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CODE OF FEDERAL REGULATIONS

Title 32
National Defense

Parts 400 to 629

Revised as of July 1, 2014

Containing a codification of documents
of general applicability and future effect

As of July 1, 2014

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 32 CFR 504.1 *refers to title 32, part 504, section 1.*

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CHARLES A. BARTH,
Director,
Office of the Federal Register.
July 1, 2014.

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, 2014.

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 part 800 to end.

For this volume, Cheryl E. Sirofchuck was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Ann Worley.

Title 32—National Defense

(This book contains parts 400 to 629)

SUBTITLE A—DEPARTMENT OF DEFENSE (CONTINUED)

Part

CHAPTER V—Department of the Army 504

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

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SUBCHAPTER A—AID OF CIVIL AUTHORITIES AND PUBLIC RELATIONS

PARTS 400–500 [RESERVED]

PART 504—OBTAINING INFORMATION FROM FINANCIAL INSTITUTIONS

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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 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:

(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 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 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 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)

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

(Describe the specific records to be examined)

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).

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.

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.

(Official Signature Block)

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

(*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):

_____

(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.

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

_____

(List applicable courts)

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.

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.

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) _____

PART 505—ARMY PRIVACY ACT PROGRAM

Sec.

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505.2 General provisions.
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APPENDIX A TO PART 505—REFERENCES
APPENDIX B TO PART 505—DENIAL AUTHORITIES FOR RECORDS UNDER THEIR AUTHORITY (FORMERLY ACCESS AND AMENDMENT REFUSAL AUTHORITIES)
APPENDIX C TO PART 505—PRIVACY ACT STATEMENT FORMAT
APPENDIX D TO PART 505—EXEMPTIONS; EXCEPTIONS; AND DOD BLANKET ROUTINE USES
APPENDIX E TO PART 505—LITIGATION STATUS SHEET
APPENDIX F TO PART 505—EXAMPLE OF A SYSTEM OF RECORDS NOTICE
APPENDIX G TO PART 505—MANAGEMENT CONTROL EVALUATION CHECKLIST
APPENDIX H TO PART 505—DEFINITIONS

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

SOURCE: 71 FR 46052, Aug. 10, 2006, unless otherwise noted.

§ 505.1 General information.

(a) *Purpose.* This part sets forth policies and procedures that govern personal information maintained by the Department of the Army (DA) in Privacy Act systems of records. This part also provides guidance on collecting and disseminating personal information in general. The purpose of the Army Privacy Act Program is to balance the government's need to maintain information about individuals with the right of individuals to be protected against unwarranted invasions of their privacy stemming from Federal agencies' collection, maintenance,

use and disclosure of personal information about them. Additionally, this part promotes uniformity within the Army's Privacy Act Program.

(b) *References:* (1) Referenced publications are listed in Appendix A of this part.

(2) DOD Computer Matching Program and other Defense Privacy Guidelines may be accessed at the Defense Privacy Office Web site *http://www.defenselink.mil/privacy*.

(c) Definitions are provided at Appendix H of this part.

(d) *Responsibilities.* (1) The Office of the Administrative Assistant to the Secretary of the Army will—

(i) Act as the senior Army Privacy Official with overall responsibility for the execution of the Department of the Army Privacy Act Program;

(ii) Develop and issue policy guidance for the program in consultation with the Army General Counsel; and

(iii) Ensure the DA Privacy Act Program complies with Federal statutes, Executive Orders, Office of Management and Budget guidelines, and 32 CFR part 310.

(2) The Chief Attorney, Office of the Administrative Assistant to the Secretary of the Army (OAASA) will—

(i) Provide advice and assistance on legal matters arising out of, or incident to, the administration of the DA Privacy Act Program;

(ii) Serve as the legal advisor to the DA Privacy Act Review Board. This duty may be fulfilled by a designee in the Chief Attorney and Legal Services Directorate, OAASA;

(iii) Provide legal advice relating to interpretation and application of the Privacy Act of 1974; and

(iv) Serve as a member on the Defense Privacy Board Legal Committee. This duty may be fulfilled by a designee in the Chief Attorney and Legal Services Directorate, OAASA.

(3) The Judge Advocate General will serve as the Denial Authority on requests made pursuant to the Privacy Act of 1974 for access to or amendment of Army records, regardless of functional category, concerning actual or potential litigation in which the United States has an interest.

(4) The Chief, DA Freedom of Information Act and Privacy Office (FOIA/P), U.S. Army Records Management and Declassification Agency will—

(i) Develop and recommend policy;

(ii) Execute duties as the Army's Privacy Act Officer;

(iii) Promote Privacy Act awareness throughout the DA;

(iv) Serve as a voting member on the Defense Data Integrity Board and the Defense Privacy Board;

(v) Represent the Department of the Army in DOD policy meetings; and

(vi) Appoint a Privacy Act Manager who will—

(A) Administer procedures outlined in this part;

(B) Review and approve proposed new, altered, or amended Privacy Act systems of records notices and subsequently submit them to the Defense Privacy Office for coordination;

(C) Review Department of the Army Forms for compliance with the Privacy Act and this part;

(D) Ensure that reports required by the Privacy Act are provided upon request from the Defense Privacy Office;

(E) Review Computer Matching Agreements and recommend approval or denial to the Chief, DA FOIA/P Office;

(F) Provide Privacy Act training;

(G) Provide privacy guidance and assistance to DA activities and combatant commands where the Army is the Executive Agent;

(H) Ensure information collections are developed in compliance with the Privacy Act provisions;

(I) Ensure Office of Management and Budget reporting requirements, guidance, and policy are accomplished; and

(J) Immediately review privacy violations of personnel to locate the problem and develop a means to prevent recurrence of the problem.

(5) Heads of Department of the Army activities, field-operating agencies, direct reporting units, Major Army commands, subordinate commands down to the battalion level, and installations will—

(i) Supervise and execute the privacy program in functional areas and activities under their responsibility; and

(ii) Appoint a Privacy Act Official who will—

(A) Serve as the staff advisor on privacy matters;

(B) Ensure that Privacy Act records collected and maintained within the Command or agency are properly described in a Privacy Act system of records notice published in the FEDERAL REGISTER;

(C) Ensure no undeclared systems of records are being maintained;

(D) Ensure Privacy Act requests are processed promptly and responsively;

(E) Ensure a Privacy Act Statement is provided to individuals when information is collected that will be maintained in a Privacy Act system of records, regardless of the medium used to collect the personal information (*i.e.*, forms, personal interviews, stylized formats, telephonic interviews, or other methods);

(F) Review, biennially, recordkeeping practices to ensure compliance with the Act, paying particular attention to the maintenance of automated records. In addition, ensure cooperation with records management officials on such matters as maintenance and disposal procedures, statutory requirements, forms, and reports; and

(G) Review, biennially Privacy Act training practices. This is to ensure all personnel are familiar with the requirements of the Act.

(6) DA Privacy Act System Managers and Developers will—

(i) Ensure that appropriate procedures and safeguards are developed, implemented, and maintained to protect an individual's personal information;

(ii) Ensure that all personnel are aware of their responsibilities for protecting personal information being collected and maintained under the Privacy Act Program;

(iii) Ensure official filing systems that retrieve records by name or other personal identifier and are maintained in a Privacy Act system of records have been published in the FEDERAL REGISTER as a Privacy Act system of records notice. Any official who willfully maintains a system of records without meeting the publication requirements, as prescribed by 5 U.S.C. 552a, as amended, OMB Circular A–130, 32 CFR part 310 and this part, will be subject to possible criminal penalties and/or administrative sanctions;

(iv) Prepare new, amended, or altered Privacy Act system of records notices and submit them to the DA Freedom of Information and Privacy Office for review. After appropriate coordination, the system of records notices will be submitted to the Defense Privacy Office for their review and coordination;

(v) Review, biennially, each Privacy Act system of records notice under their purview to ensure that it accurately describes the system of records;

(vi) Review, every four years, the routine use disclosures associated with each Privacy Act system of records notice in order to determine if such routine use continues to be compatible with the purpose for which the activity collected the information;

(vii) Review, every four years, each Privacy Act system of records notice for which the Secretary of the Army has promulgated exemption rules pursuant to Sections (j) or (k) of the Act. This is to ensure such exemptions are still appropriate;

(viii) Review, every year, contracts that provide for the maintenance of a Privacy Act system of records to accomplish an activity's mission. This requirement is to ensure each contract contains provisions that bind the contractor, and its employees, to the requirements of 5 U.S.C. 552a(m)(1); and

(ix) Review, if applicable, ongoing Computer Matching Agreements. The Defense Data Integrity Board approves Computer Matching Agreements for 18 months, with an option to renew for an additional year. This additional review will ensure that the requirements of the Privacy Act, Office of Management and Budget guidance, local regulations, and the requirements contained in the Matching Agreements themselves have been met.

(7) All DA personnel will—

(i) Take appropriate actions to ensure personal information contained in a Privacy Act system of records is protected so that the security and confidentiality of the information is preserved;

(ii) Not disclose any personal information contained in a Privacy Act system of records except as authorized by 5 U.S.C. 552a, DOD 5400.11–R, or other applicable laws. Personnel willfully making a prohibited disclosure are subject to possible criminal penalties and/or administrative sanctions; and

(iii) Report any unauthorized disclosures or unauthorized maintenance of new Privacy Act systems of records to the applicable activity's Privacy Act Official.

(8) Heads of Joint Service agencies or commands for which the Army is the Executive Agent or the Army otherwise provides fiscal, logistical, or administrative support, will adhere to the policies and procedures in this part.

(9) Commander, Army and Air Force Exchange Service, will supervise and execute the Privacy Program within that command pursuant to this part.

(10) Overall Government-wide responsibility for implementation of the Privacy Act is the Office of Management and Budget. The Department of Defense is responsible for implementation of the Act within the armed services. The Privacy Act also assigns specific Government-wide responsibilities to the Office of Personnel Management and the General Services Administration.

(11) Government-wide Privacy Act systems of records notices are available at *http://www.defenselink.mil/privacy*.

(e) *Legal Authority*. (1) Title 5, United States Code, Section 552a, as amended, The Privacy Act of 1974.

(2) Title 5, United States Code, Section 552, The Freedom of Information Act (FOIA).

(3) Office of Personnel Management, Federal Personnel Manual (5 CFR parts 293, 294, 297, and 7351).

(4) OMB Circular No. A–130, Management of Federal Information Resources, Revised, August 2003.

(5) DOD Directive 5400.11, Department of Defense Privacy Program, November 16, 2004.

(6) DOD Regulation 5400.11–R, Department of Defense Privacy Program, August 1983.

(7) Title 10, United States Code, Section 3013, Secretary of the Army.

(8) Executive Order No. 9397, Numbering System for Federal Accounts Relating to Individual Persons, November 30, 1943.

(9) Public Law 100–503, the Computer Matching and Privacy Act of 1974.

(10) Public Law 107–347, Section 208, Electronic Government (E-Gov) Act of 2002.

(11) DOD Regulation 6025.18–R, DOD Health Information Privacy Regulation, January 24, 2003.

§ 505.2 General provisions.

(a) *Individual privacy rights policy*. Army policy concerning the privacy rights of individuals and the Army's responsibilities for compliance with the Privacy Act are as follows—

(1) Protect the privacy of United States living citizens and aliens lawfully admitted for permanent residence from unwarranted intrusion.

(2) Deceased individuals do not have Privacy Act rights, nor do executors or next-of-kin in general. However, immediate family members may have limited privacy rights in the manner of death details and funeral arrangements of the deceased individual. Family members often use the deceased individual's Social Security Number (SSN) for federal entitlements; appropriate safeguards must be implemented to protect the deceased individual's SSN from release. Also, the Health Insurance Portability and Accountability Act extends protection to certain medical information contained in a deceased individual's medical records.

(3) Personally identifiable health information of individuals, both living and deceased, shall not be used or disclosed except for specifically permitted purposes.

(4) Maintain only such information about an individual that is necessary to accomplish the Army's mission.

(5) Maintain only personal information that is timely, accurate, complete, and relevant to the collection purpose.

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

(7) Maintain records for the minimum time required in accordance with an approved National Archives and Records Administration record disposition.

(8) Let individuals know what Privacy Act records the Army maintains by publishing Privacy Act system of records notices in the FEDERAL REGISTER. This will enable individuals to review and make copies of these

records, subject to the exemptions authorized by law and approved by the Secretary of the Army. Department of the Army Privacy Act systems of records notices are available at *http://www.defenselink.mil/privacy*.

(9) Permit individuals to correct and amend records about themselves which they can prove are factually in error, not timely, not complete, not accurate, or not relevant.

(10) Allow individuals to request an administrative review of decisions that deny them access to or the right to amend their records.

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

(12) Keep paper and electronic records that are retrieved by name or personal identifier only in approved Privacy Act systems of records.

(13) Maintain no records describing how an individual exercises his or her rights guaranteed by the First Amendment (freedom of religion, freedom of political beliefs, freedom of speech and press, freedom of peaceful assemblage, and petition) unless expressly authorized by statute, pertinent to and within the scope of an authorized law enforcement activity, or otherwise authorized by law or regulation.

(14) Maintain appropriate administrative technical and physical safeguards to ensure records are protected from unauthorized alteration or disclosure.

(b) *Safeguard personal information.* (1) Privacy Act data will be afforded reasonable safeguards to prevent inadvertent or unauthorized disclosure of records during processing, storage, transmission, and disposal.

(2) Personal information should never be placed on shared drives that are accessed by groups of individuals unless each person has an ''official need to know'' the information in the performance of official duties.

(3) Safeguarding methods must strike a balance between the sensitivity of the data, need for accuracy and reliability for operations, general security of the area, and cost of the safeguards. In some situations, a password may be enough protection for an automated system with a log-on protocol. For additional guidance on safeguarding personal information in automated records see AR 380–67, The Department of the Army Personnel Security Program.

(c) *Conveying privacy protected data electronically via e-mail and the World Wide Web.* (1) Unencrypted electronic transmission of privacy protected data makes the Army vulnerable to information interception which can cause serious harm to the individual and the accomplishment of the Army's mission.

(2) The Privacy Act requires that appropriate technical safeguards be established, based on the media (e.g., paper, electronic) involved, to ensure the security of the records and to prevent compromise or misuse during transfer.

(3) Privacy Web sites and hosted systems with privacy-protected data will employ secure sockets layers (SSL) and Public Key Infrastructure (PKI) encryption certificates or other DoD-approved commercially available certificates for server authentication and client/server authentication. Individuals who transmit data containing personally identifiable information over e-mail will employ PKI or other DoD-approved certificates.

(4) When sending Privacy Act protected information within the Army using encrypted or dedicated lines, ensure that—

(i) There is an ''official need to know'' for each addressee (including ''cc'' addressees); and

(ii) The Privacy Act protected information is marked For Official Use Only (FOUO) to inform the recipient of limitations on further dissemination. For example, add FOUO to the beginning of an e-mail message, along with the following language: ''This contains FOR OFFICIAL USE ONLY (FOUO) information which is protected under the Privacy Act of 1974 and AR 340–21, The Army Privacy Program. Do not further disseminate this information without the permission of the sender.''

(iii) Do not indiscriminately apply this statement. Use it only in situations when actually transmitting protected Privacy Act information.

(iv) For additional information about marking documents ''FOUO'' review AR 25–55, Chapter IV.

(5) Add appropriate ''Privacy and Security Notices'' at major Web site

entry points. Refer to AR 25–1, para 6–4n for requirements for posting ''Privacy and Security Notices'' on public Web sites. Procedures related to the establishing, operating, and maintaining of unclassified DA Web sites can be accessed at *http://www.defenselink.mil/webmasters/policy/DOD_web_policy*.

(6) Ensure public Web sites comply with policies regarding restrictions on persistent and third party cookies. The Army prohibits both persistent and third part cookies. (see AR 25–1, para 6–4n)

(7) A Privacy Advisory is required on Web sites which host information systems soliciting personally identifying information, even when not maintained in a Privacy Act system of records. The Privacy Advisory informs the individual why the information is solicited and how it will be used. Post the Privacy Advisory to the Web site page where the information is being solicited, or to a well marked hyperlink stating ''Privacy Advisory—Please refer to the Privacy and Security Notice that describes why this information is collected and how it will be used.''

(d) *Protecting records containing personal identifiers such as names and Social Security Numbers.* (1) Only those records covered by a Privacy Act system of records notice may be arranged to permit retrieval by a personal identifier (e.g., an individual's name or Social Security Number). AR 25–400–2, paragraph 6–2 requires all records covered by a Privacy Act system of records notice to include the system of record identification number on the record label to serve as a reminder that the information contained within must be safeguarded.

(2) Use a coversheet or DA Label 87 (For Official Use Only) for individual records not contained in properly labeled file folders or cabinets.

(3) When developing a coversheet, the following is an example of a statement that you may use: ''The information contained within is FOR OFFICIAL USE ONLY (FOUO) and protected by the Privacy Act of 1974.''

(e) *Notification of Individuals when personal information is lost, stolen, or compromised.* (1) Whenever an Army organization becomes aware the protected personal information pertaining to a Service member, civilian employee (appropriated or non-appropriated fund), military retiree, family member, or another individual affiliated with Army organization (e.g., volunteer) has been lost, stolen, or compromised, the organization shall inform the affected individuals as soon as possible, but not later than ten days after the loss or compromise of protected personal information is discovered.

(2) At a minimum, the organization shall advise individuals of what specific data was involved; the circumstances surrounding the loss, theft, or compromise; and what protective actions the individual can take.

(3) If Army organizations are unable to comply with policy, they will immediately notify their superiors, who will submit a memorandum through the chain of command to the Administrative Assistant of the Secretary of the Army to explain why the affected individuals or population's personal information has been lost, stolen, or compromised.

(4) This policy is also applicable to Army contractors who collect, maintain, use, or disseminate protected personal information on behalf of the organization.

(f) *Federal government contractors' compliance.* (1) When a DA activity contracts for the design, development, or operation of a Privacy Act system of records in order to accomplish a DA mission, the agency must apply the requirements of the Privacy Act to the contractor and its employees working on the contract (See 48 CFR part 24 and other applicable supplements to the FAR; 32 CFR part 310).

(2) System Managers will review annually, contracts contained within the system(s) of records under their responsibility, to determine which ones contain provisions relating to the design, development, or operation of a Privacy Act system of records.

(3) Contractors are considered employees of the Army for the purpose of the sanction provisions of the Privacy Act during the performance of the contract requirements.

(4) Disclosing records to a contractor for use in performing the requirements

of an authorized DA contract is considered a disclosure within the agency under exception (b)(1), ''Official Need to Know'', of the Act.

§ 505.3 Privacy Act systems of records.

(a) *Systems of records.* (1) A system of records is a group of records under the control of a DA activity that are retrieved by an individual's name or by some identifying number, symbol, or other identifying particular assigned to an individual.

(2) Privacy Act systems of records must be—

(i) Authorized by Federal statute or an Executive Order;

(ii) Needed to carry out DA's mission; and

(iii) Published in the FEDERAL REGISTER in a system of records notice, which will provide the public an opportunity to comment before DA implements or changes the system.

(3) The mere fact that records are retrievable by a name or personal identifier is not enough. Records must actually be retrieved by a name or personal identifier. Records in a group of records that may be retrieved by a name or personal identifier but are not normally retrieved by this method are not covered by this part. However, they are covered by AR 25–55, the Department of the Army Freedom of Information Act Program.

(4) The existence of a statute or Executive Order mandating the maintenance of a system of records to perform an authorized activity does not abolish the responsibility to ensure the information in the system of records is relevant and necessary to perform the authorized activity.

(b) *Privacy Act system of records notices.* (1) DA must publish notices in the FEDERAL REGISTER on new, amended, altered, or deleted systems of records to inform the public of the Privacy Act systems of records that it maintains. The Privacy Act requires submission of new or significantly changed systems of records to OMB and both houses of Congress before publication in the FEDERAL REGISTER (See Appendix E of this part).

(2) Systems managers must send a proposed notice at least 120 days before implementing a new, amended or altered system to the DA Freedom of Information and Privacy Office. The proposed or altered notice must include a narrative statement and supporting documentation. A narrative statement must contain the following items:

(i) System identifier and name;

(ii) Responsible Official, title, and phone number;

(iii) If a new system, the purpose of establishing the system or if an altered system, nature of changes proposed;

(iv) Authority for maintenance of the system;

(v) Probable or potential effects of the system on the privacy of individuals;

(vi) Whether the system is being maintained, in whole or in part, by a contractor;

(vii) Steps taken to minimize risk of unauthorized access;

(viii) Routine use compatibility;

(ix) Office of Management and Budget information collection requirements; and

(x) Supporting documentation as an attachment. Also as an attachment should be the proposed new or altered system notice for publication in the FEDERAL REGISTER.

(3) An amended or altered system of records is one that has one or more of the following:

(i) A significant increase in the number, type, or category of individuals about whom records are maintained;

(ii) A change that expands the types of categories of information maintained;

(iii) A change that alters the purpose for which the information is used;

(iv) A change to equipment configuration (either hardware or software) that creates substantially greater access to the records in the system of records;

(v) An addition of an exemption pursuant to Section (j) or (k) of the Act; or

(vi) An addition of a routine use pursuant to 5 U.S.C. 552a(b)(3).

(4) For additional guidance contact the DA FOIA/P Office.

(5) On behalf of DA, the Defense Privacy Office maintains a list of DOD Components' Privacy Act system of records notices at the Defense Privacy Office's Web site *http://www.defenselink.mil/privacy*.

(6) DA PAM 25–51 sets forth procedures pertaining to Privacy Act system of records notices.

(7) For new systems, system managers must establish appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records. This applies to all new systems of records whether maintained manually or automated.

(i) One safeguard plan is the development and use of a Privacy Impact Assessment (PIA) mandated by the E-Gov Act of 2002, Section 208. The Office of Management and Budget specifically directs that a PIA be conducted, reviewed, and published for all new or significantly altered information in identifiable form collected from or about the members of the public. The PIA describes the appropriate administrative, technical, and physical safeguards for new automated systems. This will assist in the protection against any anticipated threats or hazards to the security or integrity of data, which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. Contact your local Information Officer for guidance on conducting a PIA.

(ii) The development of appropriate safeguards must be tailored to the requirements of the system as well as other factors, such as the system environment, location, and accessibility.

§ 505.4 Collecting personal information.

(a) *General provisions.* (1) Employees will collect personal information to the greatest extent practicable directly from the subject of the record. This is especially critical, if the information may result in adverse determinations about an individual's rights, benefits, and privileges under federal programs (*See* 5 U.S.C. 552a(e)(2)).

(2) It is unlawful for any Federal, State, or local government agency to deny anyone a legal right, benefit, or privilege provided by law for refusing to give their SSN unless the law requires disclosure, or a law or regulation adopted before January 1, 1975, required the SSN or if DA uses the SSN to verify a person's identity in a system of records established and in use before that date. Executive Order 9397 (issued prior to January 1, 1975) authorizes the Army to solicit and use the SSN as a numerical identifier for individuals in most federal records systems. However, the SSN should only be collected as needed to perform official duties. Executive Order 9397 does not mandate the solicitation of SSNs from Army personnel as a means of identification.

(3) Upon entrance into military service or civilian employment with DA, individuals are asked to provide their SSN. The SSN becomes the service or employment number for the individual and is used to establish personnel, financial, medical, and other official records. After an individual has provided his or her SSN for the purpose of establishing a record, the Privacy Act Statement is not required if the individual is only requested to furnish or verify the SSN for identification purposes in connection with the normal use of his or her records. If the SSN is to be used for a purpose other than identification, the individual must be informed whether disclosure of the SSN is mandatory or voluntary; by what statutory authority the SSN is solicited; and what uses will be made of the SSN. This notification is required even if the SSN is not to be maintained in a Privacy Act system of records.

(4) When asking an individual for his or her SSN or other personal information that will be maintained in a system of records, the individual must be provided with a Privacy Act Statement.

(b) *Privacy Act Statement (PAS).* (1) A Privacy Act Statement is required whenever personal information is requested from an individual and will become part of a Privacy Act system of records. The information will be retrieved by the individual's name or other personal identifier (*See* 5 U.S.C. 552a(e)(3)).

(2) The PAS will ensure that individuals know why the information is being collected so they can make an informed decision as to providing the personal information.

(3) In addition, the PAS will include language that is explicit, easily understood, and not so lengthy as to deter an individual from reading it.

(4) A sign can be displayed in areas where people routinely furnish this kind of information, and a copy of the PAS will be made available upon request by the individual.

(5) Do not ask the person to sign the PAS.

(6) A Privacy Act Statement must include the following four items—

(i) *Authority:* Cite the specific statute or Executive Order, including a brief title or subject that authorizes the DA to collect the personal information requested.

(ii) *Principal Purpose (s):* Cite the principal purposes for which the information will be used.

(iii) *Routine Uses:* A list of where and why the information will be disclosed OUTSIDE of DOD. Applicable routine uses are published in the applicable Privacy Act system of records notice(s). If none, the language to be used is: ''Routine Use(s): None. However the 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply.''

(iv) *Disclosure:* Voluntary or Mandatory. Include in the Privacy Act Statement specifically whether furnishing the requested personal data is mandatory or voluntary. A requirement to furnish personal data is mandatory ONLY when a federal statute, Executive Order, regulation, or other law specifically imposes a duty on the individual to provide the information sought, and when the individual is subject to a penalty if he or she fails to provide the requested information. If providing the information is only a condition of or prerequisite to granting a benefit or privilege and the individual has the option of receiving the benefit or privilege, providing the information is always voluntary. However, the loss or denial of the privilege, benefit, or entitlement sought must be listed as a consequence of not furnishing the requested information.

(7) Some acceptable means of administering the PAS are as follows, in the order of preference—

(i) Below the title of the media used to collect the personal information. The PAS should be positioned so that the individual will be advised of the PAS before he or she provides the requested information;

(ii) Within the body with a notation of its location below the title;

(iii) On the reverse side with a notation of its location below the title;

(iv) Attached as a tear-off sheet; or

(v) Issued as a separate supplement.

(8) An example of a PAS is at appendix B of this part.

(9) Include a PAS on a Web site page if it collects information directly from an individual and is retrieved by his or her name or personal identifier (See Office of Management and Budget Privacy Act Guidelines, 40 FR 28949, 28961 (July 9, 1975)).

(10) Army policy prohibits the collection of personally identifying information on public Web sites without the express permission of the user. Requests for exceptions must be forwarded to the Army CIO/G–6. (See AR 25–1, para 6–4n.)

(c) *Collecting personal information from third parties.* (1) It may not be practical to collect personal information directly from the individual in all cases. Some examples of when collection from third parties may be necessary are when—

(i) Verifying information;

(ii) Opinions or evaluations are needed;

(iii) The subject cannot be contacted; or

(iv) At the request of the subject individual.

(2) When asking third parties to provide information about other individuals, they will be advised of—

(i) The purpose of the request; and

(ii) Their rights to confidentiality as defined by the Privacy Act of 1974 (Consult with your servicing Staff Judge Advocate for potential limitations to the confidentiality that may be offered pursuant to the Privacy Act).

(d) *Confidentiality promises.* Promises of confidentiality must be prominently annotated in the record to protect from disclosure any information provided in confidence pursuant to 5 U.S.C. 552a(k)(2), (k)(5), or (k)(7).

§ 505.5 Individual access to personal information.

(a) *Individual access.* (1) The access provisions of this part are intended for use by individuals whose records are maintained in a Privacy Act system of

records. If a representative acts on their behalf, a written authorization must be provided, with the exception of members of Congress acting on behalf of a constituent.

(2) A Department of the Army ''Blanket Routine Use'' allows the release of Privacy Act protected information to members of Congress when they are acting on behalf of the constituent and the information is filed and retrieved by the constituent's name or personal identifier. The said ''Blanket Routine Use'' is listed below.

''Congressional Inquiries Disclosure Routine Use: Disclosure from a system of records maintained by a DOD Component 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.''

(3) Upon a written request, an individual will be granted access to information pertaining to him or her that is maintained in a Privacy Act system of records, unless—

(i) The information is subject to an exemption, the system manager has invoked the exemption, and the exemption is published in the FEDERAL REGISTER; or

(ii) The information was compiled in reasonable anticipation of a civil action or proceeding.

(4) Legal guardians or parents acting on behalf of a minor child have the minor child's rights of access under this part, unless the records were created or maintained pursuant to circumstances where the interests of the minor child were adverse to the interests of the legal guardian or parent.

(5) These provisions should allow for the maximum release of information consistent with Army and DOD's statutory responsibilities.

(b) *Individual requests for access.* (1) Individuals will address requests for access to records in a Privacy Act system of records to the system manager or the custodian of the record designated in DA systems of records notices (See DA PAM 25–51 or the Defense Privacy Office's Web site *http://www.defenselink.mil/privacy*).

(2) Individuals do not have to state a reason or justify the need to gain access to records under the Act.

(3) Release of personal information to individuals under this section is not considered a ''public release'' of information.

(c) *Verification of identity for first party requesters.* (1) Before granting access to personal data, an individual will provide reasonable verification of identity.

(2) When requesting records in writing, the preferred method of verifying identity is the submission of a notarized signature. An alternative method of verifying identity for individuals who do not have access to notary services is the submission of an un-sworn declaration in accordance with 28 U.S.C. 1746 in the following format:

(i) If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)''.

(ii) If executed outside of the United States: ''I declare under perjury or penalty under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

(3) When an individual seeks access in person, identification can be verified by documents normally carried by the individual (such as identification card, driver's license, or other license, permit or pass normally used for identification purposes). However, level of proof of identity is commensurate with the sensitivity of the records sought. For example, more proof is required to access medical records than is required to access parking records.

(4) Telephonic requests will not be honored.

(5) An individual cannot be denied access solely for refusal to provide his or her Social Security Number (SSN) unless the SSN was required for access by statute or regulation adopted prior to January 1, 1975.

(6) If an individual wishes to have his or her records released directly to a third party or to be accompanied by a third party when seeking access to his or her records, reasonable proof of authorization must be obtained. The individual may be required to furnish a

signed access authorization with a notarized signature or other proof of authenticity (*i.e.* telephonic confirmation) before granting the third party access.

(d) *Individual access to medical records.* (1) An individual must be given access to his or her medical and psychological records unless a judgment is made that access to such records could have an adverse effect on the mental or physical health of the individual. This determination normally should be made in consultation with a medical doctor. Additional guidance is provided in DOD 5400.11–R, Department of Defense Privacy Program. In this instance, the individual will be asked to provide the name of a personal health care provider, and the records will be provided to that health care provider, along with an explanation of why access without medical supervision could be harmful to the individual.

(2) Information that may be harmful to the record subject should not be released to a designated individual unless the designee is qualified to make psychiatric or medical determinations.

(3) DA activities may offer the services of a military physician, other than the one who provided the treatment.

(4) Do not require the named health care provider to request the records for the individual.

(5) The agency's decision to furnish the records to a medical designee and not directly to the individual is not considered a denial for reporting purposes under the Act and cannot be appealed.

(6) However, no matter what the special procedures are, DA has a statutory obligation to ensure that access is provided the individual.

(7) Regardless of age, all DA military personnel and all married persons are considered adults. The parents of these individuals do not have access to their medical records without written consent of the individual.

(8) DOD 6025.18–R, DOD Health Information Privacy Regulation, issued pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996, has placed additional procedural requirements on the uses and disclosure of individually identifiable health information beyond those found in the Privacy Act of 1974 and this part. In order to be in compliance with HIPAA, the additional guidelines and procedures will be reviewed before release of an individual's identifiable health information.

(e) *Personal notes.* (1) The Privacy Act does not apply to personal notes of individuals used as memory aids. These documents are not Privacy Act records and are not subject to this part.

(2) The five conditions for documents to be considered personal notes are as follows—

(i) Maintained and discarded solely at the discretion of the author;

(ii) Created only for the author's personal convenience and the notes are restricted to that of memory aids;

(iii) Not the result of official direction or encouragement, whether oral or written;

(iv) Not shown to others for any reason; and

(v) Not filed in agency files.

(3) Any disclosure from personal notes, either intentional or through carelessness, removes the information from the category of memory aids and the personal notes then become subject to provisions of the Act.

(f) *Denial or limitation of individual's right to access.* (1) Even if the information is filed and retrieved by an individual's name or personal identifier, his or her right to access may be denied if—

(i) The records were compiled in reasonable anticipation of a civil action or proceeding including any action where DA expects judicial or administrative adjudicatory proceedings. The term ''civil action or proceeding'' includes quasi-judicial, pre-trial judicial, and administrative proceedings, as well as formal litigation;

(ii) The information is about a third party and does not pertain to the requester. A third party's SSN and home address will be withheld. However, information about the relationship between the individual and the third party would normally be disclosed as it pertains to the individual;

(iii) The records are in a system of records that has been properly exempted by the Secretary of the Army from the access provisions of this part and the information is exempt from release

under a provision of the Freedom of Information Act (See appendix C of this part for a list of applicable Privacy Act exemptions, exceptions, and ''Blanket'' routine uses);

(iv) The records contain properly classified information that has been exempted from the access provision of this part;

(v) The records are not described well enough to enable them to be located with a reasonable amount of effort on the part of an employee familiar with the file. Requesters should reasonably describe the records they are requesting. They do not have to designate a Privacy Act system of records notice identification number, but they should at least identify a type of record or functional area. For requests that ask for ''all records about me,'' DA personnel should ask the requester for more information to narrow the scope of his or her request; and

(vi) Access is sought by an individual who fails or refuses to comply with Privacy Act established procedural requirements, included refusing to pay fees.

(2) Requesters will not use government equipment, supplies, stationery, postage, telephones, or official mail channels for making Privacy Act requests. System managers will process such requests but inform requesters that using government resources to make Privacy Act requests is not authorized.

(3) When a request for information contained in a Privacy Act system of records is denied in whole or in part, the Denial Authority or designee shall inform the requester in writing and explain why the request for access has been refused.

(4) A request for access, notification, or amendment of a record shall be acknowledged in writing within 10 working days of receipt by the proper system manager or record custodian.

(g) *Relationship between the Privacy Act and the Freedom of Information Act.* (1) Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting information. In some instances, they may cite neither the PA nor the Freedom of Information Act in their request. In some instances they may cite one Act but not the other. The Freedom of Information Act and the PA works together to ensure that requesters receive the greatest amount of information possible.

(2) Do not deny the individual access to his or her records simply because he or she failed to cite the appropriate statute or regulation.

(3) If the records are required to be released under the Freedom of Information Act, the PA will never block disclosure to requester. If the PA allows the DA activity to deny access to an individual, the Freedom of Information Act must still be applied, and the information released if required by the Freedom of Information Act.

(4) Unlike the Freedom of Information Act, the Privacy Act applies only to U.S. citizens and aliens lawfully admitted for permanent residence.

(5) Requesters who seek records about themselves contained in a Privacy Act system of records (1st party requesters) and who cite or imply only the Privacy Act, will have their request processed under the provisions of both the PA and the Freedom of Information Act. If the information requested is not contained in a Privacy Act system of records or is not about the requester, the individual's request will be processed under the provisions of the Freedom of Information Act only, and the Freedom of Information Act processing requirements/time lines will apply.

(6) *Third party information.* (i) Third party information contained in a Privacy Act system of records that does not pertain to the requester, such as SSN, home addresses, and other purely personal information that is not about the requester, will be processed under the provisions of Freedom of Information Act only. Third party information that is not about the requester is not subject to the Privacy Act's first party access provision.

(ii) Information about the relationship between the first party requester and a third party is normally disclosed as pertaining to the first party requester. Consult your servicing Staff Judge Advocate if there is a question about the release of third party information to a first party requester.

(7) If an individual requests information about them contained in a Privacy Act system of records, the individual may be denied the information only if the information is exempt under both the PA and the Freedom of Information Act. Both PA and Freedom of Information Act exemptions will be cited in the denial letter and appeals will be processed in accordance with both Acts.

(8) Each time a first party requester cites or implies the PA, perform this analysis:

(i) Is the request from a United States living citizen or an alien lawfully admitted for permanent residence?

(ii) Is the individual requesting an agency record?

(iii) Are the records within a PA system of records that are filed and retrieved by an individual's name or other personal identifier? (If the answer is ''yes'' to all of these questions, then the records should be processed under the ''Privacy Act'') and

(iv) Does the information requested pertain exclusively to the requester?

(A) If yes, no further consideration of Freedom of Information Act exemptions required. Release all information unless a PA exemption authorizes withholding.

(B) If no, process the information that is not about the requester under the Freedom of Information Act and withhold only if a proper Freedom of Information Act exemption applies.

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

(i) *Procedures for denying or limiting an individual's right to access or amendment and the role of the Denial Authority.* (1) The only officials authorized to deny a request for records or a request to amend records in a PA system of records pertaining to the requesting individual, are the appropriate Denial Authorities, their designees, or the Secretary of the Army who will be acting through the General Counsel.

(2) Denial Authorities are authorized to deny requests, either in whole or in part, for notification, access and amendment of Privacy Act records contained in their respective areas of responsibility.

(i) The Denial Authority may delegate all or part of their authority to a division chief under his supervision within the Agency in the grade of 0–5/GS–14 or higher. All delegations must be in writing.

(ii) The Denial Authority will send the names, office names, and telephones numbers of their delegates to the DA Freedom of Information and Privacy Office.

(iii) If a Denial Authority delegate denies access or amendment, the delegate must clearly state that he or she is acting on behalf of the Denial Authority, who must be identified by name and position in the written response to the requester. Denial Authority designation will not delay processing privacy requests/actions.

(iv) The official Denial Authorities are for records under their authority (See appendix B of this part). The individuals designated as Denial Authorities under this part are the same individuals designated as Initial Denial Authorities under AR 25–55, the Department of the Army Freedom of Information Act Program. However, delegation of Denial Authority pursuant to this part does not automatically encompass delegation of Initial Denial Authority under AR 25–55. Initial Denial Authority must be expressly delegated pursuant to AR 25–55 for an individual to take action on behalf of an Initial Denial Authority under AR 25–55.

(3) The custodian of the record will acknowledge requests for access made under the provisions of the Privacy Act within 10 working days of receipt.

(4) Requests for information recommended for denial will be forwarded to the appropriate Denial Authority, along with a copy of the records and justification for withholding the record. At the same time, notify the requester of the referral to the Denial

Authority for action. All documents or portions thereof determined to be releasable to the requester will be released to the requester before forwarding the case to the Denial Authority.

(5) Within 30 working days, the Denial Authority will provide the following notification to the requester in writing if the decision is to deny the requester access to the information.

(6) Included in the notification will be:

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

(ii) Date of the denial;

(iii) The specific reason for the denial, citing the appropriate subsections of the Privacy Act, the Freedom of Information Act, AR 25–55, The Department of the Army Freedom of Information Act Program and this part; and

(iv) The individual's right to administratively appeal the denial within 60 calendar days of the mailing date of the notice, through the Denial Authority, to the Office of the General Counsel, Secretary of the Army, 104 Army Pentagon, Washington, DC 20310–0104.

(7) The appeal must be in writing and the requester should provide a copy of the denial letter and a statement of their reasons for seeking review.

(8) For denials made by the DA when the record is maintained in a Government-wide system of records, an individual's request for further review must be addressed to each of the appropriate government Privacy Act offices listed in the Privacy Act system of records notices. For a current listing of Government-wide Privacy Act system of records notices see the Defense Privacy Office's Web site *http://www.defenselink.mil/privacy* or DA PAM 25–51.

(j) *No records determinations.* (1) Since a no record response may be considered an ''adverse'' determination, the Denial Authority must make the final determination that no records exist. The originating agency shall notify the requester that an initial determination has been made that there are no responsive records, however the final determination will be made by the Denial Authority. A no records certificate must accompany a no records determination that is forwarded to the Denial Authority.

(2) The Denial Authority must provide the requester with appeal rights.

(k) *Referral of requests.* (1) A request received by a DA activity having no records responsive to a request shall be referred to another DOD Component or DA activity, if the other Component or activity confirms that they have the requested records, or verifies that they are the proper custodian for that type of record. The requester will be notified of the referral. In cases where the DA activity receiving the request has reason to believe that the existence or nonexistence of the record may in itself be classified, that activity will consult the Component or activity having cognizance over the records in question before referring the request. If the Component or activity that is consulted determines that the existence or nonexistence of the records is in itself classified, the requester shall be so notified by the DA activity originally receiving the request that it can neither confirm nor deny the existence of the record, and no referral shall take place.

(2) A DA activity shall refer a Privacy Act request for a classified record that it holds to another DOD Component, DA activity, or agency outside the Department of Defense, if the record originated in the other DOD Component, DA activity, or outside agency, or if the classification is derivative. The referring DA activity will provide the records and a release recommendation with the referral action.

(3) Any DA activity receiving a request that has been misaddressed will refer the request to the proper address and advise the requester.

(4) Within DA, referrals will be made directly to offices having custody of the requested records (unless the Denial Authority is the custodian of the requested records). If the office receiving the Privacy Act request does not know where the requested records are located, the office will contact the DA FOIA/P Office, to determine the appropriate office for referral.

(5) The requester will be informed of the referral whenever records or a portion of records are, after prior consultation, referred to another activity for a release determination and direct

response. Additionally, the DA activity referral letter will accomplish the following—

(i) Fully describe the Privacy Act system of records from which the document was retrieved; and

(ii) Indicate whether the referring activity claims any exemptions in the Privacy Act system of records notice.

(6) Within the DA, an activity will refer a Privacy Act request for records that it holds but was originated by another activity, to the originating activity for direct response. An activity will not, in any case, release or deny such records without prior consultation with the originating activity. The requester will be notified of such referral.

(7) A DA activity may refer a Privacy Act request for records that originated in an agency outside of DOD, or that is based on information obtained from an agency outside the DOD, to that agency for direct response to the requester, only if that agency is subject to the Privacy Act. Otherwise, the DA activity must respond to the request.

(8) DA activities will not honor any Privacy Act requests for investigative, intelligence, or any other type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release in writing. Such requests will be referred to the agency that provided the records.

(9) A DA activity will notify requesters seeking National Security Council (NSC) or White House documents that they should write directly to the NSC or White House for such documents. DA documents in which the NSC or White House have a concurrent reviewing interest will be forwarded to the Department of Defense, Office of Freedom of Information and Security Review, which will coordinate with the NSC or White House, and return the documents to the originating DA activity after NSC or White House review. NSC or White House documents discovered in DA activity files which are responsive to a Privacy Act request will be forwarded to DOD for coordination and return with a release determination.

(10) To the extent referrals are consistent with the policies expressed above; referrals between offices of the same DA activity are authorized.

(l) *Reproduction fees.* (1) Use fees only to recoup direct reproduction costs associated with granting access.

(2) DA activities may use discretion in their decision to charge for the first copy of records provided to an individual to whom the records pertain. Thereafter, fees will be computed pursuant to the fee schedule set forth in AR 25–55, including the fee waiver provisions.

(3) Checks or money orders for fees should be made payable to the Treasurer of the United States and will be deposited in the miscellaneous receipts of the treasury account maintained at the activity's finance office.

(4) Reproduction costs shall only include the direct costs of reproduction and shall not include costs of—

(i) Time or effort devoted to searching for or reviewing the records by personnel;

(ii) Fees not associated with the actual cost of reproduction;

(iii) Producing a copy when it must be provided to the individual without cost under another regulation, directive, or law;

(iv) Normal postage;

(v) Transportation of records or personnel; or

(vi) Producing a copy when the individual has requested only to review the records and has not requested a copy, and the only means of allowing review is to make a copy (e.g., the records are stored in a computer and a copy must be printed to provide individual access, or the activity does not wish to surrender temporarily the original records for the individual to review).

(m) *Privacy Act case files.* (1) Whenever an individual submits a Privacy Act request, a case file will be established. This Privacy Act case file is a specific type of file that is governed by a specific Privacy Act system of records notice. In no instance will the individual's Privacy Act request and corresponding Army actions be included in the individual's military personnel file or other military filing systems, such as adverse action files or general legal files, and in no instance will the Privacy Act case file be used

to make an adverse determination about the individual.

(2) The case file will be comprised of the request for access/amendment, grants, refusals, coordination action(s), and all related papers.

§ 505.6 Amendment of records.

(a) *Amended records.* (1) Individuals are encouraged to periodically review the information maintained about them in Privacy Act systems of records and to familiarize themselves with the amendment procedures established by this part.

(2) An individual may request to amend records that are retrieved by his or her name or personal identifier from a system of records unless the system has been exempted from the amendment provisions of the Act. The standard for amendment is that the records are inaccurate as a matter of fact rather than judgment, irrelevant, untimely, or incomplete. The burden of proof is on the requester.

(3) The system manager or custodian must review Privacy Act records for accuracy, relevance, timeliness, and completeness.

(4) Amendment procedures are not intended to permit individuals to challenge events in records that have actually occurred. Amendment procedures only allow individuals to amend those items that are factually inaccurate and not matters of official judgment (e.g., performance ratings, promotion potential, and job performance appraisals). In addition, an individual is not permitted to amend records for events that have been the subject of judicial or quasi-judicial actions/proceedings.

(b) *Proper amendment requests.* (1) Amendment requests, except for routine administrative changes, will be in writing.

(2) When acting on behalf of a first party requester, an individual must provide written documentation of the first party requester's consent to allow the individual to view his or her records.

(3) Amendment is appropriate if it can be shown that—

(i) Circumstances leading up to the recorded event were found to be inaccurately reflected in the document;

(ii) The record is not identical to the individual's copy; or

(iii) The document was not constructed in accordance with the applicable recordkeeping requirements prescribed in AR 25–400–2, The Army Records Information Management System (ARIMS).

(4) Under the amendment provisions, an individual may not challenge the merits of an adverse determination.

(5) U.S. Army Criminal Investigation Command (USACIDC) reports of investigations (PA system of records notice A0195–2a USACIDC, Source Register; A0195–2b USACIDC, Criminal Investigation and Crime Laboratory Files) have been exempted from the amendment provisions of the Privacy Act. Requests to amend these reports will be considered under AR 195–2. Actions taken by the Commander of U.S. Army Criminal Investigation Command will constitute final action on behalf of the Secretary of the Army under that regulation.

(6) Records placed in the National Archives are exempt 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 that are under the legal control of the originating agency; for example, an agency's current operating files or records stored at a Federal Records Center.

(7) Inspector General investigative files and action request/complaint files (records in system notice A0021–1 SAIG, Inspector General Records) have been exempted from the amendment provisions of the Privacy Act. Requests to amend these reports will be considered under AR 20–1 by the Inspector General. Action by the Inspector General will constitute final action on behalf of the Secretary of the Army under that regulation.

(8) Other records that are exempt from the amendment provisions of the Privacy Act are listed in the applicable PA system of records notices.

(c) *Amendment procedures.* (1) Requests to amend records should be addressed to the custodian or system manager of the records. The request must reasonably describe the records to be amended and the changes sought

(e.g., deletion, addition, or amendment). The burden of proof is on the requester. The system manager or records custodian will provide the individual with a written acknowledgment of the request within 10 working days and will make a final response within 30 working days of the date the request was received. The acknowledgment must clearly identify the request and inform the individual that final action will be forthcoming within 30 working days.

(2) Records for which amendment is sought must be reviewed by the proper system manager or custodian for accuracy, relevance, timeliness, and completeness.

(3) If the amendment is appropriate, the system manager or custodian will physically amend the records accordingly. The requester will be notified of such action.

(4) If the amendment is not warranted, the request and all relevant documents, including reasons for not amending, will be forwarded to the proper Denial Authority within 10 working days to ensure that the 30 day time limit for the final response is met. In addition, the requester will be notified of the referral.

