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CODE OF FEDERAL REGULATIONS

Title 32
National Defense

Parts 400 to 629

Revised as of July 1, 2020

Containing a codification of documents
of general applicability and future effect

As of July 1, 2020

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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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Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
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OLIVER A. POTTS,
Director,
Office of the Federal Register
July 1, 2020

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, 2020.

The current regulations issued by the Office of the Secretary of Defense appear in the volumes containing parts 1–190 and parts 191–399; 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, Office of the Director of National Intelligence, National Counterintelligence Center, Central Intelligence Agency, Information Security Oversight Office (National Archives and Records Administration), 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 Stephen J. Frattini.

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 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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507.3 Explanation of abbreviations and terms.
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507.5 Statutory authority.

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507.17 Procurement and wear of heraldic items.
507.18 Processing complaints of alleged breach of policies.

AUTHORITY: 10 U.S.C. 3012, 18 U.S.C. 701, 18 U.S.C. 702

SOURCE: 63 FR 27208, May 18, 1998, unless otherwise noted.

Subpart A—Introduction

§ 507.1 Purpose.

This part prescribes the Department of the Army and the Air Force policy governing the manufacture, sale, reproduction, possession, and wearing of military decorations, medals, badges, and insignia. It also establishes the Heraldic Item Quality Control Program to improve the appearance of the Army and Air Force by controlling the quality of heraldic items purchased from commercial sources.

§ 507.2 References.

Related publications are listed in paragraphs (a) through (f) of this section. (A related publication is merely a source of additional information. The user does not have to read it to understand this part). Copies of referenced publications may be reviewed at Army and Air Force Libraries or may be purchased from the National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

(a) AFI 36–2903, Dress and Personal Appearance of Air Force Personnel.

(b) AR 360–5, Public Information.

(c) AR 670–1, Wear and Appearance of Army Uniforms and Insignia.

(d) AR 840–1, Department of the Army Seal, and Department of the Army Emblem and Branch of Service Plaques.

(e) AR 840–10, Heraldic Activities, Flags, Guidons, Streamers, Tabards and Automobile Plates.

(f) AFR 900–3, Department of the Air Force Seal, Organizational Emblems, Use and Display of Flags, Guidons, Streamers, and Automobile and Aircraft Plates.

§ 507.3 Explanation of abbreviations and terms.

(a) *Abbreviations.* (1) AFB—Air Force Base.

(2) DA—Department of the Army.

(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 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 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.

PART 536—CLAIMS AGAINST THE UNITED STATES

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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 non-appropriated 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 non-appropriated 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 non-appropriated 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.

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SUBCHAPTER D—MILITARY RESERVATIONS AND NATIONAL CEMETERIES

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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 [Reserved]

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 [Reserved]

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

Subparts N–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 CEMETERIES

Sec.

Subpart A–Army National Military Cemeteries

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553.49 Exceptions to policies for interment or inurnment at Army Post Cemeteries.

AUTHORITY: 10 U.S.C. 985, 1128, 1481, 1482, 3013, 4721–4726; 24 U.S.C. 295a, 412; 38 U.S.C. 2402 note, 2409–2411, 2413; 40 U.S.C. 9102; and Pub. L. 93–43, 87 Stat. 75.

SOURCE: 81 FR 65877, Sept. 26, 2016, unless otherwise noted.

Subpart A–Army National Military Cemeteries

§ 553.1 Definitions.

As used in this part, the following terms have these meanings:

Active duty. Full-time duty in the active military service of the United States.

(1) This includes:

(i) Active Reserve component duty performed pursuant to title 10, United States Code.

(ii) Service as a cadet or midshipman currently on the rolls at the U.S. Military, U.S. Naval, U.S. Air Force, or U.S. Coast Guard Academies.

(iii) Active duty for operational support.

(iv) Persons whose service has been determined to be active duty service pursuant to section 401 of the GI Bill Improvement Act of 1977 (Pub. L. 95–202; 38 U.S.C. 106 note) as of 20 May 2016 and the remains of that person were not already formally interred or inurned as of 20 May 2016 or that person died on or after 20 May 2016.

(2) This does not include:

(i) Full-time duty performed under title 32, United States Code.

(ii) Active duty for training, initial entry training, annual training duty, or inactive-duty training for members of the Reserve components.

Active duty for operational support (formerly active duty for special work).

A tour of active duty for Reserve personnel authorized from military or Reserve personnel appropriations for work on Active component or Reserve component programs. The purpose of active duty for operational support is to provide the necessary skilled manpower assets to support existing or emerging requirements and may include training.

Active duty for training. A category of active duty used to provide structured individual and/or unit training, including on-the-job training, or educational courses to Reserve component members. Included in the active duty for training category are annual training, initial active duty for training, or any other training duty.

Annual training. The minimum period of active duty for training that Reserve members must perform each year to satisfy the training requirements associated with their Reserve component assignment.

Armed Forces. The U.S. Army, Navy, Marine Corps, Coast Guard, Air Force and their Reserve components.

Army National Military Cemeteries. Arlington National Cemetery and the U.S. Soldiers' and Airmen's Home National Cemetery.

Category 4, 5, or 5+ Posts. Category 4, 5, or 5+ posts, including the equivalent classifications as determined by the Department of State that were used prior to 2004 or may be used subsequently.

Child, minor child, permanently dependent child, unmarried adult child.

(1) *Child*.

(i) Natural child of a primarily eligible person, born in wedlock;

(ii) Natural child of a female primarily eligible person, born out of wedlock;

(iii) Natural child of a male primarily eligible person, who was born out of wedlock and:

(A) Has been acknowledged in a writing signed by the male primarily eligible person;

(B) Has been judicially determined to be the male primarily eligible person's child;

(C) Whom the male primarily eligible person has been judicially ordered to support; or

(D) Has been otherwise proved, by evidence satisfactory to the Executive Director, to be the child of the male primarily eligible person

(iv) Adopted child of a primarily eligible person; or

(v) Stepchild who was part of the primarily eligible person's household at the time of death of the individual who is to be interred or inurned.

(2) *Minor child*. A child of the primarily eligible person who

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Is under the age of twenty-one years, or is under the age of twenty-three years and is taking a full-time course of instruction at an educational institution which the U.S. Department of Education acknowledges as an accredited educational institution.

(3) *Permanently dependent child*. A child of the primarily eligible person who

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Is permanently and fully dependent on one or both of the child's parents because of a physical or mental

disability incurred before attaining the age of twenty-one years or before the age of twenty-three years while taking a full-time course of instruction at an educational institution which the U.S. Department of Education acknowledges as an accredited educational institution.

(4) *Unmarried adult child*. A child of the primarily eligible person who

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Has attained the age of twenty-one years.

Close relative. The spouse, parents, adult brothers and sisters, adult natural children, adult stepchildren, and adult adopted children of a decedent.

Commemorative monuments. Monuments or other structures or landscape features that serve to honor events in history, units of the Armed Forces, individuals, or groups of individuals that served in the Armed Forces, and that do not contain human remains or mark the location of remains in close proximity. The term does not include memorial markers erected pursuant to § 553.16.

Derivatively eligible person. Any person who is entitled to interment or inurnment solely based on his or her relationship to a primarily eligible person, as set forth in §§ 553.12(b) and § 553.13(b) respectively.

Disinterment. The permanent removal of interred human remains from a particular gravesite.

Disinurnment. The permanent removal of remains from a particular niche.

Executive Director. The person statutorily charged with exercising authority, direction, and control over all aspects of Army National Military Cemeteries.

Federal capital crime. An offense under Federal law for which a sentence of imprisonment for life or the death penalty may be imposed.

Former prisoner of war. A person who is eligible for or has been awarded the Prisoner of War Medal.

Former spouse. See *spouse*.

Government. The U.S. government and its agencies and instrumentalities.

Group burial. Interment in one gravesite of one or more service members on active duty killed in the same incident or location where:

(1) The remains cannot be individually identified; or

(2) The person authorized to direct disposition of subsequently identified remains has authorized their interment with the other service members.

Group remains may contain incidental remains of civilians and foreign nationals.

Inactive-duty training.

(1) Duty prescribed for members of the Reserve components by the Secretary concerned under 37 U.S.C. 206 or any other provision of law.

(2) Special additional duties authorized for members of the Reserve components by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

(3) In the case of a member of the Army National Guard or Air National Guard of any State, duty (other than full-time duty) under 32 U.S.C. 316, 502, 503, 504 or 505 or the prior corresponding provisions of law.

(4) This term does not include:

(i) Work or study performed in connection with correspondence courses,

(ii) Attendance at an educational institution in an inactive status, or

(iii) Duty performed as a temporary member of the Coast Guard Reserve.

Interment. The ground burial of casketed or cremated human remains.

Inurnment. The placement of cremated human remains in a niche.

Media. Individuals and agencies that print, broadcast, or gather and transmit news, and their reporters, photographers, and employees.

Memorial marker. A headstone used to memorialize a service member or veteran whose remains are unavailable for reasons listed in § 553.16.

Memorial service or ceremony. Any activity intended to honor the memory of a person or persons interred, inurned, or memorialized in the Army National Military Cemeteries. This term includes private memorial services, public memorial services, public wreath laying ceremonies, and official ceremonies.

Minor child. See *child*.

Niche. An aboveground space constructed specifically for the placement of cremated human remains.

Official ceremony. A memorial service or ceremony approved by the Executive Director in which the primary participants are representatives of the Government, a State government, a foreign government, or an international organization authorized by the U.S. Department of State to participate in an official capacity.

Parent. A natural parent, a stepparent, a parent by adoption, or a person who for a period of not less than one year stood *in loco parentis*, or was granted legal custody by a court decree or statutory provision.

Permanently dependent child. See *child*.

Person authorized to direct disposition. The person primarily entitled to direct disposition of human remains and who elects to exercise that entitlement. Determination of such entitlement shall be made in accordance with applicable law and regulations.

Personal representative. A person who has legal authority to act on behalf of another through applicable law, order, and regulation.

Primarily eligible person. Any person who is entitled to interment or inurnment based on his or her service as specified in § 553.12(a) and § 553.13(a) respectively.

Primary next of kin. (1) In the absence of a valid written document from the decedent identifying the primary next of kin, the order of precedence for designating a decedent's primary next of kin is as follows:

(i) Spouse, even if a minor;

(ii) Children;

(iii) Parents;

(iv) Siblings, to include half-blood and those acquired through adoption;

(v) Grandparents;

(vi) Other next of kin, in order of relationship to the decedent as determined by the laws of the decedent's state of domicile.

(2) Absent a court order or written document from the deceased, the precedence of next of kin with equal relationships to the decedent is governed by seniority (age), older having higher priority than younger. Equal relationship situations include those involving divorced parents of the decedent, children of the decedent, and siblings of the decedent.

Private headstones or markers. A headstone or individual memorial marker provided at private expense, in lieu of a headstone or individual memorial marker furnished by the Government.

Private memorial service. A memorial service or ceremony conducted at the decedent's gravesite, memorial headstone, or niche.

Public memorial service. A ceremony conducted by members of the public at a historic site in an Army National Military Cemetery.

Public wreath-laying ceremony. A ceremony in which members of the public, assisted by the Tomb Guards, present a wreath or similar memento at the Tomb of the Unknown Soldier.

Reserve component. The Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the Army National Guard of the United States, and the Air National Guard of the United States.

Spouse, former spouse, subsequently remarried spouse.

(1) *Spouse*. A person who is legally married to another person.

(2) *Former spouse*. A person who was legally married to another person at one time but was not legally married to that person at the time of one of their deaths.

(3) *Subsequently remarried spouse*. A derivatively eligible spouse who was married to the primarily eligible person at the time of the primarily eligible person's death and who subsequently remarried another person.

