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[88th Cong., 1st Sess.]

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Presidential Documents

Title 3—THE PRESIDENT

Proclamation 3620

INTERNATIONAL COOPERATION YEAR

By the President of the United States of America

A Proclamation

WHEREAS the United Nations General Assembly has designated the year 1965 as International Cooperation Year; and

WHEREAS the year 1965 also marks the twentieth anniversary of the United Nations; and

WHEREAS international cooperation is essential to the achievement of a peaceful world order; and

WHEREAS international organizations are vital in the modern world and provide the necessary foundation for a peaceful world community; and

WHEREAS the world has moved rapidly toward international cooperation and organization in recent years—especially within the family of the United Nations agencies; and

WHEREAS the movement for international cooperation has had, and will continue to have, the enthusiastic support of the Government of the United States of America; and

WHEREAS it is highly desirable to assess this development and examine promptly what further steps can be taken in the immediate future toward enhancing international cooperation and strengthening world organization:

NOW, THEREFORE, I, LYNDON B. JOHNSON, President of the United States of America, do hereby

—proclaim the year 1965 to be International Cooperation Year in the United States of America;

—rededicate the Government of the United States to the principle of international cooperation; and

—direct the agencies of the Executive Branch to examine thoroughly what additional steps can be taken in this direction in the immediate future.

I also call upon our national citizen organizations to undertake intensive educational programs to inform their memberships of recent progress in international cooperation and urge them to consider what further steps can be taken.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this second day of October in the year of our Lord nineteen hundred and sixty-four, and [SEAL] of the Independence of the United States of America the one hundred and eighty-ninth.

LYNDON B. JOHNSON

By the President:

DEAN RUSK,
Secretary of State.

[F.R. Doc. 64-10206; Filed, Oct. 5, 1964; 10:21 a.m.]

Executive Order 11182

ESTABLISHING FEDERAL DEVELOPMENT PLANNING COMMITTEES FOR ALASKA

WHEREAS the Federal Reconstruction and Development Planning Commission for Alaska has substantially completed the execution of those of its functions which pertain to the reconstruction of the State of Alaska following the earthquake of March 27, 1964; and

WHEREAS the Federal Government and the State of Alaska continue to have a common interest in assuring the most effective use of Federal and State programs and funds in advancing the long-range progress of the State; and

WHEREAS such effective use is dependent upon coordination of Federal and State programs which affect the general economic development of the State and the long-range conservation and use of its natural resources and upon cooperative Federal and State effort with respect to the planning of such programs; and

WHEREAS the State of Alaska has established a State body the duties of which include planning for the general economic development of the State and the long-range conservation and use of its natural resources; and

WHEREAS the authorities of the State of Alaska are desirous of arranging coordinated and cooperative Federal and State approaches to the planning and execution of such programs:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

PART I. FIELD COMMITTEE

SECTION 1. *Establishment of Field Committee.* (a) There is hereby established the Federal Field Committee for Development Planning in Alaska (hereinafter referred to as the "Field Committee").

(b) The Field Committee shall be composed of the following members: (1) a Chairman, who shall be appointed by the President, (2) nine members who shall be designated by and represent the following-named officers, respectively: the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health, Education, and Welfare, the Housing and Home Finance Administrator, the Administrator of the Federal Aviation Agency, and the Administrator of the Small Business Administration, (3) one member who shall represent the Federal Power Commission and shall be designated by the Chairman of that Commission, and (4) two public members who shall be appointed by the President.

(c) The Chairman may request any head of a Federal agency who is not referred to in subsection (b), above, to designate a representative to participate in meetings of the Field Committee concerned with matters of substantial interest to such Federal agency head.

(d) The principal place of business of the Field Committee shall be located in the State of Alaska.

SEC. 2. *Functions of the Field Committee.* (a) Subject to the general direction and guidance of the President's Review Committee for Development Planning in Alaska (established by the provisions of Part II of this order; hereinafter sometimes referred to as the "Review Committee"), the Field Committee shall serve as the principal instrumentality for developing coordinated plans for Federal programs which contribute to economic and resources development in Alaska and for recommending appropriate action by the Federal Government to carry out such plans.

(b) The Field Committee shall cooperate with representatives designated by the Governor of Alaska for purposes related to this order in accomplishing the following:

(1) Making or fostering surveys and studies to provide data for the development of plans and programs for economic and resources development in Alaska.

(2) Preparing and keeping current coordinated plans for economic and resources development in Alaska deemed appropriate to carry out existing statutory responsibilities and policies of Federal, State, or local agencies. Such plans shall be designed to promote optimum benefits from the expenditures of Federal, State, and local funds for consistent objectives and purposes.

(3) Preparing legislative and other recommendations with respect to both short-range and long-range programs and projects for Federal, State, or local agencies.

SEC. 3. *Field Committee procedures.* (a) The Field Committee shall meet at the call of its Chairman.

(b) The Field Committee may prescribe such regulations relating to the conduct of its affairs as it may deem to be necessary and not inconsistent with the provisions of this order.

(c) The Field Committee may establish such subcommittees of that Committee as may be necessary.

(d) Activities carried on by personnel employed by or detailed to the Field Committee (1) shall be carried out in accordance with such policies and programs as may be approved by the Field Committee, and (2) shall be under the direction and supervision of the Chairman or, to such extent as may be determined by the Chairman, under the direction of a principal member of the Field Committee's staff.

(e) The Field Committee shall transmit copies of plans or recommendations tentatively formulated by it to the Review Committee, the heads of interested Federal agencies, and the Governor of Alaska, for review and comment. The Field Committee shall consider any comments received by it within 90 days in pursuance of such transmittal and may revise the plans and recommendations as it may deem appropriate.

(f) The Field Committee shall transmit copies of its revised plans and recommendations, together with copies of any comments with respect to the tentative plans or recommendations received by the Field Committee in pursuance of the provisions of subsection (d), above, to the Governor of Alaska and to the Review Committee.

SEC. 4. *Personnel; compensation.* (a) The Chairman of the Field Committee is authorized to appoint such personnel as may be necessary to assist the Field Committee in connection with the performance of its functions and to obtain services in accordance with the provisions of Section 15 of the Act of August 2, 1946 (5 U.S.C. 55a).

(b) The Chairman of the Field Committee shall receive such compensation as shall be fixed in accordance with the standards and procedures of the Classification Act of 1949, as amended.

(c) Each member of the Field Committee appointed under the provisions of Section 1(b)(4) hereof may receive compensation for each day he is engaged in meetings of that Committee or is with the approval of the Chairman of the Field Committee engaged in other work in pursuance of the provisions of this order (5 U.S.C. 55a).

(d) Members and personnel of the Field Committee may be allowed travel expenses and per diem in lieu of subsistence as authorized by law.

SEC. 5. *Financing; agency cooperation.* (a) Each Federal agency the head of which is referred to in Section 1(b) of this order shall, as may be necessary, furnish assistance to the Field Committee in accordance with the provisions of Section 214 of the Act of May 3, 1945 (59 Stat. 134; 31 U.S.C. 691). In general, each such Federal agency shall, consonant with law, extend its cooperation to the Field Committee in connection with the carrying out of the functions of the Field Committee, including, as may be appropriate, (1) the furnishing of relevant available information to the Field Committee, (2) the making of studies and the preparation of reports in pursuance of requests of the Field Committee, and (3) in connection with the development of programs and priorities of the agency, the giving of full consideration to any plans and recommendations made by the Field Committee.

(b) Federal agencies the heads of which are not referred to in Section 1(b) of this order shall, to the extent permitted by law, furnish the Field Committee such information or advice bearing upon the work of the Field Committee as the Chairman thereof may from time to time request.

PART II. REVIEW COMMITTEE

SEC. 11. *Establishment of Review Committee.* (a) There is hereby established the President's Review Committee for Development Planning in Alaska (hereinafter referred to as the "Review Committee").

(b) The Review Committee shall be composed of the following members: the Secretary of Commerce, who shall be the Chairman, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Labor, the Secretary of Health, Education, and Welfare, the Housing and Home Finance Administrator, the Administrator of the Federal Aviation Agency, the Administrator of the Small Business Administration, the Chairman of the Federal Power Commission, and two public members who shall be appointed by the President. Each member of the Review Committee, other than a public member, may designate an alternate to represent him at meetings of the Review Committee which he is unable to attend.

(c) The Review Committee shall meet at least once each calendar year, at the call of its Chairman.

(d) The Review Committee may prescribe such regulations relating to the conduct of its affairs as it may deem to be necessary and not inconsistent with the provisions of this order.

SEC. 12. *Functions of the Review Committee.* The Review Committee shall provide general direction and guidance to the Field Committee; receive, review, and comment on the tentative plans or recommendations of the Field Committee; and receive and consider the final plans and recommendations of the Field Committee and transmit them, together with its own comments, to the President and the heads of interested Federal agencies.

SEC. 13. *Compensation; travel expenses.* (a) Each public member of the Review Committee may receive compensation for each day he is engaged in meetings of that Committee or is with the approval of the Chairman of the Review Committee engaged in other work in pursuance of the provisions of this order (5 U.S.C. 55a).

(b) Members and personnel of the Review Committee may be allowed travel expenses and per diem in lieu of subsistence as authorized by law.

SEC. 14. *Assistance by agencies.* Each Federal agency the head of which is referred to in Section 11(b) of this order shall, as may be necessary, furnish assistance to the Review Committee in accordance with the provisions of Section 214 of the Act of May 3, 1945 (59 Stat. 134; 31 U.S.C. 691).

SEC. 15. *Administrative services.* The Department of Commerce is hereby designated as the agency which shall provide administrative services for the Review Committee.

PART III. OFFICE OF EMERGENCY PLANNING

SEC. 31. *Functions related to earthquake.* The provisions of Section 41 hereof notwithstanding and so long as the President's declaration of a major disaster with respect to the earthquake which occurred in Alaska on March 27, 1964, remains in effect, the Director of the Office of Emergency Planning shall carry out the functions (heretofore assigned to the Federal Reconstruction and Development Planning Commission for Alaska by the provisions of Executive Order No. 11150 of April 2, 1964) of developing coordinated plans for Federal programs which contribute to reconstruction in Alaska and recommending appropriate action by the Federal Government to carry out such plans.

PART IV. MISCELLANEOUS PROVISIONS

SEC. 41. *Termination of existing Commission.* (a) Executive Order No. 11150 of April 2, 1964 (29 F.R. 4789), is hereby revoked and the Federal Reconstruction and Development Planning Commission for Alaska established thereby is abolished.

(b) The Director of the Bureau of the Budget shall make such arrangements related to the termination of the said Commission as he may deem necessary. Without limiting the generality of the foregoing the said Director is authorized, as he shall deem to be necessary or appropriate, to assign to Federal agencies duties with respect to the liquidation of the outstanding affairs of the Commission and to effect or arrange the transfer of records, property, personnel, and funds of the Commission to other Federal agencies.

(c) Nothing in this order shall preclude or limit the transferability, pursuant to law, of unobligated balances of funds appropriated for the Commission abolished by Section 41(a) of this order (78 Stat. 209) or the use of such balances in connection with this order.

SEC. 42. *Construction.* Nothing in this order shall be construed as subjecting any Federal agency, or any function vested by law in, or assigned pursuant to law to, any Federal agency, to the authority of any other Federal agency, or as abrogating or restricting any such function in any manner.

SEC. 43. *Definition.* Except as may be inconsistent with the provisions of this order or otherwise inappropriate, the term "Federal agency", as used herein, includes any department or other agency or instrumentality of the executive branch of the Government of the United States and any officer thereof (including the Field Committee and the Review Committee).

LYNDON B. JOHNSON

THE WHITE HOUSE,
October 2, 1964.

[F.R. Doc. 64–10178; Filed, Oct. 2, 1964; 4:09 p.m.]

Executive Order 11183

ESTABLISHING THE PRESIDENT'S COMMISSION ON WHITE HOUSE FELLOWSHIPS

WHEREAS it is in the national interest that our future leaders in all walks of life have opportunities to observe at firsthand the important and challenging tasks of American Government; and

WHEREAS participation in Government service early in their careers will help young persons with high qualifications to become well-informed and public-spirited citizens; and

WHEREAS it is appropriate that public recognition be given to young persons of exceptional promise who are willing to devote their time to increasing their understanding of the public business:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. *Establishment of Commission.* (a) There is hereby established the President's Commission on White House Fellowships, hereinafter referred to as the Commission. The Commission shall consist of such outstanding citizens from the fields of public affairs, education, the sciences, the professions, other fields of private endeavor, and the Government service, as the President may from time to time appoint. One of the members appointed from private life shall be designated by the President to serve as Chairman of the Commission.

(b) Members of the Commission shall serve at the pleasure of the President. Federal officials shall receive no additional compensation by reason of their service on the Commission. Members appointed to the Commission from private life shall serve without compensation.

SEC. 2. *Functions of the Commission.* (a) The Commission shall prescribe such standards and procedures as may be necessary to enable it to recommend annually a group of outstanding young persons from among whom the President may select White House Fellows. Following publication of such standards and procedures, the Commission may accept (1) applications from individuals, and (2) nominations from non-Federal sources, for consideration for its recommendation.

(b) The standards and procedures to be prescribed by the Commission shall be so drawn as to limit the selection of White House Fellows to persons who—

(1) Have demonstrated unusual ability, high moral character, outstanding motivation, and a broad capacity for leadership;

(2) Show exceptional promise of future development;

(3) Are dedicated to the institutions of the United States and the values of American civilization; and

(4) Will have attained the age of twenty-three but not the age of thirty-six prior to the beginning of their service.

(c) White House Fellows shall be recommended by the Commission and selected by the President without discrimination on the basis of sex, race, color, creed, national origin, or political affiliation.

SEC. 3. *White House Fellows.* White House Fellows will be appointed to serve for approximately fifteen months on the staff of the White House Office, the Vice President's office, or the offices of the heads of the ten executive departments, as they may be assigned, beginning on or about June 1 of the year in which they are selected. White House Fellows may, with the approval of the Commission, accept reasonable fellowship stipends from private nonprofit organizations.

SEC. 4. *Federal Agencies.* (a) Consonant with law, each Federal agency which may be represented on the Commission shall furnish necessary assistance to the Commission as authorized by section 214 of the Act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691).

(b) The United States Civil Service Commission shall provide administrative assistance for the Commission and, upon the request of the Commission, shall assist in the conduct of the Commission's work.

LYNDON B. JOHNSON

THE WHITE HOUSE,
October 3, 1964.

[F.R. Doc. 64–10242; Filed, Oct. 5, 1964; 11:11 a.m.]

Rules and Regulations

Title 7—AGRICULTURE

Chapter VII—Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

[Amdt. 1]

PART 728—WHEAT

1964–65 Marketing Year

DETERMINATIONS OF COUNTY NORMAL YIELDS FOR 1964 CROP FOR COUNTIES OF GRANT AND TRAILL, NORTH DAKOTA

Pursuant to 301(b)(13)(D) of the Agricultural Adjustment Act of 1938, as amended, there was published on May 12, 1964 (29 F.R. 6235), the determination of county normal yields for the 1964 wheat crop. Subsequent to such determination, it was discovered that the yields for Grant and Traill Counties of North Dakota, had been incorrectly tabulated, and this amendment is made to correct such errors. Since the 1964 county yields relate only to grants and benefits, the notice, procedure, and effective date provisions of the Administrative Procedure Act (5 U.S.C. 1003) are not applicable, and this amendment shall become effective upon it publication in the FEDERAL REGISTER.

Section 728.8(d) is amended by correcting the county normal yields for Grant and Traill Counties of North Dakota to read as follows:

Grant ------- 15.8 Traill ------- 30.0

(Secs. 301, 375, 52 Stat. 38, as amended 66; 7 U.S.C. 1301, 1375)

Effective date: Upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on October 1, 1964.

H. D. GODFREY,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 64-10109; Filed, Oct. 5, 1964; 8:49 a.m.]

[Amdt. 1]

PART 728—WHEAT

Subpart—Farm Wheat Certificate Program for 1964 and 1965

MISCELLANEOUS AMENDMENTS

The regulations governing the Farm Wheat Certificate Program for 1964 and 1965, 29 F.R. 5510, are amended as follows:

§ 728.101 [Amended]

1. Section 728.101(a) is amended by adding the following new sentence at the end thereof: "For 1965, this percentage is 80."

§ 728.102 [Amended]

2a. Section 728.102(a) is amended by substituting a colon for the period at the end of the paragraph and adding the following: "*Provided*, That persons sharing in the crop of wheat on a 1965 new wheat farm shall not receive marketing certificates."

b. Section 728.102(b) is amended to read as follows:

(b) *Farm requirements.* A farm shall be eligible for wheat marketing certificates if producers on the farm file an intention to participate and application for certificates (herein called Form 477 (Wheat)) for the current year in accordance with § 728.61 of the regulations governing the Wheat Diversion Program and the farm is eligible for a wheat diversion payment or would have been eligible for such payment except for the fact that (1) the diverted acreage was devoted to a substitute crop in lieu of payment; (2) the producers on the farm, while diverting the minimum acreage required under § 728.51(b)(2), failed to divert an acreage equal to the number of acres stated on Form 477 (Wheat) as required under § 728.50(b) of the regulations governing the Wheat Diversion Program; (3) a 1964 new farm wheat allotment was established for the farm; (4) for 1964, the payment otherwise earned has been reduced to zero under § 728.51(c)(2)(ii) because the wheat allotment on another farm has been exceeded but is within the tolerance prescribed in that section; (5) the acres eligible for payment are zero because of the application of § 728.64(d)(3) but the total conserving acreage is within the tolerance prescribed in § 728.64(b)(4) and any tolerance prescribed in § 728.64(c); (6) the diversion payment has been reduced to zero for authorized harvesting or grazing under the provisions of § 728.52; or (7) for 1965, no payment is authorized for the minimum diversion acreage as determined under § 728.51(b)(2). Effective only with respect to the crop of wheat planted for harvest in the calendar year 1965, and notwithstanding the foregoing provisions of this paragraph, a producer on a farm on which the acreage of wheat exceeds the farm allotment shall be eligible for wheat marketing certificates if (i) the operator files a Form 477 (Wheat) under the provisions of § 728.61 and indicates thereon his intention to produce excess wheat; (ii) the acreage of wheat does not exceed the allotment by more than 50 per centum; (iii) an amount of wheat is stored as required under the provisions of § 728.107; (iv) the producer meets the cross-compliance requirements of § 728.51(c)(2)(ii); and (v) within any tolerance prescribed in § 728.64(c), an acreage of cropland equal to the minimum diversion requirement determined under § 728.51(b)(2) is devoted to one or more of the conservation uses specified in § 728.53 and the limitations on use of such acreage specified in § 728.52 are complied with and an acreage of cropland equal to the conserving base established for the farm under § 728.55 is devoted to one or more of the conservation uses specified in such section: *Provided*, That to the extent that such reduction may be necessary in order to produce the acreage of wheat permitted by subdivision (ii) of this subparagraph, the acreages otherwise required to be devoted to conservation uses under subdivision (v) of this subparagraph may be reduced, first from the acreage required to be devoted to the uses specified in § 728.55 and then from the acreage required to be devoted to the uses specified in § 728.53.

§ 728.103 [Amended]

3a. Section 728.103(c)(1) is amended to read as follows:

(1) For 1964, domestic marketing certificates for a farm shall be issued for 50 per centum of the farm marketing allocation, and, for 1965, 56.25 per centum of such allocation: *Provided*, That the number of bushels for which domestic certificates are issued for any farm shall not exceed the number of bushels computed under paragraph (b)(2) of this section.

b. Section 728.103(c)(2) is amended by deleting the words "for 1964".

c. Section 728.103(d) is amended by adding the following new sentence at the end thereof: "For 1965, each domestic certificate issued for a farm shall be valued at 75 cents per bushel and each export certificate shall be valued at 30 cents per bushel."

d. Section 728.103(e) is amended by inserting a period following the word "value" and deleting the words "at any ASCS county office."

4. Section 728.105 is amended to read as follows:

§ 728.105 Setoffs and assignments.

(a) *Producer indebtedness.* Setoffs against the value of wheat marketing certificates which a producer is eligible to receive shall be made as provided in the regulations issued by the Secretary governing setoffs and withholdings, Part 13 of this title (29 F.R. 9425), and any amendments thereto.

(b) *Assignments.* The right to receive wheat marketing certificates under the regulations in this part may not be assigned.

5. New §§ 728.107 and 728.108 are added to read as follows:

§ 728.107 Storage of excess wheat.

(a) *Amount.* The amount of wheat required to be stored for the purpose of § 728.102(b) shall be an amount equal to twice the normal yield of wheat per acre established for the farm multiplied by the number of acres of such crop of wheat on the farm in excess of the farm acreage allotment for such crop unless a producer on the farm files an application for

downward adjustment of excess within 60 days after the date the notice provided in paragraph (b) of this section is mailed from the county office. If the total actual production for the excess farm is established to the satisfaction of the county committee, the amount of wheat required to be stored shall be such actual production less the actual production of the farm wheat acreage allotment based upon the average yield per acre for the entire wheat acreage on the farm: *Provided,* That the amount of wheat required to be stored shall not be larger than the amount by which the actual production so established exceeds the normal production of the farm wheat acreage allotment.

(b) *Notice of excess.* As soon as practicable following the wheat disposal date in § 728.10(q), producers on farms for which a timely intention to produce excess wheat was filed under § 728.102(b) and on which the wheat acreage exceeds the allotment by not more than 50 percent shall be notified of the amount of initial excess determined for such farms and of the storage requirements of this section.

(c) *Application.* Application for storage of excess wheat shall be filed in writing by any producer sharing in the wheat crop within 60 days after the date the notice in paragraph (b) of this section is mailed from the county office. In the case of farm storage, the producer shall be required to pay a service fee in an amount determined by the county committee to be sufficient to cover the cost of initial inspection and subsequent reinspections.

(d) *Storage requirements.* The wheat stored shall be equal to or better than the average quality of wheat produced on the excess farm. Excess wheat may be stored either (1) in an elevator or warehouse duly licensed and authorized to issue warehouse receipts under Federal or State laws, hereinafter referred to as "licensed storage": *Provided,* That if a State has no elevator or warehouse licensing law, warehouse receipts may be accepted from elevators or warehouses in such State unless the county committee and the State executive director determine that the elevators or warehouses are unreliable, such storage also to be referred to as "licensed storage," or (2) in any other place adapted to the storage of wheat, hereinafter referred to as "non-licensed storage." In the case of licensed warehouse storage the producer shall remain liable for all warehouse storage charges, and in the case of unlicensed storage shall be responsible for maintaining quality and quantity.

(e) *Security.* A corporate surety bond of indemnity in an amount not less than 150 per centum of the value of certificates issued with respect to the excess farm in the year of excess, shall be executed and filed with the county office manager not later than 60 days following the date the notice in paragraph (b) of this section is mailed from the ASCS county office. Each bond shall be subject to the conditions that the full amount computed under § 728.108 shall be paid at the time of the depleting of any amount stored which is not authorized under § 728.108 and if at any time any producer on the farm prevents the inspection of wheat so stored the entire amount computed under § 728.108 shall be paid. The principal amount of the bond shall not be reduced or the bond released until the entire amount of stored excess wheat is released as authorized by the county committee in § 728.108. In the case of licensed warehouse storage, the warehouse receipt, properly endorsed, shall also be deposited with the county office manager to be held in escrow.

(f) *Substitution.* Unlicensed or licensed stored wheat of any year's crop may be substituted for excess wheat in farm or warehouse storage provided that (1) prior approval for such substitution is obtained from the county committee, (2) the wheat to be used for substitution is in storage in accordance with the provisions of this section and is of equal or better quality than the excess wheat in storage, and (3) if unlicensed storage wheat is substituted for licensed storage wheat, the service fee provided for under paragraph (c) of this section is collected.

(g) *Commingling.* In the case of licensed storage, commingling of wheat shall be permissible. In the case of unlicensed storage, stored excess wheat may be commingled with excess wheat from another farm if the producers sharing in the excess wheat in storage are the same.

§ 728.108 Depletion of stored excess wheat.

(a) *Unauthorized.* At the time and to the extent of any depletion in the amount of wheat stored under § 728.107, except depletion under paragraphs (b) and (c) of this section or depletion resulting from some cause beyond the control of the producer, the producer shall pay an amount to the ASCS county office equal to one and one-half times the value of the wheat marketing certificates issued with respect to the farm for the year in which the wheat on the acreage in excess of the allotment was produced. Notwithstanding the foregoing, if a producer having an interest in the excess wheat in storage no longer shares in the wheat crop on any farm in years subsequent to the year the stored excess was produced, such producer shall be relieved of paying the amount otherwise required to be paid under this paragraph provided the right, title, and interest in his share of the excess wheat remaining in storage is conveyed to the Secretary by the tender of the warehouse receipts to the county committee in accordance with instructions issued by the Administrator. Such instructions will be available at the county ASCS office.

(b) *Underplanting.* Whenever the farm in which he shares in the wheat crop. The amount so released shall be limited to the normal production of the underplanted acres multiplied by his per centum share of the wheat crop on the underplanted farm. For the purpose of this paragraph the acreage, if any, diverted from the production of acres by which the farm acreage allotment exceeds the wheat acreage: *Provided,* That if a producer having an interest in the excess wheat in storage no longer shares in the wheat crop on the farm, such producer may obtain the release of his share of the stored excess wheat by underplanting on any other farm in which he shares in the wheat crop. The amount so released shall be limited to the normal production of the underplanted acres multiplied by his per centum share of the wheat crop on the underplanted farm. For the purpose of this paragraph the acreage, if any, diverted from the production of wheat under a conservation reserve contract, a cropland conversion agreement, great plains conservation program contract, or under any authorized wheat diversion program shall be considered wheat acreage. The acreage considered to be diverted from the production of wheat under a conservation reserve contract shall be the acreage placed in the conservation reserve at the regular rate, not to exceed the amount by which the wheat acreage allotment for the farm exceeds the wheat acreage determined for such farm: *Provided,* That in the event the farm also has one or more other commodity allotments and the acreage placed in the conservation reserve at the regular rate is less than the sum of the amount by which each allotment (after release and before reapportionment, where applicable) exceeds the actual acreage determined for each such allotment crop on the farm, the acreage placed in the conservation reserve at the regular rate shall be prorated and credited to each allotment commodity. If the acreage placed in the conservation reserve at the regular rate is equal to or is in excess of the sum of the amount by which each allotment (after release and before reapportionment, where applicable) exceeds the actual acreage determined for each allotment crop on the farm, no excess wheat may be removed from storage. The acreage diverted from wheat in order to carry out a great plains conservation program contract shall be determined by the county committee after consultation with the producer and the work unit conservationist. A producer shall not be entitled to remove excess wheat from storage under this paragraph by underplanting the allotment on Government-owned land under a lease restricting the production of wheat.

(c) *Underproduction.* Whenever the actual production of the wheat acreage is less than the normal production of the farm acreage allotment and the conditions of paragraph (d) of this section are met, the total amount of wheat from any previous crops required to be stored under § 728.107 for such farm shall be reduced by that amount which together with the actual production of the then current crop will equal the normal production of the farm acreage allotment, less the normal production of the underplanted acreage for the farm which was or could have been determined under paragraph (b) of this section: *Provided,* That if a producer having an interest in the excess wheat in storage, no longer shares in the wheat crop on the farm, such producer may obtain the release of his share of the stored excess wheat by underproduction

on any other farm on which he shares in the wheat crop to the extent of such determined underproduction multiplied by his per centum share of the wheat crop on the underproduced farm. For purposes of this paragraph, any acreage considered to be diverted from the production of wheat under the soil bank, cropland conversion, great plains programs, and any authorized wheat diversion program shall be deemed to have produced the normal production of wheat when determining the actual production for the farm.

(d) *Conditions of release.* Release of stored excess wheat by the county committee under paragraphs (b) and (c) of this section is subject to the following conditions: (1) A producer having an interest in the excess wheat files a written request for release of stored excess on or before December 31 of the year of harvest in which the underplanting or underproduction occurred, (2) in the case of underproduction the producer shall establish actual production to the satisfaction of the county committee and if the county committee determines a farm and warehouse visit is necessary to verify production, the producer shall also be required to remit a service fee to cover cost of such visit, (3) the required amount of excess wheat is in the storage at the time of application.

(Sec. 379(j), 76 Stat. 630)

Effective date: Upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on October 1, 1964.

H. D. GODFREY,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 64-10108; Filed, Oct. 5, 1964; 8:48 a.m.]

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER H—DETERMINATION OF WAGE RATES

[Sugar Determination 864.11]

PART 864—WAGES; SUGARCANE; LOUISIANA

Pursuant to the provisions of section 301(c)(1) of the Sugar Act of 1948, as amended (herein referred to as "act"), after investigation, and consideration of the evidence obtained at the public hearing held in Houma, Louisiana, on July 9, 1964, the following determination is hereby issued:

§ 864.11 Fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of sugarcane in Louisiana.

(a) *Requirements.* A producer of sugarcane in Louisiana shall be deemed to have complied with the wage provisions of the act if all persons employed on the farm in production, cultivation, or harvesting work shall have been paid in accordance with the following:

(1) *Wage rates.* All such persons shall have been paid in full for all such work and shall have been paid wages in cash therefor at rates as agreed upon between the producer and the worker, but not less than the following:

(i) *For work performed on a time or piecework basis:*

Class of Worker or Operation	Rate per hour
Harvest work:	
Harvester and loader operators	$1.05
Tractor drivers, truck drivers, harvester bottom blade operators, and hoist operators	1.00
Hand cutters, and scrappers behind loaders	.90
All other harvesting workers	.85
	Rate per ton
Cutting top and bottom:	
Large barrel varieties[1]	$1.35
Small barrel varieties[2]	1.55
	Rate per hour
Production and cultivation work:	
Tractor drivers	$0.95
All other production and cultivation workers	.85

[1] Large barrel varieties: Co. 290; C.P. 29/103; C.P. 29/116; C.P. 32/243; C.P. 36/13; C.P. 36/105; C.P. 29/120; C.P. 43/47; C.P. 44/101; C.P. 44/155; N. Co. 310; C.P. 47/193; C.P. 48/103; C.P. 52/68; and C.P. 55/30.

[2] Small barrel varieties: All other.

(ii) *Workers between 14 and 16 years of age when employed on a time basis.* For workers between 14 and 16 years of age, the wage rate per hour (maximum employment is 8 hours per day for such workers without deduction from Sugar Act payments to the producer) shall be not less than three-fourths of the applicable hourly wage rates for adults provided under subdivision (i) of this subparagraph.

(iii) *Other piecework rates.* For any piecework performed on a unit basis for which a rate is not specified in subdivision (i) of this subparagraph, the rate shall be as agreed upon between the producer and worker: *Provided,* That the hourly rate of earnings of each worker employed on piecework during each pay period (such pay period not to be in excess of two weeks), shall average for the time worked at piecework rates during such pay period not less than the applicable hourly rate prescribed in subdivisions (i) and (ii) of this subparagraph.

(2) *Compensable working time.* For work performed under subparagraph (1) of this paragraph, compensable working time includes all time which the worker spends in the performance of his duties except time taken out for meals during the work day. Compensable working time commences at the time the worker is required to start work and ends upon completion of work in the field. However, if the producer requires the operator of mechanical equipment, driver of animals, or any other class of worker to report to a place other than the field, such as an assembly point or a tractor shed, located on the farm, the time spent in transit from such place to the field and from the field to such place is compensable working time. Any time spent in performing work directly related to the principal work performed by the worker, such as servicing equipment, is compensable working time. Time of the worker while being transported from a central recruiting point or labor camp to an assembly point located on the farm, or from a central recruiting point to the field, is not compensable working time.

(3) *Equipment necessary to perform work assignment.* The producer shall furnish without cost to the worker any equipment required in the performance of any work assignment. However, the worker may be charged for the cost of such equipment in the event of its loss or destruction through negligence of the worker. Equipment includes, but is not limited to hand and mechanical tools and special wearing apparel, such as boots and raincoats, required to discharge the work assignment.

(b) *Workers not covered.* The requirements of this section are not applicable to workers performing services which are indirectly connected with the production, cultivation, or harvesting of sugarcane, including but not limited to mechanics, welders, and other maintenance workers and repairmen.

(c) *Evidence of compliance.* Each producer subject to the provisions of this section shall keep and preserve, for a period of two years following the date on which his application for a Sugar Act payment is filed, such wage records as will fully demonstrate that each worker has been paid in full in accordance with the requirements of this section. The producer shall furnish upon request to the appropriate Agricultural Stabilization and Conservation County Committee such records or other evidence as may satisfy such committee that the requirements of this section have been met.

(d) *Subterfuge.* The producer shall not reduce the wage rates to workers below those determined in accordance with the requirements in this section through any subterfuge or device whatsoever.

(e) *Claim for unpaid wages.* Any person who believes he has not been paid in accordance with this section may file a wage claim with the local County Agricultural Stabilization and Conservation Committee against the producer on whose farm the work was performed. Such claim must be filed within two years from the date the work with respect to which the claim is made was performed. Detailed instructions and wage claim forms are available at the local County ASCS office. Upon receipt of a wage claim the County office shall thereupon notify the producer against whom the claim is made concerning the representation made by the worker. The County ASC Committee shall arrange for such investigation as it deems necessary and the producer and worker shall be notified in writing of its recommendation for settlement of the claim. If either party is not satisfied with the recommended settlement, an appeal may be made to the State Agricultural Stabilization and Conservation Committee, 3737 Government Street, Alexandria, Louisiana 71303, which shall likewise consider the facts and notify the producer and worker in writing of its recommendation for settlement of the claim. If the recommendation of the State ASC Committee is not

acceptable, either party may file an appeal with the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C., 20250. All such appeals shall be filed within 15 days after receipt of the recommended settlement from the respective committee, otherwise such recommended settlement will be applied in making payments under the act. If a claim is appealed to the Deputy Administrator, State and County Operations, his decision shall be binding on all parties insofar as payments under the act are concerned. Appeals procedures are set forth and explained fully in Part 780 of this chapter (29 F.R. 8200).

Statement of bases and considerations. (a) *General.* The foregoing determination establishes fair and reasonable wage rates to be paid for work performed by persons employed on the farm in the production, cultivation, or harvesting of sugarcane in Louisiana as one of the conditions with which producers must comply to be eligible for payments under the act.

(b) *Requirements of the act and standards employed.* Section 301(c)(1) of the act requires that all persons employed on the farm in the production, cultivation, or harvesting of sugarcane with respect to which an application for payment is made shall have been paid in full for all such work, and shall have been paid wages therefor at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing; and in making such determinations the Secretary shall take into consideration the standards therefor formerly established by him under the Agricultural Adjustment Act, as amended (i.e., cost of living, prices of sugar and by-products, income from sugarcane, and cost of production), and the differences in conditions among various producing areas.

(c) *Wage determination.* This determination differs from the prior determination in the following respects: the bonus payment for harvest work performed on a time basis is discontinued; the harvest worker classification is simplified; the minimum rate for hoist operators is increased 10 cents per hour; and producers are required to keep and preserve for a period of two years, records which will fully demonstrate that workers have been paid in full in accordance with the requirements of the determination.

A public hearing was held in Houma, Louisiana, on July 9, 1964, at which interested persons were afforded the opportunity to present testimony as to whether the wage rates established by the determination which became effective October 18, 1963, and an amendment effective November 4, 1963, continue to be fair and reasonable or whether the determination should be amended or superseded. The notice of hearing specifically requested testimony and recommendations on (1) elimination of the wage rate differential for tractor drivers employed in harvesting work and production and cultivation work; (2) elimination of the piecework rates for cutting cane; and (3) the regrouping of the harvest worker classifications and evaluation of rate differentials to provide a more simplified basic minimum wage structure.

A Louisiana State University economist presented data obtained from a study of large-scale and family-size sugarcane farms in Louisiana and stated that for some sugarcane producers the 1962-crop, the most recent for which complete records were available, was a good crop while for others it was the worst on record. The witness discussed the variability of year-to-year costs and returns, stating that the studies showed large-scale farms in 1962 averaged a net income of 2 cents per ton of cane compared to $1.44 in 1961 and a loss of 2 cents per ton for the 5-year period 1955–59; that family-type sugarcane farms averaged a profit of $2.17 per ton of cane in 1962, compared with $2.86 in 1961, and a profit of 23 cents per ton for the 5-year period 1955–59; that on large-scale sugarcane farms direct labor costs during the 5-year period 1955–59 accounted for 48 percent of total direct costs compared with 46 percent for the 3-year period 1960–62; that for family-type sugarcane farms direct labor costs accounted for 39 percent of total direct costs in the 5-year period 1955–59 compared with 35 percent for the 3-year period 1960–62; that labor costs have not decreased proportionately in relation to man-hours; and that labor received a larger share of the benefits of improved technology than the grower. The witness made no recommendations regarding wage rates.

The Chairman of the Employee Relations Committee of the American Sugar Cane League recommended that the wage-price bonus provision of the prior determination be discontinued; that the worker classifications for loaders, spotters, ropemen, grabmen, teamsters, toppers, strippers, cutters and loaders, and pilers be discontinued since, generally, they were no longer used; that truck drivers be excluded because they were not regarded as being directly employed in either the production, cultivation, or harvesting of sugarcane; that the basic minimum rate for hoist operators be increased 10 cents—from 90 cents to $1.00 per hour; and that other provisions of the determination be continued unchanged.

A representative of the Louisiana Farm Bureau Federation recommended retention of the differential in wage rates for tractor drivers in harvesting work and production and cultivation work; that the piecework rates for cutting sugarcane be continued; that there be no change in the classifications of harvest workers; and, that if the Department estimates that the price of raw sugar will be below the price objective of the Sugar Act during the Louisiana raw sugar pricing period, that the new determination adopt an across-the-board reduction of at least 10 cents per hour in the minimum determination wage rates.

No testimony was presented by representatives of workers.

Consideration has been given to the recommendations made at the public hearing, to data on returns, costs, and profits of producing sugarcane obtained by field survey in a prior year and recast to reflect prospective conditions for the 1964 crop and to other pertinent factors. Analysis of these data indicate that the basic minimum wage rates established in this determination are fair and reasonable and are within the producer's ability to pay.

The production of sugarcane in Louisiana has been a profitable operation during recent years, due largely to favorable yields of sugarcane and sugar, increased income per ton of sugarcane and per acre, and improvements in production practices which have resulted in greater labor productivity. Current prospects for 1964 indicate another crop substantially above average.

The revised harvest worker classification recommended by the Employee Relations Committee of the American Sugar Cane League has been adopted. This results in four classifications of harvest workers instead of five. If any workers are employed for the classifications no longer designated, the applicable rate for such work shall be that applicable to "All other harvesting workers." The Committee's recommendation that the rate for hoist operators be increased by 10 cents per hour also has been adopted. Data indicate that in recent years these workers were paid wage rates comparable to the higher skilled workers. The recommendation that truck drivers be excluded from the rate scale has not been adopted. However, truck drivers employed by a contractor who furnishes only trucking services to the producer are not covered by this determination.

Prior wage determinations have provided that the producer was required to furnish, upon request, to the county committee acceptable and adequate proof that all workers had been paid in accordance with the requirements of the determination. This determination strengthens that requirement. Producers are required to keep and preserve for a two-year period beyond the date of filing his application for a Sugar Act payment, adequate records relating to wage payments to sugarcane workers on the farm. The requirement that wage payment records be kept for a period of two years after applying for a Sugar Act payment coincides generally with the period in which a worker may file a wage claim. This additional requirement will facilitate the settlement of wage claims which may be filed by workers.

This determination is issued on a continuing basis and will be effective until amended, superseded or terminated. The Department will keep the wage situation under review and will conduct such investigations and hold such hearings as may be necessary.

Accordingly, I hereby find and conclude that the foregoing wage determination will effectuate the wage provisions of the Sugar Act of 1948, as amended.

(Sec. 403, 61 Stat. 932; 7 U.S.C. 1153. Interprets or applies sec. 301, 61 Stat. 929, as amended; 7 U.S.C. 1132)

(The recordkeeping and reporting requirements of these regulations have been approved by, and subsequent recordkeeping and reporting requirements will be subject to the approval of the Bureau of the Budget in accordance with the Federal Reports Act of 1942.)

Effective date. This determination shall become effective on October 5, 1964, and shall remain in effect until amended, superseded, or terminated.

Signed at Washington, D.C., on September 30, 1964.

CHARLES S. MURPHY,
Acting Secretary.

[F.R. Doc. 64-10088; Filed, Oct. 5, 1964; 8:47 a.m.]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER C—EXPORT PROGRAMS

[Amdt. 1]

PART 1485—DAIRY PRODUCTS

Subpart—Dairy Products Export Payment-in-Kind Program—Terms and Conditions (SM-7)

MISCELLANEOUS AMENDMENTS

The Terms and Conditions of the Dairy Products Export Payment-in-Kind Program (SM-7) (F.R. Doc. 63-11585) are, with regard to any registration number assigned by the Office of the General Sales Manager resulting from a Notice of Sale Form CCC-138, on and after the date of publication in the FEDERAL REGISTER of this Amendment I, amended as follows:

1. Section 1485.218(b) is amended by deleting subparagraph (3) and inserting the following subparagraphs (3) and (4):

§ 1485.218 Description of certificate.

* * * * *

(3) The adjusted pounds of butter (as determined in this subsection) exported multiplied by the export payment rate in effect at the time of sale or registration, whichever is lower. The adjusted pounds of butter shall be determined by multiplying the net pounds of butter exported for each of the categories of butter listed below by the following factors as applicable:

	Factor
Standard butter (80.0-81.9 percent milkfat)	1.0000
Higher fat butter (82.0-82.9 percent milkfat)	1.0250
Higher fat butter (83.0 percent milkfat or more)	1.0375

The adjusted pounds of butter shall be determined for each churn of butter and shall be based on grading certificates submitted to CCC in support of exporter's applicaton for export payment.

(4) The number of pounds of milkfat products (other than butter) exported adjusted to a basis of 80 percent milkfat by the export payment rate for butter in effect at the time of sale or registration, whichever is lower. The milkfat content of products (other than butter) exported shall be evidenced by grading certificate submitted in support of exporter's applications for dairy products export payments.

2. Section 1485.228 is amended to read as follows:

§ 1485.228 Assignments.

No assignment shall be made by an exporter of the exporter's agreement, or any rights thereunder, except that the exporter may assign the payments due the exporter under the Application for Dairy Products Export Payment, Form CCC-135, to any bank, trust company, Federal lending agency, or other financing institution, and subject to the approval of the CCC, assignment may be made to any other person or firm: *Provided, however,* That such assignment shall be recognized only if and when the assignee thereof files written notice of the assignment together with a signed copy of the instrument of assignment, in accordance with the instructions on Form CCC-251, Notice of Assignment, which form must be used in giving notice of assignment to CCC: *And provided further,* That any such assignment shall cover all amounts payable and not already paid under the contract or registration, and shall not be made to more than one party and shall not be subject to further assignment except that any such assignment may be made to one party as agent or trustee for two or more parties participating in the financing transaction for which such assignment is given as security. The instrument of Assignment may be executed on Form CCC-252 or the assignee may use his own form of assignment subject to acceptance by CCC. Forms may be obtained from the Minneapolis ASCS Commodity Office.

§ 1485.234 [Amendment]

3. Section 1485.234 *Setoff* is amended by adding the following: "Notwithstanding any assignment pursuant to § 1485.-228, CCC may set off any amounts due CCC, if CCC notifies the assignee of such indebtedness to be set off at the time acknowledgment is made of receipt of the notice of assignment. CCC may set off any indebtedness of exporter to CCC as to which the assignee was not so notified against any amount due and payable under the contract which remains after deduction of amounts (including interest and other charges) owing by contractor to the assignee for which the assignment was made."

Effective date: On date of publication in the FEDERAL REGISTER.

Signed at Washington, D.C. on September 25, 1964.

C. R. ESKILDSEN,
Vice President, Commodity Credit Corporation; Administrator, Foreign Agricultural Service.

[F.R. Doc. 64-10111; Filed, Oct. 5, 1964; 8:49 a.m.]

Title 45—PUBLIC WELFARE

Chapter I—Office of Education, Department of Health, Education, and Welfare

PART 105—VOCATIONAL EDUCATION: SPECIAL GRANTS

Pursuant to section 4(c) of the Vocational Education Act of 1963 (Part A of P.L. 88-210, 77 Stat. 403), the following regulations (Subpart A of Part 105) are promulgated to govern grants by the Commissioner to colleges and universities and other public or nonprofit private agencies and institutions, to State boards, and, with the approval of the appropriate State board, to local educational agencies, to pay part of the cost of research and training programs and of experimental, developmental, or pilot programs developed by such institutions, boards, or agencies, and designed to meet the special vocational education needs of youths, particularly youths in economically depressed communities who have academic, socio-economic, or other handicaps that prevent them from succeeding in the regular vocational education programs.

Pursuant to section 14 of the Vocational Education Act of 1963 (Part A of P.L. 88-210, 77 Stat. 403) the following regulations (Subpart B of Part 105) are promulgated to govern grants by the Commissioner to State boards, to colleges and universities, and, with the approval of the appropriate State board, to public educational agencies, organizations, or institutions for the construction, equipment, and operation of residential vocational education schools.

The grants under this part provide Federal financial assistance subject to the requirements of Title VI of the Civil Rights Act of 1964, approved July 2, 1964 (78 Stat. 252; P.L. 88-352). Section 601 of that Act provides that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Grants made pursuant to the regulations set forth below are subject to such applicable rules, regulations, or orders as may hereafter be issued with the approval of the President to effectuate the provisions of section 601.

Subpart A—Research, Training and Experimental, Developmental or Pilot Programs in Vocational and Technical Education

Sec.

105.1 Applicability.
105.2 Definitions.
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Subpart B—Residential Vocational Education Schools

Sec.
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105.28 Disposition.

Subpart A—Research, Training and Experimental Developmental or Pilot Programs in Vocational and Technical Education

AUTHORITY: The provisions of this Subpart A issued under sec. 4(c) of Public Law 88-210, 77 Stat. 405, 20 U.S.C. 35c(c).

§ 105.1 Applicability.

The regulations of this part apply to grants made by the Commissioner of Education pursuant to his authority under section 4(c) of the Vocational Education Act of 1963 (Part A of Public Law 88-210, 77 U.S.C. 403, 20 U.S.C. 35-35n) for the purposes set forth in § 105.4.

§ 105.2 Definitions.

As used in this part

(a) "Act" means the Vocational Education Act of 1963 (Part A of Public Law 88-210, 77 Stat. 403, 20 U.S.C. 35-35n).

(b) "Commissioner" means the U.S. Commissioner of Education.

(c) "Local educational agency" means a board of education or other legally constituted local school authority having admininstrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political sub-division in a State, or any other public educational institution or agency having administrative control and direction of a vocational education program.

(d) "State board" means the State board for vocational education designated or created by a State to secure to the State the benefits of Federal grants for vocational education.

§ 105.3 Statement of conditions.

Each applicant for a grant will receive appropriate application forms and a copy of the Conditions for Special Grant Programs in Vocational and Technical Education which will define relevant terms in the statute, state the procedures to be followed by the applicant in applying for a grant, the criteria to be used by the Commissioner in evaluating applications, and the conditions under which the Commissioner will award grants, as well as the conditions with which the grantee shall comply in carrying out its program.

§ 105.4 Nature and purpose of grants.

The Commissioner is authorized under the Act to award grants to eligible agencies, institutions, State boards, or local educational agencies. Such grants shall pay part of the cost of research and training programs in vocational education. Such grants shall also pay part of the cost of experimental, developmental, or pilot programs in vocational education developed by the grantees, which programs shall be designed to meet the special vocational education needs of youths, with emphasis on those youths in economically depressed communities who have academic, socioeconomic or other handicaps that prevent them from succeeding in the regular vocational education programs.

§ 105.5 Eligibility of applicants.

Any college, university, and other public or nonprofit private agency and institution, State board, and, with the approval of the appropriate State board for vocational education, local educational agency, is eligible to apply for a grant award. The following are not eligible:

(1) Individuals;

(2) Any institution or agency, including any corporation or association, if any part of its net earnings lawfully inures or may inure to the benefit of any individual.

§ 105.6 Programs eligible.

Any program of an eligible applicant which the Commissioner of Education determines to be a research or training program, or an experimental, developmental or pilot program within the meaning of section 4(c) of the Act will be conisdered for a grant award. Experimental, developmental or pilot programs, in order to be eligible for consideration, must be designed to meet the special vocational education needs of youths. The Commissioner will give priority to experimental, developmental or pilot programs designed to meet the needs of youths in economically depressed communities who have academic, socioeconomic, or other handicaps that prevent them from succeeding in regular vocational education programs. This requirement does not mean that an experimental, developmental or pilot program which is in part directed to meet the needs of other persons is ineligible, provided a substantial part of such program is devoted to the needs of youths.

§ 105.7 Applications for grants.

Any applicant eligible for a grant award under § 105.5 may file an application on forms prescribed by the Commissioner. Such application shall describe the nature, duration, purpose and plan of the proposed program, the qualifications of the principal staff who shall be responsible for the program, the total facilities and resources that will be available, a justification of the amount of grant funds requested, the portion of the cost to be borne by the applicant, and such other pertinent information as the Commissioner may require. The application shall be executed by an individual authorized to act for the applicant. Applications and requests for information shall be sent to:

Division of Vocational and Technical Education, Office of Education, U.S. Department of Health, Education, and Welfare, Washington, D.C., 20202.

§ 105.8 Criteria for evaluation of applications.

All applications filed in accordance with § 105.7 will be evaluated by the Commissioner through such procedures as the Commissioner will establish. The Commissioner's evaluation will take into account among other pertinent factors the educational significance, the program design or plan, the competence of personnel designated to carry out the program, the adequacy of facilities, the economic efficiency, and the feasibility of the proposed program.

§ 105.9 Disposition.

On the basis of his evaluation of an application pursuant to § 105.8, the Commissioner will either (a) approve the application in whole or in part, (b) disapprove the application, or (c) defer action on the application for such reasons as lack of funds or a need for further evaluation. Any deferral or disapproval of an application shall not preclude its reconsideration or resubmission. The Commissioner will notify the applicant in writing of the disposition of the application. If the Commissioner makes a grant, the grant award letter will include the approved budget and grant conditions. The applicant shall indicate acceptance of the proposed grant by having an authorized official sign a copy of the grant award letter and by returning such copy to:

Division of Vocational and Technical Education,
Office of Education,
U.S. Department of Health, Education, and Welfare,
Washington, D.C. 20202.

Subpart B—Residential Vocational Education Schools

AUTHORITY: The provisions of this Subpart B issued under sec. 14 of Public Law 88-210, 77 Stat. 414, 20 U.S.C. 351.

§ 105.21 Applicability.

The regulations of this part apply to grants made by the Commissioner of Education, pursuant to his authority under section 14 of the Vocational Education Act of 1963 (Part A of Public Law 88-210, 77 Stat. 403, 20 U.S.C. 35-35n), for the purposes set forth in § 105.24.

§ 105.22 Definitions.

As used in this part

(a) "Act" means the Vocational Education Act of 1963 (Part A of Public Law 88-210, 77 Stat. 403, 20 U.S.C. 35-35n).

(b) "Commissioner" means the U.S. Commissioner of Education.

(c) "State board" means the State board for vocational education designated or created by a State to secure to the State the benefits of Federal grants for vocational education.

§ 105.23 Statement of conditions.

Each applicant for a grant will receive appropriate application forms and a copy of the Conditions for Grants for Residential Vocational Education Schools which will define relevant terms in the statute, state the procedures to be followed by the applicant in applying for a grant, the criteria to be used by the Commissioner in evaluating applications, and the conditions under which the Commissioner will award grants, as well as the conditions with which the grantee shall comply in carrying out its program.

§ 105.24 Nature and purpose of grants.

The Commissioner is authorized under the Act to award grants to eligible colleges, universities, State boards, or public educational agencies, organizations, or institutions for the purpose of demonstrating the feasibility and desirability of residential vocational education schools for certain youths with socioeconomic handicaps. Such grants may include the costs of construction, equipment, and operation of residential schools to provide vocational education for youths who are between the ages of 15 and 21 at time of enrollment, and who need full-time study on a residential basis in order to derive maximum benefit from vocational education. In making such grants the Commissioner will give special consideration to the needs of large urban areas having substantial numbers of youths who have dropped out of school or are employed and will seek to attain, as nearly as practicable in the light of the purpose of the Act, an equitable geographical distribution of such schools.

§ 105.25 Eligibility of applications.

(a) *Applicants.* Any college, university, State board, or, with the approval of the appropriate State board, public educational agency, organization or institution (other than a college or university) is eligible to apply for a grant award. The following are not eligible:

(1) Individuals;

(2) Any private nonprofit institution or agency including any corporation or association, other than a college or university;

(3) Any institution or agency, including any corporation or association, if any part of its net earnings lawfully inures or may inure to the benefit of any individual.

(b) *Proposals.* Any proposal of an eligible applicant for the construction, equipment and operation of a residential school to provide vocational education which the Commissioner determines to be within the scope of section 14 of the Act will be considered for a grant award.

§ 105.26 Application for grants.

Any applicant eligible for a grant award under § 105.25 may file an application on forms prescribed by the Commissioner. Such application shall contain sufficient information to permit its evaluation in accordance with the criteria set out in § 105.27, and shall be executed by an individual authorized to act for the applicant. Applications and requests for information shall be sent to:

Division of Vocational and Technical Education,
Office of Education,
U.S. Department of Health, Education, and Welfare,
Washington, D.C. 20202.

§ 105.27 Criteria for evaluation of applications.

All applications filed in accordance with § 105.26 will be evaluated by the Commissioner through such procedures as the Commissioner will establish. The Commissioner's evaluation will take into account among other pertinent factors:

(a) The extent to which the proposed school will serve large urban areas having substantial numbers of youth who have dropped out of school or are unemployed;

(b) The geographical area to be served both in terms of size and in terms of the geographical areas to be served by other possible grantees;

(c) The probable ability of the applicant to operate the proposed school successfully;

(d) The suitability of existing resources and related community services designated for use in the operation of the proposed school;

(e) The time within which the proposed school may be put into operation;

(f) The probable availability of nonfederal support for operation of the proposed school beyond the period of Federal support, should such operation seem feasible and desirable;

(g) The cost in relation to the costs of other proposals which are for programs of similar size and location;

(h) The merits of the project as a demonstration activity and the ability of the applicant, independently or with others, to make a continuing objective evaluation of the desirability and feasibility of the activity.

§ 105.28 Disposition.

On the basis of his evaluation of an application pursuant to § 105.27, the Commissioner will either (a) approve the application, (b) disapprove the application, or (c) defer action on the application for such reasons as lack of funds or a need for further evaluation. Any deferral or disapproval of an application shall not preclude its reconsideration or resubmission. The Commissioner will notify the applicant in writing of the disposition of the application. If the Commissioner makes a grant, the grant award letter will include the approved budget and grant conditions. The applicant shall indicate acceptance of the proposed grant by having an authorized official sign a copy of the grant award letter and by returning such copy to:

Division of Vocational and Technical Education,
Office of Education,
U.S. Department of Health, Education, and Welfare,
Washington, D.C. 20202.

[SEAL] WAYNE O. REED,
Acting U.S. Commissioner of Education.

SEPTEMBER 4, 1964.

Approved: September 28, 1964.

ANTHONY J. CELEBREZZE,
Secretary.

[F.R. Doc. 64-10099; Filed, Oct. 5, 1964; 8:48 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 32—HUNTING

Upper Mississippi River Wildlife and Fish Refuge, Illinois, Iowa, Minnesota and Wisconsin

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

ILLINOIS, IOWA, MINNESOTA AND WISCONSIN

UPPER MISSISSIPPI RIVER WILDLIFE AND FISH REFUGE

The public hunting of deer on the Upper Mississippi River Wildlife and Fish Refuge, Illinois, Iowa, Minnesota, and Wisconsin is permitted on the areas designated by signs as open to hunting. Restricted hunting of deer is also permitted on the areas designated by signs as closed to hunting. All deer hunting shall be within the outside dates of the applicable state seasons as follows:

ILLINOIS

Bow and arrow seasons—from one-half hour before sunrise to one-half hour before sunset, c.s.t., October 1, 1964, through November 15, 1964; and from one-half hour before sunrise to one-half hour before sunset, c.s.t., November 24, 1964, through November 29, 1964, and December 7, 1964, through December 31, 1964. Shotgun season—from 6:30 a.m. to 4:00 p.m., c.s.t., November 20 through November 23, 1964.

IOWA

Bow and arrow season—from one-half hour before sunrise to one-half hour after sunset, c.s.t., October 17, 1964 through December 6, 1964. Shotgun season—from 8:00 a.m. to 4:00 p.m., c.s.t., December 12 through December 15, 1964.

MINNESOTA

Early bow and arrow season—from sunrise to sunset, c.s.t., October 3, 1964, through October 21, 1964. Shotgun and bow and arrow season—from sunrise to sunset, c.s.t., November 7, 8, and 9, 1964. Late bow and arrow season—from sunrise to sunset, c.s.t., November 28, 1964, through December 20, 1964.

WISCONSIN

Bow and arrow season for either sex—from one-half hour before sunrise to sunset, c.s.t., September 26, 1964, through November 17, 1964, and December 5, 1964, through December 31, 1964. Shotgun only and bow and arrow season for either sex—one-half hour before sunrise to sunset, c.s.t., November 21, 1964, through November 22, 1964, in Buffalo,

Trempealeau, La Crosse, and Vernon Counties, and for legal bucks only November 23, 1964, through November 29, 1964, in Buffalo County. Rifle, shotgun, and bow and arrow season for legal bucks only—one-half hour before sunrise to sunset, c.s.t., November 23, 1964, through November 29, 1964, in Trempealeau, La Crosse and Vernon Counties. Rifle, shotgun, and bow and arrow season for either sex—one-half hour before sunrise to sunset, c.s.t., November 21, 1964, through November 23, 1964, in Crawford and Grant Counties.

The open areas comprising 153,000 acres, and the closed areas comprising 41,000 acres are delineated on maps available at the refuge headquarters, Winona, Minn., 55987, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis, Minn., 55408.

Hunting shall be in accordance with all applicable State regulations governing the hunting of deer subject to the following special conditions.

(1) Gun hunting on designated open areas concurrent with applicable State seasons is permitted from the first day of the first waterfowl hunting season applicable to the geographic area concerned, until the end of the applicable State seasons, or until March 1, 1965, whichever occurs first.

(2) Bow hunting is permitted on designated open areas concurrent with applicable State seasons, but not later than March 1, 1965.

(3) Bow and gun hunting on designated closed areas concurrent with applicable State seasons is permitted from the first day after the close of the last hunting season for ducks and coots applicable to the geographic area concerned, until the end of the applicable State seasons, or until March 1, 1965, whichever occurs first.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective until March 1, 1965.

R. W. BURWELL,
Regional Director.

SEPTEMBER 29, 1964.

[F.R. Doc. 64-10080; Filed, Oct. 5, 1964; 8:46 a.m.]

PART 32—HUNTING

Moosehorn National Wildlife Refuge, Maine

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

MAINE

MOOSEHORN NATIONAL WILDLIFE REFUGE

Public hunting of deer on the Moosehorn National Wildlife Refuge, Maine, is permitted from November 1, 1964, through December 5, 1964, inclusive, but only on the area designated by signs as open to hunting. This open area, comprising 21,000 acres, is delineated on maps available at refuge headquarters, 3 miles west of Calais, Maine, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 59 Temple Place, Boston, Mass., 02111. Hunting shall be in accordance with all applicable State regulations covering the hunting of deer subject to the following special conditions:

(1) Every deer killed must be checked out at refuge headquarters before hunters leave the refuge.

(2) A Federal permit is required to enter the public hunting area. It may be obtained by applying in person at the refuge headquarters Monday through Friday from 7:30 a.m. to 4:00 p.m. during the 15 days prior to the hunt and thereafter on the days and during the hours when hunting is permitted.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 5, 1964.

FRED L. JACOBSON,
Acting Regional Director,
Boston, Massachusetts.

SEPTEMBER 25, 1964.

[F.R. Doc. 64-10081; Filed, Oct. 5, 1964; 8:46 a.m.]

PART 32—HUNTING

Parker River National Wildlife Refuge, Massachusetts

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER. The limited time ensuing from the date of the adoption of the Federal migratory game bird regulations to and including the establishment of State hunting seasons makes it impracticable to give public notice of proposed rule making.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

MASSACHUSETTS

PARKER RIVER NATIONAL WILDLIFE REFUGE

Public hunting of ducks, geese (except snow geese), brant, and coots on the Parker River National Wildlife Refuge, Massachusetts, is permitted only on the areas designated by signs as open to hunting. These open areas, comprising 550 acres, and known as the Pine Island Hunting Area and the Canada Goose Hunting Area, are delineated on maps available at the refuge headquarters, Newburyport, Massachusetts, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 59 Temple Place, Boston, Mass., 02111. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of ducks, geese, brant and coots, subject to the following special conditions:

(1) The open season for hunting ducks, geese (except snow geese), brant, and coots on the Pine Island Hunting Area is from October 17, 1964, through October 31, 1964, inclusive, and from November 27, 1964, through December 26, 1964, inclusive.

(2) The open season for hunting geese (except snow geese) on the Canada Goose Hunting Area is from December 1, 1964, through December 5, 1964, inclusive, and from December 21, 1964 through January 9, 1965, inclusive.

(3) The daily bag limit on the Canada Goose Hunting Area shall be 1 Canada goose.

(4) Hunting on the Canada Goose Hunting Area shall be only from within 50 feet of a numbered stake driven into the ground and labeled by refuge personnel.

(5) Shooting and possession of a loaded gun on the Pine Island Hunting Area shall be only from within a corridor marked by refuge personnel.

(6) Blinds—The construction of permanent blinds and the digging of pits by the public are not permitted.

(7) A Federal permit is required to enter the public hunting areas. A seasonal permit to enter the Pine Island Hunting Area may be obtained at the checking station at the entrance to the refuge during the hours and on the days when hunting is permitted and at refuge headquarters from 8:00 a.m. to 4:30 p.m. Monday through Friday. A daily permit to enter the Canada Goose Hunting Area may be obtained at the checking station from 4:00 a.m. to 6:00 a.m. on the days when hunting is permitted. Permits to enter the Canada Goose Hunting Area shall be turned in to refuge personnel upon leaving the hunting area.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 9, 1965.

FRED L. JACOBSON,
Acting Regional Director,
Boston, Massachusetts.

SEPTEMBER 29, 1964.

[F.R. Doc. 64-10082; Filed, Oct. 5, 1964; 8:46 a.m.]

PART 32—HUNTING

Brigantine National Wildlife Refuge, New Jersey

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER. The limited time ensuing from the date of the adoption of the Federal migratory game bird regulations to and including establishment of State hunting seasons makes it impracticable to give public notice of proposed rule making.

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

NEW JERSEY

BRIGANTINE NATIONAL WILDLIFE REFUGE

The public hunting of ducks and coots on the Brigantine National Wildlife Refuge, New Jersey, is permitted from October 24, 1964, through November 14, 1964, inclusive, and from December 11, 1964, through January 2, 1965, inclusive,

and public hunting of geese (except snow geese) and brant is permitted from October 24, 1964, through January 1, 1965, inclusive, but only on the area designated by signs as open to hunting. This open area, comprising 4,480 acres, is delineated on maps available at the refuge headquarters, Oceanville, New Jersey, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 59 Temple Place, Boston, Mass., 02111. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of ducks, geese, brant, and coots.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 2, 1965.

FRED L. JACOBSON,
Acting Regional Director,
Boston, Massachusetts.

SEPTEMBER, 25, 1964.

[F.R. Doc. 64-10083; Filed, Oct. 5, 1964; 8:46 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter III—Bureau of International Commerce, Department of Commerce

SUBCHAPTER B—EXPORT REGULATIONS

[9th Gen. Rev. of Export Regs., Amdt. 91]

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

The following revisions and amendments are made in the Export Regulations:

PART 370—SCOPE OF EXPORT CONTROL BY DEPARTMENT OF COMMERCE

§ 370.5 Exportations authorized by Government agencies other than Office of Export Control.

* * * * *

(e) *Vessels.*[1] The sale to a foreign purchaser and/or the transfer to foreign registry of vessels which are owned by citizens of the United States, regardless of size, type, or documentation, is subject to the approval of the U.S. Maritime Administration under the authority of Sections 9 and 37 of the United States Shipping Act of 1916, as amended (46 U.S.C. 808 & 835; 46 CFR Part 221). Vessels of war, as defined in the United States Munitions List (see paragraph 370.5(a)), require export authorization from both the U.S. Department of State and the U.S. Maritime Administration. Vessels (including vessels of war) exported for the purpose of scrapping, dismantling, dismembering, or destroying the hulls or hulks thereof, require export authorization from both the Office of Export Control and the U.S. Maritime Administration for exportation to Hong Kong, Macao, Subgroup A destinations, Poland (including Danzig), Rumania, and Cuba. For exportation to other destinations export authorization is required from the U.S. Maritime Administration only.

* * * * *

§ 370.8 Shipments entering foreign trade zones.

(a) *Foreign origin commodities.* * * *

(1) *Hong Kong, Macao, Poland (including Danzig), Rumania and Subgroup A destinations.* Shipments to Hong Kong, Macao, Poland (including Danzig), Rumania, or a Subgroup A destination require a validated license if a shipment of similar goods of United States origin could not be made from the customs territory of the United States to such a destination under the provisions of a general license.

* * * * *

(3) *Shipments originating in Canada.* Shipments of commodities originating in Canada require a validated license only:

(i) If the shipment does not meet the conditions set forth in § 371.9(b)(1); or

(ii) If the shipment is exported to an ultimate destination to which the same commodities could not be exported directly from the United States under General License GO.

* * * * *

PART 371—GENERAL LICENSES

§ 371.8 General License GRO; shipments of non-Positive List commodities.

(a) *Scope of license.* A general license designated GRO is hereby established, authorizing the exportation to all destinations of all commodities not included on the Positive List of Commodities (§ 399.1), subject to the other provisions set forth in this § 371.8,[1] except that:

(1) No exportations may be made under this general license to Hong Kong, Macao, a Subgroup A destination, or Cuba;

(2) No exportations of the commodities listed in Supplement No. 2 to Part 371 may be made under this general license to Poland (including Danzig) or Rumania;

(3) No exportations of inbred corn seed, except sweet corn seed (Schedule B No. 10317); inbred grain sorghum seed (Schedule B No. 10350); or inbred sweet corn seed (Schedule B No. 24690) may be made under this general license to Rumania; and

(4) No exportations of the following commodities may be made under this general license to the Republic of South Africa:

Schedule B No.	Commodity description
94730	Shotguns.
94745	Components and parts specially fabricated for shotguns.
94812	Shotgun shells.
94819	Components and parts specially fabricated for shotgun shells (including empty shotgun shells, primers for shotgun shells, and percussion caps).

NOTE: Gift parcels containing commodities not on the Positive List may be shipped under General License GRO except as indicated in paragraph 371.8(a) above. Any commodity on the Positive List requires a validated license for export, even though intended as a gift, unless exportable under one of the other general licenses such as GO (see § 371.7), or GLV (see § 371.10).

§ 371.9 General License GIT; intransit shipments.

(a) *General provisions.* * * *

(3) Only those exportations of foreign origin which, if of United States origin, could be made respectively to Hong Kong, Macao, Poland (including Danzig), Rumania, or a Subgroup A country, under the provisions of a general license, may be exported to Hong Kong, Macao, Poland (including Danzig), Rumania, or a Subgroup A country, respectively, under General License GIT.

NOTE: 1. A commodity is not considered as "moving in transit" within the meaning of General License GIT if it is covered by a warehouse entry and withdrawn from warehouse under a withdrawal-for-exportation customs entry or if its transit is broken by a warehousing or processing operation under another type of customs entry.

2. General License GIT is not applicable to exportations of commodities licensed by agencies of the United States Government other than the Office of Export Control.

3. See § 370.7 regarding shipments moving in transit via the United States without unloading from the carrier.

* * * * *

§ 371.10 General License GLV; shipments of limited value.

* * * * *

(d) *Positive List commodities.* Commodities included on the Positive List of Commodities (§ 399.1), whether or not included in a single entry, may be exported in a single shipment under this general license to all destinations, except Hong Kong, Macao, Poland (including Danzig), Rumania, a Subgroup A destination (see § 371.3(a)), or Cuba, as follows:

* * * * *

§ 371.11 General licenses BAGGAGE and TOOLS OF TRADE.

(a) *Definitions.* (1) Accompanied baggage or tools. Baggage or tools taken by a person departing from the United States on the same carrier on which he departs.

(2) Unaccompanied baggage. Baggage sent from the United States on a carrier other than that on which a person departs.

(b) *General License BAGGAGE*—(1) *General provisions.* A general license designated BAGGAGE is hereby established authorizing a person leaving the United States, but not including members

[1] See § 399.3 for Schedule B numbers covered by regulations of the Atomic Energy Commission and the U.S. Maritime Administration.

[1] The Export Regulations provide that commodities may not be supplied under any general license for use on a vessel or aircraft departing from the United States, unless such exportation is authorized under General License Ship Stores or Plane Stores. (See paragraphs 371.2(c)(2), 371.13(a) and 371.13(b).)

of crews on vessels and aircraft,[1] to take to any destination, as personal baggage, accompanied or unaccompanied, the classes of commodities listed below. Unaccompanied shipments under this general license shall be clearly marked "BAGGAGE." Shipments of unaccompanied baggage may be made at the time of, or within a reasonable time prior to or after, departure of the consignee or owner from the United States. However, commodities listed on the Positive List of Commodities may not be taken out of the United States to any Subgroup A country, Poland (including Danzig), Rumania or Cuba under this general license.

(i) *Personal effects.* Usual and reasonable kinds and quantities of wearing apparel, articles of personal adornment, toilet articles, medicinal supplies, food, souvenirs, games, and similar personal effects, and their containers.

NOTE: As used in the Export Regulations, usual and reasonable quantities and kinds of food should be limited, generally, to the quantities and kinds necessary and appropriate for use by a traveler or members of his immediate family during the outgoing and any immediate return voyage. Consequently, where a traveler desires to include, under General License BAGGAGE, food in such quantities as to be obviously used for consumption after he has finished his voyage, or to be distributed as "gifts," such food is not included within the provisions of this general license.

(ii) *Household effects.* Usual and reasonable kinds and quantities of furniture, household effects, household furnishings, and their containers.

(iii) *Vehicles.* Usual and reasonable kinds and quantities of vehicles, such as passenger cars, station wagons, trucks, trailers, motorcycles, bicycles, tricycles, perambulators, and their containers.

Provided, That the above-indicated personal effects, household effects, and vehicles shall include only such articles as are owned by such person or members of his immediate family; are necessary and appropriate for the use of such person or his immediate family; are intended for his use or the use of his immediate family; and are not intended for sale.

(c) *General license TOOLS OF TRADE.* A general license designated TOOLS OF TRADE is hereby established, authorizing a person leaving the United States to take abroad usual and reasonable kinds and quantities of tools necessary in his trade, occupation, or employment under the conditions described in subparagraphs (1) and (2) of this paragraph. In all cases such tools must be accompanied by the person leaving the United States.

(1) *Tools owned by person leaving the United States.* Where the person leaving the United States owns the tools, such tools may be taken to any destination subject to the following conditions:

(i) The tools shall consist of implements or instruments used in such person's trade, occupation, or employment and may include the containers for such implements or instruments;

(ii) The tools shall be for the personal use of the person taking the commodities abroad;

(iii) The tools shall not be sold abroad; and

(iv) If the tools are listed on the Positive List of Commodities they shall not be exported or reexported to any Subgroup A destination, Poland (including Danzig), Rumania, or Cuba under this general license.

(2) *Tools not owned by person leaving the United States.* Where the person leaving the United States does not own the tools, such tools may be taken to any destination except Subgroup A destinations, Poland (including Danzig), Rumania, Hong Kong, Macao, and Cuba for use in installing, inspecting, testing, calibrating, or repairing any type of commodity subject to the following conditions:

(i) The tools shall consist of instruments or implements used in installing, inspecting, testing, calibrating, or repairing any type of commodity and may include the containers for such instruments or implements;

(ii) The tools shall be exported temporarily and may not be sold abroad;

(iii) From the time the tools are exported from the United States until they are returned to the United States, they shall be under the control of a person who is employed by or acting as agent for the owner of the tools.

(iv) The owner of the tools or a responsible official of the organization owning the tools shall promptly inform the Office of Export Control by letter that tools will be or have been shipped under General License TOOLS OF TRADE. This letter shall be addressed to the U.S. Department of Commerce, Office of Export Control, Attn: BIC–7340, Washington, D.C., 20230, and shall include the following information:

(*a*) General description and the approximate value of the tools;

(*b*) Temporary destination of the tools;

(*c*) Date the tools will be or were shipped; and

(*d*) The following certification:

I (We) hereby certify that the tools described in this letter (1) will be used in installing, inspecting, testing, calibrating, or repairing a commodity; (2) will not be exported or reexported to any Subgroup A destination, Poland (including Danzig), Rumania, Hong Kong, Macao, or Cuba; (3) will be exported temporarily and shall not be sold abroad; (4) will be under the control of a person who is employed by or acting as agent for (me) (us) from the time the tools are exported from the United States until they are returned to the United States. Further (I) (We) certify that _____ is authorized by (me) (us) to take these tools abroad.

(d) *Requirement for filing declaration.* A shipper's Export Declaration must be filed in accordance with § 379.1 whenever a shipment is exported under General License BAGGAGE or General License TOOLS OF TRADE when shipped under a Bill of Lading. If the shipment is not made under a Bill of Lading, an oral declaration must be made to the Collector at the port of exit (see paragraph 371.2(a)).

NOTE: 1. *Commodities for sale.* Commodities exported for sale, even though carried in the baggage, with the tools of a traveler, or by a crew member, may not be exported under either General License BAGGAGE, TOOLS OF TRADE, or CREW. Commodities exported for sale must be declared as a commercial shipment and may be exported only under a validated export license or under a general license applicable to such commercial shipments.

2. *Validated license requirement.* The provisions of paragraph 379.1(a)(1) also require the filing of a Declaration for authentication whenever a shipment is exported under a validated license.

3. *Oral declaration.* As stated in paragraph 371.2(a), whenever the filing of a Declaration is not required by the Export Regulations or by the Foreign Trade Statistics Regulations, an oral declaration describing the commodity or commodities shall be made to a Collector at the port of exit.

(e) *Customs authority to limit or prohibit shipments.* Collectors of Customs shall limit or prohibit the export of any commodity or commodities under General License BAGGAGE or General License TOOLS OF TRADE whenever the kind or quantity is in excess of the limitations set forth in this Section, or whenever they shall have cause to suspect that such exportation is being made for the purpose or with the intent of evading any of the regulations of the Office of Export Control.

§ 371.13 General Licenses SHIP STORES, PLANE STORES, CREW, and RCS (Registered Carrier Stores).

(a) *General License SHIP STORES—*(1) *Scope.* * * *

(ii) Equipment and spare parts for permanent use on a vessel, when necessary for the proper operation of such vessel, may be exported on board a vessel of any registry, except a vessel registered in, owned or controlled by, or under charter or lease to a Subgroup A country, Poland (including Danzig), Rumania, Cuba or a national of any of these countries.

(2) *Restrictions on the exportation of petroleum and petroleum products.*—(i) *Far Eastern Communist ports.* No exportation of petroleum or petroleum products (including those used as bunker fuel) listed in subparagraph (3) of this paragraph may be made under this general license on a foreign vessel of 500 gross registered tons or more departing from the United States for use on board such vessel if the vessel (*a*) has called at a port under Far Eastern Communist control[1] during the 180 days immediately preceding the date on which such commodities are to be laden aboard the vessel; (*b*) will call at a port under Far Eastern Communist control[1] within 120

[1] See General License CREW (paragraph 371.13(c)).

[1] "Port under Far Eastern Communist control" means any port in any of the following destinations: (1) China, including Inner Mongolia, the provinces of Tsinghai and Sikang, Sinkiang, Tibet, and Manchuria (including the former Kwantung Leased Territory, the present Port Arthur Naval Base Area and Liaoning Province); but excluding Outer Mongolia and Taiwan (Formosa); (2) Communist-controlled area of Viet-Nam; (3) North Korea; (4) Pacific region of the Union of Soviet Socialist Republics which comprises The Maritime Provinces of Primorskiy Kray and Khabarovskiy Kray, as well as Sakhalin Island and the Kurile Islands under USSR administration.

days after the date on which such commoditites are laden aboard the vessel; or (c) will carry within the next 120 days commodities, of any origin, known by the owner, master, or agent to be destined directly or indirectly to these ports, unless the commodities so carried are covered by an export license issued by the Office of Export Control or any other agency of the United States Government.

(ii) *Cuban ports.* No exportation of petroleum or petroleum products (including those used as bunker fuel) listed in subparagraph (3) of this paragraph may be made under this general license on a foreign vessel, regardless of tonnage, departing from the United States for use on board such vessel if the vessel (a) will call at a port under Cuban control on its current voyage or (b) is ineligible to carry United States Government financed cargo because it has called at a port under Cuban control at any time since January 1, 1963.

(iii) *Registry restrictions.* No exportation of petroleum or petroleum products (including those used as bunker fuel) listed in subparagraph (3) of this paragraph may be made under this general license on a foreign vessel of 500 gross registered tons or more departing from the United States for use on board such vessel if the vessel is registered in, owned or controlled by, or under charter or lease to a Subgroup A country, Poland (including Danzig), Rumania, or a national of any of these countries. No such exportation may be made on a foreign vessel, regardless of tonnage, if the vessel is registered in, owned or controlled by, or under charter or lease to Cuba or a Cuban national.

* * * * *

(b) *General License PLANE STORES—*
(1) *Scope.* * * *

(ii) Equipment and spare parts for permanent use on an aircraft, when necessary for the proper operation of such aircraft, may be exported on board an aircraft of any registry, except an aircraft registered in, owned or controlled by, or under charter or lease to a Subgroup A county, Poland (including Danzig), or Rumania, or a national of any of these countries.

(2) *Restrictions on the exportation of petroleum and petroleum products for use on aircraft.* No exportation of petroleum or petroleum products (including those used as fuel) listed in paragraph (a)(3) of this section may be made under this general license on a foreign aircraft of 12,000 pounds or more gross load departing from the United States, for use on board such aircraft if the aircraft (i) has called at any point under Far Eastern Communist control[1] during the 30 days immediately preceding the date on which such commodities are to be laden aboard the aircraft, (ii) will call at any point under Far Eastern Communist control within 30 days after the date such commodities are laden aboard the aircraft, (iii) will carry within this 30-day period commodities, of any origin, known by the owner, aircraft commander, or agent to be destined directly or indirectly to any point under Far Eastern Communist control, unless the commodities so carried are covered by an export license issued by the Office of Export Control or any other agency of the United States Government; or (iv) is registered in, owned or controlled by, or under charter or lease to a Subgroup A country, Poland (including Danzig), or Rumania, or a national of any of these countries.

* * * * *

§ 371.16 General License GTF; goods imported for trade fairs.

* * * * *

(b) *Exportation to other destinations.* * * *

(2) Where the exportation from the United States will be made to Hong Kong, Macao, Poland (including Danzig), Rumania, a Subgroup A destination, or Cuba.

* * * * *

§ 371.18 General License GLR; return of certain commodities imported into the United States.

* * * * *

(a) *Commodities sent to the United States for inspection, testing, calibration or repair.* * * *

(2) The provisions of this paragraph (a) do not apply to:

(i) Exportations to Hong Kong, Macao, Poland (including Danzig), Rumania, a Subgroup A destination, or Cuba.

(ii) Commodities disposed of by United States Government agencies under foreign excess property disposal programs.

* * * * *

§ 371.23 General License GHK; shipments of certain commodities to Hong Kong or Macao.

A general license designated GHK is hereby established authorizing the exportation to Hong Kong or Macao of commodities bearing the symbol "H," in the commodity listing shown in Supplement No. 1 to Part 371.[1]

§ 371.24 General License GLSA; shipments of certain commodities to specified Subgroup A destinations.

A general license designated GLSA is hereby established authorizing the exportation of the commodities bearing the symbol "S", in the listing shown in Supplement No. 1 to Part 371. This general license may be used for shipments to the following destinations only: Albania, Bulgaria, Czechoslovakia, East Germany (Soviet Zone of Germany and the Soviet Sector of Berlin), Estonia, Hungary, Latvia, Lithuania, Outer Mongolia, and the Union of Soviet Socialist Republics except the Pacific region of the Union of Soviet Socialist Republics which comprises the Maritime Provinces of Primorskiy Kray and Khabarovskiy Kray, Sakhalin Island and the Kurile Islands under USSR administration.[1]

§ 371.25 General License GATS; aircraft on temporary sojourn.[2]

* * * * *

(a) *Foreign registered aircraft.* An operating civil aircraft of foreign registry which has been in the United States on a temporary sojourn may depart from the United States under its own power for any destination except Poland (including Danzig), Rumania, or a destination in Subgroup A, provided that the aircraft has not been sold or disposed of while in the United States, and provided it does not carry from the United States any commodity for which export authorization has not been granted by the appropriate United States Government agency.

(b) *United States registered aircraft.* * * *

(1) A United States operating civil aircraft may depart from the United States under its own power for any destination except Poland (including Danzig), Rumania, a Subgroup A destination, or Cuba, provided that:

* * * * *

§ 371.26 General License GMS; shipments under the Mutual Security Act.

(a) A general license designated GMS is hereby established authorizing the exportation of commodities sold by the Department of Defense to a foreign government, other than the government of a Subgroup A country, Poland (including Danzig), Rumania, or Cuba, under the provisions of the Mutual Security Act of 1954, Public Law 665, 83rd Congress, approved August 26, 1954 (68 Stat. 832), as amended. In addition to entering the symbol GMS on the Shipper's Export Declaration (see § 371.2(b)), the MSMS (Mutual Security Military Sales) case number assigned by the Department of Defense to the transaction shall be entered on the Declaration.

* * * * *

§ 371.51 [Amended]

Section 371.51 *Supplement 1; Commodities subject to General License GHK or GLSA* is amended by revising the commodity description for the entry "Textile specialty compounds except texzyme tablets", Schedule B No. 82385, to read as follows:

---

[1] "Point under Far Eastern Communist control" means any point in any of the following destinations: (1) China, including Inner Mongolia, the provinces of Tsinghai and Sikang, Sinkiang, Tibet, and Manchuria (including the former Kwantung Leased Territory, the present Port Arthur Naval Base Area and Liaoning Province); but excluding Outer Mongolia and Taiwan (Formosa); (2) Communist-controlled area of Viet-Nam; (3) North Korea; (4) Pacific region of the Union of Soviet Socialist Republics which comprises the Maritime Provinces of Primorskiy Kray, Khabarovskiy Kray, Sakhalin Island and the Kurile Islands under USSR administration.

[1] Single shipment of any non-Positive List commodities may be made to Hong Kong or Macao under General License GLV if the quantity classified under a single Schedule B Number is valued at $25 or less (see § 371.10(e)).

[1] Shipments under General License GLSA are not permitted to move in transit via any Subgroup A destination other than those listed in § 371.24.

[2] Also see § 371.15(a), General License GLC.

Commodity description	Schedule B No.	Symbol
Textile specialty compounds, except texzyme tablets and textile catalysts	82385	H S

PART 372—PROVISIONS FOR INDIVIDUAL AND OTHER VALIDATED LICENSES

§ 372.7 License applications for ship stores, plane stores, supplies, and equipment.

* * * * *

(b) *Preparation of license applications.* * * *

(3) *Operating vessels and aircraft.* * * *

(i) *Country of ultimate destination.* Show country where the vessel or aircraft will take on the commodities or technical data. If it is uncertain at the time of filing the license application as to where the vessel or aircraft will take on the commodities or technical data, but it is known that the commodities or technical data will not be shipped to Hong Kong, Macao, Poland (including Danzig), Rumania, a Subgroup A destination, or Cuba, enter the following statement on the license application:

Uncertain; however, shipment(s) will not be made to Hong Kong, Macao, Poland (including Danzig), Rumania, a Subgroup A destination, or Cuba.

An export license issued under this circumstance will bear the following destination restriction:

Shipment(s) may be made to the named (vessel) (aircraft) at any port in any country except Hong Kong, Macao, Poland (including Danzig), Rumania, a Subgroup A destination, or Cuba.

* * * * *

(c) *Exportations of petroleum and petroleum products, including bunker fuel, for use on vessels and planes departing from the United States*

* * * * *

(4) *Commodity description.* (i) In addition to a description of the commodities to be exported, list for each of the carrier's calls at any point under Far Eastern Communist control[1] within 180 days prior to the date of application (or 30 days in the case of aircraft), the dates of each call and a statement, or a copy of the manifest, showing the cargo loaded or discharged. (If the carrier was in ballast, so state.)

(ii) Also submit the carrier's proposed calls at any point under Far Eastern Communist control for the next 120 days in the case of vessels (30 days in the case of aircraft) from the anticipated date of departure from the last port in the United States.

(iii) If the carrier's itinerary for all of the next 120 days in the case of vessels (or 30 days in the case of aircraft) is not known and cannot be ascertained, the itinerary shall be stated so far as it may be known or ascertainable. In addition, all other available information as to the future destinations and areas of operation shall be submitted.

(iv) If the carrier will call at a point under Far Eastern Communist control within the next 120 days in the case of vessels (30 days in the case of aircraft) from the date of departure, or if the carrier is registered in Poland (including Danzig), Rumania, or a Subgroup A country, or if the carrier is under charter to or control of a national of Poland (including Danzig), Rumania, or a Subgroup A country, state whether any commodities included on the Positive List of Commodities (§ 399.1), the United States Munitions List (§ 370.5(a)), or the United States Atomic Energy List (§ 370.5(d)), are carried on board the vessel or aircraft and destined directly or indirectly to any point under Far Eastern Communist control. If the answer is in the affirmative, indicate where such commodities will be discharged.

* * * * *

§ 372.9 Documents accompanying license applications.

* * * * *

(b) *Original must be available.* The Office of Export Control may demand the original of any copy of a document submitted in support of an export license application. Such original[1] shall be kept and made available for inspection in accordance with the provisions of § 381.11. (The Export Regulations contain further record keeping requirements. See § 381.11.)

* * * * *

§ 372.12 Reexportation.[2]

(a) *Prohibted exportations and reexportations.* Unless the reexportation of a commodity or technical data exported from the United States under a validated license has been specifically authorized by the Office of Export Control or is otherwise authorized under the provisions of paragraph (d) of this section, no person in the United States or in a foreign country may:

(1) Reexport such commodity or technical data, directly or indirectly, in whole or in part, from the country or countries of ultimate destination shown on the export license or in the destination control statement on the Shipper's Export Declaration, Bill of Lading, or commercial invoice; or

(2) Export such commodity or technical data from the United States with the knowledge that it is to be reexported, directly or indirectly, in whole or in part, from the country or countries of ultimate destination shown on the export license or in the destination control statement appearing on the Shipper's Export Declaration, Bill of Lading, or commercial invoice.

(b) Reexportation request accompanying license application. If it is stated on an export license application that the commodity or technical data to be exported is intended for distribution or resale in a country or countries other than the named country of ultimate destination, the validated license will specifically name the country or countries to which distribution or resale is authorized. (See paragraph (c) (2) of this section for special provisions for specified countries.) The only exception to this rule is the Time Limit (TL) License (see Part 377) where reexport authority may be granted on a document other than the license itself.

(1) *Statement on license.* Authorization will be granted or withheld by an appropriate statement on the face of the validated license, as follows:

(i) "Distribution or resale of the commodities listed above is permitted in the country of ultimate destination only"; or

(ii) "Distribution or resale of the commodities listed above is permitted in (name of country of ultimate destination) and (names of other approved countries)."

(2) *Limitations on reexportation authorization.* As indicated in paragraph (c) (2) of this section, the authorization by the Office of Export Control of a reexportation from Switzerland or Liechtenstein to any country or a reexportation from any country to the specific destinations listed in paragraph (c) (2) (ii) of this section is limited to a specified quantity and to a specified person or firm in the country to which the reexportation will be made. Accordingly, where a validated license authorizes distribution or resale from Switzerland or Liechtenstein or distribution or resale in a country listed in paragraph (c) (2) (ii) of this section, such authorization is limited to the specific reexportation transaction for that country as described on the related application for export license. In addition, any authorization to reexport or redistribute commodities or technical data to a Subgroup A destination, Poland (including Danzig), Rumania, or Cuba, whether authorized on the validated export license or separately pursuant to paragraph (c) of this section, expires on the last day of the sixth month following the month in which the reexportation is authorized unless otherwise specified. The United States exporter shall, in connection with each authorization, furnish written notification to the ultimate consignee of this limitation on the validity period of the reexportation authorization.

Requests for authorization to reexport from Switzerland or Liechtenstein to any country or to reexport from any country

[1] "Point under Far Eastern Communist control" means any point in any of the following destinations: (1) China, including Inner Mongolia, the provinces of Tsinghai and Sikang, Sinkiang, Tibet, and Manchuria (including the former Kwantung Leased Territory, the present Port Arthur Naval Base Area and Liaoning Province); but excluding Outer Mongolia and Taiwan (Formosa); (2) Communist-controlled area of Viet-Nam; (3) North Korea; (4) Pacific region of the Union of Soviet Socialist Republics which comprises the Maritime Provinces of Primorskiy Kray, Khabarovskiy Kray, Sakhalin Island and the Kurile Islands under USSR administration.

[1] After the expiration of twelve months from the beginning of the prescribed retention period, a reproduction of the original document may be substituted. (See paragraph 381.11(d).)

[2] See § 371.4 for additional reexportation provisions.

to the destinations listed in paragraph (c)(2)(ii) of this section shall be supported by the information and documentation set forth in paragraph (c)(2) of this section.

NOTE: 1. *Destination control statement.* See § 379.10 for requirement for destination control statement on Shipper's Export Declaration, Bill of Lading and commercial invoice covering exports from the United States.

2. Notice to consignee of distribution and resale authority. In those cases where the Office of Export Control has disapproved an authorization request for distribution or resale, in whole or part, it is suggested that the United States exporter may wish to advise his foreign consignee of the Office of Export Control decision in advance of the required notification in the form of the Destination Control Statement on the Bill of Lading and commercial invoice.

(c) *Reexportation request subsequent to submission of license application.*—(1) *General requirements.* Where additional distribution or resale authority is required subsequent to the submission of a license application to the Office of Export Control, such request for authority shall be made as follows:

(i) If the license application is still pending with the Office of Export Control, or if the export license has been issued and the proposed shipment has not been cleared for export by the United States Collector of Customs, Form IT– or FC–763 shall be submitted to the U.S. Department of Commerce, Office of Export Control, Washington, D.C., 20230, in accordance with the United States Department of Commerce, procedure described in § 380.2(g). On the Form IT– or FC–763, in the space headed "Amend license to read as follows," the applicant should state, "Add permission to reexport to (name of countries)." (See subparagraphs (2) and (3) of this paragraph for special provisions for specified countries.)

(ii) If the shipment has been cleared for export by the United States Collector of Customs, a letter request, in duplicate, shall be submitted to the U.S. Department of Commerce, Office of Export Control, Washington, D.C., 20230. The letter request shall identify the export license number (if known) and include the commodity description and quantity proposed for distribution or resale in each country of distribution or resale. (See subparagraphs (2) and (3) of this paragraph for special provisions for specified countries.)

(2) *Additional special requirements.* In addition to the provisions of subparagraph (1) of this paragraph, the request for authority to reexport shall include the following:

(i) If the export was made, or will be made, from the United States to Switzerland or Liechtenstein under a validated export license, and the commodity(ies) or technical data covered is to be reexported from Switzerland or Liechtenstein, the request shall include the name and address of each person or firm to whom reexportation will be made, the quantity and value of the commodities to be reexported to each such person or firm, and the number and date of the Swiss Blue Import Certificate(s) which was submitted in support of the application for license to export the commodities from the United States.

(ii) If the reexportation is to be made to any one of the following countries (regardless of the country to which the commodities or technical data were originally shipped from the United States), additional information shall be furnished as set forth in (*a*) and (*b*) of this subdivision.

Burundi, Kingdom of.
Cambodia.
Congo, Republic of the (Leopoldville)[1] (formerly known as the Belgian Congo).
Hong Kong.
Indonesia.
Laos.
Lebanon.
Liechtenstein.
Macao.
Malaya, Federation of.
Poland (including Danzig).
Rumania.
Rwanda, Republic of.
Singapore, State of.
Subgroup A countries.
Switzerland.
Thailand.
Viet-Nam, Republic of.
Yugoslavia.

(*a*) The name and address of each person or firm to whom reexportation will be made, and the commodity description, quantity, and value of the commodities which will be reexported to each such person or firm, and

(*b*) Consignee/purchaser statement or other documentation from the new ultimate consignee which would be required by Part 373 if the reexportation were a direct export from the United States to the new country. Where this document is a Yugoslav End Use Certificate or a Swiss Blue Import Certificate, and the same document must be furnished to the export control authorities of the country from which reexportation will be made, the Office of Export Control will accept a reproduced copy of the document being furnished to the country of reexportation.

(3) *Notice to consignee.* Where the Office of Export Control has authorized a type of reexportation described in subparagraph (2) (i) or (ii) of this paragraph, the United States exporter shall advise his foreign consignee of the amount of reexportation and name of person or firm to whom the reexportation has been approved.

(i) Any authorization to reexport or redistribute commodities or technical data to a Subgroup A destination, Poland (including Danzig), Rumania, or Cuba, whether authorized on the validated export license or separately pursuant to this paragraph (c), expires on the last day of the sixth month following the month in which the reexportation is authorized unless otherwise specified. The United States exporter shall, in connection with each such authorization, furnish written notification to the ultimate consignee of this limitation on the validity period of the reexportaton authorization.

(ii) A request for an extension of the validity period of a reexportation or redistribution authorization shall be submitted in the same manner as a request for the reexportation authorization (see subparagraphs (1) and (2) of this paragraph), except that the documentation required by subparagraph (2)(ii)(*b*) of this paragraph need not be resubmitted if the original documents remain valid. The request for extension shall, in addition to the other information required, include information identifying the original authorization, the date of the authorization, the names of the countries covered, the commodities and quantities originally authorized for reexportation, and the commodities and quantities remaining to be reexported.

(iii) The document authorizing reexportation shall be kept and made available for inspection in accordance with the provisions of § 381.11. (The Export Regulations contain further record-keeping requirements. See § 381.11.)

* * * * *

[1] This destination does not include the Republic of Congo (Brazzaville) which was formerly known as the French Congo.

PART 373—LICENSING POLICIES AND RELATED SPECIAL PROVISIONS

§ 373.3 Statement by foreign importer of aircraft or vessel repair parts.

(a) *Definitions.* (1) Foreign importer of aircraft or vessel repair parts. As used in this § 373.3, the term "Foreign Importer of Aircraft or Vessel Repair Parts" means a person or firm which is located in any foreign country except a Subgroup A country, Poland (including Danzig), Rumania, or Cuba, and which is either:

(i) Engaged in the repair, maintenance or servicing of aircraft or vessels, either exclusively or as part of a related business; or

(ii) Engaged in supplying United States origin parts, accessories, equipment, or components directly to aircraft or vessels for use on such aircraft or vessels, either exclusively or as part of a related business. Such foreign person or firm need not maintain an aircraft repair hangar or ship repair yard provided that he is engaged in one of the activities set forth in this procedure.

* * * * *

(f) *Records and reports.* * * *

(2) As a minimum, the records or reports shall include the following with respect to each vessel or aircraft on which United States origin parts, accessories, equipment, or components are supplied:

(i) Name, business address and nationality of the owner;

(ii) Country of registry;

(iii) Type of aircraft and model number;

(iv) If a vessel, the name of the vessel or other identification, and type of vessel;

(v) Date the commodities are supplied to the vessel or aircraft; and

(vi) The commodity description and units of quantity or value of the commodities supplied to the vessel or aircraft.

(The Export Regulations contain further record keeping requirements. See § 381.11.)

(g) *Extension of validity period of Form FC–43.* (1) If there are no changes with respect to the facts and commitments set forth in the Form FC–43 previously approved by the Office of Export Control, a foreign importer may request the extension of an expiring Form FC–43 by submitting a letter to the Office of Export Control, in an original and four copies, which includes the certification set forth below. However, if there will be a change, to take effect upon validation of the extension, with respect to the facts previously certified on the previously approved Form FC–43, a new Form FC–43 must be submitted to the Office of Export Control.

I (We) certify that:

(i) I (We) have reread the Form FC–43 which was executed on _____, and which expires on _____.

(ii) The facts contained in that Form have not changed to date and accurately and completely reflect the intended use and disposition of the commodities to be imported under Station No. _____ for the period ending (insert June 30 next year or an earlier termination date if desired).

(iii) The commodities imported will not be used in the maintenance, repair, or servicing of vessels or aircraft under the registry, ownership, operation, charter, lease or control of any country in the Soviet Bloc, Communist China, North Korea, the Communist-controlled area of Viet-Nam, Poland (including Danzig), Rumania, or Cuba, or a national of any of these countries, unless prior approval is received from the Office of Export Control.

(iv) I (We) will maintain records, in the detail set forth in the United States Export Regulations, of commodities imported from the United States and supplied to vessels or aircraft, for a period of three years from the date the commodities are supplied to such vessel or aircraft. These records will be available for inspection, upon demand, by the Office of Export Control or by a United States Foreign Service post.

(v) I (We) shall obtain the approval of the Office of Export Control with respect to any change in the facts or intentions which may occur after the signing of this certification.

(Name of foreign firm)

(Signature of official of foreign firm)

(Date of signing)

(Typed or printed signature)

(2) If the request for extension is approved, one copy of the foreign importer's letter will be returned to him imprinted with the seal of the U.S. Department of Commerce. Where the request for extension is not approved, the foreign importer will be advised by letter.

§ 373.4 Distribution of United States commodities by foreign-based subsidiary, affiliate, or branch.

(a) *Definitions.* * * *

(3) *Distributor.* * * *

(iv) The subsidiary, affiliate, or branch is located in a country other than a Subgroup A country, Poland (including Danzig), Rumania, or Cuba.

(4) *Customer.* The term "customer," as used in this regulation, means a person or firm in a country other than a Subgroup A country, Poland (including Danzig), Rumania, or Cuba, who is supplied United States-origin commodities through a distributor as defined in subparagraph (3) of this paragraph.

* * * * *

(c) *Exportations, reexportations, and distributions under the Form FC–243 procedure.* * * *

(4) Where a commodity, customer, distributor, or destination is not approved under the Form FC–243 procedure, the exporter is not precluded from using any other applicable export procedure, authorization, or provision. Persons or firms located in Poland (including Danzig), Rumania, Cuba, or in a Subgroup A country will not be approved as distributors under the Form FC–243 procedure. Customers in Poland (including Danzig), Rumania, Cuba, or in a Subgroup A destination may be approved only on an individual transaction basis with the prior written approval of the Office of Export Control for each shipment from the foreign-based stock.

* * * * *

(f) *Application for export license.* * * *

(2) *General provisions.* An application for export license described in paragraph (f)(1) above shall be completed in accordance with the provisions of § 372.5 except as modified by this subparagraph (2) or by subparagraph (3), (4), or (5) of this paragraph. All commodities having the same processing code may be included on one application, regardless of the related commodity group number of the commodities.[1] Positive List descriptions and Schedule B numbers, however, must be shown for each commodity in accordance with the provisions of § 372.5. In submitting an application, the applicant is not required to provide the Office of Export Control with an Import Certificate, Statement by Consignee and Purchaser or any other supporting document other than Form FC–143 or Form FC–243.

* * * * *

(5) *Shipments of parts and components direct to distributor's customer.* * * *

(ii) The commodities described on the license application represent parts and components which will be used by the distributor's customer in repairing equipment originally manufactured by the United States exporter or which will be supplied by the distributor's customer to another party exclusively for this purpose. If the parts and components are reexported for this purpose, the reexportation will be made only to the countries specified on the customer's validated Form FC–243. In addition, the parts and components will not be used in repairing equipment owned or controlled by, or leased or chartered to a Subgroup A country, Poland (including Danzig), Rumania, or Cuba, or a national of any of these countries.

* * * * *

(i) *Extension of validity period*—(1) *Form FC–143.* (i) In lieu of a new Form FC–143, a request for extension of the validity period of a previously approved Form FC–143 will be considered for approval by the Office of Export Control if there are no changes in the facts, intentions, or responsibilities set forth in the form previously approved. The request for extension shall be submitted by the United States exporter by means of a letter, in six copies, which shall include the certification shown below. If the request for extension is approved, two copies of the exporter's letter will be returned to him imprinted with the seal of the U.S. Department of Commerce. If the request for extension is not approved, the exporter will be advised by letter.

(ii) The following certification shall be signed by the exporter:

I (We) certify that I (we) have reread the Form FC–143 which was executed on _____ and which expires on _____, and I (we) hereby specifically reaffirm all of the facts, intentions, and responsibilities set forth thereon for the period ending (insert June 30 next year or an earlier termination date if desired). The commodities covered will be distributed exclusively to customers approved by the Office of Export Control and under no circumstances will they be distributed, directly or indirectly, to Poland (including Danzig), Rumania, Cuba, or a Subgroup A country, without prior approval from the Office of Export Control or to any person in any country if there is reason to believe that the commodities will be reexported to an unauthorized destination.

The Form FC–143 originally approved and the validated copies of this extension, if approved, shall be retained for a period of three years from the date of the validation of this extension, and all records relating to any distribution, sale, or reexportation under the Form FC–243 procedure shall be retained in accordance with the Export Regulations.

A supplementary statement will be submitted for the approval of the Office of Export Control disclosing any change of facts or intentions which may occur after the submission of this extension request.

(Name of firm)

(Signature of official of firm)

(Date of signature)

(Typed or printed signature)

* * * * *

§ 373.6 Commodities exported for exhibition, demonstration or testing purposes.

* * * * *

(c) *Return of commodities to the United States.* Where commodities are returned to the United States after display at a trade fair, exhibition, demonstration, or test in a Subgroup A country, Poland (including Danzig), or Rumania, the applicant shall notify the Office of Export Control in writing of the case number shown on the related United States validated export license, the customs import entry number (if any) of the returned shipment, the date of return, and the port of entry at which all or any part of the commodities were returned to the United States. If only a part of the commodities are covered by the notification, a full explanation shall be included, and an additional written notification shall be sent for each partial return until the entire shipment de-

scribed on the related United States validated export license is returned.

* * * * *

Section 373.18 *Sugar, beet and cane* is amended by adding a new paragraph (d) to read as follows:

§ 373.18 Sugar, beet and cane.

* * * * *

(d) *Establishment of export licensing quota.* An export licensing quota of 1250 metric tons is established for sugar, beet and cane, Schedule B No. 16190, for the third quarter of 1964.

* * * * *

§ 373.49 Machinery and parts.[1]

* * * * *

(d) An application for a license to export ball or roller bearings, or balls for bearings (Schedule B Nos. 76910, 76920, and 76933) to a Subgroup A destination, Poland (including Danzig), or Rumania shall include the following information in addition to the other information required by the provisions of this § 373.49:

* * * * *

§ 373.51 Aircraft and equipment, parts, accessories, and components therefor.

(a) *Spare parts accompanying aircraft.* Notwithstanding the provisions of paragraphs 372.5 (a), (d) and (e), where the applicant intends to export aircraft and accompanying spare parts for such aircraft to any destination except a Subgroup A destination, Poland (including Danzig), Rumania, or Cuba, the applicant may (1) include both the aircraft and the accompanying spare parts on a single application even though these commodities may not have the same processing code or the same related commodity group numbers; and (2) show on the application the total value of all the accompanying spare parts without the necessity for indicating the value of each Schedule B entry shown on the application, if at the time of submitting the application the applicant is unable to determine the value of the parts for each Schedule B number.

The provisions of this § 373.51 do not relieve the applicant from classifying the commodities shown on the application in accordance with Schedule B or from describing the commodities in accordance with Positive List or Schedule B commodity description terminology.

NOTE: Questions and answers regarding export licensing of civil aircraft and related commodities.

* * * * *

19. Q. Where one export order covers a number of different commodities, all of which are licensed by the Department of Commerce, may all commodities be included in one license application, using a general description and one total price?

A. A single license application may include only those commodities shown on the Positive List as having the same processing code and the same commodity group number. Where such commodities are covered in separate Positive List entries, they must be listed separately on the license application, with a separate price shown for each listing (see paragraphs 372.5 (d) and (e)).

One exception to this rule is permitted. Where the applicant intends to export aircraft and accompanying spare parts for such aircraft to any destination except Poland (including Danzig), Rumania, a Subgroup A destination, or Cuba, the applicant may (1) include both the aircraft and the accompanying spare parts on a single application even though these commodities may not have the same processing code or the same related commodity group number; (2) show on the application the total value of all the accompanying spare parts without the necessity for indicating the value of each Schedule B entry shown on the application, if at the time of submitting the application the applicant is unable to determine the value of the parts for each Schedule B number. This exception does not relieve the applicant from classifying the commodities shown on the application in accordance with Schedule B or from describing the commodities in accordance with Positive List or Schedule B commodity description terminology. Exporters are reminded that the value must be shown on the Shipper's Export Declaration in accordance with the regulations of the Bureau of Census, even though the value may not appear on the export license. * * *

26. Q. Does the U.S. Department of Commerce require a validated license for a shipment transiting the United States?

A. No. An in-transit shipment of foreign-origin commodities under the licensing authority of the U.S. Department of Commerce is permitted to enter the United States without a license and may leave the United States under General License GIT. This general license does not apply to any shipment to Hong Kong, Macao, Poland (including Danzig), Rumania, or a Subgroup A destination, however, unless such shipment could be made direct from the United States to that destination under some other general license. (Also see Question No. 27.) * * *

28. Q. If a new engine is installed in an aircraft while it is in the United States, is a validated license required to cover exportation of the new engine?

A. Exportation of the engine is covered by General License PLANE STORES except if the engine is installed on an aircraft registered in a Subgroup A country, Poland (including Danzig), or Rumania, or an aircraft controlled by or under charter to a Subgroup A country, Poland (including Danzig), or Rumania, or a national of a Subgroup A country, Poland (including Danzig), or Rumania. Where General License PLANE STORES does not apply, a validated license is required. (Also see Questions Nos. 29 and 30.)

29. Q. Where an aircraft is brought to the United States for repair or overhaul, must a validated license be obtained to return the aircraft to the country from which it came to the United States?

A. The aircraft usually may be returned under General License GLR. This general license does not apply, however, to aircraft being exported to Hong Kong, Macao, Poland (including Danzig), Rumania, a Subgroup A country, or Cuba, or to aircraft disposed of by a United States government agency under the Foreign Excess Property Disposal Program (see § 371.18).

30. Q. If an aircraft is brought to the United States to be converted from piston to turbo-prop, is a validated license required to return the converted plane?

A. The aircraft may be returned under General License GLR to any destination except Hong Kong, Macao, Poland (including Danzig), Rumania, a Subgroup A country, or Cuba. A validated license is required for the return of the aircraft to Hong Kong, Macao, Poland (including Danzig), Rumania, a Subgroup A country, or Cuba.

31. Q. May an aircraft be exported under General License GLR for purposes of repair and return to the United States?

A. Yes. General License GLR may be used to export the complete aircraft, or any equipment, parts, accessories, or components therefor, to the foreign country in which it was manufactured or from which it was imported into the United States, except to Hong Kong, Macao, Poland (including Danzig), Rumania, a Subgroup A destination, or Cuba, for purposes of repair and return to the United States.

* * * * *

(b) *Exchange of aircraft equipment, parts, accessories, and components by airlines.* (1) Any airline[1] operating abroad which has received commodities from the United States for use in the maintenance, repair, or operation of its aircraft may, for the purpose of maintaining in operation aircraft of another airline, lend or sell such commodities to that airline, without written authorization from the Office of Export Control, provided that:

(i) The transaction is subject to an agreement or arrangement that the lender will not receive any monetary profit from the transaction and either that the same or like commodities will be returned to the lender or that payment for the commodities will be limited to no more than the original purchase price to the lender plus any expenses incurred in handling the commodities, e.g., transportation costs, warehousing costs, etc.;

(ii) The commodities will not be supplied for use on any aircraft registered in, or owned or controlled by, or chartered or leased to a Subgroup A country, Poland (including Danzig), Rumania, or to Cuba, or a national of one of these countries; and

(iii) The commodities will not be supplied for use on any aircraft located in a Subgroup A country, Poland (including Danzig), Rumania, or Cuba.

* * * * *

PART 376—PERIODIC REQUIREMENTS (PRL) LICENSE

§ 376.1 Periodic Requirements (PRL) License.

This part establishes a procedure for obtaining a Periodic Requirements (PRL) License which authorizes the exportation of the licensed commodity or commodities to one or more ultimate consignees in a single country of destination for a period of one year from issuance of the license. The PRL licensing procedure is applicable to all destinations except Hong Kong, Macao, Poland (including Danzig), Rumania, or any Subgroup A destination. An application may cover as much as six-months estimated requirements of the named consignee for the commodities included in the application.

§ 376.7 Amendment of license.

If the amount licensed under a PRL License proves insufficient to meet an exporter's requirements for any country, he may request an increase in the quantity or value authorized for export under the license at any time during the first

[1] See paragraph 370.1(p) for definition of airline.

six months of the validity period of the license. Requests for amendments shall be submitted on Form IT– or FC–763, Request for and Notice of Amendment Action, in accordance with the provisions of § 380.2. Amendments of a PRL License involving extension of the validity period will not be granted, however, and a new license application shall be filed for such purpose. A new license application shall also be filed to ship additional quantities over those shown on the license during the last six months of the validity period.

PART 379—EXPORT CLEARANCE AND DESTINATION CONTROL

§ 379.10 Destination control.

* * * * *

(c) *Statement regarding ultimate destination on declaration, bill of lading, and commercial invoice.*

* * * * *

(2) *Destination control statements.* An appropriate destination control statement [1] shall be entered on all copies of the Declaration presented for authentication to the Collector of Customs, in accordance with the provisions set forth below, for all shipments subject to the provisions of this paragraph (c).

(i) The following statement shall be entered on the Declaration covering an exportation under either a validated or general license, other than General Licenses BAGGAGE TOOLS OF TRADE, GIT, G-PUB, GTDP, or GTDS, with the blank space filled in with the name of the country of ultimate destination set forth in the Declaration; [1] unless, instead of this statement, an appropriate statement as provided in subdivision (ii) or (iii) of this subparagraph has been entered:

These commodities licensed by the United States for ultimate destination (name of country). Diversion contrary to United States law prohibited.

NOTE: *Notification of permissive reexportations.* In some instances the destination control statement used by an exporter or his agent for a specific shipment may indicate that the shipment cannot be reexported to a destination to which the ultimate consignee or purchaser wishes to sell or distribute the commodities. The reexportation provisions of the Export Regulations (§§ 371.4 and 372.12) may nevertheless permit the reexportation.

In this situation, the exporter, without obtaining written approval of the Office of Export Control, may inform the foreign importer or other party in possession of the commodities, that distribution or resale may be made in accordance with the reexportation provisions where applicable. In all other instances, written approval shall be obtained from the Office of Export Control.

(ii) Instead of the statement set forth in subdivision (i) of this subparagraph, the following statement may be substituted with the blank spaces filled in as instructed below, except where the shipment is made under General License GMS:

These commodities licensed by the United States for ultimate destination (name of country) and for distribution or resale in (name of country or countries). Diversion contrary to United States law prohibited.

(*a*) If the exportation is made under a general license, other than General Licenses BAGGAGE, TOOLS OF TRADE, GIT, GMS, G–PUB, GTDP, or GTDS, insert the name of the country to which the shipment is being made in the first blank space and the following words in the last blank space, "any destination except Soviet Bloc,[2] Communist China, North Korea, Macao, Hong Kong, Communist controlled areas of Viet-Nam, or Cuba unless otherwise authorized by the United States".

(*1*) Where this destination control statement is entered on a Declaration covering the exportation to any destination of a non-Positive List commodity excepted from the provisions of General License GRO for a specified destination or destinations (see § 371.8(a)(1) for list of commodities excepted from the provisions of General License GRO for a specified destination or destinations), the destination or destinations excepted from the provisions of General License GRO must be included in the list of prohibited destinations set forth on the statement, unless exportation to the excepted destination is authorized, and is being made, under the general license used. For example, where commodities listed in Supplement No. 2 to Part 371 are exported to any destination other than Poland (including Danzig) or Rumania under any general license, the list of prohibited countries set forth on the destination control statement must also include Poland (including Danzig) or Rumania.

(*2*) Where a shipment is made under the provisions of General License GLSA, the phrase "Soviet Bloc" may be deleted from the insertion in the last blank space of the above statement. Similarly, if a shipment is made under the provisions of General License GHK, the destination "Hong Kong" or "Macao" may be deleted from the insertion in the last blank space of the above statement. In addition, where a shipment is made under any general license, an excepted destination included in the insertion in the last blank space of the above statement may be deleted: *Provided*, That § 371.4(b) permits such reexportation. For example, if a shipment is made from the United States to France under General License GRO, and the commodity being shipped is subject to the provisions of General License GLSA, the phrase "Soviet Bloc" may be deleted from the insertion in the last blank space of the above statement.

(*b*) If the exportation is made under a validated license, insert in the first blank space the name of the country shown on the license as country of ultimate destination. In the last blank space, insert the names of the countries shown on the license as approved destinations for distribution or resale. If no country is shown on the license as approved for distribution or resale, insert the word "none" in the last blank space.

NOTE: The Notes following the destination control statement set forth in paragraph (c)(2)(i) of this section are also applicable to requests for permission to distribute or resell where the statement set forth in paragraph (c)(2)(ii) of this section is used.

(iii) Where a shipment is made under a general license, other than General Licenses BAGGAGE, TOOLS OF TRADE, GIT, GMS, G–PUB, GTDP, or GTDS, the following statement [1] may be entered on the Declaration instead of the statements set forth in subdivisions (i) and (ii) of this subparagraph:

United States law prohibits disposition of these commodities to the Soviet Bloc, Communist China, North Korea, Macao, Hong Kong, Communist controlled areas of Viet Nam, or Cuba, unless otherwise authorized by the United States.

(*a*) Where this destination control statement is entered on a Declaration covering the exportation to any destination of a non-Positive List commodity excepted from the provisions of General License GRO for a specified destination or destinations (see § 371.8(a)(1) for list of commodities excepted from the provisions of General License GRO for a specified destination or destinations), the destination or destinations excepted from the provisions of General License GRO must be included in the list of prohibited destinations set forth on the statement, unless exportation to the excepted destination is authorized, and is being made, under the general license used. For example, where commodities listed in Supplement No. 2 to Part 371 are exported to any destination other than Poland (including Danzig) or Rumania under any general license, the list of prohibited countries set forth on the destination control statement must also include Poland (including Danzig) and Rumania.

(*b*) If a shipment is made under the provisions of General License GLSA, the phrase "Soviet Bloc" may be deleted from the above statement. Similarly, if a shipment is made under the provisions of General License GHK, the destination "Hong Kong" or "Macao" may be deleted from the above statement. In addition, where a shipment is made under any general license, a prohibited destination included in the destination control statement set forth in subdivision (iii) of this subparagraph, may be

[1] Where the country of ultimate destination is Viet-Nam, the destination control statement shall be filled in as required by § 373.68, regardless of the country designation shown on the Shipper's Export Declaration, and regardless of whether the shipment is made under a validated or a general license.

[2] As used in the destination control statement, the term "Soviet Bloc" means all destinations listed in the Subgroup A country designation (see paragraph 371.3(a)(2) for destinations covered by Subgroup A). It will be noted that Poland (including Danzig), Rumania, and Yugoslavia are not included in Subgroup A.

[1] As used in the destination control statement, the term "Soviet Bloc" means all destinations listed in the Subgroup A country designation (see paragraph 371.3(a)(2) for destinations covered by Subgroup A). It will be noted that Poland (including Danzig), Rumania, and Yugoslavia are not included in Subgroup A.

The words "and Laos" may be inserted at the exporter's discretion in the destination control statement after the entry of "Viet-Nam."

deleted provided that paragraph 371.4(b) permits reexportation to the deleted destination. For example, if a shipment is made from the United States to France under General License GRO, and the commodity being shipped is subject to the provisions of General License GLSA, the phrase "Soviet Bloc" may be deleted from the above statement.

NOTE: The note following the destination control statement set forth in paragraph (c)(2)(i) of this section is also applicable to requests for permission to distribute or resell where the statement set forth in paragraph (c)(2)(iii) of this section is used.

* * * * *

PART 380—AMENDMENTS, EXTENSIONS, TRANSFERS

§ 380.4 Extension of licenses.

