

**ACTION:** Correction to final and temporary regulations.

**SUMMARY:** This document contains corrections to final and temporary regulations (TD 9278) that was published in the **Federal Register** on Friday, August 4, 2006 (71 FR 44466) regarding the treatment of controlled services transactions under section 482 and the allocation of income from intangibles, in particular with respect to contributions by a controlled party to the value of an intangible owned by another controlled party. This document also contains corrections to final and temporary regulations that modify the regulations under section 861 concerning stewardship expenses to be consistent with the changes made to the regulations under section 482.

**DATES:** This correction is effective January 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Vidano, (202) 435-5265, or Carol B. Tan, (202) 435-5159, for matters relating to section 482, and David F. Bergkuist, (202) 622-3850, for matters relating to stewardship expenses (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final and temporary regulations (TD 9278) that are the subject of these corrections is under sections 482 and 861 of the Internal Revenue Code.

**Need for Correction**

As published, final and temporary regulations (TD 9278) contain errors that may prove to be misleading and are in need of clarification.

**Correction of Publication**

Accordingly, final and temporary regulations (TD 9278) that were the subject of FR Doc. 06-6497 are corrected as follows:

1. On page 44466, column 1, in the heading, the subject "Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangibles; Stewardship Expense" is corrected to read "Treatment of Services Under Section 482; Allocation of Income and Deductions From Intangibles; and Apportionment of Stewardship Expense".

2. On page 44470, column 2, in the preamble under the paragraph heading "5. Comparable Profits Method for Services—Temp. Treas. Reg. § 1.482-9T(f)", fifth line from the top of the column, the language "assets play a greater role in general" is corrected to read "assets play a greater role in generating".

3. On page 44475, column 3, in the preamble under the paragraph heading "Services Subject to a Qualified Cost Sharing Arrangement—Temp. Treas. Reg. § 1.482-9T(m)(3)," fourth line from the top of the column, the language "two provisions, the rule § 1.482-" is corrected to read "two provisions, the rule in § 1.482-".

**Cynthia Grigsby,**

*Senior Federal Register Liaison Officer, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 143**

[DOD-2006-OS-0057]

**RIN 0790-AH99**

**DoD Policy on Organizations That Seek To Represent or Organize Members of the Armed Forces in Negotiation or Collective Bargaining**

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This rule contains uniform Department of Defense policies for organizations that seek to represent or organize members of the Armed Forces in negotiation or collective bargaining. This updated rule contains editorial changes only as required for internal Department of Defense mandated reconsideration every 5 years.

**DATES:** *Effective Date:* January 22, 2007.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel Mark Gingras, Office of the Deputy Under Secretary of Defense for Program Integration, 4000 Defense Pentagon, Washington, DC 20301-4000.

**SUPPLEMENTARY INFORMATION:** The proposed rule was published on October 12, 2006, at 71 FR 60092. No comments were received. The rule is therefore adopted as published below.

**Executive Order 12866, "Regulatory Planning and Review"**

It has been determined that 32 CFR part 143 is not a significant regulatory action. The rule does not:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

**Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4)**

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

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

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. By its terms, this rule applies to state and local governments. It has no impact on "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 or recordkeeping requirements under the Paperwork Reduction Act of 1995. The reporting and recordkeeping requirements have been submitted to OMB for review.

**Executive Order 13132, "Federalism"**

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

**List of Subjects in 32 CFR Part 143**

Government employees, Labor management relations, Military personnel.

■ Accordingly 32 CFR part 143 is revised to read as follows:

**PART 143—DOD POLICY ON ORGANIZATIONS THAT SEEK TO REPRESENT OR ORGANIZE MEMBERS OF THE ARMED FORCES IN NEGOTIATION OR COLLECTIVE BARGAINING**

Sec.

- 143.1 Purpose.
- 143.2 Applicability.
- 143.3 Definitions.
- 143.4 Policy.
- 143.5 Prohibited activity.
- 143.6 Activity not covered by this part.
- 143.7 Responsibilities.
- 143.8 Guidelines.

**Authority:** 10 U.S.C. 801–940 and 10 U.S.C. 976.

#### § 143.1 Purpose.

This part provides DoD policies and procedures for organizations whose objective is to organize or represent members of the Armed Forces of the United States for purposes of negotiating or bargaining about terms or conditions of military service. The policies and procedures set forth herein are designed to promote the readiness of the Armed Forces to defend the United States. This part does not modify or diminish the existing authority of commanders to control access to, or maintain good order and discipline on, military installations; nor does it modify or diminish the obligations of commanders and supervisors under 5 U.S.C. 7101–7135 with respect to organizations representing DoD civilian employees.

#### § 143.2 Applicability.

(a) The provisions of this part apply to:

(1) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred collectively as the “DoD Components”).