(5) Based on the documentation provided, the Denial Authority will either amend the records and notify the requester and the custodian of the records of all actions taken, or deny the request. If the records are amended, those who have received the records in the past will receive notice of the amendment.

(6) If the Denial Authority determines that the amendment is not warranted, he or she will provide the requester and the custodian of the records reason(s) for not amending. In addition, the Denial Authority will send the requester an explanation regarding his or her right to seek further review by the DA Privacy Act Review Board, through the Denial Authority, and the right to file a concise ''Statement of Disagreement'' to append to the individual's records.

(i) On receipt of a request for further review by the Privacy Act Review Board, the Denial Authority will append any additional records or background information that substantiates the refusal or renders the case complete;

(ii) Within 5 working days of receipt, forward the appeal to the DA Privacy Act Review Board; and

(iii) Append the servicing Judge Advocate's legal review, including a determination that the Privacy Act Review Board packet is complete.

(d) *DA Privacy Act Review Board.* (1) The DA Privacy Act Review Board acts on behalf of the Secretary of the Army in deciding appeals of the appropriate Denial Authority's refusal to amend records.

(2) The Board will process an appeal within 30 working days of its receipt. The General Counsel may authorize an additional 30 days when unusual circumstances and good cause so warrant.

(3) The Board membership consists of the following principal members, comprised of three voting and two non-voting members, or their delegates.

(4) Three voting members include—

(i) Administrative Assistant to the Secretary of the Army (AASA) who acts as the Chairman of the Board;

(ii) The Judge Advocate General; and

(iii) The Chief, DA Freedom of Information and Privacy Division, U.S. Army Records Management and Declassification Agency.

(5) In addition, two non-voting members include—

(i) The Chief Attorney, OAASA (or designee) who serves as the legal advisor and will be present at all Board sessions to provide legal advice as required; and

(ii) Recording Secretary provided by the Office of the Administrative Assistant to the Secretary of the Army.

(e) *DA Privacy Act Review Board meetings.* (1) The meeting of the Board requires the presence of all five members or their designated representatives. Other non-voting members with subject matter expertise may participate in a meeting of the Board, at the discretion of the Chairman.

(2) Majority vote of the voting members is required to make a final determination on a request before the Board.

(3) Board members, who have denial authority, may not vote on a matter upon which they took Denial Authority action. However, an individual who

took Denial Authority action, or his or her representative, may serve as a nonvoting member when the Board considers matters in the Denial Authority's area of functional specialization.

(4) The Board may seek additional information, including the requester's official personnel file, if relevant and necessary to decide the appeal.

(5) If the Board determines that an amendment is warranted (the record is inaccurate as a matter of fact rather than judgment, irrelevant, untimely, or incomplete) it will amend the record and notify the requester, the Denial Authority, the custodian of the record, and any prior recipients of the record, of the amendment.

(6) If the Board determines that amendment is unwarranted, they will—

(i) Obtain the General Counsel's concurrence in writing;

(ii) Respond to the requester with the reasons for denial; and

(iii) Inform the requester of the right to file a ''Statement of Disagreement'' with the Board's action and to seek judicial review of the Army's refusal to amend. A ''Statement of Disagreement'' must be received by the system manager within 120 days and it will be made an integral part of the pertinent record. Anyone who may have access to, use of, or need to disclose information from the record will be aware that the record was disputed. The disclosing authority may include a brief summary of the Board's reasons for not amending the disputed record.

(7) It is inappropriate for the Privacy Act Review Board to consider any record which is exempt from the amendment provision of the Privacy Act.

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

(a) *Disclosing records to third parties.* (1) DA is prohibited from disclosing a record from a Privacy Act system of records to any person or agency without the prior written consent of the subject of the record, except when—

(i) Pursuant to the twelve Privacy Act exceptions. The twelve exceptions to the ''no disclosure without consent'' rule are those exceptions which permit the release of personal information without the individual's/subject's consent (See appendix C of this part).

(ii) The FOIA requires the release of the record. One of the twelve exceptions to Privacy Act is the FOIA Exception. If the FOIA requires the release of information, the information must be released. The Privacy Act can not prevent release to a third party if the FOIA requires release. However, information must not be discretionarily released under the FOIA if the information is subject to the Privacy Act's ''no disclosure without consent'' rule.

(iii) A routine use applies. Another major exception to the ''no disclosure without consent'' rule is the routine use exception. The Privacy Act allows federal agencies to publish routine use exceptions to the Privacy Act. Some routine uses are Army specific, DOD specific, and Governmentwide. Routine uses exceptions are listed in the Privacy Act system of records notice(s) applicable to the Privacy Act records in question. The Army and other agencies' system of records notices may be accessed at the Defense Privacy Office's Web site *http://www.defenselink.mil/privacy*.

(2) The approved twelve exceptions to the Privacy Act ''no disclosure without consent'' rule are listed at appendix C of this part.

(b) *Disclosing records to other DOD components and to federal agencies outside the DOD.* (1) The twelve Privacy Act exceptions referred to in appendix C of this part are available to other DOD components and to federal agencies outside the DOD as exceptions to the Privacy Act's ''no disclosure without consent'' rule, with the exception of the FOIA exception. The FOIA is not an appropriate mechanism for providing information to other DOD components and to federal agencies outside the DOD.

(2) A widely used exception to requests for information from local and state government agencies and federal agencies not within the DOD is the routine use exception to the Privacy Act.

(3) The most widely used exception to requests for information from other DOD components is the ''intra-agency

need to know'' exception to the Privacy Act. Officers and employees of the DOD who have an official need for the records in the performance of their official duties are entitled to Privacy Act protected information. Rank, position, or title alone does not authorize access to personal information about others. An official need for the information must exist before disclosure.

(4) For the purposes of disclosure and disclosure accounting, the Department of Defense (DOD) is considered a single agency.

(c) *Disclosures under AR 25–55, the Freedom of Information Act (FOIA) Program.* (1) Despite Privacy Act protections, all records must be disclosed if the Freedom of Information Act (FOIA) requires their release. The FOIA requires release unless the information is exempted by one or more of the nine FOIA exemptions.

(2) Required release under the FOIA. The following are examples of personal information that is generally not exempt from the FOIA; therefore, it must be released to the public, unless covered by paragraphs (d)(2) and (d)(3) of this section. The following list is not all inclusive:

(i) Military Personnel—

(A) Rank, date of rank, active duty entry date, basic pay entry date, and gross pay (including base pay, special pay, and all allowances except Basic Allowance for Housing);

(B) Present and past duty assignments, future stateside assignments;

(C) Office/unit name, duties address and telephone number (DOD policy may require withholding of this information in certain circumstances);

(D) Source of commission, promotion sequence number, military awards and decorations, and professional military education;

(E) Duty status, at any given time;

(F) Separation or retirement dates;

(G) Military occupational specialty (MOS);

(H) Active duty official attendance at technical, scientific or professional meetings; and

(I) Biographies and photos of key personnel (DOD policy may require withholding of this information in certain circumstances).

(ii) Federal civilian employees—

(A) Present and past position titles, occupational series, and grade;

(B) Present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious or Distinguished Executive Ranks, and allowances and differentials);

(C) Present and past duty stations;

(D) Office or duty telephone number (DOD policy may require withholding of this information in certain circumstances); and

(E) Position descriptions, identification of job elements, and performance standards (but not actual performance appraisals), the release of which would not interfere with law enforcement programs or severely inhibit agency effectiveness. Performance elements and standards (or work expectations) may also be withheld when they are so intertwined with performance appraisals, the disclosure would reveal an individual's performance appraisal.

(d) *Personal information that requires protection.* (1) The following are examples of information that is generally NOT releasable without the written consent of the subject. This list is not all inclusive—

(i) Marital status;

(ii) Dependents' names, sex and SSN numbers;

(iii) Civilian educational degrees and major areas of study (unless the request for the information relates to the professional qualifications for Federal employment);

(iv) School and year of graduation;

(v) Home of record;

(vi) Home address and phone;

(vii) Age and date of birth;

(viii) Overseas assignments (present or future);

(ix) Overseas office or unit mailing address and duty phone of routinely deployable or sensitive units;

(x) Race/ethnic origin;

(xi) Educational level (unless the request for the information relates to professional qualifications for federal employment);

(xii) Social Security Number (SSN); and

(xiii) The information that would otherwise be protected from mandatory disclosure under a FOIA exemption.

(2) The Office of the Secretary of Defense issued a policy memorandum in 2001 that provided greater protection of DOD personnel in the aftermath of 9/11 by requiring information that personally identifies DOD personnel be more carefully scrutinized and limited. In general, the Department of Defense has specifically advised that DOD components are not to release lists of names, duty addresses, present or past position titles, grades, salaries, and performance standards of DOD military members and civilian employees. At the office director level or above, the release of information will be limited to the name, official title, organization, and telephone number, provided a determination is made that disclosure does not raise security or privacy concerns. No other information, including room numbers, will normally be released about these officials. Consistent with current policy, information on officials below the office director level may continue to be released if their positions or duties require frequent interaction with the public.

(3) Disclosure of records pertaining to personnel of overseas, sensitive, or routinely deployed units shall be prohibited to the extent authorized by 10 U.S.C. 130b.

(e) *Release of home addresses and home telephone numbers.* (1) The release of home addresses and home telephone numbers normally is prohibited. This release is normally considered a clearly ''unwarranted invasion'' of personal privacy and is exempt from mandatory release under the FOIA. However, home addresses and home telephone numbers may still be released if—

(i) The individual has indicated previously in writing that he or she has no objection to the release;

(ii) The source of the information to be released is a public document such as commercial telephone directory or other public listing;

(iii) The release is required by Federal statute (for example, pursuant to federally funded state programs to locate parents who have defaulted on child support payments) (See 42 U.S.C. 653); or

(iv) The releasing of information is pursuant to the routine use exception or the ''intra-agency need to know'' exception to the Privacy Act.

(2) A request for a home address or telephone number may be referred to the last known address of the individual for a direct reply by the individual to the requester. In such cases, the requester shall be notified of the referral.

(3) Do not sell or rent lists of individual names and addresses unless such action is specifically authorized by the appropriate authority.

(f) *Emergency recall rosters.* (1) The release of emergency recall rosters normally is prohibited. Their release is normally considered a clearly ''unwarranted invasion'' of personal privacy and is exempt from mandatory release under the FOIA. Emergency recall rosters should only be shared with those who have an ''official need to know'' the information, and they should be marked ''For Official Use Only'' (See AR 25–55).

(2) Do not include a person's SSN on an emergency recall roster or their spouse's name.

(3) Commanders and supervisors should give consideration to those individuals with unlisted phone numbers. Commanders and supervisors should consider limiting access to an unlisted number within the unit.

(g) *Social rosters.* (1) Before including personal information such as a spouse's name, home addresses, home phone numbers, and similar information on social rosters or social directories, which will be shared with individuals, always ask for the individual's written consent. Without their written consent, do not include this information.

(2) Collection of this information will require a Privacy Act Statement which clearly tells the individual what information is being solicited, the purpose, to whom the disclosure of the information is made, and whether collection of the information is voluntary or mandatory.

(h) *Disclosure of personal information on group orders.* (1) Personal information will not be posted on group orders so that everyone on the orders can view it. Such a disclosure of personal information violates the Privacy Act and this part.

(2) The following are some examples of personal information that should not be contained in group orders. The following list is not all-inclusive—

(i) Complete SSN;

(ii) Home addresses and phone numbers; or

(iii) Date of birth.

(i) *Disclosures for established routine uses.* (1) Records may be disclosed outside the DOD without the consent of the individual to whom they pertain for an established routine use.

(2) A routine use shall—

(i) Be compatible with and related to the purpose for which the record was compiled;

(ii) Identify the persons or organizations to which the records may be released; and

(iii) Have been published previously in the FEDERAL REGISTER.

(3) Establish a routine use for each user of the information outside the Department of Defense who needs official access to the records.

(4) Routine uses may be established, discontinued, or amended without the consent of the individuals involved. However, new or changed routine uses must be published in the FEDERAL REGISTER at least 30 days before actually disclosing any records.

(5) In addition to the routine uses listed in the applicable systems of records notices, ''Blanket Routine Uses'' for all DOD maintained systems of records have been established. These ''Blanket Routine Uses'' are applicable to every record system maintained within the DOD unless specifically stated otherwise within a particular record system. The ''Blanket Routine Uses'' are listed at appendix C of this part.

(j) *Disclosure accounting.* (1) System managers must keep an accurate record of all disclosures made from DA Privacy Act system of records, including those made with the consent of the individual, except when records are—

(i) Disclosed to DOD officials who have a ''need to know'' the information to perform official government duties; or

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

(2) The purpose for the accounting of disclosure is to—

(i) Enable an individual to ascertain those persons or agencies that have received information about them;

(ii) Enable the DA to notify past recipients of subsequent amendments or ''Statements of Dispute'' concerning the record; and

(iii) Provide a record of DA compliance with the Privacy Act of 1974, if necessary.

(3) Since the characteristics of records maintained within DA vary widely, no uniform method for keeping the disclosure accounting is prescribed.

(4) Essential elements to include in each disclosure accounting report are—

(i) The name, position title, and address of the person making the disclosure;

(ii) Description of the record disclosed;

(iii) The date, method, and purpose of the disclosure; and

(iv) The name, position title, and address of the person or agency to which the disclosure was made.

(5) The record subject has the right of access to the disclosure accounting except when—

(i) The disclosure was made for law enforcement purposes under 5 U.S.C. 552a(b)(7); or

(ii) The disclosure was made from a system of records for which an exemption from 5 U.S.C. 552a(c)(3) has been claimed.

(6) There are no approved filing procedures for the disclosure of accounting records; however, system managers must be able to retrieve upon request. With this said, keep disclosure accountings for 5 years after the disclosure, or for the life of the record, whichever is longer.

(7) When an individual requests such an accounting, the system manager or designee will respond within 20 working days.

§ 505.8 Training requirements.

(a) *Training.* (1) The Privacy Act requires all heads of Army Staff agencies, field operating agencies, direct reporting units, Major Commands, subordinate commands, and installations to establish rules of conduct for all personnel involved in the design, development, operation, and maintenance of any Privacy Act system of records and

to train the appropriate personnel with respect to the privacy rules including the penalties for non-compliance (See 5 U.S.C. 552a(e)(9)).

(2) To meet the training requirements, three general levels of training must be established. They are—

(i) *Orientation.* Training that provides basic understanding of this part as it applies to the individual's job performance. This training will be provided to personnel, as appropriate, and should be a prerequisite to all other levels of training;

(ii) *Specialized training.* Training that provides information as to the application of specific provisions of this part to specialized areas of job performance. Personnel of particular concern include, but are not limited to, personnel specialists, finance officers, DOD personnel who may be expected to deal with the news media or the public, special investigators, paperwork managers, individuals working with medical and security records, records managers, computer systems development personnel, computer systems operations personnel, statisticians dealing with personal data and program evaluations, contractors and anyone responsible for implementing or carrying out functions under this part. Specialized training should be provided on a periodic basis; and

(iii) *Managerial training.* Training designed to identify for responsible managers (such as senior system managers, Denial Authorities, and functional managers described in this section) issues that they should consider when making management decisions affected by the Privacy Act Program.

(b) *Training tools.* Helpful resources include—

(1) Privacy Act training slides for Major Commands and Privacy Act Officers: Contact the DA FOIA/P Office, or slides can be accessed at the Web site *https://www.rmda.belvoir.army.mil/rmdaxml/rmda/FPHomePage.asp.*

(2) The ''DOJ Freedom of Information Act Guide and Privacy Act Overview'': The U.S. Department of Justice, Executive Office for United States Attorneys, Office of Legal Education, 600 E. Street, NW., Room 7600, Washington, DC 20530, or training programs can be accessed at the Web site *www.usdoj.gov/usao/eousa/ole.html.*

§ 505.9 Reporting requirements.

The Department of the Army will submit reports, consistent with the requirements of DOD 5400.11–R, OMB Circular A–130, and as otherwise directed by the Defense Privacy Office. Contact the DA FOIA/P Office for further guidance regarding reporting requirements.

§ 505.10 Use and establishment of exemptions.

(a) *Three types of exemptions.* (1) There are three types of exemptions applicable to an individual's right to access permitted by the Privacy Act. They are the Special, General, and Specific exemptions.

(2) Special exemption (d)(5)—Relieves systems of records from the access provision of the Privacy Act only. This exemption applies to information compiled in reasonable anticipation of a civil action or proceeding.

(3) General exemption (j)(2)—Relieves systems of records from most requirements of the Act. Only Army activities actually engaged in the enforcement of criminal laws as their primary function may claim this exemption.

(4) Specific exemptions (k)(1)–(k)(7)–Relieves systems of records from only a few provisions of the Act.

(5) To find out if an exemption is available for a particular record, refer to the applicable system of records notices. System of records notices will state which exemptions apply to a particular type of record. System of records notices that are applicable to the Army are contained in DA Pam 25–51 (available at the Army Publishing Directorate Web site *http://www.usapa.army.mil/*), the Defense Privacy Office's Web site *http://www.defenselink.mil/privacy/*), or in this section). Some of the system of records notices apply only to the Army and the DOD and some notices are applicable government-wide.

(6) Descriptions of current exemptions are listed in detail at appendix C of this part.

(b) *Exemption procedures.* (1) For the General and Specific exemptions to be applicable to the Army, the Secretary

of the Army must promulgate exemption rules to implement them. This requirement is not applicable to the one Special exemption which is self-executing. Once an exemption is made applicable to the Army through the exemption rules, it will be listed in the applicable system of records notices to give notice of which specific types of records the exemption applies to. When a system manager seeks to have an exemption applied to a certain Privacy Act system of records that is not currently provided for by an existing system of records notice, the following information will be furnished to the DA FOIA/P Office—

(i) Applicable system of records notice;

(ii) Exemption sought; and

(iii) Justification.

(2) After appropriate staffing and approval by the Secretary of the Army and the Defense Privacy Office, it will be published in the FEDERAL REGISTER as a proposed rule, followed by a final rule 60 days later. No exemption may be invoked until these steps have been completed.

§ 505.11 Federal Register publishing requirements.

(a) *The Federal Register*. There are three types of documents relating to the Privacy Act Program that must be published in the FEDERAL REGISTER. They are the DA Privacy Program policy and procedures (AR 340–21), the DA exemption rules, and Privacy Act system of records notices.

(b) *Rulemaking procedures*. (1) DA Privacy Program procedures and exemption rules are subject to the formal rulemaking process.

(2) Privacy Act system of records notices are not subject to formal rulemaking and are published in the FEDERAL REGISTER as Notices, not Rules.

(3) The Privacy Program procedures and exemption rules are incorporated into the Code of Federal Regulations (CFR). Privacy Act system of records notices are not published in the CFR.

§ 505.12 Privacy Act enforcement actions.

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

(1) *Civil remedies*. The DA is subject to civil remedies for violations of the Privacy Act. In addition to specific remedial actions, 5 U.S.C. 552a(g) may provide for the payment of damages, court costs, and attorney's fees.

(2) *Criminal penalties*. A DA official or employee may be found guilty of a misdemeanor and fined not more than $5,000 for willfully—

(i) Disclosing individually identifiable personal information to one not entitled to the information;

(ii) Requesting or obtaining information from another's record under false pretenses; or

(iii) Maintaining a system of records without first meeting the public notice requirements of the Act.

(b) *Litigation Status Sheet*. (1) When a complaint citing the Privacy Act is filed in a U.S. District Court against the Department of the Army, an Army Component, a DA Official, or any Army employee, the responsible system manager will promptly notify the Army Litigation Division, U.S. Army Legal Services Agency (USALSA), 9275 Gunston Road, Fort Belvoir, VA 22060.

(2) The Litigation Status Sheet at appendix E of this part provides a standard format for this notification. At a minimum, the initial notification will have items (a) through (f) provided.

(3) A revised Litigation Status Sheet must be provided at each stage of the litigation.

(4) When a court renders a formal opinion or judgment, copies must be provided to the Defense Privacy Office by the Army Litigation Division.

(c) *Administrative remedies—Privacy Act complaints*. (1) The installation level Privacy Act Officer is responsible for processing Privacy Act complaints or allegations of Privacy Act violations. Guidance should be sought from the local Staff Judge Advocate and coordination made with the system manager to assist in the resolution of Privacy Act complaints. The local Privacy Act officer is responsible for—

(i) Reviewing allegations of Privacy Act violations and the evidence provided by the complainants;

(ii) Making an initial assessment as to the validity of the complaint, and taking appropriate corrective action;

(iii) Coordinating with the local Staff Judge Advocate to determine whether a more formal investigation such as a commander's inquiry or an AR 15–6 investigation is appropriate; and

(iv) Ensuring the decision at the local level from either the Privacy Act Officer or other individual who directed a more formal investigation is provided to the complainant in writing.

(2) The decision at the local level may be appealed to the next higher command level Privacy Act Officer.

(3) A legal review from the next higher command level Privacy Act Officer's servicing Staff Judge Advocate is required prior to action on the appeal.

[71 FR 46052, Aug. 10, 2006, as amended at 78 FR 18473, Mar. 27, 2013]

§ 505.13 Computer Matching Agreement Program.

(a) *General provisions.* (1) Pursuant to the Privacy Act and this part, DA records may be subject to computer matching, *i.e.*, the computer comparison of automated systems of records.

(2) There are two specific kinds of Matching Programs covered by the Privacy Act—

(i) Matches using records from Federal personnel or payroll systems of records; and

(ii) Matches involving Federal benefit programs to accomplish one or more of the following purposes—

(A) To determine eligibility for a Federal benefit;

(B) To comply with benefit program requirements; and

(C) To effect recovery of improper payments or delinquent debts from current or former beneficiaries.

(3) The comparison of records must be computerized. Manual comparisons are not covered.

(4) Any activity that expects to participate in a Computer Matching Program must contact the DA FOIA/P Office immediately.

(5) In all cases, Computer Matching Agreements are processed by the Defense Privacy Office and approved by the Defense Data Integrity Board. Agreements will be conducted in accordance with the requirements of 5 U.S.C. 552a, and OMB Circular A–130.

(b) *Other matching.* Several types of computer matching are exempt from the restrictions of the Act such as matches used for statistics, pilot programs, law enforcement, tax administration, routine administration, background checks, and foreign counterintelligence. The DA FOIA/P Office should be consulted if there is a question as to whether the Act governs a specific type of computer matching.

§ 505.14 Recordkeeping requirements under the Privacy Act.

(a) *AR 25–400–2, The Army Records Information Management System (ARIMS).* To maintain privacy records are required by the Army Records Information Management System (ARIMS) to provide adequate and proper documentation of the conduct of Army business so that the rights and interests of individuals and the Federal Government are protected.

(b) A full description of the records prescribed by this part and their disposition/retention requirements are found on the ARIMS Web site at *https://www.arims.army.mil.*

APPENDIX A TO PART 505—REFERENCES

(a) The Privacy Act of 1974 (5 U.S.C. 552a, as amended).

(b) OMB Circular No. A–130, Management of Federal Information Resources.

(c) AR 25–55, The Department of the Army Freedom of Information Program.

(d) DA PAM 25–51, The Army Privacy Program—System of Records Notices and Exemption Rules.

(e) DOD Directive 5400.11, Department of Defense Privacy Program.

(f) DOD 5400.11–R, Department of Defense Privacy Program.

(g) AR 25–2, Information Assurance

(h) AR 25–400–2, The Army Records Information Management System (ARIMS).

(i) AR 27–10, Military Justice.

(j) AR 40–66, Medical Record Administration and Health Care Documentation.

(k) AR 60–20 and AFR 147–14, Army and Air Force Exchange Service Operating Policies.

(l) AR 190–45, Law Enforcement Reporting.

(m) AR 195–2, Criminal Investigation Activities.

(n) AR 380–5, Department of Army Information Security Program.

(o) DOD Directive 5400–7, DOD Freedom of Information Act (FOIA) Program.

(q) DOD 5400.7–R, DOD Freedom of Information Program.

(r) DOD 6025.18–R, DOD Health Information Privacy Regulation (HIPAA).

(s) U.S. Department of Justice, Freedom of Information Act Guide and Privacy Act Overview.

(t) Office of Secretary of Defense memorandum, dated July 15, 2005, subject: Notifying Individuals when Personal Information is Lost, Stolen, or Compromised located at *http://www.army.mil/ciog6/referencs/policy/dos/OSDprivateinfo.pdf*.

APPENDIX B TO PART 505—DENIAL AUTHORITIES FOR RECORDS UNDER THEIR AUTHORITY (FORMERLY ACCESS AND AMENDMENT REFUSAL AUTHORITIES)

(a) 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 this authority to the Chief Attorney, OAASA (See DCS, G1 for Military Equal Opportunity (EO) actions).

(b) 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, OAASA, acts on requests for non-finance and accounting records of the Assistant Secretary of the Army (Financial Management and Comptroller).

(c) 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, OAASA, acts on requests for non-procurement records of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).

(d) 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 (NOTE: Requests from former civilian employees to amend a record in an Office of Personnel Management system of records, such as the Official Personnel Folder, should be sent to the Office of Personnel Management, Assistant Director for Workforce Information, Compliance, and Investigations Group: 1900 E. Street, NW., Washington, DC 20415–0001).

(e) 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).

(f) The Inspector General is authorized to act on requests for all Inspector General Records.

(g) 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.

(h) 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 this authority to the Chief Attorney and Legal Services Directorate, U.S. Army Resources & Programs Agency (See The Judge Advocate General for the General Officer Management Office actions). 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 The Judge Advocate General for the General Officer Management Office actions).

(i) The Deputy Chief of Staff, G–3/5/7 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.

(j) The Deputy Chief of Staff, G–8 is authorized to act on requests for records relating to programming, material integration and externally directed reviews.

(k) The Deputy Chief of Staff, G–1 is authorized to act on the following records: Personnel board records, 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 (excluding individual personnel records of retired military personnel, which are the responsibility of the U.S. Army Human Resources Command-St. Louis), DA dealings with Veterans Affairs, U.S. Soldier's

and Airmen's Home; all retention, promotion, and separation records; all military education records including records related to the removal or suspension from a military school or class; Junior Reserve Officer Training Corps (JROTC) and Senior Reserve Officer Training Corps (SROTC) records; SROTC instructor records; U.S. Military Academy Cadet Records; recruiting and MOS policy issues, personnel travel and transportation entitlements, military strength and statistics, The Army Librarian, demographics, and Manprint.

(l) 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.

(m) 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.

(n) The Surgeon General/Commander, U.S. Army Medical Command, 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.

(o) 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.

(p) The Judge Advocate General is authorized to act on requests for records relating to claims, courts-martial, legal services, administrative

(q) 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 Denial Authority'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.

(r) The Chief, Army Reserve and Commander, U.S. Army Reserve Command are authorized to act on requests for all personnel and medical records of retired, separated, discharged, deceased, and reserve component military personnel, and all U.S. Army Reserve (USAR) records, unless such records clearly fall within another Denial Authority's responsibility. Records under the responsibility of the Chief, Army Reserve and the Commander, U.S. Army Reserve Command 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; and all other Office of the Chief, Army Reserve (OCAR) records and Headquarters, U.S. Army Reserve Command records.

(s) 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.

(t) The Provost Marshal General 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 Provost Marshal General 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.

(u) The Commander, U.S. Army Criminal Investigation Command, is authorized to act on requests for criminal investigative records of USACIDC headquarters, and its subordinate activities, and military police reports. This includes criminal investigation records, investigation-in-progress records, and all military police records and reports that result in criminal investigation reports. This authority has been delegated to the Director, U.S. Army Crime Records Center.

(v) The Commander, U.S. Army Human Resources Command, is authorized to act on requests for military personnel files relating to active duty personnel including, but not limited to military personnel matters, military education records including records related to the removal or suspension from a military school or class; 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. The Commander, U.S. Army Human Resources Command, is also authorized to act on requests concerning all personnel and medical records of retired, separated, discharged, deceased, and reserve component military personnel, unless such records clearly fall within another Denial Authority's authority.

(w) The Commander, U.S. Army Resources Command-St. Louis has been delegated authority to act on behalf of the U.S. Army Human Resources Commander 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 Denial Authority'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.

(x) The Assistant Chief of Staff for Installation Management 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.

(y) The Commander, U.S. 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, mapping and geodesy information, ground surveillance records, intelligence threat assessment, and missile intelligence data relating to tactical land warfare systems.

(z) The Commander, U.S. Army Combat Readiness Center (formerly U.S. Army Safety Center), is authorized to act on requests for Army safety records.

(aa) The Commander, U.S. 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.

(bb) The General Counsel, Army and Air Force Exchange Service, is authorized to act on requests for Army and Air Force Exchange Service records, under AR 60–20/AFR 147–14.

(cc) The Commandant, United States Disciplinary Barracks (USDB) is authorized to act on records pertaining to USDB functional area responsibilities relating to the administration and confinement of individual military prisoners at the USDB. This includes, but is not limited to, all records pertaining to the treatment of military prisoners; investigation of prisoner misconduct; management, operation, and administration of the USDB confinement facility; and related programs which fall directly within the scope of the Commandant's functional area of command and control.

(dd) The Commander, U.S. Army Community and Family Support Center (USACFSC) is authorized to act on requests for records pertaining to morale, welfare, recreation, and entertainment programs; community and family action programs; child development centers; non-appropriated funds issues, and private organizations on Army installations.

(ee) The Commander, Military Surface Deployment and Distribution Command (formerly Military Traffic Management Command) is authorized to act on requests for records pertaining to military and commercial transportation and traffic management records.

(ff) The Director, Installation Management Agency (IMA) is authorized to act on requests for all IMA records.

(gg) Special Denial Authority's 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 Department of the Army, Freedom of Information and Privacy Office to obtain current information on special delegations.

APPENDIX C TO PART 505—PRIVACY ACT STATEMENT FORMAT

(a) *Authority:* The specific federal statute or Executive Order that authorizes collection of the requested information.

(b) *Principal Purpose(s):* The principal purpose or purposes for which the information is to be used.

(c) *Routine Uses(s):* Disclosure of the information outside DOD.

(d) *Disclosure:* Whether providing the information is voluntary or mandatory and the effects on the individual if he or she chooses not to provide the requested information.

(1) Example of a Privacy Act Statement

(i) *Authority:* Emergency Supplement Act of 2000; Public Law 106–246; 5 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; Department of Defense Directive 8500.aa, Information Assurance (IA); and E.O. 9397 (SSN).

(ii) *Principal Purpose(s):* To control access to DOD information, information based systems and facilities by authenticating the identity of a person using a measurable physical characteristic(s). This computer

system uses software programs to create biometrics templates and summary statistics, which are used for purposes such as assessing system performance or identifying problem areas.

(iii) *Routine Use(s):* None. The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's Compilations of System of Records Notices applies to this system.

(iv) *Disclosure:* Voluntary; however, failure to provide the requested information may result in denial of access to DOD information based systems and/or DOD facilities.

(2) [Reserved]

APPENDIX D TO PART 505—EXEMPTIONS; EXCEPTIONS; AND DOD BLANKET ROUTINE USES

(a) *Special Exemption.* 5 U.S.C. 552a(d)(5)—Denies individual access to any information compiled in reasonable anticipation of civil action or proceeding.

(b) *General and Specific Exemptions.* The Secretary of the Army may exempt Army systems of records from certain requirements of the Privacy Act. The two kinds of exemptions that require Secretary of the Army enactment are General and Specific exemptions. The Army system of records notices for a particular type of record will state whether the Secretary of the Army has authorized a particular General and Specific exemption to a certain type of record. The Army system of records notices are published in DA Pam 25–51 and on the Defense Privacy Office's Web site *http://www.defenselink.mil/privacy/.*

(c) *Twelve Exceptions to the ''No Disclosure without Consent'' rule of the Privacy Act.* (1) 5 U.S.C. 552a(b)(1)—To DOD officers and employees who have a need for the record in the performance of their official duties. This is the ''official need to know concept.

(2) 5 U.S.C. 552a(b)(2)—FOIA requires release of the information.

(3) 5 U.S.C. 552a(b)(3)—The Routine Use Exception. The Routine Use must be published in the FEDERAL REGISTER and the purpose of the disclosure must be compatible with the purpose for the published Routine Use. The applicable Routine Uses for a particular record will be listed in the applicable Army Systems Notice.

(4) 5 U.S.C. 552a(b)(4)—To the Bureau of the Census to plan or carry out a census or survey, or related activity pursuant to Title 13 of the U.S. Code.

(5) 5 U.S.C. 552a(b)(5)—To a recipient who has provided DA or DOD 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) 5 U.S.C. 552a(b)(6)—To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value.

NOTE: Records transferred to the Federal Records Centers for storage remain under the control of the DA and no accounting for disclosure is required under the Privacy Act.

(7) 5 U.S.C. 552a(b)(7)—To another agency or 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 or the DOD specifying the particular portion desired and the law enforcement activity for which the record is sought.

(8) 5 U.S.C. 552a(b)(8)—To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure, notification is transmitted to the last known address of such individual.

(9) 5 U.S.C. 552a(b)(9)—To either House of Congress, or, to the extent the matter is within its jurisdiction, any committee or subcommittee thereof, or any joint committee of Congress or subcommittee of any such joint committee. Requests from a Congressional member acting on behalf of a constituent are not included in this exception, but may be covered by a routine use exception to the Privacy Act (See applicable Army system of records notice).

(10) 5 U.S.C. 552a(b)(10)—To the Comptroller General or authorized representatives, in the course of the performance of the duties of the Government Accountability Office.

(11) 5 U.S.C. 552a(b)(11)—Pursuant to the order of a court of competent jurisdiction. The order must be signed by a judge.

(12) 5 U.S.C. 552a(b)(12)—To a consumer reporting agency in accordance with section 3711(e) of Title 31 of the U.S. Code. The name, address, SSN, and 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. However, before doing so, agencies must complete a series of steps designed to validate the debt and to offer the individual an opportunity to repay it.

(d) *DOD Blanket Routine Uses.* In addition to specific routine uses which are listed in the applicable Army system of record notices, certain ''Blanket Routine Uses'' apply to all DOD maintained systems of records. These are listed on the Defense Privacy Office's Web site *http://www.defenselink.mil/privacy/.* These ''Blanket Routine Uses'' are not specifically listed in each system of records notice as the specific routine uses are. The

current DOD ''Blanket Routine Uses'' are as follows—

(1) *Law Enforcement Routine Use.* If a system of records maintained by a DOD component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

(2) *Disclosure When Requesting Information Routine Use.* A record from a system of records maintained by a DOD component may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DOD Component 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 Routine Use.* A record from a system of records maintained by a DOD component 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 Routine Use.* Disclosure from a system of records maintained by a DOD component 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 Routine Use.* Relevant information contained in all systems of records of DOD published on or before August 22, 1975, may be disclosed to Office of Management and Budget in connection with the review of private relief legislation, as set forth in OMB Circular A–19, at any stage of the legislative coordination and clearance process as set forth in that Circular.

(6) *Disclosures Required by International Agreements Routine Use.* A record from a system of records maintained by a DOD Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities in order to comply 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 Routine Use.* Any information normally contained in Internal Revenue Service Form W–2, which is maintained in a record from a system of records maintained by a DOD component, may be disclosed to state and local taxing authorities with which the Secretary of the Treasury has entered into agreements pursuant to 5 U.S.C. sections 5516, 5517, and 5520 and 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 is in accordance with Treasury Fiscal Requirements Manual Bulletin 76–07.

(8) *Disclosure to the Office of Personnel Management Routine Use.* A record from a system of records subject to the Privacy Act and maintained by a DA activity may be disclosed to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for Office of Personnel Management to carry out its legally authorized Government-wide personnel management functions and studies.

(9) *Disclosure to the Department of Justice for Litigation Routine Use.* A record from a system of records maintained by a DOD component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee, or member of the Department in pending or potential litigation to which the record is pertinent.

(10) *Disclosure to Military Banking Facilities Overseas Routine Use.* Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

(11) *Disclosure of Information to the General Services Administration Routine Use.* A record from a system of records maintained by a DOD component may be disclosed as a routine use to the General Services Administration for the purpose of records management

inspections conducted under authority of 44 U.S.C. Sections 2904 and 2906.

(12) *Disclosure of Information to National Archives and Records Administration Routine Use.* A record from a system of records maintained by a DOD component may be disclosed as a routine use to NATIONAL ARCHIVES AND RECORDS ADMINISTRATION for the purpose of records management inspections conducted under authority of 44 U.S.C. sections 2904 and 2906.

(13) *Disclosure to the Merit Systems Protection Board Routine Use.* A record from a system of records maintained by a DOD component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative procedures, appeals, special studies of the civil service and other merit systems, review of Office of Personnel Management or component rules and regulations, investigation of alleged or possible prohibited personnel practices, including administrative proceedings involving any individual subject of a DOD investigation, and such other functions, promulgated in 5 U.S.C. sections 1205 and 1206, or as may be authorized by law.

(14) *Counterintelligence Purposes Routine Use.* A record from a system of records maintained by a DOD component may be disclosed as a routine use outside the DOD or the U.S. Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws, which protect the national security of the United States.

APPENDIX E TO PART 505—LITIGATION STATUS SHEET

(a) Case Number: The number used by a DA activity for reference purposes; Requester;

(b) Document Title or Description: Indicates the nature of the case, such as ''Denial of access'', ''Refusal to amend,'' ''Incorrect records'', or other violations of the Act (specify);

(c) Litigation: Date complaint filed, Court, and Case File Number;

(d) Defendants: DOD component and individual;

(e) Remarks: Brief explanation of what the case is about;

(f) Court action: Court's finding and disciplinary action (if applicable); and

(g) Appeal (If applicable): Date complaint filed, court, case File Number, court's finding, disciplinary action (if applicable).

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

(a) Additional information and guidance on Privacy Act system of records notices are found in DA PAM 25–51. The following elements comprise a Privacy Act system of records notice for publication in the FEDERAL REGISTER:

(b) *System Identifier:* A0025–55 AHRC—DA FOIA/P Office assigns the notice number, for example, A0025–55, where ''A'' indicates ''Army,'' the next number represents the publication series number related to the subject matter, and the final letter group shows the system manager's command. In this case, it would be U.S. Army Human Resources Command.

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

(d) *System Location:* Specify the address of the primary system and any decentralized elements, including automated data systems with a central computer facility and input or output terminals at separate locations. Use street address, 2-letter state abbreviations and 9-digit ZIP Codes. Spell out office names. Do not use office symbols.

(e) *Categories of Individuals:* Describe the individuals covered by the system. Use nontechnical, specific categories of individuals about whom the Department of Army keeps records. Do not use categories like ''all Army personnel'' unless that is truly accurate.

(f) *Categories of Records in the System:* Describe in clear, plain language, all categories of records in the system. List only documents actually kept in the system. Do not identify source documents that are used to collect data and then destroyed. Do not list form numbers.

(g) *Authority for Maintenance of the System:* Cite the specific law or Executive Order that authorizes the maintenance of the system. Cite the DOD directive/instruction or Department of the Army Regulation(s) that authorizes the Privacy Act system of records. Always include titles with the citations. Note: Executive Order 9397 authorizes using the SSN as a personal identifier. Include this authority whenever the SSN is used to retrieve records.

(h) *Purpose(s):* List the specific purposes for maintaining the system of records by the activity.

(i) *Routine Use(s):* The blanket routine uses that appear at the beginning of each Component compilation apply to all systems notice unless the individual system notice specifically states that one or more of them do not apply to the system. Blanket Routine Uses are located at the beginning of the Component listing of systems notices and are not contained in individual system of records notices. However, specific routine uses are listed in each applicable system of records notice. List the specific activity to which the record may be released, for example ''To the Veterans Administration'' or ''To state and local health agencies''. For each routine user identified, include a statement as to the purpose or purposes for which the record is to

release to that activity. Do not use general statements, such as ''To other federal agencies as required'' or ''To any other appropriate federal agency''.

(j) *Polices and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:*

(k) *Storage:* State the medium in which DA maintains the records; for example, in file folders, card files, microfiche, computer, or a combination of those methods. Storage does not refer to the storage container.

(l) *Retrievability:* State how the Army retrieves the records; for example, by name, fingerprints or voiceprints.

(m) *Safeguards:* Identify the system safeguards; for example, storage in safes, vaults, locked cabinets or rooms, use of guards, visitor controls, personnel screening, computer systems software, and so on. Describe safeguards fully without compromising system security.

(n) *Retention and Disposal.* State how long AR 25–400–2 requires the activity to maintain the records. Indicate when or if the records may be transferred to a Federal Records Center and how long the record stays there. Specify when the Records Center sends the record to the National Archives or destroys it. Indicate how the records may be destroyed.

(o) *System Manager(s) and Address:* List the position title and duty address of the system manager. For decentralized systems, show the locations, the position, or duty title of each category of officials responsible for any segment of the system.

(p) *Notification Procedures:* List the title and duty address of the official authorized to tell requesters if their records are in the system. Specify the information a requester must submit; for example, full name, military status, SSN, date of birth, or proof of identity, and so on.

(q) *Record Access Procedures:* Explain how individuals may arrange to access their records. Include the titles or categories of officials who may assist; for example, the system manager.

(r) *Contesting Records Procedures:* The standard language to use is ''The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 25–71; 32 CFR part 505; or may be obtained from the system manager.''

(s) *Record Source Categories:* Show categories of individuals or other information sources for the system. Do not list confidential sources protected by 5 U.S.C. 552a(k)(2), (k)(5), or (k)(7).

(t) *Exemptions Claimed for the System:* Specifically list any approved exemption including the subsection in the Act. When a system has no approved exemption, write ''none'' under this heading.

APPENDIX G TO PART 505—MANAGEMENT CONTROL EVALUATION CHECKLIST

(a) *Function.* The function covered by this checklist is DA Privacy Act Program.

(b) *Purpose.* The purpose of this checklist is to assist Denial Authorities and Activity Program Coordinators in evaluating the key management controls listed below. This checklist is not intended to cover all controls.

(c) *Instructions.* Answer should be based on the actual testing of key management controls (e.g., document analysis, direct observation, sampling, simulation, other). Answers that indicate deficiencies should be explained and corrective action indicated in supporting documentation. These management controls must be evaluated at least once every five years. Certificate of this evaluation has been conducted and should be accomplished on DA Form 11–2–R (Management Control Evaluation Certification Statement).

TEST QUESTIONS

a. Is a Privacy Act Program established and implemented in your organization?

b. Is an individual appointed to implement the Privacy Act requirements?

c. Are provisions of AR 25–71 concerning protection of OPSEC sensitive information regularly brought to the attention of managers responsible for responding to Privacy Act requests and those responsible for control of the Army's records?

d. When more than twenty working days are required to respond, is the Privacy Act requester informed, explaining the circumstance requiring the delay and provided an appropriate date for completion.

e. Are Accounting Disclosures Logs being maintained?

Comments: Assist in making this a better tool for evaluating management controls. Submit comments to the Department of Army, Freedom of Information and Privacy Division.

APPENDIX H TO PART 505—DEFINITIONS

FUNCTION

(a) *Access.* Review or copying a record or parts thereof contained in a Privacy Act system of records by an individual.

(b) *Agency.* For the purposes of disclosing records subject to the Privacy Act, Components of the Department of Defense are considered a single agency. For other purposes including access, amendment, appeals from denials of access or amendment, exempting systems of records, and recordkeeping for release to non-DOD agencies, the Department of the Army is considered its own agency.

(c) *Amendment.* The process of adding, deleting, or changing information in a system

of records to make the data accurate, relevant, timely, or complete.

(d) *Computer Matching Agreement.* An agreement to conduct a computerized comparison of two or more automated systems of records to verify eligibility for payments under Federal benefit programs or to recover delinquent debts for these programs.

(e) *Confidential Source.* A person or organization who has furnished information to the Federal Government under an express promise that the person's or the organization's identity would be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

(f) *Cookie.* A mechanism that allows the server to store its own information about a user on the user's own computer. Cookies are embedded in the HTML information flowing back and forth between the user's computer and the servers. They allow user-side customization of Web information. Normally, cookies will expire after a single session.

(g) *Defense Data Integrity Board.* The Board oversees and coordinates all computer matching programs involving personal records contained in systems of records maintained by the DOD Component; reviews and approves all computer matching agreements between the Department of Defense (DOD) and other Federal, State, and local governmental agencies, as well as memoranda of understanding when the match is internal to the DOD.

(h) *Disclosure.* The transfer of any personal information from a Privacy Act system of records by any means of communication (such as oral, written, electronic mechanical, or actual review) to any persons, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian. Within the context of the Privacy Act and this part, this term applies only to personal information that is a part of a Privacy Act system of records.

(i) *Deceased Individuals.* The Privacy Act confers no rights on deceased persons, nor may their next-of-kin exercise any rights for them. However, family members of deceased individuals have their own privacy right in particularly sensitive, graphic, personal details about the circumstances surrounding an individual's death. This information 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 minds. Because surviving family members use the deceased's Social Security Number to obtain benefits, DA personnel should continue to protect the SSN of deceased individuals.

(j) *Individual.* A living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. The parent or legal guardian of a minor also may act on behalf of an individual. Members of the United States Armed Forces are individuals. Corporations, partnerships, sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not individuals.

(k) *Individual Access.* The subject of a Privacy Act file or his or her designated agent or legal guardian has access to information about them contained in the Privacy Act file. The term individual generally does not embrace a person acting on behalf of a commercial entity (for example, sole proprietorship or partnership).

(l) *Denial Authority (formerly Access and Amendment Refusal Authority).* The Army Staff agency head or major Army commander designated authority by this part to deny access to, or refuse amendment of, records in his or her assigned area or functional specialization.

(m) *Maintain.* Includes keep, collect, use or disseminate.

(n) *Members of the Public.* Individuals or parties acting in a private capacity.

(o) *Minor.* An individual under 18 years of age, who is not married and who is not a member of the Department of the Army.

(p) *Official Use.* Within the context of this part, this term is used when Department of the Army officials and employees have demonstrated a need for the use of any record or the information contained therein in the performance of their official duties.

(q) *Personal Information.* Information about an individual that identifies, relates, or is unique to, or describes him or her, e.g., a social security number, age, military rank, civilian grade, marital status, race, salary, home/office phone numbers, etc.

(r) *Persistent cookies.* Cookies that can be used to track users over time and across different Web sites to collect personal information.

(s) *Personal Identifier.* A name, number, or symbol that is unique to an individual, usually the person's name or SSN.

(t) *System of Records.* A group of records under the control of the DA from which information is filed and retrieved by individuals' names or other personal identifiers assigned to the individuals. System notices for all systems of records must be published in the FEDERAL REGISTER. A grouping of records arranged chronologically or subjectively that are not retrieved by individuals' names or identifiers is not a Privacy Act system of records, even though individual information could be retrieved by individuals' names or personal identifiers, such as through a paper-by-paper search.

(u) *Privacy Advisory.* A statement required when soliciting personally identifying information by a Department of the Army Web site and the information is not maintained in a system of records. The Privacy Advisory informs the individual why the information is being solicited and how it will be used.

(v) *Privacy Impact Assessment (PIA).* An analysis, which considers information sensitivity, vulnerability, and cost to a computer facility or word processing center in safeguarding personal information processed or stored in the facility.

(w) *Privacy Act (PA) Request.* A request from an individual for information about the existence of, access to, or amendment of records pertaining to that individual located in a Privacy Act system of records. The request must cite or implicitly refer to the Privacy Act of 1974.

(x) *Protected Personal Information.* Information about an individual that identifies, relates to, is unique to, or describes him or her (e.g., home address, date of birth, social security number, credit card, or charge card account, etc.).

