

CHAPTER III

Armed Forces Disciplinary Control Board

*Michael S. Archer
U.S. Marine Corps
Jacksonville, NC*

NORTH CAROLINA

BAR ASSOCIATION
seeking liberty + justice

North Carolina Bar Association (NCBA) publications are intended to provide current and accurate information and are designed to assist in maintaining professional competence. Nonetheless, all original sources of authority presented in NCBA publications should be independently researched in dealing with any client's or your own specific legal matters.

Information provided in North Carolina Bar Association publications is for educational purposes only; nothing in this publication constitutes the provision of legal advice or services, or tax advice or services, and no attorney-client relationship is formed. Publications are distributed with the understanding that neither the North Carolina Bar Association nor any of its authors or employees render any legal, accounting or other professional services.

Copyright © 2018 North Carolina Bar Association.

ALL RIGHTS RESERVED. Permission is hereby granted for the limited copying of pages or portions of pages of this book by or under the direction of licensed attorneys for use in the practice of law. No other use is permitted without the express written consent of the North Carolina Bar Association.

CHAPTER III
Armed Forces Disciplinary Control Board

Michael S. Archer – Jacksonville

Overview.....	III-1
Effect of Unlawful Business Behavior	III-1
Governing Regulations	III-1
Board Membership	III-2
Board Hearings	III-2
Information Inputs to the AFDCB	III-2
Legal Assistance Attorney Inputs	III-2
The AFDCB Agenda	III-2
AFDCB Procedures.....	III-3
Evidentiary Rules.....	III-3
Initial Board Review	III-3
Board Hearings.....	III-3
Business Opportunity to Respond.....	III-3
Board Recommendations	III-4
Appeals.....	III-4
Business Responses to Off Limits Designation	III-4
Board Strength and Weaknesses	III-4
Strengths	III-4
Weaknesses	III-4
Emergency Procedures	III-5
Recurring Issues	III-5
Consumer Issues	III-6
Landlord/Tenant Issues.....	III-6
Motor Vehicle Issues	III-6
Consumer Products Financing.....	III-6
Food Delivery Services	III-6
Construction and Landscaping Services	III-6
Life Insurance Solicitation	III-6
Criminal Enterprises	III-6
Specific Examples.....	III-6
The Dangerous Bar.....	III-6
The Dangerous Bar (2).....	III-7
The Naughty Bar	III-7
The Crooked Mechanic.....	III-7
The Problem Mechanic.....	III-7
The Predatory Lender	III-7
The Distant Car Dealer	III-8
The On-Line Landscaper	III-8

The Problem Property Manager.....	III-8
The Problem Property Manager (2).....	III-8
Conclusions	III-8
Attachments	

CHAPTER III

Armed Forces Disciplinary Control Board

1. *Overview.* The Armed Forces Disciplinary Control Board (AFDCB) can be a useful tool in reigning in the harmful practices of local businesses and protecting troops from those businesses that will not or cannot take corrective action. AFDCBs are established by commanders of military installations to make recommendations concerning the elimination of conditions which may adversely affect the health, safety, welfare, morale, and discipline of the armed forces. Such recommendations may include, but are not necessarily limited to designating a particular business, area, or establishment off limits to military personnel. A list of businesses that have been so designated is published, generally both on-line and in the installation newspaper. Service members who visit a location designated as off limits are subject to punishment under the Uniform Code of Military Justice Article 92 (10 USC 892) for the violation of a lawful general order.

2. *Effect of Unlawful Business Behavior.* The Board will review harmful business conduct that violates applicable laws and regulations. For example, the Board may consider criminal conduct, such as assault, drug trafficking, and prostitution. The Board will also consider misconduct principally violating civil statutes or regulations, such as unfair and deceptive sales practices, fraud, and conduct violating specific statutory requirements concerning landlords, auto mechanics, auto dealers, contractors, lenders, and insurance agents. Most of the time, businesses considered for off limits designation are suspected not only of harmful behavior, but also behavior that violates a statute or regulation. However, a business may be designated as off limits if it poses a significant harm to service members, even if its conduct does not violate the law. For example, consider a bar at which patrons are beaten, robbed, shot or otherwise harmed by other patrons. Though the conduct of the bar owner may be within the bounds of the law, the business may still be designated as off limits due to the danger it poses to service members who frequent it. Likewise, consider the used car dealer who routinely, and lawfully, sells cars “as is” that are so defective that they are dangerous and cannot even make it back to the military base.

3. *Governing Regulations.* AFDCBs are governed by a joint forces order, published in the individual services as follows:

- Army Regulation 190-24
- Navy Operations Instruction 1620.2A
- Air Force Instruction 31-213
- Marine Corps Order 1620.2D

-Commandant of the Coast Guard Instruction 1620.1E

This overarching order is often supplemented by local installation orders.

4. *Board membership.* Members are chosen by the installation commander, based on needs of the command. The President of the AFDCB will typically be a senior officer, perhaps the installation Inspector or Provost Marshal. Other members are selected by the commander as needed, with consideration given to representation from the following functional communities: law enforcement, legal counsel, health services, environmental protection, public affairs, equal opportunity, fire and safety, chaplain, alcohol/ drug abuse, community services, and consumer affairs.

5. *Board Hearings.* The joint forces order directs Boards to meet quarterly. Boards may also meet at additional times as necessary.

6. *Information Inputs to the AFDCB.* How does the AFDCB become aware of an allegation that a business or location poses an adverse condition to service members? The AFDCB may receive information from a variety of sources, such as:

- Complaints of aggrieved consumers reduced to writing by military legal assistance attorneys,
- Public enforcement action by federal, state, or local authorities
- Law enforcement reports or accounts
- Media reports
- Health Inspection reports
- On line complaints and sources
- Court records

7. *Legal Assistance Attorney Inputs.* The AFDCB does not have subpoena power, nor does it have any assigned law enforcement agents / investigators, a significant weakness. Thus, the zeal with which military legal assistance attorneys collect information can have a significant impact on the effectiveness of the AFDCB. The taking of detailed witness statements, the documentation of complaints, and the collection of court judgements and other evidence and information can be extremely daunting and time consuming, especially for legal assistance attorneys already with full time duties and a never-ending stream of clients to serve. Nonetheless, the effectiveness of the AFDCB often depends on such efforts.

8. *The AFDCB Agenda.* How does a case wind up on the agenda of the AFDCB? First, the AFDCB President becomes aware from such sources as indicated above that a business or location may pose an adverse condition to service members. Next, the President makes a judgement call as to the nature and severity of the alleged adverse condition, as well as the supporting documentation. Information tending to show that a business engages in a pattern or practice of harmful behavior increases the likelihood of AFDCB attention. Further, the AFDCB is more likely to review allegations where the individual harms are great rather than slight. And, of course, the quality and quantity of information is considered. However, there is no specific

quantum or threshold of evidence necessary for a business to be added to the AFDCB agenda. It is, as mentioned above, a judgement call.

9. AFDCB Procedures

a. *Evidentiary Rules.* Formal rules of evidence are not applicable to the AFDCB. The Board may consider any evidence it deems relevant (including hearsay) and give it appropriate weight. Nor are there any formal rules for discovery, although the Board will typically honor requests for a copy of any documentary information it intends to consider.

b. *Initial Board Review.* While local Boards may differ somewhat, my experience with the AFDCB over the past thirty years has been that the business or establishment under consideration will not be invited to appear at the Board's initial review. After presentation of evidence, the Board will make a decision concerning future steps: (i) no further action, (ii) continued monitoring and / or investigation of the situation, (iii) send the business a warning letter, which may identify Board concerns and suggest corrective action, (iv) invite the business to attend the next AFDCB to show why it should not be designated off limits to military personnel. The AFDCB cannot subpoena or issue other compulsory process to secure the attendance of a business owner or its representatives, nor can it direct such persons to produce any particular records. The Board can only request such attendance and production, and can, of course, consider business cooperation (or lack thereof) in making its determinations.

c. *Board Hearings.* The Joint Forces Regulation, at figure B-9, contains sample Board minutes. Typically, the hearing will proceed as indicated at paragraph 5 thereto:

- Call to Order
- Welcome
- Introduction of members and guests
- Explanation of the purpose of the board
- Reading / review of the previous Board minutes
- Unfinished business
- New business
- Recommendations

d. *Business Opportunity to Respond.* "New business" listed on the agenda includes the consideration of any business that has been invited to attend the hearing. Business representatives will be called into the hearing and introduced to Board members and any other persons present. A Board member or its representative may summarize the evidence / issues. The business representatives will then be allowed to make a statement and to offer evidence on its behalf. Such evidence may include information tending to refute or minimize the allegations, to justify the respondent's conduct, or to show that corrective action has been or will be taken. The business representatives are not be required to testify under oath. Board members may, and often will, ask questions, but business representatives cannot be compelled to respond. Complaining witnesses are generally not present. Observers, such as a

representative from the state attorney general's office or insurance commission, may be allowed to attend.

e. *Board recommendations.* The AFDCB has no authority to declare a business off limits. However, its recommendations to the installation commander, who does have such authority, are given great weight and generally followed. The Board President will advise the respondent business in writing of the commander's decisions.

f. *Appeals.* A business that has been declared off limits may appeal such decision in writing, at any time, to the President of the Board. The appeal should indicate what steps were taken to eliminate the adverse condition. The AFDCB President may direct an investigation to determine the status of the corrective action. The Board will provide its recommendation concerning the appeal to the commander for decision.

