

## § 47.5

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(3) Changing duty assignments and responsibilities.

(4) Restricting proximity travel to and from the military installation.

(5) Imposing dress and grooming standards.

(B) Consequences for noncompliance might include a loss of some privilege, dismissal from the group, or trial under military law. Such military discipline acts in favor of recognition.

(v) *Subjection to military justice.* Military members are subject to the military criminal justice system. During times of war, “persons serving with or accompanying an Armed Force in the field” are subject to the military criminal justice code. Those who were serving with the U.S. Armed Forces may have been treated as if they were military and subjected to court-martial jurisdiction to maintain discipline. Such treatment is a factor in favor of recognition.

(vi) *Prohibition against members of the group joining the armed forces.* Some organizations may have been formed to serve in a military capacity to overcome the operation of existing laws or treaty or because of a governmentally established policy to retain individuals in the group as part of a civilian force. These factors act in favor of recognition.

(vii) *Receipt of military training and/or achievement of military capability.* If a group employed skills or resources that were enhanced as the result of military training or equipment designed or issued for that purpose, this acts toward recognition.

(2) *Incidents not favoring equivalency—*  
(i) *Submission to the U.S. Armed Forces for protection.* A group that seeks protection and assistance from the U.S. Armed Forces and submits to military control for its own well-being is not deemed to have provided service to the Armed Forces equivalent to AD military service, even though the group may have been as follows:

(A) Armed by the U.S. military for defensive purposes.

(B) Routed by the U.S. military to avoid the enemy.

(C) Instructed by the U.S. military for the defense of the group when attacked by, or in danger of attack by, the enemy.

(D) Otherwise submitted themselves to the U.S. military for sustenance and protection.

(ii) *Permitted to resign.* The ability of members to resign at will and without penalty acts against military control. Penalty may be direct and severe, such as confinement, or indirect and moderate, such as difficult and costly transportation from an overseas location.

(iii) *Prior recognition of group service.* Recognition of a group’s service by agencies of State or local government does not provide support in favor of recognition under this part.

(3) *Status of group in international law.* In addition to other factors, consideration will be given to whether members of the group were regarded and treated as civilians, or assimilated to the Armed Forces as reflected in treaties, customary international law, judicial decisions, and U.S. diplomatic practice.

(c) *Reconsideration.* Applications by groups previously denied a favorable determination by the Secretary of the Air Force shall be reconsidered under this part if the group submits evidence that is new, relevant, and substantive. Any request that the DoD Civilian/Military Service Review Board established hereunder (see § 47.5(b)) determines does not provide new, relevant, and substantive evidence shall be returned to the applicant with the reasons for nonacceptance.

(d) *Counsel Representation.* Neither the Department of Defense nor Department of Transportation shall provide representation by counsel or defray the cost of such representation with respect to any matter covered by this part.

### § 47.5 Responsibilities.

(a) The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall:

(1) Appoint a primary and an alternate member in the grade of O-6 or GM-15 or higher to the DoD Civilian/Military Service Review Board.

(2) Exercise oversight over the Military Departments and the U.S. Coast Guard for compliance with this Directive and in the issuance of discharge documents and casualty reports to members of recognized groups.

(b) The Secretary of the Air Force, as the designated Executive Agent of the Secretary of Defense for the administration of Public Law 95-202 shall:

(1) Establish the DoD Civilian/Military Service Review Board and the Advisory Panel.

(2) Appoint as board president a member or employee of the Air Force in grade O-6 or GM-15 or higher.

(3) Request the Secretary of Transportation to appoint an additional voting member from the U.S. Coast Guard when the board is considering the application of a group claiming active Coast Guard service.

(4) Provide a recorder and an assistant to maintain the records of the board and administer the functions of this part.

(5) Provide nonvoting legal advisors and historians.

(6) Publish notices of group applications and other Public Law 95-202 announcements in the FEDERAL REGISTER.

(7) Consider the rationale and recommendations of the DoD Civilian/Military Service Review Board.

(8) Determine whether the service rendered by a civilian or contractual group shall be considered AD service to the U.S. Armed Forces for all laws administered by the VA. The decision of the Secretary of the Air Force is final. There is no appeal.

(9) Notify the following persons in writing when a group determination is made (if the Secretary of the Air Force disagrees with the rationale or recommendations of the board, the Secretary of the Air Force shall provide the decision and reasons for it in writing to these persons):

(i) The applicant(s) for the group.

(ii) The Secretary of the Department of Veterans Affairs.

(iii) The Secretary of the Army.

(iv) The Secretary of the Navy.

(v) The ASD (FM&P).

(vi) The Secretary of Transportation (when a group claims active Coast Guard service).

(c) The Secretary of the Army, Secretary of the Navy, Secretary of the Air Force, and Commandant of the Coast Guard shall:

(1) Appoint to the board a primary and an alternate member in the grades

of O-6 or GM-15 or higher from their respective Military Services.

(2) Process applications for discharge documents from individuals claiming membership in a recognized group in accordance with applicable laws, Directives, the Secretary of the Air Force rationale and instrument effecting a group determination, and any other instructions of the board.