(y) *Records.* Any item, collection, or grouping of information, whatever the storage media (e.g., paper, electronic, etc), about an individual that is maintained by a DOD Component, including but not limited to, his or her education, financial transactions, medical history, criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(z) *Records Maintenance and Use.* Any action involving the storage, retrieval, and handling of records kept in offices by or for the agency.

(aa) *Review Authority.* An official charged with the responsibility to rule on administrative appeals of initial denials of requests for notification, access, or amendment of records. Additionally, the Office of Personnel Management is the review authority for civilian official personnel folders or records contained in any other OMP record.

(bb) *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. A routine use must be included in the notice for the Privacy Act system of records published in the FEDERAL REGISTER.

(cc) *Statistical record.* A record in a system of records maintained for statistical research or reporting purposes and not used in whole or in part in making determinations about specific individuals.

(dd) *System Manager.* An official who has overall responsibility for policies and procedures for operating and safeguarding a Privacy Act system of records.

(ee) *Third-party cookies.* Cookies placed on a user's hard drive by Internet advertising networks. The most common third-party cookies are placed by the various companies that serve the banner ads that appear across many Web sites.

(ff) *Working Days.* Days excluding Saturday, Sunday, and legal holidays.

PART 507—MANUFACTURE AND SALE OF DECORATIONS, MEDALS, BADGES, INSIGNIA, COMMERCIAL USE OF HERALDIC DESIGNS AND HERALDIC QUALITY CONTROL PROGRAM

Subpart A—Introduction

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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.

(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 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 manufactures 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.

(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 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, 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/flashes, U.S. Army.

(d) U.S. Air Force organizational emblems for other than major commands.

(e) Hand embroidered bullion insignia.

§ 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 engagement 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 capacties 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 516—LITIGATION

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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 courts-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 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 Attorneys 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 a rising 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 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]

§ 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 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 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 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 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 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

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 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 nonappropriated 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.

(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.

(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 WordPerfect, 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 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 l988 (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 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 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 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 property 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, 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.

(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 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 can 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 immediately 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 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 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, 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 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, 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 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.

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 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 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 reports) 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 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.

(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 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 option, 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 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 alleged 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 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.

(l0) 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.

(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 military 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 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 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 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.

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 nonappropriated 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 posttrial 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 centralized 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. Recision 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. Recision 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.
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 centralized 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
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 pendancy 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 debarring 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.

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, Department 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.

Roy A. Andersen,
Assistant United States Attorney, 606 N. Carancua, 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 judgment 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 Representantion

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 Dakota 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 Dakota 84165, 15 April 1993

Mr. T. Hudson Taylor,
Attorney At Law, l05 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 Dakota 84165, 15 April 1993

Mr. T. Hudson Taylor,
Attorney At Law, l05 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 reprocurement, 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 from 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.

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.

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.

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. 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.

(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 requested 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 notification 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 releasibility 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 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 required 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.

(l) *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 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 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 nonexistence of a record would itself reveal classified information. In this situation, Army Activities shall neither confirm nor deny the existence or nonexistence 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: nondisclosure 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 prescribing 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' addressees 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 (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.

(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 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 requests 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 dependent, 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;

(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: Army Litigation Division, U.S. Army Legal Services Agency (USALSA), 9275 Gunston Road, Fort Belvoir, VA 22060. 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 and Fiscal Law Division. (Mailing address: Contract and Fiscal Law Division, U.S. Army Legal Services Agency (USALSA), 9275 Gunston Road, Fort Belvoir, VA 22060. 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 and Fiscal Law 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 security 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 relation's 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.

[71 FR 9222, Feb. 22, 2006, as amended at 78 FR 18474, Mar. 27, 2013]

§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, 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 partially 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, 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 reserve 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 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 within 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 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.

(l) *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 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, together 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 invoked 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 nongovernment 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: General Litigation Branch, Army Litigation Division, U.S. Army Legal Services Agency (USALSA), 9275 Gunston Road, Fort Belvoir, VA 22060. 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.

[71 FR 9222, Feb. 22, 2006, as amended at 78 FR 18474, Mar. 27, 2013]

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 demonstrating 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.

§ 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 calculations 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 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 ½ 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
Diazo 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
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 ½ 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 annual 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).

(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 you 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;
(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.

(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 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.

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.
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 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 forseeable 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 *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.

(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 to 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:

(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 misconduct, 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

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.

§ 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 wintesses 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 Standard 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

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.

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536.156 Procedures for claims involving tortfeasors other than nonappropriated fund employees.
536.157 Settlement/approval authority for claims involving tortfeasors other than nonappropriated fund employees.

AUTHORITY: 10 U.S.C. 2733; 10 U.S.C. 1089; 10 U.S.C. 1054; 28 U.S.C. 1291, 2401–2402, 2411–2412, 2671–2680; 10 U.S.C. 2737; 32 U.S.C. 715; 10 U.S.C. 2734a, 2734b; 10 U.S.C. 2734; 10 U.S.C. 4801, 4802, 4806; 46 U.S.C. app. 740; 39 U.S.C. 411; 10 U.S.C. 939; 10 U.S.C. 2736; 10 U.S.C. 2735; 10 U.S.C. 2731.

SOURCE: 71 FR 69360, Nov. 30, 2006, unless otherwise noted.

Subpart A—The Army Claims System

§ 536.1 Purpose of the Army Claims System.

This part sets forth policies and procedures that govern the investigating, processing, and settling of claims against, and in favor of, the United States under the authority conferred by statutes, regulations, international and interagency agreements, and Department of Defense Directives (DODDs). It is intended to ensure that claims are investigated properly and adjudicated according to applicable law, and valid recoveries and affirmative claims are pursued against carriers, third-party insurers, and tortfeasors.

§ 536.2 Claims authorities.

(a) *General.* Claims cognizable under the following list of statutes and authorities are processed and settled under DA Pam 27–162 and this part. All of these materials may be viewed on the USARCS Web site, *https://www.jagcnet.army.mil/85256F33005C2B92/(JAGCNETDocID)/HOME?OPENDOCUMENT*. Select the link ''Claims Resources.''

(1) *Tort claims.* (i) The Military Claims Act (MCA), 10 United States Code (U.S.C.) 2733 (see subpart C of this part). The ''incident-to-service'' provision, applicable to both military and civilian personnel of the Department of Defense, is contained in the MCA.

(ii) The Gonzales Act, 10 U.S.C. 1089. This act permits individual suits against health care providers for certain torts (see § 536.80).

(iii) Certain suits arising out of legal malpractice, 10 U.S.C. 1054, discussed at § 536.81 and at DA Pam 27–162, paragraph 2–62f.

(iv) The Federal Tort Claims Act (FTCA), 28 U.S.C. 1291, 1402, 2401–2402, 2411–2412, and 2671–2680 (see subpart D of this part). The Westfall Act, 28 U.S.C. 2679, an integral part of the FTCA, provides absolute immunity from individual suit for common law torts for employees of the United States acting within the scope of their employment.

(A) The legislative history of the FTCA.

(B) Regulations of the Attorney General implementing the Federal Tort Claims Act, 28 CFR part 14.

(C) An appendix to 28 CFR part 14 sets forth certain delegations of settlement authority to the Secretary of Veterans Affairs, the Postmaster General, the Secretary of Defense, the Secretary of Transportation, and the Secretary of Health and Human Services.

(v) The Non-Scope Claims Act (NSCA), 10 U.S.C. 2737 (see subpart E of this part).

(vi) The National Guard Claims Act (NGCA), 32 U.S.C. 715 (see subpart F of this part).

(vii) Claims under International Agreements or the Foreign Claims Act.

(A) International Agreements Claims Act (IACA), 10 U.S.C. 2734a and 2734b.

(B) Foreign Claims Act (FCA), 10 U.S.C. 2734 (see subpart J of this part).

(viii) The Army Maritime Claims Settlement Act (AMCSA), 10 U.S.C. 4801, 4802 and 4806. Affirmative claims under the AMCSA are processed under 10 U.S.C. 4803 and 4804 (see § 537.16 of this chapter).

(ix) Admiralty Extension Act (AEA), 46 U.S.C. app. 740 (see subpart H of this part).

(x) Claims against nonappropriated fund (NAF) activities and the risk management program (RIMP) (see subpart K of this part), processed under Army Regulation (AR) 215–1 and AR 608–10.

(xi) Claims by the U.S. Postal Service for losses or shortages in postal accounts caused by unbonded Army personnel (39 U.S.C. 411 and Department of Defense (DOD) Manual 4525.6–M).

(2) *Personnel claims (subpart I of this part and AR 27–20, chapter 11).*

(i) The Personnel Claims Act (PCA), 31 U.S.C. 3721 (see AR 27–20, chapter 11).

(ii) Redress of injuries to personal property, Uniform Code of Military Justice (UCMJ), Article 139, 10 U.S.C. 939 (see subpart I of this part).

(3) *Affirmative claims (32 CFR part 537).*

(i) The Federal Claims Collection Act (FCCA), 31 U.S.C. 3711–3720E.

(ii) The Federal Medical Care Recovery Act (FMCRA), 42 U.S.C. 2651–2653.

(iii) Collection from third-party payers of reasonable costs of healthcare services, 10 U.S.C. 1095.

(b) *Fund source authority for claims under Title 10 statutes.* 10 U.S.C. 2736, advance payments for certain property claims (see § 536.71).

(c) *Fund source authority for tort claims paid by Financial Management Service (FMS).* 31 U.S.C. 1304, provides authority for judgments, awards and compromise settlements.

(d) *Additional authorities under Title 10.* (1) 10 U.S.C. 2735, establishes that settlements (or ''actions'') under the Title 10 claims processing statutes are final and conclusive.

(2) 10 U.S.C. 2731, provides a definition of the word ''settle.''

(e) *Related remedies statutes.* The Army frequently receives claims or inquiries that are not cognizable under the statutory and other authorities administered by the U.S. Army under this publication and DA Pam 27–162. Every effort should be made to refer the claim or inquiry to the proper authority following the guidance in § 536.34 or § 536.36. (See also the corresponding paragraphs 2–15 and 2–17, respectively, in DA Pam 27–162). Some authorities for related remedies are used more frequently than others. Where an authority for a related remedy is frequently used, it is listed below and is posted on the USARCS Web site (for the address see § 536.2(a)).

(1) Tucker Act, 28 U.S.C. 1346, provides exclusive jurisdiction in the Court of Federal Claims over causes of actions alleging property loss caused by a Fifth Amendment ''taking.''

(2) Maritime authority statutes, Public Vessels Act (PVA), 46 U.S.C. app. 781–790, Suits in Admiralty Act (SIAA), 46 U.S.C. app. 741–752, and the Rivers and Harbors Act, 33 U.S.C. 408 and 412.

(3) Federal Employees Compensation Act (FECA), two excerpts: 5 U.S.C. 8116 and 8140, providing guidance on personal injury and death claims by civilian employees arising within the scope of their employment (see DA Pam 27–162, paragraph 2–15b) and information on certain claims by Reserve Officers Training Corps (ROTC) cadets, respectively, (see DA Pam 27–162, paragraph 2–17d(2)).

(4) Longshore and Harbor Workers Compensation Act (LHWCA), 33 U.S.C. 901–950.

(5) Claims for consequential property damage by civilian employees may only be considered in the Court of Federal Claims pursuant to 28 U.S.C. 1491.

(f) *Additional materials.* There are some additional authoritative materials for the processing of claims, mostly of an administrative nature. For a complete listing of all of the supplementary materials relevant to claims processing under this publication and DA Pam 27–162 see appendix B of DA Pam 27–162.

(g) *Conflict of authorities.* Where a conflict exists between a general provision of this publication and a specific provision found in one of this publication's subparts implementing a specific statute, the specific provision, as set forth in the statute, will control.

§ 536.3 Command and organizational relationships.

(a) *The Secretary of the Army.* The Secretary of the Army (SA) heads the Army Claims System and acts on certain claims appeals directly or through a designee.

(b) *The Judge Advocate General.* The SA 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 USARCS to carry out the responsibilities assigned in § 536.7 and as otherwise lawfully delegable.

(c) *U.S. Army Claims Service.* USARCS, a command and component of the Office of TJAG, is the agency through which the SA and TJAG discharge their responsibilities for the administrative settlement of claims worldwide (see AR 10–72). USARCS' mailing address is: U.S. Army Claims Service, 4411 Llewellyn Ave., Fort George G. Meade, MD 20755–5360, Commercial: (301) 677–7009.

(d) *Command claims services.* (1) Command claims services exercise general supervisory authority over claims matters arising within their assigned areas of operation. Command claims services will:

(i) Effectively control and supervise the investigation of potentially compensable events (PCEs) occurring within the command's geographic area of responsibility, in other areas for which the command is assigned claims responsibility, and during the course of the command's operations.

(ii) Provide services for the processing and settlement of claims for and against the United States.

(2) The Commander USARCS, may delegate authority to establish a command claims service to the commander of a major overseas command or other commands that include areas outside the United States, its territories and possessions.

(i) When a large deployment occurs, the Commander USARCS, may designate a command claims service for a limited time or purpose, such as for the duration of an operation and for the time necessary to accomplish the mission. The appropriate major Army command (MACOM) will assist the Commander USARCS, in obtaining resources and personnel for the mission.

(ii) In coordination with the Commander USARCS, the MACOM will designate the area of responsibility for each new command claims service.

(3) A command claims service may be a separate organization with a designated commander or chief. If it is part of the command's Office of the Staff Judge Advocate (SJA), the SJA will also be the chief of the command claims service, however, the SJA may designate a field grade officer as chief of the service.

(e) *Area claims offices.* The following may be designated as area claims offices (ACOs):

(1) An office under the supervision of the senior judge advocate (JA) of each command or organization so designated by the Commander USARCS. The senior JA is the head of the ACO.

(2) An office under supervision of the senior JA of each command in the area of responsibility of a command claims service so designated by the chief of that service after coordination with the Commander USARCS. The senior JA is the head of the ACO.

(3) The office of counsel of each U.S. Army Corps of Engineers (COE) district within the United States and such other COE commands or agencies as designated by the Commander USARCS, with concurrence of the Chief Counsel, Office of the Chief of Engineers, for all claims generated within such districts, commands or agencies. The district counsel or the attorney in charge of the command's or agency's legal office is the head of the ACO.

(f) *Claims processing offices.* Claims processing offices (CPOs) are normally small legal offices or ACO subordinate elements, designated by the Commander USARCS, a command claims service or an ACO. These offices are established for the investigation of all actual and potential claims arising within their jurisdiction, on either an area, command or agency basis. There are four types of claims processing offices (see § 536.10):

(1) Claims processing offices without approval authority.

(2) Claims processing offices with approval authority.

(3) Medical claims processing offices.

(4) Special claims processing offices.

(g) *Limitations on delegation of authority under any subpart.* (1) The Commander USARCS, commanders or chiefs of command claims services, or the heads of ACOs or CPOs with approval authority may delegate, in writing, all or any portion of their monetary approval authority to subordinate JAs or claims attorneys in their services or offices.

(2) The authority to act upon appeals or requests for reconsideration, to deny claims (including disapprovals based on substantial fraud), to grant waivers of maximum amounts allowable, or to make final offers will not be delegated except that the Commander USARCS may delegate this authority to USARCS Division Chiefs.

(3) CPOs will provide copies of all delegations affecting them to the ACO and, if so directed, to command claims services.

§ 536.4 Designation of claims attorneys.

(a) *Who may designate.* The Commander USARCS, the senior JA of a command having a command claims service, the chief of a command claims service, the head of an ACO, or the Chief Counsel of a COE District, may

designate a qualified attorney other than a JA as a claims attorney. The head of an ACO may designate a claims attorney to act as a CPO with approval authority.

(b) *Eligibility*. To qualify as a claims attorney, an individual must be a civilian employee of the Department of the Army (DA) or DOD, a member of the bar of a state, the District of Columbia, or a jurisdiction where U.S. federal law applies, serving in the grade of GS–11 or above, and performing primary duties as a legal adviser.

§ 536.5 The Judge Advocate General.

TJAG has worldwide Army Staff responsibility for administrative settlement of claims by and against the U.S. government, generated by employees of the U.S. Army and DOD components other than the Departments of the Navy and Air Force. Where the Army has single-service responsibility, TJAG has responsibility for the Army. See DODD 5515.9. Certain claims responsibilities of TJAG are exercised by The Assistant Judge Advocate General (TAJAG) as set forth in this part and directed by TJAG.

§ 536.6 The Army claims mission.

(a) Promptly investigate potential claims incidents with a view to determining the degree of the Army's exposure to liability, the damage potential, and when the third party is at fault, whether the Army should take action to collect for medical expenses, lost wages and property damage.

(b) Efficiently and expeditiously dispose of claims against the U.S. by fairly settling meritorious claims at the lowest level within the claims system commensurate with monetary jurisdiction delegated, or by denying non-meritorious claims.

(c) Develop a system that has a high level of proficiency, so that litigation and appeals can be avoided or kept to a minimum.

§ 536.7 Responsibilities of the Commander USARCS.

The Commander USARCS shall:

(a) Supervise and inspect claims activities worldwide.

(b) Formulate and implement claims policies and uniform standards for claims office operations.

(c) Investigate, process and settle claims beyond field office monetary authority and consider appeals and requests for reconsideration on claims denied by the field offices.

(d) Supervise the investigation, processing, and settlement of claims against, and in favor of, the United States under the statutes and regulations listed in § 536.2 and pursuant to other appropriate statutes, regulations, and authorizations.

(e) Designate ACOs, CPOs, and claims attorneys within DA and DOD components other than the Departments of the Navy and Air Force, subject to concurrence of the commander concerned.

(f) Designate continental United States (CONUS) geographic areas of claims responsibility.

(g) Recommend action to be taken by the SA, TJAG or the U.S. Attorney General, as appropriate, on claims in excess of $25,000 or the threshold amount then current under the FTCA, on claims in excess of $100,000 or the threshold amount then current under the FCA, the MCA, the NGCA, AMCSA, FCCA and FMRCA and on other claims that have been appealed. Direct communication with Department of Justice (DOJ) and the SA's designee is authorized.

(h) Operate the ''receiving State office'' for claims arising in the United States, its territories, commonwealths and possessions cognizable under Article VIII of the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA), Partnership for Peace (PFP) SOFA, Article XVI of the Singapore SOFA, and other SOFAs which have reciprocal claims provisions as delegated by TJAG, as implemented by 10 U.S.C. 2734a and 2734b (subpart G of this part).

(i) Settle claims of the U.S. Postal Service for reimbursement under 39 U.S.C. 411 (see DOD Manual 4525.6–M).

(j) Settle claims against carriers, warehouse firms, insurers, and other third parties for loss of, or damage to, personal property of DA or DOD soldiers or civilians incurred while the goods are in storage or in transit at

government expense (AR 27–20, chapter 11).

(k) Formulate and recommend legislation for Congressional enactment of new statutes and the amendment of existing statutes considered essential for the orderly and expeditious administrative settlement of noncontractual claims.

(l) Perform post-settlement review of claims.

(m) Prepare, justify, and defend estimates of budgetary requirements and administer the Army claims budget.

(n) Maintain permanent records of claims for which TJAG is responsible.

(o) Assist in developing disaster and maneuver claims plans designed to implement the responsibilities set forth in § 536.9(a)(12).

(p) Develop and maintain plans for a disaster or civil disturbance in those geographic areas that are not under the jurisdiction of an area claims authority and in which the Army has single-service responsibility or in which the Army is likely to be the predominant Armed Force.

(q) Take initial action, as appropriate, on claims arising in emergency situations.

(r) Provide assistance as available or take appropriate action to ensure that command claims services and ACOs are carrying out their responsibilities as set forth in §§ 536.8 and 536.9, including claims assistance visits.

(s) Serve as proponent for the database management systems for torts, personnel and affirmative claims and provide standard automated claims data management programs for worldwide use.

(t) Ensure proper training of claims personnel.

(u) Coordinate claims activities with the Air Force, Navy, Marine Corps, and other DOD agencies to ensure a consistent and efficient joint service claims program.

(v) Investigate, process and settle, and supervise the field office investigation and processing of, medical malpractice claims arising in Army medical centers within the United States; provide medical claims judge advocates (MCJAs), medical claims attorneys, and medical claims investigators assigned to such medical centers with technical guidance and direction on such claims.

(w) Coordinate support with the U.S. Army Medical Command (MEDCOM) on matters relating to medical malpractice claims.

(x) Issue an accounting classification to all properly designated claims settlement and approval authorities.

(y) Perform the investigation, processing, and settlement of claims arising in areas outside command claims service areas of operation.

(z) Maintain continuous worldwide deployment and operational capability to furnish claims advice to any legal office or command throughout the world. When authorized by the chain of command or competent authority, issue such claims advice or services, including establishing a claims system within a foreign country, interpreting claims aspects of international agreements, and processing claims arising from Army involvement in civil disturbances, chemical accidents under the Chemical Energy Stockpile Program, other man-made or natural disasters, and other claims designated by competent authority.

(aa) Upon receiving both the appropriate authority's directive or order and full fiscal authorization, disburse the funds necessary to administer civilian evacuation, relocation, and similar initial response efforts in response to a chemical disaster arising at an Army facility.

(bb) Respond to all inquiries from the President, members of Congress, military officials, and the general public on claims within USARCS' responsibility.

(cc) Serve as the proponent for this publication and DA Pam 27–162, both of which set forth guidance on personnel, tort, disaster and affirmative claims, as well as claims management and administration.

(dd) Provide supervision for the Army's affirmative claims and carrier recovery programs, as well as other methods for recovering legal debts.

(ee) Provide support for the overseas environmental claims program as designated by the DA.

(ff) Execute other claims missions as designated by DOD, DA, TJAG and other competent authority.

(gg) Appoint Foreign Claims Commissions outside Command Claims Services' geographic areas of responsibility.

(hh) Budget for and fund claims investigations and activities; such as per diem and transportation of claims personnel, claimants and witnesses; independent medical examinations; appraisals; independent expert opinions; long distance telephone calls; recording and photographic equipment; use of express mail or couriers; and other necessary expenses.

§ 536.8 Responsibilities and operations of command claims services.

(a) *Chiefs of command claims services.* Chiefs of command claims services shall:

(1) Exercise claims settlement authority as specified in this part, including appellate authority where so delegated.

(2) Supervise the investigation, processing, and settlement of claims against, and in favor of the United States under the statutes and regulations listed in § 536.2, and pursuant to other appropriate statutes, regulations, and authorizations.

(3) Designate and grant claims settlement authority to ACOs. A grant of such authority will not be effective until coordinated with the Commander USARCS, and assigned an office code. However, the chief of a command claims service may redesignate a CPO that already has an assigned office code as an ACO without coordination with the Commander USARCS. The Commander USARCS will be informed of such a designation.

(4) Designate and grant claims approval authority to CPOs. Only CPOs staffed with a claims judge advocate (CJA) or claims attorney may be granted approval authority. A grant of such authority will not be effective until coordinated with the Commander USARCS, and assigned an office code.

(5) Train claims personnel and monitor their operations and ongoing claims administration. Conduct a training course annually.

(6) Implement pertinent claims policies.

(7) Prepare and publish command claims directives.

(8) Administer the command claims expenditure allowance, providing necessary data, estimates, and reports to USARCS on a regular basis.

(9) Perform the responsibilities of an ACO (see § 536.9), as applicable, ensure that SOFA claims are investigated properly and timely filed with the receiving State and adequately funded.

(10) Serve as the United States ''sending State office,'' if so designated, when operating in an area covered by a SOFA.

(11) Supervise and provide technical assistance to subordinate ACOs within the command claims service's geographic area of responsibility.

(12) Appoint FCCs.

(b) *Operations of command claims services.* The SJA of the command shall supervise the command claims service. The command SJA may designate a field grade JA as the chief of the service. An adequate number of qualified claims personnel shall be assigned to ensure that claims are promptly investigated and acted upon. With the concurrence of the Commander USARCS, a command claims service may designate ACOs within its area of operations to carry out claims responsibilities within specified geographic areas subject to agreement by the commander concerned.

§ 536.9 Responsibilities and operations of area claims offices.

(a) *Heads of ACOs.* Heads of ACOs, including COE offices (see § 536.3(e)(3)) shall:

(1) Ensure that claims and potential claims incidents in their area of responsibility are promptly investigated in accordance with this part.

(2) Ensure that each organization or activity (for example, U.S. Army Reserve (USAR) or Army National Guard of the United States (ARNGUS) unit, ROTC detachment, recruiting company or station, or DOD agency) within the area appoints a claims officer to investigate claims incidents not requiring investigation by a JA (see § 536.23) and ensure that this officer is adequately trained.

(3) Supervise the investigation, processing, and settlement of claims against, and in favor of, the United

States under the statutes and regulations listed in § 536.2 and pursuant to other appropriate statutes, regulations, and authorizations.

(4) Act as a claims settlement authority on claims that fall within the appropriate monetary jurisdictions set forth in this part and forward claims exceeding such jurisdictions to the Commander USARCS, or to the chief of a command claims service, as appropriate, for action.

(5) Designate CPOs and request that the Commander USARCS, or the chief of a command claims service, as appropriate, grant claims approval authority to a CPO for claims that fall within the jurisdiction of that office.

(6) Supervise the operations of CPOs within their area.

(7) Implement claims policies and guidance furnished by the Commander USARCS.

(8) Ensure that there are adequate numbers of qualified and adequately trained CJAs or claims attorneys, RCJAs or attorneys, recovery claims clerks, claims examiners, claims adjudicators and claims clerks in all claims offices within their areas to act promptly on claims.

(9) Budget for and fund claims investigations and activities, such as: per diem and transportation of claims personnel, claimants and witnesses; independent medical examinations; appraisals and independent expert opinions; long distance telephone calls; recording and photographic equipment; use of express mail or couriers; and other necessary expenses.

(10) Within the United States and its territories, commonwealths and possessions, procure and disseminate, within their areas of jurisdiction, appropriate legal publications on state or territorial law and precedent relating to tort claims.

(11) Notify the Commander USARCS, of all claims and potentially compensable events (PCEs) as required by § 536.22(c); notify the chief of a command claims service of all claims and PCEs.

(12) Develop and maintain written plans for a disaster or civil disturbance. These plans may be internal SJA office plans or an annex to an installation or an agency disaster response plan.

(13) Implement the Army's Article 139 claims program. (See subpart I of this part).

(14) Notify USARCS of possible deployments and ensure adequate FCCs are appointed by USARCS and are trained.

(b) *Operations of area claims offices.* (1) The ACO is the principal office for the investigation and adjudication or settlement of claims, and shall be staffed with qualified legal personnel under the supervision of the SJA, command JA, or COE district or command legal counsel.

(2) In addition to the utilization of unit claims officers required by § 536.10(a), if indicated, the full-time responsibility for investigating and processing claims arising within or related to the activities of a unit or organization located within a section of the designated area may be delegated to another command, unit, or activity by establishing a CPO at the command, unit, or activity (see § 536.10(b)(4)). Normally, all CPOs will operate under the supervision of the ACO in whose area the CPO is located. Where a proposed CPO is not under the command of the ACO parent organization, this designation may be achieved by a support agreement or memorandum of understanding between the affected commands.

(3) Normally, claims that cannot be settled by a COE ACO will be forwarded directly to the Commander USARCS, with notice of referral to the Chief Counsel, COE. However, as part of his or her responsibility for litigating suits that involve civil works and military construction activities, the Chief Counsel, COE, may require that a COE ACO forward claims through COE channels, provided that such requirement does not preclude the Commander USARCS from taking final action within the time limitations set forth in subparts D and H of this part.

§ 536.10 Responsibilities and operations of claims processing offices.

(a) *Heads of CPOs.* Heads of CPOs will:

(1) Investigate all potential and actual claims arising within their assigned jurisdiction, on either an area, command, or agency basis. Only a CPO that has approval authority may adjudicate and pay presented claims within its monetary jurisdiction.

(2) Ensure that units and organizations within their jurisdiction have appointed claims officers for the investigation of claims not requiring a JA's investigation. (See § 536.22).

(3) Budget for and fund claims investigations and activities; including, per diem and transportation of claims personnel, claimants and witnesses; independent medical examinations; appraisals; independent expert opinions; long distance telephone calls; recording and photographic equipment; use of express mail or couriers; and other necessary expenses.

(4) Within CONUS, procure and maintain legal publications on local law relating to tort claims pertaining to their jurisdiction.

(5) Notify the Commander USARCS of all claims and claims incidents, as required by § 536.22 and AR 27–20, paragraph 2–12.

(6) Implement the Army's Article 139 claims program (see subpart I of this part).

(b) *Operations of claims processing offices*—(1) *Claims processing office with approval authority.* A CPO that has been granted approval authority must provide for the investigation of all potential and actual claims arising within its assigned jurisdiction, on an area, command, or agency basis, and for the adjudication and payment of all claims presented within its monetary jurisdiction. If the estimated value of a claim, after investigation, exceeds the CPO's payment authority, or if disapproval is the appropriate action, the claim file will be forwarded to the ACO unless otherwise specified in this part, or forwarded to USARCS or the command claims service, if directed by such service.

(2) *Claims processing offices without approval authority.* A CPO that has not been granted claims approval authority will provide for the investigation of all potential and actual claims arising within its assigned jurisdiction on an area, command, or agency basis. Once the investigation has been completed, the claim file will be forwarded to the appropriate ACO for action. Alternatively, an ACO may direct the transfer of a claim investigation from a CPO without approval authority to another CPO with approval authority, located within the ACO's jurisdiction.

(3) *Medical claims processing offices.* The MCJAs or medical claims attorneys at Army medical centers, other than Walter Reed Army Medical Center, may be designated by the SJA or head of the ACO for the installation on which the center is located as CPOs with approval authority for medical malpractice claims only. Claims for amounts exceeding a medical CPO's approval authority will be investigated and forwarded to the Commander USARCS.

(4) *Special claims processing offices*—(i) *Designation and authority.* The Commander USARCS, the chief of a command claims service, or the head of an ACO may designate special CPOs within his or her command for specific, short-term purposes (for example, maneuvers, civil disturbances and emergencies). These special CPOs may be delegated the approval authority necessary to effect the purpose of their creation, but in no case will this delegation exceed the maximum monetary approval authority set forth in other subparts of this part for regular CPOs. All claims will be processed under the claims expenditure allowance and claims command and office code of the authority that established the office or under a code assigned by USARCS. The existence of any special CPO must be reported to the Commander USARCS, and the chief of a command claims service, as appropriate.

(ii) *Maneuver damage and claims office jurisdiction.* A special CPO is the proper organization to process and approve maneuver damage claims, except when a foreign government is responsible for adjudication pursuant to an international agreement (see subpart G of this part). Personnel from the maneuvering command should be used to investigate claims and, at the ACO's discretion, may be assigned to the special CPO. The ACO will process claims filed after the maneuver terminates. The special CPO will investigate claims

arising while units are traveling to or from the maneuver within the jurisdiction of other ACOs, and forward such claims for action to the ACO in whose area the claims arose. Claims for damage to real or personal property arising on private land that the Army has used under a permit may be paid from funds specifically budgeted by the maneuver for such purposes in accordance with AR 405–15.

(iii) *Disaster claims and civil disturbance.* A special CPO provided for a disaster or civil disturbance should include a claims approving authority with adequate investigatory, administrative, and logistical support, including damage assessment and finance and accounting support. It will not be dispatched prior to notification of the Commander USARCS, whose concurrence must be obtained before the first claim is paid.

(5) *Supervisory requirements.* The CPOs discussed in paragraphs (b)(2) through (b)(4) of this section must be supervised by an assigned CJA or claims attorney in order to exercise delegated approval authority.

§ 536.11 Chief of Engineers.

The Chief of Engineers, through the Chief Counsel, shall:

(a) Provide general supervision of the claims activities of COE ACOs.

(b) Ensure that each COE ACO has a claims attorney designated in accordance with § 536.4.

(c) Ensure that claims personnel are adequately trained, and monitor their ongoing claims administration.

(d) Implement pertinent claims policies.

(e) Provide for sufficient funding in accordance with existing Army regulations and command directives for temporary duty (TDY), long distance telephone calls, recording equipment, cameras, and other expenses for investigating and processing claims.

(f) Procure and maintain adequate legal publications on local law relating to claims arising within the United States, its territories, commonwealths and possessions.

(g) Assist USARCS in evaluation of claims by furnishing qualified expert and technical advice from COE resources, on a non-reimbursable basis except for temporary duty (TDY) and specialized lab services expenses.

§ 536.12 Commanding General, U.S. Army Medical Command.

(a) After consulting with the Commander USARCS on the selection of medical claims attorneys, the Commander of the U.S. Army MEDCOM, the European Medical Command, or other regional medical command, through his or her SJA/Center Judge Advocate, shall ensure that an adequate number of qualified MCJAs or medical claims attorneys and medical claims investigators are assigned to investigate and process medical malpractice claims arising at Army medical centers under the Commander's control. In accordance with an agreement between TJAG and The Surgeon General, such personnel shall be used primarily to investigate and process medical malpractice claims and affirmative claims and will be provided with the necessary funding and research materials to carry out this function.

(b) Upon request of a claims judge advocate or claims officer, shall provide a qualified health care provider at a medical treatment facility (MTF) to examine a claimant for his injuries even if the claimant is not otherwise entitled to care at an MTF (See AR 40–400, Patient Administration, paragraph 3–47).

§ 536.13 Chief, National Guard Bureau.

The Chief, National Guard Bureau (NGB), shall:

(a) Ensure the designation of a point of contact for claims matters in each State Adjutant General's office.

(b) Provide the name, address, and telephone number of these points of contact to the Commander USARCS.

(c) Designate claims officers to investigate claims generated by ARNG personnel and forward investigations to the Active Army ACO that has jurisdiction over the area in which the claims incident occurred.

§ 536.14 Commanders of major Army commands.

Commanders of MACOMs, through their SJAs, shall:

(a) Assist USARCS in monitoring ACOs and CPOs under their respective

commands for compliance with the responsibilities assigned in §§ 536.9 and 536.10.

(b) Assist claims personnel in obtaining qualified expert and technical advice from command units and organizations on a nonreimbursable basis (although the requesting office may be required to provide TDY funding).

(c) Assist TJAG, through the Commander USARCS, in implementing the functions set forth in § 536.7.

(d) Coordinate with the ACO within whose jurisdiction a maneuver is scheduled, to ensure the prompt investigation and settlement of any claims arising from it.

§ 536.15 Claims policies.

(a) *General.* The following policies will be adhered to in processing and adjudicating claims falling within this regulation. The Commander USARCS is authorized to publish new policies or rescind existing policies from time to time as the need arises.

(1) *Notification.* The Commander USARCS must be notified as soon as possible of both potential and actual claims which are serious incidents that cannot be settled within the monetary jurisdiction of a Command Claims Service or an ACO, including those which occur in the area of responsibility of a CPO. On such claims, the USARCS Area Action Officer (AAO) must coordinate with the field office as to all aspects of the investigation, evaluation and determination of liability. An offer of settlement or the assertion of an affirmative claim must be the result of a discussion between the AAO and the field office. Payment of a subrogated claim may commit the United States to liability as to larger claims. On the other hand, where all claims out of an incident can be paid within field authority they should be paid promptly with maximum use of small claims procedures.

(2) *Consideration under all subparts.* Prior to denial, a claim will be considered under all subparts of this part, regardless of the form on which the claim is presented. A claim presented as a personnel claim will be considered as a tort prior to denial. A claim presented as a tort will first be considered as a personnel claim, and if not payable, then considered as a tort. If deniable, the claim will be denied both as a personnel claim and as a tort.

(3) *Compromise.* DA policy seeks to compromise claims in a manner that represents a fair and equitable result to both the claimant and the United States. This policy does not extend to frivolous claims or claims lacking factual or legal merit. A claim should not be settled solely to avoid further processing time and expense. All claims, regardless of amount, should be evaluated. Congress imposed no minimum limit on payable claims nor did it intend that small non-meritous claims be paid. Practically any claim, regardless of amount, may be subject to compromise through direct negotiation. A CJA or claims attorney should develop expertise in assessing liability and damages, including small property damage claims. For example, a property damage claim may be compromised by deducting the cost of collection, *i.e.*, attorney fees and costs, even where liability is certain.

(4) *Expeditious processing at the lowest level.* Claims investigation and adjudication should be accomplished at the lowest possible level, such as the CPO or ACO that has monetary authority over the estimated total value of all claims arising from the incident. The expeditious investigation and settlement of claims is essential to successfully fulfilling the Army's responsibilities under the claims statutes implemented by this part.

(5) *Notice to claimants of technical errors in claim.* When technical errors are found in a claim's filing or contents, claimants should be advised of such errors and the need to correct the claim. If the errors concern a jurisdictional matter, a record should be maintained and the claimant should be immediately warned that the error must be corrected before the statute of limitations (SOL) expires.

(b) *Cooperative investigative environment.* Any person who indicates a desire to file a claim against the United States cognizable under one of the subparts of this part will be instructed concerning the procedure to follow. The claimant will be furnished claim forms and, when necessary, assisted in completing claim forms, and may be

assisted in assembling evidence. Claims personnel may not assist any claimant in determining what amount to claim. During claims investigation, every effort should be made to create a cooperative environment that engenders the free exchange of information and evidence. The goal of obtaining sufficient information to make an objective and fair analysis should be paramount. Personal contact with claimants or their representatives is essential both during investigation and before adjudication. When settlement is not feasible, issues in dispute should be clearly identified to facilitate resolution of any reconsideration, appeal or litigation.

(c) *Claims directives and plans*—(1) *Directives*. Two copies of command claims directives will be furnished to the Commander USARCS. ACO directives will be distributed to all DA and DOD commands, installations and activities within the ACO's area of responsibility, with an information copy to the Commander USARCS.

(2) *Disaster and civil preparedness plan*. One copy of all ACOs' disaster or civil disturbance plans or annexes will be furnished to the Commander USARCS.

(d) *Interpretations*. The Commander USARCS will publish written interpretations of this part. Interpretations will have the same force and effect as this part.

(e) *Authority to grant exceptions to and deviations from this part*. If, in particular instances, it is considered to be in the best interests of the government, the Commander USARCS may authorize deviations from this part's specific requirements, except as to matters based on statutes, treaties and international agreements, executive orders, controlling directives of the Attorney General or Comptroller General, or other publications that have the force and effect of law.

(f) *Guidance*. The Commander USARCS, may publish bulletins, manuals, handbooks and notes, and a DA Pamphlet that provides guidance to claims authorities on administrative and procedural rules implementing this part. These will be binding on all Army claims personnel.

(g) *Communication*. All claims personnel are authorized to communicate directly with USARCS personnel for guidance on matters of policy or on matters relating to the implementation of this part.

(h) *Private relief bills*. The issue of a private relief bill is one between a claimant and his or her Congressional representative. There is no established procedure under which the DA sponsors private relief legislation. Claims personnel shall remain neutral in all private relief matters and shall not make any statement that purports to reflect the DA's position on a private relief bill.

§ 536.16 Release of information policies.

(a) *Conflict of interest*. Except as part of their official duties, government personnel are forbidden from advising or representing claimants or from receiving 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 and 205).

(b) *Release of information*. (1) Relevant statutes pertinent to the release of information include the Privacy Act of 1974, 5 U.S.C. 552a and 552b, the Freedom of Information Act (FOIA), 5 U.S.C. 552 and the Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. 1320d through 1320d-8.

(2) It is the policy of USARCS that unclassified attorney work product may be released with or without a request from the claimant or attorney, whenever such release may help settle the claim or avoid unnecessary litigation.

(3) A statutory exemption or privilege may not be waived. Similarly, documents subject to such statutorily required nondisclosure, exemption, or privilege may not be released. Regarding other exemptions and privileges, authorities may waive such exemptions or privileges and direct release of the protected documents, upon balancing all pertinent factors, including finding that release of protected records will not harm the government's interest, will promote settlement of a claim and will avoid unnecessary litigation, or for other good cause.

(4) All requests for records and information made pursuant to the FOIA, 5 U.S.C. 552, the Privacy Act of 1974, 5 U.S.C. 552a, or HIPAA, 42 U.S.C. 1320d, will be processed in accordance with the procedures set forth in AR 25–55 and AR 340–21, respectively as well as 45 CFR Parts 160 and 164, DODD 6025.18–R, this part, and DA Pam 27–162.

(i) Any request for DOD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of AR 25–55. Requests for DOD records submitted by a claimant or claimant's attorney will be processed under both the FOIA and under the Privacy Act when the request is made by the subject of the records requested and those records are maintained in a system of records. Such requests will be processed under the FOIA time limits and the Privacy Act fee provisions. Withheld information must be exempt from disclosure under both Acts.

(ii) Requests that cite both Acts or neither Act are processed under both Acts, using the FOIA time limits and the Privacy Act fee provisions. For further guidance, see AR 25–55, paragraphs 1–301 and 1–503.

(5) The following records may not be disclosed:

(i) Medical quality assurance records exempt from disclosure pursuant to 10 U.S.C. 1102(a).

(ii) Records exempt from disclosure pursuant to appropriate balancing tests under FOIA exemption (6) (clearly unwarranted invasion of personal privacy), exemption (7)(c) (reasonably constitutes unwarranted invasion of privacy), and law enforcement records (5 U.S.C. §552(b)) unless requested by the subject of the record.

(iii) Records protected by the Privacy Act.

(iv) Records exempt from disclosure pursuant to FOIA exemption (1) (National security) (5 U.S.C. 552(b)), unless such records have been properly declassified.

(v) Records exempt from disclosure pursuant to the attorney-client privilege under FOIA exemption (5) (5 U.S.C. 552(b)), unless the client consents to the disclosure.

(6) Records within a category for which withholding of the record is discretionary (AR 25–55, paragraph 3–101), such as exemptions under the deliberative process or attorney work product privileges (exemption (5) (5 U.S.C. 552(b)) may be released when there is no foreseeable harm to government interests in the judgment of the releasing authority.

(7) When it is determined that exempt information should not be released, or a question as to its releaseability exists, forward the request and two copies of the responsive documents to the Commander USARCS. The Commander USARCS, acting on behalf of TJAG (the initial denial authority), may deny release of records processed under the FOIA only. The Commander USARCS, will forward to TJAG all such requests processed under both the FOIA and PA. TJAG is the denial authority for Privacy Act requests (AR 340–21, paragraph 1–7i).

(c) *Claims assistance.* In the vicinity of a field exercise, maneuver or disaster, claims personnel may disseminate information on the right to present claims, procedures to be followed, and the names and location of claims officers and the COE repair teams. When the government of a foreign country in which 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 as much pertinent information and evidence as security considerations permit.

§ 536.17 Single-service claims responsibility (DODD 5515.8 and DODD 5515.9).

(a) *Assignment for DOD claims.* The army is responsible for processing DOD claims pursuant to DODD 5515.9 (posted on the USARCS Web site; for the address see §536.2(a)).

(b) *Statutes and agreements.* DOD has assigned single-service responsibility for the settlement of certain claims in certain countries, pursuant to DODD 5515.8 (posted on the USARCS Web site; for the address see §536.2(a)) under the following statutes and agreements:

(1) FCA (10 U.S.C. 2734);

(2) MCA (10 U.S.C. 2733);

(3) Status of Forces Agreements (10 U.S.C. 2734a and 2734b);

(4) NATO SOFA (4 U.S.T. 1792, Treaties and International Acts Series

(T.I.A.S.) 2846) and other similar agreements;

(5) FCCA (31 U.S.C. 3711–3720E) and FMCRCA (42 U.S.C. 2651–2653);

(6) Claims not cognizable under any other provision of law, 10 U.S.C. 2737; and

(7) Advance payments, 10 U.S.C. 2736.

(c) *Specified foreign countries.* Responsibility for the settlement of claims cognizable under the laws listed above has been assigned to military departments pursuant to DODD 5515.8, as supplemented by executive agreement and other competent directives.

(d) *When claims responsibility has not been assigned.* When necessary to implement contingency plans, the unified or specified commander with authority over the geographic area in question may, on an interim basis before receiving confirmation and approval from the General Counsel, DOD, assign single-service responsibility for processing claims in countries where such assignment has not already been made.

NOTE TO § 536.17: See also § 536.32 for information on transferring claims among armed services branches.

§ 536.18 Cross-servicing of claims.

(a) *Where claims responsibility has not been assigned.* Claims cognizable under the FCA or the MCA that are generated by another military department within a foreign country for which single-service claims responsibility has not been assigned, may be settled by the Army upon request of the military department concerned. Conversely, Army claims may in appropriate cases be referred to another military department for settlement, DODD 5515.8, E1.2 (posted on the USARCS Web site; for the address see § 536.2(a)). Tables listing claims offices worldwide are posted to the USARCS Web site at that address. U.S. Air Force claims offices may be identified by visiting the Web site at *http://afmove.hq.af.mil/page__afclaims.asp*.

(b) *Claims generated by the Coast Guard.* Claims resulting from the activities of, or generated by, soldiers or civilian employees of the Coast Guard while it is operating as a service of the U.S. Department of Homeland Security may upon request be settled under this part by a foreign claims commission appointed as authorized herein, but they will be paid from Coast Guard appropriations, 10 U.S.C. 2734.

(c) *SOFA claims within the United States.* Claims cognizable under the NATO PFP or Singaporean SOFAs arising out of the activities of aircraft within the United States may be investigated and adjudicated by the U.S. Air Force under a delegation from the Commander USARCS. Claims exceeding the delegated amount will be adjudicated by the USARCS.

(d) *Claims generated by the American Battle Monuments Commission.* Claims arising out of the activities of or in cemeteries outside the United States managed by the American Battle Monuments Commission (36 U.S.C. 2110) will be investigated and adjudicated by the U.S. Army.

NOTE TO § 536.18: See also § 536.32 for information on transferring claims among armed services branches.

§ 536.19 Disaster claims planning.

All ACOs will prepare a disaster claims plan and furnish a copy to USARCS. See DA Pam 27–162, paragraph 1–21 for specific requirements related to disaster claims planning.

§ 536.20 Claims assistance visits.

Members of USARCS and command claims services will make claims assistance visits to field offices on a periodic basis. See DA Pam 27–162, paragraph 1–22 for specific requirements related to claims assistance visits.

§ 536.21 Annual claims award.

The Commander USARCS will make an annual claims award to outstanding field offices. See DA Pam 27–162, para 1–23 for more information on annual claims awards.

Subpart B—Investigation and Processing of Claims

§ 536.22 Claims investigative responsibility—General.

(a) *Scope.* This subpart addresses the investigation, processing, evaluation, and settlement of tort and tort-related claims for and against the United States. The provisions of this subpart do not apply to personnel claims (AR

27–20, chapter 11), or to claims under subpart G of this part, §§ 536.114 through 536.116.

(b) *Cooperation.* Claims investigation requires team effort between the U.S. Army Claims Service (USARCS), command claims services, and area claims offices (ACOs) including U.S. Army Corps of Engineers (COE) District Offices, claims processing offices (CPOs), and unit claims officers. Essential to this effort is the immediate investigation of claims incidents. Prompt investigation depends on the timely reporting of claims incidents as well as continuous communication between all commands or echelons bearing claims responsibility.

(c) *Notification to USARCS.* A CPO or an ACO receiving notice of a potentially compensable event (PCE) that requires investigation will immediately refer it to the appropriate claims office. The Commander USARCS will be notified of all major incidents involving serious injury or death or those in which property damage exceeds $50,000. A command claims service may delegate to an ACO the responsibility for advising USARCS of serious incidents and complying with mirror file requirements. A copy of the written delegation and any changes made thereafter will be forwarded to the Commander USARCS.