10. *Business responses to off limits designation.* As noted above, businesses may appeal off limits designation, citing corrective action taken. Often, businesses respond in this manner, thereby helping themselves and serving the purposes of the Board. In fact, upon learning of Board concern, businesses often take corrective action prior to the hearing, which may prevent the necessity of off limits designation in the first place. Other establishments go out of business, apparently deciding that if unable to participate in illegal / unethical practices, they cannot sustain themselves. Some businesses respond in other, unhelpful ways. For example, after being declared off limits by the Commanding General, Marine Corps Installations East, a business may move to Fayetteville, so as to position itself to take advantage of soldiers assigned to Fort Bragg. Or, more frequently, the establishment will attempt to evade the effects of off limits designation by changing its name and business filings, and / or moving to a nearby location. However, in accordance with section 2-6(a) of the governing regulation, "As a matter of policy, a change in ownership, management, or name of any off limits establishment does not, in and of itself, revoke the off limits restriction."

11. *Board Strength and Weaknesses.*

a. *Strengths.* Perhaps the most important strength of the AFDCB is the depth and breadth of experience among its members. Individually and even more so, collectively, the Board is extremely knowledgeable of current issues, installation resources and procedures, historical antecedents, law and regulations, and the practical effects of business and Board actions. It is a group unlikely to be persuaded by poor reasoning or a weak case. The Board also has the advantage of wielding a potent sanction, off limits designation. While the Board can only make such recommendations, in practice, the sponsoring commander nearly always concurs with the recommendations of the AFDCB. The off limits designation is a particularly powerful tool where the military installation or installations have a large presence.

b. *Weaknesses.* The principal weaknesses of the AFDCB lie in obstacles to its collection of evidence and information. The Board has no subpoena power or other ability to compel production of witnesses or documents, nor does it have any assigned investigators. It is

therefore heavily reliant on other officials, such as legal assistance attorneys, who already have myriad other duties, to obtain relevant information. Furthermore, while the Board has a potent sanction, its range of options is very limited. Those options are often (a) take no action, (b) take only very minor action, e.g., continued monitoring, or issuance of a letter of caution, or (c) off limits designation. Absent a particularly compelling case, Board members tend to be reluctant to recommend off limits designation, leaving only much, much milder measures. Further with the exception of emergency action, as discussed below, AFDCB procedures are slow and time consuming, often taking several months. Finally, enforcement of off limits designation is problematic. Businesses change their names and move location and ownership. Monitoring ingress to the off limits establishment takes time and resources, and may be fraught with legal challenges. Further, since the point of the AFDCB is to protect service members, many commanders are reluctant to punish those who frequent an off limits establishment, particularly when the defendant's knowledge of such off limits status (while not an element of an offense under UCMJ Article 92) cannot be proved.

12. *Emergency Procedures.* In emergency cases, where the harm of delaying off limits designation is particularly great, the commander has the authority to designate a business off limits without a prior hearing, notice, or opportunity to respond. In such cases, the AFDCB will conduct a hearing as soon thereafter as practicable. Such emergency procedures have been used in the case of businesses selling dangerous and illegal narcotics, businesses secretly recording patrons having sex with prostitutes, and a business selling vehicles that it did not own.

13. *Recurring issues.* The following general categories of issues come up before the AFDCB.

Dangerousness/ victimization

For example, the bar at which patrons are physically harmed.

Illegal Narcotics

For example, cigar shops, vape stores, or convenience stores routinely selling illegal narcotics.

Blackmail Potential

For example, a bar that engages in prostitution and secretly videotapes its patrons

Force Protection

For example, food delivery vendors prowling the barracks, unlawfully posting ads and soliciting sales.

Health / Sanitation

For example, local restaurants concealing abysmal sanitation / cleanliness grades.

Consumer Issues.

Quite often the focus of AFDCB concern, expanded upon below.

14. *Consumer Issues.* Some of the consumer related issues addressed by AFDCBs are summarized below.

a. *Landlord / Tenant Issues.* For example, a property manager failing to terminate a residential lease as required by either the Servicemember Civil Relief Act (50 USC 3955) or North Carolina law (NCGS 42-45); demanding forfeiture of rent concessions when not authorized to do so; failing to make required repairs; imposing unreasonable “damage” assessments against tenants, or a combination thereof.

b. *Motor Vehicle Issues.* For example, the sale and financing of motor vehicles and after-products through fraud and deception; sale of vehicles that the dealer does not own; and negligent, dilatory, overpriced, or unwanted repair work.

c. *Consumer Products Financing.* For example, the charging of exorbitant, undisclosed interest rates, Truth in Lending Act violations, phony claims of water contamination (the better to sell a water filtration system), violations of the Military Lending Act (10 U.S.C. 232) and overcharging.

d. *Food delivery services.* For example, Chinese delivery services that violate traffic regulations, post ads, prowl the barracks, solicit sales, engage in physical altercations with competitors, and possess narcotics.

e. *Construction and landscaping services.* For example, a pool construction company that fails to complete work; or a home builder that constructs faulty homes and makes no warranted repairs.

f. *Life insurance Solicitation.* For example, the solicitation of life insurance through fraud or otherwise in a manner violating NCGS 58-58-320 et seq, Department of Defense Instruction 1344.07, or Secretary of the Navy Instruction 1740.2E.

g. *Criminal enterprises.* For example, the use of some retail establishment to sell illegal narcotics.

14. *Specific Examples*

a. *The Dangerous Bar.* Police reports and witness statements reveal that a nightclub in Jacksonville, NC, is known for drug use and frequent fights among the patrons. Further, its bouncers use grossly excessive force, even to the extent of dragging people from the bar and kicking them in the head after rendering them nearly unconscious. Cars parked in the area are damaged and burned. Excessive trash is strewn about the area, and noise exceeds applicable decibel limits. The City of Jacksonville successfully pursues a public nuisance injunction pursuant to N.C. law (NCGS 19, Article 1) and the AFDCB designates the business as off limits. The business goes out of business.

b. *The Dangerous Bar (2)*. Law enforcement receives an unusually high number of calls for police assistance, and concludes that the bar is a haven for drug use. Additionally, there are multiple shootings, at least two of which are fatal. Counsel for the respondent business points out to the AFDCB that it has adopted a policy for its employees to contact police at the first sign of trouble; that the fatal altercations occurred near and not in the establishment; that the bar takes extraordinary precautions concerning ingress, and that the establishment has adopted ten additional security precautions following the incidents. It is not designated as off limits.

c. *The Naughty Bar*. Undercover law enforcement operations produce conclusive evidence that a bar near Camp Lejeune is not only a front for prostitution, but also secretly records its patrons engaging in sex acts. Arrests are made and the bar is designated as off limits.

d. *The Crooked Mechanic*. The legal assistance office documents five incidents wherein a local mechanic fails to make repairs, charges excessive amounts, steals parts from vehicles, conducts unnecessary “repairs,” and fails to protect vehicles from the elements. Review of local court records show that the owner is pending criminal charges, including four counts of driving while license revoked, false or altered registration tag, resisting a public officer, and other traffic related offenses. In addition, there are over thirty small claims court judgements against the owner, the vast majority of which he did not pay. The business declines an invitation to attend the AFDCB hearing and is ultimately declared off limits.

e. *The Problem Mechanic*. Complaints credibly allege that an auto repair shop near Camp Lejeune is grossly dilatory in performing work, fails to protect customer vehicles from the elements, routinely violates NC Motor Vehicle Repair Act (NC GS 20-354 et seq) by failing to provide written estimate when required, and surprises customers with unreasonably high repair bill far in excess of any quoted price. Complaints from employees also allege violation of labor relations rules. Labor issues are addressed by the Department of Labor. At least partial insurance payments compensate victims whose vehicles were flooded while in the respondent’s possession. The mechanic adopts new practices to ensure compliance with the, North Carolina Motor Vehicle Repair Act, conspicuously posts sign concerning rates, and takes other remedial action.