(a) *Time for submission of requests.* A licensee may submit a request for extension of the validity period of a license which will expire before shipment can be made, except that a request to extend the validity of a license issued under the emergency clearance procedure set forth in § 372.5(i) will not be granted. It is essential that the request for extension be submitted sufficiently in advance of the expiration date to allow the Office of Export Control to send an advice of amendment by regular mail to the licensee and the Collector of Customs holding the license before the license expires. However, except for licenses covering exportations to Subgroup A destinations, Poland (including Danzig), Rumania, Yugoslavia, or Cuba, where unusual circumstances have made it impossible for the licensee to submit his request for extension before the expiration date, a request for extension will be considered if received within one month after the expiration date shown on the license. The Office of Export Control will not consider for approval any request for extension of the validity period of a license for an exportation to a Subgroup A destination, Poland (including Danzig), Rumania, Yugoslavia, or Cuba, unless it is submitted prior to the expiration of the license. If a license does not qualify for extension under the terms set forth above, a new application for export license shall be submitted in accordance with the procedure described in paragraph (d) of this section.

* * * * *

PART 381—ENFORCEMENT PROVISIONS

§ 381.11 Record keeping.

(a) *Transactions subject to this regulation.* This § 381.11 applies to transactions involving exportations of commodities or technical data from the United States and any known reexportations, transshipments, or diversions of commodities or technical data originally exported from the United States, regardless of whether the exportation or reexportation is made, or proposed to be made, by any person with or without authorization by a validated license, a general license, or any other export authorization. It includes all negotiations connected with such transactions, except that a mere preliminary inquiry or offer to do business and negative response thereto shall not constitute negotiations, unless the inquiry or offer to do business proposes a transaction which a reasonably prudent exporter would believe likely to lead to a violation of Export Orders or Regulations. It includes as well any exportations to Canada, if, at any stage in the transaction, it appears that a person in a country other than the United States or Canada has an interest therein or that the commodity or technical data involved is to be reexported, transshipped, or diverted from Canada to another foreign country.

(b) *Persons subject to this regulation.* Any person in the United States who, as principal or agent (including a forwarding agent), participates in any transaction described in paragraph (a) of this section, and any person in the United States or abroad who is required to make and keep records pursuant to any provisions of the Export Regulations, shall keep all the records described in paragraph (c) of this section which are made or obtained by such person, and shall produce them in the manner provided in paragraph (f) of this section.

(c) *Records to be kept.* The records to be kept pursuant to this § 381.11 shall include memoranda, notes, correspondence, books, export control documents, and other written matter pertaining to the transactions described in paragraph (a), of this section, which may be made or obtained by a person described in paragraph (b) of this section. In addition to the records required to be kept by this § 381.11, the provisions of §§ 368.1, 371.8, 372.4, 372.9, 373.3, 373.4, 373.51, 376.3, 377.3, 379.10, and 380.1 of the Export Regulations require certain records to be made and kept by persons in the United States or abroad in connection with export transactions. The revocation or revision of any such provision of the Export Regulations which requires the making and keeping of records shall not be retroactive in effect unless specifically provided and shall not affect the original requirement to keep such records for the prescribed period.

(d) *Reproduction of records*—(1) *Definition.* "Reproduction" for the purpose of this paragraph 381.11(d) is defined to include any photographic, photostatic, microfilm, miniature photographic or other process which accurately and durably reproduces the original record.

(2) *Use of reproductions.* Reproductions may be substituted for original documents with respect to all categories of records required to be retained under any provision of the Export Regulations or of any Order, provided that all of the following conditions are met;

(i) Reproductions may not be substituted for any category of records until twelve months after the beginning of the retention period set forth in paragraph (e) of this section;

(ii) All significant information, marks, and/or other characteristics on the original document must be clearly visible and legibly reproduced; and

(iii) Appropriate facilities must be provided and maintained for the preservation of the reproduced records during the retention period and for the ready location and inspection of the records, including a projector for viewing films if needed.

(e) *Period of retention.* Records required to be kept under this § 381.11 shall be kept for a period of three years from, whichever is later, the time of:

(1) The exportation from the United States; or

(2) Any known reexportation, transshipment, or diversion; or

(3) Any other termination of the transaction, whether formally in writing or by any other means.

(f) *Production and inspection of records.* Every person, whether in the United States or abroad, required to keep records by any provision of the Export Regulations or of any Order shall produce all records or reproductions of records (see § 381.11(d)) required to be kept, and make them available for inspection and copying upon request by any authorized agent, official, or employee of the Bureau of International Commerce, the Bureau of Customs, or a United States Foreign Service post, or by any other accredited representative of the United States Government, without any charge or expense to such agent, official or employee.

PART 384—GENERAL ORDERS

§ 384.4 Disclosure of license issuance and other information.

* * * * *

(b) *Unshipped balance information.* Effective on June 1, 1962, the Office of Export Control will make available daily, certain information with regard to unshipped balances remaining on expired, revoked, or cancelled licenses issued for Subgroup A destinations, Poland (including Danzig), Rumania, Yugoslavia, or Cuba. This information will include a general description of the commodity, the value of the unshipped balance of the licensed commodity and the country of destination specified on the license.

* * * * *

§ 384.5 Revocation of authorization to reexport or redistribute commodities and technical data to Subgroup A destinations, Poland (including Danzig), Rumania, or Cuba.

Any authorization to reexport or redistribute commodities or technical data to a Subgroup A destination, Poland (including Danzig), Rumania, or Cuba which was specifically granted prior to March 1, 1962, by the Office of Export Control or any predecessor agency, and which is not generally permitted by the provisions of § 371.4, is revoked, effective August 31, 1962. Any United States exporter who was granted specific authorization to reexport or redistribute commodities to these destinations shall immediately notify the ultimate consignee named therein of the expiration date of the outstanding authorization.

NOTE: A request for extension of the validity period of a specific authorization to reexport or redistribute commodities to the destinations listed above after August 31, 1962, may be made under the provisions of § 372.12(c)(3).

PART 385—EXPORTATION OF TECHNICAL DATA

§ 385.2 General licenses.

* * * * *

(c) *General License GTDU; unpublished technical data.*

(1) *Applicability.* A general license designated GTDU is hereby established authorizing the exportation of unclassified technical data, which are either unpublished or not generally available in published form (that is, technical data not exportable under the provisions of General License GTDP), subject to the other provisions and limitations set forth in this paragraph (c).

(2) *Destination restrictions.* This general license shall not be applicable to any exportation of technical data directly or indirectly to any Subgroup A destination, Poland (including Danzig), Rumania, or Cuba; except that technical data such as manuals, instruction sheets, or blueprints may be exported to any destination other than Communist China, North Korea, or the Communist-controlled area of Viet-Nam, provided that the technical data are:

(i) Sent as part of the transaction involving, and directly related to, a commodity licensed for export from the United States to the same consignee and destination to which the commodity was or will be exported;

(ii) Sent no later than one year following the shipment of the commodity to which the technical data are related;

(iii) Of a type normally delivered with the commodity;

(iv) Necessary to the assembly, installation, maintenance, repair, or operation of the commodity; and

(v) Not related to the production, manufacture, or construction of the commodity.

(3) *Restriction relating to types of technical data.* This general license shall not be applicable to technical data relating to the commodities described below in this paragraph (3). The limitations set forth in this subparagraph (3) do not apply to the exportation of operating and maintenance instructional material or to technical data included in an application for the foreign filing of a patent, provided such foreign filing of a patent application is in accordance with the regulations of the United States Patent Office.

(i) Civil aircraft, civil aircraft equipment, parts, accessories, or components listed on the Positive List of Commodities (§ 399.1);

(ii) The following electronic commodities listed on the Positive List of Commodities (§ 399.1):

(*a*) Electrical and electronic instruments. Schedule B Nos. 70372 and 70379, specially designed for testing or calibrating the airborne direction finding, navigational and radar equipment described in Schedule B Nos. 70797 and 70867;

(*b*) Airborne transmitters, receivers, and transceivers, Schedule B No. 70779;

(*c*) Airborne direction finding equipment, Schedule B No. 70797; or

(*d*) Airborne electronic navigation apparatus and airborne radar equipment, Schedule B No. 70867.

(iii) Neutron generators, employing the electrostatic acceleration of ions and designed for operation without an external vacuum system, and specially fabricated parts and accessories for such neutron generators, Schedule B No. 70999.

(4) *Requirement of written assurance for certain data, services, and materials.* No exportation of technical data of the kind described in subdivisions (i), (ii), and (iii) of this subparagraph may be made under the provisions of this General License GTDU until the exporter has received written assurance from the importer that neither the technical data nor the direct product[1] thereof is intended to be shipped, either directly or indirectly, to a Subgroup A country, Poland (including Danzig), Rumania, or Cuba, except as provided in subdivision (iv) of this subparagraph. The required assurance may be in the form of a letter or other written communication from the importer evidencing such intention, or a licensing agreement which restricts disclosure of the technical data to use only in a country other than Subgroup A, Poland (including Danzig), Rumania, or Cuba, and prohibits shipment of the direct product[1] thereof by the licensee to a Subgroup A country, Poland (including Danzig), Rumania, or Cuba. An assurance included in a licensing agreement will be acceptable for all exportations made during the life of the agreement. If such assurance is not received, this general license is not applicable and a validated export license is required. An application for such validated license shall include an explanatory statement setting forth the reasons why such assurance cannot be obtained. In addition, this general license is not applicable to any exportation of technical data of the kind described in subdivisions (i), (ii), and (iii) of this subparagraph, if, at the time of exportation of the technical data from the United States, the exporter knows or has reason to believe that the direct product to be manufactured abroad by use of the technical data is intended to be exported or reexported directly or indirectly to a Subgroup A destination, Poland (including Danzig), Rumania, or Cuba.

[1] The term "direct product" used in this sentence and in this context only is defined to mean the immediate product (including processes and services) produced directly by use of the technical data, except that petroleum or chemical products other than molecular sieves or catalysts are not included in this definition. The coverage of the term does not extend to the results of the use of such "direct product." An example of the direct product of technical data is reforming process equipment designed and constructed by use of the technical data exported, but the aromatics produced by the reforming process equipment are not immediate or direct products of these technical data. However, if the technical data are a formula for producing aromatics, the aromatics, although they are immediate products of the data, are not included in this definition of direct product, since they are petroleum products. Conversely, if the technical data are a formula for producing either molecular sieves or catalysts, the foreign-produced molecular sieves and catalysts are included in the definition of direct product.

(i) Technical data and services listed in (*a*) of this subdivision for the plants, processes, and equipment listed in (*b*) of this subdivision:

(*a*) Types of technical data and services:

(*1*) Proprietary research and the results therefrom;

(*2*) Processes developed pursuant to research (including technology with regard to component equipment items);

(*3*) Catalyst production, activation, utilization, reactivation and recovery;

(*4*) Plant and equipment design and layout to implement the processes; and

(*5*) Construction and operation of plant and equipment.

(*b*) Types of plants and processes:

The following plants or processes usable in the treatment of petroleum or natural gas fractions or of products derived directly or indirectly therefrom:[2]

alkylation	oxidation
aromatization	oxo process
cracking	ozonolysis
dehydrogenation	polymerization
desulfurization	reduction
halogenation	reforming
hydrogenation	selective absorption
isomerization	selective adsorption
nitration	

(ii) Technical data relating to the following commodities usable in processes listed in subdivision (i) (*b*) of this subparagraph.

Dept. of Commerce Schedule B No.	Commodity description
77046	Stationary positive displacement air and gas compressors, reciprocating, capable of receiving a power input of 500 horsepower or greater and specially designed for use in the processing of petroleum, petrochemicals, natural gas or their fractions.
77046	Stationary positive displacement air and gas compressors, reciprocating, over 125 horsepower, having all flow-contact surfaces made of or lined with any of the materials specified in footnote 1.
77063	Parts and accessories, n.e.c., specially fabricated for compressors included above under Schedule B No. 77046.
77073	Centrifugal air and gas compressors capable of receiving a power input of 500 horsepower or greater and specifically designed for use in the processing of petroleum, petrochemicals, natural gas or their fractions.
77073	Centrifugal air and gas compressors having all flow-contact surfaces made of or lined with any of the material specified in footnote 1.
77076	Axial flow and mixed flow air and gas compressors capable of receiving a power input of 500 horsepower or greater and specially designed for use in the processing of petroleum, petrochemicals, natural gas or their fractions.
77076	Axial flow and mixed flow air and gas compressors having all flow-contact surfaces made of or lined with any of the materials specified in footnote 1.
77078	Parts and accessories, n.e.c., specially fabricated for compressors included above under Schedule B Nos. 77073 and 77076.
77101	Centrifugal pumps specially designed for use in the processing of petroleum, petrochemicals, natural gas or their fractions.

[1] See footnote at end of table.

[2] This includes plants, or processes for the production, extraction, and purification of petroleum products, petrochemical products, and products derived therefrom. Examples of petrochemical products include methane, ethane, propane, butane, and other aliphatics, as well as olefins, aromatics, naphthenes, and elements and other compounds.

Dept. of Commerce Schedule B No.	Commodity description
77101	Centrifugal pumps having all flow-contact surfaces made of or lined with any of the materials specified in footnote 1.
77103	Turbine pumps specially designed for use in the processing of petroleum, petrochemicals, natural gas or their fractions.
77103	Turbine pumps having all flow-contact surfaces made of or lined with any or the materials specified in footnote 1.
77105	Rotary pumps specially designed for use in the processing of petroleum, petrochemicals, natural gas or their fractions.
77105	Rotary pumps having all flow-contact surfaces made of or lined with any of the materials specified in footnote 1.
77107	Reciprocating power pumps specially designed for use in the processing of petroleum, petrochemicals, natural gas or their fractions.
77107	Reciprocating power pumps having flow-contact surfaces made of or lined with any of the materials specified in footnote 1.
77117	Pumps, n.e.c., specially designed for use in the processing of petroleum, petrochemicals, natural gas or their fractions.
77117	Pumps, n.e.c., having all flow-contact surfaces made of or lined with any of the materials specified in footnote 1.
77119	Parts and accessories, n.e.c., specially fabricated for pumps included above under Schedule B Nos. 77101, 77103, 77105, 77107, and 77117.
77125	Heat exchangers having all flow-contact surfaces made of or lined with any of the materials specified in footnote 1, and specially fabricated parts and accessories, n.e.c.
77450	Pipe valves, iron or steel, specially designed for use in the processing of petroleum, petrochemicals, natural gas or their fractions.
77450	Pipe valves, iron or steel, having all flow-contact surfaces made of or lined with any of the materials specified in footnote 1.
77455	Pipe valves, brass, bronze or other nonferrous metals, specially designed for use in the processing of petroleum, petrochemicals, natural gas or their fractions.
77455	Pipe valves, brass, bronze or other nonferrous metals, having all flow-contact surfaces made of or lined with any of the materials specified in footnote 1.
77460	Automatic control or regulating pipe valves specially designed for use in the processing of petroleum, petrochemicals, natural gas or their fractions.
77460	Automatic control or regulating pipe valves having all flow-contact surfaces made of or lined with any of the materials specified in footnote 1.
77465	Pipe valves, n.e.c., having all flow-contact surfaces made of or lined with any of the materials specified in footnote 1.
77465	Parts and accessories specially fabricated for valves listed above under Schedule B Nos. 77450, 77455, 77460, and 77465.
77525	Equipment, n.e.c., specially designed for use in the following untis: (a) solvent processing, (b) fractionating, rectifying and dephlegmatizing, (c) hydrogenation, (d) dehydrogenation, (e) isomerization, (f) polymerization, (g) aromatization, (h) alkylation, (i) desulphurization, (j) thermal or catalytic cracking, reforming or platforming; and specially fabricated parts and accessories therefor, n.e.c.
77567	Nonelectric industrial furnaces (heaters) of the following types: (a) cylindrical having a suspended deflecting cone, or (b) radiant wall employing multiple independently controlled ceramic cup burners.
77570	Parts and accessories, n.e.c., specially designed for the furnaces (heaters) included above under Schedule B Nos. 77567.
77573	Oil burners, ceramic cup type only.
77576	Gas combustion burners, ceramic cup type only.
77579	Parts and accessories, n.e.c., specially fabricated for ceramic cup burners.
77582	Mixing and blending machines and specially fabricated parts and accessories, n.e.c., having all flow-contact surfaces made of or lined with any of the materials specified in footnote 1.
77585	Fractionating columns as follows: (a) having, or having provisions for, 25 or more trays, or (b) having all flow-contact surfaces made of or lined with any of the materials specified in footnote 1; and specially fabricated parts and accessories, n.e.c.
77585	Other processing vessels, non-mixing, n.e.c., having all flow-contact surfaces made of or lined with any of the materials specified in footnote 1; and specially fabricated parts and accessories, n.e.c.
77588	Separators and collectors, industrial process types, n.e.c., and specially fabricated parts and accessories, n.e.c., having all flow-contact surfaces made of or lined with any of the materials specified in footnote 1.
77599	Pulsation dampeners, and specially fabricated parts and accessories, n.e.c., having all flow-contact surfaces made of or lined with any of the materials specified in footnote 1.

[1] The materials applicable to the flow-contact surfaces of this equipment are: (a) 90 percent or more tantalum, titanium, or zirconium either separately or combined, (b) 50 percent or more cobalt, molybdenum, nickel or tungsten either separately or combined, (c) 13 percent or more silicon, (d) steel alloys containing any combination of chromium, with either or both molybdenum or tungsten in which the sum of the alloying elements exceeds 3 percent of the total, (e) 2.5 percent or more nickel, (f) fluoro and/or silico resins, (g) glass (acid-, heat-, or shock-resistant), (h) ceramics, (i) carbon, (j) graphite, or (k) acid/heat resistant cement.

(iii) Technical data relating to the following materials and equipment:

(*a*) Steel line pipe of a size greater than 19 inches o.d. and having a yield strength greater than 40,000 psi as determined by API test (Schedule B No. 60627 and 60630);

(*b*) Forged steel pipe fittings having a pipe size connection greater than 19 inches o.d. and having a yield strength greater than 40,000 psi as determined by API test (Schedule B No. 61857);

(*c*) Centrifugal pumps designed for an internal pump-case working pressure of over 300 psi and a power input greater than 1,000 hp, and specially fabricated parts and accessories (Schedule B Nos. 77101 and 77119);

(*d*) Air and gas compressors, reciprocating, centrifugal, axial flow and mixed flow types, capable of receiving a power input greater than 2,000 hp and designed for a discharge greater than 300 psi, and specially fabricated parts and accessories (Schedule B Nos. 77046, 77073, 77076, and 77078);

(*e*) Steel valves, with an inlet or outlet dimension 17 inches or greater and designed for a working pressure of over 300 psi, and specially fabricated parts and accessories (Schedule B Nos. 77450, 77460, and 77465);

(*f*) O-ing and U-ing presses specially designed for the manufacture of steel pipe of a size greater than 19 inches o.d., and specially fabricated parts and accessories (Schedule B Nos. 74459 and 74468);

(*g*) Straightener-expander for pipes or tubes of a size greater than 19 inches o.d., and specially fabricated parts and accessories (Schedule B Nos. 74459 and 74468);

(*h*) Portable pneumatic and hydraulic drilling machines capable of tapping steel line pipe of a size greater than 19 inches o.d. without interruption of flow (Schedule B Nos. 74570 and 74601);

(*i*) Meters with inlet or outlet diameter 10 inches or larger specially designed to measure flow in petroleum and/or natural gas pipe line (Schedule B No. 76680);

(*j*) Valves specially designed for temporarily stopping off or plugging a section of steel line pipe of a size greater than 19 inches o.d. (Schedule B No. 77450);

(*k*) Automatic pipe welding machines capable of welding the joints of steel line pipe of a size greater than 19 inches o.d., and specially fabricated parts and accessories (Schedule B Nos. 70106 and 70108);

(*l*) Pipe mills specially designed for the manufacture of steel pipe of a size greater than 19 inches o.d., and specially fabricated parts and accessories (Schedule B No. 74480);

(*m*) Molecular sieves (for example, crystalline calcium alumino-silicate; crystalline sodium alumino-silicate; crystalline alkali metal alumino-silicates, etc.) (Schedule B Nos. 83799 and 83990);

(*n*) Pyrolytic graphite (i.e., graphite and doped graphites produced by vapor deposition) in any form (Schedule B No. 54809); semi-finished or finished materials or products containing pyrolytic graphite as a standing body, a coating, a lining, or a substrate (Schedule B Nos. 54730, 54805, and 54809); and

(*o*) Electric industrial melting and refining furnaces and metal heat-treating furnaces specially designed for the production or processing of vapor deposited (pyrolytic) graphite or doped graphites whether as standing bodies, coatings, linings or substrates (Schedule B Nos. 70741 and 70744).

(*p*) Cementing equipment; sidewall coring equipment; blowout preventers; fishing tools incorporating integral moving parts, casing cutters, and casing pullers; drilling control and surveying instruments; safety joints, jars, back-off tools, slip or telescopic joints; pipe and casing tongs, power type; percussion or vibratory attachments for rotary drilling; and drawworks and rotary tables designed for an input of 150 hp and over (Schedule B No. 73225);

(*q*) Rotary drill rigs incorporating rotary tables and with draw works designed for an input of 150 hp and over (Schedule B Nos. 73091 and 73095);

(*r*) Rotary rock drill bits (cone or roller types), and specially fabricated parts and accessories, n.e.c. (Schedule B Nos. 73115, 73119, and 73222);

(*s*) Well logging instruments and equipment (Schedule B No. 76698);

(*t*) Casing head and Christmas-tree assemblies, 2,000 psi and over, chokes and components; perforating equipment; formation and production testers, and packers; gas lift equipment and bottom hole pumps; and work-over rigs (Schedule B No. 73395); and

(*u*) Gravity meters (gravimeters) (specify by name); and seismograph equipment, except observatory type (Schedule B No. 76698);

(*v*) Acetal resins (Schedule B No. 82591);

(*w*) Alpha trioxymethylene (trioxane) (Schedule B No. 83299).

(iv) The limitations set forth in this paragraph (c) (4) do not apply to the exportation of technical data included in an application for the foreign filing of a patent, provided such foreign filing of a patent application is in accordance with

the regulations of the United States Patent Office.

(5) *Requirement of written assurance for certain additional products and destinations.* (i) Except for technical data requiring a written assurance in accordance with the provisions of paragraph (c) (4) of this section, and except as provided in paragraph (v) below; no exportation of technical data relating to the commodities described below in this paragraph (c) (5) (i) may be made under the provisions of this General License GTDU, until the United States exporter has received a written assurance from the foreign importer (including any Canadian importer) that, unless prior authorization is obtained from the Office of Export Control, the importer will not knowingly:

(*a*) Reexport, directly or indirectly, to any Subgroup A destination, to Poland (including Danzig), to Rumania or to Cuba, any technical data relating to commodities listed on the Positive List of Commodities or Supplement No. 2 to Part 371;

(*b*) Export, directly or indirectly, to Communist China, North Korea, the Communist-controlled area of Viet-Nam, or Cuba, any direct product [1] of the technical data if such direct product is listed on the Positive List of Commodities or in Supplement No. 2 to Part 371; or

(*c*) Export, directly or indirectly, to any destination in the European Soviet bloc [2] or to Poland (including Danzig) any direct product [1] of the technical data if such direct product is identified on the Positive List of Commodities by the symbol "A."

(ii) If the direct product [1] of any technical data is a complete plant or any major component of a plant which is capable of producing a commodity shown on the Positive List of Commodities, or in Supplement No. 2 to Part 371, or in the United States Munitions List, a written assurance by the person who is or will be in control of the distribution of the products of the plant (whether or not such person is the importer) shall be obtained by the United States exporter (via the foreign importer), stating that, unless prior authorization is obtained from the Office of Export Control, such person will not knowingly:

(*a*) Reexport, directly or indirectly, to any Subgroup A destination to Poland (including Danzig), to Rumania, or to Cuba, the technical data relating to the plant or the major component of a plant;

(*b*) Export, directly or indirectly, to Communist China, North Korea, the Communist-controlled area of Viet-Nam, or Cuba, the plant or the major component of a plant (depending upon which is the direct product [1] of the technical data) or any product of such plant or of such major component if such product of the plant is listed on the Positive List of Commodities, or in Supplement No. 2 to Part 371, or in the United States Munitions List; or

(*c*) Export, directly or indirectly, to the European Soviet bloc,[2] to Poland (including Danzig), or to Rumania, the plant or the major component of a plant (depending upon which is the direct product of the technical data) or any product of such plant or of such major component, if such product is identified on the Positive List of Commodities by the symbol "A" or in the United States Munitions List.

NOTE: Pursuant to the provisions of Current Export Bulletin 891, effective April 1, 1964, paragraph (c) (5) (ii) (*b*) and (*c*) of this section required certain written assurances relating to the disposition of the products of a complete plant or major component of a plant which is the direct product of unpublished technical data of United States origin exported under General License GTDU

Except as to items which are identified on the Positive List of Commodities by the symbol "A" and items on the United States Munitions List, the effective date of the written assurance requirements for plant products as a condition of using General License GTDU for exportation of this type of technical data is hereby deferred to and including December 31, 1964, subject to the following limitations:

1. The exporter shall, at least two weeks before the initial exportation of the technical data, notify the Office of Export Control, by letter, of the facts required to be disclosed in an application for a validated export license covering such technical data; and

2. The exporter shall obtain from the person who is or will be in control of the distribution of the products of the plant (whether or not such person is the importer) a written commitment that he will notify the United States Government, directly or through the exporter, whenever he enters into negotiations to export any product of the plant to any destination covered by paragraph (c) (5) (ii) (*b*) of this section, and such product is listed on the Positive List of Commodities but not identified by the symbol "A", or is listed in Supplement No. 2 to Part 371. The notification should state the product, quantity, country of destination, and the estimated date of shipment.

Moreover, during the period of deferment, the remaining written assurance requirement of paragraph (c) (5) (ii) (*b*) and (*c*) of this section as to plant products which are identified on the Positive List of Commodities by the symbol "A", or are on the United States Munitions List, will be waived if the plant is located in one of the following Cocom countries: Belgium, Canada, Denmark, The Federal Republic of Germany, France, Greece, Italy, Japan, Luxembourg, The Netherlands, Norway, Portugal, Turkey, and the United Kingdom.

This deferment applies to exportations of technical data pursuant to any type of contract or arrangement, including licensing agreements, regardless of whether entered into before or after April 1, 1964.

However, exporters of technical data for complete plants and major plant components pursuant to any pre-January 1, 1965, licensing agreement are advised that after December 31, 1964, written assurances may be required under paragraph (c) (5) (ii) (*b*) and (*c*) of this section as to the future disposition of products of such plants or major plant components.

(iii) The required assurance may be in the form of a letter or other written communication from the importer or, if applicable, the person in control of the distribution of the products of a plant; or the assurance may be incorporated into a licensing agreement which restricts disclosure of the technical data to use only in authorized destinations, and prohibits shipment of the direct product [1] thereof by the licensee to any unauthorized destination. An assurance included in a licensing agreement will be acceptable for all exportations made during the life of the agreement. If such assurance is not received this general license is not applicable and a validated export license is required. An application for such validated license shall include an explanatory statement setting forth the reasons why such assurance can not be obtained.

(iv) In addition, this general license is not applicable to any exportation of technical data of the kind described in this paragraph (c) (5) if, at the time of exportation of the technical data from the United States, the exporter knows or has reason to believe that the direct product [1] to be manufactured abroad by use of the technical data is intended to be exported directly or indirectly to any unauthorized destination.

(v) The limitations set forth in this paragraph (c) (5) do not apply to the exportation of technical data included in an application for the foreign filing of a patent, provided such foreign filing of a patent application is in accordance with the regulations of the United States Patent Office.

NOTE: A written assurance is not required for the exportation under this General License GTDU of any technical data which

[1] The term "direct product" used in this sentence and in this context only is defined to mean the immediate product (including processes and services) produced directly by use of the technical data.

[2] The term "European Soviet bloc", as used in this paragraph 385.2(c) (5), means the following destinations: Albania, Bulgaria, Czechoslovakia, East Germany (Soviet Zone of Germany and the Soviet Sector of Berlin), Estonia, Hungary, Latvia, Lithuania, Outer Mongolia, and the Union of Soviet Socialist Republics.

[1] The term "direct product" used in this sentence and in this context only is defined to mean the immediate product (including processes and services) produced directly by use of the technical data.

do not fall within the description set forth in paragraph (c) (4) or (5) of this section.

* * * * *

§ 385.4 **Exportation under a validated license.**

* * * * *

(c) *Completion of application form and application processing card.* * * *

(2) *Special provisions for certain commodities.* * * *

(iv) For all license applications covering technical data relating to any of the commodities in subdivisions (i), (ii), or (iii) of this subparagraph for export to any destination other than Poland (including Danzig), Rumania, a Subgroup A destination, or Cuba, an applicant shall attach to the license application a written statement of assurance from his foreign consignee that the technical data will not be reexported directly or indirectly to any country without prior authorization from the Office of Export Control. The statement shall also show that the direct product [1] produced by use of the technical data will not be exported directly or indirectly to Poland (including Danzig), Rumania, a Subgroup A destination, or Cuba, without prior authorization from the Office of Export Control. However, if the United States exporter is not able to obtain the required statement, or the consignee is unwilling to furnish assurances with respect to all of the requirements, the exporter may attach an explanatory statement to his license application setting forth the reasons therefor.

* * * * *

(Sec. 3, 63 Stat. 7; 50 U.S.C. App. 2023; E.O. 10945, 26 F.R. 4487; E.O. 11038, 27 F.R. 7003)

FORREST D. HOCKERSMITH,
Director,
Office of Export Control.

[F.R. Doc. 64-10091; Filed, Oct. 5, 1964; 8:47 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket C-832]

PART 13—PROHIBITED TRADE PRACTICES

Clairol Inc.

Subpart—Advertising falsely or misleadingly: § 13.155 *Prices:* § 13.155-40 *Exaggerated as regular and customary:* § 13.240 *Special or limited offers.* Subpart—Discriminating in price under Sec. 2, Clayton Act—price discrimination under 2(a): § 13.730 *Customer classification.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 2, 49 Stat. 1526; 15 U.S.C. 13)

[Cease and desist order, Clairol Incorporated, New York, N.Y., Docket C-832, Sept. 14, 1964]

Consent order requiring one of the largest concerns in the United States in volume of sales of hair coloring and other beauty products—which it sold to beauty salons, beauty supply dealers, beauty schools, department stores, and drug wholesalers and retailers—to cease discriminating in price in violation of section 2(a) of the Clayton Act by charging beauty salons classified as "chain" its "List Price" or "Regular Price" less a discount of 40 percent plus 15 percent on certain of its largest volume products, while charging "non-chain" beauty jobbers and salons the "List Price" less only 40 percent; and charging "chain" beauty salons the "List Price" less 33⅓ plus 15 percent on other products while charging "non-chain" jobbers and salons "List" less 40 percent; and to cease representing falsely in brochures and sales material distributed to beauty jobbers, by such statements as "Offer for Limited Time only * * * Reg. $9.00 doz. Deal Price $7.20 doz.", that the difference between the higher and lower prices represented savings to purchasers, when the higher "Reg." price was in excess of former prices and the lower price was not a "Deal Price" available for a limited time only.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondent Clairol Incorporated, a corporation, its officers, agents, representatives and employees, directly or indirectly, through any corporate or other device, in or in connection with the sale of beauty products in commerce, as "commerce" is defined in the Clayton Act, as amended, do forthwith cease and desist from: Discriminating, directly or indirectly, in the price of such products of like grade and quality by selling to any beauty salon or to any distributor for supply to any beauty salon at net prices higher than the net prices charged any other purchaser who, in fact, competes in the use, consumption or resale of said products with the purchaser paying the higher price or with a customer of the purchaser paying the higher price.

It is further ordered, That respondent Clairol Incorporated, a corporation, its officers, agents, representatives and employees, directly or indirectly, through any corporate or other device, in connection with the sale, offering for sale, or distribution of beauty products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

(1) Using the words "Regular Price", "Reg.", or words of similar import, to refer to a former price, the amount of which is in excess of the actual, bona fide price at which such merchandise has been offered for sale on a regular basis for a reasonably substantial period of time in the recent, regular course of business in the trade area or areas where the representations are made; or misrepresenting in any manner the actual, bona fide price of such merchandise;

(2) Representing, with regard to prices other than introductory prices, that savings are afforded to purchasers unless the price at which such merchandise is offered constitutes a substantial reduction, and a reduction equal to any amount stated or otherwise directly or by implication represented, from the actual, bona fide price at which such merchandise was offered to purchasers on a regular basis for a reasonably substantial period of time in the recent regular course of business in the trade area where the representation is made;

(3) Representing, directly or by implication, that savings are afforded to purchasers by a special deal or introductory price unless respondent establishes that such is the fact;

(4) Representing directly or by implication that the selling price, special deal or any offer being advertised is limited in point of time or in any other manner unless such restriction or limitation is actually imposed, and adhered to, by respondent;

(5) Placing in the hands of beauty jobbers means and instrumentalities by and through which they may deceive and mislead the purchasing public concerning any such merchandise in the respects set out above.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Issued: September 15, 1964.

By the Commission.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 64-10092; Filed, Oct. 5, 1964; 8:47 a.m.]

[1] See footnote on page 13654.

Title 32—NATIONAL DEFENSE

Chapter VII—Department of the Air Force

RECODIFICATION OF PARTS 800—999

Chapter VII, Parts 800—999, of Title 32 of the Code of Federal Regulations is recodified as set forth below to reflect a rearrangement of the subchapters and a renumbering of the parts without substantive change. All amendments which have been published through 29 F.R. 7807, June 19, 1964, have been incorporated in this republication.

The following table shows the redesignations made by this recodification:

Old section No.	*New section No.*
800.1–800.6	800.1–800.6
803.1–803.2	883.1–883.2
804.1–804.6	827.1–827.6
804.101–804.107	824.1–824.7
804.301–804.304	801.1–801.4
804.401–804.414	840.1–840.14
804.501	814.1
805.1–805.29	850.1–850.29
806.1–806.8	825.1–825.8
808.1–808.2	820.1–820.2
813.1–813.8	884.1–884.8
822.1–822.19	855.1–855.19
823.1–823.4	857.1–857.4
824.1–824.3	822.1–822.3
825.1–825.2	856.1–856.2
826.1–826.4	859.1–859.4
827.1–827.6	858.1–858.6
828.1–828.6	821.1–821.6
834.1–834.5	841.1–841.5
836.1–836.130	842.1–842.132
836.200–836.207	843.1–843.8
836.300–836.307	843.50–843.57
837.1–837.5	844.1–844.5
838.1–838.4	802.1–802.4
845.1–845.18	904.1–904.18
846.0–846.7	900.1–900.8
855.1–855.8	810.1–810.8
856.1–856.7	811.1–811.7
857.1–857.2	823.1–823.2
Part 858	*Part 813*
859.1–859.4	812.1–812.4
861.1–861.26	902.1–902.26
862.1–862.22	870.1–870.22
862.76–862.84	871.1–871.9
874.1–874.19	903.1–903.19
875.1–875.9	901.1–901.9
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878.41–878.56	882.100–882.115
878.57–878.73	882.200–882.219
878.74–878.75	882.300–882.301
878.76–878.82	882.400–882.406
878.100–878.102	882.500–882.501
880.1–880.5	890.1–890.5
881.1–881.19	865.1–865.19
881.100–881.106	865.100–865.106
881.200–881.208	865.200–865.208
887.1–887.18	885.1–885.18
888.1–888.16	920.1–920.17
889.1–889.22	891.1–891.19
890.1–890.14	880.1–880.14
891.1–891.11	826.1–826.11
970.1–970.2	930.1–930.2
971.1–971.4	931.1–931.4

SUBCHAPTER A—ADMINISTRATION

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801 Admission of Labor Union Representatives to Air Force Installations.
802 Authority of Armed Forces Personnel To Perform Notarial Acts.

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811 Sale of Aerial and Documentary Still Photography.
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SUBCHAPTER K—MILITARY TRAINING AND SCHOOLS

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901 Appointment to the United States Air Force Academy.
902 USAF Officer Training School (OTS).
903 Aviation Cadet Training; Navigator.
904 Detailing Personnel to Non-Federal Establishments for Aviation Instruction.

SUBCHAPTER L—STANDARDS OF CONDUCT

920 Standards of Conduct.

SUBCHAPTER M—ANIMALS

930 USAF Sentry Dog Program.
931 Experimental Animals.

SUBCHAPTERS N THROUGH V—[RESERVED]

Part
932–999. [Reserved]

SUBCHAPTER A—ADMINISTRATION

PART 800—DEPARTMENT OF THE AIR FORCE SEAL

Sec.
800.1 Purpose.
800.2 Description of the Seal.
800.3 Use of the Seal.
800.4 Coat of Arms.
800.5 Official drawings.
800.6 Headquarters USAF responsibilities.

AUTHORITY: The provisions of this Part 800 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 800.1 Purpose.

This part describes the Department of the Air Force Seal, prescribes its use, and tells when the Seal may be reproduced in whole or in part.

§ 800.2 Description of the Seal.

The Air Force Seal, established by Executive Order 9902, November 1, 1947, is the impression used on official documents and records of the Department of the Air Force.

(a) The Coat of Arms, in the center portion of the Seal, consists of two components:

(1) The Crest includes the eagle, cloud formation, and heraldic wreath. The American bald eagle symbolizes the United States and its airpower; the wreath beneath the eagle, composed of six alternate folds of metal and color, repeats the principal metal and color used in the Shield, white (representing silver) and light blue. The cloud formation behind the eagle depicts the creation of a new firmament—the Department of the Air Force.

(2) The Shield, immediately below the eagle, is divided horizontally into two parts by a nebuly line representing clouds. The top portion of the shield bears the heraldic thunderbolt, which portrays striking power through the medium of aerospace.

(b) The 13 encircling stars represent the original 13 colonies.

(c) Roman numerals beneath the shield indicate 1947, the year the Department of the Air Force was established.

(d) The band encircling the whole design bears the inscription "Department of the Air Force" and "United States of America."

(e) The official Air Force colors, ultramarine blue and golden yellow, are used in the Seal. Ultramarine blue is used for the circular background of the Seal, while the upper part of the Shield of the Coat of Arms is light blue, representing the sky. The lower part of the shield is white, representing the heraldic metal silver. The thunderbolt is golden yellow with flames in natural color. Alternate twists of white and light blue make up the wreath of the crest; the eagle and cloud are in their natural colors. The 13 stars are white, and the Roman numerals golden yellow. White, edged in golden yellow with black letters, is used on the encircling band.

§ 800.3 Use of the Seal.

(a) *Official policy.* Use of the Seal or any part thereof is permitted only as authorized in this part, or as approved by the Department of the Air Force in specific instances. Falsely making, forging, counterfeiting, mutilating, or altering the Seal, or knowingly using or possessing with fraudulent intent any such altered Seal, is punishable by law (62 Stat. 714; 18 U.S.C. 506).

(b) *Authorized uses.* The Seal or any part thereof, in black and white, color, monochrome reproduction, pictorial, or sculptured relief, may be used as follows:

(1) Motion pictures and television: In Air Force-approved training films, public relations films, and official USAF motion picture and television programs.

(2) Memorials and monuments: Those erected by the Department of the Air Force or for which both the purpose and design are specifically approved by Headquarters USAF.

(3) Display: With any official Air Force exhibit.

(4) Wall plaques: By museums, military societies, and governmental institutions, when specifically approved by Headquarters USAF.

NOTE: When use of the entire Seal or any part thereof is desired and the specific case is not covered in this part, request for approval will be forwarded through channels to Hq USAF (AFPMP–12–C), Washington, D.C., 20330.

(c) *Unauthorized uses.* The Seal will not be used:

(1) On souvenir or novelty items of an expendable nature.

(2) On printed matter reproduced or procured by an Air Force activity, except as provided in paragraph (b) (1) of this section.

(3) On toys or commercial gifts and premiums.

(4) As a letterhead design on stationery.

(5) On menus, matchbook covers, sugar envelopes, calendars, and similar items.

(6) To adorn civilian clothing.

(7) On membership cards of military or quasi-military clubs, societies, etc.

(8) On athletic clothing and equipment.

(9) On any article which may discredit the Seal or reflect unfavorably upon the Department of the Air Force.

(10) In any manner which implies Air Force indorsement of commercial products or services.

(11) On commercial or private printed matter.

§ 800.4 Coat of Arms.

Authorized uses of the Coat of Arms are given below:

(a) Coat of Arms, with or without encircling stars, in black and white, color, monochrome reproduction, pictorial or sculptured relief, may be used for ornamentation, for nonofficial use, on articles of jewelry, such as watches, rings, tie clasps, cuff links, bracelets, cigarette lighters, and similar articles where use of the Coat of Arms is in good taste and appropriate to the occasion.

NOTE: Use of the Coat of Arms in instances mentioned in paragraph (a) of this section must be specifically approved by Hq USAF (AFPMP–12–C), Washington, D.C., 20330. When Headquarters USAF approves use of the Coat of Arms for nonofficial purposes, it will do so only with the understanding that such usage in no way reflects Air Force endorsement of the product involved.

(b) Coat of Arms without encircling stars, in black and white, color, monochrome reproduction, pictorial, or sculptured relief, may be used for ornamentation by USAF military personnel, including members of the Reserve components and USAF retired personnel, as follows:

(1) For display on personal stationery or framing for display in the home as a painting or a wall plaque.

(2) For wear on civilian jackets or blazers of conservative color.

NOTE: Although Headquarters USAF approval is not required for use of the Coat of Arms without encircling stars in the cases mentioned in paragraph (b) of this section, Air Force personnel are reminded that it is the obligation of each member to protect the dignity of the Air Force Coat of Arms by insuring that its display is in good taste and is appropriate to the occasion.

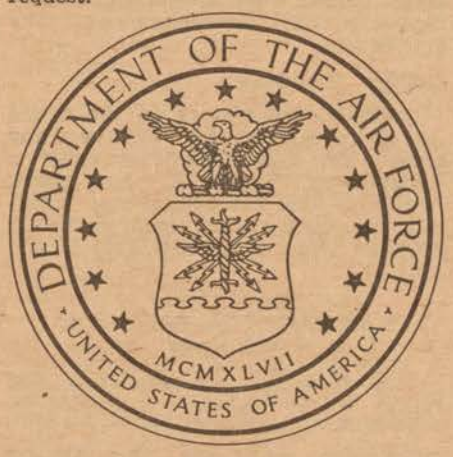
§ 800.5 Official drawings.

Official drawings of the Seal or any part thereof required for reproduction purposes may be obtained through channels from Hq USAF (AFCAS–50), Washington, D.C., 20330. The request will be accompanied by a complete justification.

§ 800.6 Headquarters USAF responsibilities.

(a) The Administrative Assistant, Office of the Secretary of the Air Force, is the custodian of the Air Force Seal, and is solely responsible for approving use of its impression on official departmental documents and records.

(b) The Deputy Chief of Staff, Personnel, is responsible for approving use of facsimiles of the Seal, or portions thereof, on insignia, flags, medals, and similar items. He is also responsible for authorizing such other uses of elements of the Seal as Air Force organizations, civilian groups, and industry may request.



PART 801—ADMISSION OF LABOR UNION REPRESENTATIVES TO AIR FORCE INSTALLATIONS

Sec.
801.1 Purpose.
801.2 Policy.
801.3 Procedures on admission to unclassified areas.
801.4 Limitations.

AUTHORITY: The provisions of this Part 801 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 801.1 Purpose.

This part announces the Air Force policy governing admission of labor union representatives to Air Force installations.

§ 801.2 Policy.

(a) Air Force policy is to cooperate with authorized labor union representatives by granting them admission to Air Force installations when they are engaged in legitimate union business.

(b) The admission of labor union representatives to Air Force installations will be governed by the following:

(1) Where union agents desire to enter an installation to conduct union business during working hours, the base commander may authorize such visits: *Provided,* That the entry of the agents does not violate applicable safety and security regulations and, that their entry, presence, or activities will not interfere with base operations or the progress of work.

(2) Where construction on Air Force installations is administered by a construction agent of the Air Force, such as the Corps of Engineers, United States Army, commanders should notify the construction agent of the proposed visit and the purpose thereof. They should also determine whether the proposed visit will interfere with the work progress.

§ 801.3 Procedures on admission to unclassified areas.

Permission to enter an Air Force installation may be granted by the commander to labor union representatives to:

(a) Discuss with the commander those policy matters which relate to employees who are engaged in work on the installation and who are members of the union represented by the visitor.

(b) Visit contractors, contractor representatives, or union stewards to discuss and review conditions of employment, grievances, and related matters within the terms of the collective bargaining agreements involving employees.

(c) Visit individual employees of contractors, provided that discussion and review of matters within the collective bargaining process cannot otherwise be accomplished.

§ 801.4 Limitations.

(a) Approval of visits to labor representatives should include the limitations and restrictions applicable to visitors. In addition, notification should specify that permission to visit an Air Force activity does not include the right to hold meetings, collect dues, make speeches, or distribute inciting or provocative material.

(b) Organizing activities carried on during work hours are considered to be disruptive; therefore, visits will not be authorized for this purpose.

(c) Nothing contained in these sections should be interpreted as requiring that permanent passes be issued to labor representatives to conduct union business.

(d) The provisions of Part 850, Subchapter E of this chapter govern admission to classified areas.

PART 802—AUTHORITY OF ARMED FORCES PERSONNEL TO PERFORM NOTARIAL ACTS

Sec.
802.1 Purpose.
802.2 Federal authority to administer oaths, and the legal effectiveness of such oaths.
802.3 Federal authority to perform other notarial acts, and the legal effectiveness of such acts.
802.4 Restrictions.

AUTHORITY: The provisions of this Part 802 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 802.1 Purpose.

This part sets forth for both Federal and non-Federal purposes the authority of U.S. Armed Force members to administer oaths; take affidavits, sworn statements, depositions, and acknowledgments; and perform other notarial acts.

§ 802.2 Federal authority to administer oaths, and the legal effectiveness of such oaths.

(a) *Federal authority to administer oaths.* (1) The following U.S. Armed Force members on active duty may administer oaths for purposes of military administration, including military justice (Art. 136, UCMJ; 10 U.S.C. 936):

(i) All judge advocates of the Army and the Air Force.

(ii) All law specialists.

(iii) All summary courts-martial.

(iv) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.

(v) All commanding officers of the Navy, Marine Corps, and Coast Guard.

(vi) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.

(vii) All other persons designated by Armed Forces regulations or by statute. Although otherwise qualified under subdivision (iv) of this subparagraph, Directors of Administrative Services, Deputy Directors of Administrative Services, Chiefs of Administrative Services, Administrative Officers, and similarly titled officers are hereby so designated by the Air Force.

(2) The following U.S. Armed Force members on active duty may administer oaths to any person when it is necessary in the performance of their duties (Art. 136, UCMJ; 10 U.S.C. 936):

(i) President, law officer, trial counsel, and assistant trial counsel for all general and special courts-martial.

(ii) President and counsel for the court of any court of inquiry.

(iii) All officers designated to take a deposition.

(iv) All persons designated to conduct an investigation.

(v) All recruiting officers.

(vi) All other persons designated by Armed Forces regulations or by statute.

(3) Any U.S. Armed Force commissioned officer of any Regular or Reserve component, whether or not on active duty, may administer:

(i) Oath of enlistment (10 U.S.C. 501 and 1031).

(ii) Oath required for appointment of any commissioned or warrant officer grade (10 U.S.C. 1031).

(iii) Any other oath required by law in connection with enlistment or appointment of any person in any U.S. Armed Force (10 U.S.C. 1031).

(b) *Legal effectiveness.* Oaths administered under these authorities are proper and legally effective for the purposes stated.

§ 802.3 Federal authority to perform other notarial acts, and the legal effectiveness of such acts.

(a) *Federal authority.* Under authority of Art. 136, UCMJ (10 U.S.C. 936), in addition to administering oaths for the purposes described in § 802.2(a), U.S. Armed Force members listed in § 802.2(a)(1) have general powers of a notary public and a U.S. consul to administer oaths and take affidavits, sworn statements, depositions, and acknowledgments to be accomplished by U.S. Armed Force members, wherever they may be, and by persons serving with, employed by, or accompanying the Armed Forces outside the United States and outside the Canal Zone, Puerto Rico, Guam, and the Virgin Islands.

(b) *Legal effectiveness for non-Federal purposes.* The legal effectiveness of any notarial act generally is dependent on the laws of the jurisdiction in which the instrument is actually to be used. This jurisdiction determines what officials may perform notarial acts, and the conditions under which they may be performed. Federal authority contained in Art. 136, UCMJ (10 U.S.C. 936), for the performance of notarial acts by certain U.S. Armed Force members may or may not be accepted as adequate compliance with the requirements of the jurisdiction in which the instrument actually is to be used.

§ 802.4 Restrictions.

Commissioned officers on the active list of the Regular Air Force or Army should not take depositions under a "commission" issued by any court. Accepting such commission may terminate the officer's appointment in the Air Force or Army. (10 U.S.C. 3544(b) and 8544(b).)

SUBCHAPTER B—SALES AND SERVICES

CROSS REFERENCE: For regulations with respect to transportation of persons on military aircraft, see Part 180 of this title.

PART 810—SALE OR RELEASE OF MOTION PICTURE AND SOUND TRACK STOCKFOOTAGE

Sec.
810.1 Purpose.
810.2 Definitions.
810.3 Sale, use, and release of stockfootage.
810.4 Responsibility.
810.5 Requesting stockfootage.
810.6 Established fees.
810.7 Requests exempt from fees.
810.8 Collection of fees.

AUTHORITY: The provisions of this Part 810 issued under sec. 8012, 70A Stat. 488, sec. 501, 65 Stat. 290; 10 U.S.C. 8012, 5 U.S.C. 140.

§ 810.1 Purpose.

This part states the policy on the sale, use, and release of unclassified Air Force motion picture stockfootage and the dissemination of classified stockfootage. It does not cover the sale of prints made from completed Air Force motion pictures. Nor does it cover the use of stockfootage in films produced for the Air Force.

§ 810.2 Definitions.

For the purpose of this part the following definitions apply:

(a) *Stockfootage.* Specific scenes or sound tracks from Air Force film footage intended for use in completing a motion picture production, or for use in engineering analysis, intelligence, training, or for other miscellaneous purposes.

(b) *Service.* The search of film files, screening of stockfootage, selection of scenes, actual reproduction of scenes or sound track required, and shipping.

§ 810.3 Sale, use, and release of stockfootage.

(a) Sale or release of reproductions from unclassified stockfootage is authorized within the provisions of this part. Classified stockfootage may be disseminated only when an official requirement exists, when Part 850, Subchapter E of this chapter is complied with, and when there is no limitation affecting the specific release imposed by the contributing military activity. The sale or release of the original negative is prohibited.

(b) Activities contributing film to the USAF Motion Picture Film Depository will insure that any limitation desired on further dissemination is clearly stated in a notation placed on the film.

(c) Requests for classified stockfootage received from foreign governments or their representatives will be sent for approval to Headquarters USAF (AFCIN).

(d) Recipients will not use stockfootage to show by implication or otherwise that the Air Force indorses a product.

(e) Exclusive rights to stockfootage may not be claimed by any other agency or person.

(f) Waiver of proprietary and privacy rights will not pass with the sale or release of stockfootage unless these rights and the right of transfer are owned by the Air Force.

(g) The sale of stockfootage which is available from commercial motion picture sources is prohibited.

(h) Film received from Air Force contractors will not be released or sold to competitive contractors unless the Air Force contracting officer having jurisdiction over the contract determines that it is in the best interest of the Air Force.

(i) There are currently in existence agreements formalized between the Air Force and certain other Government

agencies providing for photographic and related services. If such agreements are not in accordance with this part regarding the release of stockfootage to these agencies, the provisions of the formal agreement will apply.

§ 810.4 Responsibility.

The USAF Motion Picture Film Depository will provide the services stated herein and such other services as the Commander, Air Photographic and Charting Service directs.

§ 810.5 Requesting stockfootage.

(a) *Preliminary inquiry.* Before submitting his request, a person may obtain preliminary information on available stockfootage in general subject areas for which access has been granted. Such inquiries to the USAF Motion Picture Film Depository do not constitute a formal request.

(b) *Release of unclassified stockfootage to public.* The person requesting unclassified stockfootage for release to the public will:

(1) Forward his request to: Secretary of the Air Force (SAFOI), Wash. 25, D.C.

(2) Include in each request a film sequence outline or script clearly indicating those scenes for which he desires stockfootage.

(3) State preference for type of film and the approximate number of screen feet required.

When notified by Headquarters USAF that his request is favorably considered, the requester may communicate direct with the USAF Motion Picture Film Depository to arrange for selecting the stockfootage.

(c) *Unclassified stockfootage for internal use.* The person requesting unclassified stockfootage for use within the Federal Government will:

(1) Forward his request to: 1350th Motion Picture Squadron, Attn: USAF Motion Picture Film Depository, Wright-Patterson, AFB, Ohio.

(2) Include in each request a statement of intended use.

(3) State preference for the type of film and the approximate number of screen feet required.

NOTE: An Air Force contractor requiring unclassified stockfootage to meet film production requirements specified in an Air Force contract will forward his request through the Air Force contracting officer having jurisdiction over the contract. If stockfootage is for a film production intended for public release, he must submit his request in accordance with paragraph (b) of this section.

(d) *Requests for classified stockfootage by Air Force contractor.* An Air Force contractor requiring classified stockfootage will forward his request for review and approval through the Air Force contracting office having jurisdiction over the contract involved.

(e) *Other requests for classified stockfootage.* The person outside the Air Force requesting classified stockfootage will:

(1) Forward his request to: Hq USAF (AFXOP-GF) Washington, D.C. 20330.

(2) Include a statement of intended use.

When notified by Headquarters USAF that his request is favorably considered, the requester may communicate direct with the USAF Motion Picture Film Depository to arrange for selecting the stockfootage.

(3) If he is not in Executive Branch of the Government, furnish assurance that the classified information will be handled in accordance with Part 850, Subchapter E of this chapter. He must also explain the measures he will take to safeguard the information.

§ 810.6 Established fees.

(For still photography fees, see Part 811.)

The following fees are charged for stockfootage and service:

16mm or 35mm black and white unedited footage and/or optical sound track, per foot	$0.10
Color unedited footage:	
16mm, per foot	.20
16mm, inter-negative	.25
35mm, per foot:	
Viewing or release print, each	.25
Color inter-positive, each	.55
Color inter-negative, each	.55
Magnetic Tape (per foot):	
16mm (Direct Dubb), each	.05
35mm (Direct Dubb), each	.05
Searching (including direct overhead)—Each hour or fraction thereof (per hour)	5.00

All film materials, such as masters, specially prepared in order to furnish a requested end product will be charged for on a per foot basis.

Minimum charge (including stock search) per order	$10.00

§ 810.7 Requests exempt from fees.

To the extent that funds are available, those requests received from the sources and for services listed in this section may be exempt from payment of fees, provided that furnishing such service does not hamper the mission of the furnishing agency, is consistent with this part and is accomplished during normal work schedules.

(a) *Sources.* (1) Department of Defense agencies and other departments of the Federal Government for use in furtherance of approved departmental activities.

(2) Members of Congress for use in furtherance of official government activities.

(3) Federal, State, territorial, county, or municipal government, or an agency thereof, carrying on a function related to, or in furtherance of, an Air Force or other Department of Defense objective.

(4) Nonprofit organizations carrying on a function related to, or in the interest of, public health and welfare.

(5) Members of the Armed Forces in a casualty status, or their next of kin or authorized representative, when requested stockfootage relates to source of casualty.

(b) *Services.* (1) Service which is occasional and incidental (including a request from resident of a foreign country), when it is determined that a fee would be inappropriate in such case.

(2) Service determined by the Office of Information, Office of the Secretary of the Air Force, to be in the best interest of the Air Force.

(3) Service which is furnished free in accordance with statutes or Executive Orders.

(4) Service that the Federal Government will ultimately pay for.

§ 810.8 Collection of fees.

Payments will be accepted in cash, United States money orders, certified checks, or their equivalent. Negotiable instruments will be drawn payable to the Treasurer of the United States. When appropriate, fees will be collected before release of stockfootage. Searching fees will be collected whether or not stockfootage is ordered as a result of such search.

PART 811—SALE OF AERIAL AND DOCUMENTARY STILL PHOTOGRAPHY

Sec.

811.1 Purpose.
811.2 Sale of photographs.
811.3 To whom sold.
811.4 Policy covering sales.
811.5 Furnishing photographs free of charge.
811.6 Schedule of fees.
811.7 Collection of fees.

AUTHORITY: The provisions of this Part 811 issued under sec. 8012, 70A Stat. 488; sec. 501, 65 Stat. 290; 10 U.S.C. 8012, 5 U.S.C. 140.

§ 811.1 Purpose.

This part governs the sale of unclassified Air Force aerial and documentary still photographs and provides guidance for furnishing materials free of charge; furnishes a schedule of fees; and outlines collection procedures.

§ 811.2 Sale of photographs.

(a) Only the USAF Central Print and Index Library is authorized to sell official Air Force aerial mapping and reconnaissance photographs.

(b) Any Air Force activity which has custody of still documentary negatives and transparencies may sell copies in accordance with this part.

§ 811.3 To whom sold.

(a) Members and agencies of the Federal Government.

(b) The public, which includes any person or group of persons, such as associations, organizations, partnerships, corporations, businesses, municipalities, counties, States, or territorial governments.

§ 811.4 Policy covering sales.

(a) Authorized for sale are reproductions or prints and duplicate negatives made from existing black and white negatives; duplicate color negatives and duplicate color transparencies from existing counterpart color material; and Printon color prints made from existing color transparencies.

(b) Sale of photographs is discouraged. When they are sold, the number of prints sold from each negative will be limited to the minimum necessary.

(c) Selling prints or furnishing related photographic services which compete with commercial organizations is prohibited.

(d) Sale of photographs that are unrelated to Air Force activities is prohibited, even though Air Force photographers make such photographs.

(e) Sale of Air Force photographs for any use which implies Air Force endorsement of a service or product is prohibited, unless the recipient has obtained approval in writing from the Office of Information, Office of the Secretary of the Air Force.

(f) Each print sold will bear the official Air Force credit line as follows:

U.S. AIR FORCE PHOTO

Released by _____ Air Force Base

(g) Sale of prints does not include waiver of propriety or privacy rights, unless these rights and the right of transfer belong to the Air Force.

(h) Exclusive rights to official Air Force photographs may not be claimed by any person or persons.

(i) Before releasing prints to a purchaser, the commander of the Air Force activity making the sale will insure that the purchaser understands the restrictions outlined herein.

(j) Release of aerial photographs of foreign countries is subject to prior approval of the country concerned; persons desiring such approval should apply to the country's Embassy. Many countries now have their own aerial photographs and can furnish information on their availability.

§ 811.5 Furnishing photographs free of charge.

Photographs required to conduct official Department of Defense business will be furnished without charge. To the extent that work-load and funds permit, prints requested from the following sources and for the purposes specified will be furnished without charge:

(a) The general public in furtherance of the Armed Forces recruiting program or in the interest of public understanding of the Armed Forces.

(b) Members of Congress for use in official governmental activities.

(c) Nonprofit organizations carrying on a function related to, or in the interest of, public health and welfare.

(d) Members of the Armed Forces in a casualty status, or their next of kin or authorized representatives, when prints requested relate to source of casualty.

(e) Prints which may be required in accordance with statutes or Executive orders.

(f) Prints required by agencies carrying on a function related to an Air Force objective.

(g) Occasional and incidental requests (including requests from a resident of a foreign country) of the type not requested often, if it is administratively determined that a fee would be inappropriate.

§ 811.6 Schedule of fees.

All prices are subject to change without notification.

(a) Pictorial and documentary photographs (includes prints of USAF aircraft, guided missiles, ground equipment, personnel, historical photographs of USAF installations, record-establishing flights or projects, etc.) will be furnished according to the following limitations and fees:

(1) Photographs are only available in print sizes indicated.

(2) Color photographs can be furnished only when available.

(3) Glossy prints normally will be furnished unless otherwise specified. If double weight, matte finish prints are desired, $0.05 should be added to the price of each black and white print.

		Each
Black & White (prints)	8" x 10"	$0.55
Color (Printon Prints from Transparency)	8" x 10"	4.00
Duplicate Color Transparency	4" x 5"	5.00
Duplicate Color Transparency	8" x 10"	10.00
Duplicate Ektacolor Negative	4" x 5"	5.00
Duplicate Ektacolor Negative	8" x 10"	10.00

NOTE: Ektacolor negatives and color transparencies can be used by a purchaser to obtain ektacolor paper prints or dye transfer prints from commercial sources.

(b) Photostat copies of records (8½" x 10") pertaining to documentary or historical events can be made available at $0.20 each.

(c) Aerial photographs (include verticals and obliques of ground areas or subjects).

(1) Contact print size is determined by the size of the original negative and the purchaser cannot exercise a choice as to scale or size.

(2) All aerial photographs available for sale are black and white.

(3) Glossy prints will be furnished unless otherwise specified; however, no additional charge will be made for double weight, semi-matte finish.

Size	No. of separate photographs	Price each
4" x 5½", 5" x 7", 7" x 9" or 9" x 9"	1 to 100	$0.70
	101 to 1,000	.55
	Over 1,000	.50
9" x 18"	1 to 100	1.40
	101 to 1,000	1.10
	Over 1,000	1.00

(d) Mosaics or photographic indexes:

(1) Mosaics or photographic indexes are not prepared for all areas of U.S. Air Force photographic coverage. Each area of interest will be reviewed and the purchaser advised accordingly.

(2) Mosaics and indexes vary in size, but are generally 20" x 24".

(3) The price per mosaic or index print is $1.20.

(e) Aerial photographic information material (including individual plot maps, coverage diagrams, composite prints, etc.) when available, will be charged for according to the labor and time involved in production. Hand-drawn plots and sketches will be charged for at the rate of $2.00 minimum for an individual item or $2.00 for each hour of labor when more than one item is required.

§ 811.7 Collection of fees.

Payments will be accepted in cash, United States money orders, certified checks or their equivalent. Negotiable instruments will be drawn payable to the Treasurer of the United States. The Air Force activity making the sale will collect payments in advance, basing charges on the size, type, and prices established herein.

NOTE: Refunds will not be made because a regulation, directive, or fee schedule is changed after the service is performed, or for overpayments of one dollar or less.

PART 812—CHARGES FOR CERTAIN GOVERNMENT SERVICES AND PROPERTY

Sec.

812.1 Purpose.
812.2 General policy.
812.3 Determining costs and fees for special services.
812.4 Determining charges for lease or sale.

AUTHORITY: The provisions of this Part 812 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 812.1 Purpose.

This part prescribes general policy for developing an equitable and uniform system of charges for certain Government services and property.

§ 812.2 General policy.

A reasonable charge, as described in this section, should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which he derives a special benefit.

(a) *Special services.* Where a service or privilege provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large, a charge should be imposed to recover the full cost of rendering that service. No charge should be made for services when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as broadly benefiting the general public. For example, a special benefit will be considered to accrue and a charge should be imposed when an Air-Force-rendered service:

(1) Enables the beneficiary to obtain more immediate or substantial gains or values, which may or may not be measurable in monetary terms, than those which accrue to the general public.

(2) Provides business stability or assures public confidence in the business activity of the beneficiary.

(3) Is performed at the request of the recipient and is above and beyond the services regularly received by other members of the same industry or group, or of the general public.

(b) *Lease or sale.* Where federally owned resources or property are leased or sold, a fair market value should be obtained.

§ 812.3 Determining costs and fees for special services.

(a) *Determining costs.* Costs shall be determined or estimated from the best available records in the Air Force activity, and cost accounting systems will not be established solely for this purpose. The cost computation shall cover the direct and indirect costs incurred by the activity performing the service, including but not limited to:

(1) Civilian salaries, military pay and allowances at standard rates, employee leave, travel expense, cost of fee collection, postage, material and supplies used, maintenance and operation of buildings and equipment (including depreciation when appropriate), and personnel costs other than direct salaries (e.g., retirement and employee insurance).

(2) A proportionate share of the management and supervisory costs of the activity performing the service.

(3) The costs of research, establishing standards, enforcements, and regulation, to the extent they are determined by the Air Force activity to be properly chargeable to the services performed.

(b) *Establishing fees to recover costs.* Fees will be established in accordance with the policies and procedures of this part (§ 812.2). However, the provisions of this part are not to be construed in such a way as to reduce or eliminate fees and charges in effect on the date of its issuance. The maximum fee for a special service will be governed by its total cost and not by the values of the service to the recipient. (If the amount of the fee can be determined in advance, it should normally be collected before rendering the service). The cost of providing the service shall be reviewed every year and the fees adjusted as needed. In establishing new fees and increasing existing fees, exceptions may be made to the general policy which requires a reasonable charge (§ 812.2), under such conditions as follows:

(1) If the cost of collecting the fees would be unduly large in proportion to the receipts from the activity.

(2) If the furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization; or comparable fees are set on a reciprocal basis with a foreign country.

(3) If the recipient is engaged in a non-profit activity designed for the public safety, health, or welfare.

(4) If payment of the full fee by a State, local government, or nonprofit group would not be in the interest of the program.

§ 812.4 Determining charges for lease or sale.

Where federally owned resources or property are leased or sold, a fair market value should be obtained. Charges should be determined, so far as practicable and feasible, in accordance with comparable commercial practices. Charges need not be limited to the recovery of costs—they may produce net revenues to the Government.

PART 813—SCHEDULE OF FEES AND CHARGES FOR COPYING, CERTIFYING AND SEARCHING RECORDS

CROSS REFERENCE: See Subchapter P, Part 288, Chapter I of this title.

PART 814—RESPONSIBILITY OF THE CONTRACTOR

§ 814.1 Contract food service attendants.

In any contract food service attendant arrangement, the contractor provides, but is not limited to:

(a) Food service attendants to maintain food service facility sanitation, to prepare (washing, peeling, and cutting) vegetables for cooking and to serve food from steam tables.

(b) Management and supervision of food service attendants.

(c) Uniforms and the laundering thereof.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012)

SUBCHAPTER C—PUBLIC RELATIONS

PART 820—COMPETITION WITH CIVILIAN BANDS

AIR FORCE BANDS

Sec.
820.1 Use of Air Force bands.
820.2 Use of volunteer units.

AUTHORITY: The provisions of this Part 820 issued under secs. 8012, 8634, 8635, 70A Stat. 488, 532; 10 U.S.C. 8012, 8634, 8635.

§ 820.1 Use of Air Force bands.

(a) *Limitations.* The use, employment, or assignment of Air Force bands off military reservations is governed by the following:

(1) U.S. Code, Title 10, Section 8634. "No Air Force band or member thereof may receive remuneration for furnishing music outside the limits of an air base in competition with local civilian musicians."

(2) U.S. Code, Title 10, Section 8635. "No enlisted member of the Air Force on active duty may be ordered or permitted to leave his post to engage in a civilian pursuit or business, or a performance in civil life, for emolument, hire, or otherwise, if the pursuit, business, or performance interferes with the customary or regular employment of local civilians in their art, trade, or profession."

(3) The Secretary of Defense. The Secretary of Defense has set forth policies for effective and economical utilization of Armed Forces bands in connection with public events, demonstrations, ceremonies, and other activities in the civilian domain. Except as otherwise indicated in this part, the Secretary of Defense retains the authority to approve participation by Air Force bands within the geographic limits of the United States in:

(i) Public events in the Washington, D.C., area.

(ii) Events of national or international significance.

(iii) Events of more than local significance which involve two or more of the Armed Forces.

(iv) In tours or other activities in the civilian domain outside the area of the base of assignment involving bands, choral groups, or vocalists.

All requests for performance which fall within the purview of the Secretary of Defense as indicated in this section will be forwarded with full information concerning the performance(s) to: Secretary of the Air Force (SAFOI) Washington, D.C., 20330, for the approval of the Assistant Secretary of Defense (Public Affairs). Normally, requests should be submitted to arrive not less than 30 days before the occasion.

(4) For command areas outside the continental limits of the United States, the authority reserved for the Secretary of Defense as outlined in subparagraph (3) of this paragraph has been delegated to the Commanders-in-Chief of the unified commands. Notice of activities planned by an oversea commander which involve Air Force band participation in events of national or international character, or those requiring coordination among the Armed Forces or with other agencies of the Federal Government, will be forwarded with full information concerning the performance to the unified command before final commitment. In this connection, Department of Defense Directive 5410.6 is quoted for the information and guidance of all concerned: "These commanders-in-chief shall consult with the Assistant Secretary of Defense (Public Affairs) regarding requests or plans for participation in events of major international interest or importance."

(5) On plans for performances in oversea commands by Air Force bands stationed in the United States, the Director of Information will obtain coordination of the Assistant Secretary of Defense (Public Affairs) before any commitments are made.

(b) *Responsibilities.* Commanders exercising operational control over Air Force bands will determine whether the use of the band at a public gathering conflicts with the provisions quoted in paragraph (a) of this section and will enforce instructions governing the use of Air Force bands. Such commanders are authorized to approve participation of Air Force bands in local events or activities in the vicinity of the installation at no cost to the Government. Commanders approving such participation will be guided by the following examples of suitability:

(1) For all uses on military and naval installations or vessels, and other places or circumstances when on duty with military forces.

(2) When music is a part of occasions officially sponsored and attended by senior Government or military dignitaries in the performance of their official duties. Music may be broadcast or telecast with the other features of the program. Such occasions do not include social activities and entertainments these officers attend as guests—such as dinners and luncheons given by civilians or civic associations.

(3) Broadcasts and telecasts of concerts, when such programs are not for commercial purposes and originate on military or naval reservations or vessels.

(4) Broadcasts and telecasts originating on or off a military reservation or vessel:

(i) When such programs are of value to the Service concerned, provided all proper clearances are secured by the sponsors with respect to musical rights, labor agreements, etc., and provided the programs are not for commercial purposes.

(ii) When such programs are for purely recruiting drives or to present to the public certain matters which the Air Force considers important enough to require radio or television dissemination.

(5) Musical programs at any United States Government hospital for the entertainment of patients.

(6) Concerts in the Capitol grounds, Government buildings, and public parks

of the City of Washington, D.C., which are open to the public free of charge.

(7) Free social and entertainment activities conducted exclusively for the benefit of enlisted personnel and their guests in Service clubs and social centers maintained for the use of enlisted personnel on active duty.

(8) Official occasions and free social and entertainment activities held off military installations, if such activities are conducted exclusively for the benefit of military personnel on active duty and their guests.

(9) Parades and ceremonies incident to patriotic occasions, or gatherings of personnel of the Armed Forces, veterans, or patriotic organizations, which are nonpolitical community affairs, nonsectarian, and nonprofit.

(10) Fund drives for officially recognized Armed Forces relief or charitable organizations, and for civilian charitable organizations, such as the United Givers Fund, Community Chest, Red Cross, National Health Agencies, and Joint Crusade as a group, when the benefits are donated to these agencies.

NOTE: Fund drives of a local party, sect, or similar group whether for charitable or other purposes, are not considered appropriate occasions for the use of Air Force bands.

(11) Athletic contests in which one or more Armed Forces teams are participating. Band participation is not authorized in professional sports events such as basketball, baseball, or football games or in events which have no connection with the military mission and are sponsored and conducted to promote commercial interests, such as Christmas shopping parades.

(12) In connection with purely recruiting activities for the Armed Forces.

(13) Local, State, and regional fairs, exhibitions, or similar events, provided the presentation is open to the public at no charge other than the general admission, and the bands do not perform any service for which civilian musicians would have been hired.

(14) Use of Air Force bands or choral groups in support of commercial motion picture premieres and other showings in the civilian domain is not authorized.

§ 820.2 Use of volunteer units.

The provisions of § 820.1, governing the use of Air Force bands, apply to all volunteer units.

PART 821—MISSION AND FUNCTIONS OF THE 4520TH AERIAL DEMONSTRATION SQUADRON, "THUNDERBIRDS"

Sec.
821.1 Purpose.
821.2 Organization of the Squadron.
821.3 Squadron mission.
821.4 Demonstration explained.
821.5 Rules governing demonstration.
821.6 When and how to submit requests for demonstrations.

AUTHORITY: The provisions of this Part 821 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 821.1 Purpose.

This part states the mission, functions, and operations policy of the 4520th Aerial Demonstration Squadron, "Thunderbirds", and tells how to request Thunderbird demonstrations.

§ 821.2 Organization of the Squadron.

The 4520th Aerial Demonstration Squadron, "Thunderbirds," is established as the official Air Force tactical precision flying demonstration team.

§ 821.3 Squadron mission.

The 4520th Aerial Demonstration Squadron plans and presents precision aerial maneuvers to exhibit air power and the flexibilities of modern tactical aircraft, as well as the high degree of professional skills required to operate high performance aircraft. Objectives are:

(a) To portray some of the capabilities of air power on military or public occasions.

(b) To stimulate favorable international attitudes and actions toward realizing United States national objectives.

(c) To further the Air Force recruiting programs by motivating the youth of America.

(d) To further aerospace power education by conducting an active public information program through direct contact with the public and all available information media.

§ 821.4 Demonstration explained.

As used in this part, a "demonstration" is precision aerial performance, flown by a team of skilled pilots, in assigned mission aircraft, in the subsonic speed range, before a given audience. Each demonstration is narrated by a qualified squadron member, and after the demonstration a ground display of appropriate aircraft and equipment is made available to the audience. The pilots participating in the demonstration are also available for discussions.

§ 821.5 Rules governing demonstration.

All Thunderbird demonstrations will be performed as follows:

(a) Aerial maneuvers will be flown within the capability of the assigned mission aircraft at the discretion of the Squadron commander and as authorized by the Commander, TAC.

(b) Aerial maneuvers of an acrobatic nature are not authorized:

(1) Over congested areas of cities, towns, or settlements. This does not prohibit normal flight of aircraft conducted in accordance with FAA regulations. Positioning turns and maneuvers made away from the designated spectator area(s) following passes in front of such area(s), in order to permit aircraft to return over the field, are not considered acrobatic maneuvers.

(2) Closer than 1,500 feet horizontal distance from the designated spectator area. Normal takeoffs and landings are not considered part of the demonstration; however, no takeoff or landing will be made toward or over the designated spectator area.

(3) Unless the demonstration is conducted in a direction which most nearly parallels the boundaries of the designated spectator area.

(4) Where the number of aircraft in formation exceeds 12 and the total number of participating aircraft exceeds 16.

(5) Unless all aircraft operate at subsonic speeds.

(c) Minimums to be adhered to for aerial demonstrations are:

(1) *Weather minimums.* Visibility of at least five miles and ceiling 1,000 feet or more above the peak altitude of the highest vertical maneuver or altitude to be flown during the demonstration. In no case will a "flat" aerial demonstration be authorized if the ceiling is less than 3,000 feet.

(2) The minimum altitude above terrain for a maneuver:

(i) Formation—minimum safe.

(ii) Single aircraft—minimum safe.

(d) All aerial demonstrations require a written agreement, with appropriate FAA representative, clearly specifying air speeds, altitudes, route of flight maneuvers, etc., to be used. No aerial demonstration, excluding practice in the designated area near Nellis Air Force Base, will be conducted without this definitive written agreement.

(e) Aerial demonstrations will not be conducted at air fields not closed to other traffic during the performance, except in most unusual cases where specific authority is provided by Headquarters TAC.

§ 821.6 When and how to submit requests for demonstrations.

(a) Military requests for Thunderbird demonstrations are addressed to Hq USAF (SAFOI–2), Washington, D.C. 20330. Civilian requests are addressed to the Assistant Secretary for Public Affairs, Department of Defense, Washington, D.C. 20330. All requests must be on file not later than December 15th for the following year's events. All requests are considered when the Thunderbird schedule is prepared in January. Every attempt is made to schedule Thunderbird demonstrations by geographical areas for three-week periods. Requests for Thunderbird demonstrations, other than those submitted in December, are honored when possible.

PART 822—UNIDENTIFIED FLYING OBJECTS (UFO)

Sec.
822.1 Purpose.
822.2 Unidentified flying objects.
822.3 Maintaining public relations.

AUTHORITY: The provisions of this Part 822 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 822.1 Purpose.

This part establishes the UFO Program to investigate and analyze UFO's over the United States. Such investigation and analysis are directly related to Air Force responsibility for the defense of the United States. The UFO Program provides for the prompt reporting and rapid identification of UFOs.

§ 822.2 Unidentified flying objects.

Any aerial phenomena, airborne object or objects which are unknown or appear out of the ordinary to the observer because of performance, aerodynamic characteristics, or unusual features.

§ 822.3 Maintaining public relations.

The Office of Information, Office of the Secretary of the Air Force is responsible for releasing information and answering correspondence to the public relating to UFO's. Private individuals or organizations desiring AF interviews, briefings, lectures, or private discussions on UFO's will direct their requests to the Office of Information, Office of the Secretary of the Air Force.

PART 823—INDIVIDUALS AND ORGANIZATIONS AUTHORIZED COMMISSARY STORE PRIVILEGES

Sec.
823.1 Authorized patrons.
823.2 Abuses of commissary privileges.

AUTHORITY: The provisions of this Part 823 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 823.1 Authorized patrons.

Commissary privileges may be granted to the following individuals, organizations, and activities for their own use or, in the case of individuals, for the use of members of their families.

(a) *Widows.* Widows who have not remarried and who were wives of:

(1) Members of the Regular Army, Navy, Air Force, Marine Corps, and Coast Guard;

(2) Retired personnel of the Army, Navy, Air Force, Marine Corps, and Coast Guard including non-Regular personnel of the Army and Air Force who retired under the Act of April 3, 1939 (53 Stat. 559), as amended (10 U.S.C. 1201, 1203), and who were certified to the Veterans' Administration according to Executive Order 8099, April 28, 1939.

(3) Service personnel who died in line of duty while actively serving as inductees with the Army of the United States, the United States Navy, the United States Air Force, and the United States Marine Corps; the Public Health Service as regular members; and the Reserve components of the United States Armed Forces.

(4) Personnel of the Reserve components retired under 10 U.S.C. 1331, 8911.

(5) Personnel on the Emergency Officers' Retired Lists of the Army, Navy, Air Force, and Marine Corps, who retired under the Act of May 24, 1928 (45 Stat. 735; 38 U.S.C. 581, 582), and members of the Fleet Reserve of the Navy and Fleet Marine Corps Reserve.

(b) *Contract surgeons.* Sales to contract surgeons will be made only during periods of their contracts.

(c) *Uniformed personnel of the Red Cross.* Include only those uniformed Red Cross professional staff personnel who reside onbase and who perform duties at the installation. Sales will be made to such personnel only where the installation commander finds that it is impracticable for them to purchase subsistence from civilian sources.

(d) *Hospitalized veterans.* Honorably discharged veterans of the armed services and the Coast Guard, whether totally disabled or not. Sales may be made to such individuals only when they are hospitalized where commissary store facilities are available.

(e) *Totally disabled veterans.* Honorably discharged veterans of the armed services and the Coast Guard who are totally disabled as the result of a service incurred or aggravated disability, and who are receiving medical care or undergoing treatment in a hospital or in a private domicile through the Veterans' Administration. The medical care and treatment furnished must be a continuous service, even though furnished from an out-patient clinic. Totally disabled veterans who are receiving medical care or undergoing medical treatment on an occasional out-patient service are not entitled to commissary store privileges. Specific inclusions and exclusions are as follows:

(1) Totally disabled veterans receiving continuous medical care and treatment are those that have scheduled future appointments to receive medical care and treatment regardless of frequency of the appointments. These persons are entitled to commissary store privileges.

(2) Totally disabled veterans receiving one-time medical care and treatment are those that do not have scheduled future appointments to receive medical care and treatment. These persons are not authorized commissary store privileges.

(f) *Retired civilian employees of the Coast Guard.* Retired civilian employees of the Coast Guard who were serving on June 30, 1939, as officers or crew members of Lighthouse Service vessels, lightkeepers, or depot keepers in the former Lighthouse Service; and who after June 30, 1939, and at the time of retiring, were civilian employees of the Coast Guard serving as lighthouse keepers or serving on board lightships or other Coast Guard vessels.

(g) *Lighthouse Service personnel.* Retired officers and crews of vessels of the former Lighthouse Service, and retired lightkeepers and depot keepers of the former Lighthouse Service.

(h) *Young Men's Christian Association (YMCA).* At installations where YMCA buildings have been constructed under the provisions of 10 U.S.C. 9778, YMCA secretaries may purchase available subsistence supplies needed for their official installation activities.

(i) *Others.* Sales may be made to other individuals, organizations, and activities in oversea areas not specifically covered by this part when authorized by the major commander.

(j) *Agents.* Sales of subsistence may be made to members of families of individuals listed in this section when such members are residing in the sponsor's household; have been designated as agents of such authorized individuals; and are making purchases in their behalf. Installation commanders may limit agent privileges of minor children because of limited facilities or to prevent abuse of commissary store privileges.

§ 823.2 Abuses of commissary privileges.

At the discretion of the installation commander and for reasons thought sufficient by him, commissary privileges may be withdrawn from any person for any type of commissary abuse. Commissary officers will post notices in the commissary store to advise patrons that all commissary store purchases are for their own use or for the use of members of their immediate families and that they will not sell, give away, trade, or otherwise dispose of articles purchased in the commissary store. This matter will also be brought to the attention of authorized commissary store patrons by pertinent base publications.

PART 824—AIR FORCE PARTICIPATION IN PUBLIC EVENTS

Sec.
824.1 Purpose.
824.2 Policy.
824.3 Use of personnel.
824.4 Equipment.
824.5 Use of aircraft.
824.6 Specifications for insurance.
824.7 Exceptions.

AUTHORITY: The provisions of this Part 824 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 824.1 Purpose.

This part governs Air Force participation in public exhibitions, demonstrations, ceremonies, and other similar events.

§ 824.2 Policy.

(a) Participation in public events is considered essential to satisfy public interest, keep the public informed on Air Force preparedness, stimulate patriotic spirit, aid community relations, and otherwise further public understanding of the Air Force.

(b) In general, the cost of Air Force participation in public events will not be borne by the USAF, except the pay of military personnel and small incidental expenses for activities of a local nature in areas adjacent to a base or other unit. Transportation and operating costs of equipment used, costs of transportation of personnel, housing and standard per diem allowances, and all other costs, when the activity is beyond the post, camp, base or station area, will be borne by the civil organization sponsoring the activity unless an exception is made by the Secretary of Defense.

(c) No provision of this part authorizes the release, compromise, or downgrading of classified equipment or performance data. Upon the occasion of an "Open House", commanders will insure the safeguarding of classified equipment and/or areas containing such equipment.

(d) Participation must not directly or indirectly benefit or appear to benefit any private individual, commercial venture, sect, or political or fraternal group.

(e) From such participation no monetary gain shall accrue to any individual or organization, except that which is to

be used in the interest of the general public or a bona fide philanthropy.

(f) Except as otherwise indicated in this part, the Secretary of Defense retains the authority to approve:

(1) All public participation in the Washington, D.C., area.

(2) All events of national or international significance.

(3) All events of more than local significance involving two or more of the Services.

(4) Parachute jumps and equipment drops, except as regularly scheduled training programs on Armed Forces installations.

§ 824.3 Use of personnel.

Authority for utilization of personnel is delegated to all major commands and may be further delegated. Air Force personnel may participate in parades, demonstrations, public rallies and exhibitions, and the like:

(a) When such participation is an appropriate part of official occasions attended by senior officers of the government in the performance of official duties.

(b) When these events are sponsored by bona fide veterans' organizations.

(c) In support of fund drives for officially recognized Armed Forces relief agencies or charitable organizations.

(d) In support of athletic contests involving one or more Armed Forces teams.

(e) In connection with recruiting activities.

(f) The use of USAF Bands is governed by Part 820.

§ 824.4 Equipment.

Authority for the presentation of USAF equipment, displays, and exhibits, other than operable aircraft at public occasions, is delegated to major air commands.

(a) In events of local nature, involving community relations, recruiting, and public information, public liability and property damage insurance is not required.

(b) For any other occasion, the sponsor will be required to provide an adequate public liability and property damage insurance applicable to such Air Force equipment as may be on display.

§ 824.5 Use of aircraft.

Aircraft participation is considered to be the inflight demonstration or static display of one or more aircraft in connection with a public event. Insofar as practicable, flying time devoted to aerial demonstrations will be utilized for flying proficiency or training purposes. Types of participation and their requirements are defined as follows:

(a) *Class I (flyover).* Aircraft depart a USAF installation and return without landing at the site of the event.

(1) Approving authority for Class I participation on Armed Forces Day, Memorial Day, Independence Day, and Veterans Day only is delegated to major commanders and may be further delegated, if desired.

(2) Requirements: No aerobatics or competitive speed runs will be flown. No public liability and property damage insurance is required. Sponsor is not required to defray fuel or per diem expenses.

(3) Authorized occasions for this class are:

(i) Civic sponsored local celebrations of national holidays, specifically Armed Forces Day, Memorial Day, Independence Day, and Veterans Day.

(ii) Memorial services for deceased nationally recognized military or government figures.

(iii) Celebrations or receptions of prominent representatives of foreign governments.

(iv) National conventions of bona fide veterans' organizations.

(v) Occasions which are primarily designed to encourage the advancement of aviation and are of more than local interest and importance.

(b) *Class II (major air show).* Aircraft depart home bases as necessary to arrive before the event, participate as practicable, refuel as necessary, and are based at other than home station for duration of the event.

(1) Approving authority is retained by the Department of Defense. The civilian requestor for such participation may be advised to direct his request to the Department of Defense, Office of Public Information and Special Activities.

(2) Requirements: Transportation and operating costs of equipment used, costs of transportation of personnel, housing, and standard per diem allowances, and all other costs will be borne by the sponsor of the occasion unless an exception is made by the Secretary of Defense.

(3) Authorized occasions for this class are those which are primarily designed to encourage or promote the advancement of aviation and are of national or international significance.

(c) *Class III (open house).* Aircraft are demonstrated as practicable for public audiences on a government-owned or leased installation. Demonstration consists of aircraft under the command and jurisdiction of the headquarters approving the open house. (The phrase "government-owned or leased installations" is considered to include Air Force units operating from a municipal or county airport.)

(1) Approving authority is delegated to major commands and may be further delegated if desired.

(2) Requirements: Open house may be utilized at the discretion of approving authority to the best interests of the USAF.

(3) Authorized or suitable occasions are those that the approving authority determines to be in the interest of the Air Force.

(4) Headquarters USAF will monitor open house activities only on occasions of national or international significance.

(d) *Class IV (minor show).* Aircraft depart home station, arrive at destination before the event, remain on static display, and depart after the event to return to home station.

(1) Approving authority is delegated to major commands for participation on Armed Forces Day, Memorial Day, Independence Day, and Veterans Day only.

(2) Requirements: Sponsor must defray the expenses of suitable hotel accommodations, meals, and transportation of all personnel involved. Sponsor must provide public liability and property damage insurance as prescribed in § 824.6, to safeguard the U.S. Government from any claims arising as a result of the participation.

(3) Suitable occasions for Class IV participation are those primarily designed to encourage or promote the advancement of aviation, such as airport dedications, or to support recruiting or major programs of other Federal agencies, including civic sponsored local celebrations of Armed Forces Day, Memorial Day, Independence Day, and Veterans Day.

§ 824.6 Specifications for insurance.

(a) *Participation not requiring insurance.* (1) Demonstration flights conducted at installations owned or leased by the United States Government.

(2) Flight of aircraft to and from place of exhibition.

(3) Class I demonstrations (flyover).

(4) Class III demonstrations (open house).

(b) *Participation requiring insurance.* (1) Class II (major shows).

(2) Class IV (minor shows).

(c) *Kind of insurance required*—(1) *Type.* A public liability insurance policy and, when circumstances require, property damage insurance will be considered adequate coverage.

(2) *Amount.* Public liability insurance to the extent of $50,000/$500,000 for personal injury or death, $250,000 for property damage is considered adequate coverage for normal participation. Where grandstands or other mass gathering places are to be utilized for spectators at an air show, the amounts should be increased to $100,000/$2,500,000 for personal injury or death. Should any air show be performed near an area of exceptionally high real estate values, property damage insurance should be increased proportionately.

(d) *Extent of coverage.* The insurance policy must state clearly the intent to cover accidents caused by or resulting from the maintenance, use, or operation of aircraft or equipment material, owned by the United States Government and officers or employees of the United States Government acting within the scope of their employment. The policy should name the United States Government as co-insured with the sponsor and contain essentially the same elements as the following indorsement:

SAMPLE INDORSEMENT

(1) The coverage provided by this policy shall extend to any loss from liability imposed by law for any and all bodily injuries (or death resulting therefrom, including loss of services) to persons, or damage to, or destruction of property of every description (including loss of use thereof) caused by, arising out of, or resulting from the participation, operation, use, maintenance, or presence in or at the _____, of any aircraft, equipment, or materiel of any description owned by the United States Government, or caused by, arising out of, or resulting from any action or nonaction of the United States Government, its officers and employees acting within the scope of their office or employment.

(2) The coverage provided by this policy shall extend continuously from the first

moment of arrival of the first aircraft, or piece of equipment or materiel of any description owned by the United States Government, at any place or places reasonably or necessarily incident to participation in _____ _____ until the last moment of departure from said place or places of the last of said aircraft, equipment or materiel, and shall extend continuously during the presence at said place or places of the United States Government, its officers or employees, acting within the scope of their employment.

(3) The coverage provided by this policy shall not extend to any liability for loss on account of bodily injury (or death therefrom, including loss of services) of any officer or employee of the United States Government acting within the scope of his office or employment or to any liability for loss on account of any damage to or destruction of any aircraft, equipment, or materiel of any description owned by the United States Government.

(4) It is understood and agreed that the immunity to sue the United States Government, its officers or employees acting within the scope of their office or employment, shall not constitute a bar to recovery nor be pleaded as such in defense of any suit against the United States Government, its officers, or employees, or by the underwriters when defending such suits in their behalf.

(e) *Submission of policy.* The insurance policy must be submitted through channels to Headquarters USAF, Attention, SAFOI, at least 35 days prior to date of the event.

§ 824.7 Exceptions.

In unusual circumstances exceptions to the rules in this part may be made by Headquarters USAF. Requests for such exceptions will be submitted through channels to the Director of Information Services, Office of the Secretary of the Air Force, Washington, D.C., 20330.

PART 825—AIR FORCE NEWSPAPERS, BASE GUIDES AND DIRECTORIES

Sec.

825.1 Purpose and scope.
825.2 What Air Force newspapers are.
825.3 Who is responsible for Air Force newspapers.
825.4 Mastheads for unofficial newspapers.
825.5 Unofficial newspapers, base guides, and yearbooks.
825.6 Political advertising.
825.7 Commercial advertising.
825.8 Mailing newspapers.

AUTHORITY: The provisions of this Part 825 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 825.1 Purpose and scope.

This part prescribes policy and procedures for establishing and publishing Air Force newspapers, base guides, and directories. It defines the relationship of the Air Force to commercial enterprise newspapers, and describes the services provided the Air Force News Service (AFNS) and the Armed Forces Press Service (AFPS).

§ 825.2 What Air Force newspapers are.

An Air Force newspaper is a publication produced at any level of command by personnel assigned to offices of information, or through the cooperation of such an office. Its purpose is to provide Air Force news and information not immediately available from other sources to military and civilian members of the Air Force and their families at specific locations. Air Force civilian employee newspapers and papers published by or for Air National Guard and USAF Reserve units are considered Air Force newspapers, but publications produced by or for wives' clubs and members of the Civil Air Patrol and Air Force Reserve Officers' Training Corps are not. There are two types of Air Force newspapers—official and unofficial.

(a) Official newspapers are financed by appropriated or nonappropriated funds, and will not carry commercial advertising.

(b) Unofficial newspapers are commercial enterprise newspapers produced by civilian concerns exclusively in the interest of Air Force personnel of a particular base or organization, at no cost to the U.S. Government. Also included under this category are comic supplements and commercial enterprise base guides.

(1) A commercial enterprise newspaper is similar to an official newspaper except as noted in paragraph (a) of this section.

(2) A commercial enterprise comic supplement may be distributed with either official or unofficial newspapers as an insert, provided requirements of § 825.5 are met.

(3) A commercial enterprise base guide, usually published annually, is a guide to an Air Force installation and the adjacent community and geographical area, and is published without cost to the U.S. Government.

§ 825.3 Who is responsible for Air Force newspapers.

(a) The Director of Information, Office of the Secretary of the Air Force, will exercise general editorial policy supervision over Air Force newspapers in keeping with policies established by the Secretary of the Air Force.

(b) Commanders of major air commands are responsible for approving and monitoring newspapers published within their commands.

(c) Base commanders will supervise Air Force newspapers published within their commands to insure compliance with standards and policies laid down in this part.

(d) Base commanders will not:

(1) Permit official Air Force newspapers to be distributed as inserts in civilian published newspapers.

(2) Allow any civilian-published newspaper or comic supplement to be distributed as an official Air Force newspaper.

§ 825.4 Mastheads for unofficial newspapers.

(a) The title masthead of commercial enterprise newspapers should be easily identifiable and should include the name of the newspaper, the volume and issue number, the geographical location of the installation (if not prohibited by security limitations), and the day of the week published. The following statement will be printed on the first page or front cover of each commercial enterprise newspaper or supplement and on the front cover of each guide:

The (name of newspaper) is an unofficial newspaper published (frequency of publication) in the interests of personnel at (name of Air Force installation) of (major air command). It is published by (name of publisher), a private firm (or individual), in no way connected with the Department of the Air Force. Opinions expressed by publishers and writers are their own and are not to be considered an official expression by the Department of the Air Force. The appearance of advertisements in this publication does not constitute an endorsement by the Department of the Air Force of the products or services advertised.

§ 825.5 Unofficial newspapers, base guides, and yearbooks.

The content of a commercial enterprise newspaper is not subject to military control. Nevertheless, commanders have the authority to prohibit circulation of material within their commands which they consider in bad taste, detrimental to discipline, subversive, or otherwise contrary to the best interests of their commands or the Air Force. A commander who authorizes the distribution of a commercial enterprise newspaper within his command will insure that the following policies are observed:

(a) A commercial enterprise newspaper will not state that it is an official newspaper of the Air Force nor use the name, insignia, or emblem of the Air Force, command, base, or unit in any manner that might imply that it is an official Air Force publication. Nor will the name of the base appear in the date line of the newspaper. The flag of the paper may carry the base name as long as the words "Air Force Base" or "AFB" are not included in the flag.

(b) Air Force military personnel on extended active duty and Air Force civilian personnel are not permitted to be members of the editorial or administrative staffs of a commercial enterprise newspaper and will not authorize their name to be carried in the masthead. This policy does not prohibit news releases through normal channels, nor does it prohibit the names of Air Force military or civilian personnel from appearing as bylines in a commercial enterprise newspaper, as long as there is no editorial title attached to the byline and the material does not imply that the author has an official position on the newspaper.

(c) All news made available by the Air Force to a commercial enterprise newspaper will be made available on an equal basis to any other publisher who requests it.

(d) In selecting a commercial enterprise publication for distribution within their control, commanders will afford an equal and fair opportunity to any responsible bidder to submit specifications and price per copy if a charge from nonappropriated funds is required. The selection should be for a period of not less than one year, and distribution normally will be limited to one commercial enterprise publication at any military installation. Two or more such publications may be authorized, if in the opinion of the commander, local conditions make such action appear desirable.

(e) An official newspaper will not be distributed as a supplementary insert in a commercial enterprise newspaper, nor will a commercial enterprise newspaper be distributed as a part of an official newspaper. However, a commercial en-

terprise comic supplement, with commercial advertising, may be distributed as an insert in an official newspaper: *Provided:*

(1) Fair and equal opportunity is provided for responsible persons or organizations to compete for the privilege as provided in paragraph (d) of this section.

(2) The front page of the supplement carries a statement, and each succeeding page carries a statement in similar type, to the effect that the appearance of commercial advertisements in the supplement does not constitute Department of the Air Force endorsement of the products or services advertised.

(f) On the front cover of a civilian enterprise base guide, as defined in § 825.2(b)(3), the name of the civilian publisher will be printed prominently just above the disclaimer. The format for the entire guide will be designed so that even a casual observer could not mistake the publication for an official guide or directory. Before agreeing to accept any such guide for distribution, base commanders will notify the prospective civilian publisher in writing of the terms and conditions under which the guide will be accepted for distribution on the base. Conditions specified will include the points previously set forth in this section, plus these:

(1) No telephone numbers of base personnel, or complete military organizational phone numbers, charts, or listings will be included. At the discretion of the base commander emergency and service numbers, i.e., hospital, air police, etc., may be included.

(2) The unofficial nature of the guide will be made plain to every person or firm solicited for advertising. Any brochure or letter from the publisher to a prospective advertiser must make this clear. Specifically, no statement may be made that the commander or any of his staff will pass upon advertising submitted.

(3) On one of the inside pages, the publisher's name, permanent address, and telephone number will be shown plainly.

(4) The name of the installation, organization, or military post office address will be excluded from the publisher's letterhead or mailing address.

(5) References to base exchanges or commissaries will contain only the location and hours of operation.

(g) Base or equivalent commanders concerned may authorize publication of organization or base yearbooks provided such publications do not contain information determined to be of possible value to a potential enemy. Types of such information include, but are not limited to:

(1) Detailed biographic data of other than key personnel.

(2) Information on special combat equipment.

(3) Detailed manning and specialties of key combat and support units.

(4) Other detailed air order of battle data.

§ 825.6 Political advertising.

Political advertisements in commercial enterprise newspapers should be clearly recognizable as advertisements and the line "This is a paid political advertisement" should appear at top and bottom of the advertisement.

§ 825.7 Commercial advertising.

(a) To be acceptable for on-base distribution, no advertising in commercial enterprise newspapers shall be worded or phrased to give the reader the impression that the Air Force in any way endorses, guarantees, or sponsors any product or service. Advertisements which appear as editorials or news stories may be confused as such by readers, and should be clearly labelled, top and bottom, as advertisements.

(b) Military and civilian personnel are prohibited from soliciting or endorsing advertisements carried in commercial enterprise newspapers.

(c) Commanders authorizing the distribution of commercial enterprise newspapers within their commands will insure that newspaper advertisements conform to the principles of good taste, and that the amount of space in each issue used for advertisements does not detract from the primary purpose of the publication, which is to provide news and information of particular interest to the command.

(d) Satisfactory ratio of advertising copy versus news copy is:

(1) 8-page newspaper, 50 percent ads.

(2) 12–16 page newspaper, 55 percent ads.

(3) 20–24 page newspaper, 60 percent ads.

(4) Over 24 page newspaper, 65 percent ads.

§ 825.8 Mailing newspapers.

Air Force newspapers transmitted through the mails will be made to conform to the provisions of 18 U.S.C. 1302. Specifically, newspapers are to avoid mention of lotteries or games of chance of any kind. The penalties for mailing newspapers containing such information call for fines up to $1,000 or two years imprisonment.

PART 826—GIFTS TO INDIVIDUALS OF THE AIR FORCE

Sec.

826.1 Purpose.
826.2 Applicability.
826.3 Definitions.
823.4 Policy.
826.5 Gifts for distribution to individuals.
826.6 Acceptable gifts.
826.7 Responsibility.
826.8 Procedures.
826.9 Constitutional prohibition.
826.10 Members of military assistance advisory groups and aid missions.
826.11 Posthumous awards.

AUTHORITY: The provisions of this Part 826 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 826.1 Purpose.

This part sets forth rules relative to solicitation, proffer, and acceptance of gifts by individuals of the Air Force.

§ 826.2 Applicability.

(a) This part applies to all military personnel, civilian employees, and activities of the Air Force.

(b) This part does not apply to purely personal and individual gifts from the family and friends of Air Force personnel.

§ 826.3 Definitions.

(a) *Individuals of the Air Force.* Unless otherwise indicated this term means Air Force civilian employees and military personnel.

(b) *Solicitation.* This term means asking for, suggesting, or inviting the donation of gifts, or contributions toward gifts, whether for a specific person or for distribution to individuals.

(c) *Military personnel.* This term includes military personnel of all services on duty with the Air Force.

(d) *Gift.* A voluntary proffer of property by persons or organizations for distribution to individuals of the Air Force for their personal use or consumption.

(e) *Receive, receipt, receiving.* These words all have relation to the assumption, by the Air Force, of physical possession of gift property and not to an "acceptance" of such property. The acceptance of gift property is accomplished with the use or consumption thereof by the individual donees.

§ 826.4 Policy.

(a) Solicitation of gifts by individuals of the Air Force for individuals or groups is prohibited. The purpose of this prohibition will not be evaded by presenting the gift to a member of the family of the true recipient. Solicitation for such a purpose likewise is prohibited.

(b) There is no objection to the donations of gifts of a nominal value to individuals of the Air Force unless such gifts are contrary to a constitutional or statutory provision, or standards of conduct set forth in this or other Air Force directives.

(c) Gifts which may involve a violation of public trust or a conflict between personal and official interests may not be accepted (see Part 920 of this chapter).

§ 826.5 Gifts for distribution to individuals.

Sections 826.5 to 826.8 establish policy and procedures for the receipt by the Air Force of certain types of gifts, as specified herein, for distribution to military personnel. It is emphasized that the gifts discussed in this part are gifts to individuals of the Air Force in their individual capacities and are not gifts to the Department of the Air Force.

§ 826.6 Acceptable gifts.

Only gifts of a nominal value of a desirable and useful nature which contribute to the health, comfort, convenience, or morale of the person may be received under the provisions of §§ 826.5 to 826.8. (Examples of gifts of nominal value are: "playing cards for airmen of the Third Air Force", "books for hospitalized airmen", "writing material for airmen in Korea", and so forth.)

§ 826.7 Responsibility.

Subject to the policies, procedures, and limitations contained herein.

(a) CONUS major air commanders may receive gifts intended for distribution to personnel within their respective commands. This authority may be delegated to subordinate commanders.

(b) Oversea major air commanders may receive gifts from donors located within their geographic areas. This authority may be delegated to subordinate commanders.

(c) The Director of Military Personnel, Hq USAF, is designated to receive gifts from persons or organizations in the United States for distribution to oversea commands, and for distribution in the CONUS when gifts are intended for military personnel of more than one major command.

§ 826.8 Procedures.

(a) *Advertising and publicity.* Receipt of gifts of the nature contemplated by §§ 826.5 to 826.8 will be subject to the following provisions regarding advertising and publicity:

(1) By the donor of the gift: Restrictions will not be placed on advertising or publicity by the donor. However, such advertising or publicity should not imply an indorsement of the product by the Air Force or any member thereof.

(i) There is no objection to the action of a donor of a gift in placing upon the gift a marking of some description which identifies the property as being donated by a particular person, group, or organization. However, such marking must be in good taste and must not be worded so as to state or imply an indorsement of the product by the Air Force or any member thereof.

(ii) Receipt by an Air Force commander of gift property so marked will not be construed as either advertising or publicity of the gift by the Air Force.

(2) By the commander receiving the gift for distribution:

(i) Except in special cases specifically authorized by the Secretary of the Air Force, public acknowledgment of receipt of the gift will not be made. The commander authorized to receive such gifts will, on behalf of the military personnel of the command concerned, acknowledge receipt of the gift by an appropriate letter to the donor.

(ii) Arrangements will not be made which entail granting of special concessions or privileges to the donor.

(iii) Publicity will not be initiated by the receiving commander.

(b) *Packaging and transportation charges.* With the exception of the cases set forth in paragraph (c) of this section, receipt of gifts under §§ 826.5 to 826.8 will be subject to the provision that all packaging and transportation charges will be paid by the donor to the following points:

(1) Gifts for distribution in the CONUS: Gifts will be sent to the distribution point or points designated by the receiving commander or the Director of Military Personnel, Hq USAF.

(2) Gifts for distribution in oversea commands: Gifts will be sent to the port of embarkation or other coastal activity designated by the Director of Military Personnel, Hq USAF, or to the point designated by the receiving oversea commander. Oversea commanders will make all necessary arrangements with the port of embarkation for shipment of gift property to its destination in the oversea command.

(c) *Temporary custody of gift items.* Ordinarily, no question will arise concerning temporary custody of gifts covered by §§ 826.5 to 826.8. However, if a proffer of property for distribution to individuals as described in paragraph (b) of this section is made to an individual who is not authorized to receive it, and the donor specifically requests that the Air Force assume custody while the proper procedure is being determined, the donor will be informed that the Air Force cannot assume responsibility for any loss of or damage to the property before it is delivered to the point designated by the person authorized to receive the gift.

§ 826.9 Constitutional prohibition.

The Constitution of the United States prohibits the acceptance of gifts from foreign personages and governments in the following language: "No title of Nobility shall be granted by the United States: and no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State." (U.S. Const. Art. I, sec. 9, cl. 8.) This constitutional prohibition applies to:

(a) All service members of the Department of the Air Force on active duty and to all civilian employees of the Air Force.

(b) All members of the Reserve components when the gift is in recognition of services performed while on active duty, in their capacity as members of a Reserve component, or on inactive duty.

(c) Retired officers of the Regular Air Force.

(d) Discharged persons when they have assumed a new "office of profit or trust" under the United States.

(e) Members of military assistance advisory groups and aid missions.

§ 826.10 Members of military assistance advisory groups and aid missions.

Personnel performing any duty whatsoever in connection with the Military Assistance Program may not accept the tender of any gift from foreign governments or officials for duty of this nature. Participation in ceremonies involving any such tender is not authorized. To avoid embarrassment, the appropriate foreign officials should be advised of this prohibition. However, awards proffered in recognition of actual combat services or heroism involving the saving of life are excepted.

§ 826.11 Posthumous awards.

Nothing in §§ 826.5 to 826.8 apply to posthumous awards.

PART 827—RELEASE OF MATTERS OF OFFICIAL RECORD

Sec.
827.1 Purpose.
827.2 Definition.
827.3 Policy.
827.4 Submitting applications.
827.5 Action on applications.
827.6 Fees.

AUTHORITY: The provisions of this Part 827 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 827.1 Purpose.

This part prescribes the procedures and states the places where the public may apply for access to matters of official record under the control of the Department of the Air Force.

§ 827.2 Definition.

The public: Includes agencies of State and local governments, private organizations, and individuals, including U.S. Government personnel (military and civilian) whose official duties do not entitle them to the matters of official record to which they may desire access.

§ 827.3 Policy.

It is the policy of the Department of the Air Force to make matters of official record available to persons properly and directly concerned and who have a legitimate and valid reason, except for:

(a) Information and documents that relate solely to the internal management of the Department of the Air Force.

(b) Matters of official record which, in the public interest, should not be released. For example:

(1) If it is classified in the interest of the defense of the United States.

(2) If it is Atomic Energy Restricted Data as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2011–2281).

(3) If its release would interfere unduly with the efficient and effective performance of functions of the Department of the Air Force or some other Government department or agency. This includes but is not limited to functions such as: law enforcement, maintenance of discipline, the conduct of investigations, or relations with foreign governments.

(4) If its release would violate a legal or moral obligation to hold the information or its source in confidence.

(5) If the information contains unsubstantiated derogatory allegations to the character or conduct of an individual which might injure an innocent person if released.

§ 827.4 Submitting applications.

(a) Except as prescribed in paragraphs (b) and (c) of this section, write the Secretary of the Air Force, Washington, D.C., 20330. If the applicant is an agent, attorney, or physician acting for another, inclose evidence of authority to act for the principal, client, or patient. The application should:

(1) Identify as precisely as possible the documents or records involved.

(2) Indicate whether access to, copies of, or information from the records are desired.

(3) State the nature of the applicant's interest in sufficient detail to demonstrate that the applicant is properly and directly concerned with a legitimate and valid reason for the application.

(b) Write directly to the places specified in this paragraph for matters of official record concerning Air Force military personnel. Include, in addition to the information described in paragraph (a) of this section: the first name, middle name or initial, surname, date of birth, and service number of the individual concerned.

(1) USAF officers (active duty and retired)—to Hq USAF (AFDASE), Washington, D.C., 20330.

(2) USAF airmen (active duty and retired)—to USAF Airmen Records Annex (AFDASEH), Randolph AFB, Texas, 78148.

(3) Air Force Reserve (not on active duty)—Air Reserve Records Center, 3800 York Street, Denver, Colo., 80205.

(4) Former Air Force military personnel (not on active duty or reserve)—Military Personnel Records Center (Air Force), 9700 Page Boulevard, St. Louis, Mo., 63132.

(c) Send applications for matters of official record for use in litigation to Hq USAF (AFJALF), Washington, D.C., 20330, or directly to the records custodian if known. Part 840, Subchapter D of this chapter prescribes policies and procedures.

§ 827.5 Action on applications.

The Secretary of the Air Force or a person designated by him will approve or disapprove each application in accordance with the policies prescribed in § 827.3, and he will notify the applicant of the decision. If the application is approved, he will advise the applicant when appropriate, of the time and place that he may have access to the records.

§ 827.6 Fees.

A charge may be made for copying, certifying, and searching records in accordance with Subchapter P, Part 288, Chapter I of this title.

SUBCHAPTER D—CLAIMS AND LITIGATION

PART 840—RELEASING INFORMATION FOR LITIGATION, AND APPEARANCE OF WITNESSES BEFORE COURTS AND OTHER CIVIL TRIBUNALS

Sec.

840.1 Purpose.
840.2 Definitions.
840.3 Air Force policy.
840.4 Responsibilities.
840.5 Limitations.
840.6 Fees and charges.
840.7 Requests for interviews or statements.
840.8 Authentication of documents.
840.9 Release to the Department of Justice.
840.10 Release to Government contractors.
840.11 Compliance with subpoena.
840.12 Witnesses in private litigation.
840.13 Witnesses in suits involving the United States.
840.14 Depositions.

AUTHORITY: The provisions of this Part 840 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 840.1 Purpose.

This part explains what types of official information may be released from Air Force files for litigation purposes; it also provides policies and procedures for the guidance of Air Force military and civilian personnel who are requested to appear as witnesses. It takes precedence over conflicting instructions in any other regulation.

§ 840.2 Definitions.

(a) *Official information.* All documents, files, records, or papers within the possession of the Department of the Air Force, its officers, agents, or employees, and all matters within the knowledge of such officers, agents, or employees obtained by them as a result of or in connection with the performance of their official duties.

(b) *Litigation.* Prospective or pending lawsuits, controversies, hearings, investigations, or other civil administrative proceedings in civilian courts, commissions, boards, or other tribunals.

§ 840.3 Air Force policy.

Official information will be made available for use in litigation, and military and civilian personnel will be permitted to testify concerning such information in its files if material and relevant to the litigation, unless the information is classified defense information, is privileged by law or regulation, or other valid reason exists for its nonrelease.

§ 840.4 Responsibilities.

(a) The Judge Advocate General, USAF, is responsible for:

(1) Authorizing the release of Air Force information for use in prospective or pending litigation.

(2) Prescribing the type of information which is releaseable, and the circumstances under which it may be released by custodians of the information or by persons appearing as witnesses before civilian courts or tribunals.

(b) Each person in the Air Force who has custody of written information desired for use in litigation, or who is requested to appear as a witness and testify, is primarily responsible for compliance with this part.

(c) Provisions of this part do not apply when no Air Force documents or records are involved, and/or the desired testimony of the Air Force witness has no connection with his Air Force duties and the subject matter does not concern Air Force matters. In those cases, the witness is governed by the usual rules of law applicable to witnesses in the jurisdiction concerned. Section 840.12 sets forth circumstances under which these persons can testify.

§ 840.5 Limitations.

When the United States is a party to the litigation in question, information will be released only after authorization by The Judge Advocate General, USAF, the Staff Judge Advocate of the major air command concerned, The Attorney General of the United States, or a United States Attorney.

(b) When disclosure of the requested information might aid in litigation or prosecution of a present or prospective claim against the United States, custodians of records and prospective witnesses will seek advice from their Staff Judge Advocate. The Staff Judge Advocate will refer the matter immediately, through channels, to The Judge Advocate General, USAF, or to the Staff Judge Advocate of the major air command concerned, who will notify The Judge Advocate General, USAF, immediately of the decision reached. The Staff Judge Advocate will take every precaution to insure that any authorized release of requested information is made by the custodian or prospective witness "in the proper discharge of official duties" and, therefore, not in violation of the Federal criminal statute (18 U.S.C. 283).

(c) When litigation is not pending, custodians of Air Force records should satisfy themselves that:

(1) The request for information is not frivolous or unreasonable.

(2) Litigation is actually contemplated.

(3) The person requesting the information has a need and the right to know it.

If these three tests are not met, the custodian should decline to divulge the information pending institution of the litigation.

(d) Information of a personal nature in Air Force files is treated "confidentially" and will not be released unless:

(1) A subpoena duces tecum—issued by a court or other body having such powers and in whose jurisdiction the custodian is located—is properly served on the custodian, or

(2) Authorized by the Staff Judge Advocate of the major air command concerned or The Judge Advocate General, USAF.

(e) Release of medical information from Air Force files is governed by AFR 160–35 (Administering Medical Treatment Facilities), and will not otherwise be released unless:

(1) A subpoena duces tecum—issued by a court or other body in whose jurisdiction the custodian is located—is properly served on the custodian, or

(2) Authorized by the Staff Judge Advocate of the major air command concerned or The Judge Advocate General, USAF.

(f) Classified defense information cannot be released to unauthorized persons or courts under any circumstances, unless the classification is removed. If classified information is properly subpoenaed and cannot be declassified, the documents, records, or files in question will be forwarded to The Judge Advocate General, USAF, for review of the decision by Headquarters, USAF. Pending this decision, the custodian on whom the subpoena duces tecum has been served will answer the subpoena, tell the court what action he has taken, and inform the court of the contents of this part.

§ 840.6 Fees and charges.

Custodians or other persons who release information outside the Air Force under the provisions of this part are responsible for collection of fees and charges required by Subchapter P, Part 288, Chapter 1 of this title.

§ 840.7 Requests for interviews or statements.

(a) Requests by parties to private controversies preliminary to actual litigation for permission to interview or to obtain statements from Air Force personnel concerning matters related to their official duties or concerning information obtained in their official capacity may be granted by commanders, on the advice of their Staff Judge Advocates, at appropriate times and places and under

circumstances which will insure that the provisions of this part are not violated.

(b) Identical rules apply in taking depositions of Air Force personnel.

§ 840.8 Authentication of documents.

(a) Properly authenticated copies of Government records, papers, or documents are admissible in evidence in Federal courts (see 28 U.S.C. 1733).

(b) Most State courts and other tribunals will admit into evidence properly authenticated copies of Air Force records, papers, or documents without further identification by the custodian or other witness.

(c) The method of authentication is set out in Rule 44 of the Federal Rules of Civil Procedure (28 U.S.C. 2072), which is further implemented by AFR 110-10 (Authentication of Official Records for Use as Evidence).

(d) In appropriate cases, custodians of records, files, or documents are encouraged to release the requested information with a proper certificate; in many instances this will be satisfactory to the person requesting the information and avoid the necessary court appearance by the custodian.

§ 840.9 Release to the Department of Justice.

(a) Requests for official information received from local United States Attorneys should be honored by the custodian, if possible.

(b) When the requested information is classified defense information, consideration for its declassification and release should be given by persons having such authority under AFR 205-1 (Safeguarding Military Information).

(1) If it is determined that declassification is not possible, the United States Attorney will be so informed promptly.

(2) Unless the subject matter is such that disclosure of classified defense information would adversely affect the security of the United States, the United States Attorney may be permitted to examine the documents, records, or files in question. If, after reviewing the material, the United States Attorney still requests release, he should be advised to forward his request for the information to the Department of Justice.

§ 840.10 Release to Government contractors.

Contracting officers receiving requests for information from Government contractors for use in contractor litigation should comply with those requests, provided that the provisions of this part are not violated.

§ 840.11 Compliance with subpoena.

(a) Subpoenas properly served on the prospective witness by a representative of the court or tribunal which has jurisdiction over the witness and the requested record, file, or document will be complied with, if not otherwise prohibited by this part.

(1) When this part prevents the witness from testifying or producing the subpoenaed documents, the witness will appear at the time and place stated in the subpoena and respectfully advise the court or tribunal that Air Force regulations prevent him from testifying on the subject matter in question and/or producing the documents in question. If this does not satisfy the court or tribunal, the witness will furnish them a copy of this part and respectfully request leave of the court for time to submit the problem to The Judge Advocate General, USAF, for decision.

(b) In cases covered by this section, Staff Judge Advocates are authorized to accompany the subpoenaed witness to court and act as his counsel.

(c) If a subpoena has not been properly issued and served by a court or tribunal having the requisite jurisdiction over the prospective witness, it will be treated as a request for release of information and processed under the provisions of this part.

(d) When this part prohibits release of documents or other information properly subpoenaed, the appropriate custodian or Staff Judge Advocate should consider the appropriateness of informally contacting legal counsel who caused the subpoena to issue. All aspects of the matter should be fully explained to him and releasable information offered to him, in authenticated form if appropriate.

§ 840.12 Witnesses in private litigation.

(a) Air Force personnel who are requested to appear and testify in any litigation in which the Federal Government has no interest may be authorized to do so, provided that this part does not prohibit the release of the information desired, and no expense to the Government is involved.

(1) If there is any travel, subsistence, or other expense involved, it should be paid and arranged for in advance between the prospective witness and the person requesting him to testify.

(2) The witness must be willing to take official leave if his absence from duty will exceed his normal pass privileges. Civilian employees will obtain prior approval for annual leave under these circumstances. Commanders are encouraged to be liberal in granting passes or leave for this purpose.

(b) Persons who are requested to appear and testify in cases falling within the provisions of this section are encouraged to consult with their Staff Judge Advocates for advice and guidance.

