

The court may award the person who prevails reasonable attorney fees, expert witness fees, and other litigation expenses.

2. Federal Government as the Employer.

a. The same general enforcement procedures established for private employers are applied to Federal Executive Agencies as an employer; however, if unable to resolve the complaint, the Secretary of Labor shall refer the complaint to the Office of Special Counsel, which shall represent the individual in a hearing before the Merit Systems Protection Board if reasonably satisfied that the individual is entitled to the rights and benefits sought. The claimant also has the option of directly filing a complaint with the Merit Systems Protection Board on his or her own behalf.

b. A person who is adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may petition the United States Court of Appeals for the Federal Circuit to review the final order or decision.

3. Federal Intelligence Agency as the Employer. An individual employed by a Federal Intelligence Agency listed in subparagraph I.1. of this appendix, may submit a claim to the inspector general of the agency.

Appendix B to Part 104—Sample Employer Notification of Uniformed Service

This is to inform you that (insert applicant or Service member's name) must report for military training or duty on (insert date). My last period of work will be on (insert date), which will allow me sufficient time to report for military duty. I will be absent from my position of civilian employment for approximately (enter expected duration of duty as specified on your orders, and include the applicable period you have to return or submit notification of your return to work) while performing military training or duty unless extended by competent military authority or delayed by circumstances beyond my control. I otherwise expect to return to work on (insert date).

Signature and date

Employer acknowledgment and date

Dated: January 16, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98-1583 Filed 1-22-98; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 270

RIN 0790-AG43

Compensation of Certain Former Operatives Incarcerated by the Democratic Republic of Vietnam

AGENCY: Office of Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Final rule.

SUMMARY: This part implements section 657 of the National Defense Authorization Act for Fiscal Year 1997, which authorizes the Secretary of Defense to make payments to persons captured and incarcerated by the Democratic Republic of Vietnam. This part establishes policy and procedures concerning the payments to these persons.

EFFECTIVE DATE: This rule is effective May 15, 1997.

FOR FURTHER INFORMATION CONTACT: Alan Ridenour (703) 604-0821 or David Pronchick (703) 693-1066, Directorate of Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, D.C., 20301-4000.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that this is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been determined that this rule will not have a significant economic impact on a substantial number of small entities because it affects only a limited number of Vietnamese Commandos who were incarcerated in North Vietnam, and as such, does not affect small entities.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that this rule does not impose reporting and recordkeeping requirements under the Paperwork Reduction Act of 1995. The reporting and recordkeeping requirements are exempt from this Act, as it directly involves active litigation in which the U.S. is a party. The specific exemption from the Paperwork Reduction Act is found in 5 CFR part 1320. The information collection in this final rule is exempt from OMB approval under Sec. 1320.4(a)(2), "Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act".

Public Law 104-4, "Unfunded Mandates Report Act of 1995 (UMRA)"

It has been determined that this rule does not contain a federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year.

List of Subjects in 32 CFR Part 270

Military personnel, Payments, Prisoners of war, Vietnam.

Accordingly, 32 CFR part 270 is revised to read as follows:

PART 270—COMPENSATION OF CERTAIN FORMER OPERATIVES INCARCERATED BY THE DEMOCRATIC REPUBLIC OF VIETNAM

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Subpart C—Standards and Verification of Eligibility

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Appendix A to Part 270—Application for Compensation of Vietnamese Commandos

Authority: Sec. 657, Pub. L. 104-201, 110 Stat. 2422.

Subpart A—General

§ 270.1 Purpose.

The purpose of this part is to implement section 657 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201), which authorizes the Secretary of Defense to make payments to persons who demonstrate to the satisfaction of the Secretary of Defense that the persons were captured and incarcerated by the Democratic Republic of Vietnam as a result of the participation by the persons in certain operations conducted by the Republic of Vietnam.

§ 270.2 Definitions.

(a) *Applicant.* A person applying for payments under this part.

(b) *Child of an eligible person.* A recognized natural child, an adopted child, or a stepchild who lived with the eligible person in a regular parent-child relationship.

(c) *The Commission.* The Commission authorized to oversee payments to certain persons captured and incarcerated by the Democratic Republic of Vietnam, established under this part.

(d) *Eligible person.* A person determined by the Commission as eligible for payment under subpart C of this part.