f. *The Predatory Lender*. Civil enforcement action by the New York Attorney General , (and later by several state attorneys general, including North Carolina) allege that the lender targets military service members, sells grossly overpriced electronics, and charges an undisclosed interest rate of 244%. The New York Attorney General sends a letter to the Secretary of Defense to that effect and later obtains settlement for \$9.5 million in debt relief to New York service members. After an AFDCB hearing at which the respondent did not show, the lender (which had a retail store in the Jacksonville, NC mall) was designated as off limits. Enforcement action of several attorneys general, including North Carolina, results in an additional \$92 million debt relief.

g. *The Distant Car Dealer.* Car dealer in Norfolk / Virginia Beach area advertises great deals, great financing, and free transportation to dealership. Unfortunately, there are neither great deals nor great financing, and troops find it difficult to return the Camp Lejeune unless they purchase a vehicle. After listening to fraudulent sales pitches, service members purchase vehicles of dubious value, including vehicles that are not even owned by the dealership. The Virginia Motor Vehicle Dealer Board revokes the dealer's license, assists in obtaining compensation from the Virginia auto dealer compensation fund, and the business is declared off limits after a hearing at which it chose not to appear.

h. *The On-Line Landscaper.* An on-line business operating in the Camp Lejeune area advertises great prices for landscaping. However, numerous complaints submitted by legal assistance clients show that the landscaper performs the work negligently, partially, and sometimes not at all. Though the business has no physical location, it is nonetheless declared off limits.

i. *The Problem Property Manager.* Several complaints against a property manager (which has an "F" rating with the Better Business Bureau), alleging bad condition of premises on move in, failure to make adequate repairs, "discovering" damages in inspection outside the presence of tenants when earlier inspections showed no such damage, wrongful withholding of security deposits and even the failure to provide a written accounting of amounts withheld. To avoid off limits designation, the property manager representative appears at the AFDCB hearing and agrees to make refunds to aggrieved tenants, to change lease provisions to accurately reflect military lease termination rights, and to comply with seven additional recommendations for corrective action. Property manager representatives also advised that they replaced the unqualified, problem managers and now have a licensed HVAC mechanic on staff.

j. *The Problem Property Manager (2).* Several allegations that the property manager fails to comply with military lease termination rights under the SCRA or NC law, imposes excessive damage charges, fails to make timely repairs, provides misleading information, and in some case delivers defective premises. Referral to the U.S. Department of Justice to assist with SCRA related issues, referral to North Carolina Real Estate Commission to help resolve other issues. After multiple hearings, the parties reach a settlement in which property manager agrees to make a small number of refunds, to change problematic contract provisions, to provide certain information to each tenant, and to change procedures concerning lease termination.

15. *Conclusions.* The AFDCB is deliberative process, designed to protect service members from harmful businesses, while at the same time affording the suspect business ample opportunity to respond, to take corrective action, and to avoid sanction. The AFDCB works most effectively when acting in conjunction with police or other public enforcement authorities. Off limits designation is a serious sanction, imposed only upon the worst, most recalcitrant offenders.

Rev 1 October 2018

**Army Regulation 190-24
OPNAVINST 1620.2A
AFI 31-213
MCO 1620.2D
COMDTINST 1620.1E**

Military Police

Armed Forces Disciplinary Control Boards and Off-Installation Liaison and Operations

**Headquarters
Departments of the Army,
the Navy,
the Air Force,
the Marine Corps,
and the Coast Guard
Washington, DC
27 July 2006**

UNCLASSIFIED

SUMMARY of CHANGE

AR 190-24/OPNAVINST 1620.2A/AFI 31-213/MCO 1620.2D/COMDTINST 1620.1E
Armed Forces Disciplinary Control Boards and Off-Installation Liaison and
Operations

This major revision dated 27 July 2006--

- o Establishes the Provost Marshal General as the proponent of this regulation (para 1-4a).
- o Mandates Armed Forces Disciplinary Control Boards convene quarterly (app B).
- o Identifies key management control provisions (Army only) (app C).

Headquarters
Departments of the Army,
the Navy,
the Air Force,
the Marine Corps,
and the Coast Guard
Washington, DC
27 July 2006

*Army Regulation 190-24
OPNAVINST 1620.2A
AFI 31-213
MCO 1620.2D
COMDTINST 1620.1E

Military Police

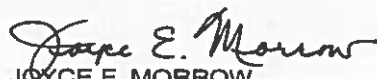
Effective 28 August 2006

Armed Forces Disciplinary Control Boards and Off-Installation Liaison and Operations

By Order of the Secretary of the Army, Navy, Marine Corps, and Air Force:

PETER J. SCHOOMAKER
General, United States Army
Chief of Staff

Official:



JOYCE E. MORROW
Administrative Assistant to the
Secretary of the Army

M.G. MULLEN
Admiral, U.S. Navy
Chief of Naval Operations

DONALD J. WETEKAM
Lt. General, U.S. Air Force
Logistics, Installations and
Mission Support (A4/7)

JAN C. HULY
Lieutenant General, U.S. Marine Corps
Deputy Commandant for Plans,
Policies and Operations

By the order of the Secretary of
Homeland Security:
THAD W. ALLEN
Admiral, U.S. Coast Guard
Commandant

Official:

CLIFFORD I. PEARSON
Rear Admiral, U.S. Coast Guard
Assistant Commandant
Human Resources Command

History. This publication is a major revision.

Summary. This regulation prescribes uniform policies and procedures for the establishment and operations of Armed Forces Disciplinary Control Boards and off-installation liaison and operations.

Applicability. This regulation applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve unless otherwise stated. This regulation also applies to active U.S. Armed Forces personnel of the Air Force, the Navy, the Marine Corps, and the Coast Guard wherever they are stationed.

Proponent and exception authority. The proponent of this regulation is The Provost Marshal General. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to

this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25-30 for specific guidance.

Army management control process. This regulation contains management control provisions and identifies key management controls that must be evaluated.

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from The Provost Marshal General (DAPM-MPD-LE), 2800 Army Pentagon, Washington, DC 20310-2800.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA, Office of the Provost Marshal General

(DAPM-MPD-LE), 2800 Army Pentagon, Washington, DC 20310-2800.

Committee Continuance Approval.

The establishment and/or continuance of Army committees are made in accordance with AR 15-1, which requires that the proponent justify establishing and/or continuing the committees, coordinate draft publications, and coordinate changes in committee status with Office of the Administrative Assistant to the Secretary of the Army, Committee Management Office (SAAA-RP), 13th Floor, Taylor Building, 2511 Jefferson Davis Highway, Arlington, VA 22202-3926. If it is determined that an establishment group identified within this regulation later takes on the characteristics of a committee, the proponent will follow all AR 15-1 requirements for establishing and continuing the group as a committee. The Department of the Army committee management officer has reviewed this regulation and concurs in the establishment and/or continuance of committees outlined herein.

Distribution. This publication is available in electronic media only and is intended for command levels C, D, and E for the Active Army, the Army National

*This regulation supersedes AR 190-24/OPNAVINST 1620.2A/AFI 31-213/MCO 1620.2C/COMDTINST 1620.1D, dated 30 June 1993.

Guard/Army National Guard of the United States, and the U.S. Army Reserve.

Navy: SNDL Parts 1 and 2.

Air Force: F.

Marine Corps: PCN 10202120500.