State capital crime. Under State law, the willful, deliberate, or premeditated unlawful killing of another human being for which a sentence of imprisonment for life or the death penalty may be imposed.

Subsequently recovered remains. Additional remains belonging to the decedent that are recovered or identified after the decedent's interment or inurnment.

Subsequently remarried spouse. See *spouse*.

Unmarried adult child. See *child*.

Veteran. A person who served in the U.S. Armed Forces and who was discharged or released under honorable conditions.

§ 553.2 Purpose.

This part specifies the authorities and assigns the responsibilities for the development, operation, maintenance, and administration of the Army National Military Cemeteries.

§ 553.3 Statutory authorities.

(a) *Historical*. Act of July 17, 1862, Sec. 18, 12 Stat. 594, 596; Act of February 22, 1867, Ch. 61, 14 Stat. 399; and the National Cemeteries Act of 1973, Public Law 93–43, 87 Stat. 75 (1973). The National Cemeteries Act established the National Cemetery System, which primarily consists of national cemeteries transferred from the management authority of the Department of the Army to the (now) Department of Veterans Affairs. Section 6(a) of the Act exempted Arlington National Cemetery and the Soldiers' and Airmen's Home National Cemetery from transfer to the National Cemetery System, leaving them under the management authority of the Secretary of the Army.

(b) *Current*. Pursuant to 10 U.S.C. 4721(a), the Secretary of the Army shall develop, operate, manage, oversee, and fund the Army National Military Cemeteries. Section 4721(c) provides that the Army National Military Cemeteries are under the jurisdiction of Headquarters, Department of the Army, and 10 U.S.C. 4721(d) provides that the Secretary of the Army shall prescribe such regulations and policies as may be necessary to administer the Army National Military Cemeteries. The responsibilities of Headquarters, Department of the Army with regard to the Army National Military Cemeteries are enumerated in 10 U.S.C. 4721–4726 and Army General Orders 2014–74 and 2014–75.

§ 553.4 Scope and applicability.

(a) *Scope*. The development, maintenance, administration, and operation of the Army National Military Cemeteries are governed by this part, Army Regulation 290–5, and Department of the Army Pamphlet 290–5. The development, maintenance, administration, and operation of Army post cemeteries are not covered by this part.

(b) *Applicability*. This part is applicable to all persons on, engaging in business with, or seeking access to or benefits from the Army National Military Cemeteries, unless otherwise specified.

§ 553.5 Maintaining order.

The Executive Director may order the removal from, and bar the re-entry onto, Army National Military Cemeteries of any person who acts in violation of any law or regulation, including but not limited to demonstrations and disturbances as outlined in 38 U.S.C. 2413, and in this part. This authority may not be re-delegated.

§ 553.6 Standards for managing Army National Military Cemeteries.

(a) The Executive Director is responsible for establishing and maintaining cemetery layout plans, including plans setting forth sections with gravesites, memorial areas with markers, and columbaria with niches, and landscape planting plans.

(b) New sections or areas may be opened and prepared for interments or for installing memorial markers only with the approval of the Executive Director.

§ 553.7 Arlington Memorial Amphitheater.

(a) In accordance with 24 U.S.C. 295a:

(1) No memorial may be erected and no remains may be entombed in the Arlington Memorial Amphitheater unless specifically authorized by Congress; and

(2) The character, design, or location of any memorial authorized by Congress for placement in the Amphitheater is subject to the approval of the Secretary of Defense or his or her designee.

(b) The Secretary of Defense or his or her designee will seek the advice of the Commission of Fine Arts in such matters, in accordance with 40 U.S.C. 9102.

(c) Tributes offered for those interred in the Tomb of the Unknown Soldier for placement in the Arlington Memorial Amphitheater display room are not memorials for purposes of this section.

§ 553.8 Permission to install utilities.

(a) The installation of utilities in Army National Military Cemeteries, including but not limited to, telephone and fiber optic lines, electric lines, natural gas lines, water pipes, storm drains, and sanitary sewers, must be authorized by the Executive Director.

(b) Requests for licenses, permits, or easements to install water, gas, or sewer lines, or other utilities or equipment on or across an Army National Military Cemetery or an approach road in which the Government has a right-of-way, fee simple title, or other interest, must be sent to the Executive Director, who will process the request in accordance with Army policy. Requests must include a complete description of the type of license, permit, or easement desired and a map showing the location of the project.

§ 553.9 Assignment of gravesites or niches.

(a) All eligible persons will be assigned gravesites or niches without discrimination as to race, color, sex, religion, age, or national origin and without preference to military grade or rank.

(b) The Army National Military Cemeteries will enforce a one-gravesite-per-family policy. Once the initial interment or inurnment is made in a gravesite or niche, each additional interment or inurnment of eligible persons must be made in the same gravesite or niche, except as noted in paragraph (f) of this section. This includes multiple primarily eligible persons if they are married to each other.

(c) In accordance with 38 U.S.C. 2410A(a)(2) the Secretary of the Army may waive the prohibition in paragraph (b) of this section as the Secretary of the Army deems appropriate.

(d) A gravesite reservation will be honored if it meets the following requirements, unless it is cancelled by the Executive Director:

(1) The gravesite was properly reserved by law before January 1, 1962, and

(2) An eligible person was interred in the reserved gravesite prior to January 1, 2017.

(e) The Executive Director may cancel a gravesite reservation:

(1) Upon determination that a derivatively eligible spouse has remarried;

(2) Upon determination that the reservee's remains have been buried elsewhere or otherwise disposed of;

(3) Upon determination that the reservee desires to or will be interred in the same gravesite with the predeceased, and doing so is feasible; or

(4) Upon determination that the reservee would be 120 years of age and there is no record of correspondence with the reservee within the last two decades.

(f) In cases of reservations meeting the requirements of 38 U.S.C. 2410A note, where more than one gravesite was reserved (on the basis of the veteran's eligibility at the time the reservation was made) and no interment has yet been made in any of the sites, the one-gravesite-per-family policy will be enforced, unless waived by the Executive Director. Gravesite reservations will be honored only if the decedents meet the eligibility criteria for interment in Arlington National Cemetery that is in effect at the time of need, and the reserved gravesite is available.

(g) Where a primarily eligible person has been or will be interred as part of a group burial or has been or will be memorialized in a memorial area at Arlington National Cemetery, the Executive Director will assign a gravesite or niche for interment or inurnment of a derivatively eligible person.

(h) Gravesites or niches shall not be reserved or assigned prior to the time of need.

(i) The selection of gravesites and niches is the responsibility of the Executive Director. The selection of specific gravesites or niches by the family or other representatives of the deceased at any time is prohibited.

§ 553.10 Proof of eligibility.

(a) The personal representative or primary next of kin is responsible for providing appropriate documentation to verify the decedent's eligibility for interment or inurnment.

(b) The personal representative or primary next of kin must certify in writing that the decedent is not prohibited from interment, inurnment, or memorialization under § 553.20 because

he or she has committed or been convicted of a Federal or State capital crime or is a convicted Tier III sex offender as defined in 38 U.S.C. 2411.

(c) For service members who die on active duty, a statement of honorable service from a general court martial convening authority is required. If the certificate of honorable service cannot be granted, the service member is ineligible for interment, inurnment, and memorialization pursuant to § 553.19(h).

(d) When applicable, the following documents are required:

(1) Death certificate;

(2) Proof of eligibility as required by paragraphs (e) through (g) of this section;

(3) Any additional documentation to establish the decedent's eligibility (e.g., marriage certificate, birth certificate, waivers, statements that the decedent had no children);

(4) Burial agreement;

(5) Notarized statement that the remains are unavailable for the reasons set forth in § 553.16; and

(6) A certificate of cremation or notarized statement attesting to the authenticity of the cremated human remains and that 100% of the cremated remains received from the crematorium are present. The Executive Director may, however, allow a portion of the cremated remains to be removed by the crematorium for the sole purpose of producing commemorative items.

(7) Any other document as required by the Executive Director.

(e) The following documents may be used to establish the eligibility of a primarily eligible person:

(1) DD Form 214, Certificate of Release or Discharge from Active Duty;

(2) WD AGO 53 or 53–55, Enlisted Record and Report of Separation Honorable Discharge;

(3) WD AGO 53–98, Military Record and Report of Separation Certificate of Service;

(4) NAVPERS–553, Notice of Separation from U.S. Naval Service;

(5) NAVMC 70–PD, Honorable Discharge, U.S. Marine Corps; or;

(6) DD Form 1300, Report of Casualty (required in the case of death of an active duty service member).

(f) In addition to the documents otherwise required by this section, a request for interment or inurnment of a subsequently remarried spouse must be accompanied by:

(1) A notarized statement from the new spouse of the subsequently remarried spouse agreeing to the interment or inurnment and relinquishing any claim for interment or inurnment in the same gravesite or niche.

(2) Notarized statement(s) from all of the children from the prior marriage agreeing to the interment or inurnment of their parents in the same gravesite or niche.

(g) In addition to the documents otherwise required by this section, a request for interment or inurnment of a permanently dependent child must be accompanied by:

(1) A notarized statement as to the marital status and degree of dependency of the decedent from an individual with direct knowledge; and

(2) A physician's statement regarding the nature and duration of the physical or mental disability; and

(3) A statement from someone with direct knowledge demonstrating the following factors:

(i) The deceased lived most of his or her adult life with one or both parents, one or both of whom are otherwise eligible for interment;

(ii) The decedent's children, siblings, or other family members, other than the eligible parent, waive any derivative claim to be interred at Arlington National Cemetery, in accordance with the Arlington National Cemetery Burial Agreement.

(h) Veterans or primary next of kin of deceased veterans may obtain copies of their military records by writing to the National Personnel Records Center, Attention: Military Personnel Records, 9700 Page Avenue St. Louis, Missouri 63132 or using their Web site. All others may request a record by completing and submitting Standard Form 180.

(i) The burden of proving eligibility lies with the party who requests the burial. The Executive Director will determine whether the submitted evidence is sufficient to support a finding of eligibility.

[81 FR 65877, Sept. 26, 2016, as amended at 84 FR 45408, Aug. 29, 2019]

§ 553.11 General rules governing eligibility for interment, inurnment, and memorialization at Arlington National Cemetery.

(a) Only those persons who meet the criteria of § 553.12 or are granted an exception to policy pursuant to § 553.22 may be interred in Arlington National Cemetery. Only those persons who meet the criteria of § 553.13 or are granted an exception to policy pursuant to § 553.22 may be inurned in Arlington National Cemetery. Only those persons who meet the criteria of § 553.14 may be interred in the Arlington National Cemetery Unmarked Area. Only those persons who meet the criteria of § 553.15 may be interred in an Arlington National Cemetery group burial. Only those persons who meet the criteria of § 553.16 may be memorialized in Arlington National Cemetery.

(b) Derivative eligibility for interment or inurnment may be established only through a decedent's connection to a primarily eligible person and not to another derivatively eligible person.

(c) No veteran is eligible for interment, inurnment, or memorialization in Arlington National Cemetery unless the veteran's last period of active duty ended with an honorable discharge. A general discharge under honorable conditions is not sufficient for interment, inurnment or memorialization in Arlington National Cemetery.

(d) For purposes of determining whether a service member has received an honorable discharge, final determinations regarding discharges made in accordance with procedures established by chapter 79 of title 10, United States Code, will be considered authoritative.

(e) The Secretary of the Army has the authority to act on requests for exceptions to the provisions of the interment, inurnment, and memorialization eligibility policies contained in this part. The Secretary of the Army may delegate this authority to the Executive Director on such terms deemed appropriate.