(d) *Geographic concept of responsibility.* A command claims service or an ACO in whose geographic area a claims incident occurs is primarily responsible for initiating investigation and processing of any claim filed in the absence of a formal transfer of responsibility (see §§ 536.30 through 536.36). DOD and Army organizations whose personnel are involved in the incident will cooperate with and assist the ACO, regardless of where the former may be located.

NOTE TO § 536.22: See the parallel discussion at DA Pam 27–162, paragraph 2–1.

§ 536.23 Identifying claims incidents both for and against the government.

(a) Investigation is required when:

(1) There is property loss or damage.

(i) Property other than that belonging to the government is damaged, lost, or destroyed by an act or omission of a government employee or a member of North Atlantic Treaty Association (NATO), Australian or Singaporean forces stationed or on temporary duty within the United States.

(ii) Property belonging to the government is damaged or lost by a tortious act or omission not covered by the report of survey system or by a carrier's bill of lading.

(2) There is personal injury or death.

(i) A civilian other than an employee of the U.S. government is injured or killed by an act or omission of a government employee or by a member of a NATO, Australian or Singaporean force stationed or on temporary duty within the United States. (This category includes patients injured during treatment by a health care provider).

(ii) Service members, active or retired, family members of either, or U.S. employees, are injured or killed by a third party and receive medical care at government expense.

(3) A claim is filed.

(4) A competent authority or another armed service or federal agency requires investigation.

(b) Determining who is a government employee is a matter of federal, not local, law. Categories of government employees usually accepted as tortfeasors under federal law are:

(1) Military personnel (soldiers of the Army, or members of other services where the Army exercises single-service jurisdiction on foreign soil; and soldiers or employees within the United States who are members of NATO or of other foreign military forces with whom the United States has a reciprocal claims agreement and whose sending States have certified that they were acting within the scope of their duty) who are serving on full-time active duty in a pay status, including soldiers:

(i) Assigned to units performing active or inactive duty.

(ii) Serving on active duty as Reserve Officer Training Corps (ROTC) instructors.

(iii) Serving as Army National Guard (ARNG) instructors or advisors.

(iv) On duty or training with other federal agencies, for example: the National Aeronautics and Space Administration, the Department of State, the Navy, the Air Force, or DOD (federal

agencies other than the armed service to which the Soldier is attached may also provide a remedy).

(v) Assigned as students or ordered into training at a non-federal civilian educational institution, hospital, factory, or other facility (excluding soldiers on excess leave or those for whom the training institution or organization has assumed liability by written agreement).

(vi) Serving on full-time duty at nonappropriated fund (NAF) activities.

(vii) Of the United States Army Reserve (USAR) and ARNG on active duty under Title 10, U.S.C.

(2) Military personnel who are United States Army Reserve soldiers including ROTC cadets who are Army Reserve soldiers while at annual training, during periods of active duty and inactive duty training.

(3) Military personnel who are soldiers of the ARNG while engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, 505, or engaged in properly authorized community action projects under the Federal Tort Claims Act (FTCA), the Non-Scope Claims Act (NSCA), or the National Guard Claims Act (NGCA), unless performing duties in furtherance of a mission for a state, commonwealth, territory or possession.

(4) Civilian officials and employees of both the DOD and DA (there is no practical significance to the distinction between the terms ''official'' and ''employee''), including but not limited to the following:

(i) Civil service and other full-time employees of both the DOD and DA who are paid from appropriated funds.

(ii) Persons providing direct health care services pursuant to personal service contracts under 10 U.S.C. 1089 or 1091 or where another person exercised control over the health care provider's day-to-day practice. When the conduct of a health care provider performing services under a personal service contract is implicated in a claim, the CJA, Medical Claims Judge Advocate (MCJA), or claims attorney should consult with USARCS to determine if that health care provider can be considered an employee for purposes of coverage.

(iii) Employees of a NAF instrumentality (NAFI) if it is an instrumentality of the United States and thus a federal agency. To determine whether a NAFI is a ''federal agency,'' consider both whether it is an integral part of the Army charged with an essential DA operational function and also what degree of control and supervision DA personnel exercise over it. Members or users, unlike employees of NAFIs, are not considered government employees; the same is true of family child care providers. However, claims arising out of the use of some NAFI property or from the acts or omissions of family child care providers may be payable from such funds under subpart K of this part as a matter of policy, even when the user is not acting within the scope of employment and the claim is not otherwise cognizable under any of the other authorities described in this part.

(5) Prisoners of war and interned enemy aliens.

(6) Civilian employees of the District of Columbia ARNG, including those paid under ''service contracts'' from District of Columbia funds.

(7) Civilians serving as ROTC instructors paid from federal funds.

(8) ARNG technicians employed under 32 U.S.C. 709(a) for claims accruing on or after January 1, 1969 (Public Law 90–486, August 13, 1968 (82 Stat. 755)), unless performing duties solely in pursuit of a mission for a state, commonwealth, territory or possession.

(9) Persons acting in an official capacity for the DOD or DA either temporarily or permanently with or without compensation, including but not limited to the following:

(i) Dollar-a-year personnel.

(ii) Members of advisory committees, commissions, or boards.

(iii) Volunteers serving in an official capacity in furtherance of the business of the United States, limited to those categories set forth in DA Pam 27–162, paragraph 2–45.

NOTE TO § 536.23: See the parallel discussion at DA Pam 27–162, paragraph 2–2.

§ 536.24 Delegation of investigative responsibility.

(a) *Area Claims Office.* An ACO is authorized to carry out its investigative responsibility as follows:

(1) At the request of the area claims authority, commanders and heads of Army and DOD units, activities, or components will appoint a commissioned, warrant, or noncommissioned officer or a qualified civilian employee to investigate a claims incident in the manner set forth in DA Pam 27–162 and this part. An ACO will direct such investigation to the extent deemed necessary.

(2) CPOs are responsible for investigating claims incidents arising out of the activities and operations of their command or agency. An ACO may assign area jurisdiction to a CPO after coordination with the appropriate commander to investigate claims incidents arising in the ACO's designated geographic area. (See § 536.3(f).)

(3) Claims incidents involving patients arising from treatment by a health care provider in an Army medical treatment facility (MTF), including providers defined in 536.23(b)(4)(ii), will be investigated by a claims judge advocate (CJA), medical claims judge advocate (MCJA), or claims attorney rather than by a unit claims officer.

(4) An ACO will publish and distribute a claims directive to all DOD and Army installations and activities including active, Army Reserve, and ARNG units as well as units located on the post at which the ACO is located. The directive will outline each installations' and activities' claims responsibilities. It will institute a serious claims incident reporting system.

(b) *Command claims service responsibility.* A command claims service is responsible for the investigation and processing of claims incidents arising in its geographic area of responsibility or for any incidents within the authority of any foreign claims commission (FCC) it appoints. This responsibility will be carried out by an ACO or a CPO to the extent possible. A command claims service will publish a claims directive outlining the geographic areas of claims investigative responsibilities of each of its installations and activities, requiring each ACO or CPO to report all serious claims incidents directly to the Commander USARCS.

(c) *USARCS responsibility.* USARCS exercises technical supervision over all claims offices, providing guidance on specific cases throughout the claims process, including the method of investigation. Where indicated, USARCS may investigate a claims incident that normally falls within a command claims services', an ACO's, or a CPO's jurisdiction. USARCS typically acts through an area action officer (AAO) who is assigned as the primary point of contact with command claims services, ACOs or CPOs within a given geographic area. In areas outside the United States and its commonwealths, territories and possessions, where there is no command claims service or ACO, USARCS is responsible for investigation and for appointment of FCCs.

NOTE TO § 536.24: See the parallel discussion at DA Pam 27–162, paragraph 2–3.

§ 536.25 Procedures for accepting claims.

All ACOs and CPOs will institute procedures to ensure that potential claimants or attorneys speak to a CJA, claims attorney, investigator, or examiner. On initial contact, claims personnel will render assistance, discuss all aspects of the potential claim, and determine what statutes or procedures apply. Assistance will be furnished to the extent set forth in DA Pam 27–162, paragraph 2–4. To advise claimants on the correct remedy, claims personnel will familiarize themselves with the remedies listed in DA Pam 27–162, paragraphs 2–15 and 2–17.

§ 536.26 Identification of a proper claim.

(a) A claim is a writing that contains a sum certain for each claimant and that is signed by each claimant, or by an authorized representative, who must furnish written authority to sign on a claimant's behalf. The writing must contain enough information to permit investigation. The writing must be received not later than two years from the date the claim accrues. A claim under the Foreign Claims Act (FCA) may be presented orally to either the United States or the government of the foreign country in which the incident occurred, within two years, provided that it is reduced to writing not later than three years from the date of accrual. A claim may be transmitted by facsimile or telegram.

However, a copy of an original claim must be submitted as soon as possible.

(b) Where a claim is only for property damage and it is filed under circumstances where there might be injuries, the CJA should inquire if the claimant desires to split the claim as discussed in § 536.60.

(c) Normally, a claim will be presented on a Standard Form (SF) 95 (Claim for Damage, Injury, or Death). When the claim is not presented on an SF 95, the claimant will be requested to complete an SF 95 to ease investigation and processing.

(d) If a claim names two claimants and states only one sum certain, the claimants will be requested to furnish a sum certain for each. A separate sum certain must be obtained prior to payment under the Federal Tort Claims Act (FTCA), Military Claims Act (MCA), National Guard Claims Act (NGCA) or the FCA. The Financial Management Service will only pay an amount above the threshold amount of $2,500 for the FTCA, or $100,000 for the other statutes.

(e) A properly filed claim meeting the definition of ''claim'' in paragraph (a) of this section tolls the two-year statute of limitations (SOL) even though the documents required to substantiate the claim are not present, such as those listed on the back of an SF 95 or in the Attorney General's regulations implementing the FTCA, 28 CFR 14.1—14.11. However, refusal to provide such documents may lead to dismissal of a subsequent suit under the FTCA or denial of a claim under other subparts of this part.

(f) Receipt of a claim by another federal agency does not toll the SOL. Receipt of a U.S. Army claim by DOD, Navy, or Air Force does toll the SOL.

(g) The guidelines set forth in federal FTCA case law will apply to other subparts of this part in determining whether a proper claim was filed.

NOTE TO § 536.26: See the parallel discussion at DA Pam 27–162, paragraph 2–5.

§ 536.27 Identification of a proper claimant.

The following are proper claimants:

(a) *Claims for property loss or damage.* A claim may be presented by the owner of the property or by a duly authorized agent or legal representative in the owner's name. As used in this part, the term ''owner'' includes the following:

(1) *For real property.* The mortgagor, mortgagee, executor, administrator, or personal representative, if he or she may maintain a cause of action in the local courts involving a tort to the specific property, is a proper claimant. When notice of divided interests in real property is received, the claim should if feasible be treated as a single claim and a release from all interests must be obtained. This includes both the owner and tenant where both claim.

(2) *For personal property.* A claim may be presented by a bailee, lessee, mortgagee, conditional vendor, or others holding title for purposes of security only, unless specifically prohibited by the applicable subpart. When notice of divided interests in personal property is received, the claim should if feasible be treated as a single claim; a release from all interests must be obtained. Property loss is defined as loss of actual tangible property, not consequential damage resulting from such loss.

(b) *Claims for personal injury or wrongful death*—(1) *For personal injury.* A claim may be presented by the injured person or by a duly authorized agent or legal representative or, where the claimant is a minor, by a parent or a person in loco parentis. However, determine whether the claimant is a proper claimant under applicable state law or, if considered under the MCA, under § 536.77. If not, the claimant should be so informed in the acknowledgment letter and requested to withdraw the claim. If not withdrawn, deny the claim without delay. An example is a claim filed on behalf of a minor for loss of consortium for injury to a parent where not permitted by state law. Personal injury claims deriving from the principal injury may be presented by other parties. A claim may not be presented by a ''volunteer,'' meaning one who has no legal or contractual obligation, yet voluntarily pays damages on behalf of an injured party and then seeks reimbursement for their economic damages by filing a claim. See paragraph (f) (3) of this section.

(2) *For wrongful death.* A claim may be presented by the executor or administrator of the deceased's estate, or by

any person determined to be legally or beneficially entitled under applicable local law. The amount allowed will be apportioned, to the extent practicable, among the beneficiaries in accordance with the law applicable to the incident. Under the MCA (subpart C of this part), only one wrongful death claim is authorized (see § 536.77(c)(1)(i)). Under subparts D and H of this part, a claim by the insured for property damage may be considered as a claim by the insurer as the real party in interest provided the insured has been reimbursed by the insurer and the insurance information is listed on the SF 95. The insurer should be required to file a separate SF 95 for payment purposes even though the SOL has expired. Where the insurance information is not listed on the SF 95 and the insured is paid by the United States, the payment of the insurer is the responsibility of the insured even though the insurer subsequently files a timely claim. To avoid this situation, always inquire as to the status of any insurance prior to payment of a property damage claim.

(c) *By an agent or legal representative.* A claimant's agent or legal representative who presents a claim will do so in the claimant's name and sign the form in such a way that indicates the agent's or legal representative's title or capacity. When a claim is presented by an agent or legal representative:

(1) It must contain written evidence of the agent's or legal representative's authority to sign, such as a power of attorney, or

(2) It must refer to or cite the statute granting authority.

(d) *Subrogation.* A claim may be presented by the subrogee in his or her own name if authorized by the law of the place where the incident giving rise to the claim occurred, under subpart D or H of this part only. A lienholder is not a proper claimant and should be distinguished from a subrogee to avoid violation of the Antiassignment Act. See paragraph (f) of this section. However, liens arising under Medicare will be processed directly with the Center for Medicare and Medicaid Systems. See DA Pam 27–162, paragraphs 2–57g and h and 2–58.

(e) *Contribution or indemnity.* A claim may be filed for contribution or indemnification by the party who was held liable as a joint tortfeasor where authorized by state law. Such a claim is not perfected until payment has been made by the claimant/joint tortfeasor. A claim filed for contribution prior to payment being made should be considered as an opportunity to share a settlement where the United States is liable.

(f) *Transfer or assignment.* (1) Under the Antiassignment Act (31 U.S.C. 3727) and Defense Finance and Accounting Service—Indianpolis (DFAS–IN) regulation 37–1, a transfer or assignment is null and void except where it occurs by operation of law or after a voucher for the payment has been issued. The following are null and void:

(i) Every purported transfer or assignment of a claim against the United States, or any interest, in whole or in part, on a claim, whether absolute or conditional; and

(ii) Every power of attorney or other purported authority to receive payment for all or part of any such claim.

(2) The Antiassignment Act was enacted 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 that arise under a statute are not barred by the Antiassignment Act. For example, subrogated workers' compensation claims are cognizable when presented by the insurer under subpart D or H of this part, but not other subparts.

(4) Subrogated claims that arise pursuant to contractual provisions may be paid to the subrogee, if the legal basis for the subrogated claim is recognized by state statute or case law, only under

subpart D or H of this part. For example, an insurer that issues an insurance policy becomes subrogated to the rights of a claimant who receives 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 a federal or state statute or a subrogation contract held valid by state law.

(g) *Interdepartmental waiver rule.* Neither the U.S. government nor any of its instrumentalities are proper claimants due to the interdepartmental waiver rule. This rule bars claims by any organization or activity of the Army, whether or not the organization or activity is funded with appropriated or nonappropriated funds. Certain federal agencies are authorized by statute to file claims, for example, Medicare and the Railroad Retirement Commission. See DA Pam 27–162, paragraph 2–17f.

(h) *States are excluded.* If a state, U.S. commonwealth, territory, or the District of Columbia maintains a unit to which ARNG personnel causing the injury or damage are assigned, such governmental entity is not a proper claimant for loss or damage to its property. A unit of local government other than a state, commonwealth, or territory is a proper claimant.

NOTE TO § 536.27: See the parallel discussion at DA Pam 27–162, paragraph 2–6.

§ 536.28 Claims acknowledgment.

Claims personnel will acknowledge all claims immediately upon receipt, in writing, by telephone, or in person. A defective claim will be acknowledged in writing, pointing out its defects. Where the defects render the submission jurisdictionally deficient based on the requirements discussed in DA Pam 27–162, paragraphs 2–5 and 2–6, the claimant or attorney will be informed in writing of the need to present a proper claim no later than two years from the date of accrual. Suit must be filed in maritime claims not later than two years from the date of accrual. See § 536.122. In any claim for personal injury or wrongful death, an authorization signed by the patient, natural or legal guardian or estate representative will be obtained authorizing the use of medical information, including medical records, in order to use sources other than claims personnel to evaluate the claim as required by the Health Care Portability and Accountability Act (HIPAA), 42 U.S.C. 1320d–1320d–8. See the parallel discussion at DA Pam 27–162, paragraph 2–7.

§ 536.29 Revision of filed claims.

(a) *General.* A revision or change of a previously filed claim may constitute an amendment or a new claim. Upon receipt, the CJA must determine whether a new claim has been filed. If so, the claim must be logged with a new number and acknowledged in accordance with § 536.27.

(b) *New claim.* A new claim is filed whenever the writing alleges a new theory of liability, a new tortfeasor, a new party claimant, a different date or location for the claims incident, or other basic element that constitutes an allegation of a different tort not originally alleged. If the allegation is made verbally or by e-mail, the claimant will be informed in writing that a new SF 95 must be filed. A new claim must be filed not later than two years from the accrual date under the FTCA. Filing a new claim creates an additional six month period during which suit may not be filed.

(c) *Amendment.* An increase or decrease in the amount claimed constitutes an amendment, not a new claim. Similarly, the addition of required information not on the original claim constitutes an amendment. Examples are date of birth, marital status, military status, names of witnesses, claimant's address, description, or location of property or insurance information. An amendment may be filed before or after the two year SOL has run unless final action has been taken. A new number will not be assigned to an amended claim; however, a change in the amount will be annotated in the database.

NOTE TO § 536.29: See the parallel discussion at DA Pam 27–162, paragraph 2–8.

§ 536.30 Action upon receipt of claim.

(a) A properly filed claim stops the running of the SOL when it is received by any organization or activity of the

DOD or the U.S. Armed Services. Placing a claim in the mail does not constitute filing. The first Army claims office that receives the claim will date, time stamp, and initial the claim as of the date the claim was initially received ''on post,'' not by the claims office. If initially received close to the SOL's expiration date by an organization or activity that does not have a claims office, claims personnel will discover and record in the file the date of original receipt.

(b) The ACO or CPO that first receives the claim will enter the claim into the Tort and Special Claims Application (TSCA) database and let the system assign a number to the claim. The claim, whether on an SF 95 or in any other format, shall be scanned into a computer and uploaded onto the TSCA database so that it will become a permanent part of the electronic record. A joint claim will be given a number for each claimant, for example, husband and wife, injured parent and children. If only one sum is filed for all claimants, the same sum will be assigned for each claimant. However, request the claimant to name a sum for each claimant. The claim will bear this number throughout the claims process. Upon transfer, a new number will not be assigned by the receiving office. If a claim does not meet the definition of a proper claim under §§ 536.26 and 536.27, it will be date stamped and logged as a Potentially Compensable Event (PCE).

(c) The claim will be transferred if the claim incident arose in another ACO's geographic area; the receiving ACO will use the claims number originally assigned.

(d) Non-Appropriated Fund Instrumentality (NAFI) claims that relate to claims determined cognizable under subpart K of this part will be marked with the symbol ''NAFI'' immediately following the claimant's name, to preclude erroneous payment from appropriated funds (APF). This symbol will also be included in the subject line of all correspondence.

(e) Upon receipt, copies of the claims will be furnished as follows (when a current e-mail address is available and it is agreeable with the receiving party, providing copies by e-mail is acceptable):

(1) To USARCS, if the amount claimed exceeds $25,000, or $50,000 per incident. However, if the claim arises under the FTCA or AMCSA, only furnish copies if the amount claimed exceeds $50,000, or $100,000 per incident.

(2) For medical malpractice claims, to the appropriate MTF Commander/s through MEDCOM Headquarters, and to the Armed Forces Institute of Pathology at the addresses listed below.

MEDCOM, ATTN: MCHO–CL–Q, 2050 Worth Road, Suite 26, Fort Sam Houston, TX 78234–5026.

Department of Legal Medicine, Armed Forces Institute of Pathology, 1335 E. West Highway, #6–100, Silver Spring, MD 20910–6254, Commercial: 301–295–8115, e-mail: *casha@afip.osd.mil*.

(3) If the claim is against AAFES forward a copy to: HQ Army and Air Force Exchange Service (AAFES), ATTN: Office of the General Counsel (GC–Z), P.O. Box 650062, Dallas, TX 75265–0062, e-mail: *blanchp@aafes.com*.

(4) If the claim involves a NAFI, including a recreational user or family child care provider forward a copy to: Army Central Insurance Fund, ATTN: CFSC–FM–I, 4700 King Street, Alexandria, VA 22302–4406, e-mail: *riskmanagement@cfsc.army.mil*.

(f) ACOs or CPOs will furnish a copy of any medical or dental malpractice claim to the MTF or dental treatment facility commander and advise the commander of all subsequent actions. The commander will be assisted in his or her responsibility to complete DD Form 2526 (Case Abstract for Malpractice Claims).

NOTE TO § 536.30: See the parallel discussion at DA Pam 27–162, paragraph 2–9.

§ 536.31 Opening claim files.

A claim file will be opened when:

(a) Information that requires investigation under § 536.23 is received.

(b) Records or other documents are requested by a potential claimant or legal representative.

(c) A claim is filed.

NOTE TO § 536.31: See the parallel discussion at DA Pam 27–162, paragraph 2–10.

§ 536.32 Transfer of claims among armed services branches.

(a) Claims filed with the wrong federal agency, or claims that should be

adjudicated by receiving State offices under NATO or other SOFA, will be immediately transferred to the proper agency together with notice of same to the claimant or legal representative. Where multiple federal agencies are involved, other agencies will be contacted and a lead agency established to take all actions on the claim. Where the DA is the lead agency, any final action will include other agencies. Similarly, where another agency is the lead agency, that agency will be requested to include DA in any final action. Such inclusion will prevent multiple dates for filing suit or appeal.

(b) If another agency has taken denial action on a claim that involves the DA, without informing the DA, and in which the DA desires to make a payment, the denial action may be reconsidered by the DA not later than six months from the date of mailing and payment made thereafter.

NOTE TO § 536.32: See also §§ 536.17 and 536.18; AR 27–20, paragraph 13–2; and the parallel and related discussion of this topic at DA Pam 27–162, paragraphs 1–19, 1–20, 2–13 and 13–2.

§ 536.33 Use of small claims procedures.

Small claims procedures are authorized for use whenever a claim may be settled for $5,000 or less. These procedures are designed to save processing time and eliminate the need for most of the documentation otherwise required. These procedures are described in DA Pam 27–162, paragraphs 2–14 and 2–26.

§ 536.34 Determination of correct statute.

(a) *Consideration under more than one statute.* When Congress enacted the various claims statutes, it intended to allow federal agencies to settle meritorious claims. A claim must be considered under other statutes in this part unless one particular statute precludes the use of other statutes, whether the claim is filed on DD Form 1842 (Claim for Loss of or Damage to Personal Property Incident to Service) or SF 95. Prior to denial of an AR 27–20, chapter 11 claim, consider whether it may fall within the scope of subparts C, D, or F of this part, and where indicated, question the claimant to determine whether the claim sounds in tort.

(b) *Exclusiveness of certain remedies.* Certain remedies exclude all others. For example, the Court of Federal Claims has exclusive jurisdiction over U.S. Constitution Fifth Amendment takings, express or implied-in-fact, as well as governmental contract losses, or intangible property losses. Claims of this nature for $10,000 or less may be filed in a U.S. District Court. There is no administrative remedy. While the FTCA is the preemptive tort remedy in the United States, its commonwealths, territories and possessions, nevertheless, other remedies must be exhausted prior to favorable consideration under the FTCA. The FTCA does not preclude use of the MCA or the NGCA for claims arising out of noncombat activities or brought by soldiers for incident-to-service property losses sustained within the United States. See DA Pam 27–162, paragraphs 2–15a and b for a more detailed discussion of determining the correct statute for property claims versus personal injury and death claims. In addition, it is important to consider the nature of the claim, e.g., whether the claim may be medical malpractice in nature, related to postal matter, or an automobile accident. Discussions of these and many other different types of claims are also provided herein as well as in the corresponding paragraph 2–15 of DA Pam 27–162. It is also very important to consider when a claim may fall outside the jurisdiction of the Army claims system. Some of these instances are alluded to immediately above, but for a detailed discussion of related remedies see § 536.36 of this part and paragraph 2–17 of DA Pam 27–162.

(c) *Status of Forces Agreement claims.* (1) Claims arising out of the performance of official duties in a foreign country where the United States is the sending State must be filed and processed under a SOFA, provided that the claimant is a proper party claimant under the SOFA. DA Pam 27–162, paragraph 2–15c sets forth the rules applicable in particular countries. A SOFA provides an exclusive remedy subject to waiver as set forth in § 536.76(h) of this part.

(2) Single-service jurisdiction is established for all foreign countries in which a SOFA is in effect and for certain other countries. A list of these countries is posted on the USARCS Web site; for the address see § 536.2(a). Claims will be processed by the service exercising single-service responsibility. In the United States, USARCS is the receiving State office and all SOFA claims should be forwarded immediately to USARCS for action. Appropriate investigation under subpart B of this part procedures is required of an ACO or a CPO under USARCS' direction.

(d) *Foreign Claims Act claims.* (1) Claims by foreign inhabitants, arising in a foreign country, which are not cognizable under a SOFA, fall exclusively under the FCA. The determination as to whether a claimant is a foreign inhabitant is governed by the rules set out in subpart C and subpart J of this part. In case of doubt, this determination must be based on information obtained from the claimant and others, particularly where the claimant is a former U.S. service member or a U.S. citizen residing in a foreign country.

(2) Tort claims will be processed by the armed service that exercises single-service responsibility. When requested, the Commander USARCS may furnish a Judge Advocate or civilian attorney to serve as a Foreign Claims Commission (FCC) for another service. With the concurrence of the Commander USARCS, Army JAs may be appointed as members of another department's foreign claims commissions. See subpart J of this part. The FCA permits compensation for damages caused by ''out-of-scope'' tortious conduct of Soldier and civilian employees. Many of these claims are also compensable under Article 139, Uniform Code of Military Justice. See DA Pam 27–162, chap. 9. To avoid the double payment of claims, ACOs and CPOs must promptly notify the Command Claims Service of each approved Article 139 claim involving a claimant who could also file under an applicable SOFA.

(e) *National Guard Claims Act claims.* (1) Claims attributed to the acts or omissions of ARNG personnel in the course of employment fall into the categories set forth in subpart F of this part.

(2) An ACO will establish with a state claims office routine procedures for the disposition of claims, designed to ensure that the United States and state authorities do not issue conflicting instructions for processing claims. The procedures will require personnel to advise the claimant of any remedy against the state or its insurer.

(i) Where the claim arises out of the act or omission of a member of the ARNG or a person employed under 32 U.S.C. 709, it must be determined whether the employee is acting on behalf of the state or the United States. For example, an ARNG pilot employed under section 709 may be flying on a state mission, federal mission, or both, on the same trip. This determination will control the disposition of the claim. If agreement with the concerned state cannot be reached and the claim is otherwise payable, efforts may be made to enter into a sharing agreement with the state concerned. The following procedures are required in the event there is a remedy against the state and the state refuses to pay or the state maintains insurance coverage and the claimant has filed an administrative claim against the United States. First, forward the file and the tort claim memorandum, including information on the status of any judicial or administrative action the claimant has taken against the state or its insurer to the Commander USARCS. Upon receipt, the Commander USARCS will determine whether to require the claimant to exhaust his or her remedy against the state or its insurer or whether the claim against the United States can be settled without requiring such exhaustion. If the Commander USARCS decides to follow the latter course of action, he or she will also determine whether to obtain an assignment of the claim against the state or its insurer and whether to initiate recovery action to obtain contribution or indemnification. The state or its insurer will be given appropriate notification in accordance with state law.

(ii) If an administrative claim remedy exists under state law or the state maintains liability insurance, the Commander USARCS or an ACO acting

upon the Commander USARCS' approval may enter into a sharing agreement covering payment of future claims. The purpose of such an agreement is to determine in advance whether the state or the DA is responsible for processing a claim (did the claim arise from a federal or state mission?), to expedite payment in meritorious claims, and to preclude double recovery by a claimant.

(f) *Third-party claims involving an independent contractor*—(1) *Generally*. (i) Upon receipt, all claims will be examined to determine whether a contractor of the United States is the tortfeasor. If so, the claimant or legal representative will be notified of the name and address of the contractor and further advised that the United States is not responsible for the acts or omissions of an independent contractor. This will be done prior to any determination as to the contractor's degree of culpability as compared to that of the United States.

(ii) If, upon investigation, the damage is considered to be primarily due to the contractor's fault or negligence, the claim will be referred to the contractor or the contractor's insurance carrier for settlement and the claimant will be so advised.

(iii) Health care providers hired under personal services contracts under the provisions of 10 U.S.C. 1089 are not considered to be independent contractors but employees of the United States for tort claims purposes.

(2) *Claims for injury or death of contractor employees*. Upon receipt of a claim for injury or death of a contractor employee, a copy of the portions of the contract applicable to claims and workers' compensation will be obtained, either through the contracting office or from the contractor. Claims personnel must find out the status of any claim for workers' compensation benefits as well as whether the United States paid the premiums. The goal is to involve the contractor in any settlement, where indicated, in the manner set forth in DA Pam 27–162, paragraphs 2–15f and 2–61. In claims arising in foreign countries consider whether the claim is covered by the Defense Bases Act, 42 U.S.C. 1651–1654.

(g) *Claims by contractors for damage to or loss of their property during the performance of their contracts*. Claims by contractors for property damage or loss should be referred to the contracting officer for determination as to whether the claim is payable under the contract. Such a claim is not payable under the FTCA where the damage results from an in-scope act or omission. Contract appeal procedures must be exhausted prior to consideration as a bailment under the MCA or FCA.

(h) *Maritime claims*. Maritime torts are excluded from consideration under the FTCA. The various maritime statutes are exclusive remedies within the United States and its territorial waters. Maritime statutes include the Army Maritime Claims Settlement Act (AMCSA), 10 U.S.C. 4801, 4802 and 4806, the Suits in Admiralty Act (SIAA), 46 U.S.C. app. 781–790, the Public Vessels Act (PVA), 46 U.S.C. app. 781–790, and the Admiralty Extension Act (AEA), 46 U.S.C. app. 740. Within the U.S. and its territorial waters, maritime suits may be filed under the SIAA or the PVA without first filing an administrative claim, except where administrative filing is required by the AEA. Administrative claims may also be filed under the AMSCA. In any administrative claim brought under the AMCSA, all action must be completed not later than two years from its accrual date or the SOL will expire. Outside the United States, a maritime tort may be brought under the MCA or FCA as well as the AMCSA. The body of water on which it occurs must be navigable and a maritime nexus must exist. Once a maritime claim is identified, give the claimant written notice of the two-year filing requirement. In case of doubt, the ACO or CPO should discuss the matter with the appropriate AAO. Even when the claimant does not believe that a maritime claim is involved, provide the claimant with precautionary notice. See DA Pam 27–162, paragraphs 2–7e and 8–6.

(i) *Postal claims*. See also DA Pam 27–162, paragraphs 2–15i, 2–30 and 2–56g discussing postal claims.

(1) Claims by the U.S. Postal Service for funds and stock are adjudicated by USARCS with assistance from the Military Postal Service Agency and the

ACO or CPO having jurisdiction over the particular Army post office, when directed by USARCS to assist in the investigation of the claim.

(2) Claims for loss of registered and insured mail are processed under subpart C of this part by the ACO or CPO having jurisdiction over the particular Army post office.

(3) Claims for loss of, or damage to, parcels delivered by United Parcel Service (UPS) are the responsibility of UPS.

(j) *Blast damage claims.* After completing an investigation and prior to final action, all blast damage claims resulting from Army firing and demolition activities must be forwarded to the Commander USARCS for technical review. The sole exception to this rule is when a similar claim is filed citing the same time, place and type of damage as one which has already received technical review. See also DA Pam 27–162, paragraph 2–28.

(k) *Motor vehicle damage claims arising from the use of non-governmental vehicles.* See also § 536.60 (splitting property damage and personal injury claims) and DA Pam 27–162, paragraphs 2–15k (determining the correct statute), 2–61 (joint tort feasors), and 2–62e (indemnity or contribution).

(1) *Government tortfeasors.* A Soldier or U.S. government civilian employee who negligently damages his or her personal property while acting within the scope of employment is not a proper claimant for damage to that property.

(2) *Claims by lessors for damage to rental vehicles.* Third-party claims arising from the use of rental vehicles will be processed in the same manner as NAFI commercially insured activities after exhaustion of any other remedy under the Government Travel Card Program or the Surface Deployment and Distribution Command Car Rental Agreement.

(3) *Third-party damages arising from the use of privately owned vehicles.* Third-party tort claims arising within the United States from a Soldier's use of a privately owned vehicle (POV) while allegedly within the scope of employment must be forwarded to the Commander USARCS for review and consultation before final action. The claim will be investigated and any authorization for use ascertained including payment for mileage. A copy of the Soldier's POV insurance policy will be obtained prior to forwarding. If the DA is an additional insurer under applicable state law, the claim will be forwarded to the Soldier's liability carrier for payment. When the tort claim arises in a foreign country, follow the provisions of subpart J of this part.

(l) *Claims arising from gratuitous use of DOD or Army vehicles, equipment or facilities.* (1) Before the commencement of any event that involves the use of DOD or Army land, vehicles, equipment or Army personnel for community activities, the Command involved should be advised to first determine and weigh the risk to potential third-party claimants against the benefits to the DOD or the Army. Where such risk is excessive, try to obtain an agreement from the sponsoring civilian organization holding the Army harmless. When feasible, third-party liability insurance may be required from the sponsor and the United States added to the policy as a third-party insured.

(2) When Army equipment and personnel are used for debris removal relief pursuant to the Federal Disaster Relief Act, 42 U.S.C. 5173, the state is required to assume responsibility for third-party claims. The senior judge advocate for a task force engaged in such relief should obtain an agreement requiring the state to hold the Army harmless and establish a procedure for payment by the state. Claims will be received, entered into the TSCA database, investigated and forwarded to state authorities for action.

(m) *Real estate claims.* Claims for rent, damage, or other payments involving the acquisition, use, possession or disposition of real property or interests therein, are generally payable under AR 405–15. These claims are handled by the Real Estate Claims Office in the appropriate COE District or a special office created for a deployment. Directorate of Real Estate, Office of the Chief of Engineers, has supervisory authority. Claims for damage to real property and incidental personal property, but not for rent (for example, claims arising during a maneuver or

deployment) may be payable under subparts C or J of this part. However, priority should be given to the use of AR 405–15 as it is more flexible and expeditious. In contingency operations and deployments, there is a large potential for overlap between contractual property damage claims and noncombat activity/maneuver claims. Investigate carefully to ensure the claim is in the proper channel (claims or real estate), that it is fairly settled, and that the claimant does not receive a double payment. For additional guidance, see subpart J of this part and United States Army Claims Service Europe (USACSEUR) Real Estate/Office of the Judge Advocate Standard Operating Procedures for Processing Claims Involving Real Estate During Contingency Operations (August 20, 2002).

(n) *Claims generated by civil works projects.* Civil works projects claims arising from tortious activities are defined by whether the negligent or wrongful act or omission arising from a project or activity is funded by a civil works appropriation. Civil works claims are those noncontractual claims which arise from a negligent or wrongful act or omission during the performance of a project or activity funded by civil works appropriations as distinguished from a project or activity funded by Army operation and maintenance funds. Civil works claims are paid out of civil works appropriations to the extent set forth in § 536.71(f). A civil works claim can also arise out of a noncombat activity, for example, an inverse condemnation claim in which flooding exceeds the high water mark. Maritime claims under subpart H of this part are civil works claims when they arise out of the operation of a dam, locks or navigational aid.

NOTE TO § 536.34: See parallel discussion at DA Pam 27–162, paragraph 2–1.

§ 536.35 Unique issues related to environmental claims.

Claims for property damage, personal injury, or death arising in the United States based on contamination by toxic substances found in the air or the ground must be reported by USARCS to the Environmental Law Division of the Army Litigation Center and the Environmental Torts Branch of DOJ. Such claims arising overseas must be reported to the Command Claims Service with geographical jurisdiction over the claim and USARCS. Claims for personal injury from contamination frequently arise at an area that is the subject of claims for cleanup of the contamination site. The cleanup claims involve other Army agencies, use of separate funds, and prolonged investigation. Administrative settlement is not usually feasible because settlement of property damage claims must cover all damages, including personal injury. Payment by Defense Environmental Rehabilitation Funds should be considered initially and any such payment should be deducted from any settlement under AR 27–20.

§ 536.36 Related remedies.

An ACO or a CPO routinely receives claims or inquiries about claims that clearly are not cognizable under this part. It is the DA's policy that every effort be made to discover another remedy and inform the inquirer as to its nature. Claims personnel will familiarize themselves with the remedies set forth in DA Pam 27–162, paragraph 2–17, to carry out this policy. If no appropriate remedy can be discovered, forward the file to the Commander USARCS, with recommendations.

§ 536.37 Importance of the claims investigation.

Prompt and thorough investigation will be conducted on all potential and actual claims for and against the government. Evidence developed during an investigation provides the basis for every subsequent step in the administrative settlement of a claim or in the pursuit of a lawsuit. Claims personnel must gather and record adverse as well as favorable information. The CJA, claims attorney or unit claims officer must preserve their legal and factual findings.

§ 536.38 Elements of the investigation.

(a) The investigation is conducted to ascertain the facts of an incident. Which facts are relevant often depends on the law and regulations applicable to the conduct of the parties involved but generally the investigation should develop definitive answers to such

questions as ''When?'' ''Where?'' ''Who?'' ''What?'' and ''How?''. Typically, the time, place, persons, and circumstances involved in an incident may be established by a simple report, but its cause and the resulting damage may require extensive effort to obtain all the pertinent facts.

(b) The object of the investigation is to gather, with the least possible delay, the best available evidence without accumulating excessive evidence concerning any particular fact. The claimant is often an excellent source of such information and should be contacted early in the investigation, particularly when there is a question as to whether the claim was timely filed.

§ 536.39 Use of experts, consultants and appraisers.

(a) ACOs or CPOs will budget operation and maintenance (O&M) funds for the costs of hiring property appraisers, accident reconstructionists, expert consultants to furnish opinions, and medical specialists to conduct independent medical examinations (IMEs). Other expenses to be provided for from O&M funds include the purchase of documents, such as medical records, and the hiring of mediators. See § 536.53(b). Where the cost exceeds $750 or local funds are exhausted, a request for funding should be directed to the Commander USARCS, with appropriate justification. The USARCS AAO must be notified as soon as possible when an accident reconstruction is indicated.

(b) Where the claim arises from treatment at an Army MTF, the MEDDAC commander should be requested to fund the cost of an independent consultant's opinion or an IME.

(c) The use of outside consultants and appraisers should be limited to claims in which liability or damages cannot be determined otherwise and in which the use of such sources is economically feasible, for instance, where property damage is high in amount and not determinable by a government appraiser or where the extent of personal injury is serious and a government IME is neither available nor acceptable to a claimant. Prior to such an examination at an MTF, ensure that the necessary specialists are available and a prompt written report may be obtained.

(d) Either an IME or an expert opinion is procured by means of a personal services contract under the Federal Acquisition Regulation (FAR), part 37, 48 CFR 37.000 *et seq.*, through the local contracting office. The contract must be in effect prior to commencement of the records review. Payment is authorized only upon receipt of a written report responsive to the questions asked by the CJA or claims attorney.

(e) Whenever a source other than claims personnel is used to assist in the evaluation of a claim in which medical information protected by HIPAA is involved, the source must sign an agreement designed to protect the patient's privacy rights.

§ 536.40 Conducting the investigation.

(a) The methods and techniques for investigating specific categories of claims are set forth in DA Pam 27–162, paragraphs 2–25 through 2–34. The investigation of medical malpractice claims should be conducted by a CJA or claims attorney, using a medical claims investigator.

(b) A properly filed claim must contain enough information to permit investigation. For example, if the claim does not specify the date, location or details of every incident complained of, the claimant or legal representative should be required to furnish the information.

(c) Request the claimant or legal representative to specify a theory of liability. However, the investigation should not be limited to the theories specified, particularly where the claimant is unrepresented. All logical theories should be investigated.

§ 536.41 Determination of liability—generally.

(a) Under the FTCA, the United States is liable in the same manner and to the same extent as a private individual under like circumstances in accordance with the law of the place where the act or omission giving rise to the tort occurred (28 U.S.C. 2673 and 2674). This means that liability must rest on the existence of a tort cognizable under state law, hereinafter referred to as a state tort. A finding of

state tort liability requires the litigating attorney to prove the elements of duty, breach of duty, causation, and damages as interpreted by federal case law.

(b) The foregoing principles and requirements will be followed in regard to tort claims against the United States under other subparts, with certain exceptions noted within the individual subparts or particular tort statutes.

(c) Interpretation will be made in accordance with FTCA case law and also maritime case law where applicable. Additionally, a noncombat activity can furnish the basis for a claim under subparts C, F, and J of this part. Noncombat activities include claims arising out of civil works, such as inverse condemnation.

(d) Federal, not state or local, law applies to a determination as to who is a federal employee or a member of the armed forces. Under all subparts, the designation ''federal employee'' excludes a contractor of the United States. See 28 U.S.C. 2671. See however, § 536.23(b)(4)(ii) concerning personal services contractors. For employment identification purposes apply FTCA case law in making a determination.

(e) Federal, not state or local, law applies to an interpretation of the SOL under all subparts. Minority or incompetence does not toll the SOL. Case law developed under the FTCA will be used in other subparts in interpreting SOL questions.

(f) Under the FTCA state or local law is used to determine scope of employment and under other subparts for guidance.

§ 536.42 Constitutional torts.

A claim for violation of the U.S. Constitution does not constitute a state tort and is not cognizable under any subpart. A constitutional claim will be scrutinized in order to determine whether it is totally or partially payable as a state tort. For example, a Fifth Amendment taking may be payable in an altered form as a real estate claim. For further discussion see DA Pam 27–162, paragraph 2–36.

§ 536.43 Incident to service.

(a) A member of the armed forces' claim for personal injury or wrongful death arising incident to service is not payable under any subpart except to the extent permitted by the receiving State under §§ 536.114 through 536.116 (Claims arising overseas); however, a claim by a member of the United States Armed Forces for property loss or damage may be payable under AR 27–20, chapter 11 or, if not, under subparts C, E, F, or G of this part. Derivative claims and claims for indemnity are also excluded.

(b) Claims for personal injury or wrongful death by members of a foreign military force participating in a joint military exercise or operation arising incident to service are not payable under any subpart. Claims for property loss or damage, but not subrogated claims, may be payable under subpart C of this part. Derivative claims and claims for indemnity or contribution are not payable under any subpart.

NOTE TO § 536.43: For further discussion see DA Pam 27–162, paragraph 2–37.

§ 536.44 FECA and LSHWCA claims exclusions.

A federal or NAFI employee's personal injury or wrongful death claim payable under the Federal Employees Compensation Act (FECA) or the Longshore and Harbor Workers Compensation Act (LSHWCA) is not payable under any subpart. Derivative claims are also excluded but a claim for indemnity may be payable under certain circumstances. A federal or NAFI employee's claim for an incident-to-service property loss or damage may be payable under AR 27–20, chapter 11 or, if not, under subparts C, D, F, G, H or J of this part. For further discussion see DA Pam 27–162, paragraph 2–38.

§ 536.45 Statutory exceptions.

This topic is more fully discussed in DA Pam 27–162, paragraph 2–39. The exclusions listed below are found at 28 U.S.C. 2680 and apply to subparts C, D, F, and H and §§ 536.107 through 536.113 (Claims arising in the United States) of subpart G, except as noted therein, and not to subparts E, J or §§ 536.107

through 536.113 (Claims arising overseas) of subpart G of this part. A claim is not payable if it:

(a) Is based upon an act or omission of an employee of the U.S. government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid. This exclusion does not apply to a noncombat activity claim.

(b) Is based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the government, whether or not the discretion is abused. This exclusion does not apply to a noncombat activity claim.

(c) Arises out of the loss, miscarriage, or negligent transmission of letters or postal matters. This exclusion is not applicable to registered or certified mail claims under subpart C of this part. See § 536.34(i).

(d) Arises in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any customs or other law enforcement officer. See 28 U.S.C. 2680(c).

(e) Is cognizable under the SIAA (46 U.S.C. app. 741–752), the PVA (46 U.S.C. app. 781–790), or the AEA (46 U.S.C. app. 740). This exclusion does not apply to subparts C, F, H or J of this part.

(f) Arises out of an act or omission of any federal employee in administering the provisions of the Trading with the Enemy Act, 50 U.S.C. app. 1–44.

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

(h) Arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights, except for acts or omissions of investigation of law enforcement officers of the U.S. government with regard to assault, battery, false imprisonment, false arrest, abuse of process or malicious prosecution. This exclusion also does not apply to a health care provider as defined in 10 U.S.C. 1089 and § 536.80 of this part, under the conditions listed therein.

(i) Arises from the fiscal operations of the U.S. Department of the Treasury or from the regulation of the monetary system.

(j) Arises out of the combatant activities of U.S. military or naval forces, or the Coast Guard during time of war.

(k) Arises in a foreign country. This exclusion does not apply to subparts C, E, F, H, J or §§ 536.114 through 536.116 (Claims arising overseas) of subpart G of this part.

(l) Arises from the activities of the Tennessee Valley Authority, 28 U.S.C. 2680(l).

(m) Arises from the activities of the Panama Canal Commission, 28 U.S.C. 2680(m).

(n) Arises from the activities of a federal land bank, a federal intermediate credit bank, or a bank for cooperatives, 28 U.S.C. 2680(n).

NOTE TO § 536.45: This topic is more fully discussed in DA Pam 27–162, paragraph 2–39.

§ 536.46 Other exclusions.

(a) *Statutory employer*. A claim is not payable under any subpart if it is for personal injury or death of any contract employee for whom benefits are provided under any workers' compensation law, if the provisions of the workers' compensation insurance are retrospective and charge an allowable expense to a cost-type contract, or if precluded by state law. See Federal Tort Claims Handbook (FTCH), section II, D7 (posted on the Web at *https://www.jagcnet.army.mil/laawsxxi/cds.nsf*. Select the link ''Claims'' under ''JAG Publications.'') The statutory employer exclusion also applies to claims that may be covered by the Defense Bases Act, 42 U.S.C. 1651–1654.

(b) *Flood exclusion*. Within the United States a claim is not payable if it arises from damage caused by flood or flood waters associated with the construction or operation of a COE flood control project, 33 U.S.C. 702(c). See DA Pam 27–162, paragraph 2–40.

(c) *ARNG property*. A claim is not payable under any subpart if it is for damage to, or loss of, property of a state, commonwealth, territory, or the District of Columbia caused by ARNG personnel, engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, or 505, who are assigned to a unit maintained

by that state, commonwealth, territory, or the District of Columbia. See DA Pam 27–162, paragraph 2–41.

(d) *Federal Disaster Relief Act.* Within the United States a claim is not payable if it is for damage to, or loss of, property or for personal injury or death arising out of debris removal by a federal agency or employee in carrying out the provisions of the Federal Disaster Relief Act, 42 U.S.C. 5173. See DA Pam 27–162, paragraph 2–42.

(e) *Non-justiciability doctrine.* A claim is not payable under any subpart if it arises from activities that present a non-justiciable political question. See DA Pam 27–162, paragraph 2–43.