Coast Guard: Standard Distribution List

No. 144; Ck(2); y(2); d(2); and Dd(2)

A: None; B: a(20); b(8); c(20); e(5); f(5);

h(5); j(2); l(2); n(5); p(2); q(5); r(5); u(2);

w(2); C: a(2); r(2); s(2); D: a(5); E: None;

F: None; G: None; H: None; Nonstandard

Distribution: B:c (MLCs) 6 extra

Contents (Listed by paragraph and page number)

Chapter 1

Introduction, page 1

Section I

Overview, page 1

Purpose • 1-1, page 1

References • 1-2, page 1

Explanation of abbreviations and terms • 1-3, page 1

Section II

Responsibilities, page 1

The Provost Marshal General, U.S. Army • 1-4, page 1

The Director, Naval Criminal Investigative Service, U.S. Navy • 1-5, page 1

The Director of Security Forces and Force Protection, U.S. Air Force • 1-6, page 1

The Commandant, U.S. Marine Corps • 1-7, page 1

The Commandant, U.S. Coast Guard • 1-8, page 1

Joint Service commanders • 1-9, page 1

Army commanders • 1-10, page 2

Navy commanders • 1-11, page 2

Chapter 2

Armed Forces Disciplinary Control Board, page 2

Establishment of Armed Forces Disciplinary Control Boards • 2-1, page 2

Composition of boards • 2-2, page 2

Participation by civil agencies • 2-3, page 3

Duties and functions of boards • 2-4, page 3

Administration • 2-5, page 3

Off-limits establishments and areas • 2-6, page 3

Chapter 3

Off-Installation Operations (Military Patrols and Investigative Activities) and Policy, page 4

Objectives • 3-1, page 4

Army policy • 3-2, page 4

Navy policy • 3-3, page 5

Air Force policy • 3-4, page 5

Marine Corps policy • 3-5, page 6

Coast Guard policy • 3-6, page 6

Operations • 3-7, page 6

Appendixes

A. References, page 7

B. Armed Forces Disciplinary Control Board Procedures Guide, page 8

Contents—Continued

C. Management Control Checklist (Army Only), *page 16*

Figure List

- Figure B-1: Armed Forces Disciplinary Control Board letter of notification, *page 11*
- Figure B-2: Armed Forces Disciplinary Control Board letter of appreciation, *page 11*
- Figure B-3: Armed Forces Disciplinary Control Board letter of invitation, *page 12*
- Figure B-4: Armed Forces Disciplinary Control Board off-limits approval letter, *page 12*
- Figure B-5: Armed Forces Disciplinary Control Board letter of declaration of off-limits, *page 13*
- Figure B-6: Armed Forces Disciplinary Control Board letter of notification of continuance of off-limits, *page 13*
- Figure B-7: Armed Forces Disciplinary Control Board letter of removal of off-limits restriction, *page 14*
- Figure B-8: Armed Forces Disciplinary Control Board notification of removal of off-limits restriction, *page 14*
- Figure B-9: Format for Armed Forces Disciplinary Control Board meeting minutes, *page 15*
- Figure B-9: Format for Armed Forces Disciplinary Control Board meeting minutes—Continued, *page 16*

Glossary

Chapter 1

Introduction

Section I

Overview

1-1. Purpose

This regulation prescribes policies and procedures for the establishment and operation of Armed Forces Disciplinary Control Boards (AFDCBs).

1-2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

Section II

Responsibilities

1-4. The Provost Marshal General, U.S. Army

The Provost Marshal General (PMG), U.S. Army will—

- a.* Serve as the proponent for this regulation.
- b.* Have primary responsibility for its content.
- c.* Develop and have staff supervision over AFDCBs and off-installation enforcement policies.

1-5. The Director, Naval Criminal Investigative Service, U.S. Navy

The Director, Naval Criminal Investigative Service, U.S. Navy will develop and have staff supervision over AFDCBs and off-installation enforcement policies.

1-6. The Director of Security Forces and Force Protection, U.S. Air Force

The Director of Security Forces and Force Protection, U.S. Air Force will develop and have staff supervision over AFDCBs and off-installation enforcement policies.

1-7. The Commandant, U.S. Marine Corps

The Commandant, U.S. Marine Corps will develop and have staff supervision over AFDCBs and off-installation enforcement policies.

1-8. The Commandant, U.S. Coast Guard

The Commandant, U.S. Coast Guard will develop and have staff supervision over AFDCBs and off-installation enforcement policies.

1-9. Joint Service commanders

a. Regional Directors of the Army Installation Management Agency (IMA), Commander, Army Materiel Command (AMC), Commander, U.S. Army Medical Command (MEDCOM), Air Force commanders, Navy regional commanders, Marine Corps commanders, and Coast Guard commanders will—

- (1) Determine level and degree of participation by subordinate commanders in Joint Service boards, when appropriate.
- (2) Resolve differences among subordinate commanders regarding board areas of responsibility and the designation of sponsoring commanders.
- (3) Evaluate board recommendations and actions from subordinate sponsoring commanders.
- (4) Forward recommendations to HQDA, OPMG (DAPM-MPD-LE), Washington, DC 20310-2800, regarding circumstances that require Service headquarters action or programs having widespread applicability.
- b.* Military installation commanders or their designated representative for off-installation enforcement actions will—
 - (1) Convene Joint Service boards within their area of responsibility (see AR 5-9).
 - (2) Conduct off-installation operations as authorized by law and Service policy.
 - (3) Coordinate off-installation operations with other Service commanders, as applicable, for uniformity of effort and economy of resources.
 - (4) Assist Federal, State, and local law enforcement agencies within the limits imposed by law and DOD policy.
- c.* Sponsoring commanders will provide administrative support for AFDCBs programs to include the following:
 - (1) Promulgating implementing directives and convening the board.

- (2) Providing a recorder for the board.
- (3) Providing copies of the minutes of board meetings to other Service commanders who are represented on the board and to other AFDCBs, as appropriate.
- (4) Approving or disapproving the minutes and recommendations of the board and making appropriate distribution, as required.
- (5) Publishing lists of off-limits establishments and areas.
- (6) Ensuring that responsible individuals are notified of any unfavorable actions being contemplated or taken regarding their establishments per appendix B.
- (7) Distributing pertinent information to the following:
 - (a) All units within their jurisdictional area.
 - (b) Units stationed in other areas whose personnel frequent their area of jurisdiction.
- (8) Ensuring that procedures are established to inform all Service personnel, to include those who may be visiting or are in a travel status, of off-limits restrictions in effect within the respective AFDCBs' jurisdictional area.

1-10. Army commanders

Commanders of Army installations will be responsible for coordinating activities of AFDCBs in their areas. They may serve as sponsoring commanders or participate as members of Joint Service boards. They may approve the establishment of a separate AFDCB for Army installations when it is in the best interest of the Army to do so.

- a. Coordinate activities of AFDCBs in their areas.
- b. Serve as sponsoring commander or participate as a member of Joint AFDCBs.
- c. Approve the establishment of separate AFDCBs for Army installations when it is in the best interest of the Army.
- d. Obtain approval from the installation higher headquarters for changes to AFDCBs areas of responsibility.

1-11. Navy commanders

Regional Navy commanders will serve as the sponsoring commander for the purpose of this regulation. This authority may be delegated by instruction to installation commanding officers when, in the judgment of the regional commander, geographical dispersion or other circumstances make it appropriate to allow an installation commanding officer to act as a sponsoring commander.

Chapter 2

Armed Forces Disciplinary Control Board

2-1. Establishment of Armed Forces Disciplinary Control Boards

The AFDCBs may be established by installation, base, or station commanders to advise and make recommendations to commanders on matters concerning eliminating conditions, which adversely affect the health, safety, welfare, morale, and discipline of the Armed Forces.

- a. For the Army, routine off-limits actions must be processed by AFDCBs following the procedures in paragraph 2-6, below, and appendix B.
- b. Coast Guard commanders must have written authorization from the Commandant (G-WP) prior to establishing AFDCBs.

2-2. Composition of boards

a. Boards should be structured according to the needs of the command, with consideration given to including representatives from the following functional areas:

- (1) Law enforcement.
- (2) Legal counsel.
- (3) Health.
- (4) Environmental protection.
- (5) Public affairs.
- (6) Equal opportunity.
- (7) Fire and safety.
- (8) Chaplains' service.
- (9) Alcohol and drug abuse.
- (10) Personnel and community activities.
- (11) Consumer affairs.

b. Sponsoring commanders will designate a board president and determine, by position, which board members will be voting members. Such designations will be included in a written agreement establishing the board.

2-3. Participation by civil agencies

a. Civil agencies or individuals may be invited to board meetings as observers, witnesses, or to provide assistance where they possess knowledge or information pertaining to problem areas within the board's jurisdiction.

b. Announcements and summaries of board results may be provided to appropriate civil agencies.

2-4. Duties and functions of boards

The AFDCBs will—

a. Meet as prescribed by appendix B.

b. Receive reports and take appropriate action on conditions in their area of responsibility relating to any of the following:

- (1) Disorder and lack of discipline.
- (2) Prostitution.
- (3) Sexually transmitted diseases.
- (4) Liquor violations.
- (5) Racial and other discriminatory practices.
- (6) Alcohol and drug abuse.
- (7) Drug abuse paraphernalia.
- (8) Criminal or illegal activities involving cults or hate groups.
- (9) Illicit gambling.
- (10) Areas susceptible to terrorist activity.
- (11) Unfair commercial or consumer practices.
- (12) Other undesirable conditions deemed unsafe, which may adversely affect the health and well-being of military personnel or their families.

c. Report to all commanders in the board's area of responsibility—

- (1) Conditions cited in subparagraph b, above.
- (2) Recommended action as approved by the board's sponsoring commander.

d. Coordinate with appropriate civil authorities on problems or adverse conditions existing in the board's area of jurisdiction.

e. Make recommendations to commanders in the board's area of jurisdiction concerning off-installation procedures to prevent or control undesirable conditions.