(f) Individuals who do not qualify as a primarily eligible person or a derivatively eligible person, but who are granted an exception to policy to be interred or inurned pursuant to § 553.22 in a new gravesite or niche, will be treated as a primarily eligible person for purposes of this part.

(g) Notwithstanding any other section in this part, memorialization with an individual memorial marker, interment, or inurnment in the Army National Military Cemeteries is prohibited if there is a gravesite, niche, or individual memorial marker for the decedent in any other Government-operated cemetery or the Government has provided an individual grave marker, individual memorial marker or niche cover for placement in a private cemetery.

§ 553.12 Eligibility for interment in Arlington National Cemetery.

Only those who qualify as a primarily eligible person or a derivatively eligible person are eligible for interment in Arlington National Cemetery, unless otherwise prohibited as provided for in §§ 553.19–553.20, provided that the last period of active duty of the service member or veteran ended with an honorable discharge.

(a) *Primarily eligible persons.* The following are primarily eligible persons for purposes of interment:

(1) Any service member who dies on active duty in the U.S. Armed Forces (except those service members serving on active duty for training only), if the General Courts Martial Convening Authority grants a certificate of honorable service.

(2) Any veteran retired from a Reserve component who served a period of active duty (other than for training), is carried on the official retired list, and is entitled to receive military retired pay.

(3) Any veteran retired from active military service and entitled to receive military retired pay.

(4) Any veteran who received an honorable discharge from the Armed Forces prior to October 1, 1949, who was discharged for a permanent physical disability, who 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 the statute been in effect on the date of separation.

(5) Any veteran awarded one of the following decorations:

(i) Medal of Honor;

(ii) Distinguished Service Cross, Air Force Cross, or Navy Cross;

(iii) Distinguished Service Medal;

(iv) Silver Star; or

(v) Purple Heart.

(6) Any veteran who served on active duty (other than active duty for training) and who held any of the following positions:

(i) President or Vice President of the United States;

(ii) Elected member of the U.S. Congress;

(iii) Chief Justice of the Supreme Court of the United States or Associate Justice of the Supreme Court of the United States;

(iv) A position listed, at the time the person held the position, in 5 U.S.C. 5312 or 5313 (Levels I and II of the Executive Schedule); or

(v) Chief of Mission of a Category 4, 5, or 5+ post if the Department of State classified that post as a Category 4, 5, or 5+ post during the person's tenure as Chief of Mission.

(7) Any former prisoner of war who, while a prisoner of war, served honorably in the active military service, and who died on or after November 30, 1993.

(b) *Derivatively eligible persons.* The following individuals are derivatively eligible persons for purposes of interment who may be interred if space is available in the gravesite of the primarily eligible person:

(1) The spouse of a primarily eligible person who is or will be interred in Arlington National Cemetery. A former spouse of a primarily eligible person is not eligible for interment in Arlington National Cemetery under this paragraph.

(2) The spouse of an active duty service member or an eligible veteran, who was:

(i) Lost or buried at sea, temporarily interred overseas due to action by the Government, or officially determined to be missing in action;

(ii) Buried in a U.S. military cemetery maintained by the American Battle Monuments Commission; or

(iii) Interred in Arlington National Cemetery as part of a group burial (the derivatively eligible spouse may not be buried in the group burial gravesite).

(3) The parents of a minor child or a permanently dependent adult child, whose remains were interred in Arlington National Cemetery based on the eligibility of a parent at the time of the child's death, unless eligibility of the non-service connected parent is lost through divorce from the primarily eligible parent.

(4) An honorably discharged veteran who does not qualify as a primarily eligible person, if the veteran will be buried in the same gravesite as an already interred primarily eligible person who is a close relative, where the interment meets the following conditions:

(i) The veteran is without minor or unmarried adult dependent children;

(ii) The veteran will not occupy space reserved for the spouse, a minor child, or a permanently dependent adult child;

(iii) All other close relatives of the primarily eligible person concur with the interment of the veteran with the primarily eligible person by signing a notarized statement;

(iv) The veteran's spouse waives any entitlement to interment in Arlington National Cemetery, where such entitlement might be based on the veteran's interment in Arlington National Cemetery. The Executive Director may set aside the spouse's waiver, provided space is available in the same gravesite, and all close relatives of the primarily eligible person concur; and

(v) Any cost of moving, recasketing, or revaulting the remains will be paid from private funds.

(5) A minor child or permanently dependent child of a primary eligible person who is or will be interred in Arlington National Cemetery.

[81 FR 65877, Sept. 26, 2016, as amended at 84 FR 45408, Aug. 29, 2019]

§ 553.13 Eligibility for inurnment in Arlington National Cemetery Columbarium.

The following persons are eligible for inurnment in the Arlington National Cemetery Columbarium, unless otherwise prohibited as provided for in §§ 553.19–553.20, provided that the last period of active duty of the service member or veteran ended with an honorable discharge.

(a) *Primarily eligible persons.* The following are primarily eligible persons for purposes of inurnment:

(1) Any person eligible for interment in Arlington National Cemetery, as provided for in § 553.12(a).

(2) Any veteran who served on active duty other than active duty for training.

(3) Any member of a Reserve component of the Armed Forces who dies while:

(i) On active duty for training or performing full-time duty under title 32, United States Code;

(ii) Performing authorized travel to or from such active duty for training or full-time duty;

(iii) On authorized inactive-duty training, including training performed as a member of the Army National Guard of the United States or the Air National Guard of the United States; or

(iv) Hospitalized or receiving treatment at the expense of the Government for an injury or disease incurred or contracted while on such active duty for training or full-time duty, traveling to or from such active duty for training or full-time duty, or on inactive-duty training.

(4) Any member of the Reserve Officers' Training Corps of the United States, Army, Navy, or Air Force, whose death occurs while:

(i) Attending an authorized training camp or cruise;

(ii) Performing authorized travel to or from that camp or cruise; or

(iii) Hospitalized or receiving treatment at the expense of the Government for injury or disease incurred or contracted while attending such camp or cruise or while traveling to or from such camp or cruise.

(5) 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 service ended honorably by death or otherwise, and who was a citizen of the United States at the time of entry into that service and at the time of death.

(6) 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:

(i) Assignment to areas of immediate military hazard.

(ii) Served in the Philippine Islands on December 7, 1941.

(iii) Transferred to the Department of the Army or the Department of the Navy under certain statutes.

(7) 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.

(8) Any Active Duty Designee as defined in this part.

(b) *Derivatively eligible persons.* Those connected to an individual described in paragraph (a) of this section through a relationship described in § 553.12(b). Such individuals may be inurned if space is available in the primarily eligible person's niche.

§ 553.14 Eligibility for interment of cremated remains in the Arlington National Cemetery Unmarked Area.

(a) The cremated remains of any person eligible for interment in Arlington National Cemetery as described in § 553.12 may be interred in the designated Arlington National Cemetery Unmarked Area.

(b) Cremated remains must be interred in a biodegradable container or placed directly into the ground without a container. Cremated remains are not authorized to be scattered at this site or at any location within Arlington National Cemetery.

(c) There will be no headstone or marker for any person choosing this method of interment. A permanent register will be maintained by the Executive Director.

(d) Consistent with the one-gravesite-per-family policy, once a person is interred in the Unmarked Area, any derivatively eligible persons and spouses must be interred in this manner. This includes spouses who are also primarily eligible persons. No additional gravesite, niche, or memorial marker in a memorial area will be authorized.

§ 553.15 Eligibility for group burial in Arlington National Cemetery.

(a) The Executive Director may authorize a group burial in Arlington National Cemetery whenever several people, at least one of whom is an active duty service member, die during a military-related activity and not all remains can be individually identified.

(b) Before authorizing a group burial that includes both United States and foreign decedents, the Executive Director will notify the Department of State and request that the Department of State notify the appropriate foreign embassy.

§ 553.16 Eligibility for memorialization in an Arlington National Cemetery memorial area.

(a) With the authority granted by 38 U.S.C. 2409, a memorial marker may be placed in an Arlington National Cemetery memorial area to honor the memory of service members or veterans, who are eligible for interment under § 553.12(a) and:

(1) Who are missing in action;

(2) Whose remains have not been recovered or identified;

(3) Whose remains were buried at sea, whether by the member's or veteran's own choice or otherwise;

(4) Whose remains were donated to science; or

(5) Whose remains were cremated and the cremated remains were scattered without interment or inurnment of any portion of those remains.

(b) When the remains of a primarily eligible person are unavailable for one of the reasons listed in paragraph (a) of this section, and a derivatively eligible person who predeceased the primarily eligible person is already interred or inurned in Arlington National Cemetery, the primarily eligible person may be memorialized only on the existing headstone or on a replacement headstone, ordered with a new inscription. Consistent with the one-gravesite-per-family policy, a separate marker in a memorial area is not authorized.

(c) When a memorial marker for a primarily eligible person is already in place in a memorial area, and a derivatively eligible person is subsequently interred or inurned in Arlington National Cemetery, an inscription memorializing the primarily eligible person will be placed on the new headstone or niche cover. Consistent with the one-gravesite-per-family policy, the memorial marker will then be removed from the memorial area.

§ 553.17 Arlington National Cemetery interment/inurnment agreement.

(a) A derivatively eligible person who predeceases the primarily eligible person may be interred or inurned in Arlington National Cemetery only if the primarily eligible person agrees in writing to be interred in the same gravesite or inurned in the same niche at his or her time of need and that his or her estate shall pay for all expenses related to disinterment or disinurnment of the predeceased person from Arlington National Cemetery if the primarily eligible person is not interred or inurned as agreed.

(b) If the primarily eligible person becomes ineligible for interment or inurnment in Arlington National Cemetery or the personal representative or primary next of kin decides that the primarily eligible person will be interred or inurned elsewhere, the remains of any predeceased person may be removed from Arlington National Cemetery at no cost to the Government.

§ 553.18 Eligibility for burial in U.S. Soldiers' and Airmen's Home National Cemetery.

Only the residents of the Armed Forces Retirement Home are eligible for interment in the U.S. Soldiers' and Airmen's Home National Cemetery. Resident eligibility criteria for the Armed Forces Retirement Home is provided for at 24 U.S.C. 412.

§ 553.19 Ineligibility for interment, inurnment, or memorialization in an Army National Military Cemetery.

The following persons are not eligible for interment, inurnment, or memorialization in an Army National Military Cemetery:

(a) A father, mother, brother, sister, or in-law solely on the basis of his or her relationship to a primarily eligible person, even though the individual is:

(1) Dependent on the primarily eligible person for support; or

(2) A member of the primarily eligible person's household.

(b) A person whose last period of service was not characterized as an honorable discharge (e.g., a separation or discharge under general but honorable conditions, other than honorable conditions, a bad conduct discharge, a dishonorable discharge, or a dismissal), regardless of whether the person:

(1) Received any other veterans' benefits; or

(2) Was treated at a Department of Veterans Affairs hospital or died in such a hospital.

(c) A person who has volunteered for service with the U.S. Armed Forces, but has not yet entered on active duty.

(d) A former spouse whose marriage to the primarily eligible person ended in divorce.

(e) A spouse who predeceases the primarily eligible person and is interred or inurned in a location other than Arlington National Cemetery, and the primarily eligible person remarries.

(f) A divorced spouse of a primarily eligible person.

(g) Otherwise derivatively eligible persons, such as a spouse or minor child, if the primarily eligible person was not or will not be interred or inurned at Arlington National Cemetery.

(h) A service member who dies while on active duty, if the first General Courts Martial Convening Authority in the service member's chain of command determines that there is clear and convincing evidence that the service member engaged in conduct that would have resulted in a separation or discharge not characterized as an honorable discharge (e.g., a separation or discharge under general but honorable conditions, other than honorable conditions, a bad conduct discharge, a dishonorable discharge, or a dismissal) being imposed, but for the death of the service member.