(f) *National Vaccine Act. (42 U.S.C. 300aa–1 through 300aa–7).* A claim is not payable under any subpart if it arises from the administration of a vaccine unless the conditions listed in the National Vaccine Injury Compensation Program (42 U.S.C. 300aa–9 through 300aa–19) have been met. See DA Pam 27–162, paragraph 2–17c(6)(a).

(g) *Defense Mapping Agency.* A claim is not payable under any subpart if it arises from inaccurate charting by the Defense Mapping Agency, 10 U.S.C. 456. See FTCH section II, B4s (Web address at paragraph (a) of this section).

(h) *Quiet Title Act.* Within the U.S., a claim is not payable if it falls under the Quiet Title Act 28 U.S.C. 2409a.

(i) *Defense Bases Act.* A claim arising outside the United States is not payable if it is covered by the Defense Bases Act, 42 U.S.C. 1651–1654.

NOTE TO § 536.46: See parallel discussion at DA Pam 27–162, paragraphs 2–40 through 2–43.

§ 536.47 Statute of limitations.

To be payable, a claim against the United States under any subpart, except §§ 536.114 through 536.116 (Claims arising overseas), must be filed no later than two years from the date of accrual as determined by federal law. The accrual date is the date on which the claimant is aware of the injury and its cause. The claimant is not required to know of the negligent or wrongful nature of the act or omission giving rise to the claim. The date of filing is the date of receipt by the appropriate federal agency, not the date of mailing. See also § 536.26(a) and parallel discussion at DA Pam 27–162, paragraph 2–44.

§ 536.48 Federal employee requirement.

To be payable, a claim under any subpart except subpart K of this part, §§ 536.153 through 536.157 (Claims involving tortfeasors other than nonappropriated fund employees), must be based on the acts or omissions of a member of the armed forces, a member of a foreign military force within the United States with which the United States has a reciprocal claims agreement, or a federal civilian employee. This does not include a contractor of the United States. Apply federal case law for interpretation. See parallel discussion at DA Pam 27–162, paragraph 2–46.

§ 536.49 Scope of employment requirement.

To be payable, a claim must be based on acts or omissions of a member of the armed forces, a member of a foreign military force within the United States with which the United States has a reciprocal claims agreement, or a federal employee acting within the scope of employment, except for subparts E, J, or subpart K of this part, §§ 536.153 through 536.157 (Claims involving tortfeasors other than nonappropriated fund employees). A claim arising from noncombat activities must be based on the armed service's official activities. Excluded are claims based on vicarious liability or the holder theory in which the owner of the vehicle is responsible for any injury or damage regardless of who the operator was. See parallel discussion at DA Pam 27–162, paragraph 2–46.

§ 536.50 Determination of damages—applicable law.

(a) *The Federal Tort Claims Act.* The whole law of the place where the incident giving rise to the claim occurred, including choice of law rules, is applicable. Therefore, the law of the place of injury or death does not necessarily apply. Where there is a conflict between local law and an express provision of the FTCA, the latter governs.

(b) *The Military Claims Act or National Guard Claims Act.* See subparts C and F of this part. The law set forth in § 536.80 applies only to claims accruing on or after September 1, 1995. The law of the

place of the incident giving rise to the claim will apply to claims arising in the United States, its commonwealths, territories and possessions prior to September 1, 1995. The general principles of U.S. tort law will apply to property damage or loss claims arising outside the United States prior to September 1, 1995. Established principles of general maritime law will apply to injury or death claims arising outside the United States prior to September 1, 1995. See *Moragne* v. *States Marine Lines, Inc.*, 398 U.S. 375 (1970) and federal case law. Where general maritime law provides no guidance, the general principles of U.S. tort law will apply.

(c) *The Foreign Claims Act.* See subpart J of this part. The law of the place of occurrence applies to the resolution of claims. However, the law of damages set forth in § 536.139 will serve as a guide.

(d) *The Army Maritime Claims Settlement Act.* Maritime law applies.

(e) *Damages not payable.* Under all subparts, property loss or damage refers to actual tangible property. Accordingly, consequential damages, including, but not limited to bail, interest (prejudgment or otherwise), or court costs are not payable. Costs of preparing, filing, and pursuing a claim, including expert witness fees, are not payable. The payment of punitive damages, that is, damages in addition to general and special damages that are otherwise payable, is prohibited. See DA Pam 27–162, paragraphs 2–56 and 3–4b.

(f) *Source of attorney's fees.* Attorney's fees are taken from the settlement amount and not added thereto. They may not exceed 20 percent of the settlement amount under any subpart.

NOTE TO § 536.50: For further discussion see DA Pam 27–162, paragraph 2–51.

§ 536.51 Collateral source rule.

Where permitted by applicable state or maritime law, damages recovered from collateral sources are payable under subparts D and H, but not under subparts C, E, F, or J of this part. For further discussion see DA Pam 27–162, paragraph 2–57.

§ 536.52 Subrogation.

Subrogation is the substitution of one person in place of another with regard to a claim, demand or right. It should not be confused with a lien, which is an obligation of the claimant. Applicable state law should be researched to determine the distinction between subrogation and a lien. Subrogation claims are payable under subparts D and H, but not under subparts C, E, F or J of this part. For further discussion see DA Pam 27–162, paragraph 2–58.

§ 536.53 Evaluation of claims—general rules and guidelines.

(a) Before claims personnel evaluate a claim:

(1) A claimant or claimant's legal representative will be furnished the opportunity to substantiate the claim by providing essential documentary evidence according to the claim's nature including, but not instead of, the following: Medical records and reports, witness statements, itemized bills and paid receipts, estimates, federal tax returns, W–2 forms or similar proof of loss of earnings, photographs, and reports of appraisals or investigation. If necessary, request permission, through the legal representative, to interview the claimant, the claimant's family, proposed witnesses and treating health care providers (HCPs). In a professional negligence claim, the claimant will submit an expert opinion when requested. State law concerning the requirement for an affidavit of merit should be cited.

(2) When the claimant or the legal representative fails to respond in a timely manner to informal demands for documentary evidence, interviews, or an independent medical examination (IME), make a written request. Such written request provides notice to the claimant that failure to provide substantiating evidence will result in an evaluation of the claim based only on information currently in the file. When, despite the government's request, there is insufficient information in the file to permit evaluation, the claim will be denied for failure to document it. Failure to submit to an IME or sign an authorization to use medical information protected by HIPAA, for

review or evaluation by a source other than claims personnel, are both grounds for denial for failure to document, provided such evaluation is essential to the determination of liability or damages. State a time limit, for example, 30 or 60 days, to furnish the substantiation or expert opinion required in a medical malpractice claim.

(3) If, in exchange for complying with the government's request for the foregoing information, the claimant or the legal representative requests similar information from the file, the claimant may be provided such information and documentation as is releasable under the Federal Rules of Civil Procedure (FRCP). Additionally, work product may be released if such release will help settle the claim. See § 536.18.

(b) An evaluation should be viewed from the claimant's perspective. In other words, before denying a claim, first determine whether there is any reasonable basis for compromise. Certain jurisdictional issues and statutory bases may not be open for compromise. The incident to service and FECA exclusions are rarely subject to compromise, whereas the SOL is more subject to compromise. Factual and legal disputes are compromisable, frequently providing a basis for limiting damages, not necessarily grounds for denial. Where a precise issue of dispute is identified and is otherwise unresolvable, mediation by a disinterested qualified person, such as a federal judge, or foreign equivalent for claims arising under the FCA, should be obtained upon agreement with the claimant or the claimant's legal representative. Contributory negligence has given way to comparative negligence in most United States jurisdictions. In most foreign countries, comparative negligence is the rule of law.

NOTE TO § 536.53: For further discussion see DA Pam 27–162, paragraph 2–59.

§ 536.54 Joint tortfeasors.

When joint tortfeasors are liable, it is DA policy to pay only the fair share of a claim attributable to the fault of the United States rather than pay the claim in full and then bring suit against the joint tortfeasor for contribution. If payment from a joint tortfeasor is not forthcoming after the CJA's demand, the United States should settle for its fair share, provided the claimant is willing to hold the United States harmless. Where a joint tortfeasor's liability greatly outweighs that of the United States, the claim should be referred to the joint tortfeasor for action.

§ 536.55 Structured settlements.

(a) The use of future periodic payments, including reversionary medical trusts, is encouraged to ensure that the injured party is adequately compensated and able to meet future needs.

(1) It is necessary to ensure adequate care and compensation for a minor or other incompetent claimant or unemployed survivor over a period of years.

(2) A medical trust is necessary to ensure the long-term availability of funds for anticipated future medical care, the cost of which is difficult to predict.

(3) The injured party's life expectancy cannot be reasonably determined or is likely to be shortened.

(b) Under subpart D of this part, structured settlements cannot be required but are encouraged in situations listed above or where state law permits them. In the case of a minor, every effort should be made to insure that the minor, and not the parents, receives the benefit of the settlement. Annuity payments at the age of majority should be considered. If rejected, a blocked bank account may be used.

(c) It is the policy of the Department of Justice never to discuss the tax-free nature of a structured settlement.

NOTE TO § 536.55: For further discussion, see DA Pam 27–162, paragraph 2–63.

§ 536.56 Negotiations—purpose and extent.

It is DA policy to settle meritorious claims promptly and fairly through direct negotiation at the lowest possible level. The Army's negotiator should not admit liability as such is not necessary. However, the settlement should reflect diminished value where contributory negligence or other value-diminishing factors exist. The negotiator should be thoroughly familiar with all aspects of the case, including the claimant's background, the key witnesses, the anticipated testimony and

the appearance of the scene. There is no substitute for the claims negotiator's personal study of, and participation in, the case before settlement negotiations begin. If settlement is not possible due to the divergence in the offers, refine the issues as much as possible in order to expedite any subsequent suit. Mediation should be used if the divergence is due to an issue of law affecting either liability or damages. For further discussion see DA Pam 27–162, paragraph 2–64.

§ 536.57 Who should negotiate.

An AAO or, when delegated additional authority, an ACO or a CPO, has authority to settle claims in an amount exceeding the monetary authority delegated by regulation. It is DA policy to delegate USARCS authority, on a case-by-case basis, to an ACO or a CPO possessing the appropriate ability and experience. Only an attorney should negotiate with a claimant's attorney. Negotiations with unrepresented claimants may be conducted by a non-attorney, under the supervision of an attorney. For further discussion see DA Pam 27–162, paragraph 2–65.

§ 536.58 Settlement negotiations with unrepresented claimants.

All aspects of the applicable law and procedure, except the amount to be claimed, should be explained to both potential and actual claimants. The negotiator will ensure that the claimant is aware of whether the negotiator is an attorney or a non-attorney, and that the negotiator represents the United States. As to claims within USARCS' monetary authority, the chronology and details of negotiations should be memorialized with a written record furnished to the claimant. The claimant should understand that it is not necessary to hire an attorney, but when an attorney is needed, the negotiator should recommend hiring one. In a claim where liability is not an issue, the claimant should be informed that if an attorney is retained, the claimant should attempt to negotiate an hourly fee for determination of damages only. For further discussion see DA Pam 27–162, paragraph 2–68.

§ 536.59 Settlement or approval authority.

''Settlement authority'' is a statutory term (10 U.S.C. 2735) meaning that officer authorized to approve, deny or compromise a claim, or make final action. ''Approval authority'' means the officer empowered to settle, pay or compromise a claim in full or in part, provided the claimant agrees. ''Final action authority'' means the officer empowered to deny or make a final offer on a claim. Determining the proper officer empowered to approve or make final action on a claim depends on the claims statute involved and any limitations that apply under that statute. DA Pam 27–162, paragraph 2–69, outlines how various authority is delegated among offices.

§ 536.60 Splitting property damage and personal injury claims.

Normally, a claim will include all damages that accrue by reason of the incident. Where a claimant has a claim for property damage and personal injury arising from the same incident, the property damage claim may be paid, under certain circumstances, prior to the filing of the personal injury claim. The personal injury claim may be filed later provided it is filed within the applicable statute of limitations. When both property damage and personal injury arise from the same incident, the property damage claim may be paid to either the claimant or, under subparts D or H of this part, the insurer and the same claimant may receive a subsequent payment for personal injury. Only under subparts D or H of this part may the insurer receive subsequent payment for subrogated medical bills and lost earnings when the personal injury claim is settled. The primary purpose of settling an injured claimant's property damage claim before settling the personal injury claim is to pay the claimant for vehicle damage expeditiously and avoid costs associated with delay such as loss of use, loss of business, or storage charges. The Commander USARCS' approval must be obtained whenever the estimated value of any one claim exceeds $25,000, or the value of all claims, actual or potential, arising from the incident exceeds $50,000; however, if the

claim arises under the FTCA or AMCSA, only if the amount claimed exceeds $50,000, or $100,000 per incident.

§ 536.61 Advance payments.

(a) This section implements 10 U.S.C. 2736 (Act of September 8, 1961 (75 Stat. 488)) as amended by Public Law 90–521 (82 Stat. 874); Public Law 98–564 (90 Stat. 2919); and Public Law 100–465 (102 Stat. 2005)). No new liability is created by 10 U.S.C. 2736, which merely permits partial advance payments, only under subparts C, F or J of this part, on claims not yet filed. See AR 27–20, paragraph 11–18 for information on emergency partial payments in personnel claims, which are not governed by 10 U.S.C. 2736.

(b) The Judge Advocate General (TJAG) and the Assistant Judge Advocate General (TAJAG) may make advance payments in amounts not exceeding $100,000; the Commander USARCS, in amounts not exceeding $25,000, and the authorities designated in §§ 536.786(4) and (5) and 536.101, in amounts not exceeding $10,000, subject to advance coordination with USARCS, if the estimated total value of the claim exceeds their monetary authority. Requests for advance payments in excess of $10,000 will be forwarded to USARCS for processing.

(c) Under subpart J of this part, three-member foreign claims commissions may make advance payments under the FCA in amounts not exceeding $10,000, subject to advance coordination with USARCS if the estimated total value of the claim exceeds their monetary authority.

(d) An advance payment, not exceeding $100,000, is authorized in the limited category of claims or potential claims considered meritorious under subparts C, F or J of this part, that result in immediate hardship. An advance payment is authorized only under the following circumstances:

(1) The claim, or potential claim, must be determined to be cognizable and meritorious under the provisions of subparts C, F or J of this part.

(2) An immediate need for food, clothing, shelter, medical or burial expenses, or other necessities exists.

(3) The payee, so far as can be determined, would be a proper claimant, including an incapacitated claimant's spouse or next-of-kin.

(4) The total damage sustained must exceed the amount of the advance payment.

(5) A properly executed advance payment acceptance agreement has been obtained. This acceptance agreement must state that it does not constitute an admission of liability by the United States and that the amount paid shall be deducted from any subsequent award.

(e) There is no statutory authority for making advance payments for claims payable under subparts D or H of this part.

NOTE TO § 536.61: For further discussion see DA Pam 27–162, paragraph 2–71.

§ 536.62 Action memorandums.

(a) *When required.* (1) All claims will be acted on prior to being closed except for those that are transferred. For claims on which suit is filed before final action, see § 536.66. A settlement authority may deny or pay in full or in part any claim in a stated amount within his or her delegated authority. An approval authority may pay in full or in part, but may not deny, a claim in a stated amount within his or her delegated authority. If any one claim arising out of the same incident exceeds a settlement or approval authority's monetary jurisdiction, all claims from that incident will be forwarded to the authority having jurisdiction.

(2) In any claim which must be supported by an expert opinion as to duty, negligence, causation or damages, an expert opinion must be submitted upon request. All opinions must meet the standards set forth in Federal Rule of Evidence 702.

(3) An action memorandum is required for all final actions regardless of whether payment is made electronically. The memorandum will contain a sufficient rendition of the facts, law or damages to justify the action being taken. (A model action is posted on the USARCS Web site; for the address see § 536.2(a).)

(b) *Memorandum of Opinion.* Upon completion of the investigation, the

ACO or CPO will prepare a memorandum of opinion in the format prescribed at DA Pam 27–162, when a claim is forwarded to USARCS for action. This requirement can be waived by the USARCS AAO.

(c) *Claim brought by a claims authority or superior.* A claim filed by an approval or settlement authority or his or her superior officer in the chain of command or a family member of either will be investigated and forwarded for final action, without recommendation, to the next higher settlement authority (in an overseas area, this includes a command claims service) or to USARCS.

NOTE TO § 536.62: For further discussion see DA Pam 27–162, paragraph 2–72.

§ 536.63 Settlement agreements.

(a) *When required.* (1) A claimant's acceptance of an award constitutes full and final settlement and release of any and all claims against the United States and its employees, except as to payments made under §§ 536.60 and 536.61. A settlement agreement is required prior to payment on all tort claims, whether the claim is paid in full or in part.

(2) DA Form 1666 (Claims Settlement Agreement) may be used for payment of COE claims of $2,500 or less or all Army Central Insurance Fund and Army and Air Force Exchange Service claims.

(3) DA Form 7500 (Tort Claim Payment Report) will be used for all payments from the Defense Finance and Accounting Service (DFAS), for example, FTCA claims of $2,500 or less, FCA and MCA claims of $100,000 or less and all maritime claims regardless of amount.

(4) Financial Management Service (FMS) Forms 194, 196 and 197 will be used for all payments from the Judgment Fund, for example, FTCA claims exceeding $2,500, MCA and FCA claims exceeding $100,000.

(5) An alternative settlement agreement will be used when the claimant is represented by an attorney, or when any of the above settlement agreement forms are legally insufficient (such as when multiple interests are present, a hold harmless agreement is reached, or there is a structured settlement). For further discussion, see DA Pam 27–162, paragraph 2–73c.

(b) *Unconditional settlement.* The settlement agreement must be unconditional. The settlement agreement represents a meeting of the minds. Any changes to the agreement must be agreed upon by all parties. The return of a proffered settlement agreement with changes written thereon or on an accompanying document represents, in effect, a counteroffer and must be resolved. Even if the claimant signs the agreement and objects to its terms, either in writing or verbally, the settlement is defective and the objection must be resolved. Otherwise a final offer should be made.

(c) *Court approval*—(1) *When required.* Court approval is required in a wrongful death claim, or where the claimant is a minor or incompetent. The claimant is responsible to obtain court approval in a jurisdiction that is locus of the act or omission giving rise to the claim or in which the claimant resides. The court must be a state or local court, including a probate court. If the claimant can show that court approval is not required under the law of the jurisdiction where the incident occurred or where the claimant resides, the citation of the statute will be provided and accompany the payment documents.

(2) *Attorney representation.* If the claimant is a minor or incompetent, the claimant must be represented by a lawyer. If not already represented, the claimant should be informed that the requirement is mandatory unless state or local law expressly authorizes the parents or a person in loco parentis to settle the claim.

(3) *Costs.* The cost of obtaining court approval will be factored into the amount of the settlement; however, the amount of the costs and other costs will not be written into the settlement, only the 20% limitation on attorney fees will be included.

(4) *Claims involving an estate or personal representative of an estate.* On claims presented on behalf of a decedent's estate, the law of the state having jurisdiction should be reviewed to determine who may bring a claim on

behalf of the estate, if court appointment of an estate representative is required, and if court approval of the settlement is required.

(d) *Signature requirements.* (1) Except as noted in paragraphs (d)(2) through (d)(6) of this section, all settlement agreements will be signed individually by each claimant. A limited power of attorney signed by the claimant specifically stating the amount being accepted and authorizing an attorney at law or in fact to sign is acceptable when the claimant is unavailable to sign. The signatures of the administrator or executor of the estate, appointed by a court of competent jurisdiction or authorized by local law, are required. The signatures of all adult beneficiaries, acknowledging the settlement, should be obtained unless permission is given by Commander USARCS. Court approval must be obtained where required by state law. If not required by state law, the citation of the state statute will accompany the payment document. Additionally, all adult heirs will sign as acknowledging the settlement. In lieu thereof, where the adult heirs are not available, the estate representative will acknowledge that all heirs have been informed of the settlement.

(2) Generally, only a court-appointed guardian of a minor's estate, or a person performing a similar function under court supervision, may execute a binding settlement agreement on a minor's claim. In the United States, the law of the state where the minor resides or is domiciled will determine the age of majority and the nature and type of court approval that is needed, if any. The age of majority is determined by the age at the time of settlement, not the date of filing.

(3) For claims arising in foreign countries where the amount agreed upon does not exceed $2,500, the requirement to obtain a guardian may be eliminated. For settlements over $2,500, whether or not the claim arose in the United States, refer to applicable local law, including the law of the foreign country where the minor resides.

(4) In claims where the claimant is an incompetent, and for whom a guardian has been appointed by a court of competent jurisdiction, the signature of the guardian must be obtained. In cases in which competence of the claimant appears doubtful, a written statement by the plaintiff's attorney and a member of the immediate family should be obtained.

(5) Settlement agreements involving subrogated claims must be executed by a person authorized by the corporation or company to act in its behalf and accompanied by a document signed by a person authorized by the corporation or company to delegate execution authority.

(6) If it is believed that the foregoing requirements are materially impeding settlement of the claim, bring the matter to the attention of the Commander USARCS for appropriate resolution.

(e) *Attorneys' fees and costs.* (1) Attorneys' fees for all subparts in this part 536 fall under the American Rule and are payable only out of the up front cash in any settlement. Attorneys' fees will be stated separately in the settlement agreement as a sum not to exceed 20% of the award.

(2) Costs are a matter to be determined solely between the attorney and the claimant and will not be set forth or otherwise enumerated in the settlement agreement.

(f) *Claims involving workers' compensation carriers.* The settlement of a claim involving a claimant who has elected to receive workers' compensation benefits under local law may require the consent of the workers' compensation insurance carrier, and in certain jurisdictions, the state agency that has authority over workers' compensation awards. Accordingly, claims approval and settlement authorities should be aware of local requirements.

(g) *Claims involving multiple interests.* Where two or more parties have an interest in the claim, obtain signatures on the settlement agreement from all parties. Examples are where both the subrogee and subrogor file a single claim for property damage, where both landlord and tenant file a claim for damage to real property, or when a POV is leased, both the lessor or lessee.

(h) *Claims involving structured settlements.* All settlement agreements involving structured settlements will be prepared by the Tort Claims Division,

USARCS, and approved by the Chief or Deputy Chief, Tort Claims Division.

§ 536.64 Final offers.

(a) When claims personnel believe that a claim should be compromised, and after every reasonable effort has been made to settle at less than the amount claimed, a settlement authority will make a written final offer within his or her monetary jurisdiction or forward the claim to the authority having sufficient monetary jurisdiction, recommending a final offer under the applicable statute. The final offer notice will contain sufficient detail to outline each element of damages as well as discuss contributory negligence, the SOL or other reasons justifying a compromise offer. The offer letter should include language indicating that if the offer is not accepted within a named time period, for example, 30 or 60 days the offer is withdrawn and the claim is denied.

(b) A final offer under subpart D of this part will notify the claimant of the right to sue, not later than six months from the notice's date of mailing, and of the right to request reconsideration. The procedures for processing a request for reconsideration are set forth in § 536.89.

(c) Under subparts C or F of this part, the notice will contain an appeal paragraph. A similar procedure will be followed in subparts E and H of this part. Subpart J of this part sets forth its own procedures for FCA final offers. The procedures for processing an appeal are set forth in § 536.79 of this part. The letter must inform claimants of the following:

(1) They must accept the offer within 60 days or appeal. The appeal should state a counteroffer.

(2) The identity of the official who will act on the appeal, and the requirement that the appeal will be addressed to the settlement authority who last acted on the claim.

(3) No form is prescribed for the appeal, but the notice of appeal must fully set forth the grounds for appeal or state that it is based on 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 the date of mailing of the final notice of action. If the last day of the appeal period falls on a Saturday, Sunday, or legal holiday, as specified in Rule 6a of the Federal Rules of Civil Procedure, the following day will be considered the final day of the appeal period.

(d) Where a claim for the same injury falls under both subparts C and D of this part (the MCA and the FTCA), and the denial or final offer applies equally to each such claim, the letter of notification must advise the claimant that any suit brought on any portion of the claim filed under the FTCA must be brought not later than six months from the date of mailing of the notice of final offer and any appeal under subpart C of this part must be made as stated in paragraph (c) of this section. Further, the claimant must be advised that if suit is brought, action on any appeal under subpart C of this part will be held in abeyance pending final determination of such suit.

(e) Upon request, the settlement authority may extend the six-month reconsideration or 60-day appeal period provided good cause is shown. The claimant will be notified as to whether the request is granted under the FTCA and that the request precludes the filing of suit under the FTCA for 6 months. Only one reconsideration is authorized. Accordingly, that claimant should be informed of the need to make all submissions timely.

NOTE TO § 536.64: For further discussion see DA Pam 27–162, paragraph 2–74.

§ 536.65 Denial notice.

(a) Where there is no reasonable basis for compromise, a settlement authority will deny a claim within his or her monetary jurisdiction or forward the claim recommending denial to the settlement authority that has jurisdiction. The denial notice will contain instructions on the right to sue or request reconsideration. The notice will state the basis for denial. No admission of liability will be made. A notice to an unrepresented claimant should detail the basis for denial in lay language sufficient to permit an informed decision as to whether to request appeal or reconsideration. In the interest of deterring reconsideration, appeal or suit, a denial notice may be releasable under

the Federal Rules of Civil Procedure or by the work product documents doctrine.

(b) Regardless of the claim's nature or the statute under which it may be considered, letters denying claims on jurisdictional grounds that are valid, certain, and not easily overcome (and for this reason no detailed investigation as to the merits of the claim was conducted), must state that denial on such grounds is not to be construed as an opinion on the merits of the claim or an admission of liability. In medical malpractice claims, the denial should state that the file is being referred to U.S. Army Medical Command for review. If sufficient factual information exists to make a tentative ruling on the merits of the claim, liability may be expressly denied.

NOTE TO § 536.65: See § 536.53, on denying a claim for failure to substantiate. In addition, the procedures and rules in DA Pam 27–162, paragraph 2–69, settlement and approval authority, apply equally to the denial of claims. See also DA Pam 27–162, paragraph 2–75.

§ 536.66 The "Parker" denial.

(a) When suit is filed before final action is taken on a subpart D of this part claim, a denial letter will be issued only upon request of DOJ or the trial attorney. If suit is filed prematurely or in error, the claimant may be requested to withdraw the suit without prejudice. Such a request must be coordinated with the trial attorney.

(b) Claimants who have filed companion claims should be notified that, due to suit being filed, no action can be taken pending the outcome of suit and they may file suit if they wish.

NOTE TO § 536.66: For further discussion see DA Pam 27–162, paragraph 2–76.

§ 536.67 Mailing procedures.

Thirty or sixty day letters seeking information from claimants, final offers and denial notices are time-sensitive as they require a claimant to take additional action within certain time limits. Accordingly, follow procedures to ensure that the date of mailing and receipt of a request for reconsideration are documented. Use certified mail with return receipt requested (or registered mail, if being sent to a foreign country other than by the military postal system) to mail such notices. Upon receipt, an appeal or request for reconsideration will be date-time stamped, logged in, and acknowledged as set forth in § 536.68.

NOTE TO § 536.67: See also AR 27–20, paragraph 13–5, and DA Pam 27–162, paragraph 2–77.

§ 536.68 Appeal or reconsideration.

(a) An appeal or a request for reconsideration will be acknowledged in writing. A request for reconsideration under subpart D of this part invokes the six-month period during which suit cannot be filed, 28 CFR 14.9(b). The acknowledgment letter will underscore this restriction.

(b) Where the contents of the appeal or request for reconsideration indicate, additional investigation will be conducted and the original action changed if warranted. Except for subpart J of this part, which sets forth separate rules for FCCs, if the relief requested is not warranted the settlement authority will forward the claim to a higher settlement authority with a claims memorandum of opinion (see § 536.62) stating the reasons why the request is invalid.

NOTE TO § 536.68: See also DA Pam 27–162, paragraph 2–78.

§ 536.69 Retention of file.

After final action has been taken, the settlement authority will retain the file until at least one month after either the period of filing suit or the appeal has expired and until all data has been entered into the database. A paid claim file will be retained until final action has been taken on all other claims arising out of the same incident. If any single claim arising out of the same incident must be forwarded to higher authority for final action, all claims files for that incident will be forwarded at the same time. For further discussion see DA Pam 27–162, paragraph 2–79.

§ 536.70 Preparation and forwarding of payment vouchers.

(a) An unrepresented claimant will be listed as the sole payee. Joint claimants will not be listed since settlement

agreements must specify the amount payable to each claimant individually and each must be issued a separate check.

(b) When a claimant is represented by an attorney, only one payment voucher will be issued with the claimant and the attorney as joint payees. The payment will be sent to the office of the claimant's attorney. The attorney of record, either an individual or firm designated by the claimant, will be the copayee. If claimant has been represented by other attorneys in the same claim, such attorneys will not be listed as payees, even if they have a lien. Satisfaction of any such fee will be a matter between the claimant and such attorney. If payment is made by electronic transfer, the funds will be paid into the account of the claimant. However, if requested, the payment may be made into the attorney's escrow account provided the claimant has provided written authorization.

(c) In a structured settlement the structured settlement broker will be the sole payee, who is authorized to issue checks for the amounts set forth in the settlement agreement. The upfront cash payment may be deposited into an escrow account established for the benefit of the claimant.

(d) If a claimant is a minor or has been declared incompetent by a court or other authority authorized to do so, payment will be made to the court-appointed guardian of the minor or incompetent, at a financial institution approved by the court approving the settlement.

(e) If the claimant is representing a deceased's estate on a wrongful death claim, or a survival action on behalf of the deceased, the payment will be made to the court-appointed representative of the estate. No payment will be made directly to the estate.

NOTE TO §536.70: See also §536.63 and DA Pam 27–162, paragraphs 2–73 and 2–81.

§536.71 Fund sources.

(a) 31 U.S.C. 1304 sets forth the type and limits of claims payable out of the Judgment Fund. Only final payments that are not payable out of agency funds are allowable, per the Treasury Financial Manual, Volume I, Part 6, Chapter 3110, at Section 3115, September 2000. Threshold amounts for payment from the judgment fund vary according to the subpart and statutes under which a claim is processed. To determine the threshold amount for any given payment procedure one must arrive at a sum of all awards for all claims arising out of that incident, including derivative claims. A joint amount is not acceptable. A claim for injury to a spouse or a child is a separate claim from one for loss of consortium or services by a spouse or parent. The monetary limits of $2,500 set forth in subpart D and $100,000 set forth in subparts C, F or J of this part, apply to each separate claim.

(b) A claim for $2,500 or less arising under subpart D or E, or under §§536.107 through 536.113 of subpart G, is paid from the open claims allotment (see AR 27–20 paragraph 13–6 b(1)) or, if arising from a project funded by a civil works appropriation, from COE civil works funds. The Department of the Treasury pays any settlement exceeding $2,500 in its entirety, from the Judgment Fund. However, if a subpart G of this part, §§536.107 through 536.113 claim is treated as a noncombat activity claim, payment is made as set forth in paragraph (c) of this section.

(c) The first $100,000 for each claimant on a claim settled under subparts C, F or J of this part is paid from the open claims allotment. Any amount over $100,000 is paid out of the Judgment Fund.

(d) If not over $500,000, a claim arising under subpart H of this part is paid from the open claims allotment or civil works project funds as appropriate. A claim exceeding $500,000 is paid entirely by a deficiency appropriation.

(e) AAFES or NAFI claims are paid from nonappropriated funds, except when such claims are subject to apportionment between appropriated and nonappropriated funds. See DA Pam 27–162, paragraph 2–80h.

(f) COE claims arising out of projects not funded out of civil works project funds are payable from the open claims allotment not to exceed $2,500 for subpart D claims and $100,000 for claims arising from subparts C, F or J of this part and from the Judgment Fund, over such amounts.

NOTE TO § 536.71: For further discussion see DA Pam 27–162, paragraph 2–80.

§ 536.72 Finality of settlement.

A claimant's acceptance of an award, except for an advance payment or a split payment for property damage only, constitutes a release of the United States and its employees from all liability. Where applicable, a release should include the ARNG or the sending State. For further discussion see DA Pam 27–162, paragraph 2–82.

Subpart C—Claims Cognizable Under the Military Claims Act

§ 536.73 Statutory authority for the Military Claims Act.

The statutory authority for this subpart is contained in the Act of August 10, 1956 (70A Stat. 153, 10 U.S.C. 2733), commonly referred to as the Military Claims Act (MCA), as amended by 90–521, September 1968 (82 Stat. 874); Public Law 90–522, September 1968 (82 Stat. 875); Public Law 90–525, September 1968 (82 Stat. 877); Public Law 93–336, July 8, 1974 (88 Stat. 291); Public Law 98–564, October 1984, (98 Stat. 2918); and Public Law 103–337, October 1994 (108 Stat. 2664).

§ 536.74 Scope for claims under the Military Claims Act.

(a) The guidance set forth in this subpart applies worldwide and prescribes the substantive bases and special procedural requirements for the settlement of claims against the United States for death or personal injury, or damage to, or loss or destruction of, property:

(1) Caused by military personnel or civilian employees (enumerated in § 536.23(b)) acting within the scope of their employment, except for non-federalized Army National Guard soldiers as explained in subpart F of this part; or

(2) Incident to the noncombat activities of the armed services (see AR 27–20, Glossary).

(b) A tort claim arising in the United States, its commonwealths, territories, and possessions may be settled under this subpart if the Federal Tort Claims Act (FTCA) does not apply to the type of claim under consideration or if the claim arose incident to noncombat activities. For example, a claim by a service member for property loss or damage incident to service may be settled if the loss arises from a tort and is not payable under AR 27–20, Chapter 11.

(c) A tort claim arising outside the United States may be settled under this subpart only if the claimant has been determined to be an inhabitant (normally a resident) of the United States at the time of the incident giving rise to the claim. See § 536.136(b).

§ 536.75 Claims payable under the Military Claims Act.

(a) *General.* Unless otherwise prescribed, a claim for personal injury, death, or damage to, or loss or destruction of, property is payable under this subpart when:

(1) Caused by an act or omission of military personnel or civilian employees of the DA or DOD, acting within the scope of their employment, that is determined to be negligent or wrongful; or

(2) Incident to the noncombat activities of the armed services.

(b) *Property.* Property that may be the subject of claims for loss or damage under this subpart includes:

(1) Real property used and occupied under lease (express, implied, or otherwise). See § 536.34(m) and paragraph 2–15m of DA Pam 27–162.

(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.

(3) Registered or insured mail in the DA's possession, even though the loss was caused by a criminal act.

(4) Property of a member of the armed forces that is damaged or lost incident to service, if such a claim is not payable as a personnel claim under AR 27–20, chapter 11.

(c) *Maritime claims.* Claims that arise on the high seas or within the territorial waters of a foreign country are payable unless settled under subpart H of this part.

§ 536.76 Claims not payable under the Military Claims Act.

(a) Those resulting wholly from the claimant's or agent's negligent or

wrongful act. (See § 536.77(a)(1)(i) on contributory negligence.)

(b) Claims arising from private or domestic obligations rather than from government transactions.

(c) Claims based solely on compassionate grounds.

(d) A claim for any item, the acquisition, possession, or transportation of which was in violation of DA directives, such as illegal war trophies.

(e) Claims for rent, damage, or other payments involving the acquisition, use, possession or disposition of real property or interests therein by and for the Department of the Army (DA) or Department of Defense (DOD). See § 536.34(m) and paragraph 2–15m of DA Pam 27–162.

(f) Claims not in the best interests of the United States, contrary to public policy, or otherwise contrary to the basic intent of the governing statute (10 U.S.C. 2733); for example, claims for property damage or loss or personal injury or death of inhabitants of unfriendly foreign countries or individuals considered to be unfriendly to the United States. When a claim is considered not payable for the reasons stated in this section, it will be forwarded for appropriate action to the Commander USARCS, with the recommendations of the responsible claims office.

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

(h) A claim for damages or injury, which a receiving State should adjudicate and pay under an international agreement, unless a consistent and widespread alternative process of adjudicating and paying such claims has been established within the receiving State. See DA Pam 27–162, paragraph 3–4a, for further discussion of the conditions of waiver.

(i) Claims listed in §§ 536.42, 536.43, 536.44, 536.45, and 536.46 of this part, except for the exclusion listed in § 536.45(k). Additionally, the exclusions in § 536.45(a), (b), (e) and (k) do not apply to a claim arising incident to noncombat activities.

(j) Claims based on strict or absolute liability and similar theories.

(k) Claims payable under subparts D or J of this part, or under AR 27–20, chapter 11.

(l) Claims involving DA vehicles covered by insurance in accordance with requirements of a foreign country unless coverage is exceeded or the insurer is bankrupt. When an award is otherwise payable and an insurance settlement is not reasonably available, a field claims office should request permission from the Commander USARCS to pay the award, provided that an assignment of benefits is obtained.

§ 536.77 Applicable law for claims under the Military Claims Act.

(a) *General principles*—(1) *Tort claims excluding claims arising out of noncombat activities.* (i) In determining liability, such claims will be evaluated under general principles of law applicable to a private individual in the majority of American jurisdictions, except where the doctrine of contributory negligence applies. The MCA requires that contributory negligence be interpreted and applied according to the law of the place of the occurrence, including foreign (local) law for claims arising in foreign countries (see 10 U.S.C. 2733(b)(4)).

(ii) Claims are cognizable when based on those acts or omissions recognized as tortious by a majority of jurisdictions that require proof of duty, negligence, and proximate cause resulting in compensable injury or loss subject to the exclusions set forth at § 536.76. Strict or absolute liability and similar theories are not grounds for liability under this subpart.

(2) *Tort claims arising out of noncombat activities.* Claims arising out of noncombat activities under §§ 536.75(a)(2) and (b) are not tort claims and require only proof of causation. However, the doctrine of contributory negligence will apply, to the extent set forth in 10

U.S.C. 2733(b)(4) and paragraph (a)(1)(i) of this section.

(3) *Principles applicable to all subpart C claims.* (i) Interpretation of meanings and construction of questions of law under the MCA will be determined in accordance with federal law. The formulation of binding interpretations is delegated to the Commander USARCS, provided that the statutory provisions of the MCA are followed.

(ii) Scope of employment will be determined in accordance with federal law. Follow guidance from reported FTCA cases. The formulation of a binding interpretation is delegated to the Commander USARCS, provided the statutory provisions of the MCA are followed.

(iii) The collateral source doctrine is not applicable.

(iv) The United States will only be liable for the portion of loss or damage attributable to the fault of the United States or its employees. Joint and several liability is inapplicable.

(v) No allowance will be made for court costs, bail, interest, inconvenience or expenses incurred in connection with the preparation and presentation of the claim.

(vi) Punitive or exemplary damages are not payable.

(vii) Claims for negligent infliction of emotional distress may only be entertained when the claimant suffered physical injury arising from the same incident as the claim for emotional distress, or the claimant is the immediate family member of an injured party/decedent, was in the zone of danger and manifests physical injury for the emotional distress. Claims for intentional infliction of emotional distress will be evaluated under general principles of American law as set forth in paragraph (a)(1)(i) of this section and will be considered as an element of damages under paragraph (b)(3)(ii) of this section. Claims for either negligent or intentional infliction of emotional distress are excluded when they arise out of assault, battery, false arrest, false imprisonment, malicious prosecution, abuse of process, libel, or slander, as defined in § 536.45(h).

(viii) In a claim for personal injury or wrongful death, the total award for non-economic damages to any direct victim and all persons, including those derivative to the claim, who claim injury by or through that victim will not exceed $500,000. However, separate claims for emotional distress considered under paragraph (b)(1) of this section are not subject to the $500,000 cap for the wrongful death claim as they are not included in the wrongful death claim; rather, each is a separate claim with its own $500,000 cap under paragraph (b)(3)(ii) of this section. Continuous or repeated exposure to substantially the same or similar harmful activity or conditions is treated as one incident for the purposes of determining the extent of liability. If the claim accrued prior to September 1, 1995, these limitations do not apply. Any such limitation in the law of the place of occurrence will apply.

(b) *Personal injury claims*—(1) *Eligible claimants.* Only the following may claim:

(i) Persons who suffer physical injuries or intentional emotional distress, but not subrogees (when claiming property loss or damage, medical expenses or lost earnings); see paragraph (a)(3)(iii) of this section.

(ii) Spouses for loss of consortium, but not parent-child or child-parent loss of consortium;

(iii) Members of the immediate family who were in the zone of danger of the injured person as defined in paragraph (a)(3)(vii) of this section.

(2) *Economic damages.* Elements of economic damage are limited to the following:

(i) Past expenses, including medical, hospital and related expenses actually incurred. Nursing and similar services furnished gratuitously by a family member are compensable. Itemized bills or other suitable proof must be furnished. Expenses paid by, or recoverable from, insurance or other sources are not recoverable.

(ii) Future medical, hospital, and related expenses. When requested, a medical examination is required.

(iii) Past lost earnings as substantiated by documentation from both the employer and a physician.

(iv) Loss of earning capacity and ability to perform services, as substantiated by acceptable medical proof. When requested, past federal income

tax forms must be submitted for the previous five years and the injured person must undergo an independent medical examination (IME). Estimates of future losses must be discounted to present value at a discount rate of one to three percent after deducting for income taxes. When a medical trust providing for all future care is established, personal consumption may be deducted from future losses.

(v) Compensation paid to a person for essential household services that the injured person can no longer provide for himself or herself. These costs are recoverable only to the extent that they neither have been paid by, nor are recoverable from, insurance.

(3) *Non-economic damages.* Elements of non-economic damages are limited to the following:

(i) *Past and future conscious pain and suffering.* This element is defined as physical discomfort and distress as well as mental and emotional trauma. Loss of enjoyment of life, whether or not it is discernible by the injured party, is compensable. The inability to perform daily activities that one performed prior to injury, such as recreational activities, is included in this element. Supportive medical records and statements by health care personnel and acquaintances are required. When requested, the claimant must submit to an interview.

(ii) *Emotional distress.* Emotional distress under the conditions set forth in paragraph (a)(3)(vii) of this section.

(iii) *Physical disfigurement.* This element is defined as impairment resulting from an injury to a person that causes diminishment of beauty or symmetry of appearance rendering the person unsightly, misshapen, imperfect, or deformed. A medical statement and photographs, documenting claimant's condition, may be required.

(iv) *Loss of consortium.* This element is defined as conjugal fellowship of husband and wife and the right of each to the company, society, cooperation, and affection of the other in every conjugal relation.

(c) *Wrongful death claims.* The law of the place of the incident giving rise to the claim will apply to claims arising in the United States, its commonwealths, territories or possessions.

(1) *Claimant.* (i) Only one claim may be presented for a wrongful death. It shall be presented by the decedent's personal representative on behalf of all parties in interest. The personal representative must be appointed by a court of competent jurisdiction prior to any settlement and must agree to make distribution to the parties in interest under court jurisdiction, if required.

(ii) Parties in interest are the surviving spouse, children, or dependent parents to the exclusion of all other parties. If there is no surviving spouse, children, or dependent parents, the next of kin will be considered a party or parties in interest. A dependent parent is one who meets the criteria set forth by the Internal Revenue Service to establish eligibility for a DOD identification card.

(2) *Economic loss.* Elements of economic damages are limited to the following:

(i) Loss of monetary support of a family member from the date of injury causing death until expiration of decedent's worklife expectancy. When requested, the previous five years federal income tax forms must be submitted. Estimates must be discounted to present value at one to three percent after deducting for taxes and personal consumption. Loss of retirement benefits is compensable and similarly discounted after deductions.

(ii) Loss of ascertainable contributions, such as money or gifts to other than family member claimants as substantiated by documentation or statements from those concerned.

(iii) Loss of services from date of injury to end of life expectancy of the decedent or the person reasonably expected to receive such services, whichever is shorter.

(iv) Expenses as set forth in paragraph (b)(2)(i) of this section. In addition, burial expenses are allowable. Expenses paid by, or recoverable from, insurance or other sources are not recoverable.

(3) *Non-economic loss.* Elements of damages are limited to the following:

(i) Pre-death conscious pain and suffering.

(ii) Loss of companionship, comfort, society, protection, and consortium

suffered by a spouse for the death of a spouse, a child for the death of a parent, or a parent for the death of a child.

(iii) Loss of training, guidance, education, and nurture suffered by a child under the age of 18 for the death of a parent, until the child becomes 18 years old.

(iv) Claims for the survivors' emotional distress, mental anguish, grief, bereavement, and anxiety are not payable, in particular claims for intentional or negligent infliction of emotional distress to survivors arising out of the circumstances of a wrongful death are personal injury claims falling under § 536.77(b)(3).

(d) *Property damage claims.* The following provisions apply to all claims arising in the United States, its commonwealths, territories and possessions.

(1) Such claims are limited to damage to, or loss of, tangible property and costs directly related thereto. Consequential damages are not included. (See § 536.50(e) and DA Pam 27–162, paragraph 2–56a.)

(2) Proper claimants are described in § 536.27. Claims for subrogation are excluded. (See § 536.27(e)). However, there is no requirement that the claimant use personal casualty insurance to mitigate the loss.

(3) Allowable elements of damages and measure of proof (additions to these elements are permissible with concurrence of the Commander USARCS). These elements are discussed in detail in DA Pam 27–162, paragraph 2–54.

(i) Damages to real property.

(ii) Damage to or loss of personal property, or personal property that is not economically repairable.

(iii) Loss of use.

(iv) Towing and storage charges.

(v) Loss of business or profits.

(vi) Overhead.

§ 536.78 Settlement authority for claims under the Military Claims Act.

(a) *Authority of the Secretary of the Army.* The Secretary of the Army, the Army General Counsel, as the Secretary's designee, or another designee of the Secretary of the Army may approve settlements in excess of $100,000.

(b) *Delegations of Authority.* (1) Denials and final offers made under the delegations set forth herein are subject to appeal to the authorities specified in paragraph (d) of this section.

(2) The Judge Advocate General (TJAG) and the Assistant Judge Advocate General (TAJAG) are delegated authority to pay up to $100,000 in settlement of a claim and to disapprove a claim regardless of the amount claimed.

(3) The Commander USARCS is delegated authority to pay up to $25,000 in settlement of a claim and to disapprove or make a final offer in a claim regardless of the amount claimed.

(4) The Judge Advocate (JA) or Staff Judge Advocate (SJA), subject to limitations that USARCS may impose, and chiefs of a command claims service are delegated authority to pay up to $25,000 in settlement, regardless of the amount claimed, and to disapprove or make a final offer in a claim presented in an amount not exceeding $25,000.

(5) A head of an area claims office (ACO) is delegated authority to pay up to $25,000 in settlement of a claim, regardless of the amount claimed, and to disapprove or make a final offer in a claim presented in an amount not exceeding $25,000. A head of a claims processing office (CPO) with approval authority is delegated authority to approve, in full or in part, claims presented for $5,000 or less, and to pay claims regardless of the amount claimed, provided an award of $5,000 or less is accepted in full satisfaction of the claim.

(6) Authority to further delegate payment authority is set forth in § 536.3(g)(1) of this part. For further discussions also related to approval, settlement and payment authority see also paragraph 2–69 of DA Pam 27–162.

(c) *Settlement of multiple claims arising from a single incident.* (1) Where a single act or incident gives rise to multiple claims cognizable under this subpart, and where one or more of these claims apparently cannot be settled within the monetary jurisdiction of the authority initially acting on them, no final offer will be made. All claims will

be forwarded, along with a recommended disposition, to the authority who has monetary jurisdiction over the largest claim for a determination of liability. However, where each individual claim, including derivative claims, can be settled within the monetary authority initially acting on them, and none are subject to denial, all such claims may be settled even though the total amount exceeds the monetary jurisdiction of the approving or settlement authority.