2-5. Administration

a. Commanders are authorized to acquire, report, process, and store information concerning persons and organizations, whether or not affiliated with DOD, according to the applicable Service regulations of the sponsoring commander, which—

- (1) Adversely affect the health, safety, morale, welfare, or discipline of Service personnel, regardless of status.
- (2) Describe crime-conducive conditions where there is a direct Service interest.

b. Boards will function under the supervision of a president (see para 2-2b, above).

c. Certain expenses incurred by Service personnel in the course of an official board investigation or inspection may be reimbursable per appropriate Service finance regulations or instructions. Requests for reimbursement will be submitted through the sponsoring commander.

d. Records of board proceedings will be maintained as prescribed by records management policies and procedures of the sponsoring commander's Service.

2-6. Off-limits establishments and areas

a. The establishment of off-limits areas is a function of command. It may be used by commanders to help maintain good order and discipline, health, morale, safety, and welfare of Service personnel. Off-limits action is also intended to prevent Service personnel from being exposed to or victimized by crime-conducive conditions. Where sufficient cause exists, commanders retain substantial discretion to declare establishments or areas temporarily off-limits to personnel of their respective commands in emergency situations. Temporary off-limits restrictions issued by commanders in an emergency situation will be acted upon by AFDCBs as a first priority. As a matter of policy, a change in ownership, management, or name of any off-limits establishment does not, in and of itself, revoke the off-limits restriction.

b. Service personnel are prohibited from entering establishments or areas declared off-limits according to this regulation. Violations may subject the member to disciplinary action per applicable Service regulations and the Uniform Code of Military Justice. Family members of Service personnel and others associated with the Service or installation should be made aware of off-limits restrictions. As a general policy, these establishments will not be

visited by Service law enforcement personnel unless specifically determined by the installation commander that visits or surveillance are warranted.

c. Prior to initiating AFDCBs action, installation commanders will attempt to correct adverse conditions or situations through the assistance of civic leaders or officials.

d. Prior to recommending an off-limits restriction, AFDCBs will send a written notice (certified mail—return receipt requested) to the individual or firm responsible for the alleged condition or situation. The AFDCBs will specify, in the notice, a reasonable time for the condition or situation to be corrected, along with the opportunity to present any relevant information to the board. If subsequent investigation reveals that the responsible person has failed to take corrective action, the board will recommend the imposition of the off-limits restriction (see app B).

e. A specified time limit will not be established when an off-limits restriction is invoked. The adequacy of the corrective action taken by the responsible individual will be the determining factor in removing an off-limits restriction.

f. A person whose establishment or area has been declared off-limits may, at any time, petition the president of the board to remove the off-limits restriction. The petition will be in writing and will include a detailed report of action taken to eliminate the condition or situation that caused imposition of the restriction. The president of the Armed Forces Disciplinary Control Board may direct an investigation to determine the status of corrective actions noted in the petition. The board will either recommend removal or continuation of the off-limits restriction to the local sponsoring commander based on the results of the investigation.

g. Off-limits procedures to be followed by the boards are in appendix B. In the United States, off-limits signs will not be posted on civilian establishments by U.S. military authorities.

h. In areas outside of the continental United States (OCONUS), off-limits and other AFDCBs procedures must be consistent with existing Status of Forces Agreements (SOFAs).

Chapter 3

Off-Installation Operations (Military Patrols and Investigative Activities) and Policy

3-1. Objectives

The primary objectives of off-installation operations are to—

- a.* Render assistance and provide information to Service personnel.
- b.* Preserve the safety and security of Service personnel.
- c.* Preserve good order and discipline among Service personnel and reduce off-installation incidents and offenses.
- d.* Maintain effective cooperation with civil authorities and community leaders.

3-2. Army policy

a. Soldiers, military and/or Department of the Army civilian (DAC) police performing off-installation operations must be thoroughly familiar with applicable agreements, constraints of the Posse Comitatus Act (Section 1385, Title 18, United States Code (18 USC 1385)) in continental United States (CONUS) and United States–host nation agreements in areas OCONUS.

b. Military and/or DAC police assigned to off-installation operations have the sole purpose of enforcing regulations and orders pertaining to persons subject to their jurisdiction.

c. Military and/or DAC police accompanying civilian law enforcement officers remain directly responsible to, and under the command of, U.S. Army superiors. Military and DAC police may come to the aid of civilian law enforcement officers to prevent the commission of a felony or injury to a civilian law enforcement officer.

d. Regional directors of the Army IMA, commander, AMC, and commander, MEDCOM may authorize subordinate commanders to establish off-installation operations within the limits imposed by higher authority (18 USC 1385) in CONUS, and United States–host nation agreements in OCONUS areas—

- (1) To assist Federal, State, and local law enforcement agencies.
- (2) In conjunction with military activities.
- (3) To safeguard the health and welfare of Soldiers.
- (4) When the type of offense or the number of Soldiers frequenting an area is large enough to warrant such operations.

e. The constraints on the authority of Soldiers and/or DAC police to act off-installation (Posse Comitatus Act (18 USC 1385)) in CONUS and United States–host nation agreements in OCONUS areas, and the specific scope of off-installation operations will be clearly delineated in all authorizations for off-installation operations. Off-installation operations will be coordinated with the local installation commander through the Staff Judge Advocate (SJA), or higher authority, and appropriate civilian law enforcement agencies.

3-3. Navy policy

The following policies apply to off-installation operations:

a. Navy military personnel manual NAVPERS 1630-020, revised August 2002, and U.S. Navy Regulations 1990, Article 0922 concerning the establishment and operation of a shore patrol.

b. Secretary of the Navy policy concerning Navy absentee collection units that collect and process apprehended absentees and deserters; escort apprehended absentees and deserters to their parent commands or to designated processing activities; escort prisoners between confinement facilities; and provide liaison with civilian law enforcement authorities.

c. Applicable agreements and implementing standard operating procedures, to include the constraints of the Posse Comitatus Act (18 USC 1385) in CONUS and United States-host nation agreements in OCONUS areas. Navy personnel will be thoroughly familiar with all.

d. Installation commanders—within CONUS—may request authority from their regional commander to establish off-installation operations—

(1) To assist Federal, State, and local law enforcement agencies within the limits imposed by higher authority and the Posse Comitatus Act (18 USC 1385).

(2) In conjunction with military operations.

(3) To safeguard the health and welfare of Naval personnel.

(4) When the type of offense or the number of Service personnel frequenting an area is large enough to warrant such operation. Constraints on the authority of military personnel to act off-installation (18 USC 1385) and the specific scope of the authority will be clearly delineated in all authorizations for off-installation operations.

e. Installation commanders—OCONUS—may authorize off-installation operations as required by local conditions and customs, as long as they are conducted in accordance with applicable treaties and SOFAs. Off-installation operations will be kept at the minimum needed for mission accomplishment.

f. Off-installation operations will be coordinated with the local installation commander through the Judge Advocate General, or higher authority, and local law enforcement authorities.

g. Security personnel selected for off-installation operations must—

(1) Have mature judgment and law enforcement experience.

(2) Be thoroughly familiar with all applicable agreements and implementing standard operating procedures, to include the constraints of the Posse Comitatus Act (18 USC 1385) in CONUS and United States-host nation agreements in OCONUS areas, as applicable.

h. Security personnel accompanying civilian police during off-installation operations do so only to enforce regulations and orders pertaining to persons subject to their jurisdiction. Security personnel assigned off-installation operations remain directly responsible to, and under the command of, their Navy superiors when accompanying civilian police. Security personnel performing such duties may come to the aid of civilian police in order to prevent the commission of a felony or injury to a civilian police officer.

i. Civilian police and court liaison may be established with concurrence of the Naval Criminal Investigative Service and is encouraged particularly when the intent is to reduce mishaps.