§ 840.13 Witnesses in suits involving the United States.

(a) Arrangements for attendance of Air Force military or civilian personnel as witnesses in litigation in which the United States is a party generally are made in Washington between the Department of Justice and The Judge Advocate General, USAF. Local United States Attorneys may request that a witness be furnished them in Government litigation. This request may be honored, provided that no travel or temporary duty are involved. If either is involved, the United States Attorney should be advised to submit his request to the Administrative Division of the Department of Justice pursuant to instructions contained in title VII, page 120, of the United States Attorneys Manual. Headquarters USAF will then issue appropriate orders directing the travel.

(b) The Air Force is required by law to furnish witnesses on behalf of the United States. Travel and per diem expenses of such witnesses are borne by the Air Force "in any case involving" the Air Force (see 28 U.S.C. 1823(a)).

(c) The same procedures apply in cases not "involving" the Air Force, except that the Air Force is reimbursed by the Department of Justice or other Government department or agency for the amounts expended for the travel and temporary duty of the witness. In these cases, Headquarters USAF will issue complete instructions concerning recoupment of all funds expended by the Air Force for the travel and temporary duty of military or civilian personnel who appear as witnesses for the Government.

§ 840.14 Depositions.

All provisions of this part also apply to testimony given by military and civilian personnel in deposition form. Individuals who are asked to testify by deposition are encouraged to consult with their Staff Judge Advocate before testifying.

PART 841—PATERNITY CLAIMS

Sec.
841.1 Purpose.
841.2 Policy.
841.3 Active duty personnel.
841.4 Personnel not on active duty.
841.5 Former service personnel.

AUTHORITY: The provisions of this Part 841 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 841.1 Purpose.

This part outlines the procedures for processing paternity claims made against Air Force personnel.

§ 841.2 Policy.

(a) Paternity disputes: The Air Force is without authority to adjudicate paternity claims made against Air Force personnel. The commander of the Air Force member concerned may only determine if the contention of the member is made in good faith. If the parties concerned cannot arrive at a decision as to paternity, then a court of competent jurisdiction adjudicates the dispute.

(b) If a court order, including one from a court of foreign jurisdiction, is issued, which determines paternity, the Air Force member concerned is expected to comply with it. The Air Force is without authority to relieve personnel of obligations imposed by a court order. Personnel must obtain relief through a judicial system of competent jurisdiction.

(c) Established paternity: If paternity is established, either by admission or by judicial decree, the commander of the Air Force member concerned will:

(1) Counsel him on his legal and moral obligations to the child.

(2) Encourage him to render the necessary financial support to the child.

(3) Counsel him on his legal rights, and

(4) Take other actions as deemed appropriate under the circumstances.

(d) Leave:

(1) The commander of the service member concerned should approve leave to the serviceman when:

(i) The serviceman and the complainant desire to marry, and

(ii) No legal obstacle exists to the marriage, and

(iii) Paternity has been established or admitted.

(2) Overseas, the serviceman may be granted emergency return if the conditions in subparagraph (1) of this paragraph apply.

§ 841.3 Active duty personnel.

A paternity claim against an Air Force serviceman on active duty received by the Air Force will be brought to the attention of the member concerned by his immediate commander. After the serviceman concerned has had an opportunity to consult with an attorney, the serviceman will be advised of his rights under Article 31b, UCMJ, and then requested by his commander to make a sworn statement about the paternity claim. If he admits paternity, he will state if he desires to marry the complainant and if he intends to support the child or make other arrangements on the child's behalf. The commander will correspond directly with the complainant for:

(a) Furnishing information as to the Air Force member's intentions in the matter;

(b) Furnishing information that the Air Force has no authority to enforce or adjudicate paternity claims against its personnel;

(c) Requesting that he be furnished with a doctor's certification of pregnancy if the child is not yet born, or a copy of the birth certificate, and

(d) Requesting that he be furnished certified copies of all judicial orders or decrees of paternity or support, including those rendered by a court of foreign jurisdiction.

§ 841.4 Personnel not on active duty.

A paternity claim made against an Air Force serviceman not on active duty will be forwarded to him in a manner to insure delivery to the addressee only. Military channels will be used whenever practicable. Otherwise, correspondence will be forwarded to the last known mailing address of the member by Certified or Registered Mail, Return Receipt Requested—Deliver to Addressee Only. After delivery of the correspondence, the complainant will be advised of the date of delivery without disclosing the member's mailing address. The complainant will be informed that the matter has been left to the discretion of the member complained of since he is in a civilian status and the Department of the Air Force has no direct control over him.

(a) Correspondence concerning Inactive Reservists will be forwarded to:

Commander, Air Reserve Records Center, 3800 York Street, Denver, Colo., 80205.

(b) Correspondence concerning Retired members will be forwarded to:

Directorate of Personnel Services, Retired Activities Branch (AFPMPP-D3), Randolph AFB, Tex., 78148.

§ 841.5 Former service personnel.

A paternity claim made against a former Air Force member will be returned to the complainant. The complainant will be advised that the member complained of is no longer in the Air Force in any capacity. Additionally, the date of discharge or final separation will be given, and the complainant will be informed that the Air Force has no responsibility for the whereabouts of former Air Force personnel. Only in cases in which the complainant has sent a certified copy of a judicial order or decree of paternity or support rendered by a United States or foreign court of competent jurisdiction, the former member's last known address will be given. In all other cases the last known address of the person concerned will not be given to the complainant.

PART 842—ADMINISTRATIVE CLAIMS

Sec.

842.0 Scope.

Subpart A—Processing Claims

842.1 Definitions.
842.2 Claims authorities.
842.3 Real property.
842.4 Personal property.
842.5 Death or personal injury.
842.6 Domestic animals and fowl; fish and wildlife.
842.7 Admiralty accidents or incidents.
842.8 Explosion, concussion, or vibration.
842.9 Sonic boom.
842.10 Claims presented by a member of another United States Armed Force.
842.11 Action by claimant.
842.12 Claim forms.
842.13 Where to present claim forms.
842.14 Evidence to be submitted by claimant.
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842.16 Action on approved claims.
842.17 Action on disapproved claims.
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AUTHORITY: The provisions of this Part 842 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012, except as otherwise noted.

§ 842.0 Scope.

This part sets forth the legal requirements, policies, and procedures utilized in adjudicating administrative claims against and in favor of the United States, and furnishes references to pertinent authorities.

Subpart A—Processing Claims

§ 842.1 Definitions.

(a) *Claim.* Any written demand on the Air Force for the payment of a sum certain, other than for ordinary obligations incurred in the regular procurement of services, supplies, equipment, or real estate. An oral demand may be considered a claim under Subparts B and E of this part. Assertable claims comprise all claims in favor of the United States based on tort liability of some third person.

(b) *Small claim.* A claim for property damage presented for $250 or less.

(c) *Claimant.* An individual, partnership, association, corporation, country, State, Territory, or their political subdivisions. The term does not include the United States Government or any of its instrumentalities (see § 842.113), except for claims in favor of the United States (see Subparts F through H and Subpart J of this part). Proper claimants are further defined in other sections of this Instruction.

(d) *Military personnel.* Individual members of the active Air Force.

(e) *Civilian personnel.* Civilian employees of the Air Force paid from appropriated funds. However, this term also may include prisoners of war and interned enemy aliens engaged in labor for pay, and volunteer workers and others serving as employees of the Air Force without compensation, except claims under Subparts C, M and N of this part.

(f) *Scope of employment.* Acts or omissions of Air Force military or civilian personnel expressly or impliedly directed, or authorized by competent authority.

(g) *Combat activities.* Activities resulting from action by the enemy, or by United States Armed Forces engaged in or in immediate preparation for impending armed conflict.

(h) *Noncombat activities.* This term relates to nonnegligence activities that are peculiarly military, having little parallel in civilian pursuits, and that historically have been considered as furnishing a proper basis for paying claims. Ordinary traffic accident and other tort-type claims are not included in this interpretation, although such claims may be payable under other statutory provisions. This term is explained in greater detail in Subparts D and L of this part.

(i) *Inhabitant of a foreign country.* A person who is domiciled in a foreign country (see Subpart E of this part).

(j) *Settle.* To consider, ascertain, adjust, determine, and dispose of a claim, whether by approval or disapproval in whole or in part.

§ 842.2 Claims authorities.

(a) *Initiating authority.* Any officer who has responsibility to investigate and process claims presented to or asserted by the Air Force.

(b) *Approving authority.* Any judge advocate designated by the Secretary of the Air Force, and any foreign claims commission appointed by him or his designee, to settle certain claims.

(c) *Reviewing authority.* The approving authority at the next higher headquarters in appropriate claims channels from the authority taking final disposition action on a claim.

§ 842.3 Real property.

The claimant will be required to submit the following information:

(a) *Proof of ownership.* (1) When the amount claimed for damage to or loss or destruction of real property does not exceed $1,000, proof of ownership ordinarily may consist of the claimant's statement or affirmation on the executed claim form that he had legal title to the property or property right on the date of the accident or incident giving rise to the claim, or a statement of his interest in the property or property right.

(2) When the amount claimed for damage to or loss or destruction of real property exceeds $1,000:

(i) The claimant will be required to submit an affidavit to include:

(*a*) Legal description of the property.

(*b*) A statement that he had legal title to the property on the date of the accident or incident giving rise to the claim; if he did not have legal title, a statement of his interest on that date.

(*c*) A statement how title or other interest was acquired—such as by warranty deed, tax deed, court decree, lease, will, or otherwise.

(*d*) Date of any legal instrument or document conveying legal title or other interest to claimant.

(*e*) Name and location of office of record where instrument or document conveying title or other interest to claimant was recorded, date of recording, and book and page number where instrument was recorded.

(*f*) Statement whether he has the identical title or interest in the property as that held at the date of damage, destruction, or loss.

(*g*) Statement whether any other person has an interest or asserted interest in the property, and the name and address of such person and description of such interest.

(*h*) If any of the required items of information are not included, the claimant will explain their absence in his affidavit.

(ii) If a single instrument or document of record exists which conveyed title or other interest to the claimant, the claimant will be required to submit a properly authenticated copy of such instrument or document.

(b) *Land and soil damage.* (1) Cost of rehabilitation of the land and steps taken to effect rehabilitation are required, including a report on whether complete restoration was effected, cost of fertilizer, tillage, holes covered, persons doing work, and any additional damage caused during such rehabilitation.

(2) If pasture or grazing land is involved, determine the value of the destroyed grasses and include the length of time the claimant will be denied the use of the land for pasture or grazing purposes, whether substitute land is available reasonably to the claimant, expenses incurred by the claimant for rent or use of substitute land, loss of rents from the affected land, and other pertinent information.

(3) In the event of permanent damage, or when a claim is made for a reduction in value of land, the claimant will be required to submit a statement from a qualified real estate appraiser of the before and after market value and the date of purchase and purchase price.

(c) *Crop losses.* (1) A detailed description of the damage and the area affected is required, including the type of crop involved, the loss in terms of appropriate units—such as bushels, bales, or pounds—acreage involved, monetary loss, size of claimant's farm, and the general nature of the farming operation.

(2) Since crop yields cannot be accurately known until harvest time, certain information is essential in calculating a loss:

(i) Claimant's past production record.

(ii) Average yields per acre for the affected crop in the county or locality where the land is located.

(iii) Market price of the crop at maturity.

(iv) Any special problems of irrigation involved.

(3) A statement whether any crops involved were subject to any Federal or state production restrictions, allocations, aids, or benefits, and, if so, give details.

(4) A statement showing any steps taken to minimize the loss—such as substitute planting where possible, harvesting, and crop and land rotation.

(5) A statement showing any loss of rentals and any crop agreements involved in leased land.

(d) *Houses, stores, barns, outbuildings, fences, or other structures affixed to the realty.* (1) A detailed description of the damage is required.

(2) Ordinarily at least two detailed written estimates of cost of repairs will be furnished by the claimant. If repairs have been accomplished, claimant will furnish the bill, receipt, or a copy thereof.

(3) Whether a building or other structure is repairable or has been destroyed is sometimes a question of fact which must be carefully considered:

(i) If it has been destroyed, the claimant will be required to submit written appraisals of the market value by two qualified real estate appraisers. These appraisals will include the date of construction, cost of construction, market value at time of destruction, local real estate conditions that may have affected market value, improvements made after original construction, and the condition of the structure at the time of destruction. Evidence as to reconstruction cost has probative value and may be considered.

(ii) If it is not possible to obtain an appraisal, the measure of damage may be determined by using the reconstruction cost, less a deduction for depreciation. Depreciation is determined by the age of the destroyed building or other structure, as compared to its normal life expectancy. Depreciation schedules may be found in publications of the Internal Revenue Service or may be those employed in local business practices.

(4) The damage to or destruction of a building or other structure used for commercial or residential purposes may give rise to a claim for loss of use:

(i) On residential structures, the file will include a detailed breakdown of the cost of rent for substitute quarters, and any extra expenses incurred for food, utilities, transportation, or any other item claimed. To permit determination of the damage, the file must include information concerning the period of time reasonably required to effect repairs or reconstruction, whether the claimant has made reasonable efforts to effect repairs or reconstruction, claimant's normal living expenses, expenses other than housing, food, and utilities, and whether such expenses were reasonable and necessary. When available, the claimant will be required to furnish the claims officer with bills, receipts, or other documentary evidence in support of such expenses.

(ii) On commercial structures, the file will include a statement of the cost of rent for any necessary substitute structure, the period of time reasonably required to effect repairs or reconstruction, and whether the claimant has made reasonable efforts to effect repairs or reconstruction. When available, the claimant will be required to furnish the claims officer with documentary evidence in support of rental expenses.

(iii) If a claim for loss of profits is made, the claimant will be required to submit an affidavit explaining in detail such alleged loss and the basis therefor, including comparison of profits for the year immediately preceding the damage and the period for which the loss is claimed.

(5) If the claimant has effected repairs himself, the cost of materials used, the reasonable value of his labor, and any wages lost from regular employment to effect repairs may be considered in determining the damage.

(e) *Trees, grass, bushes, plants, or vines.* (1) A detailed description of the damage is required.

(2) Trees, grass, bushes, plants, or vines not grown for commercial purposes. When permanently damaged or destroyed, the claimant will be required to submit a written appraisal by a qualified real estate appraiser of the market value of the land immediately before and after damage or destruction. It is emphasized that the replacement cost of a tree not grown for commercial purposes is not the measure of damage for the loss of such tree.

(3) Trees, grass, bushes, plants, or vines grown for commercial purposes:

(i) The measure of damage for sawtimber and pulpwood destroyed is stumpage—the market value of the tree standing in the forest. For young trees, it is generally the cost of replacement for destroyed trees, plus an allowance for lost growth. When any size tree is only damaged and it survives, an allowance may be made for lost growth. In fires, soil damage may also be considered.

(ii) Fruit and nut trees and vines grown in commercial orchards:

(*a*) When destroyed, the measure of damage generally is the loss of profits during the period required for a young tree or vine to reach bearing age, plus an allowance for removing the remains of the destroyed item and replacing it with a young tree or vine.

(*b*) Evaluation of the damage requires information concerning the type and number of trees or vines affected, total orchard or vineyard acreage, produce market prices, age of trees or vines at time of destruction, maturity period for the trees or vines, years of profitable bearing, cultivation, harvesting, and marketing costs, and any special factors peculiar to the locality.

(iii) Trees, bushes, plants, or vines grown in commercial nurseries. When the item itself is merchantable and is destroyed, the local market value at the time of destruction must be determined.

§ 842.4 Personal property.

(a) The claimant will be required to submit the following evidence and information:

(1) Proof of ownership of personal property damaged, lost, or destroyed ordinarily may consist of the claimant's statement or affirmation on the executed claim form that he owned the property on the date of the incident giving rise to the claim, or a statement of his interest in the property. If the claims officer has reason to doubt the claimant's ownership, he will require the claimant to furnish additional evidence.

(2) A statement of the amount claimed for each item.

(3) For personal property which has been or can be economically repaired, an itemized receipt for payment of necessary repair costs, or an itemized written statement or estimate of the repair costs from a competent individual or firm.

(4) For personal property which is not economically repairable, or is lost or destroyed, a statement listing the month and year of purchase, purchase price of each item, and any salvage value.

§ 842.5 Death or personal injury.

(a) *Death.* (1) In support of a claim for death, including any pain and suffering preceding death, the claimant will be required to submit the following evidence and information:

(i) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of deceased.

(ii) An affidavit showing:

(*a*) Deceased's employment or occupation at time of death, including monthly or yearly salary or earnings (if any), and length of time at last employment or occupation.

(*b*) Full names, birth dates, kinship, and marital status of all survivors, including identification of those survivors who were dependent for support upon deceased at the time of his death.

(*c*) Degree of support afforded by the deceased to each survivor dependent for support upon deceased at the time of his death.

(*d*) Educational benefits that survivors might reasonably have expected from deceased had he lived.

(*e*) Deceased's general physical condition before death.

(*f*) Any other evidence which would have a bearing on the determination of the proper claimants and award.

(iii) Itemized and signed bills for medical and burial expenses arising out of the accident or incident causing death, or itemized receipts of payment for such expenses.

(iv) In support of the element of pain and suffering incident to death, a physician's detailed statement concerning injuries suffered, duration of pain and suffering, drugs administered for pain, and deceased's physical condition in the interval between injury and death.

(b) *Personal injury.* (1) In support of a claim for personal injury, including pain and suffering, the claimant will be required to submit the following evidence and information:

(i) A written report by his attending physician or dentist showing the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity.

(ii) Itemized and signed bills for medical, dental, and hospital expenses in-

curred, or itemized receipts of payment for such expenses.

(iii) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(iv) When a claim is made for loss of time from work or loss of earnings, a written statement from his employer showing actual time lost from employment, whether he is a full- or part-time employee, and wages or salary actually lost.

(v) When claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(2) In addition, the claimant may be requested to submit to a physical examination at a military medical facility, or by a physician from such a facility.

§ 842.6 Domestic animals and fowl; fish and wildlife.

(a) *Death or injury to domestic animals and fowl.* (1) A statement will be required from the claimant that he owns the animals or fowl, and the number and description of those affected.

(2) In injury cases, the claimant will be required to submit a detailed statement describing the injuries and cost of treatment, supported by any bills or receipts. The claimant also will be required to furnish written statements from any veterinarian in attendance showing the cause and extent of injuries or losses.

(3) In the case of fur-bearing animals kept for pelting or sale, the claimant will be required to state:

(i) Length of time he has been in the business of raising the animals for sale or pelting.

(ii) Name of any breeding or marketing association to which he may belong, and whether or not he occupies the position of an officer in the association.

(iii) Number and type of adult and young animals at the location of the incident immediately before the incident.

(iv) Number, type, and ages of all the adults and young animals affected.

(v) When destroyed, the market value of each animal and the expected profit on each animal.

(vi) On each animal for which claim is made, whether the damage is based on the value of the animal for pelting or sale as breeding stock.

(vii) Market prices received for his last sales of pelts or breeding stock before the incident.

(viii) Name and address of his pelt buyer or market.

(ix) Normal mortality rate per litter.

(b) *Loss of weight or production and other disabilities.* (1) The local market price of the animals, fowl, or their produce at the time of damage is a factor in all cases. Since a damaged claimant is only entitled to any loss of profits, all raising and marketing costs will be considered.

(c) *Fish and wildlife.* (1) When a claim is made for loss of income from fish, oysters, or other marine life, or trapping, the claimant will be required to furnish an affidavit showing his profits from the previous three seasons.

(2) When diminution in the value of land is alleged, the claimant will be required to submit written appraisals from at least two qualified persons.

§ 842.7 Admiralty accidents or incidents.

(a) When property is damaged by an admiralty accident or incident, surveys should be held as soon as possible. Opposing interests will be notified of the occurrence and may participate in the Government survey or conduct their own survey. Private operators should afford the Government the same opportunity when they damage its property.

(b) The claimant must establish its damage by statements of witnesses and documentary evidence.

§ 842.8 Explosion, concussion, or vibration.

(a) In all cases except sonic booms, the claimant will be required to submit the following evidence and information:

(1) Proof of ownership as required by § 842.3(a) and a description of the property, including its age, state of repair, date and extent of additions, remodeling, or renovation.

(2) A statement of the cause and extent of the damage incurred.

§ 842.9 Sonic boom.

In all sonic boom cases the claimant will be required to submit the following information:

(a) Damage due to sonic boom:

(1) Detailed description of alleged damage.

(2) Detailed description of the building or structure involved, including significant details of construction, size of rooms, age, and its general state of repair.

(3) Detailed examination and description of any alleged plaster damage involved.

(4) Existence or absence of glass damage in allegedly damaged building or structure, and whether any other glass damage resulting from this incident was reported and verified.

(5) Whether windows and doors were open or closed.

(6) Whether any loose objects—such as dishes, glassware, or trinkets—inside the building or structure were moved.

(b) At times complaints will be made that the sonic boom gave rise to cracks in brick walls, driveways, concrete foundations, and other major structural elements; however, Air Force studies have shown that a sonic boom will not generate over-pressures of sufficient intensity to cause such major structural damages.

§ 842.10 Claims presented by a member of another United States Armed Force.

A member of another U.S. Armed Force may present to the Air Force a claim for loss of personal property incident to his service, although it must be referred to his service for settlement.

§ 842.11 Action by claimant.

(a) *Property damage.* (1) A claim for damage to, or loss or destruction of property may be presented by the owner of the property, his duly authorized agent or legal representative, or survivors, only as authorized in other sections of this Instruction.

(2) As used in this Instruction, owner includes:

(i) For real property: The mortgagor and when appropriate the mortgagee, depending on whether the mortgagee can maintain a cause of action in the local courts involving a tort to that specific property. When notice of divided interests in real property is received the claim should, if possible, be treated as a joint claim.

(ii) For personal property: A bailee, lessee, mortgagor, and conditional vendee. However, a mortgagee, conditional vendor, or others having title for purposes of security only are not included. If more than one party has a real interest in the property damaged, all must join in the claim.

(b) *Personal injury or death.* (1) A claim for personal injury may be presented by the injured person, his duly authorized agent, or legal representative.

(2) A claim based on death may be presented by the executor or administrator of the deceased's estate, or by any other person legally or beneficially entitled in accordance with local law governing the rights of survivors.

(c) *Insurance subrogees.* Claims of subrogees are governed by applicable sections of this Instruction.

§ 842.12 Claim forms.

(a) *Presenting claim forms.* Claimant will present his claim in triplicate on authorized official forms; SF 95, Claim for Damage or Injury, or AF Form 529, Claim for Personal Property. The following information will be included on these forms, where appropriate:

(1) In connection with personnel claims processed under Subpart C of this part, the address of the claimant will be that address at which claimant is most likely to receive his mail promptly.

(2) Facts of the accident or incident, including date, place, property, and persons involved.

(3) Nature and extent of damage, loss, or injury, and amount claimed in a sum certain.

(4) Ownership of property or property right for which claim is presented.

(5) Cause or occasion of the accident or incident.

(6) Whether litigation has been instituted in any court on the subject matter of the claim, and, if so, the name and location of the court, style of the lawsuit, amount demanded by plaintiff, and the status or outcome of such litigation.

(7) Whether damage or loss is covered in whole or in part by insurance and, if covered, the amount of coverage and name and address of insurer; whether a claim has been presented to an insurer, and, if so, in what amount; and whether the insurer has or is expected to pay the claim.

(b) *Signatures on claim forms*—(1) *How to sign.* Claim forms will be signed in ink by the claimant, or in his name by a duly authorized representative. The signatures will include the first name, middle initial (if any), and surname of both the claimant and the person signing the claim on his behalf. A married woman must sign her claim in her given name—for example, "Mary A. Doe" rather than "Mrs. John Doe." The

claim, if presented by an agent or legal representative, will be presented in the name of the owner, be signed by the agent or legal representative, show the title or capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative—for example, "John Doe by Richard Roe, Attorney in Fact." The authority to present a claim will have been executed within 180 days of presentation of the claim.

(2) *Corporation claims.* A claim presented by a corporation will show the title or capacity of the corporate officer signing, and the corporate seal (if any) will be affixed to the claim form. When other than an officer of a corporate claimant signs the claim form on behalf of the corporation, a certification by a corporate officer that the person whose signature appears on the claim form is an agent of the corporation duly authorized to present and settle the claim will be presented with the claim, and the corporate seal (if any) will be affixed thereto.

(3) *Joint interests.* In states or countries where community property laws exist, both the husband and wife will sign the claim form when a claim is presented for property damage or personal injury to either spouse. Where joint ownership or interest in real property is recognized by law, both the husband and wife also must sign the claim form.

(4) *Insurance subrogation claims.* A subrogee may present its claim separately or jointly with the insured (but see §§ 842.24(c), 842.32(b) and 842.53(c)).

§ 842.13 Where to present claim forms.

The claim will be presented to the commander of the military or civilian personnel involved, if known, otherwise it will be presented to the commander of the unit or installation at or nearest to which the accident or incident occurred. If the accident or incident occurred in a foreign country where no Air Force unit is stationed, the claim will be presented to the United States air attaché, any attache of the United States Armed Forces, or those Military Assistance Advisory Group personnel authorized to receive claims.

§ 842.14 Evidence to be submitted by claimant.

The claimant will submit competent evidence and information concerning the cause of the damage or injury for which claim is made, proof of ownership of property, and the correctness of the amount claimed.

(a) *Property damage.* See § 842.4 for the evidence and information to be submitted by a claimant.

(b) *Personal injury or death.* See § 842.5 for the evidence and information to be submitted by a claimant.

(c) *Recoveries from third parties.* If the claimant has elected to proceed against a third party as a joint tortfeasor, or has recovered from his insurer or common carrier, he will report the facts of such action and any amounts recovered with respect to items of damage which otherwise may properly be included in the claim against the Government.

(d) *Excluded items.* The following items generally are not considered proper elements of damage within the meaning of this Instruction. However, the claimant will not be prevented from including itemized accounts and complete and substantiating evidence with regard to any such damage.

(1) Interest on any award will not be allowed.

(2) Cost of preparation and presentation of the claim, including but not limited to expenditures incident to obtaining evidence—such as fees for appraisals and estimates of damage, travel and telephone expenses in connection with presenting the claim, attorney fees, and the cost or value of the claimant's or another's time and labor in preparing the claim. However, see § 842.75.

(3) Inconvenience, including but not limited to the monetary value alleged by the claimant for hardship, mental anguish, loss of use of noncommercial property, and other intangible damage and loss which may be considered punitive damages, as opposed to compensatory damages. In death claims, mental anguish may be a proper element of damage.

§ 842.15 Action if claim is withdrawn.

If the claim is withdrawn, the only papers that may be returned to a claimant are his original claim form and such supporting documents as the claimant has furnished.

§ 842.16 Action on approved claims.

(a) *Settlement agreement.* (1) When either a claim within the settlement limits of the approving authority has been approved for less than the amount claimed, or any personal injury or death claim is approved, the claimant will be required to sign a claims settlement agreement or other written release, in triplicate.

(2) In claims settled under Subpart C of this part no settlement agreement is required or will be obtained.

(3) In all claims paid under Subparts L, M, and Q of this part, a settlement agreement is required as provided therein.

(b) *Transmitting checks.* Checks will not be transmitted to any person other than the payee or his attorney without specific written authority from the payee. However, checks may be placed in the temporary custody of a representative of the Air Force for the purpose of delivery to the payee, or his duly authorized agent or legal representative.

§ 842.17 Action on disapproved claims.

If a claim is disapproved in whole or in part, the approving authority will notify the claimant in writing informing him of that action. The requirements of the sections of this Instruction under which the disapproval action was taken will control appeals, when authorized by law.

§ 842.18 Emergency payments.

(a) The Judge Advocate General, The Assistant Judge Advocate General, and the Chief, Claims Division, Headquarters USAF, may authorize emergency payments in accordance with 10 U.S.C. 2736 in an amount not to exceed $1,000, before presentation of a claim, to a potential claimant for damage, injury, or death resulting from an accident involving an aircraft or missile under Air Force or ANG control.

(b) Emergency payments are limited to cases where the amount otherwise would be payable under Subparts D, and E or L of this part. When provisions of Subpart E of this part are preempted by claims provisions of an international agreement, concurrence of the foreign government concerned will be obtained before making an emergency payment. This concurrence will include an assurance by the foreign government that the amount of the emergency payment will be deducted from the award made by the foreign government, and that the United States will be credited with the full amount of the payment on any request for reimbursement.

(c) An emergency payment is not a gift or grant, but an advance payment against future settlement. It is intended to relieve immediate hardship and suffering.

§ 842.19 Transfers and assignments of claims.

Transfers and assignments of claims against the United States ordinarily are null and void by reason of the provisions of 31 U.S.C. 203, except assignments of claims by operation of law—such as to receivers or trustees in bankruptcy or administrators of estates. A power of attorney or other purported authority to receive payment of all or a part of any claim in another's name is null and void. However, provisions of the statute do not apply to claims of insurance subrogees based on involuntary assignments arising under Subparts D, F through I, or L through M of this part.

§ 842.20 Participation in prosecution of claims and disclosure of information.

(a) *Aid or assistance prohibited.* Air Force personnel are forbidden to represent, aid, or assist any claimant or potential claimant in the prosecution or support of any claim against the United States, or to receive any gratuity, share, or interest in any such claim. This includes disclosing or furnishing information or documents which may be made the basis of a claim, or any evidence of record in a claim matter—such as reports of investigation, statements of witnesses, photographs, and medical reports.

(b) *Official duty exception.* The prohibition against furnishing aid and assistance does not apply to the proper discharge of official duties. Upon inquiry, a claimant may be advised how to present a claim, and evidence originally furnished by the claimant may be exhibited or returned to him or his representative (see § 842.15). Documentary evidence required to be submitted by a claimant under Subpart C of this part may be furnished on request, and, when necessary, claimants may be assisted in preparing the claim form and assembling the evidence.

Subpart B—Article 139 UCMJ Claims (10 U.S.C. 939)

§ 842.21 General.

(a) Provisions of Article 139, UCMJ, may be invoked by those whose property has been damaged or wrongfully taken by members of the service. However, recovery is provided solely for willful damage to or wrongful taking of property, and does not extend to personal injuries or death claims.

(b) There is no limitation on the total amount allowable under Article 139.

(c) There is no legal or other authority that will support "voluntary agreements" to pay for alleged damages in lieu of proceedings under Article 139 when the facts reveal that Article 139 would not apply. A charge against the airman's pay thereunder would be illegal.

(d) Procedures authorized under Article 139 provide the only legal remedy whereby an Armed Forces member can be made to make reimbursement out of his pay for civil damage to the party concerned.

(e) Liability may only be assessed against Armed Force members.

§ 842.22 Proper claimant.

Claimant means any person or legal entity except an insurer or a subrogee. The term claimant includes military personnel, a State, county, or municipality, but does not include the United States or any instrumentality thereof.

§ 842.23 Cognizable claims.

Any claim within the provisions of Article 139, UCMJ, not hereinafter excluded, may be presented to any Air Force commander for consideration under this subpart, and, in proper cases, approved for payment. However, such damage, loss, or destruction of property by military personnel must be caused by riotous, violent, or disorderly conduct, or acts of depredation, willful misconduct, or reckless disregard of property rights carrying an implication of guilty intent.

§ 842.24 Claims not cognizable.

Claims otherwise within the scope of this subpart nevertheless are not cognizable under their provisions when the damage, loss, or destruction of property involves any of the following:

(a) Claims cognizable under this subpart, Subparts D through I, K through M of this part: However, if a claim is within the scope of this subpart, and Subparts E or M of this part, but the act or omission occurred outside the scope of the member's employment, the claim may be processed under this subpart, either in whole or part, when specific authority to do so has been obtained from the approving authority concerned.

(b) Claims resulting from simple negligence.

(c) Subrogation claims.

(d) Any portion of a claim covered by insurance, regardless of whether claim is made against the insurer or not.

(e) Claims for personal injury or death.

(f) Claims for damage, loss, or destruction of property resulting from acts or omissions of military personnel while acting within the scope of their employment.

(g) Claims arising from larceny, forgery, deceit, embezzlement, fraud, misappropriation, and misapplication, when the wrongful taking is accomplished under conditions of stealth, deception, trickery, or device, unaccompanied by any force, riotous, violent, or disorderly conduct. However, claims for subsequent physical damage to the stolen property are cognizable.

(h) Complaints presented more than 90 days after the incident out of which the claim arises, unless the commander taking action on the report of the board determines that good cause has been shown for the delay in making complaint. Such commander's determination that good cause has or has not been shown is final.

(i) Claims for Government property, including property furnished through the Armed Forces Clothing Monetary Allowance System or through issue.

(j) Claims for damage, loss, or destruction of property caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee.

(k) Claims for indirect damages (see Subpart A of this part).

(l) If payment of a claim is made by the United States under a claims statute or international agreement, reimbursement will not be obtained from the offender.

(m) Claims resulting from acts or omissions of civilian employees.

§ 842.25 Procedure for processing claims.

(a) *Action by claimant.* Any person who believes that his property has been willfully damaged or wrongfully taken by military personnel may complain, orally or in writing, to the commander of the alleged offender. However, if the unit of the alleged offender is not known, the claimant may complain to the commander of the nearest Air Force base, station, installation, unit, or attaché. Before final action is taken, such a complaint will be accompanied by a written claim in triplicate, for a definite amount. When appropriate, such a claim may be regarded as the complaint.

(b) *Action on complaint*—(1) *Commander receiving complaint.* The commander to whom such a complaint is presented will convene a board of from one to three officers to investigate the complaint, ascertain and report the facts, and make findings and recommendations relating to the complaint.

§ 842.26 Reconsideration of claims.

Article 139 provides for no appeal from the action of the commander by either the claimant or the offender. However, it is always possible for a commander to reconsider any action taken by him in order to correct an injustice. A successor in command may change the original action even though the offender may have been transferred, but only on the basis of newly discovered evidence, fraud, or obvious error of law, fact, or calculation appearing on the face of the record. A transfer of an offender to a new unit does not give any authority to the new commander to change a decision that was favorable or unfavorable to the offender.

§ 842.27 Statute of limitations.

There are no provisions in Article 139 concerning the period within which such complaints must be asserted, however, see § 842.24(h).

§ 842.28 Settlement authority.

Claims may be settled in any amount.

Subpart C—Personnel Claims (10 U.S.C. 2732)

§ 842.29 General.

This subpart governs administrative settlement and payment of claims presented by Air Force military and civilian personnel and Air National Guard and Air Force Reserve military personnel for personal property damaged or lost incident to their service.

§ 842.30 Proper claimants.

(a) All Air Force military and civilian personnel.

(b) Air National Guard and Air Force Reserve military personnel while engaged in inactive duty training pursuant to Federal law.

(c) The authorized agent or legal representative of persons in paragraph (a) or (b) of this section.

(d) Survivors of persons in paragraph (a) or (b) of this section in the following order of precedence:

(1) Spouse.
(2) Child or children.
(3) Father or mother, or both.
(4) Brothers or sisters, or both.

(e) A claim may not be presented under this subpart by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

§ 842.31 Cognizable claims.

Claims for personal property lost or damaged incident to service are cognizable; provisions of paragraphs (a) and (b) of this section are intended to encompass the contingencies and circumstances which render a claim "incident to service."

(a) *Claims payable.* (1) Claims are payable under this subpart only for such types, quantities, or amounts of tangible personal property (including money) as the approving authority shall determine to be reasonable, useful, or proper under the circumstances existing at the time and place of the loss. In determining what is reasonable, useful, or proper the approving authority will consider the type and quantity of property involved, circumstances attending acquisition and use of the property, and whether possession or use by the claimant at the time of loss or damage was incident to his service.

(i) What is reasonable is a question of fact to be determined in the light of the officer's or airman's rank or the civilian employee's rating, together with his duty, job, and station assignment.

(ii) The Government does not underwrite all personal property losses that a claimant may sustain, and it does not underwrite individual taste. While the Government does not attempt to limit

possession of property by an individual in the service, payment for loss or damage is made only to the extent deemed reasonable, useful, or proper. If individuals possess excessive quantities of items and/or expensive items, they should have such property privately insured.

(2) Property borrowed from others may be the subject of a claim.

(3) Specific types of claims payable include:

(i) Losses at quarters or other authorized places by theft (see subdivision (vii) of this subparagraph) or unusual occurrence, including fire, flood, hurricane, typhoon, tornado, cyclone, explosion, earthquake, and similar catastrophes or disasters. Lightning is not considered an unusual occurrence. However, property must be located at:

(*a*) Quarters, wherever situated, which were occupied by the claimant and were assigned to him or otherwise provided in kind by the Government.

(*1*) To substantiate a claim for loss at quarters the claimant must show that:

(*i*) Such quarters were in fact occupied by him. Of course, this does not mean that the claimant must be physically present in the quarters at the time of the loss.

(*ii*) The loss was caused by one of the enumerated or similar disasters and was not caused by his own negligence.

(*2*) When the loss occurred within the United States at quarters assigned or otherwise provided in kind, assignment of such quarters must be substantiated by competent orders showing the assignment by the billeting office or other qualified agency.

(*3*) When quarters are assigned which are classed as substandard and the total basic allowances for quarters is not forfeited, the quarters are still considered "assigned" within the meaning of this section and this subpart.

(*4*) As a general rule, when the claimant has drawn his full basic allowance for quarters and is not required to reimburse the Government or a Government-controlled agency for any part thereof in the form of rent, such quarters are considered private rental and not quarters otherwise provided in kind.

(*5*) Quarters includes garages, carports, or attached buildings.

(*b*) Quarters outside the United States which were occupied by the claimant but were neither assigned to him nor otherwise provided in kind by the Government, except when the claimant was a civilian employee who was a local inhabitant.

(*1*) Quarters includes garages, carports, or attached buildings.

(*c*) Any warehouse, office, hospital, baggage holding area, or other place (except quarters) authorized for receiving or storing property, if:

(*1*) Storage was authorized by a competent authority,

(*2*) The place was designated as suitable for receiving and storing property, and

(*3*) The claimant complied with pertinent regulations concerning such storage.

(ii) Transportation losses incident to transportation or storage pursuant to orders; in connection with travel under orders; in performance of duty; including property in the custody of a common or contract carrier or any other commercial concern under contract with the Government, an agent or agency of the Government, or a claimant while in a private or public conveyance in which he is traveling in performance of duty.

(*a*) Joint Travel Regulations generally do not include as proper items for shipment thereunder property acquired after effective date of orders under which the particular move is to be made. However, it is Air Force policy not to disapprove claims for reasonable household goods so purchased if it is evident that they were turned over to a packer with the rest of the shipper's household goods or hold baggage. A bailment has been created when the property is accepted, and if the property is damaged or lost in shipment the damage or loss will be favorably considered.

(*b*) It is Air Force policy not to approve more than $25 for tools that are shipped with an automobile. It has been determined that this is a reasonable price for standard automobile tools. All other tools should be shipped with household goods. However, if there is no shipment of household goods by the service member and tools in excess of standard automobile tools are shipped with the car, the individual may be compensated up to the maximum on tools as outlined in the current Allowance List approved by the Judge Advocate General.

(*c*) The Air Force will consider in accordance with 10 U.S.C. 2732, claims for loss or damage to any personal property a transportation officer authorizes to be shipped by expedited mode.

(*d*) Claims arising out of a Government custody or bailment relationship frequently are for losses from fire, mildew, or other damage while stored pursuant to an authorized move, in a Government or a commercial warehouse which has been officially designated to receive the property by competent authority and orders. If, however, property is stored at a commercial facility for the personal convenience of the claimant at his expense, a claim for loss or destruction of the property is not payable, as Government custody was not involved.

(iii) Losses due to marine or aircraft disaster as a consequence of perils of the sea or air:

(*a*) Because claims under the perils of the sea provision are rare, no discussion of such claims is required. Shipping losses are generally covered under the transportation provisions in this subpart.

(*b*) Claims considered under the aircraft disaster provisions generally concern losses of baggage jettisoned in flight or damaged by fire or otherwise damaged incident to an emergency or crash landing. Claims presented under this subsection may include items of clothing being worn by the claimant at the time of the accident, money (in an amount determined reasonable to have in possession), jewelry (not to exceed maximum amounts payable), and other items lost in the aircraft crash.

(*c*) Losses sustained while on a leave or furlough status ordinarily are not cognizable under this subpart. Granting of leave or furlough normally does not require travel, and when travel is authorized it is at no expense to the Government. However, when such leave or furlough is accompanied by travel on a space-available basis on a military aircraft by active duty Air Force personnel a bailment condition arises with regard to property so placed aboard the aircraft, and that factor will lead to favorable consideration of a claim. These claimants generally are in a "hitchhiker" status, and are carried on the aircraft passenger list, although they generally are traveling only under leave or furlough orders.

(iv) Losses due to enemy action or public service as a direct consequence of:

(*a*) Action by an enemy, or threat thereof preventing capture or confiscation, or combat, guerrilla, brigandage, or other belligerent activity, whether or not the United States was involved, or unjust confiscation by a foreign power or its nationals.

(*b*) Action by the claimant in an attempt to quiet a civil disturbance or to alleviate a public disaster.

(*c*) Efforts by the claimant to save human life or Government property.

(v) Loss of money when:

(*a*) Commercial facilities are not available or normally are not used.

(*b*) Personal funds when accepted by responsible Government personnel with apparent authority to receive them for such purposes as safekeeping, deposit in airman deposit accounts, transmission by personal transfer account, purchase of United States bonds or postal money order, or conversion into military payment order, Government check or other kind of currency, or other authorized disposition, and such personal funds are neither applied as directed by the owner nor returned to him.

(*c*) In airman deposit cases, if the claim is determined to be payable, the airman is entitled to the full value of his account at the time of approval of claim.

(*d*) Forcibly taken by a thief from assigned quarters in the United States, or forcibly taken by a thief from quarters wherever situated outside the United States.

(vi) Damage to or loss of privately owned automobiles and other motor vehicles and their component parts (including tools) when shipped to, from, or between overseas areas under change of station orders or on a space required reimbursable basis in connection with overseas travel under orders. This includes on-loading and off-loading operations. Under special or unusual circumstances, damage or loss of component parts (including tools) that have been accepted by the Government for shipment may be recommended to the approving authority for consideration as a transportation loss (see subdivision (ii) of this subparagraph (3)).

(vii) Theft of property claims are payable, provided the claimant exercised

due care in protecting his property, while located at:

(a) Quarters outside the United States. Quarters need not have been assigned or provided in kind by the Government, except when the claimant is a civilian employee who is a local inhabitant.

(b) Quarters within the United States that were assigned to the claimant or otherwise provided in kind by the Government. However, claims of this nature are payable only when definite proof of a larceny, burglary, or housebreaking exists.

NOTE: There are two formulas to be followed. Overseas theft from quarters cases require only that the claimant exercise due care in protecting his property. In the United States due care as well as definite proof of larceny must exist before the claim is payable. Money, jewelry, cameras, and other small items of substantial value are always highly susceptible to theft. Therefore, due care requires that items of this type be secured within quarters, as well as having the quarters secured. Mysterious disappearance claims will not be paid.

(c) Any warehouse, hospital, baggage holding area, storeroom, or other place designated by competent authority as suitable for receiving and/or storing property and the property has been accepted by Government personnel acting within the scope of their employment.

(viii) Damage to or loss of clothing and accessories worn on the person—such as eye glasses, hearing aids, or dentures—but not if Government property. For replacement in kind see § 842.37.

(b) *Claims not payable.* Claims otherwise within the scope of this subpart are nevertheless not payable under it when the damage or loss of personal property incident to service involves any of the following:

(1) Articles acquired for other persons: Claims are not payable for articles intended directly or indirectly for persons other than the claimant or members of his immediate family. This includes articles acquired at the request of others and articles to be disposed of as gifts or for sale or for use in a private business enterprise.

(2) Small items of substantial value and money: Claims are not payable for small articles of substantial value and money when shipped with household goods or as unaccompanied baggage. Articles that are easily pilfered usually are worn or carried, including watches and expensive jewelry such as rings, pins, brooches, necklaces, and bracelets. These limitations do not apply to the articles described when the loss is cognizable under paragraph (a)(3)(i) (*a*) and (*b*) of this section.

(3) Intangible property: Claims are not payable for choses in action, or evidence thereof, such as bankbooks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, and travelers' checks.

(4) Government property: Claims are not payable for property owned by the United States, including property furnished through the Armed Forces Clothing Monetary Allowance System or through issue.

(5) Enemy property, including war trophies.

(6) Losses (including theft) at quarters not assigned or otherwise provided in kind occupied by the claimant within the United States.

(7) Portable housing, other than trailer type.

(8) Losses recoverable from insurer or carrier: Claims are not payable for losses, or any portion thereof, that are recovered or recoverable from an insurer or carrier.

(9) Contractual coverage: Claims are not payable for losses, or any portion thereof, that have been recovered or are recoverable pursuant to contract.

(10) Negligence of claimant: Claims are not payable when the damage or loss of personal property was caused in whole or in part by any lack of due care, negligence, or wrongful act on the part of the claimant, his agent, or employee while acting within the scope of his employment.

(11) Fees for obtaining estimates of repair: Claims are not payable for fees paid to obtain estimates of repair in conjunction with submitting a claim under this subpart. Exception: When, in the opinion of the approving authority, the claimant could not obtain an estimate without paying a fee, such fee will be allowed. However, it will be allowed only in an amount determined by the approving authority to be reasonable in relation to the value or the cost of repairs of the items on which the estimate was made.

(12) Violation of directives: Claims are not payable for items which, according to the evidence, were acquired, possessed, or transported in violation of pertinent directives or regulations of any U.S. Armed Force.

(13) Motor vehicles (including automobiles, motor bikes, motor scooters, bicycles, and boats):

(i) Claims are not payable for damage to an automobile of a claimant when it is being used while the claimant is on TDY or PCS orders with travel by POV authorized.

(ii) Claims are not payable, either in the United States or overseas, for motor vehicles which are lost due to theft from an area adjacent to assigned quarters; while parked in a designated parking lot; or, in the case of a boat, at a pier or on the water.

(14) Items fraudulently claimed: When investigation discloses that a claimant, his agent, or employee has intentionally misrepresented an item claimed, as to cost, condition, cost to repair, etc., the item will be disallowed in its entirety, even though some actual damage has been sustained. However, if the remainder of the claim is proper it will be paid. This does not preclude investigation and action under UCMJ if warranted.

§ 842.32 Claims not cognizable.

(a) Any claim that did not arise incident to service.

(b) Subrogation claims.

(c) Assigned claims.

(d) Conditional vendor claims.

(e) Claims by non-Air Force personnel—such as Red Cross employees, contractor employees, nonappropriated fund employees (but see Subpart M of this part), and Civil Air Patrol members and cadets. However, a member of another United States Armed Force may present a claim to the Air Force for loss of or damage to personal property incident to his service under 10 U.S.C. 2732.

(f) Damage to motor vehicles on base is not incident to service. Claims for this type of damage will be processed under Subpart D of this part.

§ 842.33 Statute of limitations.

A claim may be settled and paid under this subpart only if presented in writing within 2 years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented within 2 years after the cause ceases to exist, but not more than 2 years after the war or armed conflict is terminated.

(a) As used in this section, a war or armed conflict is one in which any U.S. Armed Force is engaged. Dates of commencement and termination of an armed conflict shall be established by concurrent resolution of Congress or by determination of the President.

(b) For purposes of this subpart a claim will be determined to have accrued at such time as the loss or damage is or should have been discovered or ascertained through exercise of due diligence by the claimant, even though such loss or damage may have happened at a prior time.

§ 842.34 Factors involved.

(a) *Cost or value.* The amount awarded on any item of property will not exceed the cost of the item (either the price paid in cash or property, or the value at the time of acquisition if not acquired by purchase or exchange). The amount payable will be determined by applying the principles of depreciation to the adjusted dollar value or other base price of property lost or damaged beyond economical repair; and by allowing the cost of repairs when an item is economically repairable, provided cost of repairs does not exceed the depreciated value of the item.

(b) *Depreciation.* (1) Depreciation in value of an item is determined by considering the type of article involved, its cost, condition when lost or damaged beyond economical repair, and the time elapsed between the date of acquisition and the date of accrual of the claim.

(2) To assure Air Force-wide uniformity in applying the principles of depreciation, the Chief, Claims Division, Office of The Judge Advocate General, Headquarters USAF, is authorized to issue from time to time guides for determining:

(i) Estimated life of various classes of items.

(ii) Maximum amount allowable for specific articles as set forth in the allowance list. Maximum allowances must be applied, with one exception: If a U.S. Armed Forces aircraft or missile crashes

on assigned quarters and destroys the property of the service member, the maximum allowance on all items will be waived except for the ceiling of $6,500.

(iii) Maximum quantities that will be considered, as well as claimant's income and social obligations, size of his family, and his need to have more than the average quantities.

(3) In applicable cases, the Chief, Claims Division, Headquarters USAF, will adjust the method of computing the base cost of items on which depreciation will be figured to allow for increases in the cost of living as authorized by the Judge Advocate General.

(c) *Appreciation.* There will be no allowance for replacement cost or appreciation in the value of the property.

(d) *Expensive articles.* Allowance for expensive items (including heirlooms and antiques) or for items purchased at unreasonably high prices will be based on the fair and reasonable purchase price for substitute articles of a similar nature.

(e) *Acquisition.* Allowance for articles acquired by barter will not exceed the cost of the articles tendered in barter. No reimbursement will be made for articles acquired in black market or other prohibited activities.

§ 842.35 Evidence to be submitted by claimant.

Requirements as to evidence generally are covered in Subpart A of this part. However, the following types of claims require evidence in addition to the statement of facts and circumstances attending the loss.

(a) *Claims for property located at quarters.* Indicate:

(1) Geographic location.

(2) Whether quarters were assigned by the Government or otherwise provided in kind.

(3) Whether quarters were regularly occupied by the claimant.

(4) If claimant is a civilian employee:

(i) Whether claimant is a local inhabitant.

(ii) Whether claimant was a "direct hire" civilian employee of the United States Air Force when the claim accrued.

(5) Measures taken to protect the property.

(b) *Claims for property located at other authorized places.* Indicate:

(1) Geographic location.

(2) Name of the authority, if any, who designated the place of storage for the property.

(3) Measures taken to protect the property.

(c) *Claims for transportation losses.* (1) Include a copy of the orders authorizing the travel, transportation, or shipment. If such copies are not obtainable, a certificate explaining their absence, and giving their substance and sufficient facts to establish that the travel, transportation, or shipment was authorized.

(2) If transportation or shipment of property was by common or contract carrier or Government agent or agency, include the bill of lading, if applicable, and the inventory of property shipped and delivered.

(3) Include a copy of the demand on carrier or insurer, or both, when required, and the reply, if any.

(4) In cases of missing baggage or household effects, indicate action taken by claimant and claims officer to locate property, and include related correspondence.

(5) Indicate whether, at the time the shipment was received from the last common carrier or local civilian carrier, a "clear" receipt was given; or whether the delivering inventory acknowledging receipt of the shipment was noted to indicate any loss, damage, or discrepancy.

(6) Indicate whether application was made pursuant to the Joint Travel Regulations if loss results from the shipment of articles of gold or silver, paintings, or other items of extraordinary value. For purposes of this subpart, sterling silver flatware, hollowware and silver service are not included within the meaning of "items of extraordinary value," and do not require special handling, except when shipped in a mobile home on a Government Bill of Lading.

(d) *Claims arising out of marine or aircraft disaster.* Include a copy of orders or other available evidence to establish claimant's lawful right, and that of his property, to be on board.

(e) *Claims arising out of enemy action or public service.* (1) Include a copy of orders or other available evidence to establish claimant's rightful entry into area or location involved.

(2) Indicate applicable cause (see § 842.31(a)(3)(iv)), with facts and circumstances involved.

(f) *Claims for money delivered to another.* (1) Indicate geographic location of the unit.

(2) Indicate name, grade, service number (if any), and address of the person who received the money, and any other person(s) involved.

(3) Indicate the name and designation of the authority who authorized such personnel to accept personal funds, and the disposition requested.

(4) Include receipts or written sworn statements explaining failure to account for the funds.

(g) *Claims for damage to motor vehicles.* Include a copy of orders or other available evidence to establish claimant's lawful right to have the property shipped, and evidence to establish damage in transit.

(h) *Claim for theft at quarters.* Indicate:

(1) Geographic area of the loss.

(2) Whether small items of substantial value were secured within the quarters, and whether quarters also were secured.

§ 842.36 Demand on carrier, contractor, warehouseman or insurer.

(a) *Carrier, contractor, or warehouseman—(1) General.* (i) In all cases where personal property is damaged or lost while being transported by a carrier, contractor, or warehouseman, the owner-claimant must provide the claims officer with sufficient information so that a written demand for reimbursement can be made, in accordance with provisions of the bill of lading or other contract, on the carrier, contractor, or warehouseman who was in possession of the property when it was lost or damaged. Exception: If the property was shipped on a thru bill of lading, demand will be made on the carrier to whom the bill of lading was issued.

(ii) If the responsible carrier, contractor, or warehouseman is not known or cannot be determined, a demand will be made on the last such carrier, contractor, or warehouseman known or believed to have handled the shipment.

(iii) If more than one bill of lading or contract was issued, a separate demand will be made on the last carrier, contractor, or warehouseman, under each.

(iv) No demand will be made if:

(*a*) It is apparent that the estimated weight of the damaged or lost property is such that any recovery would be insignificant.

(*b*) It is clearly evident that the damage or loss was caused by faulty packing by Government employees.

(*c*) There is some other cogent reason why a demand would be impracticable.

(v) If the property was being carried under an MSTS shipping contract by a commercial ocean carrier, the shipper-owner, will not make a demand on the ocean carrier. Claims against such ocean carriers are the sole responsibility of MSTS, and, after settlement of the claim by the Air Force, the Chief, Claims Division, Office of The Judge Advocate General, Headquarters USAF, will transmit the assignment of claim to MSTS for appropriate action.

(b) *Insurer—(1) General.* In all cases where damaged or lost personal property was insured in whole or part, the claimant will make a written demand on the insurer for reimbursement under the terms and conditions of the insurance coverage. Such demand should be made before filing the claim against the Government under 10 U.S.C. 2732 and this subpart, and within the time limit prescribed by the policy.

(2) *Action on claim while demand on insurer pending.* (i) Normally, the demand on the insurer should be concluded before the claim file is forwarded, unless this will unduly delay processing of the claim.

(ii) However, on traffic-type accidents and other motor vehicle damage which occur on base in the United States, its territories, Commonwealth, or possessions, the approving authority will make no settlement until the demand on the insurer has been accepted or rejected.

(3) *Insurance recovery.* The claimant should be encouraged to consult with the base staff judge advocate before accepting any insurance offer that is not in full satisfaction of the claim.

(c) *Application of recovery.* (1) Any amount recovered or recoverable from a carrier, contractor, warehouseman, or insurer will be deducted from the amount otherwise allowable under this subpart. Exception: A deduction will not be made for the recovery for any item which cannot be allowed by the Air Force for payment.

(2) When the amount recovered or recoverable from a carrier, contractor, warehouseman, or insurer is equal to or greater than the amount otherwise payable by the Air Force, no compensation will be allowed under this subpart. The amount otherwise payable is that amount determined by the application

to the total amount claimed of depreciation factors and limitations and exclusions provided in this subpart and its implementing guides and instructions. In cases where the amount determined to be payable by the Air Force exceeds $6,500 after all deductions have been made, the claimant will be awarded $6,500.

(d) *Transfer and assignment of rights.* (1) The claimant will assign to the United States, to the extent of any payment on his claim accepted by him, all his rights, title, and interest in any claim he may have against any carrier, contractor, warehouseman, insurer, or other party arising out of the incident on which the claim against the United States is based. On request, he also will furnish such evidence as may be required to enable the United States to enforce the claim.

(2) After payment of his claim by the United States, if the claimant receives any payment from a carrier, contractor, warehouseman, insurer, or other party, he will pay the proceeds to the United States to the extent of the payment received by him from the United States (see § 842.42).

§ 842.37 Replacement in kind.

(a) The commander or a designated officer of the organization to which the claimant is assigned or attached may direct that personal property damaged or lost be replaced in kind from available Air Force stocks. However, this does not apply if the items claimed are Government property, including property furnished through the Clothing Monetary Allowance System or through issue.

(1) Annual appropriations for claims do not contain funds for payment of claims resulting from the damage, loss, destruction, capture, or abandonment of items of uniform clothing furnished to airmen by the Government, whether under the Clothing Monetary Allowance System or otherwise. Settlement of such claims is the sole responsibility of the base commander under survey procedures.

(2) If a claim is properly cognizable under survey procedures, and was disapproved by proper authority, it will not be open to review by refiling under this subpart.

(3) Claims are cognizable, and, if the facts warrant, payable under this subpart when military clothing is lost or damaged in shipment incident to a service member's last move before release from active duty, or when the items are in excess of the quantity required under the Clothing Monetary Allowance System.

(b) A claim that may be settled under this section will be processed in accordance with other pertinent provisions of this subpart. However it will not be forwarded to higher authority for approval action. The action by or for the commander directing replacement in kind, and the replacement made to comply with such action, will be for all purposes a final and conclusive settlement of the claim.

§ 842.38 Claims procedure.

(a) *Presenting claim.* After discovery of the damage or loss, all claims should be submitted as soon as possible to the claims officer of the organization to which the claimant is attached or assigned. If a person inquires about the procedure for presenting a claim, he will be furnisned appropriate claim forms, advised where they may be presented, and informed of the statute of limitations. A claim will not be refused even though it is presented at the wrong place, on the wrong form, or appears not to be within the provisions of this subpart.

(b) *Claim form.* The claim will be submitted by presenting a detailed statement in quadruplicate, signed by or on behalf of the claimant, on AF Form 529, Claim for Personal Property. However, any writing will be received and considered a claim if it makes a demand for a sum certain, sets forth the facts and circumstances in detail, and contains substantially the same information required by the claim form.

§ 842.39 Settlement authority.

Personnel claims for more than $6,500 may be presented, but cannot be administratively paid in excess of that amount.

§ 842.40 Notice to claimant.

When the authorized designee disapproves a claim in whole or in part, the claimant will be notified in writing of the action taken and the reasons therefor.

§ 842.41 Reconsideration of action.

(a) The action of the approving authority in disapproving a claim in whole or in part will be final and conclusive for all purposes. No appeal is provided to the Secretary of the Air Force or any any other Government agency.

(b) However, the approving authority may reconsider any claim when the claimant submits evidence showing errors or irregularities in the submission or settlement of the claim or new evidence which was not before the approving authority at time of adjudication.

(c) Requests for such reconsideration or review will be submitted to the approving authority in writing within 60 days after the date of mailing the notification of disapproval or partial approval of his claim.

(d) If, upon reconsideration, the approving authority determines that a further amount is due the claimant, a supplemental voucher will be prepared which will show the check and voucher numbers of the initial payment, and indicate that the amount thereof is in addition to the previous payment.

§ 842.42 Property recovered by claimant.

(a) The claimant is put on notice when he files a claim that if any of the property for which the claim is made is later recovered, he is required to notify Headquarters USAF (AFJALD) immediately. This notice is incorporated in AF Form 529.

(b) Air Force policy is to grant the claimant three alternatives regarding property recovered after payment of his claim. The claimant may:

(1) Accept all of the property and return the monies paid to him by the Air Force.

(2) In the presence of the claims officer, examine the property and decide whether he wants to keep certain items for which he has been paid. In this event the approving authority or the office where the closed claim is stored will advise the claims officer of the amount paid on each item the claimant elects to retain. The claimant will then forward a check or money order, payable to the Treasurer of the United States, through the claims officer to the approving authority in the total amount paid for the items retained. The monies will then be credited to the appropriation out of which the claim was paid.

(3) Disclaim any interest in the property and request that it be turned over to the salvage officer at the nearest Air Force installation. The salvage receipt will be forwarded to the approving authority.

Subpart D—Claims Under the Military Claims Act (10 U.S.C. 2733)

§ 842.43 General.

This subpart governs administrative settlement and payment of claims against the United States for damage to or loss of property, or for personal injury or death, when caused by Air Force military or civilian personnel, or otherwise incident to Air Force noncombat activities.

§ 842.44 Proper claimants.

(a) All persons who suffer personal injury or death as a result of Air Force activities, or their legal representatives, as outlined in § 842.45. Exception: Military or civilian personnel employed by the Air Force who suffer personal injury or death incident to their service may not recover under the Military Claims Act.

(b) Property owners or their representatives:

(1) Owner includes not only the record owner, but also others who stand in certain defined legal relationships to the record owner. Thus a claim may be submitted by a bailee, lessee, mortgagor, or conditional vendee. One who holds title only for purposes of security (e.g., conditional vendor) may not submit a claim (however, see § 842.11).

(2) Payment of a claim to the record owner for property damage bars payment of a claim for the same damage presented by one who has purchased the property under an executory agreement. However, all interested parties should be joined, if possible.

(3) An authorized agent or legal representative may present a claim in the name of the claimant. In such instances evidence of authority to act on behalf of the claimant must be contained in the file.

(c) Subrogees (also see § 842.71(c)):

(1) A claim for loss wholly compensated by an insurer will be settled only with the insurer. A claim for loss par-

tially compensated by an insurer may be settled with the parties individually, as their respective interests appear, or jointly if the claim is so presented. When settlement is joint, a check for the approved amount will be made payable to the subrogor and subrogee and mailed to the latter. When claims of the subrogor and subrogee, actual or potential, aggregate more than the monetary jurisdiction of the approving authority, settlement may not be made with either.

(2) An insured claimant will make detailed disclosure concerning his insurance coverage in his claim or in an attached statement, indicating:

(i) Insurer's name and address.

(ii) Kind and amount of insurance.

(iii) Insurance policy number.

(iv) Whether a claim has been presented to the insurer, and, if so, in what amount.

(v) Whether insurer has paid or is expected to pay the claim.

(3) Each insurer or other subrogee will substantiate his claim by appropriate documentary evidence showing that payment of the amount claimed or a larger amount has been made to or assumed on behalf of the insured or subrogor.

(d) Military or civilian personnel of the U.S. Armed Forces may be proper claimants for damage to or loss of personal property, unless their claim is cognizable under Subparts C or I of this part.

(e) State or state agencies, counties, and municipalities.

(f) Prisoners of war or interned enemy aliens in the United States, if their claims are otherwise payable, may submit a claim for damage to or loss of personal property in the custody of the United States. In bailment claims of prisoners of war or interned enemy aliens, a determination of "friendliness" is not required.

(g) Claimants excluded:

(1) Military or civilian personnel who suffer personal injury or death incident to their service, or their legal representatives.

(2) Citizens of a country engaged in war or armed conflict with the United States, citizens of countries allied with an enemy nation, or corporations controlled by citizens of any enemy nation or its allies, unless the approving authority or the local military commander (subject to review by the approving authority) determines that the claimant was and is friendly to the United States.

(3) Claims of nonappropriated fund instrumentalities for property damage or loss caused by their employees are not payable under this subpart (but see Subpart M of this part).

(4) Other agencies or departments of the U.S. Government (see § 842.113). Exception: Post Office Department claims (see § 842.109).

§ 842.45 Cognizable claims.

(a) *Types of cognizable claims.* (1) Claims by other than an inhabitant of a foreign country which arise from negligent or wrongful acts or omissions of Air Force military or civilian personnel acting within the scope of their employment occurring in a foreign country.

(i) Military personnel: In determining whether negligent acts or omissions of military personnel will give rise to a claim it is necessary to differentiate between scope of employment and line of duty.

(ii) Civilian personnel: Prisoners of war and interned enemy aliens are considered to be civilian personnel when engaged in labor for pay. The acts or omissions of volunteer workers and others serving as Air Force employees, even though without compensation, may give rise to cognizable claims under this subpart; but when the acts or omissions of volunteer workers are involved it must be established that they were acting under supervision and control of authorized Air Force personnel. Household servants—such as cooks, janitors, and waiters—employed in the quarters of military or civilian personnel are not employees of the Air Force. The source of their wages and who exercises control over their activities with respect to the result to be accomplished and the means to be used are the determining factors. Usually, domestics are not Air Force employees, but are employees of the military or civilian personnel for whom they work.

(2) Claims by other than an inhabitant of a foreign country which arise incident to Air Force noncombat activities.

(i) All Air Force activity other than combat activity is not necessarily noncombat activity. Noncombat activity claims are those arising out of any authorized activities which are peculiarly military activities, having little parallel in civilian pursuits, and which historically have been considered as furnishing a proper basis for the payment of claims. Some examples of noncombat activities include maneuvers and special field exercises; practice firing of heavy guns; practice bombing; operation of aircraft, including the generation of sonic booms; use of balloons, animals, or instrumentalities having latent mechanical defects; and movement of combat vehicles or other equipment designed especially for military use.

(ii) On the facts developed in individual cases, certain claims—such as those arising out of aircraft accidents—might appear to be based on negligence, but for historical and practical reasons they nevertheless are treated as arising from noncombat activities.

(iii) The noncombat activities provision provides the only means by which the Air Force may settle many claims that arise from its activities. In the case of missile experiments and aircraft operations (including sonic booms), it would be difficult for the claimant to establish negligence on the part of Air Force personnel.

(iv) Claims that arise from accidents or incidents common in the average civilian community—such as motor vehicle collisions—will not be settled under the noncombat activities provision of this statute; they will be considered under the acts or omissions section of this subpart if arising in a foreign country.

(*a*) The Air Force may settle claims arising from the use of prime movers, amphibious vehicles, and other military vehicles not primarily designed for road use. The use of vehicles of this type is considered a noncombat activity.

(*b*) Responsibility for damage or injury from motor vehicles which are civilian in design or use will not be assumed by the Air Force on the basis of the noncombat activities provision unless the damage results from a latent mechanical defect. A claim for damage resulting from operation of an ordinary tractor-trailer would not be approved as incident to noncombat activities.

(v) It is not necessary for the claimant to allege or prove negligence or a wrongful act on the part of military or civilian personnel to recover for damage or injury resulting from noncombat activities, since the nature of those activities would make it extremely difficult in a legal sense to establish the negligent or wrongful acts. It is also unnecessary for the claimant to allege or prove that the military or civilian personnel causing the damage or injury were within the scope of their employment. Therefore, for approval of a claim based on a noncombat activity the claimant need only prove a causal connection between an authorized noncombat activity and the injury or damage which serves as the basis of the claim.

(vi) Even though the claimant alleges negligence in his claim, it will be processed under the noncombat activities provisions of this subpart if in fact the damage was caused by noncombat activities.

(3) Claims which arise from damage to or loss of bailed property.

(i) A bailment is not created merely by the act of placing personal property in a Government area. There must be authority for transferring the custody of the property to the Government, and the property must be accepted on behalf of the Air Force by authorized personnel. In adjudication of bailment claims the cause of the loss usually is not material. What must be established is the creation of the bailment with the Air Force through acceptance of personal property by authorized personnel acting in an official capacity; and the breach of the bailment relation by the nonreturn of the property or its return in a damaged condition. Air Force negligence is not required.

(ii) Claims for damage to or loss or destruction of personal property loaned, rented, or otherwise bailed to the Air Force under an express or implied agreement are payable under this subpart, even though legally enforceable against the Government as contract claims. Bailment claims may, however, if in the best interest of the United States, be processed as contract claims.

(iii) Claims for damage to or loss of personal property shipped at Government expense by persons not proper claimants under Subpart C of this part may be settled under this subpart. If it appears that the damage or loss occurred under circumstances in which a carrier is responsible, the claimant must make a demand on the carrier or insurer for payment as required by § 842.36.

(iv) Bailment claims are not payable under this subpart if the bailor has

by express agreement assumed the risk of damage, loss, or destruction.

(v) Claims for rent, as such, of personal property are not payable under this subpart.

(vi) A claim is not payable if the loss or damage resulted from the negligence or contributory negligence of the claimant, his agent, or employee.

(4) Claims which arise from damage to or loss or destruction of registered and insured mail while in the custody of authorized Air Force military or civilian personnel—such as unit mail clerks—are payable even though resulting from criminal acts or Air Force noncombat activities. These claims are processed as bailment claims.

(i) Upon delivery of registered or insured mail by the Post Office Department or Military Postal Service (APO or FPO) to the Air Force, it assumes responsibility for transporting and distributing it to the authorized military or civilian personnel. Any claim for loss or damage occurring before delivery of the mail to authorized Air Force personnel, or after redelivery to the Post Office Department or Military Postal Service will be presented to the Post Office Department for consideration under its contract of indemnity with the sender.

(ii) The Air Force is not an insurer, and does not assume the contract of indemnity issued to the sender by the Post Office Department. Therefore, upon delivery to authorized personnel, the indemnity contract terminates and the measure of damages is not controlled by the amount of the insurance coverage. However, the declaration of the sender as to the value or the amount of coverage obtained will be considered as some evidence of value.

(iii) If a package was not delivered or returned by the Air Force, the registration or insurance fee, as well as postage, is payable. If a registered or insured article was actually received by the addressee with a portion of the package intact, the postage and registration or insurance fee will not be paid.

(iv) Ordinary mail and minimum fee insured mail carrying no insurance number and not requiring hand-to-hand receipts is not within the scope of this Instruction.

(v) Losses of registered and insured mail due to enemy action are not payable under this Instruction.

(5) Claims which are enforceable under a lease or other contract may be settled under this subpart, if otherwise cognizable, or under contract procedures, as deemed in the best interests of the United States. Settlement under contract procedures is preferable.

(b) *Proximate cause.* To be payable a claim for damage or injury must have been proximately caused by the act or omission of military or civilian personnel or otherwise incident to Air Force noncombat activities.

(1) If the proximate cause of an accident or incident is the joint or concurrent tortious acts or omissions of military or civilian personnel and of one or more persons other than the claimant, his agent, or employee, the claim is payable except to the extent, if any, already paid by or on behalf of such other person or persons.

(2) Acts or omissions constituting mere conditions without the existence of which an incident could not have occurred, and which are not a proximate cause of the damage or injury for which claim is made, are not proper bases for payments under this subpart. This is the rule even if local law or ordinances forbid the acts or omissions concerned. However local law ordinarily will control the questions of proximate cause, imputed negligence, and family purpose doctrine.

(c) *Contributory negligence.* Negligence or wrongful act on the part of the claimant or his agents or employees acting within the scope of employment, in whole or in part the proximate cause of the incident, bars recovery. It is immaterial that the law of the situs follows the comparative negligence doctrine. Negligence or contributory negligence of the claimant bars payment of a claim. The presence or absence of contributory negligence normally is determined by local law.

(d) *Types of cognizable claims which are payable.* When claims are proximately caused by the activities set forth in paragraph (a) of this section, without contributory negligence on the part of the claimant, payment is authorized for:

(1) Personal injury or death, as well as pain and suffering preceding death (see § 842.5). The law permits recovery for loss of time, earnings, services, diminished earning capacity, permanent injury, physical disfigurement, anticipated medical expenses, and death benefits. However, allowable compensation will not include reimbursement for medical, hospital, or burial expenses furnished or otherwise provided at the expense of the United States.

(2) Damage to or loss of property, including:

(i) Real property used and occupied, except as excluded by § 842.46(m).

(ii) Personal property bailed to the United States under an expressed or implied agreement, unless the owner has expressly assumed the risk of damage or loss (see § 842.46 (j) and (k)).

(iii) Registered or insured mail in the possession of the Air Force.

§ 842.46 Claims not cognizable.

This subpart does not apply to a claim which arises:

(a) From combat activities of military forces during time of war or armed conflict.

(b) For property damage occurring to, or injury or death of military personnel incident to their service.

(c) For injury or death of a civilian employee cognizable under the Federal Employees' Compensation Act (5 U.S.C. 751), or the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901), as made applicable to certain civilian employees of nonappropriated fund instrumentalities of the United States Armed Forces (5 U.S.C. 150k) under the Act of July 18, 1958 (5 U.S.C. 150k–1).

(d) In a foreign country and presented by a claimant to the authorities of a foreign country and final action taken thereon under Article VIII of the NATO Status of Forces Agreement, Article XVIII of the Japanese Status of Forces Agreement, or other similar treaty or agreement.

(e) In a foreign country and the claimant is an inhabitant of a foreign country.

(f) From transaction purely contractual in nature.

(g) From private, as distinguished from Government, transactions.

(h) Solely from compassionate grounds.

(i) For patent or copyright infringement.

(j) For war trophies, and articles intended directly or indirectly for persons other than the claimant or members of his immediate family, such as articles acquired to be disposed of as gifts or for sale to another, voluntarily bailed to the Air Force, except registered or insured mail. No allowance will be made for any item when evidence indicates that the acquisition, possession, or transportation thereof was in violation of any regulation or directive.

(k) For precious jewels and other articles of extraordinary value, voluntarily bailed to the Air Force, unless within the provisions of § 842.45(d)(2)(iii). Allowance for articles acquired by barter will not be more than the cost of the articles tendered in barter.

(l) From the operations of a nonappropriated fund activity, unless arising from acts or omissions of military personnel while performing assigned military duties or civilian personnel paid from appropriated funds while performing official duties (see Subpart M of this part).

(m) For rent, damage, or other payments involving the acquisition, possession, and disposition of real property or interests therein by and for the Air Force.

(n) From the taking of private real property by trespass resulting from the flight of aircraft.

(o) [Reserved]

(p) For loss or damage to mail of any type in the possession of the Post Office Department or a Military Postal Service.

(q) From wrongful acts or omissions of military or civilian personnel acting within the scope of their employment and occurring outside a foreign country (see Subpart I of this part).

(r) Claims presented while litigation commenced by the claimant and arising from the same accident or incident, is pending against the United States.

§ 842.47 Statute of limitations.

A claim may be settled under this subpart only if presented in writing within 2 years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented within 2 years after the cause ceases to exist.

(a) As used in this section, a war or armed conflict is one in which any U.S. Armed Force is engaged. Dates of commencement and termination of an armed conflict shall be established by concurrent resolution of Congress or by determination of the President.

(b) Some persons fail to take into consideration that the claim must accrue in time of war or armed conflict, or war or armed conflict must intervene within the statutory period, if the period of limitation is to be extended. Further, good cause must be shown for any delay in excess of the statutory period.

§ 842.48 Claims procedure.

The procedure set forth in Subpart A of this part will be followed with the following exceptions:

(a) The action of the approving authority is final and conclusive for all purposes in the absence of an appeal to the Secretary of the Air Force within 30 days after the date of the letter of notification.

(b) When the approving authority disapproves a claim in whole or in part, he will notify the claimant of the action taken and the reason therefor. He will advise the claimant of his right to appeal to the Secretary of the Air Force, through the approving authority, within 30 days after the date of such notification, and that an appeal should state the basis therefor.

(c) When an appeal is presented to the approving authority, he will forward it and the related claim file to Headquarters USAF (AFJALD) for determination by the Secretary of the Air Force. This does not prohibit a reconsideration by the approving authority.

(d) The claimant will be required to execute a settlement agreement, unless the claim is for property damage only, is approved in the full amount claimed, and does not arise from an incident in which personal injury or death is involved. Acceptance by the claimant of any award constitutes a complete release of any claims against the United States and against the military or civilian personnel whose act or omission gave rise to the claim.

(e) Settlement agreements for claims cognizable under this subpart will state that the award is made pursuant to the provisions of 10 U.S.C. 2733, which provides for administrative settlement of claims arising from Air Force activities, and is not to be construed as an admission of liability on the part of the United States, its agents, or employees, but is a release of the United States, its agents, or employees from any liability.

§ 842.49 Settlement authority.

Claims for more than $5,000 are cognizable, but cannot be administratively paid by the Air Force in excess of that amount. However, if the Secretary of the Air Force considers a claim meritorious and would otherwise be cognizable under this subpart, he may after receipt of a settlement agreement in full satisfaction of the entire claim pay the claimant $5,000 and report the excess to Congress for its consideration.

§ 842.50 Emergency payments.

See § 842.18.

Subpart E—Foreign Claims (10 U.S.C. 2734)

§ 842.51 General.

This subpart governs administrative settlement and payment of claims against the United States by inhabitants of foreign countries for death, personal injury, or damage to or loss of property which arise in a foreign country and are caused by military or civilian personnel.

§ 842.52 Definitions.

(Other terms used in this subpart are explained in Subpart A of this part:

(a) *Foreign country.* A national state other than the United States. This includes any place under the jurisdiction of the United States in a foreign country.

(b) *Inhabitant of a foreign country.* A person who is domiciled in a foreign country, including a corporation or other business association. A corporation or other business association is excluded as an inhabitant if organized under United States law.

§ 842.53 Proper claimants.

(a) Claimants (or decedents in death claims) must have been inhabitants of a foreign country at the time of the incident, and not otherwise excluded as a claimant.

(1) United States citizens may be claimants if it is established that they actually are domiciled in a foreign country.

(2) Foreign military personnel may be claimants in death or injury claims, if the claim does not arise out of joint missions with United States military personnel and if it is otherwise within the purview of the Foreign Claims Act.

(3) The national government of a foreign country and each of the political subdivisions (such as a provisional government or a municipal government of such country) are considered proper claimants under the Foreign Claims Act unless the waiver provisions of any applicable agreements exclude such claims.

(4) In claims involving death of inhabitants of a foreign country, the residence or abode of the heirs is immaterial; the controlling factor is the residence of the deceased.

(b) Claimants excluded:

(1) A national (or corporation controlled by a national) of a country at war or engaged in armed conflict with the United States, or of any country allied with such enemy country, unless the foreign claims commission considering the claim or the local military commander determines that at the time of the incident the claimant was and is friendly to the United States.

(i) In unusual cases where the claimant is a national of an enemy country simply by force of circumstances, and actually is friendly to and cooperative with the United States, he would be a proper claimant if the foreign claims commission or the local military commander determines him to be friendly to the United States.

(ii) A corporation organized in the United States is not an inhabitant of a foreign country.

(2) United States Armed Forces military and civilian personnel and their dependents who are domiciled in the United States and in a foreign country primarily because of their sponsor or military orders.

(3) United States citizens who are not inhabitants of a foreign country, including tourists, contractor employees and their dependents.

(c) An insurer or other subrogee may not present a claim in his own name. A claim for the entire amount of damage or injury sustained will be presented by and settlement made solely with the insured, without regard to insurance.

(d) Claims by inhabitants of the USSR, Albania, Bulgaria, Czechoslovakia, East Germany, Hungary, Poland, Romania, North Korea, The Peoples Republic of China, Cuba, and Yugoslavia will be considered on an individual basis only, and will be forwarded through claims channels to Headquarters USAF (AFJALD) for appropriate action.

§ 842.54 Cognizable claims.

(a) *Proximate cause.* A determination is required that the incident giving rise to the claim was proximately caused by:

(1) A noncombat activity (explained in § 842.45(a)(2)(i)), or

(2) One of the following:

(i) Military personnel.

(ii) Civilian personnel, including volunteer workers, who are United States citizens.

(iii) Civilian personnel, including volunteer workers, who are not United States citizens and who were:

(*a*) Hired in one country for employment in another, or

(*b*) Indigenous personnel, prisoners of war, or interned enemy aliens acting within the scope of their employment. Exception: Claims arising from the operation of United States Armed Forces or DOD vehicles while being driven by these personnel. In these circumstances scope of employment is not required.

(3) A claim is cognizable under the Foreign Claims Act if the damage, loss, personal injury, or death was proximately caused by an act or omission of Air Force military or civilian personnel or is otherwise incident to Air Force noncombat activities. These acts or omissions may be criminal, negligent, willful, wrongful, or mere mistakes of judgment. Acts or omissions involving lack of reasonable care are the usual bases of such claims. The test is whether the damage was caused by USAF personnel and/or its noncombat activities. In determining this the ordinary legal doctrine of proximate cause applies. Proof of negligence is not necessary, except when the incident from which the claim arises is a traffic-type accident. In such instances the ordinary principles of negligence will apply.

(b) *Scope of employment.* (1) Scope of employment is a prerequisite to a finding of responsibility on the part of the United States Goverment only in the case of persons in the category stated in paragraph (a)(2)(iii)(*b*) of this section. In such cases consider all of the facts and attendant circumstances, including:

(i) Time, place, and purpose of the activity. (Ordinarily a slight deviation as to time or places does not constitute a departure from scope of employment; the deviation must be material in order to take the activity out of scope of employment.)

(ii) Whether the activity was for the furtherance of the general interest of the Air Force.

(iii) Whether the activity is usual for personnel of the grade and classification involved, or reasonably to be expected of such personnel.

(iv) Whether the instrumentality from which the damage or injury resulted was owned or furnished by the Air Force.

NOTE: A claim for damage caused by escaped prisoners of war would be disapproved.

(2) Whether persons listed in paragraph (a)(2) (i), (ii), and (iii)(a) of this section were acting within the scope of their office or employment is immaterial. It would make very little difference from the point of view of the claimant-inhabitant of the foreign country whether the military or civilian personnel who were responsible for his damage or injury were acting within the scope of their employment. Furthermore, if the act is criminal and therefore clearly without the scope of employment, the need for compensating the injured person and desirability that prompt disciplinary action be taken against the offender is amplified. In the case of United States citizens and noncitizens hired in one foreign country for employment in another foreign country, a certain responsibility rests on the United States in that it has placed the employees in the foreign country and should be responsible for their actions.

(3) In the case of volunteer workers and other serving as employees of the Air Force, with or without compensation, scope of employment may or may not have to be determined, depending on their citizenship or place of employment. The theory underlying this is that if the Air Force uses the services of such individuals in its activities, it assumes the responsibility for their acts and services while they are so engaged.

(c) *Location.* To be cognizable, claims must arise outside the United States, its territories, Commonwealth, and possessions.

(d) *Contributory and comparative negligence.* (1) Contributory negligence on the part of the claimant, his agent, or employee is not a bar to recovery unless that is the rule under local law or custom.

(2) Where applicable, the comparative negligence doctrine will be applied, and the adjudication will reflect the percentage of negligence of each party. The amount of damage sustained by both parties is then apportioned in accordance with local law.

(e) *Types of cognizable claims which are payable.* When claims are cognizable as outlined, payment is authorized for:

(1) Damage to or loss of real property of any foreign country or of any political subdivision or inhabitant of a foreign country, including damage or loss incident to use and occupancy, except as excluded by paragraph (f)(9) of this section.

(2) Damage to or loss of personal property of any foreign country or of any political subdivision or inhabitant of a foreign country, including property bailed to the United States.

(3) Personal injury to or death of any inhabitant of a foreign country.

(i) Items allowable for personal injury may include actual and reasonable medical and hospital expenses, reasonable compensation for physical pain and suffering and temporary or permanent disability, and loss of wages or earning capacity; and, if death results, actual and reasonable burial expenses and compensation for loss of life. However, moral damages, court costs, and similar items are not payable.

(ii) In death claims, only one claim arises for all beneficiaries. If the claimant is a foreign national and not an inhabitant of the country where the accident or incident occurred, the allowable compensation ordinarily will be determined by the law of the domicile of the claimant.

(iii) Allowable compensation will not include reimbursement for medical, hospital, or burial expenses furnished at the expense of the United States.

(f) *Types of claims which are cognizable but not payable.* (1) A claim which arises in a foreign country, is presented to the authorities of a foreign country, and settled under Article VIII of the NATO Status of Forces Agreement, Article XVIII of the Japanese Status of Forces Agreement, or other similar treaty or agreement.

(2) A claim which is purely contractual in nature.

(3) A claim for court costs or reimbursement for a satisfied judgment against Air Force military or civilian personnel.

(4) A claim which arises from private contractual or domestic obligations. All claims arising from a contractual relationship between such personnel and third parties regarding property leases, public utilities, hiring of domestic servants, and debts of any description should be forwarded for action to the commander of the individual concerned.

(5) A claim based solely on compassionate grounds (solatium).

(6) Bastardy claims.

(7) Claims for patent or copyright infringement.

(8) Claims waived under an international agreement.

(9) Claims for rent, damage, or other payments involving regular acquisition, possession, and disposition of real property or interests therein by and for the Air Force.

(i) Irregular procurement damage claims may be settled under this subpart if no contract or lease has been executed regularizing the original taking action.

(10) Claim for taking of private property by trespass resulting from the flight of aircraft. Actual physical damage is required. Accordingly, claims for technical trespass, overflight of aircraft, or a taking under the Fifth Amendment to the U.S. Constitution are not payable.

(11) Claims under any workmen's compensation law or regulation, whether:

(i) Federal Employees' Compensation Act of September 7, 1916 (5 U.S.C. 751, et seq.).

(ii) Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901, et seq.).

(iii) Local law or custom.

(iv) Compensation or similar benefits are provided by insurance or by United States contract, and the costs or premiums are indirectly paid by the United States.

EXCEPTION: When a claim is within subdivisions (iii) or (iv) of this subparagraph (11), an award by a foreign claims commission may be authorized, in each case, by the Chief, Claims Division, Office of The Judge Advocate General, Headquarters USAF, or any of the persons listed in § 842.57.

§ 842.55 Claims not cognizable.

(a) Claims resulting directly or indirectly from combat activities, or when settlements are suspended by a commander during a war or armed conflict.

(b) Claims based on negligence of a United States concessionnaire or other independent contractor, or his employees and dependents.

(c) Claims arising out of the activities of dependents of Air Force military or civilian personnel, their guests, servants, or pets.

(d) Nonappropriated fund claims will be paid as provided by regulation of the service concerned. (See Subpart M of this part for Air Force claims.)

(e) Claims presented while litigation, commenced by the claimant and arising from the same accident or incident, is pending against the United States.

§ 842.56 Statute of limitations.

A claim must be presented within 2 years after it accrues to the appropriate United States or foreign government officials under an international agreement (see § 842.1(a) and Subpart K of this part).

§ 842.57 Foreign claims commissions.

(a) *General.* (1) Foreign claims commissions settle and pay claims against the United States which are presented for their consideration under this subpart or Subpart D of this part when such claims are within their monetary jurisdiction.

(2) In addition to commissions activated in foreign countries, a 3-man commission has been appointed in the Claims Division, Office of The Judge Advocate General, Headquarters USAF, and another 3-man commission is located at the Air Force Missile Test Center, Patrick AFB, Florida. These commissions permit processing and settling of claims arising out of specialized USAF activities outside the United States.

§ 842.58 Claims procedure.

(a) *Action by foreign claims commission.* (1) When a commission receives a claim and related investigation, it will consider the claim and determine how it should be processed for settlement. If necessary, the commission may conduct a further investigation or refer the claim to appropriate authorities for investigation. It may confer with the claimant, to

resolve or determine facts and, if deemed in the best interests of the United States and warranted by the factual situation, it may conduct a hearing and take testimony.

(2) Awards and settlement agreements will be expressed in the currency of the country where the incident occurred or where the claimant resides. An approximate dollar amount and the rate of exchange will be included in parentheses.

(b) *Settlement agreement.* On claims recommended for settlement for more than $5,000, an acceptance or settlement agreement will not be obtained from the claimant until after approval action by the appointing authority or the Secretary of the Air Force, as appropriate.

(c) *Payment.* Payment will be made in the currency of the country where the accident or incident occurred, or where the claimant resides, depending on the physical presence of the claimant at the time of payment.

(d) *Reconsideration.* Although the Foreign Claims Act provides that a settlement made by a commission shall be final and conclusive for all purposes, a commission composed of the original members may reconsider its own errors, or may reopen, reverse, or reconsider in whole or in part any claim decided by it. However, if there has been a change in the membership of a commission, the settlement action may be reconsidered only when new and material evidence is presented, or to correct manifest mistakes of fact, errors in calculation, or for fraud or collusion. On reconsideration, the opinion of a commission will state the reason for the reconsideration. In this connection, the General Accounting Office has held that a court judgment on a claim is not a sufficient basis for reconsideration.

§ 842.59 Settlement authority.

(a) *Claims for more than $15,000.* Claims not amended to an amount within the jurisdiction of a foreign claims commission nevertheless will be processed by a three-man commission and forwarded for action by the Secretary of the Air Force. If the Secretary of the Air Force considers that the claim is meritorious and would otherwise be cognizable under the Foreign Claims Act, he may:

(1) Refer the claim to a foreign claims commission for settlement in an amount not over $15,000, or

(2) After receipt of a settlement agreement in full satisfaction of the entire claim, certify the claim to Congress.

(b) *Claims for $15,000 or less.* (1) Such claims may be settled by a three-man foreign claims commission.

(c) *Claims for $1,000 or less.* (1) Unless specifically limited in the appointing orders, a one-man foreign claims commission has authority to settle claims presented for $1,000 or less. Claims for more than $1,000 not amended to an amount within its jurisdiction will be referred to an Air Force three-man commission designated by the appointing authority.

(2) Claims may be presented to foreign claims commissions which are not cognizable under this Subpart because the claimant is not an inhabitant of a foreign country. If these claims are cognizable under Subpart D of this part and are not for more than $1,000, they may be settled, subject to appeal to the Secretary of the Air Force, by any Air Force foreign claims commission if within its monetary jurisdiction.

§ 842.60 Emergency payments.

See § 842.18.

Subpart F—Admiralty Claims (10 U.S.C. 9801–9804, 9806)

§ 842.61 General.

This subpart governs procedures for settlement, payment, or compromise of claims for or against the United States, not the subject of pending litigation, which arise from marine accidents or incidents.

§ 842.62 Compromise settlements.

The Secretary of the Air Force and certain designees in the Office of The Judge Advocate General have authority to enter into negotiations with claimants and respondents and to effect the compromise settlement of claims, both in favor of and against the Government.

§ 842.63 Proper claimants.

(a) The general policy of waiving tort claims for damage by one department or agency of the Federal Government against another (explained in § 842.113) is followed unless the claim is payable by commercial underwriters or other private interests. However, certain classes of claimants are excluded in § 842.65.

(b) Subrogee claims (see § 842.71(c)) are cognizable under this subpart and Subparts G and H of this part to the extent subrogated. Claimants may file a claim jointly or separately. Joint claims must be asserted in the names of and signed by all parties, and payment thereof is made jointly. If separate claims are filed, payment to each party is limited to the extent of such party's undisputed interest.

Subpart G—Claims Against the United States

§ 842.64 Cognizable claims.

(a) *Settlement or compromise of claims against the United States for damage to or loss of property, or personal injury or death, caused by vessels of or in the service of the Department of the Air Force.* (1) Vessels: Air Force liability is limited to tort liability, and parallels the Government's liability under the Public Vessels Act.

(2) Personal injury or death: Claims based on personal injury or death of stevedores and other personnel who are not attached to the vessel constitute damage by a public vessel, and are subject to suit under the Public Vessels Act as well as being within the provisions of Subparts F through H of this part.

(b) *Settlement or compromise of claims for towage and salvage services (including contract salvage) rendered to vessels of or in the service of the Department of the Air Force when the net amount payable by the United States does not exceed $500,000.*

(1) Towage: Claims for towage services are subject to suit and also are within the purview of Subparts F through H of this part.

(2) Salvage:

(i) Subparts F through H of this part are limited to claims for compensation for salvage services rendered to vessels of or in the service of the Air Force.

(ii) Generally, the following elements must exist in order to constitute a valid salvage claim:

(*a*) A marine peril, not occasioned by the salvor, to a vessel or her cargo.

(*b*) Services of the salvor must be voluntary and not rendered in pursuance of any duty owed to the owner or to the property.

(*c*) The property or some portion of it must have been saved from the impending peril, or the service rendered must have contributed to such success.

(iii) The amount of salvage to be awarded cannot be reduced to precise values, but depends on consideration of all the circumstances of each case. In many instances, so-called salvage efforts amount only to a towing service.

(iv) A salvage contract is an agreement containing the conditions by which a vessel in distress accepts the proposed services of a salvor in return for remuneration. These agreements usually are made on the "no cure, no pay" basis. The amount of remuneration in event of success is definitely fixed, usually with a provision for arbitration of differences.

§ 842.65 Claims not cognizable.

(a) Claims for damage to or loss or destruction of property, or for personal injury or death, resulting from action by an enemy or resulting directly or indirectly from any act by United States Armed Forces engaged in combat or in immediate preparation for impending combat.

(b) Claims for personal injury or death of United States Armed Force members incurred incident to their service.

(c) Claims for personal injury or death of civilian employees of the United States to whom the Federal Employees' Compensation Act of September 7, 1916 (5 U.S.C. 751, et seq.) applies.

(d) Claims for damage to or loss or destruction of property or for personal injury or death caused by other than vessels of or in the service of the Department of the Air Force.

(e) Claims which have been made the subject of a suit by the United States, unless the suit is dismissed when payment is made (46 U.S.C. 786).

(f) Claims which have been made the subject of a suit against the United States.

(g) Claims cognizable under a status of forces agreement, such as NATO SOFA.

(h) Claims presented while litigation, commenced by the claimant and arising from the same accident or incident, is pending against the United States.

§ 842.66 Statute of limitations.

(a) Settlement of a claim presented under Subparts F through H of this part

must be authorized by the Secretary of the Air Force and accepted by the claimant before expiration of a 2-year period from the date of the origin of the cause of action; thereafter the cause of action ceases to exist and there is no authority to effect settlement administratively. Presentation of a claim or its consideration by the Department of the Air Force neither waives nor extends the 2-year limitation period.

(b) When a claim cognizable under Subparts F through H of this part or notice of intention to file such a claim is received, the receiving claims office will advise the claimant or potential claimant of the comprehensive application of this time limit.

§ 842.67 Settlement authority.

(a) *Claims against the United States for more than $500,000.* The Secretary of the Air Force may settle or compromise admiralty claims. However, claims which are settled or compromised for more than $500,000 must be certified to Congress for payment.

(b) *Claims against the United States for $500,000 or less.* The Secretary of the Air Force may settle or compromise and pay these claims.

(c) *Claims against the United States for $1,000 or less.* The Secretary of the Air Force has authorized certain officers in The Office of The Judge Advocate General to settle or compromise and pay these claims.

Subpart H—Claims in Favor of the United States

§ 842.68 Cognizable claims.

(a) Claims of a kind that are within the admiralty jurisdiction of a Federal District Court of the United States.

(b) Claims for damage caused by a vessel or floating object to property under the jurisdiction of the Department of the Air Force or property for which the Department has assumed an obligation to respond for damages, when the net amount payable to the United States does not exceed $500,000.

(c) Claims for towage or salvage services performed by the Department of the Air Force for any vessel in any amount.

§ 842.69 Claims in favor of the United States for $500,000 or less.

The Secretary of the Air Force may settle or compromise and receive payment.

Subpart I—Claims Under the Federal Tort Claims Act (28 U.S.C. 2671–2680)

§ 842.70 General.

This subpart governs administrative settlement and payment of claims against the United States that arise other than in a foreign country for damage to or loss of property, or for personal injury or death resulting from the negligent act or omission of Air Force military or civilian personnel while acting within the scope of their employment.

§ 842.71 Proper claimants.

There is no reference as such to claimants in the Act. However, other statutes and case law relate to the following:

(a) *Military personnel.* (1) The present state of the law is that military personnel who suffer personal injuries caused by the negligent acts of others in the service may recover if the injuries were "not incident to service;" there may be no recovery if the injuries were incurred "incident to service." The determinative fact in recent cases has not been whether the serviceman was on or off the military reservation at the time he was injured or killed, or whether he was at the time on pass, furlough, or leave, although those factors have a bearing on the ultimate question. It depends on whether his actions at the time were "in the course of activity incident to service."

(2) The Military Personnel Claims Act (see Subpart C of this part), however, is the exclusive remedy of a serviceman for virtually all incident to service property damage occurring anywhere in the world.

(b) *Dependents of military personnel.* Dependents may recover under the Act. Allied with the question of the right of military personnel to recover for their service-connected injuries is the question of whether dependents of military personnel may recover for injuries suffered as a result of alleged negligent medical treatment by service medical personnel.

(c) *Subrogees.* Subrogees are proper claimants under this subpart. When a claim has been wholly compensated by insurance, settlement will be made solely with the subrogated insurer. In cases of partial subrogation, separate claims may be presented by the insurer and insured or joint claims may be presented. However, the total amount of both claims may not exceed $2,500, the jurisdictional limit for administrative consideration.

(d) *Veterans.* This Act covers injuries sustained by veterans, provided such injuries do not arise out of or incident to military service.

(e) *Claimants excluded.* (1) Civilian employees: The Federal Employees Compensation Act (5 U.S.C. 751) is the exclusive remedy for civilian employees of the Department of the Air Force who suffer personal injury or death in the performance of duty.

(2) Military personnel suffering damage, injury, or death incident to service.

(3) Prisoners in Federal penal institutions.

§ 842.72 Cognizable claims.

(a) *Types of cognizable claims.* Claims caused by negligent or wrongful acts or omissions of military or civilian personnel while acting within the scope of their employment and 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.

(1) Employees: The Act provides that the Government is liable for damages caused by the negligent or wrongful acts or omissions of any "employee of the Government." Employees are defined as including "officers or employees of any Federal agency, members of the military or naval forces of the United States, and persons acting on behalf of a Federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation".

(2) Scope of employment: Acts or omissions of military and civilian personnel of the Department of the Air Force give rise to liability under this subpart only if they occur while military or civilian personnel are acting within the scope of their employment.

(3) Proximate cause: The claimant's damage or injury must be proximately caused by the negligent or wrongful act or omission of military or civilian personnel while acting within the scope of their employment under circumstances where the United States, if a private person, would be liable according to the law of the place where the damage or injury occurred.

(4) Basis and extent of liability:

(i) The law of the place where the act or omission occurred pertaining to proximate cause, contributory or comparative negligence, and to joint tortfeasors will be applied in determining liability. When there is a conflict between local law and an express provision of the Federal Tort Claims Act (28 U.S.C. 2671–2680), the latter governs.

(b) *Types of cognizable claims which are payable.* When claims for $2,500 or less are proximately caused by the acts or omissions of Air Force military or civilian personnel acting within the scope of their employment, payment is authorized for:

(1) Personal injury and death, as well as pain and suffering preceding death (see § 842.5).

(2) Damage to or loss of property, including:

(i) Real property used and occupied.

(ii) Personal property bailed to the United States under an expressed or implied agreement.

(c) *Types of cognizable claims which are not payable.* The United States may not be held liable for punitive damages.

§ 842.73 Claims not cognizable.

(a) Claims for more than $2,500, even though otherwise cognizable under this subpart, cannot be considered or settled administratively. All subrogated interests must be included in determining whether a claim exceeds $2,500.

(b) Claims arising from an act or omission of military or civilian personnel, exercising due care, in the execution of a statute or directive, whether or not such statute or directive be valid, or based on the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or a Government employee, whether or not the discretion involved be abused.

(c) Claims arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(d) Claims arising in respect to assessment or collection of any tax or customs duty, or detention of any goods or merchandise by any officer, of customs or excise or any other law enforcement officer.

(e) Claims for which a remedy is provided by 46 U.S.C. 741–799, relating to

claims or suits in admiralty against the United States.

(f) Claims arising out of an act or omission of any Government employee in administering the provisions of the Trading with the Enemy Act (50 U.S.C. App. 1–31).

(g) Claims for damages caused by the imposition or establishment of a quarantine by the United States.

(h) Claims arising from willful torts—assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, negligent or intentional misrepresentation, deceit, or interference with contract rights.

(i) Claims for damages caused by fiscal operations of the Treasury or by regulation of the monetary system.

(j) Claims arising from combat activities of military forces during time of war. It has been held that wartime target practice in training for combat is not a combatant activity.

(k) Claims arising in a foreign country.

(l) Claims for property damage, personal injury, or death of military or civilian personnel incurred incident to service.

(m) Claims arising from operations of a nonappropriated fund instrumentality unless arising from acts or omissions of military personnel while performing assigned military duties, and civilian employees paid from appropriated funds while performing official duties (see Subpart M of this part).

(n) Claims arising under the Federal Employees' Compensation Act (5 U.S.C. 751), or the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901) as made applicable to certain civilian employees of nonappropriated fund instrumentalities of the United States Armed Forces (5 U.S.C. 150k) under the Act of July 18, 1958 (5 U.S.C. 150k–1).

(o) Claims arising from activities of the Tennessee Valley Authority.

(p) Claims arising from activities of the Panama Canal Company.

(q) Claims arising from activities of a Federal Land Bank.

(r) Claims arising during periods of emergency.

(s) Claims arising from floods.

(t) Claims arising from the inherent risk in a given activity (e.g., taking a flight in a Government airplane), when the individual has accepted the inherent risk by signing a "covenant not to sue."

(u) Claims arising where the Government has taken an easement in air space over land, and passage of military aircraft over land seriously impaired its value for residential purposes.

(v) In the absence of specific statutory authority, claims involving damage to the property of U.S. Government departments or agencies.

(w) Claims presented while litigation, commenced by the claimant and arising from the same accident or incident, is pending against the United States.

§ 842.74 Statute of limitations.

(a) Claims must be presented in writing, within 2 years after they accrue.

(1) In computing time to determine whether the period of limitation has expired, exclude the first day and include the last day.

(b) If an administrative claim for $2,500 or less is presented, a suit may be filed in a U.S. District Court within 2 years after the claim accrues, or 6 months after notice of the final disposition of the claim is mailed to the claimant, or the claim is withdrawn by the claimant, whichever is later.

(c) Presentation of a claim for more than $2,500 within 2 years after it accrues will not extend the time within which a suit may be filed, nor permit administrative consideration of the claim, even though reduced to $2,500 or less more than 2 years after it accrues.

§ 842.75 Attorneys' fees.

The approving authority may, but only on written request made before the award by the claimant or his attorney, determine and allow reasonable attorneys' fees as part of the award. If the award is $500 or more, the fees shall not exceed 10 percent of the award. Fees shall be paid to the attorney representing the claimant out of, but not in addition to, the amount of the award.

§ 842.76 Settlement authority.

Claims for more than $2,500 cannot be administratively considered.

Subpart J—Property Damage Tort Claims in Favor of the United States (31 U.S.C. 71)

§ 842.77 General.

This subpart governs procedures for administrative determinations, assertion, and collection of claims for damage to or loss or destruction of Government property through a negligent act cr omission.

§ 842.78 Definitions.

(a) *Debtor.* An individual, partnership, association, corporation, or governmental body, foreign or domestic, other than an instrumentality of the United States against whom the United States has a claim.

(b) *Government property.* Real or personal property in the possession, custody, or control of the Air Force and its nonappropriated fund instrumentalities, or personal property on loan to the Air National Guard (see 32 U.S.C. 702 and 710), the Civil Air Patrol (see 10 U.S.C. 9441), or Air Force contractor-held or furnished property (see § 842.80 (a)).

§ 842.79 Assertable claims.

Unless otherwise prescribed, assertable claims comprise all tort claims for damage to or loss or destruction of Government property of more than $25—including claims for damage caused by negligent operation of privately owned vehicles by military or civilian personnel. Claims for lesser amounts may be included when assertion thereof is considered in the interest of the Air Force. However, claims will not be made against:

(a) Nonappropriated funds, as the interdepartmental waiver applies to claims against and in favor of these Federal activities (see § 842.113).

(b) Foreign governments unless specifically authorized by Headquarters USAF (AFJALD).

§ 842.80 Claims not assertable.

(a) Claims cognizable under contract, except when Air Force contract authorities determine that settlement cannot be made under the contract or such settlement would be too expensive.

(b) Claims cognizable under AFRs 176–8 (Protection of Assets), 147–20 (Insurance and Claims Procedures for CONUS Exchanges) or 147–21 (A & AFES Insurance and Claims Procedures for Oversea Exchanges).

(c) Claims cognizable under report of survey procedures. Reports of survey relate only to property accounting responsibility (pecuniary liability), and collection of any charges raised against individuals having command, supervisory, or custodial responsibility.

(1) Procedures in this subpart will apply when individuals who had property responsibility are relieved of accountability and responsibility under a report of survey and the evidence indicates that a third party may be liable in tort. This includes military or civilian personnel of the U.S. Armed Forces when the damage to Air Force property is caused by the negligent operation of their privately owned vehicles. It also applies to third party tort claims involving Air Force property on loan to the Air National Guard (32 U.S.C. 702, 710), the Civil Air Patrol (10 U.S.C. 9441), or to Air Force contractors when it is determined that settlement cannot be made under the contract or such settlement would be too expensive.

(d) Admiralty claims cognizable under Subparts F through H of this part.

§ 842.81 Statute of limitations.

Claims will be processed and asserted regardless of the passage of time from their accrual. Neither statutes of limitation nor laches are a defense in actions by the Government.

§ 842.82 Receipts.

The staff judge advocate, or any officer designated by him, may execute and deliver a receipt to a debtor who makes payment in full, or offers a compromise settlement.

§ 842.83 Releases.

When a debtor or his insurer tenders payment in full and demands a release, the commander or his staff judge advocate is authorized to accept payment and execute a release.

(b) When the repair of Government property is effected by the debtor or his insurer, and the repairs are certified by the officer having responsibility for such property as having returned the property to a condition equal to that which existed prior to the incident causing damage, the base staff judge advocate is authorized to execute a release.

(c) When Government property is on loan to the Air National Guard, Civil Air Patrol or Air Force contractor, the staff judge advocate at the base, station, or installation, nearest to the site where the property is ordinarily located, is authorized to accept payment and

execute a release. When the debtor or his insurer effects the repairs, a release may be executed if the appropriate United States Property and Fiscal Officer, Air Force-CAP Wing Liaison Officer, Air Force Plant Representative, or other qualified person certifies that the repairs have returned the property to a condition equal to that which existed prior to the incident causing the damage.

Subpart K—Claims Under the NATO Status of Forces Agreement

§ 842.84 General.

This subpart governs the law and procedure relating to investigating and settling or adjudicating certain claims under the NATO and Status of Forces Agreements—which define the rights and responsibilities of U.S. forces and civilian components stationed or located in certain foreign countries, and those of other contracting parties stationed or located in the U.S.

§ 842.85 NATO Status of Forces Agreement (U.S. as receiving State).

(a) The United States is responsible for investigating accidents or incidents and for processing claims arising from the acts or omissions in the United States, its territories, Commonwealth, and possessions of members of the forces or civilian components of parties to the Agreement Regarding the Status of Forces of Parties to the North Atlantic Treaty under the provisions of Article VIII thereof, and of military or civilian personnel assigned or attached to or employed by international military headquarters 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.

(b) Under the authority of the Secretary of Defense, the Secretary of the Army has designated the Claims Division, Office of The Judge Advocate General, Fort Holabird, Baltimore 19, Maryland, as the receiving state office for claims cognizable under the Agreement.

§ 842.86 Where to file claims.

A claim should be submitted to the commander of the Armed Forces installation nearest the place where the accident or incident occurred, but may be filed at any other such installation.

Subpart L—Air National Guard Claims (32 U.S.C. 715)

§ 842.87 General.

This subpart governs administrative settlement and payment of claims that arise for damage to or loss of property, or for personal injury or death resulting from the negligent act or omission of Air National Guard military or caretaker (air technician) personnel while acting under the provisions of Title 32, United States Code, within the scope of their employment or otherwise incident to Air National Guard noncombat activities.

§ 842.88 Proper claimants.

(a) All persons who suffer personal injury or death as a result of ANG activities, or their legal representatives, as outlined in § 842.89. Exception: If ANG military or air technician personnel suffer personal injury or death incident to their service, recovery is not allowed under 32 U.S.C. 715.

(b) Property owners or their representatives:

(1) Owner includes not only the record owner, but also others who stand in certain defined legal relationships to the record owner. Thus a claim may be submitted by a bailee, lessee, mortgagor, or conditional vendee. One who holds title only for purposes of security (e.g., conditional vendor) may not submit a claim (see § 842.11).

(2) Payment of a claim for property damage to the record owner of property bars payment of a claim for the same damage presented by one who has purchased the property under an executory agreement. However, every effort should be made to join all interested parties.

(3) An authorized agent or legal representative may present a claim in the name of the claimant. In such instances evidence of authority to act on behalf of the claimant should be contained in the file.

(4) Claims presented by air technicians for loss or damage to personal property as a result of Air National Guard activities will be settled under this subpart.

(c) Subrogees (also see § 842.71(c)):

(1) A claim for loss wholly compensated by an insurer will be settled only with the insurer. A claim for loss partially compensated by an insurer may be settled with the parties individually, as their respective interests appear, or jointly if the claim is so presented. When settlement is joint, a check for the approved amount will be made payable to the subrogor and subrogee and mailed to the latter. When claims of the subroger and subrogee, actual or potential, aggregate more than the monetary jurisdiction of the approving authority, settlement may not be made with either. Each of such claims received will be forwarded with the related file and comments to Headquarters USAF (AFJALD).

(2) An insured claimant will make detailed disclosure concerning his insurance coverage in his claim or in an attached statement, indicating:

(i) Insurer's name and address.

(ii) Kind and amount of insurance.

(iii) Insurance policy number.

(iv) Whether a claim has been presented to the insurer, and, if so, in what amount.

(v) Whether insurer has paid or is expected to pay the claim.

(3) Each insurer or other subrogee will substantiate his claim by appropriate documentary evidence showing that payment of the amount claimed or a larger amount has been made to or assumed on behalf of the insured or subrogor.

(d) Any state or state agencies, except the state maintaining the unit to which the ANG military person or air technician causing the accident or incident from which the claim arises is assigned or employed; counties; or municipalities.

(e) Claimants excluded:

(1) ANG military or air technician personnel who suffer personal injury or death incident to their service, or their legal representatives.

(2) ANG military personnel who suffer loss or damage to personal property for which a claim may be settled under Subpart C of this part.

(3) Other agencies or departments of the U.S. Government (see § 842.113). As a matter of policy, this concept has been extended to claims otherwise cognizable under this subpart.

§ 842.89 Cognizable claims.

(a) *Types of cognizable claims.* (1) Claims which arise from negligent or wrongful acts or omissions occurring while ANG miltiary or air technician personnel are acting within the scope of their employment under the provisions of 32 U.S.C. 316, 502–505, and 709, and 37 U.S.C. 301.

(2) Claims which arise incident to ANG noncombat activities under the provisions of Title 32, United States Code.

(3) Claims which arise from damage to or loss or bailed property.

(4) Claims which arise from damage to or loss of destruction of registered and insured mail while in the custody of authorized ANG military or air technician personnel.

(5) Claims which are enforceable under a lease or other contract may be settled under this subpart, if otherwise cognizable or under contract procedures, as deemed in the best interests of the United States. Settlement under contract procedures is preferable.

(b) *Proximate cause.* To be payable a claim for damage or injury must have been proximately caused by the act or omission of ANG military or air technician personnel or otherwise incident to ANG noncombat activities.

(c) *Contributory negligence.* Negligence or a wrongful act on the part of the claimant or his agents or employees acting within the scope of employment, in whole or in part the proximate cause of the incident, bars recovery.

(d) *Types of cognizable claims which are payable.* When claims are proximately caused by the activities set forth in paragraph (a) of this section, without contributory negligence on the part of the claimant, payment is authorized for:

(1) Personal injury or death, as well as pain and suffering preceding death (see § 842.5). The law permits recovery for loss of time, earnings, services, diminished earning capacity, permanent injury, physical disfigurement, anticipated medical expenses, and death benefits. However, allowable compensation will not include reimbursement for medical, hospital, or burial expenses furnished or otherwise provided at the expense of the United States.

(2) Damage to or loss of property, including:

(i) Real property used and occupied.

(ii) Personal property bailed to the ANG under an expressed or implied agreement, unless the owner has expressly assumed the risk of damage or loss.

(iii) Registered or insured mail in ANG possession.

§ 842.90 Claims not cognizable.

This subpart does not apply to a claim which arises:

(a) Before September 13, 1960.

(b) From combat activities of military forces during time of war or armed conflict.

(c) Wholly or partly from the negligent or wrongful act of the claimant, his agent, or his employee. The doctrine of comparative negligence is not applicable.

(d) For property damage occurring to, or injury or death of ANG military personnel incident to their service.

(e) For injury or death of an air technician and others cognizable under the Federal Employees' Compensation Act (5 U.S.C. 751), or the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901).

(f) In a foreign country and presented by a claimant to the authorities of a foreign country and final action is taken thereon under Article VIII of the NATO Status of Forces Agreement or other similar treaty or agreement.

(g) From a transaction purely contractual in nature.

(h) From private, as distinguished from ANG, transactions.

(i) Solely from compassionate grounds.

(j) For patent or copyright infringement.

(k) For war trophies, and articles intended directly or indirectly for persons other than the claimant or members of his immediate family—such as articles acquired to be disposed of as gifts or for sale to another—voluntarily bailed to the ANG, except registered or insured mail. No allowance will be made for any item when evidence indicates that the acquisition, possession, or transportation thereof was in violation of any regulation or directive.

(l) For precious jewels and other articles of extraordinary value, voluntarily bailed to the ANG, unless within the provisions of § 842.89(d)(2). Allowance for articles acquired by barter will not be more than the cost of the articles tendered in barter.

(m) From the taking of private real property by trespass resulting from the flight of aircraft.

(n) For claims cognizable under Subpart I of this part.

(o) For loss or damage to mail of any type in possession of the Post Office Department or a Military Postal Service (APO or FPO).

(p) Claims presented while litigation, commenced by the claimant and arising from the same accident or incident, is pending against the United States.

§ 842.91 Statute of limitations.

A claim may be settled under this subpart only if presented in writing within 2 years after it accrues, except that if it accrues in time of war or armed conflict, or if war or armed conflict intervenes within 2 years after it accrues, and if good cause is shown, the claim may be presented within 2 years after the cause ceases to exist.

(a) As used in this section, a war or armed conflict is one in which any U.S. Armed Force is engaged. Dates of commencement and termination of an armed conflict shall be established by concurrent resolution of Congress or by determination of the President.

(b) The claim must accrue in time of war or armed conflict, or war or armed conflict must intervene within the statutory period, if the period of limitation is to be extended. Further, good cause must be shown for any delay in excess of the statutory period.

§ 842.92 Settlement authority.

Claims for more than $5,000 are cognizable but cannot be administratively paid by the Air Force in excess of that amount. However, if the Secretary of the Air Force considers a claim meritorious and otherwise would be cognizable under this subpart, he may, after receipt of a settlement agreement in full satisfaction of the entire claim, pay the claimant $5,000 and report the excess to Congress for its consideration.

§ 842.93 Emergency payments.

See § 842.18.

Subpart M—Nonappropriated Fund Claims

§ 842.94 General.

This subpart governs administrative settlements and payment of: (a) Claims against nonappropriated fund instrumentalities arising out of acts or omissions of nonappropriated fund employees, or otherwise caused by a nonappropriated fund instrumentality, and (b) nonappropriated fund employees' personnel claims. It also provides for defense of lawsuits against such persons and instrumentalities, and authorizes processing of certain claims in favor of nonappropriated funds.

§ 842.95 Air Force policy.

All tort, tort-type, and personnel claims arising out of the operation of a nonappropriated fund instrumentality or from the authorized use of its property will be processed and settled in the manner authorized for similar claims against an appropriated fund activity, except as provided in this subpart. Substantiated claims against an instrumentality will be paid from nonappropriated funds or by an insurer, as appropriate.

§ 842.96 Tort and tort-type claims.

(a) *Commercially insured claims.* All such claims will be referred to the insurer for settlement. Under certain limited circumstances foreign claims covered by insurance may be settled under this subpart.

(b) *Claims not covered by commercial insurance*—(1) *Cognizable claims.* Claims arising out of the operation of a nonappropriated fund instrumentality, or from accidents or incidents involving acts or omissions of employees, members, participants, or authorized users of nonappropriated fund instrumentality property are cognizable and payable only from nonappropriated funds if they are caused by:

(i) Military personnel or appropriated fund civilian employees while performing part-time nonappropriated fund duties for which pay is being received from a nonappropriated fund instrumentality.

(ii) Off-duty participation of members, participants, or authorized users of nonappropriated fund recreational instrumentality property, such as the use of airplanes, boats, horses, hobby shops, etc., but excluding patrons of exchanges and theaters.

(iii) Civilian employees of nonappropriated fund instrumentalities while performing assigned duties.

(iv) Negligent condition or operation of nonappropriated fund interior premises as distinguished from facility construction or maintenance.

(2) *Claims not cognizable.* Claims payable from appropriated funds will not be considered, settled, or paid under this subpart.

§ 842.97 Personnel claims.

Claims of paid civilian employees of nonappropriated fund instrumentalities for damage or loss of personal property incident to their employment are cognizable under this subpart.

§ 842.98 Compensation claims.

(a) *Longshoremen's and Harbor Workers' Compensation Act.* (1) Paid civilian employees of nonappropriated fund instrumentalities employed within the continental United States, and paid nonappropriated fund employees outside the continental limits of the United States who are United States citizens or permanent residents of the United States or a territory, are covered by the provisions of the Longshoremen's and Harbor Workers' Compensation Act.

(2) Claims that are covered by the Longshoremen's and Harbor Workers' Compensation Act are the sole responsibility of the Bureau of Employees' Compensation, U.S. Department of Labor.

(b) *Local law or custom.* Employees who are not citizens of the U.S. or permanent residents of the U.S. or a territory, who are employed outside the continental United States by any nonappropriated fund instrumentality, are excluded from compensation coverage under the Longshoremen's and Harbor Workers' Compensation Act. However, disability or death benefits in accordance with local laws, customs, or treaties will be provided these employees through insurance or otherwise.

