR 405-80 (Granting Use of Real Estate).

(c) AR 420-74 (Natural Resources—Land, Forest, and Wildlife Management).

(d) FL Reg 215-1 (Hunting, Fishing, and Trapping).

(e) FL Reg 350-30 (I Corps and Fort Lewis Range Regulations).

(f) DA Form 1594 (Daily Staff Journal or Duty Officer's Log).

(g) HFL Form 473 (Range, Facility, and Training Area Request).

§ 552.87 General.

(a) *Military training.* All use of the Ft. Lewis range complex for military training is governed by FL Reg 350-30. Military training always has priority for use of the range complex.

(b) *Hunting.* Hunting, fishing, and trapping on Ft. Lewis are governed by FL Reg 215-1.

(c) *Recreational use.* (1) All individuals or organizations, military or civilian, desiring access to the range complex for recreational purposes must apply for and possess a valid Ft. Lewis area

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access permit except as outlined in § 552.87(c) of this section. Procedures are described in §§ 552.91 and 552.92.

(2) Authorized Department of Defense (DOD) patrons enroute to or using DPCA recreational areas (appendix A) are not required to possess a permit. Travel to and from DPCA recreational use areas is restricted to the most direct route by paved or improved two lane roads, and direct trail access. Other travel in the range complex is governed by this regulation.

(3) Recreational use of CTAs without permit is authorized only for DOD personnel of Ft. Lewis and their accompanied guests. Driving Privately Owned Vehicles (POV) in the CTAs is restricted to paved or improved gravel roads, except for direct trail access to DPCA recreational areas at Shannon Marsh and Wright's Lake. Other recreational activities authorized in the CTAs for DOD personnel without permit are walking, jogging and picnicking at established picnic sites.

(4) Organizations or groups whose authorized recreational activity is of such a nature as to require special advanced confirmed commitments from Ft. Lewis for land, including Scout Camporees, seasonal or one-time regional meets, and so on, must apply to the Ft. Lewis Area Access Section in writing. If the area is available, the request will be forwarded to the Director of Engineering and Housing (DEH) for lease processing. Not less than 180 days are required for processing of these special requests. Organizations or groups whose activity requires military equipment or other special support from Ft. Lewis must also apply in writing. If a permit is granted, the special assistance request will be coordinated by the Public Affairs and Liaison Office (PALO). Sample request guide and mailing address are available for the Access Section.

(5) All other recreational uses require a permit in accordance with this regulation.

(d) *Commerical use.* Individuals or organizations using the range complex for profit-generating activities must possess a Real Estate Agreement. Requests for Real Estate Agreements must be directed to the Real Property

Branch, DEH, IAW AR 405-80. Real Estate Agreements issued after publication of this regulation will require Real Estate Agreement holders to notify the Area Access Section of their entry onto, and departure from, the range complex. Profit generating activities include individuals or organizations that collect fees for services or that sell materials collected from the range complex. Proposed timber sales require prior coordination with the Director of Plans, Training and Mobilization (DPTM) to ensure that access can be granted for the appropriate areas and times.

(e) *Installation service and maintenance.* DOD personnel and contractual personnel on official business are authorized on the Ft. Lewis Military Reservation range complex as provided in appendix B. Access to hazard areas for such personnel is governed by FL Reg 350-30.

(f) *Non-DOD personnel in transit.* Individuals in transit along State or County maintained roads or roads designated for public access by the Installation Commander require no special permits. These routes are listed in appendix B.

(g) *Trespassers.* Persons or organizations entering or using the Ft. Lewis range complex outside one of the access channels described above are trespassing on a controlled-access federal reservation and are subject to citation by the military police. Trespassers may be barred from subsequent authorized access to the installation, and will be subject to the provisions of this section.

(h) *Failure to comply.* Any person who enters the range complex of the Ft. Lewis Military Reservation without the consent of the Commanding Officer or his designated representative is in violation of the provisions of this regulation. Offenders may be subjected to administrative action or punishment under either the Uniform Code of Military Justice (UCMJ) or title 18 U.S.C. 1382, of title 50 U.S.C. 797, as appropriate to each individual's status. Administrative action may include suspension or loss of recreational privileges, or permanent expulsion from the Ft. Lewis Military Reservation.

§ 552.88 Responsibilities.

(a) *DPTM.* Operate the Ft. Lewis Area Access Section as a part of Range Control.

(b) *Law Enforcement Command.* Provide law enforcement and game warden patrols to respond to known or suspected trespassers or other criminal activity on the range complex.

(c) *DEH.* Coordinate with the Ft. Lewis Area Access Section (thru DPTM) all Real Estate Agreements, timber sales, wildlife management, construction, and other DEH or Corps of Engineers managed actions occurring on the range complex. Ensure all Real Estate Agreements issued after publication of this regulation require Real Estate Agreement holders to notify the Area Access Section of their entry onto, and departure from, the range complex.

(d) *DPCA.* Manage the Installation Hunting, Fishing, and Trapping programs in conjunction with DEH Wildlife. Manage those picnic and recreation sites located in the range complex, as listed in appendix A.

(e) *PALO.* Make initial public release of Ft. Lewis Land Use Policy and area access procedures, and provide periodic updates through media. Act as interface, when necessary, to resolve community relations issues related to land use. Coordinate special assistance requests per § 552.86(b). Inform DPTM of public response to policy execution.

§ 552.89 Activities.

(a) Examples of authorized activities are listed in appendix C.

(b) Activities listed in appendix D are not authorized on Ft. Lewis and no permit will be issued.

§ 552.90 Permit office.

DPTM Range Control operates the Ft. Lewis Area Access Section in Bldg T-6126 to issue permits and grant non-training access to the range complex. The office is open 0700-1900 hours, seven days a week, for permit processing and access control. At other hours, Range Operations will take calls for access only.

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§ 552.91 Individual permit procedures.

(a) Individuals desiring area access for authorized activities (see appendix C) must register in person at the Ft. Lewis Area Access Section, Bldg T-6127. Minimum age is 18 years, except for active duty military personnel. Individuals under 18 years of age must be sponsored and accompanied by a parent or legal guardian.

(b) Individual registration requires:

(1) Picture ID.

(2) Personal information including Social Security Number.

(3) Vehicle identification and license number, if a vehicle is to be brought on post.

(4) Names and ages of minor family members who will accompany a registered person.

(5) Liability release signature.

(6) Certification that intended activities are on the authorized list and are not for-profit commercial activities. Persons who submit false certificates are subject to prosecution in Federal Court Under 5 U.S.C. 1001, and the provisions of this section.

(c) A permit and a vehicle pass will be issued to each person authorized area access. The permit is not transferable. Entry to the range complex without the issued permit is forbidden.

(d) Individual write-in requests may be authorized for extraordinary circumstances.

§ 552.92 Group permit procedures.

(a) A collective permit will be issued to an organization desiring to conduct a group event. The group leader must register in person at the Ft. Lewis Area Access Section, Bldg T-6127, and must be 21 years of age or older except for active duty military personnel.

(b) Group registration requires the information listed in §552.91, except that a legible list of names of all persons in the group is required in lieu of the names and ages of minors.

(c) Group permits will be issued with the requirement that all members of the group will be with the leader throughout the event. If the group plans to separate while still on post, sub-group leaders must be appointed and must each obtain a permit as noted in this section. The group leader permit is not transferable.

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(d) Other group write-in requests may be authorized for extraordinary circumstances.

§ 552.93 Permit deadline and duration.

(a) Permits will be issued 0700-1900 hours daily and may be obtained no earlier than six months prior to the event date. Permits for authorized activities may be requested and issued on the day of the event, but must be in hand prior to individual or group entry on to the range complex.

(b) Permits for one-time events are valid for the duration of the event. Otherwise, permits are valid for six months and are not renewable. When a permit expires, the holder must re-apply as described in this section.

(c) Access hours are thirty minutes after daylight to thirty minutes before dark, except for authorized overnight activities and as outlined in FL Reg 215-1.

§ 552.94 Area access procedures.

(a) Holders of current permits desiring access must call the Ft. Lewis Area Access Section on the date of entry at the telephone numbers listed on the permit and state the area to be entered, estimated time of entry, and estimated time of departure. This check-in may also be done in person at the Ft. Lewis Area Access Section, Bldg T-6126. Procedures for permits and access for hunting and trapping are outlined on FL Reg 215-1.

(b) The Ft. Lewis Area Access Section will determine whether the area is available and, if so, authorize entry. If the area is not open for permit holders, and an alternate area cannot be provided, access will be denied. All calls and actions will be recorded on DA Form 1594 (Daily Staff Journal or Duty Officer's Log).

(c) Permit holders must call or visit the Ft. Lewis Area Access Section immediately after leaving the authorized area to obtain checkout clearance. If a checkout is not received within three hours after the estimated time of departure, the Ft. Lewis Area Access Section will call the contact phone number in the permit holder's record and, if necessary, initiate a search through the Military Police Desk. Permit holders who fail to call out twice will be

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barred from area access for thirty days. A third failure to check out will result in suspension of the permit for the remainder of its normal duration or ninety days, whichever is longer.

(d) Failure to comply with the provisions of this paragraph shall subject all persons to the provisions of this section.

§ 552.95 Compatible use.

(a) Unit commanders may, during training area scheduling, request that no permit holders be allowed in their areas. Justification must be in the remarks column of HFL Form 473 (Range, Facility and Training Area Request). If this restriction is granted, the Ft. Lewis Area Access Section will close the appropriate areas. In the absence of a trainer's request for closure, the following military activities are considered incompatible with non-training access and will, when scheduled, block affected areas:

(1) Live-fire training events with surface danger zones falling into training areas.

(2) Parachute and air assault operations.

(3) Field artillery firing. The numbered training area occupied by the weapons will be closed.

(4) Motorized infantry operations that will use the majority of the road net in a training area, traveling at higher than normal speeds.

(5) Training employing riot agents or smoke generating equipment.

(b) The Range Officer may close training areas based on multiple occupation by large units.

(c) Areas allocated to modern firearm deer hunting are closed to training and recreational activities. When State Fish and Game pheasant release sites can be isolated by swamps, streams, or roads from the rest of a training area, multiple occupancy is authorized.

§ 552.96 Violations.

Anyone observing violators of this or other regulations must report the activity, time, and location to the Ft. Lewis Area Access Section or the Military Police as soon as possible.

§ 552.97 Communications.

The Ft. Lewis Area Access Section communicates by telephone as noted on the permit. Tactical FM contact may be made through Range Operations.

Subpart G—Firearms and Weapons

SOURCE: 53 FR 1752, Jan. 22, 1988, unless otherwise noted.

§ 552.98 Purpose.

This regulation establishes the criteria for possessing, carrying, concealing, and transporting firearms and/or other deadly or dangerous weapons and instruments on Fort Stewart/Hunter Army Airfield (AAF) installations.

§ 552.99 Applicability.

(a) The provisions of this regulation apply to all Department of Defense (DOD) military; civilian personnel; U.S. Army Reserve/National Guard (USAR/NG) personnel on post for active duty training or inactive training in conjunction with Active Army elements, military family members; civilians employed on, visiting, or traveling through or on the Fort Stewart/Hunter AAF installation.

(b) This regulation will not become void in its entirety merely because one part or portion thereof is declared unconstitutional or void.

(c) This regulation is punitive. Military violators of the regulations may be prosecuted under the Uniform Code of Military Justice or may be subject to administrative action. Civilian violators may be subject to administrative or judicial action under title 18, United States Code, or title 16, Criminal Code of Georgia.

§ 552.100 Definitions.

(a) *Ammunition.* Projectiles together with their fuses, propelling charges, and primers that are designed to be expelled from a firearm. This includes any type of military and commercial ammunition (ball, tracer, incendiary, blank, shotgun, black powder, and shot). Items shall only be considered as

ammunition when loaded into a cartridge with its bullets and primer.

(b) *BB and pellet guns.* Any type rifle, pistol or other instrument designed or redesigned, made or remade, modified or remodified to expel BBs or pellets by springs, compressed air, CO2 or any other compressed gas cartridge.

(c) *Dangerous instruments.* Any device which is designed or redesigned, made or remade, modified or remodified to be used as an offensive or defensive weapon. Devices of this type include but are not limited to:

(1) "Constant companion" or any similar weapon, designed or redesigned, made or remade, modified or remodified to be worn as a belt buckle, brass knuckles, "Knucklers," and "Knucks."

(2) Studded or spiked wrist bands, or any device designed or redesigned, made or remade, modified or remodified to fit over the hand or wrist which can be used to cause grave bodily harm.

(3) Black jacks, slapjacks, slappers, saps, including homemade substitutes, other bludgeons (with or without handles), and metal pipes.

(4) "Nanchaku" (num-chucks), two or more sticks connected by rope, cord or chain and normally used as a martial arts weapon. "Shuriken", a disc or any geometrical object designed to be thrown as a weapon. "Manrikigusari" or "Kusari," a rope or cord joined to a weight at each end and designed to be used as a weapon.

(5) Any finger ring with blades or sharp objects that are capable of being projected/extended from the surface of the ring.

(6) Any device capable and primarily intended for discharging darts or needles.

(7) All firearms.

(d) *Explosive, incendiary, and pyrotechnic devices.* Any type of military or commercial explosive, incendiary, gas or smoke bomb, grenade, rocket, missile, mine, blasting cap, "dummy" and/or practice device such as simulators, and other similar detonating devices which are capable of being altered to contain a live charge, and pyrotechnic devices such as firecrackers, cherry bombs, bottlerockets, and starclusters.

(e) *Firearms.* Any type of weapon which is designed or redesigned, made

or remade, modified or remodified to expel a projectile by action of any explosion, and the frame or receiver of any such weapon. This does not include antique firearms, antique replicas, and those modern firearms which have been rendered permanently incapable of being fired.

(f) *Knives, sabers, swords, and machetes.* Any instrument having a sharp blade which is fastened to a handle, or made with a handle. Measurement of the blade will be from the tip of the blade to the point where the blade meets the handle. This includes folding knives, switchblades, gravity knives, stilettos, lock blade knives, swords, sabers, and machetes.

(g) *Machine gun and automatic weapon.* A weapon designed or redesigned, made or remade, modified or remodified to automatically fire more than one shot by a single pull of the trigger.

(h) *Public gathering.* Shall include, but shall not be limited to, athletic or sporting events, schools or school functions, churches or church functions, rallies, or establishments at which alcoholic beverages are sold for consumption on the premises.

(i) *Shotgun.* A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder; and designed or redesigned, made or remade, to use the energy or the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(j) *Sawed-off shotgun.* A shotgun or any weapon made from a shotgun whether by alteration, modification, or otherwise having one or more barrels less than 18 inches in length or if such weapon as modified has an overall length of less than 20 inches.

(k) *Sawed-off rifle.* A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder; and designed or redesigned, made or remade, to use the energy of the explosive in a fixed metallic cartridge to fire only as a single projectile through a rifle bore for each single pull of the trigger; and which has a barrel or barrels of less than 16 inches or has an overall length of less than 26 inches.

(1) *Silencer*. Any device used for suppressing or diminishing the report of any firearm.

(m) *Weapon*. An instrument used in an offensive or defensive manner.

§ 552.101 Prohibitions.

(a) *Prohibited items*. It is prohibited to possess, carry, conceal, transport, store, transfer or sell any of the following weapons or devices on, through or within the confines of Fort Stewart and Hunter AAF installations unless specifically allowed elsewhere in this regulation:

(1) Sawed-off shotgun.

(2) Sawed-off rifle.

(3) Machine gun and automatic weapons.

(4) Silencers.

(5) Dangerous instruments as defined in § 552.100(c).

(6) Explosives, Incendiary and Pyrotechnic Devices, as defined in § 552.100(d).

(7) Knives with automatic blade openers (*i.e.*, switch blades, gravity knives, stilettos) of any blade length. Folding or fixed bladed knives with a blade length of more than 3 inches. Swords, sabers, and machetes with sharpened blades.

(8) Any object which carries an electrical current of sufficient wattage to deliver a shock to a person, such as cattle prods, "taser" or "public defenders."

(b) *Carrying a concealed weapon*. A person commits the offense of carrying a concealed weapon when he/she knowingly has or carries about his/her person, unless in an open manner and fully exposed to view, any bludgeon, metal knuckles, firearm, or knife designed for the purpose of offense and defense, or any other dangerous or deadly weapon or instrument of like character outside of his/her home or place of business.

(c) *Carrying Deadly Weapons to or at Public Gatherings*. A person commits an offense under this section when he/she carries to or while at a public gathering any explosive compound, firearm, or knife designed for the purpose of offense and defense. This paragraph shall not apply to competitors participating in organized sporting events, military personnel in a formation when a weap-

on is required, or to police/security personnel while in performance of their duties.

(d) *Prohibited Possession and Storage*. It is prohibited for a person, military or civilian, to possess or store ammunition, firearms, knives with blades more than 3 inches, bows and arrows, crossbows, and BB and pellet guns, in locations other than those locations specified in § 552.102, except under conditions specified in § 552.103. Prohibited locations for these items include, but are not limited to, living spaces and common areas of billets, squad rooms, privately-owned vehicles, exterior storage sheds, camper trailers, and offices. Commanders will designate an arms room and times for weapons turn-in. During periods when arms rooms are closed, the Staff Duty Officer (SDO) will ensure the weapon is secured in accordance with (IAW) this regulation. A receipt will be given for each weapon received, reflecting the weapon's make, serial number, identity of owner and other data deemed appropriate.

(e) *Exemptions*. Nothing in this regulation shall prohibit:

(1) Military members or DOD civilian employees from possessing or using military weapons, military ammunition or explosives, or military devices in a lawful manner while in the performance of their military duties or for training or other authorized purposes, as prescribed by applicable Army Regulations.

(2) Military and DOD civilian personnel, while in the performance of official law enforcement duties, from possessing or using government ammunition, explosives or devices in a lawful manner, as prescribed by applicable laws or regulations or by their lawful superiors.

(3) Federal, state, county or local law enforcement personnel, while in the performance of official law enforcement duties, from possessing or using government or privately-owned weapons, ammunition, explosives or devices in a lawful manner, as prescribed by applicable laws or regulations or by their lawful superiors.

(4) Government contractors, while in performance of their contract from possessing or using weapons, ammunition, explosives or devices, IAW the

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provisions of their contract and as determined by the Contracting Officer.

(5) Individuals with Federal Firearms Licenses (Class III) from possessing, carrying, and transporting Class III weapons IAW Federal regulations; however, they are prohibited from concealing, storing, transferring, or selling Class III weapons within the confines of Fort Stewart and Hunter AAF.

(6) Individuals from possessing, carrying, transporting, or storing decorative, ornamental, and ceremonial swords and sabers within the confines of Fort Stewart and Hunter AAF when used strictly for display and ceremonies. When used as a cutting instrument, they become a prohibited item.

(7) Individuals and agencies from possessing, transporting, storing, selling, or using fixed bladed knives with a blade length of more than 3 inches when used for their lawful purpose (*i.e.*, steak knives, cooking knives, hunting knives) and when in compliance with all other requirements in this regulation.

§552.102 Requirements for possession and use.

DOD military and civilian personnel, their family members, USAR/NG personnel and civilians employed on, visiting or traveling through this installation may possess legally-defined and privately-owned firearms, ammunition, BB and pellet guns, knives, bows and arrows, and crossbows under the following conditions:

(a) Privately-owned firearms, crossbows, BB and pellet guns possessed or stored on the installation must be registered at the installation Provost Marshal's Office within three working days after arrival on the installation, or after obtaining the weapon, except:

(1) Firearms legally brought onto the installation for the purpose of hunting or firing at an approved firing range, and only for the period of time the person possessing the firearms is hunting or firing on the range.

(2) Firearms carried by federal, state, county or local law enforcement personnel when in the performance of official law enforcement duties.

(3) Firearms carried or transported, in full compliance with Georgia State Laws, on Georgia State Highways 119

and 144 by personnel traveling through the installation only. Travel off of these state highways or stopping, other than for emergency purposes, while on the installation is prohibited.

(b) Personnel residing in family housing, BOQ, BEQ/VOQ and guest housing, may store legally-acquired, authorized ammunition, knives with a blade measuring more than 3 inches, bows and arrows, registered crossbows, registered BB and pellet guns and registered firearms within their quarters.

(c) Personnel residing in troop billets may store legally-acquired authorized ammunition, knives and blades measuring more than 3 inches, bows and arrows, registered crossbows, registered BB and pellet guns and registered firearms in unit arms rooms. The unit arms room should utilize a standard weapons card and log book to document storage, removal, and return.

(d) Persons using weapons borrowed from another must have the documentation required in §552.103(a) as applicable in their possession when carrying, transporting or using the weapon on the installation.

(e) Persons under the age of 17 must be accompanied by a person over the age of 21 who will be responsible for compliance with the requirements of this regulation while hunting or target shooting on the installation and when purchasing legal arms (including knives with blades over 3 inches) and ammunition from installation retail outlets.

(f) Persons must be in compliance with federal and state laws regarding possession (*i.e.*, age, criminal record restrictions, etc.)

(g) Storage, accountability and registration procedures will be IAW Army Regulation 190-11 and supplements.

§552.103 Requirements for carrying and use.

Persons legally authorized to possess firearms, ammunition, knives (with blades longer than 3 inches), bows and arrows, and crossbows, may carry or transport legally possessed and registered (if required) weapons under the following conditions.

(a) For purposes of hunting: From quarters, on or off the installation, by the most direct route to hunting area

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or Pass and Permit Office and return. Stopping at other installation facilities while enroute is prohibited (*i.e.*, Post Exchange, Club, offices, etc.). Individual must have in his/her possession weapon registration (if applicable), valid state hunting license, valid Fort Stewart hunting permit and an area access pass (if applicable).

(b) For purposes of target shooting, selling the weapon or having the weapon repaired: From quarters by the most direct route to approved range or to the location where the weapon is to be sold or repaired and returned. Stopping at other installation facilities while enroute is prohibited. Individual must have in his/her possession at all times his/her registration (if applicable).

(1) When carried, weapons will be carried in an open manner (not concealed). Firearms will be unloaded when carried (*i.e.*, projectiles physically separated from the firearms, not just removed from the chamber), except when actually engaged in hunting or shooting. Knives will be carried in a sheath or scabbard worn in a clearly visible manner. Commanders may authorize the carrying of a privately-owned knife with a blade over 3 inches to field duty, provided it is carried IAW Victory Standard and exposed in a sheath/scabbard. The Provost Marshal may authorize the carrying of a privately-owned, sheathed, lock blade knife on military and DOD police officers' pistol belts.

(2) When transported in a vehicle, weapons will be in plain view in the passenger area of the vehicle or secured (locked) in the trunk or other rear compartment of the vehicle, not readily accessible from the passenger area (*i.e.*, locked tool box secured to bed of a truck). Firearms will be unloaded and the ammunition physically separated from the firearms. The glove compartment of a vehicle is *NOT* an authorized compartment for storing pistols.

(3) Firearms, bows and arrows, crossbows, BB and pellet guns will not be loaded, fired or used within the cantonment areas of the installation; within 50 yards of any public highway, street or Fort Stewart numbered road or across same; within 100 yards of any designated recreation area, managed waters, building or similar structures;

any aircraft landing facility (to include currently used landing or stage fields); any ammunition storage area (except on approved firing range when properly authorized).

(4) Persons not affiliated with DOD or this installation must remain on Georgia State Highways 119 and 144 when carrying or transporting weapons through the installation and must be in full compliance with Georgia State Law governing possession, use and transportation of said weapons. Travel off of these highways or stopping, for other than emergency purposes, while on the installation, is prohibited.

§ 552.104 Disposition of confiscated/seized weapons.

All weapons, ammunition, explosives or other devices defined in this regulation, that are confiscated pursuant to the commission of a crime or violation of this or other regulation or found unsecured/unattended on the installation, will be immediately turned over to the military police, U.S. Army Criminal Investigation Command (USACIDC), or the Federal Bureau of Investigation (FBI) for investigation, retention as evidence, or other lawful disposition. When retention for investigation or evidence is no longer required by military police, USACIDC, or other law enforcement or judicial agencies, the items will be disposed of under the provisions of AR 195-5, Evidence Procedures.

Subpart H—Regulation Controlling the Access to the Fort Lewis Main Cantonment Area and Prohibiting Certain Conduct Upon Fort Lewis Military Reservation

SOURCE: 52 FR 25862, July 9, 1987, unless otherwise noted. Redesignated at 53 FR 1752, Jan. 22, 1988.

§ 552.105 Purpose.

(a) This regulation establishes procedures governing access control requirements for the Main Cantonment Area, Fort Lewis, Washington, and prohibits certain forms of conduct upon the Fort Lewis Military Reservation.

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(b) These procedures and requirements have been established in conjunction with other efforts to improve the physical security of the Fort Lewis Military Reservation. It is essential that entrance to, and exit from, the installation be made only at controlled access points, and that certain forms of conduct be restricted.

(c) This regulation governs all access to the Main Cantonment Area of the Fort Lewis Military Reservation, including, but not limited to, all housing areas, Gray Army Air Field, and Madigan Army Medical Center. It further prohibits all persons from engaging in certain forms of conduct anywhere on the Fort Lewis Military Reservation.

§ 552.106 Applicability.

This regulation is applicable to all persons, both military and civilian, who enter the Fort Lewis Military Reservation.

§ 552.107 References.

(a) AR 190-5 (Motor Vehicle Traffic Supervision)

(b) AR 190-52 (Countering Terrorism and Other Major Disruptions on Military Reservations)

(c) AR 210-7 (Commercial Solicitation on Army Installations)

(d) AR 210-10 (Administration)

(e) Fort Lewis Supplement 1 to AR 190-5 (Motor Vehicle Traffic Supervision)

(f) I Corps and Fort Lewis Installation Security and Closure Plan

(g) HFL Form 1138 (Fort Lewis Visitor Pass)

§ 552.108 General.

(a) *Access controls.* (1) Fort Lewis is a closed post. Access to the installation is limited to persons with prior approved permission to enter.

(2) Public access into the Main Cantonment Area of Fort Lewis is controlled through a series of static security posts manned by sentries empowered to grant or deny access to persons and material. The "Main Cantonment Area" is that area of the Fort Lewis Military Reservation shown on the overprinted 1:50,000 Fort Lewis Special Map (DMA Stock No. V791SFTLEWIS) excluding those areas designated thereon as Impact Areas, lettered Close-In

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Training Areas, or numbered Training Areas. A full sized map is located at the Fort Lewis Area Access Office, Building T-6127. As defined, the Main Cantonment Area includes, but is not necessarily limited to, those areas of the installation containing Government housing areas, schools, medical facilities, troop billets, the installation command and control facilities, Gray Army Air Field, Madigan Army Medical Center, and certain recreational sites controlled by the Director of Personnel and Community Activities.

(3) Entry of the general public into the Main Cantonment Area at any location other than through established manned access control points is strictly prohibited. For the purposes of this regulation, entry includes the entrance of the person, or the insertion of any part of his body, or the introduction of any unauthorized material.

(b) *Trespassers.* Persons entering or remaining upon the Main Cantonment Area of the Fort Lewis Military Reservation in violation of this regulation are trespassing on a closed federal reservation and are subject to citation by the military police. Trespassers may be barred from subsequent access to the installation and will be subject to the provisions of this regulation. A person violates this regulation when he enters or remains upon the Main Cantonment Area when he is not licensed, invited, or otherwise authorized to so enter or remain. All such persons are trespassers for the purpose of this regulation.

(c) *Prohibited Activities.* Department of Defense policy permits commanders to prohibit any expressive activity which could interfere with or prevent the orderly accomplishment of the installation's mission, or which presents a clear danger to the loyalty, discipline or morale of their soldiers. Therefore, unless the prior approval of the installation commander or his designated representative has been obtained, no person while on the Fort Lewis Military Reservation shall:

(1) Engage in protests, public speeches, sit-ins, or demonstrations promoting a political point of view.

(2) Engage in partisan political campaigning or electioneering.

(3) Display or distribute commercial advertising or solicit business.

(4) Interrupt or disturb a military formation, ceremony, class or other activity.

(5) Obstruct movement on any street, sidewalk, or pathway without prior authority.

(6) Utter to any person abusive, insulting, profane, indecent or otherwise provocative language that by its very utterance tends to incite an immediate breach of the peace.

(7) Distribute or post publications, including pamphlets, newspapers, magazines, handbills, flyers, leaflets, and other printed material, except through regularly established and approved distribution outlets.

(8) Circulate petitions or engage in picketing or similar demonstrations for any purpose.

(9) Disobey a proper request or order by Department of Defense (DoD) police, military police, or other competent authority to disperse or to leave the installation.

(d) *Failure to comply.* Any person who enters or remains upon the Main Cantonment Area of Fort Lewis Military Reservation when he is not licensed, invited or otherwise authorized by the terms of this regulation or who enters or remains upon the Fort Lewis Military Reservation for a purpose of engaging in any activity prohibited by this regulation is in violation of the provisions of the regulation. Violators of this regulation may be subjected to administrative action or criminal punishment under the Uniform Code of Military Justice (UCMJ), title 18 U.S.C. 1382, or title 50 U.S.C. 797, as appropriate to each individual's status. Maximum punishment under title 18 U.S.C. 1382 is a fine of not more than \$500 or imprisonment for not more than six months, or both. Maximum punishment under 50 U.S.C. 797 is a fine of \$5,000 or imprisonment for not more than one year, or both. Administrative action may include suspension of access privileges, or permanent expulsion from the Fort Lewis Military Reservation.

§ 552.109 Routine security controls.

(a) *Unimpeded access.* Military vehicles, emergency vehicles, mail delivery

vehicles, privately owned motor vehicles registered in accordance with Fort Lewis Supplement 1 to Army Regulation (AR) 190-5, and pedestrians in possession of current active duty, retired, dependent, or DoD civilian identification cards are authorized unimpeded access to Fort Lewis during periods of routine installation operations unless prohibited or restricted by action of the Installation Commander.

(b) *Visitor access.* All visitors to the installation will report to the visitor's information center where the visitor's name, vehicle license number, purpose and duration of visit will be recorded prior to granting access. Visitor's passes for visitors to Madigan Army Medical Center and the Logistics Center/Civilian Personnel Office will be issued at the Madigan and Logistics Center gates respectively.

(c) *Visitor's passes.* HFL Form 1138 (Fort Lewis Visitor Pass) valid for a period not to exceed 24 hours unless otherwise noted below, may be issued only when one or more of the following criteria is met.

(1) Personnel in possession of proper orders directing temporary duty at Fort Lewis may be issued a visitor's pass for periods not to exceed 13 days. Personnel ordered to temporary duty at Fort Lewis for periods in excess of 13 days but less than 90 days will be required to obtain a temporary vehicle registration.

(2) Persons visiting Fort Lewis military personnel or their family members may be issued visitor's passes for periods up to and including 13 days when personally requested by the military sponsor.

(3) Moving vans and commercial delivery vehicles will be issued visitor's passes after the operator displays a bill of lading or other official documentation demonstrating a legitimate need to enter Fort Lewis.

(4) Contract vehicles not qualifying for installation vehicle registration pursuant to Fort Lewis Supplement 1 to AR 190-5 will be issued a visitor's pass as provided in paragraph (c) of this section, after the purpose of the visit has been verified by the Contracting Officer's Representative, or the Contractor when the former is not available.

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(5) Prior to issuing a visitor's pass to unsponsored personnel who desire to visit unit areas, club facilities and other recreational facilities, security personnel will telephonically contact the person to be visited. If the person to be visited cannot be contacted to verify the visit, the visitor will be denied entry. Unsponsored personnel desiring to visit the Fort Lewis Museum may be issued a visitor's pass valid until museum closing time on day of issue, provided security personnel telephonically contact the museum and verify the hours of public operation that day prior to issuing the visitor's pass.

(6) Soldiers, dependent family members, and Department of the Army employees who sponsor visitors to the installation remain responsible for the conduct of their guests on Fort Lewis for the duration of the visit.

(d) *Heightened security controls.* Access control measures implemented during periods of enhanced security will be in accordance with AR 190-52 and the I Corps and Fort Lewis Installation Security and Closure Plan. During periods of heightened security controls, sponsors may be required to personally report to the Visitor's Information Center to accept responsibility for the visitor.

§ 552.110 Requests for exception.

The installation commander or his deputy may grant exceptions to the prohibitions contained in paragraph (c)(4) of this section. An application for exception shall be submitted to the installation Public Affairs Liaison Officer at least seven days prior to the date of the requested activity. The application must be in writing, and must specify the particular activity proposed, the names of the persons and organizations sponsoring the activity, the number of participants, and the time, date and specific place or places the requester proposes the activity occur. In addition, the application shall be signed by the requester or by a representative of the requesting organization, if any, and contain an address and local telephone number where the requester or representative can be reached in the event further information is needed.

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§ 552.111 Severability.

If a provision of this Regulation is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality or validity of every other provision of this Regulation shall not be affected thereby.

Subpart I—Physical Security of Arms, Ammunition, and Explosives—Fort Lewis, Washington

SOURCE: 56 FR 25040, June 3, 1991, unless otherwise noted.

§ 552.112 Purpose.

To provide enhanced security for the protection of arms, ammunition, explosives (AA&E) and sensitive items at Fort Lewis.

§ 552.113 References.

This regulation is to be used in conjunction with the following:

(a) AR-190-11 with Forces Command and Training Command Supplement 1 (Physical Security of Arms, Ammunition and Explosives).

(b) AR 190-13 with Forces Command and Training Command Supplement 1 (The Army Physical Security Program).

(c) Fort Lewis Regulation 210-1 (Installation Fort Lewis Post Regulations).

(d) Headquarters Fort Lewis Form 816 (Registration of Personal Firearms).

§ 552.114 Violations.

Violations of the provisions of this regulation are subject to disciplinary actions under the Uniform Code of Military Justice, judicial action as authorized by state or federal law, or administrative action as provided by controlling regulation.

§ 552.115 Applicability.

This regulation is applicable to all Active Army, Reserve Officer Training Corps (ROTC), U.S. Army Reserve (USAR), and Army National Guard (ARNG) units training and/or assigned/

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attached to Fort Lewis and its sub-installations. This regulation also applies to tenant units/activities stationed on Fort Lewis. It is also applicable to all persons, both military and civilian, who reside on or who otherwise enter Fort Lewis Military Reservation for whatever reason.

§ 552.116 Privately owned weapons—security.

Privately owned arms and ammunition will be secured in the manner required for military weapons and ammunition but separate from military arms, ammunition, and explosives (AA&E) items.

§ 552.117 Disposition of Commander's Letter of Authorization.

The unit commander's written approval to withdraw privately owned weapons from the unit arms room will be attached to the record of the next weekly arms, ammunition, and explosive (AA&E) inventory. Following is a Sample Request for Authorization to Withdraw Weapon from Arms Room:

Office Symbol _____
Date _____

Memorandum for Commander of unit concerned, Fort Lewis, WA 98433

Subject: Request Authorization to Remove Privately Owned Firearm/Weapon from the Unit Arms Room

1. Request authorization to remove the following firearm/weapon registered in my name from the arms room. The firearm/weapon is a _____ (type) and serial number is _____.

2. The firearm/weapon will be removed on _____ (date) and returned on _____ (date).

3. The reason for removal is _____.

(Name/rank/unit/signature of individual making request)

Office Symbol 1st End SFC Jones/
mmm/telephone CDR, Unit concerned,
Fort Lewis, WA 98433

FOR (individual making request plus complete address) Approval is granted.

(Signature block of authorizing official)

§ 552.118 Issuance from unit arms room.

When privately owned weapons are withdrawn from the arms room, DA

Form 3749 (Equipment Receipt), will be turned in and the weapon will be signed out on Headquarters Fort Lewis Form 938 (Weapons/Ammunition and Sensitive Item Issue and Turn-In Register). The armorer will provide the owner with a copy of Headquarters Fort Lewis Form 816 (Registration of Personal Firearms), which will remain with the weapon at all times. When the weapon is turned back in to the arms room, the HFL Form 816 will be turned in also.

§ 552.119 Registration and storage.

(a) All types of personal weapons to include rifles, shotguns, handguns and antique firearms owned by personnel residing on Fort Lewis Military Reservation will be registered at the Weapons Registration Office, Law Enforcement Command, within 72 hours (three working days) after signing in to his/her permanent unit of assignment. HFL Form 816, Registration of Personal Firearms, will be completed in triplicate. The unit commander is responsible for verifying proof of legal ownership paperwork on all data entered on HFL 816. The Military Police Weapons Registration Section will retain two copies of the completed registration form and issue one copy to the individual to be retained with the weapon at all times. The Weapons Registration Section will forward one copy of the form to the individual's unit commander. The commander's copy of the registration will be maintained in the unit arms room for personnel storing personal weapons in the unit arms room. When an individual possessing a personal weapon transfers (intra-installation), the losing commander will ensure that HFL Form 816 is forwarded to the gaining commander. The gaining commander will ensure that the individual re-registers the personal weapon within 72 hours (three working days). The commander of 525th Replacement Detachment is responsible for the storage of personal weapons of newly arriving personnel, temporarily assigned to the unit. Personnel residing off post who wish to bring personal weapons on post are also required to register those weapons. Weapons registration forms (HFL 816) will be turned in at the Weapons Registration Section when

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clearing post. Upon any sale or transfer of a registered weapon, the transaction will be immediately reported within 72 hours (three working days) to the Registration Office. For additional guidance on weapon registration, refer to Fort Lewis Regulation 210-1.

(b) All soldiers are required to inform the unit commander if they are storing privately owned weapons within a 100 mile radius of Fort Lewis. Soldiers residing off-post must inform the unit of the location of the weapon(s). Those weapons must be registered if they are to be brought onto the installation for any type of authorized use.

(c) Privately owned weapons of soldiers residing in the unit billets, Bachelor Enlisted Quarters (BEQ), or Bachelor Officer Quarters (BOQ), will be stored in the assigned unit arms room under the following provisions:

(1) Commanders may authorize their personnel who reside in billets, BEQ or BOQ to store privately owned weapons in the off post quarters of another member of his/her unit or in the quarters of immediate family members residing in the area.

Family members will be considered sponsors for paragraph (b) (2) thru (5) of this section.

(2) A unit member who resides off post may sponsor a maximum of one unit member who resides in billets, BEQ or BOQ for storage of privately owned weapons.

(3) Request to store weapons off post must be submitted in writing to the unit commander, indicating the name, exact address and phone number of the proposed unit sponsor. Request must be accompanied by a written authorization from the sponsor to store the weapons, and a copy of HFL 816. Request must be kept on file in the unit arms room until legal disposition of the weapon is presented to the unit commander.

(4) Civilians (except for immediate family residing in the area) and military dependents will not be considered as sponsors to store privately owned weapons for military members.

(5) Unit commanders have the responsibility to verify the off post location for off post storage requests and ensure that military members comply with both local and state laws gov-

erning possession and use of privately owned weapons.

(d) Weapons stored in unit arms rooms may be issued to registered owners only for authorized hunting or participation in authorized target practices or matches. Request for issue of a privately owned weapon from the arms room must be in writing indicating the inclusive dates and times, reasons and serial number of weapon for issue. Weapons stored in the unit arms rooms may not be issued to anyone other than the registered owner.

(e) Properly registered privately owned weapons may be kept at the owners assigned government family quarters if approved in writing by the unit commander. One copy of the completed HFL Form 816 will be maintained on file in the unit arms room. Intra-post transfer rules as stated in paragraph (a) of this section apply.

(f) Privately owned weapons with a maximum of 100 rounds of ammunition (per weapon) may be stored in the unit arms room. Weapons and ammunition will be stored separately. The owner of a privately owned weapon will be issued a hand receipt when the weapon and/or ammunition is turned in to the arms room. The owner will return the hand receipt when the weapon and/or ammunition is removed from the arms room for any reason.

(g) Weapons cancellation and installation clearance will be as follows:

(1) Commander will ensure that privately owned weapons registered with Weapons Registration Section are de-registered during the outprocessing or when legally disposed of.

(2) Individuals who register a privately owned weapon and legally dispose of the weapon while it is still registered will surrender the registration certificate to the Weapons Registration Section at the time of disposal along with appropriate disposition documents.

§ 552.120 Possession and control.

(a) Possession of weapons on the post by civilians is prohibited with the following exceptions:

- (1) Engaged in authorized hunting.
- (2) Engaged in authorized target practice.

(3) Engaged in authorized and organized shooting matches.

(b) Request for authorization for these exceptions will be submitted in writing to the Commanding General, I Corps and Fort Lewis. Prior coordination for the use of ranges will be made through the Range Control Officer or Range Scheduling. Civilians who fail to comply with this regulation are subject to charges of Trespassing, Unlawful Discharge of a Firearm, and other criminal offenses as applicable.

(c) Military or civilian personnel are not authorized to bring personal weapons into field training sites.

(d) Carrying of concealed privately owned weapons by either military or civilian personnel is prohibited while on the Fort Lewis Military Reservation regardless of whether a state or county permit has been obtained. For the purpose of this regulation, a concealed weapon is any instrument used or designed to be used in an offensive or defensive manner which is carried in such a way as to be hidden from ordinary view. Folding knives with a blade of three inches or less are specifically excluded from this definition. Request to carry concealed weapons will be submitted in writing, with full what and why justification, to the Commanding General, I Corps and Fort Lewis, through appropriate channels.

§ 552.121 Possession or retention of prohibited weapons.

Prohibited weapons are defined as:

(a) Any instrument or weapon of the kind usually known as a sling shot, sand club, metal knuckles, spring blade knife, or any knife from which the blade is automatically released by a spring mechanism or other mechanism or other mechanical device, or any knife having a blade which opens, falls, or is effected into position by force of gravity or an outward thrust or centrifugal movement, or any knife with a blade with a length in excess of three inches. This does not include knives designed for and used during hunting and fishing activities. However, such knives may only be carried while participating in those activities. The possession of knives kept in quarters and designed for the use in the preparation of food is authorized.

(b) Any incendiary devices, military ammunition and/or explosives.

(c) Any weapons not legally obtained.

(d) Any instrument commonly used in the practice of martial arts, for example, a nunchaku, except during the legitimate martial arts training. If martial arts use is authorized, storage of these instruments during non-training periods will be in a location other than the arms room, as designed by the unit commander for soldiers residing in troop billets, BEQ or BOQ. Martial arts instruments may be stored in assigned government family quarters during nontraining periods.

(e) Any weapons on which the name of the manufacturer, serial number of identification have been changed, altered, removed or obliterated unless done for legitimate repair or part replacement.

§ 552.122 Personnel not authorized to possess or retain personal weapons.

(a) Possession, retention or storage of personal weapons or ammunition by person(s) described below is prohibited:

(1) Any person who has been convicted in any court of a crime of violence. For the purpose of this regulation, a crime of violence is one in which the use of force or threat of force is an element.

(2) Any person who is a fugitive from justice.

(3) Any person who has been convicted in any court of the possession, use, or sale of marijuana, dangerous or narcotic drugs.

(4) Any person who is presently declared as mentally incompetent or who is presently committed to any mental institution.

(5) Any civilian, or other than a military family member or a law enforcement officer authorized to carry the weapon under state or federal law, while on Fort Lewis or a sub-installation, except while hunting or engaged in authorized target practice or an organized match, unless specifically authorized in writing by the Commanding General, I Corps and Fort Lewis.

(b) Any person under the age of eighteen is prohibited from the use of firearms unless accompanied and supervised by a parent or legal guardian.

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(c) Delivery of a personal handgun to persons known to be under the age of twenty-one, persons known to have been convicted of a crime or violence, persons known to be a drug abuser or under the influence of drugs, persons known to be an alcoholic or currently under the influence of alcohol or a person known to be of unsound mind, is prohibited.

§ 552.123 Storage of personal weapons other than firearms or handguns.

Privately owned weapons, such as knives, swords, air guns, BB guns, cross bows, pellet guns, bow and arrows, of personnel residing the unit billets will be stored in a separate locked container, within a secured storage area designated for this purpose by the unit commander, in a location other than the unit arms room.

§ 552.124 Transportation of privately owned weapons and ammunition.

(a) Privately owned firearms and ammunition will be transported in the following manner:

(1) Weapons, other than weapons being transported into Fort Lewis for the first time, may be carried in vehicles only when traveling to and from an authorized hunting area during hunting seasons or enroute to or from authorized target practice and matches.

(2) The carrying of loaded privately owned weapons in a vehicle is prohibited.

(3) Privately owned weapons carried in a vehicle will be secured in the trunk or encased and carried in such a manner that they will not be readily available to the driver or passenger.

(b) Personnel who remove privately owned weapons from Fort Lewis or sub-installations will comply with applicable Federal, state, and local laws pertaining to the ownership, possession and/or registration of weapons.

§ 552.125 Disposition of confiscated weapons.

Commanders will maintain confiscated weapons in the unit arms room pending final disposition. They will provide written notification of the circumstances or loss or recovery of such weapons and a complete and accurate

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description of the weapon to Commander, I Corps and Fort Lewis, ATTN: AFZH-PMS-P, Fort Lewis, WA 98433-5000. A copy of this notification will be maintained with the weapon pending final disposition.

Subpart J—Control of Firearms, Ammunition and Other Dangerous Weapons on Fort Gordon

SOURCE: 56 FR 37130, Aug. 2, 1991, unless otherwise noted.

§ 552.126 Definitions.

For the purpose of this part, the following definitions apply:

(a) *Ammunition*. Projectiles together with their fuses, propelling charges, and primers that are designed to be expelled from a firearm. This includes any type of military and commercial ammunition (ball, trace, incendiary, blank, shotgun, black powder, and shot). Items shall only be considered as ammunition when loaded into a cartridge with its bullet and primer.

(b) *Pellet and BB Guns*. Any type rifle, pistol, or other instrument designed or redesigned, made or remade, modified or remodified to expel BBs or pellets by springs, compressed air, CO₂, or any other compressed gas cartridge.

(c) *Dangerous Instruments*. Any device which is designed or redesigned, made or remade, modified or remodified to be used as an offensive or defensive weapon. Devices of this type include but are not limited to:

(1) "Constant companion" or any similar weapon, designed or redesigned, made, or remade modified or remodified to be worn as a belt buckle, brass knuckles, "Knucklers," and "Knucks."

(2) Studded or spiked wrist bands, or any device designed or redesigned, made or remade, modified or remodified to fit over the hand or wrist which can be used to cause grave bodily harm.

(3) Blackjacks, slapjacks, slappers, saps, including homemade substitutes, other bludgeons (with or without handles), and metal pipes.

(4) "Nanchaku" (num-chucks), two or more sticks connected by rope, cord, or chain and normally used as a martial

arts weapon. "Shuriken", a disc or any geometrical object designed to be thrown as a weapon. "Manrikikusari" or "Kusari," a rope or cord joined to a weight at each end and designed to be used as a weapon. "Sai" fighting forks or other similar weapons.

(5) Any finger ring with blades or sharp objects that are capable of being projected/extended from the surface of the ring.

(6) Any device capable and primarily intended for discharging darts or needles.

(7) All firearms.

(8) Slingshots (not including small slingshots made for use by children), other missile throwing devices, or any other instrument designed to produce bodily harm.

(d) *Explosive, incendiary, and pyrotechnic devices.* Any type of military or commercial explosive, incendiary, gas or smoke bomb, grenade, rocket, missile, mine, blasting cap, "dummy" and/or practice device such as simulators, and other similar detonating devices which are capable of being altered to contain a live charge, and pyrotechnic devices such as firecrackers, cherry bombs, bottlerockets, and starclusters.

(e) *Firearms.* (1) A shotgun having a barrel or barrels of less than 18 inches in length.

(2) A weapon made from a shotgun, if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(3) A rifle having a barrel or barrels of less than 16 inches in length.

(4) A weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(5) A machine gun.

(6) A muffler or a silencer for any firearm whether or not such firearm is included within this definition. The term shall not include an antique firearm or any device (other than a machine gun) which, although designed as a weapon, by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon. For purpose of this definition, the length of the barrel on a shot-

gun or rifle shall be determined by measuring the distance between the muzzle and the face of the bolt, breech, or breechlock when closed and when the shotgun or rifle is cocked. The overall length of a weapon made from a shotgun or rifle is the distance between the extreme ends of the weapon measured along a line parallel to the center line of the bore.

(f) *Knives, sabers, swords, and machetes.* Any instrument having a sharp blade which is fastened to a handle, or made with a handle. Measurement of the blade will be from the tip of the blade to the point where the blade meets the handle. This includes folding knives, switchblades, gravity knives, stilettos, lock blade knives, swords, sabers, and machetes.

(g) *Machine gun and automatic weapon.* Any weapon which shoots, is designed to shoot, or can be readily restored to shoot automatically more than one shot without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

(h) *Pistol.* A weapon originally designed, made, and intended to fire a projectile (bullet) from one or more barrels when held in one hand, and having:

(1) A chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s).

(2) A short stock designed to be gripped by one hand and at an angle to and extending below the line of the bore(s).

(i) *Public gathering.* Shall include, but shall not be limited to, athletic or sporting events, schools or school functions, churches or church functions, rallies, or establishments at which alcoholic beverages are sold for consumption on the premises.

(j) *Revolver.* A projectile weapon, of the pistol type, having a breechloading chambered cylinder so arranged that

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the cocking of the hammer or movement of the trigger rotates it and brings the next cartridge in line with the barrel for firing.

(k) *Rifle*. A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder. Also, designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

(l) *Shotgun*. A weapon designed or redesigned, made or remade, and intended to be fired from the shoulder; and designed or redesigned, made or remade, to use the energy or the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projecting (ball shot) or a single projectile for each single pull of the trigger and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.

(m) *Silencer*. Any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for the use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

(n) *Weapon*. An instrument used in an offensive or defensive manner.

§ 552.127 Prohibitions.

(a) *Prohibited items*. It is prohibited to possess, carry, conceal, transport, store, transfer or sell any of the following weapons or devices, on, through, or within the confines of Fort Gordon unless specifically allowed elsewhere in this part:

- (1) Sawed-off shotgun.
- (2) Sawed-off rifle.
- (3) Machine gun and automatic weapons.
- (4) Silencers.
- (5) Dangerous instruments as defined in § 552.126(c) of this part.
- (6) Explosives, Incendiary and Pyrotechnic Devices, as defined in § 552.126(d) of this part.
- (7) Knives with automatic blade openers (*i.e.*, switch blades, gravity

knives, stilettos) of any blade length. Folding or fixed bladed knives with a blade length of more than 3 inches. Swords, sabers, and machetes with sharpened blades.

(8) Any object which carries an electrical current of sufficient wattage to deliver a shock to a person, such as cattle prods, stun guns, "taser" or "public defenders."

(9) Umbrellas, canes, or walking sticks with sharpened points or removable handles which convert into a sword type instrument.

(b) *Carrying a concealed weapon*. A person commits the offense of carrying a concealed weapon when he/she knowingly has or carries about his/her person, unless in an open manner and fully exposed to view, any bludgeon, metal knuckles, firearm, or knife designed for the purpose of offense and/or defense, or any other dangerous or deadly weapon or instrument of like character outside of his/her home or place of business.

(c) *Carrying deadly weapons to or at public gatherings*. A person commits an offense under this section when he/she carries to, or possesses while at, a public gathering any explosive compound, firearm, or knife designed for the purpose of offense and/or defense. This paragraph shall not apply to necessary equipment for military personnel in a formation when a weapon is required, or to police/security personnel while in performance of their duties.

(d) *Prohibited possession and storage*. It is prohibited to possess or store ammunition, firearms, knives with blades more than 3 inches, bows and arrows, crossbows, and BB and pellet guns, in locations other than those specified in § 552.128 except under conditions specified in § 552.129. Prohibited locations for these items include, but are not limited to, living spaces and common areas of billets, squad rooms, privately-owned vehicles, exterior storage sheds, camper trailers, and offices. Commanders will designate an arms room and times for weapons turn-in. During periods when arms rooms are closed, the Staff Duty Officer (SDO) will ensure the weapon is secured in accordance with (IAW) this subpart. A receipt will be given for each weapon received, reflecting the weapon's make, serial

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number, identity of owner and other data deemed appropriate.

(e) Carrying of straight razors, unless the razor is in the original sealed package, is prohibited.

(f) *Exemptions.* Nothing in this subpart shall prohibit:

(1) Military members or DOD civilian employees from possessing or using military weapons, military ammunition or explosives, or military devices in a lawful manner while in the performance of their military duties while acting under orders of superior military authority, for training, or other authorized purposes, as prescribed by applicable Army Regulations.

(2) Military and DOD civilian personnel, while in the performance of official law enforcement duties, from possessing or using government ammunition, explosives or devices in a lawful manner, as prescribed by applicable laws or regulations or by their lawful superiors.

(3) Federal, state, county or local law enforcement personnel, while in the performance of official law enforcement duties, from possessing or using government or privately-owned weapons, ammunition, explosives or devices in a lawful manner, as prescribed by applicable laws or regulations or by their lawful superiors.

(4) Government contractors, while in performance of their contract from possessing or using weapons, ammunition, explosives or devices, IAW the provisions of their contract and as determined by the contracting officer.

(5) Individuals with Federal firearms licenses (class III) from possessing, carrying, and transporting class III weapons IAW Federal regulations; however, they are prohibited from concealing, storing, transferring, or selling class III weapons within the confines of Fort Gordon.

(6) Individuals from possessing, carrying, transporting, or storing decorative, ornamental, and ceremonial swords and sabers within the confines of Fort Gordon when used strictly for display and ceremonies.

(7) Individuals and agencies from possessing, transporting, storing, selling, or using fixed bladed knives with a blade length of more than 3 inches when used for their lawful purpose (*i.e.*,

steak knives, cooking knives, hunting knives) and when in compliance with all other requirements in this subpart.

(8) Flares used for emergency warning devices in automobiles may be transported in the locked trunk or glove compartment of an automobile.

§ 552.128 Requirements for possession and use.

All persons entering or otherwise on Fort Gordon may possess legally-defined and privately-owned firearms, ammunition, pellet and BB guns, knives, bows and arrows, and crossbows under the following conditions:

(a) Privately-owned firearms, crossbows, pellet and BB guns possessed or stored on the installation must be registered at the Installation's Provost Marshal Office within 3 working days after arrival on the installation, or after obtaining the weapon, except:

(1) Firearms legally brought onto the installation for the purpose of hunting or firing at an approved firing range, and only for the period of time the person possessing the firearms is hunting or firing on the range.

(2) Firearms carried by federal, state, county, or local law enforcement personnel when in the performance of official law enforcement duties.

(b) Personnel residing in family housing, bachelor officers' quarters/bachelor enlisted quarters/visiting officer quarters (BOQ/BEQ/VOQ) and guest housing, may store legally-acquired, authorized ammunition, knives with a blade measuring more than 3 inches, bows and arrows, registered crossbows, registered pellet and BB guns, and registered firearms within their quarters.

(c) Personnel residing in troop billets may store legally-acquired authorized ammunition, knives and blades measuring more than 3 inches, bows and arrows, registered crossbows, registered pellet and BB guns and registered firearms in unit arms rooms. The unit arms room should utilize a standard weapons card and log book to document storage, removal, and return.

(d) Persons 17 or under must be accompanied by a person over the age of 21, who will be responsible for compliance with the requirements of this subpart while hunting or target shooting

on the installation and when purchasing legal arms (including knives with blades over 3 inches) and ammunition from installation retail outlets.

(e) Persons must be in compliance with federal and state laws regarding possession (*i.e.*, age, criminal record restrictions, etc.).

(f) Storage, accountability, and registration procedures will be in accordance with (IAW) Army Regulation (AR) 190-11 (Physical Security of Arms, Ammunition and Explosives) and supplements. Copies of the AR may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(g) Loss or theft of firearms and ammunition will be reported to the Fort Gordon military police desk sergeant immediately. Reports will contain all available details of the incident and a description of the lost item.

§552.129 Requirements for carrying and use.

Persons legally authorized to possess firearms, ammunition, knives (with blades longer than 3 inches), bows and arrows, and crossbows, may carry or transport legally possessed and registered (if required) weapons under the following conditions:

(a) For purposes of hunting: From quarters, on or off the installation, by the most direct route to hunting area and return. Stopping at other installation facilities while en route is prohibited (*i.e.*, post exchange, club, offices, etc.). Individual must have in his/her possession weapon registration (if applicable), valid state hunting license, valid Fort Gordon hunting permit and an area access pass (if applicable).

(b) For purposes of target shooting, selling the weapon or having the weapon repaired: From quarters by the most direct route to approved range or to the location where the weapon is to be sold or repaired and returned. Stopping at other installation facilities while en route is prohibited. Individual must have in his/her possession at all times his/her registration (if applicable).

(1) When carried, weapons will be carried in an open manner (not concealed). Firearms will be unloaded when carried (*i.e.*, projectiles physically separated from the firearms, not just removed

from the chamber), except when actually engaged in hunting or shooting. Knives will be carried in a sheath or scabbard worn in a clearly visible manner. Commanders may authorize the carrying of a privately-owned, knife with a blade over 3 inches to field duty. The provost marshal may authorize the carrying of a privately-owned, sheathed, lock blade knife on military and DOD police officers' pistol belts.

(2) When transported in a vehicle, weapons will be in plain view in the passenger area of the vehicle or secured (locked) in the trunk or other rear compartment of the vehicle, not readily accessible from the passenger area (*i.e.*, locked tool box secured to bed of a truck). Firearms will be unloaded and the ammunition physically separated from the firearms. **THE GLOVE COMPARTMENT OF A VEHICLE IS NOT AN AUTHORIZED COMPARTMENT FOR STORING PISTOLS.**

(3) Firearms, bows and arrows, crossbows, pellet and BB guns will not be loaded, fired, or used within any housing area or cantonment area of the installation; within 50 yards of any public highway, street or Fort Gordon named street or numbered road, or across same; within 100 yards of any designated recreation area, managed waters, building or similar structures; any aircraft landing facility; any ammunition storage area (except on approved firing ranges when properly authorized); be discharged from vehicles.

§552.130 Disposition of confiscated/seized weapons.

All weapons, ammunition, explosives, or other devices defined in this subpart, that are confiscated pursuant to the commission of a crime or violation of this subpart or other regulation or found unsecured/unattended on the installation, will be immediately turned over to the military police, U.S. Army Criminal Investigation Command (USACIDC), or the Federal Bureau of Investigation (FBI) for investigation, retention as evidence, or other law disposition. When retention for investigation or evidence is no longer required by military police, USACIDC, or other law enforcement or judicial agencies, the items will be disposed of under the

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provisions of AR 195-5, Evidence Procedures. Copies of the AR may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Subpart K—Restriction of Training Areas on the Installation of Fort Benjamin Harrison, Indiana

AUTHORITY: 16 U.S.C. 470; 1531-1543; 18 U.S.C. 1382; 50 U.S.C. 797.

SOURCE: 59 FR 42755, Aug. 19, 1994, unless otherwise noted.

§ 552.140 Purpose.

(a) This subpart establishes restrictions governing the operation of unauthorized vehicles, motorized and non-motorized, on the army training areas of Fort Benjamin Harrison, Indiana, as defined in §552.134 of this subpart. Unauthorized vehicles are restricted to paved roads on the installation of Fort Benjamin Harrison, Indiana.

(b) These restrictions are established to prevent the interruption of the use of these Army training areas by any person or persons. The continued and uninterrupted use of these training areas by the military is vital in order to maintain and improve the combat readiness of the U.S. Armed Forces. Training conditions exist within these areas which could be dangerous to unauthorized persons entering these areas.

(c) In addition, these restrictions have been established to prevent property damage, threatening of endangered flora and fauna in the areas, and to prevent the harassment of protected species such as the Blue Heron and the Indiana Bat by any person or persons.

§ 552.141 Applicability.

The restrictions outlined in this subpart apply to all individuals, with the exception of soldiers and Army civilian employees and authorized contractors, who may enter the restricted areas in the performance of their official duties.

§ 552.142 References.

Required and related publications are listed below. U.S. Codes referenced in this subpart can be obtained from the

Government Printing Office or can be reviewed in any Public Library. Army publications referenced in this subpart may be obtained from the U.S. Army Publications and Printing Command, Alexandria, VA 22331-0302.

- a. 16 U.S.C. 1531-1543.
- b. 16 U.S.C. 470.
- c. Title 18, U.S.C. 1382.
- d. Internal Security Act of 1950, section 21 (50 U.S.C. 797).
- e. Army Regulation 420-74.
- f. 10 U.S.C. 801-940.
- g. Article 92, Uniform Code of Military Justice.

§ 552.143 Definitions.

(a) For purpose of this subpart, restricted areas on the installation of Fort Benjamin Harrison, Indiana area defined as training areas A thru J, to include the gold course. A map defining these areas is located in the Directorate of Plans, Training, and Mobilization, Security, Plans and Operations Division, Training Branch, Building 600, Room B, Fort Benjamin Harrison, Indiana.

(b) Unauthorized motor and non-motorized vehicles are defined as any wheeled or tracked vehicle. This may include, but not limited to, bicycles, ATV, snow mobiles, motor cycles, automobiles, trucks, etc.

§ 552.144 Procedures.

(a) Except for the soldiers, Army civilians and authorized contractors who enter the restricted areas in the performance of their official duties, entry of unauthorized vehicles is prohibited for any purpose whatsoever without the advanced consent of the Commander, United States Army Soldier Support Center (USASSC), Fort Benjamin Harrison, Indiana, or his/her authorized representative.

(b) Any person or group of persons desiring advanced consent shall, in writing, submit a request to the following address: HQ, USASSC and Fort Benjamin Harrison, ATTN: Public Affairs Office, Building 600, Fort Benjamin Harrison, Indiana 46216-5040.

§ 552.145 Violations.

(a) Any person/persons entering or remaining on any training area as defined in §552.134 without the advance

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consent of the Commander, USASSC, or his authorized representative, shall be subject to the penalties prescribed by § 552.133 of this subpart, which provides in pertinent part: "Whoever, within the jurisdiction of the United States, goes upon any military, naval, or Coast Guard reservation, post, fort, arsenal, yard, station or installation, for any purpose prohibited by law or lawful regulation * * * shall be fined for not more than \$500.00 or imprisoned for not more than six months, or both.

(b) Moreover, any person who willfully violates this subpart is subject to a fine not to exceed \$5,000.00 or imprisonment for not more than 1 year as provided in § 552.133(d) of this subpart.

(c) In addition, violation of this subpart by persons subject to the Uniform Code of Military Justice (10 U.S.C. 801-940) is a violation of Article 92 of the Uniform Code of Military Justice.

Subpart L—Prohibited Personnel Practices on the Installation of Fort Jackson, South Carolina

AUTHORITY: 10 U.S. Code, Ch. 47, 21 U.S. Code 801, *et seq.*

SOURCE: 59 FR 31144, June 17, 1994, unless otherwise noted.

§ 552.150 Purpose.

This part is punitive in nature and applies to all persons assigned to, attached to, or present on the installation of Fort Jackson, South Carolina. A violation of, attempted violation of, or solicitation or conspiracy to violate any provision of this part provides the basis for criminal prosecution under the Uniform Code of Military Justice, applicable Federal Law, other regulations, and/or adverse administrative action. Civilian visitors may be barred from the installation of Fort Jackson and prosecuted under appropriate Federal laws. The enumeration of prohibited activities in this part is not intended to preclude prosecution under other provisions of law or regulation.

§ 552.151 Scope.

This part does not list all activities or practices prohibited on the installation of Fort Jackson, South Carolina. Various other Army and Fort Jackson

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regulations specifically prohibit other activities or practices. See appendix A to this subpart.

§ 552.152 Prohibited practices.

The following activities are prohibited:

(a) The possession, delivery, sale, transfer, or introduction into the installation of Fort Jackson of any device, instrument or paraphernalia designed or reasonably intended for use in introducing into the human body a controlled substance, as defined in the Controlled Substances Act, 21 U.S.C. 801, *et seq.*, is prohibited.

(b) Unless an exception is approved by the Chief of Staff or a Major Subordinate Commander for a special occasion, consumption of alcoholic beverages, or the possession of an open container thereof, is prohibited under the circumstances listed in this section. For the purpose of this part, an "alcoholic beverage" is any liquid beverage containing any amount of ethyl alcohol, including wines, malt beverages and distilled spirits.

(1) By military personnel in uniform during duty hours (0730-1630).

(2) By military personnel during their assigned duty hours when different than those in paragraph (b)(1) of this section.

(3) By civilian employees during their assigned duty hours. Lunch time is not considered duty time for civilian employees.

(4) By civilian or military personnel in places of duty.

(5) By any person in a public place, except: in the Twin Lakes and Weston Lake Recreational Areas, in the immediate vicinity of Oyster Point (Officers' Club), at installation club facilities governed by section II of AR 215-2, and at Army/Air Force Exchange Service (AAFES) eating establishments which serve alcoholic beverages for on-premises consumption.

(6) By any person in any Fort Jackson parking lot or parking area, to include the Burger King parking lot and all parking lots of AAFES facilities and installation club facilities.

(c) The presence of any person in a training area or of any permanent party soldier or civilian employee in a trainee/receptee billeting area while

impaired by alcoholic beverages or illegal drugs is prohibited. For the purpose of this part, "Impaired by alcoholic beverages" for military personnel is defined as having a blood alcohol level of .05 percent (.05 is equivalent to 55 milligrams of alcohol per 100 milliliters of blood) or more.

(d) Privately Owned Firearms and Ammunition. For the purpose of this part, a "firearm" means any device which is designed to or readily may be converted to expel a projectile by the action of an explosive. Air/pellet guns, BB guns and bows are subject to all of the provisions of this paragraph except paragraph (d)(1) of this section.

(1) It is prohibited for persons residing on the installation to fail to register privately owned firearms with their unit commander.

(2) Storage of privately owned firearms in the barracks is prohibited. For the purposes of this part, "barracks" does not include BOQs or SBEQs.

(3) It is prohibited to store privately owned firearms in BOQs, SBEQs, or family quarters unless the firearm is unloaded, ammunition is stored separately from the firearm in a locked container, and one of the following methods for firearms storage is employed: by using a trigger locking device, by storing the firearm in a locked container, by removing the firing pin from the firearm and storing the firing pin in a locked container, or by disassembling the firearm and storing the disassembled parts in separate places. For the purposes of this part a "locked container" and a "locking device" mean locked containers and locking devices the keys to which are stored in a place not assessable to persons under 18 years of age.

(4) It is prohibited to carry on one's person any privately owned firearm in a public place on the installation of Fort Jackson unless participating in an authorized sporting activity or hunting in accordance with applicable regulations.

(5) In addition to the requirements of paragraph (d)(4) of this section, a person under 18 years of age is prohibited from carrying on his or her person a firearm outside the presence of a responsible adult.

(6) Carrying a concealed firearm on one's person, except by military, state and Federal law enforcement authorities in the performance of their duties, is prohibited.

(7) It is prohibited to transport in a vehicle any privately owned firearm except in a manner prescribed by the laws of South Carolina.

(8) It is prohibited to carry on one's person or transport in a vehicle any privately owned firearm within the Weston Lakes and Twin Lakes Recreation areas.

(e) Weapons Other Than Privately Owned Firearms. The possession of the following privately owned weapons or devices is prohibited:

(1) Any knife having a switchblade or automatic blade.

(2) Brass knuckles or similar devices.

(3) Blackjacks, saps, nunchaku and similar devices. As exceptions, nunchucks may be possessed for bona fide educational instruction or competition in a recognized martial arts program and may be carried and transported directly to and from educational and competitive martial arts events.

(4) When carried on one's person in an unconcealed manner, knives with blades in excess of three inches in length except while engaged in authorized hunting, fishing, camping or other outdoor recreational activities, or when required by duty purposes.

(5) When carried on one's person in a concealed manner, knives with blades in excess of three inches, razors and ice picks.

(f) The charging of a usurious interest rate, defined as a rate exceeding thirty-six (36) percent per annum or three (3) percent per month, for the loan of money or for the extension of credit, is prohibited.

(g) Sexual intercourse or any indecent, lewd or lascivious act in any office, barracks, training area, duty location, parking lot, public recreation area or public place is prohibited.

(h) Relationships between service members of different rank or sex which involve or reasonably give the appearance of partiality, preferential treatment, the improper use of rank or position for any personal gain, or which can otherwise be reasonably expected

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to undermine discipline, authority or morale, are prohibited.

(i) Being present in any "off-limits" or "limited access" areas, except as authorized in Fort Jackson Regulation 190-3, is prohibited (See appendix A to this subpart).

(j) Use of a metal detector for other than official purposes is prohibited.

(k) When directed to do so by the Military Police, failure to relinquish possession or control to the Military Police of abandoned property found on the installation is prohibited.

(l) Scavenging in or removal of waste items or recyclable materials from dumpsters, garbage cans, outdoor trash receptacles, recycling collection points, or landfill areas is prohibited, except for official purposes. This part does not prohibit persons from collecting and disposing of scattered litter, including aluminum cans, from roadsides, parking lots and recreation areas.

(m) It is prohibited for military personnel to engage in outside employment of any nature, including ownership or operation of a private business, without the prior written approval of their commander. Soldiers reassigned or reattached from one Fort Jackson unit to another Fort Jackson unit must obtain approval for continued employment from the gaining commander within 30 days of reassignment.

(n) Except as authorized by the Installation Commander, Chief of Staff or a Major Subordinate Commander, the use of radios, stereos, tape players, compact disk players or any other similar electronic sound generating or amplification source, including equipment installed or located in motor vehicles, in a manner that can be heard more than 125 feet from the source, is prohibited. This paragraph does not apply to law enforcement or emergency vehicles, or safety warning devices.

(o) Loitering in any public place on Fort Jackson, to include all parking lots, is prohibited. Loitering is defined as remaining idle in essentially one location, spending time idly, loafing, or walking around without a purpose in a public place in such a manner as to create a disturbance or annoyance to the comfort of any person, create a danger of a breach of the peace, obstruct or

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interfere with any person lawfully in any public place, or obstruct or hinder the free passage of vehicles or pedestrians. Any person loitering as defined above in any public place may be ordered by a law enforcement officer to leave that place or the Fort Jackson military reservation.

§ 552.153 Dissemination.

(a) Unit commanders and supervisors shall ensure that newly assigned or attached military and civilian personnel are informed of the prohibitions contained in this regulation. Soldiers-in-training will be informed of the provisions of this regulation at the beginning of each training cycle.

(b) All permanent party personnel and civilian employees will be reminded annually of their duty to comply with this part.

APPENDIX A TO SUBPART L OF PART 552—PARTIAL LIST OF OTHER PUBLICATIONS APPLICABLE ON FORT JACKSON WHICH LIST PROHIBITED PRACTICES

These publications are available for inspection at the Office of the Staff Judge Advocate, Fort Jackson, SC 29207-5000.

1. Distribution of Written Materials on the Installation—Fort Jackson Supplement 1 to AR 210-10.
2. Demonstrations, Pickets, Sit-ins, etc.—Fort Jackson Supplement 1 to AR 210-10.
3. Standards of Ethical Conduct for Employees of the Executive Branch, 5 Code of Federal Regulations, part 2635.
4. Improper Associations—Fort Jackson Regulation 600-5.
5. Mistreatment of Soldiers-in-Training—Fort Jackson Regulation 350-1.
6. Participation in Military Labor Unions—Army Regulation 600-20.
7. Traffic Violations—Fort Jackson Regulation 190-5.
8. Areas of Access—Fort Jackson Regulation 190-3.

Subpart M—Land Use Policy for Fort Lewis, Yakima Training Center, and Camp Bonneville

AUTHORITY: 16 U.S.C. 470, 1531-1543; 18 U.S.C. 1382; 50 U.S.C. 797.

SOURCE: 59 FR 34762, July 7, 1994, unless otherwise noted.

§ 552.160 Purpose.

(a) This subpart establishes procedures for entry to maneuver training areas at Fort Lewis, Yakima Training Center (YTC), and Camp Bonneville. Procedures for other sub-installations to Fort Lewis will be developed by the Commanders of those installations.

(b) Uninterrupted military use of training areas is vital to the maintenance of US and Allied Armed Forces combat readiness. In addition, maneuver training areas may be dangerous to persons entering without warnings provided during training scheduling or use permit processing.

§ 552.161 References.

See appendix E to this subpart.

§ 552.162 Abbreviations.

See appendix F to this subpart.

§ 552.163 Applicability.

(a) This subpart is applicable to all military and civilian users of the range complexes at Fort Lewis, Yakima Training Center, and Camp Bonneville.

(b) This subpart governs all use of the Fort Lewis, Yakima Training Center and Camp Bonneville Military Reservations outside cantonment areas, housing areas, and recreational sites controlled by the Director of Personnel and Community Activities (DPCA). These areas are designated on the Fort Lewis, Yakima Training Center and Camp Bonneville Military Installation Maps as Impact Areas and lettered or numbered Training Areas (TAs), and comprise the range complexes for each Installation.

§ 552.164 General.

(a) Military training. Use of the Fort Lewis, Yakima Training Center, and Camp Bonneville range complexes for military training is governed by FL Regs 350-30, 350-31, and 350-32. Scheduling is per FL Policy Statement 350-2. Military training always has priority.

(b) Hunting. Hunting, fishing, and trapping on the range complexes are governed by FL Reg 215-1 and the Yakima Training Center Hunting Letter of Intent (LOI).

(c) Fund raising. Fund raising events for non-profit private organizations not

affiliated with the Army or Fort Lewis per AR 210-1 require a Corps of Engineers Real Estate Agreement. Requests for fund-raisers by such non-profit organizations, to be conducted on the Fort Lewis range complex, will be sent to the Director of Plans, Training, and Mobilization (DPTM) Range Division of preparation of a DPTM staffing document. The document will be circulated for comment to Director of Personnel and Community Activities (DPCA), Staff Judge Advocate (SJA), Public Affairs Officer (PAO), and Director of Engineering and Housing (DEH). If the event can be supported, DPTM will advise the organization to contact the Director of Engineering and Housing Real Property Branch. Requests for such activities at Yakima Training Center will be sent to the Yakima Training Center Commander for review and processing. For Camp Bonneville, the entry point is the Vancouver Barracks Commander. Corps of Engineers Real Estate Agreements require up to 8 months to process, and includes payment of a \$375.00 minimum administrative fee, with actual costs determined on a case by case basis. Requests for fundraisers in the cantonment area by private organizations are processed per AR 210-1 by the Director of Personnel and Community Activities (DPCA).

(d) Commercial use. Individuals or organizations using the range complex for profit-generating activities must possess a Corps of Engineers Real Estate Agreement. As stated above, these agreements require up to 8 months to process and include a minimum administrative fee of \$375.00, with actual costs determined on a case by case basis. Entry point for these agreements is the DEH Real Property Branch. Profit-generating activities include collection of fees for services performed on the range complex, or selling materials collected from the range complex. Real Estate Agreement holders must check into the range complex daily by calling or coming to Area Access.

(e) Installation service and maintenance. Department of Defense (DoD) and contractor personnel on official business are authorized on the range complex per appendix C to this subpart.

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Access to hazard areas for such personnel is governed by the appropriate Installation Range Regulations.

(f) Non-DoD personnel in transit. Individuals in transit across Fort Lewis on State or County maintained roads, or roads designated for public access by the Installation Commander, require no special permits. See appendix B to this subpart. This measure does not apply at Yakima Training Center or Camp Bonneville.

(g) Alcoholic Beverages. No alcoholic beverages may be consumed on the range complexes except as authorized per FL Reg 210-1.

(h) Failure to comply. Persons entering the Fort Lewis, Yakima Training Center, or Camp Bonneville range complex without permit or scheduling, which constitute the consent of the Commanding Officer or his designated representative, are in violation of this regulation and trespassing on a controlled access Federal Reservation. Offenders may be cited by Military Police and may be subjected to administrative action or punishment under either the Uniform Code of Military Justice (UCMJ) or Title 18 US Code Section 1382, or Title 50 U.S. Code Section 797, as appropriate to each individual's status. Administrative action may include suspension or loss of recreational privileges, or permanent expulsion from the Military Reservations.

§ 552.165 Responsibilities.

(a) Commander, Yakima Training Center:

(1) Schedule the Yakima Training Center range complex per FL Reg 350-31 and FL PS 350-2.

(2) Process requests for non-military, non-commercial use per § 552.166.

(b) Commander, Vancouver Barracks:

(1) Schedule the Camp Bonneville range complex per FL Reg 350-32 and FL PS 350-2.

(2) Process requests for non-military, non-commercial use per Paragraph 6c.

(c) Fort Lewis DPTM.

(1) Schedule the Fort Lewis range complex per FL Reg 350-30 and FL PS 350-2, including allocation of and for recreational use.

(2) Operate the Fort Lewis Area Access Section.

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(3) Respond to DEH coordination on timber sales and other commercial use of the range complex.

(d) Law Enforcement Agency (LEC). Provide law enforcement and game warden patrols on the range complexes.

(e) Director of Engineering and Housing (DEH).

(1) Coordinate with DPTM and the appropriate Sub-Installation Commander on Real Estate Agreements, timber sales, wildlife management, construction, forest management, Installation Training Area Management (ITAM), and other DEH or Corps of Engineers managed actions occurring on the range complex

(2) Ensure that Real Estate Agreement holders are required to notify Fort Lewis Area Access, YTC DPCA, or Camp Bonneville Range Control, as appropriate, of range complex entry.

(f) DPCA. With DEH, manage Installation hunting, fishing, and trapping programs. Manage picnic and recreation sites located in the Fort Lewis range complex, as listed in appendix A to this part. Advise DPTM on private organizations requesting use of the Fort Lewis range complex for fundraisers.

(g) Public Affairs Office (PAO).

(1) Act as interface to resolve community relations issues related to land use.

(2) Coordinate equipment and special assistance requests per § 552.165, and advise DPTM or the appropriate Sub-Installation Commander if permit requirements have been waived by the Command Group for a particular event or activity.

(3) Inform DPTM or the appropriate Sub-Installation Commander of public response to policy execution.

§ 552.166 Recreational use.

(a) Fort Lewis:

(1) Individuals or organizations, military or civilian, desiring access to the Fort Lewis range complex for recreation must obtain a Fort Lewis Area Access permit, composed of HFL Form 652 and HFL Form 653. Exceptions are outlined below.

(2) Exception 1: DoD ID card holders enroute to or using DPCA recreational areas listed in appendix A to this subpart need no permit other than the ID

card. However, travel to and from DPCA areas is restricted to the most direct paved or improved two lane roads. DoD personnel participating in non-commercial recreational activities listed in appendix C to this subpart must have an Area Access permit.

(3) Exception 2: Organizations or groups whose activity requires advanced commitment of a specific site or area, such as Scout Camporees, seasonal or one-time regional meets, and so on, must apply to the Fort Lewis DPTM, ATTN: Range Division, in writing. At least 30 days are required to process these requests. If the requested use is allowable and an appropriate area is available, DPTM may approve the request. Groups with approved land commitments will be scheduled onto the Range Complex using HFL 473. Actual commitments of land will not be made until after the Quarterly Range Scheduling Conference that covers the time period in question. Groups who need military equipment or other special support from Fort Lewis must apply in writing directly to the I Corps Public Affairs Office (PAO).

(b) Yakima Training Center: Access to the Yakima Training Center range complex for recreation requires application in writing to the Commander, Yakima Training Center, Yakima WA 98901-9399. Camping is normally not permitted on Yakima Training Center. Exceptions may be granted by the Yakima Training Center Commander for special events.

(c) Camp Bonneville: Access to the Camp Bonneville range complex for recreation requires a call to Range Control, telephone (206) 892-5800, the day before or the day of the activity. Access will be permitted if no military maneuver or live fire training is scheduled for the day requested.

§ 552.167 Activities.

(a) Authorized activities are listed in appendix C to this subpart.

(b) Prohibited activities are listed in appendix D to this subpart.

§ 552.168 Fort Lewis Area Access Office.

(a) DPTM Range Division operates the Area Access Section to issue per-

mits and grant non-training access to the range complex.

(b) Area Access is located in Range Control, Building T-6127, 19th and Tacoma Streets, Main Post Fort Lewis. Telephone numbers are (206) 967-4686/6277. Fax extension is 967-4520. E-mail is "rangeflw." Business hours vary dependent on personnel fill, and are available by calling the above numbers.

(c) Individuals desiring access for authorized activities must register in person at Area Access during business hours. Minimum age is 18 years, except for active duty military personnel. Persons under 18 years of age must be sponsored and accompanied by a parent or legal guardian. Individual registration requires:

(1) Picture ID.

(2) Address and telephone number.

(3) Vehicle identification and license number, if a vehicle is to be brought on post.

(4) Names and ages of minor family members who will accompany a sponsor or permit holder.

(5) Liability release signature.

(6) Certification that intended activities are on the authorized list and are not for profit or fund-raising. Persons who submit false certificates are subject to prosecution in Federal Court under Title 18, United States Code, Section 1001, and the provisions of § 552.165 of this subpart.

(d) A wallet-sized permit (HFL Form 653) and a vehicle pass (HFL Form 652) will be issued to each person authorized access. The permit is not transferable. Entry to the Fort Lewis range complex without the permit is prohibited.

(e) A collective permit will be issued to an organization desiring to conduct a one-time group event not tied to a specific area or site, maximum length 3 days. The group leader must register in person at the Area Access Office and must be 21 years of age or older except for active duty military personnel.

(1) Group registration requires the information listed for individual permits above for the group leader(s), plus a list of names of all persons in the group.

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(2) Group permits require that all members of the group be with the leader throughout the event. If the group plans to separate while on Fort Lewis, sub-group leaders must be appointed and must obtain separate group permits. The group leader permit is not transferable.

(3) Events requiring commitment of land must be processed per § 552.166.

(f) Aside from the land commitment coordination time requirement in § 552.166, there is no deadline for permit application. Permits for authorized activities that do not require commitment of land may be obtained on the day of the event.

(g) Group event permits for specialized one-time activities are valid for the duration of the event, not to exceed 3 days. Individual activities permits are valid for one year. When a permit expires, the holder must re-register to renew privileges, and a new permit will be issued.

(h) Access hours are 30 minutes after daylight to 30 minutes before dark, except for authorized overnight activities and as outlined in FL Reg 215-1.

(i) All permit holders must check in with Area Access, either telephonically or in person, no earlier than 0800 the day prior to the event. It is the responsibility of each permit holder to inform a friend or relative of the area being used, the estimated time of return, and the vehicle being used.

(j) Except when land commitment has been coordinated and approved, Area Access will determine when called for entry whether the area requested is available. If the requested area is not open for permit holders and an alternate area cannot be provided or is not acceptable to the requestor, access will be denied.

§ 552.169 Yakima Training Center Area Access Office.

The Yakima Training Center DPCA functions as the Area Access Officer (AAO).

§ 552.170 Camp Bonneville Area Access Office.

Camp Bonneville Range Control (CBRC) functions as Area Access.

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§ 552.171 Compatible use.

(a) Military unit commanders may request during initial scheduling or subsequent training event coordination that no permit holders be allowed in areas they have scheduled for training. If this restriction is granted, the Installation Range Control will close appropriate areas. The following military activities are considered incompatible with non-training access and automatically close affected areas:

(1) Live-fire training events with danger zones extending into training areas.

(2) Parachute and air assault operations.

(3) Field Artillery firing. The numbered training area occupied by the weapons will be closed.

(4) Training involving riot agents or smoke generating equipment.

(b) The Installation Range Officer may also close training areas based on density of occupation by military units, unit size, or training to be conducted.

(c) Areas allocated to modern firearm deer hunting are closed to both training and other recreational activities. At Fort Lewis, when pheasant release sites can be isolated by swamps, streams, or roads from the rest of a training area, multiple use of the affected training area (TA) is authorized.

§ 552.172 Violations.

Anyone observing violators of this or other regulations must report the activity, time, and location to the appropriate Area Access Office or the Military Police (MP) as soon as possible.

APPENDIX A TO SUBPART M OF PART 552—DPCA RECREATIONAL AREAS IN TRAINING AREAS

1. This listing applies to Fort Lewis only. There are no such facilities at Yakima Training Center or Camp Bonneville.

2. For DoD member use only, no permit other than ID card required.

NOTE: Use of specific sites is authorized only to military, retired military, DoD civilian personnel, their family members and accompanied guests.

Boat launch adjacent to Officer's Club Beach on American Lake—Beachwood area
Cat Lake Picnic and Fishing Area—Training Area 19

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Chambers Lake Picnic and Fishing Area—
Training Area 12 (See Para 3 below)
Fiander lake Picnic and Fishing Area—
Training Area 20
Johnson Marsh—Training Area 10
Lewis Lake Picnic and Fishing Area—Train-
ing Area 16
No Name Lake—Training Area 22
Sequalitchew Lake Picnic Area—Training
Area 2
Shannon Marsh—CTA D
Skeet Trap Range—2d Division Range Road,
CTA E
Solo Point Boat Launch—North Fort, CTA A
West
Sportman's Range—East Gate Road, Range
15
Wright Marsh/Lake—CTA C
Vietnam Village Marsh—Training Area 9 and
10
Spanaway Marsh—Training Area 9
Sears Pond—Beachwood Housing
Nisqually River—Training Area 18

3. For non-DoD member use, permit re-
quired: Chambers Lake and Nisqually River
for fishing only.

4. The Solo Point road and the South Sani-
tary Fill roads are also open in an east-west
direction only to personnel of the
Weyerhaeuser Corporation and Lone Star
Corporation, and their assigns, for business
or recreation access to adjacent Army owned
real estate.

APPENDIX B TO SUBPART M OF PART 552—NON-PERMIT ACCESS ROUTES

1. This listing applies only to Fort Lewis.
There are no such routes on Yakima Train-
ing Center or Camp Bonneville.

2. The following public easement routes
may be used without permit or check-in: I-5.
Steilacoom-DuPont Road (ET 286163 or ET
301229).

Pacific Highway Southeast (ET 231121 to ET
249143).

Washington State Route 507 (ET 363065 to ET
428146).

Goodacre and Rice Kandle Roads (ET 386090
to ET 449076).

8th Avenue South (ET 424047 to ET 423127).

8th Avenue East (ET 439077 or ET 439128).

208th Avenue (ET 423128 to ET 431128).

Washington State Route 510 (ET 234065 to ET
246056 and ET 260048 to ET 272022).

Yelm Highway (ET 231058 to ET 238061).

Rainier Road Southeast (ES 167999 to ES
212943).

Military Road Southeast (ES 212943 to ES
214945).

Spurgeon Creek Road (ES 177988 to ES
178999).

Stedman Road (ES 152989 to ES 167998).

3. The following military routes may be
used without permit or check-in:

Huggins Meyer Road (North Fort Road, ET
304204—ET 327215)

East Gate Road (C-5 Mock-up to 8th Ave
South, ET 423097)

Roy Cut-off (Chambers Lake) Road (East
Gate Road to Roy City Limits), when
open.

Lincoln Avenue (Old Madigan to ET 390179)

4. The Solo Point Road is open to
Weyerhaeuser Corporation personnel for busi-
ness and recreation.

5. DoD personnel and Fort Lewis con-
tractor personnel on official business may
use all DEH-maintained range roads and
trails in the training areas.

6. Range roads closed for training by barri-
cades or road guards will not be used. Barri-
cades and guards will not be by-passed.

APPENDIX C TO SUBPART M OF PART 552—AUTHORIZED ACTIVITIES FOR MANEUVER TRAINING AREA ACCESS

1. Fort Lewis:

Military Training (FL Reg 350-30)
DEH or Corps of Engineers Real Estate
Agreement for commercial use (AR 405-
80)

Installation service and maintenance (AR
420-74, FL Reg 350-30)

Non-DoD personnel in transit on public-ac-
cess routes (appendix B) non-commercial re-
creational use:

Hunting, fishing and trapping (FL Reg 215-1)
Dog training (not allowed 1 April through 31

July in selected areas per FL Reg 215-1)
Horseback riding on roads and vehicle tracks

Walking, distance running

Model airplane and rocket flying (Range
Control scheduling and Notice to Airmen
(NOTAM) required)

Model boating

Orienteering

Sport parachuting

Organized rifle and pistol competition
(Range Control scheduling required)

Scout activities and weekend camporees

Observation of wildlife and vegetation

Non-commercial picking of ferns, mush-
rooms, blackberries, apples and other
vegetation

Photography

Hiking

2. Yakima Training Center:

Military Training (FL Reg 350-31)

DEH or Corps of Engineers Real Estate
Agreement for commercial use (AR 405-
80)

Installation service and maintenance (AR
420-74)

Non-Commercial recreational use:

Hunting, fishing and trapping (FL Reg 215-1)

Dog training

Horseback riding on roads and vehicle tracks

Walking, distance running

Model airplane and rocket flying (Range
Control scheduling and Notice to Airmen
(NOTAM) required)

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Orienteering
 Sport parachuting
 Organized rifle and pistol competition
 (Range Control scheduling required)
 Scout activities
 Observation of wildlife and vegetation
 Photography
 Hiking
 Camping, per Paragraph 6
 3. Camp Bonneville:
 Military Training (FL Reg 350-32)
 DEH or Corps of Engineers Real Estate
 Agreement for commercial use (AR 405-
 80)
 Installation service and maintenance (AR
 420-74)
 Non-Commercial recreational use:
 Hunting, fishing and trapping (FL Reg 215-1)
 Dog training
 Horseback riding on roads and vehicle tracks
 Walking, distance running
 Model boating
 Orienteering
 Organized rifle and pistol competition
 (Range Control scheduling required)
 Scout activities and weekend camporees
 Observation of wildlife and vegetation
 Non-commercial picking of ferns, mush-
 rooms, blackberries, apples and other
 vegetation
 Photography
 Hiking
 NOTE: Permit holders for the above activi-
 ties must certify that they are non-commer-
 cial and not for profit.

APPENDIX D TO SUBPART M OF PART
 552—UNAUTHORIZED ACTIVITIES IN
 MANEUVER TRAINING AREAS

1. Fort Lewis:
 Civilian paramilitary activities and combat
 games.
 Off-pavement motorcycle riding.
 Off-road vehicle operation.
 Hang gliding.
 Ultralight aircraft flying.
 Hot air ballooning.
 Souvenir hunting and metal-detecting, in-
 cluding recovery of ammunition residue
 or fragments, archaeological or cultural
 artifacts, or geological specimens.
 Vehicle speed contests.
 Wood cutting or brush picking, without DEH
 or Corps of Engineer permit.
 Commercial activities conducted for profit,
 including horseback riding rentals or
 guide service, dog training for reimburse-
 ment, or fund-raising events for other
 than non-profit organizations working in
 the public good. Fund raisers require
 DEH Real Estate Agreement. For-profit
 activities require Corps of Engineer
 leases or permits, obtained through the
 DEH Real Estate Office.

Overnight camping outside of DPCA sites
 (camping on DPCA sites is open to DoD
 members only, per above).
 Consumption of alcoholic beverages.
 2. Yakima Training Center:
 Civilian paramilitary activities and combat
 games.
 Off-pavement motorcycle riding.
 Off-road vehicle operation.
 Hang gliding.
 Ultralight aircraft flying.
 Hot air ballooning.
 Souvenir hunting and metal-detecting, in-
 cluding recovery of ammunition residue
 or fragments, archaeological or cultural
 artifacts.
 Vehicle speed contests.
 Commercial activities conducted for profit,
 including dog training for reimburse-
 ment, or fund-raising events for other
 than non-profit organizations working in
 the public good. Fund raisers require
 DEH Real Estate Agreement. For-profit
 activities require Corps of Engineer
 leases or permits, obtained through the
 DEH Real Estate Office.
 Overnight camping except where specifically
 permitted as part of the activity by the
 Commander, Yakima Training Center.
 Consumption of alcoholic beverages.
 3. Camp Bonneville:
 Civilian paramilitary activities and combat
 games.
 Off-pavement motorcycle riding.
 Off-road vehicle operation.
 Hang gliding.
 Ultralight aircraft flying.
 Hot air ballooning.
 Souvenir hunting and metal-detecting, in-
 cluding recovery of ammunition residue
 or fragments, archaeological or cultural
 artifacts, or geological specimens.
 Vehicle speed contests.
 Wood cutting or brush picking, without DEH
 or Corps of Engineer permit.
 Commercial activities conducted for profit,
 including horseback riding rentals or
 guide service, dog training for reimburse-
 ment, or fund-raising events for other
 than non-profit organizations working in
 the public good. Fund raisers require
 DEH Real Estate Agreement. For-profit
 activities require Corps of Engineer
 leases or permits, obtained through the
 DEH Real Estate Office.
 Overnight camping.
 Consumption of alcoholic beverages.
 Model airplane and rocket flying.
 Sport parachuting.

APPENDIX E TO SUBPART M OF PART
 552—REFERENCES

Army Regulations referenced in this sub-
 part may be obtained from National Tech-
 nical Information Services, U.S. Department

Department of the Army, DoD

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of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Fort Lewis Regulations and forms referenced in this subpart may be viewed at the Office of the Staff Judge Advocate General, Fort Lewis, Washington or at the Range Office, Headquarters, I Corps and Fort Lewis.

AR 210-1 (Private Organizations on Department of the Army Installations), with Fort Lewis Supplement 1
AR 405-70 (Utilization of Real Estate)
AR 405-80 (Granting Use of Real Estate)
AR 420-74 (Natural Resources—Land, Forest, and Wildlife Management)
FL Reg 190-11 (Physical Security of Arms, Ammunition, and Explosives)
FL Reg 210-1 (Fort Lewis Post Regulations)
FL Reg 215-1 (Hunting, Fishing, and Trapping)
FL Reg 250-30 (I Corps and Fort Lewis Range Regulations)
FL Reg 350-31 (Yakima Training Center Range Regulations)
FL Reg 350-32 (Camp Bonneville Range Regulations)
FL Policy Statement 350-2 (Training Resource Scheduling)
HFL Form 473 (Training Resource Request)
HFL Form 652 (Range Control Vehicle Permit)
HFL Form 653 (Range Control Area Access Card)

APPENDIX F TO SUBPART M OF PART 552—ABBREVIATIONS

AAO Area Access Officer
AR Army Regulation
CBRC Camp Bonneville Range Control
DEH Director of Engineering and Housing
DPCA Director of Personnel and Community Activities
DPTM Director of Plans, Training and Mobilization
FL Fort Lewis
ITAM Installation Training Area Management
LEC Law Enforcement Command
LOI Letter of Intent
MP Military Police
PAO Public Affairs Office
TA Training Area
SJA Staff Judge Advocate
UCMJ Uniform Code of Military Justice
YTC Yakima Training Center

Subpart N—Operation and Use of Fort Monroe, Virginia, Fishing Facilities

AUTHORITY: 10 U.S.C. Chapter 27; 16 U.S.C. 470, 1531-1543; 18 U.S.C. 1382; 50 U.S.C. 797.

SOURCE: 59 FR 45212, Sept. 1, 1994, unless otherwise noted.

§ 552.180 Purpose.

This subpart prescribes policies and procedures for the operation and use of fishing facilities located at Fort Monroe, Virginia.

§ 552.181 Applicability.

This subpart applies to all personnel to include military and civilian personnel assigned to Fort Monroe, residents and visitors to the State of Virginia who utilize the fishing facilities located at Fort Monroe.

§ 552.182 References.

Publications referenced in this section may be reviewed in the Office, Directorate of Community and Family Activities, Fort Monroe, Virginia.

(a) AR 215-1, Administration of Army Morale, Welfare, and Recreation activities and Non appropriated Fund Instrumentalities, February 20, 1984.

(b) Fort Monroe Vehicle Code.

(c) Codes of Virginia S 28.1-48(c), S 28.1-174, 28.1-187, and S 28.2-302.1-9.

(d) Virginia Marine Resources Commission (VMRC) regulations.

(e) Department of Defense (DD) Form 1805, United States District Court Violation Notice.

(f) Fort Monroe Fishing Map (appendix A to this subpart).

§ 552.183 Responsibilities.

(a) Director of Community and Family Activities (DCFA) is responsible for the overall operation of the installation fishing program.

(b) Directorate of Installation Support is responsible for—

(1) Trash and debris disposal.

(2) Real property facility maintenance and repair.

(3) Periodic hosing of all piers, as required.

(c) The Directorate of the Provost Marshal (DPM) will—

(1) Enforce this subpart and all other policies imposed by the Fort Monroe Installation Commander and state and federal fishing regulations.

(2) Open and close fishing areas in accordance with this subpart. Seasonal safety factors and ongoing ceremonies will, at times, delay opening of fishing areas.

(3) Issue DD Form 1805 for violations, as appropriate.

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§ 552.184 Policy.

(a) Fort Monroe fishing facilities are available for use by authorized personnel on a daily basis.

(b) Direct requests for information and/or assistance to the Outdoor Recreation Office at commercial (804) 727-4305 or (804) 727-2384.

(c) Personal equipment restrictions on all piers located on Fort Monroe are as follows:

(1) Two fishing rods per person, 18 years of age and older; one fishing rod per person, under 18 years of age.

(2) Dip nets with handles exceeding 4 feet in length are prohibited on all piers at Fort Monroe.

(3) Personnel using cast nets to catch food fish must have a current state cast net license in their possession.

(4) Personnel are authorized to take or catch crabs with one crab trap or crab pot per person from Fort Monroe piers.

(d) Saltwater fishing licenses. Persons ages 16 through 64, fishing with a rod and reel, or any other fishing device, in Virginia's portion of the Chesapeake Bay or in saltwater or tidal tributaries require a saltwater fishing license. Refer to the 1994 Virginia Freshwater and Saltwater Fishing Regulations booklet for exemptions and fee information. This booklet is available at the Outdoor Recreation Office, Building 165, Fort Monroe.

(e) In accordance with Codes of Virginia S 28.1-174 and S 28.1-165, persons without a license to take crabs will be permitted to take or catch 1 bushel of hard-shell crabs and 2 dozen peeler crabs per day, per household. A first violation of any regulation under the Code of Virginia in regards to fishing, crabbing, etc., is a Class 3 misdemeanor; second or subsequent violations of these provisions is a Class 1 misdemeanor in accordance with S 28.2-903, Code of Virginia.

(f) All patrons are responsible for the conduct of their family members and guests. They are also responsible for the proper disposal of all personal refuse into the proper receptacles. Refuse such as seaweed, leftover bait, unwanted fish, crabs, etc., will NOT be left on piers or placed in trash receptacles. All refuse of this type will be thrown overboard. However, it is ille-

gal and a violation of existing law to throw fishing line, paper, plastic materials, and other debris into the water. Doing so may lead to a fine or imprisonment, or both. All man-made materials will be deposited in proper trash receptacles or recycled.

(g) Cleaning of fish is not allowed on Fort Monroe piers and seawalls.

(h) Littering (to include leaving seaweed, bait, or fish on piers) is prohibited. Failure to comply with established policies may result in the loss of installation fishing privileges.

(i) Children under 12 years of age must be accompanied by a responsible adult at all Fort Monroe fishing piers.

(j) The moat is off limits to fishing.

(k) The Fort Monroe fishing map at appendix A to this subpart, visually outlines all areas authorized for each category of user. Copies of this map are available at the Outdoor Recreation Office, Building 165.

(l) In accordance with the Directorate of Provost Marshal, police officers from the Virginia Marine Resources Commission (VMRC) will enforce VMRC fishing regulations at Fort Monroe fishing areas.

§ 552.185 Eligibility.

The following personnel are authorized to fish on Fort Monroe:

(a) Active duty and retired military personnel, their family members, and Department of Defense civilian employees, as specified on the fishing map at appendix A to this subpart.

(b) All other personnel, as specified on the fishing map at appendix A to this subpart.

Subpart O [Reserved]

Subpart P—Protests, Picketing, and Other Similar Demonstrations on the Installation of Aberdeen Proving Ground, Maryland

AUTHORITY: 18 U.S.C. Sec. 1382.

SOURCE: 62 FR 33998, June 24, 1997, unless otherwise noted.

§ 552.211 Purpose.

This subpart establishes policies, responsibilities, and procedures for protests, picketing, and other similar demonstrations on the Aberdeen Proving Ground installation.

§ 552.212 Scope.

(a) The provisions of this subpart apply to all elements of U.S. Army Garrison, Aberdeen Proving Ground (USAGAPG), and the supported organizations and activities on the Aberdeen and Edgewood Areas of Aberdeen Proving Ground.

(b) The provisions of this subpart cover all public displays of opinions made by protesting, picketing, or any other similar demonstration.

(c) The provisions of this subpart are applicable to all people, military and civilian employees, and all visitors, family members, or others, entering, upon or present at Aberdeen Proving Ground.

§ 552.213 Policy.

(a) Aberdeen Proving Ground is a non-public forum and is open for expressive activity only under certain circumstances. Aberdeen Proving Ground is a military installation under the exclusive federal jurisdiction at which official business of the federal government is conducted, including military training, testing of weapon systems and other military equipment, and other official business.

(b) On Aberdeen Proving Ground, except for activities authorized under 5 United States Code Chapter 71, Labor Management Relations, it is unlawful for any person to engage in any public displays of opinions made by protesting, picketing or any other similar demonstration without the approval of the Commander, U.S. Army Garrison, Aberdeen Proving Ground. Therefore, unless prior approval has been obtained as outlined below in 32 CFR 552.214, it will be unlawful for any person on Aberdeen Proving Ground to:

(1) Engage in protests, public speeches, marches, sit-ins, or demonstrations promoting a point of view.

(2) Interrupt or disturb the testing and evaluating of weapon systems, or any training, formation, ceremony,

class, court-martial, hearing, or other military business.

(3) Obstruct movement on any street, road, sidewalk, pathway, or other vehicle or pedestrian thoroughfare.

(4) Utter to any person abusive, insulting, profane, indecent, or otherwise provocative language that by its very utterance tends to excite a breach of the peace.

(5) Distribute or post publications, including pamphlets, newspapers, magazines, handbills, flyers, leaflets, and other printed materials, except through regularly established and approved distribution outlets and places.

(6) Circulate petitions or engage in picketing or similar demonstrations for any purpose.

(7) Engage in partisan political campaigning or electioneering.

(8) Disobey a request from Department of Defense police, other government law enforcement officials (e.g., Federal, State, or local law enforcement officials), military police, or other competent authority to disperse, move along or leave the installation.

(c) In appropriate cases, the Commander, U.S. Army Garrison, Aberdeen Proving Ground may give express written permission for protests, picketing, or any other similar demonstrations on Aberdeen Proving Ground property outside the gates adjacent to the installation borders, only if the procedures outlined below in 32 CFR 552.214 are followed.

§ 552.214 Procedures.

(a) Any person or persons desiring to protest, picket, or engage in any other similar demonstrations on Aberdeen Proving Ground must submit a written request to the Commander, U.S. Army Garrison, Aberdeen Proving Ground, ATTN: STEAP-CO, 2201 Aberdeen Boulevard, Aberdeen Proving Ground, Maryland 21005-5001. The request must be received at least 30 calendar days prior to the demonstration, and it must include the following:

(1) Name, address, and telephone number of the sponsoring person or organization. (If it is an organization, include the name of the point of contact.)

(2) Purpose of the event.

(3) Number of personnel expected to attend.

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(4) Proposed date, time, location and duration of the event.

(5) Proposed means of transportation to and from APG.

(6) Proposed means of providing security, sanitary services and related ancillary services to the participants.

(b) Based on the Commander's concerns for discipline, mission accomplishment, protection of property, and the safeguarding of the health, morale, and welfare of the APG community, the Commander will determine whether to grant the request and, if granted, any limitations as to where and when it will take place.

§ 552.215 Responsibilities.

(a) Director, Law Enforcement and Security, U.S. Army Garrison, Aberdeen Proving Ground, will furnish police support as needed.

(b) Chief Counsel and Staff Judge Advocate, U.S. Army Test and Evaluation Command, will provide a legal review of the request.

§ 552.216 Violations.

(a) A person is in violation of the terms of this subpart if:

(1) That person enters or remains upon Aberdeen Proving Ground when that person is not licensed, invited, or otherwise authorized by the Commander, U.S. Army Garrison, Aberdeen Proving Ground pursuant to the terms of § 552.214; or

(2) That person enters upon or remains upon Aberdeen Proving Ground for the purpose of engaging in any activity prohibited or limited by this subpart.

(b) All persons (military personnel, Department of the Army civilian employees, civilians, and others) may be prosecuted for violating the provisions of this subpart. Military personnel may be prosecuted under the Uniform Code of Military Justice. Department of the Army civilian employees may be prosecuted under 18 U.S.C. 1382, and/or disciplined under appropriate regulations. Civilians and others may be prosecuted under 18 U.S.C. 1382.

(c) Administrative sanctions may include, but are not limited to, bar actions including suspension of access privileges, or permanent exclusion from Aberdeen Proving Ground.

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APPENDIX A TO PART 552—DPCA RECREATIONAL AREAS IN TRAINING AREAS

1. DOD use only, permit not required:

NOTE. Use is authorized only to military, retired military, DOD civilian personnel, their family members and accompanied guests.

Boat launch adjacent to Officer's Club Beach on American Lake/Beachwood area

Cat Lake Picnic and Fishing Area—Training Area 19

Chambers Lake Picnic and *Fishing Area—Training Area 12 (See para 2 below)

Ecology Park Hiking Path—North Fort, CTA A West

Fiander Lake Picnic and Fishing Area—Training Area 20

Johnson Marsh—Training Area 10

Lewis Lake Picnic and Fishing Area—Training Area 16

Miller Hill Trail Bike Area (DOD only)—Main Post

No Name Lake—Training Area 22

Sequalitchew Lake Picnic Area—Training Area 2

Shannon Marsh—CTA D

Skeet Trap Range—2d Division Range Road, CTA E

Solo Point Boat Launch—North Fort, CTA A West

Sportman's Range—East Gate Road, Range 15

Wright Marsh/Lake—CTA C

Vietnam Village Marsh—Training Area 9 and 10

2. Non-DOD use, permit required: Chambers Lake, fishing only.

APPENDIX B TO PART 552—NON-PERMIT ACCESS ROUTES

1. The following public easement routes may be used without permit or check-in:

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Steilacoom-DuPont Road (EH 286156 to EH 302227).

Pacific Highway Southeast (EH 232119 to EH 250141).

Washington State Route 507 (EH 363061 to EH 429144).

Goodacre (unpaved) and Rice Kandle (paved) Roads (EH 386088 to EH 450074).

8th Avenue South (EH 424045 to EH 424126).

8th Avenue East (EH 440074 to EH 440126).

208th Avenue (EH 424126 to EH 432126).

Washington State Route 510 (EH 235063 to EH 247054 and EH 261046 to EH 273020).

Yelm Highway (EH 233056 to EH 239058).

Rainer Road Southeast (EG 167997 to EG 213941).

Military Road Southeast (EG 213941 to EG 215944).

Spurgeon Creek Road (EG 178986 to EG 179997).

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Stedman Road (EG 153987 to EG 167995).

2. The following military routes may be used without permit or check-in:

Huggins Meyer Road (North Fort Road, EH 305202—EH 328213)

East Gate Road (C-5 Mock-up to 8th Ave South—EH 328213)

260th (EH 440074 to EH 457074)

Roy cut-off (Chambers Lake) Road (East Gate Road to Roy City Limits)

Lincoln Avenue (Madigan to EH 391179)

3. The Solo Point Road is open to Weyerhaeuser Corporation personnel for business and recreation.

4. DOD personnel and Fort Lewis contractor personnel on official business may use all DEH-maintained paved roads and two lane gravel roads in the training areas. The use of one lane gravel lanes, or any established road not identified above, must be coordinated with the Area Access Office prior to use except as specified in §552.87(b)(2)

5. All range roads closed because of training activities will not be used until opened by the Range Officer. Such road closures will normally involve barricades and road guards. Barricades and road guards placed by direction of Range Control may not be by-passed.

APPENDIX C TO PART 552—AUTHORIZED ACTIVITIES FOR FORT LEWIS MANEUVER AREA ACCESS

Military Training (FL Reg 350-30)

DEH or Corps of Engineers Real Estate Agreement for commercial use (AR 405-80)

Installation service and maintenance (AR 420-74, FL Reg 350-30)

Non-DOD personnel in transit on public-access route only (appendix B)

Non-Commercial recreational use:

Hunting, fishing and trapping (FL Reg 215-1)

Dog training (not allowed 1 April through 31 July in selected areas)

Horseback riding on roads and vehicle tracks

Walking, distance running

Model airplane and rocket flying

Model boating

Orienteering

Sport parachuting

Organized rifle and pistol competition

Service group camping and activities (Boy Scouts, etc.)

Observation of wildlife and vegetation

Non-Commercial picking of ferns, mushrooms, blackberries, apples and other miscellaneous vegetation

Photography

Hiking

Historical Trails

APPENDIX D TO PART 552—UNAUTHORIZED ACTIVITIES IN FORT LEWIS MANEUVER AREAS

Civilian paramilitary activities and combat games.

Off-pavement motorcycle riding, except as noted in appendix A Off-road vehicle operation.

Hang gliding.

Ultralight aircraft flying.

Hot air ballooning.

Souvenir hunting and metal-detecting, including recovery of ammunition residue of fragments, archaeological or cultural artifacts, or geological specimens.

Vehicle speed contests.

Wood cutting or brush picking, without DEH or Crops of Engineer permit.

Commercial activities conducted for profit that require a Real Estate Agreement or commercial permit per AR 405-80, including horseback riding rentals or guide service, and dog training for reimbursement.

PART 553—ARMY NATIONAL CEMETERIES

Sec.

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APPENDIX A TO PART 553—SPECIFICATIONS FOR TRIBUTES IN ARLINGTON NATIONAL CEMETERY

§ 553.1

AUTHORITY: 24 U.S.C. Ch. 7.

SOURCE: 42 FR 25725, May 19, 1977, unless otherwise noted.

§ 553.1 Purpose.

The following specifies the authority and assigns the responsibilities for the development, operation, maintenance, and administration of the Arlington and Soldiers' Home National Cemeteries, a civil works activity of the Department of the Army.

§ 553.2 Statutory authority.

Basic statutory authority pertaining to the Army national cemeteries is in chapter 7, title 24, United States Code, entitled "National Cemeteries." Many of the provisions of this chapter were repealed by section 7(a) of the National Cemeteries Act of 1973 (Pub. L. 93-43, 18 June 1973, 38 U.S.C. 1000 *et seq.*); but section 7(b) provides that nothing in this section shall be deemed to affect in any manner the functions, powers, and duties of the Secretary of the Army with respect to Arlington and Soldiers' Home National Cemeteries.

§ 553.3 Scope and applicability.

(a) *Scope.* The development, operation, maintenance, and administration of Arlington National Cemetery and the Soldiers' Home National Cemetery are governed by this part and TM 10-287. AR 210-190 assigns responsibilities for the operation, maintenance, and administration of Army post cemeteries.

(b) *Applicability.* The provisions of AR 290-5 are applicable to active and retired members of the Armed Forces, certain disabled veterans, and veterans who were awarded certain military decorations.

§ 553.4 Responsibilities.

The Army national cemeteries, consisting of the Arlington National Cemetery, Arlington, Virginia, and Soldiers' Home National Cemetery, Washington, DC, are under the jurisdiction of the Department of the Army. The Assistant Secretary of the Army for Civil Works is directly responsible to the Secretary of the Army for policy formulation in the administration of these cemeteries. The Adjutant General is responsible for their day-to-day

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administration, operation, and maintenance. Specific responsibilities for Arlington and Soldiers' Home National Cemeteries are delegated to the Commander, Military District of Washington in accordance with a Memorandum of Understanding.

§ 553.5 Federal jurisdiction.

Where the State legislature has given the consent of that State to purchase the land which now comprises an Army national cemetery, the jurisdiction and power of legislation of the United States over Army national cemeteries will, in all courts and places, be held to be the same as is granted by Section 8, Article 1, Constitution of the United States.

§ 553.6 Donations.

(a) *Policy.* Under Department of the Army policy, proffered donations or gifts for beautifying Army national cemeteries may be accepted from legitimate societies and organizations or from reputable individuals, subject to the following provisions:

(1) The society, organization, or individual does not associate the name of the Department of the Army in any way with soliciting for the donation or gift.

(2) Delivery is made to the cemetery or to another point designated by the Department of the Army without expense to the Government.

(3) Installing, constructing, placing, or planting is in keeping with the planned development of the cemetery and the donor agrees to the use of the gift at any designated place within the cemetery.

(4) The donor is not permitted to affix any commemorative tablet or plaque to the items donated or to place one in the cemetery or elsewhere on Department of the Army property.

(b) *Processing.* All proffers of donations to Army national cemeteries will be referred to The Adjutant General with the recommendation of the cemetery superintendent as to the action to be taken.

(c) *Conditional gifts.* The Secretary of the Army is authorized, at his discretion, to accept, receive, hold, administer, and expend any gift, devise, or bequest of real or personal property on

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condition that the item be used for the benefit of, or in connection with, the operation maintenance, or administration of the two national cemeteries under the jurisdiction of the Department of the Army. The Adjutant General will take appropriate action on conditional gifts as prescribed in AR 1-100.

(d) *Unconditional gifts.* All proffers or donations of gifts which are unconditional will be accompanied by a report stating all material facts in connection with the source, nature, and purpose of the gift.

§ 553.7 Design and layout of Army national cemeteries.

(a) General cemetery layout plans, landscape planting plans and gravesite layout plans for Army national cemeteries will be maintained by The Adjutant General.

(b) New burial sections will be opened and prepared for burials only with the approval of The Adjutant General and after types and sizes of monuments on permanent sites have been established.

§ 553.8 Arlington Memorial Amphitheater.

(a) The Act of 2 September 1960 (74 Stat; 24 U.S.C. 295a) provides that the Secretary of Defense or his designee may send to Congress or his designee may send to Congress in January of each year recommendations on the memorials to be erected and the remains of deceased members of the Armed Forces to be entombed in the Arlington Memorial Amphitheater in Arlington National Cemetery. The Act further provides that—

(1) No memorial may be erected and no remains may be entombed in the Arlington Memorial Amphitheater unless specifically authorized by Congress;

(2) The character, design, or location of any memorial authorized by Congress is subject to the approval of the Secretary of Defense or of his designee.

(b) Under the provisions of the Act of 2 September 1960, the Secretary of the Army has been designated to act in behalf of the Secretary of Defense.

(c) The Department of the Army will seek the advice of the Commission of Fine Arts concerning any requests relative to inscriptions or memorials

within the Arlington Memorial Amphitheater.

§ 553.9 Power of arrest.

The superintendents of Army national cemeteries are authorized to arrest any person who willfully destroys, cuts, breaks, injures, or removes any tree, shrub, or plant within the limits of the cemetery and to bring that person before any United States magistrate or judge of any district court of the United States within any State or district where the cemeteries are situated, to hold that person to answer for the misdemeanor, and then and there to make a complaint in due form.

§ 553.10 Solicitations.

Solicitations to the public of any type of business including the sale of souvenirs and refreshments within the cemetery are prohibited. Violators who do not leave when so ordered or who unlawfully reenter the cemetery after being evicted will be subject to prosecution.

§ 553.11 Procurement.

Cemetery supplies and services will be procured in accordance with the provisions of the Armed Services Procurement Regulation (ASPR) and the Army Procurement Procedure (APP).

§ 553.12 Encroachments and revocable licenses.

(a) *Encroachments.* No railroads will be permitted upon the right-of-way acquired by the United States leading to Arlington or Soldiers' Home National Cemetery or to encroach upon any roads or walks thereon and maintained by the United States.

(b) *Revocable licenses.* The construction or erection of poles and lines (including underground lines) for transmitting and distributing electric power or for telephone and telegraph purposes, as well as water and sewer pipes, will not be permitted without the authority of the Department of the Army. Requests for revocable licenses to construct water, gas, or sewer lines or other appurtenances on or across the cemetery or an approach road in which the Government has a right-of-way or fee simple title or other interest will be submitted for final action to

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the cemetery superintendent with a complete description of the privilege desired and a map showing the location of the project on the roadway in question. The superintendent will forward the application and inclosures with his comments and recommendation to Headquarters, Department of the Army.

§ 553.13 Standards of construction, maintenance, and operations.

The following standards of the Department of the Army will be observed in the development, operation, maintenance, administration, and support of Army national cemeteries and will be considered in relation to budgetary reviews within the Department of the Army:

(a) As permanent national shrines provided by a grateful nation to the honored dead of the Armed Forces of the United States, the standards for construction, maintenance, and operation of Army national cemeteries will be commensurate with the high purpose to which they are dedicated.

(b) Structures and facilities provided for Army cemeteries will be permanent in nature and of a scope, dignity, and aesthetic design suitable to the purpose for which they are intended.

(c) Cemeteries will be beautified by landscaping and by means of special features based on the historical aspects, location, or other factors of major significance.

(d) Accommodations and services provided to the next of kin of the honored dead and to the general public will be of high order.

§ 553.14 Authority for interments.

The Act of 14 May 1948 (62 Stat. 234), as amended by the Act of 14 September 1959 (73 Stat. 547; 24 U.S.C. 281), and other laws specifically cited in this part authorize burial in Arlington and Soldiers' Home National Cemeteries under such regulations as the Secretary of the Army may, with the approval of the Secretary of Defense, prescribe.

§ 553.15 Persons eligible for burial in Arlington National Cemetery.

(a) Any active duty member of the Armed Forces (except those members

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serving on active duty for training only).

(b) Any retired member of the Armed Forces. A retired member of the Armed Forces, in the context of this paragraph, is a retired member of the Army, Navy, Air Force, Marine Corps, Coast Guard, or a Reserve component who has served on active duty (other than for training), is carried on an official retired list, and is entitled to receive retired pay stemming from service in the Armed Forces. If, at the time of death, a retired member of the Armed Forces is not entitled to receive retired pay stemming from his service in the Armed Forces until some future date, the retired member will not be eligible for burial.

(c) Any former member of the Armed Forces separated for physical disability prior to 1 October 1949 who has served on active duty (other than for training) and who would have been eligible for retirement under the provisions of 10 U.S.C. 1201 had that statute been in effect on the date of his separation.

(d) Any former member of the Armed Forces whose last active duty (other than for training) military service terminated honorably and who has been awarded one of the following decorations:

(1) Medal of Honor.

(2) Distinguished Service Cross (Air Force Cross or Navy Cross).

(3) Distinguished Service Medal.

(4) Silver Star.

(5) Purple Heart.

(e) Persons who have held any of the following positions, provided their last period of active duty (other than for training) as a member of the Armed Forces terminated honorably:

(1) An elective office of the United States Government.

(2) Office of the Chief Justice of the United States or of an Associate Justice of the Supreme Court of the United States.

(3) An office listed in 5 U.S.C. 5312 or 5 U.S.C. 5313.

(4) The Chief of a mission who was at any time during his tenure classified in class I under the provisions of 411 of the Act of 13 August 1946, 60 Stat. 1002, as amended (22 U.S.C. 866, 1964 ed.).

(f) Any former prisoner of war who, while a prisoner of war, served honorably in the active military, naval, or air service, whose last period of active military, naval, or air service terminated honorably and who died on or after November 30, 1993.

(1) The term “former prisoner of war” means a person who, while serving in the active military, naval, or air service, was forcibly detained or interned in line of duty—

(i) By an enemy government or its agents, or a hostile force, during a period of war; or

(ii) By a foreign government or its agents, or a hostile force, under circumstances which the Secretary of Veterans Affairs finds to have been comparable to the circumstances under which persons have generally been forcibly detained or interned by enemy governments during periods of war.

(2) The term “active military, naval, or air service” includes active duty, any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty, and any period of inactive duty training during which the individual concerned was disabled or died from an injury incurred or aggravated in line of duty.

(g) The spouse, widow or widower, minor child and, at the discretion of the Secretary of the Army, unmarried adult child of any of the persons listed above.

(1) The term “spouse” refers to a widow or widower of an eligible member, including the widow or widower of a member of the Armed Forces who was lost or buried at sea or officially determined to be permanently absent in a status of missing or missing in action. A surviving spouse who has remarried and whose remarriage is void, terminated by death, or dissolved by annulment or divorce by a court with basic authority to render such decrees regains eligibility for burial in Arlington National Cemetery unless it is determined that the decree of annulment or divorce was secured through fraud or collusion.

(2) An unmarried adult child may be interred in the same grave in which the parent has been or will be interred,

provided that child was incapable of self-support up to the time of death because of physical or mental condition. At the time of death of an adult child, a request for interment will be submitted to the Superintendent of Arlington National Cemetery. The request must be accompanied by a notarized statement from an individual who has direct knowledge as to the marital status, degree of dependency of the deceased child, the name of that child’s parent, and the military service upon which the burial is being requested. A certificate of a physician who has attended the decedent as to the nature and duration of the physical and/or mental disability must also accompany the request for interment.

(h) Widows or widowers of service members who are interred in Arlington National Cemetery as part of a group burial may be interred in the same cemetery but not in the same grave.

(i) The surviving spouse, minor child, and, at the discretion of the Secretary of the Army, unmarried adult child of any person already buried in Arlington.

(j) The parents of a minor child or unmarried adult child whose remains, based on the eligibility of a parent, are already buried in Arlington National Cemetery.

[42 FR 25725, May 19, 1977, as amended at 59 FR 60559, Nov. 25, 1994]

§ 553.15a Persons eligible for inurnment of cremated remains in Columbarium in Arlington National Cemetery.

(a) Any member of the Armed Forces who dies on active duty.

(b) Any former member of the Armed Forces who served on active duty (other than for training) and whose last service terminated honorably.

(c) Any member of a Reserve component of the Armed Forces, and any member of the Army National Guard or the Air National Guard, whose death occurs under honorable conditions while he is on active duty for training or performing full-time service; performing authorized travel to or from that duty or service; or is on authorized inactive duty training including training performed as a member of the Army National Guard or the Air National Guard. Also included are those

members whose deaths occur while hospitalized or undergoing treatment at the expense of the United States for injury or disease contracted or incurred under honorable conditions while on that duty or service or performing that travel or inactive duty training.

(d) Any member of the Reserve Officers' Training Corps of the Army, Navy, or Air Force whose death occurs under honorable conditions while attending an authorized training camp or on an authorized practice cruise, performing authorized travel to or from that camp or cruise, or hospitalized or undergoing treatment at the expense of the United States for injury or disease contracted or incurred under honorable conditions while attending that camp or cruise, performing that travel, or undergoing that hospitalization or treatment at the expense of the United States.

(e) Any former prisoner of war who, while a prisoner of war, served honorably in the active military, naval, or air service, whose last period of active military, naval, or air service terminated honorably and who died on or after November 30, 1993.

(1) The term "former prisoner of war" means a person who, while serving in the active military, naval, or air service, was forcibly detained or interned in line of duty—

(i) By an enemy government or its agents, or a hostile force, during a period of war; or

(ii) By a foreign government or its agents, or a hostile force, under circumstances which the Secretary of Veterans Affairs finds to have been comparable to the circumstances under which persons have generally been forcibly detained or interned by enemy governments during periods of war.

(2) The term "active military, naval, or air service" includes active duty, any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty, and any period of inactive duty training during which the individual concerned was disabled or died from an injury incurred or aggravated in line of duty.

(f) Any citizen of the United States who, during any war in which the

United States has been or may hereafter be engaged, served in the Armed Forces of any government allied with the United States during that war, whose last active service terminated honorably by death or otherwise, and who was a citizen of the United States at the time of entry on such service and at the time of death.

(g) Commissioned officers, United States Coast and Geodetic Survey (now National Oceanic and Atmospheric Administration) who die during or subsequent to the service specified in the following categories and whose last service terminated honorably:

(1) Assignment to areas of immediate military hazard.

(2) Served in the Philippine Islands on December 7, 1941.

(3) Transferred to the Department of the Army or the Department of the Navy under certain statutes.

(h) Any commissioned officer of the United States Public Health Service who served on full-time duty on or after July 29, 1945, if the service falls within the meaning of active duty for training as defined in 38 U.S.C. 101(22) or inactive duty training as defined in 38 U.S.C. 101(23) and whose death resulted from a disease or injury incurred or aggravated in line of duty. Also, any commissioned officer of the Regular or Reserve Corps of the Public Health Service who performed active service prior to July 29, 1945 in time of war; on detail for duty with the Armed Forces; or while the service was part of the military forces of the United States pursuant to Executive order of the President.

(i) Spouses, minor children, and dependent adult children of the persons listed above.

(24 U.S.C. 281)

[43 FR 35043, Aug. 8, 1978, as amended at 59 FR 60559, Nov. 25, 1994; 60 FR 8305, Feb. 14, 1995]

§553.16 Persons eligible for burial in Soldiers' Home National Cemetery.

The Board of Commissioners of the US Soldiers' and Airmen's Home will prescribe rules governing burial in the Soldiers' Home National Cemetery.

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§ 553.17 Persons ineligible for burial in an Army national cemetery.

(a) A father, mother, brother, sister, and in-law is not eligible for interment by reason of relationship to an eligible service person even though he/she is dependent upon the service member for support and/or is a member of his/her household.

(b) A person whose last separation from one of the Armed Forces was under other-than-honorable conditions is not eligible for burial even though he may have received veterans benefits, treatment at a Veterans Administration hospital or died in such a hospital.

(c) A person who has volunteered for service with the Armed Forces but has not actually entered on active duty.

(d) Nonservice-connected spouses who have been divorced from the service-connected members or who have remarried after the interment of the service-connected spouse and whose remarriage is still valid are not eligible because of the decedent's service.