3-4. Air Force policy

a. Airmen, military and/or Department of the Air Force civilian (DAFC) police performing off-installation operations must be thoroughly familiar with applicable agreements, constraints of the Posse Comitatus Act (18 USC 1385) in CONUS and United States-host nation agreements in OCONUS areas.

b. Military and/or DAFC police assigned to off-installation operations have the sole purpose of enforcing regulations and orders pertaining to persons subject to their jurisdiction.

c. Military and/or DAFC police accompanying civilian law enforcement officers remain directly responsible to, and under the command of, U.S. Air Force superiors. Military and DAFC police may come to the aid of civilian law enforcement officers to prevent the commission of a felony or injury to a civilian law enforcement officer.

d. Air Force commanders may authorize subordinate commanders to establish off-installation operations within the limits imposed by higher authority, the Posse Comitatus Act (18 USC 1385) in CONUS and United States-host nation agreements in OCONUS areas—

(1) To assist Federal, State, and local law enforcement agencies.

(2) In conjunction with military activities.

(3) To safeguard the health and welfare of Airmen.

(4) When the type offense or the number of Airmen frequenting an area is large enough to warrant such operations.

e. The constraints on the authority of Airmen and/or DAFC police to act off-installation (Posse Comitatus Act (18 USC 1385)) in CONUS and United States-host nation agreements in OCONUS areas) and the specific scope of off-installation operations will be clearly delineated in all authorizations for off-installation operations. Off-installation

operations will be coordinated with the local installation commander through the SJA, or higher authority, and appropriate civilian law enforcement agencies.

3-5. Marine Corps policy

a. Within CONUS—

(1) Commanders may request authority from Headquarters, Marine Corps (Code PS), to establish off-installation operations—

(a) To assist Federal, State, and local law enforcement agencies within the limits imposed by higher authority and the Posse Comitatus Act (18 USC 1385).

(b) In conjunction with military operations.

(c) To safeguard the health and welfare of Marines.

(d) When the type offense or the number of Service personnel frequenting an area is large enough to warrant such operations.

(2) Constraints on the authority of military personnel to act off-installation (Posse Comitatus Act (18 USC 1385)) and the specific scope of the authority will be clearly delineated in all authorizations for off-installation operations.

b. Within OCONUS, off-installation operations will be kept at the minimum needed for mission accomplishment. Installation commanders may authorize off-installation operations as required by local conditions and customs, as long as they are conducted in accordance with applicable treaties and SOFAs.

c. Off-installation operations will be coordinated with the local installation commander through the SJA, or higher authority, and local law enforcement authorities.

d. Marines selected for off-installation operations must—

(1) Have mature judgment and law enforcement experience.

(2) Be thoroughly familiar with all applicable agreements and implementing standard operating procedures, to include the constraints of the (Posse Comitatus Act (18 USC 1385)) in CONUS and United States-host nation agreements in OCONUS areas, as applicable.

e. Marines accompanying civilian police during off-installation operations do so only to enforce regulations and orders pertaining to persons subject to their jurisdiction. Marines assigned off-installation operations remain directly responsible to, and under the command of, their Marine superiors when accompanying civilian police. Marines performing such duties may come to the aid of civilian police in order to prevent the commission of a felony or injury to a civilian police officer.

f. Procedures for absentee and deserter collection units to accept an active-duty absentee or deserter from civilian authorities may be established.

g. Civilian police and civil court liaison may be established.

3-6. Coast Guard policy

This chapter is not applicable to the U.S. Coast Guard.

3-7. Operations

When an incident of substantial interest to the Service, involving Service property or affiliated personnel, occurs off-installation, the Service law enforcement organization exercising area responsibility will—

a. Obtain copies of civilian law enforcement reports for processing or forwarding according to applicable Service regulations.

b. Return apprehended persons to representatives of their Service as soon as practicable.

Appendix A References

Section I Required Publications

NAVPERS 1630-020

Shore Patrol. (Cited in para 3-5a.) (Available at <http://buperscd.technology.navy.mil/>.)

Navy Regulations 1990, Article 0922

Shore Patrol. (Cited in para 3-5a.) (Available at <http://doni.daps.dla.mil/>.)

Section II Related Publications

A related publication is a source of additional information. The user does not have to read it to understand this publication.

AR 5-9

Area Support Responsibilities

AR 11-2

Management Control

AR 195-2

Criminal Investigation Activities

AR 380-13

Acquisition and Storage of Information Concerning Nonaffiliated Persons and Organizations

AFI 31-201

Security Police Standards and Procedures. (Available at <http://www.e-publishing.af.mil/>.)

DODD 1010.4

Drug and Alcohol Abuse by DOD Personnel. (Available at <http://www.dtic.mil/whs/directives/>.)

DODD 5400.7

DOD Freedom of Information Act (FOIA) Program. (Available at <http://www.dtic.mil/whs/directives/>.)

Uniform Code of Military Justice

Available at <http://www.au.af.mil/au/awc/awcgate/ucmj.htm>.

18 USC 1385

Use of Army and Air Force as posse comitatus. (Posse Comitatus Act) (Available at <http://www.gpoaccess.gov/uscode/>.)

USCG COMDTINST M1000.6

Personnel Manual With Ch-I To 40. (Available at <http://isddc.dot.gov/>.)

USCG COMDTINST M5728.2C

Public Affairs Manual. (Available at <http://isddc.dot.gov/>.)

USCG COMDTINST M5260.3

Coast Guard Freedom of Information and Privacy Acts Manual. (Available at <http://isddc.dot.gov/>.)

Section III Prescribed Forms

This section contains no entries.

Section IV

Referenced Forms

Except where otherwise indicated below, the following forms are available as follows: DA Forms are available on the Army Electronic Library (AEL) CD-ROM (EM 0001) and the APD Web site (<http://www.apd.army.mil>).

DA Form 11-2-R

Management Control Evaluation Certification Statement

Appendix B

Armed Forces Disciplinary Control Board Procedures Guide

B-1. Purpose

This guide prescribes procedures for the establishment, operation, and coordination of AFDCBs. The AFDCBs' proceedings are not adversarial in nature.

B-2. Meetings

a. The board will meet quarterly. The commander establishing the board may specify whether the meetings will be open or closed. If not specified, the decision is at the discretion of the president of the board. Normally proceedings are closed, but may be opened to the public when circumstances warrant.

b. Special meetings may be called by the president of the board. Except by unanimous consent of members present, final action will be taken only on the business for which the meeting was called.

c. A majority of voting members constitutes a quorum for board proceedings.

B-3. Armed Forces Disciplinary Control Board composition

Voting members will be selected per paragraph 2-2, above.

B-4. Attendance of observers or witnesses

a. The board may invite individual persons or organization representatives as witnesses or observers if they are necessary or appropriate for the conduct of board proceedings. The below listed authorities may assist in addressing installation or command concerns or issues.

- (1) Federal, State, and local judicial, legislative, and law enforcement officials.
- (2) Housing regulation and enforcement authorities.
- (3) Health and social service authorities.
- (4) Environmental protection authorities.
- (5) Alcoholic beverage control authorities.
- (6) Equal employment opportunity authorities.
- (7) Consumer affairs advocates.
- (8) Chamber of Commerce representatives.
- (9) Public works or utility authorities.
- (10) Local fire marshal and public safety authorities.
- (11) State and local school board or education officials.
- (12) Any other representation deemed appropriate by the sponsoring command such as, news media, union representatives, and so forth.

b. Invited witnesses and observers will be listed in the minutes of the meeting.

B-5. Appropriate areas for board consideration

a. Boards will study and take appropriate action on all reports of conditions considered detrimental to the good order and discipline, health, morale, welfare, safety, and morals of Armed Forces personnel. These adverse conditions include, but are not limited to, those identified in paragraph 2-4, above.

b. The board will immediately forward to the local commander reported circumstances involving discrimination based on race, color, sex, religion, age, or national origin.

B-6. Off-limit procedures

a. Off-limits restrictions should be invoked only when there is substantive information indicating that an establishment or area frequented by Armed Forces personnel presents conditions, which adversely affect their health, safety, welfare, morale, or morals. It is essential that boards do not act arbitrarily. Actions must not be of a punitive nature. Boards should work in close cooperation with local officials and proprietors of business establishments and seek to accomplish their mission through mutually cooperative efforts. Boards should encourage personal visits by local

military and civilian enforcement or health officials to establishments considered below standard. The AFDCBs should point out unhealthy conditions or undesirable practices to establishment owners or operators to produce the desired corrective action.

b. In cases involving discrimination, the board should not rely solely on letters written by the Equal Opportunity Office and Military Affairs Committee or investigations of alleged racial discrimination.

c. If the board decides to attempt to investigate or inspect an establishment, the president or a designee will prepare and submit a report of findings and recommendations at the next meeting. This procedure will ensure complete and documented information concerning questionable adverse conditions.

d. When the board concludes that conditions adverse to Armed Forces personnel do exist, the owner or manager will be sent a letter of notification (see fig B-1). This letter will advise him or her to raise standards by a specified date and if such conditions or practices continue, off-limits proceedings will be initiated. Any correspondence with the individuals responsible for adverse conditions, which may lead to off-limits action, will be by certified mail.

e. If a proprietor takes remedial action to correct undesirable conditions previously noted the board should send a letter of appreciation (see fig B-2) recognizing this cooperation.

f. If undesirable conditions are not corrected, the proprietor will be invited to appear before the AFDCB to explain why the establishment should not be placed off-limits (see fig B-3). Any proprietor may designate, in writing, a representative to appear before the board on his or her behalf.

g. In cases where proprietors have been invited to appear before the board, the president of the board will perform the following:

(1) Prior to calling the proprietor—

(a) Review the findings and decision of the previous meeting.