(c) *Other claims procedures.* Claims covered by insurance policies relating to employees covered under local laws, customs, or treaties are the responsibility of the insurer. These policies are required to contain provisions for settling claim disputes by arbitration.

(d) *Compensation benefits are exclusive remedy.* Benefits provided for compensated employees for disability or death resulting from accident or death arising out of an injury in the course of employment is provided by law to be the exclusive remedy against the United States or such instrumentality, and the decision of the arbitrator is final and conclusive.

§ 842.99 Customer complaints.

Although certain types of sales and service claims may properly fall in the category of tort claims, authority has been granted to local officers in charge of revenue-producing nonappropriated

fund instrumentalities to settle claims generated by their activities by a cash payment out of funds on hand, by additional service, or by replacement in kind from stock.

§ 842.100 Settlement authority.

Tort and tort-type claims payable from nonappropriated funds, except those settled as customer complaints, will be settled by the same approving authorities authorized to settle appropriated fund claims within the following limitations.

EXCEPTION: The Judge Advocate General, USAF, has authority to settle nonappropriated fund claims without regard to monetary limitations.

Subpart N—Civil Air Patrol Claims

§ 842.101 General.

This subpart governs procedures for processing certain administrative claims for and against the United States which arise out of CAP activities when their services are being used by the Air Force on specifically assigned operational missions under the direction of the Air Force, or when U.S. Government property is damaged by the CAP or a third party.

(5 U.S.C. 803 and 803a; 10 U.S.C. 2733, 2734, 9441 and 9801–9806; 28 U.S.C. 2671–2680; 31 U.S.C. 71; and 36 U.S.C. 201–208)

§ 842.102 Definition.

The CAP is a nonprofit civilian corporation established by law as a volunteer civilian auxiliary of the Air Force, which authorizes the Air Force to render certain limited assistance to it and accept and utilize its services in fulfilling the Air Force noncombat mission (see 10 U.S.C. 9441 and 36 U.S.C. 201–208). CAP senior members and cadets are members of a corporation, and are not Air Force military or civilian personnel within the meaning of Subpart C of this part. Nothing in this subpart shall be construed to confer military or veteran status on any person.

(5 U.S.C. 803 and 803a; 10 U.S.C. 2733, 2734, 9441 and 9801–9806; 28 U.S.C. 2671–2680; 31 U.S.C. 71; and 36 U.S.C. 201–208)

§ 842.103 Third party claims.

(a) *Cognizable claims.* Claims for personal injury, death, or property damage arising out of CAP accidents or incidents are cognizable under this Instruction if proximately caused by the CAP, acting under Air Force direction on a specifically assigned mission. This subpart will not be construed to create a bailment or loan to the Air Force of privately owned property.

(b) *Claims not cognizable.* (1) Reimbursement claims for the use of or depreciation to privately owned property used by the CAP, its senior members, or cadets on any mission specifically assigned by the Air Force.

(2) Indemnity claims for damage to or loss of privately owned property used on any mission specifically assigned by the Air Force, and resulting from acts or omissions of the owner or operator.

(3) Claims for personal services or expenses incurred by the CAP, its senior members, or cadets while engaged in any mission specifically assigned by the Air Force (see 10 U.S.C. 9441 for CAP-reimbursable expenses).

(4) Claims arising out of CAP accidents or incidents when the CAP is not under Air Force direction, or which occur outside the time limit prescribed for the mission specifically assigned by the Air Force.

(5) Claims based solely on Government ownership of property on loan to the CAP.

(c) *Processing tort-type claims.* CAP accidents, incidents, and claims will be investigated, settled and paid by approving authorities in the same manner as any other claim arising out of Air Force activities (see Subpart A of this part, and Subparts D through I of of this part).

(5 U.S.C. 803 and 803a; 10 U.S.C. 2733, 2734, 9441 and 9801–9806; 28 U.S.C. 2671–2680; 31 U.S.C. 71; and 36 U.S.C. 201–208)

§ 842.104 Compensation claims.

(a) *Coverage.* Compensation benefit claims by volunteer civilian CAP members (except CAP cadets) or their survivors for personal injury—including death and medical and burial expenses relating to such injury or death—are limited, and Federal law applies only in special situations. These claims are cognizable under the Federal Employees' Compensation Act and regulations of the Bureau of Employees' Compensation, U.S. Department of Labor.

(1) Included are claims that arise incident to active service, or travel to and from such service, rendered in performance or direct support of operational CAP missions under Air Force direction and under written authorization by competent authority covering a specific assignment and prescribing a time limit for such assignment.

(2) CAP cadets are specifically excluded from coverage under this law, but may be provided limited services while at encampments, including emergency hospital and medical care.

(b) *Presentation of claim and reports.* The claimant (member or survivor) and the local commander of the CAP unit (immediate superior) are responsible for initiating and submitting claims, and obtaining supporting documents required by the Department of Labor. To avoid reporting delays, Air Force civilian personnel officers, on request, will provide employee, supervisor, and medical "CA" forms, and assist the claimant and the CAP unit commanders in carrying out their responsibilities. However, reports, claims, and forms should be submitted to the appropriate office of the Bureau of Employees' Compensation through the local commander of the CAP unit concerned.

(c) *Responsibility for limited investigation.* CAP compensation claims are processed, investigated, and settled by the Bureau of Employees' Compensation. However, under law the Bureau of Employees' Compensation may request Air Force advice (Headquarters USAF, AFJALD) concerning the claimant's status and facts of the injury.

(5 U.S.C. 803 and 803a; 10 U.S.C. 2733, 2734, 9441 and 9801–9806; 28 U.S.C. 2671–2680; 31 U.S.C. 71; and 36 U.S.C. 201–208)

Subpart O—Other Claims

§ 842.105 General.

This subpart discusses a wide variety and category of claims that may be presented, some of which are cognizable under claims statutes and chapters of this Instruction. However, the majority of the claims either are not cognizable or not payable under claims statutes, but contain equitable aspects or elements of legal liability that warrant their consideration.

§ 842.106 Claims for reimbursement arising from industrial security regulations.

The Secretary of the Air Force has responsibility for processing claims for monetary restitution arising under the Industrial Personnel Access Authorization Review Program insofar as Air Force contracts are concerned. These claims are processed only in the Claims Division, Hq USAF. Any inquiries should be referred to Headquarters USAF (AFJALD).

§ 842.107 Air Force Reserve Claims.

(a) A claim by a member of the Air Force Reserve for damage or loss of personal property incident to his service (inactive duty training) will be processed and settled under Subpart C of this part.

(b) Claims for injury or death of Reserve personnel while engaged in training incident to their service are not cognizable under claims statutes, and will be processed under other procedures applicable in these cases.

(c) Claims of third parties for damage, loss, injury, or death arising out of the activities of members of the Air Force Reserve engaged in inactive duty training, whether for pay or not, will be processed and settled as any other claim against the Air Force.

§ 842.108 AFROTC Claims.

(a) Claims arising out of the activities of student members (cadets) of the Air Force Reserve Officers Training Corps (AFROTC) are the responsibility of the educational institution where enrolled, except when:

(1) Engaged in Air Force flight instruction or training camp duties, as distinguished from flight orientation.

(2) Their property is damaged or they are injured by Air Force personnel in the performance of official duty.

(b) Cognizable claims may arise when the Air Force transports these members to Air Force bases for physical examinations, orientation, and for other military purposes. Accordingly, if a student member is injured while being transported by a military department, his claim will be processed as any other claim under Subparts D or I of this part.

(c) The Federal Employees' Compensation Act has been extended (5 U.S.C. 802) to apply to disability or death claims of AFROTC members while:

(1) Engaged in flight instruction under Federal law.

(2) Performing authorized travel to or from or while attending a training camp under Federal law.

(d) Claims against the United States arising out of the military activities of USAF personnel assigned to AFROTC duty at educational institutions will be processed as any other claim against the Air Force.

§ 842.109 Post Office Department claims.

Reimbursement claims of the Post Office Department for APO losses or shortages in postal accounts, caused by unbonded Air Force military personnel designated as postal clerks or custodians, will be processed under 39 U.S.C. 712. These claims are presented on SF 1080, Voucher for Transfers Between Appropriations and/or Funds, to Headquarters USAF (AFJALD).

§ 842.110 Laundry and dry cleaning claims.

Claims involving Air Force Industrial Fund laundry and dry cleaning establishments will be processed by the Laundry Officer and the Claims Officer as provided in AFR 148–1 (Laundry and Dry Cleaning Services and Operations).

§ 842.111 Contract claims.

(a) Claims which arise from Air Force contracts, expressed or implied, ordinarily are covered under procurement regulations and are not payable under any section of this Instruction.

(b) However, in some cases an informal commitment cannot be regularized as a contract, or the claim cannot be settled or paid under contract procedures. In these circumstances, if otherwise cognizable, the claim may be processed under claims procedures after the appropriate procurement authority determines that the claim cannot be settled under contract procedures.

§ 842.112 Real estate claims.

Claims for rent, damage, and other payments involving the regular acquisition and disposition of real property or interest therein by and for the Air Force will be processed under contract and procurement procedures. These claims normally are not cognizable under any section of this Instruction.

§ 842.113 Government Department claims (interdepartmental waiver).

Tort or tort-type claims for damage to the property of one U.S. department or agency normally cannot be asserted against another U.S. department or agency.

§ 842.114 Meritorious claims act.

31 U.S.C. 236 authorizes the General Accounting Office to consider meritorious claims against the United States that are not subject to lawful adjustment. When a claim or demand, in the judgment of the Comptroller General of the United States, contains such elements of legal liability or equity as to be deserving of the consideration of Congress, he is authorized to submit it to Congress, with his recommendation thereon.

§ 842.115 Military rescue and assistance claims.

(a) *Fire Department claims.* These claims should be referred to the Air Force Accounting and Finance Center for referral to the General Accounting Office under 4 GAO 2015.10.

(b) *Ambulance claims.* If an unpaid claim of this type appears meritorious, it should be referred to Headquarters USAF (AFJALD), for appropriate action.

(c) *Sea rescue expense claims.* Such claims should be forwarded to the Air Rescue Service, Orlando AFB, Florida, 32813, for consideration.

(d) *Land rescue expense claims.* If the service was requested by Air Force authorities, or the claim otherwise is meritorious, the claim should be referred to Headquarters USAF (AFJALD), for appropriate action.

(e) *Air crew assistance.* Such claims may be referred to Headquarters USAF (AFJALD). Claims arising prior to September 26, 1947 will be referred to the Judge Advocate General, Department of the Army.

(1) The basis of previous payments of escape and evasion claims usually has been predicated on the expense to the claimant, and not the risk that he may have incurred in rendering assistance to U.S. airmen.

Subpart P—Hospital Recovery Claims in Favor of the United States (42 U.S.C. 2651–2653)

§ 842.116 General.

(a) The statute provides generally that in any case in which the United States is authorized or required by law to furnish hospital, medical, surgical, or dental care and treatment (including prothesis and medical appliances) to a person who is injured or suffers a disease after December 31, 1962 under circumstances creating a tort liability upon some third person to pay damages therefor, the United States shall have the right to recover from said third person the reasonable value of such care and treatment so furnished or to be furnished and shall as to this right be subrogated to any right or claim that the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors has against such third person to the extent of the reasonable value of the care and treatment so furnished or to be furnished.

(b) The President has provided by Executive Order No. 11060 of November 7, 1962 that the Director of the Bureau of the Budget shall determine and establish rates that represent the reasonable value of hospital, medical, surgical, or dental care and treatment (including prothesis and medical appliances) furnished or to be furnished.

(c) Except as to determination and establishment of rates as set forth in paragraph (b) of this section, the Executive Order provides that The Attorney General shall prescribe regulations to carry out the purpose of the Act. The Attorney General has promulgated regulations in accordance therewith which are set forth in 28 CFR 43.1–43.4. These regulations prescribe that in each case wherein hospital, medical, surgical, dental care or treatment is furnished a determination be made as to whether or not a third party is liable in tort, and thereupon assert a claim for the reasonable value of the injured parties hospitalization care and/or treatment. In addition, the individual receiving such medical or dental treatment is required to assign to the United States his claim or cause of action against the third person to the extent of the reasonable value of the care and treatment furnished or to be furnished; to cooperate in the prosecution of claims and actions by the United States; to notify the department concerned of any offer of settlement or the institution of suit against the third party. These regulations authorize the department concerned to accept the full amount of a claim and execute a release therefor in any amount, or to compromise and settle any claim where the amount claimed is $2,500 or less. Annual reports are required to be submitted to The Attorney General.

§ 842.117 Definitions.

(a) *Assertion of claim.* A demand on a third party tortfeasor for a sum certain determined to be the reasonable value of medical care.

(b) *Medical care.* Includes hospital, medical, surgical, or dental care and treatment (including prosthesis and medical appliances) furnished or to be furnished by the United States.

(c) *Reasonable value of medical care.* The value of the medical care furnished or to be furnished as a result of the injury or disease which gave rise to the claim determined only in accordance with rates prescribed by the Bureau of the Budget.

(d) *Base staff judge advocate.* The staff judge advocate of the base furnishing legal services to the United States Air Force medical facility furnishing medical care to the injured party. If medical care is provided in other than a United States Air Force medical facility, then the staff judge advocate of the Air Force base nearest to the location where the medical care was provided.

(e) *General courts-martial jurisdiction (GCM).* The command exercising general courts-martial jurisdiction over the organization of the base staff judge advocate.

(f) *Major air command.* The major air command to which the general courts-martial jurisdiction is assigned.

(g) *Injured party.* Any person who is furnished authorized medical care and does not personally or through his agent pay the existing rate for the same (see § 842.118).

(h) *Notice to tortfeasor.* Initial notice to apparent tortfeasor of intent to assert claim SF 96, "Notice of Claim".

(i) *Debtor.* An individual, partnership, association, corporation, or governmental body, foreign or domestic (other than an instrumentality of the United States or an employer of seamen treated under the provisions of 42 U.S.C. 249).

§ 842.118 Assertable claims.

Assertable claims comprise all claims which are based upon injuries or disease occurring after December 31, 1962 within the purview of this subpart for which medical care has been furnished by the Air Force without reimbursement, or for which the Air Force is the responsible sponsoring agent, under circumstances creating a tort liability upon some third person (other than or in addition to the United States). Subsistence charges, interservice rate, interagency rate or dependent rate for medical care are not considered as reimbursement for the purposes of this section.

§ 842.119 Claims not assertable.

(a) Claims for less than 2 days' hospitalization or for less than four outpatient definitive treatments unless:

(1) A property damage tort claim is to be asserted.

(2) A tortfeasor or his insurer requests a release from the United States as a condition precedent to payment of other damages to the injured party.

(b) Claims for medical care furnished by the Veterans Administration to an eligible veteran for a service-connected disability under the provisions of 38 U.S.C. 601–643.

(c) Claims against employers of seamen treated under the provisions of 42 U.S.C. 249.

§ 842.120 Statute of limitations.

The Act provides that the United States is subrogated to the right of the injured party. Accordingly, it is desirable that all actions be taken timely so as to preclude the running of any statute of limitations based on local law. As to actions to be brought in the name of the United States, it has been historically the position of the United States that no defense of statute of limitations or laches may be interposed. However, whenever a formal claim has not been asserted or if the claim has been asserted and has not been settled within 4 months prior to the running of the statute of limitations based on local law, the entire file will be forwarded to Headquarters USAF (AFJALD) with appropriate recommendations.

§ 842.121 Medical care furnished by other Federal medical facilities.

A Federal medical facility other than an Air Force medical treatment facility which gives definitive medical care at the expense of the Air Force to a person who has been injured or who has incurred a disease because of apparent third party tort liability, will submit a report thereof to the staff judge advocate of the Air Force base nearest to the facility rendering the care.

§ 842.122 Action by base staff judge advocate.

(a) Upon receipt of a report (AF Form 438 (Medical Care—Third Party Liability Notification)), the report will be reviewed and if it is incomplete every effort will be made to obtain the required supplementary information.

(1) Advise the injured party, his guardian, personal representative, estate, dependents or survivors that:

(i) A Power of Attorney and Assignment (SF 96–A) must be executed in triplicate assigning to the United States the claim or cause of action against the third person to the extent of the reasonable value of the care and treatment to be furnished, or any portion thereof. One copy of the executed SF 96–A will be retained by the party executing the same.

(ii) A full and complete written statement concerning the circumstances giving rise to injury, including name and address of all third parties and witnesses to the incident, must be furnished.

(iii) Complete information must be furnished the responsible staff judge advocate concerning any action instituted or to be instituted by or against a third person, any offer of settlement, and that no settlement with third person or his insurer should be made without the concurrence of the responsible staff judge advocate.

(iv) They are required by law to cooperate in the prosecution of all claims and actions by the United States against such third persons.

§ 842.123 Settlement authority.

The Secretary of the Air Force or his designees may accept the full amount of any hospital recovery claim found due the United States or compromise or waive any such claim not in excess of $2,500.

§ 842.124 Medical records.

Notwithstanding any provision of AFM 160–20 (Administration of Medical Treatment Activities), records as to medical history, diagnosis, findings, or treatment will be withheld from injured party or other party claiming through such injured party until the SF 96–A is properly executed. Subsequent to the proper execution of SF 96–A, such records may be released in accordance with AFM 160–20 upon the approval of the appropriate staff judge advocate.

Subpart Q—Claims Incident to the Use of Government Property Not Cognizable Under Any Other Law (10 U.S.C. 2736; Public Law 87–769)

§ 842.125 General.

This subpart governs the administrative processing, settlement, and payment of claims against the United States for damage to or loss of property, or for personal injury or death, incident to the use of Government property by Air Force military or civilian personnel, not cognizable under any other law.

§ 842.126 Definitions.

(Other terms used in this subpart are explained in Subpart A of this part.)

(a) *Civilian official or employee.* Any civilian employee of the Air Force receiving pay from appropriated funds at the time of the incident which resulted in the claim. It does not include other persons covered under § 842.1(e), such as local hire or wage rate indigenous employees assigned to the Air Force for duty by foreign countries, prisoners of war, interned enemy aliens, employees of the Air National Guard and nonappropriated fund instrumentalities, Red Cross personnel, CAP members and cadets, or other volunteer workers.

(b) *Member of the Air Force.* All Air Force military personnel (see § 842.1(d)).

(c) *Vehicle.* For purposes of this subpart only, every description of carriage or other artificial contrivance used or capable of being used as a means of transportation on land (see 1 U.S.C. 4).

(d) *Property of the United States.* Any property under the jurisdiction of the United States, including vehicles.

§ 842.127 Proper claimants.

(For purposes of this subpart only):

(a) *General.* Except as limited herein and by § 842.1(d), any person may present a claim under this subpart.

(b) *Claimants excluded.* (1) Military personnel who suffer private property damage, injury or death incident to their service (including their heirs and legal representatives) who receive benefits under any other Federal law.

(2) Civilian employees of the United States who suffer personal injury or death in the performance of duty and receive benefits under the Federal Employees Compensation Act (5 U.S.C. 751), and Department of Defense and military department employees when their property damage or loss occurred incident to their service and they receive payment under 10 U.S.C. 2732.

(3) Claimants subrogated to or assigned the rights of another.

(4) Inhabitants of foreign countries whose claim arose in a foreign country (see Subpart E of this part).

(5) Claimants who obtained their rights under an indemnifying law or indemnity contract.

§ 842.128 Cognizable claims.

The following types of claims must be settled under the sections indicated, rather than under this subpart: Willful damage and depredation claims, Subpart B of this part; personnel claims, Subpart C of this part; Military Claims Act claims, Subpart D of this part; foreign claims, Subpart E of this part; admiralty claims, Subparts F through H of this part; tort claims, Subpart I of this part; international agreement claims, Subpart K of this part; ANG claims, Subpart L of this part; and nonappropriated fund claims, Subpart M of this part.

(a) *Types of cognizable claims*—(1) *General.* Any claim against the United States, not cognizable under any other provision of law, arising on or after October 9, 1962, that is timely presented by a proper claimant for damage to or loss of property, real or personal, or for personal injury or death, caused by Air Force military or civilian personnel or officials either:

(i) Incident to the use of a vehicle of the United States at any place; or

(ii) Incident to the use of any other property of the United States on a Government installation.

(2) *Outside scope.* A claim is cognizable if the act or omission of Air Force military or civilian personnel was outside the scope of their employment, pro-

vided it is not cognizable under other settlement authority (see Subpart E of this part). This includes, in appropriate cases, the unauthorized use of Government property (including its vehicles), as well as a substantial deviation from assigned duties.

(3) *Within scope.* A claim is cognizable if the act or omission of Air Force military or civilian personnel was within the scope of their employment, provided it is not cognizable under other law. This includes, in appropriate cases, the authorized use of Government property (such as weapons) when claims resulting from their use are not cognizable under any other law (28 U.S.C. 2672, 2680).

(b) *Proximate cause.* To be payable, a claim for damage, injury, or death must have been proximately caused by the act or omission of Air Force military or civilian personnel.

(1) Proximate cause refers to the immediate or motivating cause, involving a natural and continuous sequence unbroken by an effective intervening cause.

(2) If the proximate cause of an accident or incident is the joint or concurrent tortious act or omission of Air Force military or civilian personnel and of one or more persons other than the claimant, his agent, or employee, the claim is payable except to the extent, if any, already paid by or on behalf of such other person or persons.

(3) Acts or omissions constituting mere conditions without the existence of which an incident could not have occurred, and which are not a proximate cause of the damage or injury for which claim is made, are not proper bases for payments under this subpart, even if the law of the situs forbids the acts or omissions concerned. However, local law ordinarily will control questions of proximate cause, imputed negligence, and family purpose doctrine.

(c) *Claimant's negligence.* A negligent or wrongful act on the part of the claimant, his agent, or his employee, in whole or in part, which is the proximate cause of the incident, bars recovery. It is immaterial that the law of the situs follows the comparative negligence doctrine. Negligence or contributory negligence of the claimant bars payment of a claim, as determined by the facts and the law.

(d) *Payment requirement.* No claim will be paid under this subpart unless the amount tendered is accepted by the claimant in full satisfaction.

§ 842.129 Claims not cognizable.

The following types of claims and elements of damage are excluded (see also § 842.14(d)):

(a) A claim cognizable under any other provision of law or this part.

(b) A claim for damages for personal injury or death, or elements of damage incident thereto. However, this does not preclude the payment of the cost of reasonable medical, hospital, and burial expenses actually incurred.

(c) A claim for medical, hospital or burial services furnished or paid by the United States.

(d) A claim not presented in writing for a sum certain within 2 years after it accrues.

(e) A claim for property damage, personal injury, or death caused wholly or partly by the negligent or wrongful act of the claimant, his agent, or his employee.

(f) Subrogated claims.

(g) A claim or any part thereof, the amount of which is legally recoverable by the claimant under an indemnifying law or indemnity contract.

(h) Attorney fees; and no effort will be made to fix such a fee in connection with the settlement of a claim.

§ 842.130 Statute of limitations.

No claim may be allowed or paid under this subpart unless it is presented in writing within 2 years after it accrues.

§ 842.131 Settlement agreement.

A settlement agreement is required before any payment, even though tendered in the full amount claimed.

§ 842.132 Settlement authority.

Claims for more than $1,000 may be considered but cannot be administratively approved or paid in excess of that amount.

PART 843—STATUTORY REIMBURSEMENT FOR LAND

Subpart A—Reimbursement to Owners and Tenants of Land Acquired by the Department of the Air Force Pursuant to Public Law 534, 82d Congress

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843.56 Conditions of reimbursement.
843.57 Payment.

Subpart A—Reimbursement to Owners and Tenants of Land Acquired by the Department of the Air Force Pursuant to Public Law 534, 82d Congress

AUTHORITY: The provisions of this Subpart A issued under sec. 401, 66 Stat. 624, as amended.

§ 843.1 Statutory provisions.

The Secretary of the Air Force is authorized, to the extent he determines to be fair and reasonable, under regulations approved by the Secretary of Defense, to reimburse the owners and tenants of land to be acquired for any public works project of the Department of the Air Force for expenses and other losses and damages incurred by such owners and tenants, respectively, in the process and as a direct result of the moving of themselves and their families and possessions because of such acquisition of land, which reimbursement shall be in addition to, but not in duplication of, any payments in respect of such acquisition as may otherwise be authorized by law: *Provided*, That the total of such reimbursement to the owners and tenants of any parcel of land shall in no event exceed 25 per centum of the fair value of such parcel of land as determined by the Secretary of the Air Force. No payment in reimbursement shall be made unless application therefor, supported by an itemized statement of the expenses, losses, and damages so incurred, shall have been submitted to the Secretary of the Air Force within one year following the date of such acquisition or within one year following the date that the property is vacated by the applicant, whichever date is later. The authority for reimbursement of owners and tenants for moving costs conferred by this subsection shall be in addition to but not in duplication of authority contained in subsection 501(b) of the act of September 28, 1951 (65 Stat. 365) for the reimbursement to owners and tenants of land acquired pursuant to authorization in said act.

NOTE: Regulations implementing subsection 501(b) of the act of September 28, 1951 (65 Stat. 365) are contained in Subpart B of this part. "*Provided, further*, That with respect to land acquired subsequent to July 27, 1954 but prior to July 15, 1955, reimbursement shall be restricted to those owners and tenants who used such land for residential or agricultural purposes."

§ 843.2 Definitions.

(a) *The act.* Public Law 534, 82d Congress, approved July 14, 1952.

(b) *Owner.* Any owner of land who moves himself, his family, or his possessions because of acquisition of his land for any public works project of the Department of the Air Force.

(c) *Tenant.* One who under proper authority uses or occupies land and who moves himself, his family, or his possessions because of acquisition of such land for any public works project of the Department of the Air Force.

(d) *Land to be acquired for any public works project.* Acquisition by the Department of the Air Force of any interest in land required for military purposes, except industrial installations not within the boundaries of an authorized multiple ownership project being acquired under circumstances similar to those involved in the normal acquisition of property for an airfield, camp or reservoir.

(e) *Industrial installations.* Any unit of real property which when acquired by the United States is being used or is useful for the production of materiel, munitions and supplies or for industrial research and development.

(f) *Date of acquisition.* The date on which title to land being acquired vests in the United States or the date on which the temporary term commences if a possessory interest only is being acquired.

(g) *Date of vacating.* The date on which an owner or tenant moves himself, his family, and his possessions subsequent to January 1, 1958, from land acquired on or subsequent to July 14, 1952.

(h) *Fair value.* The value of the land as determined in accordance with Department of the Air Force appraisal procedure.

§ 843.3 Scope.

Pursuant to the provisions of the act, reimbursement may only be made to the extent determined fair and reasonable for items of expense and other losses and damages incurred by owners or tenants in the process and as a direct result of the moving of themselves and their families and possessions. The types of reimbursable items and non-reimbursable items described in paragraphs (a) and (b) of this section are not intended to be exclusive.

(a) *Types of reimbursable items.* (1) Moving expenses, such as costs of transportation, insurance, crating and uncrating.

(2) Temporary storage expenses.

(3) Expenditures for obtaining new site or land such as cost of appraisals, surveys, and title searches, where such expenses are normally borne by the purchaser. This does not include any part of the purchase price for the new site or any expenditures for the purpose of adding to the value or utility of the new site.

(b) *Types of non-reimbursable items.* (1) Costs of conveying property to the Government.

(2) Consequential damages or losses, such as loss of good will, loss of profits, loss of trained employees, or expenses of sales and losses because of such sales.

§ 843.4 Delegation.

Authority is delegated to the Chief of Engineers, Department of the Army, and such officers and employees of the Corps of Engineers as he may designate and are approved by the Secretary of the Air Force, to perform all functions and make all determinations which are authorized to be performed by the Secretary of the Air Force with respect to reimbursement under the provisions of section 401(b) of the act.

§ 843.5 Filing of application.

All applications for reimbursement must be delivered to or mailed to the appropriate Division or District Engineer, Corps of Engineers, Department of the Army within one year from the date of acquisition or within one year from the date that the property is vacated by the applicant, whichever date is later. Applications must be supported by an itemized statement of the expenses, losses, and damages incurred for which reimbursement is requested.

§ 843.6 Limitation of amount of payment.

The act provides that the total amount of reimbursement to all owners and tenants of any parcel of land shall not exceed 25 per centum of the fair value of such parcel of land. In the event that the approved amount of reimbursement for all owners and tenants exceeds 25 per centum of the fair value of the land, each applicant will receive the same proportion of the 25 per centum of the fair value as the approved amount for each application is of the total amount approved for all applications.

§ 843.7 Conditions of reimbursement.

In determining whether reimbursement will be made and the extent and amount thereof, consideration will be given to the following:

(a) Reimbursement shall not be made unless and until reasonable proof of the expenses or other losses and damages incurred, in the form of receipts therefor or the next best evidence thereof when receipts are not available, have been submitted.

(b) Reimbursement shall not be made to the extent the applicant's negligence, or wrongful act has contributed to the amount of the expenses, losses or damages.

(c) Reimbursement shall not be made for any expenses, losses or damages which were allowed in establishing the compensation paid or to be paid for the interest acquired in the land.

§ 843.8 Payment.

Appropriate action will be taken to accomplish payment in accordance with prescribed procedure and regulations. Reimbursement will be made from funds appropriated to the Department of the Air Force pursuant to any act authorizing military public works projects for the Department of the Air Force, to the extent available.

Subpart B—Reimbursement to Owners and Tenants of Land Acquired by the Air Force Pursuant to Public Law 155, 82d Congress

AUTHORITY: The provisions of this Subpart B issued under sec. 501, 65 Stat. 365, as amended.

§ 843.50 Statutory provisions.

The Secretary of the Air Force is authorized, to the extent he determines to be fair and reasonable, to reimburse owners and tenants of land acquired by the Air Force pursuant to the provisions of Public Law 155, 82d Congress, for expenses and other losses and damages incurred by such owners and tenants, respectively, in the process and as a direct result of the moving of themselves and their families and possessions because of such acquisition of land, which reimbursement shall be in addition to, but not in duplication of, any payments in respect of such acquisition as may otherwise be authorized by law: *Provided,* That the total of such reimbursement to the owners and tenants of any parcel of land shall in no event exceed 25 per centum of the fair value of such parcel of land as determined by the Secretary of the Air Force. No payment or reimbursement shall be made unless application therefor, supported by an itemized statement of the expenses, losses and damages so incurred shall have been submitted to the Secretary of the Air Force within one year following the date of such vacating (sec. 501(b), Pub. Law 155, 82d Cong.): *Provided, further,* That with respect to land acquired subsequent to July 27, 1954, but prior to July 15, 1955, reimbursement shall be restricted to those owners and tenants who used such land for residential or agricultural purposes.

§ 843.51 Definitions.

(a) *The act.* Public Law 155, 82d Congress, approved September 28, 1951.

(b) *Owner.* Any owner of land, who moves himself, his family, or his possessions because of acquisition of his land pursuant to the act.

(c) *Tenant.* One who under proper authority uses or occupies land and who moves himself, his family, or his possessions because of acquisition of such land pursuant to the act.

(d) *Acquisition pursuant to the act.* Acquisition by the Air Force of any interest in land for any project authorized by the act.

(e) *Date of vacating.* The date the owner or tenant moves himself, his family and his possessions.

(f) *Fair value.* The value of the land as determined in accordance with Air Force appraisal procedure.

§ 843.52 Scope.

Pursuant to the provisions of the act, reimbursement may only be made to the extent determined fair and reasonable for items of expenses and other losses and damages incurred by owners or tenants in the process and as a direct result of the moving of themselves and their families and possessions. The types of reimbursable items and non-reimbursable items described in paragraphs (a) and (b) of this section are not intended to be exclusive.

(a) *Types of reimbursable items.* (1) Moving expenses, such as costs of transportation, insurance, crating and uncrating.

(2) Temporary storage expenses.

(3) Expenditures for obtaining new site or land such as cost of appraisals, surveys, and title searches, where such expenses are normally borne by the purchaser. This does not include any part of the purchase price for the new site or any expenditures for the purpose of adding to the value or utility of the new site.

(b) *Types of non-reimbursable items.* (1) Costs of conveying property to the Government.

(2) Consequential damages or losses, such as loss of good will, loss of profits, loss of trained employees or expenses of sales and losses because of such sales.

§ 843.53 Delegation.

Authority is delegated to the Chief of Engineers, Department of the Army, and such officers and employees of the Corps of Engineers as he may designate and are approved by the Secretary of the Air Force, to perform all functions and make all determinations which are authorized to be performed by the Secretary of the Air Force with respect to reimbursement under the provisions of section 501(b) of the act.

§ 843.54 Filing of application.

All applications for reimbursement will be filed with the appropriate Division or District Engineer, Corps of Engineers, Department of the Army, for forwarding to the Chief of Engineers for final action. Such applications must be

delivered to or mailed to such Division or District Engineer within one year from the date of vacating and must be supported by an itemized statement of the expenses, and the losses and damages incurred and for which reimbursement is requested.

§ 843.55 Limitation of amount of payment.

The act provides that the total amount of reimbursement to all owners and tenants of any parcel of land shall not exceed 25 per centum of the fair value of such parcel of land. In the event that the approved amount of reimbursement for all owners and tenants exceeds 25 per centum of the fair value of the land, each applicant will receive the same proportion of the 25 per centum of the fair value as the approved amount for each application is of the total amount approved for all applications.

§ 843.56 Conditions of reimbursement.

In determining whether reimbursement will be made and the extent and amount thereof, consideration will be given to the following:

(a) Reimbursement shall not be made unless and until reasonable proof of the expenses or other losses and damages incurred, in the form of receipts therefor or the next best evidence thereof when receipts are not available, have been submitted.

(b) Reimbursement shall not be made to the extent the applicant's negligence, or wrongful act has contributed to the amount of the expenses, losses or damages.

(c) Reimbursement shall not be made for any expenses, losses or damages which were allowed in establishing the compensation paid or to be paid for the interest acquired in the land.

§ 843.57 Payment.

Appropriate action will be taken to accomplish payment in accordance with prescribed procedure and regulations. Reimbursement will be made from funds appropriated to the Department of the Air Force pursuant to the act, to the extent available.

PART 844—TAXATION, LEGAL AND ADMINISTRATIVE ACTIONS, AND LEGAL PROCESS

Sec.

844.1 When and how to report a suit, action, or proceeding.
844.2 Government representation of an Air Force contractor.
844.3 Government representation of an individual; employment of private counsel.
844.4 Civil suits, actions, and proceedings in foreign countries.
844.5 Lawsuits under the Federal Tort Claims Act.

AUTHORITY: The provisions of this Part 844 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 844.1 When and how to report a suit, action, or proceeding.

Except in tax disputes, the person or command involved will submit an initial teletype or telegraphic report direct to The Judge Advocate General, Headquarters USAF, Washington, D.C., 20330, immediately upon receipt of notice of the institution of a suit, action, or proceeding.

§ 844.2 Government representation of an Air Force contractor.

If an Air Force contractor requests Air Force representation, the following written agreement, signed by an official representative of the contractor, is required:

REQUEST FOR GOVERNMENT REPRESENTATION

The undersigned hereby requests the Attorney General of the United States to designate counsel to defend on behalf of the undersigned the action entitled:

It is agreed that the assumption by the Attorney General of the defense of said action does not alter or increase the obligations of the United States under United States Contract No. ----------. It is further agreed that such representation will not be construed as a waiver or estoppel of any rights which any interested party may have under said contract.

§ 844.3 Government representation of an individual; employment of private counsel.

This section implements 28 U.S.C. 2679 b, c, d, and e, and 28 CFR 15.1–15.4. It applies only to civil actions and proceedings commenced as a result of accidents or incidents occurring on or after March 21, 1962.

(a) When lawsuits filed against Air Force military or civilian personnel arise out of the performance of their official duties, such persons may request Government legal representation through The Judge Advocate General, USAF. The request must be made in writing by the defendant. The Government will not be responsible for expenses of private counsel without special authorization.

(b) When Air Force military or civilian personnel are sued as the result of operation of any motor vehicle while acting within the scope of their office or employment:

(1) The person sued shall promptly deliver to the Staff Judge Advocate furnishing legal services to his organization:

(i) All process and pleadings served on him, or an attested true copy thereof.

(ii) All other information regarding the accident or incident out of which the lawsuit arises.

§ 844.4 Civil suits, actions, and proceedings in foreign countries.

The provisions of the proceeding sections of this part are fully applicable and will be adhered to in civil proceedings initiated in foreign countries. The foregoing includes any suit or proceeding in which the United States, although not named as party defendant, has an interest such as by virtue of an obligation under international agreement to share the expense of any judgment finally awarded. In addition, the following policies and procedures will be observed:

(a) *Initiation of proceedings and service of process.* United States Government agencies and instrumentalities in foreign countries (e.g., military units and installations, base exchanges, open messes, military missions, etc.) lack judicial personality under United States law. Under established concepts of international law, such Government activities of the United States are not subject to civil proceedings or service of process in foreign countries. Claims nominally against such activities are in legal fact claims against the United States and, except as to proceedings against United States personnel arising out of performance of official duties (see § 844.3), the United States is the only proper party defendant or respondent in any foreign civil proceedings. Further, the only United States activity specifically designated and authorized to receive and accept service of foreign process is the United States embassy or diplomatic mission within the country concerned, and such service normally is accomplished through diplomatic channels.

(1) Suits against the United States: Any writ, summons, notice of legal proceeding, or other foreign civil process served upon or otherwise delivered to an Air Force officer, employee, or activity will be referred immediately upon receipt to the staff judge advocate, who will return the document to the issuing authority with a suitable statement respectfully and tactfully explaining the lack of authority of the person or activity to accept service on behalf of the United States, and suggesting that service or delivery be made upon the United States embassy or diplomatic mission through established channels. Exceptions to this procedure are not authorized other than upon prior approval from The Judge Advocate General, USAF, and clearance from the Chief of the United States Diplomatic Mission in the country concerned.

(2) Garnishment and attachment proceedings: The United States and its agencies and instrumentalities are not subject to garnishment orders or money attachment proceedings in foreign countries aimed at wages or other funds due and payable by the United States to alleged or adjudicated debtors of the parties on whose behalf garnishment or attachment is attempted.

(i) Any writ, order, or petition for garnishment or money attachment served upon or otherwise delivered to an Air Force officer, employee, or activity will be referred immediately upon receipt to the staff judge advocate, for return to the issuing authority as outlined in subparagraph (1) of this paragraph. Concurrently with the return of process, the staff judge advocate will advise the foreign court or other agency concerned that, without prejudice to the immunity of the United States from foreign suit or process, the United States military authorities will be pleased to cooperate with the local authorities concerned to the extent of furnishing advance notification of the date, time, and place of payments made to the debtor, thereby enabling the creditor to pursue his remedies under local law directly against the debtor.

(b) *Cooperation with foreign counsel.* Staff Judge Advocates will cooperate with foreign counsel retained by the Department of Justice to represent United States interests by providing required information and evidence.

(c) *Communication with Department of Justice.* Foreign counsel are retained, instructed and paid by the Department of Justice; communication with that Department concerning litigation will be by retained counsel.

§ 844.5 Lawsuits under the Federal Tort Claims Act.

By statute, service of the summons and complaint in these actions is on the United States Attorney and by registered mail on The Attorney General.

SUBCHAPTER E—SECURITY

PART 850—SAFEGUARDING CLASSIFIED INFORMATION

Sec.

850.1 Dissemination.
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850.28 Interim Secret clearances—immigrant aliens.
850.29 Foreign national employees of contractors.

AUTHORITY: The provisions of this Part 850 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 850.1 Dissemination.

Requirement for access: Knowledge or possession of classified information is permitted only to persons who need it to do their job. No one has a right to classified information solely by virtue of his rank or position. The responsibility for determining whether or not a person's duties require access to classified information rests with the official having custody of the classified material. This requirement applies to all classified information.

§ 850.2 Industrial security program.

To be effective, the security program must provide protection for classified information entrusted to contractors as well as that held only by the Government. Therefore, an information security system and program have been established by the Department of Defense to safeguard classified information entrusted to DoD contractors and their employees. The Industrial Security Program, given effect by the execution of a Security Agreement between DoD and the contractor, establishes security requirements and access authorization procedures which are similar to those that apply in the Air Force, but which have been adapted to the operating requirements of industry, educational institutions, research activities, and consultants. The security procedures that contractors must follow are set forth in the DoD Industrial Security Manual for Safeguarding Classified Information (ISM); and the security and procurement responsibilities of the Air Force in relation to the DoD Industrial Security Program are set forth in AFR 205–4 (Armed Forces Industrial Security Regulations) and supplemented in this part. Familiarity with those provisions is required any time a procurement action is proposed or undertaken which involves the release of classified information to a contractor or his employees, which requires the contractor or his employees to have access to classified information, or which will result in developing or producing information or material that will be assigned a classification.

§ 850.3 Assignment of classification.

The provisions of Executive Order 10501, as implemented in the DoD directives and this part, apply only to official information of the United States Government and do not extend to privately-owned information. Therefore, the assignment of a defense classification to privately-owned information is not authorized. Normally, AFR 11–30 (Custody, Use and Preservation of DoD Official Information Which Requires Protection in the Public Interest) provides the means for withholding from public release privately-owned information entrusted to the Air Force when its release would be contrary to the public interest. However, the Patent Secrecy Act of 1952 (35 U.S.C. 181–188) provides one means whereby the Government can enjoin the public release of privately-owned information (see § 850.12).

§ 850.4 Declassification for public release.

Release by the office of primary responsibility: Classified information approved for public release must be declassified before it is released. Persons who cancel or approve the cancellation of the classification or information, and simultaneously approve its release to the public, must take action to notify each addressee to whom he transmitted the material, regarding change or cancellation of classification, as soon as possible. When the release involves a weapon system for which a System Program Office has been established, the command having primary system management responsibility must also be notified. The issuance of timely declassification notices is necessary to preserve the effectiveness and integrity of the security classification system, and to conserve Air Force resources.

§ 850.5 Espionage law notation.

A classified document furnished to a DoD contractor, or to any other person or activity outside the Executive Branch, shall bear the following additional notation at least once:

> This material contains information affecting the national defense of the United States within the meaning of the Espionage Laws (Title 18, U.S.C., sections 793 and 794), the transmission or revelation of which in any manner to an unauthorized person is prohibited by law.

§ 850.6 Authorized dissemination.

(a) (1) *DoD contractors.* Persons and other legal entities, such as educational, scientific, and industrial organizations, may be authorized access to classified information if it is required for the negotiation or performance of a DoD contract and they have been determined to be trustworthy pursuant to AFR 205–4.

(2) *Other persons and entities.* Persons and legal entities, other than those described in subparagraph (1) of this paragraph, may be authorized access to classified information only if they must have it to perform a function which, in the judgment of the releasing official, will be in the interest of promoting national defense; they have been determined to be trustworthy; and they can and will protect the information adequately. These provisions apply to educational, scientific, and industrial organizations not acting in the capacity of DoD contractors; to officials and agencies of a State or of a Federal agency not part of the Executive Branch; and to private persons.

NOTE: For any purpose not stated in subparagraph (2) of this paragraph, problems involving dissemination to private persons or activities should be solved by declassification, rather than by expanding authorized access to classified matter.

(b) *Non-DoD information.* Classified information possessed by the Department of Defense but originated by another Federal department or agency shall be disseminated outside DoD only with the consent of the originating agency. The one exception to this rule is provided by section 102, National Security Act of July 26, 1947 (50 U.S.C. 403), which authorizes the Director of Central Intelligence to correlate and to evaluate intelligence relating to the national security, and to provide for the appropriate dissemination thereof within the Government.

NOTE: A contracting agency possesses a proprietary interest in information originated in connection with one of its contracts. Therefore, for classification and dissemination purposes, information originated by a contractor in connection with a Government contract is considered to have been originated by the contracting Government department or agency.

§ 850.7 Determining requirement for access.

(a) *Policy.* Knowledge or possession of classified information is permitted only to persons to whom the information is essential in order to perform their duties in the interest of national security. No one has a right to have access to classified information solely by virtue of his rank or position; if a person does not need the information to perform his officially assigned duties, he shall not be given access to it.

(b) *Applicability.* The prerequisites for dissemination, and the authority to disseminate, vary according to the status of the intended recipient. A person or organization can, and frequently does, have more than one status; for example:

(1) One person can be a Reserve officer, a Government employee, and a private citizen, and

(2) An organization or person can be a contractor or consultant to the Government, and a contractor to a nongovernmental enterprise. In all such cases, the following rules apply:

(i) Before approving a release of classified information, the releasing official must determine the status or capacity in which the intended recipient is acting in connection with each proposed release or dissemination of classified information.

(ii) The basis for dissemination, and the authority to approve it, as provided in §§ 850.6 through 850.10, vary according to the intended recipient's status in relation to the proposed release. Thus, for example, if the recipient is acting in the capacity of a DoD contractor, §§ 850.6 (a)(1) and 850.9(f) would apply; if the same recipient is acting in a private capacity, §§ 850.6(a)(2) and 850.9(h) would apply.

§ 850.8 Dissemination for personal or private use.

Classified information shall not be released for private use (personal or commercial, or as background material). Any person who requests classified information for such use is considered a "private individual." His request shall not be approved even though he may have been partly or solely responsible for production of the information. This rule applies to requests from military personnel on active duty or in retired status, members of the Reserve Forces, and civilian officials, as well as other individuals.

§ 850.9 Dissemination and disclosure authority.

(a) *To other U.S. Government personnel and agencies.* Unless otherwise provided in §§ 850.6 through 850.10, designated officials are authorized to make or to approve dissemination to other departments, agencies, branches, and personnel of the U.S. Government. Each such release shall be made through the normal channels of communication established between the Air Force and the department or agency concerned, and the release shall be reviewed for propriety and desirability at each intervening Air Force element.

(b) *To Congress.* All requests by the Congress or its committees or members for classified information will be referred to the Secretary of the Air Force (Director of Legislative Liaison, SAF–LL) according to AFR 11–7 (Air Force Relations with Congress).

(c) *To General Accounting Office (GAO).* Authority and procedures for disclosing classified information to GAO representatives are prescribed in AFR 11–8 (Air Force Relations with the General Accounting Office).

(d) *For litigation purposes.* Requests or subpoenas for the appearance of witnesses before civil tribunals or for classified information to be used in connection with litigation will be acted upon as directed in Part 840, Subchapter D of this chapter.

(e) *To the Renegotiation Board.* By agreement between the Department of Defense and the Renegotiation Board, certain appropriately cleared and specifically designated personnel of the Renegotiation Board are authorized to have access to DoD classified information, provided such access is necessary in connection with the official functions of the Renegotiation Board. Lists of Renegotiation Board personnel certified to the Department of Defense for such access are revised at least annually, and are distributed to major air commands concerned. Inquiries about these provisions or lists should be sent through channels to Hq USAF (AFISL–3), Washington, D.C., 20333.

NOTE: The functions of the Renegotiation Board are specified in the Renegotiation Act of 1951 (Public Law 9, 82d Congress); in addition, certain powers, functions, and duties of the Secretary of Defense are delegated to the Renegotiation Board by DoD Directive 4105.16.

(f) *For procurement, research, and development purposes*—(1) *General limitations.* Knowledge or access to classified information shall be permitted to bidders, contractors, or grantees only when it is essential to the accomplishment of a function which is necessary in the interest of promoting the national defense.

(2) *Dissemination authority.* The major air command responsible for the negotiation, award, or administration of a contract for the procurement of materiel, supplies, or services is authorized to disseminate the classified information and material which is essential to the performance of the contract. The major air command having responsibility for the project involved in a procurement action is also authorized to disseminate classified information and material which is essential to the performance of the project. In addition, the Commanders, Air Force Systems Command and Office of Aerospace Research, are authorized to disseminate classified information and material to the extent necessary for the successful fulfillment of the objectives of the grantee and long-range planning program. The Commander, Defense Documentation Center, is authorized to disseminate classified information and material to the extent provided in DoD Directive 5100.36, provided the need for the information in a specific field of interest has been certified by the contracting officer or project office concerned.

(3) *Safeguarding requirements.* Classified information and material disseminated according to subparagraph (2) of this paragraph shall be permitted only to persons or activities participating in the DoD Industrial Security Program as the result of the negotiation of a DoD Security Agreement (DD Form 441). Prior to dissemination, it must be ascertained (according to AFR 205–4) that the proposed recipient has an appropriate and current facility security clearance and the capability to safeguard the classified material. (See §§ 850.16 through 850.25 for further details on the industrial security program.)

(g) *To foreign nationals.* Classified defense information will not be furnished or disclosed to any foreign national except as stated in this paragraph:

(1) *Foreign governments and their representatives.* The Assistant Chief of Staff, Intelligence, Hq USAF, is responsible for developing and implementing Air Force policy relating to the disclosure of classified defense information to foreign governments and international organizations. Pertinent instructions are contained in AFR 200–9 and AF–DCMI 1956 (Department of the Air Force document, Disclosure of Classified Military Information to Foreign Governments).

(i) Orders or written instructions which attach foreign nationals to installations or permit them to visit installations or contractors will: (*a*) Authorize their access to military information, and (*b*) specifically identify the classification category and subject matter of any classified information that may be disclosed. Commanders and chiefs of offices must restrict access to military information by foreign nationals to that specifically authorized.

(ii) When release of classified material is authorized, the method of transmitting classified material to a foreign government or to its designated representative must be one that is authorized by this part. In addition, and regardless of the classification category of the information, a receipt shall be obtained; the Receipt for Documents Released to Accredited Representatives of Foreign Nations (AF Form 349) shall be used for this purpose.

(2) *Foreign contractors.* See § 850.21.

(3) *Foreign national employees of the Air Force.* See AFR 205–10 (Security Policy on the Use of Non-U.S. National Employees).

(4) *Foreign national employees of contractors.* See AFR 205–6 (Personnel Investigations, Security Clearances and Access Authorizations).

(5) *Other foreign nationals.* These provisions apply to foreign nationals other than those described in subparagraphs (1) through (4) of this paragraph. The disclosure of classified information to foreign nationals or foreign organizations acting in a private (i.e., nongovernmental) capacity is not authorized. Requests from, or proposals to disclose classified information to such

individuals or organizations shall be sent through normal command channels to Hq USAF (AFNICBB), Washington, D.C., 20330, for action or disposition.

NOTE: When appropriate in the interest of promoting national defense, AFNIN will initiate action so that the prospective recipient is officially sponsored by his government, whereupon the provisions of subparagraph (1) of this paragraph will apply.

(6) *Reports of disclosures to foreign visitors.* When a visit report is specifically requested by Hq USAF, commanders shall send through channels to Hq USAF (AFNICBB) a report on foreign nationals who visit their installations and who have access to classified information under Air Force control or jurisdiction. Similarly, when a foreign national visits a contractor's facility and has access to Air Force classified information pursuant to paragraph 3–103*h*, AFR 205–4, and 28*h*, ISM, the cognizant security office shall, when a visit is requested, obtain the necessary information from the contractor and forward a report through channels to Hq USAF (AFNICBB). The major air command that indorses the report shall review it for completeness and accuracy, and shall determine whether the disclosures were within the policy referred to in subparagraph (1) of this paragraph. When requested, a similar report shall be submitted by chiefs of Hq USAF offices on the directorate and higher levels regarding visits by foreign nationals to their offices. Reports must reach Hq USAF within 20 days after the completion of the visit. Each report will include:

(i) Name, official position, and nationality of each visitor.

(ii) Specific authority for visit. (If the visit was authorized by Hq USAF, the USAF authorization number will be quoted; if authorized by a major air commander, quote the specific authority upon which the commander's action was based.)

(iii) A brief of what was shown, discussed, explained, and refused.

(iv) Highest classification of the information authorized for disclosure, and the highest classification of the information disclosed.

(v) Any remarks the reporting officer believes of importance in the final evaluation of the report.

(h) *For historical research.* All requests by persons outside the Executive Branch of the Government for access to classified information required in connection with historical research projects shall be forwarded through channels to the Office of Information (SAF–OI), OSAF, Washington, D.C., 20330, for action.

§ 850.10 Visits to Air Force installations and activities.

(a) *Restrictions on movements of visitors.* To protect classified information, the commander must restrict the movement of visitors entering his installation. Visitors authorized to have access to classified matter will be accompanied by the commander, or his representative, who has been informed of the restrictions placed upon the visitor.

(b) *Visits by DoD contractor personnel.* Requests for visit approval are prepared by DoD contractors and their personnel in accordance with the DoD Industrial Security Manual.

(c) *Visits by other personnel.* Requests for the approval of a visit involving access to classified information shall be submitted early enough to allow time for consideration, decision, and reply by the approving authority. The requests shall include the following information, as applicable:

(1) Name in full, grade, title, position.

(2) Nationality of visitor (immigrant aliens will furnish alien registration number), date, and place of birth.

(3) Current residence or military assignment.

(4) Employer or sponsor.

(5) Name and location of installation or activity to be visited.

(6) Date, time, and duration of visit.

(7) Purpose of visit, in detail.

(8) Level of classified access authorized and name of authority granting access authorization (if clearance has previously been granted).

§ 850.11 General rules for safeguarding.

(a) *Location of meetings.* Because of the security hazards inherent in the use of any normally-public meeting place for the presentation or discussion of classified information, classified meetings or classified sessions of a meeting shall, whenever possible, be held only on a U.S. Government installation or at a cleared facility of a DoD contractor. The only exception that may be made to this rule is a meeting at which information classified no higher than Confidential is to be disclosed or discussed may be held at other locations provided: (1) An adequate U.S. Government installation or a cleared DoD contractor facility is not available, and (2) it has been specifically authorized in writing at numbered air force or comparable or higher level.

(b) *Attendance by foreign nationals.* The following provisions apply only to meetings in which classified information is to be discussed or disclosed at one session or more.

(1) Foreign nationals of countries outside the Sino-Soviet Bloc may be approved for attendance at an Air Force conducted meeting provided such attendance is individually and specifically authorized in accordance with § 850.9 (g) (1).

(2) Representatives of Sino-Soviet Bloc countries shall not normally be authorized to attend any session, or any other portion, of a meeting conducted by an Air Force activity. However, when the attendance of such individuals at an unclassified session appears to be desirable, a request for approval of such attendance shall be submitted through channels to Hq USAF (AFNICB), where action will be taken in accordance with DoD Directive 5200.12. Such requests shall include: the names of the individuals, the dates on which attendance is desired, the subject matter scheduled for presentation, the location of the meeting, and the subject titles of scientific, technical, or other papers scheduled for presentation by foreign nationals. In any case, those so approved shall be excluded without exception from all classified sessions, presentations, and displays.

(c) *Individual activities.* Military and civilian personnel shall not include classified information in any personal or commercial article, presentation, thesis, book, or other product written for commercial publication or public distribution.

(d) *Use to preclude inadvertent disclosure.* If the sender or the recipient of a classified document determines that its anticipated handling or distribution renders it liable to inadvertent disclosure to a foreign national at a given unit or location, he shall apply the special handling notice described in paragraph (e) of this section. (The need for this would arise when a classified document is sent to a headquarters or unit to which foreign nationals are assigned or attached, or when it is sent to the U.S. element of an international pact headquarters or organization.)

(e) *Special handling notice.* When a determination is made, it shall be annotated appropriately to reflect that decision. The abbreviation "NOFORN" may be used when appropriate. In other cases, the following special handling notice shall be used:

> SPECIAL HANDLING REQUIRED
>
> NOT RELEASABLE TO FOREIGN NATIONALS
>
> The information contained in this document will not be disclosed to foreign nationals or their representatives.

§ 850.12 Patent Secrecy Act.

The Patent Secrecy Act of 1952 (35 U.S.C. 181–188) provides that if, in the opinion of the Atomic Energy Commission, the Secretary of Defense, or the head of another designated Executive department or agency, the publication or disclosure of an invention by the granting of a patent therefor would be detrimental to the national security, the Commissioner of Patents shall order that the invention be kept secret and shall withhold the grant of a patent for such period as the national interest requires, and shall so notify the applicant. DoD Directive 5535.2 delegates to the Secretaries of the Army, Navy, and Air Force the authority to make such determinations on behalf of the Secretary of Defense. Patent applications on which secrecy orders have been imposed, and the substance of the information they contain, shall be handled in the Air Force as follows:

(a) *Official information.* A defense classification can be assigned only to official information. If a patent application contains official information which requires protection under Executive Order 10501, the information shall be assigned a defense classification. In this case, the document shall be marked and safeguarded as prescribed by this part for its assigned classification, with special attention given to the requirements for marking individual paragraphs.

(b) *Private information.* If the patent application does not contain official information, the following procedures shall be used:

(1) The information shall be withheld from public release; its dissemination within the Air Force shall be severely limited; and the applicant shall be instructed not to disclose it to any unauthorized person. Documents containing the information shall be afforded secure storage, and the document shall be transmitted, if transmission is necessary, in double covers by U.S. Registered or Certified mail.

(2) Ordinarily, the document need not be marked in any way. However, when it is necessary or desirable to inform or to warn the intended recipient that the information is the subject of a secrecy order issued pursuant to the Act of 1952, instructions should be included in a covering letter of transmittal substantially as follows:

> The attached material contains information relating to a patent application on which secrecy orders have been issued by the U.S. Patent Office after determination that its publication or disclosure would be detrimental to the national security. See the Patent Secrecy Act of 1952, 35 U.S.C. 181–188.
>
> In view of this determination, the attached material affects the national defense within the meaning of the espionage laws (18 U.S.C. 793–794). Its transmission or revelation in any manner to an unauthorized person is prohibited by law.

When necessary, however, documents and material containing the information in the patent application may also be marked with a shorter notice as follows:

> Withheld under the Patent Secrecy Act of 1952 (35 U.S.C. 181–188)

(c) *Foreign registration.* When a patent application, on which secrecy orders have been issued, is approved for registration with a foreign government under the provisions of the Act of 1952 and agreements on the interchange of patent rights and technical information for defense purposes, additional considerations are involved. In such cases, action must be taken to invoke the protection of the foreign government's national security system. Therefore, the copies of the patent application prepared for foreign registration (but only those copies) shall be marked on the bottom of each page with a notation specifying the degree of protection (Secret or Confidential) as determined by the Armed Services Patent Advisory Board. For example:

> Withheld under the Patent Secrecy Act of 1952 (35 U.S.C. 181–188). Handle as:
>
> SECRET

§ 850.13 Transportation of classified material.

(a) *Shipments protected by Government or contractor escort via commercial carrier within the United States.* Top Secret, Secret, or Confidential material may be shipped within the continental U.S., and within (but not between) Alaska, Hawaii, a U.S. possession, or the Commonwealth of Puerto Rico, by any commercial carrier that is approved by the appropriate regulatory authority (e.g., I.C.C., C.A.B., etc.) or by the appropriate military commander within the Commonwealth of Puerto Rico or a U.S. possession, provided:

(1) For shipments made by an Air Force contractor or subcontractor, the classified material is kept under the continuous protection of appropriately cleared military or civil service personnel or, when specifically authorized by the Air Force contracting officer, the continuous protection of appropriately cleared employees of the contractor or subcontractor involved.

(b) *Shipments protected by commercial carrier in the United States*—(1) *Limitation on categories and types.* Top Secret material, registered cryptomaterial, and certain Atomic Energy Restricted Data shall not be shipped by commercial carrier without being protected by an authorized courier, and by guards if necessary. Other Secret and Confidential material may be shipped wholly within the continental U.S., Hawaii, Alaska, the Commonwealth of Puerto Rico, or a U.S. possession, as provided in paragraphs (c) through (e) of this section, without U.S. Government or contractor escort.

(c) *Air carriers.* (1) Confidential material may be shipped by commercial airline under these conditions:

(i) Hand-to-hand receipting is required from the time the shipment leaves the hands of the consignor until delivered to the consignee; and

(ii) The airline must provide constant security measures to protect the material (including periods that the material is in flight, grounded in transit, awaiting transit, and awaiting pickup by, or delivery to, consignee). Commanders must make advance arrangements to make sure that the carrier is informed of the necessary protection and agrees in writing to provide it. However, such bilateral arrangements need not be made when a shipment is routed via a carrier referred to in subparagraph (2) of this paragraph.

(2) The Rule 6.10 commercial air carrier signature service referred to in AFM 75–1, which is provided only by certain participating commercial airlines, meets the security requirements necessary for the shipment of Confidential material. While the shipments in subparagraph (1) of this paragraph may not be transferred by one airline to any other carrier, consignors may route a shipment of Confidential material via more than one airline participating in the Rule 6.10 service.

(d) *Motor carrier.* Confidential material may be shipped by commercial truck, including a tractor-trailer combination, or by commercial bus, subject to the following:

(1) The carrier shall be required to have his employees protect the shipment constantly. Security measures must include continuous direct surveillance over the shipment, over the vehicle, or over any storage facility that is used.

(2) The material involved shall be prepared for shipment so as to protect classified information from view.

(e) *Railway freight.* Confidential material may be shipped by railway frieght either in a closed car or on an open car. Prepare the material for shipment so as to protect classified information from view. If an open car is used, shipping containers and uncrated materiel must be suitably locked or sealed to the car.

NOTE: External features of classified materiel that do not reveal classified information need not be covered, provided the materiel is always under proper supervision and control to prevent unauthorized access to or disclosure of the classified internal features.

§ 850.14 Precluding unauthorized inspection or access to classified shipments by State authorities.

(a) *General.* Within the United States and its territories and possessions, the transportation or shipment of classified material by or for the Federal Government, and the protection of such classified material while in transit, constitute a Federal function. As such, the function is exempt from control or unreasonable interference by representatives of State or local governments (hereafter referred to, for convenience, as "State authorities"). In performing this function, the Federal Government may act through its own agents, officers, enlisted personnel, or employees, using its own vehicles and equipment; or it may act through a contractor and contractor employees, including a commercial carrier. Regardless of the means used, it remains a Federal function and, although the technical rules applicable in each instance may vary, the practical effect remains the same: unless authorized by the Federal Government, officers or agencies of a State may not lawfully search or inspect shipments of classified material transported by or on behalf of the Federal Government.

(b) *Extent and limitations on the immunity and rights of personnel accompanying classified shipments.* (1) Any person (military, civil service employee, or contractor employee) properly detailed to guard, or to guard and transport, a shipment of classified material has the legal right and responsibility to protect such material from inspection or access by any and all unauthorized persons, including State authorities and their officers or employees. In his protecting and securing of such classified material, he may use such force at his command as is reasonable to a prudent man under the circumstances.

(2) The foregoing would not preclude an authorized representative of the Federal Government from making an otherwise lawful search (although by interdepartmental agreements they usually refrain from such searches). Further, the immunity from search or inspection by State authorities does not preclude State agents from stopping and, in appropriate instances, arresting drivers and other attending personnel for misconduct or other violations of State law arising through acts in excess of their authority or not a part of their official duties.

(c) *Rules governing shipments.* To some extent, the technical rules applicable to various shipments of classified material will differ, depending on whether shipment is being effected by Government vehicle or by a commercial carrier or other contractor.

(1) Shipment by Government vehicle: The shipment of classified material by military or civil service personnel in a Government vehicle is a function which carries all of the Federal sovereign immunities outlined in paragraphs (a) and (b) of this section.

(2) Shipment by commercial carrier or contractor: Generally, commercial carriers or contractors do not have the sovereign immunities of the Federal Government as such. Thus, within limits, a State may regulate and control the activities of contractors and commercial carriers operating within its boundaries. However, the extent to which State authorities may regulate or control a commercial carrier or contractor transporting classified material is limited to that which would not unreasonably impede or defeat the purpose of the contract with the Government. Thus, for example, a State may properly require compliance with vehicle licensing laws, vehicle automotive inspection laws, drivers' licensing laws, vehicle weight laws, and other requirements for the operation and maintenance of vehicles on public roads. However, where a contractor or commercial carrier has been employed by the Federal Government to transport and keep secure classified material, a State does not have a legal right to search or inspect such classified shipments if the effect would be to subject the classified material to compromise, as the security of the classified material is the very essence of the performance required by the Federal Government. In such instances, therefore, the carrier or contractor is under no legal obligation to submit the classified material to search or inspection by State authorities, but he has the legal right and responsibility as the agent of the Federal Government to protect and secure the classified material in his custody.

(3) Use of firearms: Guard and escort personnel are never required by this part to bear firearms for the protection of classified information, nor should they be required to bear arms solely for that purpose. However, when required for reasons other than the protection of classified information, or when the responsible commander deems it necessary, he may require the use of armed guards for the protection of material under his jurisdiction. Military and civil service personnel are authorized to be armed as deemed necessary without regard to State laws concerning weapons, so long as the individual remains within the scope of his orders on wearing and using arms. Such personnel, however, must comply with the provisions of Federal law when applicable. Commercial carrier personnel and contractor personnel bearing arms in the accomplishment of the shipment of classified material do so under the authority and control of both State and Federal laws which apply. The commercial carrier or contractor is responsible for arranging any necessary permits in this regard.

(d) *Instructions for personnel accompanying classified shipments*—(1) Commanders responsible for the shipment of classified material shall insure that personnel accompanying each shipment are properly instructed concerning their rights and responsibilities in the protection of that shipment. In particular, such personnel shall be advised that, in dealing with State authorities, the display or use of arms or physical force should be avoided if at all possible short of compromising the classified material. State and local governments have as great and as patriotic an interest in the national defense as the Federal Government; therefore, in most instances, classified shipments can be protected from unauthorized access, search, or inspection by State authorities if the personnel accompanying the shipment explain the nature of the shipment to the State representatives, exercise good judgment and common-sense, and produce proper identification. When necessary, however, personnel accompanying the shipment should call for assistance from the nearest military agency, and should the need arise, they may relinquish custody of the shipment to representatives of the nearest U.S. military agency or to representatives of any other appropriate Federal agency.

(2) Instructions to personnel accompanying shipments of classified material shall be in written form, and shall include, in addition to the requirements of subparagraph (1) of this paragraph: (i) Provisions for contacting the nearest military establishment if the classified shipment is detained for any reason; (ii) provisions for insuring the maintenance of custody and the prevention of compromise of the classified material in the event of accident, arrest arising from a violation of State law, or other comparable situations; and (iii) a formal notice for presentation to any person or agency attempting to interfere with the shipment, reading substantially as follows:

> You are hereby placed on notice that this is a classified shipment by the Federal Government, and that this shipment is immune and exempt from search or inspection by any unauthorized persons, including State authorities.

The notice must be prepared to show its official nature, origin, applicability, and duration. This shall be accomplished by: preparing the notice on official letterhead stationery signed by the commander responsible for the shipment (or his designee), and bearing the organizational seal if one is available; specifying in the notice the shipment or transaction to which it applies; stating the approximate inclusive dates of the shipment or transaction; and invalidating the notice on the terminal date of the shipment.

NOTE: In the case of classified shipments containing explosives or other dangerous articles, the instructions in this section apply in addition to those prescribed in chapter 216, AFM 75-2 (Military Traffic Management Regulation). In case of accident, fire, or comparable situations involving classified shipments of explosives or other dangerous articles, the interest of the public safety shall transcend the responsibility to preclude access, thereby permitting access by firefighting, demolition, or other emergency personnel as necessary.

§ 850.15 Visits to DoD contractor facilities.

Visits to DoD contractors involving access to Restricted Data in their custody shall be processed as prescribed in AFR 205-4 unless the DoD contractor is also an Atomic Energy Commission contractor. In the latter case, if the visit would also involve access to the Restricted Data pertaining to the AEC contract, the prescribed access and visit procedures shall apply.

§ 850.16 Industrial Security Manual.

The Industrial Security Manual for Safeguarding Classified Information (ISM) is a Department of Defense publication which contains detailed security rules for bidders and contractors in the United States, including firms in the United States which perform classified contract work in foreign locations. The manual is made applicable to a bidder by execution of the Department of Defense Security Agreement (DD Form 441), and to a contractor by including a security requirements clause in the contract.

§ 850.17 Contracting and security responsibility.

(a) *Retention and recovery of classified material.* (1) The contracting officer is responsible for prompt, positive action to recover all classified material released or produced in connection with a bid, proposal, or contract, except that which has been destroyed in accordance with paragraph 14, ISM, or that which the contractor has specifically been authorized to retain pursuant to paragraph 5k, ISM. The PCO is responsible for this action in the case of a bid or proposal. The ACO is responsible for the action upon the completion or termination of a contract.

(2) When a contracting officer authorizes a contractor to retain classified material under the authority given in paragraph 5k, ISM, he shall furnish a list or description of the material and a copy of the authorization to the cognizant security office concerned. In addition, when he authorizes such retention, the contracting officer retains a residual responsibility, in accordance with paragraph 1-308, AFR 205-4, for appropriate classification actions in regard to the classified information involved, and for recovering the material at the end of the authorized retention period. This responsibility continues until the classified information has been destroyed, declassified, or recovered in accordance with subparagraph (1) of this section.

§ 850.18 Facility clearances and personnel access authorizations.

(a) *Facility security clearances.* A facility security clearance is an administrative determination that a facility is eligible, from a security viewpoint, for

access to classified information of the same or lower category as the clearance granted. Classified information may be disclosed only to organizations which have executed a DoD Security Agreement (DD Form 441) and which have been granted a facility security clearance. A facility security clearance may be granted to meet (1) a Government need, or (2) the need of a Government contractor who intends to negotiate a classified subcontract. When a PCO has a requirement to enter into precontract negotiations involving the disclosure of classified information, or to award a classified contract, he shall submit to the appropriate cognizant security office a request for the issuance of a facility security clearance. The ACO shall take similar action when a contractor has a requirement to enter into precontract negotiations with a subcontractor involving the disclosure of classified information, or to award a classified subcontract. In addition, when the PCO is aware of a future classified procurement need, and believes that undesirable delays will result if he waits until he is ready to start precontract negotiations before initiating facility security clearance action, he may submit the request for a clearance of any facility that is capable of and interested in filling that procurement need.

(b) *Granting facility security clearances.* Only those facilities located in the 50 States, the District of Columbia, U.S. possessions, or Puerto Rico may be granted facility security clearances.

(c) *Personnel access authorizations.* Contractor personnel requiring access to classified defense information may be granted access authorizations in accordance with the instructions contained in AFR 205–6. That regulation also contains instructions on the suspension, denial, or revocation of access authorizations for contractor personnel.

§ 850.19 Contracts performed on installations.

(a) The Air Force Procurement Instruction requires that each classified contract contain as a minimum a security clause requiring the contractor to apply the principles of his Security Agreement (DD Form 441) for the purpose of safeguarding classified information. The contractor is bound by this requirement regardless of where the contract is performed. However, security matters pertaining to Air Force installations are not governed by the ISM or AFR 205–4. Therefore, the following instructions apply to classified contracts which require performance on Air Force installations. With the exception of paragraph (d) of this section (which applies only to installations located in the United States, U.S. possessions, or Puerto Rico), this section applies to all Air Force activities, world-wide.

(b) Installation security support: When classified contracts are to be performed on an installation, the commander thereof shall normally be required to provide certain security support to the contractor in order to insure effective and economical protection of classified material in possession of the contractor, as well as to insure integration, to the extent appropriate, of the contractor's security operations with those of the installation. The extent and nature of the support to be provided should be determined by agreement between the project command, contracting command, and the installation commander, and may include such items as physical security, storage facilities for classified material, and the use of the installation's facilities for transmission and accounting for classified material.

(c) Security supervision functions: The commander responsible for security supervision shall require the contractor to report to the installation commander any occurrences, incident to the contractor's on-base operation, which involve espionage, sabotage, or subversive activity; or the compromise or suspected compromise of classified information. These reports will be in addition to those the contractor must make to his cognizant security office, pursuant to paragraph 6, ISM.

(d) Limitation on facility security clearances: A facility security clearance will not be granted for contractor operations within an Air Force installation, except when the contractor operation is to be relatively permanent or when the operation is to be autonomous and is not to be integrated with the military operation. When the contractor's on-base operation is not cleared as a separate facility, the contractor must have executed a DoD Security Agreement and have an active facility security clearance for that facility of his organization which is responsible for the contract being performed on the installation. In those instances when a contractor's activity is located on an installation in the U.S., its possessions, or Puerto Rico and is a separate operating entity performing classified contract work of an industrial nature, it may be designated a separate facility.

(e) Visits to installations: Contractor personnel who make visits to Air Force installations in the performance of their duties will be treated as visitors in accordance with AFR 205–4, if they require access to classified information.

(f) Additional security requirements: Necessary security requirements which are additional to or different from those in the ISM must be made effective by including them in, or modifying, the contract pursuant to paragraph 5b, ISM. The specific duties and responsibilities of the contractor and of the installation where the contract is to be performed should be clearly defined (see paragraph (b) of this section). In those instances where the contractor's on-base operation is designated a separate facility (see paragraph (d) of this section), it normally is necessary only to include a special clause requiring compliance by the contractor with the appropriate security directives of the installation. Therefore, contracting officers shall incorporate, as a minimum, the following security requirements clause in any classified contract or subcontract which will require performance on an Air Force installation:

> Notwithstanding any other provision in this contract affecting military security requirements, the contractor shall comply with such modifications or changes in such security requirements as are prescribed in writing by the commander of the Air Force installation at which the work under this contract or any part thereof is being performed. Should any such modifications or changes in security requirements result in an increase or decrease in security costs under this contract, the contract price shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any equitable adjustment shall be accomplished in the same manner as if such modifications or changes were directed under the "Changes" clause in this contract.

§ 850.20 Contracts performed outside the United States.

(a) *Transmission outside the U.S.* (1) If the transmission of classified information to or from a contractor or contractor employee located outside the continental United States is approved pursuant to paragraph 12i, ISM, the material must be addressed to a military authority for delivery to the contractor or his employee. Also the material must be routed through the same channels as are authorized in this part for transmitting classified material in the custody of Air Force units. (Classified material will be transmitted only through U.S. Government channels and under the control of U.S. Government activities. Normally, transmission will be by registered mail through the U.S. military postal services or by the Armed Forces Courier Service.)

(2) When transmission of classified material between oversea locations through normal military or other U.S. Government channels would create unacceptable operational problems, appropriately cleared contractor personnel may be appointed in writing by the ACO, upon approval of the activity responsible for the security supervision of the contract, to act as courier or escort for the material, provided the transmission does not cross national boundaries, is accomplished (begun and completed) during normal daytime duty hours of the same day, and is in accordance with the agreements in effect with the country concerned.

(3) When contract work within a foreign country involves a project of joint interest to the foreign government and the United States, it may be necessary to make special arrangements for transmitting classified information held jointly by the two governments. The phrase "held jointly by the two governments," as used in this section, refers to U.S. classified information which has been released to the foreign government, foreign classified information released to the United States, or classified information developed jointly by the two governments concerned. In such cases, the classified material may be transmitted to the contractor by either government. The procedures for transmission may be those prescribed by this part, or when transmission is within the host country, the procedures authorized by that country may be used. However, the ACO, in collaboration with the project officer, should develop specific procedures which meet the practical

requirements of the project while maintaining required standards of security for the information. Such procedures must be coordinated with the activity having security supervisory responsibility for the contractor's oversea operation involved.

(4) If a U.S. contractor engaged in a bilateral project requires access to U.S. classified information which is releaseable under § 850.9(g) (but which has not been approved for release) to the foreign government involved in the bilateral project, the procedures prescribed in this part for transmission of such material normally will be used. In exceptional cases, however, special transmission procedures may be established to meet unique operational requirements. In such cases, the ACO, in conjunction with the project officer and the activity responsible for security supervision of the contractor's activity, may develop appropriate procedures which will meet operational requirements while maintaining the necessary degree of security. The proposed procedure shall be forwarded for approval to Hq USAF (AFISL–3). The request for approval must include a detailed statement of facts and justification.

(b) *Storage in foreign countries.* (1) The storage of classified defense information in a foreign country within any location other than a U.S. military installation or other U.S. Government controlled installation is prohibited. Contractor personnel in foreign countries who must be given access to classified material will be advised that it is necessary, in order to assure security, for the material to remain under U.S. Government control. (If storage at a U.S. military installation is not practical, the contracting officer must arrange for storage with a U.S. military attache, Military Assistance Advisory Group (MAAG), or a U.S. diplomatic or consular officer.)

(2) However, if the contract work involves a bilateral project (see paragraph (a)(3) of this section), special arrangements for storing classified information held jointly by the participating governments may be developed. In such cases, the classified material may be retained for the contractor under the custody of that government which has an activity most conveniently located with regard to the contractor's operation. If such procedures are established, the material shall be stored and safeguarded in accordance with the rules of the government accepting responsibility for the material and providing the storage facilities.

§ 850.21 Contracts performed by foreign contractors.

(a) *General.* The major air commander who has a requirement for procuring supplies or services in a foreign country from an individual, company, or other legal entity of that country may initiate procurement action which will involve the release or disclosure of classified defense information, provided:

(1) The classified information involved has been approved for release (or is determined to be releasable) to the government of the foreign country as described in § 850.9(g).

(2) A government-to-government agreement exists or is established between the Unied States and the foreign government whereby the foreign government has obligated itself to assume responsibility for the adequate protection of the classified information involved in or released with the contract.

(3) A government-to-government agreement exists or is established between the United States and the foreign government whereby that government agrees to permit the United States to contract with individuals, companies, or other legal entities under its jurisdiction. Such agreements may permit the United States Government to negotiate directly with the prospective contractor, or they may require the negotiations to be conducted through government-to-government channels.

(b) *Industrial security measures.* The effect of the agreement referred to in paragraph (a)(2) of this section is that the foreign government legally imposes its own "industrial security program" on the contractor in order to protect the United States classified information involved in the contract. The procedures for safeguarding classified information, the clearance of the contractor and his employees, and other security measures, are the responsibility of, and are conducted according to the rules prescribed by, the foreign government concerned.

§ 850.22 Releasing classified information.

(a) *Recording and routing material.* The chief of an office who plans to release classified information to bidders and contractors will first determine that the contractor or facility has been cleared, has been declared eligible, and can properly safeguard the information concerned (see paragraphs 2–108 and 2–109, AFR 205–4). In addition to §§ 850.6 through 850.10, which govern dissemination of classified material, all instructions for recording and preparing material for transmission will be observed. Classified material for contractors shall be addressed only to the official address of cleared facilities. When the information is intended for an individual (who has been authorized access), it shall be addressed to a cleared facility and marked for the attention of the individual concerned.

(b) *Defense Documentation Center (DDC).* DoD Instruction 5100.38 provides the authority and purpose of the Defense Documentation Center for Scientific and Technical Information (DDC). This instruction is implemented in the Air Force by AFR 80–29 (The Scientific and Technical Information (STINFO) Program). The primary function of the DDC is to acquire, store, announce, retrieve, and provide secondary distribution of scientific and technical documents, as well as other related functions. DDC service is available to educational, industrial, and scientific organizations which have been granted a facility security clearance of an appropriate degree according to AFR 205–4, provided the project office concerned approves the dissemination. The program does not apply to documents containing information of the following types: (1) Top Secret, (2) crypto material, (3) designated special categories of intelligence, (4) registered documents or publications, (5) contract proposals, administrative reports, orders, and memoranda, or (6) information furnished the U.S. by foreign governments when its dissemination is forbidden by the foreign government.

(i) Bidders, contractors, or grantees, and others participating in the AFSC Long-Range Planning Program, may be certified for unclassified DDC service by submitting a completed Field-of-Interest Register (FOIR) to DDC. For classified DDC service, they must submit the FOIR (DDC Form 20) to the ACO, who in turn will forward the form to the project office for approval. In addition, they must submit the Facility Clearance Register (DDC Form 62) to their cognizant security office for approval. DDC Forms 20 and 62 are available from Hq DDC (TIMA), Cameron Station, Alexandria, Va., 22314, or DDC Field Offices.

(ii) The project office is responsible for approving the FOIR, which establishes the proposed recipient's eligibility for DDC service and, where classified service is authorized, also constitutes certification of the proposed recipient's requirement for knowledge or classified information to perform a DoD contract, agreement, or grant (i.e., need-to-know). Information concerning the effective dates of contracts, agreements, or grants will be shown on the FOIR. Contracts, agreements, or grants so reported will not themselves be submitted to DDC. The project office is responsible for notifying DDC promptly of subsequent premature terminations of contracts, agreements, or grants, of extensions to them, and of any changes in need-to-know. Concurrent with these actions to approve and subsequently to terminate prematurely, the project office is responsible for notifying the appropriate cognizant security office of the establishment or disestablishment of a contractor's eligibility.

(iii) The cognizant security office of the proposed recipient is responsible for certifying the facility security clearance, which constitutes certification as provided in AFR 205–4 that the proposed recipient has a current clearance of the appropriate degree and has facilities to protect classified material of the specified classification category entrusted to him. The cognizant security office, in accordance with AFR 205–4, is responsible for notifying DDC should the revocation, suspension, termination, or inactivation of a clearance, or an unsatisfactory security condition, require the withholding or termination of classified DDC service.

§ 850.23 Sponsoring meetings.

(a) *Sponsorship by the Air Force.* When the subject matter to be discussed at meetings is of principal interest to the Air Force, the project commander primarily concerned shall be responsible for determining if the proposed meeting will serve an Air Force interest and, if so, he may approve and sponsor the meeting on

behalf of the Department of Defense. When there is no apparent project commander, the major air command having primary functional responsibility in the Air Force for the subject matter may assume sponsorship on behalf of DoD.

NOTE: The approval and sponsorship of such contractor conducted meetings requires a positive finding that the meeting will serve a Government purpose and that it will provide a definite advantage to the United States. Such meetings normally will also serve to promote the functions and interests of the project office or staff agency charged with responsibility for the subject, project, or activity involved. Therefore, over-all responsibility for approval and sponsorship should normally be assumed by or assigned to the organizational entity having primary functional responsibility for the subject or project. However, when the interests of economy, efficiency, and security would be served best thereby, the sponsoring activity may request assistance from other military agencies or staff activities for the performance of some on-site functions.

(b) *Location of meetings.* Air Force agencies shall not approve the use of auditoriums, halls, gymnasiums, etc., located on the campus of a college or university for meetings when Top Secret or Secret information is to be disclosed in the meeting. Such buildings are not considered to be part of the cleared facility, since they are used primarily for campus activities such as plays, athletic events, faculty meetings, student rallies, and other events open to the public. Moreover, they were not constructed or designed with any security considerations in mind and, consequently, are vulnerable to unauthorized visual, audio, or physical access. Meetings at which Top Secret or Secret information is to be disclosed may, however, be conducted at a U.S. Government installation or within a building, room, or laboratory located on the campus of a college or university provided that:

(1) The building, room, or laboratory has been identified by the cognizant security office as an integral part of the cleared facility, and

(2) The cognizant security office has, during the performance of the recurring inspections, determined that the security controls over the building, room, or laboratory are adequate and would preclude unauthorized access during the conduct of a classified meeting.

§ 850.24 Consultants.

(a) *Part-time Government employees.* Part-time Government employees include (1) Consultants who are employed by the Air Force without compensation (WOC), and (2) experts and consultants employed by the Air Force and compensated on a when-actually-employed (WAE) basis. After proper clearance and access authorization, these employees may be given access to classified material within the area of the Air Force agency concerned. They are not authorized to remove classified material from the Air Force agency, and it may not be sent to them.

(b) *Prime contractors.* Individuals who enter into a contract to provide personal services to an Air Force agency, which requires the consultant to have physical custody of classified information at his place of business, are considered prime contractors. These consultants must be granted a facility security clearance according to AFR 205–4 and the ISM, and their facility must be approved for storing classified information before they may take classified information outside the Air Force agency, or before it can be sent to them. These consultant facilities are subject to inspection by cognizant security offices.

(c) *Personal services consultants.* Personal services consultants are individuals who enter into a contract to provide personal services to an Air Force agency, wherein all service will be performed at the Air Force agency. These consultants must be granted a personnel security clearance according to AFR 205–4 and the ISM prior to being granted access to classified material. A facility clearance is not required, provided the certificate prescribed in paragraph 2–114.2b, AFR 205–4, is accomplished. They are not authorized to remove classified material from the Air Force agency, and it may not be sent to them.

(d) *Personal services contractors.* A personal services contractor is a contractor who enters into a contract for one or more of his employees to perform personal services for an Air Force agency. This service may be provided under two conditions:

(1) The contractor shall be cleared as a facility in accordance with AFR 205–4, if the performance of such services involves access to classified information and requires classified information to be in the physical custody of the contractor. The contractor and employees concerned must be granted personnel security clearances prior to being granted access to classified material. Also, the contractor's facility is subject to inspection by a cognizant security office.

(2) If the consultant services will be performed on the premises of the Air Force agency and the classified information not be removed from such premises, no facility clearance is required. The contractor and his employees performing the personal services must jointly execute the certificate prescribed in paragraph 2–114.2c, AFR 205–4. Those personnel requiring access to classified information must be granted a personnel security clearance prior to being granted access.

§ 850.25 Contractor's use of COMSEC material and crypto devices.

(a) General: Air Force classified cryptographic information and other communications security information is made available to DoD contractors, and to their subcontractors, vendors, and suppliers, under one or more of the following conditions:

(1) When the contractor requires the use of crytographic systems in the performance of his contract.

(2) When the contractor is required to accomplish research, development, or production of crytographic systems or equipment.

(3) When the contractor is required to install, maintain, or operate crytographic equipment for an activity of the U.S. Government.

§ 850.26 Personnel access authorizations for contractor employees.

(a) *Cognizant security command.* The commander of a major air command having security cognizance of a contractor's facility has the authority to effect interim and final personnel security clearances. This authority will be exercised regarding all Department of Defense clearances required at the facility, except those granted by the Army or the Navy according to AFR 205–4.

NOTE: Special authorization must be obtained in accordance with § 850.28 for the issuance of an interim Secret clearance for an immigrant alien, and for any interim Top Secret clearance.

(b) *Contracting command.* The commander of the major air command having responsibility for negotiating or administering a contract is responsible for effecting security clearances when:

(1) The Army or Navy command having security cognizance of the contractor's facility involved is unable to provide clearance service due to extenuating circumstances.

(2) Restricted Data classified Confidential is to be disclosed to U.S. citizen employees, and the facility involved is under Army or Navy security cognizance.

(c) *Clearance criteria.* Instructions for determining the eligibility of bidders and contractors and their employees to have access to classified defense information are contained in the Department of Defense Industrial Personnel Security Regulation.

§ 850.27 Denial, suspension, and revocation of clearances for contractor employees.

(a) *DoD policy.* Instructions which are published as an attachment to AFR 205–12 establish uniform standards and criteria applying to clearances for contractors and their employees. Paragraph 2–209, AFR 205–4, explains how to dispose of cases which involve the denial, suspension, or revocation of such clearances. Paragraph 2–202e, AFR 205–4, prescribes the action to be taken when a contractor employee terminates his employment before clearance action or review action has been completed.

(b) *Withdrawal of interim clearances.* The withdrawal of an interim personnel security clearance is not subject to the rules prescribed for the denial, suspension, or revocation of final clearances. In this connection, an interim facility security clearance must be withdrawn promptly if significant derogatory information (defined in AFR 205–12) is developed on an individual who was issued an interim personnel security clearance as part of the facility security clearance action. However, a final clearance for access to a lower category of classified information may not be revoked except as provided in paragraph 2–111d, AFR 205–4.

(c) *Derogatory information.* According to paragraphs 6 a, b, and d of the ISM, a contractor is required to give the cognizant security office information concerning: (1) Subversive activity, (2) compromises or suspected compromises of classified information, and (3) individuals whose access to classified infor-

mation might not be clearly consistent with the interests of national security. In addition, Air Force commanders will submit to the cognizant security office and to contracting commanders certain information on technical representatives or similar type contractor personnel who have been or are being cleared for access to classified matter. Specifically, this will include information indicating that such access would not be consistent with the interests of the national security. An Air Force cognizant security commander who receives such information will take action as follows:

(i) For a person who has access or who is being cleared for access to classified information:

(*a*) If the information indicates that retention of a security clearance would constitute an immediate threat to the security interests of the United States, the procedures contained in AFISL letter to AFSC, AAC, ADC, SAC, and AFLC, subject: Emergency Suspension of Industrial Personnel Access Authorizations, April 8, 1963, will be followed.

(*b*) If the facts indicate a need for further information, the OSI should be requested to initiate necessary investigation. When the reports of investigation are received and reviewed, an administrative determination will be made to do one of the following: (*1*) Process the case to the Director, Office of Industrial Personnel Security Review; (2) issue a Letter of Consent; or (*3*) continue or administratively restore the clearance, as appropriate.

(ii) For a person not referred to above, the derogatory information will be referred to the OSI. It will include a statement that the person does not have a clearance for, nor access to, classified information. The receipt of the information will be acknowledged to the contractor and the contractor will be advised to refer to the Government any future requirement for access to classified information.

§ 850.28 Interim Secret clearances; immigrant aliens.

The Secretary of the contracting military department may authorize the issuance of an interim Secret personnel security clearance for an immigrant alien. This authorization may be given only after a favorable National Agency Check.

§ 850.29 Foreign national employees of contractors.

This section applies to Air Force contracts awarded to U.S. firms in the United States which are to be performed either within or outside of the United States.

(a) *General.* Except as specified in paragraph 2–203, AFR 205–4, a foreign national is not eligible for a personnel security clearance. However, if the facts indicate an impelling necessity to permit disclosure of the classified information involved, the commander may request that a limited access authorization be approved.

(b) *Authority and criteria for approval.* A Deputy Chief of Staff (or an officer having an equivalent position) in Hq USAF who has primary interest in the procurement aspects of the contract (or contracts) involved may approve a request from a contractor for permission to use a foreign national on duties involving access to classified information, provided that:

(1) There is an impelling necessity in the interest of essential Air Force procurement operations to permit the foreign national to have such access. (A foreign national will never be used if a qualified individual who can be cleared is available for employment in the duties involved.)

(2) The person's employment is for a designated task or project and the classified information to be disclosed will be limited to Air Force information directly connected with a specific Air Force contract or contracts.

(3) Top Secret information, Restricted Data, or classified cryptographic systems or equipment will not be involved.

(4) The classified information is releaseable to the individual's government according to policy in AFR 200–9.

(5) As much of a Background Investigation as is feasible has been completed by the appropriate investigative agency.

(6) Concurrence is obtained from Hq USAF from the Assistant Chief of Staff, Intelligence, and the Inspector General.

(c) *Initial routing request.* (1) A request from a contractor for permission to use a foreign national employee on duties requiring access to classified information will be submitted to the contracting officer concerned. If there is more than one contract, the contractor should select the contracting officer who appears to have the greatest interest; however, each contract will be identified. Each request must include sufficient information to support the requirement of paragraphs (b) (1) and (2) of this section, and to permit an evaluation to be made. In addition, the request must specifically identify the classified information involved.

(2) If the immediate commander of the contracting officer believes the request to be sufficiently justified for further consideration in the Air Force, he will send it and his comments through command channels to the commander having direct responsibility for the project involved in the contract or contracts. If project responsibility rests in Hq USAF, the contracting command will route the request to the chief of the major staff office concerned.

(3) When the contracting and project offices are in different major air commands, correspondence regarding the use of a foreign national will follow the same channel used for other communications between the two offices.

(d) *Action by a project command.* (1) If it appears that the proposal for disclosing classified information meets the criteria for approval in paragraph (b) of this section, the request will be sent through project command channels to the chief of the office of primary responsibility in Hq USAF. Requests which are disapproved will be returned direct to the contracting officer.

(2) Recommendations for approval of a request must include complete information showing why approval is necessary. Also the basis for the classification assigned to the information involved must be stated.

(e) *Signatures on recommendations and approvals*—(1) *Recommendations.* The commander or deputy commander of each headquarters that recommends approval of a request must sign the recommendations. However, at a major air command headquarters the chief of staff or a general officer in the staff office having primary interest in the project may be authorized to sign for the commander.

(2) *Approvals.* In Hq USAF, an approval or concurrence must be signed by the officer designated in paragraph (b) of this section, or by his deputy or principal assistant, after the concurrences specified in paragraph (b) (6) of this section have been obtained.

(f) *Action after approval.* (1) The notification of approval of a request will be channeled through the project command to the contracting commander.

(2) The contracting officer will prepare and forward a letter of notification to the contractor. The instructions in this letter will be in the nature of a limited access authorization in the same form as prescribed in AFR 205–10 for foreign national employees of the Air Force. The "letter of limited access authorization" must show specifically and completely:

(i) The task or project and the contract or contracts on which duty assignment is authorized;

(ii) The highest classification and description of classified information to which the employee may be given access;

(iii) Restrictions against permitting access to designated types of classified information when circumstances indicate the need for such definitive instructions;

(iv) Applicable instructions concerning the security of classified documents; and

(v) Any other security requirement necessary to preclude unauthorized disclosure of classified information.

(3) The contracting officer will send copies of the "letter of limited access authorization" to:

(i) The project commander; and

(ii) The commander having security cognizance of the contractor's facility where the foreign national is employed (if industrial security cognizance has been assigned under AFR 205–4), or to the commander responsible for security supervision of the contractor's operations (see § 850.19).

SUBCHAPTER F—AIRCRAFT

PART 855—USE OF AIR FORCE INSTALLATIONS BY OTHER THAN UNITED STATES GOVERNMENT-OWNED AIRCRAFT

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AUTHORITY: The provisions of this Part 855 issued under sec. 8012, 70A Stat. 488, secs. 1107, 1108, 72 Stat. 798; 10 U.S.C. 8012, 49 U.S.C. 1507, 1508.

§ 855.1 Purpose.

This part establishes the responsibilities and describes the procedures for use of Air Force installations by other than U.S. Government-owned aircraft under the authority of the Federal Aviation Act of 1958 (secs. 1107 and 1108) 72 Stat. 798; 49 U.S.C. 1507, 1508.

§ 855.2 Definitions.

Terms used in this part are explained as follows:

(a) *Installation.* An officially defined area of real property which:

(1) The U.S. Air Force controls; or

(2) Hq USAF has designated as an Air Force installation; or

(3) The U.S. Air Force utilizes in a foreign country by agreement or by right of occupation; and

(4) The U.S. Air Force operates as an airfield facility.

(b) *Regular use.* Use of an AF installation on a scheduled or recurring basis over more than a 5-day period.

(c) *Weather alternate use.* Use of an AF installation for a weather alternate as required by Part 40, Civil Air Regulations (14 CFR 40.5).

(d) *Civil aircraft.* Domestic or foreign aircraft operated by private individuals or corporations of any national registry, and foreign government-owned aircraft operating for commercial purposes.

(e) *Military aircraft.* Aircraft operated by military agencies of any government.

(f) *Government aircraft.* Aircraft (other than those included in paragraphs (d) and (e) of this section) owned, operated, or controlled by either the U.S. or a foreign government; or aircraft owned and operated by any agency of the States of the U.S., or by a political subdivision of a State. All responsibility for operating the aircraft must reside with the State, municipality, or county.

(g) *Contract aircraft.* Civil aircraft operated under contract with any U.S. Government department or agency and under operational control of that department/agency.

(h) *Charter aircraft.* Civil aircraft the entire capacity of which is chartered by a U.S. Government department or agency to move Government passengers or cargo or for other U.S. Government missions. The charter agreement may be written or oral. It is usually for single or multiple trips over a short period of time.

(i) *Bailed, leased, or loaned aircraft*—(1) *Bailed aircraft.* Government-owned aircraft delivered by the Government to a Government contractor for a specific purpose directly related to a Government contract. The identity of the bailed aircraft and the rights and obligations of the parties in connection with the bailment are evidenced by a bilateral agreement. Operators of bailed aircraft are required to comply with §§ 855.1 to 855.19 before use of an Air Force installation.

(2) *Leased aircraft.* Government-owned aircraft delivered by the Government to a lessee subject to terms and conditions prescribed in a bilateral agreement. The agreement generally includes the requirement for payment of rental fees for the aircraft, but excludes provisions limiting the lessee's use of the aircraft to Government business or performance of Government contracts. A leased aircraft is defined as a civil aircraft.

(3) *Loaned aircraft.* Government-owned aircraft delivered by the Air Force gratuitously to another Government agency or to an USAF Aero Club. The nature of the organization to which the aircraft is loaned determines the applicability of this part.

(j) *User.* Individual, corporation, or company, owning or operating civil aircraft. A user will be named on AF Form 180, "Hold Harmless Agreement"; AF Form 181, "Civil Aircraft Landing Permit"; and AF Form 203, "Certificate of Insurance."

(k) *Joint-use installation.* An AF installation where a specific agreement—between the U.S. Government and a foreign government (diplomatic agreement), or between the Air Force and a community—provides for civil aircraft use of the runways and taxiways. Civil aircraft terminal, parking, and servicing facilities are established and controlled by a community or other agent, and normally are located in a civil area separate from the military use. At joint-use installations, civil aircraft (except those described in paragraphs (g) and (h) of this section) normally are restricted to the civil parking and terminal areas. Civil aircraft with a requirement to use the Air Force area of a joint-use installation must comply with all provisions of this part.

(l) *AF Form 180, "Hold Harmless Agreement."* An agreement to be executed by a user. In it, the user agrees to release the U.S. Government from all liabilities in connection with civil aircraft use of AF installations.

(m) *AF Form 181, "Civil Aircraft Landing Permit."* A landing permit that, when completed by the user and an approving authority (see § 855.11), authorizes civil aircraft to use AF bases in accordance with the terms of the permit.

(n) *AF Form 203, "Certificate of Insurance."* A certificate executed by an insurance company, in accordance with this part, as evidence of the amount of aircraft liability insurance carried by the user.

(o) *Foreign government aircraft landing request.* A request by a foreign government for use of AF installations for landing foreign military or government-owned non-commercially operated aircraft.

(p) *Approving authority.* An installation commander, air attache, major air commander, or Headquarters USAF (AFNIN) and (AFOAP) possess delegated authority under this part to approve or disapprove use of an AF installation and to execute the required AF Form 181 or the "Foreign Government Aircraft Landing Request." (See § 855.11.)

(q) *Official business.* Business, in the interest of the U.S. Government, which personnel aboard an aircraft must transact with U.S. Government personnel, units, or organizations at or near the AF installation concerned. Use of an AF installation to petition for U.S. Government business is not official business.

(r) *Authorized supplier.* A commercial petroleum company (doing business in the United States or its territories) which has an agreement with the Air Force to guarantee payment for aviation fuel and oil furnished by the Air Force to civil, contract, and charter aircraft. (When applicable, the name of an authorized supplier will be shown in the space provided on AF Form 181.)

§ 855.3 Policy.

AF installations are established only to support the USAF mission, and facilities, personnel, and material are maintained only to the extent necessary to support AF operations.

(a) *Civil aircraft.* AF policy is that civil aircraft may use AF installations only when U.S. Government interests will be expedited. Other types of use may be approved as described in § 855.7. Civil aircraft use of AF installations, for other than official business, is approved only under exceptional circumstances.

(1) Users (except those declaring an inflight emergency) must have an approved AF Form 181 aboard the aircraft before making any landings at AF installations.

(2) Users should submit AF Form 181 and related documents to the appropriate approving authority (see § 855.11).

(b) *Foreign aircraft (non-civil).* All military and government aircraft of a foreign government must have written authorization from Hq USAF (AFNIN) before landing at AF installations. (See § 855.8(b).)

(c) *All aircraft*—(1) *Restrictions on use of AF installations.* Approval of any type of use is contingent upon its not:

(i) Interfering with the military mission or its security.

(ii) Endangering unduly the facilities or equipment.

(2) *Radio equipment.* Each aircraft must have two-way radio equipment capable of voice communication with the control tower on standard AF frequencies.

(3) *Diplomatic clearance.* Permission to land at an AF installation (in the U.S. or another country) does not constitute nor take the place of diplomatic clearance. The user or foreign government must obtain, when appropriate, permission to overfly and land in the United States or other countries. The requesting government or user must obtain this permission through diplomatic channels from each country to be overflown and/or where landing is intended.

(4) *Emergency landing.* Any aircraft involved in an inflight emergency endangering the safety of passengers or aircraft may land at any AF installation. Advance authorization or an approved AF Form 181 is not required. (See § 855.5.)

(5) *Use of non-AF installations.* AF authority applies only to the use of AF installations. Permission necessary for landing at civil or other non-AF installations must be obtained by a foreign government or user direct from the appropriate controlling agency.

(6) *Extent of authorization.* Permission to use an AF installation under the provisions of this part extends only to the landing, taxiing, and normal parking of aircraft. Permission to permanently base aircraft at AF installations and to use or lease facilities must be obtained under other regulations and/or agreements (see § 855.16). This part authorizes civil aircraft use of an installation only when an official requirement exists for the aircraft or its passengers to be at the installation, a written agreement permits use or, because of exceptional circumstances, the Air Force permits use for private reasons. The installation commander and/or the agency requiring the aircraft and passengers to be at the installation is responsible for and authorized to control the activities of the aircraft and passengers while in the AF controlled area of the installation.

§ 855.4 Exceptions.

Certain agreements, concerning use of AF installations by other than U.S. Government-owned aircraft, take precedence over the provisions of this part. The agreements will vary and compliance with this part in whole or part may or may not be required. Agreements that take precedence over this part are those between the:

(a) U.S. Air Force and a community, for joint use.

(b) U.S. Air Force and a foreign air force, for reciprocal use by military aircraft.

(c) U.S. Government and a foreign government.

§ 855.5 Emergency landings at Air Force installations by civil aircraft.

The Air Force policy is that any aircraft may land at any Air Force installation in any type of aircraft emergency. However, in order to avoid any interference with the combat alert and minimum reaction time capability, the Air Force prefers that the pilot of a civil aircraft land at a civil airfield when the emergency is such that he can select the time and place of landing. The following will apply when an emergency landing has been made:

(a) *Clearance of runway.* The Air Force reserves the right to use any method or means to clear a runway of aircraft or wreckage. Care will be taken to preclude unnecessary damage in removing wrecked aircraft consistent with actual national defense requirements.

(b) *Payment of costs to the Air Force.* The user making the emergency landing will be billed for all charges incurred to the Government as a direct result of the emergency landing (see Part 812, Subchapter B of this chapter). Charges will not include landing fees. Charges will include cost of labor, materials, or parts expended or furnished, rental of equipment and tools, and so forth, for:

(1) Spreading foam on the runway before the aircraft crash-lands.

(2) Fire and crash control, and rescue.

(3) Movement and storage of aircraft or wreckage.

(4) Damage to runway, lights, navigation aids, and so forth.

(c) The base operations officer will provide the base accounting and finance officer with necessary data or documentation of all costs incurred by the Air Force as a result of a civil aircraft emergency. The base accounting and finance officer will prepare billings and collect therefor.

(d) The pilot of the aircraft or the employer of the pilot will be requested to file a complete narrative report of the emergency with the installation commander. If such a report cannot be obtained, the base operations officer will file the report, using the most reliable facts available.

(e) The commander of the installation will complete AF Form 181 (without requiring AF Forms 180 and 203). In item 7 of the AF Form 181 show the circumstances of the emergency landing. Make normal distribution of the AF Form 181. Also, report the circumstances of the emergency landing to:

(1) The General Aviation District Office of the Federal Aviation Agency if the installation is within the United States, its Territories, or possessions.

(2) The USAF air attache if the installation is within a foreign country.

§ 855.6 Uses of AF installations normally approved.

Civil aircraft use of AF installations is normally approved in connection with:

(a) The performance of a U.S. Government charter/contract with an air carrier for the movement of passengers or cargo when the use of AF installations is required for loading, or en route or terminal stops (e.g., AF contract, National Aeronautics Space Agency contract, or Defense Traffic Management Service charter (DTMS)) while operating under any U.S. Government agency control or agreement.

(b) The on- or off-loading of military passengers and cargo, while operating at the request of an authorized AF contracting or transportation officer.

(1) A Government bill of lading, cargo manifest, or transportation request must accompany the aircraft.

(2) Non-Government passengers or cargo must not be on- or off-loaded.

(c) Commercial activities of scheduled air carriers for regular or weather alternate use only when:

(1) The Air Force has specifically designated the installation for use by International Civil Aviation Organization (ICAO) air carriers. The air carriers must be registered in a country that is a member of ICAO and operate on international air routes.

(2) Authorized under the terms of a diplomatic, right or occupation, or other agreement.

Limitation. Aircraft may not be dispatched from a point of departure to an approved weather alternate. Diversion to or actual use of a designated alternate installation is authorized only when unforecast weather conditions require the aircraft to change from its original to an alternate destination while in flight.

§ 855.7 Special types of use.

The intent of this section is to further define, but not limit, the types of use of AF installations that may be approved.

(a) *Civil aircraft*—(1) *Non-commercial use.* (i) The aircraft is privately owned and operated by Government personnel:

(*a*) Military personnel on active duty, for private, non-revenue producing purposes or for official transportation to AF installations when on official business required by written orders.

(*b*) Military personnel of the Air National Guard (ANG) or Air Force Reserve (AFRes) for official transportation to an AF installation:

(*1*) To participate in scheduled official activities or

(*2*) To perform duty with the ANG or AFRes.

Passengers or cargo may not be carried for revenue-producing purposes.

(*c*) Retired military personnel, for transportation to AF installations to participate in activities authorized to retirees by law. Passengers or cargo may not be carried for revenue-producing purposes.

(*d*) Civil employees of the U.S. Government, for official transportation to AF installations on official business required by written orders. Only official passengers may be carried. Passengers or cargo may not be carried for revenue-producing purposes.

(ii) The aircraft is owned by either the Civil Air Patrol (CAP) or its members and operated by them in connection with CAP activities. All aircraft owned or operated by the CAP are civil aircraft and must comply with this part.

(iii) The aircraft is privately owned and operated by non-U.S. Government personnel:

(*a*) An individual or corporation, for transportation to AF installations in connection with sales or services (maintenance) representation to authorized military agents (e.g., the exchange, commissary, or contracting officer). This use may be considered as official business, when authorized by the installation commander. Passengers or cargo may not be carried for revenue-producing purposes.

(*b*) An individual or corporation, with a specific U.S. Government contract to perform work at AF installation(s), for transporting the contractor's supplies and personnel. Contract numbers must

be cited in the justification for use of each installation.

Limitations. (a) The aircraft cannot be used to transport passengers or cargo not connected with performance of the specific contract.

(b) The aircraft cannot be used for daily transportation of employees in competition with public transportation.

(c) Manufacturers and others to demonstrate or show civil aircraft or installed equipment to official representatives of the U.S. Government (e.g., Department of Defense, the Federal Aviation Agency (FAA), Members of Congress, or the Executive Department).

Limitations. (a) The U.S. Government must have a procurement interest, or

(b) U.S. Government officials must have expressed interest and have responsibility for approval or certification of the aircraft or equipment, or

(c) Major air commanders must have requested a demonstration or showing.

(d) Aircraft manufacturers and others, for development testing and/or aircraft certification:

Limitations. The aircraft is being produced according to U.S. Government specifications (either with or without Federal funds), and

(a) The Government has a procurement interest, or use is:

(1) In the best interest of the U.S. Government, or

(2) In the best interest of public safety, or

(3) To fulfill Federal Aviation certification requirements.

(2) *Commercial use.* (i) Scheduled air carriers may be permitted to use AF installations located within the Continental United States (CONUS), Hawaii, and Alaska, for:

(a) Regular use: Scheduled use of AF installations is not encouraged and will be considered only when there will be no interference with AF operations. Feeder airline-type operations only will be considered when they are necessary to provide scheduled service to communities having no adequate civil airfield available. The community must have requested—and the Civil Aeronautics Board must have issued—a Certificate of Necessity authorizing the service to the community.

NOTE: Even though other requirements of this part are met, approval will not be given under (a) of this subdivision unless an area is available for civil operations separate from AF operations.

(b) Weather alternate use: When required as an alternate weather airfield by U.S. registered aircraft operating on domestic air routes only. Aircraft may not be dispatched from a point of departure to an approved weather alternate. Diversion to or actual use of an alternate installation is authorized only when unforecast weather conditions require the aircraft to change from its original to an alternate destination while in flight.

(ii) Nonscheduled air carriers may be permitted to use AF installations:

(a) For air taxi operations when such service is required by an AF commander. The services must be obtained by a contract or written agreement. Only official passengers or cargo may be carried.

(b) When chartered by individuals or corporations requiring use of an AF installation under the circumstance described in subparagraph (1)(iii) of this paragraph. The individuals or corporations must submit a justification with the request for such use.

(3) *Joint use.* Hq USAF will evaluate, individually, requests from authorized representatives of a community for joint use of an AF installation within the United States. Joint use will be considered only when:

(i) The community lacks adequate public airfields to accommodate the current and future needs of civil aviation in the community.

(ii) The FAA concurs in the community's request.

(iii) The amount and type of proposed civil operations are compatible with current and programmed military operations.

(iv) An area is available for development as a civil area, separate from the Air Force area of operations. (The area may be available from land that is excess to AF requirements or from privately owned land adjacent to the installation.)

(v) The community agrees to acquire, construct, and maintain all of the facilities required for civil aviation operations. These facilities will include, as necessary, a terminal building, parking ramp, taxiway, and civil runway.

(b) *Foreign aircraft (non-civil).* Military and other government noncommercially operated aircraft may be permitted to use AF installations when the aircraft are being:

(1) Used for training aircrews.

(2) Used to transport the foreign government's personnel or cargo.

(3) Ferried.

(c) *Other aircraft.* (1) Aircraft owned by USAF Aero Clubs may be permitted to use AF installations if the club is established in accordance with AFR 34–14 (AF Aero Clubs). Such clubs are not required to complete AF Form 180, 181 or 203. Aero clubs of other U.S. military services may also be authorized use, if they have similar organization and insurance coverage.

(2) Aircraft operated by a State, municipality, or county may be permitted to use AF installations when landing in connection with official business of their respective organizations.

(3) Civil aircraft operated by the Federal Aviation Agency under a lease or other contractual agreement. Such aircraft are used by FAA employees in connection with official FAA business, and are within the definition of § 855.2(f). AF Forms 180, 181, and 203 are not required.

(4) Civil aircraft operated by USAF–CAP liaison officers under U.S. Government contract. Such aircraft are used by USAF–CAP liaison officers in connection with official USAF business and are within the definition of § 855.2(f). AF Forms 180, 181, and 203 are not required.

NOTE: Do not confuse these aircraft with CAP aircraft discussed in paragraph (a)(1)(ii) of this section.

§ 855.8 How to request use of Air Force installations.

(a) *Civil aircraft.* The user will:

(1) Complete AF Forms 180 and 181 and have his insurer complete AF Form 203 (see §§ 855.9 and 855.10 and AFR 55–20, Attachment 1) as follows:

(i) Forward one signed copy each of the AF Forms 180 and 203 and six signed copies of AF Form 181 to the appropriate approving authority (see § 855.11). Prepare a separate set of AF Form 181 for each type of use requested.

(2) Forward the completed forms (with or without a letter of transmittal) direct to the appropriate approving authority as authorized in § 855.11, 30 days before the date of the first intended landing. (See § 855.17 concerning purchase of aviation fuel and oil, if appropriate.)

(b) *Foreign aircraft (non-civil).* For military or other government non-commercially operated aircraft, the foreign government will:

(1) Submit a written request. (AF Forms 180, 181, and 203 are not required.)

NOTE: Permission to land at an AF installation does not provide nor authorize diplomatic clearance. (See § 855.3(c)(3).)

(2) Forward the request through its air attache to Hq USAF (AFNINCBB), Washington, D.C., 20330, at least 10 days before the first intended landing.

(3) Submit a concurrent request to the U.S. Department of State, if a military overflight agreement does not exist with that Department.

Exceptions. (1) Canada, Costa Rica, Dominican Republic, Guatemala, Honduras, Nicaragua, and United Kingdom may use AF installations in accordance with existing Bi-lateral Military Air Transit Agreements.

(2) All Latin American countries are authorized to send requests, for use of Albrook Air Force Base or other AF installations in the Canal Zone, direct to the Commander, Caribbean Air Command.

(c) *Joint use.* (1) A community's request for joint use of an Air Force installation within the United States will be accepted only from authorized community representatives (mayor, airport committee, city council). The request should be in a letter addressed to the commander of the installation where joint use is desired. When discussing this matter with the community representatives, commanders are not authorized to comment on long-term use of the installation by the Air Force or to refer to the possibility of joint use being approved, until specifically authorized to do so in writing by Headquarters USAF. Commanders will forward the request with his comments through military channels to Headquarters USAF (AFOAP). The request must include:

(i) The type and number of aircraft to be located on the installation.

(ii) An estimate of the amount of general aviation aircraft operations annually over a 5-year period.

(iii) An estimate of the amount of scheduled airline operations annually over a 5-year period.

(2) The community must forward a duplicate copy of the request to the FAA for approval. The FAA will forward requests it approves to Headquarters USAF (AFOAP). Headquarters USAF will not give final consideration to the commu-

nity's request until it has been forwarded by the FAA.

(3) If joint use can be permitted, an agreement will be negotiated.

(4) The provisions of this part normally will apply to all use authorized by the joint-use agreement.

(d) *State, municipality, or county aircraft.* Each agency must obtain oral or written clearance from the installation commander before use of the installation and furnish any information the commander may require. AF Forms 180, 181, and 203 are not required.

§ 855.9 Where to obtain required forms.

Air Force Regulation 55–20 and AF Forms 180, 181, and 203 may be obtained from any AF installation or approving authority. The "Foreign Government Aircraft Landing Request" is not a printed form; it should be prepared by the foreign government in the prescribed format.

§ 855.10 Preparation of required forms.

(a) *AF Form 180.* The user must complete both sides. If completed by a corporation, two officials must sign. After the executed agreement has been accepted by an approving authority, it is valid indefinitely and need not be resubmitted with future requests to the same approving authority.

(b) *AF Form 181.* The user and the approving authority will complete the pertinent portions. The approving authority may correct entries to conform to this part, but he will not amend the entries after the permit has been approved and distributed. If changes are required, a new AF Form 181 must be submitted.

(c) *AF Form 203.* The insurer must complete this certificate. All amounts must be stated in U.S. dollars.

(d) *Foreign government aircraft landing request.* (See AFR 55–20, attachment 2.)

§ 855.11 Who may approve use of Air Force installations.

The authority to disapprove or approve (and sign the AF Form 181, "Civil Aircraft Landing Permit," or the "Foreign Government Aircraft Landing Request," as appropriate) is delegated to (but cannot be redelegated below their headquarters):

(a) *Air Force installation commanders.* For civil aircraft landing at airfields under their control when use is:

(1) Directly connected with official business.

(2) A one-time request:

(i) For not more than 8 landings within a 5-day period, in connection with Government or community interests, and

(ii) No adequate civil airport is available.

(3) By Aero Clubs.

(4) By aircraft owned or operated by the CAP or its members.

(5) By aircraft owned or operated by Government personnel when such use is in accordance with § 855.7(a)(1)(i).

(6) By civil aircraft either owned or personally chartered by:

(i) The President or Vice President or past President of the United States.

(ii) The head of any Federal department or agency, or

(iii) A Member of Congress.

(7) By a bailed, leased, or loaned aircraft when operated in connection with official business only.

NOTE: 1. Use under subparagraph (6) of this paragraph may be for official or personal business. In either case, compliance with this part is necessary. If time does not permit normal processing of such requests, an AF Form 181 need not be completed until after the aircraft has arrived at the installation. When use is not for official purposes, landing fees will be collected.

NOTE 2. Installation commanders receiving requests for foreign civil aircraft to land at AF installations in any country, other than the country where the aircraft is registered, will forward the request for consideration by Hq USAF (AFNINCBB).

NOTE 3. Installation commanders may not approve use of any installation other than their own and may not approve use for commercial, training, or testing purposes.

(b) *Any USAF air attache.* For civil aircraft to use (for a one-time operation) any AF installation located within the country to which he is accredited, if the aircraft is registered in that country. The use should be in connection with official interests of either that country's or the U.S. government and only when an adequate civil airport is not available. The approval is limited to a one-time operation not to exceed 8 landings within a 5-day period. The air attache should not approve frequent requests for such use, but should refer them to other approving authority.

(c) *Major air commands.* For civil aircraft landing at airfields under their control when use is:

(1) Directly connected with official business.

(2) A one-time request:

(i) For not more than 8 landings within a 5-day period, in connection with Government or community interests, and

(ii) No adequate civil airport is available.

(3) In accordance with § 855.7(a)(1) and (2)(b).

(d) *Commander, Caribbean Air Command.* For military or Government aircraft of any Latin American country to use Air Force installations under his control.

(e) *Commander, Alaskan Air Command.* In addition to paragraph (c) of this section, may approve occasional use of the various airstrip-type installations under his control without restriction as to type of use when such use does not interfere with the Air Force mission and does not involve use of any Air Force supplies, equipment, or facilities except a landing strip.

(f) *Headquarters USAF*—(1) *Assistant Chief of Staff, Intelligence (AFNIN).* For foreign military or foreign government non-commercially operated aircraft to use Air Force installations.

(2) *Directorate of Aerospace Programs (AFOAP).* For all other requests for civil aircraft to use Air Force installations, such as for:

(i) More than one installation on one permit.

(ii) Flights between different countries or over international areas, except that delegated to USAF air attaches in § 855.11(b).

(iii) The major civil airfield in a community, by either commercial or general aviation.

(iv) Regular use for other than official business, except the types stated in § 855.7(a)(1)(i). (See paragraph (a) of this section.)

(v) Commercial, training, or testing purposes.

Limitations: Reference paragraph (f)(2)(iii) and (v) of this section. AF Form 181 may not be approved with an authorized supplier shown in item 20 of the form. All use approved must be for flights operating only within the geographical area of the country within which the installations are located and not involving flight over international areas.