(e) *OPLAN 34A.* The operation carried out under the auspices of the government of South Vietnam and the U.S. Military Assistance Command Vietnam, Studies and Observations Group (MACV/SOG), starting in 1964, which inserted commandos into North Vietnam for the purpose of conducting intelligence and other military activities. OPLAN 34A also refers to predecessor operations which were precursors to OPLAN 34A operations. OP 35 refers to the small military units which were sent to conduct sabotage, reconnaissance, exploitation and other intelligence missions on or around the borders of Vietnam and Laos.

(f) *North Vietnam.* The Democratic Republic of Vietnam.

(g) *OSD.* The Office of the Secretary of Defense.

(h) *The Secretary.* The Assistant Secretary of Defense (Force Management Policy).

(i) *South Vietnam.* The Republic of Vietnam.

(j) *Spouse of an eligible person.* Someone who was married to that eligible person for at least 1 year immediately before the death of the eligible person.

(k) *Required declaration.* The statements to be signed and notarized in Appendix A to this part. All applicants must sign Part C and either Part A or Part B of Appendix A to this part.

§ 270.3 Effective date.

This part is effective on May 15, 1997.

Subpart B—Commission

§ 270.4 Membership.

The Secretary shall establish within OSD a Commission that is composed of the following voting members: one representative from the Office of the Under Secretary of Defense for Personnel and Readiness, who shall be the chairman of the Commission, one representative from the Office of the Under Secretary of Defense for Policy, and one representative from each of the military departments. Members of the Commission may be either military or

civilian and all members must possess, at a minimum, a Secret clearance.

§ 270.5 Staff.

(a) The Commission will have a support staff, which will include staff members sufficient to expeditiously and efficiently process the applications for payments under this part. All members of the staff will possess, as a minimum, a Top Secret clearance because of the sensitive nature of the information that may require review in determining eligibility of claimants.

(b) The Secretary will ensure that the Commission has all administrative support, including space, office and automated equipment and translation services, needed for the efficient and expeditious review and payment of claims. The Secretary may task appropriate Department of Defense elements to provide such support, either through assignment of personnel or the hiring of independent contractors.

Subpart C—Standards and Verification of Eligibility

§ 270.6 Standards of eligibility.

(a) A person is eligible for payments under this part if such person:

(1) Was captured and incarcerated by North Vietnam as a result of his participation in operations conducted under OPLAN 34A or its predecessor operation; or

(2) Served as a Vietnamese operative under OP 35, and was captured and incarcerated by North Vietnamese forces as a result of the participation by the person in operations in Laos or along the Lao-Vietnamese border pursuant to OP 35, and

(i) Was captured and incarcerated by the North Vietnamese, and remained in captivity after 1973 (or died in captivity) after participation in OP 35, and

(ii) Has not previously received payment for the United States Government after 1972 from the period spent in captivity.

(b) In the case of a decedent who would have been eligible for a payment under this part if alive, payment will be made to the survivors of the decedent in the following order:

(1) To the surviving spouse of an eligible person; or

(2) If there is no surviving spouse of an eligible person, to the surviving children of an eligible person, in equal shares.

(c) A payment may not be made under this part to, or with respect to, a person who the Commission determines, based on the available evidence, served in the People's Army of North Vietnam or provided active assistance to the

Government of North Vietnam or forces opposed to the Government of South Vietnam or the United States during any period from 1958 through 1975.

(d) The Commission will make reasonable efforts to publicize the availability of payments involved in this procedure, using existing public affairs channels.

§ 270.7 Verification of eligibility.

(a) All persons applying for payment under this part shall first submit a properly completed, signed and notarized Application for Compensation of Vietnamese Commandos as set out in Appendix A to this part, along with all corroborating documents and information required, to the Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, D.C. 20301–4000. Submission of an Application for Compensation of Vietnamese Commandos without properly signed and notarized declarations will automatically render the application ineligible for consideration by the Commission for payment. All applicants must sign and have notarized the declarations in Part C of the Application for Compensation of Vietnamese Commandos. In addition, all applicants must sign and have notarized the declaration in either Part A or Part B of the Application for Compensation of Vietnamese Commandos. If portions of the Application for Compensation of Vietnamese Commandos are not completed, the Commission may draw adverse inferences from the portions left incomplete.