(2) If such authority determines that federal liability is established, he or she may return claims of lesser value to the field claims office for settlement within that office's jurisdiction. The field claims office must take care to avoid compromising the higher authority's discretion by conceding liability in claims of lesser amount.

(d) *Appeals.* Denials or final offers on claims described as follows may be appealed to the official designated:

(1) For claims presented in an amount over $100,000, final decisions on appeals will be made by the Secretary of the Army or designee.

(2) For claims presented for $100,000 or less, and any denied claim, regardless of the amount claimed, in which the denial was based solely upon an incident-to-service bar, exclusionary language in a federal statute governing compensation of federal employees for job-related injuries (see § 536.44), or untimely filing, TJAG or TAJAG will render final decisions on appeals, except that claims presented for $25,000 or less, and not acted upon by the Commander USARCS, are governed by paragraph (d)(3) of this section.

(3) For claims presented for $25,000 or less, final decisions on appeals will be made by the Commander USARCS, his or her designee, or the chief of a command claims service when such claims are acted on by an ACO under such service's jurisdiction.

(4) Sections 536.64, 536.65, and 536.66 of this part set forth the rules relating to the notification of appeal rights and processing.

(e) *Delegated authority.* Authority delegated by this section will not be exercised unless the settlement or approval authority has been assigned an office code.

§ 536.79 Action on appeal under the Military Claims Act.

(a) 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 regulation. The settlement authority will also examine the claim file and decide whether additional investigation is required; ensure that all allegations or evidence presented by the claimant, agent, or attorney are documented; and ensure that all pertinent evidence is included. If claimants state that they appeal, but do not submit supporting materials within the 60-day appeal period or an approved extension thereof, these appeals will be determined on the record as it existed at the time of denial or final offer. Unless action under paragraph (b) of this section is taken, the claim and complete investigative file, including any additional investigation, and a tort claims memorandum will be forwarded to the appropriate appellate authority for necessary action on the appeal.

(b) If the evidence in the file, including information submitted by the claimant with the appeal and that found by 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 a settlement cannot be reached, the appeal will be forwarded in accordance with paragraph (a) of this section.

(c) As to an appeal that requires action by TJAG, TAJAG, or the Secretary of the Army or designee, the Commander USARCS may take the action in paragraph (b) of this section or forward the claim together with a recommendation for action. All matters submitted by the claimant will be forwarded and considered.

(d) Since an appeal under this subpart is not an adversarial proceeding, no form of hearing is authorized. A request by the claimant for access to documentary evidence in the claim file to be used in considering the appeal will be granted unless law or regulation does not permit access.

(e) If the appellate authority upholds a final offer or authorizes an award on appeal from a denial of a claim, the notice of the appellate authority's action will inform the claimant that he or she must accept the award within 180 days of the date of mailing of the notice of the appellate authority's action or the award will be withdrawn, the claim will be deemed denied, and the file will be closed without future recourse.

§ 536.80 Payment of costs, settlements, and judgments related to certain medical malpractice claims.

(a) *General.* Costs, settlements, or judgments cognizable under 10 U.S.C. 1089(f) for personal injury or death caused by any physician, dentist, nurse, pharmacist, paramedic, or other supporting personnel (including medical and dental technicians, nurse assistants, therapists, and Red Cross volunteers of the Army Medical Department (AMEDD), AMEDD personnel detailed for service with other than a federal department, agency, or instrumentality and direct contract personnel identified in the contract as federal employees), will be paid provided that:

(1) The alleged negligent or wrongful actions or omissions occurred during the performance of medical, dental, or related health care functions (including clinical studies and investigations) while the medical or health care employee was acting within the scope of employment.

(2) Such personnel furnish prompt notification and delivery of all process served or received and other documents, information, and assistance as requested.

(3) Such personnel cooperate in the defense of the action on its merits.

(b) *Requests for contribution or indemnification.* All requests for contribution or indemnification under this section should be forwarded to the Commander USARCS for action, following the procedures set forth in this subpart.

§ 536.81 Payment of costs, settlements, and judgments related to certain legal malpractice claims.

(a) *General.* Costs, settlements, and judgments cognizable under 10 U.S.C. 1054(f) for damages for personal injury or loss of property caused by any attorney, paralegal, or other member of a legal staff will be paid if:

(1) The alleged negligent or wrongful actions or omissions occurred during the provision or performance of legal services while the attorney or legal employee was acting within the scope of duties or employment;

(2) Such personnel furnish prompt notification and delivery of all process served or received and other documents, information, and assistance as requested;

(3) Such personnel cooperate in the defense of the action on the merits.

(b) *Requests for contribution or indemnification.* All requests for contribution or indemnification under this section should be forwarded to the Commander USARCS, for action, following the procedures set forth in this subpart.

§ 536.82 Reopening an MCA claim after final action by a settlement authority.

(a) *Original approval or settlement authority (including TAJAG, TJAG, Secretary of the Army, or the Secretary's designees).* (1) An original settlement authority may reconsider the denial of, or final offer on, a claim brought under the MCA upon request of the claimant or the claimant's authorized agent. In the absence of such a request, the settlement authority may on his or her initiative reconsider a claim.

(2) An original approval or settlement authority may reopen and correct action on an MCA claim previously settled in whole or in part (even if a settlement agreement has been executed) when it appears that the original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. For errors in fact, the new evidence must not have been discoverable at the time of final action by either the Army or the claimant through the exercise of reasonable diligence. Corrective action may also be taken when an error contrary to the parties' mutual understanding is discovered in the original action. If the settlement or approval authority determines that their original action was incorrect, they 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. For example, a claim was settled for $15,000, but the settlement agreement was typed to read ''$1,500'' and the error is not discovered until the file is being prepared for payment. If appropriate, a corrected payment will be made. A settlement authority who has reason to believe that a settlement was obtained by fraud on the part of the claimant or claimant's legal representative, will reopen action on that claim and, if the belief is substantiated, correct the action. The basis for correcting an action will be stated in a memorandum and included in the file.

(b) *A successor approval or settlement authority (including TAJAG, TJAG, Secretary of the Army, or the Secretary's designees)*—(1) *Reconsideration.* A successor approval or settlement authority may reconsider the denial of, or final offer on, an MCA claim upon request of the claimant or the claimant's authorized agent only on the basis of fraud, substantial new evidence, errors in calculation, or mistake (misinterpretation) of law.

(2) *Settlement correction.* A successor approval or settlement authority may reopen and correct a predecessor's action on a claim that was previously settled in whole or in part for the same reasons that an original authority may do so.

(c) *Time requirement for filing request for reconsideration.* Requests postmarked more than five years from the date of mailing of final notice will be denied based on the doctrine of laches.

(d) *Finality of action.* Action by the appropriate authority (either affirming the prior action or granting full or granting full or partial relief) is final under the provisions of 10 U.S.C. 2735. Action upon a request for reconsideration constitutes final administrative disposition of a claim. No further requests for reconsideration will be allowed except on the basis of fraud.

Subpart D—Claims Cognizable Under the Federal Tort Claims Act

§ 536.83 Statutory authority for the Federal Tort Claims Act.

The statutory authority for this subpart is the Federal Tort Claims Act (FTCA) (60 Stat. 842, 28 U.S.C. 2671–2680), as amended by Public Law 89–506, July 1966 (80 Stat. 306); Public Law 93–253, March 1974 (88 Stat. 50); Public Law 97–124, December 1981 (93 Stat. 1666); Public Law 100–694, November 1988 (102 Stat. 4563–67); and Public Law 101–552, November 1996 (104 Stat. 734); and as implemented by the Attorney General's Regulations (28 CFR 14.1–14.11 and its appendix), all of which are posted on the USARCS Web site; for the address see § 536.2(a).

§ 536.84 Scope for claims under the Federal Tort Claims Act.

(a) *General.* This subpart applies in the United States, its commonwealths, territories and possessions (all hereinafter collectively referred to as United States or U.S.). It prescribes the substantive bases and special procedural requirements under the FTCA and the implementing Attorney General's regulations for the administrative settlement of claims against the United States based on death, personal injury, or damage to, or loss of, property caused by negligent or wrongful acts or omissions by the United States or its employees acting within the scope of their employment. If a conflict exists between this part and the Attorney General's regulations, the latter governs.

(b) *Effect of the Military Claims Act.* A tort claim arising in the United States, its commonwealths, territories, and possessions may be settled under subpart C of this part if the Federal Tort Claims Act (FTCA) does not apply to the type of claim under consideration or if the claim arose incident to noncombat activities. If a claim is filed under both the FTCA and the Military Claims Act (MCA), or when both statutes apply equally, final action thereon will follow the procedures set forth in DA Pam 27–162, paragraphs 2–74 through 2–76, discussing final offers and denial letters.

§ 536.85 Claims payable under the Federal Tort Claims Act.

(a) Unless otherwise prescribed, claims for death, personal injury, or damage to, or loss of, property (real or personal) are payable under this subpart when the injury or damage is

caused by negligent or wrongful acts or omissions of military personnel or civilian employees of the Department of the Army or Department of Defense 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 waiver of sovereign immunity without which the United States may not be sued in tort. Similarly, neither the Fifth Amendment nor any other provision of the U.S. Constitution creates or permits a federal cause of action allowing recovery in tort. Immunity must be expressly waived, as the FTCA waives it.

(b) To be payable, a claim must arise from the acts or omissions of an ''employee of the government'' under 28 U.S.C. 2671. Categories of such employees are listed in § 536.23(b) of this part.

§ 536.86 Claims not payable under the Federal Tort Claims Act.

A claim is not payable if it is identified as an exclusion in DA Pam 27–162, paragraphs 2–36 through 2–43.

§ 536.87 Applicable law for claims under the Federal Tort Claims Act.

The applicable law for claims falling under the Federal Tort Claims Act is set forth in §§ 536.41 through 536.52.

§ 536.88 Settlement authority for claims under the Federal Tort Claims Act.

(a) *General.* Subject to the Attorney General's approval of payments in excess of $200,000 for a single claim, or if the total value of all claims and potential claims arising out of a single incident exceeds $200,000 (for which USARCS must write an action memorandum for submission to the Department of Justice), the following officials are delegated authority to settle (including payment in full or in part, or denial) and make final offers on claims under this subpart:

(1) The Judge Advocate General (TJAG);

(2) The Assistant Judge Advocate General (TAJAG); and

(3) The Commander USARCS.

(b) *ACO heads.* A head of an area claims office (ACO) is delegated authority to pay up to $50,000 in settlement of a claim, regardless of the amount claimed, and to disapprove or make a final offer in a claim presented in an amount not exceeding $50,000, provided the value of all claims and potential claims arising out of a single incident does not exceed $200,000.

(c) *CPO heads.* A head of a claims processing office (CPO) with approval authority is delegated authority to approve, in full or in part, claims presented for $5,000 or less, and to pay claims regardless of amount, provided an award of $5000 or less is accepted in full satisfaction of the claim.

(d) *Further guidance.* Authority to further delegate payment authority is set forth in § 536.3(g)(1) of this part. For further discussions related to approval, settlement and payment authority, see paragraphs 2–69 and 2–71 of DA Pam 27–162.

(e) *Settlement of multiple claims from a single incident.* (1) Where a single act or incident gives rise to multiple claims cognizable under this subpart, and where one claim cannot be settled within the monetary jurisdiction for one claim of the authority acting on the claim or all claims cannot be settled within the monetary jurisdiction for a single incident, no final offer will be made. All claims will be forwarded, along with a recommended disposition, to the Commander USARCS.

(2) If the Commander USARCS determines that all claims can be settled for a total of $200,000 or less, he may return claims to the field office for settlement. If the Commander USARCS, determines that all claims cannot be settled for a total of $200,000, he must request Department of Justice authority prior to settlement of any one claim. The field claims office must not concede liability by paying any one claim of lesser value.

§ 536.89 Reconsideration of Federal Tort Claims Act claims.

(a) *Reconsideration of paid claims.* Under the provision of 28 U.S.C. 2672, neither an original or successor authority may reconsider a claim which has been paid except as expressly set forth below. Payment of an amount for

property damage will bar payment for personal injury or death except for a split claim provided the provisions of § 536.60 are followed. Supplemental payments for either property or injury are barred by 10 U.S.C. 2672. Accordingly, claimants will be informed that only one claim or payment is permitted.

(b) *Notice of right to reconsideration.* Notice of disapproval or final offer issued by an authority listed in § 536.88(b) will advise the claimant of a right to reconsideration to be submitted in writing not later than six months from the date of mailing the notice. Such a request will suspend the requirement to bring suit for a minimum of six month or until action is taken on the request. The claimant will be so informed. See the Attorney General's Regulations at 28 CFR 14.9(b), posted on the USARCS Web site; for the address see § 536.2(a).

(c) *Original approval or settlement authority*—(1) *Reconsideration.* An original settlement authority may reconsider the denial of, or final offer on, a claim brought under the FTCA upon request of the claimant or the legal representative.

(2) *Settlement correction.* An original approval or settlement authority may reopen and correct action on a claim previously settled in whole or in part (even if a settlement agreement has been executed) when an error contrary to the parties' mutual understanding is discovered in the original action. For example: a claim was settled for $15,000, but the settlement agreement was typed to read ''$1,500'' and the error is not discovered until the file is being prepared for payment. If appropriate, a corrected payment will be made. An approval or settlement authority who has reason to believe that a settlement was obtained by fraud on the part of the claimant or claimant's legal representative will reopen action on that claim, and if the belief is substantiated, correct the action. The basis for correcting an action will be stated in a memorandum and included in the file.

(d) *A successor approval or settlement authority*—(1) *Reconsideration.* A successor approval or settlement authority may reconsider the denial of, or final offer on, an FTCA claim upon request of the claimant, the claimant's authorized agent, or the claimant's legal representative only on the basis of fraud, substantial new evidence, errors in calculation, or mistake (misinterpretation) of law.

(2) *Settlement correction.* A successor approval or settlement authority may reopen and correct a predecessor's action on a claim that was previously settled in whole or in part for the same reasons that an original authority may do so.

(e) *Requirement to forward a request for reconsideration.* When full relief is not granted, forward all requests for reconsideration of an ACO's denial or final offer to the Commander USARCS for action. Include all investigative material and legal analyses generated by the request.

(f) *Action prior to forwarding.* A request for reconsideration should disclose fully the legal and/or factual bases that the claimant has asserted as grounds for relief and provide appropriate supporting documents or evidence. Following completion of any investigation or other action deemed necessary for an informed disposition of the request, the approval or settlement authority will reconsider the claim and attempt to settle it, granting relief as warranted. When further settlement efforts appear unwarranted, the entire file with a memorandum of opinion will be forwarded to the Commander USARCS. The claimant will be informed of such transfer.

(g) *Finality of action.* Action by the appropriate authority (either affirming the prior action or granting full or partial relief) upon a request for reconsideration constitutes final administrative disposition of a claim. No further requests for reconsideration will be allowed except on the basis of fraud. Attempted further requests for reconsideration on other grounds will not toll the six-month period set forth in 28 U.S.C. 2401(b).

Subpart E—Claims Cognizable Under the Non-Scope Claims Act

§ 536.90 Statutory authority for the Non-Scope Claims Act.

The statutory authority for this subpart is set forth in the Act of October

1962, 10 U.S.C. 2737, 76 Stat. 767, commonly called the ''Non-Scope Claims Act (NSCA).''

§ 536.91 Scope for claims under the Non-Scope Claims Act.

(a) This subpart applies worldwide and prescribes the substantive bases and special procedural requirements for the administrative settlement and payment of not more than $1,000 for any claim against the United States for personal injury, death or damage to, or loss of, property caused by military personnel or civilian employees, incident to the use of a U.S. vehicle at any location, or incident to the use of other U.S. property on a government installation, which claim is not cognizable under any other provision of law.

(b) For the purposes of this subpart, 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 means of transportation on land (1 U.S.C. 4).

(c) Any claim in which there appears to be a dispute about whether the employee was acting within the scope of employment will be considered under subparts C, D, or F of this part. Only when all parties, including an insurer, agree that there is no ''in scope'' issue will the claim be considered under this subpart.

§ 536.92 Claims payable under the Non-Scope Claims Act.

(a) *General.* A claim for personal injury, death, or damage to, or loss of, property, real or personal, is payable under this subpart when:

(1) Caused by negligent or wrongful acts or omissions of Department of Defense or Department of the Army (DA) military personnel or civilian employees, as listed in § 536.23(b):

(i) Incident to the use of a vehicle belonging to the United States at any place or;

(ii) Incident to the use of any other property belonging to the United States on a government installation.

(2) The claim is not payable under any other claims statute or regulation available to the DA for the administrative settlement of claims.

(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 under the Non-Scope Claims Act.

Under this subpart, a claim is not payable that:

(a) Results in whole or in part from the negligent or wrongful act of the claimant or his or her agent or employee. The doctrine of comparative negligence does not apply.

(b) Is for medical, hospital, or burial expenses furnished or paid by the United States.

(c) Is for any element of damage pertaining to personal injuries or death other than as provided in § 536.93(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 substitute property, for example, a rental.

(e) Is legally recoverable by the claimant under an indemnifying law or indemnity contract. If the claim is in part legally recoverable, the part recoverable by the claimant is not payable.

(f) Is a subrogated claim.

(g) In some circumstances some claims may be partially payable. See DA Pam 27–162, paragraph 5–4 for more information on claims that may be partially payable.

§ 536.94 Settlement authority for claims under the Non-Scope Claims Act.

(a) *Settlement authority.* The following are delegated authority to pay up to

$1,000 in settlement of each claim arising out of one incident and to disapprove a claim presented in any amount under this subpart:

(1) The Judge Advocate General (TJAG);

(2) The Assistant Judge Advocate General (TAJAG);

(3) The Commander USARCS;

(4) The Judge Advocate (JA) or Staff Judge Advocate (SJA) or chief of a command claims service; and

(5) The head of an area claims office (ACO).

(b) *Approval authority.* The head of a claims processing office (CPO) with approval authority is delegated authority to approve and pay, in full or in part, claims presented for $1,000 or less and to compromise and pay, regardless of amount claimed, an agreed award of $1,000 or less.

(c) *Further guidance.* Authority to further delegate payment authority is set forth in § 536.3(g)(1) of this part. For further discussions also related to approval, settlement and payment authority, see also paragraphs 2–69 and 2–71 of DA Pam 27–162.

§ 536.95 Reconsideration of Non-Scope Claims Act claims.

The provisions of § 536.89 addressing reconsideration apply and are incorporated herein by reference. If the claim is not cognizable under the Federal Tort Claims Act, appellate procedures under the Military Claims Act or NGCA apply.

Subpart F—Claims Cognizable Under the National Guard Claims Act

§ 536.96 Statutory authority for the National Guard Claims Act.

The statutory authority for this subpart is contained in the Act of September 1960 (32 U.S.C. 715, 74 Stat. 878), commonly referred to as the ''National Guard Claims Act'' (NGCA), as amended by Public Law 87–212, (75 Stat. 488), September 1961; Public Law 90–486, (82 Stat. 756), August 1968; Public Law 90–521, (82 Stat. 874), September 1968; Public Law 90–525, (82 Stat. 877), September 1968; Public Law 91–312, (84 Stat. 412), July 1970; Public Law 93–336, (88 Stat. 291), July 1974; and Public Law 98–564, (98 Stat. 2918), October 1984.

§ 536.97 Scope for claims under the National Guard Claims Act.

This subpart applies worldwide and prescribes the substantive bases and special procedural regulations for the settlement of claims against the United States for death, personal injury, damage to, or loss or destruction of property.

(a) Soldiers of the Army National Guard (ARNG) can perform military duty in an active duty status under the authority of Title 10 of the United States Code, in a full-time National Guard duty or inactive-duty training status under the authority of Title 32 of the United States Code, or in a state active duty status under the authority of a state code.

(1) When ARNG soldiers perform active duty, they are under federal command and control and are paid from federal funds. For claims purposes, those soldiers are treated as active duty soldiers. The NGCA, 32 U.S.C. 715, does not apply.

(2) When ARNG soldiers perform full-time National Guard duty or inactive-duty training, they are under state command and control and are paid from federal funds. The NGCA does apply, but as explained in paragraph (c) of this section it is seldom used.

(3) When ARNG soldiers perform state active duty, they are under state command and control and are paid from state funds. Federal claims statutes do not apply, but state claims statutes may apply.

(b) The ARNG also employs civilians, referred to as technicians and employed under 32 U.S.C. 709. Technicians are usually, but not always, ARNG soldiers who perform the usual 15 days of annual training (a category of full-time duty) and 48 drills (inactive-duty training) per year.

(c) NGCA coverage applies only to ARNG soldiers performing full-time National Guard duty or inactive-duty training and to technicians. However, since the NGCA's enactment in 1960, Congress has also extended Federal Tort Claims Act (FTCA) coverage to these personnel.

(1) In 1968, technicians, who were state employees formerly, were made federal employees. Along with federal employee status came FTCA coverage. Technicians no longer have any state status, albeit they are hired, fired, and administered by a state official, the Adjutant General, acting as the agent of the federal government.

(2) In 1981, Congress extended FTCA coverage to ARNG soldiers performing full-time National Guard duty or inactive-duty training (such as any training or other duty under 32 U.S.C. 316, 502–505). Unlike making technicians federal employees, this extension of coverage did not affect their underlying status as state military personnel.

(d) Claims arising from the negligent acts or omissions of ARNG soldiers performing full-time National Guard duty or inactive-duty training, or of technicians, will be processed under the FTCA. Therefore, the NGCA is generally relevant only to claims arising from noncombat activities or outside the United States. Additionally, claims by members of the National Guard may be paid for property loss or damage incident to service if the claim is based on activities falling under this subpart and is not payable under AR 27–20, chapter 11.

§ 536.98 Claims payable under the National Guard Claims Act.

The provisions of § 536.75 apply to claims arising under this subpart.

§ 536.99 Claims not payable under the National Guard Claims Act.

The provisions of § 536.76 apply to claims arising under this subpart.

§ 536.100 Applicable law for claims under the National Guard Claims Act.

The provisions of § 536.77 apply to claims arising under this subpart.

§ 536.101 Settlement authority for claims under the National Guard Claims Act.

The provisions of § 536.78 apply to claims arising under this subpart.

§ 536.102 Actions on appeal under the National Guard Claims Act.

The provisions of § 536.79 apply to claims arising under this subpart.

Subpart G—Claims Cognizable Under International Agreements

§ 536.103 Statutory authority for claims cognizable under international claims agreements.

The authority for claims presented or processed under this subpart is set forth in the following federal laws and bi- or multinational agreements:

(a) 10 U.S.C. 2734a and 10 U.S.C. 2734b (the International Agreements Claims Act) as amended, for claims arising overseas under international agreements.

(b) Various international agreements, such as the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA) and the Partnership for Peace (PFP) SOFA.

§ 536.104 Current agreements in force.

Current listings of known agreements in force are also posted on the USARCS Web site; for the address see § 536.2(a).

§ 536.105 Responsibilities generally/international agreements claims.

(a) The Commander USARCS is responsible for:

(1) Providing policy guidance to command claims services or other responsible judge advocate (JA) offices on SOFA or other treaty reimbursement programs implementing 10 U.S.C. 2734a and 2734b.

(2) Monitoring the reimbursement system to ensure that programs for the proper verification and certification of reimbursement are in place.

(3) Monitoring funds reimbursed to or by foreign governments.

(b) *Responsibilities in the continental United States (CONUS).* The responsibility for implementing these agreements within the United States has been delegated to the Secretary of the Army (SA). The SA, in turn, has delegated that responsibility to the Commander USARCS, who is in charge of the receiving State office for the United States, as prescribed in DODD

5515.8. The Commander USARCS is responsible for maintaining direct liaison with sending State representatives and establishing procedures designed to carry out the provisions of this subpart.

§ 536.106 Definitions for international agreements claims.

(a) *Force and civilian component of force.* Members of the sending State's armed forces on temporary or permanent official duty within the receiving State, civilian employees of the sending State's armed forces, and those individuals acting in an official capacity for the sending State's armed forces. However, under provisions of the applicable SOFAs the sending State and the receiving State may agree to exclude from the definition of ''force'' certain individuals, units or formations that would otherwise be covered by the SOFA. Where such an exclusion has been created, this subpart will not apply to claims arising from actions or omission by those individuals, units or formations. ''Force and civilian component of force'' also includes claims arising out of acts or omissions made by military or civilian personnel, regardless of nationality, who are assigned or attached to, or employed by, an international headquarters established under the provisions of the Protocol on the Status of International Military Headquarters Set Up Pursuant to the North Atlantic Treaty, dated August 28, 1952, such as Supreme Allied Command, Atlantic.

(b) *Types of claims under agreements*—(1) *Intergovernmental claims.* Claims of one contracting party against any other contracting party for damage to property owned by its armed services, or for injury or death suffered by a member of the armed services engaged in the performance of official duties, are waived. Claims above a minimal amount for damage to property owned by a governmental entity other than the armed services may be asserted. NATO SOFA, Article VIII, paragraph 1–4; Singapore SOFA, Article XVI, paragraph 2–3.

(2) *Third-party scope claims.* Claims arising out of any acts or omissions of members of a force or the civilian component of a sending State done in the performance of official duty or any other act, omission, or occurrence for which the sending State is legally responsible shall be filed, considered and settled in accordance with the laws and regulations of the receiving State with respect to claims arising from the activities of its own armed service; see, for example, NATO SOFA, Article VIII, paragraph 5.

(3) *Ex gratia claims.* Claims arising out of tortious acts or omissions not done in the performance of official duties shall be considered by the sending State for an ''ex gratia'' payment that is made directly to the injured party; see, for example, NATO SOFA, Article VIII, paragraph 6.

§ 536.107 Scope for international agreements claims arising in the United States.

This section sets forth procedures and responsibilities for the investigation, processing, and settlement of claims arising out of any acts or omissions of members of a foreign military force or civilian component present in the United States or a territory, commonwealth, or possession thereof under the provisions of cost sharing reciprocal international agreements which contain claims settlement provisions applicable to claims arising in the United States. Article VIII of the NATO SOFA has reciprocal provisions applying to all NATO member countries; the Partnership for Peace (PFP) Agreement has similiar provisions, as do the Singapore and Australian SOFAs.

§ 536.108 Claims payable under international agreements (for those arising in the United States).

(a) Within the United States, Art. VIII, NATO SOFA applies to claims arising within the North Atlantic Treaty Area, which includes CONUS and its territories and possessions north of the Tropic of Cancer (23.5 degrees north latitude). This excludes Puerto Rico, the Virgin Islands, and parts of Hawaii. Third-party scope claims are payable under subpart D or, if the claim arises incident to noncombat activities, under subpart C of this part. Maritime claims are payable under subpart H of

this part. The provisions of these subparts on what claims are payable apply equally here. The members of the foreign force or civilian component must be acting in pursuance of the applicable treaty's objectives.

(b) Within the United States, third-party ex gratia claims are payable only by the sending State and are not payable under subpart E of this part.

§ 536.109 Claims not payable under international agreements (for those arising in the United States).

The following claims are not payable:

(a) Claims arising from a member of a foreign force or civilian component's acts or omissions that do not accord with the objectives of a treaty authorizing their presence in the United States.

(b) Claims arising from the acts or omissions of a member of a foreign force or civilian component who has been excluded from SOFA coverage by agreement between the sending State and the United States.

(c) Third-party scope claims arising within the United States that are not payable under subparts C, D, or H of this part are listed as barred under those subparts. As sending State forces are considered assimilated into the U.S. Armed Services for purposes of the SOFAs, their members are also barred from receiving compensation from the United States when they are injured incident to their service, *Daberkow* v. *United States*, 581 F.2d 785 (9th Cir. 1978).

§ 536.110 Notification of incidents arising under international agreements (for claims arising in the United States).

To enable USARCS to properly discharge its claims responsibilities under the applicable SOFAs, it must be notified of all incidents, including off-duty incidents, in which members of a foreign military force or civilian component are involved. Any member or employee of the U.S. armed services who learns of an incident involving a member of a foreign military force or civilian component resulting in personal injury, death, or property damage will immediately notify the judge advocate (JA) or legal officer at the installation or activity to which such person is assigned or attached. The JA or legal officer receiving such notification will in turn notify the Commander USARCS. If the member is neither assigned nor attached to any installation or activity within the United States, the Commander USARCS, will be notified.

§ 536.111 Investigation of claims arising under international agreements (for those claims arising in the United States).

Responsibility for investigating an incident rests upon the area claims office (ACO) or claims processing office (CPO) responsible for the geographic area in which the incident occurred. The Commander USARCS, an ACO, and a CPO are authorized to designate the legal office of the installation at which the member of the foreign force or civilian component is attached, including the legal office of another armed force, to carry out the responsibility to investigate. The investigation will comply with the responsible Service's implementing claims regulation. When the member is neither assigned nor attached within the United States, the Commander USARCS will furnish assistance.

§ 536.112 Settlement authority for claims arising under international agreements (for those claims arising in the United States).

Settlement authority is delegated to the Commander USARCS, except for settlement amounts exceeding the Commander's authority as set forth in subparts C, D, or H of this part, or in those cases where settlement is reserved to a higher authority. Pursuant to the applicable SOFA, the Commander USARCS will report the proposed settlement to the sending State office for concurrence or objection. See, for example, NATO SOFA, Article VIII.

§ 536.113 Assistance to foreign forces for claims arising under international agreements (as to claims arising in the United States).

As claims arising from activities of members of NATO, Partnership for Peace, Singaporean, or Australian forces in the United States are processed in the same manner as those arising from activities of U.S. government personnel. All JAs and legal offices will

provide assistance similar to that provided to U.S. armed services personnel.

§ 536.114 Scope for claims arising overseas under international agreements.

(a) This section sets forth guidance on claims arising from any act or omission of soldiers or members of the civilian component of the U.S. armed services done in the performance of official duty or arising from any other act or omission or occurrence for which the U.S. armed services are responsible under an international agreement. Claims incidents arising in countries for which the SOFA requires the receiving State to adjudicate and pay the claims in accordance with its laws and regulations are subject to partial reimbursement by the United States.

(b) Claims by foreign inhabitants based on acts or omissions outside the scope of official duties are cognizable under subpart J of this part. Claims arising from nonscope acts or omissions by third parties who are not foreign inhabitants are cognizable under subpart E but not under subparts C or F of this part.

§ 536.115 Claims procedures for claims arising overseas under international agreements.

(a) SOFA provisions that call for the receiving State to adjudicate claims have been held to be the exclusive remedy for claims against the United States, *Aaskov* v. *Aldridge*, 695 F. Supp. 595 (D.D.C. 1988); *Dancy* v. *Department of the Army*, 897 F. Supp. 612 (D.D.C. 1995).

(b) SOFA provisions that call for the receiving State to adjudicate claims against the United States usually refer to claims by third parties brought against members of the force or civilian component. This includes claims by tourists or business travelers as well as inhabitants of foreign countries. Depending on how the receiving State interprets the particular SOFA's class of proper claimants, the receiving State may also consider claims by U.S. soldiers, civilian employees, and their family members. Chiefs of command claims services or other Army JA offices responsible for claims that arise in countries bound by SOFA or other treaty provisions requiring a receiving State to consider claims against the United States will ensure that all claims personnel know the receiving State's policy on which persons or classes of persons are proper claimants under such provisions. When a claim is filed both with the receiving State and under either the Military Claims Act (MCA) or Foreign Claims Act (FCA), the provisions of § 536.76(h) of this part and DA Pam 27–162, paragraph 3–4a apply.

(c) When SOFA provisions provide for receiving state claims consideration, the time limit for filing such claims may be much shorter than the two years otherwise allowed under the FCA or MCA. For example, receiving state claims offices in Germany require that a claim be filed under the SOFA within three months of the date that the claimant is aware of the U.S. involvement. If the filing period is about to expire for claims arising in Germany, have the claimant fill out a claim form, make two copies, and date-stamp each copy as received by the a sending State claims office. Return the date-stamped original of the claim to the claimant with instructions to promptly file with the receiving State claims office. Keep one date-stamped copy as a potential claim. Forward one date-stamped copy of the claim to the U.S. Army Claims Service Europe (USACSEUR). This may toll the applicable German statute of limitations. Additionally, many receiving state claims offices do not require claimants to demand a sum certain. All claims personnel must familiarize themselves with the applicable receiving state law and procedures governing SOFA claims.

(d) All foreign inhabitants who file claims against the United States that fall within the receiving State's responsibility, such as claims based on acts or omissions within the scope of U.S. Armed Forces members' or civilian employees' duties, must file the claim with the appropriate receiving State office. Those U.S. inhabitants whose claims would be otherwise cognizable under the Military Claims Act (subpart C of this part) and whom the receiving State deems proper claimants under the SOFA must also file with the receiving State.

(e) A claim filed with, and considered by, a receiving State under a SOFA or other international agreement claims provision may be considered under other subparts of this part only if the receiving State denied the claim on the basis that it was not cognizable under the treaty or agreement provisions. See DA Pam 27–162, paragraph 3–4a(2), for conditions of waiver of the foregoing requirement. See also §§ 536.76(h) and 536.138(j) of this part. When a claimant has filed a claim with a receiving State and received payment, or the claim has been denied on the merits, such action will be the claimant's final and exclusive remedy and will bar any further claims against the United States.

§ 536.116 Responsibilities as to claims arising overseas under international agreements.

(a) Command claims services or other responsible JA offices within whose jurisdiction SOFA or other treaty provisions provide for a claim reimbursement system, and where DA has been assigned single-service responsibility for the foreign country seeking reimbursement (see § 536.17) are responsible for:

(1) Establishing programs for verifying, certifying, and reimbursing claims payments. Such service or JA office will provide a copy of its procedures implementing the program to the Commander USARCS.

(2) Providing the Commander USARCS with budget estimates for reimbursements in addition to the reports required by AR 27–20, paragraph 13–7.

(3) Providing the Commander USARCS each month in which payments are made, with statistical information on the number of individual claims reimbursed, the total amount paid by the foreign government, and the total amount reimbursed by the United States.

(4) Providing the Commander USARCS with a quarterly report showing total reimbursements paid during the quarter for maneuver damage and tort claims classified according to major categories of damage determined by the Commander USARCS, and an update on major issues or activities that could affect the reimbursement system's operation or funding.

(b) Command claims services or other responsible Army JA offices will ensure that all claims personnel within their areas of responsibility:

(1) Receive annual training on the receiving State's claims procedures, including applicable time limitations, procedures and the responsible receiving State claims offices' locations.

(2) Screen all new claims and inquiries about claims to identify those claimants who must file with the receiving State.

(3) Ensure that all such claimants are informed of this requirement and the applicable time limitation.

(4) Ensure that all applicable SOFA claims based on incidents occurring in circumstances that bring them within the United States' primary sending State jurisdiction are fully investigated.

Subpart H—Maritime Claims

§ 536.117 Statutory authority for maritime claims.

The Army Maritime Claims Settlement Act (AMCSA) (10 U.S.C. 4801–04, 4806, as amended) authorizes the Secretary of the Army or his designee to administratively settle or compromise admiralty and maritime claims in favor of, and against, the United States.

§ 536.118 Related statutes for maritime claims.

(a) The AMCSA permits the settlement of claims that would ordinarily fall under the Suits in Admiralty Act (SIAA), 46 U.S.C. app. 741–752; the Public Vessels Act (PVA), 46 U.S.C. app. 781–790; or the Admiralty Extension Act (AEA), 46 U.S.C. app. 740. Outside the United States the AMCSA may be used to settle admiralty claims in lieu of the Military Claims Act or Foreign Claims Act. Within the United States, filing under the AMCSA is not mandatory for causes of action as it is for the SIAA or PVA.

(b) Similar maritime claims settlement authority is exercised by the Department of the Navy under 10 U.S.C. 7363 and 7621–23 and by the Department

of the Air Force under 10 U.S.C. 9801–9804 and 9806.

§ 536.119 Scope for maritime claims.

The AMCSA applies worldwide and includes claims that arise on high seas or within the territorial waters of a foreign country. At 10 U.S.C. 4802 it provides for the settlement or compromise of claims for:

(a) Damage caused by a vessel of, or in the service of, the Department of the Army (DA) or by other property under the jurisdiction of the DA.

(b) Compensation for towage and salvage service, including contract salvage, rendered to a vessel of, or in the service of, the DA or other property under the jurisdiction of the DA.

(c) Damage that is maritime in nature and caused by tortious conduct of U.S. military personnel or federal civilian employees, an agent thereof, or property under the Army's jurisdiction.

§ 536.120 Claims payable as maritime claims.

A claim is cognizable under this subpart if it arises in or on a maritime location, involves some traditional maritime nexus or activity, and is caused by the wrongful act or omission of a member of the U.S. Army, Department of Defense (DOD) or DA civilian employee, or an agent thereof, while acting within the scope of employment. This class of claims includes, but is not limited to:

(a) Damage to a ship, boat, barge, or other watercraft;

(b) An injury that involves a ship, boat, barge, or other watercraft;

(c) Damage to a wharf, pier, jetty, fishing net, farm facilities or other structures in, on, or adjacent to any body of water;

(d) Damage or injury on land or on water arising under the AEA and allegedly due to operation of an Army-owned or leased ship, boat, barge, or other watercraft;

(e) An injury that occurs on board an Army ship, boat, barge or other watercraft; and

(f) Crash into water of an Army aircraft.

§ 536.121 Claims not payable as maritime claims.

Under this subpart, claims are not payable if they:

(a) Are listed in §§ 536.42, 536.43, 536.44, 536.45 (except at (e) and (k)), and 536.46;

(b) Are not maritime in nature;

(c) Are not in the best interests of the United States, are contrary to public policy, or are otherwise contrary to the basic intent of the governing statute, for example, claims for property loss or damage or personal injury or death by inhabitants of unfriendly foreign countries or by individuals considered to be unfriendly to the United States. When a claim is considered not payable for the reasons stated in this section, it will be forwarded for appropriate action to the Commander USARCS, along with the recommendations of the responsible claims office.

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

(e) Are for damages or injuries that a receiving State should pay for under an international agreement. See § 536.34(c).

§ 536.122 Limitation of settlement of maritime claims.

(a) Within the United States the period of completing an administrative settlement under the AMCSA is subject to the same time limitation as that for beginning suit under the SIAA or PVA; that is, a two-year period from the date the cause of the action accrued. The claimant must have agreed to accept the settlement and it must be approved for payment by the Secretary of the Army or other approval authority prior to the end of such period. The presentation of a claim, or its consideration by the DA, neither waives nor extends the two-year limitation period and the

claimant should be so informed, in writing, when the claim is acknowledged. See § 536.28.

(b) For causes of action under the AEA, filing an administrative claim is mandatory. However, suit is required under the two-year time limit applicable to the SIAA and PVA, even though the AEA provides that no suit shall be filed under six months after filing a claim.

(c) For causes of action arising outside the United States, there is no time limitation for completing an administrative settlement.

§ 536.123 Limitation of liability for maritime claims.

For admiralty claims arising within the United States under the provisions of the Limitation of Shipowners' Liability Act, 46 U.S.C. app. 181–188, in cases alleging injury or loss due to negligent operation of its vessel, the United States may limit its liability to the value of its vessel after the incident from which the claim arose. The act requires filing of an action in federal District Court within six months of receiving written notice of a claim. Therefore, USARCS, or the Chief Counsel, U.S. Army Corps of Engineers (COE), or his designee, must be notified within 10 working days of the receipt of any maritime claim arising in the United States or on the high seas out of the operation of an Army vessel, including pleasure craft owned by the United States. USARCS or Chief Counsel, COE will coordinate with the Department of Justice (DOJ) as to whether to file a limitation of liability action.

§ 536.124 Settlement authority for maritime claims.

(a) The Secretary of the Army, the Army General Counsel as designee of the Secretary, or other designee of the Secretary may approve any settlement or compromise of a claim in any amount. A claim settled or compromised in a net amount exceeding $500,000 will be investigated and processed and, if approved by the Secretary of the Army or his or her designee, will be certified to Congress for final approval.

(b) The Judge Advocate General (TJAG), The Assistant Judge Advocate General (TAJAG), the Commander USARCS, the Chief Counsel COE, or Division or District Counsel Offices are delegated authority to settle, such as to deny or approve payment in full or in part, any claim under this subpart regardless of the amount claimed, provided that any award does not exceed $100,000.

(c) A Staff Judge Advocate (SJA) or chief of a command claims service and heads of area claims offices (ACOs) are delegated authority to pay up to $50,000, regardless of the amount claimed, and to disapprove or make a final offer on a claim presented in an amount not exceeding $50,000.

(d) Authority to further delegate payment authority is set forth in § 536.3(g)(1) of this part. For further discussion also related to settlement and approval authority see paragraph 2–69 of DA Pam 27–162.

(e) Where the claimed amount or potential claim damage exceeds $100,000 for COE claims or $50,000 for all others, Commander USARCS will be notified immediately, and be furnished a copy of the claim and a mirror file thereafter. See § 536.30 and AR 27–20, paragraph 2–12.

Subpart I—Claims Cognizable Under Article 139, Uniform Code of Military Justice

§ 536.125 Statutory authority for Uniform Code of Military Justice (UCMJ) Claims.

The authority for this subpart is Article 139, Uniform Code of Military Justice (UCMJ) (10 U.S.C. 939, which provides redress for property willfully damaged or destroyed, or wrongfully taken, by members of the Armed Forces of the United States.

§ 536.126 Purpose of UCMJ claims.

This subpart sets forth the standards to apply and the procedures to follow in processing claims for the wrongful taking or willful damage or destruction of property by military members of the Department of the Army.

§ 536.127 Proper claimants; unknown accused—under the UCMJ.

(a) A proper claimant under this subpart includes any individual (whether civilian or military), a business, charity, or state or local government that owns, has an ownership interest in, or lawfully possesses property.

(b) When cognizable claims are presented against a unit because the individual offenders cannot be identified, this subpart sets forth the procedures for approval authorities to direct pay assessments, equivalent to the amount of damages sustained, against the unit members who were present at the scene and to allocate individual liability in such proportion as is just under the circumstances.

§ 536.128 Effect of disciplinary action, voluntary restitution, or contributory negligence for claims under the UCMJ.

(a) *Disciplinary action.* Administrative action under Article 139, UCMJ, and this subpart is entirely separate and distinct from disciplinary action taken under other sections of the UCMJ or other administrative actions. Because action under both Article 139, UCMJ, and this subpart requires independent findings on issues other than guilt or innocence, a soldier's conviction or acquittal of claim-related charges is not dispositive of liability under Article 139, UCMJ.

(b) *Voluntary restitution.* The approval authority may terminate Article 139 proceedings without findings if the soldier voluntarily makes full restitution to the claimant.

(c) *Contributory negligence.* A claim otherwise cognizable and meritorious is payable whether or not the claimant was negligent.

§ 536.129 Claims cognizable as UCMJ claims.

Claims cognizable under Article 139, UCMJ, are limited to the following:

(a) *Requirement that conduct constructively violate UCMJ.* In order to subject a person to liability under Article 139, the soldier's conduct must be such as would constitute a violation of one or more punitive Articles of the UCMJ. However, a referral of charges is not a prerequisite to action under this subpart.

(b) *Claims for property willfully damaged.* Willful damage is damage inflicted intentionally, knowingly, and purposefully without justifiable excuse, as distinguished from damage caused inadvertently, thoughtlessly or negligently. Damage, loss, or destruction of property caused by riotous, violent, or disorderly acts or acts of depredation, or through conduct showing reckless or wanton disregard of the property rights of others, may be considered willful damage.

(c) *Claims for property wrongfully taken.* A wrongful taking is any unauthorized taking or withholding of property, with the intent to deprive, temporarily or permanently, 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. However, mere breach of a fiduciary or contractual duty that does not involve larceny, forgery, embezzlement, fraud, or misappropriation does not constitute wrongful taking.

(d) *Definition of property.* Article 139 provides compensation for loss of or damage to both personal property, whether tangible or intangible, and real property. Contrast this to the Personnel Claims Act and chapter 11 of AR 27–20, which provides compensation only for tangible personal property. Monetary losses may fall into the category of either tangible property (for example, cash), or intangible property (for example, an obligation incurred by a claimant to a third party as a result of fraudulent conduct by a soldier), although recovery for losses of intangible property may be limited by other provisions of this part, such as the exclusion of theft of services (see § 536.130(f)) or consequential damages (see § 536.130(g)).

(e) *Claims cognizable under more than one statute.* Claims cognizable under other claims statutes may be processed under this subpart.

§ 536.130 Claims not cognizable as UCMJ claims.

Claims not cognizable under Article 139, UCMJ, and this subpart, include the following:

(a) Claims resulting from negligent acts.

(b) Claims for personal injury or death.

(c) Claims resulting from acts or omissions of military personnel acting within the scope of their employment, including claims resulting from combat activities or noncombat activities, as those terms are defined in the Glossary of AR 27–20.

(d) Claims resulting from the conduct of Reserve component personnel who are not subject to the UCMJ at the time of the offense.

(e) Subrogated claims.

(f) Claims for theft of services, even if such theft constitutes a violation of Article 134 of the UCMJ.

(g) Claims for indirect, remote, or consequential damages.

(h) Claims by entities in conflict with the United States or whose interests are hostile to the United States.

§ 536.131 Limitations on assessments arising from UCMJ claims.

(a) *Limitations on amount.* (1) A special court-martial convening authority (SPCMCA) has authority to approve a pay assessment in an amount not to exceed $5,000 per claimant per incident and to deny a claim in any amount. If the Judge Advocate responsible for advising the SPCMCA decides that the SPCMCA's final action under the provisions of Rule for Courts-Martial 1107 in a court-martial arising out of the same incident would be compromised, the SPCMCA may forward the Article 139 claim to the general court-martial convening authority (GCMCA) for action.

(2) A GCMCA, or designee, has authority to approve a pay assessment in an amount not to exceed $10,000 per claimant per incident and to deny a claim in any amount.

(i) If the GCMCA or designee determines that a claim exceeding $10,000 per claimant per incident is meritorious, that officer will assess the soldier's pay in the amount of $10,000 and forward the claim to the Commander USARCS, with a recommendation to increase the assessment.

(ii) If the head of the area claims office (ACO) (usually the GCMCA's Staff Judge Advocate (SJA)) decides that the GCMCA's final action under the provisions of Rule for Courts-Martial 1107 in a court-martial arising out of the same incident would be compromised, that officer may forward the Article 139 claim to USARCS for action.

(3) Only TJAG, TAJAG, the Commander USARCS, or designee has authority to approve assessments in excess of $10,000 per claimant per incident.

(b) *Limitations on type of damages.* Property loss or damage assessments are limited to direct damages. This subpart does not provide redress for indirect, remote, or consequential damages.

§ 536.132 Procedure for processing UCMJ claims.

(a) *Time limitations on submission of a claim.* A claim must be submitted within 90 days of the incident that gave rise to it, unless the SPCMCA acting on the claim determines there is good cause for delay. Lack of knowledge of the existence of Article 139, or lack of knowledge of the identity of the offender, are examples of good cause for delay.

(b) *Form and presentment of a claim.* The claimant or authorized agent may present a claim orally or in writing. If presented orally, the claim must be reduced to writing, signed, and seek a definite sum in U.S. dollars within 10 days after oral presentment.