(b) Call for inspection reports.

(c) Allow those present to ask questions and discuss the case.

(2) When the proprietor or his or her representative is called before the board—

(a) Present the proprietor with a brief summary of the complaint concerning the establishment.

(b) Afford the proprietor an opportunity to present matters in defense.

(c) Invite those present to question the proprietor. After the questioning period, provide the proprietor an opportunity to make a final statement before being dismissed.

(3) Deliberations on recommended actions will be in closed session, attended only by board members.

h. The board should recommend an off-limits restriction only after the following:

(1) The letter of notification (see fig B-1) has been sent.

(2) An opportunity for the proprietor to appear before the board has been extended.

(3) Further investigation indicates that improvements have not been made.

i. The minutes will indicate the AFDCB's action in each case. When a recommendation is made to place an establishment off-limits, the minutes will show the procedural steps followed in reaching the decision.

j. Recommendations of the AFDCB will be submitted to the sponsoring commander for consideration. The recommendations will then be forwarded to other installation commanders who are represented on the board (see fig B-4). If no objection to the recommendations is received within 10 days, the sponsoring commander will approve or disapprove the recommendations and forward the decision to the AFDCB president.

k. Upon approval of the AFDCB's recommendations, the president will write the proprietor that the off-limits restriction has been imposed (see fig B-5).

l. A time limit should not be specified when an off-limits restriction is revoked. The adequacy of the corrective action taken by the proprietor of the establishment must be the determining factor in removing the off-limits restriction.

m. Military authorities may not post off-limits signs or notices on private property.

n. In emergencies, commanders may temporarily declare establishments or areas off-limits to Service personnel subject to their jurisdiction. The circumstances for the action will be reported as soon as possible to the commander sponsoring the board. Detailed justification for this emergency action will be provided to the board for its deliberations.

o. Appropriate installation commanders will publish a list of off-limits establishments and areas using command and media channels.

B-7. Removal of off-limits restrictions

a. Removal of an off-limits restriction requires AFDCB action and approval by the sponsoring commander. Proprietors of establishments declared off-limits should be advised that they may petition the appropriate AFDCB at any time. In their petition they should submit the reason why the restriction should be removed. A letter of notification for continuance of the off-limits restriction should be sent to the proprietor if the sponsoring commander does not remove the off-limits restriction (see fig B-6). The proprietor may appeal to the next higher commander after exhausting all appeals at the local sponsoring commander level. Boards should make at least quarterly inspections of off-limits establishments. A statement that an inspection has been completed should be included in AFDCB minutes.

b. When the board learns that the proprietor has taken adequate corrective measures, the AFDCB will take the following actions:

- (1) Discuss the matter at the next meeting and make an appropriate recommendation.
- (2) Forward a recommendation for removal of the off-limits restriction to the sponsoring commander. If approved, a letter removing the restriction (see fig B-7 or fig B-8) will be sent to the proprietor.
- (3) Reflect action taken in the minutes.

B-8. Duties of the Armed Forces Disciplinary Control Board president

The president of the AFDCB will—

- a. Schedule and preside at all AFDCB meetings.
- b. Provide an agenda to each voting member at least 72 hours prior to the meeting.
- c. Ensure records, minutes, and correspondence are prepared, distributed, and maintained per this regulation (see para 2-5d).

B-9. Commanders

The installation commander and commanders within an AFDCB's area of responsibility must be thoroughly acquainted with the mission and services provided by AFDCBs. The AFDCB members should keep their respective commanders informed of command responsibilities pertaining to AFDCB functions and actions.

B-10. Public affairs

a. Due to the sensitive nature of the subject matter, there will not be a media release in connection with AFDCB meetings. However, any AFDCB proceeding, which is open to the public, will also be open to representatives of the news media. Unless identified as a witness, representatives of the news media will be considered observers and will not participate in matters considered by the AFDCB. Members of the news media may also be invited to participate in an advisory status in coordination with the public affairs office.

b. News media interviews and releases will be handled through the public affairs office according to applicable Service regulations.

B-11. Minutes

a. Minutes will be prepared in accordance with administrative formats for minutes of meetings prescribed by the Service of the sponsoring commander (see fig B-9). The written minutes of AFDCB meetings will constitute the official record of the AFDCB proceedings. Verbatim transcripts of board meetings are not required. The reasons for approving or removing an off-limits restriction, to include a complete address of the establishment or area involved, should be indicated in the order of business. In addition, the AFDCB's action will be shown in the order or sequence of actions taken. A change in the name of an establishment or areas in an off-limits restriction will also be included.

b. Distribution of the minutes of AFDCB meetings will be limited to the following:

(1) Each voting member, sponsoring command, commands, and installations represented by the board and military advisory member, if deemed appropriate.

(2) Civilian and Government agencies within the State in which member installations are located having an official interest in the functions of the board, if appropriate, in accordance with the Freedom of Information Act and the Privacy Act.

c. The AFDCB minutes are subject to release and disclosure in accordance with applicable Federal laws, Service regulations, and directives.

d. Minutes and recommendations of the board will be forwarded to the sponsoring commander for approval.

(Letterhead)

Proprietor:

Dear Sir:

This letter is to inform you that it has come to the attention of the Armed Forces Disciplinary Control Board (AFDCB) that certain conditions reported at your establishment may adversely affect the *(health, safety, or welfare)* of members of the Armed Forces.

The AFDCB is initiating action to determine whether your establishment (area) should be placed off-limits to members of the Armed Forces if *(cite conditions)* are not corrected by *(date)*.

A representative of the AFDCB will visit your establishment to determine if steps have been taken to correct the conditions outlined above.

Sincerely,
John J. Smith
Colonel, U.S. Army
President, Armed Forces
Disciplinary Control Board

(Note: Use certified mail, return receipt requested if mailed.)

Figure B-1. Armed Forces Disciplinary Control Board letter of notification

(Letterhead)

Proprietor:

Dear Sir:

This is in reference to my letter of *(date)* concerning the condition(s) reported at your establishment which adversely affected the health and welfare of members of the Armed Forces.

The Board appreciates your action to correct the condition previously noted and does not contemplate further action with respect to this specific matter.

Your continued cooperation is solicited.

Sincerely,
John J. Smith
Colonel, U.S. Army
President, Armed Forces
Disciplinary Control Board

Figure B-2. Armed Forces Disciplinary Control Board letter of appreciation

(Letterhead)

Proprietor

Dear Sir:

This is in reference to my letter of *(date)* concerning the condition reported at your establishment which adversely affects the (health, safety, or welfare) of members of the Armed Forces. Information has been received by the board which indicates you have not taken adequate corrective action to eliminate the reported condition.

Reports presented to the Armed Forces Disciplinary Control Board (AFDCB) indicate *(list and describe conditions)*.

You are advised that the AFDCB will initiate action to determine whether your establishment should be declared off-limits to members of the Armed Forces.

You may appear in person, with or without counsel, before the AFDCB at its next scheduled meeting on *(date, time, and place)*. At that time you will have the opportunity to refute the allegation, or to inform the board of any remedial action you have taken or contemplate taking to correct the condition. It is requested that you inform the President of the AFDCB if you plan to attend.

Any questions regarding this matter may be addressed to the President, Armed Forces Disciplinary Control Board, *(address)*. Every effort will be made to clarify the matter for you.

Sincerely,
John J. Smith
Colonel, U.S. Army
President, Armed Forces
Disciplinary Control Board

(Note: Send certified mail-return receipt requested, if mailed.)

Figure B-3. Armed Forces Disciplinary Control Board letter of invitation

(Letterhead)

Office Symbol

MEMORANDUM FOR *(Commanders of Supported Installations)*

SUBJECT: Establishments or Areas Recommended for Off-Limits Designation

1. On *(date)*, the Armed Forces Disciplinary Control Board (AFDCB) recommended imposition of the following off-limits restrictions: *(name and address of establishment)*
2. Commanders furnishing AFDCB representatives are requested to provide any comments within 10 days as to whether: *(name of establishment or area)* should be placed off-limits
3. A copy of the AFDCB minutes and recommendation is enclosed.