(e) Dependents are not eligible for burial in Arlington National Cemetery unless the Service-connected family member has been or will be interred in that cemetery. This does not apply to widows or widowers of members of the Armed Forces lost or buried at sea or officially determined to be permanently absent in a status of missing or missing in action.

§ 553.18 Assignment of gravesites.

(a) Under present policy of the Department of the Army, only one gravesite is authorized for the burial of a service member and eligible family members.

(b) Gravesites will not be reserved.

(c) Gravesite reservations made in writing before the one-gravesite-per-family unit policy was established will remain in effect as long as the reservee remains eligible for burial in Arlington.

§ 553.19 Disinterments.

(a) Interments in Arlington National Cemetery of eligible decedents are considered permanent and final, and disinterments will be permitted only for cogent reasons. Disinterments and removal of remains will be approved only when all living close relatives of the

decedent give their written consent or when a court order directs the disinterment.

(b) All requests for authority to disinter remains will include the following information:

(1) A full statement of reasons for the proposed disinterment.

(2) Notarized statements by all close living relatives of the decedent that they interpose no objection to the proposed disinterment. "Close relatives" are widow or widower, parents, adult brothers and sisters, and adult children of the decedent and will include the person who directed the initial interment, if living, even though the legal relationship of that person to the decedent may have changed.

(3) A sworn statement by a person who knows that those who supplied affidavits comprise all the living close relatives of the deceased, including the person who directed the initial interment.

(c) In lieu of the documents required, an order of a court of competent jurisdiction will be recognized. The Department of the Army or officials of the cemetery should not be made a party or parties to the court action since this is a matter that concerns the family members involved.

(d) Any disinterment that may be authorized under this paragraph must be accomplished without expense to the Government.

§ 553.20 Headstones and markers.

All graves in Army national cemeteries will be appropriately marked in accordance with 24 U.S.C. 279. Government headstones and markers are provided by the Veterans Administration in accordance with the provisions of the National Cemeteries Act of 1973. When requested by the next of kin, an appropriate memorial headstone or marker will be furnished by the Veterans Administration and erected by cemetery personnel in a memorial section of the cemetery which has been set aside for this purpose. Headstones will be of white marble, upright slab design.

§ 553.21 Monuments and inscriptions at private expense.

(a) The erection of markers and monuments at private expense to mark graves in lieu of Government headstones and markers is permitted only in sections of Arlington National Cemetery in which private monuments and markers were authorized as of 1 January 1947. These monuments will be of simple design, dignified, and appropriate to a military cemetery. The name of the person(s) or the name of an organization, fraternity, or society responsible for the purchase and erection of the marker will not be permitted on the marker or anywhere else in the cemetery. Approval for the erection of a private monument will be given with the understanding that the purchaser will make provision for its future maintenance in the event repairs are necessary. The Department of the Army will not be liable for maintenance of or damage of the monument.

(b) Where a monument has been erected to an individual interred in Arlington National Cemetery and the next of kin desires to have inscribed on it the name and appropriate data pertaining to a deceased spouse, parent, son, daughter, brother, or sister whose remains have not been recovered and who would have been eligible in their own right for burial in Arlington, such inscriptions may be incised on the monument at no expense to the Government. The words "In Memoriam" or "In Memory Of" are mandatory elements of these inscriptions.

(c) Except as may be authorized for marking group burials, ledger monuments of freestanding cross design, narrow shafts, mausoleums, or over-ground vaults are prohibited. Under-ground vaults may be placed at private expense, if desired, at the time of interment.

(d) Specific instructions concerning private monuments and markers are contained in TM 10-287.

§ 553.22 Visitors' rules for the Arlington National Cemetery.

(a) *Purpose.* The rules of this section define the standards of conduct required of all visitors to the Arlington National Cemetery, Arlington, Virginia. Applicable Army regulations and

directives should be consulted for all other matters not within the scope of these rules.

(b) *Scope.* Pursuant to title 40 United States Code, sections 318a and 486, and based upon delegations of authority from the Administrator, General Services Administration, the Secretary of Defense, and the Secretary of the Army, this section applies to all Federal property within the charge and control of the Superintendent, Arlington National Cemetery, and to all persons entering in or on such property. At the discretion of the Secretary of the Army, any person or organization that violates any of the provisions of paragraphs (d), (e), (f), (g), and (h), or (i) of this section may be barred from conducting memorial services and ceremonies within the Cemetery for two years from the date of such violation. Any such person shall also be subject to the penalties set out in title 40, United States Code section 318c.

(c) *Definitions.* When used in this section;

(1) The term *memorial service or ceremony* means any formal group activity conducted within the Arlington National Cemetery grounds intended to honor the memory of a person or persons interred in the Cemetery or those dying in the military service of the United States or its allies. "Memorial service or ceremony" includes a "private memorial service," "public memorial service," "public wreath laying ceremony" and "official ceremony" as defined in this section.

(2) The term *official ceremony* means a memorial service or ceremony approved by the Commanding General, Military District of Washington, in which the primary participants are authorized representatives of the United States Government, a state government, a foreign country, or an international organization who are participating in an official capacity.

(3) The term *private memorial service* means a memorial service or ceremony, other than an official ceremony, conducted at a private gravesite within Arlington National Cemetery by a group of relatives and/or friends of the person interred or to be interred at

that gravesite. Private memorial services may be closed to members of the public.

(4) The term *public memorial service* means a ceremony, other than an official ceremony, conducted by members of the public at the Arlington Memorial Amphitheater, the Confederate Memorial, the Mast of the Maine, the John F. Kennedy Grave or at an historic shrine or at a gravesite within Arlington National Cemetery designated by the Superintendent, Arlington National Cemetery. All public memorial services are open to any member of the public to observe.

(5) The term *public wreath laying ceremony* means a brief ceremony, other than an official ceremony, in which members of the public, assisted by members of the Tomb Guard, present a wreath or similar memento, approved by the Superintendent or Commanding General, at the tomb and plaza area of the Tomb of the Unknown Soldier (also known as the Tomb of the Unknowns). Participants follow the instructions of the Tomb Guards, Superintendent and Commanding General in carrying out the presentation. The ceremony is open to any member of the public to observe.

(6) The term *Superintendent* means the Superintendent, Arlington National Cemetery or his representative.

(7) The term *Commanding General*, means the Commanding General, U.S. Army Military District of Washington or his representative.

(d) *Visitors hours.* Visitors' hours shall be established by the Superintendent and posted in conspicuous places. Unless otherwise posted or announced by the Superintendent, visitors will be admitted during the following hours:

October through March—8 a.m. through 5 p.m.

April through September—8 a.m. through 7 p.m.

No visitor shall enter or remain in the Cemetery beyond the time established by the applicable visitors' hours.

(e) *Destruction or Removal of Property.* No person shall willfully destroy, damage, mutilate or remove any monument, gravestone, structure, tree, shrub, plant or other property located within the Cemetery grounds.

(f) *Conduct within the Cemetery.* Because Arlington National Cemetery is a shrine to the honored dead of the Armed Forces of the United States and because certain acts, appropriate elsewhere, are not appropriate in the Cemetery, all visitors, including persons attending or taking part in memorial services and ceremonies, shall observe proper standards of decorum and decency while within the Cemetery grounds. Specifically, no person shall:

(1) Conduct any memorial service or ceremony within the Cemetery, except private memorial services, without the prior approval of the Superintendent or Commanding General. All memorial services and ceremonies shall be conducted in accordance with the rules established in paragraph (h) and, except for official ceremonies, paragraph (i) of this section. Official ceremonies shall be conducted in accordance with guidance and procedures established by the Commanding General;

(2) Engage in any picketing, demonstration or similar conduct within the Cemetery grounds;

(3) Engage in any orations, speeches, or similar conduct to assembled groups of people, unless the oration is part of a memorial service or ceremony authorized by this section;

(4) Display any placards, banners, flags or similar devices within the Cemetery grounds, unless, in the case of a flag, use of the same is approved by the Superintendent or Commanding General and is part of a memorial service or ceremony authorized by this section;

(5) Distribute any handbill, pamphlet, leaflet, or other written or printed matter within the Cemetery grounds except that a program may be distributed if approved by the Superintendent or Commanding General and such distribution is a part of a memorial service or ceremony authorized by this section;

(6) Allow any dog, cat, or other pet to run loose within the Cemetery grounds;

(7) Use the Cemetery grounds for recreational activities such as sports, athletics, or picnics;

(8) Ride a bicycle within Cemetery grounds except on Meigs Drive, Sherman Drive and Schley Drive or as otherwise authorized by the Superintendent under this subparagraph. All other bicycle traffic will be directed to the Visitors' Center where bicycle racks are provided. Exceptions for bicycle touring groups may be authorized in advance and in writing by the Superintendent. An individual visiting a relative's gravesite may be issued a temporary pass by the Superintendent to permit him to proceed directly to and from the gravesite by bicycle;

(9) Deposit or throw litter on Cemetery grounds;

(10) Play any radio, tape recorder, or musical instrument, or use any loud-speaker within the Cemetery grounds unless use of the same is approved by the Superintendent or Commanding General and is part of a memorial service or ceremony authorized by this section;

(11) Drive any motor vehicle within Arlington National Cemetery in excess of twenty miles per hour or such lesser speed limit as the Superintendent posts;

(12) Park any motor vehicle in any area on the Cemetery grounds designated by the Superintendent as a no parking area; or leave any vehicle in the Visitors' Center Parking Lot at the Cemetery beyond two hours;

(13) Engage in any disorderly conduct within the Cemetery grounds. For purposes of this section, a person shall be guilty of disorderly conduct if, with purpose to cause, or with knowledge that he is likely to cause, public inconvenience, annoyance or alarm, he:

(i) Engages in, promotes, instigates, encourages, or aids and abets fighting, or threatening, violent or tumultuous behavior;

(ii) Yells, utters loud and boisterous language or makes other unreasonably loud noise;

(iii) Interrupts or disturbs a memorial service or ceremony;

(iv) Utters to any person present abusive, insulting, profane, indecent or otherwise provocative language or gesture that by its very utterance tends to incite an immediate breach of the peace;

(v) Obstructs movement on the streets, sidewalks, or pathways of the Cemetery grounds without prior authorization by competent authority;

(vi) Disobeys a proper request or order by the Superintendent, Cemetery special police, park police, or other competent authority to disperse or to leave the Cemetery grounds; or

(vii) Otherwise creates a hazardous or physically offensive condition by any act not authorized by competent authority.

(g) *Soliciting and Vending.* No person shall display or distribute commercial advertising or solicit business while within the Cemetery grounds.

(h) *Requests to Conduct Memorial Services and Ceremonies.* (1) Requests by members of the public to conduct memorial services or ceremonies shall be submitted to the Superintendent, Arlington National Cemetery, Arlington, Virginia 22211. Such requests shall describe the proposed memorial service or ceremony in detail to include the type of service, its proposed location, the name of the individual or organization sponsoring the service, the names of all key individuals participating in the service, the estimated number of persons expected to attend the service, the expected length of the service, the service's format and content, whether permission to use loud-speaker systems or musical instruments or flags during the service is requested and, if so, the number, type, and how they are planned to be used, whether permission to distribute printed programs during the service is requested, and, if so, a description of the programs, and whether military support is requested. Individuals and organizations sponsoring memorial services or ceremonies shall provide written assurance that the services or ceremonies are not partisan in nature, as defined in paragraph (i) of this section, and that they and their members will obey all rules set out in this section and act in a dignified and proper manner at all times while in the Cemetery grounds.

(2) Requests to conduct official ceremonies shall be submitted to the Commanding General.

(3) Memorial services or ceremonies other than private memorial services

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may be conducted only after permission has been received from the Superintendent or Commanding General. Private memorial services may be conducted only at the gravesite of a relative or friend. All other memorial services and ceremonies may be conducted only at the area or areas designated by the Superintendent or Commanding General as follows:

(i) Public memorial services may be authorized to be conducted only at the Arlington Memorial Amphitheater, the Confederate Memorial, the John F. Kennedy Grave, or other sites designated by the Superintendent.

(ii) Public wreath laying ceremonies may be authorized to be conducted at the tomb and plaza area of the Tomb of the Unknown Soldier (also known as the Tomb of the Unknowns).

(iii) Official ceremonies may be authorized to be conducted at sites designated by the Superintendent or Commanding General.

(i) *Conduct of Memorial Services and Ceremonies.* All memorial services and ceremonies within Arlington National Cemetery, other than official ceremonies, shall be conducted in accordance with the following rules:

(1) Memorial services and ceremonies shall be purely memorial in purpose and dedicated only to the memory of all those interred in the Cemetery, to all those dying in the military service of the United States, to all those dying in the military service of the United States while serving during a particular conflict or while serving in a particular military unit or units, or to the memory of the individual or individuals interred or to be interred at the particular gravesite at which the service or ceremony is held.

(2) Partisan activities are inappropriate in Arlington National Cemetery, due to its role as a shrine to all the honored dead of the Armed Forces of the United States and out of respect for the men and women buried there and for their families. Services or any activities inside the Cemetery connected therewith shall not be partisan in nature. A service is partisan and therefore inappropriate if it includes commentary in support of, or in opposition to, or attempts to influence, any current policy of the Armed Forces,

the Government of the United States or any state of the United States; if it espouses the cause of a political party; or if it has as a primary purpose to gain publicity or engender support for any group or cause. If a service is closely related, both in time and location, to partisan activities or demonstrations being conducted outside the Cemetery, it will be determined to be partisan and therefore inappropriate. If a service is determined to be partisan by the Superintendent or the Commanding General, permission to conduct memorial services or ceremonies at the Cemetery will be denied.

(3) Participants in public wreath laying ceremonies shall remain silent during the ceremony.

(4) Participants in public memorial services at the John F. Kennedy Grave shall remain silent during the service.

(5) Public memorial services and public wreath laying ceremonies shall be open to all members of the public to observe.

(6) Participants in public wreath laying ceremonies shall follow all instructions of the Tomb Guards, Superintendent, and Commanding General relating to their conduct of the ceremony. (40 U.S.C. 318a, 486, and delegations of authority from the Administrator, General Services Administration, Secretary of Defense, and Secretary of the Army).

(j) *Tributes in Arlington National Cemetery to commemorate individuals, events, units, groups and/or organizations—(1) General.* Tributes, which include plaques, medals, and statues, will be accepted only from those veterans organizations listed in the Directory of Veterans Organizations and State Department of Veterans Organizations published annually by the Veterans Administration or those substantially similar in nature.

(2) *Plaques at trees and other donated items.* Plaques may be accepted and placed at trees or other donated items to honor the memory of a person or persons interred in Arlington National Cemetery or those dying in the military service of the United States or its allies.-

Plaques placed at trees or other donated items must conform to the specifications described in appendix A,

Specifications for Tributes in Arlington National Cemetery. A rendering of the proposed plaque shall be sent to the Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003 for approval.

(k) *Tributes to the Unknowns (Unknown Soldier)*—(1) *General*. Tributes, normally plaques, to the Unknowns by those organizations described in § 553.22(j) above must conform to specifications and guidelines contained in appendix A, Specifications for Tributes in Arlington National Cemetery. Descriptions of the character, dimensions, inscription, material and workmanship of the tribute must be submitted in writing to Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003 for approval.

(2) *Tributes to the Unknowns (Unknown Soldier) Presented by Foreign Dignitaries*. Presentation of tributes by Foreign Dignitaries is allowed as part of an official ceremony as defined herein.

(1) *Monuments*. Monuments (other than private monuments or markers) to commemorate an individual, group or event may be erected following joint or concurrent resolution of the Congress.

APPENDIX A TO PART 553—SPECIFICATIONS FOR TRIBUTES IN ARLINGTON NATIONAL CEMETERY

1. *Purpose*. The appendix provides specifications and guidelines for obtaining approval for the donation of tributes at Arlington National Cemetery. -

2. *Approval*. The Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003 exercises general supervision over Arlington National Cemetery; and his approval of proposed tributes to be placed in Arlington National Cemetery is required.

3. *Who May Offer Tributes*. a. Tributes will be accepted only from those veterans' organizations listed in the Directory of Veterans Organizations and State Department of Veterans Organizations published annually by the Veterans Administration or those substantially similar in nature. Tributes will not be accepted from individuals or from subdivisions of parent organizations.

b. Only one tribute will be accepted from an organization. However, with prior approval, the inscription of a tribute already presented in Memory of the Unknown Soldier (World War I) may be reworded by the donating organization to commemorate one

additional or all the Unknowns, or a new tribute may be substituted for the old one.

4. *Design*—a. *Character*. The design of the tribute shall be artistically proportioned and shall be consistent with the sacred purpose of the shrine, which is to honor heroic military service as distinguished from civilian service however notable or patriotic.

b. *Dimensions*. The surface area of the tribute, including the mounting, shall not exceed 36 square inches; and the thickness or height shall not exceed two (2) inches when mounted.

c. *Inscriptions*—(1). *Tributes to the Unknowns*. Tributes are accepted only for the purpose of commemorating and paying homage and respect to one or more of the Unknowns. Thus all tributes must include, either in the basic design or on a small plate affixed thereto, a clear indication of such commemoration.

Suggestions follow:

- In Memory Of The American Heroes Known But to God
- The American Unknowns
- The Unknown American Heroes
- The Unknown Soldier
- The Unknown of World War II
- The Unknown of the Korean War
- The Unknown American of World War II
- The Unknown American of the Korean War

The identity of the donor/Date of Presentation.

2. *Other Tributes including plaques at trees and other donated Items*. Inscriptions on tributes will be in keeping with the dignity of Arlington National Cemetery.

d. *Material and Workmanship*. The material and workmanship of the tribute, including the mounting, shall be of the highest quality, free of flaws and imperfections.

5. *Applications*. Requests for authority to present tributes shall be submitted in writing to the Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003.

a. A scale drawing or model, showing the exact inscription and other details of the proposed tribute.

b. A copy of the constitution and bylaws of the organization desiring to make the presentation.

6. *Final Approval*. Upon fabrication, the completed tribute will be forwarded to the Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003 for visual inspection prior to its presentation.

7. *Presentation of Tributes*. After authorized acceptance of the tribute the sponsoring organization may arrange appropriate presentation ceremonies with the Superintendent, Arlington National Cemetery, Arlington, Virginia 22211-5003. If presentation ceremonies are not desired, the Superintendent will acknowledge receipt of the tribute and inform the sponsoring organization of the

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number of the case in which it reposes in the Memorial Display Room at the Amphitheater at Arlington National Cemetery.

[45 FR 80524, Dec. 5, 1980, as amended at 51 FR 19708, May 30, 1986; 51 FR 43742, Dec. 4, 1986]

PART 555—CORPS OF ENGINEERS, RESEARCH AND DEVELOPMENT, LABORATORY RESEARCH AND DEVELOPMENT AND TESTS, WORK FOR OTHERS

Sec.

- 555.1 Purpose.
- 555.2 Applicability.
- 555.3 References.
- 555.4 Policy.
- 555.5 Terms of providing reimbursement for work performed.
- 555.6 Authority.
- 555.7 Submission of technical proposals.
- 555.8 Program documentation.
- 555.9 Reporting requirements for work in support of DOE.
- 555.10 Coordination requirements.

APPENDIX A TO PART 555—DIRECTOR OF DE- FENSE RESEARCH AND ENGINEERING

AUTHORITY: 10 U.S.C. 3036; 22 U.S.C. 2357; 22 U.S.C. 2421; 31 U.S.C. 686; 42 U.S.C. 4221-4225.

SOURCE: 45 FR 32302, May. 16, 1980, unless otherwise noted.

§ 555.1 Purpose.

This regulation defines and establishes policies and procedures applicable to the performance of research and development and tests at Corps of Engineers laboratory installations for other governmental and private agencies and organizations.

§ 555.2 Applicability.

This regulation applies to the U.S. Army Engineer Waterways Experiment Station (WES), the U.S. Army Construction Engineering Research Laboratory (CERL), the U.S. Army Engineer Topographic Laboratories (ETL), the U.S. Army Coastal Engineering Research Center (CERC), the U.S. Army Cold Regions Research and Engineering Laboratory (CRREL), the U.S. Army Facilities Engineering Support Agency (FESA), the U.S. Army Corps of Engineers Water Resources Support Center (WRSC).

§ 555.3 References.

- (a) AR 10-5.
- (b) AR 37-27.
- (c) AR 70-1.
- (d) ER 1-1-6.
- (e) ER 1-1-7.
- (f) ER 70-1-5.
- (g) ER 70-1-10.
- (h) ER 1110-1-8100.
- (i) ER 1110-2-8150.
- (j) ER 1140-2-302.
- (k) ER 1140-2-303.

§ 555.4 Policy.

(a) The policies and procedures covered herein extend and supplement the performance of work for other Federal Agencies authorized in ER 1140-2-302, and services for State and local governmental units authorized in ER 1140-2-303, and the policy set forth by the Secretary of Defense in appendix A.

(b) Subject to the authority limitations contained in § 555.6 of this part, research and development and tests may be performed for other agencies of the Federal Government, State and local governments, foreign governments and private firms under the following conditions:

(1) The work is performed on a cost reimbursable basis; or on a cooperative basis with the Department of Energy (DOE), utilizing the resources of both DOE and the Corps; or as a part of direct funded programs for the Army Materiel Development and Readiness Command (DARCOM) or the Defense Mapping Agency (DMA), as provided for in §§ 555.6(a)(1), 555.6(a)(2), 555.7, and 555.9 of this part.

(2) Performance of the work will not interfere with performance of services essential to the mission of the Corps.

(3) Performance of the work will not require an increase in the permanent staff of the facility.

(4) Performance of the work will not require expansion of normal facilities.

(5) The work is within the scope of authorized activities of the laboratory at which the work is to be performed.

(6) Performance of the work will not be adverse to the public interest.

(7) Work will not be performed for foreign government or private firms unless it is firmly established that other laboratory facilities capable of

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performing the services are not available, or because of location or for other reasons it is clearly impractical to utilize other laboratory services.

(8) Prior to performing any research and development or tests for private firms, CE laboratories will obtain a written certification from such firms stating that the results of the work to be performed will not be used in litigation or for promotional purposes.

§ 555.5 Terms of providing reimbursement for work performed.

(a) *Federal Agencies.* Reimbursement for work for the Department of Defense, the Department of the Army, and other Federal Agencies will be in accordance with the procedures prescribed in AR 37-27.

(b) *Private firms and Foreign Governments.* Funds to cover the total estimated cost of the work or an initial increment of the estimated cost based on an approved schedule of payment will be deposited with the installation performing the work before any obligations or expenses in connection with the work are incurred; and when funds are being deposited on an approved schedule, no obligations or expenses will be incurred in connection with the work in excess of funds on deposit. Charges shall include a surcharge of 15% of all applicable costs, except under the following conditions:

(1) When the final product will directly contribute to planning, design, research, or construction activities in which Federal funds are involved by grant or otherwise.

(2) Where an exception is granted based on a direct benefit to the Government, Adequate justification, outlining the direct benefits which are expected to accrue to the Government, will be forwarded to HQDA (DAEN-RD) WASH DC 20314, for review and approval prior to deletion of the surcharge.

(c) *State and Local Governments.* Work for State and local governments will be performed only to the extent that cash has been received and deposited with the U.S. Treasury in advance of actual expenditures. When the work for State and local governments is to be performed as part of an authorized Civil Works Project, reimbursement may be made in annual installments during

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the period of performance in accordance with Section 40 of the Water Resources Development Act of 1974.

§ 555.6 Authority.

The following delegations of authority to perform research and development and tests apply.

(a) *Major Corps of Engineers Research and Development Laboratories.* The major Corps of Engineers research and development organizations are identified as WES, CERL, ETL, CERC, and CRREL. While not major CE R&D Laboratories, FESA, IWR, and HEC are responsible for performance of specific R&D functions.

(1) Subject to the provisions of § 555.8 of this regulation, the Commanders and Directors of WES, ETL and CRREL are authorized to perform direct funded work for DARCOM and DMA in accordance with the applicable memorandums of understanding.

(2) Subject to the provisions of §§ 555.7 and 555.9, the Commanders and Directors of CERL, CRREL, WES and FESA, for specific research and development functions, are authorized to perform work for DOE in accordance with the applicable memorandum of understanding.

(3) Except as provided for in paragraphs (a) (5) and (6) of this section, the Commanders and Directors of WES, CERL, CERC, CRREL, ETL and FESA are authorized to perform reimbursable work without OCE prior approval for Army agencies, Federal, State and local governmental agencies where the total estimated cost of each request for research and development or test is \$50,000 or less. The Research and Development Office will be advised of each request for research and development or test having an estimated cost exceeding \$20,000 (excluding cement sampling and testing work covered in § 555.6(a)(5) herein). Reimbursable research and development and test work for which the cost is estimated to be in excess of \$50,000 will not be initiated until authorization is received. Written requests for authorization to conduct work beyond the \$50,000 limit and notification of all scheduled work costing between \$20,000 and \$50,000 shall be submitted to DAEN-RD. These requests

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should accompany the technical proposal copy required by § 555.7(a) herein. It should include an explanation of the proposed work including how the work complements or impacts on-going research.

(4) Except as provided for in § 555.6(a)(5), the Commanders and Directors of WES, CERL, CERC, CRREL, ETL and FESA are delegated authority to perform reimbursable research and development for U.S. private firms and foreign governments when the total estimated cost of each request for research and development or test is \$20,000 or less. Approval is required when estimated costs exceed this authority. Written requests for approval shall be addressed to DAEN-RD.

(5) Corps R&D Laboratories are authorized to participate in the Department of Defense Technology Transfer Consortium. Participation in and effort undertaken to adapt existing technology or on-going research for transfer to the civil sector as a result of participation in this consortium shall be subject to the provisions of appendix A.

(6) The Director of WES is authorized to perform sampling and testing of cement and pozzolan for Federal, State, and local governmental agencies without limitation on cost. Approval is required prior to performance of sampling and testing of cement and pozzolan for private firms and foreign governments when the total estimated cost of sampling and testing services exceeds \$2,500. Requests for approval shall be addressed to DAEN-RD.

(7) The Director of CERL is authorized to perform compliance testing of paint for Federal, State and local governmental agencies without limitation on cost.

§ 555.7 Submission of technical proposals.

(a) Corps of Engineers research and development laboratories are authorized to submit technical proposals directly to other Federal agencies covering proposed work in their assigned fields except that proposals submitted to DMA must be submitted through DAEN-RD for approval. Proposals for cooperative effort projects under the DOD-DOE Memorandum of Understanding utilizing DOD and DOE re-

sources, will be forwarded to DAEN-RD for securing prior approval from the DA and DOD Program Coordinators. Copies of proposals which exceed the delegation of authority contained in this ER will be submitted to the Chief of Engineers marked for the attention of DAEN-RD.

(b) The above authority for direct submission of technical proposals does not include authority to perform work when proposals are accepted if the estimated cost exceeds the limits stated before. Authority to proceed will be as outlined in § 555.6.

§ 555.8 Program documentation.

Program documentation will be submitted in accordance with instructions provided by the sponsoring agency with two copies to HODA (DAEN-RD) WASH DC 20314.

§ 555.9 Reporting requirements for work in support of DOE.

The following reports are to be submitted to HODA with a copy to Commander and Director, CERL. CERL has been assigned the responsibility of Principal Laboratory for Energy R&D.

(a) All executed agreements subordinate to the DOD-DOE Memorandum of Understanding will be reported to DAEN-RD for forwarding to DA and DOD Program Coordinators within 20 days of their consummation.

(b) Reports analyzing each agreement and the DOD-DOE Memorandum of Understanding will be prepared as a "Report on the Department of Defense—Department of Energy Interagency Agreement", Report Control Symbol DD-M(SA)1511 and forwarded to DAEN-RD within 20 days after the end of the second and fourth quarters each fiscal year. Reports are to be prepared in accordance with the procedures prescribed in DEPPM, No. 78-8. In addition, informal reporting of other cooperative work with DOE not falling under the MOU, will also be reported at those times.

(c) Notifications of non-compliance. DAEN-RD should be promptly notified if the Corps component or DOE fail to comply with the terms of the DOD-DOE Memorandum of Understanding or subordinate agreements. This notification shall include:

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(1) A brief statement of the problem.
(2) Nature of corrective action proposed.

(3) Any recommended action for the DOD Program Coordinator.

§ 555.10 Coordination requirements.

All reimbursable work accepted by a laboratory which falls into a category for which a Principal Laboratory has been designated by DAEN-RD, will be reported to the designated POC in the Principal Laboratory, with a copy of the notification to DAEN-RD.

APPENDIX A TO PART 555—DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING

JUNE 14, 1974.

MEMORANDUM FOR ASSISTANT SECRETARIES OF THE MILITARY DEPARTMENTS (R&D)

Subject: Non-Defense Work in DoD Labs and R & D Facilities.

The Deputy SECDEF, in his memorandum of 21 January 1972 to the Secretaries of the Military Departments, on the above subject, (enclosure 1), outlined broad policy considerations for the DoD Laboratory Consortium formed to coordinate non-defense work being performed by them for other government organizations. In order to establish more precise guidelines for the Consortium, an operating policy has been developed (enclosure 2) which establishes criteria for Consortium membership and the type of work that may be undertaken. Also, the following additional constraints are placed upon the operation of this Consortium:

- The expenditure of in-house effort in any one laboratory shall be limited to 3% of the professional man-years at that laboratory unless expressed approval of the parent Military Department is granted to exceed this limit.

- The DoD commitment to support the brokerage function at the National Science Foundation shall not exceed two man-years per year through FY 76, subject to the continued willingness of the Military Departments to absorb the costs.

Malcolm R. Currie.

January 21, 1972.

Memorandum for Secretaries of the Military Departments Director of Defense Research and Engineering Assistant Secretary of Defense (Comptroller).

Subject: Non-Defense Work in DOD Laboratories and R&D Facilities Civil government agencies are expressing an increased interest in the application of defense and aerospace technology to the solution of problems in the civil sector. Included in this interest is the desire to exploit the technological expertise which

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exists in our DOD laboratories for the solutions of domestic problems. Separate and distinct from work done for defense oriented agencies such as AEC and NASA, our DOD laboratories have, for many years, performed selected projects for other agencies upon request. Recently, fifteen of these laboratories have formed a consortium for the purpose of coordinating the non-defense work being performed by them for other government organizations. Although the level of effort is a very small percentage in these laboratories at the present time, the aggregate can have a substantial beneficial impact on domestic programs.

It is generally conceded that the most efficient transfer of technology occurs when the adaptation of a technology to a new purpose is carried out by the team which carried out the original development. Recognizing this, the *Federal Council on Science and Technology (FCST)* has approved a "Policy for Expanded Interagency Cooperation in Use of Federal Laboratories" (attached). I endorse the spirit and intent of this policy.

The Military Services are encouraged to participate in this endeavor consistent with mission and legislative constraints. The level of effort in any laboratory is the prerogative of the cognizant Military Department which may, in turn, issue more detailed policy guidance as appropriate. Any Military Department policy shall be subject to the following considerations:

(a) *The level of effort of the work undertaken shall be such that it does not impede the accomplishment of the missions of the Military Services and the defense laboratories.*

(b) *The projects selected for non-defense work shall be compatible with the technological capability of the laboratory performing the work.*

(c) *Projects may be undertaken in support of federal, state and local government organizations. Non-defense work will be performed for the private industrial sector only on an exception basis.*

(d) *The full costs of projects undertaken shall be supported by transfer of funds through formal written agreements.*

(e) *Jointly sponsored projects are permitted when there is also a direct application to a Military requirement.* The commitment of funds and resources to joint programs shall be commensurate with the interest of each agency in the project.

The Assistant Secretary of Defense (Comptroller) shall explore with the Office of Management and Budget means for providing relief from any imposed manpower constraints to the extent of the DOD participation in non-defense work.

OPERATING POLICY OF THE DEPARTMENT OF
DEFENSE TECHNOLOGY TRANSFER CONSORTIUM

Purpose—The purpose of this policy is to establish the basic framework and direction of the Department of Defense (DOD) Technology Transfer Consortium.

Background—The DOD currently funds approximately half of the total Federal expenditure for R&D. Civil government agencies are expressing an increased interest in the exploitation of defense technology for the solution of problems in the civil sector. The Military Departments have been encouraged to cooperate in this endeavor, subject to considerations promulgated by the Secretary of Defense.

Consortium Purpose—The DOD Laboratories are a source of technology for the solution of these civil sector problems which are amenable to technological solutions. The primary role of the in-house laboratories is to provide a research and development base for the development of systems required to fulfill the national security mission of the DOD. However, these laboratories can serve a vital secondary role in the adaptation of technology to other fields and areas of need to the extent that it does not adversely impact on the primary DOD mission. A consortium of DOD Laboratories is formed for the purpose of coordinating interactions with other Federal Agencies and technology users at federal, state, and local level, and of coordinating the efforts in this endeavor. The technology transfer consortium is an association of DOD Laboratories working together through an informal affiliation. The main thrust of the consortium activity is through the individual and cooperative efforts of the laboratories involved, with an emphasis on the transfer and adaptation of technology through person-to-person mechanisms.

Criteria for Laboratory Consortium Membership. The following criteria for the participation of a DOD Laboratory in Consortium activities shall apply:

- The participation of any laboratory shall be undertaken with the full knowledge of the parent Military Department and the director or commander of the laboratory.
- For each participating laboratory an individual shall be designated by name to represent that laboratory to the consortium, and to coordinate the technology transfer activities of that laboratory. Procedures should be adopted within each laboratory to preclude the dilution of the efforts of middle and top level management by their involvement in the administrative aspects of the technology transfer effort.
- Any laboratory may withdraw from the Consortium by notifying the Consortium Chairman of this intent.

Criteria for Conduct of Work—It is the view of the Consortium that the civil sector

should rely on the private enterprise system to provide those services which are reasonably and expeditiously available through ordinary business channels. The laboratories shall attempt to provide a supplemental resource that is not technically available or that is obtainable only at an excessive cost. Such services shall not supplant existing private or industrial resources but are offered to enable other Federal agencies, State and local governments to avoid unnecessary duplication of special service functions.

The following criteria shall apply for the conduct of work undertaken in the technology transfer program:

- In order for work to be undertaken for any government organization each of the following criteria must be satisfied:
 - a. Laboratory staff will not increase as a result of the additional work.
 - b. Laboratory facilities will not be added for non-DOD work.
 - c. Proposed work should relate to a laboratory's area of particular expertise and the laboratory should be a significant resource in the particular subject area.
 - d. A determination should be made that the laboratory's background, experience and facilities are such that private industry could not perform the work except at a significantly increased cost.
- The major emphasis of the Technology Transfer Consortium should be directed to:
 - a. The transfer or adaptation of existing technology, either directly, or after being subjected to adaptive engineering.
 - b. The preparation of documentation and technical assistance in those activities unique to the mission of the DOD laboratories.
- Work will be performed for private industry only on an exception basis, such as when the laboratory possesses unique facilities that are required and which are not available in the private sector.
- Description of the work to be accomplished and the funds to be transferred will normally be specified in a formal inter-agency agreement.
- All costs shall be recovered from the receiving government organization, including realistic overhead costs, except that cooperative developments on a shared cost basis are encouraged where there is a distinct military application.
- Laboratory production of hardware shall normally be limited to prototypes or test units required to prove feasibility.
- Adaptive engineering shall not be performed on technological innovations for which a patent application has been made by a private industrial firm unless permission is received in writing from that firm. Technical, consulting, and support services will not normally be furnished another agency on a continuing basis.

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- Work in the form of analytic services shall not normally be undertaken in areas where comparable expertise exists in com-

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petitive industry. An exception to this provision is acceptable in areas of problem definition where existing Defense technology offers a unique potential solution.

SUBCHAPTER E—ORGANIZED RESERVES

PART 562—RESERVE OFFICERS' TRAINING CORPS

Sec.

- 562.1 Purpose.
- 562.2 Applicability.
- 562.3 Definitions.
- 562.4 Objectives.
- 562.5 Policies.
- 562.6 Responsibilities.
- 562.7 Program information.
- 562.8 Army Advisory Panel on ROTC Affairs.

AUTHORITY: 10 U.S.C. 2101-2111, unless otherwise noted.

SOURCE: 44 FR 51221, Aug. 31, 1979, unless otherwise noted.

§ 562.1 Purpose.

This regulation gives policies for conducting the Army's Senior Reserve Officers' Training Corps (ROTC) Program.

§ 562.2 Applicability.

This regulation applies to the program given at college level institutions and at the college level in military junior colleges.

§ 562.3 Definitions.

The following terms apply to the Army's Senior Reserve Officers' Training Corps Program:

- (a) *Academic year.* A period covering two semesters, or the equivalent, in which a student should complete one-fourth of the baccalaureate degree requirements under a 4-year college curriculum, or one-fifth of the requirements under a 5-year curriculum. The vacation period or summer session which follows is not normally included.
- (b) *Advanced camp.* The advanced camp training period held on a military installation. This is part of the advanced course and normally attended between Military Science (MS)-III and MS-IV. (The Ranger camp is an acceptable alternate).
- (c) *Advanced course.* The Senior ROTC 2-year advanced course of study (MS-III and MS-IV), including advanced camp. This advanced study normally taken by the cadet during his/her junior and senior years in college (fresh-

man and sophomore years in a military junior college (MJC)).

(d) *Basic camp.* The 6-week ROTC training course held at a military installation. This course is normally taken before the applicant's junior academic year. It is a prerequisite to enrollment in the 2-year ROTC program.

(e) *Basic course.* The 2-year senior ROTC basic course (MS-I and MS-II) normally pursued by the cadet during freshman and sophomore years in college.

(f) *Branch material.* Designation of a course of instruction designed to prepare the cadet for appointment as a commissioned officer in a specific branch of the Army. A branch material unit may offer training in one or more specific branches.

(g) *Cadet.* A term applied to each enrolled member of the ROTC program, including alien students in MS-I or MS-II. As a grade of rank, this term applies only to advanced course cadets.

(h) *Four-year Senior ROTC Program.* The 4-year Senior ROTC Program consisting of 4 years of military science (MS-I, -II, -III, and -IV), and ROTC advanced camp.

(i) *General military science (GMS).* A ROTC instruction program to prepare a cadet for appointment as a commissioned officer in any branch of the Army for which he/she is qualified.

(j) *Military science (MS).* The Senior ROTC curriculum which consists of two courses, the basic course (MS-I and MS-II) and the advanced course (MS-III and MS-IV).

(k) *Professor of Military Science (PMS).* The academic and military title of the senior commissioned Army officer assigned to a Senior ROTC unit.

(l) *Region commander.* The commanding general of a U.S. Army ROTC Region who is responsible for the operation, training, and administration of the ROTC program within his/her geographical area. Region commanders are located at:

- (1) US Army First ROTC Region, Fort Bragg, NC 28307.
- (2) US Army Second ROTC Region, Fort Knox, KY 40121.

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(3) US Army Third ROTC Region, Fort Riley, KS 66442.

(4) US Army Fourth ROTC Region, Fort Lewis, WA 98433.

(m) *ROTC ranger camp*. The ranger course conducted by the US Army Infantry School for volunteer cadets. Those selected attend in lieu of advanced camp.

(n) *Two-year ROTC Program*. A Senior ROTC Program of the same status as the 4-year program. It consists of the advanced course, preceded by basic camp as a qualifying step (in lieu of MS-I and MS-II).

§ 562.4 Objectives.

The objectives of the ROTC program are to:

(a) Attract, motivate, and prepare students with potential to serve as commissioned officers in the Regular Army or the US Army Reserve.

(b) Understand the concepts and principles of military art and science.

(c) Develop potential to lead and manage.

(d) Understand other professions.

(e) Develop integrity, honor, and responsibility.

(f) Appreciate the need for national security. Attaining these objectives prepares students for commissions and establishes a basis for future professional development and performance in the Army.

§ 562.5 Policies.

(a) The ROTC draws young men and women from all geographic areas and all strata of our country. It uses the many educational disciplines required for the modern Army. The ROTC ensures that men and women educated in a variety of American schools of higher learning are commissioned annually in the Army officer corps. In the future, the ROTC will continue to be the major source of newly commissioned officers for the Active Army, both Regular Army and Reserve forces. In addition, ROTC provides an advantage both to the Army and institutions of higher learning by assisting in the education of future Army Officers and providing a communication link between our military leaders and our developing students.

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(b) The Army Senior ROTC program is a cooperative effort, contracted between the Army and host institution to provide junior officer leadership in the interest of national security. The Army maintains a cordial and cooperative relationship with host institutions. The Army's goal is to continue to develop well-educated young men and women with potential as leaders in both civilian enterprise and national defense. The Army is receptive to valid criticism, regardless of source, as a means of maintaining a workable program. The right of orderly campus dissent is recognized. However, anti-ROTC activities which degrade and distort the Army image cannot be ignored. Consequently, the Army must look to its institutional hosts to provide campus support for the ROTC program.

(c) The program meets changing educational philosophies and concepts. It gives a flexible course of study in the changing environment of the academic community. A curriculum in the ROTC program is not restricted to classroom teaching. Program objectives may be satisfied in a variety of ways. A program may include a curriculum of other than classroom instruction if: it provides stated learning results, it is adopted by the host institution as part of its curriculum, and it follows the program of instruction published by the US Army Training and Doctrine Command. The PMS has authority, subject to limits set by the region commander, to develop courses that accomplish program objectives of the host institution. Activities which are part of the host school's curriculum require the same degree of support as other elements of the curriculum. The goal of the ROTC program is to commission well-educated young men and women in the Army.

(d) The PMS is responsible to see that each cadet realizes the importance of choice of branch preferences and what is involved in making an intelligent selection. Each graduating cadet by Army policy is assigned to the branch indicated by personal preference, academic major, physical qualifications, ROTC training, and demonstrated abilities, whenever possible. However, the assignment must be made by the needs of the service and may

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prevent selection based on the other factors. In assigning branches consideration is given to the cadet's academic specialization.

§ 562.6 Responsibilities.

(a) *The Commanding General, US Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332*, is the administrator of the Department of the Army for ROTC.

(b) *The Commanding General, US Army Training and Doctrine Command, Ft. Monroe, VA 23651*, manages and operates the ROTC program, except for those functions and responsibilities retained by Headquarters, Department of the Army.

(c) *The Professor of Military Science (PMS)* is the key to the success of the ROTC program. He/she is responsible for setting up the Military Science Program to blend the philosophies of the institution with the needs of the Army.

[44 FR 51221, Aug. 31, 1979; 45 FR 9262, Feb. 12, 1980]

§ 562.7 Program information.

(a) The Senior ROTC is conducted at military colleges, civilian colleges and universities and military junior colleges. School authorities may apply for a ROTC unit to the region commander of the area in which the school is located or to TRADOC. To be eligible for a unit, the institution must:

(1) Be a 4-year degree granting college or university.

(2) Be accredited by an appropriate regional accrediting association or accredited by a nationally recognized professional accrediting association.

(3) Have an enrollment large enough to ensure that officer production requirements will be met.

(4) Agree to—

(i) Establish a Department of Military Science as an integral academic and administrative department of the institution.

(ii) Adopt as part of the institution's curriculum either the 2- or 4-year program (or both) of the senior ROTC.

(iii) Require each cadet enrolled in any ROTC course to devote the number of hours to military instruction prescribed by the Secretary of the Army.

(iv) Make available for use by the Senior ROTC unit necessary and adequate classrooms, administrative offices, office equipment, storage space, drill field, and other required facilities in a fair and equitable manner in comparison with other departments of the institution (or other elements of the institution, if the institution does not have departments) and to pay the costs of utilities and maintenance thereof.

(v) Grant appropriate academic credit applicable toward graduation for successful completion of courses offered by the Department of Military Science.

(vi) Arrange for the scheduling of military classes to make it equally convenient for students to participate in ROTC as in other courses at the same educational level.

(vii) Include a representative of the Department of Military Science designated by the PMS on all faculty committees whose recommendations would directly affect the Department of Military Science.

(viii) Provide, without expense to the Army, adequate storage and issue facilities for all Government property provided for the ROTC program, when the Army assumes accountability and responsibility for Government property. Adequate facilities will consist of safe, well-lighted, dry, heated, ventilated areas, provided with office space, shelving, bins, clothing racks, and cabinets, as required, and suitable storage space for arms and ammunition. All windows will be securely barred or provided with heavy mesh screen, and doors will be reinforced and fitted with cylinder locks. Such facilities will be separate and apart from those occupied by any other department of the institution or other Government agency. Determination will be made by the region commander as to adequacy, safety, and satisfactory nature of storage and issue facilities.

(5) Produce a minimum annual average of 15 qualified commissioned officers from each 4-year senior division unit or a combination of a 4- and 2-year senior division unit; or a minimum annual average of 10 qualified officers from each 2-year senior division unit.

(6) Comply with the following requirements:

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(i) There will be no discrimination with respect to admission to the institution or subsequent treatment of students on the basis of race, color, or national origin.

(ii) The senior commissioned officer of the ROTC unit at the institution will be given the academic rank of Professor.

(b) Institutional authorities may, subject to approval of Department of the Army, elect to—

(1) Administer a GMS unit or a branch material unit. Their preference will be given consideration, but the type of unit approved for establishment will be determined on the basis of the needs of the Army.

(2) Administer the 4-year or the 2-year ROTC program, or both.

(3) Maintain accountability and responsibility for Government property issued for the ROTC program by complying with the following requirements or apply for relief therefrom.

(i) Appoint an officer of the institution as military property custodian who will be empowered to requisition, receive, stock, and account for Government property issued to the institution, and otherwise transact matter pertaining thereto for and in behalf of the institution.

(ii) Conform to the regulations of the Secretary of the Army relating to issue, care, use, safekeeping turn-in and accounting for such Government property as may be issued to the institution.

(iii) Comply with the provisions of law and regulations of the Secretary of the Army pertaining to the furnishing of a bond to cover the value of all Government property issued to the institutions, except uniforms, expendable articles, and supplies expendable in operation, maintenance, and instruction.

(c) Students desiring enrollment in a unit must:

(1) Be enrolled in and attending fulltime a regular course of instruction at a school participating in the program.

(2) Be a citizen of the United States.

(3) Be at least 17 years of age.

(4) Be physically capable of participating in the program.

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§ 562.8 Army Advisory Panel on ROTC Affairs.

(a) The Army Advisory Panel on ROTC Affairs (AAP) was established on April 28, 1952. The AAP provides for a continuous exchange of views between the U.S. Army Training and Doctrine Command, the Department of the Army, and the academic community.

(b) Membership is drawn from national educational associations, faculty members and administrators from ROTC host institutions and nationally prominent individuals.

(c) The AAP meets as required, but not less than once annually and the meetings are open to the public.

[45 FR 39502, June 11, 1980]

PART 564—NATIONAL GUARD REGULATIONS

MEDICAL ATTENDANCE AND BURIAL

Sec.

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CLAIMS FOR DAMAGES INVOLVING THE NATIONAL GUARD AND AIR NATIONAL GUARD

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AUTHORITY: Section 110, 70A Stat. 600; 32 U.S.C. 110.

MEDICAL ATTENDANCE AND BURIAL

SOURCE: Sections 564.37 through 564.41 appear at 44 FR 16385, Mar. 19, 1979, unless otherwise noted.

§ 564.37 Medical care.

(a) General. The definitions of medical care; policies outlining the manner, conditions, procedures, and eligibility for care; and the sources from which medical care is obtained are enumerated in AR 40-3.

(b) Elective care. Elective care in civilian medical treatment facilities or

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by civilian medical and dental personnel is not authorized. The medical care authorized by this regulation is limited to that necessary for the treatment of the disease or injury incurred under the conditions outlined herein.

(c) Prosthetic devices, prosthetic dental appliances, hearing aids, spectacles, orthopedic footwear, and orthopedic appliances. These items will be furnished—

(1) By Army medical facilities. (i) When required in the course of treatment of a disease or injury contracted or incurred in line of duty.

(ii) When required to replace items that have been lost, damaged, or destroyed while engaged in training under sections 502-505 of title 32, U.S.C., not the result of negligence or misconduct of the individual concerned.

(2) By civilian sources. (i) Under the circumstances enumerated in paragraph (c)(1)(i) of this section, after approval of the United States Property and Fiscal Officer's (USPFO) of the respective States.

(ii) Under the circumstances enumerated in paragraph (c)(1)(ii) of this section, in the case of prosthetic devices, prosthetic dental appliances, hearing aids, orthopedic footwear, and orthopedic appliances when the unit commander determines that:

(A) Member is far removed from a Federal medical treatment facility.

(B) Lack of such device would interfere with the individual's performance of duty as a member of the ARNG.

(C) Approval must be obtained from the USPFO's of the respective States prior to replacement.

(iii) Under the circumstances enumerated in paragraph (c)(1)(ii) of this section, in the case of spectacles upon a determination by the unit commander that:

(A) The member is far removed from military medical treatment facility.

(B) The member has no other serviceable spectacles.

(C) Lack of a suitable pair of spectacles would interfere with the member's performance of duty as a member of the ARNG.

(D) Charges for replacement of spectacles will not exceed the rates stated in AR 40-330. Charges for replacement

or repair by civilian sources over and above the allowable rates will be paid from the individual's personal funds.

(E) In cases covered by paragraphs (c)(2) (ii) and (iii) of this section, the unit commander will furnish a statement to support the voucher as follows:

Statement

Name _____, Rank _____,
SSN _____,
_____, while engaged in training under section *(502 *(503) *(504) *(505) of title 32, United States Code sustained the *(loss) *(damage) *(destruction) of his/her spectacles _____, description of loss, damage or destruction (type of lens and frames) not the result of misconduct or negligence on his/her part. The *(repair) *(replacement) would interfere with his/her performance of duty as a member of the Army National Guard. Date, _____, signature of unit commander _____.

*Indicate applicable portions.

(F) Approval must be obtained from the USPFO of the respective State prior to repair or replacement of spectacles.

(32 U.S.C. 318-320 and 502-505)

§ 564.38 For whom authorized.

(a) In line of duty. Medical care is authorized for members who incur a disease or injury in line of duty under the following circumstances:

(1) When a disease is contracted or injury is incurred while enroute to, from, or during any type of training or duty under sections 503, 504, 505, and for Guardmembers on orders for over 30 days performing duty under section 502f of title 32, U.S.C. Such training includes, but is not limited to annual training, maneuvers and field exercises, service schools, small arms meets, and FTTD under aforementioned sections.

(2) When an injury is incurred while engaged in any type of training under section 502 of title 32, U.S.C. Such training includes, but is not limited to, unit training assembly, multiple unit training assembly, and training in aerial flight, other than FTTD under 502f.

(3) While not on duty and while voluntarily participating in aerial flights in Government-owned aircraft under proper authority and incident to training. Guardmembers are authorized medical and dental care required as the

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result of an injury incurred in line of duty.

(4) Medical care is not authorized at Army expense for members who incur an injury while enroute to or from any type of training under section 502, except for Guardmembers ordered to perform duty for over 30 days under section 502f of title 32, U.S.C. Line of duty investigations and authorization for any medical treatment for conditions incurred while the members were performing Reserve Enlistment Program of 1963 (REP 63) training in a Federal status, or training under title 10, U.S.C. are the responsibility of the Army Area commander under whose jurisdiction the member was training, even though the individual may have returned to his/her National Guard status.

(b) Not in line of duty. Members who incur an injury or contract a disease during any type of training or duty under sections 502f, 503, 504, or 505 of title 32, U.S.C., when it is determined to be not in line of duty, may be furnished medical care at Army expense during the period of training.

(c) Armory drill status. Members who incur an injury while in an armory drill status under section 502 of title 32, U.S.C., when it is determined to be not in line of duty, may not be furnished medical care at Army expense.

(32 U.S.C. 318-320 and 502-505)

§ 564.39 Medical care benefits.

(a) A member of the ARNG who incurs a disease or injury under the conditions enumerated herein is entitled to medical care, in a hospital or at his/her home, appropriate for the treatment of his/her disease or injury until the resulting disability cannot be materially improved by further medical care.

(b) If it is determined that the disease or injury was directly related to authorized activities surrounding the care of the original disease or injury, medical care may be continued in the same manner as if it had occurred during the training period.

(c) When members who incur a disease or an injury during a period of training or duty under title 32, U.S.C. 503, 504, 505, or 502f are admitted to an Army medical treatment facility, and

it appears that a finding of "not in line of duty" may be appropriate, a formal line of duty investigation should be promptly conducted, and a copy of the report furnished the treatment facility. If these findings result in a "not in line of duty" determination prior to the date the training is terminated, every effort should be made to assist the hospital concerned in disposing of the patient from the hospital by the date the training is terminated or as soon thereafter as he/she becomes transportable. Medical care furnished such member after the termination of the period of training is not authorized at Army expense unless the "not in line of duty" determination is ultimately reversed. The individual may be furnished medical care at Army expense from the date the training is terminated to the date the member receives notification of this action. Medical care received subsequent to the member's receipt of such notification is not authorized at Army expense. In the event a line of duty investigation has not been made by the date the training is terminated, every effort will be made to arrive at a determination as soon thereafter as possible.

(32 U.S.C. 318-320 and 502-505)

§ 564.40 Procedures for obtaining medical care.

(a) When a member of the ARNG incurs a disease or an injury, while performing training duty under sections 502-505 of title 32, U.S.C., he/she will, without delay, report the fact to his/her unit commander. Each member will be informed that it is his/her responsibility to comply with these instructions, and that failure to promptly report the occurrence of a disease or injury may result in the loss of medical benefits.

(b) Authorization for care in civilian facility. (1) An individual who desires medical or dental care in civilian medical treatment facilities at Federal expense is not authorized such care without written or verbal authorization by the Chief, National Guard Bureau or his/her designee, except in an emergency.

(2) When medical care is obtained without prior authorization, the details will be submitted to NGB-ARS as

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soon as practicable. The notification of medical care will be made following the format in the appendix. The notification will be reviewed by NGB-ARS and replied to as deemed appropriate.

(c) Status while undergoing hospitalization. The ARNG status of an individual is not affected by virtue of his hospitalization. The provisions of AR 135-200 will apply. Determination of requirement for continued hospitalization will be made by the MTF commander. Paragraph (d) of this section will apply when a final "not in line of duty" determination has been made. Under no condition will an individual be assigned to the medical holding unit of a hospital.

(d) Disposition of hospitalized cases. When it is determined that a hospitalized ARNG member has obtained the maximum benefits from hospitalization and there is no disability remaining from the condition for which hospitalized, he/she will be returned to his/her duty station or, if none, to his/her home of record at the time of entry into the hospital.

APPENDIX

NOTIFICATION OF INJURY

Date _____
SUBJECT: Notification of Medical Care and/or Hospitalized Beyond the End of Training Periods.
THRU: The Adjutant General State of _____
TO: NGB-ARS, Washington, DC 20310.

In accordance with paragraph 8, NGR 40-3, notification of medical care is furnished below:
Name: _____
SSN: _____
Grade: _____
Parent unit and station: _____
Type and inclusive dates of training: _____
Date and place of incident: _____
Diagnosis: _____
LOD status: _____
Name and distance of nearest Federal medical facility: _____
Name and address of medical facilities utilized: _____
Estimated cost and duration of treatment: _____
Summary of incident: _____

(32 U.S.C. 318-320 and 502-505)

§ 564.41 Burial.

(a) Purpose. The purpose of this section is to provide policies and des-

ignate responsibilities for the care and disposition of remains of members of the Army National Guard entitled to burial at Federal expense.

(b) Authority. Act of 10 August 1956 (70A Stat. 112) as amended, title 10 U.S.C., sections 1481 through 1488, applicable to military personnel and their dependents.

(c) Policy. The provisions of AR 638-40 are applicable to battalion and higher level units of the Army National Guard, except as modified herein.

(d) Responsibilities. (1) The Chief, National Guard Bureau is responsible for prescribing procedures for the care and disposition of remains of members of the ARNG who die while—

(i) Performing full-time training at other than an Active Army installation under sections 316, 502, 503, 504, and 505, title 32, U.S.C.

(ii) Performing authorized travel to or from training outlined in paragraph (d)(1)(i) of this section.

(iii) Being hospitalized or undergoing treatment at Government expense for an injury incurred or disease contracted while performing duty indicated in paragraphs (d)(1) (i) and (ii) of this section.

(iv) Performing inactive duty training (IDT) under section 502, title 32, U.S.C. (It is to be noted that present law does not provide for payment of burial expenses from Federal funds for ARNG personnel killed while traveling to or from IDT.)

(2) Active Army installations are responsible for the care and disposition of remains of members of the National Guard who die while—

(i) Performing active duty for training under title 10 and training or other full-time training duty at an Active Army installation under sections 502, 503, 504, and 505, title 32, U.S.C.

(ii) Performing authorized travel to or from training specified in paragraph (d)(2)(i) of this section.

(iii) Being hospitalized or receiving treatment at Government expense as a result of injury incurred or disease contracted while performing duty indicated in paragraphs (d)(2) (i) and (ii) of this section.

(3) State adjutants general are responsible for notification of death in accordance with chapter 10, AR 600-10.

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(e) *Limitation of burial expense.* Payment of burial expenses is limited to an amount not exceeding that allowed by the Government for such services and in no circumstances may payment exceed the amount actually expended. The amount allowed when relatives incur the expenses will be in accordance with the following limitation:

(1) If death occurs where a properly approved Contract for Care of Remains is in force (Army, Navy, or Air Force contracts), the amount to be allowed for each item will not exceed the amount allowable under such contract.

(2) If death occurs where no contract is in force, reimbursement for items or services, including preparation and casketing will be limited to the stipulated amount included in chapter 4, AR 638-40.

(3) Reimbursement for transportation will be limited to the amount for which the Government could have obtained required common carrier transportation plus the change made for hearse service from the common carrier terminal to the first place of delivery.

(4) Reimbursement for interment expenses is limited to the amounts provided in chapter 13, AR 638-40.

(f) *Accountability for clothing.* (1) If in a serviceable condition, the uniform in possession of the deceased will be used and accountability dropped in accordance with NGR 710-2.

(2) If a serviceable uniform is not in possession of the deceased, a request for issue of required items will be prepared. Accountability and responsibility for items issued will be terminated by the responsible officer upon execution of a statement on DA Form 3078 or 3345, substantially as follows:

The items of clothing enumerated above were issued to clothe the remains of _____ for funeral purposes. At the time of his/her death, the deceased was a member in good standing in this organization.

(g) *ARNG personnel serving in a non-pay status.* In accordance with title 32, U.S.C. section 503, a member may, with his/her consent, either with or without pay, be ordered to perform training or other duty in addition to that prescribed under title 32, U.S.C. section 502(a). Duty without pay will be consid-

ered for all purposes as if it were duty with pay.

[44 FR 18489, Mar. 28, 1979]

CLAIMS FOR DAMAGES INVOLVING THE NATIONAL GUARD AND AIR NATIONAL GUARD

SOURCE: Sections 564.51 through 564.58 appear at 19 FR 5168, Aug. 17, 1954, unless otherwise noted. Redesignated at 26 FR 12767, Dec. 30, 1961.

§ 564.51 Purpose.

Sections 564.51 to 564.58 are published for the information and guidance of all concerned to implement the statutory authority by defining the claims payable thereunder and the procedure for establishing, determining, and settling such claims. They provide the exclusive authorization and procedure for the determination and settlement of claims within the following statutory authority.

§ 564.52 Statutory authority.

(a) Limited authority for the payment of claims arising out of National Guard and Air National Guard activities has been granted annually for several years by provisions of the annual Appropriations Act for the Department of Defense. A recent provision is as follows:

The following sums are appropriated, * * * For payment of * * *; claims (not to exceed \$1,000 in any one case) for damages to or loss of private property incident to the operation of Army and Air National Guard camps of instruction, either during the stay of units of said organizations at such camps or while en route thereto or therefrom; * * * (Act of August 1, 1953, Public Law 179, 83d Cong.).

(b) In accordance with general principles of law, the National Guard and the Air National Guard when not in Federal service are not agencies of the United States, and the United States is not liable for injury or damage arising from their activities. Thus, claims for such injury or damage are not cognizable under the Federal Tort Claims Act, as revised and codified (62 Stat. 982, 28 U.S.C. 3671-80). By the statutory provisions referred to in paragraph (a)

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of this section, the United States assumes an obligation to settle administratively limited classes of claims relating to activities of the National Guard and the Air National Guard.

§ 564.53 Definitions.

As used in §§ 564.51 to 564.58, the following terms shall have the meaning hereinafter set forth:

(a) *Claim*. A written demand for payment in money.

(b) *Private property*. Real or personal property, excluding property owned by any government entity, Federal, State, city, county, or town, and excluding stocks, bonds, choses in action, debts, and insurance policies.

(c) *Camps of instruction*. Regularly scheduled training for units in organized camps, or bivouacs and maneuvers away from such camps constituting part of such training.

(d) *While en route thereto or therefrom*. The period of time during which a unit as distinguished from its individual members is travelling from its rendezvous to a camp of instruction or return, or from the camp of instruction or on a regularly scheduled maneuver and return thereto, and the routes followed by the unit. The term does not include the movement of individuals.

(e) *Proximate cause*. No precise definition of this term can be given. Whether acts or omissions of personnel constitute proximate cause must be determined in accordance with the local law. In general, an act or omission may be said to have been a proximate cause of the accident or incident if it was one of the impelling forces resulting in the accident or incident. For example, in a rear-end collision, the failure of the driver of the following car to stop in time is said to be the proximate cause of the accident. But, if the driver of the leading car stopped so suddenly and without warning that the second car, using the utmost diligence, could not have stopped, the conduct of the driver of the leading car would be said to have been the proximate cause of the accident. An act or omission without the existence of which the accident or incident would not have occurred but which cannot be said to have brought it about is a condition and would not constitute a basis for liability, or, if

committed by the claimant, would not constitute a basis for denial of his claim. For example, violations of statutes or ordinances providing standards of safety may be negligence in themselves, but may not constitute the bases of liability or for denial of a claim.

(f) *Scope of employment*. Scope of employment is determined in accordance with the law of the place where the accident or incident occurred, except that statutes in derogation of the common law, such as statutes creating a presumption that an employee is in scope of employment if using the employer's car with permission, are not controlling. An act or omission is within the scope of employment if such activity is expressly or impliedly directed or authorized by competent authority or is at least in part intended to further the mission of the unit or organization, or the interests of the National Guard or the Air National Guard. In determining whether an act or omission was within the scope of employment, consideration must be given to all the attendant facts and circumstances, including the time, place, and purpose thereof; whether it was in furtherance of the mission of the unit of the National Guard or Air National Guard; whether it was usual for or reasonably to be expected of personnel of the classification and grade involved; and whether the instrumentality causing the damage or injury resulted was property of the National Guard or Air National Guard, or of a State or the Federal Government being used by the National Guard or Air National Guard.

§ 564.54 Claims payable.

Claims for damage to or loss of private property proximately resulting from authorized activities incident to the operation of camps of instruction, including maneuvers, field exercises, training of units and personnel, movement of vehicles, operation of aircraft, maintenance and support of units and personnel, tortious acts or omissions of

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military personnel or civilian employees of the National Guard or Air National Guard in the scope of employment, and claims arising under a contract, executed incident to camps of instruction, even though legally enforceable under the express terms of the contract and no other, are payable under §§ 564.51 to 564.58.

§ 564.55 Claims not payable.

(a) *Contributory negligence.* Negligence or wrongful act of the claimant or of his agent or employee, a proximate cause of the accident or incident, bars a claim. The law of the place where the accident or incident occurred will be followed in determining whether contributory negligence is present but the doctrine of comparative negligence will not be applied.

(b) *Personal injury.* Claims for personal injury are not cognizable under the act of §§ 564.51 to 564.58.

(c) *Use and occupancy.* Claims for use and occupancy, payment of which is governed by the terms of a lease or contract, are not cognizable under §§ 564.51 to 564.58.

§ 564.56 Action by claimant.

(a) *Who may present a claim.* A claim for damage to or loss of private property may be presented by the owner, or his agent or legal representative. The word "owner", as so used, includes bailees, lessees, mortgagors, conditional vendors, and subrogees, but does not include mortgagees, conditional vendors, and others having title for purposes of security only. If filed by an agent or legal representative, the claim should be filed in the name of the owner, signed by such agent or legal representative, showing the title or capacity of the person signing, and be accompanied by evidence of the appointment of such person as agent, executor, administrator, guardian, or other fiduciary. If filed by a corporation the claim should show the title or capacity of the officer signing it and be accompanied by evidence of his authority to act. In case of the death of the proper claimant, if it appears that no legal representative has been or will be appointed, the claim may be presented by any person who, by reason of the family relationship, has in fact in-

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curring the expense for which the claim is made.

(b) *Form of claim.* A claim shall be submitted in the form of a statement signed by the claimant, setting forth his address, and stating briefly all the facts and circumstances relating to the damage for which compensation is claimed, including a description of the property, evidence of its value, the nature and extent of the damage, the date and place such damage was incurred, the agency by which it was caused, if known, and the amount. Standard Form 95 (Claim for Damage or Injury), appropriately modified by deleting references to "injury" and "personal injury," may be used for this purpose. The claim and all papers accompanying it which are signed by the claimant should bear like signatures.

(c) *Time within which claim must be presented.* A claim cognizable under §§ 564.51 to 564.58 must be submitted within two years of the date of occurrence of the accident or incident.

(d) *Place of filing.* A claim cognizable under §§ 564.51 to 564.58 must be presented in writing to the adjutant general, or his duly authorized representative, of the State, Territory, Commonwealth, or District of Columbia, having jurisdiction over the personnel or unit involved in the accident or incident out of which the claim arose, or to the office of the Chief, National Guard Bureau, The Pentagon, Washington, DC 20310.

(e) *Evidence to be submitted by claimant—(1) General.* A claim for damage to or loss of private property must be specific and substantiated by evidence of the damage or loss. A mere statement that such property was damaged or lost and that a certain amount is a fair compensation therefor is not sufficient to support a claim.

(2) *Motor vehicles, buildings, fences, and other structures.* The claimant must submit, if repairs or replacement has been effected, itemized bills therefor, signed and certified as just and correct by the repairman or suppliers, together with evidence of payment thereof, if made; if repairs or replacement has not been effected, an estimate of the cost thereof signed by a person competent to effect such repairs or replacement.

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(3) *Crops, trees, land, and other realty.* The claimant must submit an itemized signed estimate of the cost of repairs or restoration of the property, supported by evidence of the number of acres of land, crops, or trees involved, the normal yield per acre and the market value of the property per unit of measure common to the property damaged, or the estimated length of time the land will be unfit for grazing, the normal rental value per acre of similar land in the vicinity, and such other information as may be necessary.

(4) *Contracts.* A copy of the contract, or competent evidence of the provisions thereof, will be furnished by the claimant in support of a claim cognizable under § 564.54.

(5) *Additional evidence.* The claims officer, the interested State adjutant general, or the Chief National Guard Bureau, may require the claimant to submit such additional evidences as he deems necessary to substantiate the claim, including, without limiting the generality of the foregoing, estimates of cost, of repairs from repairman other than those whose estimates the claimant has submitted with the claim and evidence of ownership of or interest in the property.

§ 564.57 Procedure.

Responsibility for the investigation of claims cognizable under §§ 564.51 to 564.68 and of accidents or incidents which may give rise to such claims rests in the adjutants general of the several States. Accordingly, claims received by the National Guard Bureau, or other agencies of the United States, will be referred to the adjutants general of the interested States. Regulations promulgated by the State adjutants general should require the prompt investigation of all accidents or incidents which might result in claims cognizable hereunder, whether or not claims have been filed.

§ 564.58 Determination of amount allowable.

(a) The maximum amount which may be allowed is the value of the property

immediately prior to the accident or incident. Subject to the foregoing, the amount allowable is the cost, incurred or estimated to be incurred, of replacing the property, or of restoring it to the condition in which it was immediately prior to the accident or incident. However, if as the result of the repairs effected, the value of the property is appreciably enhanced, a sum equal to the increase in value will be deducted from the cost of restoring the property in determining the amount allowed. Conversely, if after the repairs have been effected, the value of the property is appreciably less than that prior to the accident or incident, the difference in value will be added to the cost of repairs in determining the amount allowed. However, no award in excess of the amount claimed may be made.

(b) In determining the amount allowable for repairs, the permanency of parts replaced will be considered and deductions made for depreciation as appropriated. Thus, an automobile tire is not expected to last through the life of a vehicle so that when a tire three-fourths worn is replaced with a new tire, the amount allowable is one-fourth of the cost of the new tire. The same principle applies to batteries and other items of equipment or accessories during relatively short wearout periods. However, no allowance for depreciation is made in replacing parts, such as fenders, bumpers, radiators, which normally would last through the life of the vehicle.

(c) Deprivation of use of property (including motor vehicles) is allowable as an item of damages, but only in those cases where the claimant has sustained legally provable damages. Towing charges are also allowable items of damage. However, interest, cost of preparation of claim and of securing supporting evidence, inconvenience, and similar items are not property allowable items of damage.

SUBCHAPTER F—PERSONNEL

PART 571—RECRUITING AND ENLISTMENTS

Sec.

571.1 General.

571.2 Basic qualifications for enlistment.

571.3 Waivable enlistment criteria including civil offenses.

571.4 Periods of enlistment.

571.5 Enlistment options.

AUTHORITY: Section 3012, 70A Stat. 157; 10 U.S.C. 3012.

SOURCE: 44 FR 9745, Feb. 15, 1979, unless otherwise noted.

§ 571.1 General.

(a) *Purpose.* This part gives the qualifications for men and women enlisting or reenlisting in the Regular Army (RA). The procedures simplify and standardize the processing of applicants through the recruiting service. The applicant's ability to meet all requirements or exceptions will determine eligibility. This includes obtaining prescribed waivers.

(b) *Definitions.* The following definitions apply to this part:

(1) *Enlistment.* The first voluntary enrollment in the Regular Army as an enlisted member.

(2) *Reenlistment.* The second or subsequent voluntary enrollment in the Regular Army as an enlisted member.

(3) *United States Army.* The Regular Army, Army of the United States (AUS), Army National Guard (ARNG) of the United States, and the United States Army Reserve (USAR).

(4) *Regular Army (RA).* The permanent Army, which is a major component of the United States Army, as used in this part distinguishes it from the other major components.

(5) *Prior Service (PS).* One or more days of completed active duty in a regular component or of extended active duty in a Reserve component of any of the Armed Forces, in the Army National Guard or Army Reserve programs of active duty for training pursuant to the Reserve Forces Act of 1955; in the Reserve Enlistment Program of 1963; or in similar programs of any of the Army Forces. Short periods of active duty for training in any other pro-

grams will not meet prior service requirements in this part.

(6) *Non-Prior Service (NPS).* No previous service in any of the Armed Forces of the United States, or previous service without completion of 1 or more days of active duty or active duty for training as given in paragraph (b)(5) of this section.

(7) *Within 3 months of separation.* The 3 month's period when an individual must reenlist to be eligible for certain benefits. This period begins on the day following separation and ends with the date of the month, 3 months later, that corresponds to the separation date. When there is no corresponding date in the 3rd month, the terminating date will be the last day of that month. For example, an individual separated on 31 January has a terminating date of 30 April.

(8) *Major commanders.* The following have commanding generals, United States Army Forces Command (FORSCOM); United States Army Training and Doctrine Command (TRADOC); US Army Military District of Washington (MDW); US Army Materiel Development and Readiness Command (DARCOM); US Army Intelligence and Security Command (INSCOM); US Army Communications Command (ACCOM); US Army Criminal Investigation Command (CIDC); US Army Health Services Command (HSC); Military Traffic Management Command (MTMC); Commander in Chief, US Army Europe and Seventh Army (CINCUSAREUR); Eighth US Army; and US Army Japan (USAJ).

(9) *Dependent.* The term "dependent" means:

(i) A spouse. This does not include a common law spouse unless so judged by a civil court.

(ii) Any unmarried natural (legitimate or illegitimate) or adopted child of the applicant if the child is under 18 year of age, whether or not the applicant has custody of the child, and regardless of who has guardianship of the child. If the applicant's child has been adopted by another person (Final adoption decree issued and effective)

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then the child is not the applicant's dependent. The term "natural child" includes any illegitimate child claimed by the applicant to be his/her child or judged to be his/her child by court order.

(iii) Stepchild of the applicant who resides with the applicant if the stepchild is under 18 years of age.

(iv) Any other person who is dependent on the applicant for over one-half of his/her support.

(10) *Applicant without a spouse.* An applicant who is unmarried, is divorced, is legally separated, whose spouse is deceased; has deserted applicant, is incarcerated, is not residing permanently with applicant, or applicant has sole custody of the dependent(s).

(c) *Delayed Entry Program (DEP).* The Commanding General, United States Army Recruiting Command (USAREC) is authorized by 10 U.S.C. 5-11a to organize and administer DEP. Applicants enlisted in DEP are assigned to the United States Army Reserve (USAR) Control Group (Delayed Entry). Only qualified applicants who agree to subsequently enlist in the Regular Army may enlist in DEP.

§571.2 Basic qualifications for enlistment.

(a) *Age requirements.* (1) Non-prior service. Applicants must be 17 to 34 years old, inclusive.

(2) Prior service. Applicants must be 17 to 34 years old. If 35 or older but less than 55 years, they will qualify if they:

(i) Have a minimum of 3 years honorable active service in any one of the Armed Forces, with at least 1 or more days of Army service.

(ii) Be not less than 35 years old plus the number of completed years of prior honorable active military service.

(3) Exceptions. Applicants will be exempt from the above age requirements if they can qualify for retirement by age 60, are not 55 or older with 20 or more years of active service, and if they are:

(i) Honorably discharged active duty commissioned or warrant officers who enlist within 6 months after their separation date or who were awarded the Medal of Honor, Silver Star, or the Distinguished Service Cross.

(ii) Enlisted members who separate from the Regular Army with an honorable or general discharge and reenlist within 3 months after separation date.

(4) Parental consent. The written consent of parents or legal guardian is required for applicants under 18 years of age.

(b) *Citizenship requirements.* The applicant must be:

(1) A citizen of the United States, or

(2) An alien who has been lawfully admitted to the United States as a permanent resident, or

(3) A National of the United States (Citizen of Puerto Rico, Guam, American Samoa or the Virgin Islands).

(c) *Trainability requirements.* (1) Non-prior service. For enlistment in mental group category I-III applicants must have a high school diploma (HSD) or General Education Development (GED) Certificate. HSD or GED scores must be 90 or above in one or more aptitude areas in Armed Services Vocational Aptitude Battery (ASVAB) tests. Mental group IV requires two. Non-high-school graduates (NHSG) in mental group I-III require two. Applicants must meet all other criteria for the option they wish to select. (See §571.2(c)(3).)

(2) Prior service. Applicants must meet the mental requirements in paragraph (c)(3) of this section, or qualify for exemption from these requirements through:

(i) Award of the Medal of Honor.

(ii) Award of the Distinguished Service Cross, Navy Cross, or Silver Star Medal, with less than 20 years of active military service.

(iii) Partially disabling combat-wounds with less than 20 years of active military service.

(3) Mental categories and eligibility for enlistment.

Applicant	Age	Education level ¹	Mental category ²	Enlistment eligibility ³		Remarks
				DEP	RA	
NPS—male	17	HSG GED GED	I-IVB	Yes	Yes	10th grade minimum unless over 22 years old, then 11th grade minimum.
			I-III A	Yes	No	
			III B-IV		Yes	
					No	
NPS—male	18 or older.	HSG GED GED	I-IVB	Yes	Yes	10th grade minimum unless over 22 years old, then 11th grade minimum.
			I-III B	Yes	Yes	
			IV	No	No	
NPS—female	HSG	WST 50 or higher ..	Yes	Yes	Eligible for RA if graduates.
Prior service—male	HSG GED	I-III B and three aptitude scores of 90 or higher.	Yes	Yes	If female is a member of USAR/ ARNG prior to RA enlistment, a minimum Womens Selection Test (WST) score of 50 is required in addition to 3 aptitude scores of 90 or higher.
		NHSG		No	No.	
Prior service—female	.....	HSG GED NHSG	Three aptitude scores of 90 or higher.	Yes	Yes
				No	No	

¹ Education definitions:
a. High school graduate (HSG). An applicant who has graduated from an accredited high school with a diploma, a certificate of graduation, or statement of completion.
b. General Education Development (GED) equivalency. An applicant who has evidence of completion of the high school level GED equivalency.
c. Non-high school graduate (NHSG) and high school senior (HSSR). Self explanatory.
² CAT I 93-100, CAT II 65-92, CAT III A 50-64, CAT III B 31-49, CAT IV A 21-30, CAT IV B 16-20.
³ Applicants must meet the additional prerequisites for training in the selected military occupational specialty (MOS) as indicated by the option and REQUEST System.

(d) *Education requirement.* (1) Applicants must meet the following educational requirements of the specific enlistment option.

(i) Female applicants must be high school graduates.

(ii) Male applicants, 17-22 years of age, must have successfully completed the 10th grade or equivalent. Males, 23 or older at time of entry on active duty, must have successfully completed the 11th grade or equivalent.

(iii) Aliens or applicants completing high school requirements in foreign countries must take the GED or have obtained an evaluation in accordance with table 2-5, note 5d, AR 601-210 to be considered a high school graduate for enlistment purposes.

(iv) Minimum education requirements, in a foreign country, given in paragraph (d)(1)(iii) of this section are the same in the United States.

(2) Prior service applicant must either:

(i) Possess a diploma or certificate of graduation from high school; or

(ii) Present documentation of successful completion of high school level or higher GED equivalency.

(e) *Physical requirements.* (1) The applicant must:

(i) Meet the enlistment physical fitness standards given in chapter 2, AR 40-501.

(ii) Meet any additional requirement of the specific enlistment option.

(iii) Request a waiver if the AFEES medical examining officer decides an exception to medical standards is appropriate.

(2) Prior service applicants must meet the weight standards in appendix A, AR 600-9 and

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(i) The retention medical fitness standards in chapter 3, AR 40-501, if applicant enlists within 6 months of RA separation.

(ii) The enlistment medical fitness standards in chapter 2, AR 40-501 (except the weight standards of paragraph 2-22, AR 40-501) if applicants enlist 6 months from the last RA separation date, or if applicants last separated from another service or component and meets the weight tables in appendix A, AR 600-9.

(iii) The retention medical fitness standards in chapter 3, AR 40-501 if applicant is an active member of USAR/ ARNG unit and meets the weight tables at appendix A, AR 600-9.

(iv) Any additional requirements for the specific enlistment option.

(f) *Dependent criteria.* (1) The applicant may have only three dependents (see paragraphs (f)(1) and (iii) of this section).

(i) An applicant without a spouse who has one or more dependents under 18 years of age is disqualified, except as noted in paragraphs (f)(1) (ii) and (iii) of this section. No waiver is authorized.

(ii) An applicant may be enlisted when dependent children are in the custody of the other parent by court order, and the applicant is not required to provide child support. No waiver is required.

(iii) An applicant, required to pay child support for no more than 2 dependents under 18 years of age when dependents are in the other parent's custody by court order, may enlist without waiver.

(iv) In meritorious cases, an applicant with a spouse may request waiver of paragraph (f)(1) of this section.

(v) Husband and wife teams who have one or more dependents under 18 years of age are disqualified. No waiver is authorized.

(vi) An applicant with a spouse on active duty with any Service who has 1 or more dependents under 18 years of age is disqualified.

(2) Prior service. Same as non-prior service for pay grades E-1 through E-3. If eligible for pay grade E-4 or higher, may enlist without regard to number and ages of dependents. However, the provisions of paragraphs (f) (i), (ii),

(iii), (v), and (vi) of this part for applicants without prior service apply.

§ 571.3 Waivable enlistment criteria including civil offenses.

(a) *Waivers of enlistment eligibility criteria—(1) General.* This section gives the procedures for initiating and processing requests for waiver to meet the basic qualifications for enlistment.

(2) *All waiver authority.* The Commander, U.S. Army Enlistment Eligibility Activity (USAEAA) may act for the Commanding General, U.S. Army Military Personnel Center (MILPERCEN) to process, approve and disapprove waivers for enlistment.

(3) *Waiver disapproval authority.* The responsibility for deciding if a waiver request warrants favorable consideration rests at all levels.

(4) *Validity period.* Unless otherwise stated in the waiver document, waivers are valid for 6 months.

(5) *Waiver approval authorities—eligibility criteria.*

If disqualification is—	Then approval authority is—
(i) Medical: Non-prior service.	CG, USAREC
Prior service	CG, MILPERCEN
(ii) Underweight or overweight (+ or - 5 lbs.): Non-prior service.	AFEES Senior Medical Officer
Prior service.	None. Prior service applicants enlisting in DEP or active Army must meet the AR 600-9 weight standards. No waivers are authorized.
(iii) Dependents	CG, MILPERCEN
(iv) AWOL: Lost time 1-15 days.	CDR, District Recruiting Command (DRC)
Lost time over 15 days.	CG, MILPERCEN
(v) Previous discharge for dependency or hardship.	CG, MILPERCEN
(vi) Last separated from any of the Armed Forces on the basis of being a sole surviving person and family member or applying for enlistment for the first time.	CG, USAREC

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If disqualification is—	Then approval authority is—
(vii) Previous conscientious objectors who are no longer conscientious objectors: Non-prior service. Prior service	CG, USAREC CG, MILPERCEN CG, MILPERCEN
(viii) Received one or more convictions by military courts-martial during last period of active service or was discharged with disqualifications (e.g., unsuitability, conviction by civil court, resignation for good of Service, misconduct, fraudulent enlistment, or bar to reenlistment).	
(ix) Desires to enlist as conscientious objector: Non-prior service. Prior service	CG, USAREC CG, MILPERCEN CG, MILPERCEN
(x) Was denied reenlistment at time of last separation from active Service under Qualitative Screening Process unless ineligible for enlistment.	
(xi) Discharged under the Trainee Discharge program or Expeditious Discharge program.	CG, MILPERCEN
(xii) Primary Military Occupational Specialty (PMOS) Evaluation Score below 70.	CG, MILPERCEN

If disqualification is—	Then approval authority is—
(xiii) Persons whose DD Form 214 (Report of Separation from Active Duty) contains no PMOS evaluation score.	CG, MILPERCEN (Year Group Management)
(xiv) Persons enrolled in the Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) at time of last separation from active duty.	CG, MILPERCEN

(b) *Civil offenses—(1) Moral standards.* Moral standards for enlistment deal generally with the acceptability of persons with records of court convictions or adverse juvenile judgments. The standards screen out persons who may become serious disciplinary cases and who could bring harm to a military mission.

(2) *Waiver approval authorities—civil offenses.*

If the offense is—	Then approval authority is—
(i) Minor traffic offenses.	CDR, Recruiting Area
(ii) Minor non-traffic offenses.	CDR, Recruiting Area
(iii) Misdemeanors.	CDR, DRC
(iv) Juvenile felonies.	CG, USAREC
(v) Adult felonies.	CG, MILPERCEN
(vi) Civil restraint of unconditional suspended sentence or unconditional.	CDRs in lines (i) through (v) for the offenses involved

(c) *Rules governing processing of moral waivers.* (1) Individuals require a misdemeanor waiver if arrested, cited, charged, or held and allowed to plead guilty to a lesser offense or to plead guilty to criminal possession of stolen property (value \$100 or less). An arrest or questioning with no preferral of charges does not require a waiver. When charges are dismissed without

determination of guilt no waiver is required. A waiver is not authorized if a criminal or juvenile court charge is pending or if such a charge was dismissed or dropped at any stage of the court proceedings on condition that the offender enlist in a military service.

(2) To ensure equal treatment of all persons applying for RA enlistment, notwithstanding the wide variance in State statutes, the following guidance is furnished:

(i) *Expunging of the record.* Some states have procedures for (subsequent) “expunging of the record,” dismissal of charges, or pardon (upon evidence of rehabilitation of the offender). Such action has the effect of extinguishing the “initial conviction” or “adverse juvenile adjudication.” Under the State law, the applicant then has no record of conviction or adverse juvenile decision. Despite the legal effect of this action, a waiver is required to authorize the RA enlistment of such an applicant. The record is also required to be revealed.

(ii) *Juvenile and youthful offenses.* To determine eligibility for RA enlistment, a juvenile or youthful offense is defined as one committed by the applicant under the age that the individual could enlist in the RA without parental consent. Offenses committed below the age of 18 are considered juvenile or youthful offenses regardless of disposition of civil authorities. For example, a juvenile felony is one committed by an applicant under 18, whether or not the result is a civil court conviction or adverse juvenile judgments. On the other hand, an adult felony is one committed by an applicant when 18 years old or older regardless of what type of court makes the decision.

(iii) *Civil court conviction.* This term means the decision of guilty by a court (or a jury) based either on the case’s merits, or on the defendant’s guilty plea or nolo contendere, regardless of—

(A) Whether sentence was then imposed, withheld, or suspended, or

(B) Subsequent proceedings deleted an initial decision of guilt from court records, based on evidence of rehabilitation or completion of a satisfactory probationary period. Examples of subsequent proceedings in adult offender

cases include pardon; expungement; reopening of the case to change the original finding of guilty or nolo contendere, to not guilty, dismissing the charge, amnesty, and setting aside the conviction. These subsequent proceedings merely recognize rehabilitation, they do not alter the fact that the offender committed the criminal act.

(iv) *Adverse juvenile judgments.* This term—

(A) Means that a judge or a jury in a juvenile court proceedings determined that the juvenile was guilty of or committed the alleged acts, that the decision was based either on the complaint’s merits or on the juvenile’s admission of guilt or plea of guilty; and that the decision was recorded in the court records.

(B) Applies, whether or not sentence was then imposed, withheld, or suspended; and regardless of subsequent proceedings to delete an initial determination of guilt from court records, based on rehabilitation or satisfactory probation or supervision. Examples of subsequent proceedings in juvenile courts include expungement; record sealing; reopening the case to change the original findings of guilty or delinquency, or the plea of guilty or admission of the truth of the allegation, to not guilty; and dismissal of the original petition and setting aside the decision of delinquency. These subsequent proceedings merely recognize rehabilitation. They do not alter the fact that the juvenile committed the act for which he or she was judged.

(C) Includes judgement as a juvenile delinquent, wayward minor, youthful offender, delinquent child or juvenile offender, and declaration of the juvenile as a ward of the court. The term does not include the judgement of the juvenile as dependent, neglected, or abandoned.

(v) *Unconditional suspended sentence and supervised unconditional probation.* These terms mean a suspended sentence or probationary status imposed by a court that places no condition upon the individual—

(A) Concerning individual’s freedom of movement.

(B) Requiring the payment of damages. (If paid, this requirement is no bar to waiver consideration.)

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(C) Requiring periodic reporting to an officer of the court (including a probation officer).

(D) Involving supervision by an officer of the court (including a probation officer). For example, a sentence suspended on sole condition that the offender must not commit a like offense in the next 12 months does not bar waiver consideration.

(vi) *For prior service personnel.* Although the applicant must reveal all offenses committed, only those require a waiver that are committed during and/or subsequent to the last period of honorable service, and/or those not previously revealed. For Reserve Component personnel of any Service, waivers are required for all offenses shown that require a waiver, whether or not a waiver was authorized for entry into the Reserve Component. Waivers granted to enter the Reserve Components are not valid for Regular Army enlistment.

(d) *Waiting period.* The waiting period following release from civil restraint gives the individual an opportunity to demonstrate a satisfactory adjustment and the Army a basis to judge the applicant's rehabilitation before enlistment.

(e) *Required investigations.* If the applicant does or does not admit a record (to include arrests, charges, juvenile court judgments, and convictions), and the enlisting agency has reason to believe a record exists, enlistment action will be held in abeyance pending an investigation.

(f) *Civil restraint.* (1) If all civil restraint is ended and there is substantial evidence of rehabilitation as a law-abiding member of a civil community, the applicant may be processed for enlistment.

(2) Recruiting personnel will not help directly or indirectly in the release of an individual from a pending charge so that he or she may enlist in the Army as an alternative to further prosecution or further juvenile court proceedings. Equally important, recruiting personnel will in no way contribute, either tacitly or expressly, to the false notion that the Army condones such a practice. Persons subject to a pending charge are not eligible for enlistment. Therefore, they are not eli-

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gible for preenlistment processing to determine their mental and medical eligibility.

(g) *Restrictions on help.* Recruitment personnel will not help in any way to secure the release of individuals from any type of civil restraint so that these individuals may enlist or start reenlistment processing. The term "civil restraint" includes confinement, probation, parole, and suspended sentence. Persons under civil restraint that makes them ineligible for enlistment are not eligible for preenlistment processing to determine their mental and medical eligibility for enlistment.

§571.4 Periods of enlistment.

Enlistments are authorized for periods of 2, 3, 4, 5, or 6 years. The enlistee's option determines the number of years.

§571.5 Enlistment options.

Personnel who enlist in the Regular Army for 2 or more years are authorized certain initial assignment choices. They must meet the criteria given in AR 601-210. Also, a valid Army requirement must exist for the skill under which enlisted.

PART 575—ADMISSION TO THE UNITED STATES MILITARY ACADEMY

Sec.

575.1 Military Academy.

575.2 Admission; general.

575.3 Appointments; sources of nominations.

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575.5 Entrance requirements.

575.6 Catalogue, United States Military Academy.

AUTHORITY: Secs. 3012, 4331, 70A Stat. 157, 238; 10 U.S.C. 3012, 4331-4355.

SOURCE: 44 FR 11781, Mar. 2, 1979, unless otherwise noted.

§575.1 Military Academy.

(a) *Organization and administration.* (1) The United States Military Academy is under the general direction and supervision of the Department of the Army. The Secretary of the Army has designated the Chief of Staff of the Army as the officer in direct charge of all matters pertaining to West Point.

(2) The immediate government and military command of the Academy and the military post at West Point are vested in the Superintendent. In the absence of the Superintendent, the Deputy Superintendent, if present for duty, shall have such government and command. The Dean of the Academic Board has charge of the faculty and all academic work, and acts as representative of the academic departments and as adviser on academic matters to the Superintendent. The Commandant of Cadets is in charge of the administration and training of the Corps of Cadets and is also head of the Department of Tactics.

(b) *Mission.* The mission of the United States Military Academy is to educate, train, and motivate the Corps of Cadets so that each graduate shall have the character, leadership, and other attributes essential to progressive and continuing development throughout a career of exemplary service to the Nation as an officer of the Regular Army.

(c) *Courses of instruction.* Courses include academic education and military training. In accomplishing its mission, the Military Academy strives to develop in each cadet the following traits:

(1) The knowledge, skill, intellectual curiosity, discipline, and motivation provided by a sound education in the arts and sciences requisite for continued professional and intellectual growth.

(2) A highly developed sense of personal honor and professional ethics.

(3) Professional and personal commitment to the responsibilities of an officer for soldiers.

(4) Selflessness.

(5) The willing acceptance of responsibility for personal actions and the actions of subordinates.

(6) The initiative and good judgment to take appropriate action in the absence of instructions or supervision.

(7) Physical and moral courage.

(8) The physical strength, endurance, and conditioning habits required of a soldier.

§ 575.2 Admission; general.

(a) In one major respect, the requirements for admission to the United States Military Academy differ from

the normal requirements for admission to a civilian college or university; each candidate must obtain an official nomination to the Academy. The young person interested in going to West Point should, therefore, apply for a nomination from one of the persons authorized to make nominations listed in § 575.4. In the application, each prospective candidate should request a nomination to the United States Military Academy, and give residence, reasons for wanting to enter the Academy, and status of education and training.

(b) A candidate's mental qualifications for admission are determined by performance on one of the regularly administered College Entrance Examination Board series of tests. The Military Academy will consider scores made on the tests which are offered in December, January, March, and May at more than 700 College Board Test Centers throughout the United States and abroad. In general, a center will be within 75 miles of the candidate's home. Candidates register for the prescribed tests in accordance with the regularly published instructions of the College Board and pay the required fee directly to the College Board.

(c) The candidate's physical qualifications are determined by a thorough medical examination and physical aptitude test. To qualify, a candidate must be in good health, have good vision and hearing, have no deformities, and have the physical strength, endurance, coordination, and agility of active persons in their late teens. The medical examination and physical aptitude tests are held at selected military installations throughout the country (and overseas) on the Thursday and Friday preceding the regularly scheduled March administration of the College Board tests.

§ 575.3 Appointments; sources of nominations.

Admission to the Military Academy is gained by appointment to one of the cadetships authorized by law. Graduation of the senior class normally leaves about 915 vacancies each year. Candidates are nominated to qualify for these vacancies the year prior to admission. Those nominees appointed enter the Academy the following July

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and upon graduation are obligated to serve in the Army for a period of not less than 5 years. There are two major categories of nomination (Congressional/Gubernatorial and Service-Connected) and two minor categories (Filipino and Foreign Cadets). Cadetships authorized at the Military Academy are allocated among various sources of nominations from the major categories as follows:

Congressional/Gubernatorial	Cadets at the Academy at any one time
Vice President	5
100 Senators (5 each)	500
435 Representatives (5 each)	2,175
Delegates in Congress from:	
District of Columbia	5
Virgin Islands	1
Guam	1
Governor/Residential Commissioner of Puerto Rico	6
Governors of:	
Canal Zone	1
American Samoa	1

Service-Connected	Annually Allocated Cadetships
Presidential	100
Enlisted Members of the Regular Army	85
Enlisted Members of the Army Reserve/National Guard	85
Sons and Daughters of Deceased and Disabled Veterans (approximately)	10
Honor Military, Naval Schools and ROTC	20
Sons and Daughters of persons Awarded the Medal of Honor	Unlimited

(a) *Congressional / Gubernatorial Nomination.* (1) Up to 10 nominations may be submitted for each vacancy. Nominating authorities may use one of three methods of nomination:

- (i) Name 10 nominees on a totally competitive basis,
- (ii) Name a principal nominee, with nine competing alternates, or
- (iii) Name a principal nominee, with nine alternates in order of preference.

(2) The priority that a fully qualified candidate may receive when considered for appointment is actually governed by the method of nomination used. For example, a principal nominee who is found minimally qualified must be offered an appointment. Conversely, the same individual nominated on a totally competitive basis, may be ranked as one of the least qualified nominees for that vacancy and, consequently, may not be offered an appointment. Many

nominating authorities hold preliminary competitive nomination examinations to select their nominees. Those selected are required to be actual residents of the geographic location represented by the nominating authority.

(b) *Service-connected nominations.* There is no restriction on the residence of nominees who compete for an appointment under these quotas. All applications for a service-connected nomination must be submitted to the Superintendent, United States Military Academy, West Point, NY 10996, not later than 15 December for the class entering the following July. A description of the Service-Connected nomination categories follows:

(1) *Presidential:* Children of career military personnel in the Armed Forces who are on active duty, retired, or deceased, are nominated through this category. The term "career" includes members of the Reserve Components currently serving 8 or more years of continuous active duty and Reserve retirees receiving either retired or retainer pay. Children of reservists retired while not on active duty are ineligible. Applications should include the name, grade, social security number/service number, and branch of service of the parent as a member of such regular component, and the full name, address, and date of birth of the applicant (complete military address and social security number, if in the Armed Forces). Adopted children are eligible for appointment if they were adopted prior to their 15th birthday; a copy of the order of court decreeing adoption, duly certified by the clerk of the court, must accompany the application.

(2) *Children of Deceased and Disabled Veterans:* This category is for children of deceased or 100 percent disabled Armed Forces veterans whose deaths or disabilities were determined to be service-connected, and for children of military personnel or federally employed civilians who are in a missing or captured status. Candidates holding a nomination under this category are not eligible for nomination under the Presidential or Medal of Honor category. The Veterans Administration determines the eligibility of all applicants. The application should include the full name, date of birth, and address of the

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applicant (complete service address should be given if the applicant is in the Armed Forces), and the name, grade, social security number/service number, and last organization of the veteran parent, together with a brief statement concerning the time, place, and cause of death. The claim number assigned to the veteran parent's case by the Veterans Administration should also be furnished.

(3) Children of Persons Awarded the Medal of Honor: Applications from children of persons awarded the Medal of Honor should contain the applicant's full name, address, and date of birth (complete service address should be given if the applicant is in the Armed Forces); the name, grade, and branch of service of the parent; and a brief statement of the date and circumstances of the award. Candidates appointed from this source may qualify in the same manner as a congressional principal candidate. All who are found fully qualified will be admitted as cadets, regardless of the number.

(4) Honor Military Schools: Certain Honor Military Schools designated by Department of the Army, Department of the Navy, and Department of the Air Force are invited to recommend three candidates for nomination annually from among their honor graduates. Appointments are filled by selecting the best qualified candidates regardless of the school from which nominated. Application should be made through the school Senior Army Instructor.

(5) Army ROTC: This category is for members of college and high school Army Reserve Officers' Training Corps units. Application should be made through the Professor of Military Science or Senior Army Instructor at the school.

(6) Regular Army: This category is for enlisted members of the active Army. Appointments may be awarded to 85 Regular Army candidates. Application for admission, through command channels to the United States Military Academy Preparatory School (USMAPS) constitutes application for nomination under this category.

(7) Reserve Components: This category is for enlisted members of the Army Reserve and Army National Guard. Application for admission

should be made through command channels to USMAPS. Enlisted members who are not on active duty should apply to the Commandant, United States Military Preparatory School, Fort Monmouth, New Jersey 07703.

(c) *Filipino cadets.* The Secretary of the Army may permit each entering class one Filipino, designated by the President of the Republic of the Philippines, to receive instruction at the United States Military Academy.

(d) *Foreign cadets.* The law permits 20 persons at a time from the Latin-American Republics and Canada to receive instruction at the United States Military Academy. A maximum of three persons from any one country may be cadets at the same time. Such persons receive the same pay and allowances (including mileage from their homes in proceeding to the Military Academy for initial admission) as cadets appointed from the United States. However, they are not entitled to appointment in the United States Armed Forces upon graduation. Citizens of other foreign countries have been permitted from time to time to attend the Military Academy upon specific authorization of the United States Congress in each case. Applications must be submitted to the United States Government through diplomatic channels by the governments concerned. Requirements for the admission, advancement, and graduation of foreign cadets are similar to those for United States Cadets.

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§575.5 Entrance requirements.

This section describes the specific requirements which candidates must fulfill in addition to obtaining an appointment as outlined in §575.3.

(a) *Age.* On 1 July of the year admitted to the Military Academy a candidate must be at least 17 years of age and must not have passed his/her 22d birthday. The age requirements for all candidates are statutory and cannot be waived.

(b) *Citizenship.* A candidate must be a citizen of the United States, except those appointed specifically as foreign cadets.

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(c) *Character.* Every candidate must be of good moral character.

(d) *Marital Status.* A candidate must be unmarried and not be pregnant or have a legal obligation to support a child or children.

§ 575.6 Catalogue, United States Military Academy.

The latest edition of the catalogue, United States Military Academy, contains additional information regarding the Academy and requirements for admission. This publication may be obtained free of charge from the Registrar, United States Military Academy, West Point, NY 10996, or from the United States Army Military Personnel Center, HQDA (DAPC-OPP-PM), 200 Stovall Street, Alexandria, VA 22332.

PART 578—DECORATIONS, MEDALS, RIBBONS, AND SIMILAR DEVICES

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AUTHORITY: Sec. 3012, Pub. L. 84-1028, 70A Stat. 157; 10 U.S.C. 3013.

SOURCE: 71 FR 17276, Apr. 5, 2006, unless otherwise noted.

GENERAL

§578.1 Purpose.

The primary purpose of the awards program is to provide tangible evidence of public recognition for acts of valor and for exceptional service or achievement. Medals constitute one of the principal forms for such evidence; in the United States Army, medals are of the following categories:

(a) Military decorations are awarded on a restricted individual basis in recognition of and as a reward for heroic, extraordinary, outstanding, and meritorious acts, achievements, and services; and such visible evidence of recognition is cherished by recipients. Decorations are primarily intended to recognize acts, achievements, and services in time of war.

(b) The Army Good Conduct Medal is awarded in recognition of exemplary behavior, efficiency, and fidelity during enlisted status in active Federal military service.

(c) Service medals are awarded generally in recognition of honorable performance of duty during designated campaigns or conflicts. Award of decorations, and to a lesser degree, award of the Army Good Conduct Medal and of service medals, provide a potent incentive to greater effort, and are instrumental in building and maintaining morale.

§578.2 Explanation of terms.

The following definitions are furnished for clarity and uniformity in the determination and award of decorations:

(a) *Above and beyond the call of duty.* Exercise of a voluntary course of action, the omission of which would not justly subject the individual to censure for failure in the performance of duty. It usually includes the acceptance of

greatly benefit the interests of the United States.

(p) *Duty of responsibility.* Duty, which by virtue of the positions held, carries a high degree of the responsibility for the successful operation of a major command, activity, agency, installation, or project, or which requires the exercise of judgment and decision affecting plans, policies, operations, or the lives and well being of others.

(q) *Extraordinary heroism.* Act or acts of heroism or gallantry involving the risk of life. Minimum level of valorous performance in combat consistent with a recommendation for the Distinguished Service Cross.

(r) *Foreign Decoration.* Any order, device, medal, badge, insignia, emblem or award, tendered by or received from a foreign government.

(s) *Foreign government.* Includes any unit of a foreign governmental authority, including any foreign national, State, local and municipal Government; any international or multinational organization whose membership is composed of any unit of foreign government described above; and any agent or representative of any such unit or organization while acting as such.

(t) *Gallantry and intrepidity at the risk of life.* Fearless spontaneous conduct at the certain risk of life, above and beyond the call of duty, which clearly sets the soldier apart from all other comrades. Minimum level of valorous performance in combat consistent with a recommendation for the Medal of Honor.

(u) *Gallantry in action.* Spirited and conspicuous acts of heroism and courage. Minimum level of valorous performance in combat consistent with a recommendation for the Silver Star.

(v) *Heroism.* Extreme courage demonstrated in attaining a noble end. Varying levels of documented heroic actions are necessary to substantiate recommendations for the Bronze Star Medal with "V," Air Medal with "V," and the Army Commendation Medal with "V."

(w) *In connection with military operations against an armed enemy.* This phrase covers all military operations including combat, support, and supply which have a direct bearing on the out-

come of an engagement or engagements against armed opposition. To perform duty or to accomplish an act of achievement in connection with military operations against an armed enemy, the individual must have been subjected either to personal hazard as a result of direct enemy action, or the imminence of such action, or must have had the conditions under which his duty or accomplishment took place complicated by enemy action or the imminence of enemy action.

(x) *Key individual.* A person who is occupying a position that is indispensable to an organization, activity, or project.

(y) *Medal.* A term used to—

(1) Include the three categories of awards, namely: Decorations, Army Good Conduct Medal, and service medals.

(2) Refer to the distinctive physical device of metal and ribbon which constitutes the tangible evidence of an award.

(z) *Meritorious Achievement.* An act which is well above the expected performance of duty. The act should be an exceptional accomplishment with a definite beginning and ending date. The length of time is not a primary consideration; however, speed of accomplishment of an important task can be a factor in determining the value of an act.

(aa) *Meritorious Service.* Service which is distinguished by a succession of outstanding acts of achievement over a sustained period of time. Individual performance must exceed that expected by virtue of grade and experience, based on accomplishments during an entire tour of duty.

(bb) *Military merit.* Demonstrated conduct or character deserving of recognition.

(cc) *Officer.* Except where expressly indicated otherwise, the word "officer" means "commissioned or warrant officer."

(dd) *Operation.* A military action, or the carrying out of a strategic, tactical, service, training, or administrative military mission; the process of carrying on combat including movement, supply, attack, defense, and maneuvers needed to gain the objectives of any battle or campaign.

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(ee) *Outstanding or unusually meritorious performance.* Performance of duty determined by the employing component to have contributed to an unusually significant degree toward the furtherance of good relations between the United States and the foreign government tendering the decoration. This requires that the service be of national significance to the foreign government and that it be performed under exceptionally difficult, extraordinary, or hazardous conditions.

(ff) *Peacetime criteria.* (1) In a period when the United States is not engaged in the prosecution of a formal declared war.

(2) Applied outside a combat zone when the United States is engaged in military operations against an armed enemy, but is not prosecuting a formally declared war, except that in the communications zone those individuals whose duties are in connection with military operations against an armed enemy may be considered under wartime criteria.

(3) A period in specified areas where U.S. troops are engaged in military operations involving conflict with an opposing foreign force or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(gg) *Primary next of kin.* Primary next of kin are, in order of precedence, surviving spouse, eldest child, father or mother, eldest brother or sister, or eldest grandchild.

(hh) *Reserve Components of the Army.* The Army National Guard of the United States and the U.S. Army Reserve.

(ii) *U.S. Individual Army decorations.* U.S. Individual Army decorations are the Medal of Honor, Distinguished Service Cross, Distinguished Service Medal, Silver Star, Legion of Merit, Distinguished Flying Cross, Soldier's Medal, Bronze Star Medal, Purple Heart, Meritorious Service Medal, Air Medal, Army Commendation Medal, and the Army Achievement Medal.

(jj) *U.S. unit decorations.* U.S. unit decorations are the Presidential Unit Citation, Valorous Unit Award, Meritorious Unit Commendation, and Army Superior Unit Award.

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(kk) *Valor.* Heroism performed under combat conditions.

(1) *Wartime criteria.* (1) A period of formally declared war and for 1 year after the cessation of hostilities.

(2) A period of military operations against an armed enemy and for 1 year after cessation of hostilities. Only those individuals actually in the combat zone or those in the communications zone whose duties involve direct control or support of combat operations are to be considered under wartime criteria.

(3) A period of national emergency declared by the President or by the Congress.

§ 578.3 Display sets of award elements and the Medal of Honor.

(a) *Government agencies.* Upon approval by the Secretary of the Army, samples of military decorations may be furnished, without charge, for one display at the headquarters of each Army and higher field commander, in the offices of the chiefs of governmental agencies not under military jurisdiction where opportunity for the public to view the display is assured, and in each office of Headquarters, Department of the Army (HQDA) with activities that include matters pertaining to decorations.

(b) *Civilian institutions.* Upon approval by the Secretary of the Army, samples of military decorations may be furnished, at cost price, to museums, libraries, and to national headquarters of historical, numismatic, and military societies; and to institutions of such public nature as will assure an opportunity for the public to view the exhibits under circumstances beneficial to the Army. All decorations furnished to civilian institutions for exhibition purposes will be engraved with the words, "For Exhibition Purposes only."

(c) *Requests.* Letter requests for decorations for exhibit or display will be made to Commander, U.S. Army Human Resources Command (USA HRC), ATTN: AHRCPDO-PA, 200 Stovall Street, Alexandria, VA 22332-0471.

(d) *Display.* Service medals for service prior to World War II will not be provided for display purposes since only minimum essential quantities are

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available for issue to authorized recipients.

(e) *Purchase of medals.* Except for the Medal of Honor, all other decorations, service medals, and ribbons can be purchased from private vendors who have been issued a certificate of authority by the Institute of Heraldry. A list of certified vendors can be obtained from HQ, USA HRC (see § 578.3 (c)).

(f) *Display sets of the Medal of Honor.* Upon written requests, The Adjutant General of the Army can approve issue

of a display Medal of Honor to government agencies (defined in paragraphs (a) and (b) of this section). Adequate security arrangement must be provided for the medal so that it will not be lost through vandalism or theft. Maximum exposure of the medal to the public must be ensured, on a free of charge basis, under circumstances beneficial to the Army.

§ 578.4 U.S. Military decorations.

To whom awarded, see Table 1 below.

TABLE 1

Decorations listed in order of precedence	Awarded for:		Awarded to:			
	Heroism	Achievement or service	Military		Civilian	
			United States	Foreign	United States	Foreign
Medal of Honor	Combat	n/a	War ¹	n/a	n/a	n/a
Distinguished Service Cross	Combat	n/a	War	War	n/a	n/a
Distinguished Service Medal	War	War & Peace	War & Peace	War & Peace	War ²	War ²
Silver Star	Combat	n/a	War	War	War ²	War ²
Legion of Merit	n/a	War & Peace	War & Peace	War & Peace ⁵	n/a	n/a
Distinguished Flying Cross	Combat	War & Peace ⁴	War & Peace	War	n/a	n/a
Soldier's Medal	Noncombat	n/a	War & Peace ⁴	War & Peace ⁴	n/a	n/a
Bronze Star Medal	Noncombat	War & Peace ⁴	War & Peace ⁴	War & Peace ⁴	n/a	n/a
Purple Heart	Combat ³	n/a	War & Peace ⁴	War & Peace ⁴	n/a	n/a
	For wounds received as the result of hostile action.	n/a	War & Peace ^{7, 8}	n/a	n/a	n/a
Meritorious Service Medal	n/a	Peace & War ⁹	Peace	Peace	n/a	n/a
Air Medal	Combat ³	War & Peace ⁴	War & Peace ⁴	War	War ²	War ²
Army Commendation Medal	Noncombat	War	War & Peace ⁶	War & Peace ⁶	n/a	n/a
Army Achievement Medal	Noncombat	Peace	Peace ⁶	Peace ⁶	n/a	n/a
	n/a	Peace & War ^{6, 9}	Peace ⁶	Peace ⁶	n/a	n/a

Notes:

- ¹ The Medal of Honor is awarded only to U.S. military personnel.
- ² Under limited circumstances. Recommendations will be forwarded to HQ, USA HRC for processing.
- ³ Awarded with Bronze "V" Device for valor in combat.
- ⁴ Awarded for peacetime when no formal war has been declared but the U.S. is engaged in military operations against an armed enemy.
- ⁵ Awarded to foreign military personnel in one of four degrees.
- ⁶ Not awarded to general officers.
- ⁷ Awarded to military personnel wounded by terrorists or while members of a peacekeeping force.
- ⁸ Approval authority is the Secretary of the Army.
- ⁹ Authorized for award in a combat theater for non-combat meritorious service and achievement.

§ 578.5 Award recommendations.

(a) It is the responsibility and privilege of any individual having personal knowledge of an act, achievement, or service believed to warrant the award of a decoration to submit a recommendation for consideration. It is usually desirable that the intended recipient not be informed of a pending recommending or given an implied promise of an award prior to final approval and clearance. This is especially true when the intended recipient is a foreigner.

(b) The Department of the Army (DA) Form 638 (Recommendation for Award) will be used to initiate, process and approve award recommendations of all U.S. Army individual decorations, to include valor and heroism decorations.

(c) Narrative description of meritorious service or achievement for awards of the Meritorious Service Medal (MSM), Army Commendation Medal (ARCOM), and Army Achievement Medal (AAM) will be limited to bullet format in the space allowed on the DA Form 638. Bullet format or narratives may be used for the Legion of Merit (LM). Narratives are required for all other awards and will be added as an addendum to the recommendation. Narrative should be prepared on 8½ by 11-inch bond paper and is limited to one double-spaced typewritten page except for recommendations of the Distinguished Service Medal and above. Narratives for valor must contain a description of the following elements: Terrain and weather of the area in which the action took place; enemy conditions, to include morale, proximity, firepower, casualties and situation prior to, during and after the act; the effect of the act on the enemy; the action of comrades in the immediate vicinity of the act and the degree of their participation in the act; if the act occurred in aerial flight, the type and position of the aircraft and the individual's crew position; the degree to which the act was voluntary; the degree to which the act was outstanding and exceeded what was normally expected of the individual; all unusual circumstances; and overall effects or results of the act.

(d) Heroism award recommendations will contain statements of eye-

witnesses, preferably in the form of certificates, affidavits, or sworn statements; extracts from official records; sketches; maps; diagrams; photographs; and so forth, which support and amplify stated facts for the heroism award.

(e) Recommendations will be forwarded through command channels to the commander authorized to approve or disapprove it. Each intermediate commander/supervisor will recommend approval or disapproval, and cite specific reasons whenever disapproval is recommended.

(f) Except for the provisions of 10 U.S.C. 1130 outlined in paragraph (g) of this section and lost awards, each recommendation for an award of a military decoration must be entered administratively into military channels within 2 years of the act, achievement, or service to be honored. Submission into military channels is defined as "signed by the initiating official and endorsed by a higher official in the chain of command."

(g) Pursuant to 10 U.S.C. 1130, a Member of Congress can request consideration of a proposal for the award or presentation of decoration (or the upgrading of a decoration), either for an individual or unit, that is not otherwise authorized to be presented or awarded due to limitations established by law or policy. Based upon such review, the Secretary of the Army shall make a determination as to the merits of approving the award or presentation of the decoration and other determinations necessary to comply with congressional reporting under 10 U.S.C. 1130.

§ 578.6 Wartime criteria.

Wartime criteria, by whom awarded. The Medal of Honor is awarded only by the President. Other decorations are awarded by the President, the Secretary of Defense, and the Secretary of the Army. When wartime conditions erupt, authority to further delegate decorations approval authority will be requested from the Secretary of the Army. Initial delegation will be requested consistent with the award approval authority outlined in Table 2 below.

TABLE 2
Delegation of Award Approval—Wartime Criteria

The primary purpose of this table is to outline the various awards and decorations approval authorities for use during the immediate stages of Army combat operations. Once delegated, this authority is reviewed every 30, 60, or 90 days during combat operations to determine if further delegation is expedient and justified. Wartime delegation is withdrawn from approval authorities upon redeployment of the unit. This table is not absolute and is subject to change as necessary by the Secretary of the Army. Award approval levels outlined in Table 3 are applicable to Table 2.

Awards	Approval authority	May further delegate	Awarded to
Medal of Honor DSC & all lesser decorations ..	President of the United States Secretary of the Army or others as designated by the Secretary of the Army.	N/A N/A	U.S. military personnel. a. U.S. Army Active and Reserve Component personnel. b. U.S. Navy, Marine Corps, Air Force, and Coast Guard personnel with concurrence of the appropriate Service Secretary.
DSC, SS, LM, DFC and SM	CG of a U.S. Army Force (Serving in the rank of General) (See note 1).	MG and BG commanders (BG must be serving in MG position), commanders of separate units, may award the BSM, AM, and ARCOM (See note 2).	U.S. Army personnel and members of the other armed services and members of the armed forces of forces of friendly foreign nations in the ranks comparable to the grade of O-6 (COL) or lower provided concurrence is obtained from that Service or foreign government.
BSM, AM, ARCOM	Senior Army Commander and commanders of a separate force serving in the rank of LTG (see note 1).	MG and BG (serving in MG positions) commanders of separate units, may award the BSM, AM and ARCOM (see note 2).	U.S. Army personnel and members of the armed forces of friendly foreign nations in the ranks comparable to the grade of O-6 (COL) and below, provided concurrence is obtained from that Service or foreign government.
PH	CG of any separate unit and Hospital commanders receiving casualties.	To any field grade commander who has orders issuing authority.	Member of the Army and member of other Services provided concurrence is obtained from that Service.
PUC, VUA, MUC	As provided in § 578-57; § 578-58 and § 578-59.	Not further delegated	U.S. units and foreign allied units (see § 578-57; § 578-58; and § 578-59).
Campaign Participation Credit	Senior Army Commander serving in the rank of LTG or higher.	Not further delegated	Only to eligible U.S. Army units and RC units called to active duty.
Assault landing Credit	Senior Army Commander serving in the rank of LTG or higher.	Not further delegated	Only to eligible U.S. Army units and RC units called to Active duty. (DA General Orders Issued)
Combat Badges	Commanding General of any separate unit.	To any field grade commander who has orders issuing authority.	See § 578.69, § 578.70, § 578.71, § 578.72, § 578-74, § 578-79, § 578-84 and § 578-99 for specific eligibility requirements for combat requirements for combat badges. See also Table 9 on who may be awarded these badges.

Notes:

1. The senior Army commander (SAC) upon arrival in the theater of operations, or as soon thereafter as practical, will submit a request to CFR, USA HRC (see § 578.3(c)), requesting this delegation be activated.
2. Authority to approve award of the ARCOM under wartime criteria may be delegated to Colonel level commanders.

§ 578.7 Peacetime criteria.

Peacetime criteria, by whom awarded. Awards for peacetime service are made by the President, the Secretary

of Defense, and the Secretary of the Army. When peacetime criteria apply, authority to award decorations is automatically delegated as shown in Table 3 below.

TABLE 3

Delegation of award approving authority-peacetime criteria		
Commanders and principal HQDA agency officials	May award	To
Chief of Staff, U.S. Army	DSM and all less decorations	All U.S. Army personnel and personnel of other Services (see note 2).
General	LM, MSM, ARCOM, and AAM	1. U.S. Army personnel. 2. U.S. Navy, Marine Corps, and Air Force Personnel below brigadier general attached to their organizations (see note 2).
Lieutenant General	LM	1. U.S. Army personnel upon retirement or for posthumous awards only (except general grade officers).
	MSM, ARCOM, and AAM	2. U.S. Army personnel assigned and attached for duty to their command or agency. 3. U.S. Navy, Marine Corps, and Air Force Personnel below brigadier general attached to their organizations (see note 2).
Major General	LM (see note 1)	1. U.S. Army personnel assigned and attached for duty to their command or agency.
	MSM, ARCOM, and AAM	2. U.S. Navy, Marine Corps, and Air Force Personnel below brigadier general attached to their organizations (see note 2).
Brigadier General	MSM, ARCOM, and AAM	1. U.S. Army personnel assigned and attached for duty to their command or agency.
		2. U.S. Navy, Marine Corps, and Air Force Personnel below brigadier general attached to their organizations (see note 2).
Colonel	ARCOM, AAM	1. U.S. Army personnel assigned and attached for duty to their command or agency. 2. U.S. Navy, Marine Corps, and Air Force Personnel below brigadier general attached to their organizations (see note 2).
Lieutenant Colonel	AAM	1. U.S. Army personnel assigned and attached for duty to their command.
		2. U.S. Navy, Marine Corps, and Air Force Personnel below brigadier general attached to their organizations (see note 2).

TABLE 3—Continued

Delegation of award approving authority-peacetime criteria		
Project Managers Program Managers, Product Managers, and Program Executive Officers	May award	To
Major Generals and civilian equivalent Senior Executive Service (SES).	MSM, ARCOM and AAM	Service members assigned to their projects (see note 2).
Brigadier Generals and civilian equivalent SES.	MSM, ARCOM and AAM	Service members assigned to their projects (see note 2).
Colonels and civilian equivalent General Schedule (GS) 15.	ARCOM and AAM	Service members assigned to their projects (see note 2).
Lieutenant Colonels	AAM	Service members assigned to their projects (see note 2).

Notes:

1. Major Army commanders and officials of principal HQDA agencies in the grade of Major General have authority to approve awards of the Legion of Merit, to retiring and deceased persons, other than general officers, assigned to their commands or agencies.
2. See paragraph 1–36, AR 600–8–22 for instructions on awarding Army decorations to members of the other U.S. Services.

§ 578.8 General rules.

(a) *Awards for civilian service.* Awards for DA civilians are governed by Army Regulation (AR) 672–20, Incentive Awards. AR 672–20 provides implementing instructions for incentive awards, honorary awards and devices,

awards from nonfederal organizations, and medals for public service.

(b) *Posthumous awards.* Awards may be made following the death of the person being honored in the same manner as they are made for a living person except that the orders and citation will indicate that the award is being made

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posthumously. The engraved medal and certificate will not contain the word posthumous. Orders announcing the award, together with the certificate, medal, citation and related documents will be forwarded to the appropriate commander for presentation. Eligible classes of next of kin are listed in the order of their precedence in § 578.2 (gg).

(c) *Interim awards and awards of a lesser decoration.* (1) To ensure that a deserving act, achievement, or service receives recognition, the appropriate authority may promptly award a suitable lesser military decoration pending final action on a recommendation for a higher award, except for retiring U.S. Army general officers. When a higher award is approved, the approving authority will revoke the interim award in the same orders published for the higher award. The decoration will be returned by the recipient, unless the higher award is approved posthumously, in which case the next of kin will be permitted to retain both awards.

(2) The authority taking final action may award the decoration recommended, award a lesser decoration (or consider the interim award as adequate recognition), or in the absence of an interim award, disapprove award of any decoration.

(d) *Duplication of awards.* (1) Only one decoration will be awarded to an individual or unit for the same act, achievement, or period of meritorious service.

(2) The award of a decoration in recognition of a single act of heroism or meritorious achievement does not preclude an award for meritorious service at the termination of an assignment. Recommendations for award of a decoration for meritorious service will not refer to acts of heroism or meritorious achievements, which have been previously recognized by award or decoration.

(3) Continuation of the same or similar type service already recognized by an award for meritorious service or achievement will not be the basis for a second award. If appropriate, an award may be made to include the extended period of service by superseding the earlier award, or the award previously

made be amended to incorporate the extended period of service.

(e) *Conversion of awards.* Awards of certain decorations (Silver Star, Bronze Star Medal, Purple Heart, and Army Commendation Medal) on the basis of existing letters, certificates, and/or orders, as hereinafter authorized will be made only upon letter application of the individuals concerned to the National Personnel Records Center (NPRC), 9700 Page Avenue, St. Louis, MO 63132-5100 (Soldiers who retired or were discharged on or after October 1, 2002 should send their requests to the Commander, U.S. Army Human Resources Command, St. Louis, ATTN: AHRC-CC-B, 1 Reserve Way, St. Louis, MO 63132-5200).

(f) *Character of service.* No decoration shall be awarded or presented to any individual whose entire service subsequent to the time of the distinguished act, achievement, or service shall not have been honorable. The Act of July 9, 1918 (40 Stat. 871) as amended (10 U.S.C. 1409); the Act of July 2, 1926 (44 Stat. 789), as amended (10 U.S.C. 1429).

(g) *Time limitations.* (1) Except for the provisions of 10 U.S.C. 1130 and lost awards addressed below, each recommendation for an award of a military decoration must be entered administratively into military channels within 2 years of the act, achievement, or service to be honored. Submission into military channels is defined as "signed by the initiating official and endorsed by a higher official in the chain of command."

(2) Pursuant to 10 U.S.C. 1130, a Member of Congress can request consideration of a proposal for the award or presentation of decoration (or the upgrading of a decoration), either for an individual or unit, that is not otherwise authorized to be presented or awarded due to limitations established by law or policy. Based upon such review, the Secretary of the Army shall make a determination as to the merits of approving the award or presentation of the decoration and other determinations necessary to comply with congressional reporting under 10 U.S.C. 1130.

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(3) To be fully effective, an award must be timely. Undue delay in submitting a recommendation may preclude its consideration. It is highly desirable that a recommendation be placed in military channels and acted upon as quickly as possible. If circumstances preclude submission of a completely documented recommendation, it is best to submit it as soon as possible and note that additional data will be submitted later. However, to ensure prompt recognition, interim awards should be considered and are encouraged as addressed above.

(4) No military decoration, except the Purple Heart and exceptions for decorations approved under 10 U.S.C. 1130, will be awarded more than 3 years after the act or period of service to be honored.

(5) These time limitations do not apply to retroactive and conversion awards made in confirmation of recognition of previously issued orders, letters, or certificates or in exchange of decorations hereinafter authorized.

(6) In cases where it can be conclusively proven that formal submission of a recommendation for award was not made within the time limitations indicated above, because either the person recommending or the person being recommended was in a prisoner of war (POW), missing in action (MIA) or in a medically incapacitated status, award of the Silver Star or lesser decorations may be approved without regard to elapsed time since the act, achievement, or service occurred, that is to be honored.

(7) If the Secretary of the Army determines that a statement setting forth the distinguished act, achievement, or service, and a recommendation for official recommendation recognition was made and supported by sufficient evidence within 2 years after the distinguished service, and that no award was made because the statement was lost, or through inadvertence the recommendation was not acted upon; he or she may, within 2 years after the date of the determination, award any appropriate military decoration. In each case, the following will be provided:

(i) Conclusive evidence of the formal submission of the recommendation into military channels.

(ii) Conclusive evidence of the loss of the recommendation or the failure to act on the recommendation through inadvertence.

(iii) A copy of the original recommendation, or its substantive equivalent. As a minimum, the recommendation should be accompanied by statements, certificates, or affidavits corroborating the events or services involved. It is emphasized that the proponent must provide Commander, USA HRC (see §578.3(c)), with adequate information for Secretarial evaluation of the deed or service to determine if an award is to be made. The person signing a reconstructed award recommendation must be identified clearly in terms of his or her official relationship to the intended recipient at the time of the act or during the period of service to be recognized.

(h) *U.S. awards to foreign military personnel.* (1) It is the Department of Defense (DOD) policy to recognize individual acts of heroism, extraordinary achievement or meritorious achievement on the part of service members of friendly foreign nations when such acts have been of significant benefit to the United States or materially contributed to the successful prosecution of a military campaign by Armed Forces of the United States. Such acts or achievement shall be recognized through the award of an individual U.S. decoration.

(2) U.S. campaign and service medals shall not be awarded to members of foreign military establishments.

(3) Foreign military personnel in ranks comparable to the grade of O-6 and below, at the time the act was performed and at the time the decoration is presented, may be awarded the following decorations: Silver Star; Distinguished Flying Cross; Bronze Star Medal; or the Air Medal for valorous acts in actual combat in direct support of military operation; the Soldier's Medal, for heroic acts in direct support of operations, but not involving actual combat; and the Legion of Merit (see §578.13 for the Legion of Merit to foreign military personnel).

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(i) *Announcement of awards.* (1) Decorations and the Army Good Conduct Medal.

(i) Awards made by the President, the Secretary of Defense, and the Secretary of the Army will be announced in DA General Orders (DAGO).

(ii) Awards of decorations and the Army Good Conduct Medal made by principal HQDA officials will be announced in permanent orders.