(b) Staff Functions in the Verification of Eligibility Process. The Staff Director shall:

(1) Establish a database for logging and tracking Applications for Compensation of Vietnamese Commandos throughout the claims process, including appellate actions and final payment or denial of claims.

(2) Maintain a liaison with on-site personnel at the National Archives Center, College Park, Maryland, to organize and translate finance records for review.

(3) Upon receipt of each Application for Compensation of Vietnamese Commandos, research cases to verify eligibility of claimant to include reviewing and analyzing existing records.

(4) Forward applications (including support documentation) to other U.S. Government agencies as required (e.g., CIA, INS) for review of their records, as needed to acquire documentation that may aid in determining the eligibility of claimants to receive payments.

(5) Present any information or comments resulting from the research and review of cases, plus any reasonably available and probative information, to the Commission with a recommendation on the eligibility of applicants.

(6) If eligibility is favorably approved by the Commission, forward written requests to DFAS to effectuate payments.

(7) Prepare notification letters, on behalf of the Commission, for forwarding to claimants notifying them of the final determination concerning approval or disapproval of their applications.

(8) In coordination with the Army Budget Office and OSD, determine appropriate fund cite that will be used for payments.

(9) Assist in the preparation of required Reports to Congress.

(10) Determine administrative budgetary support requirements and submit funding request to OSD.

(11) Provide clerical and administrative support to the Commission.

(12) Create and maintain a system of records to manage all information generated by the processing of Applications for Compensation of Vietnamese Commandos under this part and to create an administrative record of actions by the Commission. All information received or originated from other Departments and agencies of the U.S. government will be retained, stored, and further disseminated only in accordance with pertinent law (e.g., 5 U.S.C. section 552(FOIA) and 5 U.S.C. section 552a (Privacy Act)) and conditions set by those originating Departments and agencies.

(c) Claims will be processed expeditiously. Within 18 months of actual receipt by the Commission of an Application for Compensation of Vietnamese Commandos, the Commission will determine the eligibility of the applicant. The standard for finding eligibility is whether the information reasonably available to the Commission indicates that the applicant is more likely than not to be eligible for a payment under this part. The burden of making a showing of eligibility shall be on the applicant. Upon determination of eligibility, the payment should be promptly accomplished.

(d) Applicants may request to appear in person before the Commission, which will retain discretion whether to grant such requests. The Commission may request the personal appearance or interview of any applicant as a condition of further consideration of his or her application if such appearance would significantly aid the Commission

in its determination. All appearances shall be at the expense of the applicant.

Subpart D—Payment

§ 270.8 Authorization of payment.

Subject to the availability of appropriated funds, upon determination by the Commission of the eligibility of a person for payment, the Commission will authorize the Defense Finance and Accounting Service (DFAS) to make payments out of the funds appropriated for this purpose. Any payment authorized to a person under a legal disability, may, in the discretion of the Commission, be paid for the use of the person, to the natural or legal guardian, committee, conservator, or curator, or, if there is no such natural or legal guardian, committee, conservator, or curator, to any other person, including the spouse or children of such person, who the Commission determines is charged with the care of the person. The Commission will notify eligible persons of the process for disbursements.

§ 270.9 Amount of payment.

The amount payable to, or with respect to, an eligible person under this part is \$40,000. If an eligible person can demonstrate to the satisfaction of the Commission that confinement or incarceration exceeded 20 years, the Commission may authorize payment of an additional \$2,000 for each full year in excess of 20 (and a proportionate amount for a partial year), but the total amount paid to, or with respect to, an eligible person under this part may not exceed \$50,000.

§ 270.10 Time limitations.

To be eligible for payments under this part, applicants must file Applications for Compensation of Vietnamese Commandos with the Commission within 18 months of the effective date of these regulations, May 15, 1997.

§ 270.11 Limitation on disbursements.

The Commission may, in its discretion, direct that the actual disbursement of a payment under this part be made only to the person who is authorized to receive the payment, and only upon the appearance of that person, in person, at any designated Defense Finance Accounting Service disbursement office in the United States. Upon approval of the Commission, payment may be made at such other location or in such other manner as the person authorized to receive payment may request in writing. In the case of an application authorized for payment but not disbursed as a result of the foregoing, the Secretary will hold the funds in trust for the

person authorized to receive payment in an interest bearing account until such time as the person complies with the conditions for disbursement set out in this part.