(c) *Action upon receipt of a claim.* Any officer receiving a claim will forward it within two working days to the SPCMCA exercising jurisdiction over the soldier or soldiers against whom the claim is made. If the claim is made against soldiers under the jurisdiction of two or more convening SPCMCAs who are under the same GCMCA, forward the claim to that GCMCA. That GCMCA 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 GCMCA, forward the claim to the SPCMCA whose headquarters is located

nearest the situs of the alleged incident. That SPCMCA will investigate and act on the claim as to all soldiers involved. If a claim is brought against a member of one of the other military services, forward the claim to the commander of the nearest major command of that service equivalent to a major Army command (MACOM).

(d) *Action by the special court-martial convening authority.* (1) If the claim appears to be cognizable, the SPCMCA will appoint an investigating officer within four working days of receipt of a claim. The investigating officer will follow the procedures of this subpart supplemented by DA Pam 27–162, chapter 9, and AR 15–6, chapter 4, which applies to informal investigations. The SPCMCA may appoint the claims officer of a command (if the claims officer is a commissioned officer) as the investigating officer. In cases where the special court-martial convening authority is an inactive duty soldier of the United States Army Reserve, the appointment of an investigating officer will be made within 30 calendar days.

(2) If the claim is not brought against a person who is a member of the Armed Forces of the United States at the time the claim is received, or if the claim does not appear otherwise cognizable under Article 139, UCMJ, the SPCMCA may refer it for legal review (see paragraph (g) of this section) within four working days of receipt. If after legal review the SPCMCA determines that the claim is not cognizable, final action may be taken disapproving the claim (see paragraph (h) of this section) without appointing an investigating officer. In claims where the special court-martial convening authority is an inactive duty soldier of the United State Army Reserve, the request for a legal review will be made within 30 calendar days.

(e) *Expediting payment through Personnel Claims Act and Foreign Claims Act procedures.* When assessment action on a particular claim will be unduly delayed, the claims office supporting the SPCMA may consider the claim under the Personnel Claims Act, 31 U.S.C. 3721, and chapter 11 of AR 27–20, or under the Foreign Claims Act, 10 U.S.C. 2734, and subpart J of this part, as long as it is otherwise cognizable under that authority. If the Article 139 claim is later successful, the claims office will inform the claimant of the obligation to repay to the government any overpayment received under these statutes.

(f) *Action by the investigating officer.* The investigating officer will notify the soldier against whom the claim is made.

(1) If the soldier wishes to make voluntary restitution, the investigating officer may, with the SPCMCA's concurrence, delay proceedings until the end of the next pay period to permit restitution. If the soldier makes payment to the claimant's full satisfaction, the SPCMCA will dismiss the claim.

(2) In the absence of full restitution, the investigating officer will determine whether the claim is cognizable and meritorious under the provisions of Article 139, UCMJ, and this subpart, and the amount to be assessed against each offender. This amount will be reduced by any restitution the claimant accepts from an offender in partial satisfaction. Within 10 working days, or such time as the SPCMCA may determine, the IO will submit written findings and recommendations to the SPCMCA.

(3) If the soldier is absent without leave and cannot be notified, a claims office may process the Article 139 claim in the soldier's absence. If an assessment is approved, forward a copy of the claim and the memorandum authorizing pay assessment by transmittal letter to the servicing Defense Accounting Office (DAO) for offset against the soldier's pay. If the soldier is dropped from the rolls, the servicing DAO will forward the assessment documents to: Commander, Defense Finance and Accounting Service (DFAS), ATTN: Military Pay Operations, 8899 E. 56th Street, Indianapolis, IN 46249.

(g) *Legal review.* The SPCMCA will refer the claim for legal review to its servicing legal office upon either completion of the investigating officer's report or the SPCMCA's determination that the claim is not cognizable (see paragraph (d)(2) of this section).

(1) Within five working days or such time as the SPCMCA determines, that

office will furnish a written opinion as to:

(i) Whether the claim is cognizable under the provisions of Article 139, UCMJ, and this subpart.

(ii) Whether the findings and recommendations are supported by a preponderance of the evidence.

(iii) Whether the investigation substantially complies with the procedural requirements of Article 139, UCMJ; this subpart; DA Pam 27–162, chapter 9; and AR 15–6, chapter 4.

(iv) Whether the claim is clearly not cognizable (see paragraph (d)(2) of this section) and final denial action can be taken without appointing an investigating officer.

(2) If the investigating officer's recommended assessment does not exceed $5,000, the claims judge advocate (CJA) or claims attorney will, upon legal review, forward the claim to the SPCMCA for final action.

(3) If the investigating officer's recommended assessment is more than $5,000, the CJA or claims attorney will, upon legal review, forward the claim file to the head of the ACO, who will also conduct a legal review within five working days.

(i) If the recommended assessment does not exceed $10,000, the head of the ACO will forward the claim file to the GCMCA for final action.

(ii) If the recommended assessment exceeds $10,000, the head of the ACO will forward the claim file to the GCMCA for approval of an assessment up to $10,000 and for a recommendation of an additional assessment. The head of the ACO will then forward the claims file and the GCMCA's recommendation to the Commander USARCS for approval.

(h) *Final action.* After consulting with the legal advisor, the approval authority will disapprove or approve the claim in an amount equal to, or less than, the amount of the assessment limitation. The approval authority is not bound by the findings or recommendations of the IO; AR 15–6, paragraph 2–3a. The approval authority will notify the claimant, and any soldier subject to that officer's jurisdiction, of the determination and the right of any party to request reconsideration (see § 536.133). A copy of the investigating officer's findings and recommendation will be enclosed with the notice. The approval authority will then suspend action on the claim for 10 working days pending receipt of a request for reconsideration, unless the approval authority determines that this delay will result in substantial injustice. If after this period the approval authority determines that an assessment is still warranted, the approval authority will direct the appropriate DAO to withhold such amount from the soldier's pay account (see § 536.131(a)). For any soldier not subject to the approval authority's jurisdiction, the approval authority will forward the claim to the commander who exercises SPCMCA jurisdiction over the soldier for assessment. The receiving SPCMCA is bound by the determination of the approval authority.

(i) *Assessment.* Subject to any limitations set forth in appropriate regulations, the servicing DAO will withhold the amount directed by the approval authority and pay it to the claimant. The assessment is not subject to appeal and is binding on any finance officer. If the servicing DAO cannot withhold the required amount because it does not have custody of the soldier's pay record, the record is missing, or the soldier is in a no pay due status, that office will promptly notify the approval authority of this fact in writing.

(j) *Remission of indebtedness.* 10 U.S.C. 4837, 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, UCMJ.

§ 536.133 Reconsideration of UCMJ claims.

(a) *General.* Although Article 139, UCMJ, does not provide for a right of appeal, either the claimant or a soldier whose pay is assessed may request the approval authority (SPCMCA or GCMCA, depending on the amount assessed) or successor in command to reconsider the action. Either party must submit such a request for reconsideration in writing and clearly state the factual or legal basis for the relief requested. The approval authority may

direct that the matter be reinvestigated.

(b) *Reconsideration by the original approval authority.* The original approval authority may reconsider the action at any time while serving as the approval authority for the claim in question, even after the transfer of the soldier whose pay was assessed. The original approval authority may modify the action if it was incorrect, subject to paragraph (d) of this section. However, the approval authority should modify the action only because of fraud, substantial new evidence, errors in calculation, or mistake of law.

(c) *Reconsideration by a successor in command.* Subject to paragraph (d) of this section, a successor in command may modify an action only because of fraud, substantial new evidence, errors in calculation, or mistake of law apparent on the face of the record.

(d) *Legal review and action.* Prior to modifying the original action, the approval authority will have the servicing claims office render a legal opinion and fully explain the basis for modification as part of the file. If the legal review agrees that a return of the assessed pay is appropriate, the approval authority should request in writing that the claimant return the money, setting forth in the letter the basis for the request. There is no authority for repayment from appropriated funds.

(e) *Disposition of files.* After completing action on reconsideration, the approval authority will forward the reconsideration action to the servicing claims office, which will then file the action per § 536.132(h).

§ 536.134 Additional claims judge advocate and claims attorney responsibilities (for UCMJ claims).

In addition to the duties set forth in this subpart, the CJA or claims attorney is responsible for forwarding copies of completed Article 139 actions to USARCS, maintaining a log, monitoring the time requirements of pending Article 139 actions, and publicizing the Article 139 program to commanders, soldiers, and the community.

Subpart J—Claims Cognizable Under the Foreign Claims Act

§ 536.135 Statutory authority for the Foreign Claims Act.

(a) The statutory authority for this subpart is the Act of August 10, 1956, 10 U.S.C. 2734 (70 Stat. 154), commonly referred to as the Foreign Claims Act (FCA), as amended by Public Law 86–223, September 1959 (73 Stat. 453); Public Law 86–411, April 1960 (74 Stat. 16); Public Law 90–521, September 1968 (82 Stat. 874); Public Law 91–312, July 1970 (84 Stat. 412); Public Law 93–336, July 1974 (88 Stat. 292); Public Law 96–513, Title V, § 511 (95), December 1980 (94 Stat. 2928). It is posted on the USARCS Web site; for the address see § 536.2(a).

(b) Claims arising from the acts or omissions of the U.S. Armed Forces in the Marshall Islands or the Federated States of Micronesia are settled in accordance with Art. XV, Non-contractual Claims, of the U.S.-Marshall Islands and Micronesian Status of Forces Agreement (the ''SOFA'') (posted on the USARCS Web site; for the address see § 536.2(a)). This is pursuant to the ''agreed upon minutes'' that are appended to the SOFA, pursuant to Section 323 of the Compact of Free Association between the U.S. and the Marshall Islands and the Federated States of Micronesia, enacted by Public Law 99–239, January 14, 1986. (The Compact may be viewed at *http://www.fm/jcn/compact/relindex.html*). The ''agreed upon minutes'' state that ''all claims within the scope of paragraph 1 of Article XV [Claims], [of the Compact] * * * shall be processed and settled exclusively pursuant to the Foreign Claims Act, 10 U.S.C. 2734, and any regulations promulgated in implementation thereof.'' Therefore, Title I, Article 178 of the Compact, regarding claims processing, is not applicable to claims arising from the acts or omissions of the U.S. armed forces, but only to other federal agencies. Those agencies are required to follow the provisions of the Federal Tort Claims Act, 28 U.S.C. 2672.

§ 536.136 Scope for claims arising under the Foreign Claims Act.

(a) *Application.* This subpart, which is applicable outside the United States, its commonwealths, territories and

possessions, including areas under the jurisdiction of the United States, implements the FCA and prescribes the substantive basis and special procedural requirements for settlement of claims of inhabitants of a foreign country, or of a foreign country or a political subdivision thereof, against the United States for personal injury, death, or property damage caused by service members or civilian employees, or claims that arise incident to noncombat activities of the armed forces.

(b) *Effect of Military Claims Act (MCA).* Claims arising in foreign countries will be settled under the MCA if the injured party is an inhabitant of the U.S., for example, a member of the U.S. armed forces, a U.S. civilian employee, or a family member of either category. In a wrongful death case, if the decedent is an inhabitant of a foreign country, even though his survivors are U.S. inhabitants, the FCA will apply. See § 536.74(c). For claims arising outside the U.S. involving foreign-born spouces, see DA Pam 27–20, paragraph 2–20a.

(c) *Effect of Army Maritime Claims Settlement Act (AMCSA) (10 U.S.C. 4801, 4802 and 4808).* A maritime claim may be settled under the FCA.

§ 536.137 Claims payable under the Foreign Claims Act.

(a) A claim for death, personal injury, or loss of or damage to property may be allowed under this subpart if the alleged damage results from noncombat activity or a negligent or wrongful act or omission of soldiers or civilian employees of the U.S. armed forces, as enumerated in § 536.23(b), regardless of whether the act or omission was made within the scope of their employment. This includes non-U.S. citizen employees recruited elsewhere but employed in a country of which they are not a citizen. However, a claim generated by non-U.S. citizen employees in the country in which they were recruited and are employed will be payable only if the act or omission was made in the scope of employment. But claims arising from the operation of U.S. armed forces vehicles or other equipment by such employees may be paid, even though the employees are not acting within the scope of their employment, provided the employer or owner of the vehicle or other equipment would be liable under local law in the circumstances involved.

(b) Claims generated by officers or civilian employees of the American Battle Monuments Commission (36 U.S.C. 2110), acting within the scope of employment, will be paid from American Battle Monuments Commission appropriations.

(c) Claims for the loss of, or damage to, property that may be settled under this subpart include the following:

(1) Real property used and occupied under lease, express, implied, or otherwise. See § 536.34(m) of this part and paragraph 2–15m of DA Pam 27–162.

(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.

§ 536.138 Claims not payable under the Foreign Claims Act.

A claim is not payable if it:

(a) Results wholly from the negligent or wrongful act of the claimant or agent;

(b) Is purely contractual in nature;

(c) Arises from private or domestic obligations as distinguished from government transactions;

(d) Is based solely on compassionate grounds;

(e) Is a bastardy claim for child support expenses;

(f) Is for any item whose acquisition, possession, or transportation is in violation of Department of the Army (DA) or Department of Defense (DOD) directives, such as illegal war trophies.

(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. See § 536.34(m) of this part and paragraph 2–15m of DA Pam 27–162.

(h) Is not in the best interest of the United States, is contrary to public policy, or otherwise contrary to the basic intent of the governing statute (10 U.S.C. § 2734); for example, claims for property loss or damage, or personal injury or death caused by inhabitants of unfriendly foreign countries or by individuals considered to be unfriendly to the United States.

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

(j) Is for damages or injury, the claim for which a receiving State should adjudicate and pay pursuant to an international agreement, subject to waiver by the Commander USARCS. See DA Pam 27–162, paragraph 3–4a(2), for a discussion of the conditions of waiver.

(k) Is listed in §§ 536.45 and 536.46, except for the exclusions listed in §§ 536.45(e), (h) and (k). Additionally, the exclusions set forth in §§ 536.45(a) and (b) do not apply to a claim arising incident to noncombat activities.

(l) Is brought by a subrogee.

(m) Is covered by insurance on the involved U.S. Armed Forces' vehicle or the tortfeasor's privately owned vehicle (POV), in accordance with requirements of a foreign country, unless the claim exceeds the coverage or the insurer is insolvent. See § 536.139(c).

(n) Is payable under subpart C of this part or AR 27–20, chapter 11.

(o) Is brought by or on behalf of a member of a foreign military force for personal injury or death arising incident to service, or pursuant to combined military operations. Combined military operations include exercises and United Nations and North Atlantic Treaty Association (NATO) peacekeeping and humanitarian missions. Derivative claims arising from these incidents are also excluded.

§ 536.139 Applicable law for claims under the Foreign Claims Act.

(a) *Venue of incident and domicile of claimant.* In determining an appropriate award, apply the law and custom of the country in which the incident occurred to determine which elements of damages are payable and which individuals are entitled to compensation. However, where the claimant is an inhabitant of another foreign country and only temporarily within the country in which the incident occurred, the quantum of certain elements of damages, such as lost wages and future medical care, may be calculated based on the law and economic conditions in the country of the claimant's permanent residence. Where the decedent is the subject of a wrongful death case, the quantum will be determined based on the country of the decedent's permanent residence regardless of the fact that his survivors live in the U.S. or a different foreign country than the decedent. See § 536.77 for further damages guidance.

(b) *Other guidance.* The guidance set forth in §§ 536.77(b) through (d) as to allowable elements of damages is generally applicable. Where moral damages, as defined in DA Pam 27–162, paragraph 2–53c(4), are permitted, such damages are payable. In some countries it is customary to get a professional appraisal to substantiate certain claims and pass this cost on to the tortfeasor. The Commander USARCS or the chief of a command claims service may, as an exception to policy, permit the reimbursement of such costs in appropriate cases. Where feasible, claimants should be discouraged from incurring such costs.

(c) *Deductions for insurance.* (1) Insurance coverage recovered or recoverable will be deducted from any award. In that regard, every effort will be made to monitor the insurance aspect of the case and encourage direct settlement between the claimant and the insurer of the tortfeasor.

(2) When efforts under paragraph (c)(1) of this section are of no avail, or when it otherwise is determined that an insurance settlement will not be reasonably available for application to the award, no award will be made until the chief of the command claims service or the Commander USARCS, has first granted consent. In such cases, an assignment of the insured's rights against the insurer will be obtained and, in appropriate cases, reimbursement action will be instituted against the insurer under applicable procedures.

(3) If an insurance settlement is not available due to the insurer's insolvency or bankruptcy, a report on the bankruptcy will be forwarded to the Commander USARCS without delay, setting forth all pertinent information, including the alleged reasons for the bankruptcy and the facts concerning the licensing of the insurer.

(d) *Deductions for amounts paid by tortfeasor*. Settlement authorities will deduct from the damages any direct payments by a member or civilian employee of the U.S. armed forces for damages (other than solatia).

§ 536.140 Appointment and functions of Foreign Claims Commissions.

(a) Claims cognizable under this subpart will be referred to the command responsible for claims arising within its geographic area of responsibility, including claims transferred by agreement between the services involved. The senior judge advocate of a command having a command claims service, or his delegee, will appoint a sufficient number of Foreign Claims Commissions (FCCs) to dispose of the claims. If there is no command claims service, the responsible commander may ask the Commander USARCS for permission to establish one. Otherwise, the Commander USARCS will appoint a sufficient number of FCCs from personnel furnished by the command involved. See § 576.3(d) for more information about command claims services.

(b) The Commander USARCS will appoint all other FCCs to act on all other claims, regardless of where such claims arose, unless they arose in a country for which single-service responsibility has been assigned to another service. FCCs appointed by the Commander USARCS at units based in the continental United States (CONUS) may act on any claim arising out of such unit's operations. Any FCC operating in, or adjudicating claims arising out of, a geographical area within a command claims service's jurisdiction, will comply with that service's legal and procedural rules.

(c) An FCC may operate as an integral part of a command claims service, which will determine the cases to be assigned to it, furnish necessary administrative services, and establish and maintain its records. Where an FCC does not operate as part of a command claims service, it may operate as part of the office or a division, corps or higher command staff judge advocate (SJA), which will perform the foregoing functions.

(d) An appointing authority who appoints or relieves an FCC whom he or she has appointed will forward one copy of each order addressing an FCC's appointment, relief, or change of responsibility to the Commander USARCS. Upon receipt of an initial appointing order, the Commander USARCS will assign an office code number to the FCC. Without such a number the FCC has no authority to approve or pay claims. See AR 27–20, paragraph 13–1.

(e) Normally, the FCC is responsible for the investigation of all claims referred to it, using both the procedures set forth in subpart B of this part and any local procedures established by the appointing authority or command claims service responsible for the geographical area in which the claim arose. Chiefs of a command claims service may request assistance on claims investigation within their geographical areas from units or organizations other than the FCC. The Commander USARCS may make the same request for any claim referred to an FCC appointed under his or her authority.

(f) When an FCC intends to deny a claim, or offer an award less than the amount claimed, it will notify in writing the claimant, the claimant's authorized agent, or legal representative of the intended action on the claim and the legal and factual bases for that action. If the FCC proposes a partial award, a settlement agreement should be enclosed with the notice. Claimants will be advised that they may either accept the FCC action by returning the signed settlement agreement or, if dissatisfied with the FCC's action, they may submit a request for reconsideration stating the factual or legal reasons why they believe the FCC's proposed action is incorrect. This notice serves to give the claimant an opportunity to request reconsideration of the FCC action and state the reasons for the request before final action is

taken on the claim. When the FCC intends to award the amount claimed, or recommend an award equal to the amount claimed to a higher authority, this procedure is not necessary. However, a settlement agreement is required for all awards, full or partial. See § 536.63(a).

(1) This notice should be given at least 30 days before the FCC takes final action, except on small claims processed pursuant to § 536.33. The notice should be mailed via certified or registered mail to the claimant. The claimant should be informed that any request for reconsideration should be addressed to the FCC that took final action, and that all materials the claimant wishes the FCC to consider should be included with the request for reconsideration.

(2) An FCC may alter its initial decision based on the claimant's response or proceed with the intended action. If the claimant's response raises a general policy issue, the FCC may request an advisory opinion from the Commander USARCS or the chief of the command claims service while retaining the claim for final action at its level.

(3) Upon completing of its evaluation of the claimant's response, the FCC will notify the claimant of its final decision and advise the claimant that its action is final and conclusive as a matter of law (10 U.S.C. 2735), unless the final decision is a recommendation for payment above its authority. In that case, the FCC will forward any response submitted by the claimant along with its claims memorandum of opinion to the approval authority, and will notify the claimant accordingly.

(4) When an FCC determines that a claim is valued at more than $50,000 or all claims arising out of a single incident are valued at more than $100,000, the file will be transferred to the Commander USARCS for further action; see § 536.143(d)(2). Upon request of the Commander USARCS, the FCC may negotiate a settlement, the amount of which exceeds the FCC's authority; however, prior approval by a higher authority is required.

(5) Every reasonable effort should be made to negotiate a mutually agreeable settlement on meritorious claims. When an agreement can be reached, the notice and response provisions above are not necessary. If the FCC recommends an award in excess of its monetary authority, the settlement agreement should indicate that its recommendation is contingent upon approval by higher authority.

(g) The chief of an overseas command claims service may delegate to a one-member FCC the responsibility for the receipt, processing, and investigation of any claim, regardless of amount, except those required to be referred to a receiving State office for adjudication under the provisions of a treaty concerning the status of U.S. forces in the country in which the claim arose. If, after investigation, it appears that action by a three-member FCC is appropriate, the one-member FCC should send the claim to the appropriate three-member FCC with a complete investigation report, including a discussion of the applicable local law and a recommendation for disposition.

§ 536.141 Composition of Foreign Claims Commissions.

(a) Normally, an FCC will be composed of either one or three members. Alternate members of three-member FCCs may be appointed when circumstances require, and may be substituted for regular members on specific cases by order of the appointing authority. The appointing orders will clearly designate the president of a three-member FCC. Two members of a three-member FCC will constitute a quorum, and the FCC's decision will be determined by majority vote.

(b) Upon approval by the Commander USARCS and the appropriate authority of another uniformed service, the membership may be composed of one or more members of another uniformed service. If another service has single-service responsibility over the foreign country in which the claim arose, that service is responsible for the claim. If requested, the Commander USARCS may furnish a JAG officer or claims attorney to be a member of another service's FCC.

§ 536.142 Qualification of members of Foreign Claims Commissions.

Normally, a member of an FCC will be either a commissioned officer or a claims attorney. At least two members of a three-member FCC must be JAs or claims attorneys. In exigent circumstances, a qualified non-lawyer employee of the armed forces may be appointed to an FCC, subject to prior approval by the Commander USARCS. Such approval may be granted only upon a showing of the employee's status and qualifications and adequate justification for such appointment (for example, lack of legally qualified personnel). The FCC will be limited to employees who are citizens of the United States. An officer, claims attorney, or employee of another armed force will be appointed a member of an Army FCC only if approved by the Commander USARCS.

§ 536.143 Settlement authority of Foreign Claims Commissions.

(a) In order to determine whether the claim will be considered by a one-member or three-member FCC, the claimed amount will be converted to the U.S. dollar equivalent (based on the annual Foreign Currency Fluctuation Account exchange rate, where applicable). However, the FCC's jurisdiction to approve is determined by the conversion rate on the date of final action. Accordingly, if the value of the U.S. dollar has decreased, the FCC will forward the recommendation to a higher authority, if necessary.

(b) Payment will be made in the currency of the country in which the incident occurred or in which the claimant resided at the time of the incident, unless the claimant requests payment in U.S. dollars or another currency and such request is approved by the chief of a command claims service or the Commander USARCS. However, if the claimant resides in another foreign country at the time of payment, payment in an amount equivalent to that which would have been paid under the preceding sentence may be made in the currency of that third country without the approval of the Commander USARCS.

(c) A one-member FCC may consider and pay claims presented in any amount provided a mutually agreed settlement may be reached in an amount not exceeding the FCC's monetary authority. A one-member FCC may deny any claim when the claimed amount does not exceed its monetary authority. Unless otherwise restricted by the appointing authority, a one-member FCC who is a JA or claims attorney has $15,000 monetary authority, while any other one-member commission has $5,000 monetary authority.

(d) A three-member FCC, unless otherwise restricted by the appointing authority, may take the following actions on a claim that is properly before it:

(1) *Disapprove a claim presented in any amount.* After following the procedures in § 536.140, including reconsideration, the disapproval is final and conclusive under 10 U.S.C. 2735. The FCC will inform the appointing authority of its action. After it takes final action and disapproves a claim presented in any amount over $50,000, the FCC will forward to the appointing authority the written notice to the claimant required by § 536.140(f), any response from the claimant, and its notice of final action on the claim.

(2) *Approve and pay meritorious claims presented in any amount.* (i) Claims paid in full or in part for an amount not exceeding $50,000 will be paid after any reconsideration as set forth in § 536.140. This action is final and conclusive under 10 U.S.C. 2735.

(ii) Claims valued at an amount exceeding $50,000, or multiple claims arising from the same incident valued at more than $100,000, will be forwarded through the appointing authority with a memorandum of opinion to the Commander USARCS for action; see DA Pam 27–162, paragraph 2–60. The memorandum of opinion will discuss the amount for which the claimant will settle and include the recommendation of the FCC.

(e) The Judge Advocate General (TJAG), The Assistant Judge Advocate General (TAJAG) and the Commander USARCS, or his or her designee serving at USARCS, may approve and pay, in whole or in part, any claim as long as the amount of the award does not exceed $100,000; may disapprove any claim, regardless of either the amount

claimed or the recommendation of the FCC forwarding the claim; or, if a claim is forwarded to USARCS for approval of payment in excess of $50,000, refer the claim back to the FCC or another FCC for further action.

(f) Payments in excess of $100,000 will be approved by the Secretary of the Army, the Army General Counsel as the Secretary's designee, or other designee of the Secretary.

(g) Following approval where required and receipt of an agreement by the claimant accepting the specific sum awarded by the FCC, the claim will be processed for payment in the appropriate currency. The first $100,000 of any award will be paid from Army claims funds. The excess will be reported to the Financial Management Service, Department of the Treasury, with the documents listed in DA Pam 27–162, paragraph 2–81.

(h) If the settlement authority upholds a final offer or authorizes an award on appeal from a denial of a claim, the notice of the settlement authority's action will inform the claimant that he or she must accept the award within 180 days of the date of mailing of the notice of the settlement authority's action or the award will be withdrawn, the claim will be deemed denied, and the file will be closed without future recourse.

§ 536.144 Reopening a claim after final action by a Foreign Claims Commission.

(a) *Original approval or settlement authority (including TAJAG, TJAG, Secretary of the Army, or the Secretary's designees).* (1) An original settlement authority may reconsider the denial of, or final offer on a claim brought under the FCA upon request of the claimant or the claimants authorized agent. In the absence of such a request, the settlement authority may reconsider a claim on its own initiative.

(2) An original approval or settlement authority may reopen and correct action on an FCA claim previously settled in whole or in part (even if a settlement agreement has been executed) when it appears that the original action was incorrect in law or fact based on the evidence of record at the time of the action or subsequently received. For errors in fact, the new evidence must not have been discoverable at the time of final action by either the Army or the claimant through the exercise of reasonable diligence. Corrective action may also be taken when an error contrary to the parties' mutual understanding is discovered in the original action. If it is determined that the original action was incorrect, the action will be modified, and if appropriate, a supplemental payment made. The basis for a change in action will be stated in a memorandum included in the file. For example, a claim was settled for $15,000, but the settlement agreement was typed to read ''$1,500'' and the error is not discovered until the file is being prepared for payment. If appropriate, a corrected payment will be made. A settlement authority who has reason to believe that a settlement was obtained by fraud on the part of the claimant or the claimant's legal representative, will reopen action on that claim and, if the belief is substantiated, correct the action. The basis for correcting an action will be stated in a memorandum and included in the file.

(b) *A successor approval or settlement authority (including TAJAG, TJAG, Secretary of the Army, or the Secretary's designees)*—(1) *Reconsideration.* A successor approval or settlement authority may reconsider the denial of, or final offer on, an FCA claim upon request of the claimant or the claimant's authorized agent only on the basis of fraud, substantial new evidence, errors in calculation, or mistake (misinterpretation) of law.

(2) *Settlement correction.* A successor approval or settlement authority may reopen and correct a predecessor's action on a claim that was previously settled in whole or in part for the same reasons that an original authority may do so.

(c) *Time requirement for filing request for reconsideration.* Requests postmarked more than five years from the date of mailing of final notice will be denied based on the doctrine of laches.

(d) *Finality of action.* Action by the appropriate authority (either affirming the prior action or granting full or partial relief) is final under the provisions of 10 U.S.C. 2735. Action upon request for reconsideration constitutes final

administrative disposition of a claim. No further requests for reconsideration will be allowed except on the basis of fraud.

§ 536.145 Solatia payment.

Payment of solatia in accordance with local custom as an expression of sympathy toward a victim or his or her family is common in some overseas commands. Solatia payments are known to be a custom in the Federated States of Micronesia, Japan, Korea, and Thailand. In other countries, the FCC should consult the command claims service or Commander USARCS for guidance. Such payments are not to be made from the claims expenditure allowance. These payments are made from local operation and maintenance funds. This applies even where a command claims service is directed to administer the command's solatia program. See, for example, United States Forces Korea Regulation 526–11 regarding solatia amounts and procedures.

Subpart K—Nonappropriated Fund Claims

§ 536.146 Claims against nonappropriated fund employees—generally.

This subpart sets forth the procedures to follow in the settlement and payment of claims generated by the acts or omissions of the employees of nonappropriated fund (NAF) activities. NAF activities include NAF or Army and Air Force Exchange Service (AAFES) facilities, post exchanges, bowling centers, officers and noncommissioned officers' clubs, and other facilities located on land or situated in a building used by an activity that employs personnel compensated from NAFs.

§ 536.147 Claims by NAFI employees for losses incident to employment.

Claims by employees for the loss of or damage to personal property incident to employment will be processed in the manner prescribed by AR 27–20, chapter 11 and will be paid from NAFs in accordance with § 536.152.

§ 536.148 Claims generated by the acts or omissions of NAFI employees.

(a) *Processing.* Claims arising out of acts or omissions of employees of NAFI activities will be processed and settled in the manner specified for similar claims against the United States, except that payment will be made from NAFs in accordance with AR 215–1 (Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalites) and § 536.152 of this part.

(b) *Procedural requirements.* Procedural requirements of this part's pertinent subparts, as stated below, will be followed except as provided in §§ 536.151 and 536.152. However, when the Nonappropriated Fund Instrumentality (NAFI) is protected by a commercial insurer (for example, flying and parachute activities), the claim will be referred to the insurer as outlined in § 536.148(d). See Department of Defense Directive (DODD) 5515.6, dated November 3, 1956, posted on the USARCS Web site (see § 536.2(a)).

(1) Claims arising within the United States, its territories, commonwealths, or possessions. Such claims will be processed in the manner prescribed by subparts C, D, E, F, H or J of this part, as appropriate.

(2) Claims arising outside the United States, its territories, commonwealths, or possessions. Such claims will be processed in accordance with the provisions of applicable Status of Forces Agreements (SOFAs) or in the manner prescribed by subparts C, D, E, F, H or J of this part, as appropriate.

(c) *Reporting and investigation.* Such claims will be investigated in accordance with AR 215–1 and subpart B of this part.

(1) *Reporting.* Personal injury, death, or property damage resulting from vehicular collisions, falls, falling objects, assaults, or accidents of similar nature will be reported immediately to the person in charge of the NAFI or activity at which it occurred. The report should be made by the employee who initially received notice of the incident, even if the individual involved denies sustaining personal injury or property damage. Upon receipt of the report of the incident, the person in charge of the NAF activity concerned

will transmit the report to the area claims office (ACO) or claims processing office (CPO) for investigation.

(2) *Investigation.* Claims arising out of acts or omissions of employees of NAF activities will be investigated in the manner set forth in subpart B of this part. A determination as to whether the claim is cognizable under this section will be made as soon as practicable.

(d) *Customer complaints.* AAFES-generated complaints will be handled in accordance with Exchange Service Manual 57–2. NAFI-generated complaints will be handled in accordance with AR 215–1, chapter 3. Complaints generated by appropriated funds laundry and dry-cleaning operations will be handled in accordance with AR 210–130, chapter 2. Complaints generated by refunds of sales proceeds will be handled in accordance with Exchange Operating Procedures (EOP) 57–2.

(e) *Commercial insurance.* Certain NAFI activities (such as flying and parachute activities, and all AAFES concessionaires) may have private commercial insurance.

(1) A claims investigation under subpart B of this part will not be conducted except when the claim's estimated value may exceed the insurance policy limits. In that event, the Commander USARCS, will be notified immediately and an investigation will be conducted with a view to determining whether the United States may be liable under subparts C, D, F, H or J of this part. Otherwise, the ACO or CPO will refer the claim to the insurer and furnish copies to the USARCS AAO, as required in AR 27–20, paragraph 2–12. Assistance will be furnished to the insurer as needed. Copies of any other required investigations may be furnished to the insurer.

(2) The claim will be reviewed at key intervals to ensure that progress is being made, negotiations are properly conducted, and the file is closed. The Commander USARCS will be advised of any problems.

(3) If requested by either the insurer or NAFI officials, the appropriate claims authority will assist in or conduct negotiations.

(4) Where NAFI vehicles are required to be covered by insurance in foreign countries, the insurer will process the claim. However, if the policy coverage limit is exceeded or the insurer is insolvent, the claim may be processed under subpart G, §§ 536.114 through 536.116 (Claims arising overseas) or, if subpart G does not apply, under subparts C or J of this part. See § 536.139(c) for additional guidance.

§ 536.149 Identification of persons whose actions may generate liability.

Claims resulting from the acts or omissions of members of the classes of persons listed below may be processed under this section. An ACO or a CPO authority will ask the Commander USARCS, for an advisory opinion prior to settling any claim where the person whose conduct generated the claim does not clearly fall within one of the following categories:

(a) Civilian employees of NAFI activities whose salaries are paid from NAFs.

(b) Active duty military personnel while performing off-duty part-time work for which they are compensated from NAFIs, not to include members who are acting in their capacity as an officer or other official of the NAFI.

(c) Volunteers serving in an official capacity in furtherance of the business of the United States, limited to those categories set forth in DA Pam 27–162, paragraph 2–45d.

§ 536.150 Claims payable from appropriated funds.

Claims payable from appropriated funds will be processed under the appropriate subpart. Appropriated fund payable claims include those resulting from:

(a) Acts or omissions of military personnel while performing assigned military duties in connection with NAFI activities.

(b) Acts or omissions of civilian employees paid from appropriated funds in connection with NAFI activities.

(c) Negligent maintenance of an appropriated funds facility used by a NAFI activity but for which the Department of Defense or Department of the Army (DA) command concerned is responsible and has been notified of the deficiency by the NAF. Where liability

is determined to exist for both a NAFI and an appropriated fund activity, liability will be apportioned between the two activities.

(d) Temporary use of a NAFI facility by an appropriated fund activity.

(e) Operation of government owned or rented vehicles on authorized missions for NAFI activities where the driver is a DA soldier or civilian employee and is paid from APFs.

§ 536.151 Settlement authority for claims generated by acts or omissions of NAFI employees.

(a) *Settlement.* Claims cognizable under this section and processed under subparts C, D, E, G, H or J of this part will be settled by claims authorities authorized to settle claims under those subparts subject to the same monetary and denial authority limitations, except that The Judge Advocate General (TJAG), The Assistant Judge Advocate General (TAJAG), and the Commander USARCS may settle such claims without regard to monetary limitations. However, the approval of the Attorney General or Assistant General Counsel may be required for an apportioned amount to be paid from APFs when subpart D of this part procedures are used and the amount to be paid from APFs exceeds $200,000. Similarly, approval of TAJAG, the Attorney General or the Assistant General Counsel is required when using procedures under subparts C, F, H, or J of this part and an apportioned amount to be paid from APFs exceeds the limits set for the Commander, USARCS.

(b) *Finality of settlement.* A determination made by a claims settlement authority on a claim processed under subpart D of this part is subject to suit. A claim processed under subparts C or F of this part may be appealed. Claims processed under subparts C, D, E, H, or J of this part, or AR 27–20, chapter 11 may be reconsidered in accordance with the sections addressing reconsideration in those subparts (or paragraphs in the case of Chapter 11).

§ 536.152 Payment of claims generated by acts or omissions of NAFI employees.

(a) The settlement or approval authority will forward the appropriate payment documents to the office listed in DA Pam 27–162, paragraph 2–80h, for payment.

(b) Reimbursement to a foreign country of the United States' pro rata share of a claim paid pursuant to an international agreement will be made from NAFs.

§ 536.153 Claims involving tortfeasors other than nonappropriated fund employees: NAFI contractors.

AAFES concessionaires and NAFI contractors, such as entertainment performers or groups, carnival operators, and fireworks displayers are considered independent contractors and claims arising from their activities should be disposed of as set forth in DA Pam 27–162, paragraph 2–15f. If a dispute arises as to the availability of liability or workers compensation insurance the claims should be referred to AAFES Dallas (see address in § 536.30(e)(4)) or the Central Insurance Fund, U.S. Army Community and Family Support Agency as applicable.

§ 536.154 Claims involving tortfeasors other than nonappropriated fund employees: NAFI risk management program (RIMP) claims.

The risk management program (RIMP) is administered by the U.S. Army Community and Family Support Center under the provisions of AR 215–1 and AR 608–10 (Family Child Care Provider Claims). Providers in order to encourage authorized personnel, that is, military and civilian employees, to use the family child care program and sports equipment, such claims are processed in a manner similar to NAFI claims in §§ 536.146 through 536.152 of this subpart. Certain claims are payable from nonappropriated funds even though the U.S. is not liable under the FTCA or the MCA as the tortfeasor is not an appropriated fund or nonappropriated fund employee.

§ 536.155 Claims payable involving tortfeasors other than nonappropriated fund employees.

(a) Non-NAFI RIMP claims can arise from the activities of:

(1) Members of NAFIs or authorized users of NAFI sports equipment or devices for recreational purposes, while

using such property, except real property, in the manner and for the purposes authorized by DA regulations and the charter, constitution, and bylaws of the particular NAF activity.

(2) Family child care providers, authorized members of the provider's household and approved substitute providers while care under the family child care program is being provided in the manner prescribed in AR 608–10, except as excluded below. Such claims are generally limited to injuries to, or death of, children receiving care under the family child care program that are caused by the negligence of authorized providers. Claims arising from the transportation of such children in motor vehicles and claims involving loss of or damage to property are not cognizable.

(b) An ACO or a CPO will ask the Commander USARCS for an advisory opinion prior to settling any non-NAFI RIMP claim where the person whose conduct generated liability does not fall clearly within the categories listed above. Such authorities may also ask, through the Commander USARCS, for an advisory opinion from the U.S. Army Community and Family Support Center prior to settling any claim arising under paragraph (a)(2) of this section, where it is not clear that the injured or deceased child was receiving care within the scope of the family child care program.

(c) Where liability has been determined to exist for both non-NAFI RIMP and APF activities, liability will be apportioned between the two activities.

(d) The total payment for all claims (including derivative claims), arising as a result of injury to, or death of, any one person is limited to $500,000 for each incident. Continuous or repeated exposure to substantially the same or similar harmful activity or conditions is treated as one incident for purposes of determining the limits of liability.

§ 536.156 Procedures for claims involving tortfeasors other than nonappropriated fund employees.

(a) *Reporting.* Non-NAFI RIMP claims (regardless of the amount claimed) and incidents that could give rise to non-NAFI RIMP claims will be reported to USARCS and the Army Central Insurance Fund immediately.

(b) *Investigation.* ACOs and CPOs are responsible for the investigation of non-NAFI RIMP claims. Such investigation will be closely coordinated with program managers responsible for the activity generating the claim. Close coordination with USARCS is also required, and USARCS will maintain mirror files containing the investigative materials of all actual and potential claims.

(c) *Payment.* Non-NAFI RIMP claims will be transmitted for payment to: The Army Central Insurance Fund, ATTN: CFSC–FM–I, 4700 King Street, Alexandria, VA 22302–4406.

(d) *Commercial insurance.* The provisions of § 536.148(d) also apply to claims arising under this section, except that in claims involving family child care providers, a claims investigation will be conducted regardless of whether commercial insurance exists.

§ 536.157 Settlement/approval authority for claims involving tortfeasors other than nonappropriated fund employees.

(a) *Settlement authority.* TJAG, TAJAG, and the Commander USARCS are authorized to approve in full or in part, or deny a non-NAFI RIMP claim, regardless of the amount claimed, except where an apportioned amount to be paid from APFs exceeds their monetary authority and the action of the Attorney General or Assistant General Counsel is required as set forth in § 536.151(a).

(b) *Approval authority.* (1) The staff judge advocate, Commander or chief of a command claims service, and a head of an area claims office are authorized to approve in full or in part non-NAFI RIMP claims presented in the amount of $50,000 or less, provided the acceptance is in full settlement and all claims and potential claims arising out of a single incident do not exceed $100,000.

(2) The above authorities are not delegated authority to deny or make a final offer on a claim under this section. Claims requiring such action will be forwarded to the Commander USARCS with an appropriate recommendation.

(c) *Finality of settlement.* A denial or final offer on a non-NAFI RIMP claim is final and conclusive and is not subject to reconsideration or appeal.

PART 537—CLAIMS ON BEHALF OF THE UNITED STATES

Sec.

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AUTHORITY: 31 U.S.C. 3711–3720E; 42 U.S.C. 2651–2653; 10 U.S.C. 1095; 10 U.S.C. 4803–4804; 33 U.S.C. 408.

SOURCE: 71 FR 69403, Nov. 30, 2006, unless otherwise noted.

§ 537.1 Statutory authority for non-maritime claims.

(a) *The Federal Claims Collection Act.* The Federal Claims Collection Act (FCCA), is set forth at 31 U.S.C. 3711–3720E, as amended by the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749 (October 1982), Public Law 101–552, 104 Stat. 2746 (November 1990).

(b) *Federal Medical Care Recovery Act.* The Federal Medical Care Recovery Act (FMCRA) is set forth at 42 U.S.C. 2651–53, as amended by the National Defense Authorization Act for Fiscal Year 1997, Public Law 104–202, section 1075, 110 Stat. 2422.

(c) *Title 10 United States Code Section 1095.* 10 U.S.C. 1095, Public Law 101–510, section 713, 107 Stat. 1547, 1689 (1993), as amended by Public Law 103–160, 104 Stat. 1485 (November 1990).

NOTE TO § 537.1: All of these statutes may be viewed on the USARCS Web site, *https://www.jagcnet.army.mil/85256F33005C2B92/(JAGCNETDocID)/HOME?OPENDOCUMENT.* Select the link ''Claims Resources.''

§ 537.2 Scope of non-maritime affirmative claims statutes.

(a) *Recovery for government property loss or damage.* The FCCA, originally passed in 1966, gives federal agencies the authority to collect a claim of the United States government for money or property arising out of the activities of the agency in question. However, the broad authority is limited for purposes of this regulation to claims for loss of or damage to property, as the FMCRA takes precedence for medical care recoveries.

(b) *Recovery for medical expenses and lost military pay.* (1) The FMCRA, passed in 1962, authorizes recovery from a third person of the expenses for medical care the United States furnishes to a person who is injured or suffers a disease when such care is authorized or required by law. Likewise the United States is authorized to recover the cost of pay for members of the uniformed services unable to perform duties. Recovery normally arises out of a third-party tort under local law as to which the United States has an independent cause of action.

(2) Under 10 U.S.C. 1095 the United States is also deemed a third-party beneficiary or subrogee under an alternative system of computations such as workers' compensation; hospital lien laws; contract rights under the terms of insurance policies including medical payment coverage; uninsured, underinsured and no-fault coverage; and no-fault laws.

(c) *Recovery of health insurance.* 10 U.S.C. 1095 permits recovery of health insurance for medical care furnished at military medical treatment facilities (MTFs), including supplemental policies. This third-party collection program has been delegated to the Surgeon General of the Army by the Judge Advocate General (TJAG).

(d) *Worldwide applicability.* The foregoing authorities are worldwide in application, except for intergovernmental

claims waived by treaty, for example, North Atlantic Treaty Association Status of Forces Agreement (NATO SOFA), Article VIII, paragraph 1.

§ 537.3 Claims collectible.

(a) *Claims for medical expenses.* Claims for the value of medical care furnished to active or retired members of the uniformed services, family members of either category, employees of the Department of the Army (DA) or Department of Defense (DOD), or other persons to whom care was furnished because authorized or required by law and resulting in injury, death or disease, including those:

(1) Arising out of a tort under local law,

(2) Arising out of an on-the-job injury compensable under workers' compensation law except for Federal Employees Compensation Act (FECA) recoveries,

(3) Based on the United States being a third-party beneficiary of the insurance contract of the injured party to include medical payment coverage, lost wages, as well as uninsured, underinsured, and no-fault coverage.

(b) *Claims for lost military pay.* Claims for the value of lost pay of active members of the uniformed services arising out of a tort under local law resulting in injury, death or disease.

(c) *Claims for property loss.* Claims arising out of a tort under local law for the value of lost or missing DA or DOD property, including non-appropriated fund instrumentality (NAFI) property, or for the cost of repairs of such property, including damage to assigned quarters, are not collectable under 10 U.S.C. 2775. (See § 537.4).

§ 537.4 Claims not collectible.

(a) Where the tortfeasor is a department, agency or instrumentality of the United States. (See § 536.27(g) of this chapter).

(b) Where the tortfeasor is a member of the uniformed services or an employee of the DA or DOD, acting within the scope of employment, who damages or loses property. See AR 735–5, chapter 13.

(c) Where the damage or loss of property falls under a contractor bill of lading and recovery is pursued by the contracting agency, e.g., Surface Deployment and Distribution Command (SDDC), formerly the Military Traffic Management Command (MTMC), for lost or destroyed shipments.

(d) Where damage to assigned quarters, or equipment or furnishings therein, is collectible from a member of the uniformed services under 10 U.S.C. 2775.

(e) Where the medical care is furnished by a Department of Veterans Affairs facility to other than active duty members of the uniformed services for service-connected disabilities.

§ 537.5 Applicable law.

(a) *Basis for recovery.* (1) Most recovery assertions are based on the negligence or wrongful acts or omissions of the person or entity that caused the loss. These actions or omissions must constitute a tort as determined by the law of place of occurrence, except in no-fault jurisdictions where the no-fault law permits recovery. Where the tort is not complete within the jurisdiction where it originally occurred, the law of the original jurisdiction is nevertheless applicable. For example, if a plane crashes in Virginia due to the negligence of a Federal Aviation Administration controller in Maryland, Maryland law determines the extent and nature of the tort. However, as to what law of damages is applicable, Maryland or Virginia depecage (choice of law) theory may apply. For example, if the flight originated in Indiana and the destination was Virginia, the conflict law of both Maryland and Virginia must be applied. See DA Pam 27–162, paragraph 2–35.

(2) Recovery assertions based on the United States being a third-party beneficiary or subrogee are not based on tort, but on the right to recover under local law, for example, the right of a third party to recover workers' compensation benefits is based on local law. However, the right of a third-party beneficiary to recover under an insurance contract may turn on whether an exclusionary clause is valid under the law of the jurisdiction where the contract was made.

(b) *Statute of limitations.* (1) Federal law determines when a recovery assertion must be made. Assertions for the

value of medical expenses, lost military pay or property loss or damage based on a tort must be made not later than three years from the date of accrual, 28 U.S.C. 2415(b). The date of accrual is usually the date of the occurrence giving rise to the recovery, for example, the date of injury or death for medical expenses and lost military pay or the date of damage or loss for a government property assertion. There are exceptions. For example, the loss of property in rightful possession of another accrues when that person claims ownership or converts the property to his own use.