(3) Determine whether the applicant was a member of a recognized group after considering the individual's evidence of membership and verifying the service against available Government records.

(4) Issue a DD Form 214, "Certificate of Release or Discharge from Active Duty," and a DD Form 256, "Honorable Discharge Certificate," or a DD Form 257, "General Discharge Certificate," as appropriate, consistent with DoD Instruction 1336.1<sup>1</sup> and DoD Directive 1332.14<sup>2</sup> and the implementing documents of the appropriate statutes of the Military Department concerned or the DoT and the instructions of the DoD Civilian/Military Service Review Board.

(5) Issue a DD Form 1300, "Report of Casualty," in accordance with DoD Instruction 1300.9<sup>3</sup> if a verified member was killed during the period of AD service.

(6) Ensure that each DD Form 214, "Certificate of Release or Discharge from Active Duty," and each DD Form 1300, "Report of Casualty," have the following statement entered in the "Remarks" section:

This document, issued under Public Law 95-202 (38 U.S.C. 106 Note), administratively establishes active duty service for the purposes of Department of Veterans Affairs benefits.

(7) Determine the equivalent military pay grade, when required by the Department of Veterans Affairs. For VA benefits, a pay grade is needed only in cases when an individual was killed or received service-connected injuries or disease during the recognized period

<sup>1</sup>Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.

<sup>2</sup>See footnote 1 to § 47.5(c)(4).

<sup>3</sup>See footnote 1 to § 47.5(c)(4).

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of AD service. A DD Form 1300 shall be issued with the equivalent pay grade annotated for a member who died during the recognized period of service. A DD Form 214 shall not include pay grade, unless the Department of Veterans Affairs requests that a grade determination be given. Determinations of equivalent grade shall be based on the following criteria in order of importance:

(i) Officially recognized organizational grade or equivalent rank.

(ii) The corresponding rank for civilian pay grade.

(iii) If neither of the criteria in paragraphs (c)(7) (i) and (ii) of this section, and applies, only one of three grades may be issued; i.e., O-1, E-4, or E-1. Selection depends on the nature of the job performed, the level of supervision exercised, and the military privileges to which the individual was entitled.

(8) Adjudicate applicant challenges to the period of AD service, characterization of service, or other administrative aspects of the discharge documents issued.

### § 47.6 Procedures.

(a) *Submitting group applications.* Applications on behalf of a civilian or contractual group shall be submitted to the Secretary of the Air Force using the instructions in appendix A to this part.

(b) *Processing group applications.* (1) When received, the recorder shall review the application for sufficiency and either return it for more information or accept it for consideration and announce acceptance in the FEDERAL REGISTER.

(2) The recorder shall send the application to the appropriate advisory panel for historical review and analysis.

(3) When received, the recorder shall send the advisory panel's report to the applicant for comment. The applicant's comments shall be referred to the advisory panel if significant disagreement requires resolution. Additional comments from the historians also shall be referred to the applicant for comment.

(4) The DoD Civilian/Military Service Board shall consider the group application, as established, in paragraph (a)

and paragraphs (b) (1) through (3) of this section.

(5) After the Secretary of the Air Force makes a decision, the recorder shall notify the applicant of the decision and announce it in the "FEDERAL REGISTER."

(c) *Submitting individual applications.* When a group is recognized, individual members may apply to the appropriate Military Department or to the Coast Guard for discharge documents. Submit applications on DD Form 2168, "Application for Discharge of Member or Survivor of Member of Group Certified to Have Performed Active Duty with the Armed Forces of the United States." An application on behalf of a deceased or incompetent member submitted by the next of kin must be accompanied by proof of death or incompetence.

### APPENDIX A TO PART 47—INSTRUCTIONS FOR SUBMITTING GROUP APPLICATIONS UNDER PUBLIC LAW 95-202

*A. In Submitting a Group Application:* 1. Define the group to include the time period that your group provided service to the U.S. Armed Forces.

2. Show the relationship that the group had with the U.S. Armed Forces, the manner in which members of the group were employed, and the services the members of the group provided to the Armed Forces.

3. Address each of the factors in § 47.4.

4. Substantiate and document the application. (The burden of proof rests with the applicant.)

*B. Send Completed Group Applications To:* Secretary of the Air Force (SAF/MRC), DoD Civilian/Military Service Review Board, Washington, DC 20330-1000.

### APPENDIX B TO PART 47—THE DoD CIVILIAN/MILITARY SERVICE REVIEW BOARD AND THE ADVISORY PANEL

#### *A. Organization and Management*

1. The board shall consist of a president selected from the Department of the Air Force and one representative each from the OSD, the Department of the Army, the Department of the Navy, the Department of the Air Force, and the U.S. Coast Guard (when the group claims active Coast Guard service). Each member shall have one vote except that the president shall vote only to break a tie. The board's decision is determined by majority vote. The president and two voting members shall constitute a quorum.

2. The advisory panel shall act as a non-voting adjunct to the board. It shall consist