(iii) Awards of decorations and the Army Good Conduct Medal made according to delegated authority will be announced in permanent orders by the commanders authorized to make the awards.

(2) *Service medals and service ribbons.* Service medals and service ribbons are administratively awarded to individuals who meet the qualifying criteria. Orders are not required.

(3) *Badges.* Permanent awards of badges, except basic marksmanship qualification badges, identification badges, and the Physical Fitness Badge will be announced in permanent orders by commanders authorized to make the award or permanent orders of HQDA.

(j) *Engraving of awards.* The grade, name, and organization of the awardee are engraved on the reverse of the Medal of Honor. The name only of the awardee is engraved on the reverse side of every other decoration, the POW Medal and the Army Good Conduct Medal. Normally engraving will be accomplished prior to presentation. When this is impracticable, the awardee will be informed that he or she may mail the decoration or Army Good Conduct Medal to the Commander, U.S. Army TACOM, Clothing and Heraldry Product Support Integration Directorate (PSID), P.O. Box 57997, Philadelphia, PA 19111-7997, for engraving at Government expense.

(k) *Presentation of decorations.* (1) The Medal of Honor is usually presented to living awardees by the President of the United States at the White House. Posthumous presentation to the next of kin normally is made in Washington, DC by the President or his or her personal representative.

(2) Other U.S. military decorations will be presented with an appropriate air of formality and with fitting ceremony.

(3) Foreign decorations will not be presented by members of the U.S. Army to designated recipients whether awardees or next of kin.

(4) Conversion awards, service medals, and service ribbons usually are not presented with formal ceremony. However, such presentation may be made at the discretion of the local commander.

(5) Whenever practical, badges will be presented to military personnel in a formal ceremony as provided in Field Manual (FM) 3-21.5. Presentations should be made as promptly as practical following announcement of awards, and when possible, in the presence of the troops with whom the recipients were serving at the time of the qualification.

(6) Presentation of the Army Good Conduct Medal to military personnel may be made at troop formations. (See FM 3-21.5.) Ceremonies will not be conducted to present the Army Good Conduct Medal to former military personnel or next of kin.

(7) The Army Lapel Button will be formally presented at troop formations or other suitable ceremonies. The U.S. Army Retired Lapel Button will be presented at an appropriate ceremony prior to their departure for retirement. These buttons may be presented to a separating soldier at the same time as the Army Good Conduct Medal and any other approved decoration.

(1) *Act of presentation.* In the act of presentation, a decoration may be pinned on the clothing of the awardee whether in uniform or civilian clothing or on the next-of-kin in the case of a presentation following the recipient's death; however, this will not be construed as authority to wear the decoration for any person other than the individual honored. As an alternative to pinning the decoration, especially on next-of-kin, it may be handed to the recipient in an opened decoration container.

§ 578.9 Medal of Honor.

(a) *Criteria.* The Medal of Honor (10 U.S.C. 3741) was established by Joint Resolution of Congress, July 12, 1962 (amended by Act of July 9, 1918 and Act of July 25, 1963) is awarded by the President in the name of Congress to a

person who, while a member of the Army, distinguished himself or herself conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty while engaged in an action against an enemy of the United States; while engaged in military operations involving conflict with an opposing foreign force; or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party. The deed performed must have been one of personal bravery or self-sacrifice so conspicuous as to clearly distinguish the individual above his comrades and must have involved risk of life. Incontestable proof of the performance of the service will be exacted and each recommendation for the award of this decoration will be considered on the standard of extraordinary merit. Eligibility is limited to members of the Army of the United States in active Federal military service.

(b) *Description.* A gold-finished bronze star, one point down, $1\frac{1}{16}$ inches in diameter with rays terminating in trefoils, surrounded by a laurel wreath in green enamel, suspended by two links from a bar bearing the inscription "Valor" and surmounted by an eagle grasping laurel leaves in one claw and arrows in the other. In the center of the star is the head of Minerva surrounded by the inscription "United States of America." Each ray of the star bears an oak leaf in green enamel. On the reverse of the bar are stamped the words "The Congress To." The medal is suspended by a hook to a ring fastened behind the eagle. The hook is attached to a light-blue moired silk neckband, $1\frac{1}{16}$ inches in width and $2\frac{1}{4}$ inches in length, behind a square pad in the center made of the ribbon with the corners turned in. On the ribbon bar are 13 white stars arranged in the form of a triple chevron, consisting of two chevrons of 5 stars and one chevron of 3 stars. A hexagonal rosette of light-blue ribbon $\frac{1}{2}$ inch circumscribing diameter, with a fan-shaped ribbon insert showing white stars, is included for wear on civilian clothing.

(c) *Medal of Honor Roll.* The Medal of Honor Roll was established by Act of Congress, April 27, 1916, as amended by

38 U.S.C. 1562. It provides that each Medal of Honor awardee may have his or her name entered on the Medal of Honor Roll. Each person whose name is placed on the Medal of Honor Roll is certified to the Veterans Administration as being entitled to receive a special pension of \$1000 per month for life, if the person desires. Payment will be made by the Veterans Administration beginning as of the date of application thereof (38 U.S.C. 1562). The payment of this special pension is in addition to, and does not deprive the pensioner of any other pension, benefit, right, or privilege to which he or she is or may thereafter be entitled. The awardee will submit a DD Form 1369 (Application for Enrollment on the Medal of Honor Roll and for the Pension Authorized by the Act of Congress) to have his or her name placed on the Medal of Honor Roll and to receive the special pension. The application will bear the full personal signature of the awardee, or in cases where the awardee cannot sign due to disability or incapacity, the signature of the awardee's legally designated representative, and be forwarded to Commander, USA HRC (see §578.3(c)). Applicant will receive a DD Form 1370A (Certificate of Enrollment on the Medal of Honor Roll).

(d) *Additional benefits.* (1) Supplemental uniform allowance. Enlisted recipients of the Medal of Honor are entitled to a supplemental uniform allowance. (See AR 700-84.)

(2) Air transportation for Medal of Honor awardees. (See DOD Regulation 4515.13-R.)

(3) Commissary privileges for Medal of Honor recipients and their eligible family members. (See AR 600-8-14.)

(4) Identification cards for Medal of Honor recipients and their eligible family members. (See AR 600-8-14.)

(5) Admission to U.S. Service Academies. Children of Medal of Honor awardees, otherwise qualified, are not subject to quota requirements for admission to any of the U.S. Service Academies. (See U.S. Service Academies annual catalogs.)

(6) Exchange privileges for Medal of Honor recipients and their eligible family members. (See AR 600-8-14.)

(7) Burial honors for Medal of Honor recipients are identical to those who

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become deceased while on active duty. (See AR 600-8-1 and AR 600-25.)

§ 578.10 Distinguished Service Cross.

(a) *Criteria.* The Distinguished Service Cross was established by Act of Congress July 9, 1918 (amended by Act of July 25, 1963), 10 U.S.C. 3742. It is awarded to a person who, while serving in any capacity with the Army, distinguishes himself or herself by extraordinary heroism not justifying the award of a Medal of Honor while engaged in an action against an enemy of the United States; while engaged in military operations involving conflict with an opposing force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing Armed Force in which the United States is not a belligerent party. The act or acts of heroism must have been so notable and have involved risk of life so extraordinary as to set the individual apart from his comrades.

(b) *Description.* A cross of bronze 2 inches in height and $1\frac{3}{16}$ inches in width with an eagle on the center and a scroll below the eagle bearing the inscription "For Valor." On the reverse, the center of the cross is circled by a wreath. The cross is suspended by a ring from moired silk ribbon, $1\frac{3}{8}$ inches in length and $1\frac{3}{8}$ inches in width, composed of a band of red ($\frac{1}{8}$ -inch), white ($\frac{1}{16}$ -inch), blue (1-inch), white ($\frac{1}{16}$ -inch), and red ($\frac{1}{8}$ -inch). (Sec. 3742, 70A Stat. 215; 10 U.S.C. 3742)

§ 578.11 Distinguished Service Medal.

(a) *Criteria.* (1) The Distinguished Service Medal was established by Act of Congress on July 9, 1918 (10 U.S.C. 3743). It is awarded to any person who, while serving in any capacity with the U.S. Army, has distinguished himself or herself by exceptionally meritorious service to the Government in a duty of great responsibility. The performance must be such as to merit recognition for service which is clearly exceptional. Exceptional performance of normal duty will not alone justify an award of this decoration.

(2) For service not related to actual war the term "duty of great responsibility" applies to a narrower range of positions than in time of war and requires evidence of conspicuously sig-

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nificant achievement. However, justification of the award may accrue by virtue of exceptionally meritorious service in a succession of high positions of great importance.

(3) Awards may be made to persons other than members of the Armed Forces of the United States for wartime services only, and then only under exceptional circumstances with the express approval of the President, in each case.

(b) *Description.* The coat of arms of the United States in bronze surrounded by a circle of dark-blue enamel $1\frac{1}{2}$ inches in diameter, bearing the inscription "For Distinguished Service MCMXVIII." On the reverse, a blank scroll upon a trophy of flags and weapons. The medal is suspended by a bar from a moired silk ribbon, $1\frac{3}{8}$ inches in length and $1\frac{3}{8}$ inches in width, composed of a band of scarlet ($\frac{5}{8}$ -inch), a stripe of dark-blue ($\frac{1}{16}$ -inch), a band of white ($\frac{5}{8}$ -inch), a stripe of dark-blue ($\frac{1}{16}$ -inch), and a band of scarlet ($\frac{5}{16}$ -inch). (Sec. 3743, 70A Stat. 216; 10 U.S.C. 3743).

§ 578.12 Silver Star.

(a) *Criteria.* The Silver Star was established by Act of Congress July 9, 1918 (amended by Act of July 25, 1963, 10 U.S.C. 3746). It is awarded to a person who, while serving in any capacity with the U.S. Army, is cited for gallantry in action against an enemy of the United States while engaged in military operations involving conflict with an opposing foreign force, or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party. The required gallantry, while of lesser degree than that required for the Distinguished Service Cross, must nevertheless have been performed with marked distinction. It is also awarded upon letter application to Commander, USA HRC (see § 578.3(c)), to those individuals who, while serving in any capacity with the U.S. Army, received a citation for gallantry in action in World War I published in orders issued by a headquarters commanded by a general officer.

(b) *Description.* A bronze star $1\frac{1}{2}$ inches in circumscribing diameter. In

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the center thereof is a $\frac{3}{16}$ -inch diameter raised silver star, the center lines of all rays of both stars coinciding. The reverse has the inscription "For Gallantry in Action." The star is suspended by a rectangular-shaped metal loop with corners rounded from a moired silk ribbon $1\frac{3}{8}$ inches in length and $1\frac{3}{8}$ inches in width, composed of stripes of blue ($\frac{3}{32}$ -inch), white ($\frac{3}{64}$ -inch), blue ($\frac{7}{32}$ -inch), white ($\frac{7}{32}$ -inch), red ($\frac{7}{32}$ -inch), white ($\frac{7}{32}$ -inch), blue ($\frac{7}{32}$ -inch), white ($\frac{3}{64}$ -inch), and blue ($\frac{3}{32}$ -inch). (Sec. 3746, 70A Stat. 216; 10 U.S.C. 3746)

§ 578.13 Legion of Merit.

The Legion of Merit was established by Act of Congress July 20, 1942 (10 U.S.C. 1121). It is awarded to any member of the Armed Forces of the United States or of a friendly foreign nation who has distinguished himself or herself by exceptionally meritorious conduct in the performance of outstanding services and achievement.

(a) *Criteria for members of Armed Forces of the United States.* The performance must have been such as to merit recognition of key individuals for service rendered in a clearly exceptional manner. Performance of duties normal to the grade, branch, specialty, or assignment, and experience of an individual is not an adequate basis for this award.

(b) For service not related to actual war, the term "key individuals" applies to a narrower range of positions than in time of war and requires evidence of significant achievement. In peacetime, service should be in the nature of a special requirement or of an extremely difficult duty performed in an unprecedented and clearly exceptional manner. However, justification of the award may accrue by virtue of exceptionally meritorious service in a succession of important positions.

(c) Awards will be made without reference to degree.

(d) *Criteria for members of the Armed Forces of foreign nations.* The LM in the degrees described below, may be awarded to foreign military personnel who distinguish themselves by "exceptional meritorious conduct in performance of outstanding service" to the United

States in accordance with Executive Order (E.O.) 9260.

(e) The LM awarded to members of the Armed Forces of foreign nations is awarded in the following degrees:

(1) Chief Commander: A domed five-pointed American white star plaque of heraldic form bordered in purplish-red enamel $2\frac{5}{16}$ inches circumscribing diameter with 13 white stars on a blue field emerging from a circle of clouds; backing the star, a laurel wreath with pierced, crossed arrows pointing outward between each arm of the star and the wreath. The reverse is engraved with the words "United States of America."

(2) Commander: A five-pointed American white star of heraldic form bordered in purplish-red enamel $2\frac{1}{4}$ -inches circumscribing diameter with 13 white stars on a blue field emerging from a circle of clouds; backing the star, a laurel wreath with pierced, crossed arrows pointing outward between each arm of the star and the wreath. A bronze wreath connects an oval suspension ring to a neck ribbon. The reverse of the five-pointed star is enameled in white bordered in purplish-red enamel; in the center is a disk surrounded by the words "Annuit Coeptis" and "MDCCLXXXII," and on the scroll are the words "United States of America." The moired silk neck ribbon is $2\frac{1}{4}$ inches in length and $1\frac{5}{16}$ inches in width composed of a bank of purplish-red ($1\frac{3}{16}$ -inches) with edges of white ($\frac{1}{16}$ -inch).

(3) Officer: A five-pointed American white star of heraldic form bordered in purplish-red enamel $1\frac{7}{8}$ -inches circumscribing diameter with 13 white stars on a blue field emerging from a circle of clouds; backing the star, a laurel wreath with modeled, crossed arrows pointing outward between each arm of the star and the wreath, and an all-bronze device of the same design as the pendant $\frac{3}{4}$ inch in diameter on the center of the suspension ribbon. On the reverse is a disk surrounded by the words "Annuit Coeptis" and "MDCCLXXXII," and on the scroll are the words "United States of America." The pendant is suspended by a moired silk ribbon $1\frac{7}{8}$ inches in length and $1\frac{3}{8}$ inches in width, composed of a bank of

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purplish-red (1¼-inches) with edges of white (¼-inch).

(4) Legionnaire: Same as prescribed in paragraph (e)(3) of this section, except the all-bronze device is not worn on the ribbon. (Sec. 1121, 70A Stat. 88; 10 U.S.C. 1121, E.O. 9260, October 29, 1942, 7 FR 8819, 3 CFR, 1943 Cum. Supp.)

§ 578.14 Distinguished Flying Cross.

(a) *Criteria.* The Distinguished Flying Cross was established by Act of Congress July 2, 1926, (10 U.S.C. 3749). It is awarded to any person who, while serving in any capacity with the Army of the United States, distinguished himself or herself by heroism or extraordinary achievement while participating in aerial flight. The performance of the act of heroism must be evidenced by voluntary action above and beyond the call of duty. The extraordinary achievement must have resulted in an accomplishment so exceptional and outstanding as to clearly set the individual apart from his comrades, or from other persons in similar circumstances. Awards will be made only to recognize single acts of heroism or extraordinary achievement and will not be made in recognition of sustained operational activities against an armed enemy.

(b) *Description.* On a bronze 1½-inch cross pattee, a four-bladed propeller 1¼ inches across the blades; in the re-entrant angles, rays forming a 1-inch square. The cross is suspended by a plain, straight link from a moired silk ribbon 1¾ inches in length and 1¾ inches in width, composed of stripes of blue (⅞-inch), white (⅞-inch), blue (1½-inch), white (¾-inch), red (¾-inch), white (¾-inch), blue (1½-inch), white (¾-inch), and blue (⅞-inch). (Sec. 3749, 70A Stat. 217; 10 U.S.C. 3749, E.O. 4601, March 1, 1927, as amended by E.O. 7786, January 8, 1938, 3 FR 39.)

§ 578.15 Soldier's Medal.

(a) *Criteria.* The Soldier's Medal was established by Act of Congress July 2, 1926 (10 U.S.C. 3750). It is awarded to any person of the Armed Forces of the United States or of a friendly foreign nation who, while serving in any capacity with the Army of the United States, including Reserve Component soldiers not serving in a duty status, as

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defined in 10 U.S.C. 101(d), at the time of the heroic act, who distinguished himself or herself by heroism not involving actual conflict with an enemy. The same degree of heroism is required as that for an award of the Distinguished Flying Cross. The performance must have involved personal hazard or danger and the voluntary risk of life under conditions not involving conflict with an armed enemy. Awards will not be made solely on the basis of having saved a life.

(b) *Description.* On a 1¾-inch bronze octagon, an eagle displayed, standing on a fasces, between two groups of stars of six and seven, above the group of six a spray of leaves. On the reverse is a shield paly of 13 pieces on the chief, the letters "U.S." supported by sprays of laurel and oak, around the upper edge the inscription "Soldier's Medal," and across the face the words "For Valor." The medal is suspended by a rectangular-shaped metal loop with corners rounded from a moired silk ribbon 1¾ inches in length and 1¾ inches in width, composed of two outside stripes of blue (¾-inch), the center containing 13 white and red stripes of equal width (7 white and 6 red). (Sec. 3750, 70A Stat. 217; 10 U.S.C. 3750.)

§ 578.16 Bronze Star Medal.

(a) *Criteria.* The Bronze Star Medal was established by Executive Order 9419, February 4, 1944 (superseded by E.O. 11046, August 24, 1962 and amended by 10 U.S.C. 1133). It is awarded to any person who, while serving in any capacity in or with the Army of the United States after December 7, 1941, distinguished himself or herself by heroic or meritorious achievement or service, not involving participation in aerial flight, in connection with military operations against an armed enemy; or while engaged in military operations involving conflict with an opposing armed force in which the United States is not a belligerent party. Per 10 U.S.C. 1133, award of the Bronze Star Medal is limited to members of the Armed Forces of the United States who receive imminent danger pay.

(1) *Heroism.* Awards may be made for acts of heroism, performed under circumstances described above, which are

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of lesser degree than required for the award of the Silver Star.

(2) *Meritorious achievement and service.* Awards may be made to recognize single acts of merit and meritorious service. The lesser degree than that required for the award of the LM, must nevertheless have been meritorious and accomplished with distinction.

(3) Awards may be made, by letter application to NPRC, 9700 Page Avenue, St. Louis, MO 63132-5100 (Soldiers who retired or were discharged after October 1, 2002 should send their requests to the Commander, U.S. Army Human Resources Command, St. Louis, ATTN: AHRC-CC-B, 1 Reserve Way, St. Louis, MO 63132-5200), enclosing documentary evidence, if possible, to each member of the Armed Forces of the United States who, after December 6, 1941, has been cited in orders or awarded a certificate for exemplary conduct in ground combat against an armed enemy between December 7, 1941 and September 2, 1945, inclusive, or whose meritorious achievement has been otherwise confirmed by documents executed prior to July 1, 1947. For this purpose, an award of the Combat Infantryman Badge or Medical Badge is considered as a citation in orders. Documents executed since August 4, 1944 in connection with recommendations for the award of decorations of higher degree than the Bronze Star Medal will not be used to establish a basis for the award under this paragraph.

(4) Upon letter application, award of the Bronze Star Medal may be made to eligible soldiers who participated in the Philippine Islands Campaign between December 7, 1941 to May 10, 1942. Performance of duty must have been on the island of Luzon or the Harbor Defenses in Corregidor and Bataan. Only soldiers who were awarded the Distinguished Unit Citation (redesignated the Presidential Unit Citation on November 3, 1966) may be awarded this decoration. Letter application should be sent to NPRC (see paragraph (a)(3) of this section).

(b) *Description.* A bronze star 1½ inches in circumscribing diameter. In the center thereof is a ¾-inch diameter raised bronze star, the center line of all rays of both stars coinciding. The

reverse has the inscription "Heroic or Meritorious Achievement." The star is suspended by a rectangular-shaped loop with corners rounded from a moired silk ribbon 1¾ inches in length and 1¾ inches in width, composed of stripes of white (½-inch), red (¼-inch), white (½-inch), blue (¼-inch), white (½-inch), red (¼-inch), and white (½-inch). A bronze block letter "V" ¼ inch in height with serifs at the top of the members is worn on the suspension and service ribbons of the Bronze Star Medal to denote an award made for heroism (valor). Not more than one "V" device will be worn. When one or more oak-leaf clusters appear on the same ribbon the "V" device is worn on the wearer's right. (E.O. 9419, February 4, 1944, 9 FR 1495)

§ 578.17 Purple Heart.

(a) *Criteria.* The Purple Heart was established by General George Washington at Newburgh, New York, on August 7, 1782, during the Revolutionary War. It was reestablished by the President of the United States per War Department General Orders (WDGO) 3, 1932 and is currently awarded pursuant to Executive Order 11016, April 25, 1962; Executive Order 12464, February 23, 1984; Public Law 98-525, October 19, 1984; Public Law 103-160, November 30, 1993; Public Law 104-106, February 10, 1996; and Public Law 105-85, November 18, 1997. It is awarded in the name of the President of the United States to any member of the Armed Forces of the United States who, while serving under competent authority in any capacity with one of the U.S. Armed Services after April 5, 1917 who has been wounded or killed, or who has died or may hereafter die after being wounded:

(1) In any action against an enemy of the United States.

(2) In any action with an opposing armed force of a foreign country in which the Armed Forces of the United States are or have been engaged.

(3) While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

(4) As a result of an act of any such enemy of opposing armed forces.

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(5) As the result of an act of any hostile foreign force.

(6) After March 28, 1973, as a result of an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of Army, or jointly by the Secretaries of the separate armed services concerned if persons from more than one service are wounded in the attack.

(7) After March 28, 1973, as a result of military operations while serving outside the territory of the United States as part of a peacekeeping force.

(b) While clearly an individual decoration, the Purple Heart differs from all other decorations in that an individual is not "recommended" for the decoration; rather he or she is entitled to it upon meeting specific criteria.

(1) A Purple Heart is authorized for the first wound suffered under conditions indicated above, but for each subsequent award an Oak Leaf Cluster will be awarded to be worn on the medal or ribbon. Not more than one award will be made for more than one wound or injury received at the same instant or from the same missile, force, explosion, or agent.

(2) A wound is defined as an injury to any part of the body from an outside force or agent sustained under one or more of the conditions listed above. A physical lesion is not required, however, the wound for which the award is made must have required treatment by a medical officer and records of medical treatment for wounds or injuries received in action must have been made a matter of official record.

(3) When contemplating an award of this decoration, the key issue that commanders must take into consideration is the degree to which the enemy caused the injury. The fact that the proposed recipient was participating in direct or indirect combat operations is a necessary prerequisite, but is not sole justification for award.

(4) Examples of enemy-related injuries which clearly justify award of the Purple Heart are as follows:

(i) Injury caused by enemy bullet, shrapnel, or other projectile created by enemy action.

(ii) Injury caused by enemy placed mine or trap.

(iii) Injury caused by enemy released chemical, biological, or nuclear agent.

(iv) Injury caused by vehicle or aircraft accident resulting from enemy fire.

(v) Concussion injuries caused as a result of enemy generated explosions.

(5) Examples of injuries or wounds which clearly do not qualify for award of the Purple Heart are as follows:

(i) Frostbite or trench foot injuries.

(ii) Heat stroke.

(iii) Food poisoning not caused by enemy agents.

(iv) Chemical, biological, or nuclear agents not released by the enemy.

(v) Battle fatigue.

(vi) Disease not directly caused by enemy agents.

(vii) Accidents, to include explosive, aircraft, vehicular, and other accidental wounding not related to or caused by enemy action.

(viii) Self-inflicted wounds, except when in the heat of battle, and not involving gross negligence.

(ix) Post traumatic stress disorders.

(x) Jump injuries not caused by enemy action.

(6) It is not intended that such a strict interpretation of the requirement for the wound or injury to be caused by direct result of hostile action be taken that it would preclude the award being made to deserving personnel. Commanders must also take into consideration the circumstances surrounding an injury, even if it appears to meet the criteria. Note the following examples:

(i) In a case such as an individual injured while making a parachute landing from an aircraft that had been brought down by enemy fire; or, an individual injured as a result of a vehicle accident caused by enemy fire, the decision will be made in favor of the individual and the award will be made.

(ii) Individuals injured as a result of their own negligence; for example, driving or walking through an unauthorized area known to have been mined or placed off limits or searching for or picking up unexploded munitions as war souvenirs, will not be awarded the Purple Heart as they clearly were

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not injured as a result of enemy action, but rather by their own negligence.

(7) Members killed or wounded in action by friendly fire, 10 U.S.C. 1129.

(i) For purposes of award of the Purple Heart, the Secretary of the Army shall treat a member of the Armed Forces described in paragraph (a) of this section in the same manner as a member who is killed or wounded in action as the result of an act of an enemy of the United States.

(ii) A member described in this subsection is a member who is killed or wounded in action by weapon fire while directly engaged in armed conflict, other than as the result of an act of an enemy of the United States, unless (in the case of a wound) the wound is the result of willful misconduct of the member.

(iii) This section applies to members of the Armed Forces who are killed or wounded on or after December 7, 1941. In the case of a member killed or wounded, as described in paragraph (b) of this section, on or after December 7, 1941 and before November 30, 1993, the Secretary of the Army shall award the Purple Heart under provisions of paragraph (a) of this section in each case which is known to the Secretary before such date or for which an application is made to the Secretary in such manner as the Secretary requires.

(c) A Purple Heart will be issued to the next of kin of each person entitled to a posthumous award. Issue will be made automatically by the CG, USA HRC, upon receiving a report of death indicating entitlement.

(d) Upon written application to NPRC (see § 578.16(a)(3)) award may be made to any member of the Army, who during World War I, was awarded a Meritorious Service Citation Certificate signed by the Commander in Chief, American Expeditionary Forces, or who was authorized to wear wound chevrons. Posthumous awards to personnel who were killed or died of wounds after April 5, 1917 will be made to the appropriate next of kin upon application to the CG, USA HRC (see § 578.3(c) for address).

(e) Any member of the Army who was awarded the Purple Heart for meritorious achievement or service, as opposed to wounds received in action, be-

tween December 7, 1941 and September 22, 1943, may apply for award of an appropriate decoration instead of the Purple Heart.

(f) For those who became Prisoners of War during World War II, the Korean War and after April 25, 1962, the Purple Heart will be awarded to individuals wounded while prisoners of foreign forces, upon submission by the individual to the Department of the U.S. Army of an affidavit that is supported by a statement from a witness, if this is possible. Documentation and inquiries should be directed to Commander, USA HRC (see § 578.3(c) for address).

(g) Any member of the U.S. Army who believes that he or she is eligible for the Purple Heart, but through unusual circumstances no award was made, may submit an application through military channels, to Commander, USA HRC (see § 578.3(c) for address). Application will include complete documentation, to include evidence of medical treatment, pertaining to the wound.

(h) *Description.* On a purple heart within a bronze border, a profile head in relief of General George Washington in military uniform. Above the heart is a shield of General Washington's coat of arms between two sprays of leaves in green enamel. On the reserve below the shield and leaves without enamel is a raised bronze heart with the inscription "For Military Merit." The entire device is $1\frac{1}{16}$ inches in length. The medal is suspended by a rectangular-shaped loop with corners rounded from a moired silk ribbon $1\frac{3}{8}$ inches in length and $1\frac{3}{8}$ inches in width consisting of a purple (pansy) center with white edges ($\frac{1}{8}$ -inch).

§ 578.18 Meritorious Service Medal.

(a) *Criteria.* The Meritorious Service Medal was established by Executive Order 11448, January 16, 1969 as amended by Executive Order 12312, July 2, 1981. It is awarded to any member of the Armed Forces of the United States or to any member of the Armed Forces of a friendly foreign nation who, has distinguished himself or herself by outstanding meritorious achievement or service under the following circumstances:

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(1) After January 16, 1969, for meritorious service or achievement while serving in a non-combat area.

(2) On or after September 11, 2001, for outstanding non-combat meritorious achievement or service in a non-combat or combat area.

(b) *Description.* A Bronze medal, 1½ inches in diameter overall, consisting of six rays issuant from the upper three points of a five-pointed star with beveled edges and containing two smaller stars defined by incised outlines; in front of the lower part of the star an eagle with wings upraised standing upon two upward curving branches of laurel tied with a ribbon between the feet of the eagle. The reverse has the encircled inscriptions “UNITED STATES OF AMERICA” and “MERITORIOUS SERVICE”. The moired ribbon is 1¾ inches wide and consists of the following stripes: ⅛ inch Crimson 67112; ¼ inch White 67101; center ⅝ inch Crimson; ¼ inch White; and ⅛ inch Crimson.

§ 578.19 Air Medal.

(a) *Criteria.* The Air Medal was established by Executive Order 9158, May 11, 1942 as amended by Executive Order 9242-A, September 11, 1942. It is awarded to any person who, while serving in any capacity in or with the U.S. Army, has distinguished himself or herself by meritorious achievement while participating in aerial flight. Awards may be made to recognize single acts of merit or heroism, or for meritorious service as described.

(1) Awards may be made for acts of heroism in connection with military operations against an armed enemy or while engaged in military operations involving conflict with an opposing armed force in which the United States is not a belligerent party, which are of a lesser degree than required for award of the Distinguished Flying Cross.

(2) Awards may be made for single acts of meritorious achievement, involving superior airmanship, which are of a lesser degree than required for award of the Distinguished Flying Cross, but nevertheless were accomplished with distinction beyond that normally expected.

(3) Awards for meritorious service may be made for sustained distinction

in the performance of duties involving regular and frequent participation in aerial flight for a period of at least 6 months. In this regard, accumulation of a specified number of hours and missions will not serve as the basis for award of the Air Medal. Criteria in § 578.19(a)(1), concerning conditions of conflict are applicable to award of the Air Medal for meritorious service.

(4) Award of the Air Medal is primarily intended to recognize those personnel who are on current crewmember or non-crewmember flying status which requires them to participate in aerial flight on a regular and frequent basis in the performance of their primary duties. However, it may also be awarded to certain other individuals whose combat duties require regular and frequent flying in other than a passenger status, or individuals who perform a particularly noteworthy act while performing the function of a crewmember, but who are not on flying status as prescribed in AR 600-106. These individuals must make a discernible contribution to the operational land combat mission or to the mission of the aircraft in flight. Examples of personnel whose combat duties require them to fly include those in the attack elements of units involved in air-land assaults against an armed enemy and those directly involved in airborne command and control of combat operations. Involvement in such activities, normally at the brigade/group level and below, serves only to establish eligibility for award of the Air Medal; the degree of heroism, meritorious achievement or exemplary service determines who should receive the award. Awards will not be made to individuals who use air transportation solely for the purpose of moving from point to point in a combat zone.

(5) Numerals, starting with 2 will be used to denote second and subsequent awards of the Air Medal.

(b) *Description.* A bronze compass rose 1¼ inches circumscribing diameter suspended by the pointer and charged with an eagle volant carrying two lightning flashes in its talons. The points of the compass rose on the reverse are modeled with the central portion plain. The medal is suspended from a moired silk ribbon 1¾ inches in

length and $1\frac{3}{8}$ inches in width, composed of a band of ultramarine blue ($\frac{1}{8}$ -inch), a band of golden orange ($\frac{1}{4}$ -inch), a band of ultramarine blue ($\frac{5}{8}$ -inch), a band of golden orange ($\frac{1}{4}$ -inch), and a band of ultramarine blue ($\frac{1}{8}$ -inch), by a ring engaging the pointer. (E.O. 9158, May 11, 1942, 7 FR 3541, as amended by E.O. 9242A, September 11, 1942, 7 FR 7874).

§ 578.20 Army Commendation Medal.

(a) *Criteria.* The Army Commendation Medal (ARCOM) was established by War Department (WD) Circular 377, on December 18, 1945 (amended in DAGO 10, March 31, 1960). It is awarded to any members of the Armed Forces of the United States who, while serving in any capacity with the Army after December 6, 1941, distinguishes himself or herself by an act of heroism, extraordinary achievement, or meritorious service. Award may be made to a member of the Armed Forces of a friendly foreign nation who, after June 1, 1962, distinguishes himself or herself by an act of heroism, extraordinary achievement, or meritorious service, which has been of mutual benefit to a friendly nation and the United States.

(1) Awards of the ARCOM may be made for acts of valor performed under circumstances described above which are of lesser degree than required for award of the Bronze Star Medal. These acts may involve aerial flight.

(2) An award of the ARCOM may be made for acts of non-combat related heroism, which do not meet the requirements for an award of the Soldier's Medal.

(3) The ARCOM will not be awarded to general officers.

(4) Awards of the ARCOM may be made on letter application to NPRC (see § 578.16(a)(3) for address), to any individual commended after December 6, 1941 and before January 1, 1946 in a letter, certificate, or order of commendation, as distinguished from letter of appreciation, signed by an officer in the grade or position of a major general or higher. Awards of the Army Commendation Ribbon and of the Commendation Ribbon with Metal Pendant are re-designated by DAGO 10, March 31, 1960, as awards of the ARCOM, with-

out amendments of certificates or of orders previously issued.

(5) The Commander, Eighth U.S. Army is authorized to award the Army Commendation Medal for meritorious service to Korean Augmentation to U.S. Army (KATUSA) personnel.

(b) *Description.* On a $1\frac{3}{8}$ -inch bronze hexagon, one point up, an American bald eagle with wings displayed horizontally grasping three crossed arrows and bearing on its breast a shield paly of 13 pieces and a chief. On the reverse between the words "For Military" and "Merit" a panel, all above a sprig of laurel. A moired silk ribbon $1\frac{3}{8}$ inches in length and $1\frac{3}{8}$ inches in width, composed of stripes of white ($\frac{3}{32}$ -inch), green ($\frac{25}{64}$ -inch), white ($\frac{1}{32}$ -inch), green ($\frac{1}{16}$ -inch), white ($\frac{1}{32}$ -inch), green ($\frac{1}{16}$ -inch), white ($\frac{1}{32}$ -inch), green ($\frac{1}{16}$ -inch), white ($\frac{1}{32}$ -inch), green ($\frac{1}{16}$ -inch), white ($\frac{1}{32}$ -inch), green ($\frac{25}{64}$ -inch), and white ($\frac{3}{32}$ -inch).

§ 578.21 Army Achievement Medal.

(a) *Criteria.* The Army Achievement Medal (AAM) was established by the Secretary of the Army, April 10, 1981. It is awarded to any member of the Armed Forces of the United States, or to any member of the Armed Forces of a friendly foreign nation, who while serving in any capacity with the Army distinguished himself or herself by meritorious service or achievement of a lesser degree than required for award of the Army Commendation Medal under the following circumstances:

(1) After August 1, 1981, for meritorious service or achievement while serving in a non-combat area.

(2) On or after September 11, 2001, for non-combat meritorious achievement or service.

(b) The AAM will not be awarded to general officers.

(c) *Description.* A Bronze octagonal medal, $1\frac{1}{2}$ inches in diameter, with one angle at the top centered. On the obverse is a design consisting of the elements of the DA plaque and the date "1775" at the bottom. On the reverse, in three lines, are the words "FOR MILITARY ACHIEVEMENT" above a space for inscription and below there are two slips of laurel. The moired ribbon is $1\frac{3}{8}$ inches wide and consists of the following stripes: $\frac{1}{8}$ inch Green

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67129; $\frac{1}{16}$ inch White 67101; $\frac{1}{8}$ inch Green; $\frac{1}{16}$ inch White; $\frac{3}{32}$ inch Ultramarine Blue 67118; center $\frac{1}{16}$ inch White; $\frac{3}{32}$ inch Ultramarine Blue; $\frac{1}{16}$ inch White; $\frac{1}{8}$ inch Green; $\frac{1}{16}$ inch White; and $\frac{1}{8}$ inch Green.

§ 578.22 Prisoner of War Medal.

(a) *Criteria.* The POW Medal is authorized by Public Law 99-145, 10 U.S.C. 1128, November 8, 1985, as amended by 10 U.S.C. 1128, November 29, 1989. It is authorized for any person who, while serving in any capacity with the U.S. Armed Forces, was taken prisoner and held captive after April 5, 1917.

(1) The POW Medal is to be issued only to those U.S. military personnel and other personnel granted creditable U.S. military service, who were taken prisoner and held captive—

(i) While engaged in an action against an enemy of the United States.

(ii) While engaged in military operations involving conflict with an opposing foreign force.

(iii) While serving with friendly forces engaged in an armed conflict against an opposing force in which the United States is not a belligerent party.

(iv) By foreign armed forces that are hostile to the United States, under circumstances which the Secretary concerned finds to have been comparable to those under which persons have generally been held captive by enemy armed forces during periods of armed conflict.

(2) U.S. and foreign civilians who have been credited with U.S. military service which encompasses the period of captivity are also eligible for the medal. The Secretary of Defense authorized on January 27, 1990, the POW Medal for the Philippine Commonwealth Army and Recognized Guerrilla Unit Veterans who were held captive between December 7, 1941, and September 26, 1945. DD Form 2510-1 (Prisoner of War Medal Application/Information-Philippine Commonwealth Army and Recognized Guerrilla Veterans) was developed as the application for Filipino Veterans who fit this category.

(3) For purposes of this medal, past armed conflicts are defined as World War I, World War II, Korean War, Viet-

nam Conflict, Grenada, Panama, Persian Gulf War, and Somalia. Hostages of terrorists and persons detained by governments with which the United States is not engaged actively in armed conflict are not eligible for the medal.

(4) Any person convicted of misconduct or a criminal charge by a U.S. military tribunal, or who receives a less than honorable discharge based upon actions while a prisoner of war, or whose conduct was not in accord with the Code of Conduct, and whose actions are documented by U.S. military records is ineligible for the medal. The Secretary of the Army is the authority for deciding eligibility in such cases.

(5) No more than one POW Medal will be awarded. For subsequent award of the medal, service stars will be awarded and worn on the suspension and service ribbon of the medal. A period of captivity terminates on return to U.S. military control. Escapees who do not return to U.S. military control and are recaptured by an enemy do not begin a new period of captivity for subsequent award of the POW Medal. (Service stars are described in § 578.61.)

(6) The POW Medal may be awarded posthumously.

(7) The primary next of kin of eligible prisoners of war who die in captivity may be issued the POW Medal regardless of the length of stay in captivity.

(8) Personnel officially classified as Missing in Action (MIA) are not eligible for award of the POW Medal. The POW Medal will only be awarded when the individual's prisoner of war status has been officially confirmed and recognized as such by the DA. Likewise, the return of remains, in and of itself, does not constitute evidence of confirmed prisoner of war status.

(b) *Award of the POW Medal to active military personnel, veterans, retirees and their next of kin—(1) Active Military Personnel.* Award of the POW Medal to military personnel in an active war will be processed by the Commander, USA HRC (see § 578.3 (c)), after coordination with the Repatriation and Family Affairs Division.

(2) Veterans, retirees and their next of kin. All requests for the POW Medal will be initiated by eligible former

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POWs, or their next of kin, using a personal letter or DD Form 2510 (Prisoner of War Medal Application/ Information). Applications should be forwarded to the NPRC (see § 578.16(a)(3) for address).

(c) *Description.* A purple heart within a Gold border, 1¾ inches wide, containing a profile of General George Washington. Above the heart appears a shield of the Washington Coat of Arms (a White shield with two Red bars and three Red stars in chief) between sprays of Green leaves. The reverse consists of a raised Bronze heart with the words "FOR MILITARY MERIT" below the coat of arms and leaves. The ribbon is 1¾ inches wide and consists of the following stripes: ⅓ inch White 67101; 1¼ inches Purple 67115; and ⅓ inch White 67101.

§ 578.23 National Defense Service Medal.

(a) *Criteria.* The National Defense Service Medal (NDSM) was established by Executive Order 10448, April 22, 1953, as amended by Executive Order 11265, January 11, 1966 and Executive Order 12776, October 18, 1991. It is awarded for honorable active service for any period between June 27, 1950 and July 27, 1954, both dates inclusive; between January 1, 1961 and August 14, 1974, both dates inclusive; between August 2, 1990 and November 30, 1995, both dates inclusive; and from September 11, 2001 to a date to be determined.

(1) For the purpose of this award, the following persons will not be considered as performing active service:

(i) Army National Guard and U.S. Army Reserve forces personnel on short tours of duty to fulfill training obligations under an inactive duty training program.

(ii) Any service member on temporary duty or temporary active duty to serve on boards, courts, commissions, and like organizations.

(iii) Any service member on active duty for the sole purpose of undergoing a physical examination.

(2) In addition to the conditions listed above, Executive Order 12776 extended award of the NDSM to all members of the Army National Guard and United States Army Reserve who were part of the selected Reserve in good

standing during the period August 2, 1990 to November 30, 1995. During this period, soldiers in the following categories will not be considered eligible:

(i) Any soldier of the Individual Ready Reserve, Inactive National Guard or the standby or retired Reserve whose active duty service was for the sole purpose of undergoing a physical examination.

(ii) Any soldier of the Individual Ready Reserve, Inactive National Guard or the standby or retired reserve whose active duty service was for training only, or to serve on boards, courts, commissions and like organizations.

(3) On March 28, 2003, the President signed an amendment to Executive Order 10448 that extends the eligibility criteria for award of the NDSM to members of the selected Reserve of the Armed Forces of the United States in good standing during the period beginning September 11, 2001 to a date to be determined to be eligible for award of the NDSM.

(4) Any member of the Army National Guard or U.S. Army Reserve who, after December 31, 1960, becomes eligible for the award of the Armed Forces Expeditionary Medal or the Vietnam Service Medal, is also eligible for award of the NDSM. The NDSM may be awarded to members of the Reserve Component who are ordered to Federal active duty regardless of the duration (except for categories listed above).

(5) To signify receipt of a second or subsequent award of the NDSM, a service star will be worn on the service ribbon by U.S. Army personnel so qualified. Second or third award of the NDSM is authorized for soldiers who served in one or more of the three time periods as listed in paragraph (a) of this section. It is not authorized for soldiers who met the criteria in one time period, left active duty and returned during the same period of eligibility. (Service stars are described in § 578.61)

(6) Cadets of the U.S. Military Academy are eligible for the NDSM, during any of the inclusive periods listed above, upon completion of the swearing-in ceremonies as a cadet.

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(7) The NDSM may be awarded posthumously.

(b) *Description.* On a Bronze medal, 1¼ inches in diameter, an eagle displayed with inverted wings standing on a sword and palm branch, all beneath the inscription "NATIONAL DEFENSE". On the reverse is a shield taken from the Coat of Arms of the United States with an open wreath below it, the right side of oak leaves and the left side of laurel leaves. The ribbon is 1¾ inches wide and consists of the following stripes: ⅞ inch Scarlet 67111; ⅓ inch White 67101; ⅓ inch Old Glory Blue 67178; ⅓ inch White; ⅓ inch Scarlet; center ¼ inch Golden Yellow 67104; ⅓ inch Scarlet; ⅓ inch White; ⅓ inch Old Glory Blue; ⅓ inch White; and ⅞ inch Scarlet.

§ 578.24 Antarctica Service Medal.

(a) *Criteria.* The Antarctica Service Medal (ASM) was established by Public Law 86-600 (DA Bulletin, 3, 1960). It is awarded to any person who, after January 2, 1946 and before a date to be announced, meets any of the following qualifications:

(1) Any member of the Armed Forces of the United States or civilian citizen, national, or resident alien of the United States who, is a member of a direct support or exploratory operation in Antarctica.

(2) Any member of the Armed Forces of the United States or civilian citizen, national, or resident alien of the United States who participates in or has participated in a foreign Antarctic expedition in Antarctica in coordination with a United States expedition and who is or was under the sponsorship and approval of competent U.S. Government authority.

(3) Any member of the Armed Forces of the United States who participates in or has participated in flights as a member of the crew of an aircraft flying to or from the Antarctic continent in support of operations in Antarctica.

(4) Any member of the Armed Forces of the United States or civilian citizen, national, or resident alien of the United States who serves or has served on a U.S. ship operating south of latitude 60 degrees S. in support of U.S. programs in Antarctica.

(5) Any person, including citizens of foreign nations, not fulfilling any above qualification, but who participates in or has participated in a United States expedition in Antarctica at the invitation of a participating United States Agency. In such case, the award will be made by the Secretary of the Department under whose cognizance the expedition falls provided the commander of the military support force as senior U.S. representative in Antarctica considers that the individual has performed outstanding and exceptional service and shared the hardship and hazards of the expedition.

(b) Personnel who remain on the Antarctic Continent during the winter months will be eligible to wear a clasp or a disc as described below:

(1) A clasp with the words "Wintered Over" on the suspension ribbon of the medal:

(2) A ⅝ inch diameter disc with an outline of the Antarctic continent inscribed thereon fastened to the bar ribbon representing the medal.

(3) The appurtenances in paragraphs (b)(1) and (2) of this section are awarded in bronze for the first winter, in gold for the second winter and in silver for personnel who "winter over" three or more times.

(c) Subsequent to June 1, 1973, minimum time limits for the award are 30 days under competent orders to duty at sea or ashore, south of latitude 60 degrees S. Each day of duty under competent orders at any outlying station on the Antarctic continent will count as 2 days when determining award eligibility. Effective July 1, 1987, flight crews of aircraft providing logistics support from outside the Antarctic area may qualify for the award after 15 missions (one flight in and out during any 24-hour period equals one mission). Days need not be consecutive.

(d) No person is authorized to receive more than one award of the ASM. Not more than one clasp or disc will be worn on the ribbon. Antarctica is defined as the area south of latitude 60 degrees S. The ASM takes precedence immediately after the Korean Service Medal.

(e) *Description.* The medal is bronze, 1¼ inches in diameter, with a view of a polar landscape and the standing figure

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in Antarctica clothing facing to the front between the horizontally placed words "ANTARCTICA" on the figure's right and "SERVICE" on the figure's left. On the reverse is a polar projection with geodesic lines of the continent of Antarctica across which are the horizontally placed words "COURAGE", "SACRIFICE", and "DEVOTION", all within a circular decorative border of penguins and marine life. The Suspension Ribbon Clasp: On a metal clasp, 1¼ inches in width and ¼ inch in height, inscribed with the words "WINTERED OVER" in raised letters within a ½ inch rim. The metal color of the clasp is Bronze for the first winter, Gold for the second winter and Silver for the third winter. The Service Ribbon Attachment: On a metal disc, 5/16 inch in diameter, a superimposed delineation of the Antarctica continent. The metal color of the ribbon attachment is Bronze for the first winter, Gold for the second winter and Silver for the third winter. The ribbon is 1¾ inches wide and consists of a 3/16 inch Black stripe on each edge and graded from a White stripe in the center to a Pale Blue, Light Blue, Greenish Blue, and Medium Blue.

§ 578.25 Armed Forces Expeditionary Medal.

(a) *Criteria.* The Armed Forces Expeditionary Medal (AFEM) was established by Executive Order 10977, dated December 4, 1961 (DA Bulletin, 1, 1962) and Executive Order 11231, July 8, 1965. This medal is authorized for:

- (1) U.S. military operations.
- (2) U.S. operations in direct support of the United Nations.
- (3) U.S. operations of assistance for friendly foreign nations.

(b) *Requirements.* The AFEM is awarded for services after July 1, 1958, meeting the following qualifications:

(1) Personnel must be a bona fide member of a unit and engaged in the operation, or meet one or more of the following criteria:

- (i) Have served not less than 30 consecutive days in the area of operations.
- (ii) Be engaged in direct support of the operation for 30 consecutive days or 60 nonconsecutive days, provided this support involves entering the area of operations. The qualifying criteria for non-unit direct support personnel in Grenada is 6 consecutive days or 12 non-consecutive days.
- (iii) Serve for the full period where an operation is of less than 30 days duration.
- (iv) Be engaged in actual combat, or duty which is equally as hazardous as combat, during the operation with armed opposition, regardless of time in the area.
- (v) Participate as a regularly assigned crewmember of an aircraft flying into, out of, within, or over the area in support of the military operation.

(2) If the criteria above have not been fulfilled the individual must be recommended, or attached to a unit recommended, by the chief of a service or the commander of a unified or specified command for award of the medal. Such recommendations may be made to the Joint Chiefs of Staff (JCS) for duty of such value to the operation as to warrant particular recognition.

(c) The designated U.S. military operations, areas, and dates are provided in Table 4 below:

TABLE 4

Area	Dates	Explanation
Quemoy and Matsu Islands	August 23, 1956 to June 1, 1963	
Lebanon	July 1, 1958 to November 1, 1958	
Taiwan Straits	August 23, 1958 to January 1, 1959	
Berlin	August 14, 1961 to June 1, 1963	
Cuba	October 24, 1962 to June 1, 1963	
Congo	November 23 to 27, 1964	
Dominican Republic	April 28, 1965 to September 21, 1966	
Korea	October 1, 1966 to June 30, 1974	
Cambodia—Operation EAGLE PULL	April 11 to 13, 1975	Evacuation of Cambodia.
Vietnam—Operation FREQUENT WIND ..	April 29 to 30, 1975	Evacuation of Vietnam (see § 578.26(e) for conversion of AFEM to VSM).
Mayaguez Operation	May 15, 1975	

TABLE 4—Continued

Area	Dates	Explanation
Grenada—Operation URGENT FURY	October 23, 1983 to November 21, 1983	The qualifying criteria for non-unit direct support personnel in Grenada is 6 consecutive days or 12 nonconsecutive days.
Libya—Operation ELDORADO CANYON	April 12, 1986 to April 17, 1986	
Panama—Operation JUST CAUSE	December 20, 1989 to January 31, 1990	
Haiti—Operation UPHOLD DEMOCRACY	September 16, 1994 to March 31, 1995	

(d) Designated U.S. operations in direct support of the United Nations are provided in Table 5 below:

TABLE 5

Area	Dates	Explanation
Congo	July 14, 1960 to September 1, 1962.	Only for participants deployed in Bosnia-Herzegovina and Croatia.
Somalia—Operations RESTORE HOPE and UNITED SHIELD.	December 5, 1992 to March 31, 1995.	
Former Republic of Yugoslavia—Operations JOINT ENDEAVOR and JOINT GUARD.	June 1, 1992 to June 20, 1998	
Former Republic of Yugoslavia—Operation JOINT FORGE.	June 21, 1998 to a date to be determined.	

(e) Designated U.S. operations of assistance for a friendly foreign nation are provided in Table 6 below:

TABLE 6

Area	Dates	Explanation
Vietnam	July 1, 1958 to July 3, 1965.	Only those in direct support of Cambodia operations.
Laos	April 19, 1961 to October 7, 1962.	
Cambodia	March 29, 1973 to August 15, 1973.	
Thailand	March, 29 1973 to August 15, 1973	
El Salvador	January 1, 1981 to February 1, 1992.	The area of operations is the area from 20 degrees north latitude northward to 30 degrees, 30 minutes, north latitude and from 46 degrees, 36 minutes, east longitude eastward to 63 degrees east longitude. These geographical limits include the Persian Gulf, Bahrain, Kuwait, the Gulf of Oman and most of Saudi Arabia.
Lebanon	June 1, 1983 to December 1, 1987.	
Persian Gulf—Operation EARNEST WILL	July 24, 1987 (the date of the Bridgeton incident) to August 1, 1990.	
Southwest Asia:		
—Operation SOUTHERN WATCH.	December 1, 1995 to a date to be determined.	
—Maritime Intercept Operation ...	December 1, 1995 to a date to be determined.	
—Vigilant Sentinel	December 1, 1995 to February 15, 1997.	
—Operation NORTHERN WATCH.	January 1, 1997 to a date to be determined.	
—Operation DESERT THUNDER	November 11, 1998 to December 22, 1998.	
—Operation DESERT FOX	December 16, 1998 to December 22, 1998.	
—Operation DESERT SPRING ..	December 31, 1998 to a date to be determined.	

(f) One bronze service star is worn to denote subsequent award of the AFEM. To be eligible for additional awards, service must be rendered in more than one of the designated areas and dates specified in paragraphs (c), (d), and (e) of this section. No two awards will be made for service in the same designated area.

(g) *Arrowhead device.* The arrowhead device is a bronze replica of an Indian arrowhead $\frac{1}{4}$ -inch high. It denotes participation in a combat parachute jump, helicopter assault landing, combat glider landing, or amphibious assault landing, while assigned or attached as a member of an organized force carrying out an assigned tactical mission. A soldier must actually exit the aircraft or watercraft, as appropriate, to receive assault landing credit. Individual assault credit is tied directly to the combat assault credit decision for the unit to which the soldier is attached or assigned at the time of the assault. It is worn on the service and suspension ribbons of the AFEM when the unit is credited with assault landing credit. Only one arrowhead device will be worn on the ribbon.

(h) *Description.* The medal is bronze, $1\frac{1}{4}$ inches in diameter, an eagle, with wings addorsed and inverted, standing on a sword loosened in its scabbard, and super-imposed on a radiant compass rose of eight points, all within the circumscription "ARMED FORCES" above and "EXPEDITIONARY SERVICE" below with a sprig of laurel on each side. On the reverse is the shield from the United States Coat of Arms above two laurel branches separated by a bullet, all within the circumscription "UNITED STATES OF AMERICA". The ribbon is $1\frac{3}{8}$ inches wide and consists of the following stripes: $\frac{3}{32}$ inch Green 67129; $\frac{3}{32}$ inch Golden Yellow 67104; $\frac{3}{32}$ inch Spicebrown 67196; $\frac{3}{32}$ inch Black 67138; $\frac{7}{32}$ inch Bluebird 67117; $\frac{1}{16}$ inch Ultramarine Blue 67118; $\frac{1}{16}$ inch White 67101; $\frac{1}{16}$ inch Scarlet; $\frac{7}{32}$ inch Bluebird; $\frac{3}{32}$ inch Black; $\frac{3}{32}$ inch Spicebrown; $\frac{3}{32}$ inch Golden Yellow; and $\frac{3}{32}$ inch Green.

§ 578.26 Vietnam Service Medal.

(a) *Criteria.* The Vietnam Service Medal (VSM) was established by Executive Order 11231, July 8, 1965. It is

awarded to all members of the Armed Forces of the United States serving in Vietnam and contiguous waters or airspace thereover, after July 3, 1965 through March 28, 1973. Members of the Armed Forces of the United States in Thailand, Laos, or Cambodia, or the airspace thereover, during the same period and serving in direct support of operations in Vietnam are also eligible for this award.

(b) *Qualifications:* To qualify for award of the VSM an individual must meet one of the following qualifications:

(1) Be attached to or regularly serve for 1 or more days with an organization participating in or directly supporting military operations.

(2) Be attached to or regularly serve for 1 or more days abroad a Naval vessel directly supporting military operations.

(3) Actually participate as a crew-member in one or more aerial flights into airspace above Vietnam and contiguous waters directly supporting military operations.

(4) Serve on temporary duty for 30 consecutive days or 60 nonconsecutive days in Vietnam or contiguous areas, except that time limit may be waived for personnel participating in actual combat operations.

(c) No person will be entitled to more than one award of the VSM.

(d) Individuals qualified for the AFEM for reason of service in Vietnam between July 1, 1958 and July 3, 1965 (inclusive) shall remain qualified for that medal. Upon request (unit personnel officer) any such individual may be awarded the VSM instead of the AFEM. In such instances, the AFEM will be deleted from the list of authorized medals in personnel records. No person will be entitled to both awards for Vietnam service.

(e) Service members who earned the AFEM for Operation FREQUENT WIND between April 29-30, 1975, may elect to receive the Vietnam Service Medal instead of the AFEM. No service member may be issued both medals for service in Vietnam.

(f) Vietnam and contiguous waters, as used herein, is defined as an area which includes Vietnam and the water adjacent thereto within the following

specified limits: From a point on the East Coast of Vietnam at the juncture of Vietnam with China southeastward to 21 degrees N. latitude, 108 degrees; 15'E. longitude; thence, southward to 18 degrees; N. latitude, 108 degrees; 15' E. longitude; thence southeastward to 17 degrees 30' N. latitude, 111 degrees E. longitude; thence southward to 11 degrees N. latitude; 111 degrees E. longitude; thence southwestward to 7 degrees N. latitude, 105 degrees E. longitude; thence westward to 7 degrees N. latitude, 103 degrees; E. longitude; thence northward to 9 degrees 30' N. latitude, 103 degrees E. longitude, thence northeastward to 10 degrees 15' N. latitude, 104 degrees 27' E. longitude; thence northward to a point on the West Coast of Vietnam at the juncture of Vietnam with Cambodia.

(g) The VSM may be awarded posthumously.

(h) The boundaries of the Vietnam combat zone for campaign participation credit are as defined in paragraph (d) of this section.

(i) One bronze service star is authorized for each campaign under the following conditions:

(1) Assigned or attached to and present for duty with a unit during the period in which it participated in combat.

(2) Under orders in the combat zone and in addition meets any of the following requirements:

(i) Awarded a combat decoration.

(ii) Furnished a certificate by a commanding general of a corps, higher unit, or independent force that he actually participated in combat.

(iii) Served at a normal post of duty (as contrasted to occupying the status of an inspector, observer, or visitor).

(iv) Aboard a vessel other than in a passenger status and furnished a certificate by the home port commander of the vessel that he served in the combat zone.

(3) Was an evadee or escapee in the combat zone or recovered from a prisoner-of-war status in the combat zone during the time limitations of the campaign. Prisoners of war will not be accorded credit for the time spent in confinement or while otherwise in restraint under enemy control.

(j) *Description.* The medal is Bronze, 1¼ inches in diameter, an oriental dragon behind a grove of bamboo trees above the inscription "REPUBLIC OF VIETNAM SERVICE." On the reverse, a crossbow surmounted a by a torch above the arched inscription "UNITED STATES OF AMERICA". The ribbon is 1 ⅜ inches wide and consists of the following stripes: ⅛ inch Primitive Green 67188; ⅝ inch Air Force Yellow 67103; ¼ inch Old Glory Red 67156; ⅝ inch Air Force Yellow; center ¼ inch Old Glory Red; ⅝ inch Air Force Yellow; ¼ inch Old Glory Red; ⅝ inch Air Force Yellow; and ⅛ inch Primitive Green.

(k) The Vietnam campaigns are provided in Table 7 below:

TABLE 7

Campaigns	Inclusive dates	Streamer inscription
Vietnam Advisory Campaign	March 15, 1962 to March 7, 1965	Vietnam Advisory 1962-1965.
Vietnam Defense Campaign	March 8, 1965 to December 24, 1965	Vietnam Defense 1965.
Vietnam Counteroffensive	December 25, 1965 to June 30, 1966	Vietnam Counteroffensive 1965-1966.
Vietnam Counteroffensive Phase II	July 1, 1966 to May 31, 1967 (see footnote below).	Vietnam Phase II 1966, 1967.
Vietnam Counteroffensive Phase III	June 1, 1967 to January 29, 1968	Vietnam Counteroffensive, Phase III, 1967-1968.
Tet Counteroffensive	January 30, 1967 to April 1, 1968	Tet Counteroffensive 1968.
Vietnam Counteroffensive Phase IV	April 2, 1968 to June 30, 1968	Vietnam Counteroffensive, Phase IV 1968.
Vietnam Counteroffensive Phase V	July 1, 1968 to November 1, 1968	Vietnam Counteroffensive, Phase V 1968.
Vietnam Counteroffensive Phase VI	November 2, 1968 to February 22, 1969	Vietnam Counteroffensive, Phase VI 1968-1969.
Tet 69 Counteroffensive	February 23, 1969 to June 8, 1969	Tet 69/Counteroffensive, 1969.
Vietnam Summer-Fall 1969	June 9, 1969 to October 31, 1969	Vietnam Summer-Fall 1969.
Vietnam Winter-Spring 1970	November 1, 1969 to April 30, 1970	Vietnam Winter-Spring 1970.
Sanctuary Counteroffensive	May 1, 1970 to June 30, 1970	Sanctuary Counteroffensive 1970.
Vietnam Counteroffensive Phase VII	July 1, 1970 to June 30, 1971	Vietnam Counteroffensive, Phase VII, 1970-1971.
Consolidation I	July 1, 1971 to November 30, 1971	Consolidation I 1971.

TABLE 7—Continued

Campaigns	Inclusive dates	Streamer inscription
Consolidation II	December 1, 1971 to March 29, 1972	Consolidation II 1971–1972.
Vietnam Cease-Fire	March 30, 1972 to January 28, 1973	Vietnam Cease-Fire 1972–1973.

Footnote: Arrowhead device authorized only for members of the 173d Airborne Brigade who actually participated in the landing in the vicinity of Katum, Republic of Vietnam, between the hours of 0800–0907, inclusive on February 27, 1967. A bronze service star affixed to the Parachutist Badge is authorized for members of the 173d Airborne Brigade for participation in combat parachute jump on February 22, 1967 per Department of the Army General Orders 18, 1979.

§ 578.27 Southwest Asia Service Medal.

(a) The Southwest Asia Service Medal (SWASM) was established by Executive Order 12754, March 12, 1991. It is awarded to all members of the Armed Forces of the United States serving in Southwest Asia and contiguous waters or airspace thereover, on or after August 2, 1990 to November 30, 1995. Southwest Asia and contiguous waters, as used herein, is defined as an area which includes the Persian Gulf, Red Sea, Gulf of Oman, Gulf of Aden, that portion of the Arabian Sea that lies north of 10 degrees N. latitude and west of 68 degrees E. longitude, as well as the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and United Arab Emirates.

(b) Members of the Armed Forces of the United States serving in Israel, Egypt, Turkey, Syria, and Jordan (including the airspace and territorial waters) between January 17, 1991 and April 11, 1991, will also be eligible for this award. Members serving in these countries must have been under the command and control of U.S. Central Command or directly supporting military operations in the combat theater.

(c) To be eligible, a service member must meet one or more of the following criteria:

(1) Be attached to or regularly serving for one or more days with an organization participating in ground or shore (military) operations.

(2) Be attached to or regularly serving for one or more days aboard a naval vessel directly supporting military operations.

(3) Be actually participating as a crew member in one or more aerial flights directly supporting military operations in the areas designated in paragraphs (a) and (b) of this section.

(4) Be serving on temporary duty for 30 consecutive days or 60 nonconsecutive days. These time limitations may be waived for people participating in actual combat operations.

(d) The SWASM may be awarded posthumously to any person who lost his or her life while, or as a direct result of, participating in Operation DESERT SHIELD or Operation DESERT STORM without regard to the length of such service, if otherwise eligible.

(e) One bronze service star will be worn on the suspension and service ribbon of the SWASM for participation in each designated campaign. Service stars are described in §578.61. The designated campaigns for Southwest Asia are provided in Table 8 below:

TABLE 8

Campaign	Inclusive dates	Streamer inscription
Defense of Saudi Arabia	August 2, 1990 to January 16, 1991	Defense of Saudi Arabia 1990–1991.
Liberation and Defense of Kuwait	January 17, 1991 to April 11, 1991	Liberation and Defense of Kuwait 1991.
Southwest Asia Cease-Fire	April 12, 1991 to November 30, 1995	Southwest Asia Cease-Fire, 1991–1995.

(f) See AR 670–20 for the Civilian Service in Southwest Asia Medal.

(g) *Description.* The medal is Bronze 1¼ inches wide, with the words “SOUTHWEST ASIA SERVICE” across the center background. Above the center is a desert scene with a tank, ar-

mored personnel carrier, helicopter and camels with the rising sun in the background. Below the center is a seascape with ship, tanker, aircraft and clouds in the background. On the reverse, is an upraised sword entwined with a palm frond and “UNITED STATES OF

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AMERICA” around the edge. The ribbon is 1 $\frac{3}{8}$ inches wide and consists of the following stripes: $\frac{1}{16}$ inch Black 67138; $\frac{1}{8}$ inch Chamois 67142; $\frac{1}{16}$ inch Old Glory Blue 67178; $\frac{1}{16}$ inch White 67101; $\frac{1}{16}$ inch Old Glory Red 67156; $\frac{3}{16}$ inch Chamois; $\frac{3}{32}$ inch Myrtle Green 67190; center $\frac{1}{16}$ inch Black; $\frac{3}{32}$ inch Myrtle Green; $\frac{3}{16}$ inch Chamois; $\frac{1}{16}$ inch Old Glory Red; $\frac{1}{16}$ inch White; $\frac{1}{16}$ inch Old Glory Blue; $\frac{1}{8}$ inch Chamois; and $\frac{1}{16}$ inch Black.

§ 578.28 Kosovo Campaign Medal.

(a) *Criteria.* The Kosovo Campaign Medal (KCM) was established by Executive Order 13154, May 3, 2000. It is awarded to members of the Armed Forces of the United States who, after March 24, 1999, meet the following criteria:

(1) Participated in or served in direct support of Kosovo Operation(s): ALLIED FORCE; JOINT GUARDIAN; ALLIEDHARBOUR; SUSTAIN HOPE/SHINING HOPE; NOBLE ANVIL; or Kosovo TASK FORCE(S): HAWK, SABER; or HUNTER within the Kosovo Air Campaign or Kosovo Defense Campaign areas of eligibility.

(i) *Kosovo Air Campaign.* The Kosovo Air Campaign began on March 24, 1999 and ended on June 10, 1999. The area of eligibility for the Air Campaign includes the total land area and air space of Serbia (including Kosovo), Montenegro, Albania, Macedonia, Bosnia, Croatia, Hungary, Romania, Greece, Bulgaria, Italy and Slovenia; and the waters and air space of the Adriatic and Ionian Sea north of the 39th North latitude.

(ii) *Kosovo Defense Campaign.* The Kosovo Defense Campaign began on June 11, 1999 to a date to be determined. The area of eligibility for the Defense Campaign includes the total land area and air space of Serbia (including Kosovo), Montenegro, Albania, Macedonia, and the waters and air space of the Adriatic Seas within 12 nautical miles of the Montenegro, Albania, and Croatia coastlines south of 42 degrees and 52 minutes North latitude.

(2) Service members must be bona fide members of a unit participating in or be engaged in direct support of the operation for 30 consecutive days in the

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area of eligibility or for 60 nonconsecutive days provided this support involves entering the operations area of eligibility for meet one or more of the following criteria:

(i) Be engaged in actual combat, or duty that is equally as hazardous as combat duty, during the operation with armed opposition, regardless of time in the area of eligibility;

(ii) While participating in the operation, regardless of time, is wounded or injured and requires medical evacuation from the area of eligibility.

(iii) While participating as a regularly assigned aircrew member flying sorties into, out of, within, or over the area of eligibility in direct support of the military operations.

(b) The KCM may be awarded posthumously to any person who lost his or life without regard to the length of such service.

(c) One bronze service star will be worn on the suspension and service ribbon of the KCM for participation in each campaign (Kosovo Air Campaign and Kosovo Defense Campaign). Qualification for a second bronze service star requires meeting the criteria for both campaigns. The 30 consecutive or 60 nonconsecutive days that begin during the Air Campaign and continues into the Defense Campaign entitles a member to only one bronze service star.

(d) *Description.* The medal is bronze, 1 $\frac{3}{8}$ inches in diameter, with the stylized wreath of grain, reflecting the agricultural domination of the area and its economy, symbolizes the basic human rights while highlighting the desire of all for peace, safety and prosperity. The rocky terrain, fertile valley, and mountain pass refer to the Dinaric Alps and the Campaign Theater of operations. The sunrise denotes the dawning of a new age of unity and hope; the right to forge a future of freedom, progress and harmony, thus fulfilling the goal of the Alliance. On the reverse an outline of the Yugoslavian Province of Kosovo, denoting the area of conflict, is combined with a NATO star and highlighted compass cardinal points, signifying the Alliance participants who stabilized the region and provided massive relief. The inscription “IN DEFENSE OF HUMANITY”

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reinforces the objective of the action. The ribbon is 1 $\frac{3}{8}$ inches in width. It is composed of the following vertical stripes: $\frac{1}{2}$ inch Old Glory Blue 67178; $\frac{1}{4}$ inch Scarlet 67111; $\frac{1}{4}$ inch White 67101; $\frac{1}{4}$ inch Old Glory Blue 67178; $\frac{1}{2}$ inch Scarlet 67111.

§ 578.29 Afghanistan Campaign Medal.

(a) The Afghanistan Campaign Medal is authorized by Public Law 108-234, May 28, 2004 and Executive Order 13363, November 29, 2004. It is authorized for award to individuals who served in direct support of Operation ENDURING FREEDOM. The area of eligibility encompasses all land area of the country of Afghanistan and all air spaces above the land. The period of eligibility is on or after October 24, 2001 to a future date to be determined by the Secretary of Defense or the cessation of Operation ENDURING FREEDOM.

(b) *Criteria.* Service members qualified for the Global War on Terrorism Expeditionary Medal by reasons of service between October 24, 2001 and February 28, 2005, in an area for which the Afghanistan Campaign Medal was subsequently authorized, shall remain qualified for that medal. Upon application, any such service member may be awarded the Afghanistan Campaign Medal in lieu of the Global War on Terrorism Expeditionary Medal for such service. No service member shall be entitled to both medals for the same act, achievement or period of service.

(c) *General.* Service members must have been assigned, attached, or mobilized to units operating in the area of eligibility for 30 consecutive days or for 60 non-consecutive days or meet one of the following criteria:

(1) Be engaged in combat during an armed engagement, regardless of the time in the area of eligibility.

(2) While participating in an operation or on official duties, is wounded or injured and requires medical evacuation from the area of eligibility.

(3) While participating as a regularly assigned air crewmember flying sorties into, out of, within or over the area of eligibility in direct support of the military operations; each day of operations counts as one day of eligibility.

(d) *Rules.* The following rules apply to award of the Afghanistan Campaign Medal:

(1) The Afghanistan Campaign Medal may be awarded posthumously.

(2) Only one award of this medal may be authorized for any individual.

(3) Under no condition shall personnel or units receive the Afghanistan Campaign Medal, the Global War on Terrorism Expeditionary Medal, the Global War on Terrorism Service Medal, the Iraq Campaign Medal, or the Armed Forces Expeditionary Medal for the same action, time period or service.

(e) *Precedence.* The Afghanistan Campaign Medal shall be positioned below the Kosovo Campaign Medal and above the Iraq Campaign Medal.

(f) *Description.* On a bronze metal 1 $\frac{3}{8}$ inches (3.49 cm) in diameter above a range of mountains is a map of Afghanistan. Around the top is the inscription "AFGHANISTAN CAMPAIGN." On the reverse, a radiating demisun superimposed by an eagle's head couped. Inscribed across the bottom half of the reverse side are the three lines "FOR SERVICE" "IN" "AFGHANISTAN" all enclosed by a laurel wreath. The ribbon is 1 $\frac{3}{8}$ inches wide and consists of the following stripes: $\frac{1}{4}$ inch Emerald 67128; $\frac{1}{8}$ inch Scarlet 67111; $\frac{1}{8}$ inch Black 67138; $\frac{1}{4}$ inch White 67101; $\frac{1}{4}$ inch Scarlet 67111; $\frac{1}{4}$ inch White 67101; $\frac{1}{4}$ inch Old Glory Blue 67178; $\frac{1}{4}$ inch White 67101; $\frac{1}{4}$ inch Scarlet 67111; $\frac{1}{4}$ inch White 67101; $\frac{1}{8}$ inch Black 67138; $\frac{1}{8}$ inch Scarlet 67111; $\frac{1}{4}$ inch Emerald 67128.

§ 578.30 Iraq Campaign Medal.

(a) The Iraq Campaign Medal is authorized by Public Law 108-234, May 28, 2004 and Executive Order 13363, November 29, 2004. It is authorized for award to individuals who have served in direct support of Operation IRAQI FREEDOM. The area of eligibility encompasses all land area of the country of Iraq, and the contiguous water area out to 12 nautical miles, and all air spaces above the land area of Iraq and above the contiguous water area out to 12 nautical miles. The period of eligibility is on or after March 19, 2003 to a future date to be determined by the

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Secretary of Defense or the cessation of Operation IRAQI FREEDOM.

(b) *Criteria.* Service members qualified for the Global War on Terrorism Expeditionary Medal by reasons of service between March 19, 2003 and February 28, 2005, in an area for which the Iraq Campaign Medal was subsequently authorized, shall remain qualified for that medal. Upon application, any such service member may be awarded the Iraq Campaign Medal in lieu of the Global War on Terrorism Expeditionary Medal for such service. No service member shall be entitled to both medals for the same act, achievement or period of service.

(c) *General.* Service members must have been assigned, attached, or mobilized to units operating in the area of eligibility for 30 consecutive days or for 60 non-consecutive days or meet one of the following criteria:

(1) Be engaged in combat during an armed engagement, regardless of the time in the area of eligibility.

(2) While participating in an operation or on official duties, is wounded or injured and requires medical evacuation from the area of eligibility.

(3) While participating as a regularly assigned air crewmember flying sorties into, out of, within or over the area of eligibility in direct support of the military operations; each day of operations counts as one day of eligibility.

(d) *Rules.* The following rules apply to award of the Iraq Campaign Medal:

(1) The Iraq Campaign Medal may be awarded posthumously.

(2) Only one award of this medal may be authorized for any individual.

(3) Under no condition shall personnel receive the Iraq Campaign Medal, the Global War on Terrorism Expeditionary Medal, the Global War on Terrorism Service Medal, the Iraq Campaign Medal, or the Armed Forces Expeditionary Medal for the same action, time period or service.

(e) *Precedence.* The Iraq Campaign Medal shall be positioned below the Afghanistan Campaign Medal and above the Global War on Terrorism Expeditionary Medal.

(f) *Description.* On a bronze metal $\frac{1}{8}$ inches (3.49 cm) in diameter the relief of Iraq, surmounted by two lines throughout, surmounting a palm

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wreath. Above is the inscription "IRAQ CAMPAIGN." On the reverse, the Statue of Freedom surmounting a sunburst, encircled by two scimitars points down crossed at tip of blades, all above the inscription "FOR SERVICE IN IRAQ." The ribbon is $1\frac{3}{8}$ inches wide and consists of the following stripes: $\frac{5}{32}$ inch Scarlet 67111; $\frac{1}{16}$ inch White 67101; $\frac{1}{32}$ inch Green 67129; $\frac{1}{16}$ inch White 67101; $\frac{5}{32}$ inch Black 67138; $\frac{7}{16}$ inch Chamois 67142; $\frac{5}{32}$ inch Black 67138; $\frac{1}{16}$ inch White 67101; $\frac{1}{32}$ inch Green 67129; $\frac{1}{16}$ inch White 67101; $\frac{5}{32}$ inch Scarlet 67111.

§578.31 Global War on Terrorism Expeditionary Medal.

(a) The Global War on Terrorism Expeditionary Medal (GWOTEM) was established by Executive Order 13289, March 12, 2003. It is authorized for award to members of the Armed Forces of the United States who deploy abroad for service in the Global War on Terrorism operations on or after September 11, 2001 to a date to be determined. Operations approved for the GWOTEM are provided in paragraph (g) of this section.

(b) *Procedures.* (1) The Secretary of Defense in consultation with the Chairman, Joint Chiefs of Staff will designate approved operations on a case-by-case basis when requested by the Combatant Commanders.

(2) The general area of eligibility (AOE) encompasses all foreign land, water, and air spaces outside the fifty states of the United States and outside 200 nautical miles of the shores of the United States. The Secretary of Defense, when recommended by the Chairman, Joint Chiefs of Staff, shall designate the specific area of eligibility per qualifying operation.

(3) Because counter-terrorism operations are global in nature, the AOE for an approved operation may be deemed to be non-contiguous. The Combatant Commander has the authority to approve award of the medal for units and personnel deployed within his or her theater. Under no conditions will units or personnel within the United States, the general region excluded in paragraph (b)(2) this section be deemed eligible for the GWOTEM.

(c) *Criteria.* Service members must be assigned, attached or mobilized to a

unit participating in designated operations for 30 consecutive days or 60 nonconsecutive days in the AOE, or meet one of the following criteria:

(1) Be engaged in actual combat against the enemy and under circumstances involving grave danger of death or serious bodily injury from enemy action, regardless of time in the AOE.

(2) While participating in the designated operation, regardless of time, is killed, wounded or injured requiring medical evacuation from the AOE.

(3) Service members participating as a regularly assigned air crew member flying sorties into, out of, within, or over the AOE in direct support of Operations Enduring Freedom and/or Iraqi Freedom are eligible to qualify for award of the GWOTEM. Each day that one or more sorties are flown in accordance with these criteria shall count as one day toward the 30 or 60 day requirement.

(d) *General.* (1) The GWOTEM may be awarded posthumously.

(2) Service members may be awarded both the GWOTEM and the Global War on Terrorism Service Medal (GWOTSM) if they meet the criteria for both awards; however, the qualifying period of service used to establish eligibility for one award cannot be used to justify eligibility for the other award.

(3) *Order of Precedence.* The GWOTEM will be worn before the GWOTSM and both shall directly follow the Kosovo Campaign Medal (KCM) (i.e., KCM, GWOTEM, GWOTSM, Korea Defense Service Medal (KDSM), etc.).

(4) Subsequent awards. Only one award of the GWOTEM may be authorized to any individual; therefore, an appurtenance (e.g., oak leaf cluster, bronze service star) is authorized for wear on the GWOTEM.

(e) [Reserved]

(f) *Battle stars.* (1) Battle stars may be applicable for service members who were engaged in actual combat against the enemy and under circumstances involving grave danger of death or serious bodily injury from enemy action. Only the Combatant Commander can initiate a request for a Battle Star. The request will contain the specific unit(s) or individual(s) engaged in ac-

tual combat, the duration for which actual combat was sustained, and a detailed description of the actions against the enemy.

(2) The Chairman, Joint Chiefs of Staff (CJCS) is the approving authority for Battle Stars.

(3) The approval of battle stars by the CJCS is the authority for the senior Army commander in the combat theater to approve campaign participation credit. See paragraph 7-18, Table 7-1 and Figure 7-1, AR 600-8-22.

(g) *Approved operations.* Initial award of the GWOTEM is limited to service members deployed abroad in Operations ENDURING FREEDOM and IRAQI FREEDOM in the following designated specific geographic areas of eligibility AOE: Algeria, Bahrain, Bosnia-Herzegovina, Bulgaria (Bourgas), Chad, Colombia, Crete, Guantanamo Bay Cuba, Cyprus, Diego Garcia, Djibouti, Egypt, Eritrea, Ethiopia, Georgia, Hungary, Iran, Israel, Jordan, Kazakhstan, Kenya, Kosovo (only specific GWOT operations not associated with operations qualifying for the Kosovo Campaign Medal), Kuwait, Kyrgyzstan, Lebanon, Mali, Mauritania, Niger, Oman, Pakistan, Philippines, Qatar, Romania (Constanta), Saudi Arabia, Somalia, Syria, Tajikistan, Turkey, Turkmenistan, Uganda, United Arab Emirates, Uzbekistan, Yemen, that portion of the Arabian Sea north of 10 degrees north latitude and west of 68 degrees longitude, Bab El Mandeb, Gulf of Aden, Gulf of Aqaba, Gulf of Oman, Gulf of Suez, that portion of the Mediterranean Sea east of 28 degrees east longitude, Mediterranean Sea ("Boarding And Searching" Vessel Operations), Persian Gulf, Red Sea, Strait of Hormuz, and the Suez Canal.

(h) *Description*—(1) *Ribbon.* The different topographies our Armed Forces operate in are represented by the colors tan for the deserts, green for the grass or woodlands, blue for the waterways and white for the snowy regions. Blue also alludes the atmosphere, the zone of airstrikes. Gold is emblematic of excellence and high achievement. The red, white and blue stripes at center highlight this nation's role in the global war on terrorism.

(2) *Obverse.* The eagle, strong, keen of eye and vigilant, represents the United

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States and our resolve to make the world safe from the terrorism. The polestar and globe highlight the worldwide scope of this mission to secure our freedoms.

(3) *Reverse.* The torch and fasces denote freedom and justice. The laurel represents honor and high esteem.

§ 578.32 Global War on Terrorism Service Medal.

(a) The Global War on Terrorism Service Medal (GWOTSM) was established by Executive Order 13289, March 12, 2003. It is authorized for award to members of the Armed Forces of the United States who have participated in or served in support of the Global War on Terrorism operations outside of the designated areas of eligibility defined in § 578.31 of this part, on or after September 11, 2001 to a future date to be determined. Operations approved for the GWOTSM are provided in paragraph (e) of this section.

(b) *Procedures.* (1) The Chairman, Joint Chiefs of Staff will designate approved operations on a case-by-case basis when requested by the Combatant Commanders.

(2) At the request of the Combatant Commander, the Chairman, Joint Chiefs of Staff may approve specific efforts that are rendered by unit(s) or individual(s) that meet all other requirements for award of the Global War on Terrorism Service Medal however, are not issued specific orders for the approved operation(s).

(3) Battalion commanders and commanders of separate units have the authority to award the Global War on Terrorism Service Medal for approved operations to units and personnel within his or her command.

(c) *Criteria.* Service members must be assigned, attached; or mobilized to a unit supporting designated operations listed in § 578-31 of this part for 30 consecutive days or for 60 nonconsecutive days, or meet one of the following criteria:

(1) Initial award of the Global War on Terrorism Service Medal will be limited to airport security operations from September 27, 2001 through May 31, 2002 and service members who supported Operations NOBLE EAGLE, EN-

DURING FREEDOM, and IRAQI FREEDOM.

(2) All service members on active duty, including Reserve Components mobilized, or National Guardsmen activated on or after September 11, 2001 to a date to be determined having served 30 consecutive days or 60 nonconsecutive days are authorized the Global War on Terrorism Service Medal.

(d) *General.* (1) The GWOTSM may be awarded posthumously.

(2) Service members may be awarded both the GWOTEM and the GWOTSM if they meet the requirements of both awards; however, the qualifying period used to establish eligibility for one cannot be used to justify eligibility for the other award.

(3) *Order of Precedence.* The GWOTSM will be worn directly below the GWOTEM and both shall directly follow the Kosovo Campaign Medal.

(4) *Subsequent awards.* Only one award of the GWOTSM may be authorized for any individual; therefore, an appurtenance (e.g., oak leaf cluster, bronze service star) is not authorized.

(e) *Approved operations.* Initial approved operations for the Global War on Terrorism Service Medal are Airport Security Operations from September 27, 2001 through May 31, 2002 and Operations NOBLE EAGLE, ENDURING FREEDOM and IRAQI FREEDOM.

(f) *Description—(1) Ribbon.* The dark red stripe denotes sacrifice. The gold stripes symbolize achievement. The blue stripes signify justice.

(2) *Obverse.* The obverse has a stylized globe, the universal symbol of the world. Surmounting the globe is six arrows exemplifying fighting power and readiness, also representing the area that terrorism is being fought; diplomatic, military, financial, intelligence, investigative and law enforcement. Below, a olive branch exemplifies peace and an oak branch emphasizing strength and protection.

(3) *Reverse.* The reverse is inscribed 'FOR INTERNATIONAL RESPONSES AGAINST TERRORISM' between three stars commemorate achievement and below the year '2002'.

§ 578.33 Korea Defense Service Medal.

(a) *Eligibility Requirements.* The Korea Defense Service Medal (KDSM) was authorized by Section 543, 2003 National Defense Authorization Act. It is awarded to members of the Armed Forces who have served on active duty in support of the defense of the Republic of Korea from July 28, 1954 to a date to be determined.

(1) The area of eligibility encompasses all land area of the Republic of Korea, and the contiguous water out to 12 nautical miles, and all air spaces above the land and water areas.

(2) The KDSM period of eligibility is July 28, 1954, to a future date to be determined by the Secretary of Defense.

(b) *Specific.* Service members must have been assigned, attached, or mobilized to units operating in the area of eligibility for 30 consecutive or for 60 nonconsecutive days, or meet the following criteria:

(1) Be engaged in combat during an armed engagement, regardless of the time in the area of eligibility.

(2) Is wounded or injured in the line of duty and requires medial evacuation from the area of eligibility.

(3) While participating as a regularly assigned air crew member flying sorties into, out of, or within the area of eligibility in direct support of military operations. Each day that one or more sorties are flown in accordance with these criteria shall count as one day toward the 30 or 60-day requirement.

(4) Personnel who serve in operations and exercises conducted in the area of eligibility are considered eligible for the award as long as the basic time criteria is met. Due to the extensive time period for KDSM eligibility, the nonconsecutive service period for eligibility remains cumulative throughout the entire period.

(c) *Awarding.* (1) The KDSM may be awarded posthumously.

(2) Only one award of the KDSM is authorized for any individual.

(d) *Precedence.* The KDSM shall be positioned below the Global War on Terrorism Service Medal in precedence; and shall be positioned above the Armed Forces Service Medal.

(e) *Description.* The ribbon is dark green represents the land of Korea, blue indicates overseas service and

commitment to achieving peace. Gold denotes excellence, white symbolizes idealism and integrity. The obverse is a bronze-color disc bearing a Korean "circle dragon" within an encircling scroll inscribed "Korea Defense Service Medal" with, in base, two sprigs, laurel to dexter side, bamboo to sinister. The four-clawed dragon is a traditional symbol of Korea and represents intelligence and strength of purpose. The sprig of laurel denotes honorable endeavor and victory, the bamboo refers to the land of Korea. The reverse is a representation of the land mass of Korea surmounted by two swords points up saltirewise within a circlet garnished of five points. The swords placed saltirewise over a map of Korea signify defense of freedom in that country and the readiness to engage in combat to that end. The circlet enclosing the device recalls the forms of five-petal symbols common in Korean armory.

§ 578.34 Armed Forces Service Medal.

(a) *Criteria.* The Armed Forces Service Medal (AFSM) was established by Executive Order 12985, January 11, 1996. It is awarded to members of the Armed Forces of the United States who, after June 1, 1992 meet the following criteria:

(1) Participate, or have participated, as members of U.S. military units, in a U.S. military operation that is deemed to be a significant activity; and

(2) Encounter no foreign armed opposition or imminent threat of hostile action.

(b) *Eligibility requirements.* To qualify for award of the AFSM service members must be bona fide members of a unit participating for one or more days in the operation within the designated area of eligibility, or meet one or more of the following criteria:

(1) Be engaged in direct support for 30 consecutive days in the area of eligibility (or for the full period when an operation is of less than 30 days duration) or for 60 nonconsecutive days provided this support involves entering the area of eligibility.

(2) Participate as a regularly assigned crew member of an aircraft flying into, out of, within, or over the

area of eligibility in support of the operation.

(c) *Qualifying operations.* (1) The AFSM may be authorized for significant U.S. military activities for which no other U.S. campaign or service medal is appropriate, such as—

(i) Peacekeeping operations.

(ii) Prolonged humanitarian operations.

(2) The AFSM may be awarded for U.S. military operations in direct support of the United Nations (UN) or the North Atlantic Treaty Organization (NATO), and for operations of assistance to friendly foreign nations.

(d) *General criteria.* (1) The AFSM provides recognition to participants who deploy to the designated area of eligibility for the qualifying operation. Outstanding or meritorious performance of non-deployed or remotely located support units and individuals is not justification for award of the AFSM. Such performance may be recognized by appropriate unit and/or individual decorations.

(2) Because the AFSM may be awarded for a prolonged humanitarian operation, distinction between the AFSM and the Humanitarian Service Medal (HSM) must be maintained. The following rules apply:

(i) The HSM is an individual U.S. service medal, presented to individuals who are physically present at the site of immediate relief and who directly contribute to and influence the humanitarian action. The HSM is only awarded for service during the identified “period of immediate relief”; eligibility for the HSM terminates once (if) the humanitarian action evolves into an “established ongoing operation beyond the initial emergency condition.”

(ii) The AFSM is a theater award, authorized for presentation to all participants who meet the eligibility requirements established for a designated operation.

(iii) For operations in which all deployed participants are awarded the HSM and for which the “period of immediate relief” coincides with the duration of significant deployed operations, award of the AFSM is not authorized.

(iv) Humanitarian operations for which some (or all) participants are

awarded the HSM, which continue beyond the “period of immediate relief,” may be recognized by award of the AFSM. The AFSM may be awarded for the entire period of the operation; individuals awarded the HSM for direct participation during the “period of immediate relief” are also eligible for the AFSM if awarded.

(e) *Limitations on awarding the AFSM.* The following limitations apply when determining whether the AFSM should be awarded for a particular mission or operation or when determining eligibility for award to an individual:

(1) The AFSM shall be awarded only for operations for which no other U.S. campaign or service medal is approved.

(2) For operations in which personnel for only one Service participates, the AFSM shall be awarded only if there is no other suitable award available to that Service.

(3) The military service of the individual on which qualification for the award of the AFSM is based shall have been honorable.

(4) Award of the AFSM is not authorized for participation in national or international exercises.

(5) The AFSM will not be awarded for NATO or United Nations operations not involving significant, concurrent U.S. military support operations.

(f) *Approval and designation of area of eligibility—*(1) *Approval of operations.* The Chairman of the Joint Chiefs of Staff (CJCS) shall designate U.S. military operations subsequent to June 1, 1992 that qualify for the AFSM.

(2) *Designation of area of eligibility.* (i) The CJCS shall specify the qualifying area of eligibility for award of the AFSM.

(ii) Prior to submission to the CJCS for consideration, the proposed qualifying area of eligibility will be coordinated with the Joint Chiefs of Staff and the Commander in Chiefs (CINCS) to ensure all appropriate locations are included.

(iii) Upon the recommendation of a CINC and in coordination with the Joint Chiefs of Staff, the CJCS may adjust the area of eligibility to reflect changes in the location, scope and degree of participation of forces deployed

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to, and in direct support of, an operation for which the AFSM has been awarded.

(g) *Subsequent awards.* No more than one medal shall be awarded to any one Service member. One bronze service star is worn to denote second and subsequent awards of the AFSM. To be eligible for additional awards, service must be rendered in more than one designated area and period of service. No two awards will be made for service in the same designated area. (Service stars are described in § 578.61)

(h) *Manner of wearing.* The AFSM shall take precedence immediately after the Southwest Asia Service Medal.

(i) *Posthumous awards.* The AFSM may be awarded posthumously to eligible soldier's primary next of kin (primary next of kin is defined in the Glossary).

(j) Designated U.S. military operations, area and dates are as follows:

(1) Operations PROVIDE PROMISE, JOINT ENDEAVOR, ABLE SENTRY, DENY FLIGHT, MARITIME MONITOR, and SHARP GUARD, from November 20, 1995 to December 19, 1996.

(2) Operation JOINT GUARD from December 20, 1996 to June 20, 1998.

(3) Operation JOINT FORGE from June 21, 1998 to a date to be determined.

(4) Operation UNITED NATIONS MISSION in HAITI; U.S. FORCES in HAITI and U.S. SUPPORT GROUP-HAITI from April 1, 1995 to January 31, 2000.

(5) Operation PROVIDE COMFORT from December 1, 1995 to December 31, 1996.

(k) See AR 672-20 for the Armed Forces Civilian Service Medal.

(l) *Description.* The medal is Bronze, 1¼ inches in diameter with a demitorch (as on the Statue of Liberty) encircled at the top by the inscription "ARMED FORCES SERVICE MEDAL" on the obverse side. On the reverse side is an eagle (as on the seal of the DOD) between a wreath of laurel in base and the inscription "IN PURSUIT OF DEMOCRACY" at the top. The ribbon is 1¾ inches wide and consists of the following stripes: ¼ inch Goldenlight 67107; ¼ inch Jungle Green 67191; ¼ inch Green 67129; ¼ inch Mosstone

67127; ¼ inch Goldenlight; Center ¼ inch Bluebird 67117; ¼ inch Goldenlight; ¼ inch Mosstone; ¼ inch Green; ¼ inch Jungle Green; and ¼ inch Goldenlight.

§ 578.35 Humanitarian Service Medal.

(a) *Criteria.* The Humanitarian Service Medal (HSM) was established by Executive Order 11965, January 19, 1977. It is awarded to members of the Armed Forces of the United States who, after April 1, 1975, distinguished themselves by meritorious direct participation in a DOD approved significant military act or operation of a humanitarian nature. It is not awarded for participation in domestic disturbances involving law enforcement, equal rights to citizens, or protection of properties.

(b) To be eligible, a service member must meet the following requirements:

(1) Must be on active duty at the time of direct participation in a DOD approved humanitarian act or operation. "Active duty" means full-time duty in the active military service of the United States. It includes duty on the active duty list, full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a Service school by law or by the Secretary of the Military Department concerned per 10 U.S.C. 101(22). This includes service as a cadet at the U.S. Military Academy. Members of the Army National Guard are eligible provided that the use of active forces has been authorized in the act or operation.

(2) Must have directly participated in the humanitarian act or operation within the designated geographical area of operation and within specified time limits. "Direct participation" is defined as "hands on" activity at the site or sites of the military act or operation. Specifically excluded from eligibility for this medal are personnel or elements remaining at geographically separated military headquarters.

(3) Must provide evidence which substantiates direct participation in a DOD approved humanitarian act or operation except when by-name eligibility lists are published. Acceptable evidence includes the following:

(i) Certificates, letters of commendation or appreciation.

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(ii) Officer or enlisted evaluation reports.

(iii) Copies of TDY or special duty orders reflecting participation within the specified timeframe and geographical location cited.

(iv) After-action reports, situation reports, rosters, unit files or any other records or documentation which verify the service members participation.

(v) Statements from commanders, supervisors, or other officials who were in a position to substantiate the service members direct participation in the area of operation.

(c) The HSM is a U.S. service medal and does not preclude or conflict with other service medals or decorations awarded on the basis of valor, achievement or meritorious service.

(d) No person will be awarded more than one HSM for participation in the same military act or operation.

(e) A service star will be worn to denote direct participation in second or subsequent humanitarian acts or operations. The approved HSM operations are provided in AR 600-8-22 and the HQDA Military Awards Branch Web site: <https://www.perscomonline.army.mil/tagd/awards/HSM.doc>.

(f) See AR 672-20 for Civilian Award for Humanitarian Service.

(g) *Description.* The medal is Bronze, 1¼ inches in diameter, surmounted by an open hand, palm up, extending to the upper left. On the reverse is a sprig of oak in a left oblique slant between the inscription "FOR HUMANITARIAN SERVICE" in three horizontal lines, and "UNITED STATES ARMED FORCES" in an arc around the base. The ribbon is 1⅜ inches wide and consists of the following stripes: ⅜ inch Imperial Purple 67161; ¼ inch White 67101; ⅜ inch Bluebird 67117; ¼ inch Flag Blue 67124; ⅜ inch Bluebird; ¼ inch White; and ⅜ inch Imperial Purple.

§ 578.36 Military Outstanding Volunteer Service Medal.

(a) *Criteria.* The Military Outstanding Volunteer Service Medal (MOVSM) was established by Executive Order 12830, January 9, 1993. It may be awarded to members of the Armed Forces of the United States and their Reserve Components, who subsequent to December

31, 1992, perform outstanding volunteer community service of a sustained, direct and consequential nature.

(b) To qualify for award of the MOVSM a service member's volunteer service must meet the following requirements:

(1) Be to the civilian community, to include the military family community.

(2) Be significant in nature and produce tangible results.

(3) Reflect favorably on the Military Service and the DOD.

(4) Be of a sustained and direct nature.

(c) While there is no specific time period to qualify for the MOVSM (for example, 500 hours of community service within 24 calendar months), approval authorities shall ensure the service to be honored merits the special recognition afforded by this medal. The MOVSM is intended to recognize exceptional community support over time and not a single act or achievement. Further, it is intended to honor direct support of community activities. For the purpose of this award, attending membership meetings or social events of a community service group is not considered qualifying service, while manning a community crisis action telephone line is considered qualifying service.

(d) Approval authority for award of the MOVSM will be commanders (overseas and CONUS (continental United States)) serving in the rank of Lieutenant Colonel or higher. Before the recommendation is forwarded to the award approval authority, the recommender must certify that the service member meets the eligibility criteria for award of the MOVSM. Substantiating documentation, such as record of hours contributed, letters or certificates from activity supervisors, or other proof of the service member's volunteer services may be attached as enclosures to the recommendation.

(e) *Description.* The medal is Bronze, 1⅜ inches in diameter bearing on the obverse, five annulets interlaced enfiled by a star and environed by a wreath of laurel. On the reverse is a sprig of oak between the inscription "OUTSTANDING VOLUNTEER SERVICE" at the top and "UNITED STATES

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ARMED FORCES" at the bottom. The ribbon is 1 $\frac{3}{8}$ inches wide and consists of the following stripes: $\frac{1}{8}$ inch Bluebird 67117; $\frac{1}{8}$ inch Goldenlight 67107; $\frac{3}{16}$ inch Bluebird; $\frac{1}{16}$ inch Green 67129; $\frac{5}{32}$ inch Goldenlight; center $\frac{1}{16}$ inch Green; $\frac{5}{32}$ inch Goldenlight; $\frac{1}{16}$ inch Green; $\frac{3}{16}$ inch Bluebird; $\frac{1}{8}$ inch Goldenlight; and $\frac{1}{8}$ inch Bluebird.

§ 578.37 Army Good Conduct Medal.

(a) *Criteria.* The Army Good Conduct Medal (AGCM) was established by Executive Order 8809, June 28, 1941 and was amended by Executive Order 9323, 1943 and by Executive Order 10444, April 10, 1953. It is awarded for exemplary behavior, efficiency, and fidelity in active Federal military service. It is awarded on a selective basis to each soldier who distinguishes himself or herself from among his or her fellow soldiers by his exemplary conduct, efficiency, and fidelity throughout a specified period of continuous enlisted active Federal military service. There is no right or entitlement to the medal until the immediate commander has approved the award and the award has been announced in permanent orders.

(b) *Personnel eligible:* (1) Active Component enlisted soldiers.

(2) Active Guard Reserve (AGR) enlisted personnel serving on extended periods of active duty (other than for training) under 10 U.S.C. and 32 U.S.C. are eligible for award of the AGCM for qualifying service beginning on or after September 1, 1982, provided no period of the service has been duplicated by the same period of service for which the soldier has been awarded the Army Reserve Components Achievement Medal (ARCAM). The AGCM qualification period may commence anytime during the 3 years immediately preceding the September 1, 1982 effective date provided no portion of service for the AGCM is included in a period of service for which the ARCAM was awarded.

(3) Retroactively to eligible Army of the United States (AUS) enlisted personnel.

(4) Other Army enlisted personnel as may be directed by the Secretary of the Army.

(c) *Awarding authority.* Unit commanders are authorized to award the AGCM to enlisted personnel serving

under their command jurisdiction who meet the established criteria. Send requests for award of the AGCM for former soldiers to NPRC (see § 578.8(e) for address). Requests for award of the AGCM for Army National Guard and Army Reserve members for periods of active duty based on qualifying prior active Federal military service (Regular Army and AUS) will be forwarded through normal command channels to the Commander, USA HRC-St. Louis, ATTN: ARPC-PSP-R, One Reserve Way, St. Louis, MO 63132-5200. Separation transfer points will review the records of enlisted personnel being separated to determine whether they qualify for the AGCM. Where possible, make a reasonable effort to contact the unit commander before awarding the medal to qualified members.

(d) *Basis for approval.* The immediate unit commander's decision to award the AGCM will be based on his or her personal knowledge and of the individual's official records for periods of service under previous commanders during the period for which the award is to be made. The lack of official disqualifying comment by such previous commanders qualifies the use of such period toward the award by the current commander.

(e) *Qualifying periods of service.* Any one of the following periods of continuous enlisted active Federal military service qualifies for award of the AGCM or of an AGCM Clasp (see paragraph (h) of this section in conjunction with the criteria in paragraph (f) of this section):

(1) Each 3 years completed on or after August 27, 1940.

(2) For first award only, 1 year served entirely during the period December 7, 1941 to March 2, 1946.

(3) For first award only, upon termination of service on or after June 27, 1950, of less than 3 years but more than 1 year.

(4) For first award only, upon termination of service, on or after June 27, 1950, of less than 1 year when final separation was by reason of physical disability incurred in the line of duty.

(5) For first award only, for those individuals who died before completing 1 year of active Federal military service

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if the death occurred in the line of duty.

(f) *Character of service.* Throughout a qualifying period, each enlisted soldier must meet all of the following criteria for an award:

(1) The immediate commander evaluates the soldier's character as above reproach.

(2) The record of service indicates that the soldier has—

(i) Willingly complied with the demands of the military environment.

(ii) Been loyal and obedient to their superiors.

(iii) Faithfully supported the goals of their organization and the Army.

(iv) Conducted themselves in such an exemplary manner as to distinguish them from their fellow soldiers.

(3) While any record of non-judicial punishment could be in conflict with recognizing the soldier's service as exemplary, such record should not be viewed as automatically disqualifying. The commander analyzes the record, giving consideration to the nature of the infraction, the circumstances under which it occurred and when. Conviction by court-martial terminates a period of qualifying service; a new period begins following the completion of sentence imposed by court-martial.

(4) In terms of job performance, the soldier's efficiency must be evaluated and must meet all requirements and expectations for that soldier's grade, Military Occupational Specialty (MOS), and experience.

(5) Individuals whose retention is not warranted under standards prescribed in AR 604-10, or for whom a bar to reenlistment has been approved under the provisions of AR 601-280, chapter 6 (specifically for the reasons enumerated in paragraphs 6-4a, b, and d), are not eligible for award of the AGCM.

(g) *Additional implementing instructions.* (1) Qualifying periods of service (paragraph (e) of this section) must be continuous enlisted active Federal military service. When an interval in excess of 24 hours occurs between enlistments, that portion of service before the interruption is not creditable toward an award.

(2) Release from enlisted status for entry into service as a cadet or midshipman at any U.S. service academy,

or discharge from enlisted status for immediate entry on active duty in an officer status is considered termination of service for awarding the AGCM. A minimum of 12 months enlisted service is required and must have been completed for first award of the AGCM; otherwise, the full 3 years of qualifying enlisted service is required.

(3) A qualified person scheduled for separation from active Federal military service should receive the award at his or her last duty station. Such award is authorized up to 30 days before the soldier's departure en route to a separation processing installation in CONUS or overseas. Orders announcing such advance awards will indicate the closing date for the award prefixed with date of separation, on or about, as the response to the "Dates or period of service" lead line. Example: From October 31, 1977 to date of separation on or about October 30, 1980. For soldiers who are granted terminal leave prior to retirement or End Tour of Service (ETS), orders awarding second and subsequent awards of the AGCM may be issued up to 90 days before retirement or ETS date.

(4) An award made for any authorized period of less than 3 years must be for the total period of obligated active Federal military service. This applies to first award only, all other awards of the AGCM require 3 full years qualifying service.

(5) Discharge under provisions of AR 635-200 for immediate (re)enlistment is not termination of service.

(h) *Disqualification for the Army Good Conduct Medal.* (1) Conviction by courts-martial terminates a period of qualifying service; a new period begins the following day after completion of the sentence imposed by the court-martial.

(2) Individual whose retention is not warranted under standards prescribed in AR 604-10, or for whom a bar to reenlistment has been approved under the provisions of AR 601-280, chapter 6 (specifically for the reasons enumerated in, paragraphs 6-4a, b, and d, AR 601-280), are not eligible for award of the AGCM.

(3) In instances of disqualification as determined by the unit commander,

the commander will prepare a statement of the rationale for his or her decision. This statement will include the period of disqualification and will be referred to the individual according to AR 600-37. The unit commander will consider the affected individual's statement. If the commander's decision remains the same, the commander will forward his or her statement, the individual's statement, and his or her consideration for filing in the individual's military record.

(4) Disqualification for an award of the AGCM can occur at any time during a qualifying period (for example, when manner of performance or efficiency declines). The custodian of the soldier's record will establish the new "beginning date" for the soldier's eligibility for award of the AGCM, annotate the date on the soldier's DA Form 2-1, and submit an automated transaction. These procedures do not apply if the soldier is disqualified under the provisions of paragraph (h)(2) of this section.

(i) *Subsequent awards and clasps.* A clasp is authorized for wear on the AGCM to denote a second or subsequent award. Clasps authorized for second and subsequent award are:

- (1) Award: 2d; Clasp: Bronze, 2 loops;
 - (2) Award: 3d; Clasp: Bronze, 3 loops;
 - (3) Award: 4th; Clasp: Bronze, 4 loops;
 - (4) Award: 5th; Clasp: Bronze, 5 loops;
 - (5) Award: 6th; Clasp: Silver, 1 loop;
 - (6) Award: 7th; Clasp: Silver, 2 loops;
 - (7) Award: 8th; Clasp: Silver, 3 loops;
 - (8) Award: 9th; Clasp: Silver, 4 loops;
 - (9) Award: 10th; Clasp: Silver, 5 loops;
 - (10) Award: 11th; Clasp: Gold, 1 loop;
 - (11) Award: 12th; Clasp: Gold, 2 loops;
 - (12) Award: 13th; Clasp: Gold, 3 loops;
 - (13) Award: 14th; Clasp: Gold, 4 loops;
- and
- (14) Award: 15th; Clasp: Gold, 5 loops.

(j) *Army Good Conduct Medal certificate policy.* (1) The DA Form 4950 (Good Conduct Medal Certificate) may be presented to enlisted soldiers only on the following occasions:

(i) Concurrent with the first award of the AGCM earned on or after January 1, 1981.

(ii) Concurrent with retirement on or after January 1, 1981.

(2) When presented at retirement, the DA Form 4950 will reflect the last approved award of the AGCM earned by

the soldier before retirement. The number of the last earned will be centered immediately beneath the line "THE GOOD CONDUCT MEDAL;" for example, "Sixth Award." The period shown on the certificate will be the period cited in the last award earned by the soldier. The words "UPON HIS OR HER RETIREMENT" may be typed below the soldier's name.

(3) The DA Form 4950 will not be presented for second or subsequent awards of the AGCM except as provided in paragraph (j)(2) of this section.

(4) DA Form 4950 is available from the U.S. Army Publications Distribution Center, St. Louis, MO.

(k) *Retroactive award.* (1) Retroactive award to enlisted personnel, and to officer personnel who qualified in an enlisted status, is authorized provided evidence is available to establish qualification. Where necessary, to correct conflicting or duplicate awards, previous general or permanent orders may be revoked and new orders published, citing this paragraph as authority.

(2) Requests for retroactive awards to enlisted persons which cannot be processed due to lack of information will be forwarded to Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249-5301, by the commander having command jurisdiction. Upon receipt of eligibility information from U.S. Army Enlisted Records and Evaluation Center (USAEREC), the commander can take action to confirm retroactive award of the AGCM by publication of orders, or by informing the soldier of findings of ineligibility.

(1) *Description.* The medal is Bronze, 1¼ inches in diameter, with an eagle, wings spread, standing on a closed book and sword, encircled by the words "EFFICIENCY HONOR FIDELITY". On the reverse is a five-pointed star and a scroll between the words "FOR GOOD" and "CONDUCT", surrounded by a wreath formed by a laurel branch on the left and an oak branch on the right. Clasps are placed on the ribbon to represent subsequent awards. The ribbon is 1¾ inches ribbon consisting of the following stripes: ¼ inch Soldier Red 67157; ¼ inch White 67101; ¼ inch Soldier Red; ¼ inch White; ¼ inch Soldier Red; ¼ inch White; center ⅝

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inch Soldier Red; $\frac{1}{16}$ inch White; $\frac{1}{16}$ inch Soldier Red; $\frac{1}{16}$ inch White; $\frac{1}{16}$ inch Soldier Red; $\frac{1}{16}$ inch White; and $\frac{1}{16}$ inch Soldier Red.

§ 578.38 Army Reserve Components Achievement Medal.

(a) *Criteria.* The Army Reserve Components Achievement Medal (ARCAM) was established by the Secretary of the Army on March 3, 1971 and amended by Department of the Army General Orders (DAGO) 4, 1974. It is awarded for exemplary behavior, efficiency, and fidelity while serving as a member of an Army National Guard (ARNG) or USAR troop program unit (TPU) or as an individual mobilization augmentee (IMA). The first design bears the inscription "United States Army Reserve," the other design bears the inscription, "Army National Guard."

(b) *Personnel eligible.* The ARCAM is authorized for award to Army personnel including Active Guard Reserve (AGR) officers in the rank of colonel and below. Individual must have been a member of an ARNG unit or USAR TPU, excluding enlisted soldiers in an AGR status. AGR enlisted soldiers are eligible for the AGCM under the provisions of § 578.37(b). The medal is also awarded to USAR soldiers serving as IMA after completing qualifying service and on recommendation of the unit commander or HQDA official to which the IMA is assigned.

(c) *Award approval authority.* Approval authority for award of the ARCAM for ARNG units and USAR TPU soldiers is the soldier's unit commander. Commander, USA HRC-St. Louis, One Reserve Way, St. Louis, MO 63132-5200, is the approval authority for award of the ARCAM to USAR IMA soldiers. Orders are not published for the award of this medal. Approved ARCAM is announced using an official memorandum. The records custodian will then annotate the records.

(d) *Peacetime and wartime applicability.* The ARCAM is awarded to eligible Army Reserve Component soldiers during times of peace and war. However, during periods of war, the length of qualifying service is subject to change at the discretion of the Secretary of the Army.

(e) *Basis or criteria for approval.* (1) Between March 3, 1972 and March 28, 1995, the medal was authorized on completion of 4 years' service with a Reserve Component unit. Individual must have completed 4 years of qualifying service on or after March 3, 1972 and before March 28, 1995. A qualifying year of service is one in which a Reserve soldier earns a minimum of 50 retirement points during his/her retirement year. Qualifying service for computation purposes is based only by retirement ending year dates.

(2) Effective March 28, 1995, the period of qualifying service for award of the ARCAM is reduced from 4 to 3 years. That is, soldiers completing 3 years of qualified service on or after March 28, 1995 are eligible for ARCAM consideration. This change is not retroactive.

(3) All awards of the ARCAM must be made under the following conditions:

(i) Such years of qualifying service must have been consecutive. A period of more than 24 hours between Reserve enlistments or officer's service will be considered a break in service. Credit toward earning the award must begin anew after a break in service. Service while attending Officer Candidate School or Warrant Officer Candidate school will be considered enlisted service, and termination will occur when the soldier is commissioned or appointed a warrant officer.

(ii) Although only unit service may be credited for award of this medal, consecutive Ready Reserve service between periods of unit service will not be considered as a break in service and service in the first unit may be added to service in the second unit to determine total qualifying service.

(iii) Soldiers who are ordered to active duty in the AGR program will be awarded the ARCAM if they have completed 2 of the 3 years required (Army Good Conduct Medal eligibility starts on the effective date of the AGR order). Soldiers with less than 2 years will not receive an award. Service lost may be recovered if the soldier is separated honorably from the AGR program and reverts to troop program unit service, for example, a soldier serves 1 year and 6 months of qualifying service and is ordered to an AGR tour. This service is

not sufficient for award of the ARCAM. When the soldier leaves the AGR program that 1 year and 6 months is granted towards the next award of the ARCAM. Only the State adjutant general may determine that the AGR service was not sufficiently honorable enough to revoke the previously earned time, regardless of the type of separation given.

(iv) The member must have exhibited honest and faithful service as is in accordance with the standards of conduct, courage and duty required by law and customs of the service, of a member of the same grade as the individual to whom the standard is being applied.

(4) A member must be recommended for the award by his or her unit commander whose recommendation is based on personal knowledge of the individual and the individual's official records of periods of service under prior commanders during the period for which the award is made.

(5) A commander may not delay award or extend the qualifying period for misconduct. A determination that service is not honorable as prescribed negates the entire period of the award.

(f) *Unqualified service.* (1) Service performed in the Reserve Components of the U.S. Air Force, Navy, Marine Corps, or Coast Guard may not be credited for award of the ARCAM.

(2) Release from Army Reserve Component status for entry into service as a cadet or midshipman at any U.S. service academy or discharge from Army Reserve Component for immediate entry in the Regular Army, in an officer or enlisted status, is considered termination of service for the purpose of qualifying for the ARCAM.

(3) Service while in an enlisted AGR status may not be credited for award of the ARCAM.

(g) *Subsequent awards and Oak Leaf Clusters.* Second and succeeding awards of the ARCAM are denoted by Oak Leaf Clusters.

(h) *Description.* The medal is Bronze, 1¼ inches in diameter, consisting of a faceted twelve-pointed star with a beveled edge, the points surmounting a wreath of laurel and bearing on a disc within a smaller wreath of laurel, a torch between two swords crossed saltirewise, points up and flanked by

two mullets. The reverse has the cuirass from the DA seal centered below "ARMY NATIONAL GUARD" or "UNITED STATES ARMY RESERVE" and above "FOR ACHIEVEMENT". The ribbon is 1¾ inches wide ribbon consisting of the following stripes: ⅝ inch Old Gold 67105; ⅛ inch Ultramarine Blue 67118; ¼ inch White 67101; center ⅜ inch Scarlet 67111; ⅛ inch White; ⅛ inch Ultramarine Blue; and ⅝ inch Old Gold.

§ 578.39 Army Reserve Components Overseas Training Ribbon.

(a) *Criteria.* The Army Reserve Components Overseas Training Ribbon (ARCOTR) was established by the Secretary of the Army on July 11, 1984. It is awarded to members of the Reserve Components of the Army, (Army National Guard and U.S. Army Reserve), for successful completion of annual training (AT) or active duty for training (ADT) for a period not less than 10 consecutive duty days on foreign soil. ARNG and USAR soldiers who accompany the Reserve Component (RC) unit (including unit cells) to which they are assigned or attached as full-time unit support (FTUS) during overseas training are also eligible for the award.

(b) Effective July 11, 1984, all members of the ARNG and USAR are eligible for this award if they were active Reserve status members of the Army National Guard, U.S. Army Reserve (not on active duty in the Active Army), or AGR FTUS soldiers at the time their unit underwent AT or ADT on foreign soil.

(c) AGR personnel, not assigned to a TPU, are also eligible for award of the ARCOTR provided they are ordered overseas specifically as advance party to, simultaneously with, or in support of mop-up operations of RC units training overseas. Ten consecutive days overseas must be met. Other AGR members overseas for any other reason are not eligible for the ARCOTR.

(d) The ARCOTR may be awarded retroactively to those personnel who successfully completed AT or ADT on foreign soil in a Reserve status prior to July 11, 1984 provided they have an active status as defined above on or after July 11, 1984.

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(e) Soldiers must be credited with completion of at least 10 consecutive duty days outside the 50 States, the District of Columbia and U.S. possessions and territories in the performance of duties in conjunction with Active Army, joint services, or Allied Forces. The day of departure counts; the day of return does not.

(f) The ARCOTR is a training ribbon, which does not conflict with service medals or decorations.

(g) Numerals will be used to denote second and subsequent awards of the ARCOTR. (See § 578.61 Appurtenances to military decorations.)

(h) *Description.* The ribbon is 1 $\frac{3}{8}$ inches in width; however, it is mounted on the ribbon bar horizontally so that the horizontal center stripe is $\frac{3}{32}$ inch Old Glory Red with a $\frac{3}{64}$ inch White stripe on each side. The remainder of the ribbon is Ultramarine Blue.

§ 578.40 Overseas Service Ribbon.

(a) *Criteria.* The Overseas Service Ribbon (OSR) was established by the Secretary of the Army on April 10, 1981. It is awarded to members of the U.S. Army for successful completion of overseas tours.

(b) Effective August 1, 1981, all members of the Active Army, Army National Guard and Army Reserve in an active Reserve status are eligible for this award. The ribbon may be awarded retroactively to those personnel who were credited with a normal overseas tour completion before August 1, 1981 provided they had an Active Army status as defined above on or after August 1, 1981.

(c) Soldiers must be credited with a normal overseas tour completion according to AR 614-30. Service members who had overseas service with another branch of service (U.S. Navy, Air Force, or Marine Corps) must be credited with a normal overseas tour completion by that service to qualify for award of the Army OSR.

(d) Numerals will be used to denote second and subsequent awards of the OSR.

(e) *Posthumous award of the OSR.* For first award of the OSR only, an individual may be posthumously awarded (on or after August 1, 1981) the OSR before completion of the overseas tour,

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provided the soldier's death is ruled "Line of duty-Yes."

(f) *Description.* The Army Overseas Service ribbon is 1 $\frac{3}{8}$ inches in width. It is composed of the following vertical stripes: $\frac{3}{16}$ inch National Flag Blue 67124, $\frac{5}{16}$ inch Grotto Blue 67165, $\frac{1}{16}$ inch Golden Yellow 67104, $\frac{1}{4}$ inch Brick Red 67113, $\frac{1}{16}$ inch Golden Yellow, $\frac{5}{16}$ inch Grotto Blue, and $\frac{3}{16}$ inch National Flag Blue.

§ 578.41 Army Service Ribbon.

(a) *Criteria.* The Army Service Ribbon (ASR) was established by the Secretary of the Army on April 10, 1981. It is awarded to members of the U.S. Army for successful completion of initial entry training.

(b) Effective August 1, 1981, all members of the Active Army, Army National Guard, and U.S. Army Reserve in an active Reserve status are eligible for this award. The ribbon may be awarded retroactively to those personnel who completed the required training before August 1, 1981 provided they had an Active Army status as defined above on or after August 1, 1981.

(c) Officers will be awarded this ribbon upon successful completion of their basic/orientation or higher level course. For those officer personnel assigned a specialty, special skill identifier, or MOS based on civilian or other service acquired skills, this ribbon will be awarded upon honorable completion of 4 months active service.

(d) Enlisted soldiers will be awarded this ribbon upon successful completion of their initial MOS producing course. For those enlisted soldiers assigned a MOS based on civilian or other service acquired skills, this ribbon will be awarded on honorable completion of 4 months active service.

(e) Only one award of the ASR is authorized, regardless of whether a soldier completes both officer and enlisted initial entry training.

(f) For first award only, an individual may be posthumously awarded (on or after August 1, 1981) the Army Service Ribbon prior to completion of the requisite training or time in service, provided the soldier's death is ruled "Line of duty-Yes."

(g) *Description.* The ribbon is 1 $\frac{3}{8}$ inches in width. It is composed of the

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following vertical stripes: $\frac{7}{32}$ inch Scarlet 67111, $\frac{5}{32}$ Orange 67110, $\frac{3}{32}$ inch Golden Yellow 67104, $\frac{1}{8}$ inch Emerald 67128, Ultramarine Blue 67118, $\frac{1}{8}$ inch Emerald, $\frac{3}{32}$ inch Golden Yellow, $\frac{5}{32}$ inch Orange, and $\frac{7}{32}$ inch Scarlet.

§ 578.42 Noncommissioned Officer Professional Development Ribbon.

(a) *Criteria.* The Noncommissioned Officer (NCO) Professional Development Ribbon (NPDR) was established by the Secretary of the Army on April 10, 1981. It is awarded to members of Active Army, ARNG, and USAR soldiers for successful completion of designated NCO professional development courses.

(b) *Subsequent awards.* The NPDR consist of the basic ribbon with numeral devices of 2, 3, or 4, which signify satisfactory completion of the respective levels of NCO professional development courses. Numerals used in conjunction with this service ribbon are the same type as those used for subsequent awards of the Air Medal.

(c) *Policy.* (1) A change approved in February 1989 completely revamped the wear policy of numerals on ribbons and award suspension elements. Also, simultaneously U.S. Army Training and Doctrine Command (TRADOC) announced that the First Sergeant Course is not a recognized element of the NCO Professional Development Training System. Because of the impact of these two far-reaching policy changes, no grandfathering is allowed for Active Army or RC soldiers concerning the wear of numerals on the NPDR. Only the numerals 2, 3, and 4 are authorized for wear on the ribbon.

(2) Once a service member has been awarded the NPDR upon graduation from Primary Leadership Development Course (PLDC) or Primary Leadership Development Course-RC, subsequent appropriate numerals will be awarded to identify completion of higher level NCO Education System (NCOES) or RC NCOES courses.

(3) Senior NCOs selected by the U.S. Army Sergeants Major Academy (USASMA) who complete equivalent resident courses conducted by the other Services will wear the NPDR with numeral 4.

(4) Soldiers who have been authorized by their local commanders to attend local NCO courses or training conducted by the other Services and who qualify for or are awarded another Service's training ribbon will not wear the other Service's ribbons on the Army uniform.

(5) Soldiers who have attended NCO development courses, other than Senior Level, conducted by another Service while in the Army will not be granted Army course equivalency recognition.

(6) Soldiers must successfully complete one or more of the courses listed in paragraph (d) of this section which are further described in AR 351-1. Graduates of NCO Academy courses conducted prior to 1976 for the Active Army, and 1980 for Reserve Components, will be given credit for the Primary Level only.

(7) Acceptable evidence of graduation is a diploma, certificate, or a letter signed by an appropriate service school official.

(8) Effective March 30, 1989, a service member will be awarded the NPDR with the numeral which identifies the highest level of NCOES or RC-NCOES successfully completed as follows—Bar Ribbon Device=Primary Level; 2=Basic Level; 3=Advanced Level; and 4=Senior Level.

(d) *Requirements.* Effective August 1, 1981, all Active Army, Army National Guard and Army Reserve soldiers in an active status are eligible for this award for satisfactory completion of the respective NCOES or RC-NCOES courses as follows:

(1) Primary level—Primary NCO Course, Combat Arms (PNCOC), Primary Leadership Course (PLC), Primary Technical Courses (Service School—PTC), and Primary Leadership Development Course (PLDC) for award of the basic ribbon.

(2) Basic level—Basic NCO Course, Combat Arms (BNCOC), Basic Technical Courses (Service School—BTC), and Basic NCO Course (CS/CSS—BNCOC) for award of numeral 2.

(3) Advanced level—Advanced NCO Courses (Service School—ANCOC) for award of numeral 3.

(4) Senior level—U.S. Army Sergeants Major Academy (USASMA) for

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award of numeral 4. (See paragraph (c)(3) of this section).

(e) *Special instructions.* Special instructions for ARNG and USAR are as follows:

(1) Primary level—Primary NCO Course, Combat Arms—Reserve Components (PNCOC—RC), and effective October 1, 1985 Primary Leadership Development Course—Reserve Components (PLDC—RC).

(2) Basic level—Basic NCO Course—Reserve Components (CS/CSS BNCOC—RC) through September 30, 1985 (PNCOC—RC and BNCOC—RC combined for CA/CS/CSS). Effective October 1, 1987 Basic NCO Course/Reserve Components (CA, CS, CSS) as developed and implemented.

(f) *Description.* The ribbon is 1 $\frac{3}{8}$ inches in width. It is composed of the following vertical stripes: $\frac{3}{16}$ inch Green 67129, $\frac{1}{8}$ inch Yellow 67108, $\frac{3}{16}$ inch Green, $\frac{1}{16}$ inch Yellow; $\frac{1}{4}$ inch Flag Blue 67124, $\frac{1}{16}$ inch Yellow, $\frac{3}{16}$ inch Green, $\frac{1}{8}$ inch Yellow, and $\frac{3}{16}$ inch Green.

§ 578.43 Armed Forces Reserve Medal.

(a) *Criteria.* The Armed Forces Reserve Medal (AFRM) was established by Executive Order 10163, as announced in DA Bulletin 15, 1950, and was amended by Executive Order 10439, announced in DA Bulletin 3, 1953 and Executive Order 13013, dated August 6, 1996.

(b) The reverse side of this medal is struck in two designs for award to personnel whose Reserve Component service has been primarily in the organized Reserve or primarily in the National Guard. The first design portrays the Minute Man from the Organized Reserve Crest; the other design portrays the National Guard insignia.

(c) The AFRM is awarded for honorable and satisfactory service as a member or former member of one or more of the Reserve Components of the Armed Forces of the United States, including the Coast Guard Reserve and the Marine Corps Reserve, for a period of 10 years under the following conditions:

(1) Such years of service must have been performed within a period of 12 consecutive years.

(2) Each year of active or inactive status honorable service prior to July 1, 1949 in any Reserve Component listed

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in AR 135-180, will be credited toward award. For service performed on or after July 1, 1949, a member must accumulate, during each anniversary year, a minimum of 50 retirement points as prescribed in AR 135-180.

(3) Service in a regular component of the Armed Forces, including the Coast Guard, is excluded except that service in a Reserve Component which is concurrent in whole or in part with service in a regular component will be included. (Example: regular component enlisted soldier with a Reserve commission.)

(4) Any period during which Reserve service is interrupted by one or more of the following will be excluded in computing, but will not be considered as a break in the period of 12 years:

(i) Service in a regular component of the Armed Forces.

(ii) During tenure of office by a State official chosen by the voters of the entire State, territory, or possession.

(iii) During tenure of office of member of the legislative body of the United States or of any State, territory, or possession.

(iv) While service as judge of a court of record of the United States, or of any State, territory, possession, or the District of Columbia.

(5) *Members called to active duty.* On or after August 1, 1990, the member was called to active duty and served under 10 U.S.C. 12301(a), 12302, 12304, 12406, or, in the case of the U.S. Coast Guard Reserve, 14 U.S.C. 712. The member volunteered and served on active duty in support of specific U.S. military operations or contingencies designated by the Secretary of Defense, as defined in 10 U.S.C. 101(A) (13). AGR members who receive orders changing their current duty status (legal authority under which they perform duty), their duty location, or assignment to support a contingency operation are eligible for the award of the "M" Device.

(d) The Ten-year-device is authorized for wear on the AFRM to denote each succeeding 10-year period as follows:

(1) A bronze hourglass shall be awarded upon completion of the first 10-year period award.