§ 855.12 Action by approving authority.

Each approving authority will:

(a) Determine the validity of the request and compliance with this part.

(b) Determine the availability and/or capability of the installation to accommodate the type of use requested.

(c) Disapprove or approve requests.

NOTE: Hq USAF (AFNIN) will assign an aircraft landing authorization number (ALAN) to each approved foreign request.

(d) Distribute, before the date of the first landing, copies of approved AF Forms 181 or foreign requests as follows:

(1) Original to Hq USAF (AFOAPDA), Washington, D.C., 20330.

(2) Two copies to the user.

(3) One copy to each installation to be used. (Except those approved for U.S. Government charter/contract use. These copies are distributed only to Hq Air Force Logistics Command, Military Air Transport Service, and Defense Traffic Management Service.)

(4) One copy to each major air command concerned.

(5) Retain one copy for file.

(e) Retain one copy of each "authorized supplier letter" he accepts, and forward one copy each to:

(1) Hq USAF (AFOAPDA) and

(2) Director of Air Force Aerospace Fuels, Chemicals and Petroleum Products, Middletown AMA, Olmsted AFB, Pa., 17057.

§ 855.13 Required types and amounts of insurance and policy provisions.

Owners or operators of civil aircraft, except aircraft exempted by paragraph (c) of this section, must carry minimum amounts of insurance (stated in U.S. dollars). Policies must be carried with companies acceptable to the Air Force, and at the expense of the aircraft's owner or operator.

(a) *Aircraft required to have insurance and amounts.* (1) Privately owned commercially operated aircraft used for cargo carrying only, aircraft being flight tested without passengers, and aircraft being ferried without passengers, will be insured for:

(i) Bodily injury liability (excluding passengers): At least $50,000 for each person in any one accident, with at least $500,000 for any one accident;

(ii) Property damage liability: At least $500,000 for each accident.

(2) All privately owned commercially operated aircraft used for carrying passengers, and privately owned non-commercially operated aircraft of 12,500 pounds or more certified maximum gross takeoff weight, will be insured for:

(i) Bodily injury liability (excluding passengers): At least $50,000 for each person in any one accident, with at least $500,000 for any one accident;

(ii) Property damage liability: At least $500,000 for each accident.

(iii) Passenger liability: At least $50,000 for each passenger and, subject to the limit for each passenger, a minimum accident limit determined as follows: Multiply the minimum $50,000 for each passenger by a whole number equal to not less than 75 percent of the total number of passenger seats (exclusive of crew seats). (For example: The accident limit for an aircraft with 94 passenger seats would be computed as follows: 94×0.75=70.5, 71×$50,000=$3,550,000.)

(3) Privately owned non-commercially operated aircraft of less than 12,500 pounds will be insured for:

(i) Bodily injury liability (excluding passengers): At least $50,000 for each person in any one accident, with at least $200,000 for any one accident.

(ii) Property damage liability: At least $150,000 for each accident.

(iii) Passenger liability: At least $50,000 for each passenger and, subject to the limit for each passenger, a minimum accident limit determined as follows: Multiply the minimum $50,000 for each passenger times the full number of passenger seats (exclusive of crew seats).

(4) The amount for aircraft insured with a single limit of liability, must be equal to or more than the combined minimum amounts of bodily injury, property damage and passenger liability specified in this paragraph. (For example: The single liability limit for aircraft in the example in subparagraph (2) of this paragraph is $500,000+$500,000+$3,550,000=$4,550,000 single liability limit.)

(5) The combined amounts of bodily injury, property damage and passenger liability, respectively, for aircraft insured by a combination of primary and excess policies, must satisfy the requirements stated in either subparagraph (1), (2), or (3) of this paragraph.

(b) *Indorsements required.* All policies will specifically provide:

(1) "A waiver of any right of subrogation the insurer may have against the United States by reason of any payment under the policy for damage or injury which might arise out of or in connection with the insured's use of any Air Force installation or facilities."

(2) That the insurance "afforded by the policy applies to the liability assumed by the insured under AF Form 180, 'Hold Harmless Agreement.'"

(3) That if the:

(i) "Insurer elects to cancel or reduce the amount of insurance afforded under the policy, the insurer hereby agrees that such cancellation shall not be effective unless written notice thereof shall be sent by the insurer by registered mail not less than thirty (30) days in advance of such cancellation" direct to Hq USAF (AFOAP), Washington, D.C., 20330, and

(ii) "Named insured requests such cancellation or reduction, the insurer agrees to notify the foregoing immediately upon receipt of such request."

(c) *Aircraft exempt from having insurance.* (1) Foreign military or government aircraft, when non-commercially operated.

(2) Aircraft owned and operated by States, counties, and municipalities of the United States.

(3) Aircraft operated AF Aero Clubs: (Aero Clubs of other U.S. military services also are exempt if they are organized as sundry fund activities and operated as instrumentalities of the Federal Government.)

§ 855.14 Cooperation with customs, immigration, and health authorities.

AF installation commanders will cooperate with local customs, immigration, health, and other public authorities when necessary, in connection with aircraft arrivals and departures. Mutually acceptable procedures will be made standard at each installation concerned. Clearance for take-off will not be issued until all requirements have been met. The user of an AF installation will be responsible for:

(a) Complying with laws and regulations administered by public authorities.

(b) Paying fees, charges for overtime services, and all other costs connected with administering such laws.

§ 855.15 Fees for landing, parking, and storing aircraft.

(a) The commander of each AF installation will collect fees from all users of his facilities, except for:

(1) Aircraft owned and/or operated by:

(i) A military department of the United States or foreign government not engaged in commercial activities.

(ii) Agencies of foreign governments (unless the foreign government charges fees for U.S. Government aircraft) for non-commercial purposes.

(iii) States, counties, or municipalities of the United States.

(iv) Military and auxiliary personnel (CAP, AF Reserve, ANG, AFROTC), either retired or on active duty, unless the aircraft are used for commercial purposes.

(v) AF Aero Clubs established in accordance with AFR 34-14.

(vi) Other U.S. military services' Aero Clubs if they are organized as sundry fund activities and operated as instrumentalities of the Federal Government.

(2) Cargo or passenger aircraft under charter or contract to the U.S. Government or its agencies.

(3) Aircraft under production by U.S. Government contract.

(4) Private aircraft authorized to land in connection with official business.

(5) Aircraft employed in training operators in the use of ground-controlled approach or instrument-landing systems and so forth, when no landing is made.

(b) Landing fees are computed on the basis of:

(1) The frequency of operations and

(2) The aircraft's authorized maximum gross take-off weight to the nearest 1,000 pounds.

NOTE: Maximum gross take-off weight appears on the AF Form 181 or in the "Airplane Flight Manual" carried aboard the aircraft. If the weight cannot be determined, it should be estimated.

(c) Parking fees are computed on the basis of:

(1) Amount of time on the ground; and

(2) Gross weight of aircraft.

NOTE: Installation commanders may limit the amount of time that an aircraft will be permitted to remain at the installation.

(d) All active and inactive AF installations will charge the fees listed in subparagraphs (1) and (2) of this paragraph.

NOTE: Except for emergency landings, if an aircraft lands without advance authorization, the usual fee will be doubled to take care of any special handling.

(1) Landing fees within the CONUS normally will be:

Landings per month per user	Weight of aircraft	Amount per landing
First 90	25,000 lbs or less	$2.50
	Over 25,000 lbs	2.50+$0.04 [1]
Next 90	25,000 lbs or less	1.75
	Over 25,000 lbs	1.75+ .04 [1]
After first 180	25,000 lbs or less	1.00
	Over 25,000 lbs	1.00+ .04 [1]

[1] Per 1,000 lbs in excess of 25,000 lbs.

(2) Landing fees outside the CONUS normally will be the same as those at the nearest suitable civil airport within the same country; however, if the rates shown in the table are higher, they will be charged.

Landings per month per user	Weight of aircraft	Amount per landing
First 90	10,000 lbs or less	$3.00
	10,000 lbs to 25,000 lbs	5.00
	Over 25,000 lbs	5.00+$0.15 [1]
Next 90	25,000 lbs or less	4.00
	Over 25,000 lbs	4.00+ .12 [1]
After first 180	25,000 lbs or less	3.00
	Over 25,000 lbs	3.00+ .10 [1]

[1] Per 1,000 lbs in excess of 25,000 lbs.

(3) Parking fees inside a hangar will be 20 cents per 1,000 pounds; minimum, $3.00 per aircraft for each 24-hour period or fraction thereof when parking is emergency, temporary, or intermittent, and nonexclusive.

(4) Parking fees outside a hangar will be 10 cents per 1,000 pounds; minimum, $1.00 per aircraft for each 24-hour period or fraction thereof; the charge will start 6 hours after the plane lands.

(5) Free storage of aircraft owned and operated for non-commercial purposes by military personnel on active duty may be permitted when facilities are available and storage will not interfere with military requirements.

(e) All fees due will be collected by the base operations officer at time of use, unless other agreements specify differently. Base operations officers will daily remit all fees collected to the base

accounting and finance officer with supporting documentation.

§ 855.16 Permission to use real property.

If a user requires use of real estate or real property at an AF installation, in connection with a landing permit, he must request such use from the installation commander.

§ 855.17 Purchase of aviation fuel and oil.

Air Force aviation fuel and oil may be purchased by operators of:

(a) Civil aircraft: If the operator desires to purchase fuel on credit by the "authorized supplier method," he must obtain an "authorized supplier letter." He must submit three signed copies of the letter to each approving authority to whom an AF Form 181 is submitted. If an authorized supplier has been established, the name and address will be shown on the AF Form 181.

(b) Foreign aircraft (non-civil), as authorized by separate agreement or as stated in each approved landing request.

§ 855.18 Reporting violations.

When a violation of this part occurs, the installation commander (in addition to other action taken) will:

(a) Inform the aircraft operator of the provisions of this part.

(b) Require the aircraft operator to:

(1) Complete AF Form 180.

(2) Complete AF Form 181 (AF Form 203 is not required), including in item 7 a statement of the reasons for landing. (Note: The installation commander will make normal distribution of the AF Form 181.)

(3) Pay in cash three times the amount of the normal landing fee (except that no landing fee will be collected if the aircraft landed because of an emergency as explained in § 855.3(c)(4)).

(c) Report the violation to:

(1) The General Aviation District Office of the Federal Aviation Agency if the installation is within the United States, its Territories, or Possessions.

(2) The USAF air attaché if the installation is within a foreign country.

§ 855.19 Cancellation of insurance, authorized supplier letter, and approved AF Form 181.

When Hq USAF (AFNINCBB) receives a notice of cancellation of either the user's insurance or his authorized supplier credit guarantee, all current approved AF Forms 181 for that user will be cancelled. A cancelled AF Form 181 will not be reinstated. A new request must be submitted if renewal is desired.

PART 856—AIRCRAFT ARRESTING SYSTEMS

Sec.

856.1 Purpose.
856.2 Use of arresting systems by non-U.S. Government aircraft.

AUTHORITY: The provisions of this Part 856 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 856.1 Purpose.

This part outlines the responsibilities for operating aircraft arresting systems at Air Force installations and joint-use civil airports.

§ 856.2 Use of arresting systems by non-U.S. Government aircraft.

In an emergency, pilots of nongovernment aircraft may, upon request, use arresting systems installed by the Air Force at Air Force or joint-use airfields in the U.S. or overseas. However, the Air Force will accept no liability for damages resulting from attempted engagements by such aircraft.

PART 857—PROVIDING WEATHER SERVICE TO NONMILITARY AGENCIES OR INDIVIDUALS

Sec.

857.1 Purpose.
857.2 Responsibility.
857.3 Guidance for providing meteorological service.
857.4 Exchanges with national meteorological services.

AUTHORITY: The provisions of this Part 857 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 857.1 Purpose.

This part prescribes the conditions under which the Air Force provides meteorological service to nonmilitary agencies or individuals.

§ 857.2 Responsibility.

A country's national meteorological service (in the United States, the Weather Bureau) is responsible for providing weather service to nonmilitary agencies or individuals. However, when a national meteorological service requests assistance in carrying out this responsibility, the Air Force, through the Air Weather Service, will make every effort to provide it. If help cannot be provided, the Air Force will explain why.

§ 857.3 Guidance for providing meteorological service.

(a) Aircraft pilots authorized to use an Air Force facility where an Air Weather Service detachment is located will, on request, be furnished local observations and weather information required for clearance purposes.

(b) Civilian airlines using Air Force bases where the Air Weather Service facility has been designated an International Civil Aviation Organization (ICAO) Main or Dependent meteorological station will be furnished local observations, clearance information, in-flight service, and planning information in accordance with ICAO procedures.

(c) Other nonmilitary agencies or individuals will be furnished requested meteorological service provided that all of the following criteria have been satisfied:

(1) The national meteorological service normally responsible for the service has requested that the service be provided. Agencies or individuals who have not cleared their requests through the meteorological service will be asked to do so.

(2) Military mission accomplishment will not be impaired.

(3) Additional personnel and facilities will not be required.

(4) Recipient is advised that the Air Force can assume no legal, financial, or moral responsibility for the weather service provided.

(d) In an emergency, where immediate action is required to avert or lessen the loss of human life and property damage, service will be furnished without regard to the limitations described in paragraph (c) of this section. Moreover, major air commands, attaché offices, and comparable agencies, will inform Headquarters USAF (AFOWX) whenever a particular situation arises in which they feel it would be in the national or Air Force interest to furnish meteorological service not otherwise authorized by this part.

§ 857.4 Exchanges with national meteorological services.

This part is not intended to affect or inhibit the normal exchange of meteorological data between the Air Force and civilian meteorological services.

PART 858—ORIENTATION AND INDOCTRINATION FLIGHTS

Sec.

858.1 Purpose.
858.2 Definitions.
858.3 Who may approve flights.
858.4 Requirements for flights.
858.5 Limitations placed on flights.
858.6 Certificate authorized.

AUTHORITY: The provisions of this Part 858 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 858.1 Purpose.

This part authorizes orientation and indoctrination flights for selected passengers in Air Force aircraft and states the limitations and requirements for such flights. It also authorizes a certificate of achievement in recognition of an orientation or indoctrination flight.

§ 858.2 Definitions.

Terms used in this part are explained as follows:

(a) *Orientation and indoctrination flight.* A flight in an Air Force aircraft, with take-off and landing at the same base, carrying a selected passenger(s) to familiarize him (them) with the aircraft—its operating capabilities and concept of employment—in furtherance of public understanding and appreciation of the Air Force.

(b) *Selected passenger.* An influential person who because his position permits ready contact with the various segments of the public, can improve understanding and appreciation of the Air Force. Also includes military and civilian foreign nationals of allied countries who have a similar position in their country.

§ 858.3 Who may approve flights.

Major air commanders may approve orientation and indoctrination flights on an unclassified basis for selected passengers, when such flights are, in their opinion, of value in promoting greater public understanding and appreciation of the Air Force and the problems associated with its operations.

(a) The Commander, Tactical Air Command, may delegate to the 4520th Aerial Demonstration Squadron Commander authority to approve orientation flights.

(b) An orientation flight, which is likely to cause unusual or national interest will not be authorized without approval of the Secretary of the Air Force (SAFOI–3c). Examples are: A flight during which a record attempt is made; a first flight of an aircraft just accepted into Air Force inventory carrying a media representative; or the first media flight over an isolated geographical area.

§ 858.4 Requirements for flights.

(a) *Selection of crew.* Highly qualified Air Force personnel will be selected to conduct orientation and indoctrination flights.

(b) *Briefing passenger(s).* The designated officers will:

(1) Require each passenger to sign a release as required in AFR 76–6 (Responsibilities and Policies for Movement of Traffic on Other Than MATS Scheduled Aircraft), absolving the Government of liability in case of accident.

(2) Brief each passenger as specified in AFR 60–16 (General Flight Rules). Include any other information that may be pertinent for passenger safety and comfort. Tactfully explain each item in the briefing to avoid passenger fear or apprehension.

(3) Orient passenger(s) on the aircraft's exterior if considered appropriate.

(4) Brief passenger(s) on procedures, controls, and instrumentation if he (they) will occupy a crew member's position.

§ 858.5 Limitations placed on flights.

The following limitations apply to orientation and indoctrination flights.

(a) Flights will terminate at point of origin.

(b) Flights will be performed during daylight visual flight conditions with minimum ceiling of 5,000 feet and visibility of 5 miles which has existed for at least 1 hour before take-off and is forecast to exist for one hour after landing. However, on flights of several hours' duration, weather minimums will be as prescribed by the approving authority.

(c) Provisions of AFR 50–27 (AF Physiological Training Program) pertaining to flight altitudes and physiological training apply to passengers receiving orientation and indoctrination flights in all types of aircraft.

(d) Formation flying will not be performed unless required for a specific purpose and authorized by the approving authority.

§ 858.6 Certificate authorized.

The certificate of achievement is suggested as an award for the passenger in recognition of his flight. Appropriate photographs may also be presented to the passenger.

PART 859—NON-AIR FORCE PILOTS FLYING AIR FORCE TEST AIRCRAFT

Sec.
859.1 Purpose.
859.2 Explanation of test aircraft.
859.3 Who may fly Air Force test aircraft.
859.4 Approval of flights.

AUTHORITY: The provisions of this Part 859 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 859.1 Purpose.

This part authorizes the flying of Air Force test aircraft by non-Air Force pilots, and tells who may approve such flights.

§ 859.2 Explanation of test aircraft.

A test aircraft is any aircraft undergoing USAF research and development testing or used by the USAF for conducting component or related tests in the research and development program. Initial models of production aircraft undergoing acceptance testing are not included.

§ 859.3 Who may fly Air Force test aircraft.

Non-Air Force pilots who possess qualifications comparable to Air Force standards may fly Air Force test aircraft provided:

(a) Flights are in the interest of the Air Force development program and do not hinder the Air Force testing program.

(b) A report of the findings of each flight is submitted to the Air Force. The person making the flight will submit the report to the agency which approved the flight.

(c) Classified information is not disclosed or revealed except with specific approval.

§ 859.4 Approval of flights.

(a) The Director of Systems Acquisition, Headquarters USAF, is authorized to approve:

(1) Flying of Air Force test aircraft by:

(i) Persons sponsored by or representing foreign governments.

(ii) Other non-United States citizens.

(iii) United States citizens who are not members of the Department of Defense, NASA, or FAA.

(2) Flying research or scarce experimental aircraft by persons not directly involved in the testing program for that aircraft.

(b) The Commander, AFSC, is authorized to approve test flight requests of:

(1) United States citizens who are members of the Department of Defense, NASA, or FAA.

(2) Civilian contractor personnel actively engaged in approved USAF test programs.

(c) The cognizant Air Force representative will approve flights of contractor personnel in Air Force test aircraft provided through bailment agreement in accordance with Parts 1013 and 1059, Subchapter W of this chapter.

SUBCHAPTER G—BOARDS

PART 865—PERSONNEL REVIEW BOARDS

Subpart A—Air Force Board for Correction of Military Records

Sec.
865.1 Purpose.
865.2 Establishment, function, and jurisdiction of the Board.
865.3 Application for correction.
865.4 Time limit for filing application.
865.5 Exhaustion of other remedies.
865.6 Other proceedings not stayed.
865.7 Review of application.
865.8 Entitlement to hearing, notice, counsel, witnesses, and access to records.
865.9 Convening the Board.
865.10 Conduct of hearing.
865.11 Continuance.
865.12 Action by the Board.
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Subpart A—Air Force Board for Correction of Military Records

AUTHORITY: The provisions of this Subpart A issued under secs. 1552, 8012, 70A Stat. 116, 488; 10 U.S.C. 1552, 8012.

§ 865.1 Purpose.

This subpart establishes procedures for making application, and the consideration of applications, for the correction of military records by the Secretary of the Air Force acting through the Air Force Board for the Correction of Military Records (referred to in this part as the "Board").

§ 865.2 Establishment, function, and jurisdiction of the Board.

(a) *Establishment and composition.* Pursuant to 10 U.S.C. 1552, the Air Force Board for the Correction of Military Records has been established in the Office of the Secretary of the Air Force. The Board consists of civilians of the executive part of the Department of the Air Force in such number, not less than three, as may be appointed by the Secretary of the Air Force. Three members present shall constitute a quorum of the Board. The Secretary designates one member as chairman. In the absence

or incapacity of the chairman an acting chairman chosen by the Board shall act as chairman for all purposes.

(b) *Function.* The function of the Board is to consider all applications properly before it for the purpose of determining the existence of an error or an injustice and to make appropriate recommendations to the Secretary of the Air Force.

(c) *Jurisdiction.* The Board shall have jurisdiction to review and determine all matters properly brought before it, consistent with existing law.

§ 865.3 Application for correction.

(a) *General requirements*—(1) *Submission.* The application for correction should be submitted on DD Form 149, "Application for Correction of Military or Naval Record," or exact facsimile thereof, and should be addressed to: Hq USAF (AFDASED3), Washington, D.C., 20330. Forms and explanatory matter may be obtained from Hq USAF (AFDASED3), Washington, D.C., 20330.

(2) *By whom signed.* Except as provided in subparagraph (3) of this paragraph, the application shall be signed by the person requesting corrective action with respect to his record and will either be sworn to or will contain a provision to the effect that the statements submitted in the application are made with full knowledge of the penalty provided by law for making a false statement or claim (18 U.S.C. 287, 1001).

(3) *When person is unable to submit application himself.* When the record in question is that of a person who is incapable of making application himself, or whose whereabouts are unknown, or when such person is deceased, for the purpose of bringing the matter before the Board, the application may be made (except where compliance with the provisions of the law with respect to time limitations for filing an application may require otherwise) by such person as the Board shall determine to be competent and suitable and to have a proper interest therein, including but not limited to, a spouse, a parent, or relative. Such proof of suitability and proper interest shall be submitted as may be required by the Board.

§ 865.4 Time limit for filing application.

A claimant, his heir, or legal representative, must file the application for correction of a record with the Secretary of the Air Force within three years after discovery of the alleged error or injustice. Failure to file within the time prescribed may be excused by the Board if it finds it would be in the interest of justice to do so. If the claimant, his heir, or legal representative files an application more than three years after he discovers the error or injustice, he must include in his application his reasons why the Board should find it is in the interest of justice to excuse his failure to file the application within the time prescribed in this section.

§ 865.5 Exhaustion of other remedies.

No application will be considered until the applicant has exhausted all effective administrative remedies afforded him by existing law or regulations, and such legal remedies as the Board shall determine are practical and appropriately available to the applicant.

§ 865.6 Other proceedings not stayed.

The application to the Board for correction of a record shall not operate as a stay of any proceedings being taken with respect to the person involved.

§ 865.7 Review of application.

Each application and the available military or naval records pertinent to the corrective action requested will be reviewed to determine whether to authorize a hearing or to deny the application without a hearing. The Board will make this determination in all cases except those in which the application has been denied administratively for the reason that the applicant has not exhausted all other effective administrative remedies available to him, or for the reason that the applicant did not file his application within three years after he discovered the alleged error or injustice and did not submit any reason why the Board should find it to be in the interest of justice to excuse his failure to file the application within the prescribed three years. In connection with any application which it considers, the Board may recommend to the Secretary that the records be corrected, as requested by the applicant, without a hearing. The Board may deny an application if it determines that insufficient evidence has been presented to indicate probable material error or injustice, that the applicant has not exhausted other effective administrative or legal remedies available to him, that effective relief cannot be granted, or that the applicant did not file his application within three years after he discovered the alleged error or injustice and insufficient evidence has been presented to warrant a finding that it would be in the interest of justice to excuse the failure to file within the prescribed three years. The Board will not deny an application on the sole ground that the record or records involved were made by or by direction of the President or the Secretary in connection with proceedings other than proceedings of a Board for correction of military or naval records. If the application is denied, the applicant will be advised of the denial and that he is privileged to submit new and material evidence for consideration.

§ 865.8 Entitlement to hearing, notice, counsel, witnesses, and access to records.

(a) *General.* In each case in which a hearing is authorized, the applicant will be entitled to appear before the Board either in person or by counsel of his own selection or in person with counsel.

(b) *Notice*—(1) *To applicant and counsel.* In each case in which a hearing is authorized, the Board will transmit to the applicant and counsel, if any, a written notice stating the time and place of hearing. The notice will be mailed to the applicant and counsel, if any, at least 30 days prior to the date of hearing, except that an earlier date may be set where the applicant waives his right to such notice in writing.

(2) *Notifying Board.* Upon receipt of notice of hearing, the applicant will notify the Board in writing at least 15 days prior to the date set for hearing as to whether he will be present at the hearing and will indicate to the Board the name of counsel, if represented by counsel, and the names of such witnesses as he may intend to call in his behalf. Cases in which the applicant notifies the Board that he does not desire to be present at the hearing will be considered in accordance with § 865.10(b).

(c) *Definition of counsel.* The term "counsel" will be construed to include members in good standing of the Federal bar or the bar of any State, accredited representatives of veterans' organizations recognized by the Administrator of Veterans' Affairs under Title 38, United States Code, section 3402, and such other persons who, in the opinion of the Board, are considered to be competent to present equitably and comprehensively the request of the applicant for correction, unless barred by law.

(d) *Witnesses.* The applicant will be permitted to present witnesses in his behalf at hearings before the Board. It will be the responsibility of the applicant to notify his witnesses and to arrange for their appearance at the time and place set for hearing.

(e) *Access to records*—(1) *Official records.* The applicant shall have access to such official records as are deemed necessary to an adequate presentation of his case. It will be the responsibility of the applicant to procure such evidence not contained in the official records of the Department of the Air Force as he desires to present in support of his case.

(2) *Classified or privileged matter.* Classified or privileged matter shall not be disclosed or made available without express finding of the chairman that such disclosure is required in the case and is not detrimental to the public interest. Such disclosure shall not be contrary to existing law and departmental regulations concerning the security of classified material. When appropriate, the applicant may be supplied only with a summary or extract of classified matter.

§ 865.9 Convening the Board.

The Board will be convened at the call of the chairman and will recess or adjourn at his order.

§ 865.10 Conduct of hearing.

(a) *By chairman.* The hearing shall be conducted by the chairman, and shall be subject to his rulings so as to insure a full and fair hearing. The Board shall not be limited by legal rules of evidence but shall maintain reasonable bounds of competency, relevancy, and materiality.

(b) *When applicant is not present or represented at hearing.* If the applicant, after being duly notified, has indicated to the Board that he does not desire to be present or to be represented by counsel at the hearing, the Board will consider the case on the basis of all the material before it, including, but not limited to, the application for correction filed by the applicant, any documentary evidence filed in support of such appli-

cation, any brief submitted by or in behalf of the applicant, and all available pertinent records.

(c) *When applicant fails to appear at time and place set for hearing.* If the applicant, after being duly notified, has indicated to the Board that he will be present or be represented by counsel at the hearing, and without good cause and timely notice to the Board, he or his representative fails to appear at the time and place set for the hearing, the Board may consider the case in accordance with the provisions of paragraph (b) of this section, or will make such other disposition of the case as is indicated under the circumstances.

(d) *Testimony.* All testimony before the Board shall be given under oath or affirmation. The proceedings of the Board and the testimony given before it will be recorded verbatim.

§ 865.11 Continuance.

The Board may continue a hearing on its own motion. A request for continuance by or in behalf of the applicant may be granted by the Board if a continuance appears necessary to insure a full and fair hearing.

§ 865.12 Action by the Board.

(a) *Deliberations, findings, decisions, and recommendations*—(1) *Deliberations.* Only members of the Board and its staff shall be present during the deliberations of the Board.

(2) *Further information.* During the course of review of the case, when it appears to the Board's satisfaction that the facts have not been fully and fairly disclosed by the records or by the testimony and other evidence before the Board, the Board may require the applicant to obtain, or the Board may obtain, such further information as it may consider essential to a complete and impartial determination of the facts and issues.

(3) *Findings, decisions, and recommendations.* Following a hearing, the Board will make written findings, decisions, and recommendations. A majority vote of the members present on any matter before the Board will constitute the action of the Board and shall be so recorded.

(4) *Separate communication.* Where the Board considers it necessary to submit comments or recommendations to the Secretary of the Air Force as to matters arising from but not directly related to the issues of any case, such comments and recommendations shall be the subject of separate communication.

(b) *Minority report.* In case of a disagreement between members of the Board, a minority report may be submitted, either as to the findings, decision, or the recommendations or to all, including the reasons therefor.

(c) *Record of proceedings.* When the Board has completed its proceedings, a record thereof shall be prepared. Such record shall indicate whether or not a quorum was present at the hearing and at the Board's deliberations. The record shall include the application for relief, a transcript of any testimony, affidavits, papers, and documents considered by the Board, briefs and written arguments filed in the case, the findings, decision and recommendations of the Board and all other papers, documents, and reports necessary to reflect a true and complete history of the proceedings. The record so prepared will be certified by the chairman or his designee as being true and complete.

(d) *Withdrawal.* The Board may permit an applicant to withdraw his application without prejudice at any time before its proceedings are forwarded to the Secretary of the Air Force.

§ 865.13 Action by the Secretary of the Air Force.

The record of proceedings of the Board will be forwarded to the Secretary of the Air Force who will direct such action in each case as he determines to be appropriate, which may include the return of the record to the Board for further consideration when deemed necessary.

§ 865.14 Staff action.

(a) *Returning case to Board.* Upon final action by the Secretary of the Air Force, the complete record in each case will be returned to the Board. The Board will transmit the decision of the Secretary of the Air Force to the Chief of Staff, USAF, for appropriate action.

(b) *Communicating decision to applicant and counsel.* Upon receipt of the record of proceedings after final action by the Secretary of the Air Force, the Board will communicate the decision to the applicant and counsel, if any.

(c) *Informing applicant when administrative action has been completed.* When all necessary administrative action has been completed by the Air Staff, the applicant will be informed of such action by the Air Staff office designated by the Chief of Staff, USAF.

(d) *Written notice to chairman of Board.* Written notice specifying the action taken and the date thereof will be transmitted to the chairman of the Board.

(e) *Filing record of decision of the Secretary of the Air Force.* The record of the decision of the Secretary of the Air Force will not be filed in the military records of the subject of the application where the effect of such action would be to nullify the relief granted or in those cases wherein the application is denied.

(f) *Inspection of record of proceedings.* After the Secretary of the Air Force has taken action on the record, the applicant or his counsel is entitled upon request to inspect the Record of Proceedings and to receive a copy of the Board's findings, decisions, and recommendations, unless the Chairman considers that granting the request would be detrimental to the public interest.

§ 865.15 Further hearing before the Board.

After final adjudication, further hearing before the Board will be granted only upon presentation by the applicant of newly discovered relevant evidence not previously considered by the Board and then only upon recommendation of the Board and approval by the Secretary of the Air Force.

§ 865.16 Settlement of claims.

(a) *Authority*—(1) *Claims authorized to be settled and paid.* The Department of the Air Force is authorized to pay claims in accordance with Title 10, United States Code, section 1552.

(2) *Claims not authorized to be paid.* The Department of the Air Force is not authorized to pay any claim heretofore compensated by Congress through enactment of a private law, or to pay any amount as compensation for any benefit to which the claimant might subsequently become entitled under the laws and regulations administered by the Administrator of Veterans' Affairs.

(b) *Application for settlement*—(1) *Filing claims.* Settlement and payment of claims shall be made only upon a claim of the person whose record has been corrected or of his legal representative, his heirs at law, or his beneficiaries. Such claim for settlement and payment may be filed as a separate part of the application for correction of the record.

(2) *To whom payments will be made if person is deceased.* In case the person whose record has been corrected is deceased, and where no demand is presented by a duly appointed legal representative of the estate, payments otherwise due shall be made to the decedent's spouse, heir or beneficiaries, in order of precedence as prescribed in Title 10, United States Code, section 1552.

(3) *Determining status as proper parties to claim.* Upon request, the applicant or applicants shall be required to furnish requisite information to determine their status as proper parties to the claim for purposes of payment under applicable provisions of law.

(c) *Settlement*—(1) *Basis for settlement.* Settlement of claims shall be based on the decision of the Secretary of the Air Force. Computation of the amounts due shall be made by the Comptroller of the Air Force, Headquarters USAF, or his representative. In no case will the amount found due exceed the amount which would otherwise have been paid or have become due under applicable laws had no error or injustice occurred. To the extent authorized by law and regulations, amounts found due may be reduced by the amount of any existing indebtedness to the Government, arising from military service.

(2) *Advising as to nature and amount of various benefits.* Prior to or at the time of payment, the person to whom payments are to be made shall be advised by the Comptroller of the Air Force, Headquarters USAF, or his representative, as to the nature and amount of the various benefits represented by the total settlement, and shall be advised further that acceptance of such settlement shall constitute a complete release by the claimants involved of any claim against the United States on account of the correction of records.

(d) *Report of settlement.* In every case where payment is made, the amount of such payment and the name of the payee or payees, shall be reported to the chairman of the Board.

§ 865.17 Staff assistance.

(a) *Assembling and transmitting available military records.* At the request of the Board, the appropriate staff office will assemble the original or certified copies of all available military records pertinent to the corrective action requested. Such records together with the application and all supporting papers will be transmitted to the Board with a certification from the staff office designated by the Chief of Staff, USAF, that the corrective action requested cannot be granted through administrative action by any staff office.

(b) *Facilities of staff offices.* The facilities of all staff offices will be made available as required to assist the Board in accomplishing its function. Upon request of the Board, personnel of the Air Staff will be made available for presentation before the Board of matters within their functional areas and which relate to the issues under consideration.

§ 865.18 Expenses.

No expense of any nature whatsoever, voluntarily incurred by the applicant, his counsel, his witnesses, or by any other person in his behalf, will be paid by the Government.

§ 865.19 Changes in procedures.

The Board may initiate recommendations for such changes in procedures as established herein as may be considered necessary for the proper functioning of the Board. Such changes will be subject to the approval of the Secretary of the Air Force and the Secretary of Defense.

Subpart B—Air Force Discharge Review Board

AUTHORITY: The provisions of this Subpart B issued under sec. 8012, 70A Stat. 488, sec. 1553, 72 Stat. 1267; 10 U.S.C. 8012, 1553.

§ 865.100 Organization and purpose.

The Air Force Discharge Review Board (hereinafter called the "Board") is a part of the Secretary of the Air Force Personnel Council, and is administered and supervised by the Director of that Council. It is an administrative agency which, on its own motion or at the request of former military members (or their appropriate agents), reviews the type and nature of discharges or dismissals from service unless the separations resulted from sentences of general courts-martial.

§ 865.101 Jurisdiction and authority.

The Board has jurisdiction and authority in cases of former military personnel who, at the time of their separation from the service, were members of the U.S. Army aviation components (Aviation Section, Signal Corps; Air Service; Air Corps; or Air Forces) or the U.S. Air Force. The Board does not have jurisdiction and authority concerning personnel of other arms and services who, at the time of their separation, were assigned to duty with the Army Air Forces or the U.S. Air Force.

(a) The Board determines whether the type of discharge or dismissal the former service man or woman received was equitably and properly given and, if not, instructs the Director of Administrative Services (AFDAS) to adjust the discharge or dismissal in accordance with the facts presented to the Board. The Board's findings are subject to review only by the Secretary of the Air Force.

(b) The Board is not authorized to revoke any discharge or dismissal, to reinstate any person in the military service subsequent to his separation, or to recall any person to active duty.

(c) The Board may on its own motion consider a case, which appears likely to result in a decision favorable to the former military member, without his knowledge or presence. If the decision is favorable, the Board directs AFDAS to notify the former member at his last known address. If the decision is unfavorable, the Board returns the case to the files without record of formal action. It will reconsider the case without prejudice if the former member subsequently files an application for review.

(d) The Board does not reconsider a case after it has rendered a formal decision unless new, pertinent, and material evidence is found which might change the original decision. If new evidence is discovered, the former member (or his appropriate agent) may request a rehearing. The request for rehearing must be written (a letter is permissible) and be submitted within a reasonable time. It must include the new evidence and show that (1) The applicant diligently tried to obtain and present all available evidence at the original hearing and (2) the delay in discovering the new evidence was not the applicant's fault.

§ 865.102 Application for review.

The Air Force must receive applications for review within 15 years after the effective date of the former member's discharge or dismissal.

(a) The former member (or his appropriate agent) will submit (see paragraph (c) of this section) a single copy of DD Form 293, "Application for Review of Discharge or Separation from the Armed Forces of the United States," and supporting affidavits and other evidence. The application must show:

(1) Member's full name, grade, and service number.

(2) Organization or assignment at date of separation.

(3) Date and place of separation.

(4) Type and nature of the discharge or dismissal.

(5) Basis of the claim for review.

(6) Conclusive action desired of the Board.

(7) Whether the applicant desires:

(i) To appear personally before the Board.

(ii) To be represented by counsel before the Board; if so, the name and address of the designated counsel.

(8) Mail address for receipt of correspondence concerning the review.

(b) The spouse, next of kin, or legal representative of a former member may request the review as agent for the member, but proof of the member's death or mental incompetency must accompany the request.

(c) Applicants will forward their requests for review as follows: Mail to Air Force Section, Military Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri, 63132.

(d) The agency receiving an application for review assembles the originals or official copies of all available military records pertaining to the former service man or woman and transmits the records, application, and supporting documents to the Board.

§ 865.103 Convening the Board.

(a) The president convenes, recesses, and adjourns the Board. If the president is absent, the next senior member acts as president.

(b) The president indicates the time and place the Board will convene, usually in Washington, D.C.

(c) The Board assembles in either open or closed session to consider cases presented to it. It considers cases in closed session when the applicant has not asked to appear in person or to have properly designated counsel appear in his behalf, or when applicant fails to appear when scheduled. Such cases are decided on the basis of documentary evidence, including briefs submitted by or for the applicant.

§ 865.104 Procedures for hearings.

(a) *Applicant's rights.* The law entitles the applicant for a review to appear, at his request, before the Board in open session either in person or by counsel of his own selection, and to present such witnesses as he may desire. In this subpart, "counsel" includes members in good standing of the Federal or a State bar, accredited representatives of veterans organizations recognized by the Veterans' Administration under section 200 of the Act of June 29, 1936 (38 U.S.C. 3402), and any other person the Board considers to be competent to present the applicant's claim equitably and comprehensively. The Government does not pay expenses or compensation of the applicant's witnesses or counsel. The applicant may submit any documents he wishes as evidence for the Board's consideration. Such documents may include, but are not limited to, police clearances, character references, and statements by employers.

(1) When an applicant has requested a personal appearance, the Board will send him (and his designated counsel, if any) written notice of the hearing time and place. The notice will be mailed at least 30 days before the hearing date. If the applicant wishes he may waive the time limit and in such case the Board may set an earlier hearing date. Evidence will be placed in the record to show how and when the notice was given.

(2) If an applicant has requested a personal appearance and, after being notified of the hearing time and place, fails to appear at the appointed time, either in person or by counsel, he waives his right to be present.

(b) *Board actions.* The Board conducts hearings in a way to insure full and fair inquiries. Applicants or their counsel will not be allowed access to any classified reports of investigation or any document received from the Federal Bureau of Investigation. When neces-

sary to inform an applicant about the substance of such a document, the Board requests an appropriate official to prepare a summary of or extract from the document without including references to sources of information and other matter that would be detrimental to public interest if disclosed. The summary may be made available, with or without classification, to the applicant or his counsel.

(c) The Board, in conducting its inquiries, is not limited by the rules of evidence applicable in judicial proceedings.

(d) Witnesses may testify either in person under oath or by affidavit. If a witness testifies under oath, he is subject to examination by Board members. At the request of applicant or his counsel, and at the discretion of the Board, witnesses may be allowed to make unsworn statements in respondent's behalf, in which case they will not be examined by Board members.

(e) The Board may continue a hearing on its own motion or, at its discretion, grant an applicant's (or his counsel's) request for continuance if this appears necessary to insure a full and fair hearing.

(f) The Board, at its discretion and for good cause, may permit an applicant to withdraw his request without prejudice at any time before the Board begins its deliberations.

§ 865.105 Findings and conclusions.

(a) The Board, in closed session, prepares written findings and conclusions in each case. The conclusions state whether the Air Force should correct the discharge or dismissal. Corrective action cannot exceed the Board's jurisdiction (see § 865.101).

(b) The Board's findings and conclusions constitute those of a majority of its members.

§ 865.106 Disposition of proceedings.

(a) When the Board has concluded its proceedings in any case, the recorder prepares a complete record. The record includes the application for review; a transcript of the hearing, if any; documentary evidence considered; the findings, conclusions, and directions (see § 865.101); minority reports of dissenting Board members; and all other documents necessary to a true and complete history of the proceedings. The Board president signs the record and the recorder authenticates it as true and complete. If the recorder is absent or incapacitated, a voting member of the Board may authenticate the record.

(b) The Board transmits a record of its proceedings, including a transcript of testimony, and directions in each case to AFDAS. This office administratively carries out the Board's directions and reports the results to the applicant (and/or his counsel, if any). The applicant, his guardian, or legal representative, may request in writing that AFDAS furnish a copy of the Board proceedings, findings, and conclusions. Information that appears to be potentially injurious to the applicant's physical or mental health is furnished only to his guardian or legal representative.

(c) Unclassified records of Board proceedings are open to perusal by the Administrator of Veterans Affairs or his authorized representative.

Subpart C—Air Force Disability Review Board

AUTHORITY: The provisions of this Subpart C issued under sec. 8012, 70A Stat. 488, secs. 301, 302, 58 Stat. 286, as amended; 10 U.S.C. 8012, 38 U.S.C. 693h, 693i.

§ 865.200 Constitution and purpose.

The Air Force Disability Review Board (referred to in this part as the Review Board) is an administrative agency established within the Department of the Air Force pursuant to section 302 of the Servicemen's Readjustment Act of 1944, as amended (58 Stat. 287, as amended; 38 U.S.C. 693i), Transfer Order 16 (13 F.R. 3461), to review, at the request of an officer retired or released from active service, without pay for physical disability pursuant to the decision of a retiring board, disposition board or physical evaluation board, the findings and decisions of such board.

§ 865.201 Jurisdiction and authority.

(a) The Review Board has jurisdiction and authority in cases of officers who, at the time of their separation or release from active service, were members of the Aviation Section, Signal Corps, United States Army; the Air Service, United States Army; the Air Corps, United States Army; the Army Air Forces; or the United States Air Force. However, Army personnel of other arms and services who, at the time of their separation from the service, were assigned to duty with the Army Air Forces or the United States Air Force, are excluded from such jurisdiction and authority.

(b) Upon timely application therefor, the Review Board is authorized to review the proceedings and findings of boards referred to in § 865.200 and to receive additional evidence bearing thereon. 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 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 to reverse prior findings in the case 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, will be deprived unjustly of retirement pay benefits, or retired status and retired pay, as the case may be, by reason of erroneous findings.

(c) In carrying out its duties the Review Board will have the same powers as exercised by, or vested in, the board whose findings and decisions are being reviewed.

§ 865.202 Application for review.

(a) Any officer desiring a review of his case will make a written application therefor on AF Form 436, "Application for Review of Department of the Air Force Retiring Board Proceedings," and AF Form 436a, "Supplement to Application for Review of the Department of the Air Force Retiring Board Proceedings."

(b) An application for review will not be granted unless received by the Department of the Air Force prior to June 22, 1959, or within 15 years after the date on which the officer was separated from the service or released to inactive service, without pay, for physical disability, whichever date is later.

(c) Upon receipt of an application for review, the Director of Military Personnel will note thereon the time of receipt thereof and, in cases where the jurisdiction for review by the Review Board is established, will assemble the originals or certified copies of all available service and/or other records pertaining to the health and physical condition of the applicant, including the record of the proceedings and findings of all retiring, disposition, and physical evaluation boards in question and the records of all administrative and/or executive action taken thereon. The records, together with the application and any supporting documents submitted therewith, will be transmitted to the president of the Review Board.

§ 865.203 Convening of Review Board.

(a) 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.

(b) Unless otherwise directed by its president, the Review Board will convene in Washington, D.C., at the time and place indicated by him.

(c) The Review Board will assemble in open session for the consideration and determination of cases presented to it. After the conclusion of the hearing, the Review Board, as soon as practicable, will convene in closed session for determination.

§ 865.204 Hearings.

(a) 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 will be permitted to present testimony either in person or by affidavit. As used in the regulations contained in this subpart, the term "counsel" will be construed to include members in good standing of the Federal bar and/or 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; 38 U.S.C. 101), and any other person who, in the opinion of the Review Board, is 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.

(b) In every case in which a hearing is authorized, the Review Board will transmit to the applicant and to desig-

nated counsel for the applicant, if any, a written notice by registered mail stating the time and place of hearing. The notice will 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. The notice will constitute compliance with the requirement of notice to applicant and his counsel.

(c) An applicant may waive his right to a personal hearing in writing or by his failure to appear in person or by counsel at the appointed time and place. In the event of a waiver of appearance, the board will nevertheless consider the case on the record.

(d) In the conduct of its inquiries, the Review Board will not be limited by the restrictions of rules of evidence.

(e) In a case wherein it is advisable and practicable, the Review Board, upon its own motion, may request any Armed Forces medical facility to detail one or more medical officers to make a physical examination of the applicant, if available, and report the examination results 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 Review Board may examine the applicant, if available, and testify as witnesses concerning the results of the examination.

(f) 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.

(g) 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 Review Board's discretion, a continuance appears necessary to insure a full and fair hearing.

§ 865.205 Finding and conclusions.

(a) The Review Board will make findings in closed session in each case. Such findings will include a finding affirming or reversing the findings of the retiring, disposition, or physical evaluation board under review and of the administrative action taken subsequent thereto, specifying which of the findings and administrative actions are affirmed and which are reversed.

(b) In the event the Review Board reverses any of such original findings, the Review Board will then make substitute findings for those reversed so that the affirmed and substituted findings will aggregate the following complete findings:

(1) Whether the applicant was permanently disabled for active service at the time of his separation from the service or released to inactive service.

(2) The cause or causes of the disability.

(3) The approximate date of origin of each disabling defect.

(4) The date the officer become disabled for active service.

(5) Whether the cause or causes of the disability was or was not an incident of the service.

(6) Whether the cause or causes of the disability had been permanently aggravated by military service.

(7) Whether the disability for active service was or was not the result of an incident of the service.

(8) Whether the officer's disability was incurred in combat with an enemy of the United States.

(9) Whether the officer's disability, if incurred prior to January 1, 1951, resulted from an explosion of an instrumentality of war in line of duty, or whether the disability, if incurred subsequent to January 1, 1951, was caused by an instrumentality of war in line of duty.

(c) In the event the Review Board finds the officer permanently incapacitated for active service and that the incapacity was an incident of the 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 or the benefits provided by the Career Compensation Act of 1949 as amended (63 Stat. 802).

(d) The findings and conclusions of a majority of the Review Board will constitute the findings and conclusions of the Review Board, and when made, will be signed by the president of the Review Board and authenticated by the recorder.

§ 865.206 Disposition of proceedings.

(a) When the Review Board has concluded its proceedings in any case, the recorder will prepare a complete record thereof. The record will 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 and conclusions 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 recorder as being true and complete. In the event of the absence or incapacity of the recorder, the record may be authenticated by a participating member of the Review Board,

(b) Normally, all records of the proceedings of the Review Board will be without classification. Upon written request from the applicant, a copy of the proceedings of the Review Board, less any exhibits which may be impractical to reproduce, will be furnished by the custodian of the master personnel records. In cases where there is possible harm to the mental health of the applicant, a copy of the proceedings of the Review Board will be furnished to the guardian or legal representative upon written request. The copy of the proceedings furnished will include as a minimum the following:

(1) A copy of the order appointing the Review Board.

(2) The findings of the retiring board or physical evaluation board affirmed.

(3) The findings of the retiring board or physical evaluation board reversed.

(4) The findings of the Review Board.

(5) The conclusions which were made by the Review Board. Subject to the foregoing restrictions and upon request of the applicant or, in cases where there is possible harm to the mental health of the applicant, upon request of the guardian or legal representative, the custodian of the master personnel records will make available for inspection a record of the proceedings of any case reviewed by the Review Board.

§ 865.207 Action upon proceedings.

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 Director of Military Personnel for appropriate Department of the Air Force action. The Director of Military Personnel, 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, will perform the necessary administerial acts, and thereafter will notify the applicant and/or his counsel of the action taken.

§ 865.208 Rehearings.

(a) After the Review Board has reviewed a case and its findings and decision have been approved, the case normally will not be reconsidered, except on the basis of new, pertinent, and material evidence which might reasonably be expected to cause findings and decision other than those rendered as the result of the original review.

(b) Any officer desiring a rehearing of his case will make a written application therefor on AF Form 437, "Application for Review of Findings of the Department of the Air Force Disability Review Board."

SUBCHAPTER H—AIR FORCE RESERVE OFFICERS' TRAINING CORPS

PART 870—POLICIES AND PROCEDURES FOR THE ORGANIZATION, ADMINISTRATION AND OPERATION OF THE AFROTC

Sec.

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870.20 Credit for previous military training.
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870.22 Disenrollment from the basic course.

AUTHORITY: The provisions of this Part 870 issued under secs. 8012, 8540, 9381–9387, 70A Stat. 488, 527, 568–571; 10 U.S.C. 8012, 8540, 9381–9387.

§ 870.1 Purpose.

This part prescribes the policies and procedures for the organization, administration, and operation of the Air Force Reserve Officers' Training Corps (AFROTC) during peacetime, national emergency, or full-scale mobilization.

§ 870.2 Definitions.

In this part, the following terms apply:

(a) *Air Force ROTC detachment.* An Air Force organization manned by Regular or Reserve Air Force personnel assigned to Air Force ROTC, with duty station at a civilian educational institution.

(b) *Sub-detachment.* An AFROTC detachment under the administrative control of another (parent) detachment whose physical location is separate from the parent detachment.

(c) *Air Science.* The official designation of the Air Force ROTC program of instruction.

(d) *Department of Air Science.* An integral academic subdivision of an educational institution which includes all Air Force ROTC activities conducted at the institution as stipulated in a contract with the Air Force.

(e) *Basic course.* The first- and second-year program of instruction in Air Science.

(f) *Advanced course.* The third- and fourth-year program of instruction in Air Science.

(g) *Air Force ROTC summer training.* A period of training for the advanced course cadets conducted at an Air Force installation.

(h) *Summer training unit (STU).* The training organization established annually as the camp authorized by Section 9385, Title 10, United States Code, to conduct the training cited in paragraph (g) of this section.

(i) *Professor of Air Science (PAS).* The senior Air Force commissioned officer assigned to command a detachment or a sub-detachment of the Air Force ROTC.

(j) *Institutional phase.* That portion of the entire Air Force ROTC program conducted at a civilian educational institution (as distinguished from the Air Force ROTC summer training phase).

(k) *Academic year.* The period that begins with the opening date of registration for the fall term and ends the day before the opening date of the fall term registration of the following year.

(l) *Cadet.* A student who has been admitted to full membership in the AFROTC and is entitled to all benefits authorized by law and regulations pertaining thereto.

(m) *Conditional cadet.* A cadet who is tentatively accepted for enrollment in the advanced course pending determination of his eligibility for enrollment, when his lack of eligibility is caused by factors over which the cadet has no control.

(n) *Pursuing student.* A student who is not a member of the AFROTC nor a candidate for appointment as a commissioned officer on the basis of the completion of the AFROTC program, but who is permitted to pursue the institutional phase of the AFROTC course for academic credit only.

(o) *Category.* An enrollment classification of advanced course cadets, used to identify their potential utilization as a commissioned officer, and based on their qualifications, personal preferences, and USAF officer production requirements. (See categories I–P, I–N, II, III, and IV, in § 870.15.)

(p) *AFROTC graduate.* A cadet who has successfully completed the AFROTC program prescribed by law and regulations, including the prescribed AFROTC summer training, and has been awarded a baccalaureate degree.

(q) *Extended active duty (EAD).* A tour of active military service performed by a Reserve officer who occupies an authorized troop space in the active military establishment.

(r) *Active duty for training.* A 6-month tour of active military service for Reserve training under orders that provide for automatic reversion to an inactive duty training status upon completion of the specified period of active military service.

(s) *Friendly foreign nations.* Those nations outside Communist domination or influence, or which are known to have military or political pacts with the United States.

(t) *Officer training program.* Any portion of training received in OCS, OTS, advanced course Army, Navy, or Air Force ROTC, or any of the service academies.

(u) *Completed cadet.* A cadet who has completed the AFROTC program of instruction at least one quarter or semester before he completes his degree requirements, or who has completed the AFROTC program of instruction (including summer training) and has graduated from the institution, but who for reasons beyond his control cannot be commissioned until all commissioning requirements have been met.

§ 870.3 Policy on officer procurement.

The Air Force Reserve Officers Training Corps (AFROTC) is a major officer procurement program of the Air Force. It is conducted jointly with the cooperating educational institutions, as outlined in this part. AFROTC or other equivalent peacetime program will be the officer candidate program conducted in colleges and universities during a national emergency or war.

§ 870.4 Mission and objectives of the Air Force ROTC.

The mission of the Air Force ROTC is to produce officers of appropriate quality to satisfy stated Air Force officer requirements. The objectives of the AFROTC are:

(a) To develop a selection base broad enough to insure the Air Force a wide choice of officer material.

(b) To screen, select, and enroll enough candidates of a suitably high quality to meet Air Force requirements.

(c) To provide appropriate precommissioning education and training which will qualify the candidate for active duty as a junior officer and strongly motivate him toward an Air Force career.

(d) To commission as second lieutenants those graduates who meet all requirements.

§ 870.5 Organization of the Air Force ROTC.

The Department of the Air Force determines the plans and policies to implement Chapter 905, Title 10 U.S.C., and other Federal statutes relating to the AFROTC; it also supervises the execution of all laws, plans, and policies affecting the conduct of the AFROTC program by major air commanders.

(a) The Air Force ROTC program exists only at accredited degree-granting institutions; it is planned to coincide with the normal academic program leading to a baccalaureate degree. In the event of full-scale mobilization, the educational institution shall be responsible for the educational program of the officer candidates. Academic program acceleration and baccalaureate degree requirements shall be as follows:

(1) A minimum of 48 weeks of academic instruction per year will be required.

(2) Current credit requirements for baccalaureate degree shall be maintained at the respective institutional minima.

(3) Any off-campus work done by the officer candidates in "cooperative schools" or courses shall be done in laboratories or industries approved by Air University.

(4) All students shall be placed on the same accelerated schedule, if feasible.

(b) The Air Force ROTC is organized as a subordinate unit of the Air University and has a central unit, detachments, and sub-detachments. A detachment is established/disestablished only with the approval of the Secretary of the Air Force, although the Commandant, AFROTC, and the educational institution may establish/disestablish a sub-detachment by mutual agreement. If Headquarters USAF establishes a sub-detachment, it cannot be disestablished without Headquarters USAF approval.

(c) The agreement between the institution and the Air Force stipulates that each cadet who has enrolled in either course must complete that course as a prerequisite to his graduation from the institution. This obligation may be waived only:

(1) Under regulations prescribed by the Secretary of the Air Force.

(2) When the Professor of Air Science, with the concurrence of the institutional authorities, disenrolls a basic or advanced cadet from AFROTC (see § 870.22).

§ 870.6 Selection of educational institutions.

To assure the selection of educational institutions (to receive new units of AFROTC or of any similar on-campus precommissioning program) on a com-

mon and equitable basis under peacetime, national emergency, or full-scale mobilization conditions, each institution selected must:

(a) Have applied to receive a unit;

(b) Be fully accredited by the appropriate regional or national authority;

(c) Provide adequate physical facilities; and

(d) Be capable of producing a number of officers adequate to justify the Department of Defense resources invested, considering (among other factors) the number of students enrolled who are prospective officer candidates, and the proportion of each entering academic class who normally receive degrees from the institution.

§ 870.7 Organization of the training program.

This training program includes the institutional phase (the basic and advanced courses) and the summer training phase.

(a) *The institutional phase.* This phase consists of a 2-year basic course and a 2-year advanced course. Completion of the basic course does not guarantee acceptance in the advanced course (but it or the equivalent is a prerequisite). The student must voluntarily apply for the advanced course and compete with all applicants for selection. (Sections 870.8 to 870.17 describe the eligibility requirements for enrollment in each course, and tell what categories of enrollment exist in the advanced course.) Entrance into the advanced course is normally phased so that its completion coincides with the awarding of the baccalaureate degree. The Commandant, AFROTC, may prescribe policies which are an exemption to this.

(b) *Compression, curtailment, or concurrent pursuit of courses.* The basic and advanced courses are expected to cover four full academic years, and the law forbids that the basic course be compressed or curtailed into less than two academic years. However, the Commandant, AFROTC, may permit compression of the entire program through concurrent enrollment in both courses, or through compression of the advanced course when these circumstances exist:

(1) When a cadet is enrolled in an academic program that requires less than 4 years of resident study for the degree.

(2) When a cadet with outstanding leadership qualities is enrolled, who would otherwise be unable to complete the entire AFROTC course before his degree is awarded.

(3) When the academic program of an educational institution having AFROTC or equivalent program is accelerated during full-scale mobilization.

§ 870.8 Legal requirements.

Before a student is eligible to enroll in the Air Force Reserve Officers Training Corps, he must be:

(a) A male citizen of the United States.

(b) Not less than 14 years of age.

(c) Physically qualified for military service at the time of enrollment or will be so on becoming of military age.

(d) A student at an institution where an AFROTC unit is established.

NOTE: A student may not enroll in an AFROTC unit unless the unit is hosted by the same institution where he is enrolled.

§ 870.9 Who may not enroll in AFROTC.

(a) Commissioned officers (present/former) of any component of the Army, Navy, Air Force, Marine Corps, or Coast Guard.

(b) Officers (present/former) of the U.S. Public Health Service.

(c) Members of any component of the U.S. Armed Forces on extended active duty.

§ 870.10 Character requirements.

Good moral character is a prerequisite for enrolling and continuing in the AFROTC; a candidate becomes ineligible under these circumstances.

(a) *Military or civil offenses.* If a student has been convicted by a court-martial, or by a civil court for any offense other than a minor traffic violation, he will not be certified for Selective Service deferment as a basic student, nor will he be enrolled or continued in the advanced course unless a waiver is granted. The Commander, AU, has waiver authority for all offenses. The Commandant, AFROTC, is authorized to grant or deny waivers of nonrecurrent minor violations that are not prejudicial to the applicant's performance of duty as an Air Force officer and do not indicate unacceptable traits of character. The authority to waive nonrecurrent minor violations may be delegated to the PAS.

(b) *Unsuitability.* If a student is eliminated from a service academy or from any officer training program of the Army, Navy, or Air Force:

(1) For military inaptitude, indifference, major honor violations, or undesirable traits of character, he may not enroll in AFROTC or wear the AFROTC uniform. This includes persons who resign in the face of impending charges, as well as those eliminated by official action. A student who has been eliminated for disciplinary reasons may enroll as a basic cadet, but he cannot be certified for Selective Service deferment and cannot enter the advanced course without a waiver from Headquarters USAF (AFPTR).

(2) For academic deficiency, he may be enrolled in the basic course. He may also be conditionally enrolled in the advanced course but his application must be referred through channels to Headquarters USAF (AFPTR) for review and final decision; if his application is approved, he may be enrolled. (See §§ 870.18 to 870.20 for conditional enrollment procedures.)

§ 870.11 Loyalty requirements.

The PAS will make sure that any U.S. citizen who fails to do the following is not permitted to wear the AFROTC uniform:

(a) *Sign the oath of allegiance.* A student is not enrolled in the basic course unless he signs the following certificate, which becomes part of his record. (He may, because of conscientious scruple, substitute the word "affirm" for "swear," and delete the phrase "so help me God" for the same reason.)

I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

(b) *Complete the Armed Forces Security Questionnaire.* If an advanced course applicant fails or refuses, after instruction, to fill out DD Form 98, "Armed Forces Security Questionnaire," in its entirety, the PAS will deny him enrollment in the advanced course. Also, if he makes entries on this form which provide reason to believe that his enrollment is not clearly consistent with the interests of national security, or if he qualifies an entry by a remark other than "none" or "none to my knowledge" in the Remarks section, he will be denied enrollment or appointment until after a full and complete investigation discloses that his enrollment or appointment is not prejudicial to the national interest. (Such an applicant may be conditionally enrolled in the advanced course until his eligibility for enrollment or commissioning is determined; see §§ 870.18 to 870.20 for conditional enrollment procedures.)

(1) The student must file the DD Form 98 sufficiently in advance of the announced enrollment date to permit such an investigation, if one is required.

§ 870.12 Age requirements.

A student may not enroll/reenroll in the advanced course after a lapse in training if he would be too old to complete all requirements for appointment as a Reserve of the Air Force by the time he is 26 years and 6 months old (if he is programmed for flying training) or 28 years old (if he is programmed for other than flying training).

(a) *Waivers permitted.* The Commandant, AFROTC, may extend the age limit for an AFROTC cadet who has served on active duty with any branch of the military service, by not more than the number of months the cadet served on EAD, if this does not permit the cadet to be commissioned after his 30th birthday.

(b) *Waivers not permitted.* Category I cadets are never entitled to the waiver in paragraph (a) of this section.

§ 870.13 Policy on eligibility for the advanced course.

As many qualified students may be enrolled in each category as are necessary to fill, but not exceed, quotas set by Headquarters USAF (and sub-allotted by the Commandant, AFROTC) for the graduating class in which they will be appointed.

(a) Priority consideration should be given to Civil Air Patrol members who hold a CAP certificate of proficiency.

(b) Waivers to permit the enrollment of a cadet in an advanced course are discouraged.

(c) A graduate student may be enrolled in the advanced course, if he:

(1) Is selected within the prescribed production requirements.

(2) Is selected in competition with undergraduate students.

(3) Has completed the basic course or has received credit for it, as prescribed in § 870.19.

(d) A conscientious objector may not be enrolled in the advanced course.

§ 870.14 Prerequisites for enrollment in the advanced course.

Each cadet enrollment in the advanced course:

(a) Must have completed the basic course or must have received credit for it, as prescribed in § 870.19.

(b) Must meet the physical requirements required by the Air Force.

(c) Must successfully complete any general survey or screening test prescribed for entrance into his category.

(d) Must sign a deferment agreement as required by Part 871.

NOTE: The PAS must make certain that the cadet understands that the deferment agreement and the category agreement (1056 series of Air Force forms) do not conflict; instead, the former quotes a statute, and the latter a contractual agreement.

§ 870.15 Categories of training for advanced ROTC.

Students accepted in the advanced course may be enrolled in four categories as follows:

(a) *Category I.* These are cadets who qualify for flying training. There are two sub-categories: I–P for pilot candidates, and I–N for navigator candidates. AF Form 1056, "Category I Agreement," is used to enroll these cadets.

(1) To enroll in Category I, the cadet must sign the Career Reserve Statement.

(2) The cadet may not enroll in Category I–P if he has been eliminated from an aviation cadet pilot training class of the Air Force or Navy for flying deficiency. If the same authority that eliminated him recommends it, however, the PAS may enroll him as a cadet in Category I–N or other categories.

(3) The cadet may not enroll in Category I–N if he has been eliminated from an aviation cadet navigator training class of the Air Force or Navy for flying deficiency. If the same authority that eliminated him recommends it, however, the PAS may enroll him as a cadet in Category I–P or in other categories.

(4) The Commandant, AFROTC, will not commission such cadets (in subparagraphs (2) and (3) of this paragraph) until the date of graduation of the class from which they were eliminated.

(5) A cadet in Category I who fails or refuses to apply for flying training within the established time limit is discharged from the AFROTC program.

(b) *Category II.* These are cadets enrolled in a college program leading to a baccalaureate degree, with a major in a prescribed engineering or scientific field, who meet the physical standards for an Air Force commission.

(1) AF Form 1056a, "Category II, III Agreement," is used to enroll cadets in this category.

(2) These cadets may sign the Career Reserve Statement either at the time they enroll or during the course, at their option.

(c) *Category III.* These are cadets enrolled in a college program leading to a baccalaureate degree, generally with a major other than engineering or science, who meet the physical standards for an Air Force commission.

(1) AF Form 1056a, "Category II, III Agreement," is used to enroll cadets in this category.

(2) These cadets have the same option as Category II cadets as to whether they will sign their Career Reserve Statements.

(d) *Category IV.* These are cadets who have fulfilled their active duty Selective Service requirements, except those who have served on active duty for training as provided in the Reserve Forces Act of 1955 (Public Law 305). AF Form 1056b, "Category IV Agreement," is used to enroll cadets in this category.

§ 870.16 Appointment as Reserve of the Air Force.

A member of the advanced course AFROTC accrues no vested right to a commission in any Air Force component by virtue of such membership. If he is otherwise qualified, such a graduate is tendered an appointment as second lieutenant, Reserve of the Air Force:

(a) Upon successful completion of prescribed military training and upon the award of a baccalaureate degree; or

(b) When an authorized institutional official certifies that he has qualified for a degree to be awarded officially at a later date.

§ 870.17 Extended active duty for AFROTC graduates.

Under the terms of his category agreement, a cadet enrolled in one of the first three categories and commissioned from it upon graduation from the AFROTC, must serve an initial active duty period within one year, unless a delay is approved. A cadet enrolled in Category IV is not ordered to extended active duty unless he volunteers and is selected for active duty.

§ 870.18 Conditional enrollment in advanced course.

The Commandant, AFROTC, prescribes specific policy for conditional enrollment of cadets, which enables the PAS to accept tentatively a cadet in the advanced course until his eligibility is determined or the enrollment quota is received.

(a) *Statement required from the cadet.* Before his conditional enrollment, each cadet must sign the following statement:

I understand and agree that no rights or benefits will be made available to me, or in my behalf, unless and until it is determined by proper authority that I am fully qualified and selected for enrollment in the advanced course of the Air Force ROTC; that, upon such determination being made by proper authority, I will be entitled to receive all rights and benefits I would have earned and accrued but for the conditional nature of my enrollment from the date upon which I began work of the advanced course under the terms of this agreement. I further understand and agree that, if I am found to be not fully qualified and selected for such enrollment, I will be considered as not having been an advanced course cadet and will not be entitled to any rights or benefits under the terms of this agreement.

(b) *Deferment.* Cadets accepted for conditional enrollment are authorized deferment as outlined in Part 871.

§ 870.19 Enrollment of pursuing students.

If a student cannot be enrolled or conditionally enrolled in the AFROTC program, the institutional authorities and the PAS may authorize him to pursue the basic or advanced course for academic credit only.

(a) *Commutation.* A pursuing student is not entitled to commutation of subsistence or Government uniforms or uniform allowances, but he may purchase the required AFROTC uniform at his own expense to wear during the course.

(b) *Equipment.* A pursuing student may use available arms and equipment issued for instructional purposes, but such equipment will not be procured solely for his benefit.

(c) *Statement required.* A pursuing student must sign the following statement:

I, _____(name)_____, do hereby agree and understand that as a pursuing student, I am not a member of the Air Force ROTC; that, notwithstanding the fact that I am permitted to pursue the Air Force ROTC course for academic credit, I am not qualified for, nor will the Air Force tender me, a commission as a Reserve of the Air Force, based upon my successful completion of the institutional phase of the advanced course, nor will I be permitted to attend the summer training.

(d) *Who may be a pursuing student.* Any student (including a citizen of a friendly foreign nation) who cannot be enrolled or conditionally enrolled in the AFROTC program, unless otherwise not eligible.

§ 870.20 Credit for previous military training.

(a) *Credit for the basic AFROTC course.* An AFROTC cadet who transfers to another AFROTC detachment will receive credit for that part of the course he successfully completed at the losing institution. An Army or Navy ROTC cadet who desires enrollment in the AFROTC program may receive credit for that portion of the senior division Army or Navy ROTC basic course which he successfully completed at the losing institution. In addition, the Commandant, AFROTC, may waive the first year of the AFROTC basic course for successful completion of three years of junior division Army ROTC; this authority may be delegated to the PAS. The PAS may also waive the basic course for any cadet that has successfully completed Military Schools Division courses MST–1, MST–2, MST–3, and MST–4 of Army ROTC (high school level) at a military school or academy. Although the full basic course may be waived, the PAS should consider requiring the cadet to complete at least one semester or one-quarter of the basic course in order to better evaluate the cadet for entrance into the advanced course.

(b) *Credit for active service.* A cadet may request a waiver of the basic AFROTC course, or a portion of it, re-

quired to enroll in the advanced course, based on his previous honorable active service (includes 6 months active duty for training) in the Air Force, Army, Navy, Marine Corps, or Coast Guard. The PAS may waive as much of the basic course as he considers equivalent to the active service training. Note: To provide a broader basis for evaluating and training, the PAS should encourage each veteran who enters an institution at the freshman or sophomore level, who desires a commission through AFROTC, to take the remaining portion of the basic program in phase with his nonveteran contemporaries.

(c) *Credit for academy or senior division ROTC training.* If the candidate is eligible to enroll and is accepted, the PAS may waive on a year-for-year basis as much of the AFROTC program as he considers equivalent to previous training at the U.S. Air Force Academy, U.S. Military Academy, U.S. Naval Academy, U.S. Coast Guard Academy, or in the senior division of the Army ROTC or Naval ROTC. Requirements for the successful completion of the summer training phase are never waived. (Section 870.15(a)(4) applies to these cadets also.)

(d) *Granting advanced standing.* Advanced standing is not granted for the following:

(1) Training received before the student's 14th birthday.

(2) Training received as a member of the Civil Air Patrol.

(3) Training received as a member of a Reserve component of any of the Armed Forces of the United States, when not in the active military service.

(4) Training received at an institution where no commissioned officer of the active military forces is detailed by orders of the appropriate department as Professor of Military Science, Professor of Naval Science, or Professor of Air Science.

§ 870.21 Disenrollment from the advanced course.

(a) *Reasons for disenrollment.* With the concurrence of the head of the institution (or his designated representative) the PAS will disenroll a cadet from the advanced course for any of the following reasons:

(1) Inability to continue regular enrollment in the institution.

(2) Failure to remain medically qualified for commission.

(3) Failure to maintain acceptable retention standards under prescribed competitive criteria.

(4) Individual request for release for justifiable reasons.

(5) Ineptitude, indifference to training, incompatibility, evading the terms of the advanced course agreement, disciplinary reasons, or reasons involving undesirable traits of character.

(b) *Investigations.* When a cadet is considered for disenrollment for any of the reasons in paragraph (a) (3) through (5) of this section, the PAS will appoint an officer to investigate the case, interview the cadet, and return a written report.

(c) *Records.* If a cadet is disenrolled from the advanced course, a DD Form 785, "Record of Disenrollment from Officer Candidate-Type Training," is completed showing any specific recommendations for his further officer training. All of the above disenrollments will be "For the convenience of the Government" and no refund is required for commutation of subsistence paid to the cadet.

(d) *Reenrollment.* The Commandant, AFROTC, prescribes policies and procedures for reenrolling cadets that have been disenrolled for the reasons in paragraph (a) (1) through (4) of this section. No cadet who wilfully promotes his own disenrollment for any of the reasons in paragraph (a)(5) of this section, or whose conduct has brought dishonor to the Corps or himself, is eligible to reenroll in any Air Force procurement program or be appointed in any AF component.

§ 870.22 Disenrollment from the basic course.

With the concurrence of the institutional authorities the PAS may disenroll a cadet from the basic AFROTC course. Such disenrollment releases the institution from the agreement described in § 870.5(c), to require the cadet concerned to complete the basic course as a prerequisite for graduation.

PART 871—DEFERMENT OF AIR FORCE ROTC CADETS

Sec.

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871.7 Deferment agreement.
871.8 Cadet transfer procedure.
871.9 Enrollment of member of Reserve as Air Force ROTC cadet.

AUTHORITY: The provisions of this Part 871 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012; 50 U.S.C. App. 451–473.

§ 871.1 Purpose.

This part states the policy and procedure by which cadets of the Air Force Reserve Officers' Training Corps (ROTC) may be deferred from induction in the Armed Forces under the Universal Military Training and Service Act, hereinafter referred to as "the Act."

§ 871.2 Deferment policy.

The sole purpose of the Air Force ROTC deferment procedure outlined in §§ 871.2 to 871.9 is to enable selected cadets to qualify for appointment as commissioned officers in a component of the Air Force through uninterrupted completion of academic and military courses. A cadet who cannot ultimately qualify for a commission through enrollment and training afforded by the Air Force ROTC or who evidences lack of desire to become an officer will not be selected for deferment.

§ 871.3 Participating military colleges.

Under section 6(a) of the Act, a student enrolled in the Air Force ROTC program at a military college—the curriculum of which has the approval of the Secretary of Defense—is not required to register under section 3 of the Act and is relieved from liability for training and service under Section 4 of the Act. In other words, the cadet need not be granted deferment. The following military colleges, approved and designated by the Secretary of Defense, participate in the Air Force ROTC program:

(a) The Citadel, Charleston, South Carolina.

(b) Virginia Military Institute, Lexington, Virginia.

(c) Agricultural and Mechanical College of Texas, College Station, Texas.

(d) Virginia Polytechnic Institute, Blacksburg, Virginia.

§ 871.4 When cadets may be deferred.

(a) The PAS is authorized to select for deferment any qualified cadet enrolled in the basic course. Dates for deferment are as follows:

(1) Fall enrollee in Air Science I is not deferred until February 16th.

(2) Midyear enrollee in Air Science I is not deferred until he completes one academic semester or quarter at the institution.

(b) The PAS will defer each advanced cadet subject to induction under the Act.

(c) Once a cadet's deferment is cancelled, he may not again be eligible for deferment unless the Commandant, Air Force ROTC, approves his deferment. The Commandant may delegate this authority to the PAS.

§ 871.5 Period of cadet's deferment.

(a) The deferment will continue until the cadet completes the Air Force ROTC and academic programs and is commissioned; *Provided*, That:

(1) Air Force ROTC enrollment is continuous.

(2) Degree requirements will be met within the 12-month period after he completes the Air Force ROTC program.

(b) The PAS will strictly control deferments by reviewing them at the end of each quarter or semester for possible cancellations.

§ 871.6 Obligation of cadets.

The PAS (or his officer representative) will explain to Air Force ROTC cadets the obligation they assume in signing the deferment agreement (AF Form 1041) as follows:

(a) A cadet continued in a deferred status under section 6 of the Act remains liable for training and service in the Armed Forces until his 35th birthday:

(1) His deferment ceases when he enters on extended active duty under the six-year obligation and he is then exempt from induction while serving on extended active duty under section 6(a) of the Act. After he completes his required tour of extended active duty, he is exempt from induction under section 6(b)(3) of the Act.

(2) If he enters on active duty for training and incurs the eight-year obligation, he continues in a deferred status. After he completes the required tour of active duty for training, his deferment continues as long as he participates satisfactorily in a Ready Reserve unit or mobilization assignment position. After he completes a total period of

eight years of required active duty for training and satisfactory participation in a Ready Reserve training program, his deferred status ceases.

(b) Upon being commissioned, a cadet assumes either a six-year or an eight-year obligation, as stated in the agreement. That obligation is distinct from any total-service obligation he may have incurred under other provisions of law, and the partial or entire discharge of that other obligation does not affect the one resulting from the Air Force ROTC appointment.

(c) Unless enrolled in the Air Force ROTC program at a military college, a cadet between the ages of 18 and 26 is not excused from registration and must register under section 3 of the Act on the day(s) proclaimed by the President.

§ 871.7 Deferment agreement.

Unless enrolled in a college specified in § 871.3, each cadet accepted for enrollment in the Air Force ROTC course must complete AF Form 1041, "Deferment Agreement," to be eligible for deferment: (a) At the time of enrollment, and (b) before signing an advanced course contract if he is liable for induction under the Act. AF Form 1041 states in part:

I . . . . hereby agree to complete the basic course, if enrolled therein; to enroll in and complete the advanced course at the proper time, if accepted therefor; upon completion or termination of the course of instruction therein, to accept a commission, if tendered; to serve on active duty in the Air Force for a period of not less than 2 years after receipt of such commission, subject to call by the Secretary of the Air Force; and to remain a member of a Regular or Reserve component of the Air Force until the sixth (6th) anniversary of the receipt of my commission; or, if the Air Force does not require my service on active duty for 2 years in fulfillment of my obligation, to serve on active duty for training with the Air Force for a period of 6 months after receipt of my commission and thereafter to remain a member of an appropriate Reserve unit until the eighth (8th) anniversary of the receipt of my commission.

A cadet who voluntarily signs AF Form 1041 while otherwise liable for induction is bound by the provisions of his deferment agreement and, upon failure or refusal to fulfill it, may be subject to the penalties stated in section 12 of the Act.

§ 871.8 Cadet transfer procedure.

When a cadet transfers to another institution and enrolls in AFROTC, the gaining PAS will send a revised DD Form 44 to the cadet's Selective Service Board. On the form he enters the cadet's new Air Force unit and requests that the previously submitted form be rescinded.

§ 871.9 Enrollment of member of Reserve as Air Force ROTC cadet.

(a) An enlisted man or warrant officer of the National Guard of the United States, the Air National Guard of the United States, the Army Reserve, the Navy Reserve, the Marine Corps Reserve, the Air Force Reserve, or the Coast Guard Reserve may enroll in the basic course of the Air Force ROTC on the same basis as any other student if he is otherwise qualified and is not on active duty. He is not exempt, however, under other provisions of law from call to active military service as a member of a Reserve component.

(b) Before a member of a Reserve component of another Service or of the Air National Guard of the United States may formally enroll in the Air Force ROTC advanced course or be selected for deferment, he must be discharged from his component or transferred to the Air Force Reserve. For further information, see Part 870.

SUBCHAPTER I—MILITARY PERSONNEL

PART 880—MEDICAL, DENTAL, AND VETERINARY CARE FROM CIVILIAN SOURCES

Sec.

880.1 Purpose.
880.2 Definitions.
880.3 Policies.
880.4 Care authorized from civilian sources.
880.5 For whom authorized.
880.6 Who authorizes.
880.7 When not authorized.
880.8 Emergencies.
880.9 Eye refractions obtained by individuals.
880.10 Surgical and orthopedic appliances.
880.11 Information required on statements and bills from civilian hospitals, physicians, dentists, and nurses.
880.12 Veterinary care authorized.
880.13 When to authorize civilian veterinary care.
880.14 Bills for veterinary service.

AUTHORITY: The provisions of this Part 880 issued under secs. 8012, 672(d), 8721–8723, 70A Stat. 488, 27, 538, 569; 10 U.S.C. 8012, 672(d), 8721–8723, 9385.

§ 880.1 Purpose.

This part tells how to authorize and reimburse at Air Force expense for:

(a) Essential medical and dental care from civilian sources when Government facilities are not available for:

(1) Air Force members on active duty and

(2) Air Force military personnel of the NATO Forces stationed in or passing through the United States in connection with their official duties;

(b) Supplemental medical care necessary for uniformed service members, including eligible military personnel of the NATO Forces while under treatment at Air Force medical treatment facilities;

(c) Veterinary service for Air Force-owned animals when Government veterinary service is unavailable.

§ 880.2 Definitions.

For the purpose of this part, the following terms will apply:

(a) *Civilian medical care.* Physical examination, professional advice, and treatment provided by a civilian physician or civilian medical agency to sick or injured military personnel. The term includes nursing, hospital care, medicine, whole blood or blood derivatives, laboratory and X-ray services, physical therapy, etc.

(b) *Civilian physician.* Any person legally qualified and licensed without limitation to administer drugs and to perform surgical procedures in the geographic area where such service is provided.

(c) *Civilian dentist.* Any person legally qualified and licensed without limitation in the geographic area concerned to administer drugs and to perform all procedures related to the teeth, jaws, and structures contiguous to one or the other.

(d) *Emergency care.* Medical or dental care required to save life, limb, sight, or to prevent undue suffering.

(e) *Uniformed services.* The Army, Navy, Air Force, Marine Corps, Coast Guard, the Commissioned Corps of the Coast and Geodetic Survey, and the Commissioned Corps of the Public Health Service.

(f) *Member of a uniformed service.* A person appointed, enlisted, inducted, called, ordered, or conscripted into a uniformed service who is serving on active duty or active duty for training.

(g) *Civilian veterinary service.* Treatment, surgery, or hospitalization by a civilian veterinarian. This term includes surgical appliances and medicine where indicated.

(h) *Civilian veterinarian.* Any person legally qualified and licensed without limitation to practice veterinary medicine where the veterinary service is performed.

(i) *NATO Forces.* Military personnel belonging to the land, sea, or air armed services of any State which is a party to the North Atlantic Treaty. These nations are Belgium, Canada, Denmark, Federal Republic of Germany, France, Greece, Iceland, Italy, Luxembourg, Netherlands, Norway, Portugal, Turkey, and the United Kingdom.

§ 880.3 Policies.

(a) *When treatment is authorized.* Civilian medical and dental attendance for Air Force military personnel and authorized NATO Air Force member at public expense is authorized only when the required treatment cannot be obtained from available facilities of the Air Force or other Government agencies such as Army, Navy, Veterans' Administration, and U.S. Public Health Service.

(b) *Paying civilian agencies.* Vouchers for payment to civilian agencies will ordinarily be prepared by the director of base medical services of the Air Force installation nearest the civilian facility which provided the medical care and will be processed through the local accounting and finance officer for payment. Approving authority, see § 880.6, or certifying officers, will prepare vouchers at locations where there is no director of base medical services.

(c) *Itemized statement.* When charges appear excessive, an itemized statement will be obtained from the doctor or hospital before payment is made. The itemized statements should be submitted to the local medical society or referred to the next Air Force echelon of command for evaluation. This will avoid placing the Air Force medical facility commander in a position of controversy with doctors or hospitals.

(d) *Unsatisfactory identification.* If satisfactory identification of an individual as an Air Force member, former Air

Force member or NATO Air Force member, or his unit of assignment, cannot be obtained, inquiry should be made as follows:

(1) USAF Airmen—USAF Airmen Records Annex (AFDASEF), Randolph Air Force Base, Texas, 78148.

(2) USAF Officers—Hq USAF (AFDASEB), Washington, D.C., 20330.

(3) NATO Air Force Personnel—Military Representative to NATO, % Embassy of the respective NATO Country, Washington, D.C.

(e) *NATO military personnel in the United States.* NATO Forces military personnel listed in § 880.2(i), stationed in or passing through the United States in connection with their official duties, may be provided civilian medical and dental care under the same conditions and comparable to that authorized active duty U.S. military personnel at Department of Defense, other Federal and civilian medical facilities.

§ 880.4 Care authorized from civilian sources.

Medical and dental care from civilian sources at Air Force expense is limited to that which would be provided by Air Force medical or dental facilities if they were available. Such care is authorized at Air Force expense as follows:

(a) When an Air Force member and authorized NATO Air Force member within the meaning of § 880.5 requires essential medical or dental care and there is neither an Air Force medical or dental facility nor any other Government medical or dental facility available.

(b) When an Air Force medical or dental facility is unable to provide an essential medical or dental service for a uniformed service member due to a limitation of the facility or its staff.

(c) Civilian ambulance service at Air Force expense is authorized to move an Air Force member and authorized NATO Air Force member who is absent without leave or in desertion to a civilian medical facility or place of treatment or to a Government medical facility if the Air Force member is returned to military control or custody during or directly after such transportation or treatment.

§ 880.5 For whom authorized.

Medical and dental care from civilian sources in the absence of Air Force or other Government medical facilities is authorized at Air Force expense for the following Air Force personnel:

(a) Active duty military personnel of the Air Force, including Air Force Academy cadets and aviation cadets, on a duty status or in authorized absence, i.e., leave, pass, or authorized travel.

(b) Members of the Air Force Reserve who are injured or contract a disease in line of duty while on active duty or who are injured in line of duty while performing inactive-duty training or while voluntarily participating in an aerial flight in a Government-owned aircraft under proper authority and as an incident of training. Rehospitalization may be authorized under the provisions of this section for the same condition for which hospitalization at Air Force expense was initially required until no improvement will derive from further treatment.

(c) Members of the Air National Guard who are injured or become ill in line of duty when on active duty for the purpose of performing Air Force directed missions such as ferrying aircraft, runway alert, or such other duties as the Secretary of the Air Force may direct on competent Air Force orders. (Air National Guard members who are on active duty for training or inactive-duty training are also eligible for medical and dental care from civilian sources in accordance with ANG directives at Air National Guard expense. Such hospitalization may be authorized by the Air National Guard organization or Air Force base commander. This does not preclude admission and treatment of Air National Guard members at Air Force medical facilities.

(d) Members of Air Force Reserve Officer Training Corps (AFROTC) who are injured or become ill in line of duty while en route to or from or while participating in summer encampments only. An AFROTC member is not entitled to medical service from civilian sources at Air Force expense beyond the training period specified in his training orders.

(e) Members of NATO Air Forces, stationed in or passing through the United States in connection with their official duties, are authorized medical and dental care under the same conditions and comparable to that provided active duty U.S. Air Force personnel.

§ 880.6 Who authorizes.

Authority to approve civilian medical and dental attendance at Air Force expense is the responsibility:

(a) In emergencies, of the commander of the Air Force base or his authorized representative nearest the civilian medical facility providing the medical care. Emergency medical service will not be delayed pending approval (see § 880.8).

(b) In other than emergencies, of the Air Force base commander or his authorized representative under whose jurisdiction the member requiring medical care is assigned, or the commander of the unit to which a member is assigned in cases where the member's organization is not at an Air Force base.

(c) For supplemental care, of the director of base medical services.

§ 880.7 When not authorized.

Civilian medical or dental care at Air Force expense is not authorized for:

(a) Persons other than those stated in § 880.5. (For dependents, see AFR 160–41 (Dependents' Medical Care) and AFR 160–29 (Civilian Medical Care for Eligible Dependents in Areas Other than ConUS, Alaska, Hawaii and Puerto Rico).)

(b) Elective treatment.

(c) Treatment when adequate medical or dental service is available from an Air Force or other Government medical or dental facility.

(d) Retired or discharged members of the Air Force. (An exception will be made for periodic examination, in whole or in part of Air Force members and authorized NATO Air Force member temporarily retired for disability (TDRL) when ordered by competent authority to civilian medical facilities for such examination.)

(e) Air Force military personnel and authorized NATO Air Force member absent without leave or in desertion.

NOTE: Charges incurred for civilian medical care when absent without authority are the sole responsibility of the individual concerned. Payment of charges for civilian medical care obtained after return of the individual to military control may be made from Air Force funds. Return to military control is effected when an absentee or deserter surrenders to, is delivered to, or is apprehended by an agent of the Armed Forces authorized to apprehend. (For ambulance service see § 880.4(c).)

(f) Air Force Reserve, Air National Guard, and AFROTC members other than those listed in §880.5.

§ 880.8 Emergencies.

Emergency civilian medical or dental care at Air Force expense may be obtained without prior authority by or in behalf of Air Force members and authorized NATO Air Force member authorized in § 880.5. Emergency dental care is limited to relief of pain, treatment of acute septic conditions, or essential correction of dental injuries requiring immediate correction.

§ 880.9 Eye refractions obtained by individuals.

In the absence of an Air Force medical facility, and when eye refraction cannot be obtained from other Government agencies, refractive examinations necessary for the fitting of spectacles may be obtained from a civilian physician or licensed optometrist at Air Force expense by Air Force personnel and authorized NATO Air Force member on active duty only.

(a) *Authority.* Eye refraction under this section shall be approved by the authority in § 880.6 (a) or (b). Exception: Prior authority will not be required for refractions for Air Force personnel and authorized NATO Air Force member on duty in foreign countries away from a uniformed service unit.

(b) *Prescribing lenses.* Civilian physicians or optometrists performing refractions for Air Force personnel and authorized NATO Air Force member will be requested to prescribe lenses to the closest ¼ diopter.

(c) *Costs.* The charge for refraction should be at local rates and should include the adjustment of frames and fitting of spectacles when delivered.

(d) *Procuring spectacles.* Procurement at Government expense of spectacles from civilian physicians or optometrists who perform refractions is not authorized. Spectacles are supplied and will be shipped to the Air Force member and authorized NATO Air Force member for whom prescribed.

§ 880.10 Surgical and orthopedic appliances.

Items authorized for base procurement may be provided by the civilian medical facility in connection with treatment and services otherwise authorized by this part.

§ 880.11 Information required on statements and bills from civilian hospitals, physicians, dentists, and nurses.

(a) *Hospital service.* (1) Hospitalization charges at the daily or weekly rate will be shown with applicable dates.

(2) Charges for services not included in the daily or weekly rate including dates of such charges as, use of operating room, laboratory service, X-ray, medicine, ambulance service, etc., will be shown as follows:

(i) X-rays: Aggregate.

(ii) Routine laboratory tests: Aggregate.

(iii) Special laboratory tests by name.

(iv) Medicines: Aggregate.

(v) First aid or emergency treatment: State the exact nature of the services.

(vi) Ambulance service: Show the mileage involved and the flat rate or rate per mile, as the case may be. See § 880.3(c).

(vii) Long distance telephone call or telegram charges: Must be accompanied by certificate or copy of telegram.

(viii) Use of operating room: Indicate if this includes administration of anesthetic and if administered by a member of hospital staff. If not, show the charge separately in the name of the person administering the anesthetic. If the hospital has paid anesthetist, charge may be listed on hospital voucher, but must be accompanied by receipted bill from the anesthetist showing payment by hospital.

(ix) Items incident to treatment: List and itemize separately, crutches, special therapy, etc.

(x) Physician and nurses: Include only those regularly employed on a salary basis by the hospital and for whose services payments are due to the hospital. If this is the case, state that nurse or physician is a salaried member of hospital staff. If the hospital has paid physicians and nurses who are not salaried members of the staff, such charge may be included in the hospital bill but must be accompanied by a receipted bill showing payment by the hospital.

(b) *Bills for physicians' or surgeons' services.* (1) Visits: Show where visits were made, i.e., hospital, doctor's office, patient's home, etc. List date and charge for each visit chronologically. If two or more visits are made on any one day, enter the number for each day and mark them "first visit" and "second visit," etc. List date and charge for operations separately. List chronologically the date of each visit after the operation and itemize the charges and the services rendered.

(2) Other services (such as X-rays, laboratory services, and medicines): Aggregate.

(3) Medicines: Aggregate. If furnished from physician's own stock, certify on the voucher that they were furnished from his stock, charges, etc.

(c) *Special nursing service.* Indicate place where service was rendered, the hour it began and ended, the number of hours served each day or night, the rate per day or night, and the number of days or nights served.

NOTE: If a nurse went on duty at 11:00 p.m. on one day and went off duty at 7:00 a.m. the next day, only one night will be counted, although two dates are involved.

(d) *Dental services.* (1) Show each service rendered, such as extraction, filling, etc., and the charge for each. Identify each tooth involved. Show the number of tooth surfaces involved and filling material used.

(2) Filling operations, treatment of chronic lesions, prosthetic replacements, dental repair, and prolonged or extensive procedures, such as those required following the relief of immediate emergency, require prior approval of the authority cited in § 880.6.

§ 880.12 Veterinary care authorized.

Veterinary care is limited to that which would be available from an Air Force veterinarian if he were available. Civilian veterinary care for Government-owned animals assigned to Air Force units only is authorized at Air Force expense within the limitations of this part.

§ 880.13 When to authorize civilian veterinary care.

Civilian veterinary care is authorized only in emergencies where the services of a military veterinarian are not economically available.

§ 880.14 Bills for veterinary service.

(a) List each service rendered, such as X-rays, laboratory service, hospitalization, medical treatment, splints, pins, etc., and the charge for each.

(b) Indicate on the vouchers if veterinary care was provided in an emergency.

PART 881—[RESERVED]

PART 882—DECORATIONS AND AWARDS

Subpart A—Decorations

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Subpart A—Decorations

AUTHORITY: The provisions of this Subpart A issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012, except as otherwise noted.

§ 882.1 Purpose.

This subpart explains the Air Force policy on awarding decorations to military and civilian personnel.

§ 882.2 Objective of decorations.

The primary purpose of the decorations program is to foster morale, incentive, and esprit de corps through the prompt public recognition of acts of exceptional bravery, outstanding achievement, and meritorious service. To preserve the integrity of the decorations program, awards must be restricted to the recognition of acts or services which are so clearly and distinctly outstanding by nature and magnitude that they place an individual's performance significantly above that of other individuals of like grade and responsibility and can be appropriately recognized in no other way.

§ 882.3 List of authorized decorations.

(a) *Decorations awarded by the Air Force.* The decorations awarded by or upon the recommendation of the Air Force are as follows:

Military

Medal of Honor.
Air Force Cross.
Distinguished Service Medal.
Silver Star.
Legion of Merit.
Distinguished Flying Cross.
Airman's Medal.
Bronze Star Medal.
Air Medal.
Air Force Commendation Medal.
Purple Heart.

Nonmilitary

Medal for Merit.
President's Certificate of Merit.
National Security Medal.
The Presidential Medal of Freedom.
Department of Defense Medal for Distinguished Public Service.
Exceptional Service Award.
Air Force Scroll of Appreciation.

NOTE: §§ 888.26 and 888.27 indicate to whom authorized decorations are awarded and the criteria prescribed for their award.

(b) *Decorations awarded by Department of Defense.* The Joint Service Commendation Medal is awarded in the name of the Secretary of Defense, as indicated in § 882.28.

§ 882.4 Eligibility to receive a decoration.

The eligibility of a person to receive a decoration listed in § 882.3 depends upon the following factors:

(a) *Nature and magnitude of the act, achievement, or service.* Sections 882.26 and 882.27 explain which types of acts, achievements, and services are considered worthy of recognition.

(b) *Relationship of the person to the Air Force.* (1) All military personnel on active duty are eligible to receive any U.S. military decoration. With the exception of the National Security Medal, nonmilitary decorations are not awarded to United States military personnel for an act or service performed as a military member.

(2) Members of the Reserve components, while participating in authorized periods of training or while in inactive status, may be considered for all military decorations provided the act, achievement, or service was in furtherance of an Air Force mission or function and meets the established criteria. However, acts, achievements, or services which are of principal benefit to private citizens are not the basis for military decorations.

(c) *Posthumous awards.* Decorations may be awarded following the decease of the persons being honored, in the same manner as awarded to a living person.

(d) *Character of service.* (1) No decoration will be awarded or presented to any individual whose entire service during or subsequent to the time of the distinguished act, achievement, or service shall not have been honorable. (See 10 U.S.C. 8744; 8749.)

(2) Any award for meritorious service may be revoked prior to presentation if facts subsequently determined would have prevented original approval of the award. Commanders becoming aware of any such instances must immediately report the circumstances and make recommendations to the awarding authority for review and determination of appropriate action.

§ 882.5 Number of decorations and medals a person may receive.

(a) There is no limitation placed on the number of decorations that may be awarded to an individual. However, only one decoration may be awarded for the same act, achievement, or period of service. Any subsequent recommendations for the same decoration should be based upon increasingly higher standards of performance and meritorious service.

(b) Unless otherwise indicated in this subpart, only one medal of a decoration is presented unless the recipient is a foreign national or the award is posthumous, in which case an additional medal is presented. In all other instances, oak-leaf clusters are used in lieu of additional medals of the same decoration.

§ 882.6 Preparing, submitting, and processing recommendations.

(a) *Who may submit recommendations.* Any person having knowledge of the act, achievement, or service believed to warrant the award of a decoration may initiate a recommendation for the award. Preferred recommendations are those initiated by the person's commander or supervisor at the time the act, achievement, or service was performed.

(b) *Special considerations for submitting recommendations based on meritorious service or outstanding achievement*—(1) *General.* (i) To preserve the integrity of decorations, recommendations should be restricted to the recognition of meritorious service and outstanding achievements that are incontestably exceptional and of a magnitude that clearly places an individual above his peers.

(ii) Recommendations should be based on specific projects, plans, programs, or actions, the implementation of which has been successful and the benefits to the Air Force positively ascertained, or that have progressed to a point where results expected at some future date can be accurately predicted.

(iii) Superior performance does not, in itself, constitute justification for a military decoration. Favorable communications and appropriate remarks on Effectiveness or Performance Reports provide ample means of recognizing the praiseworthy duty performance that is expected of Air Force personnel.

(iv) Service terminated by voluntary early retirement or involuntary release under any Air Force quality control program requires the careful weighing of all related facts to insure that the award of a decoration is fully justified.

(v) The reassignment or retirement of a commander or supervisor is not a basis for initiating recommendations for awards to his subordinates.

(2) *Meritorious service.* A recommendation based on meritorious service must be for a completed period of service.

(3) *Outstanding achievement.* An outstanding achievement award is intended to recognize a single specific act or accomplishment that is separate and distinct from regularly assigned duties. The period of an outstanding achievement normally is short and characterized by definite beginning and ending dates. The specific achievement must be sufficiently outstanding to be readily distinguishable from meritorious service and must clearly warrant immediate recognition. A recommendation based on an outstanding achievement may be submitted at any time; however, to insure maximum benefit to morale and incentive, such an award should be recommended as soon as possible after the achievement upon which it is based. The award of a decoration in recognition of a single act of heroism or a single achievement does not necessarily preclude an award for meritorious service at termination of assignment. In such instance, and to avoid duplication, the previously recognized act or achievement cannot be included in the justification for, or consideration of, the subsequent award.

(c) *Special consideration for submitting recommendations based on aerial achievements.* The completion of a specified number of missions, sorties, special flights, or accident-free flying hours does not, in itself, constitute adequate justification for an award recommendation. There are other equally important factors to be considered in evaluating a recommendation based on meritorious aerial achievements. Accordingly, all recommendations must clearly substantiate exceptional performance and outstanding airmanship above that normally expected of professional airmen.

(d) *Special considerations for submitting recommendations for awards to members of the armed forces of friendly foreign nations*—(1) *Type of service recognized.* The award of United States decorations in peacetime is authorized to recognize:

(i) Service of marked international significance where the interests of the United States are involved.

(ii) Service which has aided the United States in furthering its national policies.

(iii) Service which has furthered the interests of the security of the United States or of any nation allied or associated with the United States during a period of national emergency declared by the President or the Congress.

(iv) An act of heroism, outstanding achievement, or meritorious service which has been of mutual benefit to a friendly foreign nation and the United States.

(2) Appropriate award: The following United States military decorations may be recommended to recognize acts or services described in subparagraph (1) of this paragraph when they meet the standards prescribed for similar awards to United States Air Force personnel:

(i) While serving in any capacity with the Air Force: Any military decoration, except the Medal of Honor and the Purple Heart (see § 882.26).

(ii) While not serving with the Air Force:

(*a*) Legion of Merit.

(*b*) Air Force Commendation Medal.

(3) Awards to British, Canadian, and Australian Personnel: The British, Canadian, and Australian governments do not permit their personnel to accept foreign decorations in recognition of peacetime meritorious service or achievement. Commanders desiring to recognize meritorious service or achievement rendered by these personnel may initiate a recommendation for the award of a British, Canadian, or Australian equivalent of a specific United States military decoration.

Example. Recommendation for award of the British equivalent of the (Legion of Merit) (Air Force Commendation Medal):

Either the major air commander or deputy commander must personally indorse each recommendation.

(4) Information to be included:

(i) Recommendations originating from oversea commanders must include a statement that the proposed award has been coordinated with the senior commanders of the other United States services in the area or theater and with the United States Ambassador to the country concerned.

(ii) A recommendation for an award to a member of the armed forces of a foreign nation, initiated by a commander of an organization performing temporary duty in an oversea theater, must be processed through the appropriate oversea commander, who will include the information required by subdivision (i) of this subparagraph and forward it to the major air commander of the recommending individual.

(e) *When to submit recommendations.* (1) Timely presentation is essential to exploit the full potential of decorations. Accordingly, recommendations must be submitted as soon as possible after the act, achievement, or service considered to justify award of a decoration.

(2) When heroism is involved and immediate recognition is essential, commanders on the scene are authorized to use electrical means to transmit recommendations for award of decorations to the awarding authority. Electrically transmitted recommendations must be fully justified and sufficiently detailed to permit proper evaluation and decision.

(3) When it is definitely established that a person will be reassigned, retired, or separated on a specific date and presentation is desired before the individual's departure, a recommendation may be initiated before the date of reassignment, retirement, or separation. The recommendation should include the desired presentation date. Such recommendations should be initiated sufficiently early to permit normal processing and arrival at the awarding headquarters 60 days prior to the desired presentation date. Recommendations for awards of decorations to foreign nationals and to U.S. civilians require extensive processing and clearance within the Department of Defense, and concurrence of other departments of the Government on those decorations for foreign nationals. Because of this, recommendations for U.S. civilians should arrive at the USAF Military Personnel Center (AFPMPP), Randolph Air Force Base, Texas, 78148, 60 days before the desired presentation date, and those for foreign nationals 120 days before this date.

(f) *How to prepare recommendations*—(1) *Format.* Individual recommendations are prepared on AF Form 642, "Recommendation for Decoration," or, when form is not available, in the letter format shown in § 882.7. Letter format will be used only when AF Form 642 is not available. When additional space is needed for the narrative description of the act, achievement, or service, use plain 8 x 10½" bond paper. The recommending individual must also sign the last sheet. The citation is prepared on separate paper in accordance with subparagraph (3) of this paragraph and included with the recommendation. The citation is not stapled to the recommendation, but is inserted, unfolded, in an envelope or other protective covering, which must be securely attached to the recommendation.

(i) When more than one person is recommended for the same decoration and for the same act, achievement, or service, a separate AF Form 642 must be prepared for each person, except that only one narrative description of the act, achievement, or service is required to be attached to the package. However, a separate citation for each person must be prepared and forwarded with the form.

(ii) When the letter format shown in § 882.7 is used, and more than one person participated in and shared responsibility for the same act, achievement, or service, the contributions of all of the participants may be combined into one recommendation. However, the recommendation must indicate the decoration for which each individual is being recommended. A separate citation for each person is required as indicated in subdivision (i) of this subparagraph.

(2) *Content of narrative description.* Each recommendation for a decoration is evaluated on the merits of the justification contained therein. Recommendations based on generalities, broad or vague terminology, superlative adjectives, or a recapitulation of duties performed, normally do not permit competent evaluation. Justification should be specific and factual. Give concrete examples of exactly what the person did, how he did it, and what benefits or results significantly exceeded expected performance of duty. In addition, the following should be included:

(i) Supporting documentary evidence, if the person initiating the recommendation does not have first-hand knowledge of the act or service performed; and

(ii) Official supporting records, if considered advisable by the recommending individual.

(3) *Citation.* Citations must be prepared in accordance with the instructions contained in attachment 5, AFR 900–7 and in the format prescribed in attachment 6, AFR 900–7. The citation must agree with the recommendation as to date of the act or inclusive dates of the achievement or service, and the duty position and assignment of the individual. Citations are frequently published in news media and subsequently become valued personal mementoes of the recipients (see § 882.7). Accordingly, citations should be in good taste and of a quality that will give the recipients a high degree of lasting prestige. A final citation (single spaced and in quadruplicate) for each person recommended must accompany each award recommendation requiring Department of the Air Force approval. Citations normally are not revised or retyped by Headquarters USAF. For approved awards, Headquarters USAF affixes the Air Force Seal to the citation as submitted, and returns the citation for presentation along with other elements of the award.

NOTE: Recommendations, including classified, requiring Department of the Air Force approval, are forwarded in an original and one copy to Hq USAF (AFPMPP). Citations are submitted in quadruplicate as indicated in subparagraph (3) of this paragraph. However, when the recommendation is classified, an unclassified citation, in quadruplicate, must accompany the recommendation.

(g) *Processing recommendations.* (1) All recommendations are forwarded through command channels to the designated awarding authority. To accelerate final action, processing at each intermediate headquarters should be as expeditious as possible, consistent with full and considered evaluation.

(2) Either the commander or deputy commander at each intermediate headquarters must personally indorse each recommendation. Comments and/or alternate recommendations by intermediate commanders are encouraged, as they are helpful to the awarding authority in making a final determination. In his forwarding indorsement, each intermediate commander must recommend approval or disapproval of the recommendation or recommend award of a lesser decoration.

(3) All recommendations placed in official channels, i.e., forwarded to the next highest echelon above the initiator, must be forwarded through channels to the designated awarding authority for final action, regardless of whether or not an intermediate commander considers that the requirements for the recom-

mended award have been met. Recommendations may be returned at any level of command for administrative correction or inclusion of essential supporting data. However, these recommendations are not considered as having been removed from official channels, and they must be returned without delay through channels to the awarding authority.

(4) When a recommendation for the award of a decoration is disapproved, the awarding authority will reconsider the recommendation to determine whether the award of a lesser decoration is appropriate.

(5) When a recommendation originates in a unified or joint command or exercise, MAAG, or mission, the recommendation is forwarded to the unified or joint commander or the chief of the MAAG or Mission for comment; he then forwards it to the awarding authority.

(6) Recommendations previously disapproved by the awarding authority may be submitted for reconsideration only if new evidence is furnished (see paragraph (h)(2) of this section).

(h) *Time limitations on submitting recommendations.* (1) Time limitations are based generally upon law (10 U.S.C. 8744). With the exception of the Purple Heart, recommendations for the award of military decorations must be formally entered into official military channels within 2 years of the date of the act, achievement, or service performed.

(2) A request for reconsideration of a recommendation also must be in official channels within 2 years of the date of the act, achievement, or service performed.

(3) Recommendations which were officially placed in military channels within the prescribed time limitations, but were not acted upon through loss or inadvertence, may be resubmitted for consideration.

(i) Such recommendations must be accompanied by the following:

(*a*) A copy of the original recommendation or a reconstructed version thereof.

(*b*) Conclusive evidence that the recommendations were officially placed in military channels within the prescribed time limit.

(*c*) Conclusive evidence that the recommendation was not acted on through loss or inadvertence.

(ii) Consideration of an award under these provisions is contingent upon the presentation of evidence required by subdivisions (i) (*a*) through (*c*) of this subparagraph. Recommendations not so documented normally are returned without action, because the extensive and time-consuming research involved is a workload which Headquarters USAF cannot perform, and which is not considered justified because of the lapse of time.

§ 882.7 Format of letter recommendation.

(Headquarters Designation)

(Date)

SUBJECT: Recommendation for Award of Decoration

TO: (Commander of next higher headquarters)

1. It is recommended that the following individual(s) be awarded the decoration(s) indicated:

a. (Grade, first name, middle initial, last name, and service number.)

b. (Name of decoration. Indicate numbered cluster, if applicable.)

c. (Present organization and station.)

d. (Permanent home address.)

e. (Grade, duty assignment, and unit of assignment of the individual at time of the act or service.)

f. (List of United States decorations previously awarded to the individual(s) with complete authorities therefor and dates of service recognized. Do not include service medals, battle credits, unit citations, or foreign decorations.)

g. (Date of last promotion.)

h. (Date of reassignment, retirement, or separation, if applicable, and whether retirement or separation is voluntary or involuntary. Also include TAFCSD, TAFMSD, TFCSD, and TMSD for individuals being retired or separated.)

NOTE: Provide same information as in a. through h. for additional individuals being recommended for same act or service.

2. Give a narrative description of the heroism, achievement, or service. The narrative should be specific and factual. Give concrete examples of exactly what the person did, how he did it, what benefits or results were realized, and why or how such benefits or results significantly exceeded expected superior performance of duty. In addition, include supporting documentary evidence, if the person initiating the recommendation does not have first-hand knowledge of the act or service performed, and/or official supporting records, if considered advisable by the recommending individual.

3. Furnish a statement indicating that the service in the Air Force of the person recommended has been honorable subsequent to the act or service for which recommended.

4. Furnish statement if other individuals are being recommended for the same act or service. If recommendations for these individuals are not a part of this recommendation, explain delay, indicate date recommendations will be forwarded, and identify the individuals concerned by grade, name, service number, present organization, and station.

5. Furnish a statement indicating that an unclassified citation is attached (see § 882.6 (f)(3) (Note).

6. Furnish a statement indicating whether or not other recommendations for awards to the same individual are pending.

7. Furnish a statement indicating that a previous award has not been made to the same individual for the act or service described.

8. If applicable, furnish a statement indicating that the proposed award is posthumous, or that the person recommended is missing in action or a prisoner of war. In all such instances, state the name, address, and relationship of the next of kin.

9. State the date on which presentation of the award is desired if the recommendation is approved. Also indicate the place to which the award elements should be forwarded for presentation.

(Signature of recommending official)

---- Atchs.

1. Citation.

2. (Attach other records, as applicable.)

§ 882.8 Presentation of decorations.

Presentations afford excellent opportunities for the enhancement of command and community relations. Accordingly, close coordination should be effected with the information officer of the command conducting a presentation to permit adequate public relations and publicity planning and coverage of the event, except as noted in § 882.9(b). Presentations should be conducted with an appropriate air of formality and should reflect the high esteem with which the Air Force regards its outstanding personnel. The service uniform appropriate for the occasion must be worn by all military participants in presentation ceremonies. Whenever possible, commanders should personally make presentations. Approved awards for presentation to foreign nationals are transmitted by the Assistant Chief of Staff, Intelligence, Headquarters USAF, to the appropriate presenting official as determined by protocol and other considerations.

(a) *Types of presentation ceremonies.* Ceremonies may range from presentations made at formal reviews to small office ceremonies at which the citation is read and the decoration presented to the recipient.

(b) *Elements of the award.* At a presentation, the elements of the award include a leatherette or plastic case containing the medal with suspension ribbon, ribbon bar, clusters (if any), lapel button or rosette (as applicable); a certificate; and a citation, except for the Purple Heart Award. The awarding authority issues the certificate and citation. Special orders published by the awarding authority are not essential at the time of the ceremony but may be furnished later. Normally, field commanders in combat areas do not present certificates.

(1) Whenever a second or subsequent award of the same decoration is presented, except in awards to foreign nationals (see subparagraph (2) of this paragraph) and those presented posthumously (see § 882.9(a)(2)), the appropriate basic medal, with oak-leaf cluster(s) attached to the suspension ribbon, is used for presentation purposes only. After the ceremony, this medal is recovered and the recipient is issued the appropriate oak-leaf clusters for attachment to the medal and ribbon bar originally awarded. The recipient must be instructed in the proper placement of these oak-leaf clusters. Oak-leaf clusters are issued in two sizes—large and small—and in two colors—bronze and silver. The large size is worn on the suspension ribbon of the medal and the small size on the ribbon bar. A bronze oak-leaf cluster is used for the second through the fifth, seventh through tenth, etc., awards. A silver oak-leaf cluster is used for the sixth, eleventh, etc., award, or in lieu of five bronze oak-leaf clusters.

(2) Whenever the oak-leaf cluster is presented to a foreign national, it is attached to the appropriate medal and ribbon bar as indicated above, and the complete decoration is retained by the recipient following the ceremony regardless of whether the basic medal was previously issued.

(c) *How to present the decoration.* The decoration may be pinned on the clothing of the recipient, whether in uniform or civilian clothing. Standard attachment hooks are available, designed to make it easier to pin the medal or ribbon on the uniform or clothing at presentation ceremonies. These attachment hooks are available in two styles—

one for pinning the ribbon bar, and the other for pinning the medal pendant.

(d) *Transmitting elements of decoration.* Whenever it becomes necessary to transmit elements of decorations, extreme care must be taken to prevent damage in transit. Elements must be protected by heavy corrugated cardboard within the envelope or must be inserted in heavy duty mailing tubes. Soiled, creased, torn, or otherwise damaged elements lessen the prestige of decorations. Damaged elements must be returned to the issuing headquarters for replacement.

(e) *Time limitation on presenting decorations.* Time limitations are based generally upon law (10 U.S.C. 8744). The decoration must be presented not later than 3 years after the termination date of the act or service performed, except as noted in § 882.6(h).

§ 882.9 Presentation of posthumous, missing-in-action, and prisoner-of-war decorations.

(a) *Posthumous.* Next of kin are entitled to receive decorations earned but not presented because of the death of the recipient. The next of kin listed in order of precedence are: Widow, widower, eldest son, eldest daughter, father, mother, eldest brother, eldest sister, eldest grandchild. However, when a decoration is presented to the widow (widower), or their children, duplicates of all elements of this decoration are furnished cost free to the parent(s) of the deceased. Request for authority to make posthumous presentation of decorations to eligible next of kin, other than in the order listed in this paragraph, must be forwarded to Hq USAF (AFPMPP) for approval.

(1) Types of presentation ceremonies: Presentation ceremonies are held in accordance with the desires of the next of kin eligible to receive the award. Unless otherwise indicated by the next of kin, one of the following ceremonies may be arranged for this purpose:

(i) A formal parade and ceremony, in which base personnel participate.

(ii) An office ceremony, normally held in the base commander's office or other appropriate room or office of his headquarters, where members of the commander's staff are present.

(iii) An informal ceremony at the residence of the recipient, where the commander or his designated representative reads the citation and presents the award elements.

(2) Elements of the award: The elements of the award include a leatherette or plastic case containing the medal with suspension ribbon, ribbon bar, clusters (if any), lapel button or rosette (as applicable), a certificate, the citation, and the special order announcing the award. A decoration is awarded posthumously when the individual is deceased at the time the decoration is approved by the awarding authority. In those cases, the citation must indicate that the award is being made posthumously. The word "posthumous" appears beneath the title of the decoration (see attachment 6, AFR 900–7). The special orders also must indicate that the award is being made posthumously. However, the word "posthumous" is omitted from the certificate accompanying the decoration. Whenever the oak-leaf cluster is presented, it is attached to the appropriate medal and ribbon bar, and the complete decoration is retained by the next of kin following the ceremony regardless of whether the basic medal was previously issued to the deceased.

(3) How to present the decoration: The decoration may be pinned on the clothing of the next of kin. However, this must not be construed as authority for any person other than the individual who earned the decoration to wear it. As an alternative to pinning the decoration, it may be handed to the next of kin in the open decoration case. The method of presentation is optional with the presenting official.

(b) *Missing-in-action and prisoner-of-war.* All elements of decorations earned but not presented to personnel who later become missing or prisoners of war must be forwarded to Hq USAF (AFPMPP). Awards of this nature are not publicized until Headquarters USAF officially announces a final determination of the recipient's status.

§ 882.10 Issue and use of certificates.

Headquarters USAF (AFPMPP) stocks and issues blank certificates relating to the decorations authorized in this part. These certificates must not be reproduced locally, unless authorized by Headquarters USAF.

(a) *Signature on certificates.* Certificates issued by awarding authorities, other than Headquarters USAF, normally contain the signature of the awarding commander or his deputy in the place provided on the lower left line of the certificate.

§ 882.11 Issuance and replacement.

(a) *Issuing decorations to personnel not on active duty—(1) Members of the Air Reserve Forces assigned to specific Reserve Units, and Air National Guard personnel.* The immediate commanders issue authorized decorations to such persons.

(2) *Members of the Air Force Reserve not on active duty and not assigned to specific Reserve Units.* Such persons may obtain decorations from: Air Reserve Records Center, 3800 York Street, Denver Colorado, 80205.

(3) *Retired Air Force personnel.* Retired Air Force personnel normally will have received all awards prior to retirement, or at the time of retirement. If, for any reason, decorations are not issued prior to or at time of retirement, retired personnel may obtain them from the air base of retirement. If records are no longer available and entitlement cannot be established in some other manner, the air base of retirement may request a thermofax copy of the appropriate page of AF Form 7 or 11 from Hq USAF (DASEB) (for officers) or (DASEF) (for airmen).

NOTE: Request received in Headquarters USAF from personnel retired after April 1, 1963, normally will be referred to the air base of retirement for necessary action.

(4) *Persons not on active duty and not members of a Reserve Component.* Authorized decorations may be obtained from: General Services Administration, Air Force Branch, Military Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri, 63132.

(b) *Replacement of decorations.* A member of the Air Force on active duty, a member of a Reserve component of the Air Force, or a retired member may have a lost or destroyed decoration replaced without charge if the decoration was lost or destroyed through no fault or neglect on his part. Replacement is made upon application to the commander having custody of the member's unit personnel records, for active duty personnel, or to the records custodians indicated in paragraph (a) (1) and (2) of this section, for members of the Reserve component, and to Headquarters USAF (AFPMPP), for retired members. Former members of the Air Force and next of kin of deceased personnel may have a lost or destroyed decoration replaced, at cost price, by sending application to custodian of records indicated in paragraph (a)(4) of this section. A copy of the orders announcing the award, if available, or the authority for the award, should accompany each request.

(c) *Replacement of certificates.* All members and former members may have a lost or destroyed certificate replaced as follows:

(1) Active duty members, members of the Air Force Reserve, and Air National Guard personnel may apply for a replacement certificate to the commander having custody of the unit personnel records. The records custodian will verify entitlement to the decoration and forward the letter for replacement action to the headquarters which originally awarded the decoration, provided that headquarters is still on the active list. If the headquarters which originally awarded the decoration is not an active organization, the letter will be forwarded by the records custodian to the USAF Military Personnel Center (AFPMPP) for replacement action.

(2) Retired Air Force personnel may apply for a replacement certificate by letter direct to the USAF Military Personnel Center (AFPMPP).

(3) Persons not on active duty and not members of a Reserve component may apply for a replacement certificate by letter to the records custodian indicated in paragraph (a)(4) of this section.

§ 882.12 Requests for documentation and establishment of authority for decorations.