(2) Individuals and groups entering, using, or seeking to enter or use military installations.

(b) This part does not limit the application of the Uniform Code of Military Justice in 10 U.S.C. 901–940 or 10 U.S.C. 976 including the prohibitions and criminal penalties set forth therein with respect to matters that are the subject of this part or that are beyond its scope.

#### § 143.3 Definitions.

(a) *Member of the Armed Forces.* A member of the Armed Forces who is serving on active duty, or a member of a Reserve component while performing inactive duty training.

(b) *Military labor organization.* Any organization that engages in or attempts to engage in:

(1) Negotiating or bargaining with any civilian officer or employee, or with any

member of the Armed Forces, on behalf of members of the Armed Forces, concerning the terms or conditions of military service of such members in the Armed Forces;

(2) Representing individual members of the Armed Forces before any civilian officer or employee, or any member of the Armed Forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of military service of such member in the Armed Forces; or

(3) Striking, picketing, marching, demonstrating, or any other similar form of concerted action which is directed against the Government of the United States and that is intended to induce any civilian officer or employee, or any member of the Armed Forces, to:

(i) Negotiate or bargain with any person concerning the terms or conditions of military service of any member of the Armed Forces,

(ii) Recognize any organization as a representative of individual members of the Armed Forces in connection with complaints and grievances of such members arising out of the terms or conditions of military service of such members in the Armed Forces, or

(iii) Make any change with respect to the terms or conditions of military service of individual members of the Armed Forces.

(c) *Civilian officer or employee.* An employee, as defined in 5 U.S.C. 2105.

(d) *Military installations.* Includes installations, reservations, facilities, vessels, aircraft, and other property controlled by the Department of Defense.

(e) *Negotiation or bargaining.* A process whereby a commander or supervisor acting on behalf of the United States engages in discussions with a member or members of the Armed Forces (purporting to represent other such members), or with an individual, group, organization, or association purporting to represent such members, for the purpose of resolving bilaterally terms or conditions of military service.

(f) *Terms or conditions of military service.* Terms or conditions of military compensation or duty including but not limited to wages, rates of pay, duty hours, assignments, grievances, or disputes.

#### § 143.4 Policy.

It is the policy of the United States under Public Law 95–610 that:

(a) Members of the Armed Forces of the United States must be prepared to fight and, if necessary, to die to protect the welfare, security, and liberty of the

United States and of their fellow citizens.

(b) Discipline and prompt obedience to lawful orders of superior officers are essential and time-honored elements of the American military tradition and have been reinforced from the earliest articles of war by laws and regulations prohibiting conduct detrimental to the military chain of command and lawful military authority.

(c) The processes of conventional collective bargaining and labor-management negotiation cannot and should not be applied to the relationships between members of the Armed Forces and their military and civilian superiors.

(d) Strikes, slowdowns, picketing, and other traditional forms of job action have no place in the Armed Forces.

(e) Unionization of the Armed Forces would be incompatible with the military chain of command, would undermine the role, authority, and position of the commander, and would impair the morale and readiness of the Armed Forces.

(f) The circumstances that could constitute a threat to the ability of the Armed Forces to perform their mission are not comparable to the circumstances that could constitute a threat to the ability of Federal civilian agencies to perform their functions and should be viewed in light of the need for effective performance of duty by each member of the Armed Forces.

#### § 143.5 Prohibited activity.

(a) *Membership and enrollment.* (1) A member of the Armed Forces, knowing of the activities or objectives of a particular military labor organization, may not:

(i) Join or maintain membership in such organization; or

(ii) Attempt to enroll any other member of the Armed Forces as a member of such organization.

(2) No person on a military installation, and no member of the Armed Forces, may enroll in a military labor organization any member of the Armed Forces or solicit or accept dues or fees for such an organization from any member of the Armed Forces.

(b) *Negotiation or bargaining.* (1) No person on a military installation, and no member of the Armed Forces, may negotiate or bargain, or attempt through any coercive act to negotiate or bargain, with any civilian officer or employee, or any member of the Armed Forces, on behalf of members of the Armed Forces, concerning the terms or conditions of service of such members.

(2) No member of the Armed Forces, and no civilian officer or employee, may

negotiate or bargain on behalf of the United States concerning the terms or conditions of military service of members of the Armed Forces with any person who represents or purports to represent members of the Armed Forces.

(c) *Strikes and other concerted activity.* (1) No person on a military installation, and no member of the Armed Forces, may organize or attempt to organize, or participate in, any strike, picketing, march, demonstration, or other similar form of concerted action involving members of the Armed Forces that is directed against the Government of the United States and that is intended to induce any civilian officer or employee, or any member of the Armed Forces, to:

(i) Negotiate or bargain with any person concerning the terms or conditions of service of any member of the Armed Forces,

(ii) Recognize any