(2) A silver hourglass shall be awarded upon completion of the second 10-year period award.

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(3) A gold hourglass shall be awarded upon completion of the third 10-year period award.

(4) A gold hourglass, followed by a bronze hourglass shall be awarded upon completion of the fourth 10-year period award.

(e) *“M” Device.* The “M” Device is authorized for wear on the AFRM by members of the Reserve Components who are called or who volunteer and serve or active duty in support of specific U.S. military operations or contingencies designed by the Secretary of Defense, as defined in of 10 U.S.C. 101(A)(13).

(1) When a member qualifies for the “M” Device, the Bronze “M” shall be awarded, positioned on the ribbon and medal, and a number shall be included on the ribbon and medal. No more than one AFRM may be awarded to any one person. Multiple periods of service during one designated contingency (under provisions of § 578.41(c)) shall count as one “M” Device award.

(2) If no “M” Device is authorized, the appropriate hourglass shall be positioned in the center of the ribbon. If no hourglass is authorized, the “M” Device shall be positioned in the center of the ribbon, followed by Arabic numerals indicating the number of times the device has been awarded, starting with the second award, no number is worn for the first award.

(3) If both the hourglass and the “M” Device are awarded, the hourglass shall be positioned in first position on the ribbon (at the wearer’s right), the “M” Device in the middle position, and the number of times the “M” Device has been awarded in the remaining position (at the wearer’s left).

(f) *Description.* The medal is Bronze, 1¼ inches in diameter, with a flaming torch in front of a crossed powder horn and a bugle within a circle composed of thirteen stars and thirteen rays. On the reverse is a different design for each of the reserve components. The reverse of all medals have the inscription “ARMED FORCES RESERVE” around the rim. Organized Reserve: On a wreath, the Lexington Minuteman statue as it stands on the Common in Lexington, Massachusetts encircled by thirteen stars. National Guard: The National Guard insignia (two crossed

fascies superimposed on an eagle displayed with wings reversed). Air Force Reserve: The crest from the Air Forces seal (on a wreath, an eagle displayed in front of a cloud form). Naval Reserve: The center device of the Department of the Navy seal (an eagle displayed on an anchor in front of a ship in full sail). Marine Corps Reserve: The Marine Corps insignia (eagle perched on a globe superimposed on an anchor). Coast Guard Reserve: The central design of the Coast Guard seal (crossed anchors superimposed by a shield within an annulet).

(1) The devices are Bronze hourglass to indicate 10 years service; silver hourglass to indicate 20 years service; gold hourglass to indicate 30 years service; letter “M” to indicate mobilization in support of U.S. Military operations or contingencies designated by the Secretary of Defense; and a numeral to indicate number of times mobilized.

(2) The ribbon is 1¾ inches wide and consists of the following stripes: ¼₁₆ inch Bluebird 67117; ¼₃₂ inch Chamois 67142; ¼₁₆ inch Bluebird; ¼₃₂ inch Chamois; ¼₁₆ inch Bluebird; ¾₈ inch Chamois; center ¼₈ inch Bluebird; ¾₈ inch Chamois; ¼₁₆ inch Bluebird; ¼₃₂ inch Chamois; ¼₁₆ inch Bluebird; ¼₃₂ inch Chamois; and ¼₁₆ inch Bluebird.

§ 578.44 Korean Service Medal.

(a) *Criteria.* The Korean Service Medal (KSM) was established by Executive Order 10179, dated November 8, 1950. It is awarded for service between June 27, 1950 and July 27, 1954, under any of the following conditions:

(1) Within the territorial limits of Korea or in waters immediately adjacent thereto.

(2) With a unit under the operational control of the Commander in Chief, Far East, other than one within the territorial limits of Korea, which has been designated by the Commander in Chief, Far East, as having directly supported the military efforts in Korea.

(3) Was furnished an individual certificate by the Commander in Chief, Far East, testifying to material contribution made in direct support of the military efforts in Korea.

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(b) The service prescribed must have been performed under any of the following conditions:

- (1) On permanent assignment.
- (2) On temporary duty for 30 consecutive days or 60 nonconsecutive days.
- (3) In active combat against the enemy under conditions other than those prescribed in paragraphs (a)(1) and (2) of this section, provided a combat decoration has been awarded or an individual certificate has been furnished by the commander of an independent force or of a division, ship, or air group, or comparable or higher unit, testifying to such combat credit.

(c) One bronze service star is authorized for each campaign under the following conditions:

- (1) Assigned or attached to and present for duty with a unit during the period in which it participated in combat.
- (2) Under orders in the combat zone and in addition meets any of the following requirements:
 - (i) Awarded a combat decoration.
 - (ii) Furnished a certificate by a commanding general of a corps, higher unit, or independent force that he actually participated in combat.
 - (iii) Served at a normal post of duty (as contrasted to occupying the status of an inspector, observer, or visitor).
 - (iv) Aboard a vessel other than in a passenger status and furnished a certificate by the home port commander of the vessel that he served in the combat zone.
- (3) Was an evader or escapee in the combat zone or recovered from a prisoner-of-war status in the combat zone during the time limitations of the campaign. Prisoners of war will not be accorded credit for the time spent in confinement or while otherwise in restraint under enemy control. (§578.61 Appurtenances to military decorations)

(d) The arrowhead device is authorized for wear on the KSM to denote participation in a combat parachute jump, helicopter assault landing, combat glider landing, or amphibious assault landing, while assigned or attached as a member of an organized force carrying out an assigned tactical mission. Additional information on the arrowhead device is in §578.61.

(e) *Description.* The medal is Bronze, 1¼ inches in diameter, a Korean gateway, encircled by the inscription "KOREAN SERVICE". On the reverse is the Korean symbol taken from the center of the Korean National flag with the inscription "UNITED STATES OF AMERICA" and a spray of oak and laurel encircling the design. The ribbon is 1⅝ inches wide and consisting of the following stripes: ½ inch White 67101; 19/32 inch Bluebird 67117; center ¼ inch White; 19/32 inch Bluebird; and ½ inch White.

§ 578.45 Medal of Humane Action.

(a) *Criteria.* The Medal of Humane Action was established by the act of Congress July 20, 1949 (63 Stat. 477). It is awarded to members of the Armed Forces of the United States and to other persons when recommended for meritorious participation, for service while participating in the Berlin airlift or in direct support thereof.

(b) Service must have been for at least 120 days during the period June 26, 1948 and September 30, 1949, inclusive, with the following prescribed boundaries of area of Berlin airlift operations:

- (1) Northern boundary. 54th parallel north latitude;
- (2) Eastern boundary. 14th meridian east longitude;
- (3) Southern boundary. 48th parallel north latitude;
- (4) Western boundary. 5th meridian west longitude.

(c) Posthumous award may be made to any person who lost his life while, or as a direct result of, participating in the Berlin airlift, without regard to the length of such service, if otherwise eligible.

(d) See DA Pamphlet 672-1 for the list of Army units entitled to the Berlin Airlift Device.

(e) *Description.* The medal is Bronze and is 1¼ inches in diameter. The miniature medal is 5/8 inch in diameter. On the obverse, in the center, a C-54 airplane (as viewed from above) within a wreath of wheat connected at the bottom by a coat of arms. On the reverse, an eagle, shield and arrows from the seal of the DOD, beneath the words "FOR HUMANE ACTION" and above

the inscription in four lines, "TO SUPPLY NECESSITIES OF LIFE TO THE PEOPLE OF BERLIN GERMANY". The ribbon to the Medal for Humane Action is 1 $\frac{3}{8}$ inches in width and consists of the following stripes: $\frac{3}{32}$ inch black; $\frac{1}{16}$ inch white; $\frac{9}{32}$ inch teal blue; $\frac{3}{64}$ inch white; $\frac{1}{32}$ inch scarlet; $\frac{3}{64}$ inch white; $\frac{9}{32}$ inch teal blue; $\frac{1}{16}$ inch white; and $\frac{9}{32}$ inch black.

§ 578.46 Army of Occupation Medal.

(a) *Criteria.* The Army of Occupation Medal (AOM) was established by War Department General Orders (WDGO) 32, 1946. It is awarded for service for 30 consecutive days at a normal post of duty (as contrasted to inspector, visitor, courier, escort, passenger, temporary duty, or detached service) while assigned to any of the following:

(1) Army of Occupation of Germany (exclusive of Berlin) between May 9, 1945 and May 5, 1955. (Service between May 9 and November 8, 1945 will be counted only if the European-African-Middle Eastern Campaign Medal was awarded for service before May 9, 1945.)

(2) Service for the prescribed period with a unit which has been designated in DA general orders as having met the requirement for the Berlin airlift device.

(3) Service for which the individual was awarded the Berlin airlift device in orders issued by appropriate field authority.

(4) Army of Occupation of Austria between May 9, 1945 and July 27, 1955. (Service between May 9 and November 8, 1945 will be counted only if the European-African-Middle Eastern Campaign Medal was awarded for service before May 9, 1945.)

(5) Army of Occupation of Berlin between May 9, 1945 and October 2, 1990. (Service between May 9 and November 8, 1945 will be counted only if the European-African-Middle Eastern Campaign Medal was awarded for service before May 9, 1945.)

(6) Army of Occupation of Italy between May 9, 1945 and September 15, 1947 in the compartment of Venezia Giulia E. Zara or Province of Udine, or with a unit in Italy as designated in DAGO 4, 1947. (Service between May 9 and November 8, 1945 will be counted only if the European-African-Middle

Eastern Campaign Medal was awarded for service before May 9, 1945.)

(7) Army of Occupation of Japan between September 3, 1945 and April 27, 1952 in the four main islands of Hokkaido, Honshu, Shikoku, and Kyushu, the surrounding smaller islands of the Japanese homeland, the Ryukyu Islands, and the Bonin-Volcano Islands. (Service between September 3, 1945 and March 2, 1946 will be counted only if the Asiatic-Pacific Campaign Medal was awarded for service before September 3, 1945. In addition, service which meets the requirements for the KSM as prescribed in § 578.44 will not be counted in determining eligibility for this medal.)

(8) Army of Occupation of Korea between September 3, 1945 and June 29, 1949, inclusive. (Service between September 3, 1945 and March 2, 1946 will be counted only if the Asiatic-Pacific Campaign Medal was awarded for service before September 3, 1945.)

(b) Clasps and the Berlin airlift device are authorized for wear on the Army of Occupation Medal. They are as follows:

(1) *Army of Occupation Medal Clasp.* Soldiers who served in the European Theater during the occupation of Europe will wear the clasp inscribed "Germany." Soldiers who served in the Far East Theater during the occupation of the Far East will wear the Clasp inscribed "Japan." Clasps bearing other inscriptions are not authorized. (The Army of Occupation Medal Clasp is described in § 578.61).

(2) *Berlin Airlift Device.* This device is awarded for service of 92 consecutive days with a unit credited with participation in the Berlin airlift, or by competent field authority on an individual basis. Qualifying service must have been entirely within the period from June 26, 1948 to September 30, 1949, inclusive. Orders announcing award of the Berlin Airlift device will specifically award the Army of Occupation Medal to persons not otherwise eligible therefor.

(c) *Description.* The medal is Bronze, 1 $\frac{1}{4}$ inches in width. On the obverse, the Remagen Bridge abutments below the words "ARMY OF OCCUPATION". On the reverse, Fujiyama with a low hanging cloud over two Japanese junks

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above a wave scroll and the date "1945". A Bronze clasp $\frac{1}{8}$ inch wide and $1\frac{1}{2}$ inches in length with the word "GERMANY" or "JAPAN" is worn on the suspension ribbon to indicate service in Europe or the Far East. NAVY: On the obverse is Neptune mounted on a composite creature of a charging horse and a sea serpent with a trident grasped in right hand above wave scrolls. Around the bottom of the medal are the words "OCCUPATION SERVICE". The reverse is the same as the China Service Medal and is an eagle perched on the shank of a horizontal anchor with a branch of laurel entwined around the anchor. On the left is the word "FOR" and to the right is the word "SERVICE" and around the top is the inscription "UNITED STATES NAVY". MARINE CORPS: The medal for the Marine Corps is the same as the Navy, except the inscription around the top of the reverse is "UNITED STATES MARINE CORPS". The ribbon is the same for both medals and is $1\frac{3}{8}$ inches wide and consists of the following stripes: $\frac{3}{16}$ inch White 67101; $\frac{1}{2}$ inch Black 67138; $\frac{1}{2}$ inch Scarlet 67111; and $\frac{3}{16}$ inch White.

§ 578.47 World War II Victory Medal.

(a) *Criteria.* The World War II Victory Medal was established by the act of Congress July 6, 1945 (59 Stat. 461). It is awarded for service between December 7, 1941 and December 31, 1946, both dates inclusive.

(b) *Description.* The medal is Bronze, $1\frac{3}{8}$ inches in width. On the obverse is a figure of Liberation standing full length with head turned to dexter looking to the dawn of a new day, right foot resting on a war god's helmet with the hilt of a broken sword in the right hand and the broken blade in the left hand, the inscription "WORLD WAR II" placed immediately below the center. On the reverse are the inscriptions "FREEDOM FROM FEAR AND WANT" and "FREEDOM OF SPEECH AND RELIGION" separated by a palm branch, all within a circle composed of the words "UNITED STATES OF AMERICA 1941-1945". The ribbon is $1\frac{3}{8}$ inches wide and consists of the following stripes: $\frac{3}{8}$ inch double rainbow in juxtaposition (blues, greens, yellows, reds (center), yellows, greens, and

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blues); $\frac{1}{32}$ inch White 67101; center $\frac{1}{16}$ inch Old Glory Red 67156; $\frac{1}{32}$ inch White; and $\frac{3}{8}$ inch double rainbow in juxtaposition. The rainbow on each side of the ribbon is a miniature of the pattern used in the WWI Victory Medal.

§ 578.48 European-African-Middle Eastern Campaign Medal.

(a) *Criteria.* The European-African-Middle Eastern Campaign Medal was established by Executive Order 9265, announced in WD Bulletin 56, 1942, as amended by Executive Order 9706, March 15, 1947. It is awarded for service within the European-African-Middle Eastern Theater between December 7, 1941 and November 8, 1945 under any of the conditions as prescribed in § 578.49 (Asiatic-Pacific Campaign Medal).

(b) The boundaries of European-African-Middle Eastern Theater are as follows:

(1) *Eastern boundary.* The eastern boundary is coincident with the western boundary of the Asiatic-Pacific Theater (§ 578.49).

(2) *Western boundary.* The western boundary is coincident with the eastern boundary of the American Theater (§ 578.50 American Campaign Medal).

(c) One bronze service star is authorized for each campaign under the following conditions:

(1) Assigned or attached to, and present for duty with, a unit during the period in which it participated in combat.

(2) Under orders in the combat zone and in addition meets any of the following requirements:

(i) Awarded a combat decoration.

(ii) Furnished a certificate by a commanding general of a corps or higher unit or independent force that he actually participated in combat.

(iii) Served at a normal post of duty (as contrasted to occupying the status of an inspector, observer, or visitor).

(iv) Aboard a vessel other than in a passenger status and furnished a certificate by the home port commander of the vessel that he served in the combat zone.

(3) Was an evadee or escapee in the combat zone or recovered from a prisoner-of-war status in the combat zone

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during the time limitations of the campaign. Prisoners of war will not be accorded credit for the time spent in confinement or while otherwise in restraint under enemy control.

(d) The arrowhead is authorized for wear on this medal to denote participation in a combat parachute jump, helicopter assault landing, combat glider landing, or amphibious assault landing, while assigned or attached as a member of an organized force carrying out an assigned tactical mission. (The arrowhead is described in § 578.61)

(e) *Description.* The Bronze medal is 1¼ inches in width. On the obverse is a LST landing craft and troops landing under fire with an airplane in the background below the words "EUROPEAN AFRICAN MIDDLE EASTERN CAMPAIGN". On the reverse, an American bald eagle close between the dates "1941-1945" and the words "UNITED STATES OF AMERICA". The ribbon is 1¾ inches wide and consists of the following stripes: ⅜ inch Brown 67136; ⅛ inch Irish Green 67189; ⅛ inch White 67101; ⅛ inch Scarlet 67111; ¼ inch Irish Green; center ⅜ inch triparted Old Glory Blue 67178, White and Scarlet; ¼ inch Irish Green; ⅛ inch White; ⅛ inch Black 67138; ⅛ inch White; and ⅜ inch Brown.

§ 578.49 Asiatic-Pacific Campaign Medal.

(a) *Criteria.* The Asiatic-Pacific Campaign Medal was established by Executive Order 9265 (WD Bulletin 56, November 6, 1942), as amended by Executive Order 9706, March 15, 1947. It is awarded for service with the Asiatic-Pacific Theater between December 7, 1941 and March 2, 1946 under any of the following conditions:

(1) On permanent assignment in the Asiatic-Pacific Theater.

(2) In a passenger status or on temporary duty for 30 consecutive days or 60 nonconsecutive days.

(3) In active combat against the enemy and was awarded a combat decoration or furnished a certificate by the commanding general of a corps or higher unit or independent force showing that he actually participated in combat.

(b) *Boundaries of Asiatic-Pacific Theater*—(1) *Eastern boundary.* Coincident

with the western boundary of the American Theater (§ 578.50 American Campaign Medal).

(2) *Western boundary.* From the North Pole south along the 60th meridian east longitude to its intersection with the east boundary of Iran, thence south along the Iran boundary to the Gulf of Oman and the intersection of the 60th meridian east longitude, thence south along the 60th meridian east longitude to the South Pole.

(c) One bronze service star is authorized for each campaign under the conditions outlined in § 578.48 European-African-Middle Eastern Campaign Medal. (Service stars are described in § 578.61).

(d) The arrowhead is authorized for wear on this medal to denote participation in a combat parachute jump, helicopter assault landing, combat glider landing, or amphibious assault landing, while assigned or attached as a member of an organized force carrying out an assigned tactical mission. (The arrowhead is described in § 578.61).

(e) *Description.* The Bronze medal is 1¼ inches in width. On the obverse is a tropical landing scene with a battleship, aircraft carrier, submarine and an aircraft in the background with landing troops and palm trees in the foreground with the words "ASIATIC PACIFIC CAMPAIGN" above the scene. On the reverse, an American bald eagle close between the dates "1941-1945" and the words "UNITED STATES OF AMERICA". The ribbon is 1¾ inches wide and consists of the following stripes: ⅜ inch Yellow 67108; ⅛ inch White 67101; ⅛ inch Scarlet 67111; ⅛ inch White; ¼ inch Yellow; center ⅜ triparted Old Glory Blue 67178, White and Scarlet; ¼ inch Yellow; ⅛ inch White; ⅛ inch Scarlet; ⅛ inch White; and ⅜ inch Yellow.

§ 578.50 American Campaign Medal.

(a) *Criteria.* The American Campaign Medal was established by Executive Order 9265 (WD Bulletin 56, 1942), as amended by Executive Order 9706, March 15, 1947. It is awarded for service within the American Theater between December 7, 1941 and March 2, 1946 under any of the following conditions:

(1) On permanent assignment outside the continental limits of the United States.

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(2) Permanently assigned as a member of a crew of a vessel sailing ocean waters for a period of 30 consecutive days or 60 nonconsecutive days.

(3) Outside the continental limits of the United States in a passenger status or on temporary duty for 30 consecutive days or 60 nonconsecutive days.

(4) In active combat against the enemy and was awarded a combat decoration or furnished a certificate by the commanding general of a corps, higher unit, or independent force that the soldier actually participated in combat.

(5) Within the continental limits of the United States for an aggregate period of 1 year.

(b) The boundaries of American Theater are as follows:

(1) *Eastern boundary.* The eastern boundary is located from the North Pole, south along the 75th meridian west longitude to the 77th parallel north latitude, thence southeast through Davis Strait to the intersection of the 40th parallel north latitude and the 35th meridian west longitude, thence south along the meridian to the 10th parallel north latitude, thence southeast to the intersection of the Equator and the 20th meridian west longitude, thence south along the 20th meridian west longitude to the South Pole.

(2) *Western boundary.* The western boundary is located from the North Pole, south along the 141st meridian west longitude to the east boundary of Alaska, thence south and southeast along the Alaska boundary to the Pacific Ocean, thence south along the 130th meridian to its intersection with the 30th parallel north latitude, thence southeast to the intersection of the Equator and the 100th meridian west longitude, thence south to the South Pole.

(c) One bronze service star is authorized for wear on the American Campaign Medal to denote participation in the antisubmarine campaign. The individual must have been assigned or attached to, and present for duty with, a unit credited with the campaign. Information on the antisubmarine campaign.

(d) *Description.* The Bronze medal is 1¼ inches in width. On the obverse is a Navy cruiser under full steam with a

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B-24 airplane flying overhead with a sinking enemy submarine in the foreground on three wave symbols, in the background a few buildings representing the arsenal of democracy, above the scene the words "AMERICAN CAMPAIGN". On the reverse an American bald eagle close between the dates "1941-1945" and the words "UNITED STATES OF AMERICA". The ribbon is 1⅜ inches wide and consists of the following stripes: ⅜ inch Oriental Blue 67172; ⅜ inch White 67101; ⅜ inch Black 67138; ⅜ inch Scarlet 67111; ⅜ inch White; ⅜ inch Oriental Blue; center ⅜ triparted Old Glory Blue 67178, White and Scarlet; ⅜ inch Oriental Blue; ⅜ inch White; ⅜ inch Scarlet; ⅜ inch Black; ⅜ inch White; and ⅜ inch Oriental Blue.

§578.51 Women's Army Corps Service Medal.

(a) *Criteria.* The Women's Army Corps Service Medal was established by Executive Order 9365, announced in WD Bulletin 17, 1943. It is awarded for service in both the Women's Army Auxiliary Corps between July 10, 1942 and August 31, 1943 and the Women's Army Corps between September 1, 1943 and September 2, 1945.

(b) *Description.* A Bronze medal, 1¼ inches in diameter, with the head of Pallas Athene in profile facing right, superimposed on a sheathed sword cross with oak leaves and a palm branch within a circle composed of the words "WOMEN'S" in the upper half, and in the lower half "ARMY CORPS". On the reverse, within an arrangement of 13 stars, is a scroll bearing the words "FOR SERVICE IN THE WOMEN'S ARMY AUXILIARY CORPS" in front of the letters "U S" in lower relief. At the top and perched on the scroll is an eagle with wings elevated and displayed and at the bottom, the date "1942-1943". The ribbon is 1⅜ inches wide and consists of the following stripes: ⅜ inch Old Gold 67105; 1⅜ inch Mosstone Green 67127; and ⅜ inch Old Gold.

§578.52 American Defense Service Medal.

(a) The American Defense Service Medal (ADSM) was established by Executive Order 8808, announced in WD

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Bulletin 17, 1941. It is awarded for service between September 8, 1939 and December 7, 1941 under orders to active duty for a period of 12 months or longer.

(b) A clasp, with the inscription "Foreign Service", is worn on the ADSM to denote service outside the continental limits of the United States, including service in Alaska, as a member of a crew of a vessel sailing ocean waters, flights over ocean waters, or as an assigned member of a organization stationed outside the continental limits of the United States. Possession of a clasp is denoted by the wearing of a bronze service star on the service ribbon. (See § 578.61 for descriptions of the clasp and service stars.)

(c) *Description.* The Bronze medal is 1¼ inches in width. On the obverse is a female Grecian figure symbolic of defense, holding in her sinister hand an ancient war shield in reverse and her dexter hand brandishing a sword above her head, and standing upon a conventionalized oak branch with four leaves. Around the top is the lettering "AMERICAN DEFENSE". On the reverse is the wording "FOR SERVICE DURING THE LIMITED EMERGENCY PROCLAIMED BY THE PRESIDENT ON SEPTEMBER 8, 1939 OR DURING THE UNLIMITED EMERGENCY PROCLAIMED BY THE PRESIDENT ON MAY 27, 1941" above a seven-leaved spray of laurel. The foreign service clasp is a Bronze bar ¼ inch in width and 1½ inches in length with the words "FOREIGN SERVICE", with a star at each end of the inscription. The foreign service clasp is placed on the suspension ribbon of the medal. The ribbon is 1¾ inches wide and consists of the following stripes: ⅜ inch Golden Yellow 67104; ⅛ inch triparted Old Glory Blue 67178; White 67101; and Scarlet 67111; center ¾ inch Golden Yellow; ⅛ inch triparted Scarlet; White; and Old Glory Blue 67178; and ⅜ inch Golden Yellow.

§ 578.53 Army of Occupation of Germany Medal.

(a) *Criteria.* The Army of Occupation of Germany Medal was established by the act of November 21, 1941, (55 Stat. 781). It is awarded for service in Germany or Austria-Hungary between November 12, 1918 and July 11, 1923.

(b) *Description.* The medal is Bronze and 1¼ inches in diameter. On the obverse is a profile of General John J. Pershing, encircled by four stars indicating his insignia of grade as Commanding General of the Field Forces. In the lower left is the inscription "GENERAL JOHN J. PERSHING" and on the right is a laurel wreath superimposed by a sword with the dates "1918" and "1923" enclosed by the wreath. The reverse shows the American eagle perched with outspread wings standing on the Castle Ehrenbreitstein, encircled by the words "U.S. ARMY OF OCCUPATION OF GERMANY" and three stars at the bottom of the medal. The ribbon is 1¾ inches in width consisting of the following stripes: ⅜ inch Ultramarine Blue 67118; ⅛ inch Scarlet 67111; ⅜ inch White 67101; ¾ inch Black 67138 (center); ⅜ inch White; ⅛ inch Scarlet; ⅜ inch Ultramarine Blue.

§ 578.54 World War I Victory Medal.

(a) The World War I Victory Medal was established by WDGO 48, 1919. The medal is awarded for service between April 6, 1917 and November 11, 1918 or with either of the following expeditions:

(1) American Expeditionary Forces in European Russia between November 12, 1918 and August 5, 1919.

(2) American Expeditionary Forces Siberia between November 23, 1918 and April 1, 1920.

(b) Battle clasps, service clasps, and service stars are authorized appurtenances to be worn on the World War I Victory Medal. (See § 578.61 for specific details.)

(c) *Description.* The medal is Bronze and 1¾ inches in diameter. On the obverse is a winged Victory, standing full length and full face. On the reverse is the inscription "THE GREAT WAR FOR CIVILIZATION" and the United States shield with the letters "U.S." surmounted by a fasces, and on either side the names of the allied and associated nations. The lapel button is a five-pointed star ⅝-inch in diameter on a wreath with the letters "U.S." in the center. The medal is suspended by a ring from a silk ribbon 1¾ inches in width, representing two rainbows

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placed in juxtaposition and having the red in the middle.

§ 578.55 Service medals and ribbons no longer available for issue.

The medals listed below are no longer issued by HQDA. They may be purchased if desired from civilian dealers in military insignia and some Army exchanges.

(a) *Civil War Campaign Medal*. This medal was established by WDGO 12, 1907. It is awarded for service between April 15, 1861 and April 9, 1865, or in Texas between April 15, 1861 and August 20, 1866.

(b) *Indian Campaign Medal*. This medal was established by WDGO 12, 1907. It is awarded for service in a campaign against any tribes or in any areas listed below, during the indicated period.

(c) *Spanish Campaign Medal*. This medal was established by WDGO 5, 1905. It is awarded for service ashore in, or on the high seas en route to, any of the following countries:

(1) Cuba between May 11 and July 17, 1898.

(2) Puerto Rico between July 24 and August 13, 1898.

(3) Philippine Islands between June 30 and August 16, 1898.

(d) *Spanish War Service Medal*. This medal was established by the act of July 9, 1918 (40 Stat. 873). It is awarded for service between April 20, 1898 and April 11, 1899, to persons not eligible for the Spanish Campaign Medal.

(e) *Army of Cuban Occupation Medal*. This medal was established by WDGO 40, 1915. It is awarded for service in Cuba between July 18, 1898 and May 20, 1902.

(f) *Army of Puerto Rican Occupation Medal*. This medal was established by War Department Compilation of Orders, changes 15, February 4, 1919. It is awarded for service in Puerto Rico between August 14 and December 10, 1898.

(g) *Philippine Campaign Medal*. This medal was established by WDGO 5, 1905. It is awarded for service in the Philippine Islands under any of the following conditions:

(1) Ashore between February 4, 1899 and July 4, 1902.

(2) Ashore in the Department of Mindanao between February 4, 1899 and December 31, 1904.

(3) Against the Pulajanes on Leyte between July 20, 1906 and June 30, 1907, or on Samar between August 2, 1904 and June 30, 1907.

(4) With any of the following expeditions:

(i) Against Pala on Jolo between April and May 1905.

(ii) Against Datu Ali on Mindanao in October 1905.

(iii) Against hostile Moros on Mount Bud-Dajo, Jolo, March 1906.

(iv) Against hostile Moros on Mount Bagsac, Jolo, between January and July, 1913.

(v) Against hostile Moros on Mindanao or Jolo between 1910 and 1913.

(5) In any action against hostile natives in which U.S. troops were killed or wounded between February 4, 1899 and December 31, 1913.

(h) *Philippine Congressional Medal*. This medal was established by the act of June 29, 1906 (34 Stat. 621). It is awarded for service meeting all the following conditions:

(1) Under a call of the President entered the Army between April 21 and October 26, 1898.

(2) Served beyond the date on which entitled to discharge.

(3) Ashore in the Philippine Islands between February 4, 1899 and July 4, 1902.

(i) *China Campaign Medal*. This medal was established by WDGO 5, 1905. It is awarded for service ashore in China with the Peking Relief Expedition between June 20, 1900 and May 27, 1901.

(j) *Army of Cuban Pacification Medal*. This medal was established by WDGO 96, 1909. It is awarded for service in Cuba between October 6, 1906 and April 1, 1909.

(k) *Mexican Service Medal*. This medal was established by WDGO 155, 1917. It is awarded for service in any of the following expeditions or engagements:

(1) Vera Cruz Expedition in Mexico between April 24 and November 26, 1914.

(2) Punitive Expedition in Mexico between March 14, 1916 and February 7, 1917.

(3) Buena Vista, Mexico, December 1, 1917.

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(4) San Bernardino Canon, Mexico, December 26, 1917.

(5) Le Grulla, Texas, January 8 and 9, 1918.

(6) Pilares, Mexico, March 28, 1918.

(7) Nogales, Arizona, November 1 to 5, 1915 or August 27, 1918.

(8) El Paso, Texas, and Juarez, Mexico, June 15 and 16, 1919.

(9) Any action against hostile Mexicans in which U.S. troops were killed or wounded between April 12, 1911 and February 7, 1917.

(1) *Mexican Border Service Medal*. This medal was established by the act of July 9, 1918 (40 Stat. 873). It was awarded for service between May 9, 1916 and March 24, 1917, or with the Mexican Border Patrol between January 1, 1916 and April 6, 1917, to persons not eligible for the Mexican Service Medal.

§ 578.56 United States Unit Awards.

(a) *Intent*. Awards are made to organizations when the heroism displayed or meritorious service performed is a result of group effort.

(b) *Announcement*. All unit awards approved at HQDA will be announced in HQ, DAGO.

(c) *Presentation*. Unit awards will be presented at an appropriate formal ceremony at the earliest practicable date after the award is announced. FM 22-5 prescribes the ceremony for presentation of unit awards at a formal review.

§ 578.57 Presidential Unit Citation.

(a) *Criteria*. The Presidential Unit Citation (PUC) (re-designated from the Distinguished Unit Citation on November 3, 1966) is awarded to unit of the Armed Forces of the United States and cobelligerent nations for extraordinary heroism in action against an armed enemy occurring on or after December 7, 1941. The unit must display such gallantry, determination, and esprit de corps in accomplishing its mission under extremely difficult and hazardous conditions as to set it apart from and above other units participating in the same campaign. The degree of heroism required is the same as that which would warrant award of a Distinguished Service Cross to an individual. Extended periods of combat duty or participation in a large number

of operational missions, either ground or air is not sufficient. This award will normally be earned by units that have participated in single or successive actions covering relatively brief time spans. It is not reasonable to presume that entire units can sustain Distinguished Service Cross performance for extended periods except under the most unusual circumstances. Recommendations for units larger than brigade will not be submitted.

(b) *Awarding authorities*. Approval authority for award of the PUC is the President of the United States who delegated authority to the Service Secretaries.

(c) *Award elements*. The award elements for the PUC (Army) are as follows:

- (1) PUC Streamer (Army);
- (2) PUC Emblem (Army);
- (3) PUC Certificate and Citation;
- (4) DAGO.

(d) *Description*. The PUC Emblem is 1 $\frac{7}{16}$ inches wide and $\frac{9}{16}$ inch in height. The emblem consists of a $\frac{1}{16}$ inch wide gold frame with laurel leaves, which encloses an ultramarine blue 67118 ribbon.

§ 578.58 Valorous Unit Award.

(a) *Criteria*. The Valorous Unit Award (VUA) may be awarded to units of the Armed Forces of the United States for extraordinary heroism in action against an armed enemy of the United States while engaged in military operations involving conflict with an opposing foreign force or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party for actions occurring on or after August 3, 1963.

(b) *Requirements*. The VUA requires a lesser degree of gallantry, determination, and esprit de corps than that required for the Presidential Unit Citation. Nevertheless, the unit must have performed with marked distinction under difficult and hazardous conditions in accomplishing its mission so as to set it apart from and above other units participating in the same conflict. The degree of heroism required is the same as that which would warrant award of the Silver Star to an individual. Extended periods of combat

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duty or participation in a large number of operational missions, either ground or air is not sufficient.

(c) *Unit eligibility.* This award will normally be earned by units that have participated in single or successive actions covering relatively brief time spans. It is not reasonable to presume that entire units can sustain Silver Star performance for extended periods except under the most unusual circumstances. Recommendations for units larger than brigade will not be submitted.

(d) *Awarding authorities.* The Deputy Chief of Staff (DCS), G-1 is approval authority for the VUA. Recommendations for award of the VUA will be forwarded to Commander, USA HRC, ATTN: AHRC-PDO-PA, Alexandria, VA 22332-0471, for processing to the DCS, G-1 for final action.

(e) *Award elements.* The award elements for the VUA are as follows:

- (1) VUA Streamer;
- (2) VUA Emblem;
- (3) VUA Certificate and Citation;
- (4) DAGO.

(f) *Description.* The VUA emblem is $1\frac{7}{16}$ inches wide and $\frac{9}{16}$ inch in height. The emblem consists of a $\frac{1}{16}$ inch wide gold frame with laurel leaves which encloses a ribbon of the pattern of the Silver Star Medal ribbon centered on a red ribbon. The stripe dimensions of the ribbon are: $\frac{3}{8}$ inch old glory red 67156; $\frac{1}{16}$ inch ultramarine blue 67118; $\frac{1}{64}$ inch white 67101; $\frac{3}{32}$ inch ultramarine blue 67118; $\frac{3}{32}$ inch white 67101; center $\frac{3}{32}$ inch old glory red 67156; $\frac{3}{32}$ inch white 67101; $\frac{3}{32}$ inch ultramarine blue 67118; $\frac{1}{64}$ inch white 67101; $\frac{1}{16}$ inch ultramarine blue; and $\frac{3}{8}$ inch old glory red 67156. The streamers are the same pattern as the silver star medal ribbon.

§ 578.59 Meritorious Unit Commendation.

(a) *Criteria.* (1) The Meritorious Unit Commendation (MUC) (Army) (previously called the Meritorious Service Unit Plaque) is awarded to units for exceptionally meritorious conduct in the performance of outstanding services for at least 6 continuous months during the period of military operations against an armed enemy occurring on or after January 1, 1944. Service in a combat zone is not required, but must

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be directly related to the combat effort. Units based in the continental United States are excluded from this award, as are other units outside the area of operation. The unit must display such outstanding devotion and superior performance of exceptionally difficult tasks as to set it apart and above other units with similar missions. The degree of achievement required is the same as that which would warrant award of the Legion of Merit to an individual. Recommendations for units larger than brigade will not be submitted. For services performed during World War II, awards will be made only to service units and only for services performed between January 1, 1944 and September 15, 1946.

(2) Effective March 1, 1961, the MUC was authorized for units and/or detachments of the Armed Forces of the United States for exceptionally meritorious conduct in performance of outstanding services for at least 6 continuous months in support of military operations. Service(s), as used in this paragraph, is interpreted to relate to combat service support type activities and not to the type of activities performed by senior headquarters, combat, or combat support units.

(b) *Awarding authorities.* Approval authority for the MUC is the Deputy Chief of Staff (DCS), G-1. Recommendations for award of the MUC will be forwarded to Commander, USA HRC, ATTN: AHRC-PDO-PA, Alexandria, VA 22332-0471, for processing to the DCS, G-1 for final action.

(c) *Award elements.* The award elements for the MUC are as follows:

- (1) MUC Streamer;
- (2) MUC Emblem;
- (3) MUC Certificate and Citation; and
- (4) DAGO.

(d) *Description.* The MUC emblem is $1\frac{7}{16}$ inches wide and $\frac{9}{16}$ inch in height. The emblem consists of a $\frac{1}{16}$ inch wide gold frame with laurel leaves which encloses a scarlet 67111 ribbon. The previously authorized emblem was a gold color embroidered laurel wreath, $1\frac{3}{8}$ inches in diameter on a 2 inch square of olive drab cloth.

§ 578.60 Army Superior Unit Award.

(a) *Criteria.* The Army Superior Unit Award (ASUA) was created in 1985 to

recognize outstanding meritorious performance of a unit during peacetime of a difficult and challenging mission under extraordinary circumstances. Circumstances may be deemed to be extraordinary when they do not represent the typical day-to-day circumstances under which the unit normally performs, or may reasonably be expected to perform, its peacetime mission. The following additional criteria also applies:

(1) The unit must display such outstanding devotion and superior performance of exceptionally difficult tasks as to set the unit apart from and above other units with similar missions. For the purpose of this award, peacetime is defined as any period during which wartime or combat awards are not authorized in the geographical area in which the mission was executed. The ASUA may be awarded to units that distinguish themselves while conducting humanitarian missions for a minimum of 30 days, however, the ASUA will not be awarded if the same act or period of service has already been recognized by another unit award.

(2) The award applies to both TO&E units and TDA organizations of battalion size or equivalent. TDA organizations may be considered for this award, even if comprised mostly of civilians. As an exception to policy, organizations larger than battalion equivalent size may also be submitted, but the submitting headquarters must take care to highlight the logic associated with the request to justify an exception to policy.

(b) *Approval authority.* The approval authority for the ASUA is the Deputy Chief of Staff (DCS), G-1. Recommendations for award of the ASUA will be forwarded to Commander, USA HRC, ATTN: AHRC-PDO-PA, Alexandria, VA 22332-0471, for processing to the DCS, G-1 for final action.

(c) *Award elements.* The award elements for the ASUA are as follows: ASUA Streamer; ASUA Emblem; ASUA Certificate and Citation; DAGO; Army Superior Unit Award Lapel Pin. The lapel pin is authorized for issue and wear by Department of the Army civilians in the employ of the decorated unit. Those individuals employed with the unit during the cited period

may wear the lapel pin permanently. Those currently employed with a decorated unit, but who were not employed during the cited period may wear the lapel pin on a temporary basis as long as they remain employed by the unit. The lapel pin is also authorized for optional purchase and wear on civilian clothing by qualified military personnel. Permanent and temporary wear is governed by the provisions of AR 670-1.

(d) *Description.* The ASUA emblem is $1\frac{7}{16}$ inches wide and $\frac{9}{16}$ inch in height. The emblem consists of a $\frac{1}{16}$ inch wide gold frame with laurel leaves which encloses a ribbon of the following pattern: $\frac{1}{32}$ inch scarlet 67111; $\frac{1}{32}$ inch yellow 67103; $\frac{1}{4}$ inch green 67129; $\frac{1}{32}$ inch yellow 67103; and $\frac{1}{32}$ inch scarlet 67111. The streamers are the same pattern as the emblem ribbon.

§ 578.61 Appurtenances to military decorations.

Appurtenances are devices affixed to service or suspension ribbons or worn instead of medals or ribbons. They are worn to denote additional awards, participation in a specific event, or other distinguished characteristics of the award. The following is a list of authorized appurtenances:

(a) *Oak Leaf Clusters.* A bronze or silver twig of four oak leaves with three acorns on the stem, $\frac{13}{32}$ -inch long for the suspension ribbon, and $\frac{5}{16}$ -inch long for the service ribbon bar and the unit award emblem is issued to denote award of second and succeeding awards of decorations (other than the Air Medal), the Army Reserve Components Achievement Medal, and unit awards. A silver Oak Leaf Cluster is worn instead of five bronze Oak Leaf Clusters. If the number of authorized Oak Leaf Clusters exceeds four and will not fit on a single ribbon, a second ribbon is authorized for wear. When wearing the second ribbon, place it after the first ribbon; the second ribbon counts as one award. Wear no more than four Oak Leaf Clusters on each ribbon. If the receipt of future awards reduces the number of Oak Leaf Clusters sufficiently (that is, a silver oak leaf cluster for five awards), remove the second ribbon and place the appropriate number of devices on a single ribbon. Oak

Leaf Clusters are not issued for the Legion of Merit awarded in degrees to foreign nationals. Five-sixteenths inch Oak Leaf Clusters joined together in series of 2, 3, and 4 clusters are authorized for optional purchase and wear on service ribbons, and unit award emblems.

(b) *Numerals.* Arabic numerals $\frac{3}{16}$ inch in height are issued instead of a medal or ribbon for second and succeeding awards of the Air Medal, Multi-national Force and Observers Medal, Overseas Service Ribbon and the Army Reserve Components Overseas Training Ribbon. The ribbon denotes the first award and numerals starting with the numeral 2 denote the number of additional awards. The numeral worn on the NCO Professional Development Ribbon will denote the highest completed level of NCO development. The numerals are to be centered on the suspension ribbon of the medal or the ribbon bar.

(c) *“V” device.* The “V” (Valor) device is a bronze block letter, V, $\frac{1}{4}$ -inch high with serifs at the top of the members. It is worn to denote participation in acts of heroism involving conflict with an armed enemy. It was originally worn only on the suspension and service ribbons of the Bronze Star Medal to denote an award made for heroism (valor). Effective February 29, 1964, the “V” device was also authorized for wear on the Air Medal and Army Commendation Medal for heroic acts or valorous deeds not warranting awards of the Distinguished Flying Cross or the Bronze Star Medal with “V” device. Effective June 25, 1963, the “V” device was authorized additionally for wear on the Joint Service Commendation Medal when the award is for acts of valor (heroism) during participation in combat operations. In the case of multiple “V” devices for the same award, only one “V” device is worn on the service ribbons.

(d) *“M” device.* The “M” (Mobilization) Device is a bronze letter, M, $\frac{1}{4}$ -inch high with serifs at the bottom of the members. It is authorized for wear on the Armed Forces Reserve Medal by members of the Reserve Components who are called or who volunteer and serve on active duty in support of specific U.S. Military operations or con-

tingencies designated by the Secretary of Defense, as defined in 10 U.S.C. 101(a) (13). AGR members who receive orders changing their current duty status (legal authority under which they perform duty), their duty location, or assignment to support a contingency operation are also eligible for award of the “M” Device.

(e) *Clasps.* They are authorized for wear on the Army Good Conduct Medal, World War I Victory Medal, American Defense Service Medal, Army of Occupation Medal, and Antarctica Service Medal. All clasps, except the Army Good Conduct Medal clasp, are worn only on the suspension ribbon of the medal. The clasps are described as follows:

(1) The Army Good Conduct Medal clasp is a bar $\frac{1}{8}$ -inch by $1\frac{3}{8}$ inches, of bronze, silver or gold, with loops indicative of each period of service. Paragraph 4-9 describes the clasps authorized for second and subsequent awards of the Army Good Conduct Medal.

(2) The World War I Victory Medal battle clasps is a bronze bar $\frac{1}{8}$ -inch by $1\frac{1}{2}$ inches with the name of the campaign or the words “Defensive Sector,” and with a star at each end of the inscription. The campaigns are as follows:

- (i) Cambrai;
- (ii) Somme, Defensive;
- (iii) Lys;
- (iv) Aisne;
- (v) Montdidier-Noyon;
- (vi) Champagne-Marne;
- (vii) Aisne-Marne;
- (viii) Somme, Offensive;
- (ix) Oise-Aisne;
- (x) Ypres-Lys;
- (xi) St. Mihiel;
- (xii) Meuse-Argonne;
- (xiii) Vittorio-Veneto;
- (xiv) Defensive Sector.

(3) The World War I Victory Medal service clasp is a bronze bar $\frac{1}{8}$ -inch by $1\frac{1}{2}$ inches with the name of the country which the service was performed inscribed thereon. The service clasps authorized are as follows:

- (i) England;
- (ii) France;
- (iii) Italy;
- (iv) Russia;
- (v) Siberia.

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(4) The American Defense Service Medal clasp is a bronze bar $\frac{1}{8}$ -inch by $1\frac{1}{2}$ inches with the words "Foreign Service" and with a star at each end of the inscription.

(5) The Army of Occupation Medal clasp is a bronze bar $\frac{1}{8}$ -inch by $1\frac{1}{2}$ inches with the word "Germany" or "Japan" inscribed thereon, to denote occupation duty rendered in Europe and/or the Far East.

(6) The Antarctica Service Medal is a clasp bearing the words "Wintered Over" for wear on the suspension ribbon of the medal awarded in bronze for the first winter, in gold for the second winter, and in silver for the third winter.

(f) *Service stars.* Are worn on campaign and service ribbons to denote an additional award. The service star is a bronze or silver five-pointed star $\frac{3}{16}$ -inch in diameter. A silver star is worn instead of five bronze service stars. The bronze service star is also affixed to the parachutist badge to denote participation in a combat parachutist jump, retroactive to December 7, 1941. See §578.74 on Parachutist badges for criteria for award of the combat parachutist badge. See AR 670-1 for proper wear of the service stars. Service stars are authorized for wear on the following campaign and service medals and or ribbons:

- (1) World War I Victory Medal;
- (2) American Defense Service Medal;
- (3) American Campaign Medal;
- (4) Asiatic-Pacific Campaign Medal;
- (5) European-African-Middle Eastern Campaign Medal;
- (6) Korean Service Medal;
- (7) Armed Forces Expeditionary Medal;
- (8) Vietnam Service Medal;
- (9) National Defense Service Medal;
- (10) Humanitarian Service Medal;
- (11) Prisoner of War Medal;
- (12) Southwest Asia Service Medal;
- (13) Military Outstanding Volunteer Service Medal.

(g) *Arrowhead.* The arrowhead is a bronze replica of an Indian arrowhead $\frac{1}{4}$ -inch high. It denotes participation in a combat parachute jump, helicopter assault landing, combat glider landing, or amphibious assault landing, while assigned or attached as a member of an organized force carrying out an as-

signed tactical mission. A soldier must actually exit the aircraft or watercraft, as appropriate, to receive assault credit. Individual assault credit is tied directly to the combat assault credit decision for the unit to which the soldier is attached or assigned at the time of the assault. Should a unit be denied assault credit, no assault credit will accrue to the individual soldiers of that unit. It is worn on the service and suspension ribbons of the Asiatic-Pacific Campaign, European-African-Middle Eastern Campaign, Korean Service Medal, Vietnam Service Medal, Armed Forces Expeditionary Medal, and Global War on Terrorism Expeditionary. Only one arrowhead will be worn on any ribbon.

(h) *Ten-Year Device.* The Ten-year device is authorized for wear on the Armed Forces Reserve Medal to denote each succeeding 10-year period as follows:

(1) A bronze hourglass shall be awarded upon completion of the first 10-year period award.

(2) A silver hourglass shall be awarded upon completion of the second 10-year period award.

(3) A gold hourglass shall be awarded upon completion of the third 10-year period award.

(4) A gold hourglass, followed by a bronze hourglass shall be awarded upon completion of the fourth 10-year period award.

(i) *Berlin Airlift Device.* A gold colored metal miniature of a C-54 type aircraft of $\frac{3}{8}$ -inch wingspan, other dimensions proportionate. It is worn on the service and suspension ribbons of the Army of Occupation Medal. (See §578.46 Army of Occupation Medal)

(j) *Army Astronaut Device.* A gold colored device, $\frac{7}{16}$ -inches in length, consisting of a star emitting three contrails encircled by an elliptical orbit. It is awarded by the Chief of Staff, Army, to personnel who complete a minimum of one operational mission in space (50 miles above earth) and is affixed to the appropriate Army Aviator Badge, Flight Surgeon Badge, or Aviation Badge awarded to the astronaut. Individuals who have not been awarded one of the badges listed above

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but who meet the other astronaut criteria will be awarded the basic Aviation Badge with Army Astronaut Device.

§ 578.62 Service ribbons.

A ribbon identical in color with the suspension ribbon of the service medal it represents, attached to a bar $1\frac{3}{8}$ inches in width and $\frac{3}{8}$ inch in length, equipped with a suitable attaching device. A service ribbon is issued with each service medal.

§ 578.63 Lapel buttons.

(a) Lapel buttons are miniature replicas of military decorations; service medals and ribbons; and identification badges. Lapel buttons are worn only on civilian clothing. The buttons will be worn on the left lapel of civilian clothing for male personnel and in a similar location for female personnel.

(b) *Lapel buttons for military decorations.* Lapel buttons for military decorations are issued in the following two forms:

(1) A rosette, $\frac{1}{2}$ -inch in diameter, for the Medal of Honor.

(2) A colored enamel replica ($\frac{1}{8}$ -inch by $2\frac{1}{32}$ -inch) for the service ribbon for other decorations.

(c) *Lapel buttons for badges.* The only badges that have an approved lapel button are certain identification badges as follows:

- (1) Presidential Service Badge;
- (2) Vice Presidential Service Badge;
- (3) Office of the Secretary of Defense Identification Badge;
- (4) Joint Chiefs of Staff Identification Badge; and
- (5) Army Staff Identification Badge.

(d) *World War I Victory Button.* A five-pointed star $\frac{5}{8}$ -inch in diameter on a wreath with the letters "US" in the center. For persons wounded in action, the lapel button is silver; for all others, the lapel button is bronze. Eligibility requirements are the same for the World War I Victory Medal.

(e) *Honorable Service Lapel Button (World War II Victory Medal).* A button of gold-color metal consists of an eagle perched within a ring composed of a chief and 13 vertical stripes. The button is $\frac{7}{16}$ -inch high and $\frac{5}{8}$ -inch wide. Eligibility requirements are honorable

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Federal military service between September 8, 1939 and December 31, 1946.

(f) *Lapel button for service prior to September 8, 1939.* (Not issued or sold by the Department of the Army.) A button $\frac{7}{16}$ -inch high and $\frac{5}{8}$ -inch wide, of gold-color metal consists of an eagle perched within a ring which displays seven white and six red vertical stripes and a blue chief bearing the words "National Defense." It may be worn only by a person who served honorably before September 8, 1939 as an enlisted man, warrant officer, nurse, contract surgeon, veterinarian, or commissioned officer, in the Regular Army or a Citizen's Military Training Camp for 2 months, or in the National Guard, Enlisted Reserve Corps, or Senior ROTC for 1 year, or in junior ROTC for 2 years.

(g) *Army Lapel Button.* The Army Lapel Button is a gratuitous issue item made up of a minute man in gold color on a red enamel disk surrounded by 16-pointed gold rays with an outside diameter of $\frac{9}{16}$ -inch. Eligibility requirements are as follows:

(1) Soldiers transitioning with an honorable characterization of service (those being transferred to another component for completion of a military service obligation, and those receiving an Honorable Discharge Certificate).

(2) Non-adverse separation provision.

(3) Minimum 9 months continuous service—a break is 24 hours or more.

(4) Active Federal service on or after April 1, 1984; or, service in a Ready Reserve unit organized to serve as a unit (National Guard unit or Army Reserve troop program unit) on or after July 1, 1986.

(5) Retroactive issuance is not authorized.

(6) No soldier separating from the Service is to be awarded more than one Army Lapel Button.

(h) *U.S. Army Retired Lapel Button.* Retired Army personnel who are in possession of DD Form 2 (U.S. Uniformed Services Identification Card) (Retired) are eligible to wear the Army Retired Lapel Button. Commanders will present the U.S. Army Retired Lapel Button to Army personnel at an appropriate ceremony before they retire.

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(i) *Active Reserve Lapel Button.* The Active Reserve Lapel Button is authorized for active membership in the Ready Reserve of the Army. It is made up of a minute man in gold color on a bronze color base and is $\frac{1}{16}$ -inch in length. The button is an optional purchase item, not issued or sold by the Department of the Army. It is not worn on the uniform.

(j) *Lapel Button for Korean Augmentation to the U.S. Army (KATUSA).* The KATUSA Lapel Button (KLB) was approved by the Secretary of the Army on March 22, 1988 as a gratuitous issue item. The KLB is a round disk with an outside diameter of $\frac{9}{16}$ -inch that is comprised of a Korean Taeguk that consists of the characteristics from both the U.S. and Republic of Korea National Flags resting on a white background. The words "Honorable Service * KATUSA" are situated on the border of the outer edge of the KLB.

(1) The following requirements must be met to be eligible for award of the KLB:

(i) Individual must have been a Republic of Korea Army soldier who has been assigned as a KATUSA soldier to a U.S. Army unit or activity for a minimum of 9 months of continuous honorable active service on or after March 22, 1988.

(ii) Must be separating from active duty with the Republic of Korea Army.

(iii) Disqualifying characterization of service for the award of the KLB is identical with that used for the Army Lapel Button.

(2) Issuance requirements are as follows:

(i) The KLB will be awarded to all eligible KATUSA soldiers.

(ii) The U.S. Army unit commander will coordinate with the appropriate Republic of Korea staff officer/NCO to obtain Republic of Korea Army concurrence prior to presentation of the KLB.

(iii) Presentation will normally be made by the U.S. Army unit commander to which last assigned prior to separation from active service or by his designated U.S. Army commissioned officer representative during a troop formation or other appropriate ceremony.

(3) Orders will not be published to confirm award of the KLB.

(k) *Gold Star Lapel Button.* The Gold Star Lapel Button was established by Act of Congress (Pub. L. 80-306) August 1, 1947, codified at 10 U.S.C. 1126 in order to provide an appropriate identification for widows, widowers, parents, and next of kin of members of the Armed Forces of the United States who lost their lives during World War I, April 6, 1917 to March 3, 1921; World War II, September 8, 1939 to July 25, 1947; any subsequent period of armed hostilities in which the United States was engaged before July 1, 1958 (United Nations action in Korea, June 27, 1950 to July 27, 1954); or who lost their lives after June 30, 1958, while engaged in an action against an enemy of the United States; or while engaged in military operations involving conflict with an opposing foreign force; or while serving with friendly foreign forces engaged in an armed conflict in which the United States is not a belligerent party against an opposing Armed Force; or who lost or lose their lives after March 28, 1973, as a result of an international terrorist attack against the United States or a foreign nation friendly to the United States, recognized as such an attack by the Secretary of Defense; or while serving in a military operation while serving outside the United States (including the commonwealths, territories, and possessions of the United States) as part of a peace-keeping force.

(1) The Gold Star Lapel Button consists of a gold star on a purple circular background, bordered in gold and surrounded by gold laurel leaves. On the reverse is the inscription "United States of America, Act of Congress, August 1966" with space for engraving the initials of the recipient. Gold Star Lapel Buttons inscribed August 1947 may be issued until present inventories are exhausted.

(2) One Gold Star Lapel Button will be furnished without cost to the widow or widower, to each of the parents, each child, stepchild, child through adoption, brother, half brother, sister, and half sister of a member of the Armed Forces who lost his or her life while in the active military service during the periods indicated above. The term "widow or widower" includes those who have since remarried, and

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the term "parents" includes mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in loco parentis. Request for replacement of the Gold Star Lapel Button (lost, destroyed or unserviceable) will be submitted on DD Form 3 (Application for Gold Star Lapel Button) to NPRC (see §578.16 (a)(3)).

(3) Each casualty area commander and major overseas commander will stock Gold Star Lapel Buttons and ensure that survivor assistance officers are provided them for issue to eligible next of kin. Normally, delivery should not be made prior to the first visit to the next of kin following interment.

(1) *Lapel Button for Next of Kin of Deceased Personnel.* The Lapel Button, Next of Kin of Deceased Personnel is provided to widows(ers), parents, and primary next of kin of armed services members who lose their lives while serving on active duty or while assigned in an Army Reserve or Army National Guard unit in a drill status.

(1) The button consists of a gold star within a circle (commemorating honorable service) surrounded by sprigs of oak (referring to the Army, Navy, Air Force, and Marine Corps).

(2) One lapel button will be furnished without cost to the widow or widower, to each of the parents, each child, stepchild, child through adoption, brother, half brother, sister, and half sister of a member of the Armed Forces who lost his or her life while on active duty. The term widow or widower includes those who have since remarried, and the term parents includes mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in place of a parent.

(3) Casualty area commands will stock the button and ensure that survivor assistance officers issue them to eligible next of kin.

(4) The Lapel Button, Next of Kin of Deceased Personnel is authorized for issue retroactive to March 29, 1973. The next of kin of soldiers who died since that date may request issue of the button by writing to the NPRC (see §578.16(a)(3)). Furnish the name, grade, SSN, and date of death of the deceased

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soldier. The names and relationships of the next of kin must also be provided.

(m) *Army Superior Unit Award Lapel Pin.* The Army Superior Unit Award Lapel Pin is authorized for issue and wear by DA civilians in the employ of a unit awarded the Army Superior Unit Award. The lapel pin is also authorized for optional purchase and wear on civilian clothing by qualified military personnel.

§578.64 Miniature decorations.

(a) *Decorations.* Miniature replicas of all medals except the Medal of Honor and the Legion of Merit in the Degrees of Chief Commander and Commander are authorized for wear on certain uniforms instead of the issued medals. Miniatures of decorations are issued only to foreign nationals and with the award of the Distinguished Service Medal to U.S. personnel.

(b) *Miniature badges.* Replicas of combat and special skill badges in miniature size are authorized for wear on certain uniforms instead of the full-size badges.

§578.65 Supply, service, and requisition of medals and badges.

(a) Medals and appurtenances listed are issued by DA:

- (1) Decorations;
- (2) Service medals;
- (3) Service ribbons;
- (4) Palms;
- (5) Rosettes;
- (6) Clasps;
- (7) Arrowheads;
- (8) Service stars;
- (9) French Fourragere;
- (10) Netherlands Orange Lanyard;
- (11) Army Good Conduct Medals;
- (12) Oak Leaf Cluster;
- (13) Numerals;
- (14) Letter "V" devices;
- (15) Certificate for decorations;
- (16) Lapel buttons for decorations;
- (17) Miscellaneous lapel buttons listed in Lapel buttons for badges and Lapel buttons for service;
- (18) Ten-year devices;
- (19) Berlin Airlift devices;
- (20) Containers for decorations;
- (21) Miniature decorations to foreign military personnel;
- (22) Letter "V" Device;
- (23) Letter "M" Device;

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(b) Badges and appurtenances listed below are issued by Department of the Army:

- (1) Combat and special skill badges;
- (2) Basic Marksmanship Designation Badges;
- (3) Distinguished marksmanship designation badges;
- (4) Excellence in competition badges;
- (5) Basic marksmanship qualification badges and bars;
- (6) Army Staff Identification Badge;
- (7) The Guard, Tomb of the Unknown Soldier Identification Badge (an item of organizational equipment);
- (8) Army ROTC Nurse Cadet Program Identification Badge;
- (9) Drill Sergeant Identification Badge;
- (10) U.S. Army Recruiter Identification Badge;
- (11) Career Counselor Badge;
- (12) Army National Guard Recruiting and Retention Identification Badge;
- (13) U.S. Army Reserve Recruiter Identification Badge.

§ 578.66 Original issue or replacement.

(a) *General.* All U.S. Army medals are presented without cost to an awardee. Replacement of medals or service ribbons for individuals not on active duty may be made at cost price. Requests will be honored from the original recipient of the award, or if deceased, from his or her primary next of kin in the following order: surviving spouse, eldest surviving child, father or mother, eldest surviving brother or sister, or eldest surviving grandchild.

(b) Issue or replacement of service medals and service ribbons antedating the World War I Victory Medal is no longer accomplished. These awards are not available from the supply system, but may be purchased from private dealers in military insignia.

(c) No money should be mailed until instructions are received by NPRC. Requests for medals should be directed to the following addresses as shown below.

(1)(i) Request for: Personnel in active Federal military service or in the Army National Guard or U.S. Army Reserve.

(ii) Submit to: Unit Commander.

(2)(i) Request for: Medals on behalf of individuals having no current U.S.

Army status or deceased prior to October 1, 2002.

(ii) Submit to: National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132-5100.

(3)(i) Request for: Medals for individuals who retired, were discharged or died (except general officers) after October 1, 2002.

(ii) Submit to: Commander, U.S. Army Human Resources Command, ATTN: AHRC-CC-B, 1 Reserve Way, St. Louis, MO 63132-5200.

(4)(i) Request for: Personnel receiving retired pay, except general officers.

(ii) Submit to: National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132-5100.

(5)(i) Request for: Retired general officers.

(ii) Submit to: Commander, USA HRC, ATTN: AHRC-PDO-PA, 200 Stovall Street, Alexandria, VA 22332-0471.

(d) *Issue of medals, other than Army.* Medals and appurtenances awarded while in active Federal service in one of the other U.S. military Services will be issued on individual request to appropriate Service as shown below.

(1)(i) Request for: Navy awards.

(ii) Submit to: Office of the Chief of Naval Operations, Awards, Code: 09B33, 2000 Navy Pentagon, Washington, DC 20350-2000.

(2)(i) Request for: Air Force awards.

(ii) Submit to: Commander, U.S. Air Force Personnel Center/DPPPRA, 550 C Street West, Suite 12, Randolph Air Force Base, TX 78150-6001.

(3)(i) Request for: Marine Corps awards.

(ii) Submit to: Commandant, U.S. Marine Corps, Manpower and Reserve Affairs, Code: MMMA, 3280 Russell Road, Quantico, VA 22134-5103.

(4)(i) Request for: Coast Guard awards.

(ii) Submit to: Commandant, United States Coast Guard, 2100 Second Street, SW., ATTN: G-PS-5/TP41, Washington, DC 20593-0001.

§ 578.67 Manufacture, sale, and illegal possession.

Sections 507.1 to 507.8 of this chapter prescribe:

(a) Restrictions on manufacture and sale of service medals and appurtenance by civilians.

(b) Penalties for illegal possession and wearing of service medals and appurtenances.

§ 578.68 Badges and tabs; general.

(a) *Purpose.* The purpose of awarding badges is to provide for public recognition by tangible evidence of the attainment of a high degree of skill, proficiency, and excellence in tests and competition, as well as in the performance of duties. Awards of badges promote esprit de corps, and provide an incentive to greater effort, thus becoming instrumental in building and maintaining morale. Types of badges authorized to be awarded as hereinafter prescribed, are combat and special skill badges, marksmanship qualification badges, identification badges and tabs.

(b) *Recommendations and approval authority.* (1) Recommendations for awards of badges will be submitted by memorandum or DA Form 4187 through command channels to the commander authorized to make the award.

(2) Badges may be approved and awarded in the field only by the commanders authorized to award the respective badge.

(3) Award of badges to Active Army personnel which cannot be resolved by local commanders will be forwarded through command channels to HQ, USA HRC, (see address § 578.3(c)).

(c) *Posthumous awards.* When an individual who has qualified for a badge dies before the award is made, the badge may be presented to the next of kin.

(d) *Retroactive awards.* Retroactive awards of the Combat Infantryman Badge and the Combat Medical Badge may be made to fully qualified individuals. Such awards will not be made except where evidence of injustice is presented. Active duty soldiers will forward their applications through command channels to HQ, AHRC, (see address § 578.3(c)). Reserve Component soldiers should address their application to Commander, USA HRC—St. Louis, One Reserve Way, St. Louis, MO 63132-5200. Retirees and veterans should address their application to the NPRC (see § 578.16(a)(3) for address).

(e) *Announcement of awards.* Permanent awards of badges, except basic marksmanship qualification badges,

identification badges, and the Physical Fitness Badge, will be announced in Permanent Orders by commanders authorized to make the award or Permanent Orders of HQDA.

(f) *Presentation of awards.* Whenever practical, badges will be presented to military personnel in a formal ceremony. Presentations should be made as promptly as practical following announcement of awards, and when possible, in the presence of the troops with whom the recipients were serving at the time of the qualification.

(g) *Supply of badges.* (1) Badges listed below are issued by the DA.

- (i) Combat and special skill badges;
- (ii) Basic Marksmanship Designation Badges;
- (iii) Distinguished marksmanship designation badges;
- (iv) Excellence in competition badges;
- (v) Basic marksmanship qualification badges and bars;
- (vi) Army Staff Identification Badge;
- (vii) The Guard, Tomb of the Unknown Soldier Identification Badge (an item of organizational equipment);
- (viii) Army ROTC Nurse Cadet Program Identification Badge;
- (ix) Drill Sergeant Identification Badge;
- (x) U.S. Army Recruiter Identification Badge;
- (xi) Career Counselor Badge;
- (xii) Army National Guard Recruiting and Retention Identification Badge;
- (xiii) U.S. Army Reserve Recruiter Identification Badge.

(2) Items not issued or sold by the DA:

- (i) Identification badges, except as provided in paragraph (g)(1) of this section;
- (ii) Lapel buttons for badges;
- (iii) Certificates for badges;
- (iv) Foreign badges;
- (v) Miniature Combat Infantryman, Expert Infantryman, Combat Medical, Expert Field Medical, and Aviation badges;
- (vi) Dress miniature badges. (Miniatures may be purchased from dealers in military insignia.)
- (h) *Requisition.* Combat and special skill badges, basic marksmanship qualification badges, and authorized bars,

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may be requisitioned by commanders through normal channels. Requisitions will contain a statement that issue is to be made to authorized personnel. Commanders authorized to make the award may requisition bulk delivery of badges to meet needs for 60 days. Care should be taken that excessive stocks are not requisitioned. Initial issue or replacement for a badge lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was awarded, will be made upon application, without charge to military personnel on active duty and at stock fund standard price to all others.

(i) *Character of service.* A badge will not be awarded to any person who, subsequent to qualification therefore, has been dismissed, dishonorably discharged, or convicted of desertion by court-martial.

(j) *Special guidance.* (1) Effective September 30, 1986, local established special skill badges are no longer authorized for wear. Authority for major commanders to approve local badges is rescinded.

(2) The wear of badges issued by other Services is governed by AR 670-1. Those cases that cannot be resolved should be forwarded to Office of the Deputy Chief of Staff, G-1, ATTN: DAPE-HR-S, 300 Army Pentagon, Washington, DC 20310-0300.

(3) Authority must be obtained from HQ, USA HRC (AHRC-PDO-PA) before

wearing on the Army uniform badges awarded by other U.S. Services and the Director of Civilian Marksmanship.

(k) *To whom awarded.* (1) The Combat Infantryman Badge may be awarded only to members of the U.S. Army.

(2) The Combat Medical Badge may be awarded only to members of the U.S. Army, Navy, or Air Force.

(3) Awards of U.S. Army badges to foreign military personnel will be made only with the prior consent of his or her Government and upon completion of the full requirements established for each badge. Foreign military personnel may also qualify for Army badges while attending U.S. Army service schools or while participating in combined or joint operations.

(4) All other special skill badges may be earned by U.S. military personnel who qualify while performing honorable active duty or Reserve service in an active status or while formally assigned or attached to the U.S. Army.

(5) In certain cases, civilian personnel may be awarded special skill badges provided specific criteria are met. Requests or recommendations for award of special skill badges to civilians should be directed to designated approval authorities or Commander, USA HRC (see § 578.3 (c) for address).

(6) Table 9 below lists the U.S. Army combat and special skill badges authorized and who is authorized to be awarded each badge.

TABLE 9.—U.S. ARMY BADGES AND TABS

Order of precedence may be awarded to:	Members of other services	Department of the army civilians	Foreign military personnel
Combat Infantryman Badge	YES	NO	YES
Combat Medical Badge	YES	NO	NO
Combat Action Badge	YES	NO	YES
Expert Infantryman Badge	NO	NO	NO
Expert Field Medical Badge	YES	YES	YES
Parachutist Badges	YES	YES	YES
Parachute Rigger Badge	YES	YES	YES
Military Free-Fall Parachutist Badge.	NO	NO	NO
Army Aviator Badge	YES	YES	YES
Astronaut Device	YES	YES	YES
Flight Surgeon Badge	YES	YES	YES
Divers Badges	YES	YES	YES
Special Operations Diver Badge.	YES	NO	NO
Explosive Ordnance Disposal Badges.	YES	YES	YES
Pathfinder Badge	YES	YES	YES
Air Assault Badge	YES	YES	YES
Aviation Badge	YES	YES	YES
Driver & Mechanic Badge	YES	YES	YES
Ranger Tab	YES	YES	YES

TABLE 9.—U.S. ARMY BADGES AND TABS—Continued

Order of precedence may be awarded to:	Members of other services	Department of the army civilians	Foreign military personnel
Special Forces Tab	YES	YES	YES
Sapper Tab	YES	YES	YES

Notes:

1. Badges authorized to foreign military personnel will be made only after obtaining prior consent from his or her Government and after completion of the full requirements established for each badge.
2. DA civilians must complete full requirements for the respective badge before it is awarded.

§ 578.69 Combat Infantryman Badge.

(a) *Specific eligibility requirements.* There are basically three requirements for award of the Combat Infantryman Badge (CIB):

(1) The Soldier must be an infantryman satisfactorily performing infantry duties.

(2) Must be assigned to an infantry unit during such time as the unit is engaged in active ground combat.

(3) Must actively participate in such ground combat. (Campaign or battle credit alone is not sufficient for award of the CIB.)

(b) The specific eligibility criteria for the CIB requires that:

(1) A Soldier must be an Army infantry or special forces officer (SSI 11 or 18) in the grade of colonel or below, or an Army enlisted Soldier or warrant officer with an infantry or Special Forces Military Occupational Specialties (MOS), who, subsequent to December 6, 1941, has satisfactorily performed duty while assigned or attached as a member of an infantry, ranger or special forces unit of brigade, regimental, or smaller size during any period such unit was engaged in active ground combat. Eligibility for Special Forces personnel in MOS 18B, 18E, 18F, and 18Z (less Special Forces medical sergeant) accrues from December 20, 1989. Retroactive awards of the CIB to Special Forces personnel are not authorized prior to December 20, 1989.

(2) A recipient must be personally present and under hostile fire while serving in an assigned infantry or Special Forces primary duty, in a unit actively engaged in ground combat with the enemy. The unit in question can be of any size smaller than brigade. For example, personnel possessing an infantry MOS in a rifle squad of a cavalry platoon in a cavalry troop would be eligible for award of the CIB. Battle

or campaign participation credit alone is not sufficient; the unit must have been in active ground combat with the enemy during the period.

(3) Personnel with other than an infantry or Special Forces MOS are not eligible, regardless of the circumstances. The infantry or Special Forces SSI or MOS does not necessarily have to be the Soldier's primary specialty, as long as the Soldier has been properly trained in infantry or Special Forces tactics, possesses the appropriate skill code, and is serving in that specialty when engaged in active ground combat as described above. Commanders are not authorized to make any exceptions to this policy.

(4) Awards will not be made to general officers or to members of headquarters companies of units larger in size than brigade.

(5) On or after September 18, 2001, the following rules apply:

(i) A Soldier must be an Army infantry or special forces (SSI 11 or 18) in the grade of colonel or below, or an Army enlisted Soldier or warrant officer with an infantry or special forces MOS, who has satisfactorily performed duty while assigned or attached as a member of an infantry, ranger or special forces unit of brigade, regimental, or smaller size during any period such unit was engaged in active ground combat, to close with and destroy the enemy with direct fire.

(ii) A Soldier must be personally present and under fire while serving in an assigned infantry or Special Forces primary duty, in a unit engaged in active ground combat, to close with and destroy the enemy with direct fire.

(iii) Soldiers possessing MOS of 18D (Special Forces Medical Sergeant) who satisfactorily perform special forces duties while assigned or attached to a

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special forces unit of brigade, regimental, or smaller size during any period such unit was engaged in active ground combat may be awarded the CIB. These Soldiers must have been personally present and engaged in active ground combat, to close with and destroy the enemy with direct fires. Retroactive awards under these criteria are not authorized for service prior to September 18, 2001.

(iv) Those Soldiers possessing MOS of 18D who qualify for award of the Combat Medical Badge from September 18, 2001 to June 3, 2005 will remain qualified for the badge. Upon request any such Soldier may be awarded the CIB instead of the Combat Medical Badge. In such instances, the Soldier must submit a request through the chain of command to the Commander, USA HRC (see § 578.3(c) for address), for conversion of the Combat Medical Badge to the CIB.

(v) Service members from other U.S. Armed Forces and foreign military (infantry and Special Forces equivalents) assigned or attached as a member of a U.S. Army infantry or Special Forces unit of brigade, regimental, or smaller size may be considered for award of the CIB. The specific eligibility requirements listed in § 578.69(a) must be met. Retroactive awards under these criteria are not authorized for service prior to September 18, 2001.

(c) The CIB is authorized for award for the following qualifying periods:

(1) World War II (December 7, 1941 to September 3, 1945).

(2) The Korean War (June 27, 1950 to July 27, 1953).

(3) Republic of Vietnam Conflict (March 2, 1961 to March 28, 1973), combined with qualifying service in Laos (April 19, 1961 to October 6, 1962).

(4) Dominican Republic (April 28, 1965 to September 1, 1966).

(5) Korea on the DMZ (January 4, 1969 to March 31, 1994).

(6) El Salvador (January 1, 1981 to February 1, 1992).

(7) Grenada (October 23 to November 21, 1983).

(8) Joint Security Area, Panmunjom, Korea (November 23, 1984).

(9) Panama (December 20, 1989 to January 31, 1990).

(10) Southwest Asia Conflict (January 17 to April 11, 1991).

(11) Somalia (June 5, 1992 to March 31, 1994).

(12) Afghanistan (Operation ENDURING FREEDOM, December 5, 2001 to a date to be determined).

(13) Iraq (Operation IRAQI FREEDOM, March 19, 2003 to a date to be determined).

(d) The special provisions authorized for the Vietnam Conflict, Laos, and Korea on the DMZ are outlined in paragraphs (d)(1) through (5) of this section.

(1) During the Vietnam Conflict, any officer whose branch is other than infantry who, under appropriate orders, has commanded a line infantry (other than a headquarters unit) unit of brigade, regimental, or smaller size for at least 30 consecutive days is deemed to have been detailed in infantry and is eligible for award of the CIB notwithstanding absence of a written directive detailing that Soldier in the infantry, provided all other requirements for the award have been met. Orders directing the officer to assume command will be confirmed in writing at the earliest practicable date.

(i) In addition, any officer, warrant officer, or enlisted Soldier whose branch is other than infantry, who under appropriate orders was assigned to advise a unit listed in paragraphs (d)(2) and (3) of this section or was assigned as a member of a White Star Mobile Training Team or a member of MAAG-Laos as indicated in paragraphs (d)(4)(i) and (ii) of this section will be eligible for award of the CIB provided all other requirements have been met.

(ii) After December 1, 1967 for service in the Republic of Vietnam, non-commissioned officers serving as Command Sergeants Major of infantry battalions and brigades for periods of at least 30 consecutive days in a combat zone are eligible for award of the CIB provided all other requirements have been met.

(2) Subsequent to March 1, 1961, a Soldier must have been—

(i) Assigned as advisor to an infantry unit, ranger unit, infantry-type unit of the civil guard of regimental or smaller size, and/or infantry-type unit of the self-defense corps unit of regimental or

smaller size of the Vietnamese government during any period such unit was engaged in actual ground combat.

(ii) Assigned as advisor of an irregular force comparable to the above infantry units under similar conditions.

(iii) Personally present and under fire while serving in an assigned primary duty as a member of a tactical advisory team while the unit participated in ground combat.

(3) Subsequent to May 24, 1965, to qualify for the CIB, personnel serving in U.S. units must meet the requirements of paragraph (b)(1) of this section. Individuals who performed liaison duties with the Royal Thai Army of the Army of the Republic of Korea combat units in Vietnam are eligible for award of the badge provided they meet all other requirements.

(4) In Laos from April 19, 1961 to October 6, 1962, a Soldier must have been—

(i) Assigned as member of a White Star Mobile Training Team while the team was attached to or working with a unit of regimental (groupment mobile) or smaller size of Forces Armee du Royaume (FAR), or with irregular type forces of regimental or smaller size.

(ii) A member of MAAG-Laos assigned as an advisor to a region or zone of FAR, or while serving with irregular type forces of regimental or smaller size.

(iii) Personally under hostile fire while assigned as specified in paragraphs (d)(4)(i) and (ii) of this section.

(5) In Korea on the DMZ. The special requirements for award of the CIB for service in the Republic of Korea are rescinded. Army veterans and service members who served in Korea on or after July 28, 1953 and meet the criteria for award of the CIB outlined in paragraphs (a) and (b) of this section, may submit an application (to include supporting documentation) for award of the CIB to the Commander, USA HRC, (see §578.3(c) for address). Retroactive awards under these criteria are not authorized for service prior to July 29, 1953.

(e) *Subsequent awards.* To date, a separate award of the CIB has been authorized for qualified soldiers in any of the following four qualifying periods:

(1) World War II (December 7, 1941 to September 3, 1945).

(2) The Korean Conflict (June 27, 1950 to July 27, 1953).

(3) *The Vietnam Conflict.* Service in the Republic of Vietnam conflict (after March 1, 1961) combined with qualifying service in Laos (April 19, 1961 to October 6, 1962); the Dominican Republic (April 28, 1965 to September 1, 1966); Korea on the DMZ (after January 4, 1969); El Salvador (January 1, 1981 to February 1, 1992); Grenada (October 23 to November 21, 1983); Joint Security Area, Panmunjom, Korea (November 23, 1984); Panama (December 20, 1989 to January 31, 1990); Southwest Asia (January 17 to April 11, 1991); and Somalia (June 5, 1992 to March 31, 1994) is recognized by one award only regardless of whether a soldier has served one or multiple tours in any or all of these areas.

(4) *Global War on Terrorism.* Operation ENDURING FREEDOM (November 20, 2001 to date to be determined) and Operation IRAQI FREEDOM (March 19, 2003 to a date to be determined).

(f) If a Soldier has been awarded the CIB in one of the qualifying periods outlined in paragraph (c) of this section, that Soldier is not eligible to earn the CMB in the same period.

(g) *Who may award—*(1) *Current awards.* Current awards of the CIB may be awarded by the Commanding General, USA HRC and any commander delegated authority by the Secretary of the Army during wartime.

(2) *Retroactive awards.* Retroactive awards of the Combat Infantryman Badge and the Combat Medical Badge may be awarded by the Commanding General, USA HRC to active duty Soldiers and Reserve Component Soldiers. Applications for retroactive award of the CIB and CMB will be forwarded through command channels to the Commander, USA HRC, (see §578.3(c) for address). Retirees and veterans should address their application to the NPRC, (see §578.16(a)(3) for address). Retroactive award of the CIB and CMB are authorized for time periods specified above to fully qualified individuals. Such awards will not be made except where evidence of injustice is presented.

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(h) *Description.* A silver and enamel badge 1 inch in height and 3 inches in width, consisting of an infantry musket on a light blue bar with a silver border, on and over an elliptical oak wreath. Stars are added at the top of the wreath to indicate subsequent awards; one star for the second award, two stars for the third award and three stars for the fourth award.

§ 578.70 Combat Medical Badge.

(a) *Eligibility requirements.* (1) The Combat Medical Badge (CMB) may be awarded to members of the Army Medical Department (colonels and below), the Naval Medical Department (captains and below), the Air Force Medical Service (colonels and below), assigned or attached by appropriate orders to an infantry unit of brigade, regimental, or smaller size, or to a medical unit of company or smaller size, organic to an infantry unit of brigade or smaller size, during any period the infantry unit is engaged in actual ground combat on or after December 6, 1941. Battle participation credit alone is not sufficient; the infantry unit must have been in contact with the enemy.

(2) Award of the CMB will not be made to general or flag officers.

(b) The following individuals are also eligible for the CMB:

(1) Effective December 19, 1989, Special Forces personnel possessing military occupational specialty 18D (Special Operations Medical Sergeant) who satisfactorily performed medical duties while assigned or attached to a Special Forces unit during any period the unit is engaged in actual ground combat, provided they are personally present and under fire. Retroactive awards under these criteria are not authorized prior to December 19, 1989.

(2) Effective January 16, 1991, Medical personnel outlined in paragraph (a) of this section, assigned or attached to armor and ground cavalry units of brigade or smaller size, who satisfactorily perform medical duties while the unit is engaged in actual ground combat, provided they are personally present and under fire. Retroactive awards under these criteria are not authorized prior to January 16, 1991.

(3) Effective September 11, 2001, Medical personnel outlined in paragraphs

(a) (1) and (b)(2) of this section, assigned or attached to or under operational control of any ground Combat Arms units (not to include members assigned or attached to Aviation units) of brigade or smaller size, who satisfactorily perform medical duties while the unit is engaged in actual ground combat, provided they are personally present and under fire. Retroactive awards under these criteria are not authorized prior to September 11, 2001.

(4) Effective on or after September 18, 2001:

(i) Medical personnel assigned or attached to or under operational control of any ground Combat Arms units (not to include members assigned or attached to Aviation units) of brigade or smaller size, who satisfactorily perform medical duties while the unit is engaged in active ground combat, provided they are personally present and under fire. Retroactive awards under these criteria are not authorized for service prior to September 18, 2001.

(ii) Effective June 5, 2005, Soldiers possessing a MOS of 18D are no longer eligible for award of the CMB (see § 578.69 (b)(5)(iii) of this part).

(c) The CMB is authorized for award for the following qualifying periods:

(1) World War II (December 7, 1941 to September 3, 1945).

(2) The Korean War (June 27, 1950 to July 27, 1953).

(3) Republic of Vietnam Conflict (March 2, 1961 to March 28, 1973), combined with qualifying service in Laos (April 19, 1961 to October 6, 1962).

(4) Dominican Republic (April 28, 1965 to September 1, 1966).

(5) Korea on the DMZ (January 4, 1969 to March 31, 1994).

(6) El Salvador (January 1, 1981 to February 1, 1992).

(7) Grenada (October 23 to November 21, 1983).

(8) Joint Security Area, Panmunjom, Korea (November 23, 1984).

(9) Panama (December 20, 1989 to January 31, 1990).

(10) Southwest Asia Conflict (January 17 to April 11, 1991).

(11) Somalia (June 5, 1992 to March 31, 1994).

(12) Afghanistan (Operation ENDURING FREEDOM, December 5, 2001 to a date to be determined).

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(13) Iraq (Operation IRAQI FREEDOM, March 19, 2003 to a date to be determined).

(d) The special provisions for the Vietnam Conflict, Laos and Korea on the DMZ are as follows:

(1) For service in Vietnam Conflict:

(i) On or after March 1, 1961, a Soldier must have been assigned to a Vietnamese unit engaged in actual ground combat or as a member of a U.S. Army infantry unit of brigade or smaller size, including Special Forces Detachments, serving with a Republic of Vietnam unit engaged in actual ground combat. The Republic of Vietnam unit must have been of regimental size or smaller and either an infantry, ranger, infantry-type unit of the civil guard, infantry-type unit of the self-defense corps, or the irregular forces. The Soldier must have been personally present and under hostile fire while assigned as specified.

(ii) On or after May 24, 1965, Soldiers serving in U.S. units must meet the requirements of paragraph (b)(1) of this section. Soldiers who perform liaison duties with the Royal Thai Army or the Army of the Republic of Korea combat units in Vietnam are eligible for award of the badge provided they meet all other requirements.

(2) For service in Laos, from April 19, 1961 to October 6, 1962, the Soldier must have been—

(i) Assigned as member of a White Star Mobile Training Team while the team was attached to or working with a unit of regimental (groupment mobile) or smaller size of Forces Armee du Royaume (FAR), or with irregular-type forces of regimental or smaller size.

(ii) A member of the Military Assistance Advisory Group (MAAG), Laos, assigned as an advisor to a region or zone of FAR, or while serving with irregular-type forces of regimental or smaller size.

(iii) Personally under hostile fire while assigned as specified in paragraphs (d)(2)(i) and (ii) of this section.

(3) For service in Korea on the DMZ. The special requirements for award of the CMB for service in the Republic of Korea are rescinded. Army veterans and service members who served in Korea on or after July 28, 1953 and meet

the criteria for award of the CMB outlined in paragraph (a) of this section, may submit an application (to include supporting documentation) for award of the CMB to the Commander, USA HRC, (see § 578.3(c) for address). Retroactive awards under these criteria are not authorized for service prior to July 29, 1953.

(e) *Subsequent awards.* Second and subsequent awards of the CMB are as follows:

(1) Second and third awards of the CMB are indicated by superimposing 1 and 2 stars respectively, centered at the top of the badge between the points of the oak wreath. To date, a separate award of the CMB has been authorized for qualified soldiers who service in the follow four qualifying periods:

(i) World War II.

(ii) The Korean War.

(iii) *Vietnam Conflict.* Service in the Republic of Vietnam conflict combined with qualifying service in Laos; the Dominican Republic; Korea on the DMZ; El Salvador; Grenada; Joint Security Area, Panmunjom, Korea; Panama; and Southwest Asia Conflict; and Somalia regardless of whether a Soldier has served one or multiple tours in any or all of these areas. The Vietnam Conflict Era officially terminated on March 10, 1995.

(iv) Global War on Terrorism (Afghanistan, Operation ENDURING FREEDOM) and Iraq, Operation IRAQI FREEDOM.

(2) If a Soldier has been awarded the CIB in one of the qualifying periods that Soldier is not eligible to earn the CMB in the same period.

(f) *Who may award.* The award approval authority for the CMB is the same as the CIB (see § 578.69(g) of this part.

(g) *Description.* An oxidized silver badge 1 inch in height and 1½ inches in width, consisting of a stretcher crossed by a caduceus surmounted at top by a Greek cross, all on and over an elliptical oak wreath. Stars are added to indicate subsequent awards; one star at top for the second award, one star at top and one at bottom for the third award, one star at top and one at each side for the fourth award.

§ 578.71 Combat Action Badge.

(a) On May 2, 2005, the Chief of Staff, Army, approved the creation of the Combat Action Badge (CAB) to provide special recognition to Soldiers who personally engage, or are engaged by the enemy.

(b) *Basic eligibility requirements.* The requirements for award of the CAB are Branch and MOS immaterial. Assignment to a Combat Arms unit or a unit organized to conduct close or offensive combat operations, or performing offensive combat operations is not required to qualify for the CAB. However, it is not intended to award all Soldiers who serve in a combat zone or imminent danger area.

(c) *Specific eligibility requirements.* (1) May be awarded to any Soldier.

(2) Soldier must be performing assigned duties in an area where hostile fire pay or imminent danger pay is authorized.

(3) Soldier must be personally present and actively engaging or being engaged by the enemy, and performing satisfactorily in accordance with the prescribed rules of engagement.

(4) Soldier must be assigned or attached to a unit that would qualify the Soldier for the CIB or CMB. For example, an 11B assigned to Corps staff is eligible for award of the CAB. However, an 11B assigned to an infantry battalion is not eligible for award of the CAB.

(d) In addition to Army Soldiers, the CAB may be awarded to members of other U.S. Armed Forces and foreign military personnel assigned to a U.S. Army unit, provided they meet the criteria (for example, Korean Augmentation to U.S. Army (KATUSA) personnel in the 2d Infantry Division would be eligible).

(e) Award of the CAB is authorized from September 18, 2001, to a date to be determined. Award for qualifying service in any previous conflict is not authorized.

(f) Second and subsequent awards of the CAB are as follows:

(1) Only one CAB may be awarded during a qualified period.

(2) Second and subsequent awards of the CAB will be indicated by superimposing one and two stars respec-

tively, centered at the top of the badge between the points of the oak wreath.

(g) Retroactive awards of the CAB are not authorized prior to September 18, 2001. For service on or after September 18, 2001, applications (with supporting documentation) for retroactive awards of the CAB will be forwarded through the first 2-star general in the chain of command to the Commander, USA HRC, (see § 578.3(c) for address).

(h) The CAB is categorized as a Group 1 Badge. See Army Regulation 670-1 for specific wear instructions.

(i) Soldiers may be awarded the CIB, CMB and CAB for the same qualifying period, provided the criteria for each badge are met. However, subsequent awards of the same badge within the same qualifying period are not authorized.

(j) The CAB may be awarded by a commander delegated authority by the Secretary of the Army during wartime or the Cdr, USA HRC. Effective June 3, 2005, commanders delegated authority to award the CAB may further delegate award authority to commanders in the grade of major general or above. The CAB will be announced in permanent orders.

(k) *Description.* A silver badge 2 inches (5.08cm) in width overall consisting of an oak wreath supporting a rectangle bearing a bayonet surmounting a grenade, all silver. Stars are added at the top to indicate subsequent awards; one star for the second award, two stars for the third award and three stars for the fourth award.

§ 578.72 Expert Infantryman Badge.

(a) *Basic eligibility criteria*—(1) *Specialty skill identifier and Military Occupational Specialty (MOS) requirement.* Candidates must be in an Active Army status and must possess a primary MOS in CMF 11 or 18B, 18C, 18E, 18F, or 18Z; be warrant officers identified as 180A; or be infantry or special operations branch officers serving in infantry positions.

(2) *Duty requirement.* All personnel having a Career Management Field (CMF) 11 or Specialty Code 11 code, regardless of their present assignment, are eligible to participate in the Expert Infantryman Badge (EIB) program. They must meet the prerequisites and

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take the test with an infantry unit of at least battalion size.

(b) *Test requirement.* Personnel must meet all prerequisites and proficiency tests prescribed by U.S. Army Infantry Center.

(c) *Authority to test and award the badge.* The following commanders are authorized to give EIB tests and award the badge to qualified soldiers in their commands:

- (1) Division commanders;
- (2) Commanders of separate infantry brigades and regiments;
- (3) Commanders of divisional brigades when authority is delegated to them by their division commanders;
- (4) Separate infantry battalion commanders when authority is delegated to them by the commander exercising general court-martial authority over the battalion;
- (5) Commanders of U.S. Army Training Centers;
- (6) Commandant, U.S. Army Infantry School;
- (7) Commanders of Special Forces Groups;
- (8) Commanders of separate Special Forces battalions when authority is delegated to them by the commander exercising general court-martial authority over their units;
- (9) Commanders of Reserve Component combat and training divisions, and brigade size units are authorized to administer EIB tests and award the badge to qualified personnel in the command.

(d) *Description.* A silver and enamel badge $\frac{7}{16}$ inch in height and 3 inches in width, consisting of an Infantry musket on a light blue bar with a silver border.

§ 578.73 Expert Field Medical Badge.

(a) *Basic eligibility criteria.* (1) Officers must be assigned or detailed to an Army Medical Department (AMEDD) corps. This includes Army officers in training at the Uniformed Services University of Health Sciences. It also includes Army officers enrolled in the Health Professions Scholarship Program.

(2) Warrant officers must have an AMEDD primary MOS controlled by the Surgeon General. Warrant officer pilots are also eligible, if they have a

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“D” SQI (Aeromedical Evacuation Pilot) and are assigned to an air ambulance unit.

(3) Enlisted personnel must have a primary Military Occupational Specialty (MOS) in the Medical Career Management Field or an MOS of 18D.

(4) Other U.S. Armed Services and foreign military must either be medical personnel or serving in comparable medical positions. The approval for wear of the badge by other U.S. Armed Services and foreign military is governed according to their respective Services guidance.

(b) *Duty requirement.* Eligible personnel must be on active duty or assigned to a troop program unit in the Reserve component unit or an AMEDD mobilization augmentation agency.

(c) *Authority to test and award.* The following commanders in the grade of Lieutenant Colonel or above are authorized to conduct the test and award the badge. Commanders must have the resources and facilities to conduct the test as prescribed by the U.S. Army Medical Department Center and School.

(1) Active Army Table of Organization and Equipment (TOE) and Table of Distribution and Allowances (TDA) medical units.

(2) Division support commands.

(3) Separate regiments and brigades.

(4) Commanders of U.S. Army Reserve and National Guard units. Reserve and National Guard units must conduct the test during their annual active duty training.

(d) *Description.* An oxidized silver badge $1\frac{9}{16}$ inch in height and $1\frac{1}{16}$ inches in width consisting of a stretcher crossed by a caduceus surmounted at top by a Greek cross.

§ 578.74 Parachutist badges.

(a) Three degrees of badges are authorized for award: Basic Parachutist Badge, Senior Parachutist Badge, and Master Parachutist Badge.

(b) Eligibility criteria for each badge as set forth in Parachutist Badge—Basic, Senior Parachutist Badge, and Master Parachutist Badge.

(c) Special eligibility for awards will be determined from the DA Form 1307 (Individual Jump Record) in their military record. Each entry on this form

will include pay period covered and initials of the personnel officer; the entry will be made only from a DA Form 1306 (Statement of Jump and Loading Manifest) completed by an officer or jumpmaster.

(d) Jumps with civilian parachute clubs will not be counted in the number of total jumps required for each badge.

(e) Award of the basic Parachutist Badge or advanced parachutist badges awarded by other U.S. Services may only be awarded if the soldier meets the Army criteria for the badge.

(f) *Approval authority.* Award approval authorities for all three badges are as follows:

(1) Commanding Generals of major Army commands (MACOM) and continental United States (CONUS);

(2) Commanders of U.S. Army Corps with organic long-range reconnaissance companies, commanders of airborne corps, airborne divisions;

(3) Commander, 4th Psychological Operations Group (Airborne);

(4) Infantry divisions containing organic airborne elements;

(5) Commandants of the Infantry School and the Quartermaster School;

(6) Commanders of separate airborne regiments, separate airborne battalions, Special Forces Group (Airborne), and the U.S. Army John F. Kennedy Special Warfare Center and School;

(7) The President, U.S. Army Airborne, Communications and Electronics Board;

(8) Commander, U.S. Army Special Forces Command (Airborne);

(9) Commander, U.S. Army Special Operations Support Command (Airborne).

(g) *Subsequent awards.* A bronze service star is authorized to be worn on the Parachutist Badges to denote a soldier's participation in a combat parachute jump. Orders are required to confirm award of these badges. A soldier's combat parachute jump credit is tied directly to the combat assault credit decision for the unit to which the soldier is attached or assigned at the time of the assault. Should a unit be denied air assault credit, no air assault credit for purpose of this badge will accrue to the individual soldiers of that unit. Each soldier must physically exit the

aircraft to receive combat parachute jump credit and the Parachutist badge with bronze service star.

(h) *Description.* An oxidized silver badge $1\frac{3}{4}$ inches in height and $1\frac{1}{2}$ inches in width, consisting of an open parachute on and over a pair of stylized wings displayed and curving inward. A star and wreath are added above the parachute canopy to indicate the degree of qualification. A star above the canopy indicates a Senior Parachutist; the star surrounded by a laurel wreath indicates a Master Parachutist. Small stars are superimposed on the appropriate badge to indicate combat jumps as follows:

(1) One jump: A bronze star centered on the shroud lines $\frac{3}{16}$ inch below the canopy;

(2) Two jumps: A bronze star on the base of each wing;

(3) Three jumps: A bronze star on the base of each wing and one star centered on the shroud lines $\frac{3}{16}$ inch below the canopy;

(4) Four jumps: Two bronze stars on the base of each wing;

(5) Five jumps: A gold star centered on the shroud lines $\frac{3}{16}$ inch below the canopy.

§ 578.75 Parachutist Badge—Basic.

General. To be eligible for award of the basic Parachutist Badge, an individual must have satisfactorily completed the prescribed proficiency tests while assigned or attached to an airborne unit or the Airborne Department of the Infantry School, or have participated in at least one combat parachute jump as follows:

(a) A member of an organized force carrying out an assigned tactical mission for which the unit was credited with an airborne assault landing by the theater commander;

(b) While engaged in military operations involving conflict with an opposing foreign force;

(c) While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

§ 578.76 Senior Parachutist Badge.

To be eligible for the Senior Parachutist Badge, an individual must have

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been rated excellent in character and efficiency and have met the following requirements:

(a) Participated in a minimum of 30 jumps to include the following:

(1) Fifteen jumps with combat equipment to consist of normal TOE equipment including individual weapon carried in combat whether the jump was in actual or simulated combat. In cases of simulated combat the equipment will include water, rations (actual or dummy), ammunition (actual or dummy), and other essential items necessary to sustain an individual in combat.

(2) Two night jumps made during the hours of darkness (regardless of time of day with respect to sunset) one of which will be as jumpmaster of a stick.

(3) Two mass tactical jumps which culminate in an airborne assault problem with either a unit equivalent to a battalion or larger; a separate company battery; or an organic staff of regimental size or larger. The soldier must fill a position commensurate with his or her rank or grade during the problem.

(4) For award of the Senior Parachutist Badge, the prerequisite requirements above must be obtained by static line parachuting.

(b) Either graduated from the Jumpmaster Course of the Airborne Department of the Infantry School or the Jumpmaster School of a separate airborne battalion or larger airborne unit, or infantry divisions and separate infantry brigades containing organic airborne elements, to include the U.S. Army Alaska Jumpmaster Course or served as jumpmaster on one or more combat jumps or as a jumpmaster on 15 noncombat jumps.

(c) Have served on jump status with an airborne unit or other organizations authorized parachutists for a total of at least 24 months.

§ 578.77 Master Parachutist Badge.

To be eligible for the Master Parachutist Badge, an individual must have been rated excellent in character and efficiency and have met the following requirements:

(a) Participated in a minimum of 65 jumps to include:

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(1) Twenty-five jumps with combat equipment to consist of normal TOE equipment, including individual weapon carried by the individual in combat whether the jump was in actual or simulated combat. In cases of simulated combat the equipment will include water rations (actual or dummy), ammunition (actual or dummy), and other essential items necessary to sustain an individual in combat.

(2) Four night jumps made during the hours of darkness (regardless of the time of day with respect to sunset) one of which will be as jumpmaster of a stick.

(3) Five mass tactical jumps which culminate in an airborne assault problem with a unit equivalent to a battalion or larger; a separate company/battery; or an organic staff of regimental size or larger. The individual must fill a position commensurate with their rank or grade during the problem.

(4) For award of the Master Parachutist Badge, the prerequisite requirements in paragraphs (a)(1), (2) and (3) of this section must be obtained by static line parachuting.

(b) Either graduated from the Jumpmaster Course of the Airborne Department of the Infantry School or the Jumpmaster School of a separate airborne battalion or larger airborne unit, or infantry divisions and separate infantry brigades containing organic airborne elements, to include the U.S. Army Alaska Jumpmaster Course, or served as jumpmaster on one or more combat jumps or as jumpmaster on 33 noncombat jumps.

(c) Have served on jump status with an airborne unit or other organization authorized parachutists for a total of at least 36 months.

§ 578.78 Parachute Rigger Badge.

(a) *Eligibility requirements.* Any individual who successfully completes the Parachute Rigger course conducted by the U.S. Army Quartermaster School and holds an awarded MOS of 43E (enlisted) or 401A (warrant officers) may be awarded the Parachute Rigger Badge. Officers qualify upon successful completion of one of the following courses: Aerial Delivery and Materiel Officer Course; Parachute Maintenance

and Aerial Supply Officer Course; Parachute Maintenance and Airdrop Course (officer or enlisted) or Parachute Rigger Course (enlisted). Sergeants Major and Master Sergeants who hold by career progression a MOS of 00Z or 76Z and formerly held an awarded MOS of 43E are qualified for award of the Parachute Rigger Badge.

(b) *Retroactive award.* The Parachute Rigger Badge may be awarded retroactively to any individual who graduated from the Parachute Rigger school after May 1951 and holds or at anytime held an awarded MOS listed in paragraph (a) of this section. Officers must have successfully completed one of the courses listed in paragraph (a) of this section to qualify for retroactive award of the badge. The badge may also be awarded retroactively to any individual who performed as a rigger prior to May 1951 and did not attend or graduate from the U.S. Army Quartermaster Center and School.

(c) *Who may award*—(1) *Current awards.* Current awards of the Parachute Rigger Badge will be made by the Commandant, U.S. Army Quartermaster School, Fort Lee, VA 23801-5152, and the Commander, USA HRC (§578.3(c) for address).

(2) *Retroactive awards*—(i) *After 1951.* Requests for award of the badge from individuals having no current Army status (veterans and retirees) who qualified after 1951 will be forwarded to the NPRC (see §578.16(a)(3) for address).

(ii) *Before 1951.* Requests for award of the badge from individuals (Active duty, veterans and retirees) who qualified before 1951 will be submitted to the Commandant, U.S. Army Quartermaster Center and School, ATTN: ATSM-Q-MG (Historian), Fort Lee, VA 23801-1601. Requests must include written justification and will be considered on a case-by-case basis.

(d) *Description.* A silver winged hemispherical canopy with conically arrayed cords, 1¾ inches wide, with a band centered on the badge inscribed "RIGGER."

§ 578.79 Military Free Fall Parachutist Badge.

(a) The Military Free Fall Parachutist Badges identify Special Operations Forces (SOF) personnel who

have qualified in one of the military's most demanding and hazardous skills, military free fall parachuting.

(b) *Badge authorized.* Two degrees of the Military Free Fall Parachutist Badges are authorized for award: Basic and Jumpmaster.

(c) *Eligibility requirements.* (1) Military Free Fall Parachutist Badge, Basic. To be eligible for the basic badge, an individual must meet one of the following criteria:

(i) Have satisfactorily completed a prescribed program of instruction in military free fall approved by the U.S. Army John F. Kennedy Special Warfare Center and School (USAJFKSWC&S); or

(ii) Have executed a military free fall combat jump.

(2) Military Free Fall Parachutist Badge, Jumpmaster. To be eligible for the Jumpmaster Badge, an individual must have satisfactorily completed a prescribed military free fall jumpmaster program of instruction approved by USAJFKSWC&S.

(d) *Approval authority.* (1) The Commander in Chief, U.S. Special Operations Command is the approval authority for award of these badges.

(2) The Commanding General, USAJFKSWC&S is the approval authority for award of the badges to qualifying personnel upon their graduation from USAJFKSWC&S Military Free Fall Parachutist basic and Military Free Fall Parachutist Jumpmaster courses.

(3) *Retroactive award.* Special Operations Forces personnel who qualified in military free fall prior to October 1, 1994 must obtain approval prior to wearing the Military Free Fall Parachutist Badges. Requests for award of the badge will be submitted in writing to Commander, U.S. Army John F. Kennedy Special Warfare Center and School, ATTN: AFJK-GPD-SA, Fort Bragg, NC 28307-5000. Applications will include the following:

(i) Name, rank, SSN, and MOS;

(ii) Copy of official jump record, DA Form 1307 (Individual Jump Record), and any other supporting documents (that is, graduation or qualification certificates).

(4) *Veterans and retirees.* Veterans and retirees may request update of their

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records to show permanent award of the badge by writing to the NPRC (§ 578.16 (a)(3) for address). Requests should include copy of official jump record, DA Form 1307 (Individual Jump Record), and any other support documents (that is, graduation or qualification certificates).

(e) A bronze service star is authorized to be worn on all degrees of the Military Free Fall Parachutist Badge to denote a soldier's participation in a combat parachute jump. Orders are required to confirm award of this badge. A soldier's combat parachute jump credit is tied directly to the combat assault landing credit decision for the unit to which the soldier is assigned or attached at the time of the assault landing. Should a unit be denied air assault credit, no air assault credit for purpose of this badge will accrue to the individual soldiers of that unit. Each soldier must physically exit the aircraft to receive combat parachute jump credit and the Military Free Fall Parachutist badge with bronze service star.

§ 578.80 Army Aviator Badges.

(a) *Badges authorized.* There are three degrees of the aviator badges authorized for award. They are as follows: Basic Army Aviator Badge, Senior Army Aviator Badge, and Master Army Aviator Badge.

(b) *Eligibility requirements*—(1) *Eligibility for U.S. personnel.* An individual must have satisfactorily completed prescribed training and proficiency tests as outlined in AR 600-105, and must have been designated as an aviator in orders issued by headquarters indicated above.

(2) *Eligibility for foreign military personnel.* While only U.S. officers may be awarded an aeronautical rating, the Army Aviator Badge may be awarded to foreign military graduates of initial entry flight-training courses conducted at the U.S. Army Aviation Center. The Senior and Master Army Aviator Badges may be awarded to foreign military personnel rated as pilots who meet or exceed eligibility criteria required of U.S. Army officers for the respective badges, and subject to the regulations of their countries. As a minimum, foreign officers recommended

for award of advanced aviator badges must—

(i) Be currently qualified for flying duty in their own military service.

(ii) Be medically qualified.

(iii) If not a graduate of an initial entry U.S. Army aviation course, have attended a formal training or aircraft transition course conducted at Fort Rucker or at an U.S. Army Aviation Training School.

(iv) Have 1000 flying hours in aircraft and 7 years from basic rating date for the Senior Aviator Badge; have 2000 hours in aircraft and 15 years from basic rating date for the Master Aviator Badge. Total Operational Flying Duty Credit (TOFDC) which may be applied by U.S. officers to qualify for advanced badges will not be used to justify awards to foreign officers.

(c) *Approval authority.* Badge approval authority is as follows:

(1) The Commander, U.S. Army Aviation Center and Fort Rucker, to U.S. student aviators upon successful completion of courses leading to an aeronautical rating of Army Aviator, and to foreign military personnel under the provisions of paragraph (d) of this section.

(2) CG, USA HRC (HRC-OPA-V) to inter-service transfers who previously held an aeronautical rating in another service.

(3) Commanders having general court-martial convening authority may award the Senior or Master Army Aviator Badge to officers on extended active duty.

(4) Major Army overseas commanders, CONUSA (the numbered armies in the continental United States) commanders, and CDR, USA HRC may award the Senior and Master Aviator Badge to U.S. Army Reserve personnel not on extended active duty in the Active Army.

(5) Chief, National Guard Bureau may award the Senior or Master Aviator Badge to Army National Guard (ARNG) personnel not on extended active duty in the Active Army.

(d) *Army Astronaut Device.* A gold colored device, $\frac{7}{16}$ inch in length, consisting of a star emitting three contrails encircled by an elliptical orbit. It is awarded by the Chief of

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Staff, Army, to personnel who complete a minimum of one operational mission in space (50 miles above earth) and is affixed to the appropriate Army Aviator Badge, Flight Surgeon Badge, or Aviation Badge awarded to the astronaut. Individuals who have not been awarded one of the badges listed above but who meet the other astronaut criteria will be awarded the basic Aviation Badge with Army Astronaut Device.

(e) *Description.* An oxidized silver badge $\frac{3}{4}$ inch in height and $2\frac{1}{2}$ inches in width, consisting of the shield of the coat of arms of the United States on and over a pair of displayed wings. A star is added above the shield to indicate qualification as a Senior Army Aviator. The star is surrounded with a laurel wreath to indicate qualification as a Master Army Aviator.

§ 578.81 Flight Surgeon Badges.

(a) *Badges authorized.* Three levels of Flight Surgeon Badges are authorized for award, Basic Flight Surgeon Badge; Senior Flight Surgeon Badge; and Master Flight Surgeon Badge.

(b) *Eligibility requirements.* Any Army Medical Corps officer who satisfactorily completes the training and other requirements prescribed by AR 600-105.

(c) *Badge approval authority.* (1) The basic Flight Surgeon Badge may be awarded by the Commanding General, U.S. Army Aviation Center and Fort Rucker. The CG will award the badge to those U.S. medical officers who have been awarded an aeronautical designation per AR 600-105 and to foreign military personnel who complete the training and the requirements prescribed by AR 600-105.

(2) Senior and Master Flight Surgeon Badges may be awarded by the following:

(i) The Surgeon General. Forward requests to HQDA (DASG-HCZ, WASH DC 20310-2300).

(ii) The Chief, National Guard Bureau to National Guard personnel not on active duty. Forward requests to the National Guard Bureau, Military Personnel Office, 111 South George Mason Drive, Arlington, VA 22204-1382.

(d) *Description.* An oxidized silver badge $2\frac{3}{32}$ inch in height and $2\frac{1}{2}$ inches in width, consisting of a shield, its field

scored with horizontal lines and bearing the Staff of Aesculapius on and over a pair of displayed wings. A star is added above the shield to indicate the degree of Senior Flight Surgeon and the star is surrounded with a laurel wreath to indicate the degree of Master Flight Surgeon.

§ 578.82 Diver Badges.

(a) *Badges authorized.* There are five types of Diver Badges authorized for award, Master Diver Badge; First-Class Diver Badge; Salvage Diver Badge; Second-Class Diver Badge; and Scuba Diver Badge.

(b) *Navy Badges.* The following Navy Diving Badges may also be worn on the Army uniform after written approval is obtained from HQ, AHRC (§578.3(c)): Diving Officer and Diving Medical Officer. The eligibility criteria and approval authority for these two badges is provided in Army Regulation AR 611-75, Selection, Qualification, Rating and Disrating of Marine Divers.

(c) *Eligibility requirements.* See AR 611-75.

(d) *Badge approval authority.* See AR 611-75.

(e) *Descriptions.* (1) Scuba—A 1 inch high silver badge consisting of a scuba diver's hood with face mask, mouthpiece, and breathing tubes. The width is $2\frac{1}{32}$ inch.

(2) Salvage—A silver diving helmet, 1 inch in height, with the letter "S" $\frac{3}{8}$ inch in height, superimposed on the chest plate. The width is $2\frac{3}{32}$ inch.

(3) Second Class—A silver diving helmet 1 inch in height. The width is $2\frac{3}{32}$ inch.

(4) First Class—A silver diving helmet $1\frac{5}{16}$ inch in height, between two dolphins, 1 inch high. The width is $1\frac{3}{32}$ inches.

§ 578.83 Special Operations Diver Badge.

(a) The Scuba Diver Badge was renamed the Special Operations Diver Badge (SODB). In addition to the SODB, another skill level was created, Special Operations Diving Supervisor Badge (SODSB).

(b) *Eligibility criteria.* The basic eligibility criteria for award of the SODB and the SODSB are as follows:

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(1) The SODB is awarded to graduates of the U.S. Army John F. Kennedy Special Warfare Center and School (USAJFKSWCS) Combat Diver Qualification Course (CDQC), Special Forces Underwater Operations, Key West, Florida or any other United States Army Special Operations Command (USASOC) approved combat diver qualification course.

(2) The SODSB is awarded to graduates of the USAJFKSWCS CDQC, Special Forces Underwater Operations, Key West, Florida or any other USASOC approved combat diving supervisor course. Prerequisite for the SODSB is the SODB.

(c) *Approval authority.* The Commanding General, USAJFKSWCS is the approval authority for the SODB and the SODSB.

(d) *Retroactive award.* The SODB and the SODSB may be awarded retroactively to members of any service who successfully completed the USAJFKSWCS CDQC and the Combat Diving Supervisor Course on or after October 1, 1964. Retroactive award requests will be submitted to the Commander, USAJFKSWCS, ATTN: AOJK-GPB (C/21 SWTG LNO), Fort Bragg, NC 28310. Retroactive requests for veterans must be forwarded to the National Personnel Records Center, ATTN: NRPMA-M, 9700 Page Avenue, St. Louis, MO 63132-5100.

(e) *Revocation.* The SODB and the SODSB may be revoked by the Commander, USAJFKSWCS or the CG, USA HRC, based on the recommendation of the field commander (COL and above). If the commander believes the individual has exhibited a pattern of behavior or duty performance that is inconsistent with expectations of the Army, or the qualified service member does not continuously demonstrate enhanced degrees of confidence, commitment, competency and discipline, then the badge may be revoked. Award of the SODB and the SODSB may be revoked for any of the following conditions:

(1) Dismissal, dishonorable discharge, or conviction by courts-martial for desertion in time of war.

(2) Failure to maintain prescribed standards of personal fitness and readi-

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ness to accomplish missions commensurate with position and rank.

(3) Upon relief or release for cause.

(f) *Description.* (1) SODB. A silver badge $1\frac{1}{8}$ inches (2.86cm) in height consisting of a diver's head in full gear in front of two crossed Sykes-Fairbain Commando daggers points up. Around either side of the diver's head is diving shark with tail fin behind the dagger point.

(2) SODSB. A silver badge $1\frac{1}{8}$ inches (2.86cm) in height consisting of a diver's head in full gear in front of two crossed Sykes-Fairbain Commando daggers points up. Around either side of the diver's head a diving shark with tail fin behind the dagger point. Over the mouth piece is a star surrounded by a wreath of laurel.

§ 578.84 Explosive Ordnance Disposal Badges.

(a) *Badges authorized.* There are three types of explosive ordnance disposal (EOD) badges authorized for award. They are the Basic, Senior, and Master.

(b) *Badge approval authority.* Commanding generals of divisions and higher commands; commanders of separate groups or equivalent headquarters exercising operational control of EOD personnel or units, Commandant, U.S. Army Ordnance Missile & Munitions Center & School, and a commander of an EOD Control Group, or units may approve awards of all levels of badges.

(c) *Basic eligibility criteria.* Eligibility requirements for each badge are provided below.

(d) *Description.* A silver badge, $1\frac{3}{4}$ inches in height, consisting of shield charged with a conventional, drop bomb, point down, from which radiates four lightning flashes, all in front of and contained within a wreath of laurel leaves. The Senior Explosive Ordnance Disposal Badge is the same as the basic badge except the drop bomb bears a $\frac{7}{32}$ inch silver star. The Master Explosive Ordnance Disposal Badge is the same as the Senior Badge except a star, surrounded by a laurel wreath, is added above the shield.

§ 578.85 Explosive Ordnance Disposal Badge—Basic.

(a) *Eligibility requirements.* Any commissioned officer or enlisted soldier

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may be awarded the badge if he or she meets, or has met, all the following requirements:

(1) Successful completion of conventional render safe qualification as prescribed for the Explosive Ordnance Disposal (EOD) course of instruction (minimum requirement).

(2) Assigned in a TOE or TDA EOD position for which basic EOD course is a prerequisite.

(3) Service in a position in paragraph (a)(2) of this section must be satisfactory for a period of 18 months for the award to be permanent.

(4) Officers must have a special skill identifier of 91E, and enlisted personnel must hold the military occupational specialty 55D.

(b) *Who may award.* See § 578.84 of this part.

§ 578.86 Senior Explosive Ordnance Disposal Badge.

(a) *Eligibility requirements.* Any commissioned officer or enlisted soldier may be awarded the badge if he or she has:

(1) Been awarded the basic Explosive Ordnance Disposal Badge and effective May 1, 1989, has served 36 months cumulative service assigned to a TOE or table of distribution (TD) EOD position following award of basic badge.

(2) Effective May 1, 1989, has served 36 months cumulative service assigned to a TOE or TD EOD position following award of the basic badge. Prior to May 1, 1989, must have served 18 months cumulative service assigned to a TOE or TD EOD position following award of the basic badge.

(3) Been recommended for the award by immediate commander.

(4) Current explosive ordnance disposal qualifications at the time of recommendation for the award.

(b) *Who may award.* See § 578.84 of this part.

§ 578.87 Master Explosive Ordnance Disposal Badge.

(a) *Eligibility requirements.* Any commissioned officer, or enlisted soldier may be awarded the badge if he or she meets, or has met, all the following requirements:

(1) Must have been awarded the Senior Explosive Ordnance Disposal Badge.

(2) Sixty months cumulative service assigned to a TOE or TD officer or non-commissioned officer EOD position since award of Senior Explosive Ordnance Disposal Badge.

(3) Must be recommended for the award by immediate commander.

(4) Explosive ordnance disposal qualifications must be current at the time of recommendation for the award.

(b) *Who may award.* See § 578.84 of this part.

§ 578.88 Pathfinder Badge.

(a) *Eligibility criteria.* (1) Successful completion of the Pathfinder Course conducted by the U.S. Army Infantry School.

(2) Any person previously awarded the Pathfinder award for completion of Pathfinder training is authorized award of the Pathfinder Badge.

(b) *Badge approval authority.* The Pathfinder Badge may be approved by the Commandant, U.S. Army Infantry School.

(c) *Description.* A gold color metal and enamel badge $1\frac{3}{16}$ inches in height and $1\frac{1}{2}$ inches in width, consisting of a gold sinister wing displayed on and over a gold torch with red and gray flames.

§ 578.89 Air Assault Badge.

(a) *Basic eligibility criteria.* The basic eligibility criteria consist of satisfactory completion of—

(1) An air assault training course according to the TRADOC standardized Air Assault Core Program of Instruction.

(2) The standard Air Assault Course while assigned or attached to 101st Airborne Division (Air Assault) since April 1, 1974.

(b) *Badge approval authority.* Badge approval authority is as follows:

(1) Commanders of divisions and separate brigades.

(2) The Commander, 101st Airborne Division (Air Assault).

(c) *Description.* An oxidized silver badge $\frac{3}{4}$ inch in height and $1\frac{17}{32}$ inches in width, consisting of a helicopter, frontal view, superimposed upon a pair of stylized wings displayed and curving. The wings suggest flight and together with the helicopter symbolize individual skills and qualifications in

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assault landings utilizing the helicopter.

§ 578.90 Aviation Badges.

(a) *Badges authorized.* There are three degrees of Aviation Badge (formerly the Aircraft Crew Member Badge) authorized for award, Basic, Senior and Master.

(b) *Badge approval authority.* Commanders exercising jurisdiction over the individuals' personnel records will make permanent award of these badges. Permanent award of these badges based upon wounds or combat missions will be referred to Commander, USA HRC (see § 578.3(c) for address). Request for award of the Senior and Master Aviation Badges that cannot be resolved at the MPD/PSC will be forwarded to the Commander, U.S. Army Aviation Center, ATTN: ATZQ-AP, Fort Rucker, AL 36362-5000.

(c) *Special policy.* (1) The retroactive date for these badges is January 1, 1947.

(2) The Master Aviation Badge and the Senior Aviation Badge are authorized for permanent wear. The Basic Aviation Badge may be authorized for temporary or permanent wear. An officer awarded an Aviation Badge while serving in an enlisted status is authorized to wear the badge as a permanent part of the uniform.

(d) Eligibility requirements for each badge are provided in §§ 578.91, 578.92, and 578.93.

(e) *Description.* An oxidized silver badge $\frac{3}{4}$ inch in height and $2\frac{1}{2}$ inches in width, consisting of a shield with its field scored with horizontal lines and bearing the coat of arms of the United States on and over a pair of displayed wings. A star is added above the shield to indicate the degree of Senior Aviation Badge and the star is surrounded with a laurel wreath to indicate the degree of Master Aviation Badge.

§ 578.91 Aviation Badge—Basic.

(a) *Permanent award.* (1) For permanent award of this badge, an individual must be on flying status, (physically qualified-class III), IAW AR 600-106 or be waived by HQDA, have performed in-flight duties for not less than 12 hours (not necessarily consecutive), or is school trained.

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(2) An officer on flying status as an aerial observer may be awarded the Basic Aviation Badge. U.S. Army personnel assigned to a Joint Service Airborne Command Post and serving as members of an operational team on flying status manning the Airborne Command Post are eligible for the award of the Basic Aviation Badge. Concurrent with such assignment, these personnel are authorized temporary wear of the Basic Aviation Badge until relieved from such duty or until such time as he or she fulfills the mandatory requirements for permanent award.

(3) An individual who has been incapacitated for further flight duty by reason of being wounded as a result of enemy action, or injured as the result of an aircraft accident for which he or she was not personally responsible, or has participated in at least 15 combat missions under probable exposure to enemy fire while serving in a principal duty outlined in paragraph (a)(1) of this section, is permanently authorized to wear the Basic Aviation Badge.

(4) The Basic Aviation Badge may be permanently awarded to soldiers upon successful completion of formal advanced individual training (AIT) in Career Management Field (CMF) 67 and CMF 93 MOS', and to soldiers who previously completed AIT in CMF 28 MOS'. This includes soldiers who graduated from AIT for MOS' in the 68 series. Soldiers holding MOS' 35L, 35M, 35Q, and 35W who graduated from a CMF 67 AIT prior to September 30, 1996 and MOSs 93C and 93P who graduated from a CMF 67 AIT after December 31, 1985 are authorized based on documented prior AIT.

(5) Individuals who meet the criteria for award of the Army Astronaut Device and are not authorized an Aviator, Flight Surgeon or Aviation Badge will be awarded the Aviation Badge in addition to the Army Astronaut Device.

(6) The Aviation Badge may be permanently awarded to soldiers upon successful completion of formal AIT in CMF 93 MOS'. Soldiers previously holding MOS 93B who graduated from a CMF 93 AIT prior to January 1, 1998 and soldiers previously holding MOS 93D who graduated from a CMF 93 AIT

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prior to September 30, 1996 are authorized the badge based on documented AIT after December 31, 1985.

(b) *Temporary award.* For temporary award of this badge, the commander of any Army unit that has Army aircraft assigned may authorize in published orders qualified personnel of his or her command to wear the Aviation Badge. The individual must be performing in-flight duties.

§ 578.92 Senior Aviation Badge.

(a) *Eligibility criteria.* For award of this badge, an individual must either successfully perform 7 years on flight status (physically qualified-class III) in a principal duty assignment described in AR 600-106 or serve in CMF 67 and 93, including all 68 series MOS'. Warrant Officers MOS' 150A and 151A, and MOS 00Z individuals from CMF 67 or 93 field may qualify for the Senior Aviation Badge with 10 years of experience and meet the following criteria:

(1) Only time involving frequent and regular flights will be counted toward fulfillment of this requirement, except that time involved in transit between PCS assignments to include TDY, will also be credited.

(2) Soldiers who retain CMF 67 or 93 while performing career progressive assignments, especially duties as Drill Sergeant, Recruiter, Career Management NCO, Career Advisor, Instructor or Equal Opportunity Advisor will be counted towards this requirement not to exceed 36 months. Warrant Officers MOS 150A or 151A may qualify for this badge after successfully performing 7 years on flight status or 10 years experience in CMF 67 or 93, MOS 151A or 150A. Prior enlisted CMF 67 time may count with MOS 151A experience and CMF 93 time may count with MOS 150A experience to fulfill this requirement. The retroactive date for this badge under these criteria is January 1, 1983.

(3) Displayed complete competence in the principal duty or duties performed leading to this award.

(4) Attained the grade of E-4 or higher.

(5) Be recommended by the unit commander of the unit to which presently assigned.

(b) *Retroactive award.* The retroactive date for award of this badge is Feb-

ruary 1, 1989 for CMF 93, Warrant Officer MOS' 150A and 151A and individuals in MOS 00Z. Soldiers holding CMF 93 or MOS 93D, prior to September 30, 1996 and MOS 93B prior to January 1, 1998, may qualify for award of the Senior Aviation Badge based on documented experience.

§ 578.93 Master Aviation Badge.

(a) For award of this badge, an individual must either successfully perform 15 years on flight status (physically qualified-class III) in a principal duty assignment described in AR 600-106 or serve in CMF 67 or 93, including all 68 series MOS'. Warrant Officers MOS' 150A and 151A and individuals in MOS 00Z from a CMF 67 or 93 field, may qualify for the Master Aviation Badge with 17 years of experience and meet the following criteria:

(1) Only time involving frequent and regular flights will be counted toward fulfillment of this requirement, except that time involved in transit between PCS assignments, to include TDY, will also be credited.

(2) Soldiers that retain CMF 67 or 93 while performing career progressive assignments, especially duties as Drill Sergeant, Recruiter, Career Management NCO, Career Advisor, Instructor or Equal Opportunity Advisor, will be counted towards this requirement not to exceed 36 months. Warrant Officer MOS' 150A and 151A may qualify for this badge after successfully performing 15 years on flight status or 17 years experience in CMF 67 or 93 or MOS 150A and 151A. Prior enlisted CMF 67 time may count with MOS 151A experience and CMF 93 time may count with MOS 150A experience to fulfill this requirement.

(3) Displayed complete competence in the principal duty or duties performed leading to this award.

(4) Attained the grade of E-6 or higher.

(5) Be recommended by the unit commander and endorsed by the next higher commander of the unit to which presently assigned.

(b) *Retroactive date.* The retroactive date for the badge under these revised criteria is January 1, 1976. The retroactive date for CMF 93, Warrant Officer MOS' 150A and 151A and individuals in

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MOS 00Z is February 1, 1982. Soldiers holding CMF 93, MOS 93D, prior to September 30, 1996 and MOS 93B, prior to January 1, 1998, may qualify for award of the Master Aviation Badge based on documented experience.

§ 578.94 Driver and Mechanic Badge.

(a) *Basic criteria.* The Driver and Mechanic Badge is awarded to drivers, mechanics, and special equipment operators to denote the attainment of a high degree of skill in the operation and maintenance of motor vehicles.

(b) *Badge approval authority.* Commanders of brigades, regiments, separate battalions, and any commander in the rank of lieutenant colonel or higher.

(c) *Eligibility requirements for drivers.* A soldier must—

(1) Qualify for and possess a current OF 346 (U.S. Government Motor Vehicles Operator's Identification Card), issued as prescribed by AR 600-55 and,

(2) Be assigned duties and responsibilities as a driver or assistant driver of government vehicles for a minimum of 12 consecutive months, or during at least 8,000 miles and with no government motor vehicle accident or traffic violation recorded on his or her DA Form 348-1-R (Equipment Operator's Qualification Record (Except Aircraft)), or,

(3) Perform satisfactorily for a minimum period of 1 year as an active qualified driver instructor or motor vehicle driver examiner.