(a) *Where to send requests.* If the authorization for a decoration is not included in the unit's records or in the member's private file, the individual's commander may request substantiating information pertaining to a specific decoration in accordance with the following Table and paragraphs (b) and (c) of this section.

Where to send request for supporting documentation:

Rule	When request is for—	Then forward request addressed to—
1	Officers and Warrant Officers on Extended Active Duty.	Hq USAF (AFDASE).
2	Officers, Warrant Officers, and Airmen in paid retired status.	Do.
3	Air Force Reserve Officers, Reserve Warrant Officers, and Reserve Airmen not on Extended Active Duty.	Air Reserve Records Center, 3800 York St., Denver Colo. 80205.
4	Members of the Retired Reserve not in a paid retired status.	Do.
5	Air National Guard Officers and Warrant Officers not on Extended Active Duty.	Chief, National Guard Bureau (AFPM), Washington D.C. 20310.
6	All Airmen, except those in paid retired status (2 above) and Air Force Reserve not on Extended Active Duty (3 above).	General Services Administration, Air Force Branch, Military Personnel Records Center, 9700 Page Blvd., St. Louis, Mo. 63132.
7	Persons with no current military status.	Do.

NOTE: Data furnished by the agencies listed above will be limited to substantiating only those decorations that are of record in the master personnel records group. If the master personnel records group fails to substantiate the decoration, the provisions of § 882.6(h) will apply.

(b) *Information to be included.* Each request for authentication of a decoration must be limited to one individual and must include the person's full name, grade, and service number(s), all known facts and circumstances, and any other pertinent information available on the award in question. In the case of airmen, indicate date of entry on current enlistment and inclusive dates and branch of service for each prior enlistment period. This information will be helpful in determining the location of prior records for the period of service involved. (Two or more requests may be sent in the same envelope, but "list" cases containing more than one name are not acceptable.)

(c) *Avoid unnecessary requests.* The agencies listed in paragraph (a) of this section cannot provide expeditious authentication of decorations for World War II and the Korean Operation because of the extensive research of records required and manpower limitations. Before a commander or individual submits a request, he must be sure that adequate justification for submission exists and that the information cannot be obtained from available official or personnel records.

§ 882.13 Special entitlements.

(a) *Increase in retired pay.* Any Regular enlisted member of the Air Force retired under section 8914, Title 10, U.S. Code, credited with extraordinary heroism in the line of duty, is entitled to 10 percent increase in retired pay. An enlisted man who has been awarded the Medal of Honor, Air Force Cross, Distinguished Service Cross, or Navy Cross satisfies the requirements for extraordinary heroism for the purpose of this additional pay. The determination of the Secretary of the Air Force regarding such increases in pay is final for those awarded the Distinguished Flying Cross, Airman's Medal, Soldier's Medal, or equivalent Navy decoration, where extraordinary heroism was involved.

(b) *Medal of Honor recipients*—(1) *Medal of Honor Roll.* Each living recipient of the Medal of Honor, who has attained the age of 50 years, and upon written application to the Secretary of the Air Force, may have his name entered on the Medal of Honor Roll, if the Medal of Honor was awarded: While engaged in an action against an enemy of the United States; while engaged in military operations involving conflict with an opposing foreign force; or while serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party. Each person whose name is placed on the Roll is certified to the Veterans Administration as being entitled to receive a special pension of $100 per month for life, if he so desires, payable monthly by that agency. The payment of this special pension is in addition to, and does not deprive the pensioner of, any other pension, benefit, right, or privilege to which he is or may be thereafter entitled. (Sections 560–562, Title 38, U.S.C.) Necessary application is automatically furnished each Air Force recipient of the Medal of Honor not less than 90 days prior to his reaching age 50.

(2) *Air transportation.* Living recipients of the Medal of Honor are entitled to free transportation on military aircraft within the continental limits of the United States on a "space available" basis. Identification cards for this purpose are furnished by Headquarters USAF (AFPMPP).

(3) *Admission to United States Service Academies.* Sons of Medal of Honor recipients, otherwise qualified, are not subject to quota requirements for admission to any of the United States Service Academies. (See annual catalog, United States Air Force Academy.)

(4) *Wearing of Air Force uniform.* Persons awarded the Medal of Honor are authorized to wear the uniform at any time, except as prohibited in AFM 35–10 (Service and Dress Uniforms for Air Force Personnel).

§ 882.14 Decorations for use in exhibitions.

(a) *By public institutions and patriotic societies.* Upon approval by the Secretary of the Air Force, sample decorations for exhibit purposes may be furnished at cost price, including charges for packing, transportation, and engraving each decoration with the words "Exhibition Only." Sample decorations may be furnished only to museums, libraries, and historical, numismatic, and military societies and institutions of such public nature as to provide an opportunity for the public to view them under circumstances beneficial to the Air Force.

(b) *By United States military organizations and United States governmental agencies outside the Department of Defense.* Upon approval by the Secretary of the Air Force, sample decorations may be furnished for display at the headquarters of a major air command and at such other Air Force activities as approved by the major air commander. They may also be furnished for public display purposes to United States governmental agencies not under military jurisdiction.

(c) *Where to send requests.* All requests for decorations for exhibit or display will be submitted to Hq USAF (AFPMPP) for approval by the Secretary of the Air Force.

(d) *Where to send requisitions.* Upon approval, requisitions for sample decorations are submitted by military organizations in accordance with AFM 67–1 (USAF Supply Manual). Upon approval for other than military organizations, Headquarters USAF makes arrangements for issuing the decorations.

§ 882.15 Manufacture, sale, and possession of decorations.

By law (18 U.S.C. 704), the manufacture, sale, or wearing of any United State Air Force decoration or device, or the pictorial representation in regulation size of such decoration or device, is prohibited unless authorized by the Department of the Air Force.

§ 882.16 General policy concerning acceptance of decorations awarded by foreign governments.

Clause 8, Section 9, Article I, of the Constitution of the United States provides in part that "no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatsoever from any king, prince, or foreign state." The Attorney General has rendered an opinion (24 op. Atty. Gen. 117) to the effect that any type of gift, whether a present, title, or simple remembrance of courtesy, falls within the prohibition against the acceptance of "any present * * * of any kind whatsoever." Except as prohibited in § 882.21, token acceptance of a decoration presented by or on behalf of a foreign government is permissible. However, such decoration may not be retained or worn without the specific authorization of Congress.

§ 882.17 Prior Congressional authorization.

Congressional authority was given to United States Armed Forces personnel to accept decorations proffered by friendly foreign governments in recognition of service performed during the periods listed in paragraphs (a) through (c) of this section. However, the decorations must have been presented to and accepted by

the intended recipient before the termination date of the applicable Public Law:

(a) World War II—December 7, 1941, through July 24, 1948 (Public Law 314, 80th Congress).

(b) Berlin Airlift—June 26, 1948 through September 20, 1951 (Public Law 503, 81st Congress).

(c) Korean Operation—June 27, 1950 through July 27, 1955 (Public Law 354, 83d Congress).

§ 882.18 Requesting Congressional authorization.

(a) *Procedure.* Congressional authorization is requested only through Headquarters USAF. The recipient must send all original elements of the award, including the medal, badge, and appurtenances, and any required documents by letter of transmittal to Hq USAF (AFPMPP). Documents include, but are not limited to, the following:

(1) A statement in explanation of the award.

(2) Full name, grade, and service number of the recipient.

(3) The identity of the award and the country offering it.

(4) The organization, station, and a brief description of the recipient's duty assignment during the time recognized by the award.

(5) The date and place of the presentation, and the name and title of the person making the presentation.

Headquarters USAF will acknowledge receipt of the decoration and forward all elements to the Department of State, where they will be held in escrow pending authorization by the Congress for the recipient to accept the award. Recipients of foreign decorations, awards, or gifts, are not permitted to retain any part of these awards prior to Congressional authorization. When the elements are sent to the Department of State, they must include all components of the award.

(b) *When Congress will authorize.* The Department of State is directed by law to prepare an omnibus authorizing bill on all foreign decorations or gifts held for retired persons, for transmittal to the Second Session of each alternate Congress, or every fourth year; i.e., 1966, 1970, 1974, etc. At the present time, such legislation may not be introduced for other than retired personnel. Upon retirement, the recipient of a foreign decoration(s), award(s), or gift(s) should notify the office indicated in paragraph (a) of this section of his status and request inclusion of his name on the next omnibus bill presented to the Congress by the Department of State.

§ 882.19 Applicability.

The prohibition stated in § 882.16 applies to:

(a) All service members of the Department of the Air Force on active duty and all civilian employees of the Department of the Air Force.

(b) All members of Reserve components of the Air Force in recognition of services performed while on active duty, in their capacity as members of a Reserve component of the Armed Forces, or on inactive duty.

(c) Decorations, awards, or gifts offered or presented to members of the immediate families of the military or civilian members defined in paragraphs (a) and (b) of this section.

§ 882.20 Participating in presentation ceremonies.

If a member is advised that a friendly foreign nation wishes to award him a decoration and that his presence is desired at a formal presentation ceremony, he may participate in the ceremony and make a token acceptance of the decoration without the consent of Congress. (This provision does not apply to members of Military Assistance Advisory Groups and Air Missions—see § 882.21.) The receipt of the decoration at the ceremony does not, however, constitute an official acceptance. The acceptance is not official until the Congress authorizes it. The individual should submit a request for this authorization immediately following the ceremony, following procedures explained in § 882.18. No foreign decoration (including foreign aviation badge), ribbon, or other device may be worn prior to Congressional authorization. In no case may a member make a token acceptance of a decoration offered by a foreign nation without diplomatically advising an appropriate representative of that nation of the requirement of the Constitution cited in § 882.16.

§ 882.21 Members of Military Assistance Advisory Groups and Air Missions.

Air Force service members and civilian employees, regardless of assignment, performing any duty whatsoever in connection with the Military Assistance Program, may not accept the tender of any decoration, award, or gift from foreign governments or officials for duty of this nature. Participation in ceremonies involving any such tender is not authorized. To avoid embarrassment, the appropriate foreign officials should be advised of this prohibition. However, awards proffered in recognition of actual combat services or heroism involving the saving of life are excepted and may be received and treated as prescribed in § 882.20.

§ 882.22 Decorations to retired personnel.

A retired member of a Reserve component of the Air Force or a retired airman of the Regular Air Force, not holding an office of profit or trust under the United States Government, may without specific consent of the Congress, accept foreign decorations, provided that the decorations are not proffered in recognition of service performed while the member was on active duty with the Armed Forces of the United States. Retired officers of the Regular Air Force are considered as occupying an office of profit or trust under the United States Government and may not accept foreign awards without the consent of the Congress. Token acceptance is permissible, but elements of the award must be forwarded in accordance with § 882.20.

§ 882.23 Decorations awaiting Congressional approval for personnel honorably discharged from the Air Force.

Congressional approval is not required for acceptance and wearing of foreign decorations by personnel who have been honorably discharged from any of the components of the Air Force, provided they have acquired no new office of profit or trust under the United States Government. Persons may obtain their awards by sending a request to Hq USAF (AFPMPP). A signed statement certifying that the person is not employed in any capacity with the United States Government must accompany each request.

§ 882.24 Posthumous awards of foreign decorations to deceased members of the Air Force.

The approval of Congress is unnecessary in cases where a foreign decoration is awarded posthumously to a deceased member of the Armed Forces of the United States. If a recipient should die during the period the decoration is held by the Department of State, the elements are withdrawn and forwarded to the legal next of kin.

§ 882.25 Awards accepted while a bona fide member of the Armed Forces of a friendly foreign nation.

Decorations tendered or awarded for service while the recipient was a bona fide member of the Armed Forces of a friendly foreign nation may be retained without the consent of Congress, provided the decoration or award was accepted prior to the recipient's entrance into active service of the Armed Forces of the United States and acceptance was in accordance with the regulations of the country making the award. (See Part 826, Subchapter C of this chapter for information concerning gifts proffered by foreign governments to individual members of the Air Force.)

§ 882.26 Military decorations.

(a) The following chart explains how individuals must distinguish themselves to receive military decorations awarded by, or upon the recommendation of the Air Force. It also tells who has the authority to approve and disapprove recommendations for awards.

(b) Military personnel awarded the decorations described in this chart will wear them in accordance with AFM 35–10.

DECORATION

1. Medal of Honor				2. Air Force Cross				3. Distinguished Service Medal			
Awarded to—				Awarded to—				Awarded to—			
Military		Civilian		Military		Civilian		Military		Civilian	
U.S.	Foreign	U.S.	Foreign	U.S.	Foreign	U.S.	Foreign	U.S.	Foreign	U.S.	Foreign
X				X	X	X	X	X	X	X	X
Awarded for Conspicuous gallantry and intrepidity at the risk of life above and beyond the call of duty, while a member of the Air Force: 1. While engaged in an action against an enemy of the United States; 2. While engaged in military operations involving conflict with an opposing foreign force; or 3. While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party. [Each recommendation for the Medal of Honor must incontestably prove that the self-sacrifice or personal bravery involved conspicuous risk of life, the omission of which could not justly cause censure.]				*Awarded for* Extraordinary heroism, not justifying the award of a Medal of Honor, while serving in any capacity with the Air Force: 1. While engaged in an action against an enemy of the United States; 2. While engaged in military operations involving conflict with an opposing foreign force; or 3. While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.				*Awarded for* Exceptionally meritorious service to the United States Government in a duty of great responsibility, while serving in any capacity with the Air Force. During wartime, a duty of great responsibility is one that involves the exercise of authority or judgment in matters which decide the successful outcome of a major military operation. In peacetime, it is duty which carries the ultimate responsibility for the successful operation of a major command, activity, installation or major program. The discharge of such duty must involve the acceptance and fulfillment of the obligation so as to greatly benefit the interests of the United States.			

DECORATION

4. Silver Star				5. Legion of Merit				6. Distinguished Flying Cross			
Awarded to—				Awarded to—				Awarded to—			
Military		Civilian		Military		Civilian		Military		Civilian	
U.S.	Foreign	U.S.	Foreign	U.S.	Foreign	U.S.	Foreign	U.S.	Foreign	U.S.	Foreign
X	X	X	X	X	X			X	X		
Awarded for Gallantry in action, that does not warrant a Medal of Honor or Air Force Cross, while serving in any capacity with the Air Force: 1. While engaged in an action against an enemy of the United States; 2. While engaged in military operations involving conflict with an opposing foreign force; or 3. While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a a belligerent party. [Gallantry in action means heroism of high degree involving risk of life.]				*Awarded for* Exceptionally meritorious conduct in the performance of outstanding service to the United States. In peacetime, awards to U.S. military personnel are generally limited to recognizing: 1. Service of marked national or international significance where the interests of the United States are involved; 2. Service which has aided the United States in furthering its national policies; or 3. Service which has furthered the interests of the security of the United States. [Superior performance of normal duties will not alone justify award of this decoration (see § 882.6(b) for other considerations).] Awards to United States military personnel are made without degree. Peacetime awards to members of the armed forces of friendly foreign nations are limited to recognizing: 1. and 2. (same as above). 3. Service which has furthered the interests of the security of the United States, or of any nation allied or associated with the United States during a period of national emergency declared by the President or Congress. Awards to foreign military personnel are made in the Degrees of Chief Commander, Commander, Officer and Legionnaire. The degrees of Chief Commander and Commander are comparable to awards of the Distinguished Service Medal to U.S. personnel. Degrees of Officer and Legionnaire are comparable to awards of the Legion of Merit to U.S. military personnel. In order to maintain the prestige and dignity of the medal, and to insure uniformity in awarding the various degrees to foreign nationals, the following criteria are established:				*Awarded for* Heroism or extraordinary achievement while participating in aerial flight, and serving in any capacity with the Air Force. Both heroism and achievement must be entirely distinctive, involving operations that are not routine. (See § 882.6(c) for other considerations.)			

DECORATION

LEGION OF MERIT

Degree	*Awarded to—*
Chief Commander	Foreign chiefs of state or heads of government.
Commander	The equivalent of a U.S. military Chief of Staff or higher, but not to chief of state.
Officer	General or flag rank personnel below the equivalent of a U.S. military chief of staff; to ranks parallel to colonel (or captain USN) for service in assignments equivalent to those normally held by general or flag rank personnel in the U.S. military service; and to foreign attachés.
Legionnaire	To all other eligibles.

When the decoration is awarded more than once to a military member of a friendly foreign nation, subsequent awards are never made in a degree lower than the one originally awarded. Duplicate awards are given to recipients previously awarded the Legion of Merit in any of the degrees mentioned above.

DECORATION

7. AIRMAN'S MEDAL				8. BRONZE STAR MEDAL				9. AIR MEDAL			
Awarded to—				Awarded to—				Awarded to—			
Military		Civilian		Military		Civilian		Military		Civilian	
U.S.	Foreign	U.S.	Foreign	U.S.	Foreign	U.S.	Foreign	U.S.	Foreign	U.S.	Foreign
X	X			X	X	X	X	X	X	X	X

Awarded for

Heroism involving voluntary risk of life under conditions other than those of conflict with an armed enemy of the United States, while serving in any capacity with the Air Force. The saving of a life or the success of the voluntary heroic act is not essential.

Awarded for

Heroic or meritorious achievement or service (not involving participation in aerial flight) under one or more of the following conditions, while serving in or with the Air Force after December 6, 1941:

1. While engaged in an action against an enemy of the United States.

2. While engaged in military operations involving conflict with an opposing foreign force.

3. While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party.

When awarded for heroism, the Bronze Star Medal is marked by a bronze letter "V" (for Valor) clasped to the suspension ribbon and ribbon bar. Only one such "V" is authorized.

Persons who were awarded the Combat Infantryman or Medical Badge for exemplary conduct in ground combat against an armed enemy between December 7, 1941 and September 2, 1945, may, upon application, have such badges converted to an award of the Bronze Star Medal.

The specific authority for the badge must be indicated in each application, which will be forwarded to USAF Military Personnel Center (AFPMPP), Randolph AFB, Texas, for referral to the Department of the Army for awarding action. Conversion of an award of the Bronze Star Medal will terminate the individual's authority to wear the Combat Infantryman or Medical Badge on the Air Force uniform.

Awarded for

Meritorious achievement while participating in aerial flight, and serving in any capacity with the Air Force.

The required achievement to warrant award of the Air Medal is less than that required for award of the Distinguished Flying Cross, but must nevertheless be accomplished with distinction above and beyond that normally expected of professional airmen. (See § 882.6(c) for other considerations.)

DECORATION

10. Air Force Commendation Medal				11. Purple Heart			
Awarded to—				Awarded to—			
Military		Civilian		Military		Civilian	
U.S.	Foreign	U.S.	Foreign	U.S.	Foreign	U.S.	Foreign
X	X			X		X	

Awarded to

1. United States military personnel below the grade of brigadier general.

Awarded for

Meritorious achievement or meritorious service rendered specifically on behalf of the Air Force, acts of courage which do not meet the requirements for award of the Airman's Medal or Bronze Star Medal, and sustained meritorious performance by crewmembers may be considered for award of the Air Force Commendation Medal. (The Air Force Commendation Medal will not be awarded to general or flag officers for achievements or services performed while serving in a general or flag officer grade.)

It is particularly desirable that emphasis be placed on the award of this decoration to outstanding company grade officers and airmen whose achievements and services meet the prescribed standards.

Superior performance of normal duties does not, in itself, constitute automatic justification for an award of the Air Force Commendation Medal. Appropriate remarks on Effectiveness and Performance Reports, favorable communications, locally developed certificates, etc., provide ample means of recognizing the high caliber performance expected of Air Force personnel. Awards should be restricted to the recognition of achievements and services which are clearly outstanding and unmistakably exceptional when compared to similar achievements and accomplishments of personnel of like rank and responsibilities. The successful accomplishment of a predesignated number of tasks or functions is not a valid basis for an automatic award. However, unusual and extraordinary sustained performance may be used as a point of departure in justifying meritorious achievement or service. In instances where many individuals are affiliated with an exceptionally successful program, project, or mission, the Air Force Commendation Medal should be awarded only to the relatively few individuals whose contributions clearly stand out from the others, and who have contributed most to the success of the program.

Awarded to:

2. Members of the Armed Forces of a friendly foreign nation:

Awarded for:

An act of heroism, extraordinary achievement or meritorious service, performed after June 1, 1962, which has been of mutual benefit to a friendly foreign nation and to the United States Air Force. (The award of the Air Force Commendation Medal to a member of the armed forces of a friendly foreign nation shall be based upon an act, a service, or an achievement that would satisfy the criteria governing award of this decoration to a military member of the United States Air Force.)

Awarded for

Wounds received, or death after being wounded, under any of the following conditions, while serving in any capacity with one of the United States Armed Forces, after April 5, 1917:

1. In any action against an enemy of the United States;
2. In any action with an opposing armed force of a foreign country in which the armed forces of the United States are or have been engaged;
3. While serving with friendly foreign forces engaged in an armed conflict against an opposing armed force in which the United States is not a belligerent party;
4. As a result of an act of any such enemy or opposing armed force; or
5. As the result of an act of any hostile foreign force.

Posthumous Awards: The Purple Heart will be awarded posthumously to any person covered by, and under the circumstances described above, who, after April 5, 1917, has been or may hereafter be killed, or who has died or may hereafter die after being wounded. For such awards, the Purple Heart and appropriate ribbon and appurtenances will be forwarded to the next of kin without respect to whether a previous award has been made to such person, except that if the award results from service prior to December 7, 1941, the next of kin must submit application to the Secretary of the Air Force.

Definitions and Criteria: A Purple Heart is authorized for the first wound suffered under the conditions indicated above, but for each subsequent award, an oak leaf cluster shall be awarded. Not more than one award will be made for more than one wound or injury received at the same instant or from the same missile, force, explosion, or agent. For the purpose of considering an award of this decoration, a "wound" is defined as an injury to any part of the body from an outside force or agent sustained under one or more of the conditions listed above. A physical lesion is not required, provided the concussion or other form of injury received is directly due to enemy, opposing armed force, or hostile foreign force action.

A person who is wounded, injured, or killed as a result of a parachute jump from an aircraft disabled by enemy or hostile fire, or, who, after April 25, 1962, is wounded, injured or killed by his captors while in a prisoner of war status, is considered to have received such wounds or injuries as a direct result of enemy, hostile, or opposing force actions. A sworn statement from a released prisoner of war outlining circumstances and extent of injury, including date and place injury was incurred, must be submitted and considered in conjunction with other evidence. Further, a wound for which the award is made must have required treatment by a medical officer, and the records of medical treatment for wounds or injuries received under the conditions described above, must have been made a matter of official record. In those instances where medical records are not available for injuries or wounds received while a prisoner of war, a statement must be submitted by a medical officer that examination reveals that the person apparently received injuries or wounds while in a prisoner of war status, and that such injury or wound should have received medical treatment.

Application: Any person who believes himself eligible for the Purple Heart, but through unusual circumstances no award was made, may submit available facts and evidence to USAF Military Personnel Center (AFPMPP), Randolph AFB, Texas, for evaluation and awarding action, if appropriate.

§ 882.27 Nonmilitary decorations.

(a) The following chart explains how individuals must distinguish themselves to be eligible to receive nonmilitary decorations. It also tells who has the authority to approve recommendations for the awards.

(b) Other civilian awards for Air Force employees are described in AFR 40–475 (Honorary Recognition).

DECORATION

1. Medal for Merit				2. President's Certificate of Merit				3. National Security Medal			
Awarded to—				Awarded to—				Awarded to—			
Military		Civilian		Military		Civilian		Military		Civilian	
U.S.	Foreign	U.S.	Foreign	U.S.	Foreign	U.S.	Foreign	U.S.	Foreign	U.S.	Foreign
		X	X			X	X	X	X	X	X
Awarded for Exceptionally meritorious conduct in the performance of outstanding services. In the past, awards to foreign personnel have been limited to those of the Allied Nations of World War II.				*Awarded for* A highly meritorious act or service aiding the United States or its allies during World War II.				*Awarded for* Distinguished achievement or outstanding contribution on or after July 26, 1947, in the field of intelligence relating to the national security. This contribution may consist of either exceptionally meritorious service performed in a position of high responsibility, or of an act of valor requiring personal courage of a high degree and complete disregard of personal safety. Recommendations may be initiated by any person having personal knowledge of the facts of the exceptionally meritorious conduct or act of valor, either as an eyewitness or from the testimony of others who have personal knowledge or were eyewitnesses. Complete documentation, including necessary certificates, affidavits, or sworn transcripts of testimony, will accompany the recommendation. Each recommendation must show the exact status of the individual at the time he performed the act or service, including information regarding his citizenship and employment. Recommendations will be submitted to Hq USAF (AFPMPP) for transmittal to the Executive Secretary of the National Security Council by the Secretary of the Air Force.			

DECORATION

4. The Presidential Medal of Freedom				5. Department of Defense Medal for Distinguished Public Service				6. Exceptional Service Award			
Awarded to—				Awarded to—				Awarded to—			
Military		Civilian		Military		Civilian		Military		Civilian	
U.S.	Foreign	U.S.	Foreign	U.S.	Foreign	U.S.	Foreign	U.S.	Foreign	U.S.	Foreign
X	X	X	X			X	X			X	X
Awarded for An especially meritorious contribution to (1) The security or national interests of the United States, or (2) World peace, or (3) Cultural or other significant public or private endeavors. This new decoration, in two degrees, replaces the Medal of Freedom, which will no longer be awarded. (The Department of Defense will issue further implementing instructions. When available, these instructions will be included in a subsequent change to this chart. In the meantime, commanders are requested to defer the submission of recommendations for this decoration pending receipt of further implementing details.)				*Awarded for* Exceptionally meritorious civilian service since the date of the National Security Act (1947) to the Department of Defense as a whole. To be eligible for this award, the civilian nominee must be one that: 1. Does not derive his principal livelihood from Government employment; and 2. Has served at considerable personal sacrifice and inconvenience, motivated by patriotism, good citizenship, and a sense of public responsibility. It will not be awarded to groups, organizations or employees of other Government agencies. Posthumous awards may be presented to eligible next of kin in accordance with § 882.9, except that the eldest brother, eldest sister, and eldest grandchild are not eligible in this instance.					*Awarded for* Exceptional services rendered to the Department of the Air Force by United States civilians, not employed by the United States Government; or For an act of heroism, involving voluntary risk of life, by any civilian, U.S. or foreign, not employed by the United States Government. Type of services recognized: Services must have been completely voluntary and performed as a public service or by patriotic motivations with no implication of financial or other remuneration. Contractors, contractor technicians, corporations, and organizations which have a commercial or profit-making relationship with the Air Force, and render services inherent or implied by contract, do not qualify. If appropriate, commanders may recognize such service through award of favorable communications or other means of recognition available to them. However, an act of heroism by an employee of any of the foregoing is a basis for a recommendation for award of the Exceptional Service Award, provided that the act benefitted the Air Force. (This decoration is comparable to the Distinguished Service Medal to military personnel.)			

DECORATION			
7. AIR FORCE SCROLL OF APPRECIATION			
Awarded to—			
Military		Civilian	
U.S.	Foreign	U.S.	Foreign
		X	X

Awarded for

Meritorious achievement or service rendered to any activity of the Department of the Air Force by civilians, U.S. and foreign, not employed by the United States Government.

Acts of courage which do not meet the risk of life requirements for award of the Exceptional Service Award may be considered as evidence of a meritorious achievement warranting award of the Air Force Scroll of Appreciation.

Type of services recognized: Services must be completely voluntary and performed as a public service or by patriotic motivation with no implication of financial or other remuneration.

Instructions governing award of the Exceptional Service Award to contractors, contractor technicians, etc., equally apply to award of the Air Force Scroll of Appreciation.

(The Air Force Scroll of Appreciation may be awarded to groups or organizations as well as to individuals.)

§ 882.28 Joint Service Commendation Medal (Department of Defense).

(a) This chart describes the Joint Service Commendation Medal and explains who has authority to approve recommendations for its award and how individuals must distinguish themselves to receive it. Recommendations for this decoration will be prepared in format and submitted through channels prescribed by the awarding authority.

(b) Air Force personnel awarded this decoration will wear it in accordance with AFM 35–10. The Joint Service Commendation Medal takes precedence with the Air Force Commendation Medal but takes precedence above the AFCM when worn.

JOINT SERVICE COMMENDATION MEDAL

Awarded to—	*Awarded for—*
Any member of the Armed Forces of the United States serving in an assignment in any of the following joint activities, after January 1, 1963: (1) Office of the Secretary of Defense. (2) Organization of the Joint Chiefs of Staff. (3) Defense Supply Agency. (4) National Security Agency. (5) Other Department of Defense agencies or joint activities reporting through the Joint Chiefs of Staff. (6) Headquarters, unified and specified commands. (7) Headquarters of joint task forces, joint commands or control groups reporting through the Joint Chiefs of Staff, unified, specified or subordinate joint commanders, to include service components assigned to a joint command for exercise purposes (e.g., STRIKE Command). (8) Other joint activities reporting to commanders of unified or specified commands (e.g., Military Assistance Advisory Groups or joint missions).	Meritorious achievement or service which distinguished the member while serving in a capacity indicated above. The Joint Service Commendation Medal shall not be awarded to any individual for a period of service for which the Air Force Commendation Medal, or the Commendation Medal of other services, has been awarded.

Subpart B—Service Awards

AUTHORITY: The provisions of this Subpart B issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012, except as otherwise noted.

§ 882.100 Purpose.

Subparts B through E of this part describe the Air Force service awards and explain who is eligible to receive them, how and by whom they are awarded, and how they are supplied, issued, and worn. It includes information on service awards conferred by other United States agencies and foreign countries.

§ 882.101 Reason for awards.

Service awards are normally awarded to recognize honorable, active Federal military service during periods of war or national emergency. For the purpose of Subparts B through E of this part, the term "active Federal military service" is defined as all periods of military service in a Regular component of the Armed Forces of the United States or any of the Reserve components listed in § 882.214 (b) while on extended active duty, and service as a cadet or midshipman at the United States Air Force, Army, or Naval Academies.

§ 882.102 Types of awards.

Service awards include medals, service ribbons, lapel buttons, and other types of devices such as clasps, stars, arrowheads, etc.

§ 882.103 List of authorized service medals and ribbons.

The service medals and ribbons described in Subparts B through E of this part are listed in the following paragraphs. The order of precedence for these medals and ribbons is prescribed in AFM 35–10 (Service and Dress Uniforms for Air Force Personnel).

(a) Good Conduct Medal or Air Force Good Conduct Medal.
(b) American Defense Service Medal.
(c) Women's Army Corps Service Medal.
(d) American Campaign Medal.
(e) Asiatic-Pacific Campaign Medal.
(f) European-African-Middle Eastern Campaign Medal.
(g) World War II Victory Medal.
(h) Army of Occupation Medal.
(i) Medal for Humane Action.
(j) National Defense Service Medal.
(k) Korean Service Medal.
(l) Antarctica Service Medal.
(m) Armed Forces Expeditionary Medal.
(n) Air Force Longevity Service Award Ribbon.
(o) Armed Forces Reserve Medal.
(p) USAF NCO Academy Graduate Ribbon.
(q) Small Arms Expert Marksmanship Ribbon.
(r) Philippine Defense Ribbon.
(s) Philippine Liberation Ribbon.
(t) Philippine Independence Ribbon.
(u) United Nations Service Medal.
(v) United Nations Medal.

§ 882.104 Eligibility.

(a) *Who is eligible.* A person is generally eligible for a service award if he:

(1) Was assigned or attached to and present for duty with a unit serving within the prescribed geographical area established for the award during the designated time period;

(2) Was assigned or attached to and present for duty with a unit designated in appropriate administrative orders as having received the award during the prescribed time period; or

(3) Otherwise meets the requirements for the award stated in Subparts C through E of this part.

(b) *Who is ineligible.* No service award will be awarded to a person whose entire service for the period covered by the award was not honorable, nor to a person whose service for the period covered by the award was terminated under other than honorable conditions. However, if a person was awarded and presented an award for service prior to his dishonorable behavior, the award will not be revoked unless specifically directed by Headquarters USAF.

§ 882.105 Number of awards a person may receive.

Only one award of a specific United States service medal or Philippine service ribbon will be made to the same person. Devices will be awarded to denote additional awards in those instances specified in Subparts B through E of this part.

§ 882.106 Posthumous awards.

The service awards and devices listed in Subparts B through E of this part may be awarded posthumously. In addition, the next of kin is entitled to receive a complete set of the service awards earned by the deceased member of the Air Force whether or not they were previously presented to him. If desired by the next of kin, the commander of the base furnishing casualty assistance will be responsible for furnishing a complete set of the awards. The next of kin, in order of precedence, are: widow, widower, eldest son, eldest daughter, father, mother, eldest brother, eldest sister, eldest grandchild. Awards to eligible next of kin, other than in the order given, must be approved by Headquarters USAF. Duplicate awards may be furnished free to the parents of the deceased when awards are given to the widow or widower.

§ 882.107 Awards by other United States agencies.

Service awards are also awarded by the United States Army, Navy, Marine Corps, and Coast Guard. Such awards are made in conformance with the regulations of the awarding authority. Service awards made by United States Government agencies other than the military services noted, or by States and other jurisdictions subordinate to the Federal Government, will not be worn on the Air Force uniform.

§ 882.108 Awards by foreign countries.

(a) *When acceptance and wearing of foreign service awards is unauthorized.* With the exception of the United Nations Service Medal and United Nations Medal (Subpart D of this part), service awards tendered by foreign governments to an officer or airman for services rendered while a member of the United States Air Force or its Reserve components may not be accepted or worn on the Air Force uniform. See Subpart A of this part for acceptance and wear of foreign decorations.

(b) *Wearing of foreign service awards by persons who earned them as members of a friendly foreign force.* Foreign service awards earned while a bona fide member of the armed forces of a friendly country may be retained by the person, provided that they were presented to him prior to his entry on duty with the Armed Forces of the United States. However, to wear such awards on the Air Force uniform, the consent of the Congress is required, unless such Congressional authority was delegated under Public Law.

(1) Requesting congressional authorization: Congressional authorization is requested through Headquarters USAF. The member will send all elements of the award, including the medal, ribbon, and original certificate, and other documents pertaining to the award, to AFPMP–12C, Headquarters USAF. These will be sent by letter of transmittal including full name and service number of the member, name of the award and the country making it, citizenship status at time of the award, and inclusive dates of service recognized by the award. Headquarters USAF will forward the award to the Department of State, where it will be held pending authorization by Congress for the member to wear it.

(2) Notification to member when Congress authorizes wear on uniform: When Congress authorizes official wear, Headquarters USAF will withdraw the award from the Department of State and forward it to the member. This section does not apply to the Philippine service awards described in Subparts B through E of this part.

NOTE: Pursuant to a White House instruction, the Department of State prepares an omnibus authorizing bill on all foreign awards held for retired persons, for transmittal to Congress one full month before the beginning of the Second Session of each alternate Congress, or every fourth year, i.e., 1962, 1966, etc. At the present time, such legislation may not be introduced for other than retired personnel. Since the seeking of authority to wear a foreign service award is at the option of the individual concerned, commanders should thoroughly explain the procedures stated in this section so that the individual will be fully aware of the legislative requirements before he elects to seek Congressional authorization to wear the award.

§ 882.109 Replacement of service medals.

10 U.S.C. 8751 provides that any medal that is lost, destroyed, or becomes unfit for use without fault or neglect of the owner may be replaced at cost. However, if the owner is a member of the Air Force, the medal may be replaced without charge.

§ 882.110 Furnishing authorized awards.

Persons not on active duty and not members of a Reserve component may obtain authorized awards from the General Services Administration, Air Force Branch, Military Personnel Records Center, 9700 Page Boulevard, St. Louis, Mo., 63132.

§ 882.111 Items not available.

Miniature service medals and service ribbons are neither issued nor sold by the Department of the Air Force, but may be purchased from commercial sources.

§ 882.112 Engraving.

Service medals will not be engraved at Government expense. Recipient may have the medal engraved with his name at his own expense.

§ 882.113 Use of awards in exhibitions.

(a) *By public institutions and patriotic societies.* Upon approval by the Secretary of the Air Force, sample service awards for exhibit purposes may be furnished at cost price, including charges for packing, transportation, and engraving each medal with the words "Exhibition Only." Samples will be furnished only to museums; libraries; and historical, numismatic, and military societies and institutions of such public nature as to assure an opportunity for the public to view them under circumstances beneficial to the Air Force.

(b) *By U.S. agencies outside the Department of Defense.* Upon approval by the Secretary of the Air Force, sample service awards may be furnished without charge for public display to United States Government agencies not under military jurisdiction.

(c) *Where to send requests.* All requests for service awards for exhibit or display will be submitted to AFPMP–12C, Headquarters USAF, for approval by the Secretary of the Air Force.

§ 882.114 Manufacture, sale, and possession of awards.

By law (18 U.S.C. 701 and 704), the manufacture, sale, or possession of any Air Force service award, or the pictorial representation in regulation size of such award, is prohibited unless authorized by the Department of the Air Force.

§ 882.115 Sources of information on other types of awards.

Subpart A of this part governs the award of decorations.

Subpart C—Service Medals and Longevity Service Award Ribbon

AUTHORITY: The provisions of this Subpart C issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012, except as otherwise noted.

§ 882.200 Good Conduct Medal and Air Force Good Conduct Medal.

(a) *Requirements for award—(1) Quality of service.* The Good Conduct Medal or the Air Force Good Conduct Medal is awarded for exemplary behavior, efficiency, and fidelity in an enlisted status while in the active Federal military service of the United States. During the period considered for the award, there must be no conviction by a civil court (other than for a minor traffic violation), or by court martial, or record of punishment under Article 15. Where such conviction or record of punishment exists, creditable service toward the Good Conduct Medal or the Air Force Good Conduct Medal begins the day following any time lost under 10 U.S.C. 8638 and/or the day following the completion of any punishment imposed by a court martial, including punishment under Article 15. Any period of service covered by a "referral" Airman Performance Report, AF Form 75, is disqualifying for the award of the medal. Table 1 explains the basis for award.

TABLE 1

BASIS FOR AWARD OF GOOD CONDUCT MEDAL OR AIR FORCE GOOD CONDUCT MEDAL

For service from—	*Basis for award*
August 27, 1937, to September 30, 1957.	All "character" and "efficiency" ratings must have been recorded as "excellent" or higher, except that the following ratings are not disqualifying: ratings of "unknown"; service school efficiency ratings below "excellent" awarded prior to March 3, 1946.
October 1, 1957, to April 14, 1960.	Specific recommendation of the unit commander must have been recorded in section X of AF Form 75, "Airman Performance Report."
April 15, 1960, to present.	Specific recommendation of the unit commander, who will consider carefully the prerequisite requirements for the award—exemplary behavior, efficiency, and fidelity; the chronological listing of past service creditable for award of the medal (Note); information contained in AF Form 75, "Airman Performance Report"; and all other information available within the unit reflecting the quality of service of the airman concerned.

NOTE: Information contained in "Remarks," AF Form 7; see paragraph 8–18, AFM 35–12 (Airman Military Personnel Records System).

(2) *Length of service.* Provided the above quality requirements are met, the basic Good Conduct Medal or Air Force Good Conduct Medal may be awarded for periods of continuous service given in Table 2.

(b) *Type of medal to be awarded.* An airman who qualified for award of the basic Good Conduct Medal or a successive award of the Good Conduct Medal on or before May 31, 1963 will be awarded the Good Conduct Medal, or the appropriate clasp. An airman who completes the qualifying service on or after June 1, 1963, will be awarded the Air Force Good Conduct Medal. When both medals have been awarded, they must be worn with the Air Force Good Conduct Medal taking precedence over the Good Conduct Medal. After award of the first Air Force Good Conduct Medal, successive awards will be denoted by oak leaf clusters, which are identical to the clusters used to denote additional awards of military decorations. Oak leaf clusters are issued in two sizes—large and small—and in two colors—bronze and silver. The large size is worn on the suspension ribbon of the Air Force Good Conduct Medal, and the small size on the ribbon bar. A bronze oak leaf cluster is used for the second through fifth, seventh through tenth, etc., awards of the Air Force Good Conduct Medal. A silver oak leaf cluster is used for the sixth, eleventh, etc., award, or in lieu of five bronze oak leaf clusters. (See AFM 35–10 for the proper placement of oak leaf clusters on the suspension ribbon and ribbon bar.)

(c) *Computation of total service.* Periods of service as a commissioned officer or warrant officer, other than Regular Air Force, will not be considered as an interruption of continuous service, although such periods will not be included in computation of total service accumulated. A period in excess of 24 hours between enlistments or between periods of commissioned and enlisted service will be considered a break in continuous active service. Time spent in either aviation cadet or officer candidate status is creditable provided it meets the requirements of paragraph (a)(1) of this section.

(d) *Service in the Navy, Marine Corps, or Coast Guard.* Service performed in the United States Navy, Marine Corps, or Coast Guard may not be credited for award of the Good Conduct Medal or Air Force Good Conduct Medal under Subparts B through E of this part.

(e) *Time period required after basic award.* After the basic award of the Good Conduct Medal or Air Force Good Conduct Medal, a 3-year period of continuous active service is always required for additional awards of these medals. Service must always meet the requirements of paragraph (a)(1) of this section.

TABLE 2. Length of service requirements for basic award of Good Conduct Medal or Air Force Good Conduct Medal

For service during—	Upon completion of continuous active Federal service for a period of—	Upon separation		Basic award will be the—
		Completion of 1 year but less than 3 continuous years active Federal military service [1]	For physical disability incurred in the line of duty for less than 1 continuous year	
	Years			
Aug. 27, 1937–Dec. 6, 1941	3			Good Conduct Medal.
Dec. 7, 1941–Mar. 2, 1946 (WWII)	1			Do.
Mar. 3, 1946–June 26, 1950	3	X [2]	X [2]	Do.
June 27, 1950–July 27, 1954 (Korean Operation).	1	X	X	Do.
July 28, 1954–May 31, 1963	3	X	X	Do.
June 1, 1963–indefinite, or	3	X	X	Air Force Good Conduct Medal.
During any future period while U.S. is at war	1	X	X	Do.

[1] Includes termination of active Federal military service in an enlisted status in order to accept a commission.
[2] Applicable only if some portion of the service is performed after June 27, 1950.

§ 882.201 American Defense Service Medal.

Established by Executive Order 8808, June 28, 1941.

(a) *Description.* A metal disk, 1¼ inches in diameter, bearing in front an armed figure symbolic of defense under the inscription "American Defense." The ribbon is basically yellow, with blue, white, and red stripes right to left, and left to right symmetrically near the edges.

(b) *Requirements for award.* Awarded for any period of active duty service completed between September 8, 1939, and December 7, 1941, provided that the active duty orders specified service for a period of 12 months or longer.

(c) *Foreign Service Clasp.* The requirements for the Foreign Service Clasp are the same as for the medal itself, except that the service must have been performed outside the continental United States. Section 882.401(b) describes the clasp and explains how it is worn.

§ 882.202 Women's Army Corps Service Medal.

Established by Executive Order 9365, July 29, 1943.

(a) *Description.* A metal disk, 1¼ inches in diameter, bearing in front the head of Pallas Athene in profile facing dexter, superimposed on a sheathed sword crossed with oak leaves and a palm branch within a circle composed of the word "Women's" in the upper half, and in the lower half "Army Corps." The ribbon is predominantly moss-tone green with gold borders.

(b) *Requirements for award.* Awarded for service performed in both the Women's Army Auxiliary Corps between July 20, 1942, and August 31, 1943, and the Women's Army Corps between September 1, 1943, and September 2, 1945.

§ 882.203 American Campaign Medal.

Established by Executive Order 9265 November 6, 1942, as amended by Executive Order 9706, March 15, 1946.

(a) *Description.* A metal disk, 1¼ inches in diameter, bearing in front an offshore scene depicting a cruiser, an airplane, and a sinking submarine underneath the inscription "American Campaign." The ribbon is predominantly medium blue, striped white, black, red, and white from right to left, and left to right within each edge. In the center are three stripes of red, white, and blue. The blue stripe is worn to the wearer's right.

(b) *Requirements for award.* Awarded for service within the American Theater between December 7, 1941, and March 2, 1946, under any of the following conditions:

(1) Permanent assignment outside the continental United States.

(2) Permanent assignment as an aircrew member of an airplane making frequent flights over ocean waters for a period of 30 consecutive days or 60 days not consecutive.

(3) Outside the continental United States in a passenger status or on temporary duty for 30 consecutive days or 60 days not consecutive.

(4) In active combat against the enemy, provided that the individual was awarded a combat decoration or furnished a certificate by the commander of his unit stating that he actually participated in combat.

(5) Within the continental United States for an aggregate period of 1 year.

(c) *Antisubmarine Campaign Service Star.* A person assigned or attached to and present for duty with a unit which was accorded battle credit for the "Antisubmarine" campaign is entitled to wear a bronze service star. Section 882.402 explains how the star is worn.

§ 882.204 Asiatic-Pacific Campaign Medal.

Established by Executive Order 9265, November 6, 1942, as amended by Executive Order 9706, March 15, 1946.

(a) *Description.* A metal disk, 1¼ inches in diameter, depicting in front a tropical landing beneath the words "Asiatic-Pacific Campaign." The ribbon is basically yellow, with yellow, red, and white stripes near each end. In the center are three equal stripes of blue, white, and red. The blue stripe is worn to the wearer's right.

(b) *Requirements for award.* Awarded for service within the Asiatic-Pacific Theater between December 7, 1941, and March 2, 1946, under any of the following conditions:

(1) Permanent assignment.

(2) Passenger status or on temporary duty for 30 consecutive days or 60 nonconsecutive days.

(3) In active combat against the enemy, provided that the individual was awarded a combat decoration or furnished a certificate by the commander of his unit stating that he actually participated in combat.

(c) *Service stars.* A service star is awarded to denote participation in a battle campaign. Section 882.402 explains how the star is worn.

§ 882.205 European-African-Middle Eastern Campaign Medal.

Established by Executive Order 9265, November 6, 1942, as amended by Executive Order 9706, March 15, 1946.

(a) *Description.* A metal disk, 1¼ inches in diameter, depicting a landing scene beneath the words "European-African-Middle Eastern Campaign." The ribbon is principally dark-green, edged with brown bands separated from the green by green, white, and red stripes on the left (wearer's right), and by white, black, and white stripes on the right (wearer's left). In the center are equal stripes of blue, white, and red. The blue stripe is worn to the wearer's right.

(b) *Requirements for award.* Awarded for service within the EAME (European - African - Middle Eastern) Theater between December 7, 1941, and November 8, 1945, under the same conditions described in § 882.204(b) (1), (2), and (3).

(c) *Service stars.* A service star is awarded to denote participation in a battle campaign. Section 882.402 explains how the star is worn.

§ 882.206 World War II Victory Medal.

Established by Public Law 135, 79th Congress (59 Stat. 461).

(a) *Description.* A metal disk, 1¼ inches in diameter, bearing in front the figure of liberation holding a broken sword in the dawn. The ribbon is predominantly red with wide rainbow borders.

(b) *Requirements for award.* Awarded for any period of service between December 7, 1941, and December 31, 1946.

§ 882.207 Army of Occupation Medal.

Established by War Department General Orders 32, 1946.

(a) *Description.* A metal disk, 1¼ inches in diameter, bearing on the front of the disk a pictorial representation of the Remagen Bridge and on the reverse Mount Fujiyama and two Japanese junks. The ribbon is bordered with white bands with equal black and red stripes in the center. The black stripe is worn to the wearer's right.

(b) *Requirements for award.* Awarded for 30 consecutive days at a normal post of duty (as contrasted to inspector, visitor, courier, escort, passenger status, temporary duty, or detached service) while assigned to the United States occupation forces during the prescribed time limits in any of the following areas:

(1) Germany (exclusive of Berlin): Between May 9, 1945, and March 5, 1955.

Service between May 9, 1945, and November 8, 1945, may be counted only if the European-African-Middle Eastern Campaign Medal was awarded for service prior to May 9, 1945.

(2) Berlin, Germany: Between May 9, 1945, and a terminal date to be announced later. Service between May 9, 1945, and November 8, 1945, will be counted only if the European-African-Middle Eastern Campaign Medal was awarded for service prior to May 9, 1945.

(3) Austria: Between May 9, 1945, and July 27, 1955. Service between May 9, 1945, and November 8, 1945, may be counted only if the European-African-Middle Eastern Campaign Medal was awarded for service prior to May 9, 1945.

(4) Italy: Between May 9, 1945, and September 15, 1947, in the compartment of Venezia Giulia E Zara or Province of Udine, or with a unit specifically designated in Department of the Army General Orders 4, 1947. Service between May 9, 1945, and November 8, 1945, may be counted only if the European-African-Middle Eastern Campaign Medal was awarded for service prior to May 9, 1945.

(5) Japan: Between September 3, 1945, and April 27, 1952, in the four main islands of Hokkaido, Honshu, Shikoku, and Kyushu; the surrounding smaller islands of the Japanese homeland; the Ryukyu islands; and the Bonin-Volcano Islands. Service between September 3, 1945, and March 2, 1946, may be counted only if the Asiatic-Pacific Campaign Medal was awarded for service prior to September 3, 1945. By the same token, service which meets the requirements for the Korean Service Medal (§ 882.210) may not be counted in determining eligibility for this award.

(6) Korea: Between September 3, 1945, and June 29, 1949. Service between September 3, 1945, and March 2, 1946, may be counted only if the Asiatic-Pacific Campaign Medal was awarded for service prior to September 3, 1945.

(c) *Berlin Airlift Device.* Service for 90 or more consecutive days between June 26, 1948, and September 30, 1949, while assigned or attached to a unit designated in general orders of the Department of the Air Force for participation in the Berlin Airlift, qualifies a person for award of the Army of Occupation Medal with Berlin Airlift Device. Section 882.404 describes the device and explains how it is worn.

§ 882.208 Medal for Humane Action.

Established by Public Law 178, 81st Congress.

(a) *Description.* A metal disk, 1¼ inches in diameter, depicting a C–54 airplane within a border of wheat centering the coat of arms of Berlin. The ribbon is predominantly blue with black edges, followed by white, red, and white stripes. The center bears three stripes: white, red, and white, in the order named.

(b) *Requirements for award.* Awarded to personnel who were assigned or attached to and present for duty for at least 120 days during the period June 26, 1948, and September 30, 1949, inclusive, with any of the units cited in general orders of the Department of the Air Force for participation in the Berlin airlift or for direct support thereof. The geographical boundaries of the Berlin airlift operations are as follows:

(1) Northern Boundary: 54th parallel north latitude.

(2) Eastern Boundary: 14th meridian east longitude.

(3) Southern Boundary: 48th parallel north latitude.

(4) Western Boundary: 5th meridian west longitude.

(c) *Award to members of foreign armed forces and civilians.* The Medal for Humane Action may be awarded to members of foreign armed forces and civilians (United States and foreign) for meritorious participation in the Berlin airlift. In each instance, however, an individual recommendation indicating meritorious participation is required.

(d) *Award to persons whose lives were lost participating in the Berlin airlift.* Persons whose lives were lost while participating in the Berlin airlift, or as a direct result of participating therein, may be awarded the Medal of Humane Action without regard to the length of such service, provided that all other requirements are met.

NOTE: The Berlin Airlift Device described in § 882.404 is not awarded or worn with the Medal for Humane Action.

§ 882.209 National Defense Service Medal.

Established by Executive Order 10448, April 22, 1953.

(a) *Description.* A metal disk, 1¼ inches in diameter, bearing on the obverse an eagle displayed with inverted wings standing on a sword and palm branch, all beneath the inscription "National Defense." The ribbon is basically red with a yellow band in the center. Equal stripes of white, blue, white, and red border the center yellow band.

(b) *Requirements for award.* Awarded for any period of honorable active duty service between June 27, 1950, and July 27, 1954. For the purpose of this award, the following persons shall not be considered as performing active duty service:

(1) Inactive Reserve personnel ordered to active duty for short periods of training under the Inactive Reserve Training program.

(2) Reserve component personnel on temporary active duty to attend service schools or serve on boards, courts, commissions, etc.

(3) Any person on active duty for the sole purpose of undergoing a physical examination.

(4) Any person on active duty for purposes other than for extended active duty.

§ 882.210 Korean Service Medal.

Established by Executive Order 10179, November 8, 1950, as amended by Executive Order 10429, January 17, 1953.

(a) *Description.* A metal disk, 1¼ inches in diameter. On the obverse is a Korean gateway; encircling the design is the inscription "Korean Service." On the reverse is the Korean symbol taken from the center of the Korean national flag, representing the essential unity of all beings, with the inscription "United States of America," and a spray of oak and laurel encircling the design. The medal is suspended by a ring from a silk moire ribbon composed of white piping on the ends, a center of United Nations blue intersected by a white band.

(b) *Requirements for award.* Awarded to persons assigned or attached to combat or service units designated by the Commander, Far East Air Forces, in general orders for service within the Korean Theater or adjacent areas between June 27, 1950, and July 27, 1954. The term "Korean Theater" as used herein is defined as those areas which encompass North and South Korea, Korean waters, and the air over North and South Korea, and over Korean waters.

(c) *Conditions for award.* (1) The Korean Service Medal is awarded for participation in any engagement against the enemy in North or South Korean territory, in Korean waters, or in the air over North or South Korea or over Korean waters. A person will also be considered as having participated in an engagement if that person:

(i) Was a member of a designated combat or service unit in the Korean Theater.

(ii) Was a member of a combat or service unit, other than one within the Korean Theater, which has been designated by the Commander, Far East Air Forces, as having directly supported the military operations in the Korean Theater.

(iii) Was a member of a designated headquarters of the Far East Air Forces who exerted a distinct and contributory effort to the military operations in the Korean Theater.

(2) The service prescribed must have been performed while:

(i) On permanent assignment;

(ii) On temporary duty with a designated unit or headquarters for 30 consecutive days or 60 nonconsecutive days; or

(iii) In actual combat against the enemy. In this case, the individual must have been awarded a combat decoration or furnished a certificate by the commander of a division, comparable or higher unit; commander of a ship, comparable or higher unit; or commander of an Air Force group, comparable or higher unit, stating that he actually participated in combat.

(d) *Award of service stars.* Service stars are awarded to members of designated combat or service units in combat, or units assigned to the command of the Far East Air Forces, or on temporary duty with Army Ground Forces under any of the following conditions:

(1) If the person was a member assigned or attached to and present for duty with a designated combat or service unit during the period which the unit participated in combat.

(2) If the person was under orders in the combat zone and, in addition, was awarded a combat decoration, or was furnished a certificate by a commander of a division, comparable or higher unit; commander of a ship, comparable or higher unit; commander of an Air Force group, comparable or higher unit, or independent force, stating that he actu-

ally participated in combat or served at a normal post of duty (as contrasted to occupying the status of an inspector, observer, or visitor) or aboard a vessel other than in a passenger status. A certificate must be furnished by the home port commander of the vessel for actual service in the combat zone of the Korean Theater.

(3) If the person was an evadee or escapee in the combat zone or recovered from a prisoner-of-war status in the combat zone during the time limitations of the campaign. Prisoners of war will not be given credit for the time spent in confinement or while otherwise in restraint under enemy control. Section 882.402 explains how the service star is worn.

(e) *Award of arrowhead.* An arrowhead is awarded to members of designated combat or service units in combat, units assigned to the command of the Far East Air Forces, or units on temporary duty with the Army Ground forces who have participated in an airborne or amphibious assault within the territorial limits of Korea. Section 882.403 describes the arrowhead and explains how it is worn.

§ 882.211 Antarctica Service Medal.

Established by Public Law 86–600, 86th Congress, July 7, 1960.

(a) *Description.* The medal, accompanying ribbon, and other appurtenances are presently being designed by the Department of the Navy for the approval of the Secretary of Defense. When the medal is available, announcement will be made by Headquarters USAF.

(b) *Requirements for award.* Awarded to the following for service during the period January 1, 1946 to a date to be subsequently established by the Secretary of Defense:

(1) Any member of the U.S. Armed Forces or civilian citizen, national, or resident alien of the U.S. who, as a member of a U.S. expedition, participates in or has participated in scientific, direct support, or exploratory operations on the Antarctic continent.

(2) Any member of the U.S. Armed Forces or civilian citizen, national, or resident alien of the U.S. who participates in or who has participated in a foreign Antarctic expedition on that continent in coordination with a U.S. Antarctic expedition and who is or was under the sponsorship and approval of competent U.S. Government authority.

(3) Any member of the U.S. Armed Forces who participates in or who has participated in flights as a member of the crew of an aircraft flying to or from the Antarctic or within the Antarctic continent in support of operations on that continent.

(4) Any member of the U.S. Armed Forces who serves or has served in a U.S. ship operating south of latitude 60° south in support of U.S. operations in Antarctica.

NOTE: Any person, including a citizen of a foreign nation, who does not meet the requirements in subparagraphs (1), (2), (3), or (4) of this paragraph, but who participated in or participates in a U.S. Antarctic expedition on that continent at the invitation of a participating U.S. agency, may be awarded the medal by the Secretary of the Department under whose cognizance the expedition falls, provided the commander of the military support force as senior U.S. representative in Antarctica considers that he has performed outstanding and exceptional service and shared the hardship and hazards of the expedition.

No minimum time limits of participation are prescribed under the foregoing qualifications. No person is authorized to receive more than one award of the medal.

(c) *Wintering over.* Personnel who stay on the Antarctic continent during the winter months shall be eligible to wear a bronze clasp with the words "Wintered Over" on the suspension ribbon of the medal. This eligibility will also be denoted by a bronze disk of 5/16-inch diameter, with an outline of the Antarctic continent inscribed thereon, fastened on the bar ribbon representing the medal. A gold clasp or disk is authorized in lieu of the second clasp or disk, and a silver clasp is authorized for personnel who winter over three times or more. Not more than one clasp or disk shall be worn on the ribbon.

§ 882.212 Armed Forces Expeditionary Medal.

(a) *Requirements for award.* Awarded to any member of the Armed Forces of the United States, who after July 1, 1958, participates or has participated in the following operations to the degree and during the periods indicated:

(1) United States military operations and inclusive dates:

Berlin	Aug. 14, 1961, to June 1, 1963.
Lebanon	July 1, 1958, to Nov. 1, 1958.
Quemoy and Matsu Islands	Aug. 23, 1958, to June 1, 1963.
Taiwan Straits	Aug. 23, 1958, to Jan. 1, 1959.
Cuba	Oct. 24, 1962, to June 1, 1963.

(2) U.S. operations in direct support of the United Nations and inclusive dates:

Congo	July 14, 1960, to Sept. 1, 1962.

(3) U.S. operations of assistance for friendly foreign nations and inclusive dates:

Laos	Apr. 19, 1961, to Oct. 7, 1962.
Vietnam	July 1, 1958, to a date to be announced.

(4) Degree of participation: Individual must be a bona fide member of a unit engaged in the operation, or meet one or more of the following criteria:

(i) Shall serve not less than 30 consecutive days in the area of operations.

(ii) Be engaged in direct support of the operation for 30 consecutive days or 60 nonconsecutive days provided this support involves entering the area of operations.

(iii) Serve for the full period when an operation is of less than 30 days duration.

(iv) Be engaged in actual combat, or duty which is equally as hazardous as combat duty, during the operation, with armed opposition, regardless of time in the area.

(v) Participate as a regularly assigned crew member of an aircraft flying into, out of, within, or over the area in support of the military operation.

(vi) Be recommended, or attached to a unit recommended, by the Chief of a Service or the commander of a unified or specified command for award of the medal, although the criteria in this subparagraph have not been fulfilled. Such recommendation may be made to the Joint Chiefs of Staff for duty of such value to the operation as to warrant particular recognition.

(b) *Explanation of terms.* (1) "Bona fide member of a unit" means an assigned or attached member who is or was present with the unit during the operation.

(2) "A unit engaged in the operation" means a complete unit (not elements or aircraft of a unit) which is or was physically present in the area of operations during the specified period.

(3) "Area of operations" means the foreign territory specifically designated by Subparts B through E of this part upon which troops have actually landed or are present and specifically deployed for the direct support of the designated military operations; the adjacent water areas in which ships are operating, patrolling, or providing direct support of operations; the air space above and adjacent to the area in which operations are being conducted.

(4) "Direct support" means service being supplied the combat forces in the area of operations by ground units, ships, and aircraft providing supplies and equipment to the forces concerned, provided it involves actually entering the designated area; and ships and aircraft providing fire, patrol, guard, reconnaissance, or other military support.

(c) *Subsequent awards.* Not more than one medal shall be awarded to any person, but for each succeeding operation justifying such an award, a bronze service star will be awarded to be worn as outlined in § 882.402.

(d) *Limitations.* The medal shall be awarded only for operations for which no other United States campaign medal is approved. The service qualifying the person for the award shall have been honorable.

§ 882.213 Air Force Longevity Service Award Ribbon.

Established by Department of the Air Force General Orders No. 60, November 25, 1957.

(a) *Description.* An ultramarine blue service ribbon divided by four equal stripes of turquoise blue. There is no medal authorized for this award.

(b) *Requirements for award*—(1) *Basis of eligibility.* Eligibility is based upon honorable active Federal military service with any branch of the United States Armed Forces.

(2) *Who is eligible.* (i) All members of the Air Force on active duty.

(ii) All members of the Reserve components not on active duty with the Air Force who meet the criteria in subparagraph (3) of this paragraph.

(iii) All retired personnel who are carried on the Air Force retired lists.

(3) *Award criteria.* (i) Basic award: An aggregate of 4 years of honorable

active Federal military service with any branch of the United States Armed Forces.

(ii) Subsequent awards: A bronze oakleaf cluster for each additional 4 years of honorable active Federal military service. A silver oakleaf cluster is worn in lieu of five bronze clusters. The oak-leaf clusters mentioned herein are identical to the clusters used to denote additional awards of the same military decoration (see Subpart A of this part). Although oak-leaf clusters are issued in two sizes (large and small), only the small clusters will be worn on the Air Force Longevity Service Award Ribbon.

NOTE: The Air Force Longevity Service Award Ribbon replaces the Federal Service Stripes optionally worn by enlisted personnel.

§ 882.214 Armed Forces Reserve Medal.

Established by Executive Order 10163, September 25, 1950, as amended by Executive Order 10439, March 19, 1953.

(a) *Description.* A metal disk, 1¼ inches in diameter. The obverse (same for all services) is a flaming torch in front of a crossed powder horn and bugle within a circle composed of 13 stars and 13 rays. The reverse (Air Force) is the American eagle symbolizing the United States and its air power, centered within the inscription "Armed Forces Reserve" placed around and near the outer rim. The medal is suspended by a ring from a silk ribbon which is buff bordered with blue and buff stripes, and the center section of buff is intersected by a blue line followed by blue and buff stripes.

(b) *Requirements for award.* Awarded to members or former members of the Reserve components of the Armed Forces of the United States who complete or have completed a total of 10 years of honorable and satisfactory service as defined in Public Law 810, 80th Congress, Army and Air Force Vitalization and Retirement Equalization Act of 1948. The 10 years of service need not be consecutive, provided that such service was performed within a period of 12 consecutive years. For the purpose of this award, service as a member of a Reserve component will include those Reserve components which are enumerated in title III, section 306(c) Public Law 810, 80th Congress, as follows:

(1) The National Guard of the United States.

(2) The National Guard while in the service of the United States.

(3) The federally recognized National Guard prior to 1933.

(4) A federally recognized status in the National Guard.

(5) The Officers' Reserve Corps and the Enlisted Reserve Corps prior to enactment of Public Law 460, 80th Congress approved March 25, 1948.

(6) The Organized Reserve Corps.

(7) The Army of the United States without component. (Normally, all enlisted service prior to July 1940 was with the Regular component and not creditable. Conversely, service subsequent to July 1940 was Army of the United States and is creditable for this award.)

(8) The Naval Reserve and the Naval Reserve Force, excluding those members of the Fleet Reserve and the Fleet Naval Reserve transferred thereto after completion of 16 or more years of active naval service.

(9) The Marine Corps Reserve, and the Marine Corps Reserve Forces, excluding those members of the Fleet Marine Corps Reserve transferred thereto after completion of 16 or more years of service.

(10) The Limited Service Marine Corps Reserve.

(11) The Naval Militia who have conformed to the standards prescribed by the Secretary of the Navy.

(12) The National Naval Volunteers.

(13) The Air National Guard.

(14) The Air Force Reserve (officer or enlisted sections).

(15) The Air Force of the United States without component.

(16) The Coast Guard Reserve.

(c) *Creditable service.* Each year of active or inactive honorable service as a member of any of the Reserve components listed in paragraph (b) of this section may be credited toward award of the Armed Forces Reserve Medal until July 1, 1949. For service performed on or after July 1, 1949, members must accumulate during each anniversary year a minimum of 50 retirement points as prescribed in section 302(b), Army and Air Force Vitalization and Retirement Equalization Act, 1948 (62 Stat. 1087; 10 U.S.C. 1332), except that those persons in the Army of the United States or Air Force of the United States must compute time as follows:

(1) Active or inactive service prior to July 1, 1948, is creditable for those Army of the United States or Air Force of the United States officers appointed under the Act of September 22, 1941 (55 Stat. 728). After July 1, 1948, only active duty under such Army of the United States or Air Force of the United States appointments will be creditable.

(2) Active or inactive service prior to July 1, 1949, will be creditable for those Army of the United States or Air Force of the United States officers appointed under section 127a, National Defense Act, or section 515(e), Officer Personnel Act of 1947 (61 Stat. 906; 10 U.S.C. 8444).

(3) For the purpose of computing eligibility for the Armed Forces Reserve Medal, all Army of the United States or Air Force of the United States appointments will be considered as having been made under the Act of September 22, 1941, unless otherwise indicated in the official records.

(d) *Service not creditable*—(1) *General.* Service in the following may not be credited:

(i) Inactive National Guard.

(ii) Inactive Air National Guard.

(iii) Nonfederally recognized status in the National Guard or Air National Guard.

(iv) Inactive Reserve Section or Honorary Reserve Section of the Officers' Reserve Corps.

(v) Inactive Section or Honorary Section of the Air Force Reserve.

(vi) Honorary Retired List of the Naval and Marine Corps Reserve.

(vii) Inactive Status List of the Standby Reserve.

(viii) Retired Reserve.

(ix) Women's Army Auxiliary Corps.

(2) *Regular service.* Service as a Regular officer, warrant officer, or Regular enlisted person in the Armed Forces, including the Coast Guard, and service for which the Naval Reserve Medal, Organized Marine Corps Reserve Medal, or the Marine Corps Reserve Ribbon has been or may be awarded, will not be credited toward the award of the Armed Forces Reserve Medal, except that service in a Reserve component which is concurrent, in whole or in part, with service in a Regular component of the Armed Forces will not be considered a break in the necessary service period of 12 consecutive years (see paragraph (b) of this section).

(3) Attendance at aviation cadet training schools considered regular service: For the purpose of Subparts B through E of this part, periods of attendance at aviation cadet training schools (for those persons appointed "Aviation Cadets") are considered Regular service.

(e) *Determining eligibility.* Eligibility may be determined from data contained in items 5 and 19 of AF Form 11, "Officer Military Record"; AF Form 190, "USAF Reserve Personnel Record Card"; or a statement from the person concerned certifying that his service in a Reserve component meets the requirements of satisfactory Federal service as defined in section 306(b), Army and Air Force Vitalization and Retirement Equalization Act, 1948 (62 Stat. 1089; 10 U.S.C. 1332).

(f) *Hour-glass device.* One hour-glass device, with a Roman numeral "X" superimposed, may be worn on the suspension and service ribbon of the Armed Forces Reserve Medal to denote service for each additional 10-year period of service under the same conditions as prescribed for award of the basic medal. Section 882.100 describes the device and explains how it is worn.

§ 882.215 USAF NCO Academy graduate ribbon.

(a) *Requirement for award.* Awarded to graduates of accredited Air Force Noncommissioned Officer Academies as defined in AFR 50–39 (Noncommissioned Officer Training) and the annual Hq USAF NCO Academy accrediting letter. Graduates of USAF NCO Academy classes conducted prior to original publication of AFR 50–39 are authorized to wear the ribbon only if the major air command which supervised the training determines that course standards were sufficiently high to merit award of the ribbon. Graduation from NCO leadership courses and similar training conducted by other military services does not qualify an individual for this award.

§ 882.216 Small Arms Expert Marksmanship Ribbon.

(a) *Requirement for award.* Awarded to Air Force personnel, including Reserve component members whether or not on active duty, who, after January 1, 1963, qualify as "expert" in small arms marksmanship on the weapons specified and in accordance with AFR 50–8 (Small Arms

Marksmanship Training). By issuance of appropriate special orders, the ribbon is awarded only once, regardless of the number of times an individual may qualify, and it may be permanently retained and worn by the qualifying individual.

§ 882.217 Philippine Defense Ribbon.

Established by General Orders 8, Army Headquarters, Commonwealth of the Philippines, 1944.

(a) *Description.* A red ribbon divided by wide white bands and centering three white stars which form a triangle. The single star is worn uppermost.

(b) *Requirements for award.* Awarded for combat service in the defense of the Philippines from December 8, 1941, to June 15, 1942, if the individual:

(1) Was a member of the Bataan or Manila Bay forces, or of a unit, ship, or airplane under enemy attack; or

(2) Was assigned or stationed in Philippine territory or in Philippine waters for at least 30 days during the period cited above.

(c) *Bronze service star.* A person who meets both conditions set forth in paragraph (b) of this section is authorized to wear a bronze service star on the ribbon.

§ 882.218 Philippine Liberation Ribbon.

Established by General Orders 8, Army Headquarters, Commonwealth of the Philippines, 1944.

(a) *Description.* A red ribbon with equal stripes of blue and white in the center. The blue stripe is worn to the wearer's right.

(b) *Requirements for award.* Awarded for participation in the liberation of the Philippines from October 17, 1944, to September 3, 1945, if the individual:

(1) Participated in the initial landing operations on Leyte or adjoining islands from October 17, 1944, to October 20, 1944. A person will be considered as having participated in such operations if he landed on Leyte or adjoining islands, was on a ship in Philippine waters, or was a crew member of an airplane which flew over Philippine territory during the period.

(2) Participated in any engagement against the enemy during the campaign on Leyte and adjoining islands. A person will be considered as having participated in such operations if he was a member of and present with a unit actually under enemy fire or air attack, served on a ship which was under enemy fire or air attack, or was a crew member in an airplane which was under enemy aerial or ground fire.

(3) Served in the Philippine Islands or ships in Philippine waters for not less than 30 days during the period cited above.

(c) *Bronze Service Star.* Persons who meet more than one of the conditions set forth in paragraph (b) of this section are authorized to wear a bronze service star on the ribbon for each additional condition under which they qualify.

§ 882.219 Philippine Independence Ribbon.

Established by General Orders 383, Army Headquarters, Commonwealth of the Philippines, 1946.

(a) *Description.* A predominantly blue ribbon edged with yellow stripes and bearing red, white, and red stripes, in the order named, in the center.

(b) *Requirements for award.* Awarded to personnel who are recipients of both the Philippine Defense and Philippine Liberation ribbons.

NOTE: Personnel who were awarded the Philippine Independence Ribbon in accordance with the criteria formerly announced in AFR 35–50 (now obsolete) may continue to wear the award notwithstanding the change in requirement stated in paragraph (b) of this section.

Subpart D—Non-United States Service Medals

AUTHORITY: The provisions of this Subpart D issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012, except as otherwise noted.

§ 882.300 United Nations Service Medal.

Established by the United Nations General Assembly Resolution 483(V), December 12, 1950. The President accepted for the United States Armed Forces.

(a) *Description.* A metal disk, 1¼ inches in diameter. On the obverse is the emblem of the United Nations. On the reverse is the inscription "For Service In Defense Of The Principles Of The Charter Of The United Nations." The medal is suspended from a silk ribbon consisting of 17 stripes, 9 of United Nations blue and 8 of white, alternating, each stripe 0.08 inch wide. A bar bearing the word "Korea" constitutes a part of the suspension of the medal from the ribbon.

(b) *Requirements for award*—(1) *Qualifications.* Personnel must be:

(i) Members of the Armed Forces of the United States dispatched to Korea or adjacent areas of military operations specifically for service on behalf of the United Nations in the Korean Theater; or

(ii) Other personnel dispatched to Korea or adjacent areas as members of para-military and quasi-military units designated by the United States Government for service in support of the United Nations action in Korea and certified by the United Nations Commander-in-Chief as having directly supported the military operations in that area.

NOTE: Personnel awarded the Korean Service Medal automatically establish eligibility for the United Nations Service Medal.

(2) *Service.* The service must have been performed between June 27, 1950, and July 27, 1954, inclusive, under any of the following conditions:

(i) While on permanent assignment to any designated combat or service unit;

(ii) While attached to any designated combat or service unit for a period of 30 days, consecutive or nonconsecutive; or

(iii) While in active combat against the enemy under conditions other than those prescribed in subdivisions (i) and (ii) of this subparagraph, provided that the individual was awarded a combat decoration or furnished a certificate by the commander of a division, comparable or higher unit; commander of a ship, comparable or higher unit; or commander of an Air Force group, comparable or higher unit, stating that he actually participated in combat.

(c) *Persons ineligible for award.* Personnel of the United Nations, its specialized agencies, or of any government service other than as prescribed in paragraph (b) of this section, and International Red Cross personnel engaged for service under the United Nations Commander-in-Chief with any United Nations relief team in Korea, will not be eligible for the award of the United Nations Service Medal.

§ 882.301 United Nations Medal.

Established by The Secretary General of the United Nations by Dispatch 109, July 30, 1959, and Regulations for the United Nations Medal, July 1959. The President accepted for the United States Armed Forces.

(a) *Description.* A round metal disk, 1¼ inches in diameter. On the obverse is the emblem of the United Nations and the letters "U.N." On the reverse is the inscription "In The Service Of Peace." The medal is suspended from a ribbon of United Nations blue with two single narrow white stripes ¼ inch from each edge.

(b) *Requirements for award.* Military personnel who have been or are specifically identified by the United Nations as having performed qualifying service with one of the following organizations are eligible for an award of the medal:

(1) United Nations Observation Group in Lebanon.

(2) United Nations Truce Supervision Organization in Palestine.

(3) United Nations Military Observer Group in India and Pakistan.

(c) *Policy and procedures.* (1) Military personnel presently serving with any of the specified groups and those subsequently assigned will be awarded the United Nations Medal in the field by the Senior Representative of the Secretary General.

(2) A minimum period of 6 months has been established by the Secretary General of the United Nations as the period of service required for eligibility to receive the award.

(3) Individuals with previous United Nations service with the specified groups who believe themselves eligible for the United Nations Medal may submit applications to AFPMP–12–C, Headquarters USAF. Each application should include complete details related to United Nations duty including geographical location and inclusive dates of service. Such applications will be referred to the United Nations for consideration and determination of eligibility.

Subpart E—Service Medal Ribbons, Devices, and Lapel Buttons

AUTHORITY: The provisions of this Subpart E issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012, except as otherwise noted.

§ 882.400 Service medal ribbon bars.

A service medal ribbon is a service ribbon identical in color with the suspension ribbon of the service medal it rep-

resents, attached to a bar, 1⅜ inches long and ⅜ inch wide, equipped with (or without) an attaching device. The appropriate service ribbon is issued with each service medal described in Subpart C of this part.

§ 882.401 Clasps.

Clasps are authorized for wear on the Good Conduct Medal, American Defense Service Medal, and Army of Occupational Medal.

(a) *Good Conduct Medal Clasp.* A bar, ⅛ inch wide and 1⅜ inches long, of bronze, silver, or gold, with loops, indicative of subsequent awards. It is worn on both the service ribbon and suspension ribbon of the medal itself. Clasps authorized for successive periods of service are as follows:

Successive periods of service:	*Type of clasp*
2d	bronze, 2 loops
3d	bronze, 3 loops
4th	bronze, 4 loops
5th	bronze, 5 loops
6th	silver, 1 loop
7th	silver, 2 loops
8th	silver, 3 loops
9th	silver, 4 loops
10th	silver, 5 loops
11th	gold, 1 loop
12th	gold, 2 loops
13th	gold, 3 loops
14th	gold, 4 loops
15th	gold, 5 loops

(b) *American Defense Service Medal Clasp.* A bronze bar, ⅛ inch wide and 1½ inches long; bearing the words "Foreign Service." It is worn only on the suspension ribbon of the medal. A bronze service star is worn on the service ribbon to denote award of the foreign service clasp.

(c) *Army of Occupation Medal Clasp.* A bronze bar, ⅛ inch wide and 1½ inches long, bearing the word "Germany" or "Japan." It is awarded to differentiate service in the various occupation areas during World War II.

(1) Areas represented by clasps:

(i) Germany Clasp: Represents service with the United States occupation forces in Germany, Italy, or Austria.

(ii) Japan Clasp: Represents service with the United States occupation forces in Japan or Korea.

(2) How worn: The clasp is worn only on the suspension ribbon of the Army of Occupation Medal. There is no device worn on the service ribbon to denote possession of the clasp. For wear of the Berlin Airlift Device, see § 882.404.

§ 882.402 Service stars.

The service star is a bronze or silver five-pointed star of 3/16-inch diameter. It is worn:

(a) On the service ribbon of the American Defense Service Medal to denote possession of the Foreign Service Clasp.

(b) On the service and suspension ribbons of the American Campaign, Asiatic-Pacific Campaign, European-African-Middle Eastern Campaign, and Korean Service Medals to denote battle participation credit. A silver service star is worn in lieu of five bronze service stars.

(c) On the Philippine Defense and Liberation Ribbons to denote additional honors.

(d) On the service and suspension ribbon of the Armed Forces Expeditionary Medal to denote participation in more than one operation. A silver service star is worn in lieu of five bronze service stars.

§ 882.403 Arrowheads.

(a) *Description and requirements for award.* The arrowhead, a bronze replica of an Indian arrowhead, ¼ inch in height and ⅛ inch in width, is awarded to denote participation in a combat parachute jump, combat glider landing, or amphibious assault landing. The combat glider landing or parachute jump must have been made as an assigned or attached member of an organized force carrying out an assigned tactical mission. (An emergency combat parachute jump into enemy-held territory does not constitute eligibility for award of the arrowhead.) Units entitled to this award are designated in appropriate administrative orders.

(b) *How worn.* The arrowhead is worn on both the service and suspension ribbons of the Asiatic-Pacific Campaign Medal, European-African-Middle Eastern Campaign Medal, and the Korean Service Medal, point up, in a vertical position to the wearer's right of all service stars. Only one arrowhead will be worn on any one service or suspension ribbon, regardless of the number of times a person becomes eligible for the device.

§ 882.404 Berlin Airlift Device.

The Berlin Airlift Device is a gold-colored metal miniature of a C–54 aircraft of ⅜-inch wing span, other dimensions proportionate. It is worn on both the service and suspension ribbons of the Army of Occupation Medal, with the nose of the aircraft pointed upward at a 30° angle and toward the wearer's right shoulder.

§ 882.405 Hour-glass device.

This device is an hour-glass with a Roman numeral "X" superimposed thereon, of bronze, 5/16 inch in height. It is worn centered on both the service and suspension ribbons of the Armed Forces Reserve Medal.

§ 882.406 Lapel buttons.

The authorized lapel buttons are listed below. They may be worn only with civilian clothes.

(a) *Good Conduct Medal, American Defense Service Medal, and Women's Army Corps Service Medal lapel buttons.* These lapel buttons are 21/32 inch wide and ⅛ inch long and are in colored enamel, being a reproduction of the service ribbon.

(b) *World War II Honorable Service lapel button.* This button is of gold-colored metal, bearing an eagle on a ring around 13 stripes. It is awarded for honorable Federal military service between Septmber 8, 1939, and December 31, 1946.

(c) *Air Force Lapel Button.* The Air Force Lapel Button consists of the winged Air Force star in gold- and silver-colored metal. All members of the Air Force on active duty; members of the Reserve components, including members of the Air Force Reserve Officers' Training Corps; and personnel carried on Air Force retired lists are entitled to wear the lapel button.

Subpart F—Certificate of Honorable Service and Gold Star Lapel Button

AUTHORITY: The provisions of this Subpart F issued under sec. 8012, 70A Stat. 488, secs. 2, 3 and 4, 61 Stat. 710, as amended; 10 U.S.C. 8012, 36 U.S.C. 182a–182d.

§ 882.500 Purpose.

This subpart states the procedures for awarding certificates of honorable service and the gold star lapel button to next of kin of military personnel.

§ 882.501 Certificate of honorable service.

This certificate is a testimonial of honest and faithful service which is signed by the Secretary of the Air Force and awarded to the next of kin of those who die in line of duty in time of peace while honorably serving on active duty with the Air Force.

§ 882.502 Gold star lapel button.

This lapel button is made up of a gold star one-fourth inch in diameter mounted on a purple disc three-fourths inch in diameter. The star is surrounded by gold laurel leaves in a wreath five-eighths inch in diameter. The opposite side bears the inscription, "United States of America, Act of Congress, August 1947," and has space for engraving the recipient's initials. It has either a pin or clutch type fastening device.

(a) *Origin of lapel button.* The Gold Star Lapel Button is awarded to widows, widowers, parents, and certain other relatives of members of the United States Armed Forces who lost their lives in the armed services of the United States during World War I (April 6, 1917 to March 3, 1921); World War II (September 8, 1939 to July 25, 1947 at 12 o'clock noon); Korean Operation (June 27, 1950, to July 27, 1954). It also may be awarded to the next of kin of members who lose their lives during any future war or period of armed hostilities in which the United States may be engaged.

(1) Initial issue (without cost): One Gold Star Lapel Button is furnished without cost to the widow or widower (remarried or not), and to each parent (mother, father, stepmother, stepfather, mother through adoption, father through adoption, and foster parents who stood in loco parentis).

(2) Initial issue (at cost): One button is furnished, at cost, to each child, brother, sister, half-brother, half-sister, step-child, and adopted child.

(3) Replacements: Relatives may obtain, at cost, replacements for Gold Star Lapel Buttons that have been lost, destroyed or made unfit for use through no fault or neglect of the persons to whom they were furnished.

(4) Source of supply: Gold Star Lapel Buttons, either the initial issue or replacement, may be obtained by writing to: General Services Administration, Air Force Branch, Military Personnel Records Center, 9700 Page Boulevard, St. Louis, Missouri, 63132.

(b) *Penalty for fraudulent use.* The law specifies that: "Whoever shall (1) wear, display on his person, or other-

wise use as an insignia, any Gold Star Lapel Button issued to another person under the provisions of the law; (2) falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or aid in falsely making, forging, or counterfeiting any lapel button authorized by law; or (3) sell or bring into the United States, or any place subject to the jurisdiction thereof, from any foreign place, or have in his possession any such false, forged, or counterfeited lapel buttons, shall be fined not more than $1,000 or imprisoned not more than two years, or both."

PART 883—APPREHENSION AND ARREST

Sec.
883.1 Purpose.
883.2 Persons not subject to UCMJ.

AUTHORITY: The provisions of this Part 883 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 883.1 Purpose.

This part informs Air Force members of their right, under certain circumstances, to apprehend persons not subject to the Uniform Code of Military Justice (UCMJ).

§ 883.2 Persons not subject to UCMJ.

(a) All Air Force members have the ordinary right of civilians to assist in maintaining the peace. Therefore, when a felony, or a misdemeanor amounting to a breach of the peace is committed, Air Force members usually have the right to apprehend the perpetrator, no matter what his status. However, the law of apprehension varies considerably from one locality to another, and action should not be taken before ascertaining the law of the particular jurisdiction, if possible.

(b) When persons not subject to military law are found within the limits of military jurisdiction in the act of committing a breach of regulations which does not amount to a felony or a breach of the peace, the commanding officer may order them removed therefrom and not to reenter. 18 U.S.C. 1382 states the penalty imposed for reentrance after ejection.

PART 884—DELIVERY OF AIR FORCE PERSONNEL TO U.S. CIVILIAN AUTHORITIES FOR TRIAL

Sec.
884.1 Purpose.
884.2 Applicability.
884.3 Authority.
884.4 Policy.
884.5 Procedure for delivery.
884.6 Procedure upon refusal of request.
884.7 Release on bail or recognizance.
884.8 Cases involving special circumstances.

AUTHORITY: The provisions of this Part 884 issued under sec. 8012, 814, 70A Stat. 488, 41; 10 U.S.C. 8012, 814.

§ 884.1 Purpose.

This part sets forth the authority, policy, and procedures for delivery of Air Force personnel to United States civil authorities for trial.

§ 884.2 Applicability.

(a) This part applies to all military personnel in the Air Force.

(b) It does not apply to delivery of personnel to foreign authorities. It is not applicable where a State, having concurrent jurisdiction for the purpose of executing criminal process, proceeds by service of process to take custody of an Air Force member without making formal request for his delivery.

§ 884.3 Authority.

In accordance with Article 14, Uniform Code of Military Justice, a commander exercising general court-martial jurisdiction, or a wing or base commander when authorized by the officer exercising general court-martial jurisdiction, may authorize delivery of a member of the Air Force under his command, when such member is accused of a crime or offense made punishable by the laws of the jurisdiction making the request, to the civil authorities of the United States or of a State of the United States under the conditions prescribed in this part.

§ 884.4 Policy.

(a) *Offenses punishable by imprisonment for more than 1 year.* (1) Air Force policy is to turn over to the civil authorities of the Federal Government or a State of the United States, upon their request, members of the Air Force charged with an offense against civil authority punishable by imprisonment for more than 1 year, when such request is accompanied by a copy of the indictment, information, or other document which may be used in the particular jurisdiction to prefer formal charges of the commission of a criminal offense.

(2) Air Force policy is to turn over to Federal authorities, upon their request, members of the Air Force for whom a warrant of arrest has been issued for a Federal offense punishable by imprisonment for more than 1 year, when such request is accompanied by a statement from a United States attorney that an indictment has been issued or will be sought and that substantial grounds exist for belief that an indictment will be returned.

(b) *Offenses punishable by imprisonment for 1 year or less.* Upon request of civil authorities for the delivery of a member of the Air Force charged with an offense against civil authority punishable by imprisonment for 1 year or less, the commander authorized to deliver will exercise his discretion after consideration of the nature of the offense charged, other facts and circumstances, and the existing military situation. The request for delivery will be accompanied by a copy of the information or other document which may be used in the particular jurisdiction to prefer formal charges.

(c) *Request for delivery by a State other than the State in which person requested is located.* With respect to extradition process, military personnel are in the same status as persons not in the Armed Forces. It is contrary to Air Force policy to transfer an Air Force member from a station within one State to a station within another State for the purpose of making him amenable to prosecution by civil authorities. Accordingly, if the delivery of an Air Force member is requested by a State other than the State in which he is located, the authorities of the requesting State will be required, in the absence of a waiver of extradition process by the member concerned, to complete extradition process according to the prescribed procedures to obtain custody of a person from the State in which the individual is located and to make arrangements to take the individual into custody there.

(d) *Requests for custody of members stationed outside the United States.* All such requests will be forwarded to Hq USAF (AFJAM) for appropriate action.

§ 884.5 Procedure for delivery.

(a) *Delivery to state authorities.* Before making delivery to civil authorities of a State, the commander having authority to deliver will obtain from the Governor or other duly authorized officer of such State, a written agreement substantially in the following form:

In consideration of the delivery of _____
_____,
(Name, grade, and service number)
United States Air Force, to _____ at _____, for trial upon the charge of _____. I hereby agree, pursuant to the authority vested in me as _____ that the commander of _____ will be informed of the outcome of the trial and that said _____ will be returned to Air Force authorities at the aforesaid place of his delivery, or to such other place as may be designated by the Department of the Air Force, or issued transportation thereto without expense to the United States or to the person delivered, immediately upon completion of his trial upon the charge aforesaid in the event that he is acquitted upon said trial, or immediately upon satisfying the sentence imposed, or upon other disposition of his case, unless the Air Force authorities shall have indicated that return is not desired.

Where, under the laws of the State concerned, no authority exists permitting agreement to one or more of the conditions set out in the form, appropriate modification may be authorized by the commander. The Air Force considers this agreement substantially complied with when the Air Force authority who delivered the accused is informed of his prospective release for return to Air Force authorities, and when the individual is furnished transportation back to his station together with necessary funds to cover his incidental expenses en route thereto.

(b) *Delivery to Federal authorities.* Persons desired by the Federal authorities for trial will be called for and taken into custody by a United States marshal, deputy marshal, or other officer authorized by law upon agreement that the alleged offender will be returned to the custody of the Air Force immediately after having answered to the civil authorities for his offense, including service of any unsuspended sentence to confinement, except where the Air Force has advised the Federal authorities that

the return of the offender is not desired. (At the time of delivery, the United States marshal, deputy marshal, or other officer should be advised, in writing, as to the location of the Air Force station nearest the place of trial where the delivered person may be returned to the custody of the Air Force.)

§ 884.6 Procedure upon refusal of request.

In any case where a request is made for delivery to the civil authorities of a State or to the Federal authorities and such request is refused, the circumstances of the case and the basis for the refusal will be reported without delay to The Judge Advocate General, USAF, through when applicable, the officer exercising general court-martial jurisdiction.

§ 884.7 Release on bail or recognizance.

The civil authority to which an Air Force member is delivered under this part may release the member on bail or his own recognizance before final disposition of the charges against him. The commander authorized to deliver or his designee will, before delivery, direct the member in writing to report to a designated Air Force unit, activity, or recruiting office for further instructions should he be so released. If the civil authority to which delivery was authorized is in the immediate vicinity of the member's station, the activity designated ordinarily will be the member's unit. The designated authority will be advised of this action. The authority to whom the member reports will communicate, by the fastest practicable means, the member's name, rank, service number, organization, and other pertinent information to and request disposition instructions from the commander who authorized the member delivered to civil authorities. If contact with such commander is not feasible, instructions will be obtained from Hq USAF (AFPMPKA).

§ 884.8 Cases involving special circumstances.

The policies stated in § 884.4 are intended to provide guidance only and are not to be considered as providing a solution for every case. In cases involving special circumstances, the commander authorized to deliver may transmit the request to The Judge Advocate General, USAF, for determination of appropriate action.

PART 885—APPOINTMENT OF OFFICERS IN THE REGULAR AIR FORCE

Sec.

885.1 Purpose.
885.2 Applicable forms.
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885.13 Permanent grade.
885.14 Temporary grade; dentist.
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885.16 How to apply.
885.17 Sample letter.
885.18 Dental screening board.

AUTHORITY: The provisions of this Part 885 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012, except as otherwise noted.

§ 885.1 Purpose.

This part tells who is eligible for consideration for appointment as a commissioned officer in the Regular Air Force. It also explains which of those officers considered may be tendered such an appointment.

§ 885.2 Applicable forms.

(a) AF Form 17, "Application for Appointment in the Regular Air Force."

(b) AF Form 17a, "Supplement to Application for Commission in the United States Air Force—Medical Service."

(c) DD Form 398, "Statement of Personal History."

§ 885.3 Buildup of the Regular Air Force.

Air Force policy is to conduct an orderly buildup of the Regular Air Force toward authorized officer strength. This will be done by selecting the best qualified individuals possessing abilities, qualities, and experience required by the Air Force. Selections will be made on a best qualified basis by Hq USAF Selection Boards. However, a person may not be selected unless the board also considers him fully qualified. Appointments will be tendered in Regular grades as determined by the Secretary of the Air Force to those selectees who desire to accept and who are found to be medically qualified for Regular Air Force appointment.

§ 885.4 Citizenship.

An individual must be a United States citizen to be eligible for appointment. Any person selected for Regular appointment who is not a citizen by birth will be requested by Hq USAF to furnish documentary evidence of citizenship.

§ 885.5 Physical qualification.

Physical qualification is a prerequisite to appointment. Determination of such qualification will be made by the Surgeon General, USAF, according to the physical standards for commission. Upon notification of selection and provided he desires to accept, each person selected for Regular appointment who has not previously undergone medical examination in connection with application for Regular appointment will be required by Hq USAF (AFPMPJC1) to report to the nearest Air Force medical examining facility to undergo a medical examination for such appointment. Full instructions will be provided at that time.

§ 885.6 Background requirements.

(a) Each appointee must be of such background, character, and reputation to insure that his appointment in the Regular Air Force is clearly consistent with the best interests of the Air Force. He must be the subject of a favorable national agency check (NAC) prior to his appointment.

(b) Hq USAF will request a statement from each selectee who desires to accept appointment that he has not resigned or been dismissed from any officer training program of the Army, Navy, or Air Force for reason of Honor Code violation, military inaptitude, indifference, undesirable traits of character, or disciplinary reason. Any person who cannot validly make the above statement will not be eligible for appointment unless he can provide Hq USAF (AFPMPJC1) with a favorable recommendation for waiver by the superintendent or commander of the officer training program from which he was disenrolled, and provided such waiver is approved at Hq USAF. If a similar recommendation for waiver was previously obtained and approved in order to attain commissioned status, further action in that regard will not be necessary. However, the selectee must furnish his written statement to Hq USAF (AFPMPJC1), giving full details of the incident or incidents leading to resignation, dismissal, or disenrollment; and citing the approving authority for attaining his commissioned status.

(c) Male selectees are not restricted with regard to dependents. However, a female selectee may not be appointed if she:

(1) Is the parent by birth or adoption of a child under 18 years of age of whom she has personal or legal custody.

(2) Is the stepparent of a child under 18 years of age and the child is within her household for a period of more than 30 days a year; or

(3) Has or assumed personal custody of any child under 18 years of age.

§ 885.7 Probationary period.

Appointment of any person under this part is probationary for 3 years and may be revoked by the Secretary of the Air Force at any time before the third anniversary of the acceptance of such appointment.

§ 885.8 Statutory authority.

If individual is to be considered for Regular appointment as—	Then statutory authority for appointment in the Regular Air Force is 10 U.S.C.	And to determine basic eligibility see—
Distinguished AFROTC graduate.	8284-8288	§ 885.9.
Dentist	8067, 8284, and 8294	§ 885.10.

§ 885.9 Basic eligibility for Distinguished AFROTC graduates.

A Distinguished AFROTC graduate:

(a) Must hold a valid appointment as a Reserve of the Air Force officer and be serving on extended active duty.

(b) At time of appointment must be at least 21 years of age and of such age that would permit completion of 20 years of active commissioned service in the U.S. Armed Forces before his 55th birthday.

(c) Individual must be in the top 20 percent of his class and have been designated as a distinguished graduate by appropriate authority.

(d) To determine service credit see § 885.12.

§ 885.10 Basic eligibility for dentist.

If individual to be considered is a—	Then at time of appointment must be at least 21 years of age and may not exceed the age of 35 by more than the number of years, months, and days that he has served on active duty as a commissioned officer of the U.S. Armed Forces (see note).	And individual must be a graduate of—	To determine service credit see § 885.12.
Dentist not on active duty and applying more than 1 year after graduation from dental school.	X	A dental school acceptable to the Surgeon General and possess a license to practice dentistry in a state or territory of the United States or in the District of Columbia.	X
Dentist not on active duty and applying less than 1 year after graduation from dental school.	X	A dental school acceptable to the Surgeon General USAF.	X

NOTE: Age requirement may be waived upon recommendation by the Surgeon General, USAF.

§ 885.11 Service credit.

If individual is selected for appointment as a Distinguished AFROTC graduate:

(a) Upon appointment in the Regular Air Force he will be credited with an amount of service equal to the length of active Federal commissioned service that he performed in the U.S. Armed Forces before Regular appointment and after becoming 21 years of age.

(b) See § 885.13.

§ 885.12 Service credit for dental officers.

(a) Normally, doctors of dentistry will be given 4 years promotion list service credit as of their date of graduation from dental school. In such cases, the promotion list service date will be determined by subtracting 4 years from the date of graduation. However, if the Surgeon General determines that an applicant has had outstanding professional training or experience he may recommend that an earlier promotion list service date be awarded, thereby permitting Regular appointment in a higher grade.

(b) The amount of promotion list service credit possessed by an applicant will be determined by subtracting the promotion list service from date of appointment.

(c) To determine permanent grade upon appointment see § 885.13.

§ 885.13 Permanent grade.

If promotion list service credit is—	Then Regular grade upon appointment will be—	See § 885.14
Less than 3 years	2d Lt	X
3 years but less than 7	1st Lt	X
7 years but less than 14	Captain	X
14 years but less than 21	Major	X
21 years or more (see note).	Lt. Col	X

NOTE: When the Surgeon General determines that a dental applicant has had outstanding professional training or experience, and recommends that he be awarded more than 28 years promotion list service credit upon Regular appointment, such appointment will be made in the grade of Colonel. Dental appointments in the grade of Major and above normally will require the individual to be certified by an American Specialty Board and/or to have outstanding qualifications for a special position as determined by the Surgeon General.

§ 885.14 Temporary grade; dentist.

A dentist not serving on active duty and being appointed in the Regular Air Force grade of 1st Lieutenant or Captain, will, upon acceptance of Regular appointment, be appointed to the temporary grade of Captain with rank from date of graduation. (See § 885.15.)

§ 885.15 Consideration for Regular appointment.

(a) A Dentist not on extended active duty must submit an application for appointment. (See § 885.16.)

(b) A Distinguished AFROTC graduate: An AFROTC student may submit an application in advance of graduation when informed that he will probably meet the criteria for designation as a Distinguished Graduate. No applications will be submitted after graduation. All Distinguished Military Graduates who do not apply prior to graduation will be automatically considered after they complete at least 90 days of active duty. (See § 885.16.)

§ 885.16 How to apply.

If individual is—	Then he will prepare and submit—	And will include with application—	And will submit application to—	And in addition will forward a request for a letter of reference to each individual—
Applying in advance as a Distinguished AFROTC graduate.	AF Form 17 in 2 copies.	5 copies of DD Form 398; 1 copy of FD Form 258; transcript of college credits earned before application and a current head-and-shoulder type photo 5″ x 7″ or larger, with his name and name of school printed or typed on back of photo.	The Professor of Air Science.	
A dentist not on extended active duty and applying more than 1 year after graduation from dental school.	AF Form 17 and 17A in 2 copies.	A current head-and-shoulder type photo 3″ x 5″ or larger, and on the back of photo will type or print his name; copy o discharge certificate for any prior military service; copy of diploma awarding DDS degree and evidence of post graduate work or residency and state license (see note).	Hq USAF (AFPMPJC1) Washington D.C.,20330.	Listed in paragraph 5 of AF Form 17, one of which must be the Dean of his Dental School (see § 885.17).
A dentist not on extended active duty and applying less than 1 year after graduation from dental school.	AF Form 17 and 17A in 2 copies.	Copy of discharge certificate for any prior military service; copy of diploma awarding DDS degree and evidence of post graduate work or residency; copy of state license; and a copy of head-and-shoulder type photo 5″ x 7″ or larger, with his name typed or printed on back of photo.	Hq USAF (AFPMPJC1) Washington D.C.,20330.	Listed in paragraph 5 of AF Form 17, one of which must be the Dean of his Dental School (see § 885.17).

NOTE: A statement that he has not resigned or been dismissed from an officer training program of the Army, Navy, or Air Force for reasons of Honor Code violation, military inaptitude, indifference, undesirable traits of character, or disciplinary reasons. (Waiver of this provision may be requested provided such request is supported by a favorable recommendation from the superintendent or commander of the officer training program from which the applicant was disenrolled; such a recommendation will be attached to the application.)

Applicants that are not United States citizens by birth will furnish a certificate accomplished by an officer, notary public, or other person authorized by law to administer oaths, as follows:

I certify that I have this date seen the original Certificate of Citizenship No. _____ (or certified copy of court order establishing citizenship) stating that _____ was admitted to United States citizenship by the _____ Court of _____
(Full name) (District or County, State)

on _____.
(Date)

NOTE: Facsimiles or copies, photographic or otherwise, of naturalization certificates will not be made under any circumstances. (18 U.S.C. 1426(h).)

§ 885.17 Sample letter.

Dear ----------:

I am applying for a commission in the Regular Air Force. My application must be indorsed by members of our profession who can render a personal evaluation of my suitability for such an appointment, professional capabilities and potential, relative class standing,[1] personal attributes, and any other comments deemed appropriate. I have listed your name for such reference. Please furnish this information to Hq USAF (AFMSMBA2), Washington, D.C., 20330. It will be held in strict confidence and not disclosed to me.

§ 885.18 Dental screening board.

The screening board will:

(a) Conduct an oral examination that will include operative dentistry, prosthetics, crown and bridge, oral surgery, periodontia, oral diagnosis, dental roentgenology, and treatment planning.

(b) Conduct a practical examination that will include insertion of the following restorations, a multisurface amalgam, a silicate, and a ¾ crown; also, the impression procedure for a complete denture, the removal of a tooth, and the exposure of a full mouth set of X-ray film. Additional technical procedures may be required for a thorough evaluation of the applicant.

SUBCHAPTER J—CIVILIAN PERSONNEL

PART 890—EMPLOYMENT POLICIES

Sec.

890.1 Purpose.
890.2 Employment objective.
890.3 Factors to consider in making employee selections.
890.4 Keeping employees informed on policies.
890.5 Releasing employees for position change or transfer.

AUTHORITY: The provisions of this Part 890 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 890.1 Purpose.

This part states employment policies for positions in either the competitive or the excepted service when paid from appropriated funds. These policies also apply to non-U.S. citizen personnel in foreign areas and in Guam, provided that they are not in conflict with the local laws, customs, and practices.

§ 890.2 Employment objective.

The principal objective of the Air Force civilian personnel program is to recruit, place, and retain the best available civilian personnel to provide the maximum productivity and economy of operation for the Air Force.

§ 890.3 Factors to consider in making employee selections.

(a) *Order of consideration.* Air Force employees and former employees on the reemployment priority list are given first consideration for positions which provide advancement or opportunity for growth. Present or long-range management needs, however, may require recruiting of new employees who have potential or who possess qualifications not readily available to the same extent in the workforce. In considering applicants outside the Air Force, provision will be made for adequate consideration of qualified employees and comparative evaluation of outside applicants, but formal ranking of these applicants with Air Force employees is not required.

(b) *Unbiased consideration.* In filling positions, recommendations and selections will be based on merit and qualifications. This means that selections must be made without regard to age, race, sex, color, religion, national origin, physical handicap, marital status, or lawful political or group affiliation. For the majority of positions these factors are not related to qualification requirements and to use them as such constitutes discrimination.

(c) *Sex consideration.* Consideration of eligibles for appointment, noncompetitive action, or for purposes of training, will not be restricted by sex, except in unusual circumstances where such action is found justified by the Civil Service Commission.

§ 890.4 Keeping employees informed on policies.

The civilian personnel officer will keep employees informed of Air Force, command, and installation policies for filling positions—both by recruitment and in-service placement. He provides this information through planned staff visits to supervisors, base newspapers, bulletin boards, orientation sessions, or other communications media.

§ 890.5 Releasing employees for position change or transfer.

(a) Attempting to restrict employees from accepting position changes is contrary to the Air Force policy of maintaining a competent career service and of making maximum use of available skills. It is an undesirable practice which results in employee dissatisfaction, lowered efficiency, and the loss of desirable employees through resignation, the consequences of which are more detrimental to the Air Force as a whole than the loss to a particular unit of the services of an employee. Also, employees will not be refused a release for the purpose of accepting a position in another Federal agency.

(b) Employees will be released promptly for position change, whether within an installation or between Air Force installations. Normally, a release will be granted within 20 calendar days following notice to the losing supervisor of the selection. In unusual cases the release may be extended by mutual agreement to a maximum of 30 calendar days. A release will not be conditioned upon ability to obtain a replacement.

(c) In negotiating the date an employee will leave to accept appointment with another Federal agency, supervisors may request two weeks' notice; or when a longer period is necessary to permit training of a replacement, they may request up to 30 days. In no case will a period be requested which would jeopardize the employee's transfer.

PART 891—SECURITY PROGRAM

Sec.

891.1 General policy statement.
891.2 Definitions.
891.3 Responsibilities.
891.4 Establishment of Boards.
891.5 Standard.
891.6 Criteria for application of standard.
891.7 Review of reports of investigation of applicants.
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891.9 Initial action by Director of Special Investigations.
891.10 Action by commanders.
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891.12 Proceedings by the Hearing Board.
891.13 Conduct of hearings.
891.14 Hearing Board findings and recommendations.
891.15 Action by Security Review Board.
891.16 Notice to employee.
891.17 Release of information.
891.18 Resignation policy.
891.19 Reimbursement of employees.

AUTHORITY: The provisions of this Part 891 issued under sec. 8012, 70A Stat. 488; sec. 1, 64 Stat. 476, 67 Stat. 336, secs. 1–3, 69 Stat. 624, 625; 10 U.S.C. 8012, 5 U.S.C. 22–1, 118p–118r, E.O. 10450, 18 F.R. 2489, 3 CFR, 1953 Supp.

§ 891.1 General policy statement.

(a) No civilian will be employed for, assigned to, or retained in any position in the Air Force Establishment if such employment, assignment, or retention is not clearly consistent with the interests of the national security.

(b) Established national policies, founded upon statutes of the United States and Executive Orders of the President, require exclusion and removal from Federal employment of individuals who are unfit for employment for security reasons. Public Law 733, 81st Congress (sec. 1, 64 Stat. 476, 5 U. S. C. 22–1) authorizes the Secretary of the Air Force to suspend summarily without pay any civilian officer or employee when he deems such suspension necessary in the interest of national security, and to terminate the employment of such officer or employee if he determines such termination is necessary or advisable in the interest of national security. Section 9 (a) of the Hatch Act (sec. 9A, 53 Stat. 1148; 5 U. S. C. 118j) makes it unlawful for any employee whose compensation is paid from funds authorized or appropriated by Congress to have membership in any political party or organization which advocates the overthrow of our constitutional form of Government in the United States. That section also provides that any person violating its provisions shall be removed immediately from the position or office held by him, and thereafter no part of the funds appropriated by any act of Congress for such position shall be used to pay the compensation of such person. The current appropriation act applicable to the Air Force (Pub. Law 179, 83d Cong.) prohibits payment of funds appropriated by Congress to any employee who advocates or who is a member of an organization that advocates overthrow of the Government of the United States by force or violence. Executive Order 10450 (18 F. R. 2489; 3 CFR, 1953 Supp.) provides

[1] Include only in letter to the Dean.

that the interests of the national security require that all persons privileged to be employed in the Air Force shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States. Executive Order 10450 requires an effective program to insure that the employment or retention in employment of any civilian officer or employee is clearly consistent with the interests of the national security. It also provides that any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies by or in accordance with Public Law 733, 81st Congress, or pursuant to Executive Order 9835 (12 F. R. 1935; 3 CFR, 1947 Supp.), or any other security or loyalty program relating to officers or employees of the Government, shall not be reinstated or restored to duty or reemployed in the same department or agency and shall not be reemployed in any other department or agency, unless the head of the department or agency concerned finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of the national security, which findings shall be made a part of the records of such department or agency; and that no person whose employment has been terminated under such authority may be employed thereafter by any other department or agency except after a determination by the Civil Service Commission that such person is eligible for such employment.

(c) It is the policy of the Air Force that every possible safeguard will be provided to insure that no employee of the Air Force is removed from his employment arbitrarily or without full consideration and review of his case. No employee having a permanent or indefinite appointment who has completed his probationary or trial period and who is a citizen of the United States will be removed from his employment without an opportunity for a full and impartial hearing. Other individuals covered by this part may be afforded such a hearing at the discretion of the Central Security Board. It will, however, be the policy of the Board to grant such a hearing in all such cases except where the national security would otherwise be immediately affected.

(d) Security determinations will be made pursuant to the standard and criteria set forth in §§ 891.5 and 891.6. Such determinations, however, cannot be made in the abstract nor can general rules be laid down which will resolve individual cases automatically. In each case consideration should be given first to whether an individual is a suitable Air Force employee in his regularly assigned position. Where it is determined that an individual is not disqualified on security grounds for employment by the Department in any capacity, consideration should be directed to his fitness to hold the particular position to which he is assigned. The habits, activities, attitudes, associations, trustworthiness, reliability, and discretion of the individual involved are all relevant to the question of whether, because of his access to Air Force installations, information or material by virtue of his employment in the position involved, he might, either intentionally or inadvertently, disclose to unauthorized persons classified security information or other information, the disclosure of which is prohibited by law, or otherwise act against the security interests of the United States. In making this determination, the nature of the regularly assigned or official position involved (as distinguished from any position to which an employee may have been temporarily detailed as an interim security measure, and the opportunity afforded to the occupant of such position to have access (authorized or unauthorized) to security information, or to act to the detriment of national security, must be evaluated together with the information available to the Air Force and a common-sense decision rendered as to the ultimate question in each case.

(e) The suspension and removal procedures provided for in this part are based on the authority granted by Public Law 733, 81st Congress, and their use will be limited to cases in which the interests of national security are involved. These procedures will be used to supplement, not to substitute for, applicable civilian personnel removal procedures which will be used as appropriate where national security is not a consideration.

§ 891.2 Definitions.

(a) *Alien.* As used in this part, the term "alien" means any individual not a citizen of the United States.

(b) *Continental United States.* As used in this part, the term "Continental United States" means the forty-eight States and the District of Columbia.

(c) *National security.* As used in this part, the term "national security" relates to the protection and preservation of the military, economic, and productive strength of the United States, including the security of the Government in domestic and foreign affairs, against or from espionage, sabotage, and subversion, and any and all other illegal acts designed to weaken or destroy the United States.

(d) *United States.* As used in this part in a geographical sense, the term "United States" includes the Canal Zone and all territory and waters, continental or insular, subject to the jurisdiction of the United States.

§ 891.3 Responsibilities.

In carrying out the objectives and requirements of the security program, the following responsibilities are assigned:

(a) Over-all supervision and responsibility for the program are vested in the Assistant Secretary of the Air Force (Management).

(b) The Deputy Chief of Staff, Personnel, through the Director of Civilian Personnel, is responsible for the general administration of the program and for the continuing appraisal of the adequacy of the program from the standpoint of effective personnel administration.

(c) The Inspector General, Department of the Air Force, is responsible for the continuing appraisal of the adequacy of the program from the standpoint of effective security protection.

(d) Each commander is responsible for taking the action necessary to carry out the policies prescribed in this part, for taking action, as prescribed in this part, for the processing of all security cases involving civilian officers and employees under his command and for providing appropriate support for Security Hearing Boards convened at his installation as prescribed in this part.

§ 891.4 Establishment of Boards.

(a) The Central Loyalty-Security Board, established in the Department of the Air Force, is redesignated the Central Security Board. It will make initial adjudications and prepare charges, when required, in all security cases referred to it in accordance with this part, or by the Secretary of the Air Force. The Board will be composed of at least three members appointed by order of the Secretary of the Air Force. One will be selected by the Deputy Inspector General, Headquarters USAF, from activities under his jurisdiction, one from the Office of the Director of Civilian Personnel, and one from either the Office of the General Counsel or the Office of The Judge Advocate General of the Air Force. One of the members will be appointed to serve as chairman. Any three members of the Board will constitute a quorum.

(b) The Loyalty-Security Hearing Boards established at each Air Force activity outside the Continental United States, except those in Alaska, Canal Zone, Hawaii, Puerto Rico, and Virgin Islands, which maintains a central civilian personnel office are redesignated Security Hearing Boards. Each Board will hear and consider all security cases which are referred to it by the Central Security Board. Each Security Hearing Board will be composed of at least three members. Any three or more members of each Board will constitute a quorum, provided a majority of those present are civilians. The commander of the Air Force activity will nominate the members of the Board for confirmation and appointment by order of the Secretary of the Air Force, and will designate a chairman as required from among the members so appointed. The commander is responsible for taking the steps required on his part sufficiently far in advance so that a Board, appointed in accordance with the provisions of this part is available at all times.

(c) Other Security Hearing Boards to hear and consider cases involving civilian personnel of Air Force activities within the Continental United States, Alaska, Canal Zone, Hawaii, Puerto Rico, and Virgin Islands, will be established by the Secretary of the Air Force in appropriate areas.

(d) The Security Review Board is established in the Office of the Secretary of the Air Force to review all security cases submitted to it in accordance with this part and make recommendations thereon to the Secretary. The Board will be composed of members appointed by the Secretary of the Air Force.

(e) The Director of Civilian Personnel will provide an Executive Secretary, Civilian Personnel Security Program,

and a Secretariat. The Executive Secretary will perform such administrative duties as are directed by the Secretary of the Air Force, or by the Boards.

§ 891.5 Standard.

The standard for the refusal of employment or the removal from employment in the interests of the national security shall be that, based on all the available information, it is determined that employment or retention in employment of the person concerned is not clearly consistent with the interests of the national security.

§ 891.6 Criteria for application of standard.

(a) Information regarding an applicant for employment, or an employee, which may preclude a finding that his employment or retention is clearly consistent with the interests of the national security, shall relate, but shall not be limited, to the following:

(1) Depending on the relation of the employment to the national security:

(i) Any behavior, activities or associations which tend to show that the individual is not reliable or trustworthy.

(ii) Any deliberate misrepresentations, falsifications, or omission of material facts.

(iii) Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion.

(iv) An adjudication of insanity, or treatment for serious mental or neurological disorder without satisfactory evidence of cure.

(v) Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security. Among matters which should be considered in this category would be the presence of a spouse, parent, brother, sister, or offspring in a nation, a satellite thereof, or an occupied area thereof, whose interests might be inimical to the United States.

(2) Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting, another to commit or attempt to commit any act of sabotage, espionage, treason, or sedition.

(3) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or the alteration of the form of Government of the United States by unconstitutional means.

(4) Advocacy of use of force or violence to overthrow the Government of the United States, or of the alteration of the form of Government of the United States by unconstitutional means.

(5) Membership in, or affiliation or sympathetic association with, any foreign or domestic organization, association, movement, group, or combination of persons which is totalitarian, Fascist, Communist, or subversive, or which has adopted, or shows, a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or which seeks to alter the form of Government of the United States by unconstitutional means.

(6) Intentional, unauthorized disclosure to any person of security information, or of other information disclosure of which is prohibited by law.

(7) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(8) Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a Congressional committee regarding charges of his alleged disloyalty or other misconduct.

(9) Participation in the activities of an organization established as a front for an organization referred to in subparagraph (5) of this paragraph when his personal views were sympathetic to the subversive purposes of such organization.

(10) Participation in the activities of an organization with knowledge that it had been infiltrated by members of subversive groups under circumstances indicating that the individual was a part of or sympathetic to the infiltrating element or sympathetic to its purposes.

(11) Participation in the activities of an organization, referred to in subparagraph (5) of this paragraph, in a capacity where he should reasonably have had knowledge of the subversive aims or purposes of the organization.

(12) Sympathetic association with a member or members of an organization referred to in subparagraph (5) of this paragraph (ordinarily this will not include chance or occasional meetings, nor contacts limited to normal business or official relations).

(13) Currently maintaining a close continuing association with a person who has engaged in activities or associations of the type referred to in subparagraphs (2) through (11) of this paragraph. A close continuing association may be deemed to exist if the individual lives at the same premises as, frequently visits, or frequently communicates with such person.

(14) Close continuing association of the type described in subparagraph (13) of this paragraph, even though later separated by distance, if the circumstances indicate that renewal of the association is probable.

(15) Willful violation or disregard of security regulations.

(b) In regard to paragraph (a) (5), (9), (10) and (11) of this section, designations of organizations by the Attorney General of the United States are made solely for the purpose of guidance to departments and agencies in the discharge of their obligations under Executive Order 10450 as amended. An employee's membership in, affiliation with, or sympathetic association with any organization, whether specifically designated pursuant to that Executive Order or not, is but one of the factors which will be considered in making the security determination. In evaluating such membership, affiliation, or association, consideration will be given to the employee's statements concerning the reasons and circumstances which led to his joining the organization involved, and his knowledge of the purposes of the organization.

(c) The activities and associations listed in paragraph (a) of this section are of varying degrees of seriousness. Therefore, the ultimate determination of whether employment or retention in employment is clearly consistent with the interests of national security must be an overall common-sense one based on all available information.

§ 891.7 Review of reports of investigation of applicants.

Commanders concerned will take action as prescribed in this section upon receipt of reports of investigation of applicants. (The provisions of §§ 891.9 to 891.17 apply with regard to reports of investigations which contain derogatory information relating to employees, including persons appointed to positions pending completion of investigative action.)

(a) *Nonderogatory reports.* If information relating to matter enumerated in § 891.6(a) is not contained in the report, and sufficient investigative action has been completed the individual may be appointed to the position involved.

(b) *Derogatory reports.* (1) If derogatory information relating to the criteria stated in § 891.6(a) is contained in the report, and the commander concerned is of the opinion that the employment of the applicant in the position involved would not be clearly consistent with the interests of the national security, the commander will not appoint the applicant to such position.

(2) If, notwithstanding the presence of such derogatory information in the report, the commander concerned is if the opinion that the employment of the individual in the position involved would be clearly consistent with the interests of the national security, the commander:

(i) May appoint the individual to the position if it is a nonsensitive position, provided that he is eligible for such appointment under the provisions of other applicable regulations;

(ii) Will not appoint the individual to the position if it is a sensitive position unless the case is processed in accordance with §§ 891.9 to 891.17.

(c) *Disposition of derogatory reports.* Irrespective of the action taken by the commander under this section, reports of investigation containing derogatory information relating to matter enumerated in § 891.6(a) will be forwarded to the Executive Secretary, Central Security Board, together with a statement by the commander as to the action taken in the particular case. Where an individual has been appointed to a position under the provisions of this section, the

commander will include in his statement the position title and organizational location and a detailed description of the duties which the employee is required to perform in the position.