(i) Animal remains. If animal remains are unintentionally commingled with human remains due to a natural disaster, unforeseen accident, act of war or terrorism, violent explosion, or similar incident, and such remains cannot be separated from the remains of an eligible person, then the remains may be interred or inurned with the eligible person, but the identity of the animal remains shall not be inscribed or identified on a niche, marker, headstone, or otherwise.

§ 553.20 Prohibition of interment, inurnment, or memorialization in an Army National Military Cemetery of persons who have committed certain crimes.

(a) *Prohibition.* Notwithstanding §§ 553.12–553.16, 553.18, and 553.22, pursuant to 10 U.S.C. 985 and 38 U.S.C. 2411, the interment, inurnment, or memorialization in an Army National Military Cemetery of any of the following persons is prohibited:

(1) Any person identified in writing to the Executive Director by the Attorney General of the United States, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of a Federal capital crime and whose conviction is final (other than a person whose sentence was commuted by the President).

(2) Any person identified in writing to the Executive Director by an appropriate State official, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of a State capital crime and whose conviction is final (other than a person whose sentence was commuted by the Governor of the State).

(3) Any person found under procedures specified in § 553.21 to have committed a Federal or State capital crime but who has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution. Notice from officials is not required for this prohibition to apply.

(4) Any person identified in writing to the Executive Director by the Attorney General of the United States or by an appropriate State official, prior to his or her interment, inurnment, or memorialization, as a person who has been convicted of a Federal or State crime causing the person to be a Tier III sex offender for purposes of the Sex Offender Registration and Notification Act, who for such crime is sentenced to a minimum of life imprisonment and whose conviction is final (other than a person whose sentence was commuted by the President or the Governor of a State, as the case may be).

(b) *Notice.* The Executive Director is designated as the Secretary of the Army's representative authorized to receive from the appropriate Federal or State officials notification of conviction of capital crimes referred to in this section.

(c) *Confirmation of person's eligibility.* (1) If notice has not been received, but the Executive Director has reason to believe that the person may have been convicted of a Federal capital crime or a State capital crime, the Executive Director shall seek written confirmation from:

(i) The Attorney General of the United States, with respect to a suspected Federal capital crime; or

(ii) An appropriate State official, with respect to a suspected State capital crime.

(2) The Executive Director will defer the decision on whether to inter, inurn, or memorialize a decedent until a written response is received.

§ 553.21 Findings concerning the commission of certain crimes where a person has not been convicted due to death or flight to avoid prosecution.

(a) *Preliminary inquiry.* If the Executive Director has reason to believe that a decedent may have committed a Federal capital crime or a State capital crime but has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution, the Executive Director shall submit the issue to the Army General Counsel. The Army General Counsel or his or her designee shall initiate a preliminary inquiry seeking information from Federal, State, or local law enforcement officials, or other sources of potentially relevant information.

(b) *Decision after preliminary inquiry.* If, after conducting the preliminary inquiry described in paragraph (a) of this section, the Army General Counsel or designee determines that credible evidence exists suggesting the decedent may have committed a Federal capital crime or State capital crime, then further proceedings under this section are warranted to determine whether the decedent committed such crime. Consequently the Army General Counsel or his or her designee shall present the personal representative with a written notification of such preliminary determination and a dated, written notice of the personal representative's procedural options.

(c) *Notice and procedural options.* The notice of procedural options shall indicate that, within fifteen days, the personal representative may:

(1) Request a hearing;

(2) Withdraw the request for interment, inurnment, or memorialization; or

(3) Do nothing, in which case the request for interment, inurnment, or memorialization will be considered to have been withdrawn.

(d) *Time computation.* The fifteen-day time period begins on the calendar day immediately following the earlier of the day the notice of procedural options is delivered in person to the personal representative or is sent by U.S. registered mail or, if available, by electronic means to the personal representative. It ends at midnight on the fifteenth day. The period includes weekends and holidays.

(e) *Hearing.* The purpose of the hearing is to allow the personal representative to present additional information regarding whether the decedent committed a Federal capital crime or a State capital crime. In lieu of making a personal appearance at the hearing, the personal representative may submit relevant documents for consideration.

(1) If a hearing is requested, the Army General Counsel or his or her designee shall conduct the hearing.

(2) The hearing shall be conducted in an informal manner.

(3) The rules of evidence shall not apply.

(4) The personal representative and witnesses may appear, at no expense to the Government, and shall, in the discretion of the Army General Counsel or his or her designee, testify under oath. Oaths must be administered by a person who possesses the legal authority to administer oaths.

(5) The Army General Counsel or designee shall consider any and all relevant information obtained.

(6) The hearing shall be appropriately recorded. Upon request, a copy of the record shall be provided to the personal representative.

(f) *Final determination*. After considering the opinion of the Army General Counsel or his or her designee, and any additional information submitted by the personal representative, the Secretary of the Army or his or her designee shall determine the decedent's eligibility for interment, inurnment, or memorialization. This determination is final and not appealable.

(1) The determination shall be based on evidence that supports or undermines a conclusion that the decedent's actions satisfied the elements of the crime as established by the law of the jurisdiction in which the decedent would have been prosecuted.

(2) If an affirmative defense is offered by the decedent's personal representative, a determination as to whether the defense was met shall be made according to the law of the jurisdiction in which the decedent would have been prosecuted.

(3) Mitigating evidence shall not be considered.

(4) The opinion of the local, State, or Federal prosecutor as to whether he or she would have brought charges against the decedent had the decedent been available is relevant but not binding and shall be given no more weight than other facts presented.

(g) *Notice of decision*. The Executive Director shall provide written notification of the Secretary's decision to the personal representative.

§ 553.22 Exceptions to policies for interment, inurnment, or memorialization at Arlington National Cemetery.

(a) As a national military cemetery, eligibility standards for interment, inurnment, or memorialization are based on honorable military service. Exceptions to the eligibility standards for new graves are rarely granted. When granted, exceptions are for those persons who have made significant contributions that directly and substantially benefited the U.S. military.

(b) Requests for an exception to the interment or inurnment eligibility policies shall be considered only after the individual's death.

(c) Requests for an exception to the interment or inurnment eligibility policies shall be submitted to the Executive Director and shall include any documents required by the Executive Director.

(d) The primary next of kin is responsible for providing and certifying the authenticity of all documents and swearing to the accuracy of the accounting provided to support the request for exception to the interment or inurnment eligibility policies.

(e) Disapproved requests will be reconsidered only when the personal representative or next of kin submits new and substantive information not previously considered by the Secretary of the Army. Requests for reconsideration shall be submitted directly to the Executive Director. Requests for reconsideration not supported by new and substantive information will be denied by the Executive Director after review and advice from the Army General Counsel or his or her designee. The Executive Director shall notify the personal representative or next of kin of the decision of the reconsideration. The decision by the Secretary of the Army or the Executive Director, as the case may be, is final and not appealable.

(f) Under no circumstances, will exceptions to policies be considered or granted for those individuals prohibited from interment by virtue of § 553.20 or § 553.21.

§ 553.23 Placement of cremated remains at Army National Military Cemeteries.

All cremated remains shall be interred or inurned. The scattering of cremated remains and the burial of symbolic containers are prohibited in Army National Military Cemeteries.

§ 553.24 Subsequently recovered remains.

Subsequently recovered identified remains of a decedent shall be reunited in one gravesite or urn, or as part of a group burial either in an Army National Military Cemetery or other cemetery. Subsequently recovered identified remains may also be interred in the Arlington National Cemetery Tomb of Remembrance. Unidentified remains (which may or may not be comingled) may also be interred in the Arlington National Cemetery Tomb of Remembrance.

§ 553.25 Disinterments and disinurnments of remains.

(a) Interments and inurnments in Army National Military Cemeteries are considered permanent.

(b) Requests for disinterment or disinurnment of individually buried or inurned remains are considered requests for exceptions to this policy, and must be addressed to the Executive Director for decision. The request must include:

(1) A full statement of the reasons for the disinterment or disinurnment of the remains from the personal representative or primary next of kin who directed the original interment or inurnment if still living, or if not, the current personal representative or primary next of kin;

(2) A notarized statement from each living close relative of the decedent that he or she does not object to the proposed disinterment or disinurnment; and

(3) A notarized statement by a person who has personal knowledge of the decedent's relatives stating that the persons giving statements comprise all of the decedent's living close relatives.

(4) An appropriate funding source for the disinterment or disinurnment, as disinterments and disinurnments of individually buried or inurned remains must be accomplished without expense to the Government.

(c) The Executive Director shall carry out disinterments and disinurnments directed by a court of competent jurisdiction upon presentation of a lawful, original court order and after consulting with the Army General Counsel or his or her designee.

(d) Remains interred in a group burial may be disinterred only if, after the completion of identification processing of any subsequently recovered remains, each decedent's remains have not been individually identified and it is determined that available technology is likely to assist in the identification process of the previously interred group remains. Requests for disinterment of group remains must be addressed to the Executive Director by the appropriate Military Department's Secretary or his or her designee for decision. The request must include:

(1) A statement from the Joint Prisoner of War/Missing in Action Accounting Command certifying that subsequent to the interment or inurnment of the decedents, remains have been recovered from the site of the casualty incident, and that the remains of each individual U.S. citizen, legal resident, or former service member have not been previously identified from either the remains originally recovered or from the subsequently recovered portions.

(2) Sufficient circumstantial and anatomical evidence from the Joint Prisoner of War/Missing in Action Accounting Command, which when combined with contemporary forensic or other scientific techniques, would lead to a high probability of individual identification of the interred group remains.

(3) Copies of the Military Department's notification to all the living close relatives of the decedents advising them of the proposed disinterment.

(4) A time period identified by the Joint Prisoner of War/Missing in Action Accounting Command during which it proposes to perform forensic or scientific techniques for individual identification processing.

(5) An anticipated time period as to when the Joint Prisoner of War/Missing in Action Accounting Command will

return any unidentified remains to Arlington National Cemetery or will notify the cemetery that individual identifications of the group remains are complete and no remains will be returned.

(e) Disinterment or disinurnment is not permitted for the sole purpose of splitting remains or permanently keeping any portion of the remains in a location other than Arlington National Cemetery.

(f) Disinterment of previously designated group remains for the sole purpose of individually segregating the group remains is not permitted unless the requirements of paragraph (d) of this section are met.

§ 553.26 Design of Government-furnished headstones, niche covers, and memorial markers.

(a) Headstones and memorial markers shall be white marble in an upright slab design. Flat-type granite markers may be used, at the Executive Director's discretion, when the terrain or other obstruction precludes use of an upright marble headstone or memorial marker.

(b) Niche covers shall be white marble.

(c) The Executive Director shall approve the design of headstones and memorial markers erected for group burials, consistent with the policies of the Secretary of Veterans Affairs.

§ 553.27 Inscriptions on Government-furnished headstones, niche covers, and memorial markers.

(a) Inscriptions on Government-furnished headstones, niche covers, and memorial markers will be made according to the policies and specifications of the Secretary of the Army, consistent with the policies of the Secretary of Veterans Affairs.

(b) No grades, titles, or ranks other than military grades granted pursuant to title 10, United States Code, will be engraved on Government-furnished headstones, niche covers, and memorial markers. Honorary grades, titles, or ranks granted by States, governors, and others shall not be inscribed on headstones, niche covers, or memorial markers.

(c) Memorial markers must include the words ''In Memory of'' preceding the inscription.

(d) The words ''In Memory of'' shall not precede the inscription of a decedent whose remains are interred or inurned.