(d) *Eligibility requirements for mechanics.* A soldier must—

(1) Pass aptitude tests and complete the standard mechanics' course with a "skilled" rating or have demonstrated possession of sufficient previous experience as an automotive or engineer equipment mechanic to justify such a rating.

(2) Be assigned to primary duty as an automotive or engineer mechanic, unit level or higher, or is an active automotive or engineer mechanic instructor.

(3) If required to drive an Army motor vehicle in connection with automotive mechanic or automotive mechanic instructor duties, qualify for motor vehicle operators permit as prescribed above, and perform duty which

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includes driving motor vehicles for a minimum of 6 consecutive months, and has no Army motor vehicle accident or traffic violation recorded on his or her DA Form 348 (Equipment Operator's Qualification Record (Except Aircraft)).

(e) *Eligibility requirements for operators of special mechanical equipment.* A soldier or civilian whose primary duty involves operation of Army materials handling or other mechanical equipment must have completed 12 consecutive months or 500 hours of operation, whichever comes later, without accident or written reprimand as the result of his or her operation, and his or her operating performance must have been adequate in all respects.

(f) *Description.* A white metal (silver, nickel and rhodium), 1 inch in height and width, a cross patee with the representation of disk wheel with tire placed on the center. Component bars are authorized only for the following types of vehicles and/or qualifications:

- (1) Driver—W (for wheeled vehicles);
- (2) Driver—T (for tracked vehicles);
- (3) Driver—M (for motorcycles);
- (4) Driver—A (for amphibious vehicles);
- (5) Mechanic (for automotive or allied vehicles);
- (6) Operator—S (for special mechanical equipment).

§ 578.95 Glider Badge (Rescinded).

(a) Effective May 3, 1961, the Glider Badge is no longer awarded. An individual who was awarded the badge upon satisfying then current eligibility requirements may continue to wear the badge. Further, it may be awarded retroactively upon application to the Commander, USA HRC (see § 578.3(c) for address), when it can be established by means of sufficient documentation that the proficiency tests then prescribed were satisfactorily completed while assigned or attached to an airborne unit or to the Airborne Department of the Infantry School, or by participation in at least one combat glider landing into enemy-held territory as a member of an organized force carrying out an assigned tactical mission for which the unit was credited with an airborne assault landing by the theater commander.

(b) *Description.* An oxidized silver badge $\frac{1}{16}$ inch in height and $1\frac{1}{2}$ inches in width consisting of a glider, frontal view, superimposed upon a pair of stylized wings displayed and curving inward.

§ 578.96 Nuclear Reactor Operator Badge (Rescinded).

(a) Effective October 1, 1990, the Nuclear Reactor Operator Badges are no longer awarded. The Army has not conducted nuclear reactor operations or nuclear reactor operator training in several years. Accordingly, the Nuclear Reactor Operator Badges will no longer be awarded. Current Army recipients who were permanently awarded any degree of the badge may continue to wear it on the Army uniform. AR 672-5-1, dated October 1, 1990, terminated authorization to award the badge.

(b) *Description*—(1) *Basic.* On a $\frac{7}{8}$ inch square centered on two horizontal bars each $\frac{1}{8}$ inch in width separated by a $\frac{3}{32}$ inch square and protruding $\frac{1}{8}$ inch from each side of the square, a disc $\frac{3}{4}$ inch in diameter bearing the symbol of the planet Uranus all silver colored metal $\frac{7}{8}$ inch in height overall.

(2) *Second Class Operator.* The basic badge reduced in size placed on and partially encircled at the base by an open laurel wreath, the ends of the upper bar resting on the tips of the wreath, all of silver colored metal 1 inch in height overall. The areas between the wreath and the basic badge are pierced.

(3) *First Class Operator.* The basic badge reduced in size is placed on and entirely encircled by a closed laurel wreath all of silver colored metal 1 inch in height overall. The areas between the wreath and the basic badge are pierced.

(4) *Shift Supervisor.* The design of the Shift Supervisor Badge is the same as the First Class Operator Badge, except it is gold colored metal.

§ 578.97 Marksmanship Qualification Badge.

(a) *Eligibility criteria.* A basic marksmanship qualification badge is awarded to indicate the degree in which an individual, military or civilian, has qualified in a prescribed record course and an appropriate bar is furnished to de-

note each weapon with which he or she qualified. Each bar will be attached to the basic badge that indicates the qualification last attained with the respective weapon. Basic qualification badges are of three classes. Expert, sharpshooter, and marksman. The only weapons for which component bars are authorized are listed in Table 10. Basic marksmanship qualification badges are awarded to U.S. military and civilian personnel, and to foreign military personnel who qualify as prescribed.

(b) *Approval authority*—(1) *To military personnel.* Any commander in the rank or position of lieutenant colonel or higher may make awards to members of the Armed Forces of the United States; Camp/Post Commanders, Professors of Military Science, Directors of Army Instruction/Senior Army Instructors (DAI/SAI) or Reserve Officers' Training Corps (ROTC)/ Junior Reserve Officers' Training Corps (JROTC) units may make awards to members of the ROTC/JROTC.

(2) *To civilian personnel.* Installation commanders may make the authorization for civilian guards to wear marksmanship badges. Civilian guards will procure badges at their own expense.

(c) *Description*—(1) *Expert.* A white metal (silver, nickel and rhodium), 1.17 inches in height, a cross patee with the representation of a target placed on the center thereof and enclosed by a wreath;

(2) *Sharpshooter.* A white metal (silver, nickel, and rhodium), 1 inch in height, a cross patee with the representation of a target placed on the center thereof;

(3) *Marksman.* A white metal (silver, nickel, and rhodium), 1 inch in height, a cross patee.

(d) *Component bars.* Weapons for which component bars are authorized are provided in Table 10 below.

TABLE 10.—WEAPONS FOR WHICH COMPONENT BARS ARE AUTHORIZED

Weapon	Inscription
Rifle	Rifle.
Pistol	Pistol.
Antiaircraft artillery	AA Artillery.
Automatic rifle	Auto Rifle.
Machinegun	Machinegun.
Field Artillery	Field Arty.
Tank Weapons	Tank Weapons.
Flamethrower	Flamethrower.

TABLE 10.—WEAPONS FOR WHICH COMPONENT BARS ARE AUTHORIZED—Continued

Weapon	Inscription
Submachine Gun	Submachine Gun.
Rocket Launcher	Rocket Launcher.
Grenade	Grenade.
Carbine	Carbine.
Recoilless rifle	Recoilless rifle.
Mortar	Mortar.
Bayonet	Bayonet.
Rifle, small bore	Small bore rifle.
Pistol, small bore	Small bore pistol.
Missile	Missile.
Aeroweapons	Aeroweapons.

§ 578.98 Ranger Tab.

(a) *Basic eligibility criteria.* The basic eligibility criteria for award of the Ranger Tab is as follows:

(1) Successful completion of a Ranger course conducted by the U.S. Army Infantry School.

(2) Any person who was awarded the Combat Infantryman Badge while serving during World War II as a member of a Ranger Battalion (1st-6th inclusive) or in the 5307th Composite Unit (Provisional) (Merrill's Marauders).

(3) Any person who successfully completed a Ranger course conducted by the Ranger Training Command at Fort Benning, GA.

(b) *Award approval authority.* The Commandant of the U.S. Army Infantry School; CG, USA HRC, and the Cdr, USA HRC—St. Louis, may award the Ranger Tab.

(c) *Description.* The ranger qualification tab is 2¾ inches wide with a black embroidered background and yellow embroidered border and letters. A subdued version with olive drab background and border and black letters is authorized for work uniforms.

§ 578.99 Special Forces Tab.

(a) *Basic eligibility criteria.* Any person meeting one of the criteria below may be awarded the Special Forces (SF) Tab:

(1) Successful completion of USAJFKSWCS approved Active Component (AC) institutional training leading to SF qualification;

(2) Successful completion of a USAJFKSWCS approved Reserve Component (RC) SF qualification program;

(3) Successful completion of an authorized unit administered SF qualification program.

(b) *Award approval authority.* The Commander, U.S. Army John F. Kennedy Special Warfare Center (USAJFKSWCS), Fort Bragg, NC 28307-5000.

(c) *Active Component institutional training.* The SF Tab may be awarded to all personnel who successfully complete the Special Forces Qualification Course or Special Forces Detachment Officer Qualification Course (previously known as the Special Forces Officer Course). These courses are/were conducted by the USAJFKSWC (previously known as the U.S. Army Institute for Military Assistance).

(d) *Reserve Component SF qualification programs.* The SF Tab may be awarded to all personnel who successfully complete a RC SF qualification program according to TRADOC Regulation 135-5, dated June 1, 1988 or its predecessors. The USAJFKSWCS will determine individual entitlement for award of the SF Tab based on historical review of Army, Continental Army Command (CONRAC), and TRADOC regulations prescribing SF qualification requirements in effect at the time the individual began an RC SF qualification program.

(e) *Unit administered SF qualification programs.* The SF Tab may be awarded to all personnel who successfully completed unit administered SF qualification programs as authorized by regulation. The USAJFKSWCS will determine individual entitlement to award of the SF Tab based upon historical review of regulations prescribing SF qualification requirements in effect at the time the individual began a unit administered SF qualification program.

(f) *Wartime service.* The SF Tab may be awarded to all personnel who performed the following wartime service.

(1) *Prior to 1955.* Service for at least 120 consecutive days in one of the following organizations: 1st Special Service Force, August 1942 to December 1944, OSS Detachment 101, April 1942 to September 1945, OSS Jedburgh Detachments, May 1944 to May 1945, OSS Operational Groups, May 1944 to May 1945, OSS Maritime Unit, April 1942 to September 1945, 6th Army Special Reconnaissance Unit (Alamo Scouts), February 1944 to September 1945, and

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8240th Army Unit, June 1950 to July 1953.

(2) *1955 through 1975.* Any company grade officer or enlisted member awarded the CIB while serving for at least 120 consecutive days in one of the following type organizations: SF Operational Detachment-A (A-Team), Mobile Strike Force, SF Reconnaissance Team, and SF Special Project Unit.

(g) *Description.* The SF Tab is 3¼ inches wide with a teal blue embroidered background and border and yellow embroidered letters. A subdued version with olive drab background and borders and black letters is authorized for work uniforms. A metal SF Badge is authorized for wear on the mess/dress uniforms and green shirt.

§578.100 Sapper Tab.

(a) *Purpose.* The Sapper Tab was established by the Chief of Staff, Army, on June 28, 2004. It is authorized for award to U.S. military and civilian personnel and foreign military personnel who meet the prescribed eligibility criteria.

(b) *Basic eligibility criteria.* The basic eligibility criteria for award of the Sapper Tab is as follows:

(1) Successful graduation of a Sapper Leader Course conducted by the U.S. Army Engineer School.

(2) Any person who successfully graduates from a Sapper Leaders Course conducted by the U.S. Army Engineer School at Fort Leonard Wood, MO.

(3) The tab may be awarded retroactively to any person who successfully completed the Sapper Leaders Course on or after June 14, 1985.

(c) *Revocation.* The Sapper Tab may be revoked by the Commandant, U.S. Army Engineer School or the CG, USA HRC based on the recommendation of the field commander (Colonel and above) of the individual in question. This can be based on the opinion of that commander, that the individual has exhibited a pattern of behavior, expertise or duty performance that is inconsistent with expectations of the Army, that is, degree of confidence, commitment, competency and discipline. Award of the Sapper Tab may be revoked for any of the following conditions:

(1) Dismissal, dishonorable discharge, or conviction by court's martial for desertion in time of war.

(2) Failure to maintain prescribed standards of personal fitness and readiness to accomplish missions commensurate with position and rank.

(3) Upon relief or release for cause.

(d) *Award approval authority.* The Commandant of the U.S. Army Engineer School and the CG, USA HRC, may award the Sapper Tab.

(e) *Description.* The full color tab is 2¾ inches (6.03 cm) long, ¼ inch (1.75 cm) wide, with a ⅛ inch (.32 cm) red border and the word "SAPPER" inscribed in white letters ⅝ inch (1.79 cm) high. The woodland subdued tab is identical, except the background is olive drab and the word "SAPPER" is in black letters and the desert subdued tab has a khaki background with the word "SAPPER" in spice brown letters.

§578.101 Physical Fitness Badge.

(a) The Physical Fitness Badge was established by the Secretary of the Army on June 25, 1986. Effective February 1, 1999, soldiers who obtain a minimum score of 270 or above, with a minimum of 90 points per event on the Army Physical Fitness Test (APFT) and meet the body fat standards will be awarded the Physical Fitness Badge for Physical Fitness Excellence. Soldiers are required to meet the above criteria each record test to continue to wear the badge. Units can obtain APFT Standards and the new APFT Card (DA Form 705, dated June 1998) off the World Wide Web at <http://www.benning.army.mil/usapfs/>. Permanent Orders are not required for award of the Physical Fitness Badge.

(b) *Description.* On a dark blue disc 1½ inches (4.13 cm) in diameter edged dark blue; a yellow stylized human figure with arms outstretched in front of a representation of the coat of arms of the United States displaying six stars (three on each side of the figure and thirteen alternating white and red stripes, all encircled by a Brittany blue designation band inscribed "PHYSICAL FITNESS" at top and "EXCELLENCE" below separated on either side by a star, all navy blue; edged with a ⅛

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inch (.32 cm) navy blue border. Overall diameter is 2⁵/₈ inches (6.67 cm).

§ 578.102 U.S. Civilian Marksmanship Program.

The Civilian Marksmanship Program (CMP) was created by the U.S. Congress. The original purpose was to provide civilians an opportunity to learn and practice marksmanship skills so they would be skilled marksmen if later called on to service the U.S. military. Over the years the emphasis of the program shifted to focus on youth development through marksmanship. From 1916 to 1996 the CMP was administered by the U.S. Army. The National Defense Authorization Act for Fiscal Year 1996 (Title 10) created the Corporation for the (CPRPFS) Promotion of Rifle Practice and Firearms Safety, Inc. to take over administration and promotion of the CMP. The CPRPFS is a tax exempt not-for-profit 501(c)(3) organization that derives its mission from public law. The address for the CMP headquarters is PO Box 576, Port Clinton, Ohio, 43452.

§ 578.103 President's Hundred Tab.

(a) The President's Hundred Tab is awarded to soldiers who qualify among the top scoring 100 competitors in the President's Match.

(b) *Background.* (1) The National Rifle Association's (NRA) President's Match was instituted at the NRA matches of 1878, as the American Military Rifle Championship Match. It was patterned after an event for British Volunteers called the Queen's Match, which the NRA of Great Britain had initiated in 1860. In 1884, the name was changed to the President's Match for the Military Rifle Championship of the United States. It was fired at Creedmor, New York until 1891. In 1895, it was reintroduced at Sea Girt, New Jersey.

(2) The tradition of making a letter from the President of the United States the first prize began in 1904 when President Theodore Roosevelt, at the conclusion of the President's Match, personally wrote a letter of congratulations to the winner, Private Howard Gensch of the 1st Regiment of Infantry of the New Jersey National Guard.

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(3) It cannot be ascertained as to when the President's Match was discontinued; however, it is known that it was not fired during World Wars I and II. It appears to have disappeared during the 1930s and during the depression when lack of funds severely curtailed the holding of matches of importance.

(4) The President's Match was reinstated in 1957 at the National Matches as "The President's Hundred." The top-scoring 100 competitors in the President's Match were singled out for special recognition in a retreat ceremony in which they passed in review before the winner and former winners of this historic match.

(5) On May 27, 1958, the NRA requested the Deputy Chief of Staff, G-1 approval of a tab for presentation to each member of the "President's Hundred." The NRA's plan was to award the cloth tab together with a metal tab during the 1958 National Matches. The cloth tab was of high level interest and approved for wear on the Army uniform on March 3, 1958. The first awards were made at Camp Perry, Ohio, in early September 1958. The metal tab was never officially authorized for wear on the uniform by military personnel. However, the NRA issued the metal tab to military personnel for wear on the shooting jacket.

(c) *Description.* A full-color embroidered tab of yellow 4¹/₄ inches (10.80 cm) in length and 5⁸/₈ inch (1.59 cm) in height, with the words "President's Hundred" centered in 1⁴/₄ inch (.64 cm) high green letters.

§ 578.104 Identification Badges.

(a) *Intent.* Identification Badges are authorized to be worn as public evidence of deserved honor and distinction to denote service performed in specified assignments in the White House, in the Office of the Secretary of Defense; in the Organization of the Joint Chiefs of Staff, in the Office of the Secretary of the Army or as members of the General Staff; as members of the Guard, Tomb of the Unknown Soldier; as a Drill Sergeant; as a U.S. Army Recruiter, as an Army National Guard Recruiter, as a U.S. Army Reserve Recruiter; or as a Career Counselor.

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(b) It should be noted that some of the identification badges are not Department of the Army badges. Criteria and eligibility is subject to change and individuals are advised to contact the badge proponent for additional information and guidance.

(c) Eligibility requirements for the Identification Badges are provided in §§ 578.105 through 578.116.

§ 578.105 Presidential Service Badge and Certificate.

(a) The Presidential Service Badge and the Presidential Service Certificate were established by Executive Order 11174, September 1, 1964 as amended by Executive Order 11407, April 23, 1968; Executive Order 11520, March 25, 1970; and Executive Order 12793, March 20, 1992. This award replaced the White House Service Badge and Certificate established by Executive Order 10879, June 1, 1960.

(b) The certificate is awarded, in the name of the President by the Secretary of the Army, to members of the Army who have been assigned to the White House Office; to military units and support facilities under the administration of the White House Military Office or to other direct support positions with the Executive Office of the President (EOP). The certificate will not be issued to any member who is issued a Vice Presidential Certificate or similar EOP Certificate, for the same period of service. Such assignment must be for a period of at least one year, subsequent to January 21, 1989.

(c) The badge is awarded to those members of the Armed Forces who have been granted the Certificate and is awarded in the same manner in which the certificate is given. Once the badge is awarded, it may be worn as a permanent part of the uniform.

(d) Only one certificate will be awarded to an individual during an administration. Only one badge will be awarded to an individual regardless of the number of certificates received.

(e) The Presidential Service Badge and Certificate may be awarded posthumously.

§ 578.106 Vice Presidential Service Badge and Certificate.

(a) The Vice Presidential Service Badge was established by Executive Order 11926, July 19, 1976.

(b) The badge is awarded upon recommendation of the Military Assistant to the Vice President, by the Secretary of the Army to U.S. Army personnel who have been assigned to duty in the Office of the Vice President for at least 1 year after December 19, 1974.

(c) The badge shall be accompanied by a certificate, which is awarded in the same manner in which the badge is given. Once the badge is awarded it may be worn as a permanent part of the uniform.

(d) Only one badge will be awarded to an individual during an administration. Only one badge will be awarded to an individual regardless of the number of certificates received.

(e) The Vice Presidential Service Badge and Certificate may be awarded posthumously.

§ 578.107 Office of the Secretary of Defense Identification Badge.

(a) The Office of the Secretary of Defense Identification Badge is authorized under 10 U.S.C., to provide a distinct identification of military staff members while assigned and, after reassignment, to indicate that the service member satisfactorily served on the Secretary of Defense's staff. The prescribing directive for this badge is DOD 1348.33-M, Manual of Military Decorations and Awards.

(b) *Description.* The badge, 2 inches in diameter, consists of an eagle with wings displayed horizontally grasping three crossed arrows all gold bearing on its breast a shield paleways of thirteen pieces argent and gules a chief azure, a gold annulet passing behind the wing tips bearing thirteen gold stars above the eagle and a wreath of laurel and olive in green enamel below the eagle, the whole superimposed on a silver sunburst of 33 rays.

§ 578.108 Joint Chiefs of Staff Identification Badge.

(a) A certificate of eligibility may be issued to military personnel who have been assigned to duty and have served not less than 1 year after January 14,

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1961 in a position of responsibility under the direct cognizance of the Joint Chiefs of Staff. The individual must have served in a position which requires as a primary duty the creation, development, or coordination of policies, principles, or concepts pertaining to a primary function of the organization of the Joint Chiefs of Staff and must be approved for authorization to wear the badge by the Chairman, Joint Chiefs of Staff; the Director, Joint Staff; the head of a Directorate of the Joint Staff; or one of the subordinate agencies of the organization of the Joint Chiefs of Staff. The certificate of eligibility constitutes authority for wearing the badge as a permanent part of the uniform.

(b) *Description.* Within an oral silver metal wreath of laurel, 2¼ inches in height and 2 inches in width overall, the shield on the United States (the chief in blue enamel and the 13 stripes alternating white and red enamel) superimposed on four gold metal unsheathed swords, two in pale and two in saltire with points to chief, the points and pommels resting on the wreath, the blades and grips entwined with a gold metal continuous scroll surrounding the shield with the word JOINT at the top and the words CHIEFS OF STAFF at the bottom, all in blue enamel letters.

§ 578.109 Army Staff Identification Badge.

(a) The Army Staff Identification Badge (ASIB) and Army Staff Lapel Pin (ASLP) are neither awards nor decorations but are distinguished marks of service at HQDA. They are visible signs of professional growth associated with the important duties and responsibilities of the Army Secretariat and the Army Staff (ARSTAF). Issuance of the ASIB and the ASLP is not automatic, but is based on demonstrated outstanding performance of duty and approval by a principal HQDA official. Eligibility for the ASIB does not constitute eligibility for the ASLP; likewise, eligibility for the ASLP does not constitute eligibility for the ASIB.

(b) *Description.* The Coat of Arms of the United States in gold with the stripes of the shield to be enameled white and red and chief of the shield

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and the sky of the glory to be enameled blue, superimposed on a five-pointed black enameled star; in each reentrant angle of the star are three green enameled laurel leaves. The star is 3 inches in diameter for the Chief of Staff and former Chiefs of Staff and a 2 inches in diameter badge is authorized for all other personnel awarded the badge.

§ 578.110 Guard, Tomb of the Unknown Soldier Identification Badge.

(a) *Wear.* (1) The Guard, Tomb of the Unknown Soldier Identification Badge will be authorized by the Commanding Officer, 3d U.S. Infantry Regiment (The Old Guard), for wear by each member of the Tomb of the Unknown Soldier who have met all specified criteria for earning the badge. Only soldiers serving in the following positions are authorized to earn the badge:

- (i) Commander of the Guard (Platoon Leader).
- (ii) Sergeant of the Guard (Platoon Sergeant).
- (iii) Commander of the Relief.
- (iv) Sentinels.

(2) Effective December 17, 1963 the Commanding Officer, 3d U.S. Infantry Regiment (The Old Guard), may authorize the wearing of the badge as a permanent part of the uniform for personnel who:

- (i) Have served honorably for a minimum of 9 months, which need not be continuous, as a member of the Tomb of the Unknown Soldier.
- (ii) Have met all specified criteria for earning the badge.
- (iii) Have been recommended by the Commanding Officer, E Company, 3d Infantry Regiment (The Old Guard).

(3) If soldiers who have served honorably meet all specified criteria for earning the badge prior to serving 9 total months as a member of the Tomb of the Unknown Soldier and are recommended by the Commanding Officer, E Company (Honor Guard), 3d U.S. Infantry Regiment (The Old Guard), temporary wear of the badge may be authorized by the Commanding Officer, 3d U.S. Infantry Regiment (The Old Guard).

(4) Soldiers who are moved from authorized positions prior to completion of 9 total months may be considered for permanent award on a case-by-case

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basis by the Commanding Officer, 3d U.S. Infantry Regiment (The Old Guard).

(b) *Authorization.* (1) Authorization of the badge as a uniform item will be made by order of the 3d U.S. Infantry Regiment Commander citing this paragraph as authority. This order will constitute authority for individuals to wear the badge as a part of their military uniform. Original issue of the badge will be made by the Commanding Officer of the 3d U.S. Infantry Regiment (The Old Guard). Replacements will be purchased from approved commercial sources to ensure the quality of the badge.

(2) This award is retroactive to February 1, 1958 for personnel in the Active Army. This date reflects when the badge was first created and recognized by the Army for official wear. Former soldiers may apply to Commander, 3d U.S. Infantry Regiment (The Old Guard), Fort Myer, VA 22211-5020.

(c) *Revocation.* (1) When the Commander of The Old Guard becomes aware of information about a current or former member of the Tomb of the Unknown Soldier who was authorized permanent wear of the Tomb Identification Badge that suggests inappropriate conduct, including, but not limited to, acts of commission or omission for a member of that unit, or the intention to engage in inappropriate conduct, he will notify the Commander, E Company (Honor Guard), 3d U.S. Infantry Regiment (The Old Guard). The Commander, E Company (Honor Guard) will conduct a Commander's Inquiry to determine if the matter warrants further investigation, or if there is sufficient information to recommend to the Commanding Officer, 3d U.S. Infantry Regiment (The Old Guard) that the Tomb Identification Badge be revoked or that the soldier be reassigned, or both.

(2) Nothing stated in this section prevents the Regimental Commander from taking peremptory action deemed necessary or appropriate to protect the interests of the U.S. Army, the 3d U.S. Infantry Regiment (The Old Guard), or the soldiers under his command. Authority to revoke the badge remains with Commanding Officer, 3d U.S. Infantry Regiment (The Old Guard). Rev-

ocation will be announced in permanent orders.

(d) *Reinstatement.* Requests to have the badge reinstated will be directed to the current Commanding Officer, Headquarters, 3d U.S. Infantry Regiment (The Old Guard), Fort Myer, VA 22211-1199. Requests will be reviewed upon receipt of all information and forwarded to the reinstatement authority with a recommendation. Approval authority for reinstatement of the badge is the Commander, USA HRC (see §578.3(c) for address).

(e) *Description.* A silver color metal badge 2 inches in width and $1\frac{15}{32}$ inches in height, consisting of an inverted open laurel wreath surmounted by a representation of the front elevation of the Tomb of the Unknown Soldier, the upper section containing the three figures of Peace, Victory, and Valor, the base bearing in two lines the words "HONOR GUARD", all in low relief.

§578.111 Army ROTC Nurse Cadet Program Identification Badge.

This badge is authorized for issue to and wear by contracted ROTC cadets enrolled in a program leading to a baccalaureate degree in nursing. It was formerly referred to as the Army Student Nurse Program Identification Badge.

§578.112 Drill Sergeant Identification Badge.

(a) *Eligibility.* Successful completion of the Drill Sergeant course and assignment as a drill sergeant to a training command.

(b) *Authorization.* The Commandant of the Drill Sergeant School will authorize the permanent wear of the badge to eligible personnel by memorandum. Officers are authorized to wear this badge if it was permanently awarded to them while in an enlisted status.

(c) *Description*—(1) *Metal.* A gold plated metal and enamel insignia, 2 inches (5.08 cm) in width and $1\frac{51}{64}$ inches (4.56 cm) in height, consisting of a flaming torch above a breast plate and jupon in front of a rattlesnake on a green background, grasping in its mouth at upper right and with its tail at upper left, the ends of an encircling scroll inscribed

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“THIS WE’LL DEFEND” in black letters, between 13 black stars, 7 on the left and 6 on the right.

(2) *Embroidered.* An embroidered insignia, as described above in subdued colors, except the size is 2¾ inches (6.99 cm) in width and 2½ inches (6.35 cm) in height. The insignia is on a olive drab square background measuring 3½ inches (8.89 cm) in width and height.

§ 578.113 U.S. Army Recruiter Identification Badge.

(a) The U.S. Army Basic Recruiter Badge is authorized for wear by military personnel assigned or attached to the U.S. Army Recruiting Command (USAREC) as designated by the CG, USAREC. One, two, or three gold achievement stars may be awarded to eligible personnel meeting the criteria established for each achievement star by the CG, USAREC. These stars will be affixed to the basic badge.

(b) The U.S. Army Gold Recruiter Badge is authorized for wear by eligible personnel meeting the criteria established by the CG, USAREC. One, two, or three sapphire achievement stars may be awarded to eligible personnel meeting the criteria established for each achievement star by the CG, USAREC. These stars will be affixed to the gold badge.

(c) *Description.* A silver or gold color metal device 2½ inches (5.4 cm) in height overall consisting of a circular band inscribed, between two narrow green enamel borders, with the words “U.S. ARMY” on the left and “RECRUITER” on the right, in silver letters, reading clockwise and at bottom center three five-pointed stars; perched upon the inside edge of the band at bottom center an eagle looking to its right its wings raised vertically and extended over the top of the band and supported between its wings diagonally from lower left to upper right a flaming torch with both ends extended outside the band.

§ 578.114 Career Counselor Badge.

(a) The Career Counselor Badge may be authorized for wear by enlisted personnel assigned to authorized duty positions which requires Primary Military Occupational Specialty (PMOS)

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79S (Career Counselor). The award is retroactive to January 1, 1972.

(b) *Description.* An oxidized silver badge 1⅞ inches in height overall consisting of an eagle with raised and outstretched wings standing upon, at the point of the intersection, the shaft of a spear to the left and the barrel of a musket with fixed bayonet to the right, weapons terminated just below the point of crossing, and all enclosed by a horizontal oval-shaped frame, its lower half consisting of a scroll inscribed with the words “CAREER COUNSELOR” in raised letters, the upper half composed of two olive branches issuing from the ends of the scroll at either side and passing behind the eagle’s wing tips, meeting at top center; all areas between the eagle, spear and musket and the frame are pierced.

§ 578.115 Army National Guard Recruiting and Retention Identification Badges.

The National Guard Bureau (NGB-ARP) is the proponent agency for the Army National Guard Recruiting and Retention Identification Badges. There are three degrees of badges that may be awarded; basic, senior, and master ARNG Recruiter Badges. See National Guard Regulation 672-2.

§ 578.116 U.S. Army Reserve Recruiter Identification Badge.

The U.S. Army Reserve Recruiter Badge no longer exists as a separate identification badge. All Regular Army and Reserve Component recruiters only wear the U.S. Army Recruiter Identification Badges authorized in § 578.109 of this part.

§ 578.117 Foreign and International Decorations and Awards to U.S. Army Personnel—General.

(a) *Guidelines.* The provisions for receipt and acceptance, or prohibition thereof, of foreign decorations and badges outlined in this chapter apply to—

(1) Active Army, Army National Guard, and U.S. Army Reserve soldiers to include retirees regardless of duty status.

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(2) All civilian employees of DA including experts and consultants under contract to DA.

(3) All spouses, unless legally separated and family members of the personnel listed in paragraphs (a)(1) and (2) of this section.

(b) The provisions for receipt and acceptance, or prohibition thereof, of foreign decorations and badges outlined in this chapter do not apply when:

(1) A foreign decoration is awarded posthumously. Such decorations and accompanying documents will be forwarded to Commander, USA HRC, (see §578.3(c) for address), for delivery to next of kin.

(2) The recipient of a decoration dies before approval of acceptance can be obtained.

(3) A foreign decoration was awarded for service while the recipient was a bona fide member of the Armed Forces of a friendly foreign nation, provided the decoration was made prior to employment of the recipient by the U.S. Government.

(4) A decoration for service in the Republic of Vietnam was accepted on or after March 1, 1961, but not later than March 28, 1973.

(c) *Restriction.* No person will request, solicit, or otherwise encourage the tender of a foreign decoration. Whenever possible, personnel are obligated to initially refuse acceptance of foreign decorations.

(d) *Constitutional restriction.* No person holding any office of profit or trust under the United States will, without the consent of the Congress, accept any present, emolument, office, or title of any kind whatsoever from any king, prince, or foreign state. (Constitution, Article. I, section. 9) This includes decorations and awards tendered by any official of a foreign government.

(e) *Congressional authorization.* 5 U.S.C. 7342 authorizes members of the Army to accept, retain, and wear foreign decorations tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the Secretary of the Army.

(f) *Participation in ceremonies.* Subject to the restriction in, an individual may participate in a ceremony and receive

the tender of a foreign decoration. The receipt of the decoration will not constitute acceptance of the award by the recipient.

(g) *Disciplinary action.* The wearing of unauthorized awards, decorations, or other devices is a violation of the Uniform Code of Military Justice and may subject a soldier to appropriate disciplinary action.

§578.118 Individual foreign decorations.

Decorations received which have been tendered in recognition of active field service in connection with combat operations or which have been awarded for outstanding or unusually meritorious performance may be accepted and worn upon receiving the approval of HQ, USA HRC. In the absence of such approval, the decoration will become the property of the United States and will be deposited with HQ, USA HRC, for use or disposal.

§578.119 Foreign unit decorations.

(a) During the period of military operations against an armed enemy and for 1 year thereafter; or while engaged in military operations involving conflict with an opposing foreign force; or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party, Army Component commanders, or major Army commanders are authorized to accept foreign unit decorations tendered to brigades, battalions, or smaller units under their command. HQ, USA HRC (AHRC-PDO-PA) will take final action on all tenders of foreign unit decorations to headquarters and headquarters companies of divisions and higher or comparable units. This authority will not be further delegated. Acceptance of foreign unit decorations will be reported to the CG, USA HRC for confirmation in DAGO. Confirmed foreign unit decorations are listed in DA Pamphlet 672-1 and DA Pamphlet 672-3.

(b) Foreign unit decorations may be accepted only if all the following conditions are met:

(1) The decoration is tendered by a friendly foreign nation for heroism or

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exceptionally meritorious service in direct support of military operations;

(2) The decoration is one that is conferred by the national government of the foreign country upon units of its own Armed Forces; and

(3) The unit is cited by name in orders of the national government of the foreign country.

(c) Foreign unit decorations will be neither recommended by nor sought by the Department of the Army. Solicitation of foreign unit decorations by individuals or units within the Army is prohibited. Acceptance of foreign unit decorations will be approved by CG, USA HRC, only when the award is proffered by the foreign government based on services performed and without solicitation.

(d) *Display of foreign unit decorations.* Awards of foreign unit decorations are evidenced by streamers, fourrageres, or lanyards attached to the pike or lance as a component part of organizational colors, distinguishing flags or guidons.

(e) The streamer will be of colors corresponding to the ribbon of the unit decoration with the name of the action or the area of operations embroidered thereon. A separate streamer will be furnished for each award. The medal will be attached only on ceremonial occasions.

(f) Additional foreign unit decorations which have been tendered and accepted but for which no streamer is authorized for unit colors and guidons are as follows:

(1) Citation in the Order of the Day of the Belgian Army;

(2) State of Vietnam Ribbon of Friendship;

(3) Netherlands Orange Lanyard;

(g) *Emblems.* (1) Normally when a unit is cited, only the organizational color, distinguishing flag, or guidon is decorated. Unless specifically authorized by orders of the foreign government and approved by CG, USA HRC, no emblem is issued but may be purchased for wear on the uniform. See AR 670-1 for information on wear of foreign unit awards.

(2) The only emblems so far authorized for wear on the uniform to indicate a foreign decoration received by a unit are the French and Belgian Fourrageres, the Netherlands Orange

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Lanyard, the Philippine Republic Presidential Unit Citation Badge, the Republic of Korea Presidential Unit Citation Badge, the Vietnam Presidential Unit Citation Badge, the Republic of Vietnam Gallantry Cross Unit Citation Badge, and the Republic of Vietnam Civil Actions Medal Unit Citation Badges. Only the French Fourragere is authorized for temporary wear.

(3) The following emblems are not sold by the Department of the Army, but may be purchased if desired from civilian dealers in military insignia and some Army Exchanges: Philippine Republic, Republic of Korea, and the Vietnam Presidential Unit Citations, the Republic of Vietnam Gallantry Cross, and the Republic of Vietnam Civil Actions Medal.

§ 578.120 Foreign badges.

(a) *Eligibility requirements.* Qualification and special skill badges may be accepted if awarded in recognition of meeting the criteria, as established by the foreign government concerned, for the specific award. Only those badges that are awarded in recognition of military activities and by the military department of the host country are authorized for acceptance and permanent wear. Badges that do not meet these criteria may be authorized for acceptance but not for wear, and will not be entered in the official military records of the recipient. Of particular importance are the criteria established by the military department of the host country; for example, if a particular badge is authorized for award only to enlisted personnel of host country then badge may be accepted and worn by U.S. Army enlisted personnel.

(b) *Awarding authority.* Commanders (overseas and CONUS) serving in the rank of brigadier general or higher and colonel level commanders who exercise general court-martial authority are delegated authority to approve the acceptance, retention, and permanent wear of foreign badges. This authority may be further delegated to commanders charged with custody of military personnel record files. The burden of proof rests on the individual soldier to produce valid justification, that is,

orders, citations, or other original copies of the foreign elements that awarded them the badge. A list of approved badges are provided in Appendix D, AR 600-8-22 and the Army Awards Branch Web site: https://www.perscomonline.army.mil/tagd/awards/Appendix_D.doc. Request for accept and wear of any foreign badges not listed in Appendix D or the website will be forwarded to HQ, USA HRC (see § 578.3(c) for address).

(c) *Other badges.* Badges presented to Army personnel which do not fall under the category of qualification or special skill badges discussed in paragraph (a) of this section (honorary badges, identification devices, insignia) will be reported in accordance with AR 1-100, paragraph 6. Badges in these categories are considered gifts. They will not be authorized for wear nor entered in official military personnel records.

(d) *Wear.* AR 670-1 governs the manner of wear of foreign qualification and special skill badges.

§ 578.121 United Nations Service Medal.

(a) The United National Service Medal (UNSM) was established by United Nations General Assembly Resolution 483(V), December 12, 1950. Presidential acceptance for the United States Armed Forces was announced by the DOD on November 27, 1951.

(b) *Qualifications.* To qualify for award of the UNSM, individuals must meet one of the following:

(1) Members of the Armed Forces of the United States dispatched to Korea or adjacent areas for service on behalf of the United Nations in the action in Korea.

(2) Other personnel dispatched to Korea or adjacent areas as members of paramilitary and quasi-military units designated by the U.S. Government for service in support of United Nations action in Korea and certified by the United Nations Commander in Chief as having directly supported military operations there.

(3) Personnel awarded the Korean Service Medal automatically establish eligibility for the United Nations Service Medal.

(4) Service with a national contingent designated by the U.S. Govern-

ment for service in support of the United Nations action in Korea and certified by the United Nations Commander in Chief as having directly supported military operations in Korea.

(c) *Service requirements.* Service will be for periods provided between June 27, 1950 and July 27, 1954, inclusive, under either of the following conditions:

(1) Within the territorial limits of Korea or the waters immediately adjacent thereto or in the air over Korea or over such waters.

(2) The service prescribed must have been performed while serving with any unit as provided in paragraphs (b)(1) and (2) of this section as specified below:

(i) While on an assignment to such unit for any period between the dates specified above.

(ii) While attached to such a unit for a period of 30 days consecutive or non-consecutive, between the dates specified above.

(iii) While in active combat against the enemy under conditions other than those prescribed in paragraphs (b) and (c) of this section if a combat decoration has been awarded or an individual certificate testifying to such combat service has been furnished by the commander of an independent force or a division, ship, or air group, or comparable or higher unit.

(d) *Exclusions.* No personnel of the United Nations or of its specialized agencies or of any national government service other than as prescribed above and no International Red Cross personnel engaged for service under the United Nations Commander in Chief with any United Nations relief team in Korea will be eligible for award of the medal.

§ 578.122 Inter-American Defense Board Medal.

(a) The Inter-American Defense Board Medal was established by the Ninety-first Session of the Inter-American Defense Board on December 11, 1945 and authorized by Executive Order 11446, January 18, 1969.

(b) U.S. military personnel who have served on the Inter-American Defense Board for at least 1 year as chairman of the board, delegates, advisers, officers

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of the staff, officers of the secretariat, or officers of the Inter-American Defense College may wear the Inter-American Defense Board ribbon permanently.

(c) U.S. military personnel who have been awarded the Inter-American Defense Board Medal and ribbon may wear them when attending meetings, ceremonies, or other functions where Latin American members of the Board are present.

§ 578.123 Philippine Defense Ribbon.

The Philippine Defense Ribbon is awarded for service in the defense of the Philippines from December 8, 1941 to June 15, 1942, under either of the following conditions:

(a) Participation in any engagement against the enemy in Philippine territory, in Philippine waters, or in the air over the Philippines or over Philippine waters. An individual will be considered as having participated in an engagement if they meet one of the following:

(1) Was a member of the defense garrison of the Bataan Peninsula or of the fortified islands at the entrance to Manila Bay.

(2) Was a member of and present with a unit actually under enemy fire or air attack.

(3) Served on a ship that was under enemy fire or air attack.

(4) Was a crewmember or passenger in an airplane that was under enemy aerial or ground fire.

(b) Assigned or stationed in Philippine territory or in Philippine waters for not less than 30 days during the period.

(c) Individuals who meet conditions set forth in paragraphs (a) and (b) of this section are authorized to wear a bronze service star on the ribbon.

§ 578.124 Philippine Liberation Ribbon.

(a) The Philippine Liberation Ribbon is authorized by DA Circular 59, March 8, 1948.

(b) It is awarded for service in the liberation of the Philippines from October 17, 1944 to September 3, 1945, under any of the following conditions:

(1) Participated in the initial landing operations on Leyte or adjoining is-

lands from October 17, 1944 to October 20, 1944. An individual will be considered as having participated in such operations if he landed on Leyte or adjoining islands, was on a ship in Philippine waters, or was a crewmember of an airplane, which flew over Philippine territory during the period.

(2) Participated in any engagement against the enemy during the campaign on Leyte and adjoining islands. An individual will be considered as having participated in combat if he meets any of the conditions set forth in Philippine Defense Ribbon § 578.123(a)(2) through (4).

(3) Participated in any engagement against the enemy on islands other than those included in paragraph (b)(2) of this section. An individual will be considered as having participated in combat if he or she meets any of the conditions set forth in Philippine Defense Ribbon § 578.123(a)(2) through (4).

(4) Served in the Philippine Islands or on ships in Philippine waters for not less than 30 days during the period.

(c) *Bronze service stars.* An individual who meets more than one of the conditions set forth in paragraph (a) of this section is authorized to wear a bronze service star on the ribbon for each additional condition under which he or she qualifies other than that under which he or she is eligible for the initial award of the ribbon.

§ 578.125 Philippine Independence Ribbon.

The Philippine Independence Ribbon is authorized by DA Circular 59, 1948. Any recipient of both the Philippine Defense and Philippine Liberation ribbons is eligible for award of the Philippine Independence Ribbon. United States Army personnel authorized to wear the Philippine Independence Ribbon under the established criteria, may continue to wear the ribbon, provided the authority for such wear was recorded before November 24, 1954.

§ 578.126 United Nations Medal.

(a) Authorized by the Secretary General of the United Nations and Executive Order 11139, January 7, 1964. U.S. service members who are or have been in the service of the United Nations in operations designated by the Secretary

of Defense may accept the United Nations Medal (UNM) when awarded by the Chief of the United Nations Mission.

(b) *Eligibility.* The eligibility criteria for award of the UNM requires that an individual serve under the operational or tactical control of the United Nations and serve a minimum of 90 consecutive days in the service of the United Nations. The following United Nations missions/operations have been approved for acceptance and wear:

- (1) United Nations Observation Group in Lebanon (UNOGIL);
- (2) United Nations Truce Supervision Organization in Palestine (UNTSO);
- (3) United Nations Military Observer Group in India and Pakistan (UNMOGIP);
- (4) United Nations Security Forces, Hollandia (UNSFH);
- (5) United Nations Transitional Authority in Cambodia (UNTAC);
- (6) United Nations Advance Mission in Cambodia (UNAMIC);
- (7) United Nations Protection Force in Yugoslavia (UNPROFOR);
- (8) United Nations Mission for the Referendum in Western Sahara (MINURSO);
- (9) United Nations Iraq/Kuwait Observation Mission (UNIKOM);
- (10) United Nations Operations in Somalia (to include U.S. Quick Reaction Force members) (UNOSOM);
- (11) United Nations Mission in Haiti (UNMIH);
- (12) United Nations Medal Special Service (UNMSS).

(c) *Wear.* Each United Nations mission for which an UNM is awarded is commemorated by a suspension and service ribbon of unique colors and design. The ribbon and medallion combination take on the name of the specific operation for which the combination was created. For example, the operation in the Former Republic of Yugoslavia is the United Nations Protection Force (UNPROFOR), yielding the UNPROFOR Medal. Service members who are awarded an UNM may wear the first UNM with unique suspension and service ribbon for which they qualify. A bronze service star will denote subsequent awards of the UNM for service in a different United Na-

tions mission. Only one United Nations ribbon is authorized for wear.

(d) *Presentation.* The Senior Representative of the Secretary-General who makes the award normally makes presentation of the UNM in the field. Approval authority to accept and wear the UNM to member of the Armed Forces of the United States is the Secretary of Defense. When presentation is not so accomplished, any person who believes he or she is eligible for award may submit to Commander, USA HRC, (see §578.3(c) for address) and a request for such award with copy of any substantiating documents. Commander, AHRC will forward each such request through the Office of Internal Administration, Office of the Assistant Secretary of State for International Organization Affairs, to the United Nations for consideration.

(e) *Description*—(1) *Medal.* The medal is bronze, 1 $\frac{3}{8}$ inches in diameter, with a top view of the globe enclosed at sides and bottom by a wreath and the letters “UN” at the top of the medal. On the reverse side is the inscription “IN THE SERVICE OF PEACE”. The United Nations Service Medal Korea is the same design, except the obverse does not include the letters “UN” and the medal has a hanger bar with the inscription “KOREA”. On the reverse side of the United Nations Service Medal Korea is the inscription “FOR SERVICE IN DEFENCE OF THE PRINCIPLES OF THE CHARTER OF THE UNITED NATIONS”.

(2) *Ribbon.* Each United Nations mission for which a UNM is awarded is commemorated by a suspension and service ribbon of unique colors and design. The ribbon and medallion combination take on the name of the specific operation for which the combination was created. For example, the operation in the Former Republic of Yugoslavia is the United Nations Protection Force (UNPROFOR), yielding the UNPROFOR Medal. Service members who are awarded a UNM may wear the first UNM with unique suspension and service ribbon for which they qualify. A bronze service star will be worn to denote subsequent awards of the UNM for service in a different United Nations mission. Only one United Nations ribbon is authorized for wear.

§ 578.127 North Atlantic Treaty Organization (NATO) Medal.

(a) The North Atlantic Treaty Organization (NATO) Medal is awarded by the Secretary-General of the North Atlantic Treaty Organization to military and civilian members of the Armed Forces of the United States who participate in NATO operations related to the former Republic of Yugoslavia. The Secretary of Defense authorized acceptance of the NATO Medal on November 14, 1995.

(b) *Acceptance.* Acceptance of the NATO Medal has been approved for U.S. military personnel who serve under NATO command or operational control in direct support of NATO operations in the former Republic of Yugoslavia, or as designated by the Supreme Allied Command, Europe (SACEUR), from July 1, 1992 to a date to be determined.

(c) *Presentation.* The NATO Medal will normally be presented by the Allied Command Europe headquarters exercising operational command or control over U.S. military units or individuals prior to their departure from service with NATO.

(d) *Medal set.* The medal set includes a ribbon clasp denoting the specific operation for which the award was made. U.S. service members are authorized to retain the ribbon clasp presented but may not wear the clasp. Only the basic medal and service ribbon are authorized for wear on the uniform.

(e) *Subsequent awards.* Subsequent awards (if approved by the Secretary of Defense) for service in a different NATO operation, U.S. military personnel will affix a bronze service star to the NATO Medal suspension ribbon and service ribbon.

(f) *Precedence.* The NATO Medal shall have the same precedence as the United Nations Medal, but will rank immediately below the United Nations Medal when the wearer has been awarded both medals.

(g) *Description.* The medal is bronze, 1 $\frac{3}{8}$ inches in diameter, bearing on the obverse the NATO emblem (a four pointed star emitting a ray from each point superimposed on an annulet) enclosed in base by a wreath of olive. The reverse side has a band inscribed "NORTH ATLANTIC TREATY ORGA-

NIZATION" at top and "ORGANISATION DU TRAITE DE L'ATLANTIQUE NORD" at the bottom. In the center is a sprig of olive between the inscription "IN SERVICE OF PEACE AND FREEDOM" above and "AU SERVICE DE LA PAIX ET DE LA LIBERTE" below. The ribbon is 1 $\frac{3}{8}$ inches wide and consists of the following stripes: $\frac{5}{32}$ inch Yale Blue 67176; $\frac{1}{8}$ inch White 67101; $\frac{13}{16}$ inch Yale Blue; $\frac{1}{8}$ inch White; and $\frac{5}{32}$ inch Yale Blue.

§ 578.128 Multinational Force and Observers Medal.

(a) The Multinational Force and Observers (MFO) Medal was established by the Director General, Multinational Force and Observers, March 24, 1982. Presidential acceptance for the United States Armed Forces and DOD civilian personnel is announced by DOD on July 28, 1982.

(b) *Eligibility.* To qualify for the award personnel must have served with the MFO at least ninety (90) cumulative days after August 3, 1981. Effective March 15, 1985, personnel must serve 6 months (170 days minimum) with the MFO to qualify for the award. Periods of service on behalf of the MFO outside of the Sinai, and periods of leave while a member is serving with the MFO, may be counted toward eligibility for the MFO medal. Qualifying time may be lost for disciplinary reasons.

(c) *Awards.* The Director General, MFO makes awards, or in his or her name by officials to whom he or she delegates awarding authority.

(d) *Presentation.* Presentations are usually to be made by personnel designated by the Director General, MFO. When presentation is not accomplished, any person with MFO service who believes he or she is eligible for the award may submit a request for the award to Commander, USA HRC, (see § 578.3(c) for address). This request must include complete details related to MFO duty, including geographical location and inclusive dates of service, and copies of all substantiating documents. Commanding General, USA HRC, will then forward each such request through the Office of Internal Administration, Office of the Assistant Secretary of State for International

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Organization Affairs, to the Multi-national Force and Observers for consideration.

(e) *Subsequent awards.* An appropriate numeral starting with numeral 2 will indicate second and subsequent awards for each completed 6-month tour. If an individual has not completed a cumulative 6-month tour, he or she is not eligible for award of the MFO medal unless one of the following conditions exists:

(1) The award is to be made posthumously.

(2) The member is medically evacuated due to service-incurred injuries or serious illness.

(3) The member is withdrawn at the request of the parent Government for national service reasons under honorable conditions.

§ 578.129 Republic of Vietnam Campaign Medal.

(a) *Criteria.* The Republic of Vietnam Campaign Medal is awarded by the Government of the Republic of Vietnam to members of the United States Armed Forces and authorized by DOD 1348.33-M.

(b) *Requirements.* To qualify for award personnel must meet one of the following requirements:

(1) Have served in the Republic of Vietnam for 6 months during period specified in paragraph (c) of this section.

(2) Have served outside the geographical limits of the Republic of Vietnam and contributed direct combat support to the Republic of Vietnam and Armed Forces for 6 months. Such individuals must meet the criteria established for the Armed Forces Expeditionary Medal (Vietnam) or the Vietnam Service Medal, during the period of service required to qualify for the Republic of Vietnam Campaign Medal.

(3) Have served as in paragraph (b)(1) or (2) of this section for less than 6 months and have been one of the following:

(i) Wounded by hostile forces.

(ii) Captured by hostile forces, but later escaped, was rescued or released.

(iii) Killed in action or otherwise in line of duty.

(4) Personnel assigned in the Republic of Vietnam on January 28, 1973 must meet one of the following:

(i) Served a minimum of 60 days in the Republic of Vietnam as of that date.

(ii) Completed a minimum of 60 days service in the Republic of Vietnam during the period from January 28, 1973 to March 28, 1973, inclusive.

(c) Eligibility for award under authority of this paragraph is limited to the period from March 1, 1961 to March 2, 1973, inclusive. Eligibility for acceptance of this award solely by virtue of service performed prior to March 1, 1961 or subsequent to March 1973 is governed by AR 600-8-22, paragraph 9-8.

(d) The Republic of Vietnam Campaign Medal with Device (1960) and the miniature medal are items of individual purchase.

§ 578.130 Kuwait Liberation Medal—Saudi Arabia.

(a) The Kuwait Liberation Medal is awarded by the Government of Saudi Arabia to members of the Armed Forces of the United States and authorized by DOD on January 3, 1992.

(b) It is awarded to members of the Armed Forces of the U.S. who participated in Operation DESERT STORM between January 17, 1991 and February 28, 1991 in one or more of the following areas: Persian Gulf; Red Sea; Gulf of Oman; that portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude; the Gulf of Aden; or the total land areas of Iraq, Kuwait, Saudi Arabia, Oman, Bahrain, Qatar, and the United Arab Emirates.

(c) To be eligible personnel must meet one of the following qualifications:

(1) Be attached to or regularly serving for one or more days with an organization participating in ground or shore operations.

(2) Be attached to or regularly serving for one or more days aboard a naval vessel directly supporting military operations.

(3) Actually participate as a crew member in one or more aerial flights supporting military operations in the areas designated above.

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(4) Serve on temporary duty for 30 consecutive days during the period January 17, 1991 to February 28, 1991 under any of the criteria in paragraphs (b)(1) through (3) of this section. This time limit may be waived by HQ, USA HRC (AHRC-PDO-PA) for people participating in actual combat operations.

(d) The eligibility period and geographic boundaries were specified by the Government of Saudi Arabia and may not be waived.

(e) Posthumous award to the next of kin of any soldier who lost his or her life, while, or as a direct result of, participating in Operation DESERT STORM between January 17, 1991 and February 28, 1991, without regard to the length of such service, will be made by HQ, USA AHRC (AHRC-PDO-PA).

(f) The Kuwait Liberation Medal, ribbon, and miniature medal are items of individual purchase. The Army accomplished an initial issue to eligible personnel from a one-time stock provided by the Government of Saudi Arabia in 1992.

(g) *Description.* The medal is $1\frac{25}{32}$ inches in width and is described as follows: On a gold sunburst with stylized silver rays, a glob depicting the Arabian Peninsula encircled by a wreath of palm between a scroll in the base inscribed "Liberation of Kuwait" and at the top a palm tree issuing from two diagonally crossed sabers, all gold. The ribbon is $1\frac{3}{8}$ inches wide and consists of the following stripes: $\frac{5}{32}$ inch Old Glory Red 67156; $\frac{1}{64}$ inch black 67138; $\frac{1}{64}$ inch white stripe 67101; center $\frac{5}{8}$ inch irish green 67189; $\frac{1}{64}$ inch white stripe 67101; $\frac{1}{64}$ inch black 67138; and $\frac{5}{32}$ inch Old Glory Red.

§578.131 Kuwait Liberation Medal—Kuwait.

(a) The Kuwait Liberation Medal is awarded by the Government of Kuwait to members of the Armed Forces of the United States and authorized by the DOD on August 7, 1995.

(b) It is awarded to members of the Armed Forces of the U.S. who served in support of Operations DESERT SHIELD and DESERT STORM between August 2, 1990 and August 31, 1993 in one or more of the following areas: the Arabian Gulf; the Red Sea; the Gulf of Oman; that portion of the Arabian Sea

that lies north of 10 degrees north latitude and west of 68 degrees east longitude; the Gulf of Aden; or the total land areas of Iraq, Kuwait, Saudi Arabia, Omar, Bahrain, Qatar, and the United Arab Emirates.

(c) To be eligible, personnel must meet one of the following qualifications:

(1) Be attached to or regularly serving for one or more days with an organization participating in ground and/or shore operations.

(2) Be attached to or regularly serving for one or more days aboard a naval vessel directly supporting military operations.

(3) Actually participate as a crew member in one or more aerial flights directly supporting military operations in the areas designated above.

(4) Serve on temporary duty for 30 consecutive days or 60 nonconsecutive days during the period August 2, 1990 to August 31, 1993 under any of the criteria in paragraphs (c)(1) through (3) of this section. This time limit may be waived by HQ, USA HRC (AHRC-PDO-PA) for soldiers participating in actual combat operations.

(d) The eligibility period and geographic boundaries were specified by the Government of Kuwait and may not be waived.

(e) Posthumous award to the next of kin of any soldier who lost his life, while, or as direct result of participating in Operations DESERT SHIELD/STORM between August 2, 1990 and August 31, 1993, without regard to the length of such service, will be made by HQ, USA HRC (AHRC-PDO-PA).

(f) The Government of Kuwait provided a one-time stock of the Kuwait Liberation Medal for initial issue to eligible personnel.

(g) *Description.* A bronze metal and enamel, $1\frac{1}{16}$ inches in diameter suspended from a bar by a wreath. A obverse bears the Coat of Arms of the State of Kuwait. The Coat of Arms consists of the shield of the flag design in color superimposed on a falcon with wings displayed. The falcon supports a disk containing a sailing ship with the full name of the State written at the top of the disk. At the top of the medal is the inscription "1991 Liberation Medal" in Arabic letters. The reverse

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side is the map of Kuwait on a rayed background. The ribbon is the pattern of the flag of the State of Kuwait and consists of three equal stripes $\frac{29}{64}$ inch each of the following colors: old glory red (cable 67156), white (cable 67101), and irish green (cable 67189). A black trapezium is at top of the ribbon drape and service ribbon.

§ 578.132 Republic of Korea War Service Medal.

(a) The Republic of Korea War Service Medal (ROKWSM) was originally offered to the Armed Forces of the United States by the Ministry of Defense, Republic of Korea, on November 15, 1951. On 20 August 1999, the Assistant Secretary of Defense (Force Management & Policy) approved acceptance and wear of the medal for veterans of the Korean War.

(b) *Criteria.* It is awarded to members of the U.S. Armed Forces who served in Korea and adjacent waters between June 25, 1950 and July 27, 1953. The service prescribed must have been performed as follows:

(1) While on permanent assignment; or

(2) While on temporary duty within the territorial limits of Korea or on waters immediately adjacent thereto for 30 consecutive days or 60 non-consecutive days; or

(3) While as crew members of aircraft, in aerial flight over Korea participating in actual combat operations or in support of combat operations.

(c) *Supply of the medal.* The Air Force is the Executive Agency for the ROKWSM. Therefore, requests for award of the medal should be forwarded to the following address: HQ, Air Force Personnel Center, DPPPRK, 550 C Street W, Suite 12, Randolph AFB, TX 78150-4612.

(d) *Order of precedence.* Order of precedence for non-U.S. service medals and ribbons is determined by date of approval. Accordingly, the ROKWSM will be worn after the Kuwait Liberation Medal—Government of Kuwait. For the majority of Korean War veterans, the medal will be worn after the United Nations Medal or the Republic of Vietnam Campaign Medal, if they served during the Vietnam Conflict era.

(e) *Description.* A gold six pointed star with rays, 37mm in diameter, superimposed by a white enameled star, 42mm in diameter, overall in center a green disc, 18mm in diameter, with the outline of the Vietnamese country with a red flame of three rays between North and South Vietnam. On the reverse of the medal is a circle with a designated band containing the word “CHIEN-DICH” (Campaign) at the top and “BOI-THINH” (Medal) at the bottom. Across the center of the circle is the word “VIET-NAM”. The ribbon is $1\frac{3}{8}$ inches wide and consists of the following stripes: $\frac{1}{16}$ inch gherkin green 67183; $\frac{3}{16}$ inch white 67101; $\frac{5}{16}$ inch gherkin green 67183; $\frac{1}{4}$ inch white 67101; $\frac{5}{16}$ inch gherkin green 67183; $\frac{3}{16}$ inch white 67101; $\frac{1}{16}$ inch gherkin green 67183, and $\frac{3}{16}$ inch white 67101.

§ 578.133 Certificates for decorations.

(a) *Current issue.* A certificate will be presented with each award of an authorized military decoration. In no case will a commander issue a certificate indicating award of a military decoration other than on the standard DA certificate for the awarded decoration. Awards certificates will be issued without reference to numbered oak leaf clusters.

(b) *Completion.* Each certificate for award of the Legion of Merit (LM), Meritorious Service Medal (MSM), Army Commendation Medal (ARCOM) and Army Achievement Medal (AAM) will be completed by the awarding commander and will bear his or her personal signature in the lower right corner. The Permanent Orders number and date are typed on the line on the left side of the LM, MSM, ARCOM, and AAM certificates. The grade, name, and branch of service, together with the place and dates of the act, achievement, or service of the recipient, will be inserted on the certificate in the appropriate spaces.

(c) *Replacement of Award Certificates—*
(1) *Veterans and retirees.* Veterans and retirees awarded U.S. military decorations to whom an appropriate certificate has not been issued may apply for such certificate by writing to the appropriate office indicated in § 578.66.

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(2) *Active duty soldiers.* Active duty soldiers may request replacement certificate through command channels to the headquarters currently having authority to award the decoration for which certificate is required. Each request should include a copy of the orders announcing the award. The replacement certificate will be annotated with the original order number (for example, Per Permanent Orders XX-XX, January 1, 2000).

§ 578.134 Certificate of Achievement.

(a) Commanders may recognize periods of faithful service, acts, or achievements which do not meet the standards required for decorations by issuing to individual U.S. military personnel a DA Form 2442 (Certificate of Achievement) or a Certificate of Achievement of local design.

(b) Certificates of Achievement will be issued under such regulations as the local commander may prescribe.

(c) If a locally designed Certificate of Achievement is printed for use according to this regulation, it may bear reproductions of insignia. In the interest of economy, the use of color will be held to a minimum.

(d) The citation on such certificates will not be worded so that the act of service performed appears to warrant the award of a decoration.

(e) No distinguishing device is authorized for wear to indicate the receipt of a Certificate of Achievement.

§ 578.135 Certificate of appreciation to employers.

(a) To improve employer acceptance of the concept of military leave for participation in Reserve Component training and to encourage employers to adopt liberal military leave policies, certificates of appreciation may be presented to employers who have wholeheartedly and consistently cooperated in granting military leave to employees.

(b) The Commanding Generals, TRADOC, FORSCOM, State adjutants general, Army Reserve General Officer Commands, Corps, and the U.S. Army Military District of Washington are authorized to make this award.

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(c) Certificates will be presented by the awarding commander or by an authorized representative, as appropriate.

§ 578.136 Certificates for badges.

Commanders authorized to award badges may issue, simultaneously, appropriate certificates of achievement to persons under their command who have qualified for the respective badges. The certificate also may bear a citation which will follow closely the prescribed eligibility requirements for the respective badge.

§ 578.137 Cold War Recognition Certificate.

Public Law 105-85, Section 1084, established a Cold War Recognition Certificate to recognize all members of the Armed Forces and qualified Federal government civilian personnel who faithfully and honorably served the United States during the Cold War Era from September 2, 1945 to December 26, 1991. The Cold War Recognition System homepage at <https://www.perscomonline.army.mil/tagd/coldwar/default.htm> announces the program and provides instructions for individual requests.

PART 581—PERSONNEL REVIEW BOARD

Sec.

581.1 Army Disability Review Board.

581.2 Army Discharge Review Board.

581.3 Army Board for Correction of Military Records.

AUTHORITY: 10 U.S.C. 1552, 1553, 1554, 3013, 3014, 3016; 38 U.S.C. 3103(a).

§ 581.1 Army Disability Review Board.

(a) *General provisions—(1) Constitution, purpose, and jurisdiction of review board.*

(1) The Army Disability Review Board (called the review board in this section) is an administrative agency created within the Department of the Army under authority of section 302, title I, Act of June 22, 1944 (58 Stat. 284), as amended by section 4, Act of December 28, 1945 (59 Stat. 623), to review, at the request of any officer retired or released from active service, without pay, for physical disability pursuant to the decision of a retiring board or disposition board, the findings

and decisions of such board. The review board is charged with the duty, in cases within its jurisdiction, of ascertaining whether an applicant for review who was separated from the service or released to inactive service, without pay, for physical disability, incurred such physical disability in line of duty or as an incident of the service. When the review board determines in an individual case within its jurisdiction that physical disability was so incurred, it is authorized in the manner prescribed by this memorandum, to reverse prior findings in such regard and to make such findings in lieu thereof as are warranted by the evidence or pertinent regulations. Such remedial action is intended primarily to insure that no officer separated from the service or returned to an inactive status without pay, for disability, shall be deprived unjustly of retirement pay benefits, or retired status and retired pay, as the case may be, by reason of erroneous findings.

(ii) The class of officers whose cases are reviewable shall include officers of the Army of the United States, other than officers of the Regular Army, who were discharged or released to inactive service under the conditions prescribed in paragraph (a)(1)(i) of this section; and former officers of the Regular Army who were wholly retired under section 1252, Revised Statutes.

(iii) The review board is authorized, upon timely application therefor, to review the proceedings and findings of boards referred to in paragraph (a)(1)(i) of this section; and to receive additional evidence bearing on the causes and service-connection of disabilities in the cases of officers referred to in paragraph (a)(1)(ii) of this section, whose cases were the subject of findings by a retiring or disposition board, and who were separated from the service or released to inactive service, without pay, by reason of physical disability, whether denial of retirement or retirement pay benefits, as the case may be, was pursuant to the adverse findings of a board, or was pursuant to administrative action in a case where there was favorable action by a board.

(iv) In carrying out its duties under this memorandum such review board shall have the same powers as exer-

cised by, or vested in, the board whose findings and decisions are being reviewed.

(2) *Application for review.* (i) Any officer desiring a review of his case will make a written application therefor on WD AGO Form 0258 (Application for Review of Army Retiring Board Proceedings) which may be obtained from The Adjutant General, Washington, DC 20310, Attention: AGPO-S-D.

(ii) No application for review will be granted unless received by the Department of the Army within 15 years after the date on which such officer was separated from the service or released to inactive service, without pay, for physical disability, or within 15 years after June 22, 1944, whichever date is the later.

(iii) The Adjutant General, upon receipt of an application for review, will note thereon the time of receipt thereof and will, in cases where the jurisdiction for review by the review board is established, assemble the originals or certified copies of all available Department of the Army and/or other record pertaining to the health and physical condition of the applicant, including the record of the proceedings and findings of all retiring and disposition boards in question and the records of all administration and/or executive action taken thereon. Such records, together with the application and any supporting documents submitted therewith, will be transmitted to the president of the review board.

(3) *Changes in procedure of review board.* The review board may initiate recommendation for such changes in procedures as established herein as may be deemed necessary for the proper functioning of the review board. Such changes will be subject to the approval of the Secretary of the Army.

(b) *Proceedings of review board—(1) Convening of review board.* (i) The review board will be convened at the call of its president and will recess or adjourn at his order. In the event of the absence or incapacity of the president, the next senior member will serve as acting president for all purposes.

(ii) Unless otherwise directed by its president, the review board will convene in Washington, DC, at the time and place indicated by him.

(iii) The review board will assemble in open session for the consideration and determination of cases presented to it. After the conclusion of such hearing, the review board will as soon as practicable thereafter convene in closed session for determination.

(2) *Hearings.* (i) An applicant for review, upon request, is entitled by law to appear before the review board in open session either in person or by counsel of his own selection. Witnesses shall be permitted to present testimony either in person or by affidavit. As used in the regulations in this part the term "counsel" shall be construed to include members of the Federal bar, the bar of any state, accredited representatives of veterans' organizations recognized by the Veterans' Administration under section 200 of the Act of June 29, 1936 (49 Stat. 2031), and such other persons who, in the opinion of the review board, are considered to be competent to present equitably and comprehensively the claim of the applicant for review. In no case will the expenses or compensation of counsel for the applicant be paid by the Government.

(ii) In every case in which a hearing is authorized, the secretary will transmit to the applicant and to designated counsel for the applicant, if any, a written notice by registered mail stating the time and place of hearing. Such notice shall be mailed at least 30 days in advance of the date on which the case is set for hearing except in cases in which the applicant waives the right of personal appearance and/or representation by counsel. Such notice shall constitute compliance with the requirement of notice to applicant and his counsel. The record shall contain the certificate of the secretary that written notice was given applicant and his counsel, if any, and the time and manner thereof.

(iii) An applicant who requests a hearing and who, after being duly notified of the time and place of hearing, fails to appear at the appointed time, either in person or by counsel, or, in writing, waives his right to appear, thereby waives such right.

(iv) In the conduct of its inquiries, the review board shall not be limited

by the restrictions of common law rules of evidence.

(v) In the case wherein it is advisable and practicable, the review board may, at the request of the examiner, or upon its own motion, request The Surgeon General to detail one or more medical officers to make physical examination of the applicant, if available, and report their findings resulting from such examination with respect to the matters at issue, either in person or by affidavit. When testifying in person at a hearing, such medical witnesses will be subject to cross-examination. Similarly the medical members of the board may examine the applicant, if available, and testify as witnesses concerning the results of such examination.

(vi) Expenses incurred by the applicant, his witnesses, or in the procurement of their testimony, whether in person, by affidavit or by deposition will not be paid by the Government.

(3) *Continuances.* The review board may continue a hearing on its own motion. A request for continuance by the examiner or by or on behalf of the applicant may be granted, if in the board's discretion, a continuance appears necessary to insure a full and fair hearing.

(c) *Findings, conclusions, and directions—(1) Findings, conclusions, and directions of review board.* (i) The review board will make written findings in closed session in each case. Such findings will include:

(a) Statement of complete findings of the retiring or disposition board and of administrative action subsequent thereto in the proceedings under review;

(b) A finding affirming or reversing the findings of such retiring or disposition board or such administrative action, specifying which of the findings or administrative actions are affirmed and which are reversed.

(ii) In the event the review board reverses any of such original findings or administrative actions, the review board will then make complete findings which shall include the affirmed findings of the original board or of administrative action subsequent thereto. Such complete findings shall include the following:

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(a) Whether the applicant was permanently incapacitated for active service at the time of his separation from the service or release to inactive service.

(b) The cause or causes of the incapacity.

(c) The approximate date of origin of each incapacitating defect.

(d) The date officer became incapacitated for active service.

(e) Whether the cause or causes of the incapacity was or was not an incident of service.

(f) Whether the cause or causes of the incapacity had been permanently aggravated by military service.

(g) Whether such incapacity for active service was or was not the result of an incident of service.

(h) Whether the officer's incapacity was or was not incurred in combat with an enemy of the United States or whether it did or did not result from an explosion of an instrumentality of war in line of duty.

(iii) In the event the review board finds the officer permanently incapacitated for active service and that the incapacity was an incident of service, it will make an additional finding specifying the grade in which the officer is entitled to be retired or to be certified for retirement pay benefits.

(iv) The findings, conclusions, and directions of a majority of the review board shall constitute the findings, conclusions, and directions of the review board, and when made, will be signed by each member of the review board who concurs therein, filed, and authenticated by the secretary.

(d) *Disposition of and action upon proceedings*—(1) *Record of proceedings.* (i) When the review board has concluded its proceedings in any case, the secretary will prepare a complete record thereof. Such record shall include the application for review; a transcript of the hearing if any; affidavits, papers and documents considered by the review board; all briefs and written arguments filed in the case; the report of the examiner; the findings, conclusions, and directions of the review board; any minority report prepared by dissenting members of the review board; and all other papers and documents necessary to reflect a true and complete history of the proceedings.

The record so prepared will be signed by the president of the review board and authenticated by its secretary as being true and complete. In the event of the absence or incapacity of the secretary, the record may be authenticated by a second participating member of the review board.

(ii) All records of proceedings of the review board shall be confidential, except that upon written request from the applicant, his guardian or legal representative, The Adjutant General will furnish a copy of the proceedings of the review board, less any exhibits which it may be found impracticable to reproduce out which will include:

(a) A copy of the order appointing the board.

(b) The findings of the Army retiring board affirmed.

(c) The findings of the Army retiring board reversed.

(d) The findings of the review board.

(e) The conclusions which were made by the review board.

(f) The directions of the Secretary of the Army.

If it should appear that furnishing such information would prove injurious to the physical or mental health of the applicant, such information will be furnished only to the guardian or legal representative of the applicant. The Adjutant General, subject to the foregoing restrictions, will make available for inspection, upon request of the applicant, his guardian or legal representative, a record of the proceedings of any case reviewed by the review board, but copies of the proceedings of any case heard prior to January 4, 1946, will not be furnished if such copies are not readily available.

(2) *Final action by review board.* When the review board has completed the proceedings and has arrived at its decision, the proceedings, together with the review board's decision, will be transmitted to The Adjutant General for appropriate Department of the Army action. The Adjutant General, in the name of the President of the United States, will indicate on the record of such proceedings and decision the President's approval or disapproval of the action of the review board, and will perform such administrative acts as may be necessary and thereafter will

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notify the applicant and/or his counsel of the action taken. Written notice, specifying the action taken and the date thereof, will be transmitted by The Adjutant General to the president of the review board to be filed by the secretary as a part of the records of the board pertaining to each case.

(e) *Rehearings*—(1) *Policy on the granting of rehearings*. After the review board has reviewed a case and its findings and decision have been approved, the case will normally not be reconsidered except on the basis of new, pertinent, and material evidence, which if previously considered could reasonably be expected to have caused findings and a decision other than those rendered as the result of the original review. An application for rehearing must be made within a reasonable time after the discovery of the new evidence, mentioned in this subparagraph, and the request for rehearing must be accompanied by such new evidence and by a showing that the applicant was duly diligent in attempting to secure all available evidence for presentation to the review board when his case was previously reviewed and that the reason for the delay in discovering such new evidence was not due to fault or neglect on the part of the applicant.

(2) *Application for rehearing*. Any officer desiring a rehearing of his case will make a written application therefor on WD AGO Form 0413 (Application for Review of Findings of the Army Disability Review Board) which may be obtained from The Adjutant General, Washington, DC 20310, Attention: AGPO-S-D.

[13 FR 6805, Nov. 19, 1948, as amended at 19 FR 6706, Oct. 19, 1954]

§ 581.2 Army Discharge Review Board.

(a) *Purpose*. This regulation implements 10 U.S.C. 1553, Pub. L. 95-126, and DOD Directive 1332.28 (app. A).

(b) *Explanation of terms*—(1) *Legal consultant of the Army Discharge Review Board (ADRB)*. An officer of The Judge Advocate General's Corps assigned to the ADRB to provide opinions and guidance on legal matters relating to ADRB functions.

(2) *Medical consultant of the ADRB*. An officer of the Army Medical Corps assigned to the ADRB to provide opinions

and guidance on medical matters relating to ADRB functions.

(3) *Video tape hearing*. A hearing conducted by an ADRB hearing examiner at which an applicant is given the opportunity to present his/her appeal to the hearing examiner, with the entire presentation, including cross-examination by the hearing examiner, recorded on video tape. This video tape presentation is later displayed to a full ADRB panel. Video tape hearings will be conducted only with the consent of the applicant and with the concurrence of the President of the ADRB.

(c) *Composition and responsibilities*—(1) *Authority*. The ADRB is established under Pub. L. 95-126 and 10 U.S.C. 1553 and is responsible for the implementation of the Discharge Review Board (DRB) procedures and standards within DA.

(2) *The ADRB president*. The president is designated by the Secretary of the Army (SA). The President—

(i) Is responsible for the operation of the ADRB.

(ii) Prescribes the operating procedures of the ADRB.

(iii) Designates officers to sit on panels.

(iv) Schedules panels to hear discharge review appeals.

(v) Monitors the DOD directed responsibilities of the SA on service discharge review matters for the DOD.

(3) *ADRB panels and members*. The ADRB will have one or more panels. Each panel, when in deliberation, will consist of five officers. The senior officer (or as designated by the president ADRB) will act as the presiding officer.

(4) *Secretary Recorder (SR) Branch*. The Chief, SR—

(i) Ensures the efficient overall operation and support of the ADRB panels.

(ii) Authenticates the case report and directives of cases heard.

(5) *Secretary Recorder*. The SR is an officer assigned to the SR Branch whose duties are to—

(i) Schedule, coordinate, and arrange for panel hearings at a designated site.

(ii) Administer oaths to applicants and witnesses under Article 136 UCMJ.

(iii) Ensure that the proceedings of the cases heard and recorded into the case report and directive of cases.

(6) *Administrative Specialist.* An Administrative Specialist is an enlisted member assigned to the SR Branch whose duties are to—

(i) Assist the SR in arranging panel hearings.

(ii) Operate and maintain video and video recording equipment.

(iii) Aid the SR in the administrative operations of the panels.

(7) *Administrative personnel.* Such administrative personnel as are required for the proper functions of the ADRB and its panels will be furnished by the SA.

(d) *Special standards.* (1) Under the November 27, 1979, order of the United States District Court for the District of Columbia in “Giles v. Secretary of the Army” (Civil Action No. 77-0904), a former Army service member is entitled to an honorable discharge if a less than honorable discharge was issued to the service member who was discharged before 1 January 1975 as a result of an administrative proceeding in which the Army introduced evidence developed by or as a direct or indirect result of compelled urinalysis testing administered for the purpose of identifying drug abusers (either for the purpose of entry into a treatment program or to monitor progress through rehabilitation or follow up).

(2) Applicants who believe they fall within the scope of paragraph (d)(1) of this section should place the work CATEGORY “G” in block 7, DD Form 293, (Application for Review of Discharge or Dismissal from the Armed Forces of the United States). Such applications will be reviewed expeditiously by a designated official who will either send the individual an honorable discharge certificate if the individual falls within the scope of paragraph (d)(1) of this section or forward the application to the ADRB if the individual does not fall within the scope of paragraph (d)(1) of this section. The action of the designated official will not constitute an action or decision by the ADRB.

[50 FR 33035, Aug. 16, 1985]

§581.3 Army Board for Correction of Military Records.

(a) *General*—(1) *Purpose.* This section prescribes the policies and procedures

for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR).

(2) *Statutory authority.* Title 10 U.S.C Section 1552, Correction of Military Records; Claims Incident Thereto, is the statutory authority for this regulation.

(b) *Responsibilities*—(1) *The Secretary of the Army.* The Secretary of the Army will oversee the operations of the ABCMR. The Secretary will take final action on applications, as appropriate.

(2) *The ABCMR Director.* The ABCMR Director will manage the ABCMR’s day-to-day operations.

(3) *The chair of an ABCMR panel.* The chair of a given ABCMR panel will preside over the panel, conduct a hearing, maintain order, ensure the applicant receives a full and fair opportunity to be heard, and certify the written record of proceedings in pro forma and formal hearings as being true and correct.

(4) *The ABCMR members.* The ABCMR members will—

(i) Review all applications that are properly before them to determine the existence of error or injustice.

(ii) If persuaded that material error or injustice exists, and that sufficient evidence exists on the record, direct or recommend changes in military records to correct the error or injustice.

(iii) Recommend a hearing when appropriate in the interest of justice.

(iv) Deny applications when the alleged error or injustice is not adequately supported by the evidence, and when a hearing is not deemed proper.

(v) Deny applications when the application is not filed within prescribed time limits and when it is not in the interest of justice to excuse the failure to file in a timely manner.

(5) *The director of an Army records holding agency.* The director of an Army records holding agency will—

(i) Take appropriate action on routine issues that may be administratively corrected under authority inherent in the custodian of the records and that do not require ABCMR action.

(ii) Furnish all requested Army military records to the ABCMR.

(iii) Request additional information from the applicant, if needed, to assist

the ABCMR in conducting a full and fair review of the matter.

(iv) Take corrective action directed by the ABCMR or the Secretary of the Army.

(v) Inform the Defense Finance and Accounting Service (DFAS), when appropriate; the applicant; applicant's counsel, if any; and interested Members of Congress, if any, after a correction is complete.

(vi) Return original records of the soldier or former soldier obtained from the Department of Veterans Affairs (VA).

(6) *The commanders of Army Staff agencies and commands.* The commanders of Army Staff agencies and commands will—

(i) Furnish advisory opinions on matters within their areas of expertise upon request of the ABCMR, in a timely manner.

(ii) Obtain additional information or documentation as needed before providing the opinions to the ABCMR.

(iii) Provide records, investigations, information, and documentation upon request of the ABCMR.

(iv) Provide additional assistance upon request of the ABCMR.

(v) Take corrective action directed by the ABCMR or the Secretary of the Army.

(7) *The Director, Defense Finance and Accounting Service (DFAS).* At the request of the ABCMR staff, the Director, DFAS, will—

(i) Furnish advisory opinions on matters within the DFAS area of expertise upon request.

(ii) Obtain additional information or documentation as needed before providing the opinions.

(iii) Provide financial records upon request.

(iv) On behalf of the Army, settle claims that are based on ABCMR final actions.

(v) Report quarterly to the ABCMR Director on the monies expended as a result of ABCMR action and the names of the payees.

(c) *ABCMR establishment and functions—(1) ABCMR establishment.* The ABCMR operates pursuant to law (10 U.S.C. 1552) within the Office of the Secretary of the Army. The ABCMR consists of civilians regularly em-

ployed in the executive part of the Department of the Army (DA) who are appointed by the Secretary of the Army and serve on the ABCMR as an additional duty. Three members constitute a quorum.

(2) *ABCMR functions.* (i) The ABCMR considers individual applications that are properly brought before it. In appropriate cases, it directs or recommends correction of military records to remove an error or injustice.

(ii) When an applicant has suffered reprisal under the Military Whistleblower Protection Act 10 U.S.C. 1034 and Department of Defense Directive (DODD) 7050.6, the ABCMR may recommend to the Secretary of the Army that disciplinary or administrative action be taken against any Army official who committed an act of reprisal against the applicant.

(iii) The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing in 10 U.S.C. 1034 and DODD 7050.6) or request additional evidence or opinions.

(d) *Application procedures—(1) Who may apply.* (i) The ABCMR's jurisdiction under 10 U.S.C. 1552 extends to any military record of the DA. It is the nature of the record and the status of the applicant that define the ABCMR's jurisdiction.

(ii) Usually applicants are soldiers or former soldiers of the Active Army, the U.S. Army Reserve (USAR), and in certain cases, the Army National Guard of the United States (ARNGUS) and other military and civilian individuals affected by an Army military record. Requests are personal to the applicant and relate to military records. Requests are submitted on DD Form 149 (Application for Correction of Military Record under the Provisions of 10 U.S.C. 1552). Soldiers need not submit applications through their chain of command.

(iii) 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, missing, or deceased. Depending on the circumstances, a

child, spouse, parent or other close relative, heir, or legal representative (such as a guardian or executor) of the soldier or former soldier may be able to demonstrate a proper interest. Applicants must send proof of proper interest with the application when requesting correction of another person's military records.

(2) *Time limits.* Applicants must file an application within 3 years after an alleged error or injustice is discovered or reasonably should have been discovered. The ABCMR may deny an untimely application. The ABCMR may excuse untimely filing in the interest of justice.

(3) *Administrative remedies.* The ABCMR will not consider an application until the applicant has exhausted all administrative remedies to correct the alleged error or injustice.

(4) *Stay of other proceedings.* Applying to the ABCMR does not stay other proceedings.

(5) *Counsel.* (i) Applicants may be represented by counsel, at their own expense.

(ii) See DODD 7050.6 for provisions for counsel in cases processed under 10 U.S.C. 1034.

(e) *Actions by the ABCMR Director and staff—(1) Criteria.* The ABCMR staff will review each application to determine if it meets the criteria for consideration by the ABCMR. The application may be returned without action if—

(i) The applicant fails to complete and sign the application.

(ii) The applicant has not exhausted all other administrative remedies.

(iii) The ABCMR does not have jurisdiction to grant the requested relief.

(iv) No new evidence was submitted with a request for reconsideration.

(2) *Burden of proof.* The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

(3) *ABCMR consideration.* (i) A panel consisting of at least three ABCMR members will consider each application that is properly brought before it. One panel member will serve as the chair.

(ii) The panel members may consider a case on the merits in executive session or may authorize a hearing.

(iii) Each application will be reviewed to determine—

(A) Whether the preponderance of the evidence shows that an error or injustice exists and—

(1) If so, what relief is appropriate.

(2) If not, deny relief.

(B) Whether to authorize a hearing.

(C) If the application is filed outside the statute of limitations and whether to deny based on untimeliness or to waive the statute in the interest of justice.

(f) *Hearings.* ABCMR hearings. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

(g) *Disposition of applications—(1) ABCMR decisions.* The panel members' majority vote constitutes the action of the ABCMR. The ABCMR's findings, recommendations, and in the case of a denial, the rationale will be in writing.

(2) *ABCMR final action.* (i) Except as otherwise provided, the ABCMR acts for the Secretary of the Army, and an ABCMR decision is final when it—

(A) Denies any application (except for actions based on reprisals investigated under 10 U.S.C. 1034).

(B) Grants any application in whole or in part without a hearing when—

(1) The relief is as recommended by the proper staff agency in an advisory opinion; and

(2) Is unanimously agreed to by the ABCMR panel; and

(3) Does not involve an appointment or promotion requiring confirmation by the Senate.

(ii) The ABCMR will forward the decisional document to the Secretary of the Army for final decision in any case in which—

(A) A hearing was held.

(B) The facts involve reprisals under the Military Whistleblower Protection Act, confirmed by the DOD Inspector General (DODIG) under 10 U.S.C. 1034 and DODD 7050.6.

(C) The ABCMR recommends relief but is not authorized to act for the Secretary of the Army on the application.

(3) *Decision of the Secretary of the Army.* (i) The Secretary of the Army may direct such action as he or she

deems proper on each case. Cases returned to the Board for further consideration will be accompanied by a brief statement of the reasons for such action. If the Secretary does not accept the ABCMR's recommendation, adopts a minority position, or fashions an action that he or she deems proper and supported by the record, that decision will be in writing and will include a brief statement of the grounds for denial or revision.

(ii) The Secretary of the Army will issue decisions on cases covered by the Military Whistleblower Protection Act (10 U.S.C. 1034 and DODD 7050.6). In cases where the DODIG concluded that there was reprisal, these decisions will be made within 180 days after receipt of the application and the investigative report by the DODIG, the Department of the Army Inspector General (DAIG), or other Inspector General offices. Unless the full relief requested is granted, these applicants will be informed of their right to request review of the decision by the Secretary of Defense.

(4) *Reconsideration of ABCMR decision.* An applicant may request the ABCMR to reconsider a Board decision under the following circumstances:

(i) If the ABCMR receives the request for reconsideration within 1 year of the ABCMR's original decision and if the ABCMR has not previously reconsidered the matter, the ABCMR staff will review the request to determine if it contains evidence (including, but not limited to, any facts or arguments as to why relief should be granted) that was not in the record at the time of the ABCMR's prior consideration. If new evidence has been submitted, the request will be submitted to the ABCMR for its determination of whether the new evidence is sufficient to demonstrate material error or injustice. If no new evidence is found, the ABCMR staff will return the application to the applicant without action.

(ii) If the ABCMR receives a request for reconsideration more than 1 year after the ABCMR's original decision or after the ABCMR has already considered one request for reconsideration, then the case will be returned without action and the applicant will be advised the next remedy is appeal to a court of appropriate jurisdiction.

(h) *Claims/Expenses—(1) Authority.* (i) The Army, by law, may pay claims for amounts due to applicants as a result of correction of military records.

(ii) The Army may not pay any claim previously compensated by Congress through enactment of a private law.

(iii) The Army may not pay for any benefit to which the applicant might later become entitled under the laws and regulations managed by the VA.

(2) *Settlement of claims.* (i) The ABCMR will furnish DFAS copies of decisions potentially affecting monetary entitlement or benefits. The DFAS will treat such decisions as claims for payment by or on behalf of the applicant.

(ii) The DFAS will settle claims on the basis of the corrected military record. The DFAS will compute the amount due, if any. The DFAS may require applicants to furnish additional information to establish their status as proper parties to the claim and to aid in deciding amounts due. Earnings received from civilian employment during any period for which active duty pay and allowances are payable will be deducted. The applicant's acceptance of a settlement fully satisfies the claim concerned.

(3) *Payment of expenses.* The Army may not pay attorney's fees or other expenses incurred by or on behalf of an applicant in connection with an application for correction of military records under 10 U.S.C. 1552.

(i) *Miscellaneous provisions—(1) Special standards.* (i) Pursuant to the November 27, 1979 order of the United States District Court for the District of Columbia in *Giles v. Secretary of the Army* (Civil Action No. 77-0904), a former Army soldier is entitled to an honorable discharge if a less than honorable discharge was issued to the soldier on or before November 27, 1979 in an administrative proceeding in which the Army introduced evidence developed by or as a direct or indirect result of compelled urinalysis testing administered for the purpose of identifying drug abusers (either for the purposes of entry into a treatment program or to monitor progress through rehabilitation or follow-up).

(ii) Applicants who believe that they fall within the scope of paragraph (i)(1)(i) of this section should place the

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term "CATEGORY G" in block 11b of DD Form 149. Such applications should be expeditiously reviewed by a designated official, who will either send the individual an honorable discharge certificate if the individual falls within the scope of paragraph (i)(1)(i) of this section, or forward the application to the Discharge Review Board if the individual does not fall within the scope of paragraph (i)(1)(i) of this section. The action of the designated official will not constitute an action or decision by the ABCMR.

(2) *Public access to decisions.* (i) After deletion of personal information, a redacted copy of each decision will be indexed by subject and made available for review and copying at a public reading room at Crystal Mall 4, 1941 Jefferson Davis Highway, Arlington, Virginia. The index will be in a usable and concise form so as to indicate the topic considered and the reasons for the decision. Under the Freedom of Information Act (5 U.S.C. 552), records created on or after November 1, 1996 will be available by electronic means.

(ii) Under the Freedom of Information Act and the Privacy Act of 1974 (5 U.S.C. 552a), the ABCMR will not furnish to third parties information submitted with or about an application unless specific written authorization is received from the applicant or unless the Board is otherwise authorized by law.

[65 FR 17441, Apr. 3, 2000, as amended at 70 FR 67368, Nov. 7, 2005]

PART 583—FORMER PERSONNEL [RESERVED]

PART 584—FAMILY SUPPORT, CHILD CUSTODY, AND PATERNITY

Sec.

- 584.1 General.
- 584.2 Family support and child custody.
- 584.3 Paternity claims.
- 584.4 Adoption proceedings.
- 584.5 U.S. citizenship determinations on children born out of wedlock in a foreign country.
- 584.6 Procedures governing nonactive duty or discharged personnel.
- 584.7 Basic allowance for quarters.
- 584.8 Garnishment.
- 584.9 Involuntary allotments.

APPENDIX A TO PART 584—REFERENCE

AUTHORITY: 10 U.S.C. 3012.

SOURCE: 50 FR 52447, Dec. 24, 1985, unless otherwise noted.

§ 584.1 General.

(a) *Purpose.* This regulation sets forth the Department of the Army (DA) policy, responsibilities, and procedures on—

(1) Support and nonsupport of family members.

(2) Child custody.

(3) Paternity claims.

(4) Adoption proceedings involving the children of soldiers.

(b) *References.* Required and related publications and prescribed and referenced forms are listed in appendix A.

(c) *Explanation of abbreviations and terms.* Abbreviations and special terms used in this regulation are explained in the glossary.

(d) *Responsibilities.* (1) The Deputy Chief of Staff for Personnel will set policy for processing—

(i) Nonsupport complaints.

(ii) Child custody complaints.

(iii) Paternity claims.

(iv) Requests on adoption proceedings of children of soldiers.

(2) The Commanding General (CG), U.S. Army Community and Family Support Center (USACFSC) will—

(i) Set procedures for processing the following:

(A) Nonsupport complaints.

(B) Child custody complaints.

(C) Paternity claims.

(D) Requests regarding adoption proceedings of children of soldiers.

(ii) Process nonsupport complaints, child custody complaints, and paternity claims received at USACFSC regarding Army soldiers.

(iii) Carry out the objectives of this regulation to protect the rights of the soldier, the family, and the interests of the Army.

(iv) Advise and assist the heads of Headquarters, Department of the Army (HQDA) agencies, commanders of the major Army commands, and other commanders on matters pertaining to—

(A) Nonsupport.

(B) Child custody.

(C) Paternity.

(D) Adoption proceedings of children of soldiers.

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(3) Officers having general court-martial jurisdiction will give special emphasis to the support of family members in command information programs. This includes informing soldiers of Army policy and of their responsibility to provide adequate support for all family members and to comply with all court orders.

(4) First level field grade commanders will monitor all instances of soldiers' repeated failure to meet the requirements of this regulation that are brought to their attention. They will take action, when proper.

(5) Immediate commanders will—

(i) Ensure that soldiers are informed of the DA policy on support of family members and that they comply with court orders. They will also inform soldiers of the possible consequences of failing to fulfill financial obligations. This information will be included during inprocessing and outprocessing briefings, particularly during processing for mobilization and overseas movement.

(ii) Process nonsupport complaints, child custody complaints, and paternity claims per this regulation.

(iii) Counsel soldiers when complaints and claim are received. If the soldier is suspected of criminal conduct, self-incrimination protections (article 31, Uniform Code of Military Justice (UCMJ) and rights advisement) must be provided. (See § 584.2(g)(4).)

(iv) Answer all correspondence received from CG, USACFSC and other DA officials. In answering this correspondence, the commander will—

(A) Furnish complete details regarding nonsupport complaints, child custody complaints, and paternity claims.

(B) Reveal whether or not the soldier authorized the release outside the Department of Defense (DOD) of information obtained from a system of records. His or her decision should be recorded on DA Form 5459-R (Authorization to Release Information from Army Records on Nonsupport/Child Custody/Paternity Complaints).

(v) Answer all correspondence received directly from family members, legal assistance attorneys, and others. Normally, replies will not include information obtained from a system of records without the soldier's written

consent. (See § 584.1(f).) Commanders may coordinate responses with the Staff Judge Advocate (SJA). Also, the commander will ask the SJA for guidance in unusual or difficult situations.

(vi) Inform the first level field grade commander of all instances of the soldier's repeated failure to meet the requirements of this regulation or to comply with court orders. Also, point out actions taken or contemplated to correct instances of nonsupport of family members or continuing violations of court orders.

(vii) Refer correspondence or queries received from news media organizations to the unit, installation, or command public affairs officer for response.

(viii) Take appropriate action against soldiers who fail to comply with this regulation. These actions include, but are not limited to, the actions in § 584.1(d)(5)(viii) (A) through (E). Failure to comply with the minimum support requirements (§ 584.2(d)) or the child custody provisions (§ 584.2(e)) of this regulation may be charged as violations of article 92, UCMJ, Article 132, UCMJ, prohibits the making of false claims. Article 133, UCMJ, covers conduct unbecoming an officer. Article 134, UCMJ, concerns dishonorable failure to pay debts and conduct of a nature to bring discredit upon the Armed Forces. Also, the criminal laws of some States prohibit the abduction of children by a parent or the nonsupport of family members in violation of existing court orders. These laws may also apply against soldiers under article 134, UCMJ, and Assimilative Crimes Act, section 13, title 18, United States Code (18 U.S.C. 13).

(A) Denial of reenlistment for enlisted members (AR 601-280).

(B) Letter of reprimand for filing in a soldier's Military Personnel Records Jacket or Official Military Personnel File (AR 600-37).

(C) Administrative separation from the service (AR 635-100 or AR 635-200).

(D) Nonjudicial punishment under article 15, UCMJ.

(E) Court-martial.

(ix) Urge soldiers to provide additional financial support beyond the required minimum whether the needs of the family so require.

(x) After coordination with the SJA and appropriate command representatives, and under applicable State, Federal, and host country laws, take remedial steps to assist in the following:

(A) Elimination of continuing violations of court orders and this regulation on child custody.

(B) Return of such children to the parent or guardian entitled to custody.

(6) The unit, installation, or command public affairs officer will—

(i) Answer correspondence and queries received from news media organizations.

(ii) Coordinate with the SJA before making any response.

(e) *Policy.* (1) Soldiers of the Army are required to manage their personal affairs satisfactorily. This responsibility includes—

(i) Providing adequate and continuous support to or for family members. (See § 584.2.)

(ii) Complying with all court orders.

(2) The Army has an interest in the welfare of both soldiers and their families. This is recognized by numerous laws and programs authorizing the following:

(i) Family housing.

(ii) Living and travel allowances.

(iii) Medical care.

(iv) Child care and development.

(v) Community support services.

(3) Because of military duty, soldiers and their families often live in States in which they have not established domicile. Frequently, they reside in foreign nations. This often places soldiers beyond the judicial process of State courts.

(4) The Army recognizes the transient nature of military duty. This regulation prohibits the use of a soldier's military status or assignment to deny financial support to family members or to evade court orders on child support or custody. Commanders have a responsibility to ensure that soldiers provide for the welfare of their families. Before recommending approval of requests for, or extensions of, overseas assignments, commanders should consider whether the soldier's overseas assignment will adversely affect the legal rights of family members in pending court actions against the soldier.

(5) The policy in this regulation regarding the financial support of family members is solely intended as an interim measure until the parties—

(i) Arrive at a mutually satisfactory agreement, or

(ii) Resolve their differences in court.

(6) Soldiers are entitled to the same legal rights and privileges in State courts as civilians. This includes determining the extent and amount of their support obligations to family members. This regulation is not intended to be used as a guide by courts in determining the following:

(i) The existence of support obligations.

(ii) The amount of past, present, or future support obligations.

(f) *Release of information.* (1) Soldiers will be provided the opportunity of completing DA Form 5459-R before being questioned about complaints or claims under this regulation. Information voluntarily provided by soldiers may be used by commanders to answer inquiries. Replies normally will not include information obtained from a system of records without the soldier's written consent.

(2) Some information may be released outside DOD from a system of records even without the soldier's written consent. Under the Privacy Act (5 U.S.C. 552a(b)(2) and AR 340-21, para 3-3), information may be released, if required, under the Freedom of Information Act. Under 5 U.S.C. 552(b)(6) and AR 340-17, chapter III, information from personnel and other similar files may be released if it does not constitute a "clearly unwarranted invasion of privacy." The information released must be in the public interest.

(3) The type of information that may be released from a system of records without the soldier's consent will vary from case to case. In each case, the public interest of having soldiers support their families and obey court orders must be balanced against the sensitivity of the privacy interests involved. Army policy favors permanent resolution of support and custody matters in court. The denial of information that hinders such resolution is not in the public interest.

(4) Before releasing information from a system of records without the soldier's consent, commanders may consult the SJA. Generally, the types of information shown below may be released to the complaining family member entitled to support or those authorized by the family member to act in his or her behalf (for example, legal assistance attorneys, Member of Congress, courts, Government welfare agencies).

(i) Present unit of assignment, including port calls and future duty assignments, permanent or temporary, if known.

(ii) Scheduled separation and retirement dates from the Service.

(iii) Rank and authorized pay and allowances for that grade.

(iv) Allotments authorized or being authorized for or in behalf of the family member entitled to support.

(v) The soldier's stated intentions, if any, regarding resolution of the complaint.

(vi) The general whereabouts of the soldier's children, if known.

(5) The SJA should be consulted for legal advice before the residential address of a soldier or family member is released.

(6) Any information released should be pertinent to the inquiry. The soldier's relationship, if any, to the person making the inquiry, should be considered. Consistent with the purpose of this regulation, information that unduly invades the privacy of the soldier or his or her family should not be released.

(g) *Penalties.* Compliance with the minimum support requirements (§ 584.2(d)) and child custody provisions (§ 584.2(e)) of this regulation will be enforced by administrative and criminal remedies as appropriate.

(h) *Basic allowance for quarters.* A summary of the rules regarding entitlements to basic allowance for quarters (BAQ) is in § 584.7. The minimum support requirements of this regulation are stated in amounts equal to a soldier's BAQ at the "with dependents" rate. However, a soldier's entitlement or lack of entitlement to such allowances has no relationship to the obligation under this regulation to support family members. Except for § 584.2(f)(2)(ii)(B), the actual receipt or

nonreceipt of BAQ also has no relationship to that obligation.

(i) *Entitlement of variable housing allowance.* Soldiers entitled to BAQ at the "with" or "without dependents" rate may be entitled to variable housing allowance (VHA). Terms for receiving VHA are set forth in the Joint Travel Regulations, M4550 through M4557. Soldiers may use VHA to defray housing costs for family members.

(j) *Garnishment.* A summary of the rules regarding garnishment of Federal wages is in § 584.8.

(k) *Involuntary allotments.* A summary of the rules regarding involuntary allotments from pay and allowances is in § 584.9.

§ 584.2 Family support and child custody.

(a) *General.* (1) This chapter requires soldiers to provide financial support to family members and to obey court orders on child custody. It also provides guidance and policy to commanders to follow when resolving nonsupport and child custody issues. Consistent with specific provisions below, a soldier will—

(i) Furnish financial support to family members that meets at least the minimum support requirements of this regulation (§ 584.2(d)).

(ii) Provide such additional support within his or her financial ability to meet the financial needs of family members (§ 584.2(j)).

(iii) Comply with all court-imposed obligations (§ 584.2(c)(3)).

(iv) Obey court orders and this regulation on child custody and visitation rights (§ 584.2(e)).

(2) It is the responsibility of soldiers to resolve nonsupport issues with family members by one of the methods shown in § 584.2(a)(2)(i) through (iii). In all cases, Army support policy for family members should be considered temporary until either an agreement has been reached between the parties (including those acting on behalf of minor children) or court action has been taken.

(i) Oral agreements.

(ii) Written support agreements.

(iii) Court orders.

(3) Each complaint of nonsupport will be considered individually by the soldier's immediate commander. Alleged desertion or other marital misconduct on the part of a spouse has no effect on a soldier's obligation to provide financial support as required by § 584.2(d).

(b) *Separation from family due to military service.* Military service often requires soldiers to live separately from their families during oversea service or extended temporary duty. Soldiers must plan carefully for the support of their families during these periods. Commanders will educate soldiers and their families on the advantages of joint bank accounts. Such arrangements usually minimize the hardship and financial burden on family members that may occur during periods of such separation. If proper, commanders will urge soldiers to start an allotment to or for their family to ensure continuous financial support. The amount of such a support allotment should be set up by agreement between the soldier and his or her family. In the absence of such an agreement or a court order, the provisions of § 584.2(d)(2) apply. Each soldier is expected to keep reasonable contact with family members to minimize inquiries, claims, and complaints sent to Army officials.

(c) *Support by oral agreement, written support agreement, or court order—(1) Oral agreement.* It is not the Army's policy to involve itself in disputes over the terms or enforcement of oral support agreements. Where an oral agreement exists and is being followed, the Army need not and will not interfere. When a dispute arises, the Army will require compliance only with the provisions of this regulation. Thus, if a family member complains that a soldier is not sending an agreed upon amount that is less or more than the minimum required by § 584.2(d), the commander will advise the soldier to either send the agreed upon amount or the minimum amount required by § 584.2(d). Section 584.2(d) applies when the parties cannot reach an oral agreement or the amount agreed upon is in dispute. In appropriate cases, the commander can order additional support beyond the minimum amount required by § 584.2(d). (See § 584.2(j).)

(2) *Written support agreement.* If the parties are separated and have a signed written agreement, the amount of support specified in such an agreement controls. A signed written agreement includes a separation agreement or a property settlement agreement. A written agreement on support also may be shown by letters exchanged between the parties in which the amount of support has been agreed to by the parties. If the agreement is silent on an amount of spousal and/or child support, the interim minimum financial support requirements of § 584.2(d)(2) apply. The amount specified in the written agreement will be deemed adequate until modified by—

(i) Another agreement reduced to writing and signed by both parties.

(ii) Court order.

(3) *Court order.* (i) Court orders often contain other financial obligations, such as provisions for property division, marital property awards, and payment of medical and other expenses. Commanders have a responsibility to ensure that soldiers comply with these provisions. Soldiers will comply with all court-imposed obligations. Failure to do so may result in costly and time-consuming litigation or court contempt proceedings. These actions often are to the detriment of the soldier and the unit's readiness mission. Section 584.2 (d)(1)(i), however, only applies to court orders directing the soldier to provide financial support to family members on a periodic basis.

(ii) Court orders under this regulation include those orders issued by the courts of the Federal Republic of Germany (FRG). The courts must have acquired valid jurisdiction consistent with the provisions of articles 32 through 37 of the Supplementary Agreement concerning foreign forces stationed in the FRG. This agreement supplements the North Atlantic Treaty Organization Status of Forces Agreement. A soldier will comply with all other foreign nation court and administrative orders that are recognized by treaty or international agreement.

(iii) Commanders should be aware that conditions may have changed greatly from when a court order was issued. For example, a soldier may have gained other family

responsibilities. Many outstanding and uncontested support orders against soldiers cause severe hardship. Such orders can only be modified by a court. If a soldier's income appears inadequate to satisfy an outstanding order and still maintain the soldier, the commander should urge the individual to consult a legal assistance attorney. However, the soldier will comply with the terms of a court order until relieved of this obligation by modification of the order by a court.

(d) *Minimum support requirements.* (1) Soldiers will not violate the following:

(i) Financial support provisions of a court order.

(ii) Financial support provisions of a written support agreement in the absence of a court order.

(iii) Interim minimum financial support requirements of § 584.2(d)(2) in the absence of a court order or written support agreement.

(2) In the absence of a court order or written support agreement, and until such an order or agreement is obtained, the following interim *minimum* financial support requirements apply:

(i) *Single family units.* (A) Family not living in Government family quarters. The soldier will provide support in an amount equal to the soldier's BAQ at the with-dependents rate. This amount of financial support will be provided for this family unit regardless of whether or not the soldier is—

(1) Receiving BAQ.

(2) Occupying Government family quarters.

(B) Family living in Government family quarters. While the supported family is occupying Government family quarters, the soldier will provide an amount equal to the difference between BAQ at the with- and without-dependents rate. When the supported family members move out of Government family quarters, support will be provided in an amount equal to BAQ at the with-dependents rate for the soldier's rank.

(ii) *Multiple-family units.* In multi-family unit support situations, each supported family member will receive a pro-rata share of the BAQ at the with-dependents rate. This share will be determined by dividing an amount equal to BAQ at the with-dependents rate for

the soldier's rank by the total number of supported family members (excluding former spouses). The following modifications apply: First, any court ordered support will be paid as stated. Secondly, supported families living in Government family quarters will receive an amount equal to the difference between BAQ at the with- and without-dependents rate for the soldier's rank. Lastly, any remaining family members (excluding former spouses) will receive a pro-rata share of the BAQ amount. This will be provided regardless of the amount of support paid to other family members. Following are examples:

(A) *Example 1.* A soldier is divorced and has three children from that marriage. The soldier is required by a court order to pay \$300 per month for the children and \$100 per month for the former spouse. The soldier has remarried and has two more family members (spouse and child) living in private housing. The soldier now has a total of five family members that he or she must support under Army policy. (A former spouse does not qualify as a family member in pro-rata determinations.) The children by the previous marriage must receive \$300 and the former spouse must receive \$100 per the court order. The present spouse and child should receive support equal to two-fifths of BAQ at the with-dependents rate for the soldier's rank.

(B) *Example 2.* A soldier has one child by a previous marriage. There is no court order for child support. The soldier is unable to show that the court granting the divorce had personal jurisdiction over the soldier so as to be able to order child support. The soldier has remarried and has a spouse and two children living in private housing. The soldier now has a total of four family members that he or she must support under Army policy. (These family members are the child by a previous marriage and the present spouse and two children.) Each family member should receive support equal to one-fourth of BAQ at the with-dependents rate for the soldier's rank.

(C) *Example 3.* A soldier has two children by a previous marriage. The soldier is required by court order to pay \$200 per month for these children. Also, the soldier is required to pay \$75 per

month for support of a child per a court order that has declared him to be the father. He has remarried and has a spouse and three children living in Government family quarters. The soldier now has a total of seven family members that he must support under Army policy. The children by his previous marriage must receive \$200 per the court order. His other child must receive \$75 per the court order. The spouse and children of his present marriage should receive an amount equal to the difference between BAQ at the with- and without-dependents rate for the soldier's rank.

(iii) Military members married to one another. In the absence of a court order or written support agreement, an Army soldier is not required to provide support to a spouse on active duty in the Armed Forces.

(iv) Children of military member parents.

(A) *Single family units.* In the absence of a court order or written support agreement, the following interim support requirements apply:

(1) Single family units when the Army soldier does not have custody of any children of the marriage. The Army soldier will pay an amount equal to the difference between his or her own BAQ at the with- and without-dependents rate to the military member having custody of the child or children of the marriage. This amount of financial support will be provided regardless of which military member, if any, is receiving BAQ or occupying Government family quarters.

(2) Single family units when the Army soldier has custody of the child or children of the marriage (for example, Army soldier has custody of one child and spouse has custody of two children). In this situation, the Army soldier is not required to provide a minimum amount of financial support for the children in the other military member's custody.

(B) *Multiple-family units.* The provisions of § 584.2(d)(2)(ii) apply. However, the amount in § 584.2(d)(2)(iv)(A) will not be diminished by proration because of the Army soldier's financial support obligations to other family members. For example: An Army soldier has an adopted child from a previous mar-

riage. The soldier is required by court order to pay \$150 per month for this child. The soldier presently is married to a spouse on active duty with the Air Force. They have two children from this marriage. The Air Force member and children reside in private housing. The Army soldier has a total of three family members that he or she must support. The Army soldier will pay \$150 a month to the adopted child per the court order. The children from the present marriage will receive an amount equal to the difference between his or her BAQ at the with- and without-dependents rates for the Army soldier's rank.

(3) A commander has no authority to excuse a soldier from complying with the interim *minimum* support requirements of § 584.2(d)(2) when they are applicable.

(4) In the absence of a contrary provision in a written support agreement or court order, monthly financial support to family members will be sent before the last calendar day of the month for which the support is due. If the family members are not residing together, the soldier will ensure each family member receives his or her pro-rata share. (For example, spouse lives along and the children live with their grandparents.)

(e) *Child custody.* (1) A soldier relative, who is aware that another person is a lawful custodian of an unmarried child under the age of 14 years, will not—

(i) Abduct, taken, entice, or carry away the child from the lawful custodian.

(ii) Withhold, detain, or conceal the child away from the lawful custodian.

(2) A "lawful custodian" is a person authorized, either along or together with another person or persons, to have custody and exercise control over a child less than 14 years of age by order of a court. The fact that joint custody has been awarded to both parents by a court does not preclude a violation of this paragraph by the soldier parent. However, in the absence of a court order to the contrary, the mother of a child born out of wedlock who is not then, nor has ever been, married to the father of the child is deemed the "lawful custodian" of that child for the purpose of this regulation.

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(3) A soldier relative is a soldier who is the parent, grandparent, brother, sister, uncle, aunt, or one who has at some time been the lawful custodian of the child.

(4) It is a defense to a violation of this paragraph that the soldier—

(i) At the time of the offense had custody of the child to the exclusion of others pursuant to a valid order of a court having jurisdiction over the child; or

(ii) Voluntarily returned the child to the lawful custodian within 96 hours after return was demanded by the lawful custodian.

(f) *Relief from the minimum support requirement.* (1) Court orders with financial support provisions.

(i) Court ordered financial support will be by the terms of the court order. Relief from a court order can only be obtained under the law. Nothing in this regulation affects or lessens a soldier's legal obligation to comply strictly with the terms of a court order.

(ii) A soldier who disobeys a court order may be held in contempt of the court that issued the order. Also, a soldier may be punished for violating this regulation. It is, however, a defense to any violation of § 584.2(d)(1)(i) that—

(A) The court issuing the order was without jurisdiction to do so, and

(B) The soldier at all times has been complying with any of the following:

(1) The financial support provisions of another court order.

(2) The financial support provisions of a written support agreement.

(3) The interim minimum financial support requirements of § 584.2(d)(2).

(4) Court orders without financial support provisions.

(iii) A soldier will provide financial support to family members unless expressly relieved of this obligation by—

(A) Court order.

(B) Written support agreement.

(iv) A soldier will provide financial support under § 584.2(f)(2) to family members, which meets at least the minimum support requirements of this regulation. The financial support will be provided even when a court order contains no provision as to support except as follows:

(A) A soldier has no obligation to provide financial support to a former spouse except by order of court.

(B) A soldier has no obligation to provide financial support to minor children of the marriage if he or she can show the following:

(1) The court issuing the final order of divorce had personal jurisdiction over the soldier to order child support.

(2) The soldier is not receiving BAQ at the "with dependents" rate based solely on the support of the minor children in question.

(3) *Written support agreements.* If a financial support obligation is evidenced by a written agreement between the parties, the soldier can only be relieved of this obligation by another written agreement or by court order.

(4) *Greater spousal income.* In the absence of a written support agreement or court order, a soldier has no obligation to support a civilian spouse who is receiving an annual income equal to or greater than the annual gross pay of the soldier. The income of the spouse does not affect the soldier's obligation to provide financial support to the children of that marriage in the physical custody of the spouse on a pro-rata basis. Example: A soldier is living in Government family quarters with one of their children. The soldier's spouse deserted the soldier and lives in private housing with their other child. The soldier's spouse earns \$5,000 more in annual income from a civilian job than the soldier earns in annual gross pay. There is no court order or written support agreement. The soldier has a total of three family members. However, under Army support policy, the soldier does not have to provide a pro-rata share of financial support to the spouse because the spouse's income exceeds that of the soldier. (Note that under § 584.2(a)(3) marital misconduct is not a relevant consideration.) The soldier must support the child in Government family quarters. In addition, the soldier must provide an amount equal to one-third of BAQ (pro-rata share) at the "with dependents" rate to the spouse on behalf of the child living with the spouse.

(2) [Reserved]

(g) *Commander's inquiries.* (1) If a soldier denies he or she has a financial obligation to support a spouse or children for any reason, the soldier's commander will—

(i) Inquire into the matter.

(ii) Consult with the SJA prior to determining whether or not there is a support obligation. If there is no support obligation, BAQ at the "with dependents" rate should be stopped.

(2) If a soldier claims he or she has made support payments as required by this regulation, the soldier's commander will—

(i) Request the soldier to provide proof of payment in one of the following forms:

(A) Canceled personal checks.

(B) Leave and earnings statements showing allotments.

(C) Postal or money order receipts accompanied by a sworn statement from the soldier that the order was sent to the family member. If possible, evidence that the postal or money order was cashed by the complaining party should be provided.

(D) Other acceptable evidence of payment.

(ii) Consult with the SJA, if necessary, to determine whether the soldier has provided enough proof of payment.

(3) If a soldier is suspected of violating a child custody or visitation rights in a court order, the soldier's commander will—

(i) Inquire into the matter.

(ii) Consult with the SJA prior to taking action.

(4) In any case in which the soldier is suspected of violating this regulation (§584.2(d) or (e)), or of having committed other offenses, the commander, prior to questioning the soldier, will advise him or her of—

(i) The suspected offense.

(ii) The right to remain silent under article 31, UCMJ.

(iii) The right to counsel under the Fifth Amendment.

(h) *Form of support payment.* (1) Unless otherwise provided in the court order or by agreement, a financial support payment will be made in one of the following ways:

(i) In cash.

(ii) By check or money order.

(iii) By allotment.

(2) A soldier will receive credit for payments made to others on behalf of, and with the agreement of, the supported family members. Examples of support provided in kind include—

(i) Rent.

(ii) Utility services.

(iii) Interest and principal due on loans, mortgages, or charge accounts.

(iv) Insurance payments.

(i) *Arrearages*—(1) *General.* A soldier who falls into arrears without legal justification or excuse is in violation of §584.2(d).

(2) Court orders and written support agreements.

(i) Amounts in arrears based on a past failure to comply with a court order or written support agreement will be paid at once in a lump sum amount. If an immediate lump sum payment is impractical, soldiers are expected to work out arrangements with the court or the affected family members to pay arrearages on a scheduled basis. If arrangements can not be worked out, commanders will intervene and order payment of arrearages on a scheduled basis based on the soldier's ability to pay.

(ii) When arrearages arise from non-compliance with court orders and written support agreements, this may result in—

(A) Garnishment of the soldier's pay account (§584.8).

(B) Initiation of an involuntary allotment against the soldier's pay account (§584.9).

(C) Contempt of court proceedings.

(D) Recoupment of BAQ received by the soldier.

(iii) Administrative or punitive action may be taken on a violation of this regulation for any month in which the soldier failed to provide the required financial support even if the amount in arrears eventually is paid.

(3) Interim minimum financial support requirements. A soldier should be encouraged to pay the amount in arrears based on past noncompliance with the interim minimum financial support requirements (§584.2(d) (1)(iii) and (2)). However, a soldier cannot be ordered to pay such an amount. Nevertheless, administrative or punitive action may be taken on a violation of

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this regulation for any month in which the soldier failed to provide the required financial support even if the amount in arrears eventually is paid. Also, failure to provide required financial support in the past may be considered, together with other factors, in a commander's determination of the amount of additional support that may be ordered. (See § 584.2(j).)

(j) Additional support where there is no support agreement or court order.

(1) Ordinarily, a soldier should not be required to provide financial support beyond that required by § 584.2(d)(1)(iii). However, a soldier should provide additional support within his or her ability to meet the basic financial needs of family members when the interim support requirements of this regulation are shown to be inadequate.

(2) If there is a demonstrated need for immediate and temporary additional support because of unexpected and unforeseen circumstances and the parties are unable to agree on such additional support, a commander may order temporary additional support.

(3) Commanders will consider the following factors in determining the amount of additional support, if any, that a soldier should provide when a request for additional support is received:

(i) The pay, allowances, separate income, and other financial resources of both the soldier and the family member for whom additional support is requested.

(ii) The earning capacity of the family member on whose behalf support is requested.

(iii) The financial savings of the soldier and family member.

(iv) The separate and joint debts of the soldier and family member, by whom those debts were incurred, and the reasons behind them.

(v) The soldier's duty to provide financial support to other family members, including former spouses.

(vi) The financial needs of the soldier and the family member and whether these needs are temporary or permanent in nature.

(vii) The standard of living of the soldier and family member and whether such standard of living is reasonable under the circumstances.

(viii) With regard to spousal support, the duration of the marriage and the circumstances under which the parties separated.

(ix) The extent of the soldier's or family member's compliance with existing court orders and written support agreements. This includes those provisions dealing with child custody, visitation rights, property division, and marital property awards.

(x) The amount in arrears owed by the soldier based on past noncompliance with the minimum support requirements. (See § 584.2 (d) and (i).)

(xi) Any other fact which, in the judgment of the commander, has a logical bearing upon the amount of additional support the soldier reasonably should be expected to provide.

(k) *Procedure for making complaints.*

(1) Complaints about nonsupport of family members and noncompliance with court orders on financial support and child custody should be sent through command channels. The complainant should be referred to the immediate commander of the soldier concerned.

(2) The Inspector General (IG) may assist in properly routing the complaint. The IG also may assist if the responsible commander has failed to respond in a satisfactory manner or as required by this regulation. (See AR 20-1, para 4-9.)

(3) The USACFSC (DACF-IS-PA) has set up an office to assist in these cases. USACFSC will provide policy interpretations and guidance on unresolved or complex cases, as needed. USACFSC normally will go through command channels to the immediate commander of the soldier concerned requesting that action be taken under this regulation.

(4) Family members who present complaints against a military member of another Service (Air Force, Marine Corps, Navy, or Coast Guard) should be referred to the appropriate Service.

(1) *Commander's actions.* (1) Upon receipt of a complaint of nonsupport or noncompliance with court orders, including provisions on child custody or visitation rights, the commander will review the complaint. He or she will do the following if the information is incomplete:

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(i) Acknowledge receipt of the complaint.

(ii) Explain that the information or documentation sent is not enough to give proper help.

(iii) If appropriate, send the complainant DA Form 5460-R (Request for Help in Receiving Support and/or Identification Cards for Family Members).

(iv) Advise that help will be given with the complaint upon return of the completed form and other requested information and documents.

(v) If appropriate, advise that DA Form 5460-R alone is not enough documentation for issuance of a dependent identification card (ID card) (AR 640-3). Documentation (that is, court orders, birth certificates, marriage certificates, etc.) must be provided to support eligibility for benefits.

(vi) Answer any policy or procedural questions that have been asked.

(2) Upon receipt of DA Form 5460-R or a complaint that has enough information to properly respond, the commander will—

(i) Review soldier's legal financial obligations in light of the complaint and the facts presented by all parties concerned.

(ii) If necessary, ask the SJA if the complaint is valid, if the soldier must provide financial support or give up custody of children, and any other related questions.

(iii) Notify the soldier of the complaint of nonsupport or of a violation of a child custody court order.

(iv) Require the soldier to complete and sign DA Form 5459-R. Information obtained from a system of records ordinarily will not be released outside DOD without the soldier's consent. (See § 584.1(f).)

(v) If the soldier is suspected of violating this regulation or of having committed other offenses, the commander, prior to questioning the soldier, will also advise him or her of—

(A) The suspected offense.

(B) The right to remain silent under article 31, UCMJ.

(C) The right to counsel under the Fifth Amendment.

(vi) Explain the following to the soldier:

(A) The Army's policies regarding support of family members and compliance with court orders.

(B) That refusal to give required support per this regulation may result in administrative or punitive action.

(C) That a soldier is not entitled to BAQ at the "with dependents" rate when no part of the allowance is given to family members. Therefore, collection action may be initiated by the Army.

(vii) Explain what garnishment is (§ 584.8) and how it might affect the soldier's pay, allowances, and allotments. For example, explain that the amount garnisheed monthly might significantly exceed monthly support obligations previously agreed upon.

(viii) Tell the soldier of any court order for attachment or garnishment that has been received. Immediately send the court documents to the Commander, U.S. Army Finance and Accounting Center (USAFAC), ATTN: FINCL-G, Indianapolis, IN 46249-0260 for action. (See § 584.8(b).) Also, inform the soldier that if the document is in proper legal form, a portion of the soldier's pay and allowances will be garnisheed.

(ix) Explain involuntary allotments (§ 584.9) if appropriate.

(x) Coordinate with the soldier's servicing finance and accounting office (FAO) for problems of pay, allowances, and allotments.

(xi) Urge soldiers to provide continuous support to family members by allotment. The allotment should be for the mutually agreed amount, court order, or as computed under this regulation. An account may be set up in a financial institution by the recipient to receive the allotment. This action may preclude delays in receipt and other related problems in the future.

(xii) Help the soldier start an allotment to make the required support payments. Also, advise the soldier to let the commander know if there is a change or stoppage to the support allotment.

(xiii) Give the soldier a chance to consult with a legal assistance attorney if he or she desires. However, the commander should ensure that this is not used as a delaying tactic. Where

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appropriate, a support payment plan should be initiated without delay.

(xiv) Urge soldiers thinking about divorce to seek legal advice from a legal assistance attorney. Also, advise the soldier to ensure an amount of support is included in the court order for their children. This action may help to prevent future disputes.

(xv) Ensure that the soldier is not receiving BAQ at the "with dependents" rate when not entitled to it. (See § 584.7.)

(xvi) Ask the soldier about his or her intentions. Give the soldier the chance to furnish a voluntarily signed statement admitting or denying the complaint and stating his or her intentions.

(xvii) Send complaints received to the soldier's new duty station if he or she has been reassigned. Advise the complainant of the soldier's reporting date and the unit address to which correspondence should be sent. If proper, give the complainant a copy of DA Form 5460-R.

(3) Advise the complainant courteously and promptly—

(i) Of the Army policy in suitable areas of concern.

(ii) Of the soldier's intentions, if the soldier allows release of the information.

(iii) That personal problems outside the requirements of this regulation must be resolved in court if the parties cannot agree.

(4) If proper to the situation, remind complainant of other helping agencies on post, such as the chaplain and Army Community Service. These agencies can give timely, interim help to meet immediate needs pending a more permanent resolution of the problem.

(5) Retain the statements allowing or forbidding release of information to the complainant and the soldier's intentions with the case file for future reference. Documents/records will be filed per AR 600-37 and the Army Functional Files System (AR 340-2 and AR 340-18).

(6) Monitor actions closely to ensure promises of support or other actions by soldiers to complainants are being met.

(7) Consider administrative or punitive action if proper.

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(8) Inform the first level field grade commander of the soldier's repeated failure to meet the requirements of this regulation. Also, point out actions taken or contemplated to correct instances of nonsupport of family members or violations of child custody court orders.

§ 584.3 Paternity claims.

(a) *General.* (1) This chapter sets policy and procedures to process paternity claims against male Army soldiers. These procedures apply to claims made in the continental United States and in foreign countries. They apply to claims made by the claimant or on behalf of the claimant by attorneys, court officials, and others.

(2) Soldiers will be informed of paternity claims against them. Commanders will ensure that soldiers are advised of their legal rights and will advise soldiers of their moral and legal obligations in the matter. Soldiers admitting paternity will be urged to provide the necessary financial support to the child. Also, they will take any other action proper under the circumstances.

(b) Procedures for questioning soldiers about paternity claims upon receipt of a claim of paternity against a soldier, the commander will take the following actions:

(1) If there is evidence that an offense (for example, rape, indecent acts with a minor) may have been committed—

(i) Inform law enforcement officials.

(ii) Inform the soldier of the suspected offense. Before questioning, advise the soldier of his right to remain silent under article, 31, UCMJ, and his right to counsel under the Fifth Amendment.

(iii) Coordinate further action under this regulation with the SJA and law enforcement officials if appropriate.

(2) If there is no evidence that an offense was committed—

(i) Allow the soldier a chance to talk with a legal assistance attorney about his legal rights and obligations.

(ii) Require the soldier to complete and sign DA Form 5459-R. Information obtained from a system of records normally will not be released outside DOD without the soldier's consent. (See § 584.1(f).)

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(iii) Inform the soldier of Army policy on the support of family members contained in this regulation.