§ 891.8 Referral of possible derogatory information.

(a) Executive Order 10450 requires that whenever there is developed or received by any department or agency information indicating that the retention in employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, such information will be forwarded to the head of the employing department or agency or his representative. Such information as may become known to commanders within the Air Force will be furnished promptly to the appropriate Office of Special Investigations, which will be responsible for forwarding the information to the appropriate representative within the department or agency concerned.

(b) In cases referred to the Air Force, other than reports of investigation, the commander concerned will forward the information to the Office of Special Investigations for necessary investigative action. The reports of investigation will be forwarded to the commander concerned in accordance with § 891.9, and the case will be processed in accordance with all other applicable provisions of §§ 891.9 to 891.17.

§ 891.9 Initial action by Director of Special Investigations.

Reports of investigation which contain information relating to matter enumerated in § 891.6(a) will be delivered to the Director of Special Investigations, Office of The Inspector General, Department of the Air Force, who will transmit the complete file direct to the installation commander for action under this part. At the same time the Director of Special Investigations will forward a copy of the entire file concerning any employee to the Central Security Board. The Director of Special Investigations will recommend that the Central Security Board direct the immediate suspension of an employee before forwarding the file to the installation commander if, in his opinion, such suspension is necessary in the interest of national security.

§ 891.10 Action by commanders.

(a) Upon receipt of an investigative file or other information of a derogatory nature reflecting upon an employee's fitness from a security standpoint, the commander will determine whether, in his opinion, the retention of the employee in his regularly assigned position is clearly consistent with the interests of the national security in the light of the standard and criteria set forth in §§ 891.5 and 891.6.

(b) If in the opinion of the commander, the employee's continued employment may not be clearly consistent with the interests of national security, the commander may, subject to the provisions of paragraphs (c) and (d) of this section and only when there is no other practicable method of protecting the security of the installation or of classified security information suspend the employment of the person involved in accordance with paragraph (e) of this section.

(c) Under no circumstances will an employee be suspended under authority provided in this part pending further investigation when the available information indicates that retention in a duty status during such investigation would not be likely to have a material adverse effect on the security of the activity or of classified security information or material, or on mere suspicion, or for disciplinary reasons which can be appropriately handled under some other authority. Interim action other than suspension will be used to the fullest practicable extent. Examples of action which may be appropriate are: temporary removal from the employee's position of those duties which involve access to classified security information, detail of the employee to another position or to other duties, or placing the employee on annual leave.

(d) To avoid unwarranted or premature suspensions and to insure the orderly processing of cases, the commander, wherever possible, will consult by telephone directly with the Executive Secretary before taking suspension action.

(e) Whenever the employee is suspended, notice of suspension will be given on SF 50, which will state under "Remarks" only, "Immediate suspension is necessary in the interest of national security under authority of Public Law 733, 81st Congress, pending adjudication of your case under AFR 40–12", and will be given to the employee in person. Information contained in the investigative file will not be disclosed to the employee. The employee will be furnished a copy of AFR 40-12, and will be advised that he will receive a statement of charges or other instructions from the Central Security Board.

§ 891.11 Action by Central Security Board.

(a) The Central Security Board will review the case in the light of the standard and criteria set forth in §§ 891.5 and 891.6, and will determine whether the reported information warrants a finding favorable to the individual, further investigation, or further processing with a view to possible removal action. It may, in appropriate cases, recommend other administrative action such as initiation of removal proceedings under other applicable directives instead of under this part.

(b) The Central Security Board, either on its own motion, or on the recommendation of the Director of Special Investigations or the commander of the employing activity, may direct the suspension of an employee under Public Law 733, 81st Congress, if it deems such action necessary in the interest of national security. If suspension has already been effected, the Board will review such action to determine whether the employee should be restored to duty. In making its determination, the Board will take into consideration: (1) The necessity for providing maximum protection to the security of the employing activity or of classified security information or material, (2) the fact that an unwarranted or premature suspension may result in needless effort or embarrassment on the part of the employee of the Air Force, (3) those requirements of Public Law 733, 81st Congress, which provide that a suspended employee will be given a written statement, within 30 days after his suspension, of the charges against him which will be subject to amendment within 30 days thereafter, and which will be stated as specifically as security considerations permit, (4) the instruction in § 891.10(c), that commanders take interim action other than suspension whenever practicable, (5) the responsibility of the Board to insure that the file and the reported information are as complete as is reasonably practicable before it directs suspension of the employee, issues charges, or takes its final action in the case.

(c) If the Central Security Board finds favorably to the employee, it will prepare its findings in accordance with § 891.14(d) (2) and (3), and will recommend to the Secretary of the Air Force that action favorable to the employee be taken. Upon approval of such favorable finding, the commander of the employing activity will be so notified. Wherever appropriate, the notice will state that it constitutes the employee's personnel security clearance for access to the specific category of classified security information necessary for his regularly assigned position and to no other information. The commander will make an appropriate notation in the employee's official personnel folder based upon the instructions in the letter.

(d) If the Central Security Board determines that the reported information does not warrant a finding favorable to the individual, it may issue interrogatories to him, request further investigation, or prepare a notice of proposed removal action and statement of charges. The statement of charges will set forth the reasons for initiating the proposed removal action in as great detail as, in the opinion of the Board, security considerations permit in order to provide the employee with sufficient information to prepare his defense. The notice will inform the employee (1) of his right within 30 calendar days from the date of his receipt of the notice (plus an additional 30 days in the event amended charges are issued) to answer the charges in writing under oath or affirmation, together with such statements, affidavits, or other documentary evidence as he may desire to submit by way of defense, (2) of his right to an administrative hearing on the charges before a designated Security Hearing Board upon his request, if one is authorized by law or by the Central Security Board, and (3) when appropriate, of his right to appear before the Security Hearing Board personally, to be represented by counsel or a representative of his own choosing, if he desires, and to present evidence in his own behalf. The notice will state the work and pay status in which he will be carried during the notice period and until notification of the action in the case. The notice will also inform the

employee that the proposed removal will not become effective in less than 30 calendar days from the date he receives the notice, and it will state the authority under which the notice is sent.

(e) The Central Security Board will forward the notice and statement of charges direct to the commander of the employing activity and will forward a copy of both, together with the complete file of the case to the designated Security Hearing Board. The Central Security Board normally will instruct the commander to suspend the employee without pay at the time he has the notice and statement of charges delivered to him. The commander will have the notice of proposed removal action and statement of charges delivered to the employee in person, and will obtain a signed receipt therefor; if personal delivery is not practicable, the notice will be sent to the employee by registered mail with a request for a return receipt signed "by addressee only." The signed receipt will be forwarded direct to the designated Security Hearing Board for inclusion in the complete file of the case.

§ 891.12 Proceedings by the Hearing Board.

(a) Following delivery to the employee of the notice of proposed removal and statement of charges, the designated Security Hearing Board will proceed as follows with respect to cases referred to it:

(1) If the employee does not request a hearing within the time specified in the notice of proposed removal action, the entire file, including any answer to other material submitted by the employee, will be returned to the Executive Secretary for action in accordance with § 891.15.

(2) If the employee requests a hearing within the time specified, the Board will set a time and place for the hearing and will notify the employee thereof regardless of whether the employee submitted a formal reply in writing. The hearing will be held as soon as practicable allowing the employee a reasonable length of time to obtain witnesses if desired.

(b) Each individual case file referred to a Hearing Board will be studied, prior to the hearing, by each Board member who is to participate in the hearing and in the determination of the case. In this way, Board members will be able to conduct the hearing in an intelligent manner by being informed in advance of the facts giving rise to the case, and thereby become aware of those areas of doubt which will require exploration and explanation at the hearing. However, it must be borne in mind constantly when studying the file prior to the hearing that the investigative reports, statement of charges, and other information in the file may represent only one side of the case, and that the employee has not, as yet, introduced his entire defense. Board members should not form any premature conclusions as to the eventual determination of the case.

(c) When the employee requests the assistance of the Board in securing the attendance of witnesses, or when in the opinion of the Board the testimony of persons not confidential informants might be helpful, the Board may invite such witnesses or persons to appear and testify, may endeavor to take their depositions, or may ask them to answer written interrogatories or to submit written statements. All Boards are instructed to invite, in all cases whenever practicable, every witness who (1) is personally identified in the investigative file, (2) has given the investigative agency pertinent information adverse to the employee, and (3) has not expressly indicated his unwillingness to appear at the hearing and to testify in the employee's presence and to subject himself to cross-examination. Invitations should be extended in a suitable manner, a reasonable time in advance of the hearing, if possible, so as to afford witnesses an opportunity to attend. Invitations should state the time and place the hearing will be held and that the Board cannot pay witness fees or reimbursement for travel or other expenses. However, the Board will not be bound by the testimony of such witnesses by reason of having called them. Reasonable cross-examination of witnesses by the Board, by the employee, or by his counsel or representative, will be permitted. The refusal of such witnesses to cooperate with the Board will be taken into consideration in determining the probative value of any information attributed to them in the file.

§ 891.13 Conduct of hearings.

(a) Hearings are designed to accomplish two major purposes: (1) To permit the employee to present evidence in his behalf and (2) to give the Board an opportunity to consider all available information and make searching inquiry to aid in reaching a fair and impartial determination. Accordingly, such hearings are not to be conducted with the formality of a court proceeding. Rather, the hearings will be conducted as administrative inquiries held for the purpose of affording the employee an opportunity to be heard and to permit the Board to inquire fully into the matters related to the particular case.

(b) Hearings will be conducted in an orderly manner, with dignity and decorum. They may be attended only by the members of the Board participating in the hearing, the employee and his counsel or representative, the legal advisor, other Government personnel authorized by the chairman, and such witnesses as the Government or the employee desires to introduce. The employee and his counsel or representative will be permitted to be present throughout the hearing. Usually a witness may be present only when he is actually testifying.

(c) The Board may consider any information either oral or written which, in the minds of reasonable men, is of probative value to determine the issue involved. Strict rules of evidence will not be followed, but reasonable bounds with respect to relevancy, materiality, and competency will be maintained. Every reasonable effort will be made to obtain the best information available. Hearsay matter may be admitted without regard to technical rules of admissibility and accorded such weight as the circumstances warrant.

(d) Whenever practicable, the Executive Secretary will arrange to have a legal advisor present at the hearing to represent the Assistant Secretary of the Air Force (Management), to furnish legal advice to the Board, and to assist it in making certain that the record is as complete and adequate as possible. The legal advisor may interrogate all witnesses who appear before the Board, including the employee if he chooses to testify. In the event the employee appears without counsel, the legal advisor will advise him of his rights and assist him with respect to procedure. No function performed by the legal advisor, however, will relieve the Board of its responsibility for insuring that the record is complete, that the employee is advised of his rights, and that all pertinent information both favorable and unfavorable to the employee, is considered. The legal advisor is in no sense a prosecutor and he will not conduct himself as such. In the discretion of the Board, the legal advisor may attend executive sessions of the Board but he will not attend the executive session at which the Board arrives at its final findings and recommendation.

(e) Hearings will be called to order by the chairman who will make an opening statement substantially as follows:

> The Security Hearing Board of (name of activity) appointed by order of the Secretary of the Air Force in accordance with Air Force Regulation 40–12, is now ready to proceed with the hearing in the case of (name employee). This is not a court of law and strict rules of evidence and court procedure are not followed. This is an administrative hearing held for the purpose of affording you an opportunity to be heard and to permit the Board to inquire fully into the matters related to your case. You have the right to participate in this hearing and to be represented by counsel or other representative and to present witnesses in your behalf. You can assist the Board in arriving at a fair and just determination in your case by giving full and frank answers to all questions the Board may have and by confining your attention to matters related to your case. The transcript to be made of this hearing will not include all material in the file of the case, in that it will not include reports of investigation. Neither will it contain classified security information, information concerning the identity of confidential informants, or information which will reveal the source of confidential information.

Wherever appropriate, after a careful review of the case in the light of paragraph (h) of this section, the Chairman will include the following sentence in the opening statement:

> However, you are hereby informed that security considerations in this case do not prohibit informing you fully of the relevant information against you and accordingly the substance of all the relevant information against you which has been referred to the Board for its consideration has been made available to you, or will be made available during the course of this hearing. You will be furnished a copy of the transcript to be made of this hearing if you request it.

(f) Following the opening statement, the Chairman will read the statement of charges (and interrogatories issued to the employee if any) and inform the

employee that if he so desires he may make any statement he wishes and introduce any witnesses in his behalf. Statements by the employee and all testimony of witnesses must be made under oath or affirmation administered by the Chairman in the following manner:

Do you, (name of employee or witness) solemnly (swear) (affirm) that the testimony you are about to give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth (so help you God)?

(g) Subsequent to the employee's statement, if any, and the introduction of such witnesses as he may desire, the hearing will proceed as directed by the Board. The Board may recess the hearing at any time and meet in executive session. During an executive session the Board may call the reporter to review any portion of the record of the hearing and may obtain technical assistance as desired from such persons as the legal adviser or a security officer. No transcript of an executive session will be made as such session is not considered a part of the hearing.

(h) Boards are directed to conduct proceedings in such maner as to protect from disclosure classified security information or information tending to compromise investigative sources or methods. While the Board's questions should cover all grounds for proposed removal and should be designed to give employees the fullest possible opportunity consistent with security considerations to explain or refute derogatory information contained in the investigative reports, it is imperative that proposed lines of questioning be considered carefully in the light of security principles. (See § 891.17.) It is particularly important that security considerations be considered before the employee is notified, in accordance with paragraph (e) of this section, that he has been, or will be, informed of the substance of all the relevant information against him. In any case where doubt exists as to the propriety of a question or the advisability of revealing certain information, advice should be obtained, preferably in advance of the hearing. However, no information which does not appear in the statement of charges or which has been excluded from the hearing but which is relevant to the charges against the employee will be used as a basis for terminating his employment unless it has been excluded from the statement of charges and the hearing for valid security reasons, or unless it has been revealed to the employee during the adjudication process in such a manner that his ability to present a defense thereto has not been prejudiced.

(i) In each case, the Board should insure that the case file contains detailed information concerning the employee's regularly assigned position, and the opportunity afforded the occupant of the position to act to the detriment of the national security.

(j) Before the Board adjourns the hearing it should ask the employee or his counsel whether he desires additional time to secure and present evidence to the Board. Any period up to 30 days is permissible, but the employee should be urged to present his evidence as soon as possible. Usually the evidence will be in affidavit or documentary form.

(k) A verbatim stenographic transcript will be made of the hearing (prepared in quadruplicate) by qualified reporters and the transcript will be made a permanent part of the record in each case. The transcript will include a copy of the statement of charges and interrogatories issued to the employee, if any. No other transcript will be made.

(l) The employee will be furnished a copy of the transcript without cost if he, or his counsel or representative, requests it. The Board will review the copy of the transcript to be given to the employee, before releasing it to him, to insure that it contains no classified security information. Advice on such matters should be requested from the appropriate Air Force security officer when deemed desirable. Deletions will be made only when required by security considerations, and a notation will be made on all copies retained by the Air Force of the portions which were deleted from the copy furnished the employee.

(m) If the employee or his counsel or representative desires to submit corrections in the transcript to the Board, he will note the corrections on a separate statement, designating the page and line. The statement of corrections must be filed within the time set by the Board. The Board will determine what corrections are allowable and will inform the employee thereof. It will enter upon the transcript by marginal notation the corrections which are allowed, and will enter on the statement filed by the employee, his counsel or representative, the corrections which are rejected. The statement filed by the employee, his counsel or representative, will be made a part of the original transcript so that it may be a permanent part of the complete file. The Board in its discretion may call upon the employee, his counsel or his representative, for a discussion of the corrections prior to its determination thereon. Corrections will be allowed solely for the purpose of conforming the transcript to the actual testimony, except as to matters deleted for security reasons as provided in paragraph (l) of this section.

§ 891.14 Hearing Board findings and recommendations.

(a) As soon as practicable after the close of the hearing, the Hearing Board will meet in executive session for the purpose of arriving at its findings and recommendation. The Board will consider the complete file, including the original file, the transcript of testimony at the hearing, any brief submitted by the employee or by his counsel or representative, and all other relevant material.

(b) The Board will take into consideration the fact that the employee may have been handicapped in his defense by the nondisclosure to him of classified security information or by the lack of opportunity to cross-examine persons constituting sources of information, and will weigh derogatory information carefully in the light of its recency, relative seriousness, attendant circumstances, whether it was given under oath, whether it is relevant to the charges specified, whether the employee has had an opportunity to rebut it, and whether there is similar or supporting information.

(c) The Board will make its findings and recommendation in writing, which will be signed by all members of the Board voting for them. Dissenting opinions may be submitted.

(d) The findings will include:

(1) A finding with respect to each of the allegations set forth in the statement of charges and an analysis of the information and a detailed statement of the reasoning upon which each finding is based. Even though the Board finds that each of the allegations in the statement of charges is true, it need not recommend removal of the employee.

(2) Any other statement which may be helpful to the reviewing authorities.

(3) A finding in the following form:

Based on all the available information, it is found that the employment or retention in employment of (name of employee) (is) (is not) clearly consistent with the interests of the national security.

This finding will be supported by an analysis of the information and a detailed statement of the reasoning upon which the finding is based.

(e) If the Board finds that the employee's employment is clearly consistent with the interests of the national security, it will recommend that he be restored to his regularly assigned position. If it finds adversely to the employee, it may find further, on the basis of the criteria set forth in § 891.6, that the employee's employment would be clearly consistent with the national security if he were reassigned from his regularly assigned position to a non-sensitive position, and the Board may recommend such reassignment, if it has determined, after consultation with the commander, that a suitable vacancy exists and that the commander concurs in the reassignment. Commanders should positively assure themselves that a suitable vacancy under applicable Civil Service Commission and civilian personnel directives in fact does exist within their area of responsibility prior to concurring in such reassignment. The commander's concurrence will be made a matter of record and included in the file. In other cases, the Board will recommend that the employee's employment be terminated.

(f) The Hearing Board will transmit the complete file directly to the Executive Secretary, Civilian Personnel Security Program. The complete file consists of all reports of investigation or other inquiry, all charges and interrogatories, all transcripts of hearings and exhibits, all memoranda analyzing the evidence or setting forth conclusions, findings, recommendations, determinations, decisions, or other action in the case, and all affidavits, supporting documents, correspondence or memoranda in connection with the investigation and processing of the case.

(g) Upon receipt of the case from the Hearing Board, the Executive Secretary will review the file for completeness and will transmit it to the Security Review Board.

§ 891.15 Action by Security Review Board.

The Security Review Board will review the file to determine the regularity of the procedures followed, and to determine whether the information supports the findings and recommendation of the Hearing Board. It will consider any additional written evidence or brief submitted by the employee or his counsel or representative. It is authorized to take action necessary to correct any irregularities in the proceedings, and to obtain additional information pertinent to the resolution of issues in the case by remanding the case to the Hearing Board for further action, by requesting further investigation, by obtaining depositions, and otherwise. After the Security Review Board has made its findings and recommendation, it will submit the entire file to the Office of the Secretary of the Air Force for decision.

§ 891.16 Notice to employee.

The Executive Secretary will notify the employee through the commander of the employing activity of the decision in the case. He will also notify the commander of the action to be taken in the case. Wherever appropriate, the notice will include personnel security clearance authority as prescribed in § 891.11(c).

§ 891.17 Release of information.

All Government personnel, including all members of the Boards, will comply with applicable directives pertaining to the safeguarding of classified security information and the handling of investigative reports. No classified security information or any information which might compromise investigative sources, investigative methods, or the identity of confidential informants will be disclosed to any officer or employee whose case is being considered in this program or to his counsel or representative, or to any other person not requiring such information in the performance of his official duties. No information concerning the status of any security case will be disclosed to any person outside the Department of the Air Force or to any other person not requiring the information in the course of his official military or other governmental duties unless approved by the Executive Secretary.

§ 891.18 Resignation policy.

Any employee whose case is being processed under this part may resign at any time. However, if he resigns after he has been suspended, or after he has received an interrogatory or a letter of charges from the Central Security Board, or after he has been informed in some other way that proceedings under this part are pending against him, the SF 50 effecting the resignation will bear the notation, "Resigned while action pending to adjudicate security case under Public Law 733, 81st Congress." In all other cases, the SF 50 will contain only the routine data, and no mention will be made thereon of the pending security case. If the employee resigns, the entire case file will be forwarded without further action to the Central Security Board for appropriate disposition.

§ 891.19 Reimbursement of employees.

The commander of the Air Force activity concerned usually will be instructed to pay to any employee whose employment is suspended or terminated pursuant to Public Law 733, 81st Congress, and who is later reinstated or restored to duty, compensation for the period of the suspension or termination in an amount equal to the difference between the amount such employee would normally have earned during the period of such suspension or termination at the rate he was receiving on the date of his suspension or termination and his interim net earnings. However, no employee will be compensated for any extension of the period of suspension or termination caused by the employee's voluntary action and not the result of action by the Air Force in suspending or terminating his employment.

SUBCHAPTER K—MILITARY TRAINING AND SCHOOLS

PART 900—INSTITUTE OF TECHNOLOGY (IT)

Sec.
900.1 Purpose.
900.2 Mission.
900.3 How the IT is organized and operated.
900.4 What the IT will do.
900.5 Academic degrees.
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900.8 Medical postgraduate courses.

AUTHORITY: The provisions of this Part 900 issued under secs. 8012, 9301, 9314, 70A Stat. 488, 559, 561; 10 U.S.C. 8012, 9301, 9314.

§ 900.1 Purpose.

This part states the mission of the Institute of Technology (IT). It outlines the IT's role in Air Force educational and training programs; announces policies for planning and conducting IT programs; states general eligibility criteria for participation.

§ 900.2 Mission.

The mission of the IT is to provide education and training in scientific, engineering, managerial, medical, and other fields as directed by Headquarters USAF.

§ 900.3 How the IT is organized and operated.

The IT is an educational institution located on Wright-Patterson Air Force Base, Ohio. It is organized and operated under the command jurisdiction of Commander, Air University, in accordance with the policies established by Headquarters USAF.

§ 900.4 What the IT will do.

(a) The IT will plan, organize, conduct, and/or administer educational and training programs in residence and at selected civilian educational institutions and industrial organizations in accordance with directives from Headquarters USAF.

(b) In developing IT educational programs, the following policies will prevail:

(1) Programs will be established to improve the professional competence of career officers in specific Air Force Career Areas, Utilization Fields, and Specialties.

(2) Programs will be planned and developed in terms of the Air Force requirement for which they were established. The Air Force Educational Requirements Board will provide information for the development of educational programs in residence and in cooperation with civilian institutions.

(3) Programs will provide sufficient flexibility to allow each officer's experience and academic background to be considered in the development of his curriculum.

(4) The curriculum followed by each officer will enable him to reach the proficiency required by the Air Force need for which he is being educated in the minimum period of time.

(5) Programs will be planned so as to provide for the admission of all officers selected by Headquarters USAF.

(6) An academic degree will be an objective when the foregoing criteria have been met and when the educational program developed in support of an Air Force requirement is degree worthy. In view of the recognized value of the degree, minor modifications that do not compromise the requirement, or increase the cost or length of a program, may be made in an officer's curriculum.

(c) Admission standards for IT programs will be developed in terms of the policies established by Headquarters USAF for the operation of the programs and the educational background and experience of the officer corps from which the students are drawn. The problem of admission will further be considered in terms of the adult officer corps, and the particular career officers within the corps whom it is most desirable to educate from an Air Force viewpoint. Full use will be made of tests and other measures of aptitude and achievement to determine officers' qualifications for further education.

(d) Headquarters USAF will establish quotas for the various fields of study for IT programs unless otherwise specified by this part.

(e) Civilian institutions will be utilized to provide education and training required by the Air Force when they are able to meet the needs of the Air Force.

(f) When education or training authorized under this part is conducted in a resident program, priority will be given to filling resident program quotas.

(g) The Commandant, IT, will make all agreements and contractual negotiations with civilian educational and industrial organizations to provide education and/or training authorized by this part. Agreements and negotiations with Government-operated schools will be carried out in accordance with instructions furnished by Headquarters USAF.

(h) Only career officers, Regular and Reserve, will be entered into the IT Professional Education Program. Reserve officers with an established date of separation may be issued letters of eligibility for training by the Com-

mandant, IT. To determine their availability for training these officers may complete applications and forward them to Headquarters USAF. When Headquarters USAF selects such officers for schooling, each officer must elect to sign a career reserve statement and be approved for career Reserve status before entrance into an educational program. All officers selected to attend the IT will be required to indicate knowledge of the service commitment they will incur. This acknowledgment will be included as part of the officer's application.

(i) Headquarters USAF will control the initial assignment of Air Force officers completing IT programs other than those classed as TDY courses. These officers will be assigned to periods of directed duty appropriate to Air Force training programs.

(j) The maximum length of each educational program authorized by this part will be established by Headquarters USAF at the time the program is authorized. Students will complete their study within the period of time authorized for the particular program to which they are assigned or in a lesser period of time when they can do so. Headquarters USAF may extend an academic tour when a student's work has been interrupted due to illness or other circumstances beyond his control. In no instance will an officer be retained in an IT program beyond the length of time specified for the program without prior approval of Headquarters USAF. An officer may be eligible for a second tour in IT programs after completing an interim duty assignment of at least 3 years. The total time a student may be in IT education, including prior training-with-industry programs and extensions, will not exceed 48 months. Tours of duty of officers of the Medical Service engaged in residency training in any of the medical or dental specialties will not be limited by the foregoing but will be established by the Surgeon General, USAF, to conform to requirements of the appropriate national accrediting agencies.

§ 900.5 Academic degrees.

(a) Section 9314, Title 10, United States Code, authorizes the Commander, Air University, to confer appropriate academic degrees on persons who meet established requirements for degrees in fields of study conducted by the IT Resident Program.

(b) The academic requirements for obtaining degrees at the IT parallel the requirements for similar degrees in colleges and universities. Degree requirements are established by the IT and approved by Air University and Headquarters USAF.

§ 900.6 Professional education and training-with-industry programs.

(a) *Description.* (1) The IT offers undergraduate and graduate level educational programs at Wright-Patterson Air Force Base and in civilian institutions. Courses of study authorized vary from year to year as determined by Air Force requirements.

(2) The IT School of Engineering, School of Logistics, and Civil Engineering Center offer educational training programs that are peculiar to the needs of the Air Force. Programs are established as directed by Headquarters USAF.

(3) Training-with-Industry programs provide Air Force officers with on-the-job training at various industrial concerns so that they may gain an understanding of their operations in support of the national defense effort. Students assigned to these programs receive training similar to that provided executives of industrial organizations.

(b) *Eligibility.* Eligibility criteria normally applicable to IT Resident Programs, and Civilian Institutions and Training-with-Industry Programs are:

(1) Applicants must be officers serving in the grade of lieutenant colonel or below. (The term "officer" or "officers" as used in this part includes warrant officers.)

§ 900.7 Special short courses.

These courses are of less than 20 weeks duration and are designed to provide concentrated instruction in specialized subjects related to an officer's duty assignment. Headquarters USAF authorizes the establishment and tailoring of these courses to meet specific needs of the Air Force.

§ 900.8 Medical postgraduate courses.

Such courses are of less than 20 weeks duration and are established and conducted by civilian institutions. They provide concentrated instruction in many subject areas and are announced by the institution conducting the program. Qualified Air Force medical service officers may be authorized to enroll when a need for training in a particular field is established within the major air command. Quotas are not established or allocated for these courses by Headquarters USAF.

PART 901—APPOINTMENT TO THE UNITED STATES AIR FORCE ACADEMY

Sec.

901.1 Purpose.
901.2 Policy.
901.3 Appointment vacancies.
901.4 Sources of nomination.
901.5 Basic requirements.
901.6 Nomination requirements and procedures.
901.7 Where applicant will report.
901.8 How to notify Director of Admissions of change of address or station assignment.
901.9 Suggested letter formats.

AUTHORITY: The provisions of this Part 901 issued under secs. 8012, 9331–9355, 70A Stat. 488, 523; 10 U.S.C. 8012, 9331–9355.

§ 901.1 Purpose.

This part explains application procedure and appointment to the United States Air Force Academy.

§ 901.2 Policy.

Persons eligible for nomination to the Air Force Academy are encouraged to apply in every category in which they are eligible.

§ 901.3 Appointment vacancies.

Appointment vacancies are authorized by law to specific nominating authorities.

§ 901.4 Sources of nomination.

(a) United States Senators and Representatives.

(b) Resident Commissioner of Puerto Rico; Governor of the Panama Canal Zone; Governor of American Samoa; Governor of Guam; Governor of the Virgin Islands; and the Commissioners of the District of Columbia.

(c) Air Force and Army enlisted Regular competitive category.

(d) Air Force and Army enlisted Reserve competitive category.

(e) Presidential competitive category.

(f) Vice Presidential category.

(g) Sons of Deceased Veterans competitive category.

(h) Honor Military and Honor Naval Schools competitive category.

(i) Sons of Congressional Medal of Honor winners.

(j) Allied Students. ("Designated"—"To receive instruction" 10 U.S.C. 9344, 9345.)

§ 901.5 Basic requirements.

All applicants must meet the following basic requirements:

(a) *Age.* Applicant must be at least 17 years of age but must not have passed his 22d birthday by July 1st of the year in which he enters the Air Force Academy. A nominee is required to legally substantiate his date of birth.

(b) *Citizenship.* Applicant must be a male citizen of the United States. If an applicant is a citizen by naturalization, the following certificate is required, authenticated by a notary public or other persons authorized by law to administer oaths:

I certify that I have this date seen the original certificate of citizenship number _____ stating that _____ was granted United States Citizenship by the _____ on _____. The
(Name of court) (Date)
following person was named in the certificate as a minor child _____
(Name of child)
age _____.

Facsimiles or copies, photographs or otherwise, will not be made of naturalization certificates under any circumstances as stated in 18 U.S.C. 1426(H).

(c) *Domicile.* An applicant nominated by an authority designated in § 901.4 (a) or (b) must be domiciled within the constituency of such authority.

(d) *Moral character.* Applicant must be of highest moral character. Commanders will furnish information to the Director of Admissions, United States Air Force Academy, Colorado, on any military applicant or nominee whose official records show:

(1) He is or has been a conscientious objector. In this case, an affidavit expressing his abandonment of such beliefs and principles so far as they pertain to his willingness to bear arms and to give full and unqualified military service to his country is required.

(2) Any facts which give reason to believe that his appointment may not be

clearly consistent with the interests of national security.

(3) Conviction by court-martial for other than a "minor offense" (par. 128b, p. 229, MCM 1951) or conviction of a felony in a civilian court.

(4) Elimination from any officer training program or any preparatory school of the Army, Navy, or Air Force academies for military inaptitude, indifference, or undesirable traits of character. This includes any person who resigned in the face of impending charges or who was eliminated by official action.

(5) Habitual intemperance.

(6) Any behavior, activity, or associations which tend to show that he is of questionable moral character or reputation.

(e) *Physical standards.* Each applicant must meet the physical requirements.

(f) *Marital status.* Applicant must not be and never have been married. Cadets are not permitted to marry until after graduation.

§ 901.6 Nomination requirements and procedures.

Young men desiring appointment to the Air Force Academy must first apply for and obtain nomination in at least one of the following categories:

(a) *Congressional.* Any United States resident who meets the basic requirements listed in § 901.5 may apply directly to the United States Senators of his State of residence and/or the Representative of his District of residence (see § 901.9 (a)). The nominating authority will advise the applicant of further action, and will forward AF Form 1196 (used only by Hq USAF and Congressmen) for each nominee through the Air Force Academy Activities Group, Hq USAF, Washington, D.C., 20330, to the Director of Admissions, U.S. Air Force Academy, Colorado. The Director of Admissions will then schedule the nominee for testing. After nomination, the nominee should address all correspondence, forms, etc., to the Director of Admissions.

(b) *District of Columbia and United States Possessions.* Residents of the District of Columbia apply to the Commissioners of the District of Columbia. Residents of Puerto Rico apply to the Resident Commissioner. Sons of civilians residing in the Panama Canal Zone, or sons of civilian employees of the United States Government and the Panama Canal Company residing in the Republic of Panama, apply to the Governor of the Panama Canal Zone. Residents of American Samoa, Guam, and the Virgin Islands apply to their respective Governors. Applications should be submitted in writing (see § 901.9(a)) as early as May of the year preceding that in which admission to the Academy is desired. The nominating authority will advise the applicant of further action and will forward the nomination for processing as described in paragraph (a) of this section.

(c) *Presidential (competitive).* The son of a member of a Regular component of the Armed Forces of the United States is eligible for nomination. The Regular component member must be on active duty, retired or deceased, but not discharged before retirement or death. The son of a member of a Reserve component is eligible in this category if his parent received a Reserve commission or warrant while a member of a Regular component, remained on continuous extended active duty, and retained the right to revert to Regular status. An adopted son is eligible if adoption proceedings were initiated before his 15th birthday. In addition, applicants must meet the basic eligibility requirements listed in § 901.5. An eligible individual may apply to the Director of Admissions, U.S. Air Force Academy, Colorado, requesting nomination in accordance with § 901.9(b).

(d) *Vice Presidential.* Any individual who meets the basic eligibility requirements listed in § 901.5 may apply to the Vice President for nomination. The request may be submitted as early as May of the year preceding the one in which he desires appointment to the Academy. The application should be addressed to the Vice President, United States Senate, Washington, D.C., and should contain all information outlined in § 901.9(c).

(e) *Sons of deceased veterans (competitive).* The son of a deceased member of the Armed Forces of the United States is eligible for nomination in this category if he meets the basic requirements listed in § 901.5, and if the deceased parent (male or female) was killed in action, or died as a result of wounds or injuries received, disease contracted in, or pre-existing injury or disease aggravated by, active service during World War I, World War II (December 7, 1941 through December 31, 1946), or the Korean Conflict (June 27, 1950 through January 31, 1955). An individual eligible for a nomination in this category will submit a written request to the Director of Admissions, U.S. Air Force Academy, Colorado, in accordance with § 901.9(d).

(f) *Honor Military and Honor Naval Schools (competitive).* Three honor graduates or prospective honor graduates from each designated honor military and honor naval school may be nominated to fill the vacancies allocated to such schools. Vacancies are filled in the order of merit, regardless of the schools from which the nominations are made. Appropriate school authorities must certify that each nominee is an honor graduate and meets the basic eligibility requirements listed in § 901.5. Nominations must be submitted to the Director of Admissions, U.S. Air Force Academy, Colorado, by January 31st of the year in which the nominees desire appointment. Nominations are not limited to honor graduates of the current year. An individual eligible for nomination in this category will apply to the administrative authority of his school. The application will include:

(1) Full name, address, and date of birth. If in the service, grade, service number, organization, and station.

(2) Reasons for requesting nomination to the Air Force Academy.

(g) *Sons of Congressional Medal of Honor winners.* The son of any Congressional Medal of Honor winner who served in any branch of the armed services may apply for nomination. If an applicant meets the eligibility criteria and qualifies on the entrance examinations, he will be admitted to the Academy. An applicant must write to the Director of Admissions, U.S. Air Force Academy, Colorado, requesting a nomination in this category. The letter must include:

(1) Full name, address, and date of birth. If in the service, give grade, service number, organization, and station.

(2) Full name, rank, service number, and branch of service of the parent to whom the Medal of Honor was awarded.

(h) *Citizens of the American Republics and the Philippines.* These persons may apply for designation to receive instruction at the Air Force Academy. The Academy is authorized to provide instruction to as many as 20 persons at any one time from Canada and the American Republics. However, not more than three students from one republic or from Canada may receive instruction at the same time. In addition, one student from the Republic of the Philippines may be admitted in each entering class. A citizen of an American Republic or Canada must apply to the Government of his own country. A Filipino applies to the President of the Republic of the Philippines. The application should contain complete particulars about his background and should be submitted at least a year before the time of desired admission to the Academy. Applicants in these categories must meet the eligibility requirements established for all Academy candidates and must be able to read, write, and speak English proficiently. With the exception of the American Republics, Canada, and the Philippines, a student from any other foreign country may not be admitted to the Air Force Academy unless he has received specific authorization by legislation of the United States Congress.

§ 901.7 Where applicant will report.

An applicant nominated in one or more of the above categories (except § 901.6(h)) will be notified by the Director of Admissions, U.S. Air Force Academy, Colorado, to report to an Air Force Academy and Aircrew Examining Center for final qualification testing. The nominee will also be instructed concerning the College Entrance Examination Board tests. All requirements are listed in the letter of instructions. No nominee will be considered for appointment until scores on all tests are received.

§ 901.8 How to notify Director of Admissions of change of address or station assignment.

Each applicant or nominee is personally responsible for notifying the Director of Admissions of every change of address or station assignment. Notifications are sent direct to the Director of Admissions, U.S. Air Force Academy, Colorado, and will include complete name, grade, service number, and new organization or unit to which assigned. Reassignment of military personnel to any duty station will not be delayed pending action by the Director of Admissions.

§ 901.9 Suggested letter formats.

(a) *For requesting nomination in categories of Congressional, Canal Zone, District of Columbia, Puerto Rico, and Possessions.*

Date.

HONORABLE _____,
HOUSE OF REPRESENTATIVES,
Washington, D.C. 20515.
DEAR MR. _____:

OR

HONORABLE _____,
UNITED STATES SENATE,
Washington, D.C. 20510.
DEAR SENATOR _____:

It is my desire to attend the Air Force Academy and to make the United States Air Force my career. I respectfully request that I be considered as one of your nominees for the class that enters the Academy in June ____.

The following personal data is furnished for your information:

Name: (As recorded on birth certificate).
Address: (City, county, State).
Parents' name:
Date of birth:
High school attended:
Date of high school graduation:
Approximate grade average:

I have been active in high school extracurricular activities shown on the attached list.

I shall greatly appreciate your consideration of my request for a nomination to the Air Force Academy.

Sincerely,

Signature.

(b) *For requesting a Presidential nomination.*

Date.

DIRECTOR OF ADMISSIONS,
USAF ACADEMY, COLORADO 80840.

DEAR SIR: I request a nomination under the Presidential category for the class that enters the Academy in June ____, and submit the following data:

Name: (Give name as shown on birth certificate. If different from the one you use, attach a copy of court order, if applicable.)
Address: (Give permanent and temporary.)
Date and place of birth: (Spell out month.)
Date of high school graduation:
If Member of Military: (List rank, serial number, component, branch of service, and organizational address—do not use CMR or Box No.)
If Previous Candidate: (List year and candidate number.)

INFORMATION ON PARENT

Name, Rank, Serial Number, Component and Branch of Service:
Organizational Address:
Retired or Deceased: (Give date and attach copy of retirement orders or casualty report.)
Officer Personnel: (Attach Statement of Service prepared by personnel officer specifying Regular or Reserve status for all periods of service.)
Enlisted Personnel: (Attach statement prepared by personnel officer listing date of enlistment, date of enlistment expiration, component and branch of service.)
Sincerely,

Signature (As recorded on birth certificate).

(c) *For requesting a Vice Presidential nomination.*

Date.

THE VICE PRESIDENT,
UNITED STATES SENATE,
Washington, D.C. 20510.

DEAR MR. VICE PRESIDENT: It is my desire to attend the Air Force Academy and to make the United States Air Force my career. I respectfully request that I be considered as one of your nominees for the class that enters the Academy in June _____ (year).

The following personal data is furnished for your information:

Name:
Address:
Parents' name:
Date of birth:
High school attended:
Date of high school graduation:
Approximate grade average:
[1] _____

I have been active in high school extracurricular activities shown on the attached list.

I shall greatly appreciate your consideration of my request for a nomination to the Air Force Academy.

Sincerely,

Signature.

(d) *For requesting a son of deceased veteran nomination.*

Date.

DIRECTOR OF ADMISSIONS,
USAF ACADEMY, COLORADO 80840.

DEAR SIR: I request a nomination under the Sons of Deceased Veterans category for the class that enters the Academy in June ____, and submit the following data:

Name: (Give name as shown on birth certificate. If different from the one you use, attach a copy of court order, if applicable.)
Address: (Give permanent and temporary.)
Date and place of birth: (Spell out month.)
Date of high school graduation:
If Member of Military: (List rank, serial number, component, branch of service, and organizational address—do not use CMR or Box No.)
If Previous Candidate: (List year and candidate number.)

INFORMATION ON PARENT

Name, Rank, Serial Number, Regular or Reserve Component and Branch of Service:
Date and place of death:
Cause of death:
Veterans Administration XC Claim Number:
Address of VA Office Where Case is Filed:
Sincerely,

Signature (As recorded on birth certificate).

PART 902—USAF OFFICER TRAINING SCHOOL (OTS)

Sec.
902.1 Purpose.
902.2 Mission.
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902.25 Exception authority.
902.26 Eligibility requirements; Air National Guard.

AUTHORITY: The provisions of this Part 902 issued under secs. 8012, 9411, 70A Stat. 488, 571; 10 U.S.C. 8012, 9411.

§ 902.1 Purpose.

This part tells how to apply for USAF Officer Training School and explains the disposition of eliminees and graduates of the school.

§ 902.2 Mission.

The USAF OTS trains selected personnel to meet the fundamental requirements for newly commissioned officers in the Air Force.

§ 902.3 Definitions.

(a) *Officer training program.* A program estabilshed to insure the Air Force a complement of career-minded officers, well educated in subjects related to essential positions. Graduates are tendered appointments as Reserve officers of the Air Force.

(b) *Officer trainee.* A selected applicant who is on active duty and enrolled in OTS.

(c) *Airmen applicants.* Air Force male or female enlisted personnel in the active military service of the United States and airmen of the Air Force Reserve (AFRes) assigned to AFRes units.

(d) *Civilian applicants.* United States male or female citizens who are not in the military service or members of AFRes units. The term "civilian" includes all other members of Reserve components of the Armed Forces and the National Guard.

(e) *Preliminary processing.* An all-inclusive procedure to determine whether an applicant meets the basic eligibility requirements before he is referred for final processing.

(f) *Final processing.* A series of tests designated by Headquarters USAF for final qualification of officer trainee applicants.

(g) *Tentatively qualified applicant.* An applicant (male or female) who has successfully completed the required examinations and whose application has been forwarded to Lackland Military Training Center (Mil. Tng. Cen.), Lackland AFB, Texas, for further processing.

(h) *Fully qualified applicant.* An applicant who has successfully completed all qualifying examinations.

(i) *Selection board.* A board appointed by the Commander, Lackland Military Training Center, to make the final selections. The chairman of the board will be a senior officer in grade of colonel or lieutenant colonel. When female applicants are being considered, a WAF officer of field grade or a senior WAF captain is to be a member of the board.

(j) *Selected applicant.* A fully qualified applicant who has been notified in writing by the Lackland Military Training Center, of his selection and class assignment.

(k) *Air Force Academy and Aircrew Examining Center (AFAAEC).* A Headquarters USAF-designated facility, cen-

[1] If in the Military Service, give Grade, Service Number, Organization, and Station.

trally located with respect to source of applicants and with facilities adequate for final examination of such applicants.

§ 902.4 Information sources.

Information concerning OTS may be obtained from:

(a) Air Force recruiting offices.

(b) Air Force bases.

(c) Professor of Air Science at any AFROTC unit.

(d) Air National Guard (ANG) or AFRes units.

§ 902.5 How the training is conducted.

Air Training Command (ATC) will procure, select, train, and commission applicants for this program. Applicants will undergo rigid examinations before they are selected for officer training; when selected, they will be required to complete a precommission training course. After successfully completing this course, the officer trainee will be commissioned a second lieutenant, Reserve of the Air Force, in Career Reserve status. The graduating male officer will be assigned direct to duty or will pursue a pilot, navigator, or technical training course. The graduating female officer will be assigned direct to duty or will pursue a technical training course. The training course selected for each individual will be based on his desire and qualifications correlated with the needs of the Air Force.

§ 902.6 Eligibility requirements.

This section prescribes the basic eligibility requirements and requisite qualifications which must be met by applicants. The provisions of this section normally will not be waived.

(a) *Citizenship and age.* (1) Applicants for nonrated duty must be:

(i) United States male or female citizens between the ages of 20½ and 29½ years when applying.

(ii) Commissioned before reaching the 30th birthday.

(2) Applicants for flying training must be:

(i) United States male citizens between the ages of 20½ and 26½ years when applying.

(b) *Marital restrictions.* (1) *Males.* No restrictions.

(2) *Females.* Must be unmarried and have no dependents when applying, and must agree in writing to remain unmarried during the training program.

(c) *Educational qualifications.* (1) Applicants must be college graduates with a baccalaureate or higher degree from a college or university listed in the latest issue of Part 3, "Higher Education," Education Directory, published by the Department of Health, Education, and Welfare.

(2) An applicant who is a graduate of an unlisted or foreign college or university, if otherwise qualified, may meet the educational requirements by submitting evidence that the college's credits have been and are accepted as if coming from an accredited institution by not fewer than three U.S. accredited institutions.

(3) Students enrolled in the senior year of college may submit applications 210 days before scheduled graduation date. These persons will be processed as college graduates. Applicants will not be enlisted until documentary evidence has been submitted showing they have been awarded their degrees. This document will be returned to the individual concerned and will not be part of his enlistment file.

(d) *Moral character.* Applicants must be of the highest moral character.

(e) *Medical standards.* (1) Male applicants will be examined for "commission standard" only, unless they express a desire to enter flying training. Applicants for flying training may be qualified for "commission only" if they meet commission standards after failing flying standards. Item 77, SF 88, will show the category in which applicants are qualified, e.g., Class I, Class IA, or Commission.

(i) Male applicants applying for training in administrative or technical career areas will be given a commission-type physical examination only. This may be accomplished at any Air Force medical facility, or other military medical facility equipped to perform commission-type physical examinations.

(ii) Male applicants applying for flying training will be examined only at Air Force Academy and Aircrew Examining Centers for flying Class I, or IA, whichever is applicable. Item 77, SF 88, will show the category in which applicants are qualified, e.g., Class I, IA, or Commission.

(2) Female applicants will be given a commissioning-type physical examination. This may be accomplished at any Air Force medical facility or other military medical facility equipped to perform commission-type physical examinations, or it may be performed by a licensed doctor of medicine. When the services of a civilian physician are necessary, USAF Recruiting Service funds will be used for this purpose.

(3) Applicants must meet the medical standards for the training they desire and for which they are selected.

§ 902.7 Who is ineligible to apply.

The following persons are ineligible to apply for this training:

(a) A person not eligible for enlistment or reenlistment in the Air Force except for dependency and grade restrictions.

(b) For pilot training, a person who holds or has held the aeronautical rating of pilot, or comparable rating in any of the Armed Forces of the United States. (Army aviation is not comparable for this purpose.)

(c) For navigator training, a person who holds or has held the aeronautical rating of navigator or comparable rating in any of the Armed Forces of the United States.

(d) A person in the active military service of the United States other than the Air Force.

(e) An enlisted member of a Reserve Force of the United States who has received orders calling him to active military service with any of the Armed Forces other than the Air Force.

(f) A member of a Reserve Force other than the ResAF who has not obtained a conditional release from the specific service.

(g) A person currently enrolled in any U.S. Armed Forces training program leading to commissioned status, unless his application has been approved and further training recommended by an authorized official of the parent service conducting the training.

(h) A person who: (1) Has or has held a commission in any of the U.S. Armed Forces.

(2) Holds a certificate of completion of a course leading to a commission in any of the U.S. Armed Forces, and the commission is to be granted at a later date.

(i) A person who is undergoing board action on information indicating the applicant possesses undesirable personal qualities, or for whom a personnel security clearance has been denied or revoked.

(j) A person who has a record of conviction by any court-martial or civilian court (other than for a minor traffic violation) except that, if appropriate, a waiver of a minor offense not prejudicial to the performance of duty as an officer may be requested and considered in accordance with § 902.9. Punishment imposed under Article 15, Uniform Code of Military Justice, is nonjudicial punishment and will not be considered as conviction by court-martial. A general guide for determining whether an offense may be considered "minor" is contained in paragraph 128b, Manual for Courts-Martial, 1951. A waiver will not be granted for an offense that involves moral turpitude.

(k) A person who is a conscientious objector.

(l) A person whose entry into or retention in the Air Force may not be clearly consistent with the interest of national security.

(m) A Selective Service System registrant who has been ordered to report for active military service with any of the Armed Forces.

(n) Minor applicants (below age 21), without the written consent of either parent or guardian (DD Form 373, "Consent, Declaration of Parent or Legal Guardian").

(o) An applicant who has failed to obtain the minimum qualifying score on any portion of the Air Force Officer Qualifying Test (AFOQT) is ineligible to reapply or be reexamined for one year from date of last written examination.

§ 902.8 Eligibility of eliminees from precommission training courses.

Persons who have been eliminated from a course of training leading to commissioned officer status are governed by the following policy and procedures. This policy does not pertain to those who were disenrolled or eliminated from the basic phase of any ROTC course.

(a) *Policy.* (1) Persons who either resign or are dismissed from officer training programs of the Army, Navy, or Air Force, because of military inaptitude, indifference, undesirable traits of character, or for disciplinary reasons, are not eligible for enrollment in an Air Force training program leading to commis-

sioned officer status; nor are they eligible to apply for Air Force commissions. Superintendents of military academies and commanders of officer training programs may recommend waivers of this policy only in exceptional cases worthy of consideration.

(2) Persons who have been eliminated for lack of academic progress or breaches of the Honor Code may apply for enrollment in Air Force training programs leading to commissioned officer status; however, their applications will be referred to Hq USAF (AFPTR) for review and approval before enrollment.

(3) AFROTC cadets who have been eliminated from a civilian-operated military institution, because of minor violations of the institution's Honor Code, may apply for Air Force officer training programs; however, such applications will be referred to Hq USAF (AFPTR) for review and approval before enrollment.

§ 902.9 Waivers of minor offenses.

(See § 902.7(j).)

A civilian applicant may submit a request for waiver. Headquarters, USAF Recruiting Service, is authorized to grant or deny waivers except waivers for:

(a) Four or more traffic violations, or one single violation involving drunken driving;

(b) Accidents resulting in injuries or fatalities;

(c) Leaving the scene of the accident; and

(d) Similar violations that local law enforcement agencies deem to be of major consequence.

These cases will be forwarded to Headquarters ATC for determination.

§ 902.10 How to apply.

The applicant will fill out AF Form 56, in duplicate. His attention will be directed to item 24, whereby he agrees that, on completion of the training course, he will accept an appointment as an officer, Reserve of the Air Force, in Career Reserve status. Further, he agrees to remain on extended active duty as a commissioned officer with a minimum four-year active duty commitment unless sooner relieved by competent authority. He agrees to accept the current active duty commitment for the training undertaken after being commissioned. If the applicant is a minor, he will sign the agreement with the consent of either parent or guardian (DD Form 373). An officer or noncommissioned officer assigned to the USAF Recruiting Service may verify the signatures on both copies of the DD Form 373; however, the verifying official must be present when the applicant's parent or legal guardian signs the form. Each application will contain:

(a) Evidence of date of birth, which may be a birth certificate, an authenticated copy thereof, or other documentary evidence.

(b) Evidence of citizenship (if the applicant is not a citizen by birth), which is a certificate signed by an officer, notary public, or other person authorized by law to administer oaths. This certificate must give the following information:

I certify that I have this date seen the original certificate of naturalization number _____ (or certified copy of court order establishing citizenship) stating that _____ was admitted to United
(Full name)
States citizenship by the _____ Court of _____ _____ on
(District or County) (State)
_____.
(Date)

NOTE: Facsimiles or copies, photographs or otherwise, will not be made of naturalization certificates under any circumstances. (This is a criminal offense under Act of June 25, 1948, 62 Stat. 767, 18 U.S.C. 1426(h)).

(c) An official transcript of college credits indicating the undergraduate or graduate degree awarded and grades received. A student enrolled in his senior year of college must provide a statement from his school attesting to that fact, the date he is scheduled to graduate, the degree to be awarded, and his college major.

(d) A completed DD Form 98, "Armed Forces Security Questionnaire." If, after proper instruction, the applicant fails to complete DD Form 98, or completes it with qualifications, or makes entries thereon which indicate that his appointment would not be clearly consistent with the best interests of national security, he must prepare six copies of DD Form 398, "Statement of Personal History," and one copy of FD Form 258, "FBI Fingerprint Card."

(e) A completed DD Form 369, "Police Records Check." An additional DD Form 369 is required for the period between initial application and enlistment.

(f) At least three character references, on DD Form 370, "Request for Report From (Employer) (School) (Personal Reference)," from clergymen, past employers, or college officials such as the dean of the college.

(g) A statement prepared as follows, if an applicant has relatives in Communist or Communist-controlled countries or has been in any of the countries listed in attachment 10, AFM 39-9 (Enlistment and Reenlistment in Regular AF) (except under the auspices of the U.S. Government):

CERTIFICATE

(Date)

I _____,
(First, middle, and last name)

certify that I am a United States citizen and that I have not been present in any of the following countries after the period indicated by date, except for authorized presence under auspices of the United States Government. I further certify that I do not now have a spouse, parent, brother, sister, or offspring residing in the countries listed below: (List the countries currently identified in attachment 10, AFM 39-9.)

(Signed) _____
(Applicant's signature)

§ 902.11 Clothing.

Officer trainees selected from civilian status will be provided clothing under the clothing monetary allowance system.

§ 902.12 Preliminary processing.

(a) Male applicants must indicate on the application form their preference for pilot, navigator, or administrative and technical training or for all three programs. Female applicants may apply for administrative and technical training. If an applicant for all three programs is found disqualified for the training of his first choice, he will continue his processing to determine whether he is qualified for his second or third choice. Applicants are required to undergo two phases of processing preliminary and final qualifying examinations.

(1) Preliminary processing is administered locally at an Air Force recruiting detachment for civilian applicants. Preliminary processing procedures include:

(i) Completion of AF Form 56, in duplicate, by the applicant. The following statement will be entered in the "remarks section" of the AF Form 56 for each male applicant, "I (will) (will not) accept flying training if selected for the Officer Training School. The service commitment for personnel selected for flying training has been explained to me." The applicant will be required to place his initials immediately following the statement.

(ii) A check to insure that the applicant meets the eligibility requirements and has necessary supporting data, such as birth certificate and scholastic records.

(iii) An interview to counsel the applicant and to determine whether he should be considered for testing.

(iv) A notice to the applicant, if not recommended for testing, giving the reasons for his disqualification.

(v) Recruiting Service detachment commanders or their authorized test control officers may administer the AFOQT on the college campuses or in the field. The AFOQT will be scored by AFAAECs.

(2) Final processing is covered in §§ 902.14 through 902.16.

§ 902.13 Procedures for civilians.

(a) *Where to apply.* A civilian applicant normally will apply at a USAF Recruiting Service office or, in remote areas, at the nearest Air Force base.

(b) *Responsibility for processing.* The USAF Recruiting Service is responsible for the preliminary processing of officer trainee applicants from civilian sources and is specifically responsible for stimulating interest in the officer training program throughout civilian communities and educational centers. Air Force recruiters will insure that applicants meet eligibility requirements and have necessary supporting data such as birth certificates and scholastic records. In addition, recruiting detachment commanders will:

(1) Ascertain that applicants meet basic age, citizenship, and educational requirements and that documentary evidence is attached to the application.

(2) Arrange for scheduling and transporting tentatively qualified applicants to the nearest Air Force medical facility, or other military medical facility equipped to do commission-type examinations. (Exception: Applicants desiring flying training.) Arrange for scheduling and transporting tentatively qualified flying training applicants to the nearest AFAAEC for final processing. Inform all applicants, commission-only

and flying training, of the hour and date on which they are to appear.

(3) Advise disqualified applicants of the reason for disqualification during any phase of preliminary processing.

(4) Enlist selected applicants for two years.

§ 902.14 Air Force Academy and Aircrew Examining Centers (AFAAEC).

(a) *General.* Each tentatively qualified applicant referred to an AFAAEC for final processing will be given:

(1) The applicable booklets of the AFOQT, provided he has not been administered the AFOQT by authorized Recruiting Service personnel;

(2) A complete medical examination as prescribed in § 902.6(e), and other examinations as directed by Headquarters USAF.

(i) Waivers for failure to meet commissioning standards will be granted only by Headquarters ATC. Applicants who have previously qualified on AFOQT will not be retested if official record scores are available. The written examination will be given and scored before scheduling the medical examination. An applicant who fails to attain the minimum qualifying score on the officer quality portion of the AFOQT will not be processed further. A person will not be retested under any circumstances on the AFOQT before one year from the date he was last tested.

(b) *Responsibilities.* AFAAECs will:

(1) Furnish test-day schedules to the appropriate recruiting detachments for tentatively qualified applicants.

(2) Provide suitable billeting accommodations, dining facilities, and necessary local transportation for applicants.

(3) Administer the current AFOQT to derive scores in the following aptitude and interest clusters, as applicable:

(i) Males—Aptitude: Pilot, Navigator-Technical, Officer Quality, Verbal, Quantitative; Interest: Flying, Technical, Administrative, Quantitative.

(ii) Females—Aptitude: Officer Quality, Verbal, Quantitative.

§ 902.15 Information furnished applicants.

(a) *Fully qualified applicant.* When an applicant has successfully completed all qualifying examinations, Lackland Military Training Center will place his application before a selection board and notify him of his selection or nonselection within 10 workdays after initially receiving the application.

(1) *Changes affecting status of fully qualified applicants.* Fully qualified applicants need not take any further action regarding their applications unless requested to do so. However, the applicants must inform Lackland Military Training Center of any changes which affect an applicant, such as:

(i) Enlistment in the Regular Air Force or any of the other military services.

(ii) Notice from the Selective Service System ordering the civilian applicant into the active military service of the United States.

(iii) Change of address.

(iv) Modification of physical status which would be disqualifying for training.

(v) Change of desire for training.

(2) *Conviction of offenses committed after notification of qualification.* Civilian applicants who commit offenses after the date they have been determined to be fully qualified, will be processed under the provisions of AFM 39–9.

(b) *Selected applicant.* (1) The applicant will be considered by the selection board for at least two classes. If he has been considered for one class and not selected, he will be notified that his application is being retained for further consideration. If the applicant is not selected, he will be notified of the nonselection and his personal documents will be returned. If eligible, a nonselected applicant may reapply six months from the date of his last application.

(2) A draft-eligible civilian applicant, who subsequently is notified of his acceptance for officer training will not be furnished a draft deferment. If the Selective Service System orders an applicant to report to active military service before he has received written notice of his selection, his application for officer training will be canceled.

(3) Selected civilian applicants will be required, after notification of selection and class assignment, to enlist in the Regular Air Force as E–1 (basic airman) for two years, unless authorized under current enlistment directives to enlist in a higher grade.

(4) At the time of enlistment, a male civilian applicant who enters training after July 1, 1963, must be advised and must agree in writing that, if eliminated at any point in the training program for other than medical reasons, he will be required to remain on active duty and complete the remainder of his initial 2-year enlistment. The signed paper becomes an allied paper to his application for training.

(c) *Disqualified applicants.* Disqualified applicants will be advised as soon as possible of the reason for disqualification. An applicant who fails to attain the minimum qualifying score on the AFOQT will not be told the scores he made on the tests but only that he failed to attain the minimum qualifying score.

§ 902.16 Disposition of applicants.

(a) *Disqualified applicants.* When an applicant is found disqualified for other than medical reasons, his personal documents will be returned. Other documents will be destroyed.

(b) *Notifying disqualified applicants.* If an applicant is found disqualified for officer training during preliminary processing at recruiting agencies, the USAF recruiting detachment commander or the officer selection specialist will notify him orally concerning the reasons. If the disqualification becomes apparent during the final processing phase at the examining center, the officer in charge of the AFAAEC will notify him either in writing or orally. When civilian applicants are rejected by the Selection Board, the Board will furnish a copy of the letter of nonselection to the appropriate recruiting detachment.

§ 902.17 Selection and assignment.

Lackland Military Training Center will select fully qualified applicants for training.

§ 902.18 Civilian applicants.

Lackland Military Training Center will furnish letters of acceptance, two certified copies of SFs 88 and 89, and class assignments to fully qualified and selected applicants. Letters of acceptance will authorize selected applicants to enlist in the Regular Air Force for two years in accordance with AFM 39–9. After enlisting, each selected applicant, who has received class assignment instructions, will be assigned to the Air Force OTS. Upon entering training, the applicant will be promoted to the grade of E–5 (staff sergeant).

§ 902.19 Relief from training.

When the faculty board of an Air Force school determines that an officer trainee is no longer qualified to continue in his course of training, the commandant or Air Force supervisor, as applicable, will suspend the student from training. Upon final approval of the faculty board proceedings, as prescribed in AFR 53–15 (USAF Schools), the commandant will terminate the student's appointment as an officer trainee. In all instances, the faculty board proceedings will indicate whether the student is recommended for further training leading to a commission at a later date. The faculty board proceedings will contain specific reasons for failure to recommend. The responsible commander will insure that, at the time of elimination, the student is given a thorough and proper hearing and that all extenuating circumstances have been completely reviewed.

§ 902.20 Students relieved from training.

(a) *Grade.* For a student eliminated from training, the Commander, Lackland Military Training Center will issue orders as follows:

(1) Civilians, to E–1 (airman basic). Members of the ResAF processed as civilians will revert to the grades held before enlistment in the Air Force for the OTS Program.

(b) *Service credited.* Periods of service as an officer trainee will be credited as time spent in the airman grade held at time of appointment as an officer trainee and will be credited in computing the service remaining under the original contract.

(c) *Reassignment.* Eliminated or disqualified students, other than those discharged or released from active duty in accordance with paragraph (d) of this section will be reassigned.

(d) *Separation from the Air Force.* An eliminated trainee:

(1) Whose current enlistment was specifically for OTS will be afforded the opportunity to elect, in writing, to complete his enlistment contract on active duty or to be immediately separated. If he elects to complete his enlistment contract on active duty, he will not again be permitted to request relief from active duty or discharge under this authority.

(2) Who requests release from active duty and who has a remaining military service obligation will be transferred to the AFRes for the remainder of his military service obligation, and will be initially assigned to the Ineligible Reserve

Section, Air Reserve Records Center, Denver, Colorado.

NOTE: Personnel who become members of the AFRes are deferred or exempt from induction provided they meet participation requirements.

(3) Whose original term of service (enlistment before extension) expired while he was undergoing training will:

(i) Have the unused portion of the extension canceled, and

(ii) Be immediately separated by reason of expiration of term of service (ETS).

(e) *Trainees entering after July 1, 1963.* The following procedures will apply to all male trainees who enter training after July 1, 1963 and are subsequently eliminated:

(1) An eliminated trainee whose current enlistment was specifically for OTS will be required to complete his enlistment contract on active duty if he is eliminated for other than medical reasons.

§ 902.21 Reinstatement of former students.

Students eliminated from training because of:

(a) Academic deficiency will not be reinstated at a later date unless the faculty board recommended them for further officer training. At least one year must elapse from the date of termination of students status before reapplication.

(b) Military deficiency will not be reinstated.

(c) Medical disqualification may reapply, if a later medical examination indicates that the previous disqualifications has been corrected or no longer exists. However, the former student must meet all other requirements for appointment and must have been recommended for reinstatement by the eliminating authority.

(d) Resignation will not be reinstated.

(e) Emergency leave granted under regulations issued by Lackland Military Training Center. In such instances they will be held over for succeeding classes, if necessary. The length of time involved or the number of "hold overs" granted any one student will be determined by Lackland Military Training Center.

§ 902.22 Offer and refusal of appointment as an Officer, Reserve of the Air Force.

(a) *Tendering appointment.* A student who successfully completes the prescribed officer training course and who is mentally, morally, and physically qualified will be tendered appointment as second lieutenant, Reserve of the Air Force, for an indefinite term.

(1) Each graduate so appointed will be ordered into active military service as a career Reserve officer. He will serve at least four years, from the date he graduates from officer training, unless sooner relieved by orders of competent authority. In addition, each officer undergoing training after commissioning will incur an active duty service commitment for training.

(2) Each graduate appointment will be assigned direct to duty or will be given additional training appropriate to his qualifications and desires, as correlated with Air Force requirements. The type of additional training the graduate will pursue will be determined by Lackland Military Training Center in accordance with quotas established by Headquarters USAF.

(b) *Graduates who decline to accept appointment.* A graduate who declines to accept an appointment, as an officer Reserve of the Air Force, will be disposed of as an eliminated student. His appointment as an officer trainee, or status as an eliminated student, will be terminated as outlined in § 902.19 and he may be reassigned within the Air Force in accordance with § 902.20.

§ 902.23 Discharge.

When the student is commissioned in accordance with § 902.22, he will be discharged from his airman status. The commandant will prepare a discharge certificate, DD Form 214, and report of acceptance of appointment as a commissioned officer. The discharge certificate and DD Form 214 will not be delivered to the graduate until after he has taken the oath, AF Form 133, "Oath of Office," as a commissioned officer. The reason and authority for discharge will be entered on the report of separation.

§ 902.24 Assignment of graduates.

(a) The Commander, ATC, will assign graduates to pilot and navigator training in accordance with existing criteria. ATC will assign graduates to technical training schools or direct to duty according to instructions provided by Headquarters USAF.

(b) Graduates of flying training or technical training schools will incur at least four years' active duty service commitment for the type of training received. Officers desiring release from extended active duty will submit requests in accordance with existing directives.

(c) Graduates who are assigned direct to duty will incur a directed duty in the occupational field containing the AFS in which initially assigned.

§ 902.25 Exception authority.

The Secretary of the Air Force is authorized to make exceptions to the requirements prescribed in this part.

§ 902.26 Eligibility requirements; Air National Guard.

The applicant may either be an airman of the Air National Guard or a civilian, but in all cases must meet the eligibility requirements prescribed in § 902.6.

PART 903—AVIATION CADET TRAINING; NAVIGATOR

Sec.

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AUTHORITY: The provisions of this Part 903 issued under secs. 8012, 8257, 70A Stat. 488, 504 as amended; 10 U.S.C. 8012, 8257.

§ 903.1 Purpose of training program.

The aviation cadet navigator training program is designed to train qualified and selected young men to become navigators in the Air Force. It provides commissioned flying officers for active duty and enables the Air Force to maintain a sizable reserve in the lower age brackets.

§ 903.2 Definitions.

Terms used in this part are defined as follows:

(a) *Air Force Academy and aircrew examining center (AFAAEC).* An examining facility designated by Headquarters USAF, centrally located at the source of aviation cadet applicants and having adequate facilities for complete final examination of such applicants.

(b) *Air Force officer qualifying test (AFOQT).* A written examination designed to evaluate those aptitudes and interests which are important to flying training and commissioned officer performance and success.

(c) *Air Force precommission screening test (AFPST).* A written examination designed to screen precommission training applicants in order to eliminate those with little chance of qualifying on the much longer AFOQT.

(d) *Air National Guard applicants.* Enlisted personnel of the Air National Guard who apply for aviation cadet training under the quota provided the Air National Guard.

(e) *Aviation cadet.* A special and separate enlisted grade in the Regular Air Force as defined in Title 10 U.S.C. 8257.

(f) *Civilian applicant.* United States male citizen who is not in the active military service or a member of an Air Force Reserve unit. The term civilian includes members of other Armed Forces Reserve Forces and the Air National Guard.

(g) *Fully qualified applicant.* An applicant who has successfully completed all qualifying examinations and who has been furnished written notification of his eligibility to compete for selection by the Commander, Air Training Command (ATC).

(h) *Student.* Unless otherwise specified in this part, the term "student" used alone applies to both aviation cadet and aviation student.

(i) *Tentatively qualified applicant.* An applicant who has successfully completed the AFPST and the preliminary physical examinations.

(j) *United States.* The term "United States" means the Continental United States. When used with reference to citizenship requirements, it means the 50 States, the District of Columbia, Puerto Rico, the Panama Canal Zone, and Guam.

§ 903.3 Information sources.

Information concerning the aviation cadet navigator training program may be obtained from:

(a) Air Force recruiting offices.

(b) Air Force bases.

(c) Air National Guard or Air Force Reserve units.

§ 903.4 How training is conducted.

The Air Training Command procures, selects, trains, and commissions applicants for the training program. Applicants must undergo rigid examination before they are selected for aviation cadet training. After successfully completing the training course, students are commissioned as second lieutenant, Reserve of the Air Force, and are awarded the aeronautical rating of navigator. They are then assigned to Air Force units or sent as student officers to highly specialized advanced training courses.

§ 903.5 Basic eligibility requirements for training.

This section outlines the basic eligibility requirements and prerequisite qualifications an applicant must have at the time of application. The examining officer will reject all applicants who fail to meet the minimum eligibility requirements.

(a) *Age and citizenship.* Applicant must be a male citizen of the United States between the ages of 19 and 26½ at the time of application. Selected applicant must be enrolled in navigator training before his 27th birthday. An applicant under 21 must have the written consent of either parent or guardian in accordance with § 903.10. DD Form 373, "Consent, Declaration of Parent or Legal Guardian," is used for this purpose.

(b) *Marital status.* Applicant must be unmarried at the time of application and must agree in writing to remain unmarried for the duration of the training program. See item 24, AF Form 56, "Application for Commission, For Training Leading to a Commission, or For Flying Training in Officer Grade."

(c) *Air Force base or residence.* (1) A civilian applicant must be residing at time of application in any one of the 50 States, Puerto Rico, the Panama Canal Zone or the District of Columbia.

(d) *Education.* The minimum educational requirement is high school graduate level; however, some college is highly desirable. A civilian applicant must have completed high school as evidenced by a diploma or certificate of graduation. A prior service applicant not graduated from high school may apply if he has completed the entire battery of United States Armed Forces Institute (USAFI) high school level General Educational Development (GED) test with a minimum standard score of 35 on any one or with an average standard score of not less than 45 on all five tests as evidenced by a USAFI certificate. Documentary evidence of highest educational level achieved is required with the application.

(e) *Eligibility for enlistment.* Applicant must be eligible to enlist or reenlist in the Air Force under AFM 39–9 (Enlistment and Reenlistment in the Regular AF).

(f) *Moral character.* Applicant must be of good moral character.

(g) *Medical standards.* Applicant must meet medical standards.

(h) *Security background.* Applicant must meet the security requirements of AFR 35–62 (Security Program).

§ 903.6 Who is ineligible to apply.

The following persons are ineligible to apply for aviation cadet navigator training:

(a) A person who holds or has held the aeronautical rating of navigator or comparable rating in any of the Armed Forces of the United States.

(b) A person who has been eliminated from a course of training leading to commissioned officer status as stated in § 903.7.

(c) A person who: (1) Holds or has held a commission in one of the other Services.

(2) Holds a certificate of completion of a course leading to a commission in one of the other Services and the commission is to be granted at a later date.

(d) A person who has a record of conviction by any court-martial or civilian court, other than for a minor traffic violation, except that, if appropriate, a request for waiver of a minor offense not considered prejudicial to the performance of duty as an officer may be considered in accordance with § 903.8. A waiver may not be granted for an offense involving moral turpitude.

(e) A person who is a conscientious objector.

(f) A person whose entry or retention in the Air Force may not be clearly consistent with the interests of national security.

(g) A Selective Service System registrant who has been ordered to report for active military service with any one of the Services.

(h) A minor applicant (below age 21) without the written consent of either parent or guardian. See § 903.10.

(i) An applicant who failed to attain the minimum qualifying score on one of the prescribed written tests until one year has elapsed from the date of last written examination.

(j) A nonselected applicant until one year has elapsed from the date of his last application.

§ 903.7 Application policy for person disenrolled from an officer training program.

Upon entry into training the aviation cadet should be made fully aware of the policy contained in this section. A student eliminated from aviation cadet training for any reason mentioned in paragraph (a) of this section, should be advised in writing that he may be ineligible for any future training which may lead to a commission in the Air Force. This policy does not apply to a person disenrolled or eliminated from the basic phase of any ROTC course.

(a) *Policy.* (1) A person who resigns or is dismissed, disenrolled, or eliminated from officer training programs of the Army, Navy, or Air Force because of military inaptitude, indifference, undesirable traits of character, or for disciplinary reasons, may not be enrolled into an Air Force training program leading to commissioned officer status; nor is he eligible to apply for an Air Force commission. Superintendents of military academies and commanders of officer training programs may recommend waivers of this policy only in exceptional cases.

(2) A person eliminated for lack of academic progress or a breach of the Honor Code may apply for enrollment in Air Force training programs leading to commissioned officer status; however, his application must be referred to Hq USAF (AFPTR), Washington, D.C., 20330, for review and approval before his enrollment.

(3) An AFROTC cadet eliminated from a civilian-operated military institution by the educational authorities because of minor violations of the institution's Honor Code may apply for Air Force officer training programs; however, his application must also be referred to Hq USAF (AFPTR) as indicated in subparagraph (2) of this paragraph.

(b) *Procedures.* (1) The Superintendent of the Air Force Academy or the commander of an Air Force officer training program, upon the disenrollment or elimination of any student, prepares DD Form 785, "Record of Disenrollment from Officer Candidate-Type Training," with specific remarks concerning recommendations for further training. In cases involving breach of the Honor Code, section III of the form, will state "Minor Breach of Honor Code" or "Breach of Honor Code," with a concise explanation of the circumstances. This statement must be supported by an appropriate recommendation under section IV of the form.

(2) An activity responsible for the preliminary processing of applications for Air Force precommission training requests the DD Form 785 of any applicant who indicates he was disenrolled or eliminated from a course of training leading to a commission in any Service. The Superintendent of the Air Force Academy or the commander of an Air Force officer training school will provide the DD Form 785 when requested.

(3) If upon receipt of the DD Form 785, the authorities determine that the applicant was disenrolled or eliminated for any reason cited in paragraph (a) of this section, Headquarters USAF determines the eligibility. Such requests are sent through channels to Hq USAF (AFPTR) (see subdivision (*a*) of this subparagraph) and will include:

(i) Information on the type of training for which the current application is being made.

(ii) The applicant's AFOQT scores (applicant is given the AFOQT if scores are not available).

(iii) A copy of the DD Form 785, and

(iv) An official transcript of the applicant's academic record.

(*a*) Requests for determination of the eligibility for those applicants who were disenrolled or eliminated for any reason specified in paragraph (a)(1) of this section, will not be forwarded to Headquarters USAF except in those rare cases of sufficient merit to justify consideration.

(*b*) Determination of eligibility of persons disenrolled or eliminated from any officer training program for any reason not listed in paragraph (a) of this section, may be made by the preliminary processing activity after a review of the DD Form 785 in all cases and by the faculty board proceeding, when applicable.

(4) The recruiting detachment commander requests information on all civilian applicants. The request, forwarded as indicated below, will include:

(i) Name of the applicant.

(ii) Service number (if applicable).

(iii) Course or type of training.

(iv) Place and date of disenrollment or elimination, and

(v) Type of training for which application is being made.

(*a*) Send request to the Commandant, Professor of Air Science, or the Air Force supervisor of the appropriate school for the person disenrolled or eliminated from Air Force officer candidate-type training courses.

(*b*) Send request to Hq USAF (AF PTR) for the person disenrolled or eliminated from an officer training school conducted by a Service other than the Air Force. The request for DD Form 785 will include an official transcript of the applicant's academic record and his AFOQT scores. (Applicant is given AFOQT if scores are not available.)

§ 903.8 Waivers of minor offenses.

See also § 903.6(d).

(a) A civilian applicant may submit a request for waiver of a minor offense to any USAF recruiting detachment commander. The commander forwards the applicant's completed application (AF Form 56) and request for waiver to the Commander, ATC. Each request for waiver must contain complete information regarding the offense and circumstances involved and be considered on its own merits as substantiated by the following:

(1) Statement outlining nature of offense and a brief description of the details surrounding commission of the offense.

(2) Statement of maximum term of imprisonment by which punishable under the law tried.

(3) Date of offense and age at that time.

(4) Date of trial and sentence imposed.

(5) Date of release from confinement, if applicable, or date of unconditional release from parole, probation, or other form of supervision or restraint.

(6) Recommendation of investigating officer or recruiting officer and any other information pertinent to the case which will provide a sound basis for reaching a decision.

(7) Three letters of recommendation from reputable citizens (other than relatives), such as persons in the educational field, local government officials, clergymen, or professional people.

(b) A request for waiver is not authorized until the applicant is released from all restraint, probation, or parole for a minimum period of six months, or until six months has elapsed from the date of conviction, provided that no confinement, parole, or probation was imposed.

(c) A request for waiver must be completely processed before applicant can be processed at the AFAAEC.

§ 903.9 Administration of the AFPST for civilian applicants.

The USAF Recruiting Service is authorized to administer the AFPST at recruiting offices and on high school/college campuses if prior approval of the schools concerned is obtained. Before giving the AFPST, the recruiting detachment commander insures:

(a) That applicants are otherwise qualified to apply for aviation cadet navigator training.

(b) That the test is administered only by properly designated test control officers or test examiners.

(c) That the test examiners use the strict control necessary to handle, administer, and score the AFPST.

(d) In addition to the above:

(1) Before giving the AFPST, he insures that the appropriate blocks on AF Form 338 "Officer Testing Record Card," are completed in duplicate.

(2) Upon completion of the AFPST, he enters the test score on AF Form 338. Normally, the AFPST is given and scored before scheduling further processing.

(3) If an applicant does not attain a passing score on the AFPST, he sends the original copy of AF Form 338 to the Commander, ATC for statistical purposes and retains the duplicate at the recruiting detachment for a period of one year. No further processing is accomplished.

(4) In all cases where the civilian applicant is determined tentatively qualified on the AFPST and medical examinations, he initiates further processing in accordance with §§ 903.10, 903.12 (a) and (b).

§ 903.10 How to apply.

Application is made on AF Form 56, in duplicate. The applicant's attention will be directed to item 24 whereby he agrees that, on completion of the training course, he will accept an appointment as an officer, Reserve of the Air Force, in career Reserve status. Further, he agrees to remain on extended active duty as a commissioned officer with a minimum four-year active duty commitment unless sooner relieved by competent authority. If applicant is a minor, such agreement will be signed with the consent of either parent or guardian (DD Form 373). An officer or noncommissioned officer assigned to the USAF Recruiting Service may verify the signatures on both copies of the DD Form 373; however, the verifying official must be present when the form is signed by the applicant's parent or guardian. Each application must contain:

(a) Evidence of date of birth—a birth certificate or an authenticated copy thereof, or other documentary evidence. (See AFM 39-9.)

(b) Evidence of citizenship if the applicant is not a citizen by birth—a certificate, signed by an officer, notary public, or other person authorized by law to administer oaths, giving the following information:

I certify that I have this date seen the original certificate of naturalization number ------ (or certified copy of court order establishing citizenship) stating that ------ (Full ------ was admitted to United States name)
citizenship by the ---------- Court* of ---------- on ----------.
(District or county) (State) (Date)

NOTE: Facsimiles or copies, photographs or otherwise, will not be made of naturalization certificates under any circumstances. Such is a criminal offense under the Act of June 25, 1948, 62 Stat. 767, 18 U.S.C. 1426(h). (AFM 39-9 also applies.)

(c) An official transcript of college credits indicating the undergraduate or graduate degree awarded. A student enrolled in his senior year must provide a statement attesting to that fact, the date he is scheduled to graduate, and the degree to be awarded. The applicant is processed as a college graduate and the statement is used in place of the official transcript of college credits until the transcript is available after graduation.

(d) Evidence of having completed high school as outlined in § 903.5(d).

(e) A completed DD Form 98, "Armed Force Security Questionnaire." Each applicant is required to read AFR 35-62 before he completes the form. If, after proper instruction, he fails to complete the certificate in its entirety or completes it with qualifications or makes entries thereon which provide reason to believe that his appointment would not clearly be consistent with the interests of national security, he will be requested to complete six copies of DD Form 398, "Statement of Personal History," a copy of FD Form 258, "FBI Fingerprint Card," and a statement concerning the reason for qualifying DD Form 98. These forms, together with AF Form 56, are then sent to Hq USAF (AFPTR-PR-1) for appropriate action and decision.

(f) AF Form 338.

(g) A statement pertaining to the applicant, prepared as follows:

CERTIFICATE

Under the provisions of paragraph 32, AFM 39-9, May 2, 1960, I ----------
(First, middle, and
----------, certify that I am a
last name)
United States citizen and that I have not been present in any of the following countries after the period indicated by date, except for authorized presence under the auspices of the United States Government. I further certify that I do not now have a wife, parent, brother, sister, or offspring residing in the countries listed below: (List the countries currently identified in attachment 10, AFM 39-9).

(Signed) ----------
(Applicant's signature)

If an applicant has relatives in communist or communist-controlled countries (as defined in Paragraph 32, AFM 39–9) or has been present in any of the countries outlined in attachment 10, AFM 39–9, except under the auspices of the Federal Government, six copies of DD Form 398 and one copy of FD Form 258 will be forwarded together with the completed application to the Commander, ATC, for review and necessary action.

§ 903.11 How clothing is provided.

The aviation cadet selected from civilian status is provided clothing under the clothing monetary allowance system.

§ 903.12 Preliminary processing.

(a) *Procedures for all applicants.* Aviation cadet preliminary processing is administered locally by USAF recruiting detachment offices for civilian applicants. Civilian applicants who successfully complete the preliminary phase are considered tentatively qualified. Aviation cadet applicants who were former candidates for the Air Force Academy or former AFROTC students who have been administered the AFOQT are not required to take the AFPST, if the attained AFOQT scores were qualifying for the training requested and if these scores are available. Civilian applicants are scheduled for final processing at the nearest AFAAEC. Preliminary processing procedures include:

(1) Completion of AF Form 56, in duplicate.

(2) A check to insure that applicant meets the eligiblity requirements and has necessary supporting data, such as birth certificate and scholastic records.

(b) *Procedures for civilian applicant.* A civilian applicant normally applies at a USAF Recruiting Service office. In areas remote from a recruiting office, he may apply for aviation cadet training at the nearest Air Force base and be processed in accordance with subparagraph (2) of this paragraph.

(1) The USAF Recruiting Service, Armed Forces Examining Stations, and recruiting processing units are responsible for the preliminary processing of civilian applicant. The functions of procurement and processing are as follows:

(i) The USAF Recruiting Service is charged with the specific responsibility of stimulating interest in the aviation cadet navigator training program throughout civilian communities and educational centers. Air Force recruiters will insure that applicants meet eligibility requirements and have necessary supporting data, such as birth certificates and scholastic records. In addition, recruiting activities:

(*a*) Review each application for completeness and accuracy.

(*b*) Arrange for scheduling and transportation to the nearest AFAAEC for final processing if the applicant qualified on the AFPST, as stated in § 903.9; inform applicant of the date and hour to appear.

(*c*) Inform applicant who fails to attain the minimum qualifying score on the AFPST, or who is disqualified medically, why he was disqualified, and explain that he may reapply one year after the date of the past written examination, provided he is otherwise qualified.

(*d*) Inform applicant who successfully completes the processing that he is tentatively qualified for aviation cadet navigator training, but that a final determination of his eligibility for training cannot be made until he completes the final written and medical examinations and is notified in writing. The recruiting detachment commander makes a definite appointment for the tentatively qualified applicant to appear at the nearest AFAAEC. When scheduled, the applicant is furnished round-trip Government paid transportation, as authorized in paragraphs 5050 or 5051, Joint Travel Regulations. AF Form 56 (in duplicate), stapled to AF Form 338, together with a copy of school transcript or certified statement on the number of passing semester hours the applicant has attained are handcarried or mailed to the AFAAEC.

(*e*) Obtain and record the following information for each applicant processed and maintain for a period of one year:

(*1*) Name and address of applicant.

(*2*) Type of training (by choice) for which application was made.

(*3*) AFPST score and date tested.

(*4*) AFAAEC to which applicant was sent and the date.

(*5*) The notification of selection results as provided by the Commander, ATC.

(*6*) If disqualified for any reason, the specific cause.

NOTE: Under no circumstances will test scores be divulged to disqualified applicants.

(ii) USA and USAF recruiting processing units:

(*a*) Receive and process all aviation cadet applicants sent by the Air Force Recruiting Service and Air National Guard units.

(*b*) Record the AFPRT number, the last two digits of the year of publication, date tested, test scores attained on the AFPST, and preliminary qualification action on AF Form 338. The answer sheet of each applicant, tentatively qualified or disqualified, is forwarded in accordance with AFM 35–8 (AF Military Personnel Evaluation Manual).

(*c*) Insure that each applicant is familiar with information outlined in § 903.14(b)(3), then enlist selected applicants in accordance with AFM 39–9.

(2) When an eligible civilian from a remote area applies directly to an Air Force base, the Base Commander provides the initial processing and examinations. If the applicant is qualified, he arranges for scheduling and transportation to the nearest AFAAEC for final processing and return. Transportation, quarters, and meals are furnished civilian applicants at Government expense from the applicant's place of residence to the place of enlistment, as authorized by AFM 170–7, (USAF Account Structure and Codes), AFM 39–9, and the Joint Travel Regulations.

§ 903.13 Final processing of applicants at AFAAEC.

Each tentatively qualified civilian applicant referred to an AFAAEC for final processing is given the AFOQT, a complete medical examination for flying training, and any other examination directed by Headquarters USAF. An applicant who has previously qualified on the AFOQT will not be retested if official record scores are available. The written examinations are given and scored before scheduling the medical examination. An applicant will not be retested on the AFOQT to improve his available qualifying score. An applicant will not be retested under any circumstance on the AFOQT before one year from the date he was last tested.

§ 903.14 Information furnished applicants.

(a) *General.* Each applicant who successfully completes the final processing will, before his departure from the examining center, be advised that he is fully qualified to compete for selection, subject to administrative and medical review of his application by the Commander, ATC. His application is forwarded to the Commander, ATC, where it is reviewed and considered for selection on a competitive basis. Selection is based on the results of the examinations completed, and the applicant's over-all qualifications. The Commander, ATC, informs each applicant in writing of his status, as soon as possible, but not later than two weeks from date of final qualification. Applicants who are not selected within a period of six months from the date of final qualification are notified and their personal documents returned.

(b) *Fully qualified applicants.* (1) A draft eligible civilian applicant who is subsequently notified of his selection for aviation cadet navigator training is furnished a four-month draft deferment by the Commander, ATC. If an applicant is ordered to report to active military service by the Selective Service System before his deferment is issued or after his deferment expires, his application for aviation cadet training will be canceled.

(2) A report of medical examination (SF Form 88) must be accomplished within 90 days of the date of application for aviation cadet navigator training. At the time of entry into training, the report of medical examination must not be more than one year old. If the report of medical examination has expired, the selected applicant will be required to undergo a second medical examination. A fully qualified civilian applicant will be instructed to submit the two copies of the completed SF Form 88 furnished him to the enlisting agency.

(3) After notification of selection and class assignment, a selected civilian applicant will be required to enlist in the Regular Air Force for a period of two years in the grade authorized by current enlistment directives. The applicant is then appointed aviation cadet or aviation student immediately upon completion of enlistment proceedings. These additional requirements apply:

(i) At the time of enlistment, an applicant must be advised, and agree in writing that, if eliminated at any point in the training program, he will be required to remain on active duty and

complete the remainder of his initial two-year enlistment. The signed agreement will become an allied paper to his application for training. If a selected applicant who enlisted specifically for aviation cadet training is eliminated from such training, he will be retained in the service to complete his two-year enlistment contract, except as provided below.

(*a*) A selected applicant who had previously completed more than 6 months of continuous active service at the time of enlistment may request separation under paragraph 3h, AFR 39–14 (Separation for Convenience of the Government), if he is eliminated in the nonflying phase of training. If he is eliminated in the flying phase of training, he is not eligible to request separation under this authority.

(*b*) A selected applicant, with or without prior service, who is eliminated from any phase of the training program because of a medical defect that existed at the time of enlistment may request separation under paragraph 3h, AFR 39–14. However, he may elect to complete his enlistment contract if the defect is not disqualifying for general military service.

(*c*) An eliminee who elects to complete his enlistment contract will not be eligible to request separation at a later date because of his elimination from aviation cadet training.

(ii) A fully qualified but nonselected prior service aviation cadet applicant who desires to enlist for aviation cadet training in a grade higher than Airman Second Class (E–2), will be advised that his application will be canceled should he enlist in a higher grade than E–2 before he receives a letter of selection and class assignment. This precludes any prior service applicant with a critical skill from enlisting specifically for aviation cadet training in a grade higher than E–2.

(iii) A prior service applicant with a critical skill who enlists in a higher grade than E–2 for a specific assignment in that skill may later apply for aviation cadet training, if otherwise qualified. Additionally, a prior service applicant without a critical skill who is enlisted for technical training may later apply for aviation cadet training upon completion of the technical training course, if otherwise qualified.

(iv) In the letter of notification of selection and class assignment, the Commander, ATC, will advise the applicant of the earliest date on which he can be enlisted so that the applicant will not arrive at the base of training earlier than is necessary for the start of training.

(4) A fully qualified or selected applicant need not take any further action regarding his application unless requested to do so. However, the Commander, ATC (ATPOP–PA), must be informed of any changes affecting an applicant, such as:

(i) Enlistment in the Regular Air Force.

(ii) For those enlisted, advancement to noncommissioned officer grade which would permit assignment to training as an aviation student.

(iii) Change of address.

(iv) Modification of physical status which would be disqualifying for navigator training.

(v) Change of desire for training.

(vi) Receipt of notification from the Selective Service System ordering the applicant into the active military service of the United States.

(vii) Change in marital status.

(viii) Receipt of orders to enter the active military service. (Applies to a fully qualified or selected applicant who is a member of a Reserve Force of the United States other than the Air Force.)

(5) A civilian applicant guilty of offenses committed after the date he is determined fully qualified is processed under the provisions of AFM 39–9. Unit commanders will report conviction of offenses committed by airmen applicants to the Commander, ATC, for determination of eligibility for entrance into training.

(6) A student applicant enrolled in his senior year of college who applies for aviation cadet navigator training within 135 calendar days of his scheduled graduation date is processed as a college graduate. If he is determined fully qualified, he is requested to furnish a copy of his college transcript to the Commander, ATC, so that he may receive selection priority. Immediately upon receipt of the college transcript, the Commander, ATC, will furnish the applicant a tentative class assignment.

§ 903.15 Selection of applicants.

The Commander, ATC, selects fully qualified applicants on a competitive basis by applying the best qualified method of selection with emphasis given to formal educational achievement. Class assignment to training is made in the following order of priority:

(a) Applicant having a baccalaureate degree or higher.

(b) Applicant having completed two or more years of college (60 passing semester hours or 90 passing quarter hours), but less than a baccalaureate degree.

NOTE: To receive priority under paragraph (a) or (b) of this section, the school from which the education was attained must be listed in the latest issue of Part 3, "Higher Education," *Education Directory*, published by the Office of Education, Department of Health, Education, and Welfare, Washington, D.C., 20201. Copies of this publication may be obtained directly from that department.

(c) Other applicants, based on:

(1) Scores made on the AFOQT.

(2) Date of qualification.

(d) A person eliminated or disenrolled from a course of training normally leading to commissioned officer status in any of the military services of the United States, who has been determined eligible to apply for and enter aviation cadet navigator training, may not be appointed an officer in the Air Force until after the date of graduation of the class from which he was eliminated or disenrolled.

§ 903.16 Civilian applicants.

The Commander, ATC, furnishes draft deferments (DD Form 44, "Record of Military Status of Registrant"), letter of acceptance, and class assignment to selected applicants. (The applicant is furnished the duplicate copy of DD Form 44; the original is forwarded without delay to the local Selective Service Board of the applicant.) Applicant from the Air National Guard does not require a draft deferment. The letter of acceptance will authorize selected applicant to enlist in the Regular Air Force for a period of two years in accordance with AFM 39–9. After enlisting and being appointed an aviation cadet, the selected applicant is assigned as directed by the Commander, ATC.

§ 903.17 National Agency Check for selected applicants.

The Commander, ATC, initiates the National Agency Check for a civilian applicant.

§ 903.18 Reinstatement of former students.

A student previously eliminated from a flying training course conducted by one of the services may not be reinstated unless recommended for further aircrew training by the eliminating authority. A student previously eliminated from a course of navigator training by reason of flying deficiency may not be reinstated in the same course of training under any circumstance. A student applying for training under this section will not normally have the written evidence indicating recommendation for further flying training. Therefore, his completed application is forwarded through military channels to Hq USAF (AFPTR–F). It is then reviewed and a final determination made on the eligibility for reinstatement based upon recommendations of the eliminating authority.

(a) *Academic deficiency.* A student eliminated from training because of academic deficiency may not be reinstated at a later date unless recommended for further officer training by the faculty board. At least one year must elapse from the date of termination of student status before reapplication.

(b) *Military training deficiency.* A student eliminated from training because of military deficiency may not be reinstated.

(c) *Medical.* A student eliminated from training because of medical disqualification may reapply, if a later medical examination indicates that the previous disqualification has been corrected or no longer exists. However, the former student must meet all other requirements for appointment and be recommended for reinstatement by the eliminating authority.

(d) *Self-initiated elimination (SIE).* A student who initiates his own elimination from the training program may not be reinstated.

(e) *Emergency leave.* A student may be granted emergency leave under regulations issued by the Commander, ATC. In such instance, he will be held over for succeeding classes, if necessary. The length of time involved or the number of "holdovers" granted any one student is determined by the Commander, ATC.

(f) *Reinstated students.* The phase of training to which eligible students

may be reinstated is determined by the Commander, ATC.

§ 903.19 Appointment as an Officer, Reserve of the Air Force.

(a) *Tendering appointment.* A student who successfully completes the prescribed undergraduate flying training program and who is mentally, morally, and physically qualified is tendered appointment as second lieutenant, Reserve of the Air Force, for an indefinite term. Each graduate so appointed is ordered into active military service as a career reserve officer. He must serve for a minimum of four years from the date of graduation from undergraduate flying training unless sooner relieved by orders of competent authority. Each graduate is awarded the aeronautical rating of navigator and concurrently ordered to participate in regular and frequent flights. In addition, officers undergoing training after commissioning incur active duty service commitments for training as stated in AFR 36–51 (Active Duty Service Commitments for Career Officers and Procedure for Attaining Career Reserve Status).

(b) *Review.* Before graduation, the faculty board of the school reviews the qualifications of each student and prepares for each a report indicating that he is or is not mentally, morally, physically, and professionally qualified for appointment in the grade of second lieutenant, Reserve of the Air Force, with appropriate recommendations for appointment. The physical qualifications for appointment are determined by using any medical examination, sufficiently detailed for each determination prescribed in AFM 160–1 (Medical Examination), completed within 12 months immediately preceding the date of appointment as an officer, Reserve of the Air Force, unless reexamination is indicated because of a serious intervening illness or injury. If the recommendation is negative, appropriate elimination action is initiated.

(c) *Report.* The faculty board report of proceedings are forwarded to the Commander, ATC.

(d) *Graduates who decline to accept appointment.* A graduate who declines to accept an appointment as an officer, Reserve of the Air Force, is treated as an eliminated student. His appointment as an aviation cadet or status as an aviation student is terminated, and he is reassigned within the Air Force.

PART 904—DETAILING PERSONNEL TO NON-FEDERAL ESTABLISHMENTS FOR AVIATION INSTRUCTION

Sec.

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904.17 Maintenance and repair of property.
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AUTHORITY: The provisions of this Part 904 issued under secs. 8012, 9301–9304, 70A Stat. 488, 559; 10 U.S.C. 8012, 9301–9304.

§ 904.1 Purpose.

This part provides for aviation instruction of AF personnel in established civilian flying and technical schools.

§ 904.2 General.

No expense will be incurred by the United States except:

(a) The authorized pay of personnel detailed to the school,

(b) The cost of tuition at educational institutions, provided that the tuition for personnel during the period of their detail may be paid from any funds which may hereafter be made available for the foregoing expense,

(c) The cost of maintenance of personnel who may be detailed as supervisors or inspectors, and

(d) The cost of equipment assigned to supervisors or inspectors for official use.

§ 904.3 Definition.

The term "accredited aviation schools" means the flying schools or aviation mechanics schools selected by the Chief of Staff, USAF, in accordance with § 904.5.

§ 904.4 Agreement with institutions for instruction.

Services of schools will be procured by a written contract, made pursuant to 10 U.S.C. 2301 et seq. The contract will state the terms and conditions governing the furnishing of instruction. The cost of tuition for courses of instruction will be established by negotiation.

§ 904.5 How institutions will be selected.

The primary consideration will be the suitability of an institution to satisfactorily accomplish the training needed by the Air Force. The following factors, when applicable, will have special importance:

(a) Geographical location as it relates to the cost of government transportation, other expense, and the functioning of the system of supply and repair of Government property.

(b) Capacity for instruction of military personnel.

(c) Ability to maintain output of trained military personnel at a uniform rate.

(d) Ability to conduct the desired training without undue hazard to personnel or property.

(e) Conditions affecting health and safety of military personnel and the preservation and maintenance of Government property.

(f) Availability of suitable housing and messing facilities near the place of instruction.

(g) Adequacy of instructional facilities and methods, and quality of instruction.

(h) Adequacy of facilities for maintaining and preserving Government property.

(i) Provisions for maintaining the governmental supervisory and administrative establishment.

§ 904.6 Responsibilities of institutions.

Before assignment of military personnel for instruction, institutions will be required to agree to:

(a) Provide satisfactory housing and messing facilities, or make arrangements for them, at a reasonable cost to the military students.

(b) Provide satisfactory office and other space needed by Government administrative personnel in the performance of their duties.

(c) Comply with regulations prescribed by civil authorities to insure safety and any necessary supplementary instructions issued by the Chief of Staff, USAF, or his representatives.

(d) Relieve the Government from liability for any injury or damage to persons and property, except Government personnel.

(e) Keep complete records pertaining to the training and progress of each military student. These will be kept in the school registrar's office and be available to the Chief of Staff, USAF, or his representatives. Records should be kept as prescribed by the Chief of Staff, USAF.

(f) Give Government representatives access to account books and records at any time it is necessary for the Government to determine the actual cost of instruction.

(g) Open all facilities used for the training of military personnel for inspection by authorized Government representatives, at any time.

§ 904.7 Air Force training unit or detachment.

An AF Training Unit or Detachment will normally be required at institutions operating under this part to administer attached students and to provide the necessary liaison between the Air Force and the institution.

§ 904.8 Training unit or detachment commander's responsibilities.

The Unit or Detachment Commander will be the intermediary between the Air Force and the institution to which he is assigned in all matters pertaining to the instruction of military students. In addition to his duties of command, the Unit or Detachment Commander will:

(a) Determine the continued adequacy and suitability of contractors' facilities and methods as they apply to the instruction of military students.

(b) Keep informed on the progress of military students and pass upon the eligibility of any student to receive a certificate of graduation.

(c) Determine the proficiency of students in their assignments at any time during the course of instruction.

(d) Be responsible for the discipline of military students at all times.

(e) Suspend the instruction of any military student when necessary.

(f) Insure that no officer or enlisted man conducts or pursues any course of instruction at the school without proper authority of the Air Force.

(g) Furnish reports prescribed by the Chief of Staff, USAF. A special written report will be submitted covering any serious breach of contract or agreement on the part of any school or school representative, if adequate corrective action has not been taken within a reasonable length of time.

§ 904.9 Faculty board to act on termination of student status.

A board, composed of officers, will be appointed as directed by the Chief of Staff, USAF, at each institution designated to give aviation instruction to military personnel. This board will:

(a) Consider all cases referred to it by the AF Commander which involve the fitness of a student, for any reason, to continue instruction. The board will make recommendations relating to the disqualification, or reinstatement of any student.

(b) Comply with all instructions issued by the Chief of Staff, USAF.

§ 904.10 Conditions governing loan and sale of Government property.

(a) The AF is authorized to lend to accredited civilian aviation schools, to which military students are detailed, aircraft, aircraft parts, aeronautical equipment, and accessories on hand and belonging to the U.S. Government. This will be done at the discretion of the Secretary of the Air Force and under rules, regulations, and limitations prescribed by him. This authority applies only to articles required for instruction, training, and maintenance. (See 10 U.S.C. 9656.)

(b) All loans of Government property, described in paragraph (a) of this section, will be made subject to return upon request of the Government and without Government obligation to repair or replace the items in whole or in part unless otherwise specifically provided for by written agreement with the institution.

(c) The Secretary of the Air Force may sell aviation spares and accessories to civilian flying schools at which AF personnel are receiving flight training. Such schools must be under contract requiring them to repair and maintain aircraft provided them by the Air Force for flight training. (See 10 U.S.C. 9628.)

§ 904.11 Administrative provisions.

(a) Loans of Government property necessary for instruction will be made at the discretion of the Chief of Staff, USAF. He will also determine the quantity and type of property and the conditions under which loans will be made.

(b) Administrative details respecting the loan of Government property and its maintenance, including the extent to which an institution will be held responsible for replacement, repair, and overhaul will be determined by the Chief of Staff, USAF.

§ 904.12 Government property to be consigned to the AF Commander.

All Government-owned property required at institutions, regardless of the purpose for which intended, will be consigned to the AF Commander of the local AF training unit or detachment or a designated accountable officer. Property transactions between the AF Commander or the designated accountable officer and a school will be governed by paragraph (b) (1) of § 904.14. The Chief of Staff, USAF, will designate an accountable officer who will act for all Government-owned industrial property; the contract provision will provide that accountability therefor will be maintained in accordance with appropriate directives.

§ 904.13 Eligibility for loans of Government equipment.

(a) To be eligible to receive loans of Government equipment, the institution must be an accredited school as defined in § 904.3 and under contractual obligations with the Government for training AF personnel pursuant to this part.

(b) The detail of military personnel as students will not create any Government obligation to provide property for their instruction except as stated in formal agreements between the Government and the institution concerned.

§ 904.14 Requisitions, provisions, and accounting for loan of Government property.

(a) *Requisitions.* The institution will submit requests for the issue of Government property to the AF Commander or accountable officer. When authorized, he will issue the items to the institution or, if the items are not on hand, he will requisition them.

(b) *Provisions.* (1) Government property will be loaned to institutions by the AF Commander or the designated accountable officer on custody receipt. He will furnish credit custody receipts to the institution for property returned to the Air Force.

(2) The responsible head or corresponding executive of the institution will designate in writing a representative who will sign all property papers in the name of the school.

(3) Reports concerning the quantity and condition of Government property in its possession will be made by the institution as required by the Chief of Staff, USAF.

(4) The institution will make settlement for property held on custody receipt, within terms of the contract, as required by the AF Commander.

(c) *Accounting.* Property will be accounted for as prescribed in § 904.12.

§ 904.15 Transportation of property.

(a) Property authorized to be loaned under § 904.10 will be delivered to an institution through the AF Commander or the designated accountable officer by air, rail, or motor transportation as interests of the Government may require. Transportation will be at Government expense except for drayage (see paragraph (b) of this section). Property that requires rail, motor, or air transportation, including property in possession of the AF Commander or the designated accountable officer, will be returned by the institution, f.o.b. carrier's freight dock in the city nearest the institution concerned. Property will be packed, boxed, crated, and prepared for shipment to the destination determined by the Government, in accordance with AF specifications and carrier tariff requirements.

(b) All drayage of Government property to and from carrier's terminal in city nearest the institution concerned will be furnished by and at the expense of the institution. Bills of lading will be prepared accordingly.

§ 904.16 Lost, damaged, or destroyed property.

(a) The institution will not be liable for Government property which becomes unserviceable through fair wear and tear. Such property may be returned to the Government for replacement or credit, or should be repaired by the institution in accordance with its written agreement with the Government.

(b) The institution will not be liable for Government property lost, destroyed, or damaged by fire, flood, theft, tornado, aircraft accident, or other similar causes, without fault or neglect on the part of the institution, its servants, or employees. To determine whether such fault or neglect existed, a survey will be made by a surveying officer appointed in accordance with instructions issued by the Chief of Staff, USAF. Reports of survey for property in the possession of an institution will be prepared by the AF Commander.

(c) The institution will make good all other loss, damage, or deterioration of Government property for which an institution is responsible. The Comptroller of the Air Force, Hq. USAF, will take action to obtain reimbursement.

(d) The AF Commander or the designated accountable officer will report to the authorities of the institution in writing any facts, circumstances, or conditions which he believes to be prejudicial to the proper protection of Government property against loss through fire, flood, theft, tornado, accident, or similar causes. If proper corrective action is not taken by the institution it will be reported to the Chief of Staff, USAF. All such reports will be made available to surveying officers appointed under paragraph (b) of this section.

(e) The relief of institutions from liability in connection with property referred to in paragraph (b) of this section will in no way nullify any written agreement made by them with the Government for repairs and maintenance.

§ 904.17 Maintenance and repair of property.

(a) The institution will maintain property loaned to it in good repair and in the same condition as when received, usual wear, tear, and usage excepted, unless otherwise specifically provided for in a written agreement made with the institution.

(b) Authorized Government representatives will have free access to all Government property loaned to an institution to ascertain the condition of the

property and the manner in which it is being safeguarded, stored, maintained, and repaired.

(c) The Chief of Staff, USAF, may prescribe regulations that will facilitate proper inspection and maintenance of loaned Government property, when such regulations are consistent with the contractual obligations of the institution.

§ 904.18 Care and safekeeping of property.

(a) None of the property owned by the Government and furnished to an institution under this part will be removed by the institution from the continental limits of the United States. The property will not be used for any other purpose than the instruction of military personnel or the performance of formal contracts pertaining to such instruction unless specifically authorized by the Chief of Staff, USAF.

(b) Proper storage facilities will be furnished by the institution for all Government property in its possession and in the possession of the AF Commander. The place and manner of storage will satisfactorily provide for the care and safekeeping of Government property to prevent undue and avoidable deterioration.

(c) Government parts, accessories, and supplies will in no case be stored or mingled with similar articles that belong to the institution. The manner of storage will permit ready identification of the property that is loaned by the Government and facilitate its inventory when required.

SUBCHAPTER L—STANDARDS OF CONDUCT

PART 920—STANDARDS OF CONDUCT

Sec.

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920.13 Advisers, consultants, and temporary or intermittent employees.
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920.16 Summary of laws applicable to retired regular officers not on active duty.
920.17 Other related criminal laws applicable to all Department of Defense personnel.

AUTHORITY: The provisions of this Part 920 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012, except as otherwise noted.

§ 920.1 Scope of part.

This part prescribes the standards of conduct, relating to possible conflict between private interests and official duties, required of all Air Force personnel, regardless of assignment. Close adherence to these principles will insure compliance with the high ethical standards demanded of all public servants. It is in consonance with the President's Memorandum (28 F.R. 4539, May 7, 1963) concerning Special Government Employees and the Code of Ethics for Government Service contained in House Concurrent Resolution 175, 85th Congress, which applies to all Government personnel. It also includes standards of conduct based on the revisions of the conflict of interest laws enacted in 1962 (§§ 920.14 through 920.17).

§ 920.2 Code of Ethics for Government Service.

HOUSE CONCURRENT RESOLUTION 175

85TH CONGRESS, 2D SESSION

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including officeholders:

Code of Ethics for Government Service

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.
7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.
8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.
9. Expose corruption wherever discovered.
10. Uphold these principles, ever conscious that public office is a public trust.

§ 920.3 Definitions.

(a) "DOD personnel," as used in this part, unless the context indicates otherwise, means all civilian officers and employees of all the offices, agencies, and departments in the Department of Defense (including nonappropriated fund activities) and all officers and enlisted members of the Army, Navy, Air Force, and Marine Corps.

(b) "Air Force personnel," as used in this part, unless the context indicates otherwise, means all civilian officers and employees in the Department of the Air Force (including nonappropriated fund activities) and all officers and enlisted members of the Air Force.

(c) "Officers" includes both commissioned and warrant officers.

(d) "Reserve officers" includes both officers of the Air National Guard of the United States and Air Force Reserve.

§ 920.4 Applicability.

(a) This part applies to all Air Force personnel and activities.

(b) All Air Force personnel should be familiar with §§ 920.3 to 920.11 and those parts of §§ 920.12 and 920.13 which pertain to them.

§ 920.5 Ethical standards of conduct.

(a) *General.* Air Force personnel are bound to refrain from any private business or professional activity which would place them in a position where there is a conflict between their private interests and the public interests of the United States. Even though a technical conflict, as set forth in the statutes cited in this part, may not exist, Air Force personnel must avoid the appearance of such a conflict, from a public confidence point of view. Air Force personnel will not engage in any private activity which involves the use of, or the appearance of the use of, inside information gained through an Air Force position for private gain for themselves, their families or business associates. Air Force personnel must not use their official position in any way to induce, or give the appearance of inducing, another person to provide any financial benefit to themselves, or persons with whom they have family, business or financial ties.

(b) *Dealing with present and former military and civilian personnel.* Air Force personnel will not knowingly deal with military or civilian personnel, or former military or civilian personnel, of the Government, if such action will result in a violation of a statute or policy set forth in this part.

(c) *Presidential appointees.* Executive Order 10939 of May 5, 1961 (3 CFR, 1961 Supp., p. 107) prescribing special standards for Presidential appointees and others is self-explanatory.

§ 920.6 Bribery and graft.

In general, Air Force personnel may be subject to criminal penalties if they solicit, accept, or agree to accept anything of value in return for being influenced in performing or in refraining from performing an official act (see 18 U.S.C. 201).

§ 920.7 Gratuities.

(a) Air Force personnel will not accept any favor, gratuity, or entertainment directly or indirectly, from any person, firm, corporation, or other entity which has engaged, is engaged, or is endeavoring to engage in procurement activities or business transactions of any sort with any agency of the Department of Defense, where such favor, gratuity, or entertainment might affect, or might reasonably be interpreted as affecting, or give the appearance of affecting the objectivity and impartiality of such personnel in serving the Government. Favors, gratuities, or entertainment bestowed upon members of the immediate families of Air Force personnel are viewed in the same light as those bestowed upon Air Force personnel. Ac-

ceptance of entertainment, gifts, or favors (no matter how innocently tendered or received) from those who have or seek business dealings with the Department of Defense may be a source of embarrassment to the Department and to the personnel involved, may affect the objective judgment of the recipient, may impair public confidence in the integrity of business relations between the Department and industry, and must be discouraged.

(b) Procedures with respect to gifts from foreign governments are set forth in Parts 826 and 882 of this chapter.

§ 920.8 Prohibition of contributions or presents to superiors.

No officer, clerk, or employee in the United States Government employ shall at any time solicit contributions from other officers, clerks, or employees in the Government service for a gift or present to those in a superior official position; nor shall any such officials or clerical superiors receive any gift or present offered or presented to them as a contribution from persons in Government employ receiving a less salary than themselves; nor shall any officer or clerk make any donation as a gift or present to any official superior. Every person who violates this section shall be summarily discharged from the Government employ. (R.S. 1784; 5 U.S.C. 113.)

§ 920.9 Use of Government facilities, property, and manpower.

Government facilities, property, and manpower, such as stenographic and typing assistance, mimeograph services and chauffer services, shall be used only for official Government business. Sections 920.3 to 920.11 are not intended to preclude the use of Government facilities for activities which would further military-community relations provided they do not interfere with the military mission.

§ 920.10 Use of civilian and military titles in connection with commercial enterprises.

(a) All civilian personnel, and military personnel on active duty, are prohibited from using their civilian and military titles or positions in connection with any commercial enterprise or in endorsing any commercial product. For the purpose of this section, the term "commercial enterprise" includes any organization other than a nonprofit or charitable organization which is exempt from Federal income taxation because it comes within subsection (1), (3), (4), (6), (7), (8), (9), (10), (11), (13), or (14) of section 501(c) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 501). No civilian person and no military person on extended active duty will use his civilian or military title or position in connection with any organization unless he first determines from the organization involved that it is exempt from taxation under one of the above subsections of the Internal Revenue Code. The foregoing shall not be deemed to preclude publication by such personnel of books or articles which identify them as author by reference to their military or civilian title or position, provided that publication of such material has been cleared under existing Air Force procedures.

(b) All retired military personnel and all members of Reserve components, not on active duty, are permitted to use their military titles in connection with commercial enterprises. Such use of military titles shall in no way cast discredit on the Air Force or the Department of Defense. Such use is prohibited in connection with commercial enterprises when such use, with or without the intent to mislead, gives rise to any appearance of sponsorship, sanction, endorsement, or approval by Department of the Air Force or the Department of Defense. The Department of the Air Force may restrict retired personnel and members of reserve components not on active duty, from using their military titles in connection with public appearances in oversea areas.

§ 920.11 Outside employment of Air Force personnel.

(a) Air Force personnel shall not engage in private outside employment with or without compensation, which:

(1) Interferes with the performance of their Government duties,

(2) May reasonably be expected to bring discredit upon the Government or the agency concerned, or

(3) Is inconsistent with § 920.5(a).

(b) No enlisted member of the Air Force on active duty may be ordered or permitted to leave his post to engage in a civilian pursuit or business, or a performance in civil life, for emolument, hire, or otherwise, if the pursuit, business, or performance interferes with the customary or regular employment of local civilians in their art, trade, or profession. (10 U.S.C. 8635)

§ 920.12 Conflict of interest laws.

(a) *Full-time officers and employees—*(1) *Definition.* The term "full-time officer or employee" includes all civilian officers and employees, and all military officers on active duty, except those who are "special Government employees" (see paragraph (b) of this section). It does not include enlisted personnel.

(2) *Prohibitions.* Section 920.14 contains a discussion of these criminal laws and the exemptions therefrom. In general, a full-time officer or employee is subject to the following major prohibitions:

(i) He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (see 18 U.S.C. 203 and 205).

(ii) He may not receive any salary, or supplementation of his Government salary, from a private source as compensation for his services to the Government (see 18 U.S.C. 209).

(iii) He may not participate[1] in his Governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment, has a financial interest (see 18 U.S.C. 208). Instead of participating in such a matter, he must promptly disqualify himself in accordance with subparagraph (4) of this paragraph, except as provided in subparagraph (3) of this paragraph.

(3) *Nondisqualifying financial interest.* A full-time officer or employee need not disqualify himself under subparagraph (2)(iii) of this paragraph, if the financial holdings are in shares of a widely-held diversified mutual fund or regulated investment company.

(i) The indirect interests in business entities which the holder of shares in a widely-held diversified mutual fund or regulated investment company derives from ownership by the fund or investment company of stocks in business entities is hereby exempted from the provisions of 18 U.S.C. 208(a), in accordance with the provisions of 18 U.S.C. 208(b)(2) as being too remote or inconsequential to affect the integrity of the Government officers' or employees' services.

(4) *Disqualification procedures.* (i) In any case where a full-time officer or employee must disqualify himself under subparagraph (2)(iii) of this paragraph, he will promptly notify his superior thereof and make a full disclosure of the financial interest. The superior will thereupon relieve him from his duty and responsibility in the matter, unless the Government official responsible for his appointment makes a written advance determination that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from the officer or the employee. The original copy of such written determination will be made a matter of permanent record and will become a part of the Official Civilian Personnel Folder or the Military Officer Unit Personnel Record Group, as appropriate.

(ii) In the case of a military officer or a civilian employee, the "official responsible for his appointment" shall, for the purpose of this paragraph (a), be his superior, or such other person as the commander may designate, who is a full-time officer or employee serving in the grade of major, or GS–12, or higher. The designation, authorized to be made by commanders in the previous sentence, may be made by directors or heads of comparable offices in the Office of the Secretary of the Air Force and in Hq USAF for personnel assigned to their respective offices.

(iii) In addition, where a superior thinks anyone responsible to him may have a disqualifying interest, he will discuss the matter with that person and, if he finds such an interest does exist, he will relieve the person of duty and responsibility in the particular matter.

(iv) In cases of disqualification under this paragraph (a), the matter will be reassigned for decision and action to someone else who is not subordinate to the disqualified person.

(b) *Special Government employees—*(1) *Definition.* The term "special Gov-

[1] A person may "participate" through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise.

ernment employee" includes an officer or employee who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis (see 18 U.S.C. 202). The term also includes a Reserve officer while on active duty solely for training for any length of time, one who is serving on active duty involuntarily for any length of time, and one who is serving voluntarily on extended active duty for 130 days or less. It does not include enlisted personnel.

(2) *Prohibitions.* The President's Memorandum (28 F.R. 4539, May 7, 1963) contains a detailed discussion of these criminal laws. In general, a special Government employee is subject to the following major prohibitions:

(i) He may not, except in the discharge of his official duties, represent anyone else:

(*a*) Before a court or Government agency in a matter in which the United States is a party or has an interest and in which he has at any time participated personally and substantially for the Government (see 18 U.S.C. 203 and 205).

(*b*) In a matter pending before the agency he serves unless he has served there no more than 60 days during the past 365 (see 18 U.S.C. 203 and 205). He is bound by this restraint despite the fact that the matter is not one in which he has ever participated personally and substantially.

The restrictions described in this subdivision apply to both paid and unpaid representation of another.

(ii) He may not participate in his Governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment, has a financial interest (see 18 U.S.C. 208). Instead of participating in such a matter, he must promptly disqualify himself in accordance with paragraph (a)(4) of this section, except as provided in paragraph (a)(3) of this section.

(iii) After his Government employment has ended, he is subject to the prohibitions in paragraph (c)(2) of this section as a "former employee" (see 18 U.S.C. 207).