§ 553.28 Private headstones and markers.

(a) Construction and installation of private headstones and markers in lieu of Government-furnished headstones and markers may be approved at the discretion of the Executive Director, and are permitted only in sections of Army National Military Cemeteries in which private memorials and markers were authorized as of January 1, 1947. These headstones or markers must be of simple design, dignified, and appropriate for a military cemetery as determined by the Executive Director.

(b) The design and inscription of a private headstone or marker must be approved by the Executive Director prior to its construction and placement. All private headstones and markers will be designed to conform to the dimensions and profiles specified by the Executive Director and will be inscribed with the location of the gravesite.

(c) Placement of a private headstone or marker is conditional upon the primary next of kin agreeing in writing to maintain it in a manner acceptable to the Government. Should the headstone or marker become unserviceable at any time and the primary next of kin fail to repair or replace it, or if the marker is not updated to reflect all persons buried in that gravesite within 6 months of the most recent burial, the Executive Director reserves the right to remove and dispose of the headstone or marker and replace it with a standard, Government-furnished headstone or marker.

(d) The construction of a headstone or marker to span two gravesites will be permitted only in those sections in which headstones and markers are presently spanning two gravesites and only with the express understanding that in the event both gravesites are not utilized for burials, the headstone

or marker will be relocated to the center of the occupied gravesite, if possible. Such relocation must be accomplished at no expense to the Government. The Executive Director reserves the right to remove and dispose of the headstone or marker and to mark the gravesite with a Government-furnished headstone or marker if the personal representative or primary next of kin fails to relocate the headstone or marker as requested by the Executive Director.

(e) Separate headstones or markers may be constructed on a lot (two gravesites) for a service member and spouse, provided that each headstone or marker is set at the head of the gravesite after interment has been made.

(f) At the time a headstone or marker is purchased, arrangements must be made with an appropriate commercial firm to ensure that additional inscriptions will be promptly inscribed following each succeeding interment in the gravesite. Foot markers must be authorized by the Executive Director and may only be authorized when there is no available space for an inscription on the front or rear of a private headstone.

(g) Except as may be authorized for marking group burials, ledger monuments of freestanding cross design, narrow shafts, and mausoleums are prohibited.

[81 FR 65877, Sept. 26, 2016, as amended at 84 FR 45408, Aug. 29, 2019]

§ 553.29 Permission to construct private headstones and markers.

(a) Headstone firms must receive permission from the Executive Director to construct a private headstone or marker for use in Army National Military Cemeteries or to add an inscription to an existing headstone or marker in an Army National Military Cemetery.

(b) Requests for permission must be submitted to the Executive Director and must include:

(1) Written consent from the personal representative or primary next of kin;

(2) Contact information for both the personal representative or primary next of kin and the headstone firm; and

(3) A scale drawing (no less than 1:12) showing all dimensions, or a reproduction showing detailed specifications of design and proposed construction material, finishing, carving, lettering, exact inscription to appear on the headstone or marker, and a trademark or copyright designation.

(c) The Army does not endorse headstone firms but grants permission for the construction of headstones or markers in individual cases.

(d) When using sandblast equipment to add an inscription to an existing headstone or marker, headstone firms shall restore the surrounding grounds in a timely manner as determined by the Executive Director to the condition of the grounds before work began and at no expense to the Government.

§ 553.30 Inscriptions on private headstones and markers.

An appropriate inscription for the decedent will be placed on the headstone or marker in accordance with the dimensions of the stone and arranged in such a manner as to enhance the appearance of the stone. Additional inscriptions may be inscribed following each succeeding interment in the gravesite. All inscriptions will be in accordance with policies established by the Executive Director.

§ 553.31 Memorial and commemorative monuments (other than private headstones or markers).

The placement of memorials or commemorative monuments in Arlington National Cemetery will be carried out in accordance with 38 U.S.C. 2409(b).

§ 553.32 Conduct of memorial services and ceremonies.

(a) The Executive Director shall ensure the sanctity of public and private memorial and ceremonial events.

(b) All memorial services and ceremonies within Army National Military Cemeteries, other than official ceremonies, shall be purely memorial in purpose and may be dedicated only to:

(1) The memory of all those interred, inurned, or memorialized in Army National Military Cemeteries;

(2) The memory of all those who died 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

(3) The memory of the individual or individuals to be interred, inurned, or memorialized at the particular site at which the service or ceremony is held.

(c) Memorial services and ceremonies at Army National Military Cemeteries will not include partisan political activities.

(d) Private memorial services may be closed to the media and public as determined by the decedent's primary next of kin.

(e) Public memorial services and public wreath-laying ceremonies shall be open to all members of the public to observe.

§ 553.33 Visitors rules for Army National Military Cemeteries.

(a) *Visiting hours.* Visiting hours shall be established by the Executive Director and posted in conspicuous places. No visitor is permitted to enter or remain in an Army National Military Cemetery outside the established visiting hours.

(b) *Destruction or removal of property.* No person shall destroy, damage, mutilate, alter, or remove any monument, gravestone, niche cover, structure, tree, shrub, plant, or other property located within an Army National Military Cemetery.

(c) *Conduct within Army National Military Cemeteries.* Army National Military Cemeteries are a national shrine to the honored dead of the Armed Forces, and certain acts and activities, which may be appropriate elsewhere, are not appropriate in Army National Military Cemeteries. All visitors, including persons attending or taking part in memorial services and ceremonies, shall observe proper standards of decorum and decency while in an Army National Military Cemetery. Specifically, no person shall:

(1) Conduct any memorial service or ceremony within an Army National Military Cemetery without the prior approval of the Executive Director.

(2) Engage in demonstrations prohibited by 38 U.S.C. 2413.

(3) Engage in any orations, speeches, or similar conduct to assembled groups of people, unless such actions are part of a memorial service or ceremony authorized by the Executive Director.

(4) Display any placards, banners, flags, or similar devices within an Army National Military Cemetery, unless first approved by the Executive Director for use in an authorized memorial service or ceremony. This rule does not apply to clothing worn by visitors.

(5) Distribute any handbill, pamphlet, leaflet, or other written or printed matter within an Army National Military Cemetery, except a program approved by the Executive Director to be provided to attendees of an authorized memorial service or ceremony.

(6) Bring a dog, cat, or other animal (other than a service animal or military working dog) within an Army National Military Cemetery. This prohibition does not apply to persons living in quarters located on the grounds of the Army National Military Cemeteries.

(7) Use the cemetery grounds for recreational activities (e.g., physical exercise, running, jogging, sports, or picnics).

(8) Ride a bicycle or similar conveyance in an Army National Military Cemetery, except with a proper pass issued by the Executive Director to visit a gravesite or niche. An individual visiting a relative's gravesite or niche may be issued a temporary pass by the Executive Director to proceed directly to and from the gravesite or niche on a bicycle or similar vehicle or conveyance.

(9) Operate a musical instrument, a loudspeaker, or an audio device without a headset within an Army National Military Cemetery.

(10) Drive any motor vehicle within an Army National Military Cemetery in excess of the posted speed limit.

(11) Park any motor vehicle in any area of an Army National Military Cemetery designated as a no-parking area.

(12) Leave any vehicle in the Arlington National Cemetery Visitors' Center parking area or Soldiers' and Airmen's Home National Cemetery visitors' parking area more than thirty minutes outside of established visiting hours or anywhere else in an Army National Military Cemetery outside of established visiting hours.

(13) Consume or serve alcoholic beverages without prior written permission from the Executive Director.

(14) Possess firearms without prior written permission from the Executive Director. This prohibition does not apply to law enforcement and military personnel in the performance of their official duties. In accordance with locally established policy, military and law enforcement personnel may be required to obtain advance permission from the Executive Director of the Army National Military Cemeteries prior to possessing firearms on the property of an Army National Military Cemetery.

(15) Deposit or throw litter or trash on the grounds of the Army National Military Cemeteries.

(16) Engage in any disrespectful or disorderly conduct within an Army National Military Cemetery.

(d) *Vehicular traffic.* All visitors, including persons attending or taking part in memorial services and ceremonies, will observe the following rules concerning motor vehicle traffic within Arlington National Cemetery:

(1) Visitors arriving by car and not entitled to a vehicle pass pursuant to paragraph (d)(2) of this section are required to park their vehicles in the Visitors' Center parking area or at a location outside of the cemetery.

(2) Only the following categories of vehicles may be permitted access to Arlington National Cemetery roadways and issued a permanent or temporary pass from the Executive Director:

(i) Official Government vehicles being used on official Government business.

(ii) Vehicles carrying persons on official Cemetery business.

(iii) Vehicles forming part of an authorized funeral procession and authorized to be part of that procession.

(iv) Vehicles carrying persons visiting the Arlington National Cemetery gravesites, niches, or memorial areas of relatives or loved ones interred, inurned, or memorialized within Arlington National Cemetery.

(v) Arlington National Cemetery and National Park Service maintenance vehicles.

(vi) Vehicles of contractors who are authorized to perform work within Arlington National Cemetery.

(vii) Concessionaire tour buses authorized by the Executive Director to operate in Arlington National Cemetery.

(viii) Vehicles of employees of ANMC as authorized by the Executive Director.

§ 553.34 Soliciting and vending.

The display or distribution of commercial advertising to or solicitation of business from the public is strictly prohibited within an Army National Military Cemetery, except as authorized by the Executive Director.

§ 553.35 Media.

All officials and staff of the media are subject to the Visitors Rules enumerated in § 553.33 and shall comply with the Department of the Army's media policy.

Subpart B—Army Post Cemeteries

SOURCE: 84 FR 45408, Aug. 29, 2019, unless otherwise noted.

§ 553.36 Definitions.

As used in this subpart, the following terms have these meanings:

Active duty. Full-time duty in the active military service of the United States.

(1) This includes:

(i) Active Reserve component duty performed pursuant to title 10, United States Code.

(ii) Service as a cadet or midshipman currently on the rolls at the U.S. Military, U.S. Naval, U.S. Air Force, or U.S. Coast Guard Academies.

(iii) Active duty for operational support.

(2) This does not include:

(i) Full-time duty performed under title 32, United States Code.

(ii) Active duty for training, initial entry training, annual training duty, or inactive-duty training for members of the Reserve components.

Active duty for operational support (formerly active duty for special work). A tour of active duty for Reserve personnel authorized from military or Reserve personnel appropriations for work on Active component or Reserve component programs. The purpose of active duty for operational support is to provide the necessary skilled manpower assets to support existing or

emerging requirements and may include training.

Active duty for training. A category of active duty used to provide structured individual and/or unit training, including on-the-job training, or educational courses to Reserve component members. The active duty for training category includes annual training, initial active duty for training, or any other training duty.

Annual training. The minimum period of active duty for training that Reserve members must perform each year to satisfy the training requirements associated with their Reserve component assignment.

Armed Forces. The U.S. Army, Navy, Marine Corps, Coast Guard, Air Force and their Reserve components.

Army Post Cemeteries. Army Post Cemeteries consist of the 26 cemeteries on active Army installations, on Army reserve complexes, and on former Army installations or inactive posts. Army National Military Cemeteries are not included in Post Cemeteries. The West Point Cemetery is considered an Army Post Cemetery but has separate eligibility standards due to its unique stature. In addition to the 26 Post Cemeteries, there are 3 Apache Native American Prisoner of War Cemeteries on Fort Sill, Oklahoma and 5 World War II German and Italian Prisoner of War Cemeteries on four Army installations which are closed for interments but for which the Army bears responsibilities. Finally, there is the U.S. Army Disciplinary Barracks Cemetery at Fort Leavenworth used for interring the unclaimed remains of those who die while incarcerated by the United States Military. Unlike the other Army cemeteries which honor the Nation's veterans, this cemetery has unique eligibility standards due to the characterization of service of those criminally incarcerated.