(iv) Advise the soldier that a court order against him on the paternity claim, followed by a refusal to support a child born out of wedlock, could result in—

(A) Administrative or punitive action for violating this regulation.

(B) Garnishment of the soldier's pay account (§584.8).

(C) Initiation of an involuntary allotment against the soldier's pay account (§584.9).

(D) Contempt of court proceedings.

(v) Ask the soldier about his intentions. Give the soldier the chance to furnish a voluntarily signed statement admitting or denying the claim and stating his intentions.

(c) *Procedures for processing paternity claims.* (1) When one of the conditions in §584.3(c)(1)(i) applies, a claimant will be advised of the statement in §584.3(c)(1)(ii).

(i) A soldier—

(A) Refuses to answer questions about the paternity claim.

(B) Denies paternity.

(C) Admits paternity, but refuses to provide financial support.

(ii) No action can be taken on the claim of paternity in the absence of a court order. The court order must identify the soldier in question as the father of the child. Also, the court order must direct that the soldier provide financial support to the child.

(2) The commander will reply directly to the claimant or the attorney or court official she has authorized to act in her behalf. Information obtained from a system of records ordinarily will not be released outside DOD without the soldier's consent. (See §584.1(f).)

(3) If the soldier admits paternity and agrees to provide financial support, then the commander will—

(i) Ask the claimant to provide a copy of the birth certificate.

(ii) Help the soldier in filing for an allotment or providing other financial aid.

(iii) Advise the claimant of the amount, effective date, and means of payment.

(iv) Help the soldier apply for BAQ at the "with dependents" rate, if applicable. (A birth certificate may be required.)

(v) Ensure an ID card is issued for the child after the relationship is documented, if proper. (A birth certificate may be required.) (See AR 640-3, para 3-3, for dependency criteria for ID cards.)

(vi) Allow the soldier to take ordinary leave in order to marry the claimant, if leave is requested for this purpose. However, the leave may be delayed if it will interfere with military requirements. Travel in connection with leave (including travel to and from overseas commands) is the responsibility of the soldier. Travel will be at no expense to the Government. If the marriage is to take place overseas, the soldier must comply with AR 600-240 and AR 608-61 in applying for authorization to marry (DA Form 2029-R) (Application for Authorization to Marry Outside of the United States).

(d) *Court orders.* If a court order of paternity and support has been issued, the commander will—

(1) Advise the soldier of the policy regarding support of family members.

(2) Advise the soldier that refusal to support his child born out of wedlock could result in—

(i) Garnishment of the soldier's pay account (§584.8).

(ii) Initiation of an involuntary allotment against the soldier's pay account (§584.9).

(iii) Contempt of court proceedings.

(iv) Administrative or punitive action for violating this regulation.

(3) Refer the soldier to a legal assistance attorney for advice on his legal rights and obligations.

(4) Help the soldier file an allotment or give other financial aid.

(5) Advise the claimant of the amount, effective date, and means of payment.

(6) Help the soldier apply for BAQ at the "with dependents" rate, if applicable.

(7) Ensure an ID card is issued for the child.

(8) Consider administrative or punitive action if the soldier fails to obey the court order. (See §584.1(d)(5)(viii).)

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(9) Inform the first level field grade commander of the soldier's repeated failure to meet the requirements of this regulation. Also, point out actions taken or contemplated to correct instances of nonsupport of family members.

§ 584.4 Adoption proceedings.

(a) *General.* This chapter does not apply to those situations where a soldier is trying to adopt a child. It applies to those situations where another person is trying to adopt a legitimate or illegitimate child of a soldier. A child born in or out of wedlock normally may not be put up for adoption without the consent of the parents. Therefore, communications from a judge or court asking that a soldier appear at an adoption hearing must be answered.

(b) *Commander's actions.* The commander will—

(1) Inform the soldier or the inquiry.

(2) Urge the soldier to see a legal assistance attorney.

(3) Advise the court or judge, as appropriate, that—

(i) A request by the soldier for leave to attend an adoption hearing on (date) has been granted.

(ii) A request by the soldier for leave to attend an adoption hearing on (date), if made, would be approved.

(iii) Due to military requirements, the soldier cannot be granted leave to attend any court hearing until (date).

(iv) The soldier has stated that he or she is not the natural parent of the child.

(v) Since the soldier is not present because (give specific reasons), (for example, temporary duty or leave), a complete response cannot be made until (date).

(vi) The soldier is no longer in this command. The commander will provide the soldier's new military address to the court or judge. The commander then will send a copy of the inquiry to the soldier's new commander and advise the court or judge of this action.

(4) Furnish the soldier with a copy of the communication and the reply.

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§ 584.5 U.S. citizenship determinations on children born out of wedlock in a foreign country.

(a) *General.* (1) A child born out of wedlock in a foreign country of an American citizen father and an alien mother does not automatically gain U.S. citizenship. The child must first be legally acknowledged by the father. Marriage to the mother may be required in order for the child to acquire U.S. citizenship. The father also must establish that he had at least 10 years of physical presence in the United States prior to the child's birth. Five of those years must have been spent in the United States after the father's 14th birthday. United States military service counts as physical presence in the United States. (See 8 U.S.C. 1101(c)(1), 1401(g), and 1409(c).) Whether the child gains the citizenship of its mother depends entirely upon the laws of the nation in which she is a citizen.

(2) A child born out of wedlock in a foreign country to an American citizen mother and an alien father or U.S. Citizen father gains U.S. citizenship at birth if the mother had been physically present in the United States for a continuous period of 1 year prior to the child's birth. (See 8 U.S.C. 1409(c).) The child will gain the citizenship of the father only if the laws of the nation of which the father is a citizen so provide.

(b) *Procedures for claiming U.S. citizenship rights.* (1) A father desiring rights of U.S. citizenship for a foreign-born child must legally acknowledge the child as his own and prepare a case file. Each case is decided on its own merits. The Department of State, if the child is in a foreign nation, or the Immigration and Naturalization Service (INS), if the child is in the United States, will make the decision. Documents that may be important in supporting a citizenship determination are listed below:

(i) Proof of father's citizenship. This may consist of any of the following:

(A) A certified copy of his birth certificate (with a raised seal of the registrar of births).

(B) A report of birth abroad (FS Form 240 (Report of Birth Abroad of a Citizen of the United States)).

(C) A certificate of citizenship.

(D) A certificate of naturalization.

(E) A valid U.S. Passport.

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(F) A certified copy of an approved U.S. passport application.

(G) Any secondary evidence acceptable by the State Department or INS.

(ii) Affidavit of paternity.

(iii) Proof of presence in the foreign country at time of conception. (This information can be extracted from the passport, DA Form 2-1 (Personnel Qualification Record—Part II), etc.).

(iv) Child's birth certificate.

(v) Proof of the father's physical presence in the United States for 10 years (5 after age 14).

(vi) Blood type tests of the mother, the father, and the child. (At the request of the examining officer.)

(vii) Two sworn affidavits (at the request of the examining officer) from individuals who personally knew the mother, father, and child at the time of birth and can identify the child.

(viii) A copy of a certified English translation of all needed legal documents that are in a foreign language.

(ix) An executed passport application with three signed pictures of the child.

(2) The soldier may consult a legal assistance attorney for help in preparing the case file. The case file should be taken to the nearest American Embassy, Consulate General, or Consulate in the country where he and his child live. If the father is not present in the country where the child lives, he will do one of the following—

(i) Take the necessary documents to the nearest American Embassy, Consulate General, or Consulate.

(ii) Mail the documents to the Department of State, ATTN: Office of Citizens Consular Service, WASH DC 20520. That office, in conjunction with the American Consul abroad, will decide if the child is a U.S. citizen.

(3) If both father and child are within the United States, a decision of citizenship status can be obtained from the INS. The soldier should file Form N-600 (Application for Certificate of Citizenship) at the nearest INS office. This form can be obtained from the INS. The appendix of AR 608-3 lists the location of INS offices.

(4) Any soldier who claims to be a U.S. citizen has the burden of proving that claim to the Department of State or INS, as applicable.

§ 584.6 Procedures governing non-active duty or discharged personnel.

(a) *Procedures governing nonactive duty personnel.* (1) Nonsupport complaints and paternity claims against former soldiers or other not on active duty will be sent to the Commander, U.S. Army Reserve Components Personnel and Administration Center (RCPAC), ATTN: DARC-PSE-VS, 9700 Page Boulevard, St. Louis, MO 63132-5200.

(2) After RCPAC verifies the status, the following officials will act as prescribed below:

(i) Chief, National Guard Bureau, WASH DC 20310-2500, for members of the Army National Guard.

(ii) The area commander concerned for Ready Reservists assigned to troop program units under his or her control. (See AR 140-1, para 1-6.)

(iii) Commander, RCPAC for nonunit members assigned to Control Groups of the Ready Reserve, Standby Reserve, and Retired Reserve.

(3) The officials cited above will ensure that correspondence claiming nonsupport or paternity is delivered to the person concerned, using military channels. When the correspondence cannot be delivered through military channels, it will be sent to the last known mailing address of the person by certified mail (PS Form 3811 (Return Receipt, Registered, Insured and Certified Mail)). It should be marked "Return Receipt Requested—Deliver to Addressee Only." This form is available at U.S. post offices.

(4) After delivery of correspondence, the responsible official will advise the complainant or claimant—

(i) Of the date and method of delivery.

(ii) That the military department does not control the personal affairs of nonactive duty personnel. These personnel usually are in a civilian status and are not subject to military discipline. Therefore, the matter has been left to the person's discretion.

(iii) Of the person's mailing address only if the conditions in § 584.6(c) are met.

(b) *Procedures governing discharged personnel.* Nonsupport complaints or paternity claims against persons who

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have been discharged from the Service will be sent to RCPAC. These persons do not hold any military status whatsoever. Commander, RCPAC will return the correspondence and all accompanying documentation and advise the complainant or claimant—

(1) That the person is no longer a member of the Army or the Reserve Components.

(2) Of the date of discharge.

(3) That the Army no longer has control or authority over the discharged member. Therefore, the Army can take no further action in the matter.

(4) Of the person's mailing address only if the conditions in § 584.6(c) are met.

(c) *Conditions for disclosing mailing address.* Nonactive duty and discharged personnel's mailing addresses will not be disclosed except for one of the following reasons:

(1) The person consents in writing to the release of his or her address.

(2) The complainant or claimant sends a court order directing the release of the address.

(3) Any other reason that does not constitute a violation of the Privacy Act of 1974.

(d) *Retired personnel.* (1) Court orders for garnishment or attachment of pay of retired persons will be sent to USAFAC.

(2) The complainant or claimant will be advised that correspondence may be sent to the retired member as follows:

(i) Place correspondence in a stamped envelope with retired member's name typed or printed on the envelope.

(ii) Place stamped envelope in a second envelope and send to the Commander, RCPAC, ATTN: DARC-PSE-VS, 9700 Page Boulevard, St. Louis, MO 63132-5200.

(3) Commander, RCPAC will send the correspondence to the retired member but cannot release the address under the provisions of the Privacy Act of 1974.

§ 584.7 Basic allowance for quarters.

(a) *Eligibility.* (1) Soldiers entitled to basic pay, who have family members, are entitled to BAQ at the rates prescribed for soldiers "with dependents" under certain conditions. The Department of Defense Military Pay and Al-

lowances Entitlements Manual (DODPM) governs entitlements. (See DODPM, part 3, chap 2.)

(2) Soldiers may receive BAQ at the "with dependents" rate as long as they pay at least the difference between BAQ at the with- and without-dependents rate each month in support of their families. (See DODPM, part 3.) This is so even if a divorce decree or court order is silent on support or releases the soldier from the responsibility of supporting the family. (See § 584.2(f)(2).) Normally, a soldier is not entitled to BAQ on behalf of a former spouse or stepchildren after the divorce. BAQ at the "with dependents" rate is not authorized when the soldier or the supported family is residing in Government family quarters. Also, if two soldier member-parents are supporting the same child, only one soldier member is entitled to BAQ at the "with dependents" rate.

(b) *False claims.* BAQ at the "with dependents" rate is not payable to soldier who are not supporting their families. Cases involving alleged failure or refusal of soldiers to pay at least the difference between BAQ at the with- and without-dependents rate for the support of family members will be referred to the proper FAO after investigation. Nonsupport of family members for whom BAQ is claimed may result in—

(1) Collection of BAQ received but not given to the family members.

(2) Stoppage of BAQ at the "with dependents" rate.

(3) Punitive or administrative action against a soldier for—

(i) Violating the minimum support requirements of this regulation.

(ii) Submitting a fraudulent claim for BAQ based on false information.

(c) *Forfeiture of BAQ.* Forfeiture of the "with dependents" portion of BAQ does not relieve the soldier of the obligation to support family members as set up in this regulation.

(d) BAQ entitlements versus Army minimum support requirements. Terms for entitlements to BAQ are set forth in DODPM, part 3, chapter 2. Except as provided in this regulation, BAQ entitlements have no relationship to Army minimum support requirements.

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§ 584.8 Garnishment.

(a) *General.* (1) Pub. L. 93-647 (42 U.S.C. 659) permits garnishment, attachment, or assignment of Federal wages and retirement payments to enforce court-ordered child support and alimony obligations that are in arrears. It includes foreign court orders when—

(i) Required by treaty or international agreement. (A soldier is subject to garnishment for child support issued by the FRG only while physically stationed in Germany.)

(ii) Recognized by a court of competent jurisdiction. Applicable State laws govern legal procedures to be used by complainants. Jurisdictional or procedural challenges to garnishment actions remain the responsibility of individual members.

(2) In the absence of State law more favorable to the soldier, 15 U.S.C. 1673 limits the amount of pay that can be garnished as follows:

(i) Fifty percent of disposable pay when a soldier is supporting a spouse or dependent child who is not the subject of the support order. (See § 584.8(a)(3) for an explanation of disposable pay.)

(ii) Sixty percent of disposable pay when a soldier is not supporting such spouse or dependent child.

(iii) An additional 5 percent in each of the above cases if payments are more than 12 weeks overdue.

(3) The items of pay listed in § 584.8(a)(3)(i) are subject to garnishment except for amounts deducted for the items listed in § 584.8(a)(3)(ii).

(i) Items of pay and bonus subject to garnishment.

(A) Basic pay.

(B) Special pay (including enlistment and reenlistment bonuses).

(C) Incentive pay.

(D) Inactive duty training pay.

(E) Academy officials pay (except personal money allowances).

(F) Accrued leave payments (basic pay portion only).

(G) Retired and retainer pay.

(H) Lump-sum Reserve bonus.

(I) Separation payments (readjustment pay and severance pay).

(ii) Deductions not subject to garnishment.

(A) Federal income tax withholding.

(B) State income tax withholding.

(C) Servicemen's Group Life Insurance.

(D) Social Security taxes (Federal Insurance Contributions Act).

(E) United States Soldier's and Airmen's Home.

(F) Survivor Benefit Plan.

(G) Retired Servicemen's Family Protection Plan.

(H) Indebtedness to the United States and delinquent Federal taxes.

(I) Fines and forfeitures ordered by a court-martial or commander.

(b) *USAFAC procedures.* The USAFAC will process most garnishment orders. Unless the order is contrary to Federal law or the laws of the jurisdiction from which it was issued, the soldier's pay will be garnished per the court order. Garnishment orders will be sent by certified or registered mail to the Commander, USAFAC, ATTN: FINCL-G, Indianapolis, IN 46249-0160. However, all legal process issued by German courts will be processed under DODPM, section 70710, when the soldier is stationed in the FRG. The documents must expressly state they pertain to child support or alimony. Also, the name and social security number (SSN) of the soldier must be included. The submission of a divorce decree or support order alone is not enough, as a garnishment order is required.

§ 584.9 Involuntary allotments.

(a) *General.* Pub. L. 97-248 (42 U.S.C. 665) permits involuntary allotments from pay and allowances of soldiers on active duty as child, or child and spousal, support payments when—

(1) The soldier has failed to make payments under a court order for 2 months or in a total amount equal to or in excess of the support obligations for 2 months.

(2) Failure to make such payments is established by notice from an authorized person to the Commander, USAFAC, ATTN: FINCL-G, Indianapolis, IN 46249-0160. An authorized person is—

(i) Any agent or attorney of any State having in effect a plan approved under part D of title IV of the Social Security Act (42 U.S.C. 651-664), who has the duty or authority under the plan to seek recovery of any amounts

owed as child or child and spousal support (including, when authorized under a State plan, any official of a political subdivision).

(ii) A court or agent of the court that has authority to issue an order against the soldier for the support and maintenance of a child.

(3) Such notice must give the soldier's full name and SSN. Also, it must list the name and address of the person to whom the allotment is payable. The amount of the allotment will be the amount needed to comply with the support order. The allotment may include arrearages as well as amounts for current support if provided for in the support order. A copy of this must be included with the notice. If proper, a statement must be included that the support allotment qualifies for the additional 5 percent in excess of the maximum percentage limitations. These limitations are prescribed in 15 U.S.C. 1673. Also, a copy of the underlying support order must be included with the notice. An allotment under this provision will be adjusted or discontinued only upon notice from an authorized person.

(b) *Procedures.* No action will be taken to set up an allotment until the soldier has the chance to consult a legal assistance attorney. The purpose of the meeting is to discuss the legal and other factors involved with respect to the soldier's support obligation and failure to make payments. If the soldier has not consulted with legal counsel, the allotment will start the first end-of-month payday after 30 days have elapsed since notice was given to the affected soldier.

APPENDIX A TO PART 584—REFERENCE

Section I—Required Publications

- AR 340-17
Release of Information and Records from Army Files. (Cited in § 584.1(f)(2).)
- AR 340-21
The Army Privacy Program. (Cited in § 584.1(f)(2).)
- AR 600-37
Unfavorable Information. (Cited in §§ 584.1(d)(5)(viii)(B) and 584.2(1)(5).)
- AR 640-3
Identification Cards, Tags, and Badges. (Cited in §§ 584.2(1)(1)(v) and 584.3(c)(3)(v).)
- Misc Pub 13-1

DOD Military Pay and Allowances Entitlements Manual. (Cited in §§ 584.7a, 584.7(d) and 584.8(b).)

Uniform Code of Military Justice
(Cited in §§ 584.1(d)(5), 584.2(g)(4)(ii), 584.2(1)(2)(v)(B), and 584.3(b)(1)(ii).)

Section II—Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

- AR 11-2
Internal Control Systems
- AR 20-1
Inspector General Activities and Procedures
- AR 140-1
Mission, Organization, and Training
- AR 340-2
Maintenance and Disposition of Records for TOE Units and Certain Other Units of the Army.
- AR 340-18
The Army Functional Files System
- AR 600-240
Marriage in Oversea Commands
- AR 601-280
Army Reenlistment Program
- AR 608-3
Naturalization and Citizenship of Military Personnel and Dependents
- AR 608-61
Application for Authorization to Marry Outside of the United States
- AR 635-100
Officer Personnel (Separations)
- AR 635-200
Enlisted Personnel (Separations)
- Misc Pub 8-1
Joint Travel Regulations, Volume 1: Members of the Uniformed Services

Section III—Prescribed Forms

- DA Form 5459-R
Authorization to Release Information from Army Records on Nonsupport/Child Custody/Paternity Complaints. (Cited in §§ 584.1(d)(5)(iv)(B), 584.1(f)(1), 584.2(1)(2)(iv), and 584.3(b)(2)(ii).)
- DA Form 5460-R
Request for Help in Receiving Support and/or Identification Cards for Family Members. (Cited in § 584.2(1).)

Section IV—Referenced Forms

- DA Form 2-1
Personnel Qualification Record-Part II
- DA Form 2029-R
Application for Authorization to Marry Outside of the United States
- FS Form 240
Report of Birth Abroad of a Citizen of the United States
- Form N-600
Application for Certificate of Citizenship

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PS Form 3811
Return Receipt, Registered, Insured, and
Certified Mail

GLOSSARY

Section I—Abbreviations

ARNGUS
Army National Guard of the United States
BAQ
Basic allowance for quarters
DA
Department of the Army
DOD
Department of Defense
DODPM
Department of Defense Military Pay and
Allowances Entitlements Manual
FAO
Finance and accounting office
FRG
Federal Republic of Germany
HQDA
Headquarters, Department of the Army
ID cards
Identification cards
IG
Inspector general
INS
Immigration and Naturalization Service
RCPAC
U.S. Army Reserve Components Personnel
and Administration Center
SJA
Staff Judge Advocate
SSN
Social Security Number
UCMJ
Uniform Code of Military Justice
USACFSC
U.S. Army Community and Family Sup-
port Center
USAFAC
U.S. Army Finance and Accounting Center
USAR
U.S. Army Reserve
VHA
Variable Housing Allowance

Section II—Terms

Arrearage

The total amount of money a soldier owes a family member for prior months in which the soldier failed to comply with the minimum support requirements of this regulation.

Basic Allowance for Quarters

An amount of money prescribed and limited by law that a soldier receives to pay for quarters not provided by the Government.

Child Custody Complaint

A written or oral complaint by a family member, or a third party acting on behalf of

a family member, that alleges that the soldier is violating a court order granting custody of minor children to someone other than the soldier. It also includes a complaint by a mother of a child born out of wedlock against a soldier father who has abducted or detained the child.

Court Order

As used in this regulation, court order includes all judicial and administrative orders and decrees, permanent and temporary, granting child custody, directing financial support, and executing paternity findings. It also includes any foreign nation court or administrative order recognized by treaty or international agreement. Court orders are presumed valid in the absence of evidence to the contrary.

Family Member

For the purpose of this regulation only, a family member includes—

a. A soldier's present spouse. (A former spouse is not a family member. However, except as otherwise indicated, the term "family member" includes any former spouse for whom the soldier is required by any court order to provide financial support.)

b. A soldier's minor children from present and former marriages, including children legally adopted by the soldier. (A family member does not include the child of a soldier who has been legally adopted by another person.)

c. Minor children born out of wedlock to—
(1) A woman soldier.

(2) A male soldier if evidenced by a decree of paternity identifying the soldier as the father and ordering the soldier to provide support.

d. Any other person (for example, parent, stepchild, etc.) for whom the soldier has an obligation to provide financial support under the law of the domicile of either the soldier or the supported person.

Financial Support Provision

The provision in a court order or separation agreement directing the soldier to provide financial support to a family member on a periodic basis.

Government Family Quarters

Any sleeping accommodations or family-type housing owned or leased by the U.S. Government.

Gross Pay

For support purposes, gross pay includes basic pay and allowances to include special, incentive, and other pay when received on a monthly basis. Gross pay does not include funds not received on a monthly basis (that is, enlistment and reenlistment bonuses and

accrued leave payments). Gross pay does not include wages from off-duty employment.

Legal Assistance Attorney

Army lawyers designated to advise and assist soldiers and their families on family law matters. Such matters include marriage, divorce, adoption, paternity, child custody problems, and support obligations. In the context of this regulation, a legal assistance attorney also includes a lawyer retained by a soldier at his or her own expense.

Minor Children

Unmarried children under 18 years of age who are not on active duty with the Armed Forces.

Nonsupport Complaint

A written or oral complaint by a family member, or a third party acting on behalf of a family member, that alleges one of the following:

- a. Soldier is providing no financial support.
- b. Soldier is providing insufficient financial support.
- c. Soldier is failing to comply with—
 - (1) An oral agreement,
 - (2) A written support agreement, or
 - (3) A court order that sets up a financial support requirement.

Soldier

As used in this regulation, the term soldier includes commissioned officers, warrant officers, and enlisted personnel.

Staff Judge Advocate

The chief legal officer and his or her staff who advise commanders on laws and regulations affecting the command. Includes command judge advocates and post judge advocates, but not legal assistance attorneys or attorneys assigned to the Trial Defense Service.

System of Records

Any record under DA control from which information is retrieved by the name of the individual or by his or her SSN.

Variable Housing Allowance

An amount of money prescribed by law that a soldier receives to defray high housing costs in the continental United States.

Written Support Agreement

Any written agreement between husband and wife in which the amount of periodic financial support to be provided by the soldier spouse has been agreed to by the parties. A written support agreement may be contained in a separation agreement or property settlement agreement. Also, the support agreement may be shown by letters exchanged be-

tween the parties in which the amount of support has been agreed to by the parties.

PART 589—COMPLIANCE WITH COURT ORDERS BY PERSONNEL AND COMMAND SPONSORED FAMILY MEMBERS

Sec.

- 589.1 Definitions.
- 589.2 Policy.
- 589.3 Applicability.
- 589.4 General.

AUTHORITY: Public Law 100.456 and 10 U.S.C., 814.

SOURCE: 55 FR 47042, Nov. 8, 1990, unless otherwise noted.

§ 589.1 Definitions.

(a) *Court*. Any judicial body in the United States with jurisdiction to impose criminal sanctions of a DoD member, employee, or family member.

(b) *DoD Employee*. A civilian employed by a DoD Component, including an individual paid from non-appropriated funds, who is a citizen or national of the United States.

(c) *DoD Member*. An individual who is a member of the Armed Forces on active duty and is under the jurisdiction of the Secretary of a Military Department, regardless whether that individual is assigned to duty outside that Military Department.

§ 589.2 Policy.

(a) This part (chapter) implements procedural guidance in Department of Defense Directive 552 5.9, "Compliance of DoD members, employees, and family members outside the United States with court orders." This guidance applies to all soldiers and Department of the Army and Nonappropriated Fund (NAF) civilian employees serving outside the United States, as well as to their command sponsored family members.

(b) DODD 5525.9 requires DoD cooperation with courts and federal, state, and local officials in enforcing court orders pertaining to military personnel and DoD employees serving outside the United States, as well as their command sponsored family members, who—

- (1) Have been charged with or convicted of any felony.

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(2) Have been held in contempt of a court for failure to obey a court order, or

(3) Have been ordered to show cause why they should not be held in contempt for failing to obey a court order.

This guidance does not affect the authority of Army officials to cooperate with courts and federal, state, or local officials, such as is currently described in Army Regulation 27-3, Legal Services, Army Regulation 190-9, Military Absentee and Deserter Apprehension Program, and Army Regulation 608-99, Family Support, Child Custody, and Paternity, in enforcing orders against soldiers and employees in matters not discussed below. The guidance below does not authorize Army personnel to serve or attempt to serve process from U.S. courts on military or DoD employees overseas. (See also AR 27-40, Litigation, paragraph 1-7.)

§ 589.3 Applicability.

This section applies to the following personnel:

(a) Army personnel on active duty or inactive duty for training in overseas areas. This includes the National Guard when federalized.

(b) Department of the Army civilian employees, including Nonappropriated Fund Instrumentalities (NAFI) employees.

(c) Command sponsored family members of Army personnel or Department of the Army civilian employees.

§ 589.4 General.

(a) Courts of federal, state, or local officials desiring to initiate a request for assistance pursuant to this section must forward the request, with appropriate court orders, as follows:

(1) For soldiers and members of their family, to the soldier's unit commander of Office, Deputy Chief of Staff for Personnel (ODCSPER), ATTN: DAPE-MP (703-695-2497); and

(2) For Department of the Army civilian employees and members of their family, to the servicing civilian personnel office for the employee's command, or ODCSPER, ATTN: DAPE-CPL, (703-697-4429).

(3) Nonappropriated Fund (NAF) employees and members of their family, to the servicing civilian personnel of-

fice for the employee's command, or ODCSPER, ATTN: CFSC-HR-P (703-325-9461).

(b) Upon receipt of such requests for assistance concerning courts orders described in paragraph (a) of this section and AR 190-9, commanders/supervisors, with the advice of their servicing Judge Advocates and legal advisors, will take action as appropriate as outlined below:

(1) Determine whether the request is based on an order issued by a court of competent jurisdiction. An "order issued by a court of competent jurisdiction" is an order that appears valid on its face and is signed by a judge.

(2) If the order appears valid on its face and is signed by a judge, attempt to resolve the matter in a timely manner to the satisfaction of the court without the return of, or other action affecting, the soldier, Army civilian employee, or family member. Due regard should be given to mission requirements, applicable international agreements, and ongoing DoD investigations or courts-martial.

(3) If the matter cannot be resolved, afford the subject of the court order a reasonable opportunity to provide evidence of legal efforts to resist the court order or otherwise show legitimate cause for noncompliance. If it is determined that efforts to provide such evidence or to show cause for noncompliance warrant a delay in taking further action, a request for delay, not to exceed 90 days, must be sought from the Secretary of the Army. Such requests, fully setting forth the reasons justifying delay and the estimated delay necessary, will be forwarded within 30 days directly to ODCSPER, ATTN: DAPE-MP (for military personnel and their family members or ODCSPER, ATTN: DAPE-CPL (for Army civilian employees and their family members) or ODCSPER, ATTN: CFSC-HR-P (for NAF employees and their family members). These offices must promptly forward the request for delay to the Assistant Secretary of Army (Manpower and Reserve Affairs) ASA(M&RA), for approval. If a delay is approved, ASA(M&RA) will promptly notify the Assistant Secretary of Defense (Force Management and Personnel) ASD

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(FM&P), copy furnished General Counsel, Department of Defense (GC, DOD).

(4) If one, the matter cannot be resolved, and two, it appears that non-compliance with the request to return the soldier, or to take other action involving a family member or DA or NAF employee is warranted by all the facts and circumstances of the particular case, and three, the court order does not pertain to any felony or to a contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of the court or the custody of a parent or another person awarded custody by court order, the matter will be forwarded, for soldiers or their family members to the soldier's general court-martial convening authority or, for army civilian or NAF employees or their family members, to the fairest general officer or civilian equivalent in the employee's chain of command, for a determination as to whether the request should be complied with. In those cases in which it is determined that noncompliance with the request is warranted, copies of that determination will be forwarded directly to the appropriate office noted in § 589.4(b)(3) and to HQDA, DAJA-CL, pursuant to chapter 6, AR 190-9.

(5) If one, the matter cannot be resolved, and two, it appears that non-compliance with the request to return the soldier, or to take other action involving a family member of DA or NAF employee, is warranted by all the facts and circumstances of the particular case, and three, the court order pertains to any felony or to a contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or another person awarded custody by court order, a request for exception to policy will be forwarded directly to the appropriate office listed in § 589.3(b)(3) with an information copy to HQDA, DAJA-AL, within 30 days unless a delay has been approved by ASA(M&RA). The offices listed in § 589.3(b)(3) must forward the request for an exception promptly through ASA(M&RA) to ASD(FM&P) for decision, copy furnished to General Counsel, DOD.

(6) All actions, whether to invoke the DOD Directive or not, must be reported

promptly to ASD(FM&P) and General Counsel, Department of Defense. See also DOD Directive 5525.9, paragraph E.3.c.

(c) If requests for military personnel cannot be resolved without return of the individual, and denial of the request as outlined in this section is not warranted, the individual will be ordered pursuant to section 721, Public Law 100-456 and DODD 5525.9 to the appropriate U.S. port of entry at government expense, provided the federal, state, or local authority requesting the individual provides travel expenses including a prepaid transportation ticket or equivalent and an escort, if appropriate, from the port of entry to the appropriate jurisdiction. Absent unusual circumstances, requesting parties will be notified at least 10 days before the individual is due to return. Guidance concerning use of military law enforcement personnel to effect the return of military personnel to U.S. civil authorities may be obtained from the U.S. Army Military Policy Operations Agency (MOMP-O).

(d) In accordance with DoD policy, military personnel traveling pursuant to a contempt order or show cause order, as described in this part and in AR 614-XX is entitled to full transportation and per diem allowances. However, this does not alleviate the requesting parties' requirement to pay travel expenses from the appropriate U.S. port of entry. Any travel expenses received from the requesting party must be deducted from the soldier's entitlement to travel and per diem allowances. The soldier will be returned in a temporary duty (TDY) status, unless a permanent change of station (PCS) is appropriate.

(e) If requests for Army civilian and NAF employees cannot be resolved and denial of the request as outlined in this section is not warranted, the individual will be strongly encouraged to comply with the court order. Failure to comply with such orders by an Army civilian or NAF employee, if all criteria are met, is a basis for withdrawal of command sponsorship and adverse action against the employee, to include removal from federal service. Proposals to take disciplinary/adverse actions

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must be coordinated with the appropriate civilian personnel office (CPO) and the servicing Judge Advocate or legal advisor and forwarded for approval to the first general officer or civilian equivalent in the employee's chain of command. A copy of the final action taken on the case must be forwarded to HQDA, ATTN: DAPE-CPL, or ATTL: CFSC-HR-P (for NAF employees).

(f) If the request is based upon a valid court order pertaining to a family member of a soldier or Army civilian or NAF employee, the family member will be strongly encouraged to comply with the court order if denial of the request as outlined in this part is not

warranted. Unless the family member can show legitimate cause for non-compliance with the order, considering all of the facts and circumstances, failure to comply may be basis for withdrawal of command sponsorship.

(g) Failure of the requesting party to provide travel expenses for military personnel as specified in this section, is grounds to be recommended denial of the request for assistance. The request must still be forwarded through DAPE-MP and ASA(M&RA) to ASD(FM&P) for decision, copy furnished to General Counsel, Department of Defense.

[55 FR 47042, Nov. 8, 1990, as amended at 56 FR 371, Jan. 4, 1991]

SUBCHAPTER G—PROCUREMENT

CROSS REFERENCE: For Department of Defense Acquisition Regulations, see chapter 2 of title 48.

PART 619 [RESERVED]

SUBCHAPTER H—SUPPLIES AND EQUIPMENT

PART 621—LOAN AND SALE OF PROPERTY

Sec.

621.1 Loan of Army/Defense Logistics Agency (DLA) owned property for use at national and State conventions.

621.2 Sales of ordnance property to individuals, non-Federal government agencies, institutions, and organizations.

621.3 [Reserved]

621.4 Issues, loans, and donations for scouting.

AUTHORITY: Pub. L. 81-193; 10 U.S.C. secs. 2574, 4308, 4506, 4507, 4627, and 4655, and Pub. L. 92-249.

SOURCE: 44 FR 5651, Jan. 29, 1979, unless otherwise noted.

EDITORIAL NOTE: For figures referred to in this part, see 42 FR 43807, Aug. 31, 1977.

§ 621.1 Loan of Army/Defense Logistics Agency (DLA) owned property for use at national and State conventions.

(a) *General.* This section—

(1) Prescribes procedures for loan of Army-owned property to recognized National Veterans' Organizations for National or State conventions as authorized by Pub. L. 81-193.

(2) Request for loans for National Youth Athletic or recreation tournaments sponsored by veterans' organizations listed in the "Veterans Administration Bulletin 23 (ALPHA)," will be processed by parent veterans' organizations.

(3) Loans are not authorized for other types of conventions or tournaments.

(b) *Items authorized for loan.* If available, the following items may be loaned for authorized veterans' organizations requirements.

(1) Unoccupied barracks.

(2) Cots.

(3) Mattresses.

(4) Mattress covers.

(5) Blankets.

(6) Pillows.

(7) Chairs, folding.

(8) Tentage, only when unoccupied barracks are not available.

(c) *Requests for loan.* (1) Requests by authorized veterans' organizations for loan of authorized Government prop-

erty will be submitted to the appropriate CONUS Army Commander of the area in which the convention will be held or the Commander, Military District of Washington (MDW) if within his area.

(2) The tenure of loan is limited to 15 days from the date of delivery, except under unusual circumstances. A narrative explanation will be provided to support loan requests for more than 15 days duration.

(3) Loan requests should be submitted by letter at least 45 days prior to required date, if practicable.

(4) Requests for loans will contain the following information:

(i) Name of veterans' organization requesting the loan.

(ii) Location where the convention will be held.

(iii) Dates of duration of loan.

(iv) Number of individuals to be accommodated.

(v) Type and quantity of equipment required.

(vi) Type of convention, (State or National).

(vii) Complete instructions for delivery of equipment and address of requesting organizations.

(viii) Other pertinent information necessary to insure prompt delivery.

(d) *Responsibilities.* The Army or MDW Commander will:

(1) When the availability of personal and real property is determined, notify the requesting veterans' organization of the following:

(i) The items and quantities available for loan and the source of supply.

(ii) No compensation will be required by the Government for the use of real property.

(iii) No expense will be incurred by the United States Government in providing equipment and facilities on loan.

(iv) Costs of packaging, packing, transportation and handling from source of supply to destination and return will be borne by the requesting organization.

(v) All charges for utilities (gas, water, heat, and electricity) based on meter readings or such other methods

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determined will be paid by the veterans' organization.

(vi) Charges which may accrue from loan of DLA/GSA material in accordance with paragraph III, AR 700-49/DSAR 4140.27, and GSA Order 4848.7 and Federal Property Management Regulations, subparagraph 101-27.5.

(vii) The Army will be reimbursed for any material not returned.

(viii) Costs of renovation and repair of items loaned will be borne by the requesting organization. Renovation and repair will be accomplished in accordance with agreement between the Army Commander and the loanee to assure expeditious return of items.

(ix) Transportation costs in connection with the repair and renovation of property will also be at the expense of the using organization.

(x) Assure that sufficient guards and such other personnel necessary to protect, maintain, and operate the equipment will be provided by the loanee.

(xi) The period of loan is limited to 15 days from date of delivery, except as provided for in paragraph (c) of this section.

(xii) Any building or barracks loaned will be utilized in place and will not be moved.

(xiii) Upon termination of use, the veterans' organization will vacate the premises, remove its own property therefrom, and turn over all Government property.

(2) Specify a bond in an amount to insure safe return of real and personal property in the same condition as when borrowed. (In the case of personal property, this amount will be equal to the total value of the items based on current acquisition costs.)

(i) An agreement will be executed between the Army Commander and the Veterans' Organization if the terms of the loan are acceptable. A sample loan agreement is shown at figure 7-5 of this subchapter.

(ii) When the agreement has been executed and the bond furnished, requisitions will be submitted to the appropriate source of supply. Requisitions will indicate shipping destination furnished by the veterans' organization. Transportation will be by commercial bills of lading on a collect basis.

(iii) Appoint a Property Book Officer to maintain accountability for the Government property furnished under this regulation.

(3) Property Book Officer will:

(i) Assume accountability from the document used in transferring property to the custody of the veterans' organization.

(ii) Perform a joint inventory with the veterans' organization representative. Survey any shortage or damages disclosed by the joint inventory in accordance with AR 735-11.

(iii) Maintain liaison with the veterans' organization during the period of the loan.

(iv) Prepare, in cooperation with the veterans' organization representative, an inventory of property being returned. Certify all copies of the receipt document with the veterans' organization representative.

(v) Insure the return of all property at the expense of loanee to the supply source or to repair facilities.

(vi) Obtain a copy of receipted shipping document from the installation receiving the property.

(vii) Determine cost and make demand on the loanee for:

(A) Items lost, destroyed, or damaged.

(B) Costs of repair or renovation. Estimated costs will be obtained from the accountable activity.

(C) Comply with instructions contained in AR 700-49/DSAR 4140.27 in the application of condition A and/or B, C, and T items utilized.

(D) Ascertain that items lost in transit are reconciled prior to assessing charges. Where the loss is attributable to other than the loanee, charges should not be borne by the borrower.

(viii) Request payment from the loanee. Checks are to be made payable to the Treasurer of the United States. Upon receipt of payment, appropriate fiscal accounts will be credited. The Property Transaction Record will be closed and the Stock Record Accounts audited.

(ix) Deposit collections in accordance with instructions contained in AR 37-103. In the event payment is not received within a reasonable period, Report of Survey Action will be initiated in accordance with AR 735-11.

(x) Reimburse DLA/GSA for the cost of any repair, reconditioning and/or materiel not returned.

§ 621.2 Sales of ordnance property to individuals, non-Federal government agencies, institutions, and organizations.

(a) *General.* This section—

(1) Cites the statutory authority for, and prescribes the methods and conditions of sale of certain weapons, ammunition, and related items as specified herein.

(2) Applies to all sales of weapons and related material to individuals, organizations, and institutions, when authorized by the US Army Armament Materiel Readiness Command (ARRCOM), and overseas commanders.

(3) Provides that sales under this section will be limited to quantities of an item which authorized purchasers can put to their own use. It is not intended that property be sold under the provisions of this section for the purpose or resale or other disposition.

(4) Does not apply to sales of property determined to be surplus. (See AR 755 series.)

(b) *Price.* Except as noted below, when sales of the Army property are made and the title thereto passes from the US Government, the prices charged will be the standard list price contained in the SC 1305/30 Management Data List series, plus cost of packing, crating, and handling and administrative charges.

(c) *Condition of sale.* Provisions apply to sales under this section, as follows:

(1) Sales will be made without expense to the Government.

(i) All costs incident to sales (including packing, crating, handling, etc.) will be paid in advance by the purchaser.

(ii) All costs incident to shipment (transportation, parcel post charges, etc.) will also be paid by the customer.

(iii) Payment for items and charges incident to sale will be made only by cashier's check, certified check, bank money order, or postal money order made payable to the Treasurer of the United States.

(iv) For other than items of ammunition and ammunition components, cash will be acceptable when consignee

pickup is authorized or purchase is made in person.

(2) All financial transactions will be accomplished in accordance with applicable Department of the Army directives and regulations. Moneys collected for cost of items, as well as packing, crating, and handling, will be deposited as an appropriate reimbursement as prescribed in applicable regulations.

(3) Generally, all sales are final and, normally, the US Government assumes no obligation or responsibility for repair, replacement, or exchange, except as provided in AR 920-20. Purchasers will be so advised prior to making the sale. All weapons sold, however, will be safe for firing.

(4) Weapons sold at standard price will be supplied with equipment. Weapons sold at less than standard price will be supplied less equipment.

(5) Sales of specific items may be suspended at any time by the direction of CDR, ARRCOM.

(d) *Purchasing procedure.* (1) Except as provided in paragraph (e) of this section, all requests originating within CONUS for the purchase of small arms weapons, repair parts, cleaning, preserving, and target material will be submitted to the Commander, ARRCOM, Rock Island, IL 61201.

(i) Upon approval, these items will be shipped from Army depots stocking such material, based upon availability of material. Customers will be furnished instructions for submission of remittance.

(ii) Upon receipt of proper remittance from eligible customers ARRCOM will issue the necessary documents directing shipment from an Army depot where the items are available.

(2) In implementing the subchapter, oversea commands should designate installations within the oversea command to which requests for purchase of ammunition and related material will be directed.

(3) Depots shipping weapons to individuals, Director of Civilian Marksmanship (DCM) affiliated rifle and pistol "clubs", museums, veterans organizations, and other US Government agencies will annotate shipping documents with the serial number of all the weapons they ship. Firearms shipped will be reported to Commander,

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ARRCOM, ATTN: DR SAR-MMD-D, Rock Island, IL 61202, using DA Form 3535 (Weapons Sales Record), DA Form 3535 may be obtained from Commander, Letterkenny Army Depot, ATTN: DRXLE-ATD, Chambersburg, PA 17201.

(i) The transportation officer will ascertain estimated transportation costs, to include DA transportation security measures (costs) for shipment to destination. Such information will be transmitted by letter to consignee with request for acknowledgement that shipment will be accepted based on costs submitted.

(ii) Shipment will not be made unless consignee agrees to accept shipments. Refusal to accept shipment shall be reported to ARRCOM.

(4) CDR, ARRCOM is responsible for maintaining a record by serial number of all weapons reported by depot in accordance with paragraph (d)(3) of this section. He will establish procedures to screen purchase requests to insure compliance with any limitations established by this section.

(e) *Sales to individuals, organizations, and institutions.* (1) Sales of small arms weapons and ammunition are limited by statute (10 U.S.C. 4308). Such sales will be made in accordance with the provisions of this paragraph and with other rules and regulations approved by the Secretary of the Army.

(2) Sales will be limited to M1 service rifles, either national match grade or service grade. Only one such rifle and spare parts for it will be sold to an individual. No ammunition will be sold to individuals.

(3) Junior marksmanship clubs and junior marksmanship division affiliated within the Director of Civilian Marksmanship (DCM) pursuant to AR 920-20 may purchase limited quantities of .22 caliber ammunition.

(4) The DCM will determine the maximum quantity of such ammunition that clubs will be permitted to purchase in each fiscal year.

(5) Approved, non-profit summer camp organizations that are of a civic nature are allowed to purchase from the DCM at cost plus shipping and handling charges, 300 rounds of .22 caliber ammunition for each junior who is participating in a summer camp marksmanship program.

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(6) Requests for purchase of ammunition by marksmanship clubs and summer camp organizations will be submitted to the DCM for approval. If he approves, the application will be forwarded to ARRCOM for processing. If it is disapproved, it is returned to applicant with reason(s) stated for disapproval.

(f) *Eligibility of purchasers.* In order to purchase a rifle under this program, an individual must:

(1) Be a member of a marksmanship club affiliated with the DCM (AR 920-20).

(2) Based upon regular competitive shooting, have an established status as a marksman as determined by the DCM.

(g) *Purchase procedure.* (1) Individuals desiring to purchase National Match Grade M1 service rifles will submit requests to the Director of Civilian Marksmanship, Department of the Army, Washington, DC 20314-0110. The request should contain the name and address of the shooting club with which the purchaser is affiliated and appropriate evidence of status as a competitive marksman.

(2) Upon receipt of a request, the Director of Civilian Marksmanship will forward to the individual a Certificate for Purchase of Firearms in the suggested format at figure 5-1 to be completed, notarized and returned. When returned with check or arrangements for payment, the Certificate will be referred for appropriate verification in the records of US Government agencies and for other investigation as required. This is done to insure that the sale of a weapon to the applicant is not likely to result in a violation of law. The Privacy Act Statement for Certificate of Purchase of Firearms (figure 5-2) will be made available to the individual supplying data on the Certificate for Purchase of Firearms (suggested format, figure 5-1). Prior to requesting the individual to supply data on the Certificate for Purchase of Firearms (suggested format, figure 5-1) the Privacy Act Statement for Certificate will be made available to the individual concerned. (The Privacy Act Statement will be reproduced locally on 8x10½ inch paper.)

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(i) A purchase application will be denied if the applicant fails to meet all the conditions required in the Certificate.

(ii) If an application is denied, the applicant will be informed of the action and will be given an opportunity to submit additional information justifying approval of the application.

(iii) If the results of the investigation are favorable, the application will be forwarded to ARRCOM for processing.

(h) Marksmanship clubs affiliated with the DCM and individuals who are members of those clubs are authorized to purchase from the Army targets of types not otherwise available from commercial sources. Request for such purchases will be submitted to the Director of Civilian Marksmanship for approval and processing. Individuals who have in the past purchased rifles from the Army under the authority of 10 U.S.C. 4308(a)(5), may purchase spare parts for those rifles if the parts are available. Requests for purchase of spare parts will be submitted to the Director of Civilian Marksmanship for approval. If he/she approves the application, she/he will forward it to ARRCOM for processing. If he/she disapproves the application, she/he will return it to the applicant stating the reasons for disapproval. Current DA transportation security measures for weapons will be applied under procedures contained in paragraphs (d)(1) (i) and (i) of this section.

(i) *Cadets, US Military Academy.* (1) When approved by the CDR DARCOM, the Superintendent, US Military Academy may sell to cadets upon graduation from the Academy those sabers which no longer meet prescribed standards of appearance and/or serviceability.

(2) Application to purchase sabers under these provisions will be made in accordance with procedures established by the Superintendent.

(j) *Reserve Officer's Training Corps (ROTC) and National Defense Cadet Corps (NDCC).* Supplies required by educational institution for the training of units and individuals of the Reserve Officer's Training Corps and National Defense Cadet Corps, in addition to authorized items normally furnished to ROTC and NDCC schools, may be sold

when available by the activities listed in paragraph (g) of this section (10 U.S.C. 4627). Such purchases will be in accordance with AR 145-2.

(k) *Manufacturers and designers.* (1) Under the provisions of 10 U.S.C. 4506, the Secretary of the Army is authorized to sell to contractors or potential contractors such samples, drawings, and manufacturing and other information as he considers best for national defense. Procedures for such sale are contained in APP 13-1502.

(2) Under the provisions of 10, U.S.C. 4507, the Secretary of the Army may sell to designers who are nationals of the United States, serviceable ordnance and ordnance stores necessary in the development of designs for the Armed Forces. Designers will submit application to purchase to the appropriate Commodity Command.

(3) If any item normally requiring demilitarization pursuant to the Defense Disposal Manual (DoD 4160.21-M) and the AR 755-series is sold, a special condition of sale will prohibit further disposition by the purchaser without prior approval of the Deputy Chief of Staff for Logistics, Department of the Army.

(l) *Sales of individual pieces of U.S. armament for sentimental reasons.* Under the provisions of 10 U.S.C. 2574, individual pieces of U.S. armament, which are not needed for their historical value and can be advantageously replaced, may be sold at a price not less than cost when there exists for such sale sentimental reasons adequate in the judgment of the Secretary of the Army.

(m) *Method of sale.* (1) Applications to purchase under the provisions of this act will be submitted to Deputy Chief of Staff for Logistics, ATTN: DALO-SMS, Department of the Army, with a complete identification including serial number, and location of desired item, if known.

(2) Approved applications for major items will be forwarded through Commander, U.S. Army Materiel Development and Readiness Command, ATTN: DRCMM-SP, to the Commander, U.S. Army Armament Materiel Readiness Command.

[44 FR 5651, Jan. 29, 1979, as amended at 54 FR 48097, Nov. 21, 1989]

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§ 621.4 Issues, loans, and donations for scouting.

(a) *General.* This section provides information relative to issue, loan or donation of Government property to the Boy Scouts of America and the Girl Scouts of America.

(b) *Guidance.* (1) Issues are made under the provisions of the loan agreement and reimbursement is made for adjusted shortages and damages.

(2) Provisions for donations of surplus property to Scout organizations, including lists of classes of donable property, are contained in chapter III, part 3, Defense Disposal Manual (DOD 4160.21M).

(3) The loan of certain Army, Navy, Air Force and DLA equipment and the provision of transportation and other services for Jamborees is initially provided for by Pub. L. 92-249. Implementation on a current basis is made in DOD Directive 7420.1. Army implementation is provided as follows:

(i) Army stock fund in paragraph 2-6b(4), AR 37-111, Working Capital Fund-Army Stock Fund Uniform Policies, Principles and Procedures Governing Army Stock Fund Operations.

(ii) Non-stock fund in paragraph 2-18, AR 310-34, Equipment Authorization Policies and Criteria, and Common Table of Allowances.

(c) *Procedure.* Loan agreements are mutually developed preceding the actual lending of the equipment. Paragraph 1-16, AR 735-5, General Principles, Policies and Basic Procedures, is used as the guide for preparation of loan agreements. Authority for commanders to participate in World and National Jamborees is included in paragraph (d) of this section; Procedure for Loan of Equipment and Providing of Transportation and Other Services to the Boy Scouts of America for World and National Jamborees is included in paragraph (j) of this section; and sample loan agreement to be executed by area commanders is included as figure 7-5.

(d) *World and National Boy Scout Jamborees.* The Act of 10 March 1972 (Pub. L. 92-249; 86 Stat. 62) and (86 Stat. 63) authorized the Secretary of Defense to lend equipment and provide transpor-

tation and other services to the Boy Scouts of America in support of World and National Jamborees. The Secretary of Defense has delegated his authority and responsibility for the support of Jamborees to the Secretary of the Army. The Commander DARCOM ATTN: DRCMM-SP has been assigned to monitor the program for the Secretary of the Army.

(e) *Group travel and visits.* Many Scouts and Leaders will travel in groups and their itinerary will provide for visits to places of interest in CONUS en route to and from Jamborees. Such group travel may begin in June and extend into September and October of the Jamboree year. In keeping with Department of the Army policies, commanders of Army installations may extend an invitation to and honor requests from Scout groups enroute to and from the Jamboree to visit and encamp at their installation.

(f) *Commissary and post privileges.* Installation commanders are authorized to provide commissary and post exchange privileges to Scout groups en route to and from the Jamboree for food items such as bread, meat, and dairy products. These privileges will be extended only to Scout groups which are en route to or from the Jamboree and who are encamped or quartered at the installation or the Jamboree site. Commissary and post exchange privileges extended to Scout groups while encamped at the Jamboree site for supply and food items will only be honored upon application by officials of the Boy Scouts of America to supplement supplies and rations not considered adequate for American Scouts or Scouters.

(g) *Arrangements.* Regional Scout Executives have been informed by the National Headquarters of the contents of this subchapter and that arrangements pursuant to this subchapter must be made in advance directly with the installation commanders. However, commanders will consider factors of extenuation or emergency which may preclude advance arrangements.

(h) *Hospitalization.* Boy Scouts and Scout Leaders attending Jamborees are considered designees of the Secretary of the Army for the purpose of receiving medical care at US Army Medical facilities. The reciprocal rate will not

be charged. Subsistence charges will be at the rate of \$1.80 per day for hospitalized patients, but will not be collected locally. Each Boy Scout and Leader participating in Jamborees and hospitalized in Army medical treatment facilities will be reported to The Surgeon General, ATTN: DASG-SGRE-SSC, Department of the Army, Washington, DC 20314, on DD Form 7 (Report of Treatment Furnished Pay Patients; Hospitalization Furnished (part A)). No local collections are authorized.

(i) *Service coordination.* (1) The Departments of the Navy and the Air Force and the Defense Logistics Agency will assist the Department of the Army in providing necessary equipment, transportation, and services in support of the Boy Scouts of America attending Jamborees. The Secretary of the Army or his designee will maintain liaison, as appropriate, with such agencies to avoid duplication of effort.

(2) Other departments (agencies) of the Federal Government are authorized under such regulations as may be prescribed by the Secretary (Administrator) thereof, to provide to the Boy Scouts of America (BSA), equipment and other services, under the same conditions and restrictions prescribed for the Secretary of Defense.

(j) *Procedure for loan of equipment and providing of transportation and other services to the Boy Scouts of America for world and national jamborees. Preliminary actions.* (1) In accordance with the provisions of Pub. L. 92-249, H.R. 11738, 10 March 1972, and Secretary of Defense Memo of 17 May 1972, Subject: Loan of Equipment and Providing of Transportation and Other Services to the Boy Scouts of America for Boy Scout Jamborees; Memo of 23 January 1973, Subject: Military Transportation Support for Boy Scout Jamborees; and Memo of 19 August 1974, Subject: Military Transportation Support for Boy Scout Jamborees, the DOD is authorized to lend certain items and provide transportation and certain other services to such Jamborees. Prior to the loan of property and providing transportation and other services, an appropriate agreement will be executed between the United States of America and the activity to be supported. A bond (fig. 7-6), in an amount specified by the Com-

mander, DARCOM, based on statute taken by the Commander-in-Chief/Commander, Major Army Command (MACOM), and held until termination of the encampment and final settlement is made for each Jamboree.

(2) The Commander-in-Chief/Commander, MACOM designated, on behalf of the Commander, DARCOM, representing the Secretary of Defense will enter into legal arrangements with the Boy Scouts of America for the loan of equipment and the providing of transportation and certain other services for Boy Scouts World and National Jamborees. National Jamborees include Jamborees conducted by and within the United States and also those conducted by and within foreign nations.

(3) The Commander-in-Chief/Commander, MACOM, will appoint a Property Book Officer who will maintain separate stock records in order to provide for a single final billing to the supported activity (Boy Scouts of America) for items consumed, lost, damaged or destroyed. The Department of the Army will not be billed for items obtained from other than Army sources, except medical supply losses. Bills for medical supply losses will be submitted to the US Army Area Surgeon for payment. He will establish liaison with the activity to be supported. The property book account will be established in accordance with section II, chapter 2, AR 710-2.

(4) The Commander-in-Chief, MACOM, will task the Army Area Surgeon for Medical Supply Support to the Jamborees. Each Surgeon designated should appoint an accountable officer and furnish the name, location, and routing identifier of a project office wherein medical supply problems can be resolved.

(5) The Property Book Officer is authorized direct communication with the source of supply, other military department liaison personnel and DARCOM ICP's to resolve routine supply problems.

(k) *Preparing bills of material.* (1) The activity (BSA) will submit a list of equipment and supplies desired to the Commander-in-Chief/Commander, MACOM. This list will be edited during

and subsequent to preliminary conferences with representatives of the activity and furnished to Commander, DARCOM, ATTN: DRCMM-SP.

(2) HQ, DARCOM will convert the informal list to a tentative Bill of Material and will furnish the respective Commodity Command that part of the Bill of Material for their items of logistical responsibility. A suggested format for the Bill of Material is included as figure 7-1. Local reproduction is authorized. Copies of the entire tentative Bill of Material will also be furnished to each of the military departments authorized to participate in the support of the encampments. The Bill of Material forwarded to the Commander-in-Chief/Commander, MACOM will be screened prior to placing requisitions on CONUS supply points.

(3) At such time as item availability information is on hand and the sources to be used are determined (paragraph (m) of this section, a Bill of Material (figure 7-1) will be prepared by HQ, DARCOM, and forwarded to the Commander-in-chief/Commander, MACOM.

(4) The Bill of Material will list, by commodity command (military department), all items desired, identified by National Stock Number (NSN) description, quantity desired and required delivery date. The NSN will provide identification of the items required. Items will be identified by the Property Book Officer to the responsible commodity command or military department as indicated below:

(i) CERCOM	1 US Army Communications and Electronics Materiel Readiness Command.
(ii) TSARCOM.	2 US Army Troop and Aviation Materiel Readiness Command.
(iii) ARRCOM	3 US Army Armament Materiel Readiness Command.
(iv) TARCOM	4 U.S. Army Tank-Automotive Materiel Readiness Command.
(v) DLA	5 Defense Logistics Agency.
(vi) Navy	N Department of the Navy.
(vii) Air Force	F Department of the Air Force.
(viii) Other Installations.	A

The Bill of Material will be screened to insure that radioactive items restricted for military use are not included.

(1) *Establish property transaction records.* (1) A Property Transaction Record reflecting complete informa-

tion about each item loaned to the activity will be established and maintained by the Property Book Officer (figure 7-2) and the respective commodity command military department (figure 7-3). Suggested formats for the Property Transaction Records are found in figures 7-2, 7-3, and 7-4, Local reproduction is authorized.

(2) The Property Book Officer will also establish and maintain separate Property Transaction Records for items obtained from supply sources other than Army commodity commands, *i.e.*, other Army installations, Department of the Navy, Department of the Air Force (figure 7-4).

(3) Each entry on the Property Transaction Record will be supported by appropriate documentation (commodity command: copies of shipping documents, copies of return documents and copies of surveillance inspection report—Property Book Officer: Requisition voucher files and hand receipt cards). This is particularly important for reconciliation purposes in order that all property received from each source will be returned to that source upon termination of each encampment.

(m) *Locating and obtaining equipment and supplies.* (1) The respective commodity commands (military departments) will screen the tentative Bill of Material (paragraph (k)(2) of this section) and determine availability and source of supply identified by Routing Identifier Code. They will advise HQ, DARCOM, ATTN: DRCMM—SP of availability, appropriate substitute items when the requested items are not available in sufficient quantity, and the source of supply for requisitioning purposes.

(2) Concurrently, the Bill of Material will be screened within the MACOM to determine those items that can be obtained from assets available in the command.

(3) The Property Book Officer will requisition equipment and supplies from the source of supply as indicated by Commander, DARCOM in accordance with AR 725-50 or other separately furnished instructions. The requisition number, quantity requisitioned, stock number and source of supply will be entered in the Property Transaction

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Record. Requisitions will cite the appropriate project code assigned and appropriate activity address code on all requisitions submitted. Project codes will be assigned by Commander, Logistic Systems Support Activity, ATTN: DRXLS-LCC, Chambersburg, PA, 17201 and distributed by message to all interested addressees.

(4) Loan of General Services Administration (GSA) General Supply Fund Material—The Federal Property and Administrative Services Act of 1949, as amended, authorizes the Administrator, GSA to loan GSA General Supply Fund Material to the Department of Defense and other federal agencies. Loan shall be made to the extent that items are readily available and that such loans will not jeopardize the GSA stock inventory. The loan of GSA General Supply Fund Material shall normally be limited to 90 Calendar days. Requisitions for GSA material should be submitted to the nearest GSA Regional Office by the CINC/CDR MACOM.

(5) Formal accountability for all items shipped to the site of the activity will be retained by the appropriate accountable activity. Property and financial accounting will be in accordance with respective military department regulations governing loans.

(6) The shipping depot or other source will furnish a copy of the shipping document to the respective commodity command (military department) where the quantity charged, date shipped, condition of the property and total value will be posted to the Property Transaction Record.

(7) Upon receipt of the advance copy of the shipping document, the commodity command (military department) will post information to his Transaction Record, by source as in paragraph (1)(1) of this section.

(8) When the shipment is received, the Property Book Officer will inspect the property. A narrative statement of condition will be prepared if condition of the property is other than that indicated on the shipping document and referenced to the condition entry on the Property Transaction Record. The source of supply, as appropriate, will be immediately notified of overages or shortages and verified in condition, as

provided in chapter 8, AR 735-11. The Property Book Officer will enter on the shipping document the quantity actually received when it differs from quantity shown as shipped and will post the quantities received to the property book record.

(9) Discrepancies between the quantity shipped by the depot and that received by the Property Book Officer and variance in condition will be reconciled as rapidly as possible and appropriate records will be brought into agreement. When shortage or damage is not attributable to the carrier, the Property Book Officer will immediately contact the responsible source of supply, furnishing the stock number and document number involved, together with an explanation of the discrepancy. Reconciliation is particularly important in order to ensure a common point of departure in determining charges to be assessed upon termination of the activity. Replacement shipments, when required, will be covered by appropriate shipping documents.

(10) Special Instructions for Defense Logistics Agency, Clothing and Textile Items. (See DSAR 4140.27/AR 700-49).

(n) *Transportation.* (1) Transportation of equipment and supplies—The responsibility of coordinating movement of equipment and supplies placed on loan to the Boy Scouts of America during National and World Jamborees is delegated to the Commander, US Army Materiel Development and Readiness Command, ATTN: DRCMM-ST.

(2) All requisitions for items in question, will cite the appropriate project code and will be shipped by commercial bill of lading on a collect basis to all National Jamborees and World Jamborees held in the United States.

(3) Shipments to Boy Scout contingents at World Jamborees in foreign countries will be by Government bills of lading, unless otherwise specified by the Boy Scouts of America.

(4) All shipments directed to Boy Scout Jamborees will be routed by the most feasible means as determined by the shipper. Shipments will be consolidated to the maximum extent possible to assure the lowest charges available to the Boy Scouts of America.

(5) Separate shipping instructions will be provided for each Jamboree to assure that correct consignee and rail-head addresses are furnished.

(6) Movement of Boy Scouts, Scouters, and officials living in the United States of America to a Jamboree within the United States of America or to a Jamboree in an oversea area shall be the responsibility of the Boy Scouts of America or the individuals concerned.

(7) No authority exists under Pub. L. 92-249 for the movement of Boy Scouts, Scouters, and officials via military capabilities other than those of the Military Airlift Command or the Military Sealift Command.

(o) *Transportation by vessels of the Military Sealift Command (MSC).* (1) The MSC does not operate any ships suitable for carriage of passengers on transoceanic routes. Although pertinent directives and Pub. L. 92-249 authorize the movement of Boy Scouts on Military Vessels, the MSC has no capability to provide such transportation.

(2) The MSC is an industrial-funded organization and charges the military service for sealift services provided in accordance with established rates. The host command will be responsible to compensate the MSC for any equipment or material moved on MSC ships. The limitations inherent in Pub. L. 92-249 stipulate that transportation support provided will be at no cost to the Government. Under these directions, Boy Scout equipment or materiel is not authorized movement on a space available basis without prior approval of the Secretary of Defense. Such approval is not anticipated.

(3) All billings for transportation provided by MSC will be forwarded to the appropriate Commander-in-Chief/Commander of the support major Army command (MACOM). Reimbursement will be requested by the MACOM Commander from the Boy Scouts of America.

(p) *Transportation of oversea based scouts, scouters, and other authorized personnel by military airlift to national or international jamborees.* (1) Space required reimbursable transportation by Military Airlift Command (MAC) airlift over established MAC channels is authorized from points outside the Continental United States (OCONUS)

to aerial ports within CONUS, or to other oversea locations and return. Such transportation will be provided only to the extent that it does not interfere with the requirements of military operations, and only to those Boy Scouts, Scouters, and officials residing overseas and certified by the Boy Scouts of America (BSA) as representing the BSA at the Jamboree. Certification by the BSA will be in the form of a letter identifying each such individual as their authorized representative at the Jamboree. This letter of authorization must be presented to the sponsoring overseas command.

(2) Boy Scouts, Scouters, officials and their equipment will be moved after all space-required traffic, but before any space-available traffic.

(3) Each passenger is authorized the normal accompanying free baggage allowance of 66 pounds while traveling on MAC aircraft. It is not contemplated that any excess baggage allowance will be authorized.

(4) Transportation of Boy Scouts, Scouters, officials, and their equipment provided by MAC controlled aircraft will be reimbursed at the common user tariff rates assessed U.S. Government Traffic, as contained in AFR 76-11.

(5) On the basis of letters of authorization issued by the BSA, the BSA will monitor services provided by the Department of Defense. One copy of each BSA letter of authorization will be forwarded to the Commander, US Army Materiel Development and Readiness Command, ATTN: DRCMM-SP, 5001 Eisenhower Avenue, Alexandria, VA 22333, for planning purposes. This letter of authorization should specify whether one way or round trip transportation is requested.

(6) DACROM responsibilities include the following:

(i) Compiling a passenger forecast to be submitted to MAC in accordance with AR 59-8/OPNAVINST 4630.18C/AFR 76-38/MCO 4630.6B.

(ii) Providing Military Traffic Management Command (MTMC) an information copy of the passenger forecast.

(iii) Submitting all passenger requirements for one way and round trip transportation originating overseas to the appropriate overseas command.

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(7) The responsibilities of the sponsoring overseas command include:

(i) Verifying that Scout passengers are officially authorized representatives of BSA in accordance with paragraph (p)(1) of this section.

(ii) Making all necessary passenger reservations with MAC, for transportation originating overseas, in accordance with AR 55-6/AFR 76-5/OPNAVINST 4630.23/MCO P4630.11. The oversea command will submit CONUS outbound return passenger requirements to Commander, Military Traffic Management Command, ATTN: MTMC-PTO-P, Washington, DC 20315.

(iii) Issuing each passenger a MAC Transportation Authorization (DD Form 1482) for transportation from the overseas location and return, when round trip transportation has been requested. The customer identification code, item (7) of the DD Form 1482, should be designated—JBWJ—which was approved by MAC as the permanent CIC for direct billing purposes to HQ, Boy Scouts of America, North Brunswick, New Jersey, 08902.

(iv) Ensuring that each Scout passenger has a completed DD Form 1381, signed by a parent, guardian or other legally responsible individual.

(v) Evaluating the use and necessity of military airlift within or between overseas locations. This evaluation will include such factors as reasonable travel time, number of connections required, and assurance of Scout group integrity. Surface transportation will normally be used for travel within an overseas area.

(8) The responsibilities of the MTMC include:

(i) Evaluating the return outbound passenger requirements and making the necessary transportation arrangements so as to maintain Scout group integrity at all times.

(ii) Assisting the BSA in completing required documentation and insuring that passengers are ready prior to the return flight.

(iii) Pub. L. 92-249 does not provide authorization for the use of the Department of Defense transportation by Scouts, Scouters, and Officials of foreign nations. All requests to transport such persons should be forwarded through the unified command channels

to the Office of the Assistant Secretary of Defense (Public Affairs). However, DOD does not contemplate authorization for the use of MAC aircraft for other than U.S. Scouts, Scouters, and Officials.

(iv) Use of military helicopters in support of medical evacuation, VIP, press and photo-services—The Director of Army Aviation, the Department of the Army Staff Judge Advocate, and the Comptroller of the Army have furnished the general opinion that Pub. L. 92-249 authorizes the use of Military helicopters in support of the above described services to the extent they are reasonably available and permits the use of appropriated funds.

(q) *Determination of charges and settlement.* (1) All property on which repair cost is claimed will be held at the depot or post, camp or station until final charges are determined and a release is given by CDR, DARCOM, Department of the Army.

(2) The commodity command (military department) will prepare the following information and statement, and forward them, to CDR, DARCOM, Department of the Army, for final review:

(i) Complete Property Transaction Record and supporting documents.

(ii) Proper accounts for which reimbursement received for shortages and repairs are to be deposited.

(iii) The following statement: "The losses and/or damages indicated on the Property Transaction Report in the amount of \$_____ represent the total claim by (appropriate commodity command or military department) relative to commodity command or military department property loaned to (Boy Scouts of America). Upon settlement and deposit to the proper account, the CDR of the commodity command or military department releases the (Boy Scouts of America) from further obligations."

(iv) Statements as to the general type of repair (e.g., tentage, repair tears, insert new panels, replace grommets) will be reported on separate addendum to the Property Transaction Record for items requiring repair.

(3) The CINC/CDR, MACOM, will prepare the following information and statement for property furnished for

assets in the command and will forward this to CDR, DARCOM:

- (i) Same as (q)(2)(i) of this section.
 - (ii) Same as (q)(2)(ii) of this section.
 - (iii) The following statement: The losses and/or damages indicated on the Property Transaction Record in the amount of \$ _____ represent the total claim by (appropriate Army) relative to (appropriate Army) property loaned to (Boy Scouts of America). Upon settlement and deposit to the proper account, the CINC/CDR, MACOM releases the (Boy Scouts of America) from further obligations.
 - (iv) Same as (q)(2)(iv) of this section.
- (4) CDR, DARCOM, will review the charges, inspect property to be repaired, if necessary, reconcile any discrepancies and determine final charges to be levied against the supported activity. Approved list of charges will be forwarded to the CINC/CDR, MACOM, for collection, and property being held for repair will be released.
- (5) The CINC/CDR, MACOM, will prepare and dispatch a letter to the supporting activity and request payment made payable to the Treasurer of the United States. Upon receipt of payment, collection documents will be prepared and appropriate fiscal accounts, as furnished by the commodity command (military departments) ((q)(2) and (3) of this section) credited. The MACOM Surgeon will take action to reimburse the DLA stock fund for expendable medical supply losses reported. The CINC/CDR, MACOM, will close the Property Transaction Record Account.
- (6) The CINC/CDR, MACOM, will advise the CDR, commodity command (military departments and CDR, DARCOM, DA) that settlement has been accomplished. Commodity command (military department) Property Transaction Records will be closed upon receipt of the foregoing advice.
- (7) The CDR, DARCOM will advise the CINC/CDR, MACOM, to return the bond to Boy Scouts of America.
- (8) In the event of unsatisfactory settlement, the proceeds of the bond will be used to satisfy the claim. The Power of Attorney executed in connection with the agreement will be invoked and proceeds collected from the bond (fig. 7-7).

PART 623—LOAN OF ARMY MATERIEL

- Sec.
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- APPENDIX A TO PART 623—EXPLANATION OF TERMS
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- APPENDIX C TO PART 623—AGREEMENT FOR LOAN OF US ARMY MATERIEL (DA FORM 4881-R)
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- APPENDIX G TO PART 623—CONTINENTAL US ARMY BOUNDARIES
- APPENDIX H TO PART 623—REFERENCES

AUTHORITY: 10 U.S.C. 2571; 31 U.S.C. 686; 10 U.S.C. 2667.

SOURCE: AR 700-131, 45 FR 62038, Sept. 18, 1980, unless otherwise noted.

§ 623.1 General.

- (a) *Purpose.* This part sets forth policies and procedures for loan of Army materiel. As used in this regulation, the term 'loan' includes a lease.
- (b) *Applicability.* (1) This regulation applies to all Department of the Army (DA) agencies, commands, installations, and activities.
- (2) This regulation applies to the Army National Guard (ARNG) only when the procedure for the loan of equipment under the procedure of National Guard Regulation (NGR) 735-12 does not apply.
- (3) This regulation does not apply to loans governed by the DOD Military Assistance and Sales Manual, DOD 5105.38-M.
- (4) This regulation does not apply to loans governed by the Defense Acquisition Regulation (DAR).
- (c) *Scope.* This part outlines when loans of Army materiel may be made. It gives general procedures for requesting and processing loans, and sets forth

responsibilities, including requirements for reimbursement.

(d) *Explanation of terms.* (1) The terms “loan,” “lease” and “bailment” are contractual terms and are frequently used interchangeably. They have no meaning by themselves. It is necessary to study the statute to see what is required. Usually, a “loan” is thought of as a short-term transfer of property, sometimes with reimbursement; a “lease” is a more formal transfer, often long-term and requiring a fair monetary rental; and a “bailment” is a loosely-used term, generally reserved for a delivery of property to another in trust for the purpose of doing something to the property and then returning the property to the owner. The term “issue” is frequently used in the sense of a transfer of property which will be consumed in use. The terms “gift,” meaning a permanent transfer of property without reimbursement, and “sale,” meaning a permanent transfer with reimbursement, are outside the scope of this regulation.

(2) For additional definitions, see appendix A.

(3) The words “he, him, his” when used in this publication represent both the masculine and feminine genders, unless otherwise specifically stated.

(e) *Loan restrictions.* (1) Army materiel is not normally used for other than the Army’s primary mission; however, under conditions described herein materiel not immediately needed to support mission requirements may be loaned to—

(i) Army and other Department of Defense (DOD) elements.

(ii) Non-DOD Federal departments and agencies.

(iii) Civil governments (State and local).

(iv) Special activities, agencies, and others.

(2) Table 2-1 lists various circumstances where loan of Army materiel might be requested. It identifies the applicable Federal laws or other authority which would authorize such loans.

(f) *Statutory authorities.* There are three basic federal laws which authorize the loan of Army property. There are also numerous specific statutes which authorize particular types of

loans in limited situations. Unless there is a reason to use the specific statute, one of the basic statutes will be used.

(1) The following are the basic statutes:

(i) 10 U.S.C. 2571—Authority for loan of property within DOD.

(ii) 31 U.S.C. 686 (The Economy Act)—Authority for loans to other Federal departments and agencies.

(iii) 10 U.S.C. 2667 (The Leasing Statute)—Authority for loans/leases, including leases to activities outside the Federal Government.

(2) Following are some of the specific authorizing statutes:

(i) 10 U.S.C. 331—Federal aid for State governments as result of insurrection.

(ii) 10 U.S.C. 332—Use of militia and Armed Forces to enforce federal authority.

(iii) 10 U.S.C. 333—Use of militia or Armed Forces to suppress interference with state and federal law.

(iv) 10 U.S.C. 2541—Loan of equipment and barracks to national veterans organizations.

(v) 10 U.S.C. 2542—Loan of equipment to the American National Red Cross for instruction and practice.

(vi) 10 U.S.C. 2543—Loan of equipment to US Presidential Inaugural Committee.

(vii) 10 U.S.C. 2544—Loan of equipment and services to the Boy Scouts of America, for national and world jamborees.

(viii) 10 U.S.C. 2572—(See AR 870-20.) Loan of books, manuscripts, works of art, drawings, plans, models, and condemned or obsolete combat materiel not needed to—

(A) A municipal corporation.

(B) A soldiers monument association.

(C) A state museum.

(D) A nonprofit incorporated museum.

(E) Posts of Veterans of Foreign Wars of the USA.

(F) American Legion Posts.

(G) A local unit of any other recognized war veterans association.

(H) A post of the Sons of Veterans Reserve.

(ix) 10 U.S.C. 4308—Establishment and support of civilian rifle ranges.

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(x) 10 U.S.C. 4311—Issue of rifles and ammunition for conducting rifle instruction and practice.

(xi) 10 U.S.C. 4651—Issue of arms, tentage, and equipment to support educational institutions that do not have ROTC but maintain a course in military training prescribed by the Secretary of the Army.

(xii) 10 U.S.C. 4652—Loan of rifles and issue ammunition for target practice to educational institutions having corps of cadets.

(xiii) 10 U.S.C. 4653—Issue of ordnance and ordnance stores to District of Columbia high schools.

(xiv) 10 U.S.C. 4654—Issue of quartermaster supplies at educational institutions that maintain a camp for military instruction of its students.

(xv) 10 U.S.C. 4655—Loan of arms and issue ammunition to other agencies and departments of the US Government.

(xvi) 10 U.S.C. 4656—Loan of aircraft and ancillary equipment to accredited aviation schools at which DA or Air Force personnel pursue courses of instruction.

(xvii) 10 U.S.C. 4683—Loan of obsolete or condemned rifles and accouterments to local units of recognized national veterans organizations for certain ceremonial purposes.

(xviii) 10 U.S.C. 4685—Loan of obsolete ordnance to educational institutions and state soldiers and sailors orphans' homes for purpose of drill and instruction.

(xix) 32 U.S.C. 702—Issue of supplies to State National Guard.

(xx) 33 U.S.C. 701n (Pub. L. 84-99 as amended)—Flood emergency preparation; emergency supplies of drinking water.

(xxi) 33 U.S.C. 1251 *et seq.* (Pub. L. 92-500)—Federal Water Pollution Control Act.

(xxii) 42 U.S.C. 5121 *et seq.* (Pub. L. 93-288)—Disaster Relief Act.

(3) Other statutory guidance:

(i) 10 U.S.C. 4307—Authorizes the establishment of a Director of Civilian Marksmanship (DCM).

(ii) 18 U.S.C. 1385—Unlawful use of Armed Forces in local law enforcement.

(iii) 18 U.S.C. 3056 (as amended by Pub. L. 91-651)—Powers and duties of Secret Service.

(g) *Responsibilities.* (1) The Commanding General (CG), US Army Materiel Development and Readiness Command (DARCOM), through the Materiel Readiness Commands' (MRC) commanders, is responsible for loans of materiel controlled by DARCOM wholesale supply points.

(2) Major Army commands (MACOM) CGs and commanders in chief (CINCs) of unified commands (UCOMs) are responsible for loans of materiel from supporting units and installations.

(3) The Director of Military Support, Office of the Deputy Chief of Staff for Operations (ODCSOPS), is the DOD point of contact for the Federal Disaster Assistance Administration (FDAA), other Federal agencies, and the National Red Cross in disaster assistance matters.

§ 623.2 Loan policies.

(a) *Loan and approval policy*—(1) *Basic policies.* (i) Materiel is not loaned to non-DOD activities as a routine procedure. However, materiel in the Army inventory is available for loan for special purposes if approved. Approving authorities are listed in table 2-1; their addresses are in appendix B.

(ii) Loans will be approved or disapproved based on the purpose, duration of the loan, and consideration of the following factors which can take precedence over any loan.

(A) Military requirements and priorities.

(B) Continuity of military operations, troop survival, and the rehabilitation of essential military bases.

(C) Stocks and programed Army requirements. This includes prepositioned mobilization reserve stocks.

(D) Type classification with pending changes.

(E) Minimum diversion of Army stocks.

(F) The adequacy of the borrower's resources. Requesters will be encouraged to use their own resources.

(iii) Loan requests from civilian authorities or activities will normally enter Army channels at the installation or MACOM levels. If on-post or off-

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post units receive loan requests, they will refer them to unit's supporting installation commander at once. Emergency loan requests will be relayed by telephone or electrically transmitted message.

(iv) When routine handling of a loan request would result in loss of human life, grave bodily harm, or major destruction of property, and when the lack of communication facilities prevents use of normal procedures, loans otherwise permitted by this regulation can be made with local approval. However, normal policy should be followed to the extent possible. If procedural requirements cannot be fully complied with, they must be met as soon as possible after the loan is made.

(v) Army materiel loaned under this part will be delivered to borrower "as is, where is" available.

(vi) Stocks of the least serviceable condition which are still suitable for the loan's purpose will be used. Logistic control code "C" materiel will be loaned before logistic control code "B" materiel. Logistic control code "B" materiel will be loaned before logistic control code "A" materiel. (Ref chap 9, AR 708-1.)

(vii) Commanders of medical treatment facilities (MTF) are subject to all the requirements of this regulation, including the requirement for reimbursement. However, in accordance with AR 360-61 which implements DOD Instruction 5410.19,

(A) Emergency loans of medical supplies (drugs, vaccines, etc.) may not be made without reimbursement, but the loan may not exceed 30 days and the medical supplies must be replaced in kind by the borrowing agency or activity; and

(B) Emergency loans of medical equipment not to exceed 15 days may be made without reimbursement if it is the practice in the community for other hospitals to make such loans. Equipment loans which exceed 15 days must be approved, in writing, by the MACOM commander and are subject to all the requirements of 10 U.S.C. 2667, including reimbursement.

(viii) Army property loaned to non-DOD activities will not be further loaned without approval of the original approving authority.

(ix) There will be no procurement or redistribution of assets to offset the effects of loans. Material will not be set aside, earmarked, assembled, or stockpiled to be available for use related to loans.

(x) Army materiel may be recalled from the borrower at any time to meet Army requirements.

(xi) Stock record accounting and financial transactions for loans will conform with existing regulations.

(xii) Borrowers are responsible for the care, custody, and proper use of materiel borrowed. Except as stated in this regulation, reimbursement will be required for damage, destruction, loss, fair depreciation in value, and for any Army repair, care, transportation, preservation, and protection of loaned equipment.

(xiii) Care, renovation, and repair of borrowed materiel will conform with the loan agreement.

(xiv) As indicated below, borrowers must provide signed loan agreements, provide surety bonds, and vehicular insurance prior to receipt of materiel. Loan agreements and bonds will be prepared in accordance with paragraphs (b) and (c) of this section.

Borrower	Loan agreement required	Surety bond required	Vehicular insurance required
Army or other DOD activities.	No ¹	No	No.
Non-DOD Federal departments and Agencies.	Yes	No	No.
Civil Authorities (State and Local Governments).	Yes	Yes ²	Yes. ²
Civilian Activities (veterans' organizations, youth groups, etc.).	Yes	Yes	Yes.

¹ A hand receipt or other document assigning responsibility will suffice.

² In emergency disaster relief cases, bonds and insurance may be provided after receipt of the materiel. (See paragraph (a)(4) of this section.)

(2) *Loans to DOD organizations.* Army materiel may be loaned to DOD activities for projects, programs, and mission requirements that support basic functions of the borrowing activity. Examples are field exercises, maneuvers, training exercises, including annual training (AT) of Reserve Components, and research development, test, and evaluation (RDTE).

(i) Loans of major end items belonging to MACOMs are approved by MACOM or UCOM commanders. Loans of materiel other than major end items are approved at commander/installation level.

(ii) Loans of materiel belonging to DARCOM (wholesale level) are approved as follows:

(A) *Materiels other than major end items.* By the director or deputy director of an MRC.

(B) *All other items.* By HQ DARCOM or commanders of MRCs unless loan would interfere with issue against DA Master Priority List (DAMPL) priorities, then by HQDA ODCSLOG (DALO-SMD).

(3) *Loans to federal departments/agencies.* Loans to Federal activities outside the DOD are usually provided under provisions of the Economy Act, 31 U.S.C. 686. Federal agencies borrowing DOD materiel using the provisions of this act are responsible for reimbursing the DOD for all DOD costs incident to the delivery, return, and repair of the materiel. The borrower is also responsible for reimbursing the DOD for depreciation if the depreciation cost is significant.

(4) *Disaster relief.*

(i) CONUS/OCONUS.

(A) In disaster situations local civil authorities must provide relief from their own resources. If this is not sufficient, and the American National Red Cross has a team at the disaster, requests for further assistance should be made to them. If the President has declared a major disaster or emergency, requests should be made to the regional director of the Federal Disaster Assistance Administration (FDAA). (See AR 500-60 for guidance.)

(B) The commanding General, US Army Forces Command (FORSCOM), acting for the Secretary of the Army (SA), is responsible for Army materiel support of disaster relief operations within the United States and the District of Columbia. UCOMs are responsible for disaster relief operations in US possessions and trust territories. These commanders are authorized to task DOD agencies and commands, consistent with defense priorities, to provide materiel in support of operations. A military representative will be ap-

pointed by the appropriate command to act as the DOD point of contact with the Housing and Urban Development (HUD) Federal Coordinating Officer (FCO) when military assistance is required during a Presidential declared disaster or emergency. When a disaster or emergency is of such magnitude, the disaster area may be geographically subdivided. A military representative will then be appointed for each FCO. All requests for military assistance will be passed through the FCO to the DOD military representative at the disaster area.

(C) The Director of Military Support (ODCSOPS), HQDA, acts at the DOD point of contact for the Administrator, FDAA, other Federal agencies, and the American National Red Cross in all disaster assistance matters.

(ii) Foreign. (A) The Department of State is responsible for deciding when emergency foreign disaster relief operations will be undertaken. This authority is delegated to Chiefs of Diplomatic Missions for disaster relief operations whose total costs will not exceed \$25,000.

(B) Send queries on foreign disaster relief to HQDA (DAMO-ODS) (para 4, app B).

(5) *Civil disturbances.* The maintenance of law and order is primarily the responsibility of local and state authorities. In civil disturbance situations, a basic goal of the Federal Government is to minimize the involvement of active military forces. One of the most effective means of keeping Federal forces off the streets is to loan US Army civil disturbance type equipment to Federal, State, and local law enforcement agencies and also to the National Guard. (For specific guidance see AR 500-50.)

(i) Requests for loan of Army materiel during or for expected civil disturbances are of three types with approval authority as follows:

(A) *Group one.* Arms, ammunition, tank-automotive equipment, and aircraft. Loans will be approved by the SA or his designee.

(B) *Group two.* Riot control agents, concertina wire, and similar military equipment which is not included in group one. Loans will be approved by the SA (or his designee), or by an Army

task force commander employed at an objective are during a civil disturbance.

(C) *Group three.* Protective equipment such as masks and helmets; body armor vests; other equipment not included in group one or two such as clothing, communications equipment, and searchlights; and the use of DOD facilities. Such loans will be approved by the SA (or his designee); by MACOMs; by the CGs of CONUS armies, MDW, and by commanders of UCOMs outside CONUS as applicable. (NOTE: Firefighting equipment will not be used for riot control).

(ii) Queries concerning loans in support of civil disturbances will be forwarded to the Director of Military Support, HQDA(DAMO-ODS), WASH DC 20310. (See app B.)

(6) *Terrorism.* (i) The Department of the Army is the DOD Executive Agent for support to the FBI in combating terrorism. Existing civil disturbance loan procedures, including categories of equipment, apply to equipment loans to the FBI for combating terrorism. Military resources will be provided only upon request of the Director, FBI, or the Senior FBI official present at the scene of a terrorist incident. It may be difficult in some situations to determine whether a practical incident fits the definition of terrorism. In these cases, commanders are authorized to accept the judgment of the FBI official making the request if it is supported by the available facts. (See para 3, table 2-1.)

(ii) For requests from the FBI in connection with terrorist incidents, any commander in the chain of command down to and including commanders of military installations are authorized to approve loans of group two and group three resources. (See paragraphs (a)(4)(1) (B) and (C) of this section.) Requests for equipment which involve technical/operating personnel, excluding fire-fighting equipment and explosive ordnance disposal, will be processed as a group one resource. For example, approval authority is retained by the DOD Executive Agent.

(7) *Aircraft piracy.* Assistance to other federal agencies in the protection of airways is provided through loans under guidance in paragraph 3, table 2-

1. Specific limitations on such support are covered in AR 500-1.

(8) *Loan/lease to activities outside the Federal Government.* Title 10, U.S.C. 2667, authorizes the lease of Army materiel to non-DOD departments, agencies, activities, or individuals when it is determined that the materiel is not, for the period of the lease, needed for public use, is not excess property, and that the loan will promote the national defense or be in the public interest. (See AR 360-61.) Such a lease must not be for more than 1 year (or be renewed/extended for a total period of more than 5 years); it must provide that the lessee will pay a fair monetary rental. The fair monetary rental will be determined on the basis of prevailing commercial rates or computed according to sound commercial accounting practices for the fixing of rental on such property. This will include a return on capital investment and administrative cost as well as depreciation. The delegation of authority to lease is SAOSA-71-6, paragraph 1-5103, ADARS, the prescribed lease agreement is at paragraph 16-553, ADARS.

(b) *Loan agreements.* (1) Upon approval of a loan request and before shipment or issue of the materiel, the approving authority will complete a written loan agreement, DA Form 4881-R. In all cases, the statutory basis for the loan will be cited. The approving authority is acting for the DOD on loans to other Federal agencies, and for the United States on loans to civil authorities and special activities. The agreement will be signed by the approving authority and the borrowing activity. When emergency loans have been made as authorized by this AR, follow-up action will be taken at once to formalize the loan by completing a loan agreement.

(2) Loan agreements are mutually developed by the approving authority and the chief of the borrowing activity (or their designees). The agreements identify the responsibilities of all parties. They include terms and conditions of the loan. Appendix C illustrates a sample loan agreement, DA Form 4881-R (Agreement for the Loan of US Army Materiel), and specifies what the loan agreements will stipulate and contain. Also illustrated at appendix C is DA

Form 4881-2-R, which will be completed and appended to the loan agreement as "Exhibit I."

(3) Loan agreements will be held by the approving authority until termination and final settlement of each loan.

(4) If the loan agreement is signed by someone other than the chief borrowing official, than a Certificate for Signature by an Alternate will be completed. (See appendix D for DA Form 4881-1-R.) It will be attached to the signed (by the borrower) copy of the agreement that is retained by the approving authority. DA Forms 4881-R, 4881-1-R, and 4881-2-R are reproduced locally on 8½ by 11-inch paper.

(c) *Surety bonds.* (1) Some borrowers of Army materiel must post a surety bond. (See table 2-1 and DA Form 4881-3-R at app E.) Bonds ensure safe return of the borrowed materiel or reimbursement for any loss of or damage to the materiel. The bond will consist of—

(i) A properly executed surety bond with a certified bank check, cash, or negotiable US Treasury bonds, or

(ii) Notice of bond by a reputable bonding company deposited with the approving authority for the loan. Bonds will equal the total price of the borrowed items as shown in exhibit I to the loan agreement (app C, DA Form 4881-R). A "double" bond (bond equal to twice the value of the borrowed item(s)) will be required—

(A) For Army materiel loaned to the Red Cross for instruction and practice to aid the Army, Navy, or Air Force in time of war (10 U.S.C. 2542).

(B) For ordnance and ordnance stores loaned to high schools in the District of Columbia (10 U.S.C. 4653).

(2) The bond need not be posted by the borrowing agency itself. The source or originating agency for the bond is immaterial if the bond is valid. For example, to secure a loan, a State may post bond on behalf of a city, county, or other governmental body or authority within the State.

(3) In an emergency, when posting a bond would delay approval of an urgent loan request and when the total price is less than \$1,000, the approval authority may approve the request. The approval is on the condition that the bond be posted within 5 days.

(4) Bond forfeitures or exceptions to mandatory forfeitures can only be made with the concurrence of the Secretary of the Army. Forfeitures will be based on actual expense incurred. Forfeitures do not release the borrowing agency from returning borrowed materiel or affect ownership. Bonds are normally forfeited under the following conditions:

(i) Materiel is not returned at the termination of a loan period or when return has been directed by the Army.

(ii) The borrowing agent refuses to pay for damages or other Army expenses.

(5) Surety bonds will be held by the approving authority until the loan is terminated and final settlement is made. At that time, the bond will be returned to the borrower.

(6) If US treasury bonds are posted as surety bond, the borrower must execute a power of attorney (DA Form 4481-4-R, app F). This will enable cashing of the treasury bonds if some forfeiture is required. DA Form 4881-3-R (Surety Bond) and DA Form 4881-4-R (Power of Attorney) will be reproduced locally on 8½ by 11-inch paper.

(d) *Loan duration.* (1) Loan periods and extensions will be shown in table 2-2.

(2) Materiel will be loaned only for the number of days needed for the specific purpose for which borrowed. Loan extensions must be justified. The reason(s) why other means or other than Army materiel cannot be used must be included. Approval of loan extensions will be based on the merit of the reasons given.

(3) Loan extensions authorized beyond 1 year will not be approved unless the lender of the loaned materiel has inspected and inventoried the materiel to insure completeness and serviceability.

(e) *Types of DA materiel available for loan.* Examples of types of items that may be loaned, and examples of the types of organizations that may borrow Army materiel, are listed in table 2-1. Most loans will be nonexpendable items or expendable items not forecast to be consumed (durable items). Expendable items (e.g., expendability code X) will not be loaned unless approved as an exception.

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TABLE 2-1—LOAN AUTHORITY AND PURPOSE
[See footnotes at end of table]

Requester	Authority and guidance	Normal approving authority	Examples of materiel authorized
1. DOD Activities	10 U.S.C. 2571	Secretary of the Army (or designee).	Materiel, supplies, and equipment.
2. Department of Agriculture (U.S. Forest Service) protection against wildfire ² (see AR 500-60 for guidance) ³ . Avalanche Control ³	31 U.S.C. 686; Memo of Understanding (MOU), Apr. 24, 1975; AR 500-60. 10 U.S.C. 4655; 31 U.S.C. 686; AR 735-5; MOU Nov. 29, 1973.	Secretary of the Army (or designee).	Communications, earthmoving, and vehicular equipment. Communications, howitzers, etc.
3. Department of Justice (FBI)	10 U.S.C. 331; 10 U.S.C. 332; 10 U.S.C. 333.	.....	Transport aircraft, ¹ helicopters, flares, parachutes, communications equipment, arms, vehicles, etc.
Aircraft Piracy ¹ (see AR 500-1 for guidance).	10 U.S.C. 4655; 18 U.S.C. 1385; 31 U.S.C. 686; DODD 3025.12; AR 500-1.	DOD General Counsel ¹ or designee; in urgent cases, Deputy Director for Operations, NMCC.	
Terrorism ²	AR 500-50	See item 7 below for ² approval authority by equipment classification.	See item 8 below for ² classification equipment.
Drug Enforcement Agency ¹	31 U.S.C. 686; AR 735-5, par. 1-16; CSR 1-25.	Asst SECDEF (or designee).	Same as above.
4. Treasury Department (U.S. Customs Service) (U.S. Secret Service) ¹ .	18 U.S.C. 3056; 31 U.S.C. 686; AR 735-5, par. 1-16; DODD 3025.13; DODI 5030.34; AR 1-4.	Asst SECDEF (or designee); Mil Asst to the President; followed by the Spec Asst to the SECDEF; (overseas) CINC, UCOM's.	Same as above.
5. National Guard Equipment (loan to NG).	AR 735-5; 10 U.S.C. 2571	Secretary of the Army HQDA; CG FORSCOM; DARCOM.	Material, supplies, and equipment.
6. Other Federal agencies emergency support ¹ to Federal agencies (see AR 1-35 and AR 500-60 for guidance). Support to FPA/GSA Regional Field Boards ² (see AR 15-17 for guidance). Support to Inaugural Committee	AR 15-17; DODD 5100.74; OEP Civ 8500.6. 10 U.S.C. 2543	HQDA; CG FORSCOM; CG CONUSA. SECDEF	Material, supplies, and equipment for flood fighting, rescue operations, repair/restoration of flood control works, or hurricane flood protection works. Transportation, emergency power and fuel. Tents, flags, litters, ambulances, drivers, hospital furniture, camp appliances.
7. Support for Search and Rescue	AR 500-2; FM 20-150; AR 525-90.	CG FORSCOM; GC CONUSA.	Search craft and crews.
8. Civil Authorities Civil Disturbance ² (see AR 500-50 for guidance).	42 U.S.C. 5121 <i>et seq.</i> ; 10 U.S.C. 331; DODD 3025.12; AR 500-50; AR 350-7; DACD Plan; Garden Plot.	Group One: DOD Executive Agent or designee. Group Three: DOD Executive Agent or designee; CG MDW; CG CONUSA; and CINC's UCOM's, OCONUS.	Group One: Arms, ammunition, tank-automotive equipment, and aircraft. Group Three: Firefighting resources, equipment of a protective nature (masks, helmets, body armor vests) and use of Army facilities.
Disaster Relief ²	42 U.S.C. 5121 <i>et seq.</i> ; DODD 3025.1; AR 500-60 and AR 930-5; DODD 5100.46.	CG FORSCOM; CG DARCOM for DARCOM stocks; and CINC's, UCOM's, OCONUS.	Same as 6 above.

TABLE 2-1—LOAN AUTHORITY AND PURPOSE—Continued
[See footnotes at end of table]

Requester	Authority and guidance	Normal approving authority	Examples of materiel authorized
Civil Defense	DODD 3025.10; AR 500-70.	CG FORSCOM	Personnel, facilities, equipment, supplies, and services.
American National Red Cross for support of Army units in support of local civil government disaster relief.	MOU between DOD and ANRC, June 24, 1975.	HQDA; The Adjutant General (DAAG-ASO-R).	Personnel, equipment, office space, equipment, supplies; and custodial, utility, maintenance, and communication services.
9. Environmental Protection Agency and U.S. Coast Guard (oil and hazardous substances pollution spills).	33 U.S.C. 1251 <i>et seq.</i> ; DODD 5030-41; AR 500-60.	Same as disaster relief	Personnel, facilities, supplies, equipment, and transportation.
10. Boy and Girl Scouts of America (world or national jamborees) ³ .	10 U.S.C. 2544; AR 725-1, ch. 7.	MACOM CG on behalf of CG DARCOM.	Bedding, cots, chairs, vehicles, buildings, etc.
11. Civilian Marksmanship Program (Clubs and Schools) ³ .	10 U.S.C. 4308, 4311, 4651, 4652, 4653, 4685; AR 920-15; AR 920-20.	Secretary of the Army (or designee).	Arms and accouterments.
12. Community Relations and Domestic Action Programs ¹ (Youth Conservation Corps).	AR 28-19; AR 360-61; 42 U.S.C. 2701.	Installation commanders ...	Equipment or buildings which may aid in instruction to the disadvantaged.
13. Veterans Organizations (State and National Conventions) ³ .	10 U.S.C. 2541	MACOM CG and CG CONUSA.	Cots, bedding, chairs, tents, mattresses, pillows, unoccupied barracks, etc.
Burial Ceremonies	10 U.S.C. 4683	Secretary of the Army	Obsolete rifles.
14. Armies of the United Kingdom, Canada, and Australia (Standardization Program).	10 U.S.C. 2667; AR 34-1	CG DARCOM (those for equip valued over \$100,000 and those not favorably considered by DARCOM will be referred to the DCSRDA, HQDA, for approval).	Equipment.
15. Aid to District of Columbia Government in Combating Crime ² .	DODD 5030.46; CSR 500-4.	Secretary of the Army (or designee).	Communications, vehicles, aircraft, arms, etc.
16. Departments, agencies, municipalities, organizations, activities, and individuals.	10 U.S.C. 2667; SAOSA-71-6, par. 1-5103, ADARS.	Heads of Procuring Activity	Army property, not excess requirements, but not needed for period of lease. (See delegation of authority.)
17. Red Cross (Aid to DOD in time of war).	10 U.S.C. 2602; AR 930-5	DAAG	Office space, supplies and equipment; uniforms.
18. Army Flying Clubs	AR 230-1; DODD 1330.2	DAAG; CG FORSCOM	Army aircraft.
19. Civilian Activities	10 U.S.C. 2572; AR 870-15; AR 870-20.	Chief, Military History	Historical properties and military art.
20. Civilian Educational Institutions	10 U.S.C. 4654	Secretary of the Army	Quartermaster supplies.

¹ DA DCSOPS, Director of Military Support, has responsibility for these staff functions.
² DA DCSOPS, Director of Military Support, has responsibility for these executive agent functions. (See app. A for definition of this term.)
³ DA DCSLOG, Director of Supply and Maintenance, has responsibility for these staff functions.

TABLE 2-2—LOAN PERIODS

Borrower/purpose	Initial	Loan periods ¹ extension
1. DOD Activities	As needed for mission accomplishment	As needed for mission accomplishment.
2. Army National Guard (loan of equipment)	For minimum essential period as determined by requirements.	For minimum essential period as determined by requirements.
3. Department of Agriculture (U.S. Forest Service) (protection against wildfire).	90 days	90 days.
4. Department of Justice (FBI) (Aircraft piracy)	For minimum essential period	For minimum essential period.
(Drug Enforcement Agency)	1 year or less as determined by requirements.	1 year or less.
5. Treasury Department (U.S. Customs Service) ..	1 year or less as determined by requirements.	1 year or less.
(U.S. Secret Service)	For minimum essential period as determined by requirements.	For minimum essential period as determined by requirements.

TABLE 2-2—LOAN PERIODS—Continued

Borrower/purpose	Initial	Loan periods ¹ extension
6. Environmental Protection Agency/U.S. Coast Guard.	For duration of requirements.	
7. Other Federal Agencies	For minimum essential period	1 year.
8. Civil Agencies (Civil disturbances) Type I	15 days during actual disorder	15 days.
Type II	90 days in anticipation of a disorder	90 days.
(Disaster relief)	For minimum essential period, no extension for use during rehabilitation unless requested by the FDAA.	
9. Boy and Girl Scouts of America (World or National Jamborees).	For duration of "Jamboree" plus period en route to or return from Jamborees.	
10. Civilian Marksmanship (Clubs and Schools) ...	1 year	1 year.
11. Civilian Community (Relations and Domestic Action Programs).	As justified by local requesters.	
12. American National Red Cross for support of Army units in support of local civil Government disaster relief.	Same as above for duration of requirements (office equipment).	Same as above.
13. Veterans' Organizations	15 days	15 days.
14. To Armies of the United Kingdom, Canada, and Australia (Standardization Program).	1 year or less as determined by requirements.	As negotiated.
15. Civilian Organizations:		
a. Arms and accouterments	1 year or less as determined by requirements.	1 year.
b. DLA stock fund items	120 days	30 days.
c. Medical equipment	15 days	As negotiated.
d. Medical supplies (drugs, vaccines, etc. must be replaced in kind).	30 days	As negotiated.
e. All other items	Requester justification	As negotiated.
16. DA materiel provided under 10 U.S.C. 2667 ..	1 year	1 year.

¹ All extensions or loan renewals which extends the overall loan period beyond 1 year must be approved by the Secretary of the Army (or designee).

§ 623.3 Submission of requests for loan of Army materiel.

(a) *General.* (1) Loan requests will be expedited according to the situation's urgency. A situation may be so serious that waiting for instructions or approval from a higher authority is unwarranted. Commanders will then take action as required to save human life, prevent human suffering, or reduce property damage or destruction. (See § 623.2(b)(1).) Such emergency actions will be reported at once to higher authority according to § 623.7.

(2) Requests to the US Army for loan, or loan extension, will be promptly sent by the Army element that received the request through channels to the approving authority shown in table 2-1 or as specified in appropriate regulations.

(3) Loan requests will be made by the head of the Federal agency, civil authority, or civilian activity desiring the materiel. An exception is that requests from the Federal Disaster Assistance Administration (FDAA) will normally be initiated by an FDAA regional director rather than by the administrator. The requests should be

made directly to the approving authorities shown in table 2-1.

(b) *The Army National Guard (ARNG).* Loan requests for property belonging to ARNG will be made under National Guard Regulation 735-12. (See para 5, table 2-1.)

(c) *General Procedures—(1) DOD activities.* DOD activities will borrow Army materiel as follows:

(i) Requests will be made in writing citing—

(A) Detailed justification for loan to include urgency of need.

(B) Duration of loan.

(C) Funds to defray transportation and handling.

(D) Serviceability requirements.

(ii) Approving authority involved will—

(A) Forward a loan agreement to requester. Loan agreements within DOD will often consist of letter requests, approving endorsements, and materiel issue document (DD 1348-1) transferring temporary accountability. Between units and activities, a hand receipt may be used as the loan agreement.

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(B) Furnish positive identification of item to be loaned.

(C) Provide instructions for delivery of equipment.

(iii) DOD recipient of loaned Army materiel will—

(A) Forward accepted loan agreement to approving authority (all actions can be accomplished by electrically transmitted messages).

(B) Provide geographic location of equipment and specific activity that is responsible for care and preservation of loaned equipment.

(C) Return equipment to Army in condition received with normal allowance for fair wear and tear.

(2) *Non-DOD activities.* Non-DOD activities, including Federal agencies will request loan of Army materiel as follows:

(i) Non-DOD activities, and agencies, will send routine requests by letter 45 days before the materiel is required. Federal agencies may use Standard Form 344 (Multiuse Standard Requisitioning/Issue System Document). Requests will include the following:

(A) The DA approving authority. See table 2-1.

(B) Date request is submitted.

(C) Title of requesting agency and/or person authorized to receive or pick up the borrowed materiel. Be specific; e.g., Special Agent in Charge John Doe, FBI, Anytown, USA, (telephone number with area code) 123-456-7890.

(D) Type of loan; e.g., Boy Scout National Jamboree, American Legion Convention, etc. (with a short summary of circumstances).

(E) Statement that none of the requested materiel is internally available to the requesting activity.

(F) Statement that this support is not reasonably available from local government or commercial sources.

(G) Authority for the loan (if known); e.g., public law, US code, executive order, etc. See table 2-1.

(H) Positive identification of the type and quantity of items required. If national stock numbers and nomenclature are not available, identify the items needed by type, model, size, capacity, caliber, etc.

(I) Geographic location where the materiel will be located and used.

(J) Proposed duration of the loan.

(K) Statement that the agency has, or will ensure capability to properly operate, maintain, secure, and care for the borrowed materiel.

(L) If firearms are requested, a statement that adequate facilities are available to secure the arms. See § 623.5(a)(4).

(M) A statement that the borrowing activity will assume all responsibilities, liabilities, and costs related to the movement, use, care, security, loss, damage, and repair of the loaned materiel.

(N) Citation of funds to cover reimbursable costs. Also, a statement that an adequate bond will be provided, if required.

(O) A statement that the loan agreement prepared by the Army will be signed by the “responsible official” of the borrowing activity (or designee).

(P) Name, address, and telephone number of the person who will serve as the point of contact for the requesting agency, authority, or activity.

(Q) Complete instructions for delivery of the equipment to ensure that shipping instructions in the request are consistent with the urgency of the situation. State whether a small quantity shipped by air, express, or other fast means will satisfy immediate needs until bulk shipments can arrive. Also state quantity immediately required.

(R) If applicable, the number of persons to be accommodated.

(ii) Urgent requests may be made to meet expected or actual emergencies. Such requests may be made by telephone or by electrically transmitted message. Include information required in paragraphs (c)(2)(i) (A) through (R) of this section to the extent possible. The request will be presented to the approving authority. The borrower will then send a complete written request to formalize the emergency request.

(iii) If approval of the loan is granted, approving authorities will contact accountable property officers at CONUS installations (equivalent level overseas), or MRC item managers to determine which items are available. Installation requests to MRCs will state that the installation resources could not meet the loan requirements. Availability decisions will be based on normal management criteria including

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past and anticipated demand, asset balances, order-ship time, repair rate and repair cycles, and procurement schedules. If requested items are available and approved for issue, the approving authority (or designee) will—

(A) Negotiate and agreement;

(B) Obtain surety bond from the borrower when required;

(C) Provide reproduced copies of the signed documents to the appropriate accountable property office along with authorization to make the loan.

(iv) Approving authorities will maintain a system of numerical control for all loans. The accountable property officer will enter this number on all transaction documents related to each specific loan to include requisition, issue, shipping, turn-in, and financial documents.

(3) *The US Secret Service (USSS)*. (i) Army regulation 1-4 provides policies and procedures for Army support to the Secret Service. Support will be provided only on the request of the Director, United States Secret Service or his authorized representative. It will be provided only to assist the United States Secret Service in performance of its statutory protective functions.

(ii) Routine requests are sent by the United States Secret Service direct to the Office of the Special Assistant to the SECDEF for approval. Approved requests involving Army resources are tasked through HQDA (DAMO-ODS) to the proper command. Approved requests for resources of other Services are tasked direct to the proper Service.

(iii) Approved requests for resources to be used in oversea areas (regardless of Service) will be passed from the Office of the Special Assistant to the SECDEF to the Joint Chiefs of Staff (JCS) for tasking of the proper unified command.

(iv) In urgent situations, the United States Secret Service may request military resources from the nearest military commander who is authorized to take action consistent with the urgency. As soon as possible, they will seek guidance/approval through command channels to the approval authority (Spec Asst to the SECDEF).

(4) *Drug and narcotics interdiction activities*. All non-DOD Federal agencies requesting DOD resource in support of

drug or narcotics interdiction activities should send requests through their headquarters to DOD, ATTN: Deputy Assistant SECDEF (Program Management), WASH DC 20314. Concurrently, information pertaining to the request should be sent to HQDA (DAMO-ODS) (para 4, app B), or relayed by telephone (AUTOVON 225-2003 or the Army Operations Center 851-1800 during nonduty hours). The Deputy Assistant SECDEF will pass approved request to HQDA (DAMO-ODS), through the Office, Under Secretary of the Army, for determination of availability and readiness impact. If approved by the Under Secretary of the Army, ODCSOPS (DAMO-ODS) will task the proper MACOM to provide support. Requests for extension or changes to agreements will be processed as noted in tables 2-1, 2-2 and paragraph (a)(2) of this section.

(5) *The Federal Bureau of Investigation*. (i) Requests for aircraft piracy assistance, received from Federal authorities by Army field commands or activities, will be forwarded through command channels by telephone (confirmed by electrically transmitted message) to the Military Support Division, ODCSOPS (DAMO-ODS), AUTOVON 255-3848/7433/2003 (WATS 202-695-2003). These requests will be approved by the DOD General Counsel (or designee).

(ii) The requests will then be sent to the National Military Command Center (NMCC). It will coordinate between the lending accountable property officer and the borrower.

(iii) In urgent cases, the Deputy Director for Operations, NMCC, may approve requests upon his or her own responsibility. This is subject to a later report to the chairman of the Joint Chiefs of Staff and the DOD General Counsel.

(iv) Approved requirements will be passed to the Secretary of the Army by telephone and confirmed by electrically transmitted message. The Secretary of the Army will then assign the requirement to the proper command (or staff agency) which will contact the designated Federal civil official and confirm the details of the request.

Modification of the requirement to better perform the mission is authorized if the Federal official agrees.

(6) *Environmental Protection Agency (EPA), US Coast Guard (USCG), or National Response Team (NRT)*. Non-DOD Federal agency requests for loan of materiel to combat oil and hazardous substance pollution spills will be made directly to the Commanding General, FORSCOM. Requests will be made by an "On Scene Coordinator" (OSC) of the EPA, or by the USCG acting for the Department of Transportation. The pollution spill NRT may also initiate requests. Approval authority is shown in table 2-1.

(d) *Civil Authorities*. Loans of materiel to civil authorities for use during civil disturbances and disasters will be made as follows:

(1) *Civil disturbances*. Requests for Army materiel in anticipation of (or during) civil disturbances will be promptly sent through command channels to the approving authority (UCOM commanders will coordinate requests originating from areas outside CONUS) as follows:

(i) Requests for resources that require Secretary of the Army approval will be sent through channels to HQDA (DAMO-ODS) (para 4, app B).

(ii) Requests for group three resources (§623.2(a)(5)) that are not available to commanders having the approval authority will be sent through channels to HQDA (DAMO-ODS). Intermediate commands may approve and make available the requested resources.

(iii) Requests received by other DOD agencies will be referred to local Army installation commanders for processing.

(2) *Disaster relief*. Requests for loan of materiel to support disaster relief will be handled as follows:

(i) Valid requests for disaster relief assistance (see §623.2(a)(4) for decision-making process) will be given to the DOD liaison (a military officer) assigned to the disaster; or forwarded to the CONUS Army commander in which the disaster occurs. (See appendix G.) If no Federal Disaster Assistance Administration (FDAA) official (HUD Federal Coordinating Officer (FCO)) is present

at the disaster scene, requests may be received from the Red Cross.

(ii) HUD Regional Directors for FDAA, or FCOs, will send requests for loan of materiel to the Commanding General, FORSCOM, or to the proper CONUS Army commander. (Requests for Defense Civil Preparedness Agency (DCPA) resources will be sent to DCPA regional offices.)

(e) *Civilian Activities*—(1) *Veterans' Organizations*. Loan requests by authorized veterans' organizations (as listed in VA Bulletin 23A) will be sent to the commander of the CONUS Army area (or Commander, MDW), for the area where the materiel will be required. (See appendix G.)

(2) *Scouting Loans*. National and regional scout executives will send requests (restricted to DOD support of national and world jamborees) according to chapter 7, AR 725-1. (See §621.4 of this title.)

(3) *Loans/Leases Under the Provisions of Title 10 U.S.C. 2667*. Requests for loans from other civil activities and organizations may come into the DOD through various channels; e.g., telephone call to local installation commander, letter to Congressmen, or directly to the Secretary of Defense or Army. Each request will be forwarded to the authority having the item and having the authority to approve the request. (See appendix B and table 2-1.) In cases where approval is questionable, the request may be submitted through channels to HQDA (DALO-SMD) WASH DC 20310 (para 2, app B) recommending approval/disapproval action.

(f) *Loans to the United Kingdom (UK), Canada, and Australia*. All requests for loans (restricted to materiel for use in the "Standardization Program") to the UK, Canada, or Australia will be sent to Commander, DARCOM, ATTN DRC-IRD for approval. AR 795-204 addresses loans to other allied governments. (See DOD Military Assistance and Sales Manual, DOD 5105.38-M.)

(g) *Special Materiel Requests*—(1) *Loan of Communications Security (COMSEC) Equipment*. Subject to provisions of this regulation, requests for loan of COMSEC equipment will be sent to the Commander, US Army Communications Security Logistics Agency (para

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24, app B) for approval, loan action, and establishment of loan records. All loans of Army COMSEC equipment to civilian authorities or activities will be according to Technical Bulletin 380-41. Standard Form 153 will be annotated to show purpose of the loan, expected date of return, and authority for the loan. A copy will be sent to the Director, National Security Agency (NSA), ATTN: S3, Fort George G. Meade, MD 20755.

(2) *Loan of arms and accouterments.* Requests for loan of arms and accouterments will be sent by requesting agencies directly to the Secretary of the Army, Military Support Division, HQDA (DAMO-ODS) (para 4, app B). Requests received out of this channel will be returned to the originator for resubmission. The Secretary of the Army (or designee) is the approval authority. See § 623.5 for procedures.

(3) *War reserves and operational project stocks.* Regulatory guidance with respect to loan of war reserves and operational project stocks to DOD organizations is found in chapter 8, AR 710-1. Loans of war reserves and operational project stocks to non-DOD activities will be according to this regulation and must be approved by HQDA (DALO-SMW) (para 3, app B).

(4) *Loan of historical property and art.* Requests for loans of Army historical property and military art will be sent to the Commander, US Army Center of Military History (para 4, app B). Specific information on such loans is found in AR 870-15 and AR 870-20.

§ 623.4 Accounting procedures.

(a) *Loan Document Format.* (1) When the lending accountable property officer receives copies of the loan request, loan agreement, surety bond (if required), and written loan authorization from the approving authority, the loan request will be converted to Military Standard Requisitioning and Issue Procedures requisition formal (DD Form 1348) as follows: (NOTE: In emergencies, authorization may be made by telephone. The format request, agreement, bond, and authorization will follow. Informal records should be also maintained.)

Card columns	Code or data
1-3	"AOE".
4-6	RIC of NISP (lender).
7	Media and status code.
8-22	National stock number.
23-24	Unit of issue.
25-29	Quantity.
30-43	Document number.
(30-35)	DODAAC of the requisitioner, if applicable, otherwise DODAAC of accountable property officer (lender).
(36-39)	Julian date.
(40-43)	Serial number.
44	"N" for nonrecurring demand.
45-50	Supplemental address (loanee DODAAC) for DOD units. For non-DOD activities enter the shipping destination.
(45)	"Y".
(46-49)	Julian date of receipt of loan request.
(50)	Alphabetic (except I or O) indicating which loan of the day is first; e.g., A-first, B-second, etc.
51	"M".
52-53	"G4" for loans to nonresearch and development activities. "G6" for loans to research and development activities.
54-56	Blank.
57-59	Project code if applicable. Note: This will be the same for all loans. Project codes will be assigned by Chief, Logistic Systems Support Activity, ATTN: DRXLS-LCC, Chambersburg, PA 17201. It will be sent by message to all interested addresses.
60-61	Priority.
62-64	RDD.
65-66	Blank.
67-69	Depot RIC.
70	Purpose code.
71	Condition code.
72	Management code.
73-80	Blank.

(2) Loaned property will be kept on the accountable records of the owning property account. The entry showing the quantities loaned will be supported by DD Form 1348-1 (receipt document), and copies of the loan agreement and surety bond (if required). The receipt document must be signed by the responsible official of the borrowing activity. It is then returned to the accountable property officer as a valid hand receipt for property accounting purposes.

(3) Loans will be processed by accountable property officers according to normal supply procedures except as modified by this regulation.

(4) Accountable property officers will keep loan files with enough documentation to provide an audit trail for loan transactions and a single source of accounting and billing for reimbursement. No separate property book accounts will be set up for these loans.

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Items, with dates shipped, will be identified by use of "loan control numbers" in loan jacket files and in supporting documentation. The files will include copies of—

- (i) The loan request. If the request was made by telephone (urgent), a copy of the Memorandum for Record prepared to summarize the call will be used.
- (ii) The loan agreement.
- (iii) The surety bond (with cash, certified check, US treasury bonds, or adequate bond from a bonding company).
- (iv) The approving authorization to make the loan.
- (v) DD Form 1348-1 used for shipping the items.
- (vi) A master loan register with the loan control number and shipping document number.

(b) *Shipment of Loaned Materiel.* (1) Loaned Army materiel will be shipped only to the chief of the borrowing activity or to a designee authorized to receive and sign for the materiel. To keep the materiel out of unauthorized hands, consignees (receivers) will be advised of the items and quantities to be loaned; the source of supply; whether the items are to be picked up or shipped; and of shipments made.

(2) All shipments of loaned equipment will be documented on DOD single line item "release or receipt" document (DD Form 1348-1). These will be initiated by the lending accountable property officer. Packing, crating, handling, estimated transportation costs, and serial numbers (if applicable) of items shipped will be shown on all copies. The consignee will be given advance copies of the DD Form 1348-1 as notice of shipment, and a list of DD Form 1348-1 document numbers. For loans to non-DOD activities two copies of the certificate below will be prepared by the accountable property officer (see fig. 1). It will accompany the DD Forms 1348-1.

"I certify receipt of and assume responsibility for the Army materiel listed on DD Form 1348-1. Control numbers on DD Form 1348-1 follow. The items were received in good condition except as noted on the DD Form 1348-1. Serial numbers have been verified (omit if not applicable)."

Signature of responsible officer _____
 Typed name of responsible officer _____
 Address of responsible officer _____
 Date certificate was signed _____

Figure 1. Sample receipt certificate

(3) One copy of each signed DD Form 1348-1 (for non-DOD activities, one copy of the signed certificate) will be returned to the accountable property officer. Also, one copy of each will be kept in the borrower's file.

(4) The installation or depot transportation officer is responsible for coordinating movement of the items that must be shipped.

(5) Shipments, including those to foreign countries, will be made on commercial bills of lading (CBL). Freight charges will be paid by the borrower. The CBL will cite proper project codes. NOTE: In emergencies where use of CBL would delay shipment, government bills of lading (GBL) may be used subject to later reimbursement. Shipments to Boy Scout World Jamborees in foreign countries will be by GBL unless otherwise specified by the Boy Scouts.

(6) Shipments will be consolidated to the maximum to get the lowest charges available.

(7) Separate shipping instructions will be provided for each recipient, convention, jamboree, etc., to ensure correct consignee and railhead addresses.

(8) Transportation will be at no expense to the government. The Defense Transportation Services (Military Sealift Command, Military Airlift Command, and Military Traffic Management Command) will send all billings for such transportation costs to the US Army Finance and Accounting Center (USAFAC). The USAFAC will then bill the fiscal station servicing the accountable property office that made the loan. This fiscal station will then bill the borrower for these transportation costs. Army materiel loaned to non-DOD activities is not authorized for oversea movement on a space available basis by MSC or MAC without their prior approval.

(c) *Receipt of Borrowed Property.* (1) The person authorized to receive the materiel (whether shipped or picked

up) will check the quantities received against the quantities shown on the DD Form 1348-1. This person will also verify the condition of the materiel. Any variation in quantity or condition must be resolved at once. If the shortage or damage is not due to a common carrier, the borrower will give the accountable property officer the National Stock Number, document number, and an explanation of the variation at once. This establishes a basis for assessing charges on termination of the loan. Replacement shipments, when required, will be covered by a DD Form 1348-1. All variations will be noted on the reverse side of the bill of lading.

(2) When a DD Form 1348-1 has not been received by the borrower and does not accompany the shipment, an informal report will be made to the accountable property officer at once. It will include the nomenclature, quantities, condition, and if applicable, the model numbers and serial number of all material received.

(3) When shipment has been verified, the borrower (or designee) will enter the quantity received on two copies of the DD Form 1348-1. Serial numbers will also be entered for serial numbered items. The completed copies of the DD Form 1348-1 will be signed by the authorized person. One copy of the DD Form 1348-1 and one copy of the signed certificate (receipt of the materiel) will be returned to the accountable property officer.

(4) If shipments are received damaged or short, take action described in § 623.4(g).

(d) *Accounting by Borrower.* Non-DOD borrowing activities should maintain a system of jacket files. This should include copies of all documents that authorize the loan of materiel and relate to loan transactions. Such files will insure return of materiel within the approved loan period. Files should be retained for audit or any other purpose as required. These files may be destroyed upon turn in of the borrowed materiel, final completion of accounting, and reimbursement for Army costs related to the loan. DOD borrowers will conform to the requirements contained in existing regulations.

(e) *Return of Borrowed Materiel*—(1) *General.* (i) Borrowed materiel will be

returned to the Army in the condition received, less fair wear and tear, unless the terms of agreement specify otherwise.

(ii) Property for which repair cost is claimed will be held at the Army depot or installation until final charges are determined and a release is given by respective property officers.

(iii) Return of materiel loaned to rifle clubs and schools will conform with § 623.5.

(2) *Accountable property officer actions.*

(i) At the end of a loan period, recall, or upon notice by the borrower that the loaned materiel is no longer needed, the accountable property officer will send a letter of instruction to the borrower for return of the materiel. He will verify or modify the turn-in instructions provided in the loan agreement.

(ii) These procedures will be used by accountable property officers to terminate loans:

(A) For loans up to 30 days no specific termination action is necessary except when materiel is not returned by the loan due date. Then, a written loan termination notice will be sent to the borrower. A follow-up notice will be sent every 15 days until the materiel is returned or other settlement is made.

(B) For all other loans 15 days before the loan is due, a loan termination notice will be sent by the lending activity to the borrower verifying (or modifying) the turn-in instructions.

(C) Follow-up of loan termination notice will be made every 15 days until the materiel is returned or other settlement is made.

(iii) After receiving inspection reports (§ 623.4(e)(3)) and final shipment receipts, the accountable property officer will clear the loan records.

(iv) The accountable property officer will then advise the borrower of the transaction completion by furnishing receipted copies of the receiving document(s).

(v) The accountable property officer will notify the servicing finance and accounting office (FAO) of any reimbursement required.

(3) *Actions by the receiving installation, depot, or arsenal.* (i) The installation,

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depot, or arsenal receiving activities will inspect returned materiel.

(A) If the quantity received differs from the quantity shipped, the actual quantity received will be entered on the DD Form 1348-1.

(B) If the condition of the property differs from that noted on the DD Form 1348-1, the variation will be stated.

(ii) Loaned materiel returned in an unserviceable condition will be inspected by qualified technical inspectors at installation level and by quality assurance activities at depots to determine condition code.

(A) If the condition of returned materiel is the same as noted on the receipt document or the prepositioned materiel receipt card, the item will be processed as a normal receipt.

(B) If there is a discrepancy in the actual condition of the item or in the assigned code on the receipt document, obtain an estimate of repair cost and continue normal receipt documentation processing.

(C) The receiving depot or installation will prepare an Inspection and Surveillance Report for each returned item that needs repair. Cards will also be prepared for shortages. The cards will include the cost of equipment repair or the value of shortage. A minimum of two copies of each report will be sent to the proper accountable property officer.

(f) *Loan Inventories.* (1) If a loan has been approved or extended (by the SA) for a period longer than 1 year, the accountable property officer will inspect and reconcile loan accounts with the borrower at the end of each 12-month period.

(2) If no discrepancies are noted, the accountable property officer will file the signed annual inventory form in the borrower's memorandum receipt jacket file.

(3) If the inventory shows that amounts and kinds of Army materiel for which the borrower is responsible differ from that actually in his possession, the accountable property officer will—

(i) For overages, assume accountability for the overages noted on the annual inventory form. Use a copy of the annual inventory form as a debit

voucher to the account. No approval of this voucher is needed.

(ii) For shortages, act to obtain reimbursement for the value of the missing property or to adjust the discrepancy by report of survey.

(g) *Lost, Damaged, and Destroyed Materiel.* (1) When loss or damage occurs during shipment, DOD and Federal agencies will refer to AR 55-38 for specific instructions.

(2) Damage or loss which is the fault of the carrier will be billed to the carrier after reconciliation.

(3) Army materiel lost, damaged, or destroyed while in the possession of rifle clubs or schools will be handled as described in § 623.5.

(4) Any Army materiel loaned at the request of an FDAA Regional Director which is not returned according to instructions in this chapter will be reported to the borrower and to the FDAA Regional Director. The latter will arrange for proper reconciliation and reimbursement.

§ 623.5 Loan of arms and accouterments.

(a) *General.* (1) Loan of arms and accouterments requires special processing and handling. Loans to DOD and non-DOD activities will be handled as a normal loan according to instructions in this section with the added requirement of maintaining serial number visibility. Loans of arms and accouterments as included herein are not applicable to Army National Guard (ARNG).