(c) *Former officers or employees*—(1) *Definition.* The term "former officer or employee" includes those full-time civilian officers or employees and former military officers who have left Government service, special Government employees who have left Government service, retired Regular officers, and Reserve officers released from active duty. It does not include enlisted personnel.

(2) *Prohibited activities.* Section 920.15 contains a more detailed discussion of the criminal law. In general, a former officer or employee is subject to the following major prohibitions:

(i) He may not, at any time after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (see 18 U.S.C. 207(a)).

(ii) He may not, for one year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government service (see 18 U.S.C. 202(b) and 207(b)). This temporary restraint, of course, gives way to the permanent restriction described in subdivision (i) of this subparagraph, if the matter is one in which he participated personally and substantially.

(d) *Retired Regular officers*—(1) *Prohibitions.* Section 920.16 contains a summary of the laws applicable to retired Regular officers. In general, a retired Regular Air Force officer is subject to the following major prohibitions:

(i) As an officer whose "employment has ceased," he may not engage in the prohibited activities listed in paragraph (c) of this section (see 18 U.S.C. 207).

(ii) He may not, at any time, assist in prosecuting a claim against the United States if he worked on that claim while on active duty (see 18 U.S.C. 283).

(iii) He may not, within two years after his retirement, assist in prosecuting a claim which involves the Department in whose service he holds a retired status (see 18 U.S.C. 283).

(iv) He may not, at any time, sell anything to the Department in whose service he holds a retired status (see 18 U.S.C. 281).

(v) He may not, within three years after retirement, sell supplies or war materials to any agency of the Department of Defense, the Coast Guard, the Coast and Geodetic Survey, or the Public Health Service (see 37 U.S.C. 801(c), as amended October 9, 1962, Public Law 87–777, formerly 5 U.S.C. 59(c)). (See definition of "Selling," § 920.16.)

(2) *Required statement of employment.* (i) Each Regular retired Air Force officer will file the following "Statement of Employment," DD Form 1357,[2] with the Retired Pay Division, Directorate of Allotments and Retired Pay, Air Force Accounting and Finance Center (AR), 3800 York Street, Denver, Colorado, 80205. Each Regular officer retiring hereafter will file this Statement within 30 days after retirement. Whenever the information in the Statement is no longer accurate, each such officer shall file a new DD Form 1357; however, a new Statement need not be filed solely because of the revision of the DD Form 1357.

(ii) The Air Force Accounting and Finance Center will review the "Statement of Employment" to assure compliance with applicable statutes and regulations. Where it appears that a possible violation of a policy or statute, as set forth in this part may be involved, the Retired member may be requested to furnish clarifying information.

(iii) The Retired member will request additional copies of DD Form 1357 from AFAFC (AR), 3800 York Street, Denver, Colorado, 80205.

[2] Form filed as part of original document.

(e) *Officers of the Reserve components.* (1) A Reserve officer who is voluntarily serving a period of extended active duty in excess of 130 days is a full-time Government officer, and paragraph (a) of this section applies to him. Exception: Any Reserve who, before being ordered to active duty, was receiving compensation from any person may, while he is on that duty, receive compensation from that person (see 10 U.S.C. 1033).

(2) A Reserve officer who is serving on active duty involuntarily for any length of time, and a Reserve officer who is voluntarily serving on extended active duty for 130 days or less, is a "special Government employee," and paragraph (b) of this section applies to him.

(3) A Reserve officer (unless otherwise a full-time officer or employee of the United States) who is on active duty solely for training for any length of time is a "special Government employee," and paragraph (b) of this section applies to him.

(4) When he is released from active duty, a Reserve officer described in subparagraph (1), (2), or (3) of this paragraph, is a "former officer," and paragraph (c) of this section applies to him.

(5) Membership in a Reserve component of the Armed Forces or in the National Guard does not, in itself, prevent a person from practicing his civilian profession or occupation before or in connection with any department (see 5 U.S.C. 30r (c), (d)).

(6) An officer of a Reserve component, whether in the Ready, Standby, or Retired Reserve, who is not on active duty is not, solely because of his status as a Reserve, considered to be an officer or employee of the United States for the purpose of bringing him within the prohibitions summarized in paragraphs (a), (b), or (c) of this section (see 5 U.S.C. 30r (c), (d)).

(7) Receipt of retired pay by a Reserve or a former Reserve does not, in itself, make him an officer or employee or a former officer or employee for the purpose of bringing him within the prohibitions summarized in paragraphs (a), (b), or (c) of this section. Paragraph (d) of this section does not apply to a retired Reserve.

§ 920.13 Advisers, consultants, and temporary or intermittent employees.

(a) *Applicability.* This section implements the President's Memorandum of May 2, 1963, titled "Preventing Conflicts of Interest on the Part of Special Government Employees" (28 F.R. 4539, May 7, 1963). It will be noted that, while the Memorandum relates to all special Government employees, its primary thrust is to advisers and consultants.

(1) The President's Memorandum and this section apply to the following categories of personnel, including members of advisory committees established under AFR 25–7, "Air Force Committee Management":

(i) Advisers and consultants (including experts) employed under AFR 40–921, "Employment of Experts and Consultants" (publication pending); AFR

160–97, "Civilian National Consultants"; or AFR 25–4, "Expert and Consultant Services."

(ii) Temporary or intermittent employees appointed under regular Civil Service appointment procedures; and

(iii) Industry or other representatives (including representatives of labor and agriculture) who are not appointed as Air Force employees, but who are requested to appear before an activity of the Air Force to present the views of a non-governmental organization.

(2) The following categories of personnel are not considered "advisers and consultants" within the meaning of this section when performing the specific services listed in subdivisions (i) through (v) of this subparagraph, and they are not required to file the "Statement of Employment and Financial Interests" referred to in paragraph (b) (2) (i) (*b*) of this section. The other provisions of this part, and the laws referred to therein, apply to such employees either as full-time or as special Government employees.

(i) Physicians, dentists, and allied medical specialists performing care and service to patients.

(ii) Veterinarians providing veterinary service to animals.

(iii) Lecturers participating in educational activities.

(iv) Chaplains performing religious services.

(v) Individuals of national prominence in the motion picture and television fields who are utilized as narrators or actors in motion picture or television productions produced by the Department of Defense.

(b) *Specific responsibilities* — (1) *Over-all responsibility.* Each commander is responsible for implementing all of the provisions of the President's Memorandum of May 2, 1963, pertaining to his command.

(2) *Advisers and consultants.* (i) Each adviser and consultant employed, or to be employed, will:

(*a*) Familiarize himself and comply with the President's Memorandum of May 2, 1963, and those parts of this part which pertain to him.

(*b*) Complete and file with the civilian personnel office of the employing activity the following "Statement of Employment and Financial Interests" prior to his appointment or reappointment, and file with that office a revised Statement whenever the one previously submitted by him is no longer accurate. He will report on the Statement his Government employment (including his anticipated employment with the Air Force and with any other Government agencies) and his private employments, as prescribed in the President's Memorandum of May 2, 1963, and his financial interests. He must list all of his investments and other financial interests, such as a pension; retirement; group life, health, or accident insurance; and profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer. He is not required to list precise amounts of investments.

S-A-M-P-L-E

STATEMENT OF EMPLOYMENT AND FINANCIAL INTERESTS

1. *Private Employment*

(Name of all companies, firms, State or local governmental organizations, research organizations, and educational or other institutions for which you are serving as employee, officer, member, director, adviser or consultant. Also list any organization with which you are negotiating or have an arrangement concerning prospective employment.)

2. *Federal Government Employment*

a. I anticipate I will be employed by the U.S. Government during the 365 days following _____ (date of proposed appointment), as follows:

Employing Agency: _____
Estimated Days of Service: _____

b. During the 365 days prior to _____ (date of proposed appointment) I will have been employed by (Army), (Navy), (Air Force), (OSD) as follows:

Employing Agency: _____
Days Served: _____

3. *Financial Interests*

(Names of *all* companies, firms, research institutions or other organizations in which you, or to your knowledge, your spouse, or your children, own securities or other financial interests—precise amounts of investments need not be revealed.)

Name _____
Address _____
Date _____

(ii) The central civilian personnel office of the employing activity will:

(*a*) Arrange to give each prospective adviser or consultant, and each adviser or consultant now employed, a copy of this part, to invite his attention especially to this section and the President's Memorandum of May 2, 1963, and to advise him of the name of the legal office from which he should seek legal assistance should he have any question relating to conflict of interest.

(*b*) Prior to appointment or reappointment, arrange to secure a completed "Statement of Employment and Financial Interests" or a revised Statement as applicable.

(*c*) Prior to appointment or reappointment, arrange to furnish the operating official who will supervise the adviser or consultant, and the legal office, copies of the Statement and to obtain their comments thereon (see subdivisions (iii) and (iv) of this subparagraph).

(*d*) Maintain the original "Statement of Employment and Financial Interests," and other papers relating thereto as prescribed in AFM 40–2 (Civilian Personnel Actions, Records, Files and Reports). The Statement and related papers are official personnel records and must be treated accordingly.

(*e*) Determine whether the adviser or consultant is a special or full-time employee in accordance with the procedure set forth in paragraphs (a) through (g) of the President's Memorandum of May 2, 1963 (28 F.R. 4541–4542, May 7, 1963). Any service expected to be rendered with other departments or agencies during the period will be taken into account in making this determination. This determination will be based on the Statement filed by the individual.

(*f*) Record, as appropriate, one of the following in the remarks section of the SF 50, "Notification of Personnel Action":

(*1*) "Subject to conflict of interest laws and regulations as a special Government employee."

(*2*) "Subject to conflict of interest laws and regulations as a regular Government employee."

(*g*) Determine if the 60-day rule in § 920.12(b) (2) (i) (*b*) applies and advise the individual in writing of this determination. This determination is made in accordance with paragraphs (f) and (g) of the President's Memorandum of May 2, 1963 (28 F.R. 4541–4542, May 7, 1963), based on the Statement filed by the individual.

(iii) The official who supervises, and who will supervise, an adviser or consultant, will:

(*a*) Familiarize himself and comply with all of the provisions of the President's Memorandum of May 2, 1963, and the provisions of this part, pertaining to him and to advisers and consultants.

(*b*) Review each "Statement of Employment and Financial Interests," and each revised Statement and furnish, for use by the legal office and for filing in the central civilian personnel office, a statement whether, during the course of his employment, the adviser or consultant will participate in any matter the outcome of which would have a direct and predictable effect on any of the non-Governmental organizations listed in paragraphs 1 and 3 of his "Statement of Employment and Financial Interests." In an appropriate case, he will consult with the legal office before preparing this Statement.

(iv) *Legal office.* The legal office providing legal assistance to the commander of the employing activity, will:

(*a*) Furnish legal advice and assistance to the central civilian personnel office, the supervisors, and advisers and consultants, on all matters relating to conflict of interest.

(*b*) Review each "Statement of Employment and Financial Interests" and each revised Statement together with the report of the supervisor (subdivision (iii) (*b*) of this subparagraph) and furnish a written opinion thereon to the central civilian personnel office for filing.

(v) *The Directorate of Civilian Personnel, Hq USAF.* The directorate will arrange for furnishing information requested by other agencies on advisers and consultants employed within the Air Force. Requests from other agencies are directed to Hq USAF (AFPCPAA), Washington, D.C., 20330.

(3) *Temporary or intermittent employees.* The central civilian personnel office will:

(i) Brief each individual employed on a temporary or intermittent appointment.

(ii) Make the determinations, as set forth in paragraphs (a) through (g) of the President's Memorandum of May 2, 1963 (28 F.R. 4541–4542, May 7, 1963),

on the basis of personnel records, and advise the employee of these determinations.

(iii) Record one of the appropriate remarks on the SF 50 as provided in subparagraph (2)(ii)(*b*) of this paragraph.

(4) *Industry or other representatives.* (i) Each industry, labor, agriculture, or other representative who is requested to appear before an activity of the Air Force to present the views of a non-Governmental organization or group which he represents will be familiar, and comply, with those provisions of the President's Memorandum of May 2, 1963, pertaining to him.

(ii) The official who requests or receives the views of any industry or other representative (28 F.R. 4545, May 7, 1963) will:

(*a*) Furnish the representative a copy of this part and invite his attention to the President's Memorandum of May 2, 1963.

(*b*) Be familiar and comply with that Memorandum.

§ 920.14 Digest of conflict of interest laws.

New laws applicable to full-time officers and employees (these laws are set out in full in the Appendix to the President's Memorandum (28 F.R. 4539, May 7, 1963)):

(a) *18 U.S.C. 203.* (1) Section 203(a) in general prohibits an officer or employee of the United States in any branch or agency of the Government from soliciting or receiving compensation for services rendered on behalf of another person before a Government department or agency in relation to any particular matter in which the United States is a party or has a direct and substantial interest. Section 203(a) does not preclude compensation for services rendered on behalf of another in court.

(2) Section 203(b) makes it unlawful for anyone to offer or pay compensation, the solicitation or receipt of which is barred by section 203(a).

(b) *18 U.S.C. 205.* (1) Section 205 contains two major prohibitions. The first prevents an officer or employee of the United States in any branch or agency of the Government from acting as agent or attorney for prosecuting any claim against the United States, including a claim in court, whether for compensation or not. It also prevents him from receiving a gratuity, or a share or interest in any such claim, for assistance in the prosecution thereof.

(2) The second main prohibition of section 205 is concerned with more than claims. It precludes an officer or employee of the Government from acting as agent or attorney for anyone else before a department, agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

(3) 18 U.S.C. 203 and 205 overlap. The following are the few important differences between sections 203 and 205 as they apply to officers and employees of the Government:

(i) Section 203 bars services rendered for compensation solicited or received, but not those rendered without such compensation; section 205 bars both kinds of services.

(ii) Section 203 bars services rendered before the departments and agencies but not services rendered in court; section 205 bars both.

It should be noted, however, that for all practical purposes section 205 completely overshadows section 203.

(4) Exemptions:

(i) Section 205 permits a Government officer or employee to represent another person, without compensation, in a disciplinary, loyalty or other personnel matter. Another provision declares that the section does not prevent an officer or employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

(ii) Section 205 also authorizes a limited waiver of its restrictions and those of section 203 for the benefit of an officer or employee, including a special Government employee, who represents his own parents, spouse or child, or a person or estate he serves as a fiduciary. The waiver is available to the officer or employee, whether acting for any such person with or without compensation, but only if approved by the official making appointments to his position. In no event does the waiver extend to his representation of any such person in matters in which he has participated personally and substantially or which, even in the absence of such participation, are the subject of his official responsibility.

(iii) Finally, section 205 gives the head of a department or agency the power, notwithstanding any applicable restrictions in its provisions or those of section 203, to allow a special Government employee to represent his regular employer or other outside organization in the performance of work under a Government grant or contract. However, this action is open to the department or agency head only upon his certification, published in the FEDERAL REGISTER, that the national interest requires it.

(c) *18 U.S.C. 208.* (1) Section 208 forbids certain actions by an officer or employee of the Government in his role as a servant or representative of the Government. Its thrust is therefore to be distinguished from that of 18 U.S.C. 203 and 205 which forbid certain actions in his capacity as a representative of persons outside the Government.

(2) Section 208(a) in substance requires an officer or employee of the executive branch, including a special Government employee, to refrain from participating as such in any matter in which, to his knowledge, he, his spouse, minor child or partner has a financial interest. He must also remove himself from a matter in which a business or nonprofit organization with which he is connected or is seeking employment has a financial interest. Under this section 208, a "particular matter" may be a matter less concrete than an actual contract, because the concept of a "particular matter involving a specific party or parties" is not used here as in other U.S.C. sections. However, a "particular matter" is something more specific than rule making or abstract scientific principles. The test for determining whether the action of the individual involves a particular matter in which he (or the other enumerated parties) has a financial interest is whether he might reasonably anticipate that his action or the decision in which he participates or with respect to which he advises, will have a direct and predictable effect upon a financial interest of himself, his spouse, minor child, partner or organization with which he is connected or seeking employment.

(3) Section 208(b) permits the agency of an officer or employee to grant him an ad hoc exemption from section 208(a) if the outside financial interest in a matter is deemed not substantial enough to have an effect on the integrity of his services. Financial interests of this kind may also be made nondisqualifying by a general regulation published in the FEDERAL REGISTER.

(d) *18 U.S.C. 209.* (1) Section 209(a) prevents an officer or employee of the executive branch, an independent agency or the District of Columbia from receiving, and anyone from paying him, any salary or supplementation of salary from a private source as compensation for his services to the Government.

(2) Section 209(b) specifically authorizes an officer or employee covered by section 209(a) to continue his participation in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer.

(3) Section 209(c) provides that section 209 does not apply to a special Government employee or to anyone serving the Government without compensation, whether or not he is a special Government employee.

(4) Section 209(d) provides that section 209 does not prohibit the payment or acceptance of contributions, awards or other expenses under the terms of the Government Employees Training Act.

§ 920.15 New law applicable to former officers and employees.

(a) 18 U.S.C. 207 (this law is set out in full in the Appendix to the President's Memorandum (28 F.R. 4539, May 7, 1963)):

(1) Section 207 (a) and (b) contains post-employment prohibitions applicable to persons who have ended service as officers or employees of the executive branch. The prohibitions for persons who have served as special Government employees are the same as for persons who have performed regular duties.

(2) The restraint of section 207(a) is against a former officer or employee's acting as agent or attorney for anyone other than the United States in connection with certain matters, whether pending in the courts or elsewhere. The matters are those involving a specific party or parties in which the United States is one of the parties or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while holding a Government position.

(3) Section 207(b) sets forth a one-year post-employment prohibition in re-

spect of those matters which were within the area of official responsibility of a former officer or employee at any time during the last year of his service but which do not come within section 207(a) because he did not participate in them personally and substantially. More particularly, the prohibition of section 207 (b) prevents his personal appearance in such matters before a court or a department or agency of the Government as agent or attorney for anyone other than the United States. Where, in the year prior to the end of his service, a former officer or employee has changed areas of responsibility by transferring from one agency to another, the period of his post-employment ineligibility as to matters in a particular area ends one year after his responsibility for that area ends. For example, if an individual transfers from a supervisory position in the Internal Revenue Service to a supervisory position in the DOD and leaves DOD for private employment nine months later, he will be free of the restriction of section 207(b) in three months insofar as Internal Revenue matters are concerned. He will of course be bound by it for a year in respect of DOD matters.

(4) The proviso following section 207 (a) and (b) authorizes a department head, notwithstanding anything to the contrary in their provisions, to permit a former officer or employee with outstanding scientific qualifications to act as attorney or agent or appear personally before the department for another in a matter in a scientific field. This authority may be exercised by the department head upon a "national interest" certification published in the FEDERAL REGISTER.

(5) Section 207(a) describes the activities it forbids as being in connection with "particular matters involving a specific party or parties" in which the former officer or employee had participated. Section 207(b) relates to matters which were under his official responsibility. The language of both does not include general rule-making, the formulation of general policy or standards, or other similar matters. Thus, past participation in or official responsibility for a matter of this kind on behalf of the Government does not disqualify a former employee from representing another person in a proceeding which is governed by the rule or other result of such matter. Similarly, in the scientific field past participation in discussion of scientific or engineering concepts, the feasibility of scientific or technical accomplishments or proposed Government programs in early stages prior to the formulation of contract or a contract proposal where specific parties become involved in a matter, does not disqualify the former employee from representing his company with respect to a contract entered into at a later time even though the same general scientific matters may be involved in such a contract.

(6) Section 207(a) bars permanently a greater variety of actions than section 207(b) bars temporarily. The conduct made unlawful by the former is any action as agent or attorney, while that made unlawful by the latter is a personal appearance as agent or attorney. However, neither subsection precludes post-employment activities which may fairly be characterized as no more than aiding or assisting another. An individual who has left the department to accept private employment may, for example, immediately perform technical work in his company's plant in relation to a contract for which he had official responsibility—or, for that matter, in relation to one he helped the agency negotiate. On the other hand, he is forbidden for a year, in the first case, to appear personally before the department as the agent or attorney of his company in connection with a dispute over the terms of the contract. He may at no time appear personally before the department or otherwise act as agent or attorney for his company in such dispute if he helped negotiate the contract. Under both subsections the disability is personal, and neither section would prevent the former officer or employee from becoming the president or other officer of a corporation which has contracts with the Government, so long as such former officer or employee does not personally act as the agent or attorney of the company in dealing with the matters covered under subsection (a) and (b).

§ 920.16 Summary of laws applicable to retired regular officers not on active duty.

(a) *Prohibited activities*—(1) *Matters connected with former duties or official responsibilities.* A retired regular officer not on active duty is considered to be a "former officer" for the purposes of 18 U.S.C. 207 and therefore, the prohibitions discussed in §§ 920.12(c) and 920.15 apply to him.

(2) *Claims.* A retired regular officer of the armed forces may not, within two years of his retirement, act as agent or attorney for prosecuting any claim against the Government, or assist in the prosecution of such a claim or receive any gratuity or any share of or interest in such claim in consideration for having assisted in the prosecution of such a claim, if such claim involves the department in whose service he holds a retired status. Nor may a regular retired officer at any time act as an agent or attorney for prosecuting any claim aganist the Government or assist in prosecution of such claim, or receive any gratuity or any share of or interest in such a claim in consideration for having assisted in the prosecution of such claim, if such claim involves any subject matter with which he was directly connected while on active duty (see 18 U.S.C. 283).

(3) *Selling.* (i) A retired regular officer is prohibited, at all times, from receiving or agreeing to receive any compensation for representing any person in the sale of anything to the Government through the department in whose service he holds a retired status (see 18 U.S.C. 281).

(ii) 37 U.S.C. 801(c) as amended October 9, 1962, Public Law 87-777, formerly 5 U.S.C. 59(c) provides:

> No payment shall be made from appropriations in any Act to any officer on the retired lists of the Regular Army, Regular Navy, Regular Marine Corps, Regular Air Force, Regular Coast Guard, Coast and Geodetic Survey, and Public Health Service for a period of *three* years after retirement who for himself or for others is engaged in the selling of or contracting for the sale of or negotiating for the sale of to any agency of the Department of Defense, the Coast Guard, the Coast and Geodetic Survey, and the Public Health Service any supplies or war materials.

(*a*) For the purpose of this statute, "selling" means:

(*1*) Signing a bid, proposal, or contract;

(2) Negotiating a contract;

(3) Contacting an officer or employee of any of the foregoing departments or agencies for the purpose of:

(*i*) Obtaining or negotiating contracts,

(*ii*) Negotiating or discussing changes in specifications, price, cost allowances, or other terms of a contract, or

(*iii*) Settling disputes concerning performance of a contract, or

(*4*) Any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefor is subsequently negotiated by another person.

However, it is not the intent of this part to preclude a retired regular officer from accepting employment with private industry solely because his employer is a contractor with the Government.

(b) *Exemptions from law applying to officers on active duty.* A regular officer who has been retired continues to be an "officer" of the United States for purposes of many statutes. However, the laws applying to officers on active duty listed in § 920.12(a) do not normally apply to retired regular officers not on active duty. The law specifically provides that 18 U.S.C. 203 and 205 do not apply to a retired officer while not on active duty who is not otherwise an officer or employee of the United States (see 18 U.S.C. 206). In addition, as a practical matter, 18 U.S.C. 208 and 209 do not apply to a retired officer not on active duty who is not performing services for the Government, solely because of his status as a retired regular officer.

§ 920.17 Other related criminal laws applicable to all Department of Defense personnel.

(a) The following activities may subject present and former DOD personnel to criminal penalties:

(1) Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (see 18 U.S.C. 2).

(2) Concealing or failing to report to proper authorities the commission of a felony under any criminal statute if such personnel knew of the actual commission of the crime (see 18 U.S.C. 4).

(3) Conspiring with one or more other persons to commit a crime under any criminal statute or to defraud the United States, if any party to the conspiracy does any act to effect the object of the conspiracy (see 18 U.S.C. 371).

SUBCHAPTER M—ANIMALS

PART 930—USAF SENTRY DOG PROGRAM

Sec.
930.1 Procuring dogs.
930.2 Non-government-owned dogs not to be used.

AUTHORITY: The provisions of this Part 930 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 930.1 Procuring dogs.

All sentry dogs required by the Air Force will be procured by the Air Force Logistics Command through the Quartermaster General, United States Army, under the terms of an interservice agreement between the Department of the Air Force and the Department of the Army. All individuals offering dogs for sale or donation to the sentry dog program will be advised to direct correspondence to: FWGD, U.S. Army Animal Procurement Office, P.O. Box 52, Lackland Air Force Base, Texas.

§ 930.2 Non-government-owned dogs not to be used.

Only dogs procured according to § 930.1, and through procedures established by oversea commanders, will be used by any Air Force unit. Other dogs will not be trained or used in any manner that would make the Air Force responsible for their care or actions. The installation's local stray dog pound will not be operated as an integral part of the sentry dog facility, nor will it be located in the immediate or adjacent area.

PART 931—EXPERIMENTAL ANIMALS

Sec.
931.1 Purpose.
931.2 Definition.
931.3 Responsibilities.
931.4 Care of experimental animals.

AUTHORITY: The provisions of this Part 931 issued under sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 931.1 Purpose.

This part states responsibilities and procedures for the care and use of experimental animals of Air Force medical research programs.

§ 931.2 Definition.

For the purpose of this part "experimental animals" are those used in support of Air Force medical research, research-laboratory operations, development, tests, experiments, and evaluation programs.

§ 931.3 Responsibilities.

(a) *Contracting activities.* Air Force contractors will insure that contracts for research which may require use of experimental animals contain a proviso that the research will be conducted according to the National Society for Medical Research (NSMR), "Principles of Laboratory Animal Care."

(b) *Animal handlers and laboratory staffs.* Personnel in charge of experimental animals will insure that the animals are treated kindly, fed properly, and housed as comfortably and sanitarily as possible at all times (including time of transportation).

§ 931.4 Care of experimental animals.

Laboratory staffs and animal-housing facilities of all Air Force agencies or Air Force-sponsored civilian contractors must be able to (a) provide high standards of care, sanitation, and cleanliness of facilities and equipment and (b) minimize the spread of disease among animals.

SUBCHAPTERS N THROUGH V—[RESERVED]

PARTS 932–999 [RESERVED]

FREDERICK A. RYKER,
Lt Colonel, USAF, Chief, Special Activities Group, Office of The Judge Advocate General.

[F.R. Doc. 64-10058; Filed, Oct. 5, 1964; 8:45 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Coordination Product of Zinc Ion and Maneb; Tolerance for Residues

A petition was filed (PP 422) with the Food and Drug Administration by Rohm and Haas Company, 222 West Washington Square, Philadelphia 5, Pennsylvania, requesting the establishment of a tolerance for residues of a coordination product of zinc ion and maneb containing 20 percent manganese, 2.5 percent zinc, and 77.5 percent ethylenebisdithiocarbamate (calculated as zinc ethylenebisdithiocarbamate), in or on papayas at 10 parts per million on the whole fruit, with no residue present in the edible pulp after the peel is removed and discarded.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which a tolerance is being established.

After consideration of the data submitted in the petition and other relevant material which show that the tolerance established in this order will protect the public health, and by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408 (d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)) and delegated to the Commissioner of Food and Drugs by the Secretary (21 CFR 2.90; 29 F.R. 471), the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities are amended by adding to § 120.176 a tolerance for papayas and by inserting in the introductory paragraph immediately before "calculated as * * *" the words "the whole product of which is". Section 120.176 is amended to read as follows:

§ 120.176 Coordination product of zinc ion and maneb; tolerances for residues.

Tolerances for residues of a fungicide which is a coordination product of zinc ion and maneb (manganous ethylenebisdithiocarbamate) containing 20 percent manganese, 2.5 percent zinc, and 77.5 percent ethylenebisdithiocarbamate (the whole product of which is calculated as zinc ethylenebisdithiocarbamate), are established as follows:

15 parts per million in or on bananas, of which not more than 2 parts per million shall be in the pulp after peel is removed and discarded. The tolerance applies to accumulative residues from both preharvest and postharvest use.

10 parts per million in or on the whole fruit of papayas, with no residue present in the edible pulp after the peel is removed and discarded.

Any person who will be adversely affected by the foregoing order may at any time within 30 days from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: September 30, 1964.

WINTON B. RANKIN,
Assistant Commissioner for Planning.

[F.R. Doc. 64-10098; Filed, Oct. 5, 1964; 8:48 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX; OPTIONS ACQUIRED IN CONNECTION WITH LOANS

Notice of Hearing on Proposed Regulations

The proposed amendment to the regulations under sections 61 and 1232 of the Code, relating to options acquired in connection with loans, was published in the FEDERAL REGISTER for August 25, 1964.

A public hearing on the provisions of this proposed amendment to the regulations will be held on Thursday, October 15, 1964, at 10:00 a.m., e.d.t., in Room 3313, Internal Revenue Building, 12th and Constitution Avenue NW., Washington, D.C.

Persons who plan to attend the hearing are requested to notify the Acting Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C., 20224, by October 12, 1964.

[SEAL] CHARLES R. SIMPSON,
Director, Legislation and Regulations Division.

[F.R. Doc. 64-10094; Filed, Oct. 5, 1964; 8:47 a.m.]

[26 CFR Part 1]

INCOME TAX; APPEARANCES, ETC., WITH RESPECT TO LEGISLATION

Notice of Hearing on Proposed Regulations

The proposed amendment to the regulations under section 162 of the Code, relating to appearances, etc., with respect to legislation, was published in the FEDERAL REGISTER for August 4, 1964.

A public hearing on the provisions of this proposed amendment to the regulations will be held on Tuesday, November 10, 1964, at 10:00 a.m., e.s.t., in Room 3313, Internal Revenue Building, 12th and Constitution Avenue NW., Washington, D.C.

Persons who plan to attend the hearing are requested to notify the Acting Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C., 20224, by November 5, 1964.

[SEAL] CHARLES R. SIMPSON,
Director, Legislation and Regulations Division.

[F.R. Doc. 64-10095; Filed, Oct. 5, 1964; 8:47 a.m.]

[26 CFR Part 1]

INCOME TAX; INCOME OF CONTROLLED FOREIGN CORPORATION FROM INSURANCE OF UNITED STATES RISKS

Notice of Hearing on Proposed Regulations

The proposed amendment to the regulations under section 953 of the Code, relating to income of a controlled foreign corporation from insurance of United States risks, was published in the FEDERAL REGISTER for July 30, 1964.

A public hearing on the provisions of this proposed amendment to the regulations will be held on Tuesday, October 27, 1964, at 10:00 a.m., e.s.t., in Room 3313, Internal Revenue Building, 12th and Constitution Avenue NW., Washington, D.C.

Persons who plan to attend the hearing are requested to notify the Acting Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C., 20224, by October 23, 1964.

[SEAL] CHARLES R. SIMPSON,
Director, Legislation and Regulations Division.

[F.R. Doc. 64-10096; Filed, Oct. 5, 1964; 8:47 a.m.]

[26 CFR Part 1]

INCOME TAX; GAIN FROM DISPOSITIONS OF CERTAIN DEPRECIABLE PROPERTY

Notice of Hearing on Proposed Regulations

The proposed amendment to the regulations under section 1245 of the Code, relating to the gain from dispositions of certain depreciable property, was published in the FEDERAL REGISTER for August 6, 1964.

A public hearing on the provisions of this proposed amendment to the regulations will be held on Thursday, November 5, 1964, at 10:00 a.m., e.s.t., in Room 5569, Internal Revenue Building, 12th and Constitution Avenue NW., Washington, D.C.

Persons who plan to attend the hearing are requested to notify the Acting Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C., 20224, by October 30, 1964.

[SEAL] CHARLES R. SIMPSON,
Director, Legislation and Regulations Division.

[F.R. Doc. 64-10097; Filed, Oct. 5, 1964; 8:48 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1061, 1064]

[Docket Nos. AO 23-A26, AO 327-A5]

MILK IN GREATER KANSAS CITY AND ST. JOSEPH, MISSOURI, MARKETING AREAS

Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Kansas City, Missouri, on September 17, 1964, pursuant to notice thereof issued on September 4, 1964 (29 F.R. 12779).

The material issues on the record of the hearing related to:

1. The need for an emergency increase in the Class I milk prices established by the orders regulating the handling of milk in the above designated marketing areas; and

2. Whether an emergency exists concerning Issue No. 1 which requires the omission of a recommended decision and opportunity for interested persons to file exceptions thereto and the immediate issuance of a final decision.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Class I price increase.* The Class I prices established by orders regulating the handling of milk in the Greater Kansas City and St. Joseph, Missouri, marketing areas should be increased 10 cents per hundredweight through February 1965. Since the St. Joseph order specifies that the Class I price in that area shall be the Kansas City Class I price minus 10 cents, an amendment to the Kansas City order will accomplish the increase in both markets.

Milk sales routes of handlers in these two markets overlap to such an extent that it is necessary to maintain close alignment of Class I prices. Also, they are served by a common milk supply area. Most of the counties supplying the smaller St. Joseph market also supply milk to Kansas City handlers. Within the past year handlers' operations have shifted Class I sales from St. Joseph to Kansas City and some producers who formerly delivered to the St. Joseph handlers now ship to Kansas City han-

dlers. Hence, the Class I sales in these two markets and the available supply of milk must be considered on a combined basis to reach a meaningful appraisal of their milk supply in relation to Class I sales.

The hearing was called at the request of cooperative associations of producers serving each of these markets. Producers requested an increase of 25 cents per hundredweight to become effective as soon as possible and extend at least through March 1965.

The proponents testified that milk supplies in these markets are currently inadequate as demonstrated by the milk imported from other areas in August and early September this year. They maintained that drought conditions had reduced the supply of feed grains and hay available in the area and that pasture conditions have been generally below normal for a considerable period. These adverse production conditions, according to the proponents, would reduce milk supplies in the coming months and require the importation of milk from other areas at a cost greater than the Class I prices in these areas.

Handlers opposed the proposed price increase, contending that milk supplies are now and are likely to continue to be sufficient for Class I sales. Some handlers proposed that if a price increase is made effective it apply only to Class I sales other than those made in fulfillment of sales contracts let on a bid basis prior to the effective date of such an increase. One handler opposed this selective application of a Class I price increase and asked that any increase be applicable to all Class I sales.

There is no doubt that extreme drought conditions have prevailed in some of the counties where milk for these two areas is produced. All but two counties in Missouri have been approved, because of drought conditions, for the release of soil bank and conservation reserve acreage for grazing and haying privileges. Kansas counties on the western boundary of the milk supply area have received the same privileges. The counties which have been designated as drought areas supplied more than half the milk for these markets in May 1964.

While the record shows that drought conditions have prevailed in much of the milkshed for these markets, drought relief as such cannot properly be granted to producers through amendments to the orders issued under the Agricultural Marketing Agreement Act of 1937. Under the Act, the Secretary is required to fix prices which will reflect factors affecting market supply and demand for milk in a marketing area, insure a sufficient quantity of pure and wholesome milk and be in the public interest. The adequacy of milk supplies therefore is an important factor in fixing prices under an order. In areas where supplies of producer milk have been substantially decreased in relation to Class I sales and where they have reached the point where an adequate supply of milk is threatened, it is proper to provide a price increase within the framework of the Agricultural Marketing Agreement Act.

During January–August this year 74.4 percent of producer milk in these two markets was used in Class I compared to 75.6 percent in the same period last year. Although Class I utilization in August dropped sharply below August 1963, this appears to be largely due to the change in number of peak delivery days in the respective months. Class I sales of producer milk in August 1964 were 1.9 percent lower than in August 1963. However, Class I sales in July were 1.4 percent above the previous year and in June were 8.9 percent higher. In May, on the other hand, Class I sales were up only 1.6 percent over May 1963. During the first eight months this year Class I sales were 3.2 percent above sales in the same period of 1963. Hence, on an average, for the rest of this year, we can expect Class I sales to be about 3.2 percent above sales a year ago.

Receipts of milk from producers for these two markets in August were 3.5 percent above August 1963 receipts and have averaged 3.5 percent above a year earlier for the five latest months, with individual monthly increases ranging from 2.6 to 4.3 percent. If the 3.5 percent rate of increase continues it will about equal the anticipated increase in Class I sales. Thus, according to projected supply-sales relationships, these markets may be expected to be as short of milk as they were last year when an emergency increase of 10 cents per hundredweight was made effective for three months.

On the basis of importations of milk from other areas, the markets appear to be shorter than they were last year. Imports for the Kansas City area by one cooperative which supplies several handlers were negligible in August 1963 but one-quarter million pounds in August 1964. Imports in the first eight days of September this year were nearly one-half million pounds, double the receipts in the same period of 1963. The average cost of this imported milk in August was 22 cents per hundredweight higher than the Kansas City Class I price and in September was 44 cents higher.

Another cooperative supplying handlers in the Topeka part of the Kansas City area was unable to locate enough milk on three days in early September to permit one handler to maintain his bottling schedule. Some milk was imported and the handler also paid haulers an additional 10 cents per hundredweight to pick up three milkings instead of four on some days.

Five truck loads of milk were imported to meet requirements for the St. Joseph market in the first half of September and it was anticipated another five loads would be needed before the end of the month. Only half this amount of milk was imported in September 1963. A cooperative which supplies both St. Joseph and Kansas City handlers testified it could not fill all requests for milk in September.

In summary, the milk supply-sales outlook for these markets in the coming fall and winter months is about the same as last year, with the current level of imports indicating a slightly shorter supply. To provide an adequate supply in this period it is concluded, therfore, that an emergency 10-cent increase in the Class I prices for these markets should be made effective as soon as possible and extend through February 1965.

This 10-cent increase for November through February (and for that part of October for which it can be made effective) will be only slightly more than the 10-cent increase granted last year for three months. The increase should be made effective earlier this year in order to provide an immediate incentive to maintain milk production. Also, the increase is needed particularly in October and November to bring the Class I price nearer to the cost of imported milk. The Class I prices in areas from which milk has been imported are at their seasonal peak in October and November and then decline in December and again in March.

It is concluded that a temporary increase of 10 cents per hundredweight in the Class I prices in these markets is necessary for a period beginning with the earliest date on which the orders can be amended and continuing through February 1965. This temporary increase, along with the increases in the basic formula price which is slightly higher than a year ago, should serve to maintain an adequate supply for these markets. If the price were increased more than this, it is likely that a more than adequate supply of milk would be attracted to the market.

Handlers testified that milk supplies in the markets are adequate and that no price increase was needed. However, several of these handlers stated that they had received milk which was imported by the cooperative associations whose representatives described the difficulties in obtaining sufficient milk for the market. These handlers did not know the cost of this milk or, in some instances, where it came from.

Some handlers testified that if the requested Class I price increase were granted, it should not apply to Class I sales to Government institutions delivered under contracts entered into prior to the date of the hearing. They contended that otherwise it could result in substantial losses on such sales.

This argument has little weight since a handler enters into such contracts knowing that changes in the level of manufacturing prices or in the supply-demand situation in the local market can affect the Class I price by fairly substantial amounts in a short time. The recommended increase is no more than has sometimes taken place as a result of changes in the above mentioned factors. A handler is cognizant of this possibility and should make allowance for it when submitting a bid. The possibility of such changes in Class I prices is a part of the risk which the handler assumes in bidding on contracts. Such an increase does no more than offset a windfall which might occur as the result of a decrease in Class I prices because of an unforeseen drop in the level of manufacturing prices or because of the effect of the supply-demand adjustor

when supplies increase relative to sales.

Since the Class I price in the St. Joseph order is presently tied directly to the Class I price in the Kansas City order, it is necessary in this decision to amend only the Kansas City order to effectuate the price increase intended for both the Kansas City and St. Joseph orders.

The price increases should be made effective at the earliest possible date even though it should fall other than at the beginning of the monthly accounting period. There will probably be little difference in returns to producers whether the Class I prices are prorated over the month's utilization based on the number of days each price was effective or whether two accounting periods in the same month are established. Each handler should therefore be given the option of either filing two reports for the month or having the two class prices prorated according to the number of days within each month for which the different price levels are effective. The option chosen by the handler should be indicated at the time of filing his report of receipts and utilization.

2. *Emergency action.* The due and timely execution of the function of the Secretary under the Act imperatively and unavoidably requires the omission of a recommended decision and also the opportunity to file exceptions thereto, on the above issue.

The conditions in the market are such that it is urgent that remedial action be taken as soon as possible.

Any delay in informing interested parties in the Greater Kansas City and St. Joseph markets of the conclusions reached will render less effective the price increase herein granted.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. (a) The tentative marketing agreement and the order as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Greater Kansas City Marketing Area" and "Order Amending the Order, Regulating the Handling of Milk in the Greater Kansas City Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order, as hereby proposed to be amended by the attached order which will be published with this decision.

Determination of representative period. The month of August 1964 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order amending the order, regulating the handling of milk in the Greater Kansas City marketing area, is approved or favored by producers, as defined under the terms of the order, as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Signed at Washington, D.C., on October 1, 1964.

GEORGE L. MEHREN,
Assistant Secretary.

Order[1] Amending the Order Regulating the Handling of Milk in the Greater Kansas City Marketing Area

§ 1064.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Greater Kansas City marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof the handling of milk in the Greater Kansas City marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

In § 1064.51(a) the introductory text preceding subparagraph (1) is revised to read as follows:

§ 1064.51 Class prices.

* * * * *

(a) *Class I milk.* The Class I price shall be the basic formula price for the preceding delivery period plus $1.10 during each of the delivery periods of April, May, June, and July, and plus $1.40 during all other delivery periods; plus 10 cents from the effective date of this amended order through February 28, 1965; and plus or minus a supply-demand adjustment of not more than 45 cents, computed as follows:

* * * * *

[F.R. Doc. 64-10086; Filed, Oct. 5, 1964; 8:46 a.m.]

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

[7 CFR Parts 1104, 1106]

[Docket Nos. AO-298-A5, AO-210-A17]

MILK IN RED RIVER VALLEY AND OKLAHOMA METROPOLITAN MARKETING AREAS

Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Oklahoma City, Okla-

homa, on September 15, 1964, pursuant to notice thereof issued on September 4, 1964 (29 F.R. 12779).

The material issues on the record of the hearing related to:

1. The need for an emergency increase in the Class I prices under the Oklahoma Metropolitan and Red River Valley milk orders, and

2. Whether an emergency exists concerning Issue No. 1 which requires the omission of a recommended decision and opportunity for interested persons to file exceptions thereto and the immediate issuance of a final decision.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Class I price increase.* The Class I prices established by orders regulating the handling of milk in the Oklahoma Metropolitan and Red River Valley marketing areas should be increased 10 cents per hundredweight for the period beginning with the effective date of the amended order proposed herein through March 1965.

The Class I price under the Oklahoma Metropolitan order is determined monthly by adding to the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Wisconsin and Minnesota, adjusted to a 3.5 percent butterfat basis, a fluid milk differential of $1.48 for the months of April, May, and June and $1.88 for all other months. This price is subject to contraseasonal adjustments in the months of September through December and April through June and to supply-demand adjustments of not more than 50 cents. The Class I price under the Red River Valley order is the Oklahoma Metropolitan order Class I price plus 15 cents.

Three dairy cooperative associations proposed that the Class I prices under the Oklahoma Metropolitan and Red River Valley orders be increased on an emergency basis 25 cents per hundredweight for each of the months of October 1964 through March 1965. The associations indicated that such a price increase was necessary because of shortening milk supplies caused by severe drought conditions prevailing in the milkshed areas of these markets.

The record shows that drought conditions exist generally throughout the areas from which milk is supplied to these markets. Rainfall during January through July of this year has been considerably below normal in Oklahoma and this situation was preceded by an even greater rainfall deficiency in 1963. A lack of needed rain in both 1963 and 1964 in the Red River Valley milkshed area in northern Texas was described also. Greater than normal rainfall experienced in August of this year cannot be expected to diminish to any great extent the problems which have arisen in the markets because of the extended drought.

Below normal rainfall, coupled with exceedingly high temperatures, has reduced substantially the availability of pastures and the production of hay and feed-grains. Pastures for the recent five-month period of April through August averaged 68 percent of normal in Oklahoma and 63 percent of normal in Texas. In August this year pastures were 50 percent and 43 percent of normal in the respective States. Producers have been feeding during the recent summer months feed supplies normally used during the winter. Substantial purchases of hay and grain will be necessary until pastures are available next spring. Prices of such feed were quoted at levels which are slightly higher than the relatively high levels prevailing last year when feed supplies were short.

The severity of the drought is pointed up by the large number of counties in Oklahoma which have been approved for assistance under Federal drought disaster programs. Sixty-two counties have been approved for the grazing and haying program and 19 of these counties also have been approved for the livestock feed program. Over 30 percent of the producers on the Oklahoma Metropolitan and Red River Valley markets in August were located in the Oklahoma counties approved for both types of programs. An additional one-fourth of the producers were located in the Oklahoma counties approved only for the grazing and haying program.

Drought relief as such cannot be granted to producers through amendments to orders issued under the Agricultural Marketing Agreement Act of 1937, as amended. Under this Act the Secretary is required to establish prices at levels which will reflect factors affecting the supply and demand for milk in a marketing area, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. The adequacy of milk supplies is therefore an important factor in fixing prices under an order. In areas where supplies of producer milk have decreased substantially in relation to Class I sales and where they have reached the point where an adequate supply of milk is threatened, it is proper within the framework of the Act to provide a price increase.

Milk supplies and sales in the Oklahoma Metropolitan and Red River Valley markets are interrelated because of intermarket movements of packaged milk and because milk supplies are shifted between these markets by a cooperative association according to the fluid milk requirements of handlers. Accordingly, a determination of the adequacy of milk supplies must be made on the basis of combined data for the two markets.

For the period January through August the total volume of producer receipts this year in the two markets changed little compared with producer receipts in the same period last year. Class I sales this year, on the other hand, have increased during this period 2.4 percent over a year ago. While there has been a relative shortening of available producer milk for these markets, such supplies have been generally sufficient for the fluid milk requirements of handlers.

There are indications, however, that milk supplies are becoming shorter in relation to fluid sales at a more rapid rate than in 1963 when it was necessary to provide an emergency price increase to induce greater milk production. Producer receipts in the two markets decreased 5.3 percent from July to August this year while last year there was a 2.4 percent decrease. This may be compared with a 2.9 percent increase in Class I sales from July to August this year and a 3.1 percent increase in Class I sales at that time last year. A further indication of the more rapid decline in available milk supplies is that average daily producer deliveries this year in the two markets decreased 14.8 percent from May, the month of greatest production, to August as compared with a 10.2 percent decrease last year.

With drought-induced shortages of hay and grain supplies, any substantial increase in producer receipts is not expected before the onset of the 1965 pasture season. Last year producer receipts relative to Class I sales on a combined-market basis were shortest in the months of October and November when 82 percent and 83 percent, respectively, of producer receipts were used in Class I. During each of these months over one million pounds of other source receipts were classified as Class I milk. Under the present situation of somewhat shorter supplies of local milk than existed last year, importation of supplemental milk for Class I use is probable in view of the expected seasonal increase in Class I sales and further decline in receipts this fall.

A representative of one of the proponent cooperative associations indicated that the association already has had to import milk to meet its obligations to handlers. Based on the association's experience in seeking still additional milk, supplemental supplies appear difficult to obtain. Milk is generally unavailable in nearby markets because of widespread drought conditions throughout much of the south central part of the United States. Prices which are expected to prevail for alternative milk supplies from plants in the Iowa and Chicago markets are in excess of the Class I prices in the Oklahoma Metropolitan and Red River Valley markets plus transportation. Additional expense is incurred at times because of the need to have State of Oklahoma health officials personally certify a certain percentage of the farms in the distant market from which supplemental milk is obtained.

Supplemental milk is being received by two handlers in the Red River Valley market from a cooperative association in Texas. A representative of the organization indicated that a failure to increase the Class I price under the Red River Valley order could likely result in the association making a lesser amount of milk available for the market in view of the short supply situation in the Texas Federal order markets and the considerably better price which may be obtained there.

The adequate supplying of fluid milk requirements of the two markets during a time of shortening supplies of producer milk is complicated by the fact that most handlers are now bottling milk only five days each week. This results in an extra heavy demand for milk on certain days. Importation of supplemental milk from other markets thus

may be necessary to meet this demand. Yet, over the long run the market may appear to be adequately supplied with local producer milk.

Under the circumstances described above, it is necessary that the Class I prices in the Oklahoma Metropolitan and Red River Valley markets be increased until such time as seasonal increases in milk production may be expected in the spring of 1965. An increase of 10 cents per hundredweight will tend to encourage the maintenance of adequate milk supplies for the two markets.

A Class I price increase greater than this is not necessary. Class I prices under the two orders have averaged 9 cents per hundredweight higher in the first nine months of this year as compared with the same period last year. Five cents of this increase is attributable to higher basic formula prices. Additional improvement resulted through an emergency price increase of 10 cents for January and February and through the action of the supply-demand adjustor. Supply-demand adjustments in August and September this year were minus one cent and zero, respectively, as compared with adjustments of minus four cents and minus six cents, respectively, for these months last year. The adjustment for October this year is zero. Should a shortage of producer receipts continue, an increase in Class I prices can be expected because of action of the supply-demand adjustor.

Because the Class I price under the Red River Valley order is fixed at 15 cents over the Oklahoma Metropolitan order Class I price, any change in the latter price will be reflected in the Red River Valley order price. It is therefore necessary to amend only the Oklahoma Metropolitan order to effectuate the proposed increase in Class I prices in both orders.

The amendment should be made effective at the earliest possible date even though it may not be at the beginning of a monthly accounting period. It should make little difference in returns to producers whether the Class I prices are prorated over the month's utilization based on the number of days each price was effective or whether two accounting periods in the same month are established. Each handler should be given the option of either filing two reports for the month or having the two Class I prices prorated according to the number of days within each month for which the different price levels are effective. The option chosen by the handler should be indicated at the time of filing his report of receipts and utilization.

The Oklahoma Metropolitan order now provides that handlers may request two accounting periods for one month. No accounting period, however, can be of less than five days duration and the request for two accounting periods must be made at least 48 hours prior to the end of the first accounting period in the month. Further, the order now provides that a handler electing two accounting periods shall pay twice the rate of administrative assessment fixed for a monthly accounting period. It is not intended that these time limitations or the increased rate of administrative assessment should be applicable under the circumstance of establishing two accounting periods because of this Class I price change during a month. The proposed price change is not an action initiated by the handler and the present accounting period provisions thus are not appropriate for this situation.

2. *Emergency action.* The due and timely execution of the function of the Secretary under the Act imperatively and unavoidably requires the omission of a recommended decision and opportunity for exceptions thereto on Issue No. 1. The conditions in the markets are such that it is urgent that remedial action be taken as soon as possible. Any delay in informing interested parties of the conclusions reached will tend to make ineffective the relief sought. The time necessarily involved in the preparation, filing and publication of a recommended decision and the filing of exceptions thereto would in this instance contribute to the threat of an insufficient supply of milk for the two markets.

The notice of hearing stated that consideration would be given to the economic and emergency marketing conditions relating to the proposed amendments. Action under the procedure described above was requested by proponents at the hearing.

It is therefore found that good cause exists for omission of the recommended decision and the opportunity for filing exceptions thereto.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Oklahoma Metropolitan Marketing Area" and "Order Amending the Order, Regulating the Handling of Milk in the Oklahoma Metropolitan Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order, as hereby proposed to be amended by the attached order which will be published with this decision.

Determination of representative period. The month of August 1964 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Oklahoma Metropolitan marketing area, is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Signed at Washington, D.C., on October 1, 1964.

GEORGE L. MEHREN,
Assistant Secretary.

Order[1] Amending the Order Regulating the Handling of Milk in the Oklahoma Metropolitan Marketing Area

§ 1106.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Oklahoma Metropolitan marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof the handling of milk in the Oklahoma Metropolitan marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

In § 1106.51(a), the introductory text which precedes the proviso is revised to read as follows:

§ 1106.51 **Class prices.**

* * * * *

(a) *Class I milk.* The basic formula price for the preceding month plus $1.48 during the months of April, May, and June and $1.88 during all other months; plus 10 cents for the period from the effective date of this amended order through March 31, 1965:

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[F.R. Doc. 64-10087; Filed, Oct. 5, 1964; 8:46 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release 34-7432]

SECURITIES SPECIALISTS

Notice of Proposed Rule Making

The Securities and Exchange Commission announced it has under consideration a proposal to adopt a rule under the Securities Exchange Act of 1934 ("Exchange Act") and particularly sections 11(a), 11(b), and 23(a) thereof, governing the activities of specialists on the two large New York exchanges. In releasing the text of the proposed rule, the Commission invited views and comments of the securities industry and of any other interested persons. Provision has been made for the exemption of the regional exchanges.

The Commission also announced that the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex") are modifying and expanding their present rules and policies regulating the conduct of specialists and are adopting certain new ones. Proposed Commission Rule 11b-1 (17 CFR 240.11b-1) and the rules to be adopted by the NYSE and the Amex all form an integrated regulatory program governing specialists. The changes worked out between the Commission and the respective exchanges reflect a constructive joint evaluation of the various recommendations of the Special Study.[1] The Commission and the exchanges believe that these changes are in the public interest.

The proposed Commission rule contains three major parts. First, the rule sets forth certain areas in which an exchange must have rules governing the activities of specialists. Second, the rule establishes a procedure by which the Commission can review and disapprove new exchange rules relating to specialists if the Commission finds that they are inadequate to achieve the purposes described in the rule or are inconsistent with the public interest or the protection of investors. The Commission believes that the rules of the NYSE and the Amex relating to specialists, including those rules described below which these exchanges propose to adopt, meet the standards contained in proposed Rule 11b-1 (17 CFR 240.11b-1). Finally, if an exchange fails to take prompt and effective action where a specialist engages in transactions inconsistent with his obligations, the rule establishes a procedure by which the Commission can institute proceedings directly against the specialist to cancel or suspend his registration in one or more of the securities in which he is registered.

Functions of specialists. Specialists are exchange members who "specialize" in some or all of the issues traded at a particular place on the floor of an exchange known as the "post".[2] They are registered with the exchange of which they are members and are granted permission by the exchange to trade as specialists in each of their specialty stocks. Registration as a specialist in a particular security is in effect a privilege granted by an exchange to one of its members and that registration may be cancelled or suspended by the exchange.

A specialist performs two basic functions with respect to the issues in which he specializes. First, as a broker's broker, he holds and executes orders entrusted to him by other brokers on behalf of the latter's customers. These are generally "limited price" orders specifying prices "away" from the market, that is, orders to buy if and when the price declines to a particular point, or orders to sell if and when it rises to a specified figure. Since these orders cannot be immediately executed, they are left with the specialist, who acts as a central repository for them.

The second important function of the specialist is to purchase and sell securities for his own account in order to assist in maintaining a fair and orderly market in each security in which he is registered. In this capacity, the specialist will buy securities in the public market when there is no public demand at a price reasonably related to the last transaction and will sell securities in the public market under the same circumstances. Section 11 of the Exchange Act permits the specialist to act as a dealer but his dealer functions must be restricted "so far as practicable to those reasonably necessary to permit him to maintain a fair and orderly market." In general, the specialist's contribution to a fair and orderly market is to use his own capital to minimize temporary disparities between supply and demand and, thus, to contribute to price continuity.

Currently, there are 358 specialists registered on the NYSE out of a total membership of 1,366. They are organized into 104 units or firms of between 1 and 9 specialists each. On the Amex there are 160 specialists organized into 56 units and the total regular membership is 597.

One of the striking facts about the specialist system on both exchanges is the lack of competition among specialist units. The Special Study found a significant trend toward fewer competing specialist units.[1] Thus, as recently as 1957, 50 units on the NYSE competed in a total of 228 stocks. By 1963, this was reduced to 13 units competing in 37 stocks. This trend has continued. At present there are only 2 specialist units on the NYSE which compete with each other in 2 stocks.[2] The absence of competing specialists makes an effective system of regulation and surveillance particularly important.

It was a basic finding of the Special Study that the specialist system on the two major exchanges "appears to be an essential mechanism for maintaining continuous auction markets and in broad terms appears to be serving its purposes satisfactorily." However, the Study also found that while there was no need "for any broad and drastic change in the system" there was need for "a number of important, specific improvements in specialist practices and in regulatory concepts and methods * * *."[3] The Special Study described a number of specific problems concerning the dealer and

[1] See Report of the Special Study of Securities Markets, Pt. 2, pp. 167-171.

[2] For a detailed description of the specialist system reference is made to the Special Study Report, Pt. 2, pp. 57ff.

[1] See Special Study Report, Pt. 2, p. 62 and table VI-3. The Special Study did not recommend that competition among specialist units be fostered. Competition among specialists does not seem to result in the economic benefits usually associated with competition. In addition, there may be difficult regulatory problems arising from the division of responsibility for maintaining fair and orderly markets in the same stock.

[2] At present there are no competing units on the Amex.

[3] Special Study Report, Pt. 2, p. 167.

brokerage functions of specialists and the combination of these functions, and with respect to the surveillance methods of the exchanges. These problems and the manner in which the proposed rules of the NYSE and the Amex are designed to meet them are discussed below. Following this discussion, the provisions of proposed Commission Rule 11b–1 (17 CFR 240.11b–1) are described.

Dealer activities of specialists. The Special Study concluded that the present capital requirements of the NYSE which require that each specialist unit have sufficient capital to carry 400 shares of each specialty stock were inadequate in view of current market needs.[1] The Study consequently recommended at least a threefold increase in NYSE specialist minimum capital requirements. The NYSE has agreed to adopt a rule which will increase the minimum capital in common stocks in which specialists are registered to the minimum recommendation of the Special Study, i.e., sufficient capital to carry 1,200 shares of each specialty common stock. It was also agreed that the NYSE would review its specialist capital requirements periodically in light of the level of prices, volume and other needs of the market and that the first such review would take place about one year after the new requirement becomes effective.[2] Current data indicate that the new requirements will have a direct impact on about 5 percent of the specialist units on the NYSE and will probably have indirect effects upon another 5 percent whose capital is close to the new minimum.

The Study recommended that specialists be prohibited from changing prices at openings against the direction indicated by public supply and demand. The exchanges have agreed to adopt a rule which will provide that in normal situations specialists will not change prices against the public balance of supply and demand as indicated by orders in their possession at the opening.

With respect to trading after the opening, the Special Study recommended that limitations be added to existing rules concerning the specialist's ability, under ordinary circumstances, to engage in certain destabilizing transactions when establishing or increasing his own position in specialty stocks. The Study also concluded that existing regulations limiting the specialist's ability to liquidate positions did not adequately inhibit potential disruptive market effects that could follow from an extensive liquidation or reduction of a specialist's position.

The exchanges have responded to these conclusions with the adoption of new rules which make it clear that specialist liquidations should conform to certain standards and that, while engaging in liquidations, the specialist continues to have a responsibility to maintain a fair and orderly market in his specialty stocks. This responsibility means that specialists are required to avoid liquidating or reducing positions in a manner which disrupts the markets for such stocks. In establishing or increasing a long or short position, specialists would be prevented under rules proposed by the exchanges from creating imbalances in the market by purchasing or selling an undue quantity of stock offered or bid for.

The Study also concluded that the basic standards governing specialist dealer performance placed too little emphasis on the specialist's affirmative obligation to use his own capital by engaging in transactions necessary to assist in the maintenance of a fair and orderly market. A related finding was that there was too much emphasis upon transaction by transaction price continuity, as distinguished from the concept of depth, i.e., the ability of the market to supply and absorb reasonable quantities of stock before significant price changes occur. In this connection, the Study also found that some specialists furnished "nominal" quotations in their less active stocks, i.e., a bid or offer which does not reflect a reasonable price for the particular security in the light of preceding transactions and anticipated succeeding transactions.

The new exchange rules meet the first problem by making it clear that the allocation of a stock to a specialist is subject to the willingness of that specialist to engage in a course of dealings for his own account in the maintenance, so far as practicable, of a fair and orderly market. The substantial or continued failure of a specialist to employ his professional judgment and capital in this manner may result in the cancellation or suspension of his registration in one or more stocks in which he his registered.[1] The second problem has been met by an amendment to existing rules which specifically adds the concept of market depth to the obligations of specialists as dealers. The third problem, that of nominal quotations, will be made the subject of a circular to specialists which directs their attention to existing rules and policies which have the effect of prohibiting such practices by requiring that all quotations be reasonable ones.[2]

Broker activities of specialists. The Special Study made a number of recommendations with respect to the functions of specialists as brokers. Many of these were designed to deal with certain problems arising from the combination of dealer activities and brokerage responsibilities. The exchanges have agreed to adopt a number of rules related to these recommendations.

Three rules relate to situations in which a specialist participates as principal in transactions where his brokerage function is also involved. One such rule will require that a broker forwarding a customer's order to a specialist confirm in writing the price of the transaction when the specialist has dealt as principal with the customer. Another rule will require that when a specialist engages in successive transactions for his own account with customers whose orders were forwarded to him, that all such customers receive the benefit of the best price which any of them will receive. A third rule extends this principle to situations where the specialist is acting both as broker for others and as principal when participating in a large block transaction. The proposed rule will require that a specialist not pay or receive a better price in transactions for his own account than his brokerage customers pay or receive.[1]

The exchanges have also agreed to adopt rules which would prohibit specialists from servicing the accounts of issuers, corporate insiders, or institutional investors, and to formalize existing policies which prohibit specialists from recommending their own specialty stocks as investments.[2] The Amex will also institute more intensive surveillance and reporting requirements with respect to other transactions by specialists for their own public customers.[3] It has been agreed that these rules and procedures will be reviewed as sufficient experience has been accumulated to determine their effectiveness in meeting the problems presented where specialist firms also service public customers.

The practice of "stopping stock" against orders on the specialist's book, i.e., guaranteeing to a broker that his customer will obtain a specified price, is to be modified by providing that, with certain limited exceptions, a specialist who gives such a guarantee will be required to commit his own funds and may not allocate unexecuted orders of his brokerage customers for the purpose of such guarantee. The proposed rule also requires that such guarantees result in narrowing quotations on the exchanges.

Finally, the Special Study noted that an appreciable number of transactions were omitted from exchange ticker tapes, including transactions in "stopped stock". The Special Study recommended that every transaction taking place on the floor of the exchange be reported

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[1] The Amex revised its specialist capital requirements during the course of the Special Study and no further review of such requirements on that Exchange was recommended by the Special Study.

[2] The collection and study of specialist income data which the NYSE intends to undertake as described below, should considerably increase its ability to arrive at an informed judgment on appropriate capital requirements.

[1] The fact that this remedy is spelled out in the rule would not preclude the respective exchanges from imposing more severe penalties in appropriate cases under other provisions of their constitutions and rules.

[2] The Study also discussed certain other problems in connection with the dealer function of specialists involving certain tax motivated transactions. One of these were year-end purchases or sales for the purpose of obtaining tax advantages under the LIFO system of valuing inventory. The exchanges have agreed to adopt new rules prohibiting transactions made solely for the purpose of adjusting LIFO inventories. Another tax problem is the segregation by some specialists of holdings of securities in which they are registered into long-term investment accounts. Such segregation is made for the purpose of realizing long term capital gains. This problem has been deferred pending a Treasury Department ruling on this matter.

[1] The particular rules adopted by the NYSE and Amex on this point differ somewhat in content but their effect is the same.

[2] The Amex has an existing rule prohibiting any business transaction by a specialist with the issuer or its officers or directors.

[3] The NYSE already has certain reporting requirements which it initiated during the course of the special study.

on the tape and the NYSE has agreed to adopt a rule requiring the reporting of such transactions, except those that cannot be reported because of mechanical limitations or reporting errors. Initially, "stopped" transactions on that Exchange will not be required to appear on the tape until after the close. However, it is agreed that the NYSE will review the feasibility of reporting all such transactions in their proper sequence after the Exchange has its faster ticker service in full operation some time next year. The Amex has agreed, subject to the solution of certain technical problems, to report all omitted transactions in sequence on its ticker tape. Transactions involving stopped stock which are presently omitted will be reported with a special designation.

Surveillance of specialist activities. The Special Study made various recommendations with respect to the surveillance of specialist activities. Among these recommendations were the development of new performance tests, the reporting of specialist brokerage and dealer income to the exchanges, the possibility of the use of automated techniques, closer control of specialist capital positions and, in general, a greater allocation of exchange resources to this area.

Since the Special Study Report was issued and even while the Special Study was in progress, both the NYSE and the Amex have made significant progress in the further refinement of surveillance techniques. Both exchanges have reoriented their automation programs with the view to the ultimate use of such techniques in the area of floor surveillance. The Amex has recently been engaged in certain experimental programs which may lead to the electronic reporting of specialist transactions. Furthermore, both exchanges have assigned additional personnel to floor surveillance and it is anticipated that in the future even greater emphasis will be placed on these matters. Both exchanges have agreed that the development of new performance tests are important and should be pursued cooperatively with the Commission. The Amex, in particular, has devoted considerable energy to the development of new performance tests which would utilize data collected through automation.

The NYSE has agreed to adopt a rule which would require specialists to keep records showing commission income and dealer profits and losses by stock. This rule specifies that such records shall be kept so that they will be available "when the Exchange requests them * * * for the purpose of surveillance and study of specialist operations."[1] It is the Commission's understanding that both exchanges intend to use specialist income data gathered through these rules for study and surveillance purposes.

Each exchange has agreed to adopt a rule which would require that member firms financing a specialist must immediately inform the exchange of any intention to terminate or change a financing arrangement or to issue a margin call to a specialist. Both exchanges have also agreed to inform the Commission immediately by telephone if it appears that a specialist unit will not be able to meet promptly a margin call or to continue in business because of its inability to obtain a new financing arrangement. These rules will enable the exchanges and the Commission to keep informed about the financial condition of specialists during critical periods.

Description of the proposed rule. The Study recommended that for the most part, specific improvements in specialist practices and regulatory concepts and methods be accomplished through changes in the rules and procedures of the exchanges. The specific changes in rules and procedures which the NYSE and the Amex have agreed to adopt to implement the Special Study recommendations have been described above. However, the Study also recommended that since the Commission is not empowered to enforce rules of the exchanges,[1] a Commission rule should be adopted under section 11 of the Exchange Act which would enable the Commission to exercise some direct regulatory control over specialist activities. Proposed Rule 11b–1 (17 CFR 240.11b–1) implements that recommendation of the Study.

In general, the purpose of the proposed rule is to provide a new framework for regulation of specialists, under which the exchanges have been given maximum self-regulatory responsibility with the Commission actively exercising its oversight responsibilities.[2]

Under section 11(b) of the Exchange Act, if a specialist is permitted by the rules and regulations of the Commission to act as a dealer, such rules and regulations "shall restrict his dealings so far as practicable to those reasonably necessary to permit him to maintain a fair and orderly market." Paragraph (a)(1) of the proposed rule would permit national securities exchanges to register members as specialists who can act as dealers. However, if an exchange permits its specialists to act as dealers then its rules governing specialists must meet the standards described in paragraph (a)(2) and any change in or addition to such rules is subject to review and disapproval by the Commission under the provisions of paragraph (a)(3). The rules of an exchange governing specialists must include adequate minimum capital requirements, provisions restricting specialist dealer activities to the standards set forth in section 11(b) of the Exchange Act, provisions setting forth the brokerage responsibilities of specialists, a requirement that as a condition of registration a specialist affirmatively participate as a dealer and methods to provide for effective and systematic surveillance of specialist activities. Copies of these rules and of any change in or addition to exchange rules relating to specialists must be filed with the Commission. Any such change or addition may be disapproved after a hearing if the Commission finds such change or addition inconsistent with the standards prescribed in the rule.

Paragraph (b) of the proposed rule permits the Commission to institute proceedings to require cancellation or suspension of a specialist's registration in one or more of his securities if he engages in transactions which are not necessary to permit him to maintain a fair and orderly market.[1] Paragraph (b) of the proposed rule places maximum reliance upon self-regulation by requiring exchange rules to spell out the basic specialist obligations and provides a means for direct enforcement by the Commission when necessary.

The proposed rule also provides for an exemption from its provisions for regional securities exchanges. Since the Commission has not made any studies of the structure of regional exchange specialist systems, the Commission expects to exempt such exchanges from the proposed rule pending studies of the questions of responsibilities and privileges of their specialist members.

The text of the proposed rule (§ 240.11b–1) is as follows:

(a)(1) The rules of a national securities exchange may permit a member of such exchange to register as a specialist and to act as a dealer. Any change in or addition to the rules of such exchange in the areas covered by subparagraph (2) of this paragraph made after this section becomes applicable to such exchange shall be subject to the provisions of subparagraph (3) of this paragraph.

(2) The rules of a national securities exchange permitting a member of such exchange to register as a specialist and to act as a dealer shall include:

(i) Adequate minimum capital requirements in view of the markets for securities on such exchange;

(ii) Requirements, as a condition of a specialist's registration, that a specialist engage in a course of dealings for his own account to assist in the maintenance, so far as practicable, of a fair and orderly market, and that a finding by the exchange of any substantial or continued failure by a specialist to engage in such a course of dealings will result in the suspension or cancellation of such specialist's registration in one or more of the securities in which such specialist is registered;

(iii) Provisions restricting his dealings so far as practicable to those reasonably necessary to permit him to maintain a fair and orderly market or necessary to permit him to act as an odd-lot dealer;

(iv) Provisions stating the responsibilities of a specialist acting as a broker in stocks in which he is registered; and

[1] The Amex has agreed to adopt a rule along similar lines. Special accounting problems are presented on the Amex where the odd-lot function is performed by specialists unlike the NYSE where there is a separate odd-lot system.

[1] See Special Study Report, Pt. 4, pp. 706–711.

[2] Section 11 of the Exchange Act grants to the Commission broad and direct rulemaking power over the activities of specialists and adoption of proposed Rule 11b–1 (17 CFR 240.11b–1) would in no way foreclose the Commission from exercising its residual power of direct regulation.

[1] The Commission continues to have the direct disciplinary powers granted to it over specialists under other sections of the Exchange Act.

(v) Methods to provide for the effective and systematic surveillance of the activities of specialists.

(3) Every national securities exchange not exempted from this section shall file with the Commission copies of its rules in the areas covered by subparagraph (2) of this paragraph. Any change in or addition to such rules shall take effect in the manner provided for by the rules of such exchange and the provisions of the Act and rules and regulations thereunder, except that such change or addition shall not continue in effect after the Commission enters an order disapproving such change or addition; and the Commission shall enter an order disapproving such change or addition if the Commission finds that it is inadequate to achieve for the purposes of the provisions set forth in subparagraph (2) of this paragraph or is inconsistent with the public interest or the protection of investors. The Commission will not disapprove any such change or addition unless it has given such exchange written notice of its intention to determine whether or not such change or addition should be disapproved and such notice shall be given within 30 days after the filing thereof. Within 60 days after such notice, such exchange shall have the opportunity to present to the Commission any evidence or arguments with respect to such change or addition. After consideration of all relevant material presented in writing or at a hearing, the Commission may enter an order disapproving such change or addition, or may permit such change or addition to continue in effect: *Provided, however,* That the validity, force or effect of any act or omission by an exchange or a member, officer or employee thereof in *bona fide* reliance on such change or addition prior to the entry of such an order of disapproval shall not be affected thereby.

(b) If after appropriate notice and opportunity for hearing the Commission finds that a member of a national securities exchange registered with such exchange as a specialist in a specified stock or stocks has, for any account in which he, his member organization, or any participant therein has any beneficial interest, direct or indirect, effected transactions in such stock or stocks which were not part of a course of dealings reasonably necessary to permit such specialist to maintain a fair and orderly market, or to act as an odd-lot dealer, in the stocks in which he is registered and were not effected in a manner consistent with the rules adopted by such exchange pursuant to paragraph (a)(2)(iii) of this section, the Commission may by order direct such exchange to cancel, or to suspend for such period as the Commission may determine, such specialist's registration in one or more of the securities in which such specialist is registered: *Provided, however,* If such exchange has itself suspended or cancelled such specialist's registration in one or more of the securities in which such specialist is registered, no further sanction shall be imposed pursuant to this paragraph (b) except in a case where the Commission finds substantial or continued misconduct by a specialist: *And provided further,* That the provisions of this paragraph (b) shall not apply to a member of a national securities exchange exempted pursuant to the provisions of paragraph (d) of this section.

(c) For the purposes of this section, the term "rules" of an exchange shall mean its constitution, articles of incorporation, by-laws, or rules or instruments corresponding thereto, whatever the name, and its stated policies.

(d) Any national securities exchange may apply for an exemption from the provisions of this section in compliance with the provisions of section 11(c) of the Act.

(Secs. 11(a), 11(b) and 23(a), 48 Stat. 891, 892, 901, as amended, 15 U.S.C. 78k(a), 78k(b), 78w.)

All interested persons are invited to submit their views and comments, on the Commission's proposed rule to the Securities and Exchange Commission, Washington, D.C., 20549, on or before November 2, 1964. Except where it is requested that such communications not be disclosed, they will be considered available for public inspection.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

SEPTEMBER 24, 1964.

[F.R. Doc. 64-10068; Filed, Oct. 5, 1964; 8:45 a.m.]

Notices

DEPARTMENT OF STATE

Agency for International Development

[No. 21–A]

DIPLOMATIC OFFICERS IN TOGO AND UPPER VOLTA, AFRICA

Recision of Delegation of Authority Regarding Administration

Pursuant to the authority delegated to me by Delegation of Authority No. 104 from the Secretary of State, dated November 3, 1961, as amended; and in further implementation of the operational plans of the Regional USAID for Africa; there is hereby rescinded, effective September 30, 1964:

Delegation of Authority No. 21 to the principal diplomatic officers accredited in Togo and Upper Volta, dated November 20, 1962, from the Administrator of A.I.D. (27 F.R. 11821).

WILLIAM S. GAUD,
Deputy Administrator.

SEPTEMBER 17, 1964.

[F.R. Doc. 64–10093; Filed, Oct. 5, 1964; 8:47 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[Amdt. 2]

DEPUTY ADMINISTRATOR, COMMODITY OPERATIONS

Organization and Functions; Delegations of Authority

Paragraph II 5 of 28 F.R. 4368 dated May 2, 1963 is amended to read as follows:

5. Deputy Administrator, Commodity Operations:

Inventory Management Division.
Procurement and Sales Division.
Evanston Commodity Office.
Kansas City Commodity Office.
Minneapolis Commodity Office.
New Orleans Commodity Office.

Paragraph III E of 28 F.R. 4368 dated May 2, 1963, is amended to read as follows:

E. *Deputy Administrator, Commodity Operations.* The Deputy Administrator, Commodity Operations, is primarily responsible for the administration of the acquisition, storage (except CCC-owned storage), management and disposition of all CCC-owned commodities acquired under the price support loan and purchase agreement programs, including maintenance of trade relationships and for operations under the International Wheat Agreement. The Deputy Administrator, Commodity Operations, provides program interpretations to approved program policy, and provides administrative and program direction and coordination to assigned divisions, staffs and offices, namely: Inventory Management Division, Procurement and Sales Division, the ASCS Commodity Offices located in Evanston, Illinois, Kansas City, Missouri, Minneapolis, Minnesota, and New Orleans, Louisiana; and carries out assigned defense activities. The Deputy Administrator, Commodity Operations, is also Vice President of the Commodity Credit Corporation.

Paragraph III E 4 of F.R. 4368 dated May 2, 1963 is deleted.

Signed at Washington, D.C., this 1st day of October 1964.

H. D. GODFREY,
Administrator, Agricultural Stabilization and Conservation Service.

Approved:

ORVILLE L. FREEMAN,
Secretary of Agriculture.

[F.R. Doc. 64–10110; Filed, Oct. 5, 1964; 8:49 a.m.]

Office of the Secretary

KANSAS, NORTH CAROLINA AND WISCONSIN

Designation of Areas for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named counties in the States of Kansas, North Carolina and Wisconsin natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

KANSAS

Gove.
Logan.
Rawlins.
Thomas.

NORTH CAROLINA

Perquimans.

WISCONSIN

Marquette.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named Kansas counties after December 31, 1965, or in the above-named North Carolina and Wisconsin counties after June 30, 1965, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 1st day of October 1964.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 64–10112; Filed, Oct. 5, 1964; 8:49 a.m.]

MINNESOTA

Designation of Area for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named county in the State of Minnesota natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

MINNESOTA

Meeker.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named county after December 31, 1965, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 1st day of October 1964.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 64–10113; Filed, Oct. 5, 1964; 8:49 a.m.]

TEXAS

Designation of Areas for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named counties in the State of Texas natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

TEXAS

Archer.
Brazos.
Childress.
Clay.
Crosby.
Denton.
Donley.
Grimes.
Hall.
Hamilton.
Leon.
Lipscomb.
Madison.
Martin.
McCulloch.
Van Zandt.
Wichita.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after June 30, 1965, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 1st day of October 1964.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 64–10114; Filed, Oct. 5, 1964; 8:49 a.m.]

WISCONSIN

Designation of Areas for Emergency Loans

For the purpose of making emergency loans pursuant to section 321 of the Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961), it has been determined that in the hereinafter-named counties in the State of Wisconsin natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

WISCONSIN

La Crosse and St. Croix.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after June 30, 1965, except to applicants who previously received emergency or special livestock loan assistance and who can qualify under established policies and procedures.

Done at Washington, D.C., this 1st day of October 1964.

ORVILLE L. FREEMAN,
Secretary.

[F.R. Doc. 64-10115; Filed, Oct. 5, 1964; 8:50 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

FEDERAL SHARE FOR PURPOSES OF LIBRARY SERVICES AND CONSTRUCTION ACT

Promulgation

Pursuant to section 104(d) of the Library Services and Construction Act, 70 Stat. 293, as amended, 20 U.S.C. 355(d), it having been found that the three most recent consecutive years for which satisfactory data are available from the Department of Commerce as to per capita income, are the years 1961, 1962, and 1963; the Federal shares for the several States of the Union, Puerto Rico, Guam, American Samoa, and the Virgin Islands for the purposes of said Act are hereby promulgated for the fiscal years ending June 30, 1966 and June 30, 1967, respectively as follows:

State	Federal share (percent)	State	Federal share (percent)
Alabama	66.00	Louisiana	64.06
Alaska	41.85	Maine	58.83
Arizona	55.33	Maryland	43.86
Arkansas	66.00	Massachusetts	41.79
California	38.99	Michigan	49.15
Colorado	48.77	Minnesota	52.65
Connecticut	34.97	Mississippi	66.00
Delaware	33.26	Missouri	49.20
Florida	56.65	Montana	55.14
Georgia	62.91	Nebraska	52.24
Hawaii	49.09	Nevada	33.57
Idaho	60.10	New Hampshire	52.62
Illinois	39.80	New Jersey	39.97
Indiana	50.06	New Mexico	60.27
Iowa	53.58	New York	38.10
Kansas	53.34	North Carolina	63.44
Kentucky	63.74	North Dakota	59.00
Ohio	49.07	Texas	57.24
Oklahoma	59.46	Utah	56.52
Oregon	49.24	Vermont	56.82
Pennsylvania	49.85	Virginia	58.23
Rhode Island	50.15	Washington	48.45
South Carolina	66.00	West Virginia	61.85
South Dakota	59.53	Wisconsin	51.29
Tennessee	64.03	Wyoming	49.24
		District of Columbia	33.00

OUTLYING PARTS OF THE UNITED STATES

American Samoa	66.00	Puerto Rico	66.00
Guam	66.00	Virgin Islands	66.00

Dated: September 15, 1964.

[SEAL] FRANCIS KEPPEL,
U.S. Commissioner of Education.

Approved: September 28, 1964.

ANTHONY J. CELEBREZZE,
Secretary.

[F.R. Doc. 64-10100; Filed, Oct. 5, 1964; 8:48 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-156]

REGENTS OF UNIVERSITY OF WISCONSIN

Notice of Proposed Issuance of Facility License Amendment

Please take notice that the Atomic Energy Commission ("the Commission") proposes to issue to the Regents of The University of Wisconsin ("the licensee") an amendment to Facility License No. R-74 substantially in the form set forth below. The license authorizes the licensee to operate its pool-type nuclear reactor ("the reactor") located on the University's campus in Madison, Wisconsin.

The proposed amendment would authorize (1) an increase in the steady state maximum power level from 10 kilowatts to 250 kilowatts (thermal), and (2) an increase in the limit on excess reactivity from 0.005 to 0.006. The proposed amendment was requested by the licensee in an application dated April 15, 1964, and supplement thereto dated July 27, 1964.

The Commission has found that:

A. The application for amendment complies with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations set forth in Title 10, Chapter 1, CFR;

B. There is reasonable assurance that (i) the activities authorized by this license amendment can be conducted at the designated location without endangering the health and safety of the public, and (ii) such activities will be conducted in compliance with the rules and regulations of the Commission;

C. The licensee is technically and financially qualified to engage in the proposed activities in accordance with the Commission's regulations;

D. The University of Wisconsin is a nonprofit educational institution and will use the reactor for the conduct of educational activities and is therefore exempt from the financial protection requirement of subsection 170a. of the Atomic Anergy Act of 1954, as amended; and

E. The issuance of this license amendment will not be inimical to the common defense and security or to the health and safety of the public.

Within fifteen (15) days from the date of publication of this notice in the FEDERAL REGISTER, the applicant may file a request for a hearing, and any person whose interest may be affected by the issuance of this amendment may file a petition for leave to intervene. A request for a hearing and petitions to intervene shall be filed in accordance with the provisions of the Commission's rules of practice, 10 CFR Part 2. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, a notice of hearing or an appropriate order will be issued. If no request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue the license amendment fifteen (15) days from the date of publication of this notice in the FEDERAL REGISTER.

For further details with respect to this proposed amendment, see (1) the application for license amendment dated April 15, 1964, and supplement thereto dated July 27, 1964, (2) a related hazards analysis prepared by the Research and Power Reactor Safety Branch of the Division of Reactor Licensing and (3) the Technical Specifications designated as Appendix A to the license, as amended, all of which will be available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of the hazards analysis may be obtained at the Commission's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington, D.C., 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 1st day of October 1964.

For the Atomic Energy Commission.

ROGER S. BOYD,
Chief, Research and Power Reactor Safety Branch, Division of Reactor Licensing.

[License No. R-74; Amdt. No. 6]

Effective as of the date of issuance specified below, License No. R-74, as amended, is amended in its entirety to read as follows:

1. This license applies to the pool-type nuclear reactor (hereinafter "the reactor") which is owned by the Regents of The University of Wisconsin (hereinafter "The University of Wisconsin") and located on The University of Wisconsin's campus in Madison, Wisconsin, and described in the application for license dated January 13, 1960, and amendments thereto dated September 19, 1960, and October 12, 1960, December 9, 1960, December 22, 1960, October 26, 1962, January 28, 1963, June 27, 1963, April 15, 1964, and July 27, 1964.

2. Subject to the conditions and requirements incorporated herein, the Atomic Energy Commission (hereinafter "the Commission") hereby licenses The University of Wisconsin:

A. Pursuant to Section 104c of the Atomic Energy Act of 1954, as amended (herein-

after "the Act"), and Title 10, CFR, Chapter 1, Part 50, "Licensing of Production and Utilization Facilities," to possess and operate the reactor as a utilization facility at the designated location on The University of Wisconsin's campus in Madison, Wisconsin;

B. Pursuant to the Act and Title 10, CFR, Chapter 1, Part 70, "Special Nuclear Material," to receive, possess and use in connection with the operation of the reactor 16 grams of plutonium contained in plutonium-beryllium neutron sources and up to seven kilograms of contained uranium 235; and

C. Pursuant to the Act and Title 10, CFR, Chapter 1, Part 30, "Licensing of Byproduct Material," to possess, but not to separate, such byproduct material as may be produced by operation of the reactor.

3. This license shall be deemed to contain and be subject to the conditions specified in Section 50.54 of Part 50, Section 70.32 of Part 70, and Section 30.32 of Part 30 of the Commission's regulations, and to be subject to all applicable provisions of the Act and rules, regulations and orders of the Commission now or hereafter in effect; and is subject to the additional conditions specified below:

A. *Maximum power level.* The University of Wisconsin shall not operate the reactor at steady state power levels in excess of 250 kilowatts (thermal).

B. *Technical specifications.* The Technical Specifications contained in Appendix A to this license (hereinafter the "Technical Specifications") are hereby incorporated in this license. The University of Wisconsin shall operate the reactor only in accordance with the Technical Specifications. No changes shall be made in the Technical Specifications unless authorized by the Commission as provided in 10 CFR 50.59.

C. *Authorization of changes, tests, and experiments.* The University of Wisconsin may (1) make changes in the reactor as described in the Hazards Summary Report, (2) make changes in the procedures as described in the Hazards Summary Report, and (3) conduct tests or experiments not described in the Hazards Summary Report only in accordance with the provisions of Section 50.59 of the Commission's regulations.

D. *Reports.* In addition to reports otherwise required under this license and applicable regulations:

(1) The University of Wisconsin shall make an immediate report in writing to the Commission of any indication or occurrence of a possible unsafe condition relating to the operation of the reactor, including, without implied limitation, any possible unsafe condition arising out of:

a. Any substantial variance disclosed by operation of the reactor from the performance specifications set forth in the Hazards Summary Report, and

b. Any accidental release of radioactivity, whether or not resulting in property damage or personal injury or exposure above permissible limits.

(2) The University of Wisconsin shall report to the Commission in writing, within sixty (60) days, significant changes in plant organization and accident analyses, as described in the Hazards Summary Report.

E. *Records.* In addition to those otherwise required under this license and applicable regulations, The University of Wisconsin shall keep the following records:

(1) Reactor operating records, including power levels.

(2) Records of in-pile irradiations.

(3) Records showing radioactivity released or discharged into the air or water beyond the effective control of The University of Wisconsin as measured at the point of such release or discharge.

(4) Records of emergency reactor scrams, including reasons for emergency shutdowns.

4. This license amendment is effective as of the date of issuance and shall expire at midnight June 7, 2000.

Date of issuance:

For the Atomic Energy Commission.

ROGER S. BOYD,
Chief, Research and Power Reactor Safety Branch, Division of Reactor Licensing.

[F.R. Doc. 64-10158; Filed, Oct. 5, 1964; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 13777; Order E-21332]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Relating to Specific Commodity Rates

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 29th day of September 1964.

There has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, an agreement between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Traffic Conference 1 of the International Air Transport Association (IATA), and adopted pursuant to the provisions of Resolution 590 (Commodity Rates Board).

The agreement, adopted pursuant to unprotested notices to the carriers and promulgated in IATA memoranda, names additional rates as set forth in the attachment hereto.[1]

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, does not find the subject agreement to be adverse to the public interest or in violation of the Act, provided that approval thereof is conditioned as hereinafter ordered.

Accordingly, it is ordered:

That Agreement C.A.B. 17666, R-54 through R-59, be and hereby is approved, provided that such approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publication.

Any air carrier party to the agreement, or any interested person, may, within 15 days from the date of service of this order, submit statements in writing containing reasons deemed appropriate, together with supporting data, in support of or in opposition to the Board's action herein. An original and nineteen copies of the statements should be filed with the Board's Docket Section. The Board may, upon consideration of any such statements filed, modify or rescind its action herein by subsequent order.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 64-10101; Filed, Oct. 5, 1964; 8:48 a.m.]

[1] Filed as part of the original document.

[Docket No. 15595; Order E-21343]

TRANS WORLD AIRLINES, INC., AND UNITED AIR LINES, INC.

Proposed Jet Coach Fares Between Los Angeles and San Francisco; Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 30th day of September 1964.

By tariff revisions[1] marked to become effective October 10, 1964, Trans World Airlines, Inc. (TWA), proposes: (1) To reduce its local one-way jet day coach fares between Los Angeles and San Francisco/Oakland from $23.70 to $14.50, (2) to establish ten-trip jet coach commuter fares of $137.75 between the same points, with the ten-trip tickets being nontransferable and valid for 90 days, (3) to establish special excess baggage charges for jet coach service between the above points, and (4) to provide that the family-plan discount will not apply in connection with its local jet day coach fares between the same points. United Air Lines, Inc. (United), has also filed tariff revisions[2] proposing to reduce its one-way jet day coach fare between the same points to $14.50 effective October 10, 1964. In addition, effective October 25, 1964, United proposes to reduce its one-way jet coach fares in eight markets served through the Los Angeles-San Francisco market to the level of the combination of local fares constructed under the proposed Los Angeles-San Francisco fare.

Western Air Lines, Inc. (Western), has filed complaints requesting suspension and investigation of the TWA and United tariff revisions proposing the $14.50 fare for existing jet coach service between Los Angeles and San Francisco/Oakland. Western also requests suspension of the United tariff revisions proposing to reduce jet coach fares in the markets served through the Los Angeles-San Francisco market. The complaints allege that the proposals represent fare reductions of existing services without corresponding cost savings; that the proposals go beyond meeting the competition of United's new jet commuter fare since the latter represents an experiment specifically designed to serve the local commuter market; and that under the instant proposals, there is no prohibition of a lounge or of meal service, as is the case under the United commuter service. The complaints further allege that the proposals would have a substantial adverse effect on Western's revenues, not only in the Los Angeles-San Francisco market, but also in through and beyond markets; that the resulting fare differential between first-class and coach jet service in the Los Angeles-San Francisco market cannot be justified on either a cost of service or a value of service basis; and that the fare yield is out of

[1] Agent C. C. Squire's C.A.B. No. 43 and Trans World Airlines, Inc.'s, C.A.B. No. 127 bearing posting dates of August 26, 1964, and Agent C. C. Squire's C.A.B. No. 44, bearing a posting date of September 1, 1964.

[2] Revisions to Agent C. C. Squire's C.A.B. Nos. 43 and 44, filed September 10, 1964.

line with other comparable short-haul yields on the TWA and United systems.

In support of its filing and in answer to the complaints, TWA states that its proposals are being filed to meet the competitive commuter fares filed by United to become effective September 27, 1964, and that its purpose is the same as that of United, i.e., to offer the public the benefits of a low-fare jet coach service that compares favorably with other low-fare services presently offered in the Los Angeles-San Francisco market. TWA maintains that it does not intend to apply similar low yield fares to its coach services over its entire system, that there are no significant differences between its proposed service and the commuter service of United in this market, and that Western's claim of adverse impact on revenues is overstated. United claims its filing is being made to meet the reduced jet coach fares filed by TWA.

We note that the instant proposal of TWA, and the matching United filing, present a different situation than that arising from United's jet commuter fares that became effective September 27, 1964. In its simplest form, TWA is now proposing (and United is meeting) a substantial reduction of the fares for existing jet coach service to meet the fare level of a competitor's new service, without a showing that its existing service can be operated economically at the reduced fare level. The jet coach service offered at the present time would not be changed in conjunction with the fare reductions. Food service would still be available, seating density would be unchanged, and no cost savings are claimed. Moreover, there is no showing or allegation that the current jet coach fare is excessive in relation to the cost of the service. We are in favor of allowing carriers to reduce fares to meet the fares of other carriers when the services are comparable and competitive. However, we do not look with favor on a proposal which upgrades service while matching fares, such as now proposed, because the economic basis of the low-fare proposal would then be undermined.

Upon consideration of the matters of record, the Board finds that the proposed jet coach fares of TWA and United may be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, and that the tariff revisions should be investigated. Since we believe there is a substantial question as to the economic validity of the proposed fares and a likelihood of a substantial adverse economic impact on the industry from the proposed fare cuts, we have further concluded to suspend the effectiveness of the tariff revisions and defer their use pending investigation.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 102, 204(a), 403, 404, and 1002,

It is ordered, That:

1. An investigation be instituted to determine whether the fares described in Appendix A attached hereto,[3] including subsequent revisions or reissues thereof, and rules, regulations, or practices affecting such fares, are or will be, unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful and if found to be unlawful to determine and prescribe the lawful fares, and rules, regulations or practices affecting such fares;

2. Pending hearing and decision by the Board, the fares described in Appendix A attached hereto (except the fares between Vancouver and Los Angeles) are suspended and their use deferred to and including January 7, 1965, unless otherwise ordered by the Board and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The proceeding ordered herein be assigned for hearing before an Examiner of the Board at a time and place hereafter to be designated;

4. The complaints of Western Air Lines, Inc., in Dockets 15544 and 15551, to the extent granted herein, are consolidated in this docket; and

5. Copies of this order be filed with the aforesaid tariffs and be served upon Trans World Airlines, Inc., United Air Lines, Inc., and Western Air Lines, Inc., which are hereby made parties to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[4]

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 64-10102; Filed, Oct. 5, 1964; 8:48 a.m.]

[3] Filed as part of the original document.

[4] Dissenting opinion of Vice Chairman Murphy and Member Minetti filed as part of original document.

FEDERAL MARITIME COMMISSION

CENTRAL GULF LINES AND ISTHMIAN LINES, INC.

Notice of Agreements Filed for Approval

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement(s) at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 301; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter), and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Mr. J. C. Pendleton, Secretary,
The Persian Gulf Outward Freight Conference,
11 Broadway,
New York, N.Y. 10004.

Agreement No. 7700-8 between the member lines of The Persian Gulf Outward Freight Conference has been filed with the Commission for approval to modify the Admission, Withdrawal, and Expulsion provisions of the basic agreement, pursuant to General Order 9 (46 CFR Part 523).

Dated: September 30, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64-10074; Filed, Oct. 5, 1964; 8:45 a.m.]

COTTMAN CO. ET AL.

Notice of Agreements Filed for Approval

Notice is hereby given that the following freight forwarder cooperative working agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreements at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 301. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement or request for a hearing should also be forwarded to each of the parties to the agreement (as indicated hereinafter), and the comments should indicate that this has been done.

Unless otherwise indicated, these agreements are nonexclusive, cooperative working arrangements under which the parties may perform freight forwarding services for each other, dividing forwarding and service fees as agreed on each transaction. Ocean freight compensation is to be divided as agreed between the parties.

The Cottman Company, Baltimore, Md., is party to the following agreements, the terms of which are identical. The other parties are:

Trade Lanes Shipping Corp., New York, N.Y.	FF-1695
Dumont Shipping Co., Inc., New York, N.Y.	FF-1700
Triangle Forwarding Corp., New York, N.Y.	FF-1704
American Express Co., New York, N.Y.	FF-1705

The following agreements have similar terms:

Loretz & Co., Los Angeles, Calif. (Offices at San Francisco and Houston) and Federal Storage and Forwarding Co., Washington, D.C.	FF-1683

Karl Schroff & Associates, Inc., New York, N.Y., and Seaway Forwarding Co., Cleveland, Ohio..... FF-1684
T. J. Hanson, Inc., Beaumont, Tex., and Inter-Maritime Forwarding Co., Inc., New York, N.Y..... FF-1685
Advance Shipping Co., New York, N.Y., and Westfeldt Brothers Forwarders, Inc., New Orleans, La... FF-1686
W. J. Byrnes & Co., San Francisco, Calif., and Henry A. Wess, Inc., Cincinnati, Ohio..... FF-1687
John H. Faunce Philadelphia, Inc., Philadelphia, Pa., and C. A. Hartnett Company, Boston, Mass..... FF-1688
International Shipping Corp., Miami, Fla., and Copeland Shipping, Inc., New York, N.Y..... FF-1689
Triangle Forwarding Corp., New York, N.Y., and Stone & Downer Co., Boston, Mass..... FF-1691
Frank P. Dow Co., Inc., Seattle, Wash.; Frank P. Dow Co., Inc., San Francisco, Calif.; Frank P. Dow Co., Inc. of L.A., Los Angeles, Calif.; Frank P. Dow Co., Inc., Portland, Oreg.; and Amerford International Corporation, Jamaica, N.Y..... FF-1692
Martin Lewin Forwarding Co., Hollywood, Calif., and Bernardine Shipping Co., Inc., New York, N.Y..... FF-1693
Heemsoth-Kerner Corp., New York, N.Y., and Sockrider Forwarding Co., Lake Charles, La..... FF-1694
Keer, Maurer Co., Philadelphia, Pa., and Norton & Ellis (N.Y. Inc.), New York, N.Y..... FF-1701
Fred P. Gaskell Co., Inc., New York, N.Y.; Fred P. Gaskell Co., Inc., Norfolk, Va.; Fred P. Gaskell Co., Inc., New Orleans, La.; and Alltransport Inc., New York, N.Y.... FF-1704

Agreement No. FF-1690 between Frontier Freight Forwarders, Inc., Miami, Fla., and D. C. Andrews & Co., Inc., New York, N.Y., is a working arrangement under which forwarding and service fees are to be divided as agreed. Ocean freight compensation is to be divided equally between the parties.

Agreement No. FF-1696 between Bernardine Shipping Company, Inc., New York, N.Y., and The Cottman Company, Baltimore, Md., is a working arrangement under which forwarding and service fees are to be divided as agreed. Ocean freight compensation is to be retained by Bernardine Shipping Company, Inc.

Agreement No. FF-1697 between The Cottman Company, Baltimore, Md., party (a) and L. Grodwohl & Son, New York, N.Y., party (b) is an arrangement under which on shipments loaded at Baltimore, party (b) agrees to pay party (a) $2.00 for completing Export Declarations and filing them with the Custom House.

Agreement No. FF-1698 between The Cottman Company, Baltimore, Md., party (a), and Major Forwarding Company, Inc., New York, N.Y., party (b), is an arrangement under which on shipments loaded at Baltimore, party (b) agrees to pay party (a) $2.00 for completing Export Declarations and filing them with the Custom House.

Agreement No. FF-1699 between Atlas Forwarding Co., Inc., New York, N.Y., and The Cottman Company, Baltimore, Md., is a working arrangement under which forwarding and service fees are to be divided as agreed. Ocean freight compensation is to be retained by Atlas Forwarding Co., Inc.

Agreement No. FF-1702 between The Cottman Company, Baltimore, Md., and C. H. Powell Company, Inc., New York, N.Y., is a working arrangement under which forwarding and service fees are to be divided as agreed. Ocean freight compensation is to be retained by C. H. Powell Company, Inc.

Dated: September 30, 1964.

By the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64-10075; Filed, Oct. 5, 1964; 8:45 a.m.]

HAMBURG-SUEDAMERIKANISCHE DAMPFSCHIFFAHRTS-GESELLSCHAFT, EGGERT AND AMSINCK (COLUMBUS LINE) AND BLUE STAR LINE LIMITED

Notice of Agreements Filed for Approval

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement(s) at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 301; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter), and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Casey, Lane & Mittendorf,
26 Broadway,
New York, N.Y. 10004.

Agreement No. 9384 between Hamburg-Suedamerikanische Dampfschiffahrts-Gesellschaft, Eggert & Amsinck (Columbus Line) and Blue Star Line Limited provides for the establishment of a joint service covering the transportation of freight traffic from ports in Australia to the United States Atlantic and Gulf ports. The parties intend to maintain alternate sailings spaced at approximately two-week intervals in accordance with the terms and conditions set forth in the agreement. No pooling or sharing of profits is involved. If the parties join any conference established in the trade as individual members rather than as a joint service, the joint service shall be terminated but the agreement will remain in effect as a sailing agreement.

Dated: September 30, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64-10076; Filed, Oct. 5, 1964; 8:45 a.m.]

[Docket No. 1182]

JACKSONVILLE, FLORIDA/PUERTO RICO RATES

Third Supplemental Order Notice of Expansion of Investigation and Change of Name of Proceeding

Whereas, by order dated April 30, 1964, the Commission entered into an investigation to determine whether the publication by Sea-Land Service, Inc., Puerto Rican Division (Sea-Land) of a different rate on a commodity from Jacksonville to Puerto Rico than it maintains on the same commodity from other Atlantic ports to Puerto Rico is unjust, unreasonable, or otherwise unlawful under the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933;

Whereas, by First Supplemental Order in this proceeding dated May 21, 1964, the Commission expanded the investigation in this proceeding to include the issue of whether TMT Trailer Ferry, Inc. (C. Gordon Anderson, Trustee) (TMT) is entitled to maintain a differential below the rate of Sea-Land because of TMT's slower barge service and any cost differential which may be inherent in TMT's barge operation;

Whereas, on August 6, 1964, Sea-Land filed 16th Revised Page No. 31, 16th Revised Page No. 32 and 25th Revised Page No. 33 to its Tariff FMC-F No. 2 (Pan-Atlantic Steamship Corporation Series) to become effective on September 10, 1964 (25th Revised Page 33 was postponed to and including September 17, 1964), which amended rates on used and scrap metals (scrap metal);

Whereas, the scrap metal rates from Puerto Rico to other Atlantic ports remain unchanged and said tariff pages filed August 6, 1964 result in different rates being assessed on Puerto Rico/Jacksonville cargo than on cargo moving to other Atlantic ports even though all of the cargo may move on the same vessel under the provisions of the tariff;

Whereas, TMT protested the Sea-Land tariff changes on grounds similar to those which caused the Commission to institute this investigation in the first instance;

Whereas, the Commission is of the opinion that said new Sea-Land tariff provisions should be included in the investigation to determine whether they are unjust, unreasonable, or otherwise unlawful, under the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933;

Now therefore it is ordered, That this proceeding be, and it is hereby expanded to include an investigation into and a

hearing concerning the lawfulness of Sea-Land's scrap or used metal rates, effective September 10, and 18, 1964, and as later may be amended, with a view to making such findings and orders in the premises as the facts and circumstances shall warrant;

It is further ordered, That (I) a copy of this order shall forthwith be served upon the respondents herein; (II) the said respondents be duly notified of the time and place of the hearing ordered; and (III) this order and notice of the said hearing be published in the FEDERAL REGISTER.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies) having an interest in this proceeding and desiring to intervene therein, should notify the Secretary of the Commission promptly and file petitions for leave to intervene in accordance with Rule 5(n) (46 CFR 502.73).

By the Commission.

[SEAL] THOMAS LISI,
Secretary.

[F.R. Doc. 64-10077; Filed, Oct. 5, 1964; 8:45 a.m.]

MEDITERRANEAN-U.S.A. GREAT LAKES WESTBOUND FREIGHT CONFERENCE

Notice of Agreements Filed for Approval

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement(s) at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 301; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter), and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Mr. Eric G. Brown, Secretary,
Mediterranean-U.S.A. Great Lakes Westbound Freight Conference,
72, Rue de la Republique,
Marseille (Bouches-du-Rhone).

Agreement 8260-7 between member lines of the Mediterranean-U.S.A. Great Lakes Westbound Freight Conference, modifies the basic agreement (8260, as amended) to provide for the inclusion of procedures relating to Admission, Withdrawal, and Expulsion pursuant to General Order 9 (46 CFR Part 523).

Dated: September 30, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64-10078; Filed, Oct. 5, 1964; 8:46 a.m.]

OCEAN STEAM SHIP CO., LTD., ET AL.

Notice of Agreements Filed for Approval

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement(s) at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 301; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 5 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter), and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Mr. Thomas K. Roche,
Haight, Gardner, Poor & Havens,
80 Broad Street,
New York, N.Y. 10004.

Agreements 8529-1 and 8529-A-1 between Ocean Steam Ship Company, Ltd., the China Mutual Steam Navigation Co., Ltd. (carriers comprising The Blue Funnel Line joint service operating under approved Agreement 7568) and The Swedish East Asia Co., Ltd., modify the basic agreement to provide for a change in the trade name of the joint service from "Malaya Indonesia Line" to "Blue Sea Line" and to substitute the name Malaysia for the names of Malaya and Singapore so as to reflect the present designation of that trade area.

Dated: September 30, 1964.

By the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64-10079; Filed, Oct. 5, 1964; 8:46 a.m.]

FEDERAL POWER COMMISSION

[Docket Nos. G-9287, etc.]

HUMBLE OIL AND REFINING CO. ET AL.

Order Requiring Report of Intended Disposition of Refunds

SEPTEMBER 29, 1964.

Humble Oil & Refining Company, Docket No. G-9287, et al.; Tennessee Gas Transmission Company, Docket No. RP65-6; Natural Gas Pipeline Company of America, Docket No. RP65-7; Trunkline Gas Company, Docket No. RP65-8; Mississippi River Fuel Corporation, Docket No. RP65-9; Lone Star Gas Company, Docket No. RP65-10; Gas Gathering Corporation, Docket No. RP65-11; Humble Gas Transmission Company, Docket No. RP65-12; [1] Southern Natural Gas Company, Docket No. RP65-13; Northern Natural Gas Company, Docket No. RP65-14; United Gas Pipe Line Company, Docket No. RP-15; Texas Gas Transmission Corporation, Docket No. RP65-16; Kansas-Nebraska Natural Gas Company, Docket No. RP65-17; Panhandle Eastern Pipe Line Company, Docket No. RP65-18; Colorado Interstate Gas Company, Docket No. RP65-19; El Paso Natural Gas Company, Docket No. RP65-20; Cities Service Gas Company, Docket No. RP65-21; United Fuel Gas Company, Docket No. RP65-22; American Louisiana Pipe Line Company, Docket No. RP65-23.

In our order issued July 8, 1964, as amended by our order of August 7, 1964, in Docket No. G-9287, et al., we conditionally approved a rate settlement proposal filed by Humble Oil & Refining Company. That order stated that we considered it our duty in carrying out the mandates of the Natural Gas Act to assure, within the limits of our jurisdiction, that refunds made pursuant to the settlement are actually flowed through to the parties legally and equitably entitled thereto.

The order went on to state that:

We are not here determining that a pipeline purchaser from Humble or one down the line in the chain of resales between the producer and ultimate consumer are never entitled as a matter of law or equity to retain all or part of the refunds received from a supplier. We conclude only that merely because a pipeline is under no special express requirement to flow refunds through to its customers and did not previously pass on to its customers the producer's price increase (or higher gas costs arising from sales temporarily certificated at prices higher than that fixed in the settlement), does not determine that it is entitled to retain such refunds. Unlike the corresponding refund provisions of the Federal Power Act (section 205(e), 16 U.S.C. 824(d)) and the Interstate Commerce

[1] The docket number is assigned for identification purposes only and is not intended as a classification of the company for other purposes.

Act (section 15(7), 49 U.S.C. 15(7)) which provided that refunds must be paid "to the persons in whose behalf such amounts [increased rates] were paid," section 4(e) of the Natural Gas Act does not specify to whom refunds are to be paid. And in the Federal Power Commission v. Interstate Natural Gas Company, 336 U.S. 577, the Supreme Court rejected the claim that pipeline purchasers were the legal owners of funds placed in escrow pursuant to the terms of a judicial stay of a Commission directed rate reduction, merely because the fund was created from their payments at the previous higher rate. See also Central States Company v. Muscatine, 324 U.S. 138 (1945) (dissenting opinion).

In the paragraph immediately following, our order issued July 8, 1964, in Docket No. G–9287, et al., set out the procedures we propose to follow to carry out our indicated policy. That paragraph and the procedures therein provided are incorporated herein.

It appears from the terms of the settlement between the parties and the appendices attached to our order issued July 8, 1964, that each of the companies listed in the caption may receive refunds directly from Humble through this settlement. Accordingly, it is necessary and appropriate that these compaines submit the report hereinafter required setting out their proposed disposition of the refunds they may receive under the settlement of Docket Nos. G–9287, et al., as indicated in the report served upon them by Humble.

The Commission orders:

(A) The natural gas companies listed in the first paragraph (except Humble) shall submit, in their respective docket, within ten days of the issuance of this order, the report required by the paragraph of our order issued July 8, 1964, in Docket No. G–9287, et al., incorporated herein and shall serve such report upon its customers and the interested state commissions.

(B) Any of the above companies claiming the right to retain any portion of the amount it may receive from Humble, shall submit, in addition to the above report, a detailed statement of the legal and equitable basis for such claim.

(C) Pending further order of the Commission, Humble shall retain the amounts to be refunded in accordance with paragraphs (F), (G), and (H) of our order of July 8, 1964, as amended by our order of August 7, 1964.

By the Commission.

[SEAL] JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 64–10071; Filed, Oct. 5, 1964; 8:45 a.m.]

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

TARIFF OF TOLLS

Extension of Toll Review Period

Please take notice that by agreement entered on May 28, 1964 between the Saint Lawrence Seaway Development Corporation and The St. Lawrence Seaway Authority of Canada, supplementary to their agreement of January 29, 1959 respecting the St. Lawrence Seaway Tariff of Tolls, which supplementary agreement was confirmed by an exchange of notes between the Governments of the United States (Note No. 387) and Canada (Note No. 101) on June 30, 1964, the date for making a report to the Governments as to the sufficiency of the authorized Seaway tolls (24 F.R. 1925–6) to meet statutory requirements, has been extended to July 1, 1966. Accordingly, no change in tolls will be proposed at the present time, dispensing with the necessity for a public hearing under the circumstances as recited in the Corporation's notice published in the FEDERAL REGISTER on May 21, 1963 (28 F.R. 5070).

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION,
[SEAL] JOSEPH H. MCCANN,
Administrator.

[F.R. Doc. 64–10073; Filed, Oct. 5, 1964; 8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70–4234]

JERSEY CENTRAL POWER AND LIGHT CO.

Notice of Proposed Issuance and Sale of Debentures at Competitive Bidding

SEPTEMBER 30, 1964.

Notice is hereby given that Jersey Central Power & Light Company ("Jersey Central"), Madison Avenue at Punch Bowl Road, Morristown, N.J., 07960, an electric utility subsidiary company of General Public Utilities Corporation, a registered holding company, has filed an application with this Commission pursuant to section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder regarding the following proposed transaction. All interested persons are referred to the application, on file at the office of the Commission, for a statement of the transaction therein proposed which is summarized below.

Jersey Central proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 promulgated under the Act, $5,000,000 principal amount of Debentures, __ percent Series due 1989. The interest rate of the debentures (which shall be a multiple of ⅛ of 1 percent and the price, exclusive of accrued interest, to be paid to Jersey Central (which shall be not less than 100 percent more than 102¾ percent of the principal amount thereof) will be determined by the competitive bidding. The debentures will be issued under the Indenture dated as of October 1, 1963, between Jersey Central and Irving Trust Company, Trustee, as supplemented by a First Supplemental Indenture to be dated as of November 1, 1964.

The proceeds (other than premium, if any, and accrued interest) from the sale of the debentures will be applied toward Jersey Central's 1964 construction program (estimated at $42,000,000) or to reimburse partially Jersey Central's treasury for expenditures therefrom for that purpose.

Fees and expenses incident to the proposed transaction are estimated at $42,000, including counsel fees of $6,000 and accounting fees of $2,000. The fees and disbursements of counsel for the underwriters, to be paid by the successful bidder, will be supplied by amendment.

The application states that the issuance and sale of the new debentures are subject to the jurisdiction of the Board of Public Utility Commissioners of the State of New Jersey, the State commission of the State in which Jersey Central is organized and doing business, and that, although Jersey Central has qualified to do business in the Commonwealth of Pennsylvania, it is the position of the Pennsylvania Public Utility Commission that the Pennsylvania Public Utility Law does not apply to the proposed transaction. It is further stated that no other State commission has jurisdiction over the proposed transaction and that no Federal commission, other than this Commission, has jurisdiction over said transaction.

Notice is further given that any interested person may not later than November 2, 1964, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed contemporaneously with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 64–10069; Filed, Oct. 5, 1964; 8:45 a.m.]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

OCTOBER 1, 1964.

Protests to the granting of an application must be prepared in accordance with Rule 1.40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 39293: *Manufactured tobacco from Reidsville, N.C.* Filed by O. W. South, Jr., agent (No. A4570), for interested rail carriers. Rates on manufactured tobacco, in carloads, from Reidsville, N.C., to Peoria, Ill., and Milwaukee, Wis.

Grounds for relief: Motortruck competition.

Tariff: Supplement 22 to Southern Freight Association, agent, tariff I.C.C. S–293.

FSA No. 39294: *Lime from Brazlime, Tex.* Filed by Southwestern Freight Bureau, agent (No. B–8611), for interested rail carriers. Rates on lime, quick, common hydrated and common lime, in carloads, from Brazlime, Tex., to points in Kentucky, Louisiana, Michigan, New York, Ohio, Pennsylvania, and West Virginia.

Grounds for relief: Market competition.

Tariff: Supplement 23 to Southwestern Freight Bureau, agent, tariff I.C.C. 4520.

FSA No. 39295: *Tin or terne plate to Pascagoula, Miss.* Filed by O. W. South, Jr., agent (No. A4571), for interested rail carriers. Rates on tin or terne plate, as described in the application, in carloads, from East St. Louis, Ill., and St. Louis, Mo., to Pascagoula, Miss.

Grounds for relief: Barge competition.

Tariff: Supplement 143 to Southern Freight Association, agent, tariff I.C.C. S–163.

By the Commission.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 64–10089; Filed, Oct. 5, 1964; 8:47 a.m.]

[Notice 1055]

MOTOR CARRIER TRANSFER PROCEEDINGS

OCTOBER 1, 1964.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC–FC 67231. By order of September 29, 1964, the Transfer Board approved the transfer to Brown Transfer Company, a corporation, Kearney, Nebraska, of the operating rights issued by the Commission October 26, 1949, under Certificate No. MC 107037, to Alvin H. Brown, doing business as Brown Transfer Company, Kearney, Nebr., authorizing the transportation, over regular routes, of general commodities, between Omaha, Nebr., and Scottsbluff, Nebr.; between Grand Island, Nebr., and Omaha, Nebr. F. M. Parker, c/o Munro, and Bridgeport, Nebr.; and vegetables, in truckload lots, from Morrill, Nebr., to Omaha, Nebr. F. M. Parker, c/o Munro, Parker & Munro, 8 West 23 Street, Kearney, Nebr., attorney for applicants.

[SEAL] HAROLD D. MCCOY, *Secretary.*

[F.R. Doc. 64–10090; Filed, Oct. 5, 1964; 8:47 a.m.]

Title 2—THE CONGRESS

ACTS APPROVED BY THE PRESIDENT

EDITORIAL NOTE: After the adjournment of the Congress *sine die*, and until all public acts have received final Presidential consideration, a listing of public laws approved by the President will appear in the daily FEDERAL REGISTER under *Title 2, The Congress*. A consolidated listing of the new acts approved by the President will appear in the Daily Digest in the final issue of the Congressional Record covering the 88th Congress, Second Session.

Approved October 2, 1964

S. 2049 ..... Public Law 88–611
To authorize the Secretary of Commerce to accept gifts and bequests for the purposes of the Department of Commerce, and for other purposes.

H.J. Res. 793 ..... Public Law 88–612
Authorizing the United Spanish War Veterans to erect a memorial in the District of Columbia or its environs.

H.R. 5042 ..... Public Law 88–614
For the relief of certain officers of the naval service erroneously in receipt of compensation based upon an incorrect computation of service for basic pay.

H.R. 11332 ..... Public Law 88–616
To authorize certain veterans' benefits for disability or death resulting from injuries sustained prior

H.R. 11626 ..... Public Law 88–613
To authorize the payment of expenses incident to the evacuation of dependents of military personnel from Panama and Cyprus.

H.R. 11913 ..... Public Law 88–615
To authorize the disposal, without regard to the prescribed six-month waiting period, of antimony from the national stockpile and the supplemental stockpile.

H.R. 12091 ..... Public Law 88–617
To authorize the disposal, without regard to the prescribed six-month waiting period, of approximately nine million five hundred thousand pounds of sisal from the national stockpile.

Approved October 3, 1964

S. 1082 ..... Public Law 88–622
To establish in the Treasury a correctional industries fund for the government of the District of Columbia, and for other purposes.

H.R. 2501 ..... Public Law 88–620
To authorize the promotion of qualified Reserve officers of the Army and the Air force to existing unit vacancies.

H.R. 2509 ..... Public Law 88–624
To authorize Reserve officers to combine service in more than one reserve component in computing the four years of satisfactory Federal service necessary to qualify for the uniform maintenance allowance.

H.R. 2512 ..... Public Law 88–621
To clarify the status of members of the National Guard while attending or instructing at National Guard schools established under the authority of the Secretary of the Army or Secretary of the Air Force, as the case may be, etc.

H.R. 2753 ..... Public Law 88–626
To disclaim any title of the United States to certain real property in Modoc County, California.

H.R. 2859 ..... Public Law 88–623
To provide for the promulgation of rules of practice and procedure under the Bankruptcy Act, and for other purposes.

H.R. 9435 ..... Public Law 88–619
To improve judicial procedures for serving documents, obtaining evidence, and proving documents in litigation with internation aspects.

H.R. 10328 ..... Public Law 88–618
For the relief of certain commissioned officers of the Army or Air Force who were erroneously paid uniform allowance under the provisions of section 305 of the Career Compensation Act of 1949, as amended, and for other purposes.

H.R. 12033 ..... Public Law 88–625
Food Additives Transitional Provisions Amendment of 1964.

CUMULATIVE CODIFICATION GUIDE—OCTOBER

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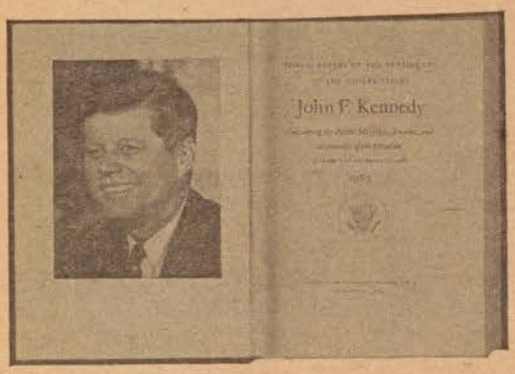
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