FOR THE (SPONSORING) COMMANDER:

Encl

JOHN SMITH
Colonel, U.S. Army
President, Armed Forces
Disciplinary Control Board

Figure B-4. Armed Forces Disciplinary Control Board off-limits approval letter

(Letterhead)

Proprietor

Dear Sir:

This letter is to inform you that your establishment has been declared off-limits to members of the Armed Forces effective *(date)*. Members of the Armed Forces are prohibited from entering your establishment (premises) as long as this order is in effect. This action is being taken because of *(state the conditions)* which are detrimental to the *(health or welfare)* of members of the Armed Forces.

This restriction will remain in effect indefinitely in accordance with established Armed Forces policy. Removal of the restriction will be considered by the Armed Forces Disciplinary Control Board upon presentation of information that satisfactory corrective action has been taken.

Correspondence appealing this action may be submitted to the President, Armed Forces Disciplinary Control Board, *(cite address)*.

Sincerely,
John J. Smith
Colonel, U.S. Army
President, Armed Forces
Disciplinary Control Board

Figure B-5. Armed Forces Disciplinary Control Board letter of declaration of off-limits

(Letterhead)

Proprietor

Dear Sir:

The Armed Forces Disciplinary Control Board (AFDCB) did not favorably consider your request for removal of the off-limits restriction now in effect at your establishment.

This decision does not preclude further appeals or appearances before the AFDCB at any of its scheduled meetings. Correspondence pertaining to this matter should be addressed to the President, Armed Forces Disciplinary Control Board, *(cite address)*.

Sincerely,
John J. Smith
Colonel, U.S. Army
President, Armed Forces
Disciplinary Control Board

Figure B-6. Armed Forces Disciplinary Control Board letter of notification of continuance of off-limits

(Letterhead)

Proprietor

Dear Sir:

This letter is to inform you that the off-limits restriction against *(name of establishment)* is removed effective *(date)*. Members of the Armed Forces are permitted to patronize your establishment as of that date.

The corrective actions taken in response to the concerns of the Armed Forces Disciplinary Control Board are appreciated.

Sincerely,
John J. Smith
Colonel, U.S. Army
President, Armed Forces
Disciplinary Control Board

Figure B-7. Armed Forces Disciplinary Control Board letter of removal of off-limits restriction

(Letterhead)

Proprietor

Dear Sir:

This letter is to inform you that your request for removal of the off-limits restriction now in effect at *(name of establishment)* was favorably considered by the Armed Forces Disciplinary Control Board (AFDCB).

This restriction will be removed effective *(date)*. Members of the Armed Forces will be permitted to patronize your establishment as of that date.

The corrective actions taken in response to the concerns of the AFDCB are appreciated.

Sincerely,
John J. Smith
Colonel, U.S. Army
President, Armed Forces
Disciplinary Control Board

Figure B-8. Armed Forces Disciplinary Control Board notification of removal of off-limits restriction

Format for AFDCB Meeting Minutes

(Letterhead)

MEMORANDUM FOR

SUBJECT: Armed Forces Disciplinary Control Board

1. Pursuant to authority contained in AR 190-24/AFI 31-213/OPNAVINST 1620.2A/MCO 1620.2C and COMDTINST 1620.1D, Armed Forces Disciplinary Control Boards and Off-Installation Liaison and Operations, the *(area)* Armed Forces Disciplinary Control Board convened at *(place)*, *(date)*

2. The following voting members were present: *(List names, titles, and addresses.)*

3. The following military members were present: *(List names, titles, and addresses.)*

4. The following civilian advisory members were present: *(List names, titles, and addresses.)*

5. Order of business:

- a. Call to order.
- b. Welcome.
- c. Introduction of members and guests.
- d. Explanation of purpose of board.
- e. Reading of minutes.
- f. Unfinished or continuing business.
- g. New business (subparagraph as necessary).
- h. Recommendations.

(1) List of areas and establishments being placed in an off-limits restriction. Include complete name and address (or adequate description of an area) of any establishment listed.

(2) List of areas and establishments being removed from off-limits restrictions. Include complete name and address (or adequate description of an area) of any establishment listed.

(3) Other matters or problems of mutual concern.

i. Time, date, and place for next board meeting.

j. Adjournment of the board.

Figure B-9. Format for Armed Forces Disciplinary Control Board meeting minutes

(Board Recorder's Name)
(Rank, Branch of Service)
Recorder, Armed Forces
Disciplinary Control Board

Approved:
(Board President's Name)
(Rank, Branch of Service)
President, Armed Forces Disciplinary Control Board

(Note: The minutes of the board proceedings will be forwarded by official correspondence from the board president to the sponsoring commander for approval of the board's recommendations. By return endorsement, the sponsoring commander will either approve or disapprove the board's recommendations.)

Figure B-9. Format for Armed Forces Disciplinary Control Board meeting minutes-Continued

Appendix C

Management Control Checklist (Army Only)

C-1. Function

The function covered by this checklist is Armed Forces Disciplinary Control Boards and off-installation liaison and operations.

C-2. Purpose

The purpose of this checklist is to assist assessable unit managers and management control administrators in evaluating the key management controls outlined below. It is not intended to cover all controls.

C-3. Instructions

Answers must be based on the actual testing of key management controls (that is, document analysis, direct observation, sampling, simulation, other). Answers that indicate deficiencies must be explained and corrective action indicated in supporting documentation. These key management controls must be formally evaluated at least once every 5 years. Certification that this evaluation has been conducted must be accomplished on DA Form 11-2-R (Management Control Evaluation Certification Statement).

C-4. Test Questions

- a. Are AFDCBs being established by installation, base, or station commanders to advise and make recommendations to commanders on matters concerning eliminating conditions that adversely affect the health, safety, morale, welfare, and discipline of the Armed Forces?
- b. Are AFDCBs structured according to the needs of the command?
- c. Are civilian agencies or individuals invited to board meetings as observers or witnesses when they know of problem areas within the boards jurisdiction?
- d. Are Soldiers and military police that perform off-installation operations thoroughly familiar with applicable agreements, constraints of the Posse Comitatus Act (18 USC 1385) in CONUS and United States-host nation agreements in OCONUS areas?
- e. Are installation commanders attempting to correct adverse conditions or situations through the assistance of civic leaders or officials, prior to initiating AFDCB actions?
- f. Are records of board proceedings being maintained in accordance with prescribed records management policies and procedures of the sponsoring commander's Service?

C-5. Suppression

There is not a previous edition of this checklist.

C-6. Comments

Help to make this a better tool for evaluating management controls. Submit comments to: HQDA, office of the Provost Marshal General (DAPM-MPD-LE), 2800 Army Pentagon, Washington, DC 203102800.

Glossary

Section I

Abbreviations

AFDCB

Armed Forces Disciplinary Control Board

AMC

U.S. Army Materiel Command

COMDTINST

Commandant Instruction

CONUS

continental United States

DAC

Department of the Army Civilian

DAFC

Department of the Air Force Civilian

DOD

Department of Defense

HQDA

Headquarters, Department of the Army

IMA

Installation Management Agency

MCO

Marine Corps order

MEDCOM

U.S. Army Medical Command

MILPERSMAN

military personnel manual

OCONUS

outside of the Continental United States

PMG

Provost Marshal General

SOFA

Status of Forces Agreement

SJA

Staff Judge Advocate

SNDL

standard Navy distribution list

USC

United States Code

Section II

Terms

Installations

Such real properties as depots, arsenals, ammunition plants (both contractor and Government operated), hospitals, terminals, and other special mission facilities, as well as other property used primarily by Service personnel.

Off-limits

The designation for any vehicle, conveyance, place, structure, building, or area which Service personnel are prohibited to use, ride, visit, or enter during the period of the off-limits declaration until existent conditions which adversely affect the health, safety, and welfare of Service personnel are eliminated or corrected.

Posse Comitatus Act

The law (18 USC 1385), which specifically prohibits the use of the U.S. Army and Air Force for the purpose of posse comitatus or civil law functions unless specific constitutional provisions are in effect which deal with a declared state of martial law.

Sponsoring commander

The commander of the Service with the greatest number of military personnel at an installation where 2 or more Services are located or which is frequented by personnel of 2 or more Services.

Section III

Special Abbreviations and Terms

This section contains no entries.

This page is intentionally blank.