Cemetery Responsible Official. An appointed official who serves as the primary point of contact and responsible official for all matters relating to the operation maintenance and administration of an Army cemetery. The appointee must be a U.S. Federal Government employee, DA civilian or military member and appointed on orders by the appropriate garrison commander or comparable official.

Child, minor child, permanently dependent child, unmarried adult child—(1) *Child*. (i) Natural child of a primarily eligible person, born in wedlock;

(ii) Natural child of a female primarily eligible person, born out of wedlock;

(iii) Natural child of a male primarily eligible person, who was born out of wedlock and:

(A) Has been acknowledged in a writing signed by the male primarily eligible person;

(B) Has been judicially determined to be the male primarily eligible person's child;

(C) Whom the male primarily eligible person has been judicially ordered to support; or

(D) Has been otherwise proven, by evidence satisfactory to the Executive Director, to be the child of the male primarily eligible person;

(iv) Adopted child of a primarily eligible person; or

(v) Stepchild who was part of the primarily eligible person's household at the time of death of the individual who is to be interred or inurned.

(2) *Minor child*. A child of the primarily eligible person who:

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Is under the age of twenty-one years, or is under the age of twenty-three years and is taking a full-time course of instruction at an educational institution which the U.S. Department of Education acknowledges as an accredited educational institution.

(3) *Permanently dependent child*. A child of the primarily eligible person who:

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Is permanently and fully dependent on one or both of the child's parents because of a physical or mental disability incurred before attaining the age of twenty-one years or before the age of twenty-three years while taking a full-time course of instruction at an educational institution which the U.S. Department of Education acknowledges as an accredited educational institution.

(4) *Unmarried adult child*. A child of the primarily eligible person who:

(i) Is unmarried;

(ii) Has no dependents; and

(iii) Has attained the age of twenty-one years.

Close relative. The spouse, parents, adult brothers and sisters, adult natural children, adult stepchildren, and adult adopted children of a decedent.

Derivatively eligible person. Any person who is entitled to interment or inurnment solely based on his or her relationship to a primarily eligible person, as set forth in §§ 553.43 through 553.45.

Executive Director. The person charged by the Secretary of the Army to serve as the functional proponent for policies and procedures pertaining to the administration, operation, and maintenance of all military cemeteries under the jurisdiction of the Army.

Federal capital crime. An offense under Federal law for which a sentence of imprisonment for life or the death penalty may be imposed.

Former spouse. See *spouse*.

Government. The U.S. Government and its agencies and instrumentalities.

Inactive-duty training. (1) Duty prescribed for members of the Reserve components by the Secretary concerned under 37 U.S.C. 206 or any other provision of law.

(2) Special additional duties authorized for members of the Reserve components by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned.

(3) In the case of a member of the Army National Guard or Air National Guard of any State, duty (other than full-time duty) under 32 U.S.C. 316, 502, 503, 504 or 505 or the prior corresponding provisions of law.

(4) This term does not include:

(i) Work or study performed in connection with correspondence courses;

(ii) Attendance at an educational institution in an inactive status; or

(iii) Duty performed as a temporary member of the Coast Guard Reserve.

Interment. The ground burial of casketed or cremated human remains.

Inurnment. The placement of cremated human remains in a niche.

Media. Individuals and agencies that print, broadcast, or gather and transmit news, and their reporters, photographers, and employees.

Minor child. See *child*.

Niche. An above ground space constructed specifically for the placement of cremated human remains.

Parent. A natural parent, a stepparent, a parent by adoption, or a person who for a period of not less than one year stood *in loco parentis*, or was granted legal custody by a court decree or statutory provision.

Permanently dependent child. See *child*.

Person authorized to direct disposition. The person primarily entitled to direct disposition of human remains and who elects to exercise that entitlement. Determination of such entitlement shall be made in accordance with applicable law and regulations.

Personal representative. A person who has legal authority to act on behalf of another through applicable law, order, and regulation.

Primarily eligible person. Any person who is entitled to interment or inurnment based on his or her service as specified in §§ 553.39 through 553.41.

Primary next of kin. (1) In the absence of a valid written document from the decedent identifying the primary next of kin, the order of precedence for designating a decedent's primary next of kin is as follows:

(i) Spouse, even if a minor;

(ii) Children;

(iii) Parents;

(iv) Siblings, to include half-blood and those acquired through adoption;

(v) Grandparents; and

(vi) Other next of kin, in order of relationship to the decedent as determined by the laws of the decedent's state of domicile.

(2) Absent a court order or written document from the deceased, the precedence of next of kin with equal relationships to the decedent is governed by seniority (age), older having higher priority than younger. Equal relationship situations include those involving divorced parents of the decedent, children of the decedent, and siblings of the decedent.

Reserve component. The Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air Force Reserve, the Coast Guard Reserve, the Army National Guard of the United States, and the Air National Guard of the United States.

Spouse, former spouse, subsequently remarried spouse—(1) *Spouse*. A person who is legally married to another person.

(2) *Former spouse*. A person who was legally married to another person at one time but was not legally married to that person at the time of one of their deaths.

(3) *Subsequently remarried spouse*. A derivatively eligible spouse who was married to the primarily eligible person at the time of the primarily eligible person's death and who subsequently remarried another person.

State capital crime. Under State law, the willful, deliberate, or premeditated unlawful killing of another human being for which a sentence of imprisonment for life or the death penalty may be imposed.

Subsequently recovered remains. Additional remains belonging to the decedent that are recovered or identified after the decedent's interment or inurnment.

Subsequently remarried spouse. See *spouse*.

Subversive activity. Actions constituting subversive activity are those defined in applicable provisions of Federal law.

Unmarried adult child. See *child*.

Veteran. A person who served in the U.S. Armed Forces and who was discharged or released under honorable conditions.

§ 553.37 Purpose.

This subpart specifies the eligibility for interment and inurnment in the twenty-five Army Post Cemeteries, the West Point Post Cemetery, NY and the U.S. Disciplinary Barracks Cemetery at Fort Leavenworth, KS.

§ 553.38 Statutory authorities.

The statutory authorities for this subpart are Public Law 93–43 Stat 87, 10 U.S.C. 985, 1481, 1482, 3013, and 38 U.S.C. 2411.

§ 553.39 Scope and applicability.

(a) *Scope*. The development, maintenance, administration, and operation of the Army Post Cemeteries are governed by this subpart, Army Regulation 290–5, and Department of the Army Pamphlet 290–5. The development, maintenance, administration, and operation of Army National Military Cemeteries are not covered by this subpart.

(b) *Applicability*. This subpart is applicable to all persons seeking interment or inurnment in Army Post Cemeteries.

§ 553.40 Assignment of gravesites or niches.

(a) All eligible persons will be assigned gravesites or niches without discrimination as to race, color, sex, religion, age, or national origin and without preference to military grade or rank.

(b) Army Cemeteries will enforce a one-gravesite-per-family policy. Once the initial interment or inurnment is made in a gravesite or niche, each additional interment or inurnment of eligible persons must be made in the same gravesite or niche, except as noted in paragraph (f) of this section. This includes multiple primarily eligible persons if they are married to each other.

(c) A gravesite reservation will be honored if the gravesite was properly reserved before May 1, 1975.

(d) The commander responsible for an Army Cemetery may cancel a gravesite reservation:

(1) Upon determination that a derivatively eligible spouse has remarried;

(2) Upon determination that the remains of the person having the gravesite reservation have been buried elsewhere or otherwise disposed of;

(3) Upon determination that the person having the gravesite reservation desires to or will be interred in the same gravesite with the predeceased, and doing so is feasible; or

(4) Upon determination that the person having the gravesite reservation would be 120 years of age and there is no record of correspondence with the person having the gravesite reservation within the last two decades.

(e) In cases of reservations where more than one gravesite was reserved

(on the basis of the veteran's eligibility at the time the reservation was made), the gravesite reservations will be honored only if the decedents continue to meet the eligibility criteria for interment in Army Post Cemeteries that is in effect at the time of need, and the reserved gravesite is available.

(f) Gravesites or niches shall not be reserved or assigned prior to the time of need.

(g) The selection of gravesites and niches is the responsibility of the Cemetery Responsible Official. The selection of specific gravesites or niches by the family or other representatives of the deceased at any time is prohibited.

§ 553.41 Proof of eligibility.

(a) The personal representative or primary next of kin is responsible for providing appropriate documentation to verify the decedent's eligibility for interment or inurnment.

(b) The personal representative or primary next of kin must certify in writing that the decedent is not prohibited from interment or inurnment under § 553.46 because he or she has not committed or has not been convicted of a Federal or State capital crime or is not a convicted Tier III sex offender.

(c) For service members who die on active duty, a statement of honorable service from a general court martial convening authority is required. If the certificate of honorable service cannot be granted, the service member is ineligible for interment or inurnment pursuant to § 553.46(b).

(d) When applicable, the following documents are required:

(1) Death certificate;

(2) Proof of eligibility as required by paragraphs (e) through (g) of this section;

(3) Any additional documentation to establish the decedent's eligibility (e.g., marriage certificate, birth certificate, waivers, statements that the decedent had no children);

(4) Burial agreement;

(5) A certificate of cremation or notarized statement attesting to the authenticity of the cremated human remains and that 100% of the cremated remains received from the crematorium are present. The Cemetery Responsible Official may, however, allow a portion of the cremated remains to be removed by the crematorium for the sole purpose of producing commemorative items.

(6) Any other document as required by the Cemetery Responsible Official.

(e) The following documents may be used to establish the eligibility of a primarily eligible person:

(1) DD Form 214 (issued by all military services since January 1, 1950), Certificate of Release or Discharge from Active Duty or any other DD Form that shows service or discharge information);

(2) WD AGO 53, 55 or 53–55, Enlisted Record and Report of Separation Honorable Discharge;

(3) WD AGO 53–98, Military Record and Report of Separation Certificate of Service or any other WD AGO/AGO Form that shows service or discharge information;

(4) NGB 22, Report of Separation and Record of Service, Departments of the Army and the Air Force, National Guard Bureau (must indicate a minimum of 20 years total service for pay);

(5) ADJ 545, Discharge Certificate or Army DS ODF, Honorable Discharge from the United States Army;

(6) Bureau of Investigation No. 6, 53 or 118, Discharge Certificate or Bureau of Investigation No. 213, Discharge from U.S. Naval Reserve Force;

(7) VA Adjudication 545, Summary of Record of Active Service or any other VA/GSA/NAR/NA Form that shows service or discharge information;

(8) NAVPERS–553, Notice of Separation from U.S. Naval Service;

(9) NAVMC 70–PD, Honorable Discharge, U.S. Marine Corps or any other NAVPERS/NAVCG/NAVMC/NMC/Form No. 6 U.S.N./Navy (no number) Form that shows service or discharge information; or

(10) DD Form 1300, Report of Casualty (required in the case of death of an active duty service member).

(f) In addition to the documents otherwise required by this section, a request for interment or inurnment of a subsequently remarried spouse must be accompanied by:

(1) A notarized statement from the new spouse of the subsequently remarried spouse agreeing to the interment or inurnment and relinquishing any

claim for interment or inurnment in the same gravesite or niche.

(2) Notarized statement(s) from all of the children from the prior marriage agreeing to the interment or inurnment of their parents in the same gravesite or niche.