(2) The Commanding General, Armament Readiness Command (ARRCOM) (ATTN: DRSAR-MMS) has been designated by Commanding General, Materiel Development and Readiness Command (DARCOM), as being responsible for keeping a centralized serial number visibility record for all small arms made for the Army. ARRCOM maintains accountable property records for loans to organizations such as the Director of Civilian Marksmanship (DCM); and for loans to non-DOD activities such as the Federal Bureau of Investigation (FBI), United States Secret Service (USSS), United States Customer Service (USCS); or rifle clubs, educational institutions, and veterans' organizations.

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(3) Requests for loan of arms which are type classified standard (logistics control code A or B) will be filled with the lowest type classified items available.

(4) Borrowers of Army arms will be fully responsible for the care, custody, and proper use of loaned materiel. Physical security measures must be equal to or greater than the minimum requirements set forth in Army Regulation 190-11 and Army Regulation 190-49.

(5) If borrowed arms are lost, stolen, or unaccounted for, the borrower must inform the lender (accountable property officer), the local police, and the FBI within 24 hours after discovery.

(6) This regulation does not apply to arms issued to Reserve Officers Training Corps units under the National Defense Act. Army Regulation 710-2 is applicable.

(b) *Loans to Civilian Activities (Other Than Rifle Clubs and Educational Institutions).* (1) Arms and accouterments may be loaned by the Army to civilian authorities and to civilian activities as follows: (§ 623.5(c) covers rifle clubs and institutions.)

(i) For use in protection of public money and property (10 U.S.C. 4655).

(ii) Obsolete or condemned rifles (not more than 10), slings, and cartridge belts may be loaned to local units of any national veteran's organization for use by that unit in ceremonies. (For example, a funeral for a former member of the armed forces.) The organization must be recognized by the Veterans' Administration (VA) (10 U.S.C. 4683).

(iii) Arms and accouterments loaned to organizations listed in § 623.5(c)(1) for a period of 1 year or less will be accounted for by ARRCOM. Loans of items that exceed 1 year will be accounted for by the DCM under § 623.5(c).

(2) Requests for loan (or extension of loan) of Army arms and accouterments will be sent by requesting agencies through HQDA (DALO-SMD), (para 2, app B) to the Secretary of the Army. Requests received outside of this channel will be returned to the originator for direct submission to the address above.

(3) Requests approved by the Secretary of the Army (or Under Sec-

retary) will be sent to ARRCOM, (para 12 app B) Rock Island, IL 61299, for completion of a formal loan agreement and issue of items.

(4) Requisitioning, accounting, and reimbursement procedures are given in § 623.4. However, upon receipt of signed copies of DD Form 1348-1 with the listing of verified serial numbers from the consignee, the ARRCOM Arms and Accouterments Property Officer will send the required transaction data to the DOD Small Arms Serialization Program (DODSASP) at ARRCOM. These data will indicate that the small arms on loan to other Government agencies are accounted for under DOD Activity Address Code W52P41.

(5) Shipment and returns are described in § 623.4 except as follows:

(i) The responsible property officer for materiel or loan will request disposition instructions from the accountable property officer when loaned materiel is no longer needed or at the end of the loan period. Loaned materiel may be withdrawn from the borrowing activity at any time to satisfy military requirements.

(ii) The accountable property officer will:

(A) Issue shipping instructions for the return of property to a designated installation. The letter of instruction will contain a MILSTRIP document number (AR 725-50) for each line item scheduled for return to be used for the shipment. The shipper will be directed to cite this document number on the shipping document.

(B) Prepare and submit to the receiving installation a prepositioned materiel receipt card (DOD Materiel Receipt Document (DD Form 1486)) (Document Identifier DWC) as advance notice of the shipment.

(1) Exception data will be annotated as follows: "Return of Loan from Other Government Agency—Report Receipt of Arms and Accouterments Accountable Property Officer, ATTN: DR SAR-MMD."

(2) A copy of the letter of shipping instructions (paragraph (b)(5)(ii) of this section) will be inclosed with the prepositioned materiel receipt card for information.

(iii) Upon receipt at the receiving installation, property will be inspected

immediately. Cost of repairing unserviceable items and cost of replacement, if irreparable, will be determined at time of inspection. The MILSTRIP receipt card will be mailed to the accountable property officer with estimated damage cost and detailed materiel condition as exception data.

(iv) Upon notification of materiel receipt, the accountable property officer will:

(A) Clear the loan record with a credit entry and process the receipt to the inventory records as an increase on hand to asset balance.

(B) Furnish receipted copies of the receiving document to the consignor and the responsible property officer closing the transaction.

(c) *Loans to Rifle Clubs and Educational Institutions*—(1) *Authorization*. Arms and accouterments may be loaned to rifle clubs and educational institutions for periods established in table 2-2 under the following conditions:

(i) Rifled arms may be loaned to civilian rifle clubs for promotion of marksmanship training among able-bodied US citizens (10 U.S.C. 4308).

(ii) Arms, tentage, and equipment, as the Secretary of the Army deems necessary, may be loaned to an educational institution to provide proper military training where there is no ROTC, but there is a course in military training prescribed by the Secretary of the Army and there are at least 100 physically fit males over 14 years of age (10 U.S.C. 4651).

(iii) Magazine rifles and appendages may be loaned to schools having a uniformed corps of cadets of sufficient number for target practice. Models loaned must not be in use at the time, or needed for a proper reserve supply (10 U.S.C. 4652).

(iv) Ordnance and ordnance stores may be loaned to Washington, DC, high schools for military instruction and practice (10 U.S.C. 4653).

(v) Obsolete ordnance and ordnance stores may be loaned to educational institutions and to State soldiers', sailors', and orphans' homes for drill and instruction if recommended by the Governor of the state or territory concerned (10 U.S.C. 4685).

(2) *Director of Civilian Marksmanship (DCM)*. The President may detail an officer of the Army or Marine Corps as Director of Civilian Marksmanship (10 U.S.C. 4307). The DCM is responsible for—

(i) Control and accountability of Army materiel issued to civilian rifle clubs;

(ii) Policies and procedures for the issue of arms and ammunition to civilian rifle clubs; and

(iii) Ensuring proper bonding of clubs before issue of Army materiel. The Secretary of the Army has further made the DCM similarly responsible for loans to institutions (schools).

(3) *Property transactions*. US Army Armament Materiel Readiness Command (ARRCOM) will transfer accountability for materiel shipped to civilian rifle clubs and institutions to the DCM. The DCM will keep a mission stock record account for these items as shown in Army Regulation 710-2. In addition, the account will note all property transactions between the DCM and civilian rifle clubs and institutions as follows:

(i) Loan and return of arms and accouterments to (from) civilian rifle clubs and institutions will not be posted to the accountable record as loss or gain vouchers. They will be posted as "loan transactions" with the DCM retaining accountability. In addition to debit, credit, and adjustment voucher files, the DCM accountable property officer will keep a "loan voucher" file in two sections; e.g., "active" and "terminated."

(A) The active section (suspense for items on loan) will contain DD Form 1348-1 or a letter acknowledging receipt of the items. (The signature of the borrower will be according to paragraph (4) (v) or (vi) of this section.) This section will contain a folder for each activity serviced by the DCM. The active loan vouchers will be filed in National Stock Number and voucher number sequence. This section serves as the DCM loan record.

(B) The terminated section (for items no longer on loan) will contain the original loan shipping document (loan voucher). The return receipt document which terminates the loan will be attached. The receipt document will contain the original shipping document

number and the return advice code "IQ."

(ii) Shipments of expendable items (e.g., ammunition, targets, etc.) will be posted as a credit to the accountable record. Accountability will be dropped (These items are deemed to have been consumed at the time of issue).

(iii) Expendable items returned by rifle clubs and institutions will be posted to the accountable record as a debit voucher. The DCM will determine disposition of these items.

(4) *Requisition procedures.* (i) The DCM will prepare requisitions based on information from the rifle clubs or institutions. DA Form 1273 (Requisition for Articles Authorized for Issue to Civilian Rifle Clubs) will be used. Two completed copies of the requisition will be sent to the requester.

(ii) The rifle club or institution will complete the form and return one signed copy to the DCM, HQDA, Secretary Field Directorate Marksmanship (SFDM), (para 7, app B) and keep one copy for file.

(iii) On receipt of the signed copy of DA Form 1273, the DCM will take proper issue action. When more arms are required by the DCM, a DD Form 1348 will be prepared and sent to the Secretary of the Army for approval (AR 725-50).

(iv) The supply source responsible for the loan will ship the materiel directly to the rifle club or school.

(v) DD Forms 1348-1 received with the shipment or by mail, will be annotated and signed by the person authorized to receive and sign for property for the rifle club or school. The quantity and condition of the items received will be entered thereon. This entry will be based on a physical check and inspection of the materiel. Serial numbers of items received (if applicable and not noted) will also be entered. Two of the completed copies will be signed by the person authorized to sign for the club or institution. They will be mailed to the DCM, HQDA Secretary Field Directorate Marksmanship (SFDM). The third completed copy will be kept in the unit's file.

(vi) If a DD Form 1348-1 is not received with the shipment or is not received by mail, a receipt letter will be sent to the DCM. It will set forth the

nomenclature, quantities, condition, and serial numbers (of serial-numbered items) of all property received. This letter will be sent as soon as possible after receipt of the property. The receipt letter will be used by the DCM as a loan voucher. One copy will be recorded in the voucher register and placed in the voucher file. The loan action will be posted to the DCM stock record account.

(5) *Property returns.* When property is returned by civilian rifle clubs or institutions, the DCM will prepare seven copies of the DD Form 1348-1. Five copies will be mailed to the rifle club or institution; one will be kept in suspense in the club's or institution's jacket file; and one will be sent to the US Army Management Systems Support Agency (USAMSSA), Wash., DC 20310, to update the "rifles intransit program." The rifle club or institution will enter on the five copies the shipment date, how shipped, the quantity shipped, and other necessary data not entered by the DCM and distribute the five copies as follows:

(i) Two copies to the consignee (receiving depot, arsenal, or installation). One copy of the DD Form 1348-1 received by the consignee will be used to tally the shipment and to account for property received. The other copy will be signed by the accountable property officer (or representative) and will be sent to the DCM to terminate the open receipt in the loan voucher file.

(ii) One copy with the shipment.

(iii) One copy to the DCM, HQDA (SFDM), accompanied by the bill of lading (where available).

(iv) One copy retained by the rifle club or institution.

(6) *Lost, damaged, or destroyed property.* Loss, damage, or destruction of property in the possession of a rifle club or institution will be reported within 24 hours by telephone to the DCM (202-693-6460), the local police, and the FBI. All public and local laws must be complied with. Rifles and other equipment (except ammunition) that becomes unserviceable will be reported to the DCM by the club or institution. The DCM will give instructions for return of the equipment without expense to the government. Any equipment damage or loss that is the fault

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of the club or institution will be determined by a report of survey (AR 735-11). The club or institution must then reimburse the DCM. The DCM may replace damaged equipment after reimbursement. Government property lost or destroyed without fault or neglect on the club's part will be replaced, if replacements are available. The club will pay only shipping and handling charges.

[AR 700-131, 45 FR 62038, Sept. 18, 1980; AR 700-131, 61 FR 45890, Aug. 30, 1996]

§ 623.6 Reimbursement for loan of Army materiel.

(a) *Reimbursement Policies and Procedures*—(1) *Policies.* (i) DA elements do not program for costs related to loan of Army materiel.

(ii) Loans to non-DOD Federal activities are made on the basis that there will be no extra cost to the Army. Costs that are in addition to normal Army operating expenses will be reimbursed by the borrower. This provision will be a part of the loan agreement.

(iii) In cases of aircraft piracy, civil disturbance, disaster relief, or protection of the President or visiting dignitaries, emergency support will not be withheld for lack of a formal reimbursement agreement. In these cases, the supporting Army element will absorb initial costs (within existing fund availability). Reimbursement will be coordinated later.

(iv) Loans made under the provisions of Title 10 U.S.C. 2667 will provide that the borrower must pay a fair monetary rental. The fair monetary rental will be determined on the basis of prevailing commercial rates or computed by sound commercial accounting practices including a return on capital investment and administrative cost as well as depreciation. Leases made under this code section will include a provision establishing the rental cost of the materiel and method of payment.

(v) The Army National Guard (ARNG) is responsible for reimbursement of costs, over and above normal DA operating expenses, related to the borrowed Army materiel.

(vi) Support to the United States Secret Service (USSS) will be on a reimbursable basis except for costs directly

related to protection of the President or Vice President. Requests for reimbursement for all other support for USSS will be according to AR 37-27.

(vii) The cost of emergency support will be billed directly to the recipient.

(2) *Procedures.* (i) The Army accountable property officer handling the loan of DLA stock fund items will coordinate DLA billings and borrower reimbursement. The borrower can make payment directly to the Defense Stock Fund.

(ii) Installation financial accounting for "accounts receivable" will conform with Army Regulation 37-108.

(iii) The finance and accounting office (FAO) supporting the supplying accountable property officer will record all charges, including accounts receivable of Army Stock Fund offices (or branch offices), in separate ledger accounts for each borrower.

(iv) Charges and collections recorded in each loan account will be reported per Army regulations and directives prescribing the reporting of the fund status in any current fiscal year.

(v) Billing will be initiated on Standard Form 1080, and sent to the borrower within 30 days of turn-in of materiel and loan termination. For loans of arms and accouterments and issue of ammunition pursuant to 10 U.S.C. 4655, the Standard Form 1080 will be annotated to show that collections are to reimburse DA appropriations.

(vi) Special appropriations established to support disaster relief will be used promptly by Army commanders concerned to ensure that all direct expenses are charged to the special appropriation. Exclude those charges subject to reimbursement by the American National Red Cross (ANRC). ANRC reimburses for supplies, materiel, and services for which they are responsible in the disaster area.

(b) *Reimbursable Costs.* Unless specifically stated, borrowing agencies, authorities, and activities will reimburse the Army for all costs related to loan of Army materiel to include but not limited to the following:

(1) Any overtime pay and pay of additional civilian personnel required to accompany, operate, maintain, or safeguard borrowed equipment.

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(2) Travel and per diem expenses of Army personnel (military and civilian).

(3) Packing, crating, handling, and shipping from supply source to destination and return. This includes port loading and off loading.

(4) All transportation including return for repair or renovation.

(5) Hourly rate for the use of Army aircraft.

(6) Petroleum, oil, and lubricants (POL) (including aviation fuel).

(7) The cost of materiel lost, destroyed, or damaged beyond economical repair except for Army aircraft, motor vehicles, or motor craft used in connection with aircraft piracy.

(8) Utilities (gas, water, heat, and electricity). Charges will be based on meter readings or other fair method.

(9) Any modification or rehabilitation of Army real property which affects its future use by DA. In such cases the borrower will also bear the cost of restoring the facility to its original form.

(10) Repair/overhaul of returned materiel. Renovation and repair will conform with agreement between the Army and the borrower. (See paragraph (e)(1) of this section.)

(11) Repair parts used in maintenance or renovation.

(12) Price decline of borrowed stock fund materiel at which returned property can be sold.

(c) *Nonreimbursable Costs.* The following costs are normal operating expenses of the Army for which no reimbursement is required:

(1) Regular pay and allowances of Army personnel (except travel) and per diem costs.

(2) Administrative overhead costs.

(3) Annual and sick leave, retirement, and other military or civilian benefits except as provided in certain cases; e.g., Army Industrial Fund regulations.

(4) Telephone, telegram, or other electrical means used to requisition items, replenish depot stocks, or coordinate the loan.

(5) Charges for the use of Army motor vehicles and watercraft except POL and per diem costs (paragraph (b) of this section).

(6) The use of real property (except as required for utilities, modification, etc.).

(d) *Funding Records.* (1) Records of all costs (other than normal operating expenses), related to loans of Army materiel, will be kept at the accountable property officer level by the supporting finance and accounting office. This will be done within existing Army financial accounting systems.

(2) Separate subsidiary general ledger accounts and/or files of documents showing the total value of all issues and materiel returned for credit, and supporting documentation will be set up by the finance and accounting office. The accounts will be kept current for each loan action so reports may be made as prescribed; and so that accounts receivable can be processed for billing and collection action.

(e) *Determination of Charges and Settlement.* (1) Returned materiel will be promptly classified by a qualified inspector with action as follows:

(i) Materiel classified as unserviceable, uneconomically repairable will be billed at 100 percent of value.

(ii) Materiel classified as unserviceable, economically repairable will be billed for reduced utility (if appropriate) as well as for repair/overhaul costs.

(iii) The depreciation of borrowed materiel will be determined by technical inspectors according to Army Regulation 735-11. When qualified inspectors are not available, returned property will be received with "condition" shown as "subject to final classification by DA." Accountable property officers will complete classification promptly so charges and billing can be made within 30 days of return of materiel.

(2) All returned property which needs repair will be examined by a technical inspector to find cost of repair. Then the accountable property officer will prepare a property transaction record with supporting documents. These records will be sent to the proper MACOM commander or CINCOM for final review. They will include—

(i) A statement on the transaction record identifying the financial account to which the reimbursement money is to be deposited.

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(ii) A statement on the transaction record (if appropriate) as follows: "The losses and/or damages shown on the Property Transaction Record in the amount of \$_____ represent the total claim by the US Army for property loaned to _____. Upon settlement and deposit to the proper account, lender releases the _____ from further obligations."

(iii) A description of the type and degree of repair (separate addendum).

(3) After the final review, an approved list of charges will be sent to the servicing finance office for collection. The property will be released for repair and returned to stock.

(4) The finance office will send a letter to the borrower requesting payment (payable to the Treasurer of the United States). Upon payment, collection documents will be prepared and fiscal accounts credited. The MACOM or UCOM Surgeon will ensure the stock fund is reimbursed for expendable medical supply losses reported.

(5) The finance office will advise the loaning accountable property officer that settlement has been made. Property transaction records will be closed.

(6) The approving authority will then return the bond to the borrower.

(7) The value of supplies and equipment returned to the Army will be credited to the account originally debited at the time of issue. FDAA Regional Directors may find that it is not in the public interest to return borrowed materiel that has not been consumed, lost, or damaged. They will negotiate with the CONUS Army concerned for proper reimbursement for the borrowed materiel not returned.

(f) *Delinquent and Uncollectable Accounts.* (1) In cases of unsatisfactory settlement, bond proceeds will be used to satisfy the claim.

(2) If this does not settle the account, then 6 months after the final report and after all collection efforts have failed—

(i) Servicing finance offices will send delinquent "accounts receivable" reports to commanders of CONUS Armies and DARCOM readiness commands, and to CINCs of UCOMs, by forwarding—

(A) Duplicate copies of Standard Form 1080 billing documents showing

complete accounting classification to which reimbursement is to be credited.

(B) Duplicate copies of all supporting documents.

(C) One copy of any correspondence showing the reason(s) for nonpayment of the account.

(ii) The CONUS Army Commanding General, CINC of UCOM, or Commanding Generals of DARCOM Materiel Readiness Commands, will also try to collect for these delinquent accounts. If all efforts fail, these accounts, (with any delinquent accounts applicable to billings initiated within their own headquarters) will be sent to the Director of Comptroller Systems, HQDA (DACA-BUS). (Para 1, app B). The letter of transmittal will state that the accounts are transferred according to this regulation. A copy will be sent to the FAO handling the accounts. The FAO will then transfer the account to inactive status. A Standard Form 1017G (Journal Voucher) will be prepared showing a debit to account 3052 (Transfer of Accounts Receivable) and a credit to the proper accounts receivable.

(iii) Appropriations available to the accountable property officer or installation will be used for reimbursing; e.g., the Army Stock Fund or Army Industrial Fund accounts. Any later reimbursements received will be credited to the Army appropriation from which payment was made.

(3) Upon receipt of the accounts included in paragraph (f)(2) of this section, the Comptroller, HQDA (DACA-BUS), will take further collection action under normal operating procedures. All later collection action is the responsibility of the Comptroller. Accounting records and reports will conform with normal procedures. When further collection effort by the Comptroller fails, these accounts will be dropped from receivable balances of the Army. They will be referred to the General Accounting Office (GAO).

§ 623.7 Reports.

(a) *General.* Reports of Army materiel loaned to non-DOD activities must be forwarded as described below.

(b) *Aircraft Piracy*. (1) Commands and agencies providing aircraft piracy support will initially report through command channels by telephone to the HQDA, (DAMO-ODS). (Para 4, app B.) Confirmation will be made by electrically transmitted message to HQDA, ATTN: DAMO-ODS. These reports are exempt from reports control under Army Regulation 335-15. Initial reports will include all available details. Following is a guide for content of reports.

- (i) Supporting unit.
- (ii) Home station of supporting unit.
- (iii) Support provided and duration of requirement.
- (iv) Changes, if any, in support requested or duration of requirement as made by the Federal civil official in charge.
- (v) Additional remarks.

(2) A final report noting termination of support will be made.

(c) *Civilian Rifle Clubs and Schools*. (1) Each affiliated club and institution (schools) must file an annual report (DA Form 1277, Annual Statistical Report of Civilian Rifle Club) on the anniversary date of the loan with the DCM.

(2) A roster of club members will list each member required to fire annually. It will include the full name, address, and age; the DCM course; score; and the date the member fired for record.

(3) A description of the club's procedures and facilities for safekeeping arms and ammunition will be appended to the roster of club members.

(d) *Civil Disturbances*. (1) Requests to meet civil disturbances are of two types:

- (i) Type I—Requests to meet an urgent need during an actual disorder.
- (ii) Type II—Requests in anticipation of an imminent civil disorder.

(2) Approving authorities, other than the Secretary of the Army, will prepare reports (RCS DD-A(AR)1112) on all requests for loan of Army materiel to support civil disturbances. The reports will be sent within 2 working days after receipt of the request. They will be prepared in the format shown in Army Regulation 500-60. They will also serve as "the request" when no other written request is available.

(3) The reports will be sent to the HQDA (DAMO-ODS)). When reports are received from unified or specified

commands, ODCSOPS will send an information copy to the Joint Chiefs of Staff (JCS) National Military Command Center (NMCC).

(4) The Secretary of the Army will send information copies of civil disorder reports to the DOD General Counsel and the US Deputy Attorney General.

(5) Reports of civil disturbance operation costs (RCS DD-A(AR)1112) also will be prepared as shown in Army Regulation 500-60.

(e) *Disaster Assistance*. When Army materiel is loaned in support of disaster assistance, CONUS Army Commanding Generals and UCOM CINCs will send reports as follows:

(1) *Initial reports*. Initial reports will be made by telephone to the Commanding General, FORSCOM (AUTOVON 588-3912), who will, in turn, telephone the report to the Military Support Division, ODCSOPS, AUTOVON 225-2003 or 7045). This will be followed within 12 hours by a Tempest Rapid Materiel Report in message form and sent electrically. The message report will be prepared according to Army Regulation 500-60.

(2) *Daily message reports*. Tempest Rapid Daily Materiel Reports of Army materiel loaned to support disaster relief will also be sent by electrically transmitted message. The reports will cover the 24-hour period from 0601Z to 0600Z. The reports must arrive at the HQDA (DAMO-ODS), no later than 1100Z the same day. Daily reports will be sent according to the format in Army Regulation 500-60 except that part III will not be included. Also, "no change reports" may be made by telephone. On the day of the last daily message report include the words FINAL DAILY REPORT in the subject line.

(3) *Final reports*. In addition to the final Tempest Rapid Daily Materiel Report, a final report on military assistance provided will be sent within 45 working days of termination of disaster assistance. The CONUS Army Commanding General will send the report by 1st Class Mail through the Commanding General, FORSCOM, to the HQDA (DAMO-ODS). The final report will include—

(i) An historic account of the disaster.

(ii) Cumulative totals of support given.

(iii) A statement of accomplishments.

(iv) Actual or estimated expenses excluding costs incurred by the Corps of Engineers under Pub. L. 84-99. Costs will be reported by Service by appropriation, using three columns to identify normal costs, incremental costs, and total costs.

(v) The status of reimbursements requested from borrowing Federal agencies, and civilian authorities and activities. If reimbursement has not been completed by the date of the final report, a separate cost report will be sent upon final reimbursement payment.

(vi) Lessons learned.

(4) *Information copies.* Information copies of all reports will be sent to the proper HUD Regional Directors for FDAA and DCPA Regional Offices.

(5) *Additional information.* Additional information may be needed by Federal officials. Normally, such requests will be telephoned by ODC SOPS Military Support Division to the Commanding General, FORSCOM.

(6) *Pollution spills.* The Commanding General, FORSCOM, will report committal of Army resources to the HQDA (DAMO-ODS), by the fastest means. Daily and final Tempest Rapid Materiel Reports will be sent with "not applicable" shown in paragraphs 8, 9, and 10 of the report.

(f) *Drugs and Narcotics Interdiction Program.* (1) Army staff agencies will submit monthly status reports of actions that support this program. The reports will be as of the last day of June and December, respectively. Reports will be sent to HQDA (DAMO-ODS), 4 working days after the end of the designated months. Reports will summarize all support during the period to include pending or terminated support plus estimated cost of items.

(2) Based on information received in these reports, ODCSOPS will prepare a report of the drug and narcotics interdiction assistance given by the Army. This report will be sent through the Army Chief of Staff to the Secretary of the Army.

(g) *United States Secret Service (USSS).* Army commands and agencies providing materiel support (routine or urgent) to the USSS will report any significant problems or deviation from the approved request at once. Reports will be telephoned through command channels.

(h) *Other Reports.* Active Army accountable property officers will make semiannual reports on open loans. The reports will be prepared as of the last day of July and December. They will be sent by the 15th day of the following month. These reports will include the items on loan, quantity, dollar value, and duration of the loans. The reports will be sent to the approving authority.

APPENDIX A TO PART 623—EXPLANATION OF TERMS

As used in this regulation, the following explanation of terms apply:

ACCOUTERMENTS. Equipment that is associated with small arms characterized as personal and individual that is available from Army stocks.

APPROVING AUTHORITY. The person (or designee) authorized to approve specific types of loans of Army materiel. (See table 2-1 and app B.)

ARMS. Weapons for use in war.

CIVIL AUTHORITIES. Those elected and appointed public officials and employees who govern the 50 States, District of Columbia, Commonwealth of Puerto Rico, US possessions and territories, and governmental subdivisions thereof.

CIVIL DEFENSE. All those activities and measures designed or undertaken to:

a. Minimize the effects upon the civilian population caused, or which would be caused, by an enemy attack upon the United States.

b. Deal with immediate emergency conditions which would be created by any such attack.

c. Effect emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by any such attack (JCS Pub 1).

COMMUNITY RELATIONS PROGRAM. A program of action, to earn public understanding and acceptance, conducted at all levels of military command wherever stationed. The program includes participation in public events, humane acts, and cooperation with public officials and civil leaders (AR 360-61).

DEFENSE CIVIL PREPAREDNESS AGENCY (DCPA). A defense department agency responsible for plans and preparations for civil defense and assistance to local governments in disaster relief planning.

- DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD). The Federal department responsible for directing and coordinating Federal assistance for major disasters on behalf of the President.
- DOMESTIC ACTION PROGRAM. A program of assistance to local, State, and Federal agencies for the continued improvement and development of society (AR 28-19 and para 4-10, AR 360-61).
- EMERGENCY. Any catastrophe in any of the United States which in the determination of the President requires Federal supplementary emergency assistance.
- EMERGENCY MEDICAL TREATMENT. The immediate application of medical procedures to wounded, injured, or sick, by trained professional medical personnel.
- EXECUTIVE AGENT. That individual or his designee authorized to act as the US Government's agent in making certain loans of government materiel. The President of the United States has delegated to the Secretary of the Army (or to his designee, the Under Secretary of the Army) authority, as Executive Agent, to approve certain loans of DOD materiel to non-DOD activities. (See table 2-1.) Other "approving authorities" act as "Executive Agents" for the US Government, but do not have that title.
- FEDERAL AGENCY. Any department, independent establishment, government corporation, or other agency of the executive branch of the Federal Government, except the ANRC.
- FEDERAL COORDINATING OFFICER (FCO). The person appointed by the President to operate under the HUD Regional Director for Federal Disaster Assistance Administration to coordinate Federal assistance in Presidentially declared emergency or major disaster.
- FEDERAL DISASTER ASSISTANCE ADMINISTRATION (FDAA). The agency within HUD delegated the disaster relief responsibilities previously assigned to the Office of Emergency Preparedness.
- FEDERAL FUNCTION. Any function, operation, or action carried out under the laws of the United States by any department, agency, or instrumentality of the United States or by an officer or employee thereof.
- FEDERAL PROPERTY. That property which is owned, leased, possessed, or occupied by the Federal Government.
- IMMINENT SERIOUS CONDITION. Any disaster or civil disturbance which is of such severity that immediate assistance is required to save human life, prevent immediate human suffering, or reduce destruction or damage to property.
- LOCAL GOVERNMENT. Any county, parish, city, village, town, district, Indian tribe or authorized tribal organization, Alaska native village or organization, or other political subdivision of any State.
- MAJOR DISASTER. Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earth-quake, drought, fire, or other catastrophe which, in the determination of the President, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government. This assistance supplements the efforts and available resources of States, local governments, and relief organization in alleviating the damage, loss, hardship, or suffering caused thereby.
- OBJECTIVE AREA. A specific geographical location where a civil disturbance or disaster is occurring or is anticipated.
- ROUTINE REQUESTS. Requests resulting from situations which are reasonably predictable or do not require immediate action to prevent or reduce loss of life, property, or essential services. Reduced efficiency of the requester's operation is not in itself grounds for classifying a request higher than routine.
- SMALL ARMS. Hand and shoulder weapons for use in war.
- SURETY BOND. A bond, including dollar deposit, guaranteeing performance of a contract or obligations.
- TERRORIST INCIDENT. A form of civil disturbance which is a distinct criminal act committed or threatened to be committed by a group or single individual in order to advance a political or other objective, thus endangering safety of individuals or property. This definition does not include aircraft piracy emergencies.
- THREATENED MAJOR DISASTER. Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire, or other catastrophe which, in the determination of the Administrator, FDAA, threatens to be of severity and magnitude sufficient to warrant disaster assistance by the Federal Government. This assistance will be used to avert or lessen the effects of such disaster before its actual occurrence.
- URGENT REQUESTS. Those resulting from unforeseeable circumstances, civil disturbances, civil defense needs, aircraft piracy, secret service requirements, and disasters when immediate action is necessary to prevent loss of life, physical injury, destruction of property, or disruption of essential functions.
- YOUTH GROUPS. Youth groups are groups such as the Boy Scouts of America; Girl Scouts of the United States of America; Civil Air Patrol; Camp Fire Girls, Incorporated; The Boy's Club of America; Young Men's Christian Association; Young Women's Christian Association; Four H Clubs; and similar groups.

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**APPENDIX B TO PART 623—APPROVING
AUTHORITY ADDRESSES/TELEPHONE
NUMBERS ***

- B-1. HQDA (DACA-BUS), WASH DC 20310, Telephone: AUTOVON 225-6336, WATS 202-695-6336;
- B-2. HQDA (DALO-SMD), WASH DC 20310, Telephone: AUTOVON 227-5960, WATS 202-697-5960;
- B-3. HQDA (DALO-SMW), WASH DC 20310, Telephone: AUTOVON 227-3159, WATS 202-697-3159;
- B-4. HQDA (DAMO-ODS), WASH DC 20310, Telephone: AUTOVON 225-2003, WATS 202-695-2003;
- B-5. HQDA (NGB-ZA), WASH DC 20310, Telephone: AUTOVON 227-2430, WATS 202-697-2430;
- B-6. HQDA (DASG-HCL), WASH DC 20310, Telephone: AUTOVON 227-8286, WATS 202-697-8286;
- B-7. Director, Civilian Marksmanship (SFNB) Room 1E-OM3, West Forrestal Building, 1000 Independence Avenue, SW., Telephone: AUTOVON 223-6460, WATS 202-693-6460;
- B-8. Commander in Chief, US Army, Europe and Seventh Army, APO New York 09403;
- B-9. Commander, First US Army, Fort George G. Meade, MD 20755, Telephone: AUTOVON 923-7500, WATS 301-677-7500;
- B-10. Commander, Fifth US Army, Fort Sam Houston, TX 78234, Telephone: AUTOVON 471-4707, WATS 512-221-4707;
- B-11. Commander, Sixth US Army, Presidio of San Francisco, CA 94129, Telephone: AUTOVON 486-4110, WATS 415-561-4110;
- B-12. Commander, US Army Armament Materiel Readiness Command, ATTN: DRSAR-MMS, Rock Island, IL 61229;
- B-13. Commander, US Army Armament Research and Development Command, Dover, NJ 07801;
- B-14. Commander, US Army Aviation Research and Development Command, PO Box 209, St. Louis, MO 63177;
- B-15. Commander, US Army Communications and Electronics Materiel Readiness Command, Fort Monmouth, NJ 07703;
- B-16. Commander, US Army Communications Research and Development Command, Fort Monmouth, NJ 07703;
- B-17. Commander, US Army Communications Security, Logistics Agency, ATTN: SELCL-NICP-IM, Fort Huachuca, AZ 86513;
- B-18. Commander, US Army Forces Command, Fort McPherson, GA 30330, Telephone: AUTOVON 588-2694, WATS 404-752-2694;
- B-19. Commander, US Army Health Services Command, Fort Sam Houston, TX 78234;
- B-20. HQDA (DAMH-HS), WASH DC 20314;
- B-21. Commander, US Army Military District of Washington, Fort Leslie J. McNair, Washington, DC 20319;
- B-22. Commander, US Army Missile Materiel Readiness Command, Redstone Arsenal, AL 35809;
- B-23. Commander, US Army Missile Research and Development Command, Redstone Arsenal, AL 35809;
- B-24. Commander, US Army Security Assistance Center, ATTN: DRSAC, 5001 Eisenhower Avenue, Alexandria, VA 22333, Telephone: AUTOVON 284-9638, WATS 202-274-9638;
- B-25. Commander, US Army Tank-Automotive Materiel Readiness Command, Warren, MI 48090;
- B-26. Commander, US Army Tank-Automotive Research and Development Command, Warren, MI 48090;
- B-27. Commander, US Army Test and Evaluation Command, Aberdeen Proving Ground, MD 21005;
- B-28. Commander, US Army Training and Doctrine Command, Fort Monroe, VA 23651, Telephone: AUTOVON 680-3112, WATS 804-727-3112;
- B-29. Commander, US Army Troop Support and Aviation, Materiel Readiness Command, 4300 Goodfellow Boulevard, St. Louis, MO 63120.

*Telephone numbers are provided for principal loan approving authorities and agencies responsible for specific loans IAW table 2-1.

APPENDIX C TO PART 623—AGREEMENT FOR LOAN OF US ARMY MATERIEL (DA FORM 4881-R)

APPENDIX C
AGREEMENT FOR LOAN OF US ARMY MATERIEL (DA FORM 4881-R)

<p>AGREEMENT FOR THE LOAN OF US ARMY MATERIEL For use of this form, see AR 700-131; the proponent agency is DCSLOG.</p>
<p><i>NOTE: For loan/lease pursuant to 10 USC 2667, see Army Defense Acquisition Regulation Supplement (ADARS), paragraph 16-553, for prescribed agreement.</i></p>
<p><i>This form will be used to enter into agreements relative to the loan of Army materiel between the United States Army and —</i></p> <p style="text-align: center;"><i>1. Non-DOD Federal departments and agencies. 2. Civil authorities. 3. Civilian activities.</i></p> <p><i>Paragraphs below are applicable to all three cases, as cited above, unless otherwise specified at the beginning of each paragraph.</i></p>
<p>This loan agreement is entered into, by, and between the United States of America, hereinafter called "the lender," represented by (b) _____</p> <p>for the purpose of entering into this agreement; and (a) _____</p> <p>hereinafter called "the borrower," represented by (c) _____</p> <p>for the purpose of entering into this agreement.</p>
<p>1. PURPOSE. Under the authority of (d) _____, the lender hereby lends to the borrower and the borrower hereby borrows from the lender the Government materiel, hereinafter called "the materiel," listed and described in Exhibit 1 hereto attached and incorporated by reference into the terms of this agreement, which materiel is required by the borrower for (e) _____</p>
<p>2. TERM. This loan of materiel is intended to meet a temporary need covered by federal law. The borrower will keep the materiel only for the period of (f) _____. Loans may be renewed, if justified, and requested by the borrower and approved by the lender. Nevertheless, the lender may revoke and terminate this agreement and demand return of the materiel in whole or in part at any time.</p>
<p>3. CONDITIONS. This agreement is predicated upon the following conditions:</p> <p>a. The lender will make every effort to ensure that each item of the materiel is furnished to the borrower in a serviceable and usable condition according to its originally intended purpose. However, if the use for which the materiel is loaned will permit, materiel of a lesser condition will be loaned. This lesser condition will be noted on the appropriate loan documents. Nevertheless, the lender makes no warranty or guarantee of fitness of any of the materiel for a particular purpose or use; or warranty of any type whatsoever.</p> <p>b. The borrower will appoint a representative for the purpose of making joint inspection and inventory of all materiel when the borrower physically picks up or returns the borrowed materiel. Upon pickup (or receipt after shipment) of the borrowed materiel, the chief of the borrowing activity (or his authorized representative) will sign the appropriate documents acknowledging receipt and possession of the materiel. Upon return of the materiel to the Army, the borrower will certify that "the quantities listed in the shipping document(s) are correct." In instances where borrower representatives, authorized to receive and sign for borrowed materiel, are not available when the materiel is delivered, all claims for costs related to the loan will be valid.</p> <p>c. The borrower is responsible for care and maintenance of borrowed materiel during the term of the loan. The borrower will provide sufficient personnel and facilities to adequately operate, maintain, protect, and secure the borrowed materiel. The borrower will maintain the materiel in a serviceable condition and ascertain that it is returned to the Army in as good a condition as when it was loaned (fair wear and tear excepted). Records of maintenance performed will be kept and returned to the Army with the borrowed materiel. (NOTE: When appropriate, the borrowing activity will place the materiel in a "properly preserved" status prior to or upon return.)</p> <p>d. The borrower will store, safeguard, and secure high value items, or arms in a manner consistent with common practice, public law, and local ordinances.</p> <p>e. The borrower will prevent misuse of borrowed materiel; or its use by unauthorized persons.</p>

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- f. The borrower will neither make nor permit any modification or alteration of any borrowed materiel except with permission of the approving authority for the loan.
- g. The borrower will not mortgage, pledge, assign, transfer, sublet, or part with possession of any borrowed materiel in any manner to any third party either directly or indirectly except with the prior written approval of the lender.
- h. At all times the lender shall have free access to all loaned materiel for the purpose of inspecting or inventorying it.
- i. The borrower will return borrowed materiel to a location designated by the lender when the materiel is no longer needed; upon termination of the loan period (including any approved extension); or upon demand therefore by the lender. The lender will provide documents to be used by the borrower to return the materiel.
- j. (Applicable to agreements involving the loan of an Army building.) The building will not be moved. Upon termination of its use, the borrowing activity will vacate the premises, remove its own property therefrom, and turn in all Government property.
4. PAYMENT. The borrower will reimburse the lender for expenses incurred in connection with this loan as provided below:
- a. (Applicable to loan agreements with civil authorities — except for FDAA requested disaster assistance — and civilian activities only.) Before delivery of any materiel by the lender, the borrower will post with the approving authority a surety bond and a certified bank check, a cash deposit, US Treasury bonds, or bonding company bond in the amount of the total value of the materiel as shown in Exhibit I. (See paragraphs 2-3a(1) and 2-3a(2), AR 700-131, for exceptions where a "double bond" is required.) The bond, marked Exhibit II, is hereto attached and incorporated by reference into the terms of this agreement.
- b. (Applicable to loan agreements with civil authorities — except for FDAA requested disaster assistance — and civilian activities only.) Should the borrower fail to return any of the borrowed materiel or fail to reimburse the lender within 30 days after receiving a request for payment of expenses, the bond shall be forfeited as liquidated damages in an amount equal to the expense to the Government.
- c. (Applicable to loan agreements with civil authorities — except for FDAA requested disaster assistance — and civilian activities only.) Payment of liquidated damages by forfeiture of any portion of the bond to the Government shall not operate as a sale to the borrower of any of the materiel available to be returned, but not returned to the lender, nor to extinguish the lender's right to have the available missing materiel returned. Should the borrower later return to the lender any of the missing materiel on account of which a portion of the bond was forfeited as liquidated damages, the borrower shall be entitled to recoup from the lender a sum equal to 90 percent of the price of the returned materiel as shown on Exhibit I, less an amount in payment for expenses, if any, computed in accordance with Chapter 6, AR 700-131, and less an amount for depreciation.
- d. (Applicable to loan agreements with civil authorities and civilian activities only.) If the normal life expectancy of borrowed materiel can be determined by reference to applicable military publications, the amount to be assessed for depreciation shall be computed by the straight line method using the price shown on Exhibit I and the date of expiration or termination of this loan as initial points. When normal life expectancy is not established by applicable military publications, the amount for depreciation shall be computed by the same method, applying a uniform depreciation rate of 50 percent per annum.
- e. (Applicable to loan agreements with civil authorities and civilian activities only.) The borrower will assume all responsibility for Army claims arising from the possession, use, or transportation of the borrowed materiel; and, agrees to hold the lender harmless from any such claims and liability. The borrower will protect the interests of the lender by procuring comprehensive insurance for all borrowed materiel to include coverage for liability, property damage, fire, and theft; and deductible collision insurance for motorized vehicles. The borrower will file duplicate copies of such insurance policy(ies) with the lender and prepare accident reports in accordance with existing laws and local ordinances.
- f. The borrower will bear the cost of pickup and return of borrowed materiel; and, will reimburse the lender for costs incurred incident to packing, crating, handling, movement, and transportation of the materiel.
- g. The borrower will reimburse the lender for any expenses necessary to repair, rehabilitate, or preserve the materiel following its return to the lender. (NOTE: Of any borrowed materiel, unless depreciation is significant.)
- h. The borrower will reimburse the lender (as indicated and at the price shown on Exhibit I) for the cost of all of the expendable materiel (including, but not limited to, petroleum, oil, and other lubricants) used or consumed during this loan.
- i. The borrower will reimburse the lender for costs incident to the pay of Army personnel who may be temporarily required to operate, maintain, guard, or otherwise attend to borrowed Army materiel. This includes travel and per diem costs for both Army uniformed and civilian personnel, and regular salary and overtime costs for Army civilians.

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j. The borrower will reimburse the lender for any other expense to the lender arising in connection with the loan of Army materiel.

k. (Applicable to loan agreements with Federal departments and agencies only.) The lender will indicate the specific accounting classification(s) against which any charges as enumerated above will be charged.

5. **OFFICIALS NOT TO BENEFIT.** No member of or delegate to Congress shall be admitted to any share or part of this loan or to any benefit arising in connection with it.

6. **CONTINGENCY FEES.** No person or agency acting for or on behalf of the borrower to solicit or obtain this loan shall be paid any commission, percentage, brokerage, or contingent fee in any way connected with this loan.

7. **DISPUTES.** Any disputes concerning a question or fact arising under this loan agreement which are not mutually disposed of by the lender and the borrower shall be decided by the Secretary of the Army as the Government's Executive Agent, or by his designee.

Done at (g) _____ this _____ .

TYPED NAME, GRADE/RANK OF ARMY APPROVING AUTHORITY FOR THE LOAN, OR HIS DESIGNEE	SIGNATURE OF APPROVING AUTHORITY OR HIS DESIGNEE
TYPED NAME OF CHIEF EXECUTIVE OR HIS AUTHORIZED DESIGNEE OF THE BORROWING AGENCY, AUTHORITY, OR ACTIVITY	SIGNATURE OF CHIEF EXECUTIVE OR HIS DESIGNEE

(DA Form 4881-R)

**INSTRUCTIONS FOR PREPARATION OF AGREEMENT
FOR THE LOAN OF US ARMY MATERIEL
(DA FORM 4881-R)**

Note. The lettered blank portions of the loan agreement are to be completed as specified in the following paragraphs with the same letters.

- (a) Enter, as appropriate, the name of the Federal agency; city, county, state, or other civil governmental body; or special activity (e.g., Boy Scouts of America, American Legion) which is borrowing the Army materiel.
- (b) Enter name and title of the Army approving authority for the loan, or his designee.
- (c) Enter name and title of the borrowing activity's chief executive (e.g., John Doe - Secretary of the Treasury, Governor of the State of Iowa, National Commander of the American Legion, etc.) or his authorized (in writing) designee.
- (d) Enter the appropriate authority for the loan from table 2-2, this regulation (e.g., Public Law, US code, DODD).
- (e) State the purpose of the loan (use to which the borrowed materiel will be put); e.g., disaster relief activities in support of the Johnstown, PA, flood; National American Legion Convention at Chicago, IL; etc.
- (f) Enter the calendar period (duration of the loan; e.g., 1 March 1978 to 15 April 1979.)
- (g) Enter location, day, month, and year that the agreement was signed.
- (h) Signature of the Army approving authority for the loan, or his designee.
- (i) Signature of the chief executive, or his authorized (in writing) designee, of the borrowing agency, authority, or activity.

Note 2. Exhibits I and II will be prepared as attachments to the loan agreement.

APPENDIX D TO PART 623—CERTIFICATE FOR SIGNATURE BY AN ALTERNATE (DA FORM 4881-1-R)

APPENDIX D
CERTIFICATE FOR SIGNATURE BY AN ALTERNATE (DA FORM 4881-1-R)

**AGREEMENT FOR THE LOAN OF US ARMY MATERIEL
CERTIFICATE FOR SIGNATURE BY AN ALTERNATE**
For use of this form, see AR 700-131; the proponent agency is DCSLOG.

I, the (a) _____

of the (b) _____ named as the

borrower in this loan agreement, certify that (c) _____

who signed this agreement on behalf of the borrower, was then (d) _____

_____ of (b) _____

and that this loan agreement was duly signed on behalf of (b) _____

_____ by authority of its governing or directing

body and is within the scope of its lawful powers. In witness whereof I have hereunto

affixed my hand and seal of (b) _____

this (e) _____ day of (f) _____, 19 (g) _____

(OFFICIAL SEAL)

(Name and title of certifying officer)

(Signature)

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**INSTRUCTIONS FOR FILLING OUT THE CERTIFICATE
FOR SIGNATURE BY AN ALTERNATE
(DA FORM 4881-1-R)**

Note. The above lettered blank portions of the certificate are to be completed as specified in the following paragraphs with the same letters.

(a) Enter the title of the chief officer of the borrowing activity; e.g., Governor, Chief Scout Executive, National Commander American Legion, etc.

(b) Enter the name of the Federal agency, civil authority, or the civilian activity borrowing the materiel.

(c) Enter the name of the person who signed the agreement.

(d) Enter the title of the person who signed the agreement.

(e) Enter the date (e.g., 5th) of the month on which the certificate was signed.

(f) Enter the month (e.g., July) in which the certificate was signed.

(g) Enter the year (e.g., 1978) in which the certificate was signed.

APPENDIX E TO PART 623—SURETY BOND (DA FORM 4881-3-R)

APPENDIX E
SURETY BOND (DA FORM 4881-3-R)

SURETY BOND FOR SAFEKEEPING OF PUBLIC PROPERTY AND GUARANTEEING REIMBURSEMENT TO THE GOVERNMENT FOR EXPENSES INCIDENT TO THE LOAN OF ARMY MATERIEL - EXHIBIT II
For use of this form, see AR 700-131; the proponent agency is DCSLOG.

Know all men by these presents, that the (a) _____,

a (b) _____ having its principal office in the city of (c) _____

and the state of (d) _____, as the obligor, is held and firmly bound into the United States of America in the

penal sum of (e) _____, lawful securities of the United States, payment of which sum, will be made to the United States, without relief from evaluation or appraisal laws, said organization binds itself, its successors and assigns firmly by these presents.

The condition of the above obligation is such, that whereas the (a) _____ is

a (b) _____ to which the Secretary of Defense is authorized to lend such materiel as may be necessary for accommodation of the requirement, subject to the provision that before delivering such materiel he

shall take from the (a) _____ a good and sufficient bond for the safe return of such property in good order and condition and the whole without expense to the United States.

Now, therefore, as to all the property of the United States to be loaned to the (a) _____,

said (a) _____ shall take good care of, safely keep and account for, and shall, when required by the Secretary of Defense or his authorized representative, safely return to Department of the Army all said property

issued and covered by this bond within (f) _____ days from the conclusion of said requirement the whole without expense to the United States, in as good order and in the same condition as that in which the equipment and property existed at the date of delivery, reasonable wear excepted, or upon formal demand make adequate monetary compensation for items lost or damaged as well as for costs of depreciation (Note: "Depreciation" will not be included in bonds related to loans to other Federal agencies.), renovation, or repair of items accomplished at Government repair facilities, and all transportation

provided as set forth and defined in the agreement dated (g) _____ between the United States of America and the

(a) _____.

The above bounded obligor, in order to more fully secure the United States in the payment of the aforementioned sum, hereby pledges as security therefor, in accordance with the provisions of Section 1126 of the Revenue Act of 1926, as amended,

United States of America Treasury bonds, in the principal amount of (e) _____ which are numbered serially, are in the denominations and amounts, are otherwise more particularly described as follows:

United States of America Treasury bonds (h) _____ due (i) _____

Interest on said Treasury bonds shall accrue and be paid to the (a) _____ except and unless there occurs a default as defined herein and said securities are sold and applied to the satisfaction of such default as provided herein. Said Treasury bond(s) (cash or certified check) have/has this day been deposited with the

Finance and Accounting Officer (j) _____ and his receipt taken therefor.

NOTE: If cash or a certified bank check is provided as bond instead of US of America Treasury bonds, the two paragraphs above will be crossed out and the following paragraph will apply.

CONTINUED ON REVERSE

The above bonded obligor, in order to more fully secure the United States in the payment of the aforementioned sum, hereby pledges as security, therefore, in accordance with the provisions of section 1126 of the Revenue Act of 1926, as amended,

cash (cashier's check) in the amount of (e) _____ . Said cash (cashier's check) has this day been deposited with the Finance and Accounting Officer (j) _____ and his receipt taken therefor.

Contemporaneously herewith the undersigned have also executed an irrevocable power of attorney and agreement in favor of the Finance and Accounting Officer, (j) _____, acting for and in behalf of the US Government authorizing and empowering said officer as such attorney to disburse said bond so deposited, or any part thereof, in case of any default in the performance of any of the above named conditions or stipulations.

In Witness Whereof, this bond has been signed, sealed, and delivered by the above named obligor, this (k) _____ day of (l) _____ 19 (m) _____.

(a) _____

(n) _____ SEAL

(o) _____ SEAL

Signed, sealed, and delivered in the presence of:

(p) _____ (q) _____
(Name) (Address)

(p) _____ (q) _____
(Name) (Address)

Before me, the undersigned, a Notary Public within and for the county of (r) _____, in the State of (s) _____, personally appear (t) _____, (n) _____, and for and in behalf of said (a) _____, a (b) _____ acknowledged the execution of the foregoing bond.

Witness my hand and notarial seal this (u) _____ day of (v) _____, 19 (w) _____

Notarial Seal (x) _____
(Notary Public)

My commission expires (y) _____
(Date)

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DA Form 4881-3-R—continued.

INSTRUCTIONS FOR PREPARATION OF SURETY BOND (DA FORM 4881-3-R)

Note. The lettered blank portions of the surety bond are to be completed as specified in the following paragraphs with the same letters:

- (a) Enter the name of the Federal agency, authority (local governmental body), or special activity which borrowed the Army materiel, or is providing the bond.
- (b) Further identify the borrower by entering here the type of activity that it is; e.g., Federal agency, civil government, corporation (Boy Scouts of America), etc.
- (c) Enter the name of the city.
- (d) Enter the name of the State.
- (e) Enter the amount of the bond.
- (f) Enter the number of days, or period, for which loan of the materiel is authorized.
- (g) Enter the date on which the loan agreement between the borrower and the US Government was signed.
- (h) Enter rate of interest paid on the bonds.
- (i) Enter date on which bonds are due for redemption.
- (j) Enter name of the Army installation (e.g., Fort Hood, TX) or US Army number (e.g., Fifth US Army) at which the servicing Finance and Accounting Office is located.
- (k) Enter date on which bond is signed.
- (l) Enter month in which bond is signed.
- (m) Enter year in which bond is signed.
- (n) Enter title of the borrowing activities' chief executive; e.g., governor, chief scout executive, national commander VFW, etc.
- (o) Enter, if appropriate, the names and title of the comptroller or treasurer of the borrowing activity.
- (p) Enter name of person witnessing signature.
- (q) Enter address of person witnessing signature.
- (r) Enter the name of the county in which the power of attorney is being signed.
- (s) Enter the name of the State in which the Power of Attorney is being signed.
- (t) Enter name of the borrowing activity's chief executive.
- (u) Enter date on which the power of attorney is signed.
- (v) Enter month in which power of attorney is signed.
- (w) Enter year in which power of attorney is signed.
- (x) Signature of Notary Public.
- (y) Enter date that the Notary Public's commission expires.

APPENDIX F TO PART 623—POWER OF ATTORNEY (DA FORM 4881-4-R)

APPENDIX F
POWER OF ATTORNEY (DA FORM 4881-4-R)

POWER OF ATTORNEY (For Transactions Involving Treasury Bonds)
For use of this form, see AR 700-131; the proponent agency is DCSLOG.

Know all men by these presents, that the (a) _____ is a (b) _____
 having its principal office in the city of (c) _____ State of (d) _____, does hereby constitute
 and appoint the finance and accounting officer, (e) _____, acting for and on behalf of the
 (f) _____, and his successors in office, as attorney for said (a) _____,
 or its authorized representatives, for and in the name of said corporation to collect or to sell, assign, and transfer certain US
 Treasury bonds described as follows:
 (g) _____ due (h) _____.

Such Treasury bonds have been deposited by (a) _____, pursuant to authority conferred
 by section 1126 of the Revenue Act of 1926, as amended, and subject to the provisions thereof and of Treasury Department
 Circular No. 154, dated February 8, 1935, as security for the faithful performance of any and all of the conditions or stipulations
 of a certain agreement entered into by (a) _____ with the United States, under date of
 (i) _____ which is hereby made a part hereof as Inclosure 1. The undersigned agrees that, in case of any default
 in performance of any of the conditions and stipulations of such _____ or any part thereof the finance and accounting officer
 (e) _____ may sell, assign, and transfer said Treasury bonds or any part thereof without notice,
 at public or private sale, free from equity of redemption and without appraisal or evaluation, notice of right to redeem being
 waived, and may apply the proceeds of such sale or collection in whole or in part, to the satisfaction of such default. The
 undersigned further agree that the authority herein granted is irrevocable.

And such (a) _____ hereby for itself, its successors and assigns, ratifies and confirms such
 proper action taken within the scope of this power.

In witness whereof, the (a) _____, the (b) _____
 herein above named by its (j) _____ and (k) _____ duly authorized
 to act in the premises, has executed this instrument and caused the seal of the (a) _____
 to be affixed this (l) _____ day of (m) _____, 19 (n) _____.

(a) _____
 By: (o) _____ (Name and title) By: (p) _____ (Name and title (Comptroller))

Before me, the undersigned, a Notary Public within and for the County of (q) _____
 in the State of (r) _____, personally appeared (s) _____, (j) _____,
 and (p) _____, comptroller, and for an on behalf of said (a) _____,
 a (b) _____, acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this (l) _____ day of (m) _____, 19(n) _____.

Notarial Seal (t) _____
 (Notary Public)

DA FORM 4881-4-R

DA Form 4881-4-R

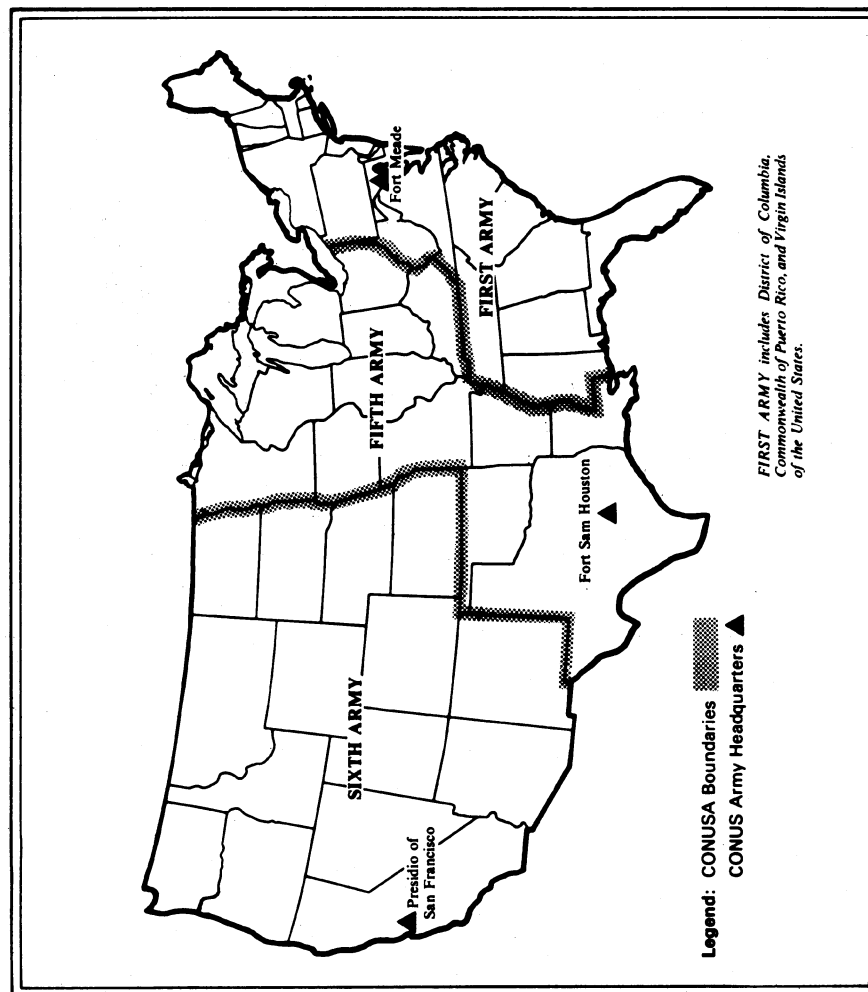
INSTRUCTIONS FOR PREPARATION OF DA Form 4881-4-R

Note. The above lettered blank portions of the sample power of attorney are to be completed as specified in the following paragraphs with the same letters:

- (a) Enter the name of the Federal agency, authority, (local governmental body), or special activity which borrowed the Army materiel.
- (b) Further identify the borrower by entering here the type of activity that it is; i.e., Federal agency, civil government, corporation (Boy Scouts of America), etc.
- (c) Enter the name of the city.
- (d) Enter the name of the state.
- (e) Enter the name of the Army installation handling the account.
- (f) Enter the name and rank of the commanding officer of the Army installation handling the account.
- (g) Describe the US Treasury bonds that have been posted as bond to include type, serial numbers, and interest rates if applicable.
- (h) Enter date on which payment of the Treasury bonds becomes due if applicable. If it is not applicable enter "NA."
- (i) Enter the date on which the agreement between the borrower and the US Government was signed.
- (j) Enter title of the borrowing activities' chief executive; e.g., governor, chief scout executive, national commander VFW, etc.
- (k) Enter here, "Comptroller," "Treasurer," etc. as appropriate.
- (l) Enter date on which the Power of Attorney is signed.
- (m) Enter month in which power of attorney is signed.
- (n) Enter year in which power of attorney is signed.
- (o) Enter name and title of chief executive of borrowing activity.
- (p) Enter, if appropriate, the names and title of the comptroller or treasurer of the borrowing activity.
- (q) Enter the name of the county in which the power of attorney is being signed.
- (r) Enter the name of the State in which the Power of Attorney is being signed.
- (s) Enter the name of the chief executive of the borrowing activity.
- (t) Signature of the Notary Public.

APPENDIX G TO PART 623—CONTINENTAL US ARMY BOUNDARIES

**APPENDIX G
CONTINENTAL US ARMY BOUNDARIES**



APPENDIX H TO PART 623—REFERENCES

- AR 1-4 Deployment of DA Resources in Support of the US Secret Service.
- AR 15-17 Army Representation on Office of Preparedness; General Service Administration (OP/GSA) Regional Field Boards in Crisis Management Operations.
- AR 28-19 Department of the Army Domestic Action Program.
- AR 34-1 United States Army Participation in International Military Rationalization/Standardization/Interoperability (RSI) Programs.
- AR 37-27 Accounting Policy and Procedures for Intragovernment, Intradefense; and Intra-Army Transactions.
- AR 37-44 Accounting Procedures for Guaranteed Loans.

AR 37-48 Accounting and Reporting for Materiel, Services, and Facilities Furnished Allied Governments and International Organizations Under Emergency or Combat Conditions.

AR 37-60 Pricing for Materiel and Services.

AR 37-111 Working Capital Funds—Army Stock Fund; Uniform Policies, Principles, and Procedures Governing Army Stock Fund Operations.

AR 58-1 Management acquisition and use of administration use motor vehicles.

AR 130-44 Logistical Policies for Support.

AR 190-11 Physical Security of Weapons, Ammunition, and Explosives.

AR 190-49 Physical Security of Arms, Ammunition, and Explosives In-Transit.

AR 210-55 Funding Support for Morale, Welfare and Recreational Programs, and Facilities.

AR 230-1 The Nonappropriated Fund System.

AR 350-7 Training and Evaluation of Forces for Civil Disturbances.

AR 360-61 Army Information—Community Relations.

AR 500-1 Aircraft Piracy Emergencies.

AR 500-2 Search and Rescue (SAR) Operations.

AR 500-50 Civil Disturbances.

AR 500-60 Disaster Relief.

AR 500-70 Military Support of Civil Defense.

AR 525-90 Wartime Search and Rescue (SAR) Procedures.

AR 700-32 Logistic Support of US Non-governmental, Nonmilitary Agencies, and Individuals in Oversea Military Commands.

AR 700-49 Loan of DSA Stock Fund Materiel.

AR 700-83 Army Support of United Seamen's Service.

AR 710-1 Centralized Inventory Management of the Army Supply System.

AR 710-2 Materiel Management for Using Units, Support Units, and Installations.

AR 725-1 Requisition and Issue of Supplies and Equipment—Special Authorization and Procedures for Issues, Sales, and Loans.

AR 725-50 Requisitioning, Receipt, and Issue System.

AR 735-5 Property Accountability—General Principles, Policies, and Basic Procedures.

AR 735-11 Accounting for Lost, Damaged, and Destroyed Property.

AR 795-25 Policies, Responsibilities, and Principles for Supply Support Arrangements.

AR 795-204 Policies and Procedures for Furnishing Defense Articles and Services on a Sale or Loan Basis.

AR 870-15 Historical Activities, Army Art Collection.

AR 870-20 Historical Activities, Historical Properties and Museums.

AR 920-15 National Board for the Promotion of Rifle Practice and Office of Director of Civilian Marksmanship.

AR 920-20 Civilian Marksmanship—Promotion of Practice with Rifled Arms.

AR 920-25 Rifles M14M and M14N for Civilian Marksmanship Use.

AR 930-5 Service Organizations—American National Red Cross Service Program and Army Utilization.

FM 20-150 Combatives.

MOU, 25 Apr 75, between DOD and Department of Agriculture and the Interior.

MOU, 24 Jun 75, between DOD and the American National Red Cross for Military Support.

PART 625—SURFACE TRANSPORTATION—ADMINISTRATIVE VEHICLE MANAGEMENT

Sec.

625.1 Purpose.

625.2 Applicability.

625.3 References.

625.4 OCE policy.

625.5 General.

APPENDIX A TO PART 625—DEPENDENT TRAVEL WAIVER OF LIABILITY

AUTHORITY: Comptroller General Decision, B-190440, 20 January 1978.

SOURCE: 44 FR 63099, Nov. 2, 1979, unless otherwise noted.

§ 625.1 Purpose.

This regulation provides guidance, and authorizes dependents to accompany a Corps employee on Temporary Duty (TDY) in a Government-owned or leased motor vehicle.

§ 625.2 Applicability.

This regulation is applicable to all field operating agencies authorized to operate or lease Administrative Use Motor Vehicles.

§ 625.3 References.

- (a) Title 31, U.S. Code, section 638.
- (b) Comptroller General Decision, 25 Comp. Gen. 844(1946) B-57732.
- (c) Comptroller General Decision, 54 Comp. Gen. 855(1975) B-178342.
- (d) Comptroller General Decision, B-190440, 20 January 1978.
- (e) DOD Regulation 4500.36-R June 1977.

§ 625.4 OCE policy.

Pursuant to the authorities, penalties and interpretations cited in the preceding references, Commanders/Directors of field operating agencies may authorize dependents to accompany a Corps of Engineers employee during official travel when using a Government-owned or leased motor vehicle, providing the following procedures and restrictions are adhered to:

(a) The Commanders/Directors of field operating agencies must make a Determination that transportation of the dependent is in "the interest of the Government".

(b) A determination of "the interest of the Government" is a matter of administrative discretion, taking into consideration the following limitations:

(1) The use of motor vehicles shall be restricted to the "official use" of the vehicles, and any questions concerning "official use" shall be resolved in favor of strict compliance with statutory provisions and policies of this and other pertinent regulations.

(2) When the travel of the dependent is in "the interest of the Government" and incidentally provides a convenience to the employee, then there can be no objection to the employee's enjoyment of that convenience. However, the convenience of itself, provides no justification to authorize dependent travel.

(3) Dependent travel will not be provided or authorized when justification is based on reasons of rank or prestige.

(4) Transportation to, from and between locations for the purpose of conducting personal business or engaging in other activities of a personal nature by military personnel, civilian officials and employees, members of their families or others is prohibited.

(c) Increased travel time (rest stops) and operational inefficiency (added weight) occasioned by the number of dependents to be transported will also be considered.

(d) Dependents must understand and agree never to operate the motor vehicle consigned to the employee for official travel.

(e) Neither the seating capacity nor the size of the motor vehicle will be

changed or increased to accommodate dependent travel.

(f) Motor vehicles as used in this regulation applies to all types of motor vehicles, owned, consigned to or leased by the Corps of Engineers.

§ 625.5 General.

(a) In view of the potential liability the Government could incur by allowing dependents to accompany an employee in a government-owned, consigned or leased motor vehicle, a Dependent Travel Waiver of Liability will be obtained prior to each and every trip. Suggested language for such waiver is set forth in appendix A.

(b) When dependents are to be transported in a GSA rented vehicle, an extra signed copy of the Dependent Travel Waiver will be furnished the GSA Interagency Motor Pool from which the vehicle is acquired.

APPENDIX A TO PART 625—DEPENDENT TRAVEL WAIVER OF LIABILITY

"I _____ (Name of dependent) will be accompanying _____,

(Name of employee)

who is my _____ (Relationship)

and who is an employee of _____, (Agency, division)

on official Government business in or while using a Government vehicle. Dates of travel are from _____ to _____ 19____. I do hereby knowingly, freely and voluntarily waive any right or cause of action of any kind whatsoever, against the United States, arising as a result of such activity from which any liability may or could accrue while accompanying the above employee in or while using said Government vehicle."

Signature of dependent

Notary Public

Date

Date

PART 626—BIOLOGICAL DEFENSE SAFETY PROGRAM

Subpart A—Introduction

- Sec. 626.1 Purpose.
- 626.2 References.

§ 626.1

- 626.3 Explanation of abbreviations and terms.
626.4 Responsibilities.

Subpart B—Biological Defense Safety Policy and Procedures

- 626.5 Policy.
626.6 Mishap reporting and investigation.
626.7 Administrative and work practice controls.
626.8 Etiologic agent containment.
626.9 Inspections.
626.10 Transportation of BDP etiologic agents.
626.11 General construction plans.
626.12 Maximum credible event (MCE).
626.13 Controls.
626.14 Waivers and exemptions.

Subpart C—BDP Contractors

- 626.15 Written procedures for contractor review.
626.16 Contracting agencies.
626.17 Contractor changes.
626.18 BDP contract requirements.

Subpart D—BDP Studies and Reviews

- 626.19 Assuring maximum safety.
626.20 Special studies.

APPENDIX A TO PART 626—REFERENCES
APPENDIX B TO PART 626—GLOSSARY ABBREVIATIONS

AUTHORITY: 5 U.S.C. 102, 10 U.S.C. 21, 111, 151-158, 42 U.S.C. 216, 50 U.S.C. 1431; Pub. L. 101-510, 104 Stat. 1516.

SOURCE: 57 FR 11368, Apr. 2, 1992, unless otherwise noted.

Subpart A—Introduction**§ 626.1 Purpose.**

(a) This regulation prescribes Department of the Army (DA) safety policy, responsibilities, and procedures for biological defense research, development, test, and evaluation (RDTE) operations.

(b) DA Pam 385-69 prescribes the minimum safety criteria and technical requirements for the Army biological defense safety program and will be used in conjunction with this regulation to establish and implement the biological defense safety program.

§ 626.2 References.

Required and related publications are listed in appendix A of this part.

§ 626.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this regulation are explained in the appendix B of this part.

§ 626.4 Responsibilities.

(a) The Assistant Secretary of the Army (Installations, Logistics, and Environment) (ASA(IL&E)) establishes overall Army occupational safety and health policy and maintains oversight of the following—

(1) All aspects of environment, safety, and occupational health statutory compliance.

(2) Safe biological defense RDTE operations.

(b) The Assistant Secretary of the Army (Research, Development, and Acquisition) (ASA(RDA)). Establishes overall Army RDA policy and will—

(1) Integrate, coordinate, and manage Army efforts to increase effectiveness of biological defense technologies, materiel research, and the development and acquisition program.

(2) Review and validate all future biological defense RDTE facility construction or renovation requirements before any organization initiates these construction or renovation programs.

(c) The Director of Army Safety (DASAF), Office of the Chief of Staff, Army (OCSA), administers and directs the Army Safety Program as specified in AR 385-10. The DASAF will—

(1) Manage Army-wide safety policy and guidance for biological defense RDTE programs as a part of the Army Safety Program.

(2) Approve all actions that imply or establish a DA safety position for biological defense RDTE covered by this part.

(3) Represent DA on all biological defense RDTE safety studies and reviews.

(4) Develop safety policy and standards for biological defense RDTE operations.

(5) Develop Army level safety program guidance.

(6) Conduct an annual management review of the biological defense occupational safety and health programs of commands with Biological Defense Program (BDP) operations and responsibilities, to ensure consistency with DA policy.

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(7) Conduct biological defense safety evaluation visits, and advise the Army Staff (ARSTAF) of concerns, trends, and needed corrective actions.

(8) Develop policies and provide guidance for executing the Biological Defense Safety Program.

(9) Conduct the review of general construction plans for biological defense RDTE facilities.

(10) Establish procedures to investigate biological defense related mishaps, referenced in AR 385-40.

(1) Serve as proponent for Army biological safety training.

(d) The Commanding General, United States Army Corps of Engineers, (CG, USACE) will establish procedures to ensure that biological defense RDTE facilities are designed, constructed, and acquired in accordance with current Federal, State, Department of Defense (DOD), and DA regulatory standards.

(e) The Surgeon General (TSG) will—

(1) Develop occupational health standards and medical support policies for the BDP.

(2) Provide advice and guidance for health hazard assessments and medical surveillance in accordance with current directives and policies.

(3) Provide medical guidance for selecting appropriate protective equipment for use in the BDP.

(4) Provide a representative to each BDP special safety study group.

(5) Provide occupational health support to the DASAF for conduct of annual management reviews (§ 624.4(c)(6)).

(f) The Commander, United States Army Medical Research and Development Command (USAMRDC), in addition to major Army commands (MACOMs) responsibilities, will—

(1) Conduct safety site assistance visits at BDP Army research facilities, on a periodic basis as determined necessary by the DASAF, and advise the ARSTAF of findings and recommendations.

(2) Provide a group member for all other studies and reviews.

(3) Assist Headquarters, Department of the Army (HQDA) in its oversight role of monitoring biological defense RDTE activities throughout the Army and advise HQDA on concerns, trends, and corrective actions required.

(4) Assist the DASAF in performing biological defense safety program mishap investigations.

(5) Assist the DASAF in developing biological defense safety policy and recommend changes to policies and procedures.

(6) Serve as the proponent for the BDP Special Immunization Program.

(g) MACOM Commanders with a BDP mission will—(1) Establish and operate an effective safety program.

(2) Publish a command program to implement HQDA biological safety standards and to identify responsibilities for all subordinate organizations that maintain, store, handle, use, transport, or dispose of etiologic agents used in the BDP.

(3) Supervise subordinate organizations to ensure that an effective safety program, which complies with this regulation, DA Pam 385-69, and AR 385-10 is implemented and maintained.

(4) Ensure that biological defense safety programs comply with the provisions of this regulation and DA Pam 385-69.

(5) Appoint a safety and health manager per AR 385-10, who is occupationally qualified under Office of Personnel Management standards and has special knowledge of biological safety and health requirements. This safety and health manager should be the single point of contact for all aspects of the BDP Safety Program.

(6) Review standing operating procedures (SOPs) for biological defense RDTE operations.

(7) Develop and submit general construction plans for approval through command channels to HQDA, Army Safety Office, DACS-SF, WASH DC 20310-0200.

(8) Approve or disapprove individual access to etiologic agent restricted areas.

(9) Implement a Chemical Hygiene Plan, as appropriate, which meets the requirement of 29 CFR 1910.1450.

Subpart B—Biological Defense Safety Policy and Procedures

§ 626.5 Policy.

(a) This regulation applies to BDP RDTE operations involving etiologic

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agents being investigated by DA for biological defense purposes.

(b) Specific biological safety requirements and guidance are contained in DA Pam 385-69.

§ 626.6 Mishap reporting and investigation.

Biological defense RDTE related mishaps will be reported and investigated per AR 385-40 and AR 40-400. Med 16 Report will be used to report only personnel exposure or illness related to the BDP.

§ 626.7 Administrative and work practice controls.

(a) The cardinal principle for safety in BDP operations is to minimize the potential exposure of personnel to etiologic agents. In practice, this means conducting RDTE activities using the appropriate facilities, equipment, and procedures for the biosafety level (BL), and requiring only the minimum number of appropriately trained personnel, the minimum period of time, and minimum amount of the material, consistent with program objectives and safe operations.

(b) Open air testing under the BDP is restricted to use of simulants only, unless the Secretary of Defense determines that testing is necessary for national security in accordance with section 409, Public Law 91-121, 83 Stat. 204, signed November 18, 1967. Also, for RDTE involving protective equipment or detection devices, the least hazardous etiologic agent consistent with mission objectives will be employed. All testing of such equipment employing etiologic agents will be in appropriate biosafety level containment laboratories.

(c) A hazard analysis, to determine safety precautions, necessary personnel protection and engineering features, and procedures to prevent exposure, will be completed for—

(1) All BDP operations involving etiologic agents.

(2) A change in process or control measures that may increase potential contact or concentrations of biological material.

(d) An SOP is required for all biological defense RDTE operations. The SOP will—

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(1) Describe in detail all necessary operational and safety requirements.

(2) Describe in detail actions to take in the event of mishap.

(3) Describe in detail the location of required emergency response equipment.

(4) Be available at the work site.

(5) Forbid concurrent unrelated work during biological defense RDTE operations within a laboratory area or suite.

(6) Be approved by the commander or the safety officer and signed by workers involved in the operation.

(7) Provide names and telephone numbers of responsible personnel.

(e) Training and information. All personnel who work directly with etiologic agents in the BDP, or who otherwise have a potential for exposure, will receive appropriate training to enable them to work safely and to understand the relative significance of agent exposures.

(1) This training will include signs and symptoms of etiologic agent exposure, information on sources of exposure, possible adverse health effects, and practices and controls used to limit exposures. The environmental and medical monitoring procedures in use, their purposes, worker responsibilities in health protection programs, and handling of laboratory mishaps will also be presented.

(2) Workers will be required to demonstrate proficiency before performing potentially hazardous operations. Refresher training will be repeated at least annually.

(3) Initial and refresher training will be documented and kept on file as a permanent record.

(f) Medical surveillance. A medical surveillance program (see AR 40-5) will be established for all personnel (military and civilian) who may be potentially exposed to etiologic agents.

(1) Placement, periodic medical surveillance examinations, and termination examinations shall be conducted for each worker, to establish a baseline health record and to provide periodic job-related assessments of the worker's health status. Preassignment, periodic, and termination health assessments will include a work history,

a medical history, physical examinations, indicated clinical laboratory studies and, when available, examinations or tests specific to the etiologic agent in question.

(2) Medical officers responsible for treating BDP etiologic agent exposures and conducting medical surveillance for BDP workers shall receive specialized training on the unique hazards of etiologic agents and recommended medical therapies.

(3) Special immunizations will be given to personnel handling specific etiologic agents as required.

(4) Records documenting the above will be maintained permanently.

(g) Emergency preparedness: (1) SOPs will address emergency procedures related to any mishap involving BDP etiologic agents. Notification and evacuation procedures will be covered in detail, as well as measures to contain the contamination.

(2) Local, regional, State, or Federal emergency support and coordinating agencies, such as law enforcement, fire departments, health departments, and governments will be informed of BDP activities and the appropriate support necessary, to include any equipment and training necessary, to provide effective emergency response and ensure compliance with community "right-to-know" statutes and regulations. Agreements with external agencies must be formalized.

(3) If a mishap with a BDP etiologic agent results in personnel exposure, approved emergency procedures will be immediately initiated to protect personnel and the environment and to constrain the spread of contamination. All personnel except those responsible for emergency operations will evacuate the immediate area.

(4) Special medical surveillance will be started as soon as possible for all workers present in the potentially affected area at the time of the mishap.

(h) Labeling and posting of hazards:

(1) Hazard warning signs which incorporate the universal biohazard symbol will be posted on the access door to the work area. (See DA PAM 385-69, para 3-5a(1).) The sign will be covered or removed if the organizational safety officer certifies that the area has been decontaminated.

(2) For areas irradiated with ultraviolet light, a caution sign reading "Ultraviolet Light, Wear Eye Protection" will be posted.

(i) Disposal controls. Etiologic agents used in the BDP must be decontaminated before disposal of infectious or hazardous wastes and must not violate any Army, Federal, State, local, or host nation environmental standards. Procedures for decontamination are described in DA Pam 385-69.

(1) The preferred methods of decontamination of etiologic agents are autoclaving or chemical inactivation with appropriate biocidal solutions. (See chap 5, DA Pam 385-69.)

(2) Etiologic agents awaiting decontamination will be contained at the appropriate biosafety level.

(j) Maintenance controls. A continuing program for equipment and facility maintenance will be implemented for each BDP operation.

(k) Protective equipment. Guidance concerning protective equipment is contained in DA Pam 385-69.

§ 626.8 Etiologic agent containment.

(a) Facility engineering controls and appropriate biocontainment equipment will be used, in conjunction with special practices and procedures, to minimize potential exposure of personnel and the environment to etiologic agents used in BDP operations. Engineering and equipment controls will be implemented to the maximum extent feasible and verified as effective. Protective clothing will not be used in lieu of engineering controls. Engineering controls will be the prime means of biocontainment. Personal protective equipment such as respirators are to be used only after feasible engineering controls have been shown unable to control the environment fully.

(b) Before beginning any etiologic agent operation, a determination will be made that the hazards associated with the operation are under positive control as defined in the applicable SOP and that the operation complies with the criteria of this regulation and DA Pam 385-69.

§ 626.9 Inspections.

(a) Biosafety laboratories require periodic (at least quarterly for BL-1

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and BL-2 and monthly for BL-3 and BL-4 laboratories), inspections by safety and health professionals. Safety officials will document the inspections, assure that deviations from safe practices are recorded, and that recommended corrective actions are taken. If deviations are life threatening, this area will be restricted until corrective actions are accomplished. New RDTE efforts involving etiologic agents will be evaluated and inspected prior to start-up to assure equipment, facilities, employee training, and procedures are in place and adequate for the introduction of BDP material. Safety officials will maintain such records for 3 years and will review the records at least annually for trends requiring corrective actions.

(b) Supervisors shall inspect work areas frequently (at least weekly) and take corrective actions promptly.

§ 626.10 Transportation of BDP etiologic agents.

(a) Etiologic agents utilized in the BDP shall be packed, labeled, marked, prepared for shipment, and shipped in accordance with applicable Federal, State, and local laws and regulations, to include 42 CFR part 72, "Interstate Shipment of Etiologic Agents," 49 CFR parts 172 and 173 (Department of Transportation), 9 CFR part 122 (USDA Restricted Animal Pathogens), and DA Pam 385-69.

(b) Etiologic agents shipped to support the BDP will use secondary shipping containers which are sealed with a crimped lid (see app D, DA Pam 385-69).

(c) BDP organizations and contractors who provide etiologic agents will ship all etiologic agents by private carrier. The United States Postal Service will not be used to transport etiologic agents required for the BDP.

(d) In addition to the above requirements, shipments of BL-4 etiologic agents will be hand carried by Government courier or under the immediate supervision of a responsible party. This individual must be knowledgeable about the potential hazards of the materials and be able to monitor all aspects of the shipment to ensure that required transfers have been completed and documented and final receipt has been accomplished and acknowledged.

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(e) Audit trails of all BDP etiologic agent shipments and receipts of such agents shall be established and maintained for at least 3 years. Such audit trails shall identify date of shipment, carrier, addresses of the shipper and recipient, and agent(s) shipped and received.

§ 626.11 General construction plans.

General construction plans for BDP facilities, as well as for changes in use of facilities, will be submitted through the chain of command to HQDA, Army Safety Office, DACS-SF, WASH DC 20310-0200 for safety review and approval. Plans shall be forwarded for new construction or major modifications of facilities used in the BDP. The facility system safety requirements of AR 385-16 and AR 415-15 shall be followed. Simultaneously, RDTE requirements that necessitate such renovation, modification, or construction shall be submitted through the chain of command to HQDA, OASA(RDA), SARD-ZT, WASH DC 20310-0103 for review and approval.

§ 626.12 Maximum credible event (MCE).

(a) Because of the complexity of the RDTE conducted in the BDP, the range of potential consequences that could be associated with a mishap must be considered. MCE is a risk analysis technique which provides a useful tool for estimating the effectiveness of existing safeguards. The potential for events must be carefully analyzed to determine the MCE that could occur and cause a mishap. All hazard analysis and general construction plans mentioned in § 626.11 will include a consideration of an MCE.

(b) The term MCE, as used herein, is analogous to a realistic worst-case analysis. The best available credible information will be applied to estimate the results of various MCEs. Those assumptions that yield the potential for more severe consequences, as opposed to assumptions that operational and safety controls will always perform as designed, will be used. The rule of reason will be applied to confine the MCE to realistic or believable occurrences.

(c) When considering an MCE, consider the redundancy of safety systems

engineered into the facilities and the equipment used, depending on containment level required to make them as fail-safe as practical. The MCE for containment laboratories must be considered in terms of physical containment for both toxins and biological organisms. Therefore, both toxin and biological MCEs will be considered.

(d) Because aerosols of etiologic agents represent the most significant potential hazard for exposure of workers or the environment, a hazard analysis (to include MCE) of proposed BDP RDTE activities will be performed to determine the procedures, engineering controls, and facility design required to mitigate potential significant hazards.

§ 626.13 Controls.

(a) Personnel who are not needed to operate a BDP laboratory, will not be allowed to enter potentially hazardous areas.

(b) Written procedures to control access and ensure that personnel can be evacuated or protected from exposure may be used in place of absolute personnel exclusion.

§ 626.14 Waivers and exemptions.

(a) The goal of the biological defense safety program is strict adherence to safety standards and the elimination of all waivers and exemptions.

(b) Waiver authority. (1) The Chief of Staff, Army (CSA) is the controlling authority for granting waivers of biological defense safety standards. This authority is redelegated by this regulation to commanders of MACOMs and the commander of the USAMRDC.

(2) Waiver authority will not be sub-delegated.

(3) Commanders with waiver authority will—

(i) Ensure the existence of necessary and compelling reasons before granting waivers.

(ii) Grant waivers to standards for installations and activities within their areas of authority.

(c) Waiver requests: (1) Commanders of installations and activities will submit a request for waiver when compliance with these standards cannot be achieved. When such waivers affect on other commands, initiating activities

will coordinate requests with those commands.

(2) Requests for waivers will contain the following information:

(i) Description of conditions. State the mission requirements and compelling reasons which make the waiver essential and the impact if not approved, and describe all affected sites or facilities and the quantity and type of BDP required.

(ii) The safety regulations, including specific safety requirements or conditions cited by paragraph, from which the waiver is requested, and the reasons for the waiver.

(iii) Specific time period for which the waiver is requested.

(iv) A hazard analysis which identifies actual and potential hazards which can result from the waived requirements or conditions.

(v) A risk assessment that provides information on the risk being assumed because of the waiver. The assessment will include those safety precautions and compensatory measures in force during the waiver period.

(vi) A waiver abatement plan to include milestones, resources, and actions planned to eliminate the need for the waiver.

(3) Requests for waivers will be forwarded through command channels to the MACOM or CG, USAMRDC, as appropriate, for approval. MACOM or USAMRDC safety officials will forward a copy of approved waivers to HQDA, DACS-SF, WASH DC 20310-0200. Copies of all waivers will be maintained at the installation and MACOM or USAMRDC Safety Offices for up to 3 years after the waiver is terminated.

(4) Time limitations: (i) Waivers are normally limited to 1 year or less, and will be considered rescinded after 1 year, unless reviewed. The activity or installation commander forwarding a request for waiver will allow time to permit investigation, evaluation, and reply.

(ii) Waivers may be renewed each year by the commander originally granting the waiver for a waiver period not to exceed 5 years. Prior renewal, commanders will review the need for the waiver to ensure that circumstances requiring the waiver have not changed. Results of this review

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(and a progress report regarding milestones that have been completed) will be forwarded through command channels to the commander originally granting the waiver.

(iii) A request for amendment will be initiated when factors or circumstances requiring a change to the original waiver are identified.

(iv) When factors or circumstances prevent correction of the waiver condition within 5 years of the initial approval of the waiver, such condition becomes a candidate for an exemption.

(d) Exemptions. (1) Exemptions are relatively long-term exceptions to otherwise mandatory standards. Exemptions will be granted only under the following conditions:

(i) If corrective measures are impractical.

(ii) If impairment of the overall defense posture would result.

(iii) If positive programs to eliminate of the need for the exemption are being pursued.

(2) Exemptions can be approved only by the Secretary of the Army.

(i) Requests for exemptions will be sent through command channels to HQDA, DACS-SF, WASH DC 20310-0200.

(ii) Exemption requests will include the information required in paragraph(c)(2) of this section.

(iii) Copies of exemption requests will be maintained at the installation and MACOM or USAMRDC Safety Offices.

Subpart C—BDP Contractors

§ 626.15 Written procedures for contractor review.

The contracting agency will prepare written procedures for reviewing contractor capability to safely perform BDP work with etiologic agents. The written procedures will describe the criteria and guidelines for preparing the facilities description, safety requirements, special procedures and techniques, inspection procedures, and MCE scenarios. These written procedures will be submitted to the contracting agency MACOM for review and approval.

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§ 626.16 Contracting agencies.

Contracting agencies, in coordination with their respective Command safety offices will monitor contractor performance in meeting safety requirements.

(a) The contracting agency will establish an inspection program and schedule for all BDP contractors who perform contract work with BL-3 or BL-4. Inspections will be conducted by safety and health personnel. The schedule will include, as a minimum, the following:

(1) A pre-award inspection on site, prior to contract award, for initial contracts for BDP work requiring BL-3 or BL-4 operations. If during a pre-award inspection, major corrective measures are required, a reinspection is required prior to the beginning of contract operations.

(2) A pre-award inspection of follow-on BL-3 and BL-4 contracts.

(3) A pre-operational inspection if a major change in procedures, facilities, or equipment is made after the pre-award survey.

(4) Annual inspection of BL-3 and semiannual inspection of BL-4 contractor facilities, equipment, and operations.

(b) Pre-award surveys and annual inspections of contractors performing work requiring BL-3 or BL-4 will be conducted by safety and health professionals trained in BDP operational safety requirements. Pre-award surveys and annual inspections of BL-1 and BL-2 contractors will be conducted by safety and health professionals or contracting agency representatives who are trained in biological safety inspection techniques. The Safety Inspection Checklist in DA Pam 385-69 will be used.

(c) The contracting agency will require each BDP contractor whose contract requires the use of etiologic agents to prepare a facility safety program plan based on the criteria below and submit the plan to the contracting agency for review prior to beginning BDP contract operations. The plan will describe the contractor organization, and procedures for meeting DOD, Army, and contracting Command safety requirements as specified in the contract.

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(1) A safety training program for all individuals working with etiologic agents must be documented by the contractor and include, as a minimum, the requirements in § 626.7(e). Appropriate safety training will be provided to scientists, other laboratory personnel, and unrelated personnel such as technicians, clerical, and maintenance workers. This training will be documented.

(2) The contractor must designate a qualified individual to be responsible for the entire safety program with full authority to develop and enforce contractor safety policies. Regular safety inspections will be conducted and inspection reports will be provided to the contracting agency upon request.

(3) Policies for storing, handling, and moving etiologic agents within the contractor facility shall be included in the plan.

(4) Policies and procedures for disposal of any etiologic agent waste must be identified. Disposal must comply with Federal, State, and local regulations as well as DOD and Army requirements.

(5) An SOP must be established for each area where BDP etiologic agents are stored, transferred, or used. In addition, an SOP must be prepared for operations unique to any specific contract. The contractor will provide the SOP to contracting agency personnel upon request for review.

(6) For contracts requiring BL-3 or BL-4, the contractor will provide (upon request) facility engineering drawings and specifications for the relevant etiologic agent containment areas, associated ventilation systems, and local approving authority. Also to be included is test data verifying that all systems adequately meet the DOD and Army safety requirements, as well as test methods for periodic recertification of the system.

(7) MCE scenarios that ensure that all realistic threats are considered at contractor sites, see § 626.12 of this part.

§ 626.17 Contractor changes.

The contractor will submit proposed changes to the original safety documentation to the contracting agency for review prior to implementation. Requests will include justification and

test data verifying that adequate safety will be maintained.

§ 626.18 BDP contract requirements.

(a) Contractors performing work with BL-3 and BL-4 material must prepare a plan detailing procedures for controlling laboratory mishaps involving etiologic agents.

(1) The contractor shall have the necessary equipment and trained personnel for controlling the mishap.

(2) In the event of an incidental release of a BDP etiologic agent from appropriate laboratory biocontainment that may result in personnel exposure, approved emergency procedures will be initiated immediately to effectively protect personnel and the environment and to constrain the spread of contamination. The affected areas will be decontaminated before normal operations are resumed.

(3) Special medical surveillance will be started as soon as possible for all workers present in the potentially affected area at the time of the mishap.

(4) Local emergency support agencies, such as law enforcement, fire departments, health departments, and governments will be informed of BDP activities and the appropriate support necessary, to include any equipment and training to provide effective emergency response. Agreements with external agencies must be formalized.

(5) The contractor shall be required to review the plan annually and consult external agencies if there is an agreement for them to provide assistance. This should be done in coordination with the contracting agency.

(b) [Reserved]

Subpart D—BDP Studies and Reviews

§ 626.19 Assuring maximum safety.

(a) Safety studies and reviews are conducted to assure that maximum safety and health measures are being taken to prevent mishaps involving BDP etiologic agents in any amount or under any conditions that may cause incapacitation, illness, or death to any person, or adverse effects on the public or to the environment.

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(b) The system safety requirements of AR 385-16 will be followed during all BDP safety studies and reviews.

§ 626.20 Special studies.

Any HQDA agency may recommend a special study or review of an etiologic agent or system when it becomes necessary to investigate the condition or changes described below. The responsible HQDA agency will determine the scope and conduct the study or review. Special study activities will be coordinated with HQDA, DACS-SF, WASH DC 20310-0200.

(a) Conditions or practices which may affect safety.

(b) Major system modifications including both design and physical configuration changes.

(c) Significant changes to safety, health, and environmental protection standards and requirements that affect BDP operations.

APPENDIX A TO PART 626—REFERENCES

These publications can be obtained from the National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

REQUIRED PUBLICATIONS

- AR 40-5—Preventive Medicine. (Cited § 626.7(f) introductory text)
- AR 40-400—Patient Administration. (Cited in § 626.6)
- AR 385-10—Army Safety Program. (Cited in §§ 626.4(c) introductory text, 626.4(g)(3), and 626.4(g)(5))
- AR 385-16—System Safety Engineering and Management. (Cited in §§ 626.11, and 626.19)
- AR 385-40—Accident Reporting and Records. (Cited in §§ 626.4(c)(10) and 626.6)
- AR 415-15—Military Construction, Army (MCA) Program Development. (Cited in § 626.11)
- DA Pam 385-69—Biological Defense Safety Program. (Cited in §§ 626.1(b), 626.4(g)(3), 626.4(g)(4), 626.5(b), 626.7(h)(1), 626.7(i) intro text, 626.7(j)(1), 626.7(k), 626.8(b), 626.10(a), 626.10(b), and 626.16(b))
- Med 16 Report. (Cited in § 626.6)

RELATED PUBLICATIONS

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

- AR 40-10—Health Hazard Assessment Program in Support of the Army Material Acquisition Decision Process

32 CFR Ch. V (7-1-06 Edition)

- AR 70-1—Systems Acquisition Policy and Procedures
- AR 70-10—Test and Evaluation During Development and Acquisition of Materiel
- AR 70-18—The Use of Animals in DOD Programs
- AR 70-25—Use of Volunteers as Subjects of Research
- AR 70-65—Management of Controlled Substances, Ethyl Alcohol, and Hazardous Biological Substances in Army Research, Development, Test, and Evaluation Facilities
- AR 200-1—Environmental Protection and Enhancement
- AR 200-2—Environmental Effects of Army Actions
- AR 405-90—Disposal of Real Estate

APPENDIX B TO PART 626—GLOSSARY ABBREVIATIONS

- AMC—United States Army Materiel Command
- AR—Army regulation
- ARSTAF—Army Staff
- ASA (IL&E)—Assistant Secretary of the Army (Installations, Logistics and Environment)
- ASA (RDA)—Assistant Secretary of the Army (Research, Development, and Acquisition)
- BDP—Biological Defense Program
- BL—Biosafety level
- CG—commanding general
- CSA—Chief of Staff, United States Army
- DA—Department of the Army
- DA Pam—Department of the Army Pamphlet
- DASAF—Director of Army Safety
- DCSOPS—Deputy Chief of Staff for Operations and Plans
- DOD—Department of Defense
- HEPA—high efficiency particulate air
- HQDA—Headquarters, Department of Army
- IPR—in process reviews
- MACOM—major Army command
- MCA—Military Construction, Army
- MCE—maximum credible event
- OCSA—Office of the Chief of Staff, United States Army
- R&D—research and development
- RDTE—research, development, test, and evaluation
- RCRA—Resource Conservation Recovery Act
- SOP—standing operating procedure
- TSG—The Surgeon General, Army
- USACE—United States Army Corps of Engineers
- USAMRDC—United States Army Medical, Research and Development Command

TERMS

Biological Defense Mishap

An event in which the failure of laboratory facilities, equipment, or procedures appropriate to the level of potential pathogenicity

or toxicity of a given etiologic agent (organism or toxin) may allow the unintentional, potential exposure of humans or the laboratory environment to that agent. Mishaps can be categorized into those resulting in confirmed exposures and those resulting in potential exposures. A confirmed accidental exposure is any mishap in which there was direct evidence of an exposure, such as a measurable rise in specific antibody titer to the etiologic agent in question, or a confirmed diagnosis of intoxication or disease. A potential exposure is any mishap in which there was reason to believe that anyone working with an etiologic agent may have been exposed to that agent, yet no measurable rise in specific antibody titer or diagnosis of illness or disease can be found. However, there is reason to believe in such a case that the possibility existed for introduction of an etiologic agent through mucous membranes, the respiratory tract, broken skin, or the circulatory system as a direct result of the incident or injury.

Biocontainment Area

An area which meets the requirements for a BL-3 or BL-4 facility. The area may be an entire building, a suite of rooms, a single room within a building, or a biological safety cabinet.

Biological Safety Cabinets

Engineering controls designed to enable laboratory workers to handle infectious etiologic agents and to provide primary containment of any resultant aerosol. There are three major classes of cabinets (I, II, and III) and several sub-classes of class II cabinets. Each type of cabinet provides a different degree of protection to personnel and to the products handled inside them.

Biosafety Level

A combination of facilities, equipment, and procedures used in handling etiologic agents to protect the worker, environment, and the community. This combination is proportional to the potential hazard of the etiologic agent in question.

Biosafety Level 1

The facilities, equipment, and procedures suitable for work involving agents of no known or of minimal potential hazard to laboratory personnel and the environment.

Biosafety Level 2

The facilities, equipment, and procedures applicable to clinical, diagnostic, or teaching laboratories, suitable for work involving indigenous agents of moderate potential hazard to personnel and the environment. It differs from BL-1 in that (1) laboratory personnel have specific training in handling pathogenic agents, (2) the laboratory is di-

rected by scientists with experience in the handling of specific agents, (3) access to the laboratory is limited when work is being conducted, and (4) certain procedures in which infectious aerosols could be created are conducted in biological safety cabinets or other physical containment equipment. Personnel must be trained. Strict adherence to recommended practices is as important in attaining the maximum containment capability as is the mechanical performance of the equipment itself.

Biosafety Level 3

The facilities, equipment, and procedures applicable to clinical, diagnostic, research, or production facilities in which work is performed with indigenous or exotic agents where there is potential for infection by aerosol and the disease may have serious or lethal consequences. It differs from BL-2 in that (1) more extensive training in handling pathogenic and potentially lethal agents is necessary for laboratory personnel, (2) all procedures involving the manipulation of infectious material are conducted within biological safety cabinets, or by other physical containment devices, (3) the laboratory has special engineering and design features, including access zones, sealed penetrations, and directional airflow, and (4) any modification of BL-3 recommendations must be made only by the commander.

Biosafety Level 4

The facilities, equipment, and procedures required for work with dangerous and exotic agents which pose a high individual risk of life-threatening disease. It differs from BL-3 in that (1) members of the laboratory staff have specific and thorough training in handling extremely hazardous infectious agents, (2) laboratory personnel understand the primary and secondary containment functions of the standard and special practices, containment equipment, and laboratory design characteristics, (3) access to the laboratory is strictly controlled by the commander, (4) the facility is either in a separate building or in a controlled area within a building, which is completely isolated from all other areas of the building, (5) a specific facility operations manual is prepared or adopted, (6) within work areas of the facility, all activities are confined to Class III biological safety cabinets or Class I or Class II biological safety cabinets used in conjunction with one-piece positive pressure personnel suits ventilated by a life support system, and (7) the maximum containment laboratory has special engineering and design features to prevent microorganisms from being disseminated to the environment.

Building

A structure that contains the requisite components necessary to support a facility that is designed according to the required biosafety level. The building can contain one or more facilities conforming to one or more biosafety levels.

Confirmed Exposure

Any mishap with a BDP agent in which there was direct evidence of an actual exposure such as: A measurable raise in antibody titer to the agent, or a confirmed diagnosis of intoxication or disease.

Decontamination

The physical or chemical processes by which an object or area, contaminated with a harmful or potentially harmful etiologic agent, is made safe for handling or use. Such processes include physical removal of all contaminants, thermal destruction of biological activity (sterilization), chemical inactivation (biocidal process), or a combination of these methods.

Etiologic Agent

A viable microorganism, or its toxin which causes or may cause human disease, and includes those agents listed in 42 CFR 72.3 of the Department of Health and Human Services regulations, and any material of biological origin that poses a degree of hazard similar to those organisms.

Exemption

A permanent written exemption approved by HQDA for a requirement imposed by this regulation. An exemption is based on a determination that conformity to the established standard is impossible, highly impracticable, unnecessary, or not in the best interest of the United States Government.

First Aid

Any one-time treatment, and any follow-up visit for the purpose of observation of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one-time treatment, and follow-up visit for observation, is considered first aid, even through provided by a physician or registered medical professional personnel.

High efficiency particulate air (HEPA) filter

A filter which removes particulate matter down to sub-micron sized particles from the air passed through it with a minimum efficiency of 99.97 percent. HEPA filters remove particulate matter with great efficiency while vapors and gases (for example from volatile chemicals) are not removed and pass through unrestricted. HEPA filters are used as the primary means of removing infectious

agents from air exhausted from engineering controls and facilities.

Institute Director

The commander of an Army activity conducting RDTE with BDP etiologic agents, or the equivalent at a research organization under contract to the BDP.

Institution

An organization such as an Army RDTE activity (institute, agency, center, or similar facility) or a contract organization such as a school of medicine or research institute that conducts RDTE with BDP etiologic agents.

Laboratory

An individual room or rooms within a facility that provides space in which work with etiologic agents may be performed. It contains all of the appropriate engineering features and equipment required at a given biosafety level to protect personnel working in the laboratory and the environment external to the facility.

Potential Accidental Exposure

Any mishap in which there was reason to believe that anyone working with a BDP material may have been exposed to that material, yet no measurable rise in antibody titer or diagnosis of intoxication or disease was made. However, the high probability existed for introduction of an agent through mucous membranes, ingestion, respiratory tract, broken skin, or circulatory system as a direct result of the accident, injury, or incident.

*Resource Conservation Recovery Act (RCRA)
Listed Hazardous Waste*

The waste materials listed by Environmental Protection Agency under authority of the RCRA for which the disposal is regulated by the Environmental Protection Agency. A description and listing of these wastes is located in 40 CFR part 261.

Sterilization

The complete destruction of all forms of microbial life.

Suite

An area consisting of more than one room, and designed to be a functional unit in which laboratory operations can be conducted. Suites may contain a combination of laboratories and animal holding rooms or both and associated support areas within a facility that are designed to conform to a particular biosafety level. There may be one or more suites within a facility.

Toxin

Toxic material of biologic origin that has been isolated from the parent organism. The toxic material of plants, animals, or microorganisms.

Waiver

A temporary (1 year or less) written relief from a requirement imposed by this regulation, pending accomplishment of actions or programs which will result in conformance to the required standards. Waivers will not be extended beyond 5 years.

PART 627—THE BIOLOGICAL DEFENSE SAFETY PROGRAM, TECHNICAL SAFETY REQUIREMENTS (DA PAMPHLET 385–69)

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AUTHORITY: 5 U.S.C. 102, 21 U.S.C. 111, 151–158; 42 U.S.C. 216; sec. 361, 58 Stat. 703 and 264; 49 U.S.C. App. 1803, 1804, 1807, and 1808; 50 U.S.C. 1431, 29 CFR 1910. 1450(e) and Public Law 101–510, 104 Stat. 1516.

SOURCE: 57 FR 12604, Apr. 10, 1992, unless otherwise noted.

Subpart A—Introduction

§ 627.1 Purpose.

This pamphlet prescribes the technical safety requirements for the use, handling, shipment, storage, and disposal of etiologic agents used in research, development, test, and evaluation (RDTE) for the Biological Defense Program (BDP).

§ 627.2 Background.

The United States Army BDP, on behalf of the Department of Defense, supports RDTE efforts to maintain and develop defensive measures and materiel to meet potential biological warfare threats. The program's objectives are to develop measures for identification, detection, treatment, protection against, and decontamination of these threats. To meet the program objectives, etiologic agents are used to conduct the necessary handling, storage, shipment, and disposal of etiologic agents. This pamphlet describes requirements based on Centers for Disease Control-National Institute of Health (CDC) (NIH) guidelines, Biosafety in Microbiological and Biomedical Laboratories, and establishes guidelines for toxins.

§ 627.3 Scope.

The requirements stated in this pamphlet apply to all elements of the Army to include the ARNG and the USAR and its contractors and subcontractors who use, produce, store, handle, or ship etiologic agents in support of the BDP, regardless of the source of the agent(s).

§ 627.4 References.

Required and related publications are listed in appendix A of this part.

§ 627.5 Abbreviations and terms.

Abbreviations and special terms used in this part are explained in appendix F of this part.

Subpart B—Administration

§ 627.6 Safety administration.

Each BDP institution must have a safety program that complies with AR 385-10, AR 385-69, and this pamphlet. In

addition, the safety program must be designed to ensure compliance with—

(a) Occupational Safety and Health Administration (OSHA) requirements for health and safety.

(b) Environmental Protection Agency (EPA) regulations designed to implement the Resource Conservation and Recovery Act (RCRA) and the National Environmental Policy Act (NEPA).

(c) Nuclear Regulatory Commission (NRC) requirements for safe handling of radioactive isotopes (when applicable).

(d) NIH Guidelines for Research Involving Recombinant Deoxyribonucleic Acid (DNA) Molecules.

(e) Relevant national, State, and local regulations.

(f) Any requirements of applicable accrediting bodies.

§ 627.7 Goal of a laboratory safety program.

The goals of the laboratory safety program are to protect those working in the laboratory, others who may potentially be exposed to hazards in the laboratory, and the environment. In addition, a laboratory safety program should ensure that hazardous materials will be handled and disposed of in such a way that people, other living organisms, and the environment are protected from harm. Safety awareness must be a part of everyone's habits, and can only be achieved if all senior and responsible staff have a sincere, visible, and continuing interest in preventing injuries and occupational illnesses. Laboratory personnel, for their part, must carry out their work in a way that protects themselves and their fellow workers.

(a) *Laboratory safety.* The safety program will be carried out as stated in AR 385-69. Additionally, the program will contain the following elements—

(1) The commander or institute director, along with all personnel, must have a continuing, observable, and known commitment to the safety program.

(2) An effective institutional safety program requires a safety officer appropriately trained in relevant safety technology. This individual, besides supplying advice and recommendations, will ensure that records are kept

showing that the institution's physical facilities and safety rules are internally consistent and compatible with potential risks, as well as in compliance with all applicable laws, regulations, and guidelines.

(3) The commander ensures safety in every department or other equivalent administrative unit of the institution. Ensuring safe operations is an integral function of each level of management through the first line supervisor. The safety office staff must work closely with administrators and investigators to develop and implement written policies and practices that promote safe laboratory work. Collectively, this group routinely must monitor current operations and practices, see that appropriate audits are maintained, and continue to seek ways to improve the safety program.

(4) Safety is a critical job element for each member of the scientific and technical staff. Each individual working in the laboratory must perform his or her job in a manner consistent with safety policy and training.

(5) If laboratory goals dictate operations or substances not suited to the existing facilities or equipment, the laboratory supervisor will, assisted by the safety officer, advise and assist the laboratory worker in developing or obtaining adequate facilities or equipment and designing appropriate work procedures.

(6) The supervisor will authorize each specific operation, delineate appropriate safety procedures, and instruct those who carry out the operation.

(7) Potential hazards will be identified before work with etiologic agents begins, and actions necessary to avoid accidents and illnesses will be implemented. This practice, called a job safety analysis, consists of breaking a job down into its logical steps, analyzing each for its hazard potential, and deciding the safe procedures to use. The process will be designed by a project director with input from employees, and each step with potential for exposure or other incidents must be described in writing in a standing operating procedure (SOP). All such SOPs will be approved by, at a minimum, the commander or institute director and the safety officer.

(8) The job safety analysis will include a consideration of health hazards identified in AR 40-10 and of maximum credible events as described in paragraph 2-8, AR 385-69.

(b) *Safety plans.* Clearly defined, published safety rules and monitoring procedures for compliance must be established. These rules will be readily available, in writing, for all involved in laboratory operations. This goal may be accomplished by preparing or modifying a facility safety plan, laboratory safety manual, occupational safety and health program or equivalent. This plan will—

(1) Be coordinated with institutional and Federal, State, and local emergency services.

(2) Be practiced with the emergency groups whose services are part of that plan prior to any need for their services, so that they can become familiar with any potential problem areas that may be encountered when they are called upon for assistance.

(3) Describe the method of rapid communication (for telephone, alarms, and so forth) that will be used during an emergency.

(4) Describe the institution's etiologic agent labeling system.

(5) Describe the institution's requirements for testing engineering controls (for example, biological safety cabinets and high efficiency particulate air (HEPA) filters) and essential safety equipment (for example, autoclaves) that are used to conduct RDTE funded by the BDP.

(6) Appoint and train personnel responsible for handling an emergency.

(7) Require that emergency telephone numbers be posted, so that emergency service personnel know whom to contact at all times of the day or night.

(8) Describe the institution's rules that have been established and are practiced to limit access to the facilities where etiologic agents under the sponsorship of the BDP are handled. The rules will include the following requirements:

(i) Access to biosafety level (BL)-1 and BL-1 large-scale (LS) laboratories is limited or restricted at the discretion of the commander or institute director when experiments are in progress.

(ii) Access to areas classified as BL-2, BL-2 LS, or where work with toxins is conducted, is limited by the commander or institute director when work with etiologic agents is in progress. Individuals who are at increased risk of acquiring infection or for whom infection may be unusually hazardous are not allowed in the laboratory. Only persons who have been advised of the potential hazard and meet any specific entry requirements (for example, immunization) may enter the individual laboratory or animal rooms. The commander or institute director must assess each circumstance and determine who may enter or work in the laboratory.

(iii) Access to areas classified as BL-3 or BL-3 LS is limited as stated in §627.7(b)(8)(ii), and is restricted to those persons whose presence in the facility or individual laboratory rooms is required for program or support purposes. Individuals under 18 years of age may not enter the controlled area.

(iv) Access to BL-4 facilities is limited as stated in §627.7(b)(8) (ii) and (iii). This is done with secure, locked doors with access controlled by the commander or institute director, safety officer, or other person responsible for the physical security of the facility. Before entry, all persons will be advised as to the appropriate safeguards for ensuring their safety. Authorized persons must comply with these instructions and all other applicable entry and exit procedures. A logbook will be maintained for all personnel to indicate the date and time of each entry and exit. A card-key activated computer record (or other electronic entry device) may be used if it indicates the date and time of both entry and exit.

(9) Describe the system that is developed and is operational for the reporting of accidents and exposures, employee absenteeism, and for the medical surveillance of potential laboratory-associated illnesses.

(c) *Safety meetings and safety committees.* In effective safety programs, everyone associated with the laboratory becomes involved. This is done by ensuring maximum participation in planning and by conducting group safety meetings.

(1) A staff safety committee, consisting of the commander or institute director or his or her designated representative, research supervisors, managers, medical personnel, employees, and the safety officer, will be established. This group leads the safety effort, reviews mishaps, and recommends changes in policies, safety program, or equipment as needed to improve safety.

(2) Safety committees will meet at least quarterly and minutes will be prepared and maintained for at least 3 years.

(3) When work with recombinant DNA molecules is undertaken, an institutional biosafety committee (IBC) for review of such work will be established and will function as stated in the NIH Guidelines for Research Involving Recombinant DNA Molecules (see appendix A to this part).

(d) *SOPs.* Besides the documented safety program that will be in effect, each institution will require that an SOP be established for each unique biological defense RDTE operation. The SOPs will meet the criteria stated in AR 385-69 and be reviewed and updated annually. A copy of the SOP will be maintained in the work area. In addition, SOPs will address the following issues—

(1) The unique hazards introduced by the activity in the work area.

(2) The methods of controlling these hazards.

(3) Any unique procedures and requirements needed that are not described as universally required in the safety plan (for example, signs, waste disposal, immunizations, emergency procedures, and personnel monitoring).

(4) Specialized orientation or training of personnel beyond that required in the safety plan.

(5) Ways of ensuring that the unique procedures are followed.

(6) Emergency procedures.

(e) *Safety communications.* Safety communications alert people to newly recognized hazards, remind them of basic biological safety principles, and instill positive attitudes toward safety. Training requirements are also found in §627.10(b). A system of communication will be established to—

(1) Implement a biological safety training program for all personnel

working with hazardous biological or chemical materials.

(2) Publish information addressing useful biological safety advice and accounts of laboratory accidents, along with the lessons to be learned from them.

(3) Make reference books and regulations concerning laboratory hazards, occupational health, and proper laboratory practices readily available.

(4) Assure that material safety data sheets (MSDS) for hazardous chemicals used in the laboratory are readily available to all employees.

(f) *Safety audits.* One of the essential elements of a good safety program is the conduct of periodic audits of the safety performance in a laboratory. Observing individual safety practices and checking the operability of safety equipment and compliance with safety rules must be part of the audit.

(1) An individual and an alternate will be appointed for each laboratory or room where BDP work is conducted. On a daily basis he or she will monitor the conduct of personnel within their room(s) and maintenance of the room to see that they comply with the safety program and SOPs.

(2) Supervisors will ensure that their projects comply with applicable safety requirements and will audit their areas at least weekly to ensure compliance.

(3) The safety officer or his or her qualified designee will inspect the institution's BL-1, BL-2, and toxin laboratories quarterly. BL-3 and BL-4 laboratories and those in which dry forms of highly potent toxins are handled will be inspected monthly by safety and health professionals. These inspections will be announced and include coverage of general safety practices as well as features specific to a particular biosafety level.

(i) Reports of deficiencies or procedures that create a potentially life-threatening situation will be made directly to supervisory personnel and the commander or institute director and actions will be taken immediately to correct the situation. The operation will not continue until every deficiency is corrected.

(ii) Reports of deficiencies for other than life-threatening situations will be made as soon as possible to the appro-

priate supervisor, with copies furnished to the commander or institute director. If a problem is widespread, all affected personnel will be notified.

(4) Supervisory personnel notified of safety deficiencies by the safety officer will ensure that the people directly concerned are contacted and that the deficiencies are remedied before operations are resumed.

(5) Malfunctioning equipment must be reported to the appropriate individuals, labeled to indicate that it should not be used, and repaired promptly.

(6) As a minimum, the audits conducted by the safety officer or his or her qualified designee will cover the items listed in appendix C to this part.

(g) *Documentation.* Records, documenting the following items, will be maintained for 3 years:

(1) Safety audits and the corrective measures.

(2) Risk assessments for proposed new laboratory procedures.

(3) Annual reviews of established SOPs.

(4) Training.

(5) Engineering controls and protective equipment certifications and tests.

(6) Safety committee meeting minutes and recommendations.

(7) Any outside auditor comments and responses.

§ 627.8 Occupational health.

An occupational health program will be implemented per AR 40-5, chapter 5, for all employees whose employment requires that they conduct duties in a BDP etiologic agent area. Essential elements of the program will include—

(a) *Medical surveillance examinations.* Medical examinations by a licensed medical doctor will be given prior to employment, at least every 3 years thereafter, and upon termination of duties requiring access to laboratories where etiologic agents are used. When full medical examinations are not given annually, health professionals will perform annual health screening. Safety and health professionals will ensure that medical examiners are made aware of all hazardous substances each employee works with at the time of the medical examination. The physician's findings will include assessment of whether an employee has any health

condition that would preclude work with etiologic agents. If any of the findings obtained during the examination are outside the normal range, the employee's supervisor and the employee will be notified and counseled on the courses of action available. In addition, a safety and health audit will be conducted to identify any potential occupational causes for the abnormalities, and corrective measures will be taken if applicable.

(b) *Serum samples.* When appropriate, considering the agent(s) handled, baseline serum samples for laboratory and other at-risk personnel will be collected and stored for their biologically useful lifetime, but not longer than 40 years. Additional serum specimens will be collected periodically, based upon the agents handled, or as required by participation in a special immunizations program. SOPs will be written detailing the collection procedures and periods if serum sampling is deemed necessary.

(c) *Assignment of personnel.* Personnel assigned duties in work areas where etiologic agents are used will be evaluated to determine their suitability for their assigned tasks by the installation medical authority. Only personnel who are physically and mentally capable of working in biocontainment areas (BL-3 and BL-4) or with toxins will be assigned to these duties.

(d) *Immunization of at-risk personnel.* The guidelines for immunizations in the latest edition of the American College of Physicians' Guide for Adult Immunizations and recommendations of Health and Human Services (HHS) in publication number (NIH) 88-8395 shall be followed. A resource list for available immunizations for personnel at risk is given in appendix B of this part.

(e) *Reporting exposures.* Spills and mishaps which result in observable, known or potential exposures to etiologic agents will be immediately reported to the supervisor, the safety officer, the responsible medical personnel, and the commander. Appropriate medical evaluation, surveillance, and treatment will be provided and written records of these occurrences will be maintained for 40 years. A Med-16 report will be initiated (see AR 40-400).

(f) *Quarantine.* When etiologic agents designated as BL-4 by the CDC-NIH in HHS publication no. (NIH) 88-8395, (or most recent edition) are handled, a facility for the quarantine, isolation, and medical care of personnel with potential or known laboratory-associated exposures will be available.

§ 627.9 Medical records.

Army activities will maintain medical records in accordance with AR 40-66 and FPM 293-31 for all military and Department of the Army (DA) civilian employees who work with etiologic agents under sponsorship of the BDP.

Subpart C—Operational Requirements

§ 627.10 Personnel prerequisites.

(a) *Medical.* Before to assignment to work with etiologic agents, personnel will be evaluated by the appropriate medical personnel with respect to their assignment and will be evaluated in the medical surveillance program described in § 627.8.

(b) *Training.* All personnel directly or indirectly involved with containment or handling of known and potentially biohazardous material shall receive instruction that adequately prepares them for their assigned duties. Training will be given by occupationally qualified personnel as determined by the commander. This training will be documented and will include—

- (1) General training—
 - (i) Personal hygiene related to laboratory work.
 - (ii) Laboratory practices.
 - (iii) Personal protective equipment.
 - (iv) Effective use of engineering controls.
 - (v) Packaging, transportation, and shipment of etiologic agents (when applicable).
 - (vi) Hazardous and infectious waste disposal, handling, and minimization procedures.
- (2) Training conducted specifically for the facilities that the individual will be working in, including—
 - (i) Procedures for the facility.
 - (ii) Reporting incidents and accidents.
 - (iii) Labeling and posting of signs.

(iv) Biohazardous waste handling, approaches to minimizing the volume of waste, decontamination, packaging, and disposal.

(v) Emergency procedures.

(3) Additional general training required for work in facilities where viable etiologic agents are present.

(i) Aseptic technique and procedures to include hands-on instruction and demonstration of proficiency.

(ii) Concept and definition of biosafety levels.

(iii) Disinfection and sterilization.

(iv) Safe use of workplace equipment, for example autoclave and centrifuge.

(v) Monitoring and auditing requirements.

(vi) Precautions for handling blood, tissues, and body fluids (when applicable).

(vii) The infectivity, pathogenicity, mode(s) of transmission, and medical surveillance requirements of specific agents.

(viii) Training for all new employees will include a period of supervised orientation in the facilities by a scientist or technician with specific training in the procedures and properties of the etiologic agents in use. During the training period, new laboratory personnel will be under the constant supervision of appropriately trained personnel.

(ix) Personnel who are assigned tasks in BL-2, BL-3, or BL-4 facilities will also have specific training in handling pathogens.

(x) Personnel assigned duties in a BL-4 facility will also have specific and thorough training in handling extremely hazardous infectious agents, the primary and secondary containment functions of standard and special practices, use of personal protective equipment, containment equipment, and laboratory design characteristics.

(4) Additional general training for handling toxins will include relevant items from § 627.10 plus—

(i) The availability of reference material on the hazards and safe handling of toxic substances.

(ii) The biological effects of the toxin(s) in use.

§ 627.11 Operational prerequisites.

(a) *Evaluation of the risks.* The risk assessment of laboratory activities involving the use of etiologic agents is ultimately a subjective process. Those risks associated with the agent, as well as with any adjunct elements of the activity to be conducted, (chemicals, radioisotopes, end-products, and so forth) must be considered in the assessment. The appropriate biosafety level for work with a particular agent or animal study depends on the virulence, pathogenicity, biological stability, route of transmission, and communicability of the agent; the nature of the laboratory; the procedures and manipulations to be used; the quantity and concentration of the agent; and the availability of effective vaccines or therapeutic measures.

(b) The characteristics of etiologic agents, primary laboratory hazards of working with the agent, and recommended biosafety levels are described by CDC-NIH (HHS publication No. (NIH) 88-8395), the considerations for recombinant DNA molecules are described by NIH, and those for oncogenic viruses are described by NCI-NIH (sources listed below). The commander or institute director will assign work with given etiologic agents to the appropriate biosafety level. A risk assessment should take into account not only the NIH Guidelines for Research Involving Recombinant DNA Molecules, but also potential hazards associated with the organism and the product of the experimentation.

(1) When established guidelines exist, these will be followed. The primary source guidelines are—

(i) HHS Publication No. (NIH) 88-8395, Biosafety in Microbiological and Biomedical Laboratories, as amended, and updates published in Morbidity and Mortality Weekly Report.

(ii) NIH Guidelines for Research Involving Recombinant DNA Molecules (FR 51: 16958-16985 and updates).

(iii) The publication by the American Committee on Arthropod-Borne Viruses Subcommittee on Arbovirus Laboratory Safety (SALS) entitled Laboratory Safety for Arboviruses and Certain Other Viruses of Vertebrates in

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the American Journal of Tropical Medicine and Hygiene, 29(6), 1980, pp. 1359–1381.

(iv) The Department of Health and Human Services Publication No. (NIH) 76-1165 by the National Cancer Institute (NCI) entitled Biological Safety Manual for Research Involving Oncogenic Viruses.

(2) When samples with unidentified viable agents are obtained, a knowledgeable and qualified scientist will evaluate the risks and make recommendations to the safety officer, who will add recommendations for review and approval by the commander or institute director. When guidelines for a specific organism are not established, in addition to these steps, the CDC or SALS or both will be consulted. Their recommendations will be documented and provided to the commander or institute director before approval.

(c) *Selection of facilities.* The facility requirements identified by the risk assessment will be adhered to. Any variations and compensatory measures will be approved by the IBC (when recombinant DNA molecules are involved), the safety officer, and the commander or institute director before a request for an exception or waiver is submitted as stated in AR 385-69.

(d) *Policies and procedures.* Policies in the form of a laboratory safety manual, regulations, memorandums, or SOPs are required for work with etiologic agents in the BDP. Before beginning a new procedure, the policies and procedures will be reviewed to ascertain that the intended operations are described and to determine the requirements that apply to the operation. If procedures exist for the intended operation, personnel will be trained to follow them; if procedures do not exist, then a detailed SOP will be written, reviewed, and approved before beginning the operation. SOPs will conform to the requirements stated in § 627.7(d), and be signed by all personnel who are required to follow the procedures, thus acknowledging that they have read and understood the contents. All SOPs that pertain to a specific area (room, laboratory, or suite) will be available at the worksite.

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§ 627.12 General laboratory techniques.

The general requirements for use of etiologic agents are composed of two sets of requirements, with the requirements for toxins being a subset of the requirements for handling viable etiologic agents. These requirements are as follows—

(a) *General techniques applicable to etiologic agents.* (1) A fully fastened long-sleeved laboratory coat, gown, uniform, or coveralls will be worn in laboratories or animal rooms.

(2) Eating, drinking, smoking, and applying cosmetics are not permitted in the work areas.

(3) Personnel must wash their hands after they handle etiologic agents or animals, and before leaving the laboratory area.

(4) Mouth pipetting is strictly prohibited. Mechanical pipetting aids must be used.

(5) Gloves—

(i) Will be worn when manipulating etiologic agents and handling containers of etiologic agents. Gloves are not required when materials are packaged appropriately for shipment.

(ii) Will be selected based on the hazards.

(iii) Will be changed frequently (or decontaminated frequently), and will be decontaminated or discarded into a labeled biohazard container after each use and immediately upon observable direct contact with an etiologic agent.

(iv) Will be removed at the workspace (workbench or hood) after handling etiologic agents to ensure that doorknobs and other surfaces are not contaminated.

(6) Good housekeeping will be maintained. This includes—

(i) Work areas free of clutter.

(ii) Work environment free of tripping hazards, with adequate access to exits, emergency equipment, controls, and such.

(iii) Benches and general work areas will be cleaned regularly using a wet sponge or similar method with disinfectant as appropriate. Methods that stir up dust such as sweeping or using vacuum cleaners, (except for HEPA-filtered vacuum cleaners) are unacceptable.

(iv) Specific work areas will be cleaned and decontaminated immediately following each use of an etiologic agent (at least once a day) and after any spill of viable material.

(v) Hallways and stairways will not be used for storage.

(7) All solutions, reagents, and chemicals will be labeled.

(8) All contaminated liquid or solid wastes will be inactivated before disposal.

(9) Work will be conducted over spill trays or plastic-backed absorbent paper. The paper will be removed, decontaminated, or disinfected, and the general area wiped with decontaminant at the end of each day or at the end of the experiment, whichever occurs first.

(10) Etiologic agents will be kept in closed containers when not in use. Cultures, solutions, or dried etiologic agents in glass vessels transported or incubated within a room or suite will be handled in nonbreakable, leak-proof pans, trays, pails, carboys, or other secondary containers large enough to contain all the material, if the glass vessel leaks or breaks. Etiologic agents removed from a room or suite for transport to another approved area within the same building will be placed in a closed unbreakable secondary container before removal from the laboratory. The secondary container will be labeled on the exterior with a biohazard symbol and identification of the contents, including the required biosafety level, the scientific name, the concentration (if applicable), and the responsible individual. The secondary containers will be wiped with suitable disinfectant before removal from the laboratory or area.