§ 270.12 Payment in full satisfaction of all claims against the United States.

The acceptance of payment by, or with respect to, an eligible person under this part shall constitute full satisfaction of all claims by or on behalf of that person against the United States arising from the person's participation in operations under OPLAN 34A or OP35.

§ 270.13 No right to judicial review or legal cause of action.

Subject to subpart E of this part, all determinations by the Commission pursuant to this part are final and conclusive, notwithstanding any other regulation. Applicants under this part have no right to judicial review, and such review is specifically precluded. This part does not create or acknowledge any legal right or obligation whatsoever.

§ 270.14 Limitation on attorneys fees.

Notwithstanding any contract or agreement, the representative of a person authorized to receive payment under this part may not receive, for services rendered in connection with the claim of, or with respect to, a person under this part, more than 10 percent of a payment made under this part on such claim.

§ 270.15 Waiver of notary requirement.

In exceptional circumstances (e.g., overseas claimant) the requirement for notarizations may be waived at the discretion of the Commission.

Subpart E—Appeal Procedures

§ 270.16 Notice of the Commission's determinations.

Applicants whose claims for payment are denied in whole or in part by the Commission will be notified in writing of the determination. Applicants may petition the Assistant Secretary of Defense, Force Management Policy (or his designee) for a reconsideration of the Commission's determinations, and may submit any documentation in support of such petitions.

§ 270.17 Procedures for filing petitions for reconsideration.

A request for reconsideration must be made to the Secretary, care of the Staff Director of the Commission at the address of the Commission set out in § 270.7, within 45 days of receipt of the notice from the Commission of ineligibility. The Commission may

waive that time limit for good cause shown.

§ 270.18 Action on reconsideration.

(a) The Assistant Secretary of Defense, Force Management Policy (or his designee) will:

(1) Review the Commission's administrative record of the original determination.

(2) Review additional information or documentation submitted by the applicant to support his or her petition for reconsideration.

(3) Determine whether the decision of the Commission should be affirmed, modified, or reversed.

(b) When there is a decision affirming the Commission's determinations, the Staff Director will notify the applicant in writing and include a statement of the reason for the affirmance.

(c) A decision of affirmance shall constitute the final action of the Department of Defense. The Secretary (or his designee) may decline to consider any subsequent petitions for reconsideration.

(d) When there is a decision modifying or reversing the Commission's determination, the notification should be immediately made to the Staff Director so as to implement the final action.

Subpart F—Reports to Congress

§ 270.19 Reports to Congress.

Not later than September 23, 1998, the Commission will prepare and the Secretary will submit to Congress a report on the payment of claims under this part. Subsequent to that initial report, the Commission will prepare and the Secretary will submit to Congress annual reports on the status of payment of claims.

Appendix A to Part 270—Application for Compensation of Vietnamese Commandos

All persons applying for payment shall submit a properly completed, signed and notarized Application for Compensation of Vietnamese Commandos, along with corroborating documents and information, to: Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, D.C. 20301-4000.

All applicants must sign and have notarized the declaration in Part C of the application. In addition, all applicants must sign and have notarized the declaration in either Part A or Part B of the application (as applicable).

Applicants must file applications within 18 months of the effective date of this part (15 May 1997): that is, *not later than 15 November 1998*.

Privacy Act Statement:

Authority: National Defense Authorization Act for Fiscal Year 1997, Public Law 104-201, Section 657.

Principal Purpose: To evaluate applications for cash payments for those individuals, or their surviving spouse or children, who were captured and incarcerated by North Vietnam as a result of participating in specified joint United States-South Vietnamese operations.

Routine Uses: To the Immigration and Naturalization Service and the Central Intelligence Agency for purposes of verifying information relating to the claimant's eligibility for payment. To the Department of Justice for purposes of representing the Department of Defense in *Au Dong Quy, et al./Lost Commandos v. The United States*.

Disclosure: Voluntary. However, if portions are not completed the Commission may draw adverse inferences from the incomplete portions.

Social Security Number: Providing a social security number is voluntary. If one is not provided, the application for payment will still be processed.

This application shall be executed by the person applying for eligibility, or his surviving spouse or children, or designated representatives of such persons.