(g) In addition to the documents otherwise required by this section, a request for interment or inurnment of a permanently dependent child must be accompanied by:

(1) A notarized statement as to the marital status and degree of dependency of the decedent from an individual with direct knowledge; and

(2) A physician's statement regarding the nature and duration of the physical or mental disability; and

(3) A statement from someone with direct knowledge demonstrating the following factors:

(i) The deceased lived most of his or her adult life with one or either parents, one or both of whom are otherwise eligible for interment; and

(ii) The decedent's children, siblings, or other family members, other than the eligible parent, waive any derivative claim to be interred at the Army Post Cemetery in question, in accordance with DA Form 2386 (Agreement for Interment).

(h) Veterans or primary next of kin of deceased veterans may obtain copies of their military records by writing to the National Personnel Records Center, Attention: Military Personnel Records, 1 Archives Drive, St. Louis, Missouri 63138 or using their website: *http://www.archives.gov/veterans/*. All others may request a record by completing and submitting Standard Form 180.

(i) The burden of proving eligibility lies with the party who requests the burial. Commanders of these cemeteries or their Cemetery Responsible Officials will determine whether the submitted evidence is sufficient to support a finding of eligibility.

§ 553.42 General rules governing eligibility for interment or inurnment in Army Post Cemeteries.

(a) Only those persons who meet the criteria of § 553.43 or are granted an exception to policy pursuant to § 553.49 may be interred in the twenty-five Army Post Cemeteries. Only those persons who meet the criteria of § 553.44 or are granted an exception to policy pursuant to § 553.49 may be interred or inurned in the West Point Cemetery. Only those persons who meet the criteria of § 553.45 may be interred in the U.S. Disciplinary Barracks Cemetery.

(b) Derivative eligibility for interment or inurnment may be established only through a decedent's connection to a primarily eligible person and not to another derivatively eligible person.

(c) No veteran is eligible for interment, inurnment, or memorialization in an Army Post Cemetery (except for the U.S. Disciplinary Cemetery) unless the veteran's last period of active duty ended with an honorable discharge. A general discharge under honorable conditions is not sufficient for interment, inurnment or memorialization in an Army Post Cemetery.

(d) For purposes of determining whether a service member has received an honorable discharge, final determinations regarding discharges made in accordance with procedures established by chapter 79 of title 10, United States Code, will be considered authoritative.

(e) The Executive Director has the authority to act on requests for exceptions to the provisions of the interment, inurnment, and memorialization eligibility policies contained in this subpart. The Executive Director may delegate this authority on such terms deemed appropriate.

(f) Individuals who do not qualify as a primarily eligible person or a derivatively eligible person, but who are granted an exception to policy to be interred or inurned pursuant to § 553.49 in a new gravesite or niche, will be treated as a primarily eligible person for purposes of this subpart.

(g) Notwithstanding any other section in this subpart, memorialization with an individual memorial marker, interment, or inurnment in an Army Post Cemetery is prohibited if there is a gravesite, niche, or individual memorial marker for the decedent in any other Government-operated cemetery or the Government has provided an individual grave marker, individual memorial marker or niche cover for placement in a private cemetery.

§ 553.43 Eligibility for interment and inurnment in Army Post Cemeteries.

Only those who qualify as a primarily eligible person or a derivatively eligible person are eligible for interment and inurnment in Army Post Cemeteries (except for the West Point Cemetery), unless otherwise prohibited as provided for in §§ 553.46 through 553.48, provided that the last period of active duty of the service member or veteran ended with an honorable discharge.

(a) *Primarily eligible persons.* The following are primarily eligible persons for purposes of interment:

(1) Any service member who dies on active duty in the U.S. Armed Forces (except those service members serving on active duty for training only), if the General Courts Martial Convening Authority grants a certificate of honorable service.

(2) Any veteran retired from a Reserve component who served a period of active duty (other than for training), is carried on the official retired list, and is entitled to receive military retired pay.

(3) Any veteran retired from active military service and entitled to receive military retired pay.

(b) *Derivatively eligible persons.* The following individuals are derivatively eligible persons for purposes of interment who may be interred if space is available in the gravesite of the primarily eligible person:

(1) The spouse of a primarily eligible person who is or will be interred in an Army Post Cemetery in the same grave as the spouse. A former spouse of a primarily eligible person is not eligible for interment in an Army Post Cemetery under this section.

(2) A subsequently remarried spouse of a primarily eligible person who is remarried at the time of need, provided that there are no children from any subsequent marriage; that all children from the prior marriage to the primarily eligible person agree to the interment and relinquish any claim for interment in the same gravesite in a notarized statement(s); and that the new spouse, if still living and married to the subsequently remarried spouse, agrees to the interment and relinquishes any claim for interment. The Cemetery Responsible Official may cancel the subsequently remarried spouse's gravesite reservation, if any, consistent with § 553.40, and place the subsequently remarried spouse's remains in the same gravesite as the primarily eligible person.

(3) The spouse of an active duty service member or an eligible veteran, who was:

(i) Lost or buried at sea, temporarily interred overseas due to action by the Government, or officially determined to be missing in action;

(ii) Buried in a U.S. military cemetery maintained by the American Battle Monuments Commission; or

(iii) Interred in Arlington National Cemetery as part of a group burial (the derivatively eligible spouse may not be buried in the group burial gravesite) and the active duty service member does not have a separate individual interment or inurnment location.

(4) A minor child or permanently dependent adult child of a primarily eligible person who is or will be interred in an Army Post Cemetery.

(5) The parents of a minor child or a permanently dependent adult child, whose remains were interred in an Army Post Cemetery based on the eligibility of a parent at the time of the child's death, unless eligibility of a parent is lost through divorce from the primarily eligible parent.

§ 553.44 Eligibility for interment and inurnment in the West Point Post Cemetery.

The following persons are eligible for interment and inurnment in the West Point Post Cemetery, unless otherwise prohibited as provided for in §§ 553.46 through 553.48, provided that the last period of active duty of the service member or veteran ended with an honorable discharge or characterization of honorable service for active duty deaths.

(a) *Primarily eligible persons for interment or inurnment.* The following are primarily eligible persons for purposes of interment or inurnment:

(1) A graduate of the USMA, provided the individual was a U.S. citizen, both as a cadet and at the time of death, and

whose military service fulfilled one of the following criteria.

(i) The graduate's service in the Armed Forces of the United States, if any, terminated honorably.

(ii) The graduate's service in wartime in the Armed Forces of a nation that was allied with the United States during the war terminated honorably.

(2) Members of the Armed Forces of the United States, including USMA cadets, who were on active duty at the USMA at time of death and their derivatively eligible person dependents who may have died while the service member was on active duty at the USMA.

(3) Members of the Armed Forces of the United States who were on active duty at the USMA at time of retirement.

(4) Members of the Armed Forces of the United States whose last active duty station prior to retirement for physical disability was the USMA. However, personnel (not otherwise eligible) who are transferred to the Medical Holding Detachment, Keller Army Hospital, for medical boarding or medical disability retirement are not, regardless of length of time, eligible for interment or inurnment in the West Point Cemetery or Columbarium.

(5) Officers appointed as Professors, USMA.

(b) *Derivatively eligible persons.* Derivatively eligible persons are those connected to an individual described in paragraph (a) of this section through a relationship described in § 553.43(b). Such individuals may be interred or inurned if space is available in the primarily eligible person's gravesite or niche.

(c) *Temporary restrictions.* The Secretary of the Army or his designee may, in special circumstances, impose temporary restrictions on the eligibility standards for the USMA cemetery. If temporary restrictions are imposed, they will be reviewed annually to ensure the special circumstances remain valid for retaining the temporary restrictions.

§ 553.45 Eligibility for interment in U.S. Disciplinary Barracks Cemetery at Fort Leavenworth.

(a) Military prisoners who die while in Military custody and are not claimed by the person authorized to direct disposition of remains or other persons legally authorized to dispose of remains are permitted to be interred in the U.S. Disciplinary Barracks Cemetery. All decisions for interment in the U.S.D.B. Cemetery will be made by the Executive Director, ANMC.

(b) Other persons approved by the Executive Director.

§ 553.46 Ineligibility for interment, inurnment or memorialization in an Army Post Cemetery.

The following persons are not eligible for interment, inurnment, or memorialization in an Army Post Cemetery:

(a) A father, mother, brother, sister, or in-law solely on the basis of his or her relationship to a primarily eligible person, even though the individual is:

(1) Dependent on the primarily eligible person for support; or

(2) A member of the primarily eligible person's household.

(b) Except for the U.S. Disciplinary Barracks Cemetery in § 553.45, a person whose last period of service was not characterized as an honorable discharge (e.g., a separation or discharge under general but honorable conditions, other than honorable conditions, a bad conduct discharge, a dishonorable discharge, or a dismissal), regardless of whether the person:

(1) Received any other veterans' benefits; or

(2) Was treated at a Department of Veterans Affairs hospital or died in such a hospital.

(c) A person who has volunteered for service with the U.S. Armed Forces, but has not yet entered on active duty.

(d) A former spouse whose marriage to the primarily eligible person ended in divorce.

(e) A spouse who predeceases the primarily eligible person and is interred or inurned in a location other than an Army Cemetery, and the primarily eligible person remarries.

(f) A divorced spouse of a primarily eligible person or the service-connected parent when the divorced spouse has a

child interred or inurned in an Army Cemetery under the child's derivative eligibility.

(g) Otherwise derivatively eligible persons, such as a spouse or minor child, if the primarily eligible person was not or will not be interred or inurned at an Army Cemetery.

(h) A person convicted in a Federal court or by a court-martial of any offense involving subversive activity or an offense described in 18 U.S.C. 1751 (except for military prisoners at the U.S. Disciplinary Barracks Cemetery).

(i) A service member who dies while on active duty, if the first General Courts Martial Convening Authority in the service member's chain of command determines that there is clear and convincing evidence that the service member engaged in conduct that would have resulted in a separation or discharge not characterized as an honorable discharge (e.g., a separation or discharge under general but honorable conditions, other than honorable conditions, a bad conduct discharge, a dishonorable discharge, or a dismissal) being imposed, but for the death of the service member.

(j) If animal remains are unintentionally commingled with human remains due to a natural disaster, unforeseen accident, act of war or terrorism, violent explosion, or similar incident, and such remains cannot be separated from the remains of an eligible person, then the remains may be interred or inurned with the eligible person, but the identity of the animal remains shall not be inscribed or identified on a niche, marker, headstone, or otherwise.

§ 553.47 Prohibition of interment, inurnment or memorialization in an Army Cemetery of persons who have committed certain crimes.

(a) *Prohibition.* Notwithstanding §§ 553.43 through 553.45, and pursuant to 10 U.S.C. 985 and 38 U.S.C. 2411, the interment or inurnment in an Army Cemetery of any of the following persons is prohibited:

(1) Any person identified in writing to the Executive Director by the Attorney General of the United States, prior to his or her interment or inurnment as a person who has been convicted of a Federal capital crime and whose conviction is final (other than a person whose sentence was commuted by the President).

(2) Any person identified in writing to the Executive Director by an appropriate State official, prior to his or her interment or inurnment as a person who has been convicted of a State capital crime and whose conviction is final (other than a person whose sentence was commuted by the Governor of the State).

(3) Any person found under procedures specified in § 553.48 to have committed a Federal or State capital crime, but who has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution. Notice from officials is not required for this prohibition to apply.

(4) Any person identified in writing to the Executive Director by the Attorney General of the United States or by an appropriate State official, prior to his or her interment or inurnment as a person who has been convicted of a Federal or State crime causing the person to be a Tier III sex offender for purposes of the Sex Offender Registration and Notification Act, who for such crime is sentenced to a minimum of life imprisonment and whose conviction is final (other than a person whose sentence was commuted by the President or the Governor of a State, as the case may be).

(b) *Notice.* The Executive Director is designated as the Secretary of the Army's representative authorized to receive from the appropriate Federal or State officials notification of conviction of capital crimes referred to in this section.