(11) Working stocks of etiologic agents will be stored in double containers. The primary and secondary containers will provide a positive seal and the secondary container will be unbreakable. The secondary container will be labeled as stated in §627.12 (a)(10) and with the date stored.

(12) Storage units (for example, freezers, refrigerators, cabinets, and hoods) will be labeled with the universal biohazard sign and indicate the classes of etiologic agents contained in them. Storage units will be secured when not in use.

(13) All contaminated materials, containers, spills, and solutions will be decontaminated or disinfected by approved methods before disposal.

(14) After injection of an etiologic agent into animals, the site of injection will be swabbed with a decontaminant.

(15) *Syringes.* (i) Reusable or disposable syringes will be of the fixed needle or LUER-LOK type (or equivalent) to assure that the needle cannot separate during use.

(ii) After use, nondisposable glass syringes with attached needles contaminated with etiologic agents will be submerged in a container of decontaminant. Disposable syringes will be discarded with needles attached in puncture-proof rigid containers. Needles will not be recapped after use.

(iii) Sterilized or decontaminated containers marked "Syringes and/or Needles" may be deposited in appropriate refuse containers after proper packaging and destruction of the contents.

[NOTE: Many States, especially those on the Eastern seaboard, have implemented strict requirements for the disposal of medical wastes. For example, Maryland has designated all waste from a microbiological laboratory as hazardous waste with licensing requirements for generators of 50 kilograms per month or more of waste, while all medical waste released for transport off-site must be manifested to a State licensed medical waste hauler with the destination specified. Additionally, in some cases, the local government (for example, a city) regulates the disposal of these wastes. These requirements will be identified and followed.]

Needles or syringes may not be destroyed by clipping. A mechanical shear may be used to smash or sheer needles after or concurrently with sterilization or decontamination.

(16) Refrigerators, deep freezers, and dry ice chests should be checked, cleaned out, and defrosted periodically to remove any ampules, tubes, and so forth, containing etiologic agents that may have broken during storage. Rubber gloves and respiratory protection appropriate to the materials in storage should be worn during cleaning. Do not store flammable solutions in nonexplosion proof refrigerators.

(b) *Additional techniques applicable to work with viable etiologic agents.* The major objective of these techniques is

to assist in protection against laboratory acquired infections. Air sampling studies have shown that aerosols are generated from most of the manipulations of bacterial and viral cultures common to research laboratories. The generation of aerosols during routine laboratory manipulations must be considered when evaluating the individual degree of risk, keeping in mind the four main factors governing infection: dosage, virulence of the organism, route of infection (for example, skin, eyes, mouth, lungs), and host susceptibility (for example, state of health, natural resistance, previous infection, response to vaccines and toxoids). The requirements stated below are minimum handling requirements to prevent accidental infection created by incidental aerosols.

(1) All procedures are performed carefully to minimize the creation of aerosols.

(2) No infectious mixtures will be prepared by bubbling air through a liquid.

(3) *Pipettes.* (i) No infectious material will be forcibly ejected from pipettes. Only to deliver (TD) pipettes will be used.

(ii) Pipettes used with infectious or toxic materials will be plugged with cotton unless they are used exclusively in a gas-tight cabinet system.

(iii) Contaminated pipettes will be placed horizontally in a rigid container containing enough disinfectant for complete immersion. Cylinders used for vertical discard are not recommended. The container and pipettes must be autoclaved as a unit and replaced by a clean container containing fresh disinfectant.

(iv) Pipetting devices must be used. Under no circumstances is mouth pipetting permitted.

(4) *Syringes.* (i) Using syringes and needles for making dilutions of etiologic agents is not recommended.

(ii) When removing a syringe and needle from a rubber stopper bottle containing viable etiologic agents, an alcohol soaked pledget around the stopper and needle will be used.

(iii) Excess fluid and bubbles should be expelled from syringes vertically into a cotton pledget soaked with disinfectant or into a small bottle containing disinfectant-soaked cotton.

(iv) The site of injection of an animal will be swabbed with a disinfectant before and after injection.

(v) After use, syringes contaminated with residual infectious fluid will be submerged in a container of disinfectant in a safety cabinet prior to removal for autoclaving. To minimize accidental injection of infectious material, the removable needles should remain on such syringes until after autoclaving. When possible, syringes with attached needles should be placed in a pan separate from that holding other discarded materials.

(vi) Caps will not be placed over needles until after disinfection. During recapping, procedures to prevent personal injuries will be used.

(5) *Centrifuges and shakers.* (i) Before centrifuging, tubes, rotors, seals, and gaskets will be checked for cleanliness and integrity. In low speed clinical-type centrifuges, a germicidal solution may be added between the tube and trunnion cup to disinfect the outer surfaces of both and to cushion against shocks that might break the tube. Metal or plastic tubes (other than nitro-cellulose) will be used.

(ii) Decanting from centrifuge tubes will be avoided. If decanting is necessary, the outer rim will be wiped with a disinfectant after decanting so that material on the lip cannot spin off as an aerosol. Centrifuge tubes will not be filled beyond the level the manufacturer recommends.

(iii) Broth cultures will be shaken in a manner that avoids wetting the plug or cap.

(6) Water baths in which viable etiologic agents are incubated must contain a disinfectant. For cold water baths, 70 percent propylene glycol is recommended. The disinfectant should be changed frequently.

(7) When a laboratory vacuum is used to manipulate viable etiologic agents, a secondary reservoir containing disinfectant and a HEPA filter must be employed to ensure that the laboratory vacuum lines do not become contaminated.

(8) *Test tubes.* (i) Tubes containing viable etiologic agents should be manipulated with extreme care. Studies have shown that simple procedures,

such as removing a tube cap or transferring an inoculum, can create a potentially hazardous aerosol.

(ii) Manipulation of biohazardous test tubes will be conducted in biological safety cabinets. Tubes and racks of tubes containing biohazardous material should be clearly marked. The individual employee must ensure that tubes containing biohazardous material are properly sterilized prior to disposal or glassware washing. Safety test tube trays should be used in place of conventional test tube racks to minimize spillage from broken tubes. When safety test tube trays are not used, the conventional test tube racks will be placed in a tray large enough to contain any potential spill. A safety test tube tray is one having a solid bottom and sides deep enough to hold all liquids, should a test tube break.

(9) Care should be exercised when using membrane filters to obtain sterile filtrates of viable etiologic agents. Due to the fragility of the membranes and other factors, such filtrates cannot be considered noninfectious until laboratory culture or other tests have proven their sterility.

(10) The preparation, handling, and use of dry powders of viable etiologic agents in open containers presents unusual hazards. The slightest manipulation of such powders can cause the generation of aerosols containing a high concentration of etiologic agents. Therefore, work with dry powders of etiologic agents in open containers should be carried out in gas-tight biological safety cabinets.

§ 627.13 Biosafety level 1.

(a) *Requirements beyond those for all etiologic agents.* BL-1 operations follow the general techniques described in §§ 627.12(a) and 617.12(b).

(b) *Additional laboratory requirement.* Contaminated materials that are to be decontaminated at a site away from the laboratory are placed in a durable leak-proof container which is closed before being removed from the laboratory. Examples of suitable containers are metal tubs with lids or plastic bags that are sealed and then placed inside a rigid container for transport.

(c) *Additional animal requirements.* (1) Bedding materials from animal cages

will be removed in such a manner as to minimize the creation of aerosols and disposed of in compliance with applicable institutional or local requirements.

(2) Cages are washed manually or in a cagewasher. Temperature of final rinse water will be a minimum of 180 °F.

(3) Laboratory coats, gowns, or uniforms worn in animal rooms shall not be worn in other areas.

§ 627.14 Biosafety level 2.

(a) *Additional requirements.* In addition to the general microbiological techniques stated in § 627.13, BL-2 operations include the following requirements:

(1) When etiologic agents are in use, a hazard warning sign incorporating the universal biohazard symbol is posted on the access door of the work area. The hazard warning sign identifies the etiologic agent, lists the name and telephone number of the institute director or other responsible person(s), and indicates the special requirement(s) for entering the laboratory.

(2) Animals not involved in the work being performed are not permitted in the laboratory.

(3) Special care is taken to avoid skin contamination with the etiologic agents; gloves will be worn when handling etiologic agents or infected animals.

(4) All wastes from laboratories and animal rooms are decontaminated before disposal.

(5) Hypodermic needles and syringes are used only for parenteral injection and aspiration of fluids from laboratory animals and diaphragm bottles.

(6) Spills and accidents which result in a potential exposure to etiologic agents will be reported immediately to the safety officer, the project leader, and the institute director.

(7) Biological safety cabinets (Class I or II) will be used when:

(i) Procedures with a high potential for creating infectious aerosols are conducted.

(ii) High concentrations or large volumes of etiologic agents are used.

(8) Laboratory coats, gowns, smocks, or uniforms will be removed before leaving the animal facility or laboratory area.

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(b) *Additional animal requirements.* (1) Cages must be decontaminated, preferably by autoclaving, before they are cleaned and washed.

(2) Approved molded masks are worn by all personnel entering animal rooms housing nonhuman primates.

(3) If floor drains are provided, the drain traps will be kept filled with water or a suitable disinfectant.

§ 627.15 Biosafety level 3.

(a) *Additional requirements.* In addition to the requirements stated in §§ 627.13 and 627.14, the following requirements apply—

(1) Approved molded masks or respirators with HEPA filters are worn by all personnel in rooms housing infected animals.

(2) Protective clothing worn in a laboratory or animal room will be removed before exiting the laboratory or animal room.

(3) Clothing worn in laboratories and animal areas to protect street clothing will be decontaminated before being laundered.

(b) *Additional laboratory requirements.*

(1) Laboratory doors will be kept closed.

(2) All activities involving etiologic agents will be conducted in biological safety cabinets (Class I, II, or III) or other physical containment devices within the containment module. No work in open vessels is conducted outside a biological safety cabinet.

(3) The work surfaces of biological safety cabinets and other containment equipment will be decontaminated after work with etiologic agents. Plastic-backed paper toweling should be used on nonperforated work surfaces within biological safety cabinets to facilitate clean-up.

(c) *Additional animal requirements.* (1)

Cages are autoclaved before bedding is removed and before they are cleaned and washed.

(2) Gloves are removed aseptically and autoclaved with other wastes before being disposed of or reused.

(3) Boots, shoe covers, or other protective footwear and disinfectant foot baths must be available and used when indicated.

(4) Personal protective clothing and equipment and other physical contain-

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ment devices are used for all procedures and manipulations of etiologic agents or infected animals. The risk of infectious aerosols from infected animals or their bedding shall be reduced by housing animals in partial containment caging systems as described in § 627.56.

(d) *Work with BL-3 etiologic agents that require additional secondary containment.* Facilities in which work with certain viruses, for example, Rift Valley fever, yellow fever, and Venezuelan equine encephalitis, is conducted require HEPA filtration of Xallexhaust air prior to discharge from the laboratory. All persons working with those agents for which a vaccine is available should be immunized.

§ 627.16 Biosafety level 4.

Laboratory work at BL-4 must follow the requirements stated in §§ 627.13, 627.14 and 627.15 as well as the following:

(a) All activities are conducted in Class III biological safety cabinets or in Class I or II biological safety cabinets in conjunction with a one-piece positive pressure personnel suit ventilated by a life-support system.

(b) Biological materials to be removed from the Class III cabinet or from the maximum containment laboratory in a viable or intact state must be transferred to a sealed nonbreakable primary container, enclosed in a nonbreakable sealed secondary container, and removed from the facility through a disinfectant dunk tank, fumigation chamber, or an airlock designed for this purpose.

(c) No materials, except for biological materials that are to remain in a viable or intact state, are removed from the maximum containment laboratory unless they have been autoclaved or decontaminated before they leave the facility. Equipment or material which might be damaged by high temperature or steam is decontaminated by gaseous or vapor methods in an airlock or chamber designed for this purpose.

(d) Personnel may enter and leave the facility only through the clothing change and shower rooms. Personnel must shower each time they leave the

facility. Personnel may use the airlocks to enter or leave the laboratory only in an emergency.

(e) Street clothing must be removed in the outer clothing change room and kept there. Complete laboratory clothing, including undergarments, pants and shirts or jumpsuits, shoes, and gloves, will be provided and must be used by all personnel entering the facility. Head covers are provided for personnel who do not wash their hair during the shower. When leaving the laboratory and before proceeding into the shower area, personnel must remove their laboratory clothing and store it in a locker or hamper in the inner change room.

(f) When etiologic agents or infected animals are present in the laboratory or animal rooms, a hazard warning sign incorporating the universal biohazard symbol must be posted on all access doors. The sign must identify the agent, list the name of the commander or institute director or other responsible person(s), and indicate any special requirements for entering the area (for example, the need for immunizations or respirators).

(g) Supplies and materials needed in the facility are brought in by way of the double-doored autoclave, fumigation chamber, or airlock which is appropriately decontaminated after each use. After securing the outer doors, personnel within the facility retrieve materials by opening the interior doors of the autoclave, fumigation chamber, or airlock. These doors are secured after materials are brought into the facility.

(h) Materials (for example, animals and clothing) not related to the experiment being conducted are not permitted in the facility.

(i) Whenever possible, avoid using any glass items.

§ 627.17 Toxins.

The laboratory facilities, equipment, and procedures appropriate for work with toxins of biological origin must reflect the intrinsic level of hazard posed by a particular toxin as well as the potential risks inherent in the operations performed. All toxins must be considered to pose a hazard in an aerosol form. However, most toxins exert

their effects only after parenteral exposure or ingestion, and a few toxins present a dermal hazard. In general, toxins of biological origin are not intrinsically volatile. Thus, the laboratory safety precautions appropriate for handling these materials closely parallel those for handling infectious organisms. The requirements in this section for the laboratory use of toxins of biological origin include the requirements in § 627.12(a) and the following:

(a) *Vacuum lines.* When vacuum lines are used with systems containing toxins, they will be protected with a HEPA filter to prevent entry of toxins into the lines (or sink drains when water aspirators are used).

(b) *Preparation of concentrated stock solutions and handling closed primary containers of dry toxins.* Preparation of primary containers of toxin stock solutions and manipulations of closed primary containers of dry forms of toxins will be conducted—

(1) In a chemical fume hood, a glove box, or a biological safety cabinet or equivalent containment system approved by the safety officer.

(2) While wearing eye protection if using an open-fronted containment system.

(3) Ensuring that gloves worn when handling toxins will be disposed of as toxin waste, with decontamination if required.

(4) With the room door closed and posted with a universal biohazard sign, or other sign, indicating that toxin work is in progress. Extraneous personnel shall not be permitted in the room during operations.

(5) Ensuring that toxins removed from hoods or biological safety cabinets are double-contained during transport.

(6) After verification of hood or biological safety cabinet inward airflow is made by the user before initiating work.

(7) Within the operationally effective zone of the hood or biological safety cabinet.

(8) Ensuring that nondisposable laboratory clothing is decontaminated before release for laundering.

(9) Ensuring that all individuals who handle toxins wash their hands upon each exit from the laboratory.

(10) With two knowledgeable individuals present whenever more than an estimated human lethal dose is handled in a syringe with a needle. Each must be familiar with the applicable procedures, maintain visual contact with the other, and be ready to assist in the event of an accident.

(c) *Manipulations with open containers of dry forms of toxins.* Handling dry forms of toxins in uncovered containers (for example, during weighing) will be performed following the requirements stated in §§ 627.12(a), 627.17 (a) and (b), and the following:

(1) Manipulations will be conducted in a HEPA filtered chemical fume hood, glove box, or biological safety cabinet. In addition the exhaust may be charcoal filtered if the material is volatile.

(2) When using an open-fronted fume hood or biological safety cabinet, protective clothing, including gloves and a disposable long-sleeved body covering (gown, laboratory coat, smock, coverall, or similar garment) will be worn so that hands and arms are completely covered. Eye and approved respiratory protection is also required. The protective clothing will not be worn outside of the laboratory and will be disposed of as solid toxin waste.

(3) Before containers are removed from the hood, cabinet, or glove box, the exterior of the closed primary container will be decontaminated and placed in a clean secondary container.

(4) When toxins are in use, the room will be posted to indicate "Toxins in Use—Authorized Personnel Only." Any special entry requirements will be posted on the entrance(s) to the room.

(5) All operations will be conducted with two knowledgeable individuals present. Each must be familiar with the applicable procedures, maintain visual contact with the other, and be ready to assist in the event of an accident.

(6) Individuals handling toxins will wash their hands upon leaving the laboratory.

(d) *Additional considerations of specific toxin properties.* The following requirements are in addition to the requirements stated in the paragraphs above. Determine whether the material fits § 627.17 (b) or (c), and complies with the

appropriate section and the following when applicable:

(1) When handling dry forms of toxins that are electrostatic—

(i) Do not wear gloves (such as latex) that help to generate static electricity.

(ii) Use glove bag within a hood or biological safety cabinet, a glove box, or a class III biological safety cabinet.

(2) When handling toxins that are percutaneous hazards (irritants, necrotic to tissue, or extremely toxic from dermal exposure)—

(i) Gloves will be selected that are known to be impervious to the toxin and the diluent (when applicable) for the duration of the manipulations.

(ii) Disposable laboratory clothing will be worn, left in the laboratory upon exit, and disposed of as solid toxin waste.

(e) *Aerosol exposures.* The requirements found in § 627.17 (a) and (b) will be complied with plus the following:

(1) Chambers, nose-only exposure apparatus, and generation system must be placed inside a fume hood, glove box, or a Class III biological safety cabinet. Glove boxes and Class III biological safety cabinets will have HEPA filters on both inlet and outlet air ports.

(2) The atmosphere from within the exposure chamber will be HEPA filtered before release inside the hood, glove box, or cabinet.

(3) All items inside the hood, glove box, or Class III biological safety cabinet will be decontaminated upon removal. Materials such as experimental samples that cannot be decontaminated directly will be placed in a closed secondary container, the exterior of which will be decontaminated and labeled appropriately. Animals will have any areas exposed to toxin wiped clean after removal from the exposure apparatus.

(4) The interior of the hood, glove box, or cabinet containing the chamber and all items will be decontaminated periodically, for example, at the end of a series of related experiments. Until decontaminated, the hood, box, or cabinet will be posted to indicate that toxins are in use, and access to the equipment and apparatus restricted to necessary, authorized personnel.

§ 627.18 Emergencies.

(a) *Introduction.* All laboratories will establish specific emergency plans for their facilities. Plans will include liaison through proper channels with local emergency groups and with community officials. These plans will include both the building and the individual laboratories. For the building, the plan must describe evacuation routes, facilities for medical treatment, and procedures for reporting accidents and emergencies. The plans will be reinforced by drills. Emergency groups and community officials must be informed of emergency plans in advance of any call for assistance. See AR 385-69.

(b) *General emergency procedures.* The following emergency procedures will be followed for laboratory accidents or incidents—

(1) Using appropriate personal protection, assist persons involved, remove contaminated clothing if necessary, decontaminate affected areas, and remove personnel from exposure to further injury if necessary; do not move an injured person not in danger of further harm. Render immediate first aid if necessary.

(2) Warn personnel in adjacent areas of any potential hazards to their safety.

(3) In case of fire or explosion, call the fire department or community fire brigade immediately. Follow local rules for dealing with incipient fire. Portable fire extinguishers will be made available with instructions for their use. Fire fighters responding to the fire scene will be advised to wear a self-contained positive pressure breathing apparatus to protect themselves from toxic combustion by-products.

(4) Laboratories must be prepared for problems resulting from severe weather or loss of a utility service. In the event of the latter, most ventilation systems not supplied with emergency power will become inoperative. All potentially hazardous laboratory work must stop until service has been restored and appropriate action has been taken to prevent personnel exposure to etiologic agents.

(5) In a medical emergency, summon medical help immediately. Laboratories without a medical staff must

have personnel trained in first aid available during working hours.

(6) For small-scale laboratory accidents, secure the laboratory, leave the area, and call for assistance.

(7) When handling mixed hazards (for example, a substance or mixture that may be infectious and radioactive, or infectious and chemically toxic), respond with procedures addressing the greater hazard first, and then follow through with those for the lesser hazards to ensure that all appropriate steps have been taken.

(c) *Evacuation procedures.* Building and laboratory evacuation procedures will be established and communicated to all personnel.

(1) *Emergency alarm system.* (i) There will be a system to alert personnel of an emergency that requires evacuation of the laboratory or building. Laboratory personnel must be familiar with the location and operation of alarm equipment.

(ii) Isolated areas (for example, cold, warm, or sterile rooms) will be equipped with an alarm or communication system that can be used to alert others outside to the presence of a worker inside, or to warn workers inside of an emergency that requires evacuation.

(2) Evacuation routes will be established and an outside assembly area for evacuated personnel must be designated. All individuals should be accounted for.

(3) Shut-down and start-up procedures.

(i) Guidelines for shutting down operations during an emergency evacuation will be available in writing. Those guidelines will include procedures for handling any power failure emergency.

(ii) Written procedures will also be provided to ensure that personnel do not return to the laboratory until the emergency is ended. Those procedures must also contain start-up operations for the laboratory.

(iii) All shut-down and start-up procedures will be available to personnel and reviewed semiannually.

(4) All aspects of the building evacuation procedure will be tested semiannually with practice drills.

(d) *Spills.* (1) All areas where work with etiologic agents is performed will

have designated personnel to respond to a spill and provide protective apparel, safety equipment, and materials necessary to contain and clean up the spill. Protective clothing requirements are described in § 627.21. Also, there will be supplies on hand to deal with the spill consistent with the hazard and quantities of the spilled substance.

(2) The safety officer will be notified immediately of all spills. The first line supervisor will ensure that proper clean-up techniques are employed.

(3) *Etiologic agents.* (i) A program for responding to spills of etiologic agents will be developed and implemented. This program will contain emergency response procedures for a biological spill, which will be tailored to the potential hazard of the material being used, the associated laboratory reagents involved, the volume of material, and the location of the materials within the laboratory. Generally, the spill should be confined to a small area while minimizing the substance's conversion to an aerosol. The spill will be chemically decontaminated or neutralized, followed by a cleanup with careful disposal of the residue. If the spilled material is volatile and noninfectious, it may be allowed to evaporate but must be exhausted by a chemical hood or ventilation system.

(ii) When a mishap occurs that may generate an aerosol of etiologic agents requiring BL-2 (or higher) containment, the room must be evacuated immediately, the doors closed, and all clothing decontaminated, unless the spill occurs in a class II or class III biological safety cabinet. Sufficient time must be allowed for the droplets to settle and the aerosols to be reduced by the air changes of the ventilation system before decontaminating the area. The area will then be decontaminated to prevent exposure to the infectious agents or toxic substances. Reentry procedures to perform the decontamination will conform to § 627.18(e).

(iii) A spill of biohazardous material within a biological safety cabinet requires a special response and cleanup procedure. Cleanup will be initiated while the cabinet continues to operate, using an effective chemical decontaminating agent. Aerosol generation during decontamination and the escape of

contaminants from the cabinet must be prevented. Caution must be exercised in choosing the decontaminant, keeping in mind that fumes from flammable organic solvents, such as alcohol, can reach dangerous concentrations within a biological safety cabinet.

(4) *Combined radioactive and biological spills.* (i) Both the radiation protection officer (RPO) and the safety officer must be notified immediately whenever there is a spill of radioactive biological material, regardless of its size. Laboratory personnel may be expected to clean up the spill. The RPO will direct the cleanup, in accordance with the NRC license for the facility.

(ii) The spill will be cleaned up in a way that minimizes the generation of aerosols and spread of contamination. All items used in cleaning up the spill must be disposed of as radioactive waste.

(iii) Following cleanup, the area, affected protective clothing, and all affected equipment and supplies must be surveyed for residual radioactive contamination. All potentially affected areas and items that are not disposable will be wipe-tested to verify that unfixed radioactive contamination has been removed. If fixed contamination is found, the RPO will determine the requirements for additional cleanup.

(e) *Reentry procedures.* This section applies when reentry is necessary to clean up a spill outside of a hood or biological safety cabinet, or to decontaminate or service engineering controls that have failed or malfunctioned so that they do not provide the required containment.

(1) When agents requiring BL-1 or BL-1 LS containment are involved, the clothing requirements stated in § 627.30 (a) or (b) as appropriate will be followed. Individuals will remove the required protective clothing when finished and wash their hands before proceeding to other tasks.

(2) When agents requiring BL-2, BL-2 LS, or toxin procedures and containment are involved, personnel will be required to wear the clothing described in § 627.30 (c) or (d) as appropriate. Outer protective clothing will be removed and left in the room before exiting and personnel will wash their

hands before proceeding on to other activities.

(3) When agents requiring BL-3, or BL-3 LS containment are involved, containers for sealing up inner protective clothing and decontaminant will be placed at the room exit. Personnel will be required to wear the clothing described in paragraph 4-10e. When exiting the area after decontamination procedures, individuals will remove their outer layer of protective clothing just before exiting the room. Once outside the room, the inner layer of protective clothing (for example, coveralls) will be removed and placed in the container and the inner gloves will be decontaminated before being removed and placed in the container. Personnel will proceed directly to the shower facility to take a complete shower before exiting the facility.

(4) When agents requiring BL-4 containment are involved, the following applies as appropriate to the type of BL-4 facility:

(i) When a spill requiring clean-up is in an area designed for use with personal positive pressure suits, the entry and exit procedures will be those normally required to enter or exit the area.

(ii) When entering a nonsuit area where a spill of etiologic agent has occurred outside the containment of a Class III biological safety cabinet, personnel will wear the clothing as described in §627.30(f). Before entry, decontamination areas will be established. To accomplish this, two step-in decontamination pans with the appropriate disinfectant will be set up [one just inside the room (where the contamination exists) and the second immediately outside the room]. Immediately outside the room, there will also be a sealable container suitable for sealing up the suit and any air lines (if used).

(iii) When exiting the room, suited individuals will place all equipment and other items in autoclaves or disinfectant, step into the disinfectant pan, and wash down the exterior of their suits with appropriate disinfectant. When completed, the door to the room will be opened and the individual will step through the doorway into the second disinfectant pan. The suit will

be thoroughly rinsed with disinfectant again before moving toward the exit from the facility. The suit (but not the respirator) will be placed in the provided container. The individual will proceed through another doorway before removing the respirator and placing it in a closed container for decontamination. The individual will then proceed directly to the shower area and take a full shower before exiting the area. In case they are needed, personnel will be standing by ready to render assistance. Suited individuals will be visually observed, if possible. When visual observation is not possible, a communications system is required.

(f) *Mishap reports and investigations.*

(1) Each institution must have a defined system for reporting laboratory injuries, illnesses, and mishaps, as well as for investigating them. These events will be documented and reported to the appropriate safety, supervisory, and occupational health personnel. Those organizations subject to the regulations promulgated by the OSHA will follow the specific requirements for reporting injuries in the work place contained in those regulations. The requirements stated in AR 385-69, State, and local government requirements for similar reporting will be followed.

(2) Form(s) for recording mishaps will be available and completed for all laboratory mishaps. Those reports must include a description of the mishap and any factors contributing to it. In addition, a description of any first aid or other health care given to the employee will be included. Responsibility for completing these forms must be clearly defined in the facility safety manual. Mishaps will be reviewed periodically by the safety officer, the safety committee, the employee health unit, or other appropriate personnel. Individual reports or a summary must be sent, along with recommended changes in laboratory procedure or policy, to the commander or institute director. Policy or procedural changes must be implemented if deemed necessary by the commander or institute director.

(3) Any mishaps with etiologic agents used under sponsorship of the BDP that

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result in sero-conversion or a laboratory-acquired illness will be reported.

§ 627.19 Large-scale operations.

(a) *Large-scale*. In addition to the requirements stated in § 627.13, the following applies to research or production activities involving viable etiologic agents in quantities greater than 10 liters:

(1) All large-scale operations will be conducted in facilities described in § 627.47.

(2) Cultures will be handled in a closed system.

(3) Sample collection, the addition of materials, and the transfer of culture fluids shall be done in a manner which minimizes the release of aerosols or contamination of exposed surfaces.

(4) A closed system or other primary containment equipment that has contained viable organisms shall not be opened for maintenance or other purposes unless it has been sterilized.

(5) SOPs will include a section describing and requiring a validation of the process equipment's proper function.

(6) Scientists, technicians, equipment workers, and support personnel with access to the large-scale production area during its operation will be included in the medical surveillance program.

(b) *BL-2-LS*. In addition to the requirements stated in §§ 627.19(a) and 627.14, the following procedures will be employed for *BL-2-LS*:

(1) Rotating seals and other mechanical devices directly associated with the closed system used for the propagation and growth of viable organisms shall be designed to prevent leakage or shall be fully enclosed in ventilated housings that are exhausted through filters which have efficiencies equivalent to HEPA filters or through other equivalent treatment devices.

(2) A closed system used for the propagation and growth of viable organisms and other primary containment equipment used to contain operations involving viable organisms shall include monitoring or sensing devices that monitor the integrity of containment during operations.

(3) Systems used to propagate and grow viable organisms shall be perma-

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nently identified. This identification shall be used in all records reflecting testing, operation, and maintenance and in all documentation relating to the use of this equipment.

(c) *BL-3-LS*. In addition to the requirements stated in §§ 627.19(a) and 617.14, the following procedures apply:

(1) Personnel entry into the controlled area shall be through the entry area specified in § 627.47(c)(1).

(2) Persons entering the controlled area shall exchange or cover their personal clothing with work garments such as jumpsuits, long sleeved laboratory coats, pants and shirts, head cover, and shoes or shoe covers. On exit from the controlled area, the work clothing may be stored in a locker separate from that used for personal clothing, or discarded for laundering. Clothing shall be decontaminated before laundering.

(3) Entry into the controlled area during periods when work is in progress shall be restricted to those persons required to meet program support needs.

(4) Prior to entry, all persons shall be informed of the operating practices, emergency procedures, and the nature of the work conducted.

(5) The universal biohazard sign shall be posted on entry doors to the controlled area and all internal doors. The sign posted on the entry doors to the controlled area shall include a statement of agents in use and personnel authorized to enter.

(6) Equipment and materials required for the management of accidents involving viable organisms shall be available in the controlled area.

(d) *BL-4-LS*. Guidelines for these operations are not established. If these are needed, they must be established by the United States Army Surgeon General or the NIH on an individual basis.

§ 627.20 Operations with radioactive material.

Operations that combine etiologic agents with radioactive material present unique problems. When this is the case, the following apply:

(a) *Radiation program*. A radiation program meeting the requirements of

AR 385-11 and NRC licensing that allows the particular isotope and its use are required. The requirements for acquisition, handling procedures, labeling, storage, training, monitoring, and disposal will be described in an organization policy document.

(b) *Procedure approval.* In addition to the required approvals for work with etiologic agents, the RPO will approve all SOPs involving the use of radioactive materials. Laboratory operators must be fully trained, with annual training updates as required by the existing license.

(c) *Special situations.* (1) The laboratory waste must be segregated as radioactive waste and disposed of as such after it has been decontaminated. Do not mix nonradioactive waste with radioactive waste as the disposal of radioactive waste is much more complex and expensive. When RCRA-listed chemicals are mixed with radioactive waste, it becomes "mixed waste" for which there is currently no means of disposal.

(2) Activities conducted with radioisotopes should be confined to the smallest number of areas or rooms consistent with requirements.

(3) Decontamination methods specific to etiologic agents will not always remove radioactivity. Other methods, such as specialized detergents and solvents designed for this use, should be employed to remove residual radioactivity.

Subpart D—Personal Protective Equipment

§ 627.21 Introduction.

Personal protective equipment (PPE) includes clothing and equipment used to protect the laboratory worker from contact with infectious, toxic, and corrosive agents, as well as excessive heat, fire, and other physical hazards. The appropriate PPE for any activity depends upon the proposed operations and the potential hazards associated with them. While PPE is an important item of personal protection, it serves as only a secondary line of protection against hazards in the workplace. Engineering controls (subpart H), combined with common sense, good laboratory techniques, and adherence to SOPs, are

the primary barriers to exposure. There are some situations, however, in which it is either impractical or impossible to rely exclusively on engineering controls. In these cases, PPE may form the primary barrier between personnel and the hazardous or infectious materials.

§ 627.22 Minimum laboratory attire for use of etiologic agents.

Individuals required to wear PPE will be trained in its proper use. The PPE listed below is the minimum required when etiologic agents are handled at any biosafety level. Research with etiologic agents usually involves hazards other than those presented by the agents themselves. When PPE is selected, the hazards presented by these other factors must be considered regardless of the biosafety level used. For example, toxic chemicals are commonly used in research involving etiologic agents. The processes may expose personnel to physical hazards, such as heat or animal bites, and the decontamination process may involve the handling of toxic or corrosive materials. When the PPE required to mitigate these hazards exceeds that of the minimum requirements, the necessary PPE will be selected considering all the hazards. Information regarding the additional appropriate PPE worn to protect against these hazards will be available from one of the following sources: MSDS, SOP for the operation, or the safety officer. Deviations from the standards stated in approved SOPs must be approved by the safety officer. All laboratory coats worn to protect the individual should be left in the laboratory when that individual leaves. In each case, the minimum attire will be—

(a) *Laboratory workers.* Street attire is permissible in the laboratory, but must include closed-toe shoes. A full-length, long sleeved, fully fastened laboratory coat, gown, or smock will be worn over the street attire in the laboratory at all times. The laboratory clothing will be removed and left in the laboratory when leaving to enter non-laboratory use areas.

(b) *Animal caretakers.* In addition to the clothing requirements in § 627.22(a), animal handlers will be provided with

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safety shoes or safety boots. The requirements of § 627.22(b) should also apply.

(c) *Nonhuman primate rooms.* Personnel entering rooms housing nonhuman primates will wear the clothing stated in § 627.22(a) and, if applicable, § 627.22(b) in addition to a molded mask or HEPA filtered respirator, latex or vinyl gloves, and eye protection.

§ 627.23 Biosafety level 1.

This level requires only the minimum attire described in § 626.22.

§ 627.24 Biosafety level 2.

This level requires the following additions to the minimum clothing specified in § 627.22:

(a) *Laboratory.* Gloves (type dependent on the application) will be worn when handling etiologic agents or containers of etiologic agents and when handling infected animals.

(b) *Animal rooms.* (1) Protective clothing will be changed completely every day. One- or two-piece laboratory suits or solid-front gowns and wrap-around smocks are preferable. Full-length, long-sleeved, fully fastened laboratory coats are allowed.

(2) Eye protection must be worn when handling nonhuman primates.

(3) Appropriate gloves must be worn.

(4) Molded masks or HEPA filtered respirators will be worn in rooms housing nonhuman primates.

§ 627.25 Biosafety level 3.

The outer clothing worn in these facilities must never be worn outside the facility. Color-coded clothing that is worn only in the facility is recommended to remind individuals not to wear it outside. The minimum clothing includes—

(a) *Laboratory.* (1) Long-sleeved, solid front, or wraparound gowns, scrub suits, or coveralls over street attire which includes closed-toe shoes. Dedicated shoes, boots, or shoe covers will be worn in the facility.

(2) Appropriate gloves.

(b) *Animal rooms.* (1) A complete change of protective clothing on a daily basis. Long-sleeved one- or two-piece solid front uniforms, solid-front

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gown, wrap-around smocks, or solid front coveralls.

(2) Eye protection must be worn when handling nonhuman primates.

(3) Molded masks or HEPA filtered respirators will be worn in rooms housing infected animals.

(4) Shoe covers will be worn and removed before exiting the room; alternatively, disinfectant footbaths will be used for each exit from the room when infected animals are present.

§ 627.26 Biosafety level 4.

Street clothing must be removed in an outer clothing change room and kept there. Clothing worn in the facility will be removed in an inner change room and a shower taken before replacing the street clothing. Two distinct PPE requirements exist for BL-4 operations:

(a) *Class III biological safety cabinet containment.* Clothing requirements when all etiologic agents and infected animals are housed and manipulated in Class III biological safety cabinets will include—

(1) Complete change of clothing and wet shower upon exit. This includes undergarments, pants and shirts or jumpsuits, and shoes. While it is preferred that the shower include washing the hair, head covers will be worn by those who do not wash their hair on each exit.

(2) Appropriate inner gloves. The inner gloves will be donned in the change room.

(b) *Class I or II biological safety cabinet containment.* Clothing requirements for this level when etiologic agents are contained in Class I or II biological safety cabinets of equivalent partial-containment caging systems (for infected animals) (See §§ 627.56 and 627.57) include—

(1) Complete change of clothing and wet shower upon exit. This includes undergarments, pants and shirts or jumpsuits, and shoes. While the shower should include washing the hair, head covers will be worn by those who do not wash their hair on each exit.

(2) Appropriate inner gloves will be donned in the change room.

(3) A one-piece positive pressure suit described in § 627.31(g).

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(4) Impervious boots fitted over the suit.

§ 627.27 Large-scale (LS) operations.

The clothing requirements for these are the same as for the corresponding biosafety levels for laboratory operations.

§ 627.28 Solutions of toxins and dry forms of toxins in closed containers.

In addition to the minimum clothing specified in § 627.22, disposable gloves or gloves designed to protect against the diluent will be worn when handling these materials.

§ 627.29 Dry forms of toxins handled in open containers.

In addition to the requirements stated in § 627.28, the requirements stated in § 627.18(c) apply.

§ 627.30 Situations specified in § 627.18(e).

The clothing requirements for this section are for the emergency procedures specified in § 627.18(e). Because situations can occur and there is no feasible or available means to mitigate the potential hazard adequately by engineering controls, the clothing requirements exceed those required for a properly conducted laboratory operation at an equivalent biosafety level. The protective equipment required will be selected based upon an assessment of the potential hazards that could be encountered. The following clothing requirements are given as a guide. The selection of PPE will be based upon the highest possible level of contamination that could exist in the room. This will be based upon what is known about the operations that were conducted in the room during and prior to the current incident. In each situation, the aerosols will be allowed to dissipate or settle before entry (approximately 30 minutes). The following clothing requirements apply to these situations:

- (a) *BL-1*. (1) Gloves.
- (2) Outer complete covering such as a pair of coveralls.
- (3) Shoe covers, provided shoes, or safety shoes or boots.
- (4) Eye protection (maintenance only).

(b) *BL-1 LS*. The same as described in section 627.30(a) with the following additions:

- (1) An impervious apron.
- (2) Impervious boots.
- (c) *BL-2 and toxins*. (1) Gloves.
- (2) Full outer covering such as a coverall.
- (3) Shoe covers, provided shoes, or safety shoes or boots (maintenance).
- (4) An approved half-face or full-face respirator with HEPA filters (worn).
- (5) Eye protection.
- (6) An impervious apron (not required for entry only).
- (d) *BL-2 LS*. The same as § 627.30(c) with the addition of impervious boots.
- (e) *BL-3 and BL-3 LS*. (1) A complete change of clothing.
- (2) Gloves.
- (3) An approved full-face HEPA or HEPA plus charcoal filtered respirator.
- (4) An impervious apron (not required for entry only).
- (5) Impervious boots.
- (6) Head cover.
- (f) *BL-4*. (1) A full change of inner clothing.
- (2) An inner pair of gloves.
- (3) A one-piece positive pressure suit as described in § 627.31(g), or a one-piece Xsuit with an approved positive pressure self-contained breathing apparatus (SCBA) and a supplied-air respirator (SAR) or both (see § 627.31(f)).
- (4) Appropriate gloves fitted to the suit.
- (5) Impervious boots fitted over the suit.

§ 627.31 Specific requirements for individual PPE items.

- (a) *Aprons*. Simple plastic or rubber aprons.
- (b) *Boots*. When boots must be worn with an apron, the apron should cover the boot tops sufficiently so that liquids splashed on the apron will not run into the boots.
- (c) *Eye and face protection*. Eye protection will meet or exceed the requirements of OSHA found in the 29 CFR 1910.133 and will be worn at all times when required. Special eye wear may be required around ultraviolet (UV) light source.
- (d) *Gloves*. (1) No one glove will be satisfactory for all applications. Gloves are fabricated in a wide assortment of

materials. The type of glove selected will depend upon the specific activity. The various activities in biocontainment facilities call for gloves to protect against etiologic agents in situations where micro-manipulations are required and excellent tactile feedback through gloves is important, gloves for handling hot glassware and cryogenic materials, and gloves to protect against animal bites, toxic substances, chemical carcinogens, solvents, acids, and caustics. Many of these requirements call for gloves distinctly different from gloves suitable for the other hazards. As a result, the SOP for each operation should address these hazards and specify the appropriate glove required for each operation. Consult MSDSs, manufacturer glove charts, and the safety officer to determine the correct glove type needed.

(2) Before donning a pair of gloves, examine them closely to ascertain that they are in serviceable condition. Check for rips and pin holes. Gloves should over-wrap the cuff and lower sleeve of the laboratory garment.

(3) Operations in open-front biological safety cabinets should be planned so that once the operator has inserted gloved hands into the cabinet, he or she does not have to withdraw them from the cabinet until the work has been completed. If gloves become visibly contaminated, they will be removed and decontaminated. Additional gloves should be available so that work can continue. When wearing gloves for an extended period, change them periodically or decontaminate them. Individual SOPs will designate the appropriate period based upon the hazards.

(4) Gloves will be removed before going from one level of containment to another (remove gloves in a safety cabinet before removing your hands from the cabinet). Take care to ensure that skin is not touched with the outer surface of contaminated or potentially contaminated gloves when they are removed. Gloves will be placed in suitable decontaminant when they are removed. Disposable gloves will be placed in a covered container for decontamination or disposal.

(5) Gloves that are a part of a biological safety cabinet system will be exam-

ined initially, after each sterilization of the biological safety cabinet system, and at least annually for leaks using the soap bubble test, followed by the halo-carbon test. Gloves will be tested while still attached to the cabinet.

(6) Sterilization of nondisposable gloves either before use or before reuse is usually done with ethylene oxide or formaldehyde gas. Sterilized gloves must be aerated in flowing sterile (filtered) air at 21 °C or higher for a minimum of 24 hours prior to use to prevent skin burns and irritation from residual decontaminants.

(e) *Laboratory clothing.* Users will check clothing before wearing it, to ensure that it is free from defects that would compromise its usefulness. Laboratory clothing (except BL-1) will be decontaminated before being released for laundering by untrained or unprotected personnel. Protective laboratory clothing that requires the wearer to pull it over the head will not be used. Laboratory clothing will meet OSHA requirements found in the 29 CFR 1910.132.

(f) *One-piece suits.* One-piece suits with a respirator under the suit are not used to any great extent except in certain emergencies. The respirators used with these are supplied air by an approved positive pressure SCBA or SAR. Respirators will be of the pressure-demand or constant flow type. The air provided will meet OSHA requirements found in the 29 CFR 1910.134, the requirements of Grade D breathing air as specified in the Compressed Gas Association pamphlet G-7.1 and American National Standards Institute (ANSI) Z86.1-1973. When used in an area that does not have a chemical shower to decontaminate the suit, a decontamination station will be set up for this purpose. Suits maintained for emergency use will be inspected at least quarterly and respiratory equipment will be inspected monthly.

(g) *One-piece positive pressure suits.* A life-support system will be provided with alarms and emergency backup breathing tanks. The air provided will be HEPA-filtered meeting OSHA requirements found in the 29 CFR 1910.134, the requirements of Grade D breathing air as specified in the Compressed Gas Association pamphlet G-7.1

and ANSI Z86.1-1973. A HEPA-filter will be in-line between the disconnect on the suit and the breathing space in the suit. When these are used in other than an emergency situation, a chemical shower must be provided to decontaminate the surfaces of the suit as the worker leaves the containment area. Suits will be inspected before each use to check for indications of significant wear or leakage. The suits will be worn with impervious boots over the foot area of the suit and the outer gloves will be attached over the hand portion.

(h) *Respiratory protection equipment.*

(1) Respirators and their use will be approved by the safety officer. The selection will be based on the conditions of the activities and the risks involved. In general, National Institute for Occupational Safety and Health (NIOSH) approved respirators that use aerosol filters for dusts and fumes having a Threshold Limit Value (TLV) of less than 0.05 mg/m³ have been found acceptable for use in microbiological laboratories. Alternatively, the Army M-17 or M-9 masks may be used. Air-supplied hoods are used in situations where greater respiratory protection is required without the need for body protection. One-piece suits are used when total body and respiratory protection are required.

(2) When respirators are used, a respirator protection program will be established that conforms to AR 11-34 and OSHA standards in the 29 CFR 1910.134. In general, a medical authority will designate who is to wear respirators, they will be fitted by individuals trained in their use and limitations, and wearers will be responsible for the proper storage and regular inspection of their assigned respirators. Air-purifying respirators will not be worn in oxygen deficient environments.

(3) Reusable respirators that have been worn in a contaminated area will be decontaminated before reuse. At the end of each workday when a respirator has been worn in an area where it was required, the wearer will wipe it down with an appropriate liquid decontaminant. A damp cloth soaked in the decontaminant, with the excess liquid squeezed out, will be used for the wipe-down process, taking care to ensure that all crevices are reached. The

respirator will be rinsed with clean, warm water. Visibly contaminated respirators will be decontaminated and discarded.

(4) Respirator programs will comply with AR 385-10 and AR 11-34.

(i) *Shoes.* All shoes specially issued for use in controlled access areas should be identified so that they can be segregated from other areas. Safety shoes or boots meeting OSHA requirements stated in the 29 CFR 1910.134 will be issued wherever heavy items or corrosive chemicals are handled. These will be sterilized appropriately after visible contamination. In certain situations (excluding BL-4 operations), it is desirable to wear disposable booties over street shoes, especially when product protection is required.

Subpart E—Decontamination and Disposal

§ 627.32 Introduction.

All material or equipment that is potentially contaminated with etiologic agents must be rendered nonhazardous before disposal. This chapter describes the acceptable physical and chemical decontamination methods and the general applicability of each. In general, all infectious materials and all contaminated equipment or apparatus will be sterilized before being washed and stored or discarded.

§ 627.33 Methods of decontamination.

(a) *Autoclave.* The use of wet heat is the most dependable procedure for destroying all forms of microbial life. An autoclave employs saturated steam under a pressure of approximately 15 pounds per square inch (psi) to achieve a chamber temperature of at least 121 °C for a minimum of 15 minutes. The time is measured after the temperature of the material being sterilized reaches 121 °C. Other combinations of temperature and pressure (some of which are dependent on the equipment used) can be used to accomplish sterilization provided that the efficacy of sterilization is validated as described below. The most critical factor in ensuring the reliability of this sterilization method, other than proper temperature, is preventing entrapped air that is not replaced by steam. Material to be

autoclaved must come in contact with steam and heat and, as a result, it may be necessary to add water to a load of waste to aid in the formation and penetration of steam. Autoclaves use either a steam-activated exhaust valve that remains open during the replacement of air by live steam until the steam triggers the valve to close, or a pre-cycle vacuum to remove air prior to steam introduction.

(b) Sterilization will be verified using biological indicators (for example, *Bacillus stearothermophilus* spores) at locations throughout the autoclave, to include placement in the center of test loads, when the autoclave is first put into service, and after any maintenance or repairs. The primary means of verifying routine sterilization will be through using chemical indicators (for example, autoclave tape or labels) at locations throughout the autoclave. In addition each autoclave will be equipped with a permanent means to record time and the temperature of each operational event as a means of ensuring sterilization. The type of materials being handled must be reviewed and standard conditions for sterilization of each established. As a guide, the manufacturer's manual for the autoclaves will be consulted as a starting point in establishing these conditions. Treatment conditions to achieve sterility will vary in relation to the volume of material treated, the contamination level, the moisture content, and other factors that should be considered and which may cause the times to lengthen. In each case, the conditions will be established based on tests which verify that the conditions selected are effective. In addition to being effective from viable agents, autoclaving effectively inactivates most protein toxins.

(c) *Dry heat.* Dry heat requires longer times or higher temperatures or both than does wet heat. If used, the specific sterilization times and temperatures must be determined for each type of material being sterilized. In general, sterilization by dry heat can be accomplished at 169-170 °C for periods of 2 to 4 hours. Higher temperatures reduce the time requirements. The heat transfer properties and spatial relation or arrangement of materials in the load

are critical in ensuring effective sterilization.

(d) *Liquid disinfectants.* Liquid disinfectants may be used in surface treatment, in dip tanks, and, at sufficient concentration, as sterilants of liquid waste for final disposal. If liquid disinfectants are used, they must have been shown to be effective against the organisms present. Important considerations include: temperature, time of contact, the negative logarithm of hydrogen ion concentration (pH), concentration and state of dispersion, penetrability, and reactivity of organic material at the site of application. Small variations in these factors may make large differences in the effectiveness of disinfection, so complete reliance should not be placed on liquid disinfectants when the end result must be sterility. If evidence of efficacy under the proposed procedures has not been reported previously, preliminary studies to verify the efficacy of liquid disinfectants must be conducted. Such studies may include attempts to recover and quantitate the agent in question from liquid or swab samples, or sealed patches, by animal inoculation, plaque assay, agar or broth cultivation, and similar methods, following controlled decontamination under the same experimental conditions envisioned for the proposed studies.

(1) *Alcohol.* Ethyl or isopropyl alcohol at the concentration of 70-85 percent by weight will denature proteins but is slow in its germicidal action. Alcohols are effective disinfectants for lipid-containing viruses. These alcohols exhibit no activity against bacterial spores.

(2) *Phenolic compounds.* These are effective disinfectants against vegetative bacteria, including *Mycobacterium tuberculosis*, fungi, and lipid-containing viruses. The phenolics are not effective against bacterial spores or non-lipid-containing viruses. The concentrations used will be in accordance with the manufacturer's recommendations.

(3) *Formaldehyde solutions.* Formaldehyde in solution at a concentration of 8 percent (formalin) is effective against vegetative bacteria, spores, and viruses. It loses considerable disinfectant activity below room temperature. Due to the toxic properties of formaldehyde, the use of formalin is restricted

to surfaces or materials that are contained within appropriate engineering controls.

(4) *Quaternary ammonium compounds.* These cationic detergents are strongly surface-active. They lose effectiveness in the presence of proteins and are neutralized by anionic detergents, such as soap. At low concentrations, they are bacteriostatic, tuberculostatic, sporostatic, fungistatic, and algistatic. At medium concentration, they are bactericidal, fungicidal, algicidal, and virucidal against lipophilic viruses. They are not tuberculocidal, sporicidal, or virucidal against hydrophilic viruses, even at high concentrations. The manufacturer's recommended dilution will be used.

(5) *Chlorine.* Sodium hypochlorite is normally used as a base for chlorine disinfectants. Free available chlorine is the active ingredient and, at concentrations of at least 2,500 parts per million (ppm) (0.25 percent), is a disinfectant that is active against most microorganisms and bacterial spores. Chlorine solutions at 2.5 percent free available chlorine are effective against most toxins. Chlorine solutions lose strength if exposed to air, so fresh solutions must be prepared whenever the free chlorine content falls below desired minimums.

(6) *Iodine.* The characteristics of chlorine and iodine are similar. Iodophor compounds with 1,600 ppm free available iodine provide a relatively rapid inactivation of all microorganisms, including some bacterial spores. A commonly available iodophor is Wescodyne. The manufacturer of Wescodyne recommends a range of dilution from 1 to 3 ounces per 5 gallons of water, giving a solution containing from 25 to 75 ppm of free iodine. At these concentrations, available iodine may be rapidly taken up by any extraneous protein present and will not be an effective sporocide. A solution providing 1,600 ppm iodine is recommended for hand washing or for use as a sporocide.

(7) *Mercurials.* Although the mercurials exhibit good activity against viruses, they are toxic and are not recommended for general use. They have poor activity against vegetative bacteria and are totally ineffective

sporocides. The dilution recommendations stated by the manufacturer will be followed.

(e) *Vapors and gases.* Formaldehyde, ethylene oxide, peracetic acid, beta-propiolactone, methyl bromide, and glutaraldehyde have all been used successfully as space sterilants where they can be employed in closed systems and with controlled conditions of temperature and humidity. Of these, methyl bromide, beta-propiolactone, and glutaraldehyde are not recommended because of their toxic properties. Peracetic acid can readily decompose with explosive violence in a concentrated state and must be used only in a diluted state and with extreme care. Formaldehyde and ethylene oxide are both regulated by OSHA for their potential human carcinogenicity, but do have permissible exposure levels (unlike beta-propiolactone, for example) and can be used safely under controlled conditions.

(1) *Formaldehyde.* Formaldehyde gas is, in general, the chemical of choice for space disinfection. Biological safety cabinets and associated effluent air-handling systems and air filters, incubators, laboratory rooms, buildings, or other enclosed spaces can be disinfected with formaldehyde. The procedures found in appendix E of the National Sanitation Foundation Standard Number 49 will be followed for the disinfection of biological safety cabinets. Other enclosures or areas will be disinfected by following the same principles. To disinfect rooms, the generation of formaldehyde gas from heating powdered or flake paraformaldehyde is the preferred method. When area decontamination is performed, use 0.3 grams of paraformaldehyde for each cubic foot of space to be treated. The room or area must be above 70 °F, the relative humidity above 70 percent, and the exposure time at least 2 hours (overnight is preferred). After the required time for disinfection, the room must be cleared of the formaldehyde gas (a small room with nonporous surfaces and no materials or equipment in the room can be cleared of all detectable formaldehyde by aeration for one hour, while larger areas with equipment in them may take a full day). Before formaldehyde is used as a space

disinfectant, the area to be treated must be surveyed to ensure that there are no open containers of any acidic solution containing chloride ion in order to prevent the possible formation of bis (chloromethyl) ether, a human carcinogen. Specific OSHA requirements for posting of rooms and equipment, personnel protection, and other requirements are found in 29 CFR 1910.1048.

(2) *Ethylene oxide (EtO)*. EtO sterilization will only be conducted in a sterilizer designed for that purpose and designed to maintain potential exposure levels below the current OSHA standard. EtO is effective against all microorganisms, including spores, molds, pathogenic fungi, and highly resistant thermophilic bacteria. All materials to be used in contact with human skin (for example, clothing, shoes, masks, adhesive tape) must be aerated for at least 24 hours after sterilization and prior to use. Concentrations of 500 to 1000 ppm are required for sterilization. Specific OSHA requirements for the use of ethylene oxide are found in 29 CFR 1910.1047.

(f) *UV Radiation*. UV radiation at a wave length of 253.7 nanometers is a practical method for inactivating airborne viruses, mycoplasma, bacteria, and fungi. The usefulness of UV radiation on exposed surfaces is limited by its low penetrating power. UV radiation shall only be relied upon to sterilize surfaces when conventional methods, such as autoclaving or the use of liquid disinfectants, would make the product unusable. An example is data sheets that must be brought out of a biocontainment facility. The UV intensity must be at least 40 microwatts/cm³ on the surface to be treated. Single sheets of paper may be treated by exposing them to this radiation for a minimum of 15 minutes. A calibrated photoelectric UV intensity meter, capable of measuring UV radiation at a wave length of 253.7 nanometers, will be used whenever a new UV source is installed, and quarterly thereafter, to ensure the UV source is providing at least 40 microwatts/cm³ at the work surface. Bulbs should be cleaned routinely to remove any accumulated dust and prolong bulb performance and assure proper energy output. Protective

eye wear and clothing may be necessary when working around UV radiation.

§ 627.34 Disposal.

Inactivation is the first step in the disposal of etiologic agents or materials that are potentially contaminated with them. All contaminated or potentially contaminated materials must be effectively disinfected or sterilized by an approved procedure discussed in § 627.33. After decontamination, reusable items, such as clothing or glassware, may be washed with other uncontaminated or decontaminated items.

(a) *Combustible items*. Combustible disposable items should be bagged and incinerated in an appropriate approved incinerator or otherwise disposed of in accordance with State and local regulations.

(b) *Noncombustible disposable items*. Items will be packaged as stated in § 626.34(e) and disposed of by a licensed waste hauler.

(c) *Equipment*. Equipment that cannot be autoclaved will be decontaminated by gaseous sterilization or with a suitable liquid disinfectant. Such equipment will be certified as decontaminated by the safety officer.

(d) *Waste*. Materials generated, such as solvents, acids, chemical carcinogens, radioactive isotopes, medical waste, or dead animals must be decontaminated, packaged, and then disposed of in accordance with EPA, NRC, local, State, and Federal regulations.

(e) *Mixed waste*. When two or more hazardous materials are mixed together, the mixture will be decontaminated and disposed of in accordance with EPA, NRC, State, and Federal regulations for the mixture, or for the most hazardous material.

(f) *Packaging*. Solid waste will be placed in cans, sturdy bags, or boxes. Rigid, puncture-resistant, sealable containers will be used for packaging "sharps." When wet materials are packaged for disposal, the materials will be placed in a leak-proof container. Heavy waste will be placed in rigid containers ensuring that the burst strength of the container is not exceeded.

(g) *Labeling.* A method of verifying that all items prepared for disposal have been decontaminated will be established for etiologic agent wastes. Mixed waste will be labeled as appropriate to indicate the hazards that must be addressed after decontamination.

(h) *Recordkeeping.* A manifest will be initiated and maintained, where required, to record the disposition and transfer of waste. Applicable Federal, State, and local ordinances will be followed.

Subpart F—Importation, Shipment, and Transport of Etiologic Agents

§ 627.35 Introduction.

The CDC of the Public Health Service (PHS), the United States Department of Agriculture (USDA), the Food and Drug Administration (FDA), the Department of Transportation (DOT), the United States Postal Service and the International Air Transport Association (IATA) regulate the importation, shipment, and transportation of etiologic agents. This chapter outlines the minimum administrative requirements the commander or institute director are to follow and gives sources for information on the requirements for importation, packaging, labeling, and shipment of etiologic agents.

§ 627.36 Administration.

The commander or institute director will establish the following controls to ensure that etiologic agents are transported with proper authorization, controls, and procedures:

(a) Institute policies will be established in writing to ensure that before etiologic agents are acquired or shipped—

(1) The division chief responsible for the area where work with etiologic agents is to be conducted approves all acquisitions or shipments.

(2) The safety officer is informed in writing of the type and amount of any BL-4 or USDA-restricted etiologic agent (listed in HHS publication No. (NIH) 88-8395 or current edition) being received, and the estimated date of arrival.

(3) The recipient of all etiologic agents shipped from an institute will be documented.

(4) The commander or institute director approves all acquisitions and shipments of BL-4 or USDA-restricted etiologic agents.

(5) The commander or institute director approves all requests for shipments to or from foreign countries and to individuals not affiliated with an institution or agency (for example, physicians in private practice).

(6) The Office of The Surgeon General, United States Army, or the Commander, United States Army Materiel Command (AMC) approves the initial acquisition and use of all reference stocks of etiologic agents and transfers between Army RDTE activities in accordance with AR 70-65.

(7) There is full compliance with the regulatory requirements referenced in §§ 627.37, 627.38, 627.39 and 627.40.

(8) The following information regarding the recipient and the intended use of BL-4 and USDA-restricted animal pathogens, will be kept on file for 10 years. This information will also be kept for all shipments to or from foreign countries and to individuals not affiliated with an institution or agency (for example, physicians in private practice).

(i) The requester's name and address.

(ii) The type and amount of the etiologic agent to be sent.

(iii) The qualifications of the recipient of the etiologic agent.

(iv) The intended use of the etiologic agent.

(v) A statement indicating that the agent is not for human use.

(b) Etiologic agents assigned to biosafety level 1, 2, or 3, approved for shipment, and properly labeled and packaged may be shipped by commercial cargo carriers.

(c) All etiologic agents assigned to BL-4 or USDA-restricted animal pathogens approved for shipment and properly packaged, will be accompanied by a designated courier, or under close supervision of a responsible party who will monitor aspects of the shipment, ensuring that required transfers have been completed and documented and final receipt has been accomplished and acknowledged.

§ 627.37 Importation directives.

Importation of etiologic agents is subject to the Public Health Service Foreign Quarantine Regulations (42 CFR 71.156). Examples of permits authorizing the importation or receipt of regulated materials and specifying conditions under which the etiologic agent is shipped, handled, and used are contained in appendix E to this part.

§ 627.38 Shipment directives.

Shipping unmarked and unidentified etiologic agents is prohibited. Etiologic agents will be packaged, labeled, and shipped according to the requirements found in the Interstate Shipment of Etiologic Agents Regulations (42 CFR part 72) and its amendments. The USDA regulations in 9 CFR parts 102 through 104, 122 and the FDA regulations in 21 CFR parts 312 and 600 through 680 will also be followed as applicable. Packaging and labeling requirements for interstate shipment of etiologic agents are summarized and illustrated in appendix D. Permits authorizing the shipment of regulated materials and specifying conditions under which the etiologic agent is shipped, handled, and used are contained in appendix E to this part.

§ 627.39 Transportation directives.

The packaging and labeling requirements cited above must be followed for the local transport of etiologic agents and diagnostic specimens by courier or by other delivery services. Similar requirements and restrictions applicable to the transport of etiologic agents, diagnostic specimens, and biological products by all modes of transportation (that is, air, motor, rail, and water) are imposed by the Department of Transportation (49 CFR part 173), IATA "Dangerous Goods Regulations," the Air Transport Association "Restricted Articles Tariff 6-D," the International Civil Aviation Organization (ICAO), Postal Bulletin No. 21246 "International Mail-Hazardous Materials," 39 CFR, and, the Domestic Mail Manual. When shipments exceed 4 liters, the requirements found in AR 740-32 will be followed.

§ 627.40 Additional requirements.

Additional requirements for importation, shipment, and transportation of infectious agents and hazardous materials that must be followed are contained in the following directives:

(a) AR 40-12, Medical and Agricultural Foreign and Domestic Quarantine Regulations for Vessels, Aircraft, and Other Transports of the Armed Forces.

(b) AR 70-65, Management of Controlled Substances, Ethyl Alcohol, and Hazardous Biological Substances in Army Research, Development, Test, and Evaluation Facilities.

§ 627.41 Sources for further information on shipment of etiologic agents.

(a) Guide for Transportation of Hazardous Materials, Vol. 4(1), February 10, 1975. Copies are obtainable from the Office of Research Grants Inquiries, NIH, Department of Health and Human Services, 5333 Westbard Avenue, Bethesda, MD 20205.

(b) The CDC, Office of Biosafety, 1600 Clifton Road N.E., Atlanta, Georgia 30333. Telephone (404) 639-3883, or FTS: 236-3883.

(c) The American Type Culture Collection (ATCC), Packaging and Shipping of Biological Materials at ATCC. Copies may be obtained from the ATCC, 12301 Parklawn Drive, Rockville, MD 20852. Phone (301) 881-2600.

(d) National Committee for Clinical Laboratory Standards (NCCLS), Procedures for the Domestic Handling and Transport of Diagnostic Specimens and Etiologic Agents, (H5-A2), Second edition. Vol. 5, No. 1. Copies are obtainable from the NCCLS, 771 East Lancaster Avenue, Villanova, PA 19085.

Subpart G—Facilities**§ 627.42 Introduction.**

The design of the facility is important in providing a secondary barrier to protect individuals inside and outside the facility. Because the hazards presented by various organisms and materials vary, the requirements for the facility will vary accordingly. The minimum facility requirements for the various biosafety levels and toxins are described below. The biosafety levels correspond to those described in the

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HHS Publication Biosafety in Microbiological and Biomedical Laboratories (HHS No. (NIH) 88-8395), while the large-scale biosafety levels were adapted from those described in the NIH Guidelines for Research Involving Recombinant DNA Molecules.

§ 627.43 Biosafety level 1.

(a) *Laboratories.* Each laboratory used for this level will, as a minimum, have the following features:

- (1) A sink for handwashing.
 - (2) Work surfaces that are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.
 - (3) Fly screens on any windows that can be opened.
 - (4) Furnishings and surfaces that are sturdy and designed to be easily cleaned.
 - (5) Spaces between furnishings and equipment that are accessible for cleaning.
- (b) *Animal facilities.* Each room will have the following features:
- (1) Design and construction to facilitate cleaning and housekeeping.
 - (2) A sink for handwashing within the facility.
 - (3) Fly screens on any windows that can be opened.
 - (4) Ventilation designed so that the direction of airflow in the animal facility is inward, with the exhausted air discharged to the outside without being recirculated.
 - (5) Self-closing doors that open inward.

§ 627.44 Biosafety level 2.

(a) *Laboratories.* Each laboratory used for this level of hazard will have, in addition to the requirements stated in § 627.43(a), the following:

- (1) An autoclave available.
 - (2) Containment equipment necessary for the operations unless the safety officer approves the use of a compensatory level of personal protective equipment.
 - (3) An eyewash available near the laboratory.
- (b) *Animal facilities.* In addition to the requirements stated in § 627.43(b), facilities will include—
- (1) A sink for handwashing in each room where animals are housed.

(2) An autoclave available in the building.

(3) Appropriate containment equipment unless the safety officer approves the use of a compensatory level of personal protective equipment.

§ 627.45 Biosafety level 3.

(a) *General requirements.* Each suite used as a laboratory or in which infected animals are housed will, as a minimum, have the following features:

- (1) Physical separation from areas which are open to unrestricted traffic.
- (2) All entrances to each laboratory or animal room from the nonlaboratory access corridors will be through two sets of doors. A change room or airlock may be incorporated between the doors.
- (3) The interior surfaces of walls, floors, and ceilings will be water resistant so that they may be easily cleaned.
- (4) All penetrations into the walls, floors, and ceilings should be sealed or capable of being sealed to facilitate decontamination.
- (5) A foot, elbow, or automatically operated sink will be located near the exit door to each laboratory or animal room.
- (6) An autoclave should be in each laboratory or animal room and will be available to the facility.
- (7) A ventilation system that will—
 - (i) Create directional airflow that draws air into the laboratory through the entry areas.

- (ii) Not recirculate laboratory air.
 - (iii) Discharge the exhaust air from the laboratory to the outside and disperse the exhaust air away from occupied areas and air intakes.

- (iv) Exhaust the HEPA-filtered air from Class I or II biological safety cabinets or other primary containment devices directly to the exterior of the laboratory or through the building exhaust system. Exhaust air from the cabinets may be recirculated within the laboratory if the cabinet is tested and certified at least every 12 months. If the filtered cabinet exhaust is discharged through the building exhaust system, it will be connected to this system in a manner (for example, thimble unit connection) that avoids any interference with the air balance of the

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cabinets or the building exhaust system.

(8) All windows to the facility will be sealed shut.

(9) Appropriate biological safety cabinets or other specialized containment equipment will be provided.

(10) Any vacuum line in the facility will have a HEPA filter and liquid disinfectant trap.

(11) Bench tops that are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

(12) Furnishings that are sturdy and spaces between benches, cabinets, and equipment that are accessible for cleaning.

(13) An eyewash available in or near the laboratory.

(b) *Additional animal facility requirements.* In addition to the requirements given in §627.44(b) and 627.45(a), all doors to the animal rooms will open inward and be self-closing.

§ 627.46 Biosafety level 4.

The engineering controls within the facility must provide absolute biological containment. All procedures with etiologic agents requiring this biosafety level of facilities, equipment, and procedures must be conducted either in Class III biological safety cabinets, or in a facility that is designed for the use of a personal positive pressure suit as described in §627.46(b) in conjunction with Class I or II biological safety cabinets.

(a) *General requirements.* The facility will have the following features:

(1) A separate building or a clearly demarcated and isolated area within a building which incorporates positive personnel control for access.

(2) All entrances from access corridors incorporate an inner and outer change room.

(3) Inner and outer change rooms separated by a shower facility.

(4) A double-doored autoclave, fumigation chamber, or ventilated airlock for passage of all items which do not enter the facility through the change room.

(5) Interior surfaces of walls, floors, and ceilings resistant to water and chemicals to facilitate cleaning and disinfecting.

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(6) Walls, floors, and ceilings of the facility constructed to form a sealed internal shell which facilitates fumigation and is animal and insect proof.

(7) All penetrations into the walls, floors, and ceilings sealed.

(8) All liquid drains in the facility connected directly to a liquid waste decontamination system.

(i) Holding tanks collecting waste from sinks, biological safety cabinets, floors, and autoclave chambers provide decontamination by heat treatment.

(ii) Holding tanks collecting waste from shower rooms and toilets provide decontamination by heat or chemical disinfectant methods.

(9) Sewer and other ventilation vents contain in-line HEPA filters.

(10) Internal facility appurtenances (for example, light fixtures, air ducts, and utility pipes) arranged to minimize the horizontal surface area on which dust can settle.

(11) A foot, elbow, or automatically operated handwashing sink located near the exit door to each laboratory or animal room.

(12) Self-closing and lockable access doors.

(13) A ventilation system that—

(i) Is dedicated to the facility and provides fresh air meeting American Society of Heating, Refrigerating, and Air Condition Engineers, Inc. (ASHRAE) Standard 62.

(ii) Maintains a negative pressure differential and assures flow inward from areas outside of the facility toward areas of highest potential risk.

(iii) Has manometers or magnehelic gauges to provide, sense, and display pressure differentials between adjacent areas maintained at different pressure levels. An alarm will sound when the pressures fall below acceptable levels.

(iv) Has the air supply and exhaust interlocked to ensure that exhaust failure or reduction will not allow the air pressure in the area to become positive to the adjacent areas.

(v) Does not recirculate exhaust air.

(vi) Is HEPA-filtered and discharged to the outside, dispersing the exhaust air away from occupied areas and air intakes.

(vii) Has the HEPA filters on the exhaust located as near to the rooms as is practicable.

(viii) Has the filter chambers designed to allow in-place decontamination before the filters are removed and to facilitate certification testing.

(ix) Contains prefilters and HEPA filters in the air supply system to protect the supply air system should air pressures become unbalanced.

(x) Exhausts the HEPA-filtered air from Class I or II biological safety cabinets directly into the laboratory or to the exterior of the building. If the HEPA-filtered exhaust from these cabinets is recirculated, the cabinets are tested and certified every 6 months. If the filtered cabinet exhaust is discharged through the building exhaust system, it will be connected to this system in a manner (for example, thimble unit connection) that avoids any interference with the air balance of the cabinets or the building exhaust system.

(xi) Passes the treated exhaust air from Class III biological safety cabinets through two sets of HEPA filters in series to the exterior of the facility through the laboratory exhaust air system.

(14) Windows (if present) sealed shut and breakage resistant.

(15) Has a double-doored autoclave for decontaminating materials passing out of the facility. The autoclave door that opens to the area external to the facility is sealed to the outer wall and automatically controlled so that it can only be opened after the autoclave sterilization cycle has been completed.

(16) Has a pass-through dunk tank, fumigation chamber, or an equivalent decontamination method for materials and equipment that cannot be autoclaved.

(17) Has central vacuum systems (if present) that—

(i) Do not serve areas outside the facility.

(ii) Have an in-line HEPA filter placed as near as practicable to each use point or service cock.

(iii) Have filters designed to allow in-place decontamination and replacement.

(18) Liquid and gas services to the facility provided with protective devices that prevent backflow.

(b) *Additional requirements for personal positive pressure suit areas.* If personal

positive pressure suits are worn in lieu of using Class III biological safety cabinets for containment, a special suit area will be provided. The suit area will provide the following, in addition to the requirements stated in § 627.46(a):

(1) An exhaust system dedicated to that area that provides filtration by two sets of HEPA filters installed in series. This system will be backed up by a duplicate filtration unit, exhaust fan, and an automatically starting emergency power source. The ventilation system will maintain the suit area under negative pressure relative to the surrounding areas.

(2) An entry area consisting of an airlock fitted with airtight doors.

(3) A chemical shower to decontaminate the surface of the personal positive pressure suit upon exit.

(4) An air supply and distribution system to support the life support system of the personal positive pressure suits.

(5) Emergency lighting and communications systems.

(6) Sealed penetrations into the internal shell of the area.

(7) A double-doored autoclave to decontaminate waste materials to be removed from the suit area.

(c) *Additional laboratory requirements.* In addition to those given in § 627.45, if water fountains are provided, they will be foot operated and located in the facility corridors outside the laboratory.

(d) *Additional animal facility requirements.* In addition to those requirements given in § 627.45, all animal facility external doors will be self-locking.

§ 627.47 Large-scale facilities.

The following requirements apply to facilities in which an individual culture of viable etiologic agents exceed 10 liters:

(a) *BL-1 LS.* In addition to the laboratory requirements stated § 627.43(a), the exhaust gases removed from a closed system or other primary containment equipment shall be treated by filters which have efficiencies equivalent to HEPA filters or by other equivalent procedures (for example, incineration) to minimize the release of viable organisms.

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(b) *BL-2 LS*. In addition to the requirements stated in §§ 627.44(a) and 627.47(a), these facilities will have—

(1) Rotating seals and other mechanical devices directly associated with a closed system used to contain viable organisms shall be designed to prevent leakage or shall be fully enclosed in ventilated housings that are exhausted through filters which have efficiencies equivalent to HEPA filters or through equivalent treatment devices.

(2) A closed system used to propagate and grow viable organisms shall include monitoring or sensing devices that monitor the integrity of containment during operations.

(3) Closed systems used for the propagation and growth of viable organisms shall be tested operationally for integrity of the containment features. The containment will be rechecked following modification or replacement of essential containment features. Procedures and methods used in the testing shall be appropriate for the equipment design and for recovery and demonstration of the test organism. Records of tests and results shall be maintained on file.

(c) *BL-3 LS*. The requirements stated in §§ 627.45 and 627.57(b) apply, and all closed systems and other primary containment equipment used in handling cultures of viable organisms shall be located within a controlled area which meets the requirements of a BL-3 facility plus the following requirements:

(1) All utilities and service or process piping or wiring entering the controlled area shall be protected against contamination.

(2) A shower facility shall be provided. This facility shall be located near the controlled area.

(3) The controlled area shall be designed to preclude release of culture fluids outside in the event of an accidental spill or release from the closed systems or other primary containment equipment.

(4) The controlled area shall have a ventilation system capable of controlling air movement. The movement of air shall be from areas of lower contamination potential to areas of higher contamination potential. If the ventilation system provides positive pressure supply air, the system shall oper-

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ate so as to prevent the reversal of air movement or shall be equipped with an alarm that would be actuated if reversal in the direction of air movement were to occur. The exhaust air from the controlled area shall not be recirculated to other areas of the facility. The exhaust air from the controlled area may be discharged to the outdoors after filtration or other means of effectively reducing an accidental aerosol burden, and dispersed clear of occupied buildings and air intakes.

§ 627.48 Toxins.

General requirements for all facilities in which toxins are used are as follows. Such facilities will—

(a) Have a ventilation system that provides three to six air changes per hour, and that provides a directional airflow inward relative to the access halls.

(b) Have a sink for handwashing.

(c) Have an eyewash available.

(d) Have bench tops that are impervious to water and resistant to acids, alkalis, organic solvents, and moderate heat.

(e) Have furniture, furnishings, and surfaces that are sturdy and designed to be easily cleaned.

(f) Be arranged so that items are accessible for cleaning.

(g) Have a quick-drench shower available within the facility.

(h) A fume hood, biological safety cabinet, glove box, or equivalent engineering control equipped with HEPA filters and with charcoal filters if volatile materials are being used.

Subpart H—Engineering Controls

§ 627.49 Introduction.

As required by the OSHA and recommended by the American Industrial Hygiene Association (AIHA) and the CDC, engineering controls and proper microbiological techniques are the primary means of protecting personnel who work with potentially hazardous biological materials. In situations of potentially higher hazard, these engineering controls are supplemented by personal protective clothing and equipment. Thus, the engineering controls discussed in this chapter will be the

primary means of personnel and environmental protection when working with etiologic agents. Because of the importance of these engineering controls, this chapter contains not only requirements for the engineering and construction of these controls, but also requirements for their certification and continuous satisfactory performance. These will be described for each engineering control.

§ 627.50 Class I biological safety cabinet.

(a) *Description.* The Class I biological safety cabinet (figure H-I in appendix F to this part) is a ventilated cabinet for personnel protection only. The cabinet provides an uncirculated inward flow of air away from the operator. The exhaust is passed through a HEPA filter. It may be discharged into the laboratory or vented out of the laboratory and dispersed away from occupied spaces or air intakes. When the exhaust is recirculated in a BL-2 or BL-3 facility, the cabinet must be tested and certified annually. In a BL-4 facility, if the exhaust is recirculated, the cabinet must be tested and certified semiannually.

(b) *Uses.* These cabinets are used if personnel protection against the microorganisms is required; for modest quantities of volatile, toxic, or radioactive chemicals (in concentrations and quantities associated with biological systems) if vented to the outside; and when sterility is not required. They are commonly used for housing tabletop centrifuges, in the necropsy of small animals, and for changing animal bedding.

(c) *Prohibitions.* This class of cabinet is not to be used when sterility must be maintained. In addition, volatile, toxic, or radioactive materials can not be used in this class of cabinet when the exhaust air is not exhausted to the exterior.

(d) *Certifications and requirements.* (1) The inward air velocity on these cabinets will be an average of 100 plus or minus 20 linear feet per minute (lfpm). Each cabinet must be certified before use and semiannually thereafter by a face velocity test. Additionally, smoke tests will be performed annually to verify containment.

(2) The exhaust system will have a HEPA filter, which will be tested initially upon installation, after repair or replacement, and every 2 years thereafter (except when required more often). Filters will be certified to be 99.97 percent effective in capturing particulate matter by a leakage test using mineral oil or other appropriate aerosol dispersed as 0.3 micron droplets.

§ 627.51 Class II biological safety cabinet.

All Class II biological safety cabinets (figure H-II in appendix F to this part) are ventilated cabinets for personnel and product protection, having an open front with inward air flow for personnel protection.

(a) *Operating standards.* (1) All of these cabinets must conform and be certified to meet National Sanitation Foundation (NSF) Standard No. 49 revised, June 1987, for the applicable type of cabinet.

(2) After installation and before use, and annually thereafter, the cabinets will be tested in accordance with NSF Standard No. 49 (latest revision June 1987) as follows:

- (i) Primary (required) tests—
 - (A) Velocity profile test.
 - (B) Work access opening airflow (face velocity) test.
 - (C) HEPA filter leak test.
 - (D) Cabinet integrity test (soap bubble test) for cabinets with positive pressure internal plenums.
- (ii) Secondary (optional) tests—
 - (A) Vibration test.
 - (B) Electrical leakage and ground circuit resistance tests.
 - (C) Noise level test.
 - (D) Lighting intensity test.
 - (E) UV light intensity test.

(3) After repairs or alterations to the cabinetry or ventilation system that affect the cabinet, the tests listed in § 627.51(a)(2) will be performed for the relevant parameters.

(4) The work access opening airflow (face velocity) test, as specified in NSF Standard No. 49 (latest revision, June 1987), will be performed to check that the cabinet is within specifications on an annual basis for BL-1 and BL-2 and toxin use. This test will be performed semiannually on cabinets used for BL-

3 and BL-4 as well as for work with dry forms of toxins.

(5) When the exhaust is recirculated in a BL-4 facility, the cabinet must be tested and certified semiannually.

(b) *Class IIA biological safety cabinets—*

(1) *Description.* A Class IIA biological safety cabinet is one in which typically 70 percent of the air is recirculated within the cabinet and the exhaust passes through a HEPA filter before discharge. The exhaust may be exhausted into the room and positive-pressure contaminated ducts and plenums within the cabinet are allowed. Type A cabinets shall have a minimum calculated face velocity of 75 feet per minute (fpm).

(2) *Uses.* These cabinets are for working with low-to-moderate risk biological samples and for protecting personnel against biological material while providing a sterile atmosphere in which to handle the material.

(3) *Prohibitions.* Materials that are toxic or volatile must not be used in these cabinets.

(c) *Class IIB₁ biological safety cabinets—*(1) *Description.* A Class IIB₁ biological safety cabinet is one that maintains a minimum average inflow of air of 100 plus or minus 20 lfpm and in which typically 30 percent of the air is recirculated. All recirculated and exhausted air passes through two HEPA filters in series. All contaminated internal ducts and plenums are under negative pressure. Type B cabinets shall have a minimum calculated face velocity of 100 fpm.

(2) *Uses.* When ultra-sterility is needed, these are the cabinets of choice. The double filtration achieves a cleaner atmosphere. Minute quantities of volatile, toxic, or volatile radioactive materials coincidental to use in biological systems may also be used in these cabinets.

(3) *Prohibitions.* More than minute quantities of toxic, volatile, or radioactive materials must not be used in these cabinets.

(4) *Additional certifications or requirements.* None.

(d) *Class IIB₂ biological safety cabinets—*(1) *Description.* A Class IIB₂ biological safety cabinet is one that maintains a minimum average of 100 plus or minus 20 lfpm inward flow and in which

all air is exhausted directly from the cabinet through a HEPA filter without recirculation within the cabinet. All contaminated ducts and plenums are under negative pressure. Type B cabinets shall have a minimum calculated face velocity of 100 fpm.

(2) *Uses.* These cabinets are recommended when small quantities of volatile, flammable, or toxic chemicals must be used coincidentally with items requiring sterility.

(3) *Prohibitions.* While these cabinets do offer the greatest degree of safety for volatile, toxic, and flammable chemical handling in a sterile environment, they are not to be used in place of a fume hood to prepare stock solutions of hazardous chemicals.

(e) *Class IIB₃ biological safety cabinets—*(1) *Description.* A Class IIB₃ biological safety cabinet is one that meets all of the requirements of a Class IIB₂ biological safety cabinet except that it recirculates most (typically 70 percent) of the air inside the cabinet. Type B cabinets shall have a minimum calculated face velocity of 100 fpm.

(2) *Uses.* Minute amounts of nonflammable chemicals can be used coincidentally with low-to-moderate risk biological agents.

(3) *Prohibitions.* Flammable materials and more than minute amounts of toxic, radioactive, or volatile chemicals must not be used in these cabinets.

(4) *Additional certifications or requirements.* None.

§ 627.52 Class III biological safety cabinet.

(a) *Description.* These cabinets (figure H-III in appendix F to this part) are totally enclosed, ventilated cabinets of gas-tight construction. Operations are conducted through attached rubber gloves. The supply of air is drawn into the cabinet through HEPA filters. The exhaust air is treated by double HEPA filtration, or by HEPA filtration followed by incineration, and is not allowed to recirculate within the room.

(b) *Uses.* These cabinets provide the ultimate protection for personnel. They are suitable for low, moderate, and high-risk etiologic agents.

(c) *Prohibitions.* More than minute amounts of flammables must not be used in these cabinets.

(d) *Certifications and requirements.* (1) These cabinets will have a manometer or magnehelic gauge that indicates the negative pressure that is maintained inside the cabinet. The pressure inside the cabinet should be a minimum of 0.5 inches water gauge negative to the surrounding room.

(2) These cabinets will be pressure tested by the soap bubble or halogen leak test as prescribed in NSF Standard No. 49, appendix B1 (latest revision, June 1987), and certified, when the HEPA filter units are serviced.

§ 627.53 Fume hood.

Fume hoods in which etiologic agents are handled must use proven technologies to provide optimal containment. Fume hood placement, design, and capture testing requirements for use in designing new laboratories can be found in the latest edition of Industrial Ventilation, A Manual of Recommended Practices, published by the American Conference of Governmental Industrial Hygienists.

(a) *Description.* Fume hoods are common chemical laboratory furnishings designed to capture fumes from chemicals that are used within them. Air is drawn through the opening and vented to the exterior without recirculation.

(b) *Uses.* Fume hoods provide excellent containment for handling hazardous chemicals.

(c) *Prohibitions.* Moderate risk biologicals and open containers of dry forms of toxins must not be used in a fume hood without HEPA filtration. Fume hoods should never be used when sterility is required.

(d) *Certification and requirements.* (1) Inward air flow will be an average of 100 plus or minus 20 lfpm as measured at the face of the fume hood. Proper function of laboratory hoods is not only a function of face velocity. An evaluation of the total operating environment is necessary.

(2) When filters are required, they will be certified by the mineral oil droplet (HEPA) or Freon (Charcoal) leak test as appropriate. Leakage through the filters will be less than 0.05 percent for Freon and 0.03 percent for oil droplets when initially installed.

(3) Fume hoods will be provided with indicator devices to give a warning

should the ventilation system fail or if the hood face velocity falls below an average of 80 lfpm

(4) Hood air flow will be certified when installed, when maintenance is performed on the ventilation system, and semiannually thereafter.

§ 627.54 Glove box.

(a) *Description.* A glove box is an enclosure that provides a positive barrier from liquids, solids, and chemical vapors. A glove box has viewing ports and glove ports for access. The box maintains personnel protection through solid barriers and maintenance of a negative pressure relative to its surroundings.

(b) *Uses.* Glove boxes are used when extreme containment is needed for highly toxic chemicals, especially for dry chemicals that can be swept out of containers by the airflow in hoods.

(c) *Prohibitions.* Unventilated boxes must not be used with volatile flammable materials and should be used with volatile toxic materials unless dilution ventilation is provided.

(d) *Additional certifications and requirements.* (1) The glove box will be maintained at a pressure of at least 0.25 inches water gauge less than its surroundings.

(2) The pressure differential will be indicated by a manometer or magnehelic gauge. Indicator devices will display a loss of pressure below 0.25 inches water gauge.

(3) Gloves will be changed at appropriate intervals (dependent on the box contents) to ensure they provide the protection needed.

(4) Inlets that provide dilution air will be protected by HEPA filters.

§ 627.55 Ventilated balance enclosures.

(a) *Description.* A ventilated balance enclosure is a box that surrounds a balance and has a small open area for access and handling material in the front. Air is exhausted out the rear of the enclosure.

(b) *Uses.* A ventilated balance enclosure is used when containment of a balance is required to weigh hazardous materials that have a low vapor pressure (such as toxins). These enclosures are also used when it is best to use the balance in other than a fume hood (due

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to the turbulence and vibration) and when biological safety cabinets or glove boxes are inappropriate or unavailable. Dry forms of toxins may be weighed in these enclosures.

(c) *Prohibitions.* Very volatile or highly toxic volatile materials must not be handled in ventilated balance enclosures unless they are placed in closed containers in a properly functioning fume hood before being transferred to the balance enclosure.

(d) *Additional certifications or requirements.* (1) The flow through the openings in the enclosure will be at least 60 lfpm and must average between 60 and 80 lfpm.

(2) Containment will be certified prior to first use and annually thereafter by smoke tubes.

(3) The air flow will be certified initially and semiannually by averaging readings taken from the face of the opening.

§ 627.56 Ventilated cage enclosures.

There are a number of cage-ventilated enclosures in which infected animals may be housed at levels corresponding to the various classes of biological safety cabinets. A brief description of four different types of animal ventilated cages is given below. This is not a complete description of all the different animal ventilated cages available. The proper functioning of these will be tested initially, upon each connection to exhaust sources, and at least annually. The inward flow rates on the partial containment systems and pressure checks on the total containment cages will be performed. Prior to selecting such equipment, an evaluation of the function and the equipment should be made, and the methods for testing and decontamination should be analyzed and documented.

(a) *Filter-top cages.* Small laboratory animal polystyrene or polycarbonate cage bottoms are fitted with a dome shaped glass fiber or polyester filter cage cover. The dome shaped filters help reduce the dissemination of aerosols, and the spread of infectious agents. Adequate ventilation around cages fitted with a dome shaped filter is essential since they may contain elevated ammonia and carbon dioxide lev-

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els, and high temperature and humidity. Ventilation recommendations in the NIH publication 86-23, 1985 "Guide for the Care and Use of Laboratory Animals" will be followed.

(b) *Forced ventilation cages.* This is a small HEPA-filtered cage connected to a centralized exhaust system. A minimum airflow of 0.03 m³/min per cage is required. Ventilation rates may vary with the size of the cage, and the number and type of animals being housed.

(c) *Cubicle-type isolation cage.* This is a partial containment unit which holds several animal cages. This unit is a negative pressure HEPA-filtered stainless steel cage. A minimum airflow of 0.3 m³/min per cage is required for a 0.24 m³ unit. Ventilation rates may vary with the size of the cage and the number and type of animals being housed.

(d) *Total containment cage.* This unit is a negative pressure or positive pressure HEPA-filtered stainless steel cage which has the filters incorporated into the design. It is halogen gas-leak tight and can be considered a Class III biological safety cabinet. A minimum airflow of 0.3 m³/min per cage is required for a 0.24 m³ unit. Ventilation rates may vary with the size of the cage, and the number and type of animals being housed.

§ 627.57 Ventilated cage areas.

Ventilated cage areas within a room that are solid-walled and bottomed areas for containing multiple cages housing infected animals. The containment for these areas is equivalent to the Class I biological safety cabinet. For testing purposes, they will be treated the same as a Class I biological safety cabinet.

APPENDIX A TO PART 627—REFERENCES

Publications referenced in this part can be obtained from the National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

REQUIRED PUBLICATIONS

AR 11-34

Army Respiratory Protection Program. (Cited in §§ 627.31(h)(2) and 627.31(h)(4).)

Department of the Army, DoD

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AR 40-5

Preventive Medicine. (Cited in §627.8.)

AR 40-10

Health Hazard Assessment Program in Support of the Army Materiel Acquisition Decision Process. (Cited in §627.7(a)(8).)

AR 40-12

Medical and Agricultural Foreign and Domestic Quarantine Regulations for Vessels, Aircraft, and Other Transports of the Armed Forces. (Cited in §627.40(a).)

AR 40-66

Medical Records and Quality Assurance Administration. (Cited in §627.9.)

AR 40-400

Patient Administration. (Cited in §627.8(e).)

AR 70-65

Management of Controlled Substances, Ethyl Alcohol, and Hazardous Biological Substances in Army Research, Development, Test, and Evaluation Facilities. (Cited in §§627.36(a)(6) and 627.40(b).)

AR 385-10

Army Safety Program. (Cited in §§627.6 and 627.31(h)(4).)

AR 385-69

Biological Defense Safety Program. (Cited in §§627.6, 627.7(a), 627.7(a)(8), 627.7(d), 627.11(c), 627.18(a) and 627.18(f)(1).)

AR 740-32

Responsibilities for Technical Escort of Dangerous Materials. (Cited in §627.39.)

RELATED PUBLICATIONS

A related publication is merely a source of additional information. The user does not have to read it to understand this pamphlet.

AR 40-14

Control and Recording Procedures for Exposure to Ionizing Radiation and Radioactive Materials.

ANSI Z86.1-1973

Breathing Air

ASHRAE Standard 62

Bacterial Toxins: A Table of Lethal Amounts, Gill, D.M., Microbiological Reviews, Volume 46, Number 1; March 1982, pages 86-94.

Biohazards Reference Manual

American Industrial Hygiene Association, 1985, Clinical Medicine Branch, Division of Host Factors, Center for Infectious Disease, Centers for Disease Control, Atlanta, GA 30333, telephone: (404) 639-3356, Compressed Gas Association Pamphlet G-7.1

Grade D Breathing Air

Dangerous Goods Regulations, International Air Transport Association (IATA), Publications Section, 2000 Peel Street, Montreal, Quebec, Canada H3A 2R4, Tel (514) 844-6311. DHEW Pub. No. (NIH) 76-1165

Biological Safety Manual for Research Involving Oncogenic Viruses, Executive Order 12196

Safety and Health Programs for Federal Employees, 26 February 1980

Guide for Adult Immunizations, Published by the American College of Physicians, Guide for Transportation of Hazardous Materials, Vol. 4(1) February 10, 1975. (Copies may be obtained from the Office of Research Grants Inquiries, NIH, Department of Health and Human Services, 5333 Westbard Avenue, Bethesda, MD 20205.)

Guidelines for Laboratory Design, Health and Safety Considerations, L. DiBerardinis, et al., John Wiley and Sons, 1987

Guidelines for Prevention of Herpesvirus Simiae (B Virus) Infection in Monkey Handlers, Kaplan, J.E., et al., Mortality and Morbidity Weekly Report, Volume 36, Number 41; October 23, 1987, pages 680-689.

HHS Publication No. (NIH) 88-8395, Biosafety in Microbiological and Biomedical Laboratories

Industrial Ventilation, A Manual of Recommended Practice Published by the American Conference of Governmental Industrial Hygienists.

Laboratory Safety for Arboviruses and Certain Other Viruses of Vertebrates, The American Journal of Tropical Medicine and Hygiene, 29:1359-1381, 1980.

NIH Guidelines for Research involving Recombinant DNA Molecules (51 FR 16958, May 7, 1986).

NIH publication 86-23, Guide for the Care and Use of Laboratory Animals

NSF Standard #49, National Sanitation Foundation Standard Number 49, Class II (Laminar Flow) Biohazard Cabinetry

Packaging and Shipping of Biological Materials at ATCC, The American Type Culture Collection (ATCC). (Copies may be obtained from the ATCC, 12301 Parklawn Drive, Rockville, MD 20852. Telephone (301) 881-2600.)

Postal Bulletin No. 21246, International Mail-Hazardous Materials

Procedures for the Domestic Handling and Transport of Diagnostic Specimens and Etiologic Agents, National Committee for Clinical Laboratory Standards (NCCLS), (H5-A2), Second edition. Vol. 5, No. 1. (Copies may be

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obtained from the NCCLS, 771 East Lancaster Avenue, Villanova, PA 19085.)

Restricted Articles Tariff 6-D, Air Transport Association

Technical Instructions for the Safe Transport of Dangerous Goods by Air, International Civil Aviation Organization (ICAO) Intereg Group, 5724 Pulaski Road, Chicago, IL 60646, Tel. (312) 478-0900.

The Centers for Disease Control, Office of Biosafety, 1600 Clifton Road NE., Atlanta, Georgia 30333. Telephone (404) 639-3883, or FTS: 236-3883.

9 CFR Parts 102 Through 104, 122

Animals and Animal products.

10 CFR Chapter 1

Nuclear Regulatory Commission.

21 CFR Parts 312, 600 Through 680

Food and drugs.

29 CFR Part 1910

Occupational Health and Safety Administration Safety and Health Standards.

39 CFR Part 111

Postal Service.

40 CFR Parts 1500 Through 1508

Protection of environment.

42 CFR Parts 71 and 72

Public Health Service Foreign Quarantine Regulations.

49 CFR Parts 172 and 173

The Department of Transportation.

APPENDIX B TO PART 627—RESOURCE LIST FOR IMMUNOPROPHYLAXIS OF PERSONNEL AT RISK

B-1. RECOMMENDATIONS FOR IMMUNOPROPHYLAXIS OF PERSONNEL AT RISK

Description of disease	Product	Recommended for use in	Source of product
Anthrax	Inactivated vaccine	Personnel working regularly with cultures, diagnostic materials, or infected animals.	USAMRIID. ¹
Botulism	Pentavalent toxoid (A,B,C,D,E) (IND). ²	Personnel working regularly with cultures or toxin	CDC. ³
Cholera	Inactivated vaccine	Personnel working regularly with large volumes or high concentrations of infectious materials.	Commercially available.
Diphtheria Tetanus (Adult).	Combined toxoid	All laboratory and animal care personnel irrespective of agents handled.	Commercially available.
Eastern equine encephalitis (EEE).	Inactivated vaccine (IND). ²	Personnel who work directly and regularly with EEE in the laboratory.	USAMRIID. ¹
Hepatitis A	Immune Serum Globulin [ISG (Human)].	Animal care personnel working directly with chimpanzees naturally or experimentally infected with Hepatitis A virus.	Commercially available.
Hepatitis B	Serum-derived or recombinant vaccine.	Personnel working regularly with human blood and blood components.	Commercially available.
Influenza	Inactivated vaccine	(Vaccines prepared from earlier isolated strains may be of little value in personnel working with recent isolates from humans or animals).	Commercially available.
Japanese Encephalitis.	Inactivated vaccine (IND). ²	Personnel who work directly and regularly with JE virus in the laboratory.	CDC. ³
Measles	Live attenuated virus vaccine.	Measles-susceptible personnel working with the agent or potentially infectious clinical materials.	Commercially available.
Meningococcal Meningitis.	Purified polysaccharide vaccine.	Personnel working regularly with large volumes or high concentrations of infectious materials (does not protect against infection with group B meningococcus).	Commercially available.
Plague	Inactivated vaccine	Personnel working regularly with cultures of <i>Yersinia pestis</i> or infected rodents or fleas.	Commercially available.
Poliomyelitis	Inactivated (IPV) and live attenuated (OPV) vaccines.	Polio-susceptible personnel working with the virus or entering laboratories or animal rooms where the virus is in use.	Commercially available.
Pox viruses (Vaccinia, Cowpox, or Monkey Pox viruses).	Live (lyophilized) vaccinia virus.	Personnel working with orthopox viruses transmissible to humans, with animals infected with these agents, and persons entering areas where these viruses are in use.	CDC. ³
Q Fever (Phase II) vaccine.	Inactivated (IND). ² ...	Personnel who have no demonstrable sensitivity to Q fever antigen and who are at high risk of exposure to infectious materials or animals.	USAMRIID. ¹

B-1. RECOMMENDATIONS FOR IMMUNOPROPHYLAXIS OF PERSONNEL AT RISK—Continued

Description of disease	Product	Recommended for use in	Source of product
Rabies	Human diploid line cell inactivated vaccine.	Personnel working with all strains of rabies virus, with infected animals, or persons entering areas where these activities are conducted.	Commercially available.
Rift Valley Fever	Inactivated virus vaccine (IND) ² .	All laboratory and animal care personnel working with the agent or infected animals and all personnel entering laboratories or animal rooms when the agent is in use.	USAMRIID. ¹
Rubella	Live attenuated virus vaccine.	Rubella-susceptible personnel, especially women, working with "wild" strains or in areas where these viruses are in use.	Commercially available.
Tuberculosis	Live, attenuated (BCG) bacterial vaccine.	BCG vaccine ordinarily is not used in laboratory personnel in the U.S.	Commercially available.
Tularemia	Live attenuated bacterial vaccine (IND) ² .	Personnel working regularly with cultures or infected animals or persons entering areas where the agent of infected animals are in use.	USAMRIID. ¹
Typhoid	Inactivated vaccine	Personnel who have no demonstrated sensitivity to the vaccine and who work regularly with cultures.	Commercially available.
Venezuelan equine (VEE) encephalitis.	Live attenuated (TC83) viral vaccine (IND) ² .	Personnel working with VEE and the Equine Cabassou, Everglades, Mucambo, and Tonate viruses, or who enter areas where these viruses are in use.	USAMRIID. ¹
Western equine encephalitis (WEE).	Inactivated vaccine (IND) ² with WEE virus.	Personnel who work directly and regularly in the laboratory	USAMRIID. ¹
Yellow Fever	Live attenuated (17D) virus vaccine.	Personnel working with virulent and avirulent strains of Yellow Fever virus.	Commercially available.

¹ For information, contact: United States Army Medical Materiel Development Activity, Fort Detrick, Frederick, MD 21701, telephone: (301) 663-7661.
² Investigational New Drug (IND).
³ Clinical Medicine Branch, Division of Host Factors, Center for Infectious Disease, Centers for Disease Control, Atlanta, GA 30333, telephone: (404) 639-3356.
 Source: Adapted from recommendations of the PHS Immunization Practices Advisory Committee and Biosafety in Microbiological and Biomedical Laboratories.

APPENDIX C TO PART 627—LABORATORY SAFETY INSPECTION CHECKLIST

C-1. The checklist that follows is not an exhaustive list of the items to consider when inspecting facilities where etiologic agents are used. It does provide some basic guidelines to remind safety and nonsafety professionals of the things that need to be considered in the laboratories they manage. The checklist should be used as follows: All area should be inspected using the general list in C-2. Certain items are optional, such as radiation safety. If no radioactive material is present in the room, then this would not be applicable. For BL-1 facilities the list in C-2 is adequate, while BL-2, BL-3, and BL-4 facilities must use the list in C-2 together with the appropriate list in C-3 to C-5.

C-2. Basic checklist

(a) Housekeeping

- (1) Is the room free of clutter?
- (2) Are all aisles from the work areas to the available exits maintained clear of obstructions?
- (3) Are all safety equipment items unobstructed and ready for use?
- (4) Is the room clean?

(b) Fire safety

- (1) Is the fire extinguisher hung in its proper place, ready for use, and unobstructed?
- (2) Are there excess flammables located outside National Fire Protection Association (NFPA) approved cabinetry?
- (3) Are all Class IA flammables that are in breakable containers in pint or smaller containers?
- (4) Are all Class IB flammables that are in breakable containers in liter or smaller containers?
- (c) Chemical safety
 - (1) Are the chemicals stored with compatible materials?
 - (2) Have the chemical fume hoods been certified in the last 6 months?
 - (3) Are the eyewash and deluge shower unobstructed and ready for use?
 - (4) Is the eyewash and deluge shower tested regularly to document proper operation?
 - (5) Is the organic waste container maintained in a closed position?
 - (6) Are all reagents and solutions properly labeled?
 - (7) Is a spill kit within a reasonable distance from the work areas?
 - (8) Is appropriate protective clothing available for the chemical hazards present?
 - (9) Is there a written hazard communication program?

(10) Have the personnel in the laboratory been trained in the provisions and principles of the hazard communication program?

(11) Are MSDSs located where they are available to the laboratory workers?

(12) Is there a written chemical hygiene plan?

(d) Radiation safety

(1) Are the radioactive materials stored double-contained?

(2) Is the containment for the radiation waste container adequate to preclude the spread of radiation?

(3) Are all containers appropriately labeled with radiation labels?

(4) Are all entrances to the room appropriately labeled?

(e) Electrical safety

(1) Are excess extension cords being utilized?

(2) Are there any frayed cords in the room?

(3) Are there any cords on the floor across normal traffic patterns in the room?

(f) General laboratory safety

(1) Are sharps discarded and destroyed in a safe manner?

(2) Are work surfaces decontaminated daily and after a spill?

(3) Is the appropriate attire worn by everyone in the room?

(4) Is there evidence that personnel eat, drink, smoke, or store food, drinks, or tobacco in the room?

(5) Was mouth pipetting observed?

(6) Are all gas cylinders secured and are all cylinders not in use capped?

(7) Are cylinders of oxidizers stored at least 20 feet from cylinders of flammable gases in the same room?

(8) Are the contents of the cylinders clearly labeled?

(9) Are the cylinders transported on appropriate dollies or hand trucks?

(10) Is there a written respiratory protection program where respirators are used?

(g) Etiologic agents

(1) Are all containers of etiologic agents appropriately labeled?

(i) Are freezers, refrigerators, and similar storage units labeled with the biohazard warning sign?

(ii) Are the storage and shipping containers adequate and properly labeled?

(2) Have all personnel been adequately trained in general microbiological techniques?

(3) Are laboratory doors kept closed when experiments are in progress?

(4) Are all operations conducted over plastic-backed absorbent paper or spill trays?

C-3. Biosafety level 2 supplemental checklist

(a) Are all floor drains filled with water or suitable disinfectant?

(b) Is the SOP for an etiologic agent spill signed by all personnel who work with etiologic agents in the room?

(c) If biological safety cabinets are used, have they been certified within the last year?

(d) Are the appropriate decontaminants available?

(e) Are all entrances to the laboratory posted with—

(1) The appropriate special provisions for entry?

(2) The universal biohazard symbol?

(3) The name and telephone number of the laboratory director or other responsible person?

(f) Is entry limited and restricted?

(g) Are gloves being worn when handling infected animals or infectious or toxic materials?

(h) Is eye and respiratory protection being worn in rooms where nonhuman primates are present?

(i) If materials are being transported off-site for decontamination, is the containment adequate?

C-4. Biosafety level 3 supplemental checklist

(a) Is laboratory clothing decontaminated before being sent to the laundry?

(b) Are all windows and penetrations through the walls and ceilings sealed?

(c) If biological safety cabinets are used, have they been certified within the last year?

(d) Are the appropriate decontaminants available?

(e) Are all entrances to the facility posted with—

(1) The appropriate special provisions for entry?

(2) The universal biohazard symbol?

(3) The name and telephone number of the laboratory director or other responsible person?

(f) Is entry limited and restricted?

(g) Are gloves being worn when handling infected animals or infectious or toxic materials?

(h) Is eye and respiratory protection being worn in rooms where nonhuman primates are present?

(i) Do the monitors indicate that the room is under negative pressure relative to all entrances?

(j) Are all vacuum lines protected with HEPA filters and liquid disinfectant traps?

(k) Is the autoclave being properly maintained and certified?

(l) Is the foot, elbow, or automatic handwash sink operating properly?

(m) Are all operations with etiologic agents being conducted inside biological safety cabinets or other approved engineering controls?

(n) Are all infected animals housed using appropriate primary containment systems?

(o) Do all personnel who enter rooms housing infected animals wear appropriate respiratory protection?

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(p) Do personnel who exit rooms having infected animals leave their protective clothing in the animal and laboratory rooms?

(q) If available, has the UV pass box output been certified within the last 3 months?

C-5. Biosafety level 4 supplemental inspection checklist

(a) Precautions for all areas.

(1) Are all penetrations through the walls and ceilings sealed?

(2) Are the appropriate decontaminants available and used properly?

(3) Are all entrances to the facility posted with—

(i) The appropriate special provisions for entry?

(ii) The universal biohazard symbol?

(iii) The name and telephone number of the laboratory director or other responsible person?

(4) Is access to the laboratory controlled strictly and documented?

(5) Do the monitors indicate that the room is under negative pressure relative to all entrances?

(6) Are all vacuum lines protected with HEPA filters and liquid disinfectant traps?

(7) Is the autoclave being properly maintained and certified?

(8) Is the foot, elbow, or automatic handwash sink operating properly?

(9) Do the self-closing doors to the facility operate properly?

(10) Do personnel completely exchange street clothing for laboratory clothing before entry and shower upon exiting?

(11) Is the dunk tank disinfectant fresh and appropriate for the agents in use?

(b) Suit areas.

(1) Are all operations with etiologic agents conducted in Class I or II biological safety cabinets?

(2) Do the procedures in place ensure that, as much as possible, the contamination remains inside the cabinets (such as ensuring that everything removed from within the cabinets, such as gloves being worn, instruments, glassware, or similar items, are decontaminated or properly packaged first)?

(3) Are the Class I or II cabinets in the facility certified every 6 months?

(4) Does the suit decontamination shower have adequate appropriate decontaminant available?

(5) Has the suit decontamination shower been used or tested in the last month?

(6) Is the ventilated suit air supply and emergency air supply adequate and working properly?

(7) Is the emergency alarm system working properly?

(8) Are all of the one-piece positive pressure suits available for use in serviceable condition?

(9) Are infected animals housed in appropriate primary containment systems?

(10) Is the static pressure in the suit area negative to all surrounding areas?

(c) Nonsuit areas.

(1) Are all operations with etiologic agents conducted inside Class III biological safety cabinets?

(2) Were the Class III biological safety cabinets certified before initiating the current operation?

(3) Are all infected animals housed in Class III cabinet containment caging systems?

APPENDIX D TO PART 627—PACKAGING AND LABELING REQUIREMENTS FOR SHIPMENT OF ETIOLOGIC AGENTS

D-1. Packaging and Labeling of Etiologic Agents, from HHS publication No. (NIH) 88-8395.

D-2. Guidelines for the Air Shipment of Diagnostic Specimens, from the Air Transport Association of America, Cargo Services Division, 1709 New York Ave., NW., Washington, DC 20006.

APPENDIX E TO PART 627—PERMITS FOR IMPORTATION AND SHIPMENT OF ETIOLOGIC AGENTS

E-1. Permit Application to Import or Transport Agents or Vectors of Human Disease. Department of Health, Education and Welfare, PHS, CDC, Office of Biosafety, Atlanta, Georgia 30333.

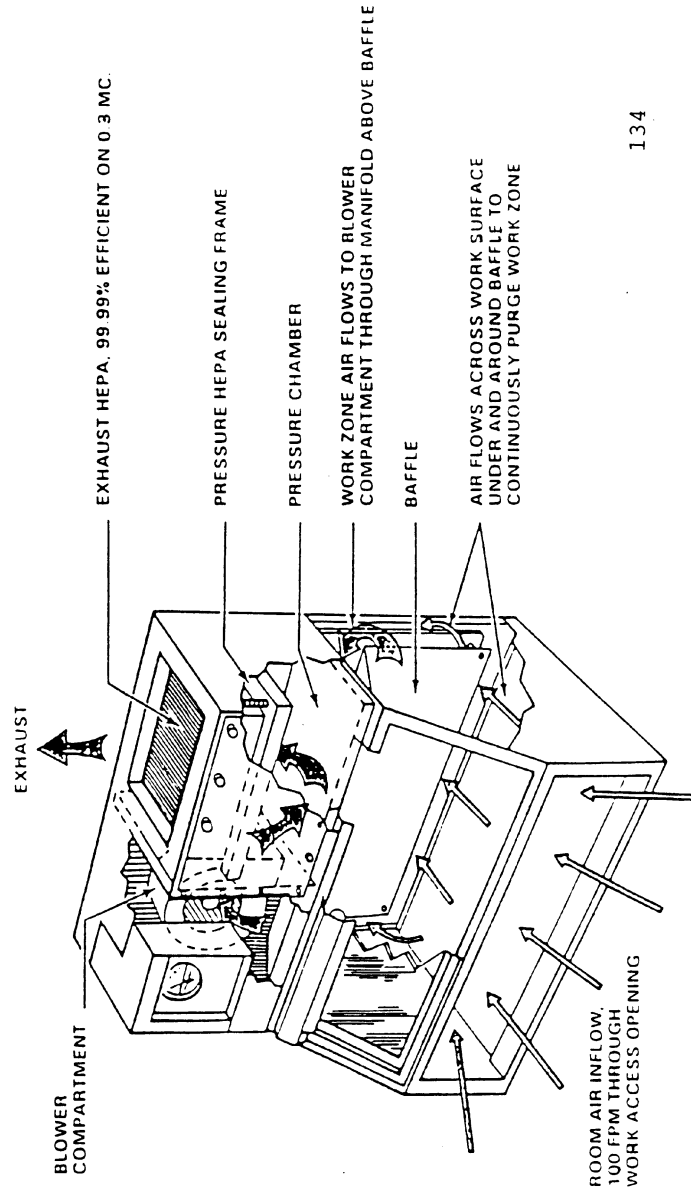
E-2. Permit Application to Import Controlled Material; Import or Transport Organisms or Vectors. U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Federal Building, Hyattsville, Maryland 20782.

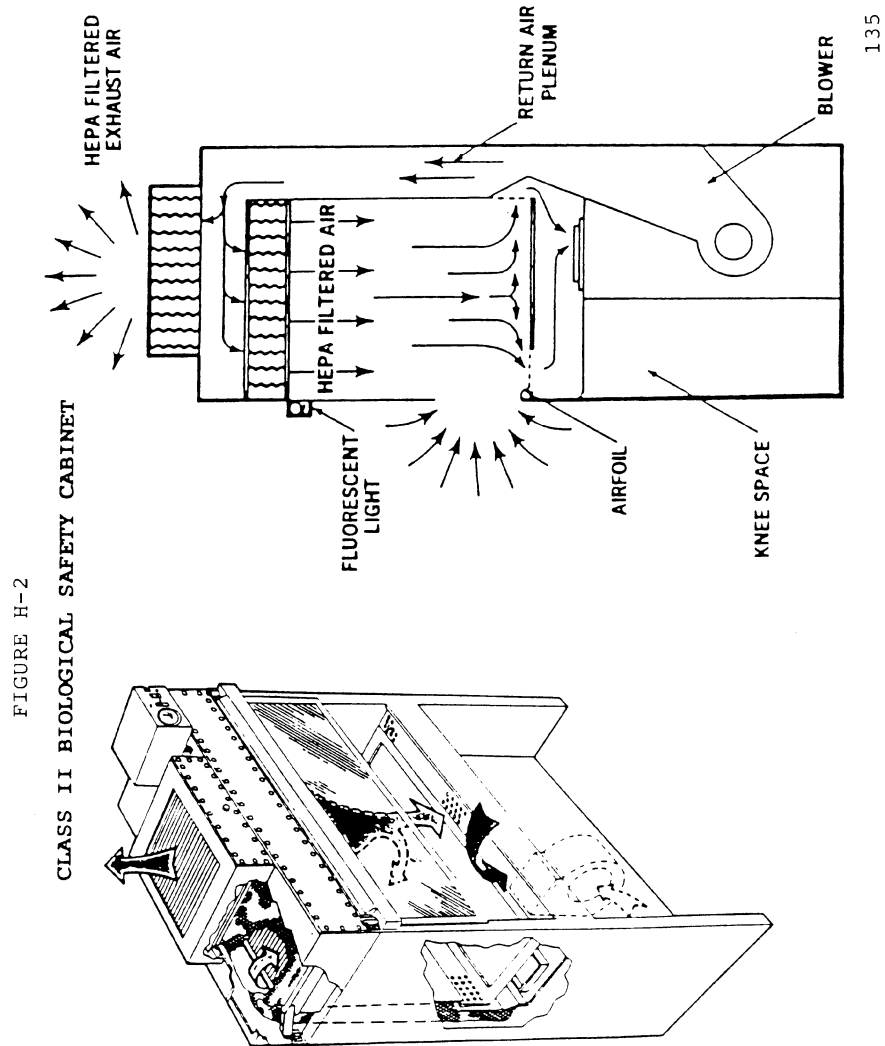
APPENDIX F TO PART 627—DRAWINGS, BIOLOGICAL SAFETY CABINETS

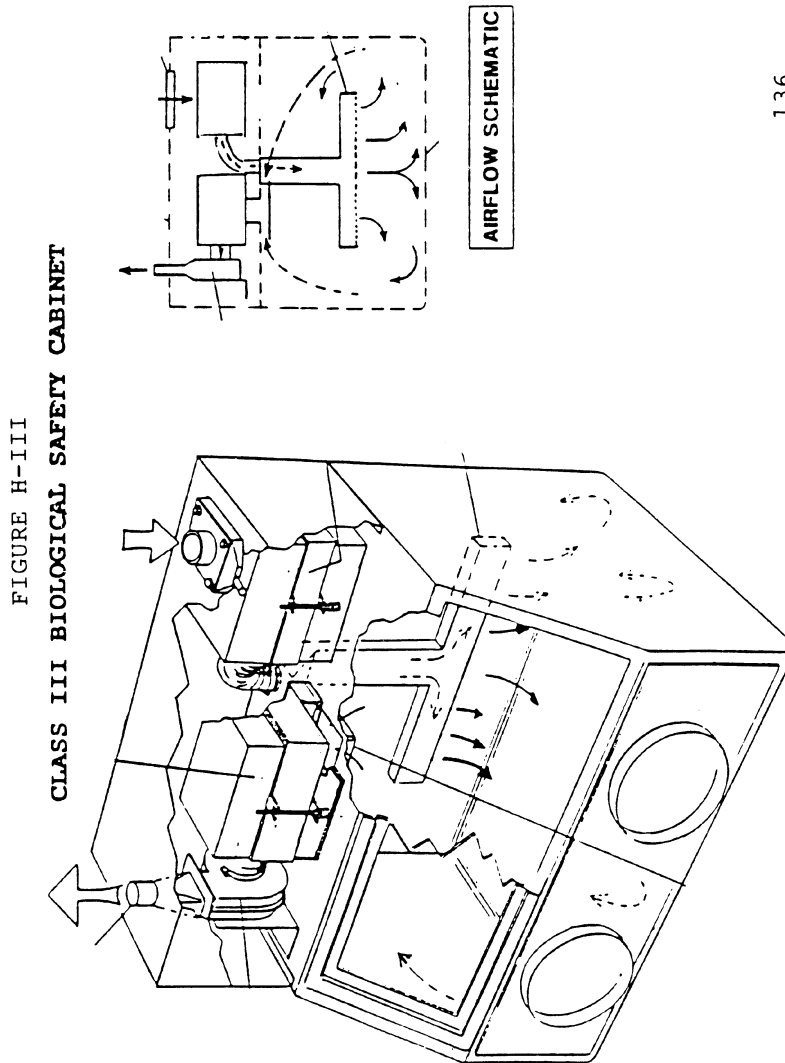
Appendix F to Part 627—Drawings, Biological Safety Cabinets

FIGURE H-1

CLASS I BIOLOGICAL SAFETY CABINET







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APPENDIX G TO PART 627—GLOSSARY

ABBREVIATIONS

AIHA	American Industrial Hygiene Association
AMC	United States Army Materiel Command
ANSI	American National Standards Institute
AR	Army Regulation
ATCC	American Type Culture Collection
ASHRAE	American Society of Heating, Refrigerating, and Air Condition Engineers, Inc.
BDP	Biological Defense Program
BL	biosafety level

ABBREVIATIONS—Continued

CDC	Centers for Disease Control
CFR	Code of Federal Regulations
DA PAM	Department of Army Pamphlet
DHEW	Department of Health, Education, and Welfare
DOD	Department of Defense
DOT	Department of Transportation
DNA	deoxyribonucleic acid
EPA	Environmental Protection Agency
ETO	ethylene oxide
FDA	Food and Drug Administration
fpm	feet per minute
HEPA	high efficiency particulate air

ABBREVIATIONS—Continued

HHS	Health and Human Services
IATA	International Air Transport Association
IBC	Institutional Biosafety Committee
ICAO	International Civil Aviation Organization
lfpm	linear feet per minute
LS	large-scale
m	meter
min	minute
MSDS	Material Safety Data Sheets
MSHA	Mine Safety and Health Administration
NCCLS	National Committee for Clinical Laboratory Standards
NCI	National Cancer Institute
NEPA	National Environmental Policy Act
NFPA	National Fire Protection Association
NIH	National Institutes of Health
NIOSH	National Institute for Occupational Safety and Health
NRC	Nuclear Regulatory Commission
NSF	National Sanitation Foundation
OSHA	Occupational Safety and Health Administration
pH	the negative logarithm of hydrogen ion concentration
PHS	Public Health Service
PPE	personal protective equipment
ppm	parts per million
psi	pounds per square inch
RCRA-Listed	Resource Conservation Recovery Act of 1976 Listed Hazardous Waste
RDTE	research, development, test, and evaluation
RPO	Radiation Protection Officer
SALS	Subcommittee on Arbovirus Laboratory Safety
SAR	supplied-air respirator
SCBA	self-contained breathing apparatus
SOP	Standing Operating Procedure
TD	to deliver
TLV	threshold limit value
USDA	United States Department of Agriculture
UV	ultraviolet

TERMS

Approved respiratory protection

Equipment which is tested and listed as satisfactory according to standards established by a competent authority (such as NIOSH, Mine Safety and Health Administration (MSHA), or host country agency) to provide respiratory protection against the particular hazard for which it is designed. For military agent protection, DA and Department of Defense (DOD) are the approval authorities. (Approval authority may be specified by law.)

BIOCONTAINMENT AREA

An area which meets the requirements for a BL-3 or BL-4 facility. The area may be an entire building or a single room within a building. See subpart G for details.

BIOLOGICAL SAFETY CABINETS

Engineering controls designed to enable laboratory workers to handle infectious etiologic agents and to provide primary containment of any resultant aerosol. There are three major classes of cabinets (I, II, and III) and several subclasses of class II cabinets. Each type of cabinet provides a different de-

gree of protection to personnel and to the products handled inside them. The various classes of cabinets are described in detail in subpart H.

BIOSAFETY LEVEL 1

The facilities, equipment, and procedures suitable for work involving agents of no known or of minimal potential hazard to laboratory personnel and the environment.

BIOSAFETY LEVEL 2

The facilities, equipment, and procedures applicable to clinical, diagnostic, or teaching laboratories, and suitable for work involving indigenous agents of moderate potential hazard to personnel and the environment. It differs from BL-1 in that (1) laboratory personnel have specific training in handling pathogenic agents, (2) the laboratory is directed by scientists with experience in the handling of specific agents, (3) access to the laboratory is limited when work is being conducted, and (4) certain procedures in which infectious aerosols could be created are conducted in biological safety cabinets or other physical containment equipment.

BIOSAFETY LEVEL 3

The facilities, equipment, and procedures applicable to clinical, diagnostic, research, or production facilities in which work is performed with indigenous or exotic agents where potential exists for infection by aerosol, and the disease may have serious or lethal consequences. It differs from BL-2 in that (1) more extensive training in handling pathogenic and potentially lethal agents is necessary for laboratory personnel; (2) all procedures involving the manipulation of infectious material are conducted within biological safety cabinets, other physical containment devices, or by personnel wearing appropriate personal protective clothing and devices; (3) the laboratory has special engineering and design features, including access zones, sealed penetrations, and directional airflow; and (4) any modification of BL-3 recommendations must be made only by the commander.

BIOSAFETY LEVEL 4

The facilities, equipment, and procedures required for work with dangerous and exotic agents which pose a high individual risk of life-threatening disease. It differs from BL-3 in that (1) members of the laboratory staff have specific and thorough training in handling extremely hazardous infectious agents; (2) laboratory personnel understand the primary and secondary containment functions of the standard and special practices, containment equipment, and laboratory design characteristics; (3) access to the laboratory is strictly controlled by the institute director; (4) the facility is either in a separate

building or in a controlled area within a building, completely isolated from all other areas of the building; (5) a specific facility operations manual is prepared or adopted; (6) within work areas of the facility, all activities are confined to Class III biological safety cabinets or Class I or Class II biological safety cabinets used in conjunction with one-piece positive pressure personnel suits ventilated by a life support system; and (7) the maximum containment laboratory has special engineering and design features to prevent microorganisms from being disseminated to the environment.

BUILDING

A structure that contains the requisite components necessary to support a facility that is designed according to the required biosafety level. The building can contain one or more facilities conforming to one or more biosafety level.

CONFIRMED EXPOSURE

Any mishap with a BDP agent in which there was direct evidence of an actual exposure such as a measurable rise in antibody titer to the agent or a confirmed diagnosis of intoxication or disease.

ETIOLOGIC AGENTS

Any viable microorganism, or its toxin which causes or may cause human disease, including those agents listed in 42 CFR 72.3 of the Department of Health and Human Services regulations, and any agent of biological origin that poses a degree of hazard similar to those agents.

FACILITY

An area within a building that provides appropriate protective barriers for persons working in the facility and the environment external to the facility, and outside of the building.

HEPA FILTER

A filter which removes particulate matter down to submicron sized particles from the air passed through it with a minimum efficiency of 99.97 percent. While the filters remove particulate matter with great efficiency, vapors and gases (for example, from volatile chemicals) are passed through without restriction. HEPA filters are used as the primary means of removing infectious agents from air exhausted from engineering controls and facilities.

HUMAN LETHAL DOSE

The estimated quantity of a toxin that is a minimum lethal dose for a 70 kilogram individual based upon published data or upon estimates extrapolated from animal toxicity data.

COMMANDER OR INSTITUTE DIRECTOR

The commander or institute director of an Army activity conducting RDTE with BDP etiologic agents, or the equivalent, at a research organization under contract to the BDP.

INSTITUTION

An organization such as an Army RDTE activity (institute, agency, center, and so forth) or a contract organization such as a school of medicine, or research institute that conducts RDTE with BDP etiologic agents.

LABORATORY

An individual room or rooms within a facility that provide space in which work with etiologic agents can be performed. It contains all of the appropriate engineering features and equipment required at a given biosafety level to protect personnel working in it and the environment external to the facility.

LARGE-SCALE OPERATIONS

Research or production involving viable etiologic agents in quantities greater than 10 liters of culture.

MAXIMUM CONTAINMENT AREA

An area which meets the requirements for a BL-4 facility. The area may be an entire building or a single room within the building. See chapter 7 for details.

MOLDED MASKS

Formed masks that fit snugly around the mouth and nose and are designed to protect against a nontoxic nuisance level of dusts and powders. These do not require approval by NIOSH or MSHA. Masks made of gauze do not qualify.

POTENTIAL ACCIDENTAL EXPOSURE

Any accident in which there was reason to believe that anyone working with a BDP agent may have been exposed to that agent, yet no measurable rise in antibody titer or diagnosis of intoxication or disease was made. However, the high probability existed for introduction of an agent through mucous membranes, respiratory tract, broken skin, or the circulatory system as a direct result of the accident, injury, or incident.

RESOURCE CONSERVATION RECOVERY ACT OF 1976 LISTED HAZARDOUS WASTE

The waste materials listed by the Environmental Protection Agency under authority of the RCRA for which the agency regulates disposal. A description and listing of these wastes is located in 40 CFR part 261.

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SUITE

An area consisting of more than one room, designed to be a functional unit in which entire operations can be facilitated. Suites may contain a combination of laboratories or animal holding rooms and associated support areas within a facility that are designed to conform to a particular biosafety level. There may be one or more suites within a facility.

TOXIN

Toxic material of etiologic origin that has been isolated from the parent organism.¹

¹The publication "Bacterial Toxins: a Table of Lethal Amounts," (Gill, D.M. (1982) *Microbiological Reviews*, 46:86-94) contains a useful table of mammalian toxicities of numerous toxins.

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected

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(Revised as of July 1, 2006)

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- VI Federal Retirement Thrift Investment Board (Parts 1600—1699)
- VIII Office of Special Counsel (Parts 1800—1899)
- IX Appalachian Regional Commission (Parts 1900—1999)
- XI Armed Forces Retirement Home (Part 2100)
- XIV Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)

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XXXV	Office of Personnel Management (Part 4501)
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XLVI	Postal Rate Commission (Part 5601)
XLVII	Federal Trade Commission (Part 5701)
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LXIII	Inter-American Foundation (Part 7301)
LXV	Department of Housing and Urban Development (Part 7501)
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- VIII Grain Inspection, Packers and Stockyards Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)
- IX Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)
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