Part A—Complete the following information on the person whose status as a former operative is the basis for applying for payment:

(1) Current legal name or legal name at death:

(a) Aliases: _____

(b) Former, or other legal names used: _____

(2) Current address or last address prior to death: _____

(3) Mailing address for compensation check in the event compensation is approved (may be different from commando's current/last address): _____

(4) Telephone Number(s): _____

(5) Identification Numbers:

(a) U.S. Social Security Number (optional): _____

(b) U.S. Immigration & Naturalization Service (INS) Number: _____

(c) Vietnamese Identification Card Number: _____

(6) Date of Birth: _____

(7) Place of Birth: _____

(8) Distinguishing marks (e.g., scars): _____

(9) Family Identification:

(a) Parents:

Father: _____

Mother: _____

(b) Spouse: _____

(c) Children: _____

(d) Brothers: _____

(e) Sisters: _____

(f) Others: _____

(10) Team name: _____

(11) Team role/duties (e.g., team leader, radioman): _____

(12) Place of insertion: _____

(13) Method of insertion (e.g., parachute, boat): _____

(14) Date of insertion: _____

(15) Date and place of capture: _____

(16) Detailed Record of confinement:

First Prison Name: _____

Date Arrived: _____

Next Prison Name: _____

Date Transferred: _____

Next Prison Name: _____

Date Transferred: _____

Next Prison Name: _____

Date Transferred: _____

Next Prison Name: _____

Date Transferred: _____

Next Prison Name: _____

Date Transferred: _____

Next Prison Name: _____

Date Transferred: _____

Date of Final Release from Confinement: _____

Name of Prison/Camp/Location of Final Release: _____

(17) Name, address, and telephone number of counsel or attorney (if any): _____

(18) Required Declaration only for commandos filing on their own behalf (complete the applicable declaration, 34A or 35—not both):

For OPLAN 34A or Predecessor Operations (Missions Into North Vietnam)

I served pursuant to OPLAN 34A or its predecessor operation and was captured and imprisoned by North Vietnam as a result of those activities. I did not serve in the People's Army of Vietnam or provide active assistance to the Government of the Democratic Republic of Vietnam (North Vietnam). I did not serve in or provide active assistance to forces opposed to the Government of the Republic of Vietnam (South Vietnam) or forces opposed to the United States during the period from 1958 through 1975. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signature: _____

Date: _____

Sworn to and subscribed before me on _____

(Date)

Notary Public: _____

Date: _____

My commission expires on _____

(Date)

For OP 35 Operations (Missions Into Laos or Along the Viet-Lao Border)

I served as a Vietnamese operative pursuant to OP 35, and was captured and imprisoned by North Vietnam as a result of my participation in operations in Laos or along the Lao-Vietnamese border under the direction of OP 35. I did not serve in the People's Army of Vietnam or provide active assistance to the Government of the Democratic Republic of Vietnam (North Vietnam). I did not serve in or provide active assistance to forces opposed to the Government of the Republic of Vietnam (South Vietnam) or forces opposed to the United States during the period from 1958 through 1975. I have not previously received payment from the United States Government as compensation for the period of captivity. I remained in captivity after 1973. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signature: _____

Date: _____

Sworn to and subscribed before me on _____

(Date) _____

Notary Public: _____

Date: _____

My commission expires on _____

(Date) _____

Part B—In addition to PART A, above, any applicant who is a surviving spouse or child of a deceased commando must complete Part B, below, with information on themselves.

(1) Current Legal name: _____

(a) Aliases: _____

(b) Former, or other names used: _____

(2) Current Address: _____

(3) Telephone Number(s): _____

(4) Identification Numbers: _____

(a) U.S. Social Security Number (optional): _____

(b) U.S. Immigration and Naturalization Service (INS) Number: _____

(c) Vietnamese Identification Card Number: _____

(5) Date of birth: _____

(6) Place of birth: _____

(7) Relationship to deceased person: _____

(8) Date and place of marriage (if surviving spouse): _____

(9) If you are a surviving child and there is no surviving spouse, list the names and addresses of all other children of the deceased person, including all recognized natural children, step-children who lived with the deceased person, and adopted children. Provide the date of death for any who are deceased.