(c) *Confirmation of person's eligibility.* (1) If notice has not been received, but the Executive Director has reason to believe that the person may have been convicted of a Federal capital crime or a State capital crime, the Executive Director shall seek written confirmation from:

(i) The Attorney General of the United States, with respect to a suspected Federal capital crime; or

(ii) An appropriate State official, with respect to a suspected State capital crime.

(2) The Executive Director will defer the decision on whether to inter, inurn, or memorialize a decedent until a written response is received.

(d) *Due diligence.* Army Post Cemetery Superintendents and Commanders who have cemeteries for which they are responsible will make every effort to determine if the decedent is ineligible in accordance with 10 U.S.C. 985 and 38 U.S.C. 2411. For those determined ineligible due to the provisions of these sections, commanders will submit their determinations in writing to the Executive Director for validation.

§ 553.48 Findings concerning the commission of certain crimes where a person has not been convicted due to death or flight to avoid prosecution.

(a) *Preliminary inquiry.* If the Executive Director has reason to believe that a decedent may have committed a Federal capital crime or a State capital crime but has not been convicted of such crime by reason of such person not being available for trial due to death or flight to avoid prosecution, the Executive Director shall submit the issue to the Army General Counsel. The Army General Counsel or his or her designee shall initiate a preliminary inquiry seeking information from Federal, State, or local law enforcement officials, or other sources of potentially relevant information.

(b) *Decision after preliminary inquiry.* If, after conducting the preliminary inquiry described in paragraph (a) of this section, the Army General Counsel or designee determines that credible evidence exists suggesting the decedent may have committed a Federal capital crime or State capital crime, then further proceedings under this section are warranted to determine whether the decedent committed such crime. Consequently the Army General Counsel or his or her designee shall present the personal representative with a written notification of such preliminary determination and a dated, written notice of the personal representative's procedural options.

(c) *Notice and procedural options.* The notice of procedural options shall indicate that, within fifteen days, the personal representative may:

(1) Request a hearing;

(2) Withdraw the request for interment, inurnment, or memorialization; or

(3) Do nothing, in which case the request for interment, inurnment, or memorialization will be considered to have been withdrawn.

(d) *Time computation.* The fifteen-day time period begins on the calendar day immediately following the earlier of the day the notice of procedural options is delivered in person to the personal representative or is sent by U.S. registered mail or, if available, by electronic means to the personal representative. It ends at midnight on the fifteenth day. The period includes weekends and holidays.

(e) *Hearing.* The purpose of the hearing is to allow the personal representative to present additional information regarding whether the decedent committed a Federal capital crime or a State capital crime. In lieu of making a personal appearance at the hearing, the personal representative may submit relevant documents for consideration.

(1) If a hearing is requested, the Army General Counsel or his or her designee shall conduct the hearing.

(2) The hearing shall be conducted in an informal manner.

(3) The rules of evidence shall not apply.

(4) The personal representative and witnesses may appear, at no expense to the Government, and shall, at the discretion of the hearing officer, testify under oath. Oaths must be administered by a person who possesses the legal authority to administer oaths.

(5) The Army General Counsel or designee shall consider any and all relevant information obtained.

(6) The hearing shall be appropriately recorded. Upon request, a copy of the record shall be provided to the personal representative.

(f) *Final determination.* After considering the hearing officer's report, the opinion of the Army General Counsel or his or her designee, and any additional information submitted by the personal representative, the Secretary of the Army or his or her designee shall determine the decedent's eligibility for

interment, inurnment, or memorialization. This determination is final and not appealable.

(1) The determination shall be based on evidence that supports or undermines a conclusion that the decedent's actions satisfied the elements of the crime as established by the law of the jurisdiction in which the decedent would have been prosecuted.

(2) If an affirmative defense is offered by the decedent's personal representative, a determination as to whether the defense was met shall be made according to the law of the jurisdiction in which the decedent would have been prosecuted.

(3) Mitigating evidence shall not be considered.

(4) The opinion of the local, State, or Federal prosecutor as to whether he or she would have brought charges against the decedent had the decedent been available is relevant but not binding and shall be given no more weight than other facts presented.

(g) *Notice of decision.* The Executive Director shall provide written notification of the Secretary's decision to the personal representative.

§ 553.49 Exceptions to policies for interment or inurnment at Army Post Cemeteries.

(a) Requests for exceptions to policy will be made to the Executive Director, Army National Military Cemeteries.

(b) Eligibility standards for interment and inurnment are based on honorable military service. Exceptions to the eligibility standards are rarely granted. When granted, exceptions are for those persons who have made significant contributions that directly and substantially benefited the U.S. military.

(c) Requests for an exception to the interment or inurnment eligibility policies shall be considered only after the individual's death.

(d) Procedures for submitting requests for exceptions to policy for interment and inurnment will be established by the Executive Director, Army National Military Cemeteries.

PART 555—CORPS OF ENGINEERS, RESEARCH AND DEVELOPMENT, LABORATORY RESEARCH AND DEVELOPMENT AND TESTS, WORK FOR OTHERS

Sec.
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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 564—NATIONAL GUARD REGULATIONS

MEDICAL ATTENDANCE AND BURIAL

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CLAIMS FOR DAMAGES INVOLVING THE NATIONAL GUARD AND AIR NATIONAL GUARD

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AUTHORITY: Section 110, 70A Stat. 600; 32 U.S.C. 110.

MEDICAL ATTENDANCE AND BURIAL

SOURCE: Sections 564.37 through 564.41 appear at 44 FR 16385, Mar. 19, 1979, unless otherwise noted.

§ 564.37 Medical care.

(a) General. The definitions of medical care; policies outlining the manner, conditions, procedures, and eligibility for care; and the sources from which medical care is obtained are enumerated in AR 40–3.

(b) Elective care. Elective care in civilian medical treatment facilities or 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 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
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 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.
623.1 General.
623.2 Loan policies.
623.3 Submission of requests for loan of Army materiel.
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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 DRC-IRD for approval. AR 795–204 addresses loans to other allied governments. (See DOD Military Assistance and Sales Manual, DOD 5105.38–M.)

(g) *Special materiel requests*—(1) *Loan of Communications Security (COMSEC) Equipment.* Subject to provisions of this regulation, requests for loan of COMSEC equipment will be sent to the Commander, US Army Communications Security Logistics Agency (para

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 reconciliation.

(3) Army materiel lost, damaged, or destroyed while in the possession of rifle clubs or schools will be handled as described in § 623.5.

(4) Any Army materiel loaned at the request of an FDAA Regional Director which is not returned according to instructions in this chapter will be reported to the borrower and to the FDAA Regional Director. The latter will arrange for proper reconciliation and reimbursement.

§ 623.5 Loan of arms and accouterments.

(a) *General.* (1) Loan of arms and accouterments requires special processing and handling. Loans to DOD and non-DOD activities will be handled as a normal loan according to instructions in this section with the added requirement of maintaining serial number visibility. Loans of arms and accouterments as included herein are not applicable to Army National Guard (ARNG).

(2) The Commanding General, Armament Readiness Command (ARRCOM) (ATTN: DRSAR-MMS) has been designated by Commanding General, Materiel Development and Readiness Command (DARCOM), as being responsible for keeping a centralized serial number visibility record for all small arms made for the Army. ARRCOM maintains accountable property records for loans to organizations such as the Director of Civilian Marksmanship (DCM); and for loans to non-DOD activities such as the Federal Bureau of Investigation (FBI), United States Secret Service (USSS), United States Customer Service (USCS); or rifle clubs, educational institutions, and veterans' organizations.

(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.

(DA Form 4881-R)

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)

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.

MILITARY PROPERTY OF THE UNITED STATES – EXHIBIT I

For use of this form, see AR 700-131; the proponent agency is DCSLOG.

NATIONAL STOCK NO.	NOMENCLATURE	QUANTITY	CONDITION CODE	PRICE EACH	TOTAL PRICE
					GRAND TOTAL

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DA Form 4881-2-R

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)

DA FORM 1 MAY 80 4881-1-R

DA Form 4881–1–R

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) _____ (q) _____
(Name) *(Address)*

(p) _____ (q) _____
(Name) *(Address)*

Before me, the undersigned, a Notary Public within and for the county of (r) _____,

in the State of (s) _____, personally appear (t) _____,

(n) _____, and for and in behalf of said (a) _____,

a (b) _____ acknowledged the execution of the foregoing bond.

Witness my hand and notarial seal this (u) _____ day of (v) _____, 19 (w) _____

Notarial Seal (x) _____
(Notary Public)

My commission expires (y) _____
(Date)

(DA Form 4881-3-R) 2

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.

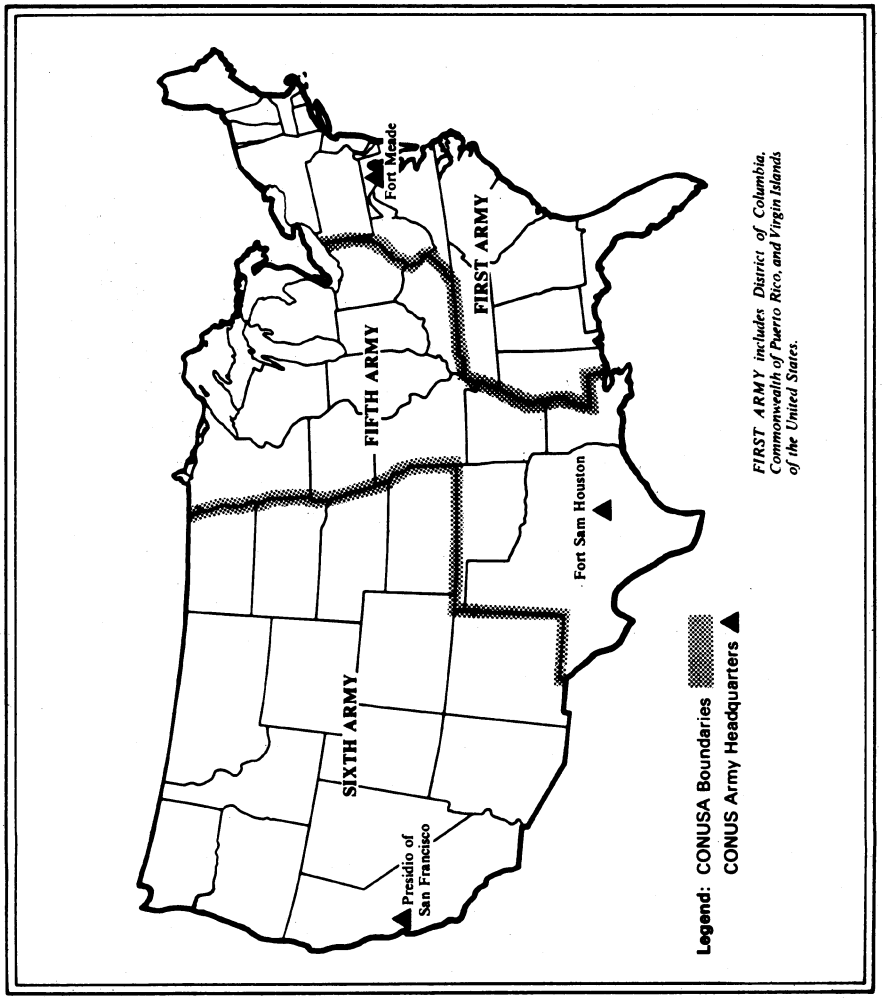
(r) Enter the name of the State in which the Power of Attorney is being signed.

(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



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625.2 Applicability.
625.3 References.
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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

PARTS 626–629 [RESERVED]

FINDING AIDS

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