(2) Recovery assertions based on an implied-in-law contract against a no-fault or personal-injury-protection insured must be brought no later than six years from the date of accrual, 28 U.S.C. 2415(a), *United States* v. *Limbs*, 524 F.2d 799 (9th Cir. 1975). The date of accrual is usually the date of occurrence.

(3) Actions asserted on a third-party beneficiary basis against an insurer or workers compensation fund must comply with the state notice requirement, which varies from one to six years, or the insurer's notice requirement set forth in the policy. *United States* v. *Hartford Acci. & Indem. Co.*, 460 F.2d 17 (9th Cir. 1972), cert. den. 409 U.S. 979 (1972).

(4) The statute of limitations is tolled or does not start running until the responsible federal official is notified of the existence of a recoverable loss, *Jankowitz* v. *United States*, 533 F.2d 538 (D.C. Cir. 1976), *United States* v. *Golden Acres, Inc.*, 684 F. Supp. 96 (D. Del. 1986). The responsible federal official can be the area claims office (ACO), the claims processing office (CPO), a command claims service or USARCS, depending on who receives the notice under this regulation. However, because of the responsibility to notify the MTF or TRICARE fiscal intermediary, and by regulation the notice must be expeditious, delayed notification could start the statute of limitations running. Additionally, when an ACO or CPO discovers the existence of an assertion, the statute of limitations will begin to run regardless of when the MTF or the TRICARE intermediary sends a notice. The date of receipt of a notice must be entered into the affirmative claims management program/database (ACMP) and the notice must be date-stamped and initialed.

§ 537.6 Identification of recovery incidents.

(a) *Responsibilities.* Each command claims service and ACO will develop means to identify recovery incidents arising in its geographic area of responsibility. See §§ 536.10 and 536.11 of this chapter and paragraph 2–2 of DA Pam 27–162. This requires publication of a claims directive to all DOD and Army installations, units and activities in its area, emphasizing the importance of reporting serious incidents to recovery judge advocates (RJAs) or civilian recovery attorneys.

(b) *Screening procedures.* (1) Establish a point of contact in each unit and activity in the area of responsibility and screen their sources periodically, including motor pools, family housing, departments of public works, safety offices, provost marshals, and criminal investigation divisions. Review civilian news and police reports, military police blotters and reports, court proceedings, line of duty and AR 15–6 investigations and similar sources to identify potential medical care recovery claims.

(2) The MTF commander will ensure that the claims office is notified of instances in which the MTF provides, or is billed by a civilian facility for, inpatient or outpatient care resulting from injuries (such as broken bones or burns arising from automobile accidents, gas explosions, falls, civilian malpractice, and similar incidents) that do not involve collections from a health benefits or Medicare supplemental insurer. Claims personnel will coordinate with MTF personnel to ensure that inpatient and outpatient records and emergency room and clinic logs are properly screened to identify potential cases. The RJA or recovery attorney will screen the MTF comptroller records database and division records as well as ambulance logs to identify potential medical care recovery cases. The RJA or recovery attorney will also coordinate with Navy and Air Force claims

offices and MTFs to ensure they identify potential claims involving treatment provided to Army personnel.

(3) The MTF commander will also ensure that the MTF does not release billings or medical records, or respond to requests for assistance with workers' compensation forms, without coordinating with the RJA or recovery attorney.

(4) The TRICARE fiscal intermediary is required to identify and mail certain information promptly to the claims office designated as the state point of contact. The fiscal intermediary must mail the TRICARE Explanation of Benefits, showing the amount TRICARE paid on the claim along with what diagnostic codes were used, and DD Form 2527, Statement of Personal Injury. A sample Statement of Personal Injury (DD Form 2527) is posted on the USARCS Web site; for the address see the Note to § 537.1.

(5) The RJA or recovery attorney will also coordinate with Navy and Air Force claims offices and MTFs to ensure they identify potential claims involving treatment provided to Army personnel, AR 40–400, paragraph 13–5.

(c) *When to open a recovery file.* (1) Upon identification of a potential recovery incident or upon receipt of a billing from a TRICARE Fiscal Intermediary or an MTF, a file will be opened and entered into the ACMP by the first ACO or CPO that learns of the event even if liability has not been established. Incidents under Navy, Air Force or Coast Guard jurisdiction will not be so entered but referred to the responsible service. Complete listings of claims/recovery offices worldwide are posted on the USARCS Web site; for the address see the Note to § 537.1. At the site, select the link ''Claims Resources.'' At the next screen, click on ''Tables Listing Claims Offices Worldwide.'').

(2) Army responsibility for affirmative claims is as follows:

(i) Damage to or loss of real or personal property of the DOD or the Army even if located at installations or activities under the jurisdiction of other uniformed services.

(ii) Personal injury to persons whose primary care for an accident-related injury is furnished at an Army MTF, regardless of the uniformed services affiliation of the person or sponsor, but not to those treated at another uniformed service's MTF even if the person is an active duty Army member.

(iii) Personal injury to an active duty or retired Army member or a family member of either category treated under TRICARE.

(iv) A lead agency will be established whenever:

(A) Property damaged or lost belonging to more than one service is involved in the same incident.

(B) Personal injury victims are treated at MTFs of more than one service.

(C) Personal injury victims with affiliations to more than one service are treated under TRICARE.

(D) Lead agencies may be established locally for claims valued at $50,000 or less. For claims greater than $50,000 USARCS will be notified and will deal with the other service at headquarters level. (See § 536.32 of this chapter.)

§ 537.7 Notice to USARCS.

Upon receipt of notice of a claim involving either actual or potential amounts within USARCS' monetary jurisdiction, that is, where final action will be taken by USARCS or the Department of Justice, immediate notice will be given to USARCS. Forwarding a copy of the serious incident report, discussed in § 536.22(c) of this chapter, to USARCS, will meet this requirement. Thereafter, mirror file copies will be furnished to USARCS in accordance with AR 27–20, paragraph 2–12. This allows for continuous monitoring and discussion between the ACO and the USARCS area action officer (AAO).

§ 537.8 Investigation.

(a) *Claims over $50,000.* Hands-on investigation will be conducted by claims personnel as set forth in DA Pam 27–162, Chapter 2, Section IV, regardless of the amount of insurance coverage immediately available, with a view to discovery of other sources of recovery, for example, vehicle defects or improper maintenance, road design and absence of warning signs, products liability, medical malpractice in civilian treatment facilities. Where the employment

of experts is indicated follow the procedures in § 536.39 of this chapter. No attorney representation agreement will be sent to the injured party's representative without USARCS approval.

(b) *Claims of $50,000 or less.* The amount of hands-on investigative effort is directly related to the amount of insurance coverage that the tortfeasor possesses and the amount of coverage that the injured party has. Where the injured party is represented, request information from his lawyer or insurer, in addition to the documents obtained in initial screening. The ACO should be able to form an independent opinion as to liability based on the investigation of the government and not solely on that of the injured party's attorney.

(c) *Claims of $5,000 or less.* Small claims procedures are applicable to the extent feasible. See § 536.33 of this chapter. Investigation, assertion and settlement by e-mail, phone or fax is encouraged. The investigation and action should be recorded. DA Form 1668, Small Claims Certificate, may be used as a model, modifying it as needed. A sample completed Small Claims Certificate is posted at USARCS Web site for the address see the Note to § 537.1.

(d) *Relations with injured party.* (1) When the injured party becomes known and an interview can be conducted locally, all relevant facts will be obtained unless the injured party is represented by a lawyer. In this latter event, basic information as set forth on DD Form 2527, Statement of Personal Injury (a completed sample is posted at the USARCS Web site; for the address see the Note to § 537.1) can be obtained without violating lawyer-client privilege. If the injured party is not immediately available, the information can be obtained by requesting assistance from another ACO, a unit claims officer, a reservist or Army National Guard (ANG) member, another federal agency, or another means.

(2) When the injured party is represented, a Health Insurance Portability and Accountability Act (HIPAA) medical release form (sample posted at the USARCS Web site; see § 537 (b)(4)) permitting USARCS to send out the medical records of the injured party for claims purposes, will be sent to the injured party's lawyer for completion and return.

(3) When the injured party or his or her lawyer refuses to furnish necessary information, it can usually be obtained by other means, for example, from an accident report or investigation. A notice will be furnished to all parties that the government has been assigned the right to bring a claim for the value of medical care furnished, lost pay or value of property lost or destroyed, and that the United States has the right to bring an independent cause of action. In absence of timely and appropriate response, discuss with the AAO to determine what action should be taken.

§ 537.9 Assertion.

(a) *Asserting demands.* If a prima facie claim exists under state law, a written demand will be made against all the tortfeasors and insurers. This includes demands against the injured party's own insurance coverage, no-fault coverage and workers' compensation carrier. The earlier the demand the better. A demand will not be delayed until the exact amount of medical expenses or lost pay is determined. The demand letter will state that the amount will be furnished when known. A copy of the demand will be furnished to the injured party or, if represented, his lawyer. Two sample demand (or assertion) letters are posted at the USARCS Web site (for the address see the Note to § 537.1). Demand letters are for initial contact with insurance companies. One of the posted samples is for a medical assertion for a soldier (that includes wages). The other is for a medical assertion for a civilian (that does not include wages). Remember the following points when asserting demands:

(1) The fact that the medical expenses have been assigned to the United States and as a result the United States has a cause of action in federal or state court. All parties will be notified that if the insurer pays the amount to another party, the United States has the right to collect from the insurer.

(2) Demands for third-party torts are under the authority of the FMCRA; demands where there is no tortfeasor are under the authority of 10 U.S.C. 1095;

demands for property loss or damage are under the authority of the FCCA.

(b) *Documentation of damages.* MTFs are required by AR 40–400, Patient Administration, chapter 13 to furnish complete billing documents to RJAs.

(1) TRICARE bills are obtained from the fiscal intermediary servicing the ACO. The amounts are based on the amount TRICARE pays and not the amount the patient is billed by the provider. TRICARE bills must be screened to insure that the care is incident or accident related as the demand is limited to that amount.

(2) MTF bills, both outpatient and inpatient, are obtained from either the MTF co-located with the ACO or if another MTF is involved, from that MTF, regardless of uniformed service affiliation. Outpatient bills include not only the cost of the visit but also the cost of each procedure, such as x-rays or laboratory tests. Inpatient billing is not based on services rendered but on a diagnostic group. Charges for professional inpatient services will be itemized the same as outpatient care. Charges for prescription services will be included. Screening to ensure that only incident or accident related care is claimed is essential. The cost of ambulance services, ground or air, will be calculated with MTF assistance and demanded. Burial expenses are obtained from the local mortuary affairs office on DD Form 2063, but will be demanded only when the insurance coverage includes such expenses.

(3) Lost pay will be obtained from the leave or earnings statement or the active duty pay chart for the year or years in question and will include special and incentive pay unless the injured service member did not receive either due to the length of time off assigned duty. The time off duty will be based on the time service members are unable to perform duties for which they have been trained (their military occupational specialty). It will not be limited to inpatient time. Time in a medical holding or convalescent leave will be lost time.

(4) The amount recoverable for personal property losses is limited to its value at the time of loss. Depreciation charts may be used to determine the reduction from the value at purchase. Replacement value will not be used. Both real and personal property damage will be on the value of labor and cost of material including the use of heavy equipment. When the cost of repairs is greater than $50,000, 10% overhead will be added. This can be substantiated using case law and by seeking documentation from the repair facility.

(c) *Double collections prohibited.* When the cost of medical care is recoverable by the MTF from medical care insurance, both primary and supplemental under 10 U.S.C. 1095, an assertion under FMCRA will be made, including a demand for lost pay not recoverable out of health insurance. While the United States is entitled to recover costs of medical care from both the injured parties' medical insurance and from the third-party tortfeasor, USARCS policy is not to collect twice. RJAs will carefully coordinate with the MTF to insure that double collection does not occur. Demand for lost pay should be enforced as it is not recoverable from medical care insurance.

§ 537.10 Recovery procedures.

(a) Recovery personnel have three means of enforcing recovery following initial assertion.

(1) Referral to litigation pursuant to § 537.11;

(2) The head of an ACO should request Chief, Litigation Division, OTJAG to have the RJA appointed as a Special Assistant United States Attorney when the following criteria are met:

(i) Filing suit is a frequent necessity, e.g., insurance companies are refusing payment on small claims either by raising issues well settled or by regularly reducing the amount of medical care as not fair and reasonable;

(ii) The local U.S. Attorney's office is in favor of such appointment due to his previous experience with the RJA and the additional burden of affirmative claims litigation on his staff;

(iii) The RJA has at least two years experience and is likely to continue in the RJA assignment for at least one year; and

(iv) Commander USARCS concurs in the appointment and is willing to furnish support.

(3) The RJA may request that the attorney representing the injured party include the amount asserted by the United States as part of special damages. The injured party's attorney may not represent the United States nor may the United States pay attorney fees as this would be in violation of 5 U.S.C. 3106. Where indicated, this arrangement should be reduced to writing. Be mindful that the attorney's duty to the injured party is in conflict with the interests of the United States where the amount potentially recoverable is small in comparison to the amount asserted by the United States. In this event the RJA should pursue recovery independently.

(b) Careful monitoring of all assertions is required to insure timely follow-up resulting in collection or suit where indicated. Installation of a suspense system to avoid the expiration of the statute of limitations is essential. Recommendations to file suit should be forwarded by the RJA well prior to the expiration of the statute of limitations. Within six months prior to the running of the statute of limitations, USARCS must be notified of the status of the claim or potential claim. Follow-up demands should precede filing suit to create a written record of efforts to avoid suit. Personal contact with all parties is encouraged. When represented, contact the representative.

(c) Sources other than vehicle liability coverage should be exhausted in cases where the amount of the potential recovery exceeds $50,000 and the coverage is small. Coordination with USARCS is required. USARCS can obtain expert witnesses for medical malpractice cases, product liability cases, or other cases in which another tortfeasor may be involved.

§ 537.11 Litigation.

(a) If a tortfeasor or insurer refuses to settle, or if an injured party's attorney improperly withholds funds, the RJA or recovery attorney must consider litigation to protect the interests of the United States. Litigation is particularly appropriate if a particular insurer consistently refuses to settle claims, or if the government's interests are not adequately represented on a claim over $25,000.

(b) RJAs or recovery attorneys must maintain close contact with local U.S. Attorney's Offices to ensure these offices are willing to initiate litigation on cases.

(c) In order to directly initiate or intervene in litigation, an RJA or recovery attorney must prepare a litigation report and formally refer the case through the Affirmative Claims Branch, USARCS, and the Litigation Division, OTJAG (as required by AR 27–40, chapter 5), to the U.S. Attorney. While the RJA or recovery attorney, in conjunction with the Litigation Division Torts Branch, should attempt to have the U.S. Attorney's Office initiate litigation at least six months before the expiration of the statute of limitations (SOL), the RJA or recovery attorney may contact USARCS telephonically if SOL problems necessitate quick action on a case. The RJA or recovery attorney should also contact USARCS if a U.S. Attorney is reluctant to pursue an important case. An injured party's attorney may represent the government's interest in litigation without any special coordination.

§ 537.12 Settlement authority.

(a) *Assertions for $50,000 or less*—(1) *Approval authority*. An RJA or civilian recovery attorney, if delegated authority by his or her ACO or CPO, may compromise a collection on a claim asserted for $50,000 or less, unless recovery action is reserved by a command claims service.

(2) *Final action authority*. (i) An ACO, or CPO if delegated authority by its ACO, may terminate collection action on a claim asserted for $50,000 or less, unless action is reserved by a command claims service.

(ii) The foregoing authorities may waive a claim asserted for $50,000 or less where undue hardship exists.

(iii) Determination of amount. The amount of $50,000 is determined totaling the amounts for medical care, lost military wages, lost earnings or government property damage arising from the same claims incident.

(b) *Assertions over $50,000*. USARCS retains final authority over assertions over $50,000. By use of the mirror file

system and through a dialogue between USARCS and the field during the course of the assertion, USARCS will decide whether it or the RJA or civilian recovery attorney will conduct the negotiations. To help it decide, the RJA or civilian recovery attorney will forward a memorandum for either medical or property recovery approval, in the format of the samples posted at the USARCS Web site (for the address see the Note to §537.1). USARCS may waive the requirement to submit a memorandum.

(c) *Appeals*—(1) *Assertion for $50,000 or less.* Where the assertion is made by an RJA or civilian recovery attorney, the appeal will be determined by the SJA, the medical center judge advocate, or head of the ACO or CPO. Otherwise, the appeal will be determined by the Commander USARCS.

(2) *Assertion over $50,000.* Where the assertion is made by a Claims Judge Advocate or claims attorney, the appeal will be determined by the Commander USARCS.

(d) *Compromise or waiver.* Any assertion may be compromised, waived or terminated in whole or in part, if for example:

(1) The cost to collect does not justify the cost of enforcement.

(2) There is evidence of fraud or misrepresentation.

(3) The U.S. cannot locate the tortfeasor.

(4) Legal merit has not been substantiated.

(5) The statute of limitations has run and the debtor refuses to pay.

(6) Collection of all or part of the amount of funds demanded would create inequity. The following criteria apply:

(i) Detailed information on what funds are available for recovery.

(ii) Reasonable value of the injured party's claim for permanent injury, pain and suffering, decreased earning power, and any other special damages.

(iii) Military, Department of Veterans Affairs, Social Security disability, and any other government benefits accruing to the injured party.

(iv) Probability and amount of future medical expenses of the government and the injured party.

(v) Present and prospective assets, income, and obligations of the injured party and those dependent on him or her.

(vi) The financial condition of the debtor.

(vii) The degree and nature of contributory negligence on the part of the injured party in causing his injury or death.

(viii) The percentage of attorney's fees that his attorney is willing to reduce.

(ix) The willingness of the tortfeasor to enter into an installment agreement.

(e) *Releases.* The RJA or recovery attorney may execute a release for affirmative claims in the pre-litigation stage acknowledging that the government has received payment in full of the amount asserted or the compromised amount agreed upon, or the final installment payment. The format of the release should be similar to the sample posted at the USARCS Web site (for the address see the Note to §537.1). However, the RJA or recovery attorney may not execute either an indemnity agreement or a release which prejudices the government's right to recover on other claims arising out of the same incident without the approval of USARCS. In addition, the RJA or recovery attorney may not execute a release that purports to release any claim that the injured party may have other than for medical care furnished or to be furnished by the United States. The RJA or recovery attorney will not execute a release if the government's claim is waived or terminated.

§ 537.13 Enforcement of assertions.

Meritorious assertions that do not result in collections should be enforced as follows:

(a) Where the debtor is a business or corporation otherwise financially capable the RJA or equivalent should forward a recommendation to bring suit or intervene in an existing suit regardless of the amount of the debt. As authorized by 28 U.S.C. 3011, the demand amount in the complaint shall include an additional 10% of the original claimed amount, to cover the administrative costs of processing and handling the enforcement of the debt.

(b) Where the debtor is an individual rather than a business, an asset determination should be made both as to existing assets or prospective earnings. If the injured party's attorney has made an assets search which is reliable, review the search before requesting a new one. Such a search can be paid for out of existing collections.

(1) If the debtor has assets refer to USARCS for transfer to a debt collection contractor or an agency debt collection center as determined by USARCS.

(2) If the debtor has no assets, but prospective future earnings, RJA may seek a confession of judgment and maintain contact with the debtor for future collection where authorized by state law and filing of suit is not required. If the amount is less then $5,000, enter into an installment payment arrangement.

§ 537.14 Depositing of collections.

(a) *Depositing property damage recovery*—(1) *Machines, supplies, watercraft, aircraft, vehicles other than General Services Administration-owned.* Recovered money must be deposited into the General Treasury Account 21R3019. This account remains the same every fiscal year. It was established in accordance with 31 U.S.C. 3302(b) and by Comptroller General decision B–205508, 64 Comp. Gen. 431.

(2) *Real property.* Collection for damage to real property must be deposited into an escrow account on behalf of the installation or activity at which the loss occurred. This escrow account must be set up at the request of the command claims service, ACO or CPO with the local finance office or resource management office with responsibility for department of engineering and housing or department of public works funds. The escrow account must be set up and managed by the department of engineering and housing or the department of public works to (1) temporarily hold deposits, and (2) to ''roll over'' deposits each fiscal year in order to avoid reversion of these deposits to the General Treasury at the end of each fiscal year. If the escrow account is not set up and managed in this manner it is operating in violation of 10 U.S.C. 2782.

(3) *NAFI property.* The Risk Management Program (RIMP) often reimburses local NAFIs for property loss or damage to facilitate return of equipment to daily use. When money is recovered from tortfeasors and their insurance carriers contact the NAFI involved for instructions on the current procedures as to where the recovered money is to be forwarded and deposited.

(4) *Army Stock Fund or Defense Business Operations Fund property.* Monies recovered for damage to property belonging to one of these funds will be returned to that fund unless the fund has charged the cost of repair or replacement to an appropriated fund account. The Defense Business Operations Fund replaced the Army Industrial Fund.

(5) *Government housing in cases of abuse or neglect by soldiers or families.* Monies recovered for damage to government housing caused by a soldier's abuse or negligence (or by a soldier's family member or guest of the soldier) will be deposited into that installation's family housing operations and maintenance (O&M) account.

(6) *Government housing in cases of negligence by nonresidents.* Government housing caused by the negligence of a nonresident must be asserted against the nonresident directly or through his/her insurer. Settlement checks must be deposited into the real property escrow account in accordance with 10 U.S.C. 2782.

(b) *Depositing recovery of pay provided to a soldier while incapacitated.* Monies recovered for the costs of pay provided to a soldier injured by the tortious acts of another shall be credited to the local O&M account that supports the command, activity, or other unit to which the soldier was assigned at the time of the injury.

(c) *Depositing medical care recovery*—(1) *To a medical treatment facility account.* Continental U.S. (CONUS) and outside the continental U.S. (OCONUS) claims offices, and command claims services, will deposit money recovered from an automobile insurer for medical care provided, paid for by, in or through an MTF to the O&M account of the Army, Navy, or Air Force MTF that provided the care. CONUS and OCONUS claims offices, and command

claims services, will deposit money recovered from any payor, under any provision of law, for medical care provided or paid for by, in or through an MTF into the MTF's O&M account.

(2) *Deposits when TRICARE paid directly for treatment.* The account in which to deposit affirmative claims recoveries when TRICARE has paid directly for the medical treatment is a Defense Health Program (DHP) account for reallocation to the services. This replaces the general treasury miscellaneous receipts account published in AR 37–100 (obsolete). Deposit to TRICARE using this new account for recoveries pending deposit, and recoveries for any claim settled on or after October 1, 2002. Retroactive claims depositing is not necessary.

(3) *Apportionment of medical care recovery between accounts.* Claims offices will often have to apportion recovered money among different accounts.

(i) *Apportioning money between accounts.* If care was provided by an MTF and paid for by or through the MTF and/or directly by TRICARE and/or a unit account for military lost wages if any, and the amount recovered is less than the amount asserted, deposit a prorated amount of money into each TRICARE account.

(ii) *Apportioning money between two or more medical treatment facility accounts.* If care was provided by two or more MTFs and the claims office recovers less than the amount asserted, the claims office should give each MTF a pro rata share of the money recovered. For example, if MTF one provided $2,000 worth of care and MTF two provided $1,000 worth of care, the claims office will deposit $800 of a $1,200 recovery to MTF one's account and the remaining $400 to MTF two's account. Similarly, if the claims office recovers an amount less than that asserted for medical care expenses and costs of pay provided, the claims office should give a pro rata share of the money recovered to both the MTF and the appropriation account that supports the injured soldier's unit.

(d) *Fiscal integrity.* Field claims offices must reconcile the property damage and medical care recovery accounts with their servicing defense accounting office. Field claims offices must ensure that their deposits have been credited to the proper accounts and that these accounts have not been improperly charged. All accounts must be reconciled at the end of the fiscal year.

§ 537.15 Statutory authority for maritime claims and claims involving civil works of a maritime nature.

(a) *The Army Maritime Claims Settlement Act.* The sections pertinent to maritime affirmative claims are set out at 10 U.S.C. 4803–4804.

(b) *The Rivers and Harbors Act.* The section of the Act pertinent to affirmative claims involving civil works of a maritime nature is set out at 33 U.S.C. 408.

§ 537.16 Scope for maritime claims.

The Army Maritime Claims Settlement Act (10 U.S.C. 4803–4804) applies worldwide and includes claims that arise on high seas or within the territorial waters of a foreign country.

(a) 10 U.S.C. 4803 provides for agency settlement or compromise of claims for damage to:

(1) DA-accountable properties of a kind that are within the federal maritime jurisdiction.

(2) Property under the DA's jurisdiction or DA property damaged by a vessel or floating object.

(b) 10 U.S.C. 4804 provides for the settlement or compromise of claims in any amount for salvage services (including contract salvage and towage) performed by the DA. Claims for salvage services are based upon labor cost, per diem rates for the use of salvage vessels and other equipment, and repair or replacement costs for materials and equipment damaged or lost during the salvage operation. The sum claimed is usually intended to compensate the United States for operational costs only, reserving, however, the government's right to assert a claim on a salvage bonus basis in accordance with commercial practice.

(c) The United States has three years from the date a maritime claim accrues under this section to file suit against the responsible party or parties.

§ 537.17 Scope for civil works claims of maritime nature.

Under the River and Harbors Act (33 U.S.C. 408), the United States has the right to recover fines, penalties, forfeitures and other special remedies in addition to compensation for damage to civil works structures such as a lock or dam. However, claims arising under 10 U.S.C. 4804 are limited to recovery of actual damage to Corps of Engineers (COE) civil works structures.

§ 537.18 Settlement authority for maritime claims.

(a) The Secretary of the Army, the Army General Counsel as designee of the Secretary, or other designee of the Secretary may compromise an affirmative claim brought by the United States in any amount. A claim settled or compromised in a net amount exceeding $500,000 will be investigated and processed and, if approved by the Secretary of the Army or his or her designee, certified to Congress for final approval.

(b) TJAG, TAJAG, the Commander USARCS, the Chief Counsel COE, or Division or District Counsel Offices may settle or compromise and receive payment on a claim by the United States under this part if the amount to be received does not exceed $100,000. These authorities may also terminate collection of claims for the convenience of the government in accordance with the standards specified by the DOJ.

(c) An SJA or a chief of a command claims service and heads of ACOs may receive payment for the full amount of a claim not exceeding $100,000, or compromise any claim in which the amount to be recovered does not exceed $50,000 and the amount claimed does not exceed $100,000.

(d) Any money collected under this authority shall be deposited into the U.S. General Treasury, except that money collected on civil works claims in favor of the United States pursuant to 33 U.S.C. 408 ''shall be placed to the credit of the appropriation for the improvement of the harbor or waterway in which the damage occurred * * *'' (33 U.S.C. 412; 33 U.S.C. 571).

§ 537.19 Demands arising from maritime claims.

(a) It is essential that Army claims personnel demand payment, or notify the party involved of the Army's intention to make such demands, as soon as possible following receipt of information of damage to Army property where the party's legal liability to respond exists or might exist. Except as provided below pertaining to admiralty claims and claims for damage to civil works in favor of the United States pursuant to 33 U.S.C. 408, copies of the initial demand or written notice of intention to issue a demand letter, as well as copies of subsequent correspondence, will be provided promptly to the Commander USARCS, who will monitor the progress of such claims.

(b) Subject to limitation of settlement authority, demands for admiralty claims and civil works damages in favor of the United States pursuant to 33 U.S.C. 408 may be asserted, regardless of amount, by the Chief Counsel COE, or his designees in COE Division or District Counsel offices.

(c) Where, in response to any demand, a respondent denies liability, fails to respond within a reasonable period, or offers a compromise settlement, the file will be promptly forwarded to the Commander USARCS, except in those cases in which a proposed compromise settlement is deemed acceptable and the claim is otherwise within the authority delegated in § 537.18 of this part. Files for admiralty claims and civil works claims in favor of the United States pursuant to 33 U.S.C. 408 will be promptly forwarded to the United States Department of Justice.

§ 537.20 Certification to Congress.

Admiralty claims, including claims for damage to civil works in favor of the United States pursuant to 33 U.S.C. 408, proposed for settlement or compromise in a net amount exceeding $100,000 will be submitted through the Commander USARCS to the Secretary of the Army for approval and if in excess of $500,000 for certification to Congress for final approval.

PART 538—MILITARY PAYMENT CERTIFICATES

Sec.

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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 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 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 invalidated 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

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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 instuction (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 partiotism.

(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,

(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.

§ 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.

(4) Meet the physical fitness standards prescribed by the school.

PARTS 543–544 [RESERVED]

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APPENDIX D TO PART 552—UNATHORIZED 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

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 Nonappropriated 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 than 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 visists 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 nonappropriated 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 (i)(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

distibuting 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.

(l) *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 without 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.

§ 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

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 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,

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, environmental 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.

(l) *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 (l)(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 prearranged 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 nonappropriated 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 noncompliance 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 prearranged 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

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

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 military 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

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

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 certification 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 7–2*o*, 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).

(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 establishment 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

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 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 acess 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.

§ 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.

(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 reapply 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

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 kunckles, ''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.

(l) *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 weapon 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 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 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.

(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 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.

(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.

§ 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/

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

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 governing 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 deregistered 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 nontraining 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.

(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 subinstallations 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 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, CO_2, 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. ''Manrikiqusari'' 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 shotgun 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

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

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

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 nonmotorized, 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

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 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 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

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 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.

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.

(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 permits 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.

(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. Individuals 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.

§ 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

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—Training 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 required: Chambers Lake and Nisqually River for fishing only.

4. The Solo Point road and the South Sanitary 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 Training 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 ot 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 Weyerhauser Corporation personnel for business and recreation.

5. DoD personnel and Fort Lewis contractor personnel on official business may use all DEH-maintained range roads and trails in the training areas.

6. Range roads closed for training by barricades or road guards will not be used. Barricades 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-access routes (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 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, mushrooms, 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)

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, mushrooms, blackberries, apples and other vegetation
Photography
Hiking

NOTE: Permit holders for the above activities must certify that they are non-commercial 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, including 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 reimbursement, 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, including recovery of ammunition residue or fragments, archaeological or cultural artifacts.
Vehicle speed contests.
Commercial activities conducted for profit, including dog training for reimbursement, 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, including 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 reimbursement, 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 subpart may be obtained from National Technical Information Services, U.S. Department

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.

§ 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 illegal 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, pickeing, 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 expensive 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.

(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.

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:

I-5
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).

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 Weyerhauser 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

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 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

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

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 cemetries 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 cemetaries 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) Accomodations 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 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.

§ 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 childern 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 overground vaults are prohibited. Underground 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 loudspeaker 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

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.

(l) *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

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.
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APPENDIX A TO PART 555—DIRECTOR OF DEFENSE 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

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 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

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 resources, 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:

(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 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 may 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 laborabories.

• 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 interagency 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.

• Work in the form of analytic services shall not normally be undertaken in areas where comparable expertise exists in competitive 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.
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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 (freshman 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.

(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.

(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

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 adminstrator 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:

(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.

§ 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.

564.37 Medical care.
564.38 For whom authorized.
564.39 Medical care benefits.
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CLAIMS FOR DAMAGES INVOLVING THE NATIONAL GUARD AND AIR NATIONAL GUARD

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564.58 Determination of amount allowable.

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

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

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

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 designate 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.

(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 servce 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 nonpay 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 considered 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)

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, chose 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 if 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 omission 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

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 incurred 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.

(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

Subpart A—Recruiting and Enlistment Eligibility

Sec.
571.1 General.
571.2 Basic qualifications for enlistment.
571.3 Waiver enlistment criteria.
571.4 Periods of enlistment.
571.5 Enlistment options.

AUTHORITY: 10 U.S.C. 504, 505, 509, 513, 520, 3262.

SOURCE: 72 FR 43162, Aug. 3, 2007, unless otherwise noted.

Subpart A—Recruiting and Enlistment Eligibility

§ 571.1 General.

(a) *Purpose*. This part gives the qualifications for men and women enlisting in the Regular Army (RA) or Reserve Components (RC). The procedures simplify and standardize the processing of recruited applicants. The applicant's ability to meet all requirements or exceptions will determine eligibility. This includes obtaining prescribed waivers.

(b) *References*—

(1) *Required publications*.

(i) AR 601–210, Active and Reserve Components Enlistment Program. (Cited in §§ 571.2, 571.3, and 571.5).

(ii) AR 40–501, Standards of Medical Fitness. (Cited in §§ 571.2 and 571.3).

(iii) AR 600–9, The Army Weight Control Program. (Cited in §§ 571.2 and 571.3).

(2) *Related publications*.

(i) DOD Directive 1304.26, Qualifications for Enlistment, Appointment, and Induction.

(ii) Army Retention Program.

(c) *Definitions*. The following definitions apply to this part:

(1) *Enlistment*. Voluntary contract (DD Form 4) for military service that creates military status as an enlisted member of the Regular Army or a Reserve Component. This includes enlistment of both non-prior service and prior service personnel.

(2) *Reenlistment*. The second or subsequent voluntary enrollment in the Regular Army or a Reserve Component as an enlisted member.

(3) *United States Army*. The Regular Army, Army of the United States (AUS), Army National Guard of the United States (ARNGUS), and the United States Army Reserve (USAR).

(4) *Regular Army (RA)*. The Regular Army is the component of the Army that consists of persons whose continuous service on active duty in both peace and war is contemplated by law and of retired members of the Regular Army.

(5) *Prior Service (PS)*. For persons enlisting in the RA, those who have 180 days or more of active duty in any component; or, for persons enlisting in a Reserve Component, those who have 180 days of active duty in any component of the armed forces and who have been awarded an MOS; or former members of an armed forces academy who did not graduate and who served 180 days or more.

(6) *Non-Prior Service (NPS)*. Those persons who have never served in any component of the armed forces or who have served less than 180 days of active duty as a member of any component of the armed forces. Reserve Component applicants must not have been awarded an MOS; or have enlisted illegally while underage and been separated for a void enlistment; or be a former member of a service academy who did not graduate and who served fewer than 180 days; or have completed ROTC and served only Active Duty for Training as an officer.

(7) *Delayed Entry Program (DEP)*. A program in which Soldiers may enlist and are assigned to a United States Army Reserve (USAR) Control Group until they enlist in the Regular Army. The Commanding General, United States Army Recruiting Command (USAREC) is authorized by 10 U.S.C. 513 to organize and administer DEP.

§ 571.2 Basic qualifications for enlistment.

(a) Age requirements for non-prior service and prior service personnel are defined in AR 601–210.

(b) Applicants must meet citizenship requirements as defined in AR 601–210.

(c) Non-prior and prior service applicants must meet medical fitness standards prescribed in AR 40–501. Height and weight standards for non-prior service personnel AR 40–501 and in AR 600–9 for prior service personnel.

(d) Education standards, dependency criteria, and trainability requirements are prescribed in AR 601–210.

§ 571.3 Waiver enlistment criteria.

(a) *Waiver criteria—*

(1) All persons who process applicants for enlistment in the Army use the utmost care to procure qualified personnel. Eligibility of personnel for enlistment will be based upon their ability to meet all requirements, including procurement of prescribed waivers.

(2) Applicants applying for moral or medical waivers will document their waiver requests, as prescribed by AR 601–210 or AR 40–501.

(3) The approval authorities for various types of waiver requests are set forth in AR 601–210. Commanders at levels below the approval authority may disapprove waivers for applicants who do not meet prescribed standards and who do not substantiate a meritorious case.

(4) Unless otherwise stated in AR 601–210, waivers are valid for 6 months.

(b) Nonwaiver medical, moral, and administrative disqualifications are defined in AR 601–210.

§ 571.4 Periods of enlistment.

Enlistments are authorized for periods of 2, 3, 4, 5, 6, 7, or 8 years.

§ 571.5 Enlistment options.

Personnel who enlist in the Regular Army for 2 or more years may select certain initial assignments or classifications, provided they meet the criteria set forth in AR 601–210 and valid Army requirements exist for the assignments and skills.

PART 575—ADMISSION TO THE UNITED STATES MILITARY ACADEMY

Sec.

575.1 Military Academy.
575.2 Admission; general.
575.3 Appointments; sources of nominations.
575.4 [Reserved]
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 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

Service-Connected	Annually Allocated Cadetships
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 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.

§ 575.4 [Reserved]

§ 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.

(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 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.* (i) 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 exercised 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:

(*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 administerial acts as may be necessary and thereafter will 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 voice 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 employed 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 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.

(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 oversea 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 statisfactorily. 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, oversea assignments, commanders should consider whether the soldier's oversea 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 compliants 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 soliders 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 compliants 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 receving 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 marriage. 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.

(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 noncompliance 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 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.

(l) *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:

(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 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.

(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).)

(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 attotment 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.)

(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 were 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.

§ 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 continous 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.

(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 nonactive 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 delvered to the person concerned, using military channels. When the correspondence cannot be delviered 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 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 authorty 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 Allowances 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.

§ 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 garnisheed 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(l)(5).)
AR 640–3
Identification Cards, Tags, and Badges. (Cited in §§584.2(l)(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(l)(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

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 Repubic 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 Support 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 between 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 nonappropriated 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 jursidiction 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.

(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 or 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 office 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 paragarph (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 (FM&P), copy furnished General Counsel, Department of Defense (GC, DOD).

(4) If one, the matter cannot be resolved, and two, it appears that noncompliance 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 noncompliance 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 jurisidiction 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. part 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 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 noncompliance 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 property 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

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,

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.

(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 8×10½ inch paper.)

(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 (ii) 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]

§ 621.3 [Reserved]

§ 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 transportation 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 Commander, DARCOM, based on statute taken by the Commander-in-Chief/Commander, Major Army Command (MACOM), and held until termination of the encampment and final settelment 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 to determine inhouse availability 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.

(l) *Establish property transaction records.* (1) A Property Transaction Record reflecting complete information 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

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 (l)(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 railhead 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.

(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 satisy 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 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.

(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 Markmanship (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-

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 appointed 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.

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].	31 U.S.C. 686; Memo of Understanding (MOU), Apr. 24, 1975; AR 500–60.	Secretary of the Army (or designee).	Communications, earthmoving, and vehicular equipment.
Avalanche Control[3]	10 U.S.C. 4655; 31 U.S.C. 686; AR 735–5; MOU Nov. 29, 1973.	Secretary of the Army (or designee).	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. Custom 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).	31 U.S.C. 686; AR 735–5; AR 1–35; AR 500–60; DODD 4000.19.	Spec Asst SECDEF; Secretary of the Army.	Material, supplies, and equipment for flood fighting, rescue operations, repair/restoration of flood control works, or hurricane flood protection works.
Support to FPA/GSA Regional Field Boards[2] (see AR 15–17 for guidance).	AR 15–17; DODD 5100.74; OEP Civ 8500.6.	HQDA; CG FORSCOM; CG CONUSA.	Transportation, emergency power and fuel.
Support to Inaugural Committee	10 U.S.C. 2543	SECDEF	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 *et seq.;* 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 One: Arms, ammunition, tank-automotive equipment, and aircraft.
		Group Three: DOD Executive Agent or designee; CG MDW; CG CONUSA; and CINC's UCOM's, OCONUS.	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 *et seq.;* 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 *et seq.;* 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.

(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

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 State 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) *Enviromental 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 DRCIRD 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

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 NICP (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.

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,

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 acountable 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 reconciliaton.

(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.

(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 condemed 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 Secretary) 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: DRSAR-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 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.

(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 reparable will be billed at 100 percent of value.

(ii) Materiel classified as unserviceable, economically reparable 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 CINC of UCOM 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.

(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 uncoolectible 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 Comproller 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 off 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.

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.

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*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)

AGREEMENT FOR THE LOAN OF US ARMY MATERIEL
For use of this form, see AR 700-131; the proponent agency is DCSLOG.

NOTE: For loan/lease pursuant to 10 USC 2667, see Army Defense Acquisition Regulation Supplement (ADARS), paragraph 16-553, for prescribed agreement.

This form will be used to enter into agreements relative to the loan of Army materiel between the United States Army and —

1. Non-DOD Federal departments and agencies. 2. Civil authorities. 3. Civilian activities.
Paragraphs below are applicable to all three cases, as cited above, unless otherwise specified at the beginning of each paragraph.

This loan agreement is entered into, by, and between the United States of America, hereinafter called "the lender,"

represented by (b) _____

for the purpose of entering into this agreement; and (a) _____

hereinafter called "the borrower," represented by (c) _____

for the purpose of entering into this agreement.

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) _____

_____.

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.

3. CONDITIONS. This agreement is predicated upon the following conditions:

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.

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.

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.)*

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.

e. The borrower will prevent misuse of borrowed materiel; or its use by unauthorized persons.

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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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DA Form 4881-R—continued.

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)

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DA Form 4881-R—continued.

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.

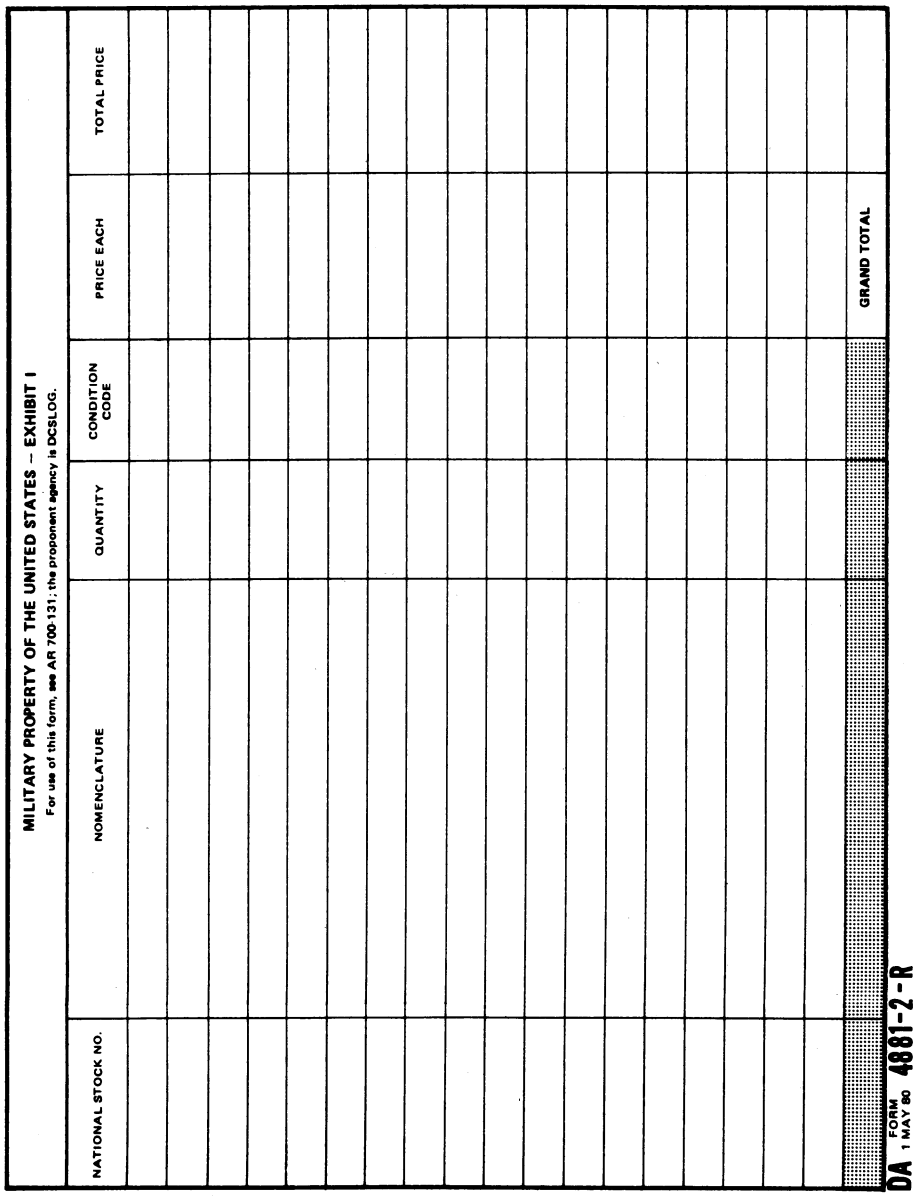

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EXHIBIT II
(DA Form 4881–3–R)

Properly executed surety bond and evidence of deposit with the approving authority of cash, certified check, United States of America Treasury bonds, or bonding company bond in the amount of the grand total shown on Exhibit I. (See app E for Surety Bond.)

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 appraisement 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

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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 ameded,

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) _____ *(Name)* (q) _____ *(Address)*

(p) _____ *(Name)* (q) _____ *(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)

(DA Form 4881-3-R)

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 there of and of Treasury Department Circular No. 154, dated February 6, 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 appraisement 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 in 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 1 MAY 80 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.

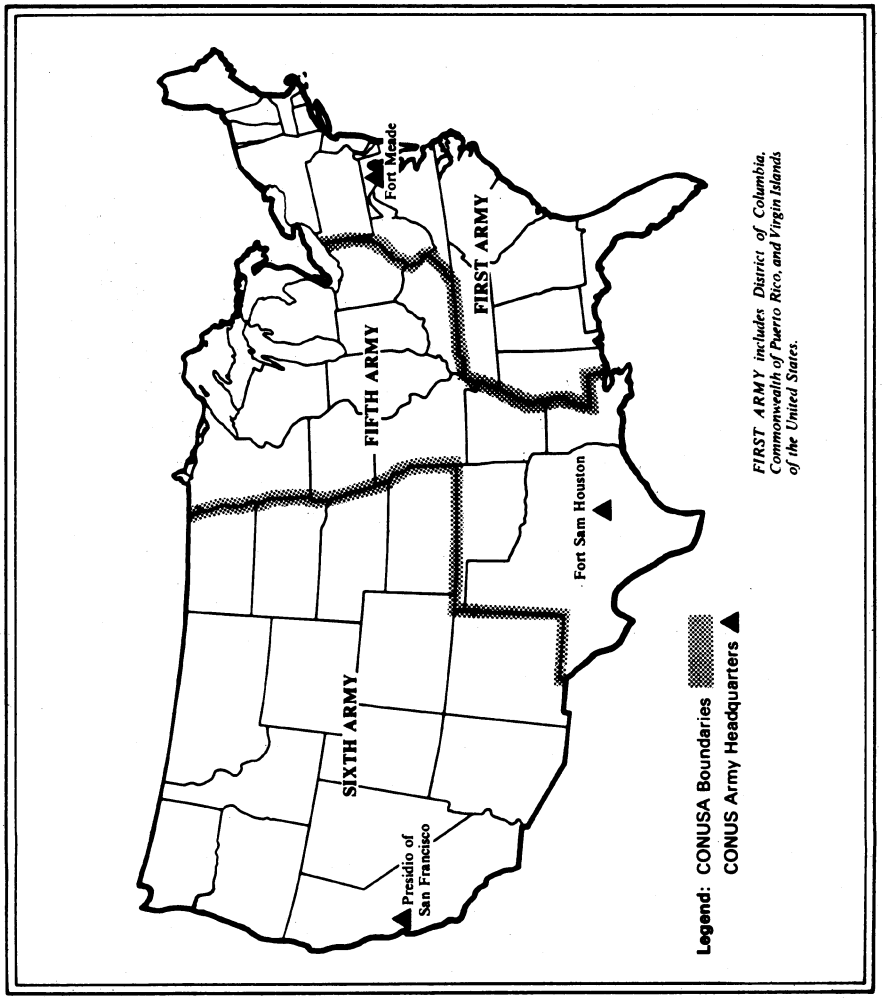
(r) Enter the name of the State in which the Power of Attorney is being signed.

(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 Nongovernmental, 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

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FINDING AIDS

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