(10) Name, address, and telephone number of counsel/attorney (if any): _____

(11) Required Declaration (Note: If Commando is deceased, applicant must sign one of the two following declarations here and Part C, below):

For Surviving Spouse or Child of Deceased Commando (OPLAN 34A or Predecessor Operations-Missions Into North Vietnam)

To the best of my information, knowledge, and belief, my deceased family member served pursuant to OPLAN 34A or its predecessor operation and was captured and imprisoned by North Vietnam as a result of those activities. He did not serve in the People's Army of Vietnam or provide active assistance to the Government of the Democratic Republic of Vietnam (North Vietnam). He did not serve in or provide active assistance to forces opposed to the Government of the Republic of Vietnam (South Vietnam) or forces opposed to the United States during the period from 1958 through 1975. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signature: _____

Date: _____

Sworn to and subscribed before me on _____

(Date) _____

Notary Public: _____

Date: _____

My commission expires on _____

(Date) _____

For Surviving Spouse or Child of Deceased Commando (OP 35 Units-Missions Into Laos or Along the Viet-Lao Border)

To the best of my information, knowledge, and belief, my deceased family member served as a Vietnamese operative pursuant to OP 35, and was captured and imprisoned by North Vietnam as a result of his participation in operations in Laos or along the Lao-Vietnamese border under the direction of OP 35. He did not serve in the People's Army of Vietnam or provide active assistance to the Government of the Democratic Republic of Vietnam (North Vietnam). He did not serve in or provide active assistance to forces opposed to the Government of the Republic of Vietnam (South Vietnam) or forces opposed to the United States during the period from 1958 through 1975. He did not previously receive payment from the United States Government as compensation for the period of captivity. He remained in captivity after 1973. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Signature: _____

Date: _____

Sworn to and subscribed before me on _____

(Date) _____

Notary Public: _____

Date: _____

My commission expires on _____

(Date) _____

Part C—Required Documents:

All documents submitted in support of an application for payment should be originals when possible, or copies of the originals certified by the official custodian of the documents. If certified copies cannot be obtained, uncertified copies should be submitted. If uncertified copies cannot be obtained, submit sworn affidavits from two or more persons who have personal knowledge of the information sought.

For the Commando/Operative (Person Described in Part A, Above)

(1) Identification. A document with his current legal name and address (or legal name and address at death if deceased).

(2) Two or more sworn affidavits from individuals having personal knowledge of the person's identity (these should be submitted in addition to the document with current name and address).

(3) One document of date of birth. A birth certificate, or if unavailable, other proof of birth (e.g., passport).

(4) One document of name change, if the person's current legal name is not the same as when he was sent on the OPLAN 34A or OP 35 missions.

(5) One document of evidence of guardianship. This is only required if you are executing this document as the guardian of the person identified in PART A. If you are a legally-appointed guardian, submit a certificate executed by the proper official of the court appointment. If you are not such a legally-appointed guardian, submit an affidavit describing your relationship to the person and the extent to which you are responsible for the care of the person, or your position as an officer of the institution in which the person is institutionalized.

(6) One document of evidence of imprisonment. This should be a document issued by the government of North Vietnam showing the dates of the person's imprisonment.

(7) Any documents of evidence of participation in covered operations. These documents should be contracts, orders, or other operational documentation corroborating participation in clandestine operations under OPLAN 34A (or its predecessor) or OP 35.

For a Spouse or Surviving Child of a Deceased Person Described in Part A, Above

In addition to documents (1) through (7) above concerning the deceased person described in PART A, submit the following:

(8) One of the following documents as evidence of the Commando's death:

(a) A certified copy of extract from the public records of death, coroner's report of death, or verdict of a coroner's jury;

(b) A certificate by the custodian of the public record of death;

(c) A statement of the funeral director or attending physician or intern of the institution where death occurred;

(d) A certified copy, or extract from an official report or finding of death made by an agency or department of the United States government; or

(e) If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

(f) If you cannot obtain any of the above evidence of the commando/operative's death, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

(g) If you are submitting an application as a surviving spouse, submit another document of the same type as evidence of the Commando's spouse's death.

For the Spouse of a Deceased Person Described in Part A Above

In addition to documents described in PART C items (1) through (8), above, each surviving spouse should submit the following:

(9) One of the following documents as evidence of your marriage to the deceased person:

(a) A copy of the public records of marriage, certified or attested, or an abstract of the public records, containing sufficient information to identify the parties, the date and place of marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage;

(b) An official report from a public agency as to a marriage which occurred while the deceased person was employed by such agency;

(c) An affidavit of the clergyman or magistrate who officiated;

(d) The certified copy of a certificate of marriage attested to by the custodian of the records;

(e) The affidavits of two or more eyewitnesses to the ceremony; or

(f) In jurisdictions where "common law" marriages are recognized, an affidavit by the surviving spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage, including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife and whether they were generally accepted as such in the communities in which they lived.

(g) If you cannot obtain any of the above evidence of your marriage, you must submit any other evidence that would reasonably support a belief that a valid marriage actually existed.

(10) In addition, submit the following documents about yourself:

(a) Identification. A document with your current legal name and address plus two or more sworn affidavits from individuals having personal knowledge of your identity (these should be submitted in addition to the document with current name and address).

(b) One document of date of birth. A birth certificate, or if unavailable, other proof of birth (e.g. passport).

(c) One document of name change. If your current legal name is the same as that during the marriage, this section does not apply. Spouses whose current legal name is different than that used when married should submit a document or affidavits to corroborate the name change.

(d) One document of evidence of guardianship. If you are executing this document as the guardian of the spouse, you must submit evidence of your authority. If you are a legally-appointed guardian, submit a certificate executed by the proper official of the court appointment. If you are not such a legally-appointed guardian, submit an affidavit describing your relationship to the spouse and the extent to which you are responsible for the care of the spouse or your position as an officer of the institution in which the spouse is institutionalized.

For the Surviving Children

In addition to documents described in PART C items (1) through (8), above, each surviving child should submit the following:

(11) One document as evidence of your relationship to your parent (the deceased person described in PART A, above), as follows:

If A Natural Child:

(a) Birth certificate showing that the deceased person was your parent.

(b) If the birth certificate does not show the deceased person as your parent, a certified copy of:

(i) An acknowledgment in writing signed by the deceased person;

(ii) A judicial decree ordering the deceased person to contribute to your support;

(iii) The public record of birth or a religious record showing that the deceased person was named as your parent;

(iv) Affidavit of a person who knows that the deceased person accepted you as his child; or

(v) Public records, such as records of school or welfare agencies, which show that with the deceased person's knowledge, the deceased individual was named as your parent.

If An Adopted Child:

An adopted child must submit a certified copy of the decree of adoption.

If A Step-Child:

Submit all three of the following documents as evidence of the step-child relationship:

(a) One document as evidence of birth to the spouse of the deceased person, or other evidence that reasonably supports the existence of a parent-child relationship between you and the spouse of the deceased person;

(b) One document as evidence that you were either living with or in a parent-child

relationship with the deceased person at the time of his death; and

(c) One document as evidence of the marriage of the deceased person and the spouse, such as a certified copy of the record of marriage, or an abstract of the public records containing sufficient information to identify the parties and the date and place of marriage issued by the officer having custody of the record, or a certified copy of a religious record of marriage.

(12) In addition, submit the following documents about yourself:

(a) Identification. A document with your current legal name and address plus two or more sworn affidavits from individuals having personal knowledge of your identity (these should be submitted in addition to the document with current name and address).

(b) One document of date of birth. A Birth certificate, or if unavailable, other proof of birth (e.g., passport).

(c) One document of name change. If your current legal name is the same as that shown on documents attesting to your birth, this section does not apply. Persons whose current legal name is different than that used on such documents should submit a document or affidavit to corroborate the name change.

(d) One document of evidence of guardianship. If you are executing this document as the guardian of the person identified as a surviving child of a deceased person, you must submit evidence of your authority. If you are a legally-appointed guardian, submit a certificate executed by the proper official of the court appointment. If you are not such a legally-appointed guardian, submit an affidavit describing your relationship to the child and the extent to which you are responsible for the care of the child, or your position as an officer of the institution in which the child is institutionalized.

Read the following statement carefully before signing this document. A false statement may be grounds for punishment by fine or imprisonment or both. This sworn declaration must accompany all documents submitted to the Commission, whether with or separate from the application.

For All Applicants

I declare under penalty of perjury under the laws of the United States of America that the foregoing documents provided in Part C are true and correct.

Signature: _____

Date: _____

Sworn to and subscribed before me on _____

(Date) _____

Notary Public: _____

Date: _____

My commission expires on _____

(Date) _____

Dated: January 16, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98-1534 Filed 1-22-98; 8:45 am]

BILLING CODE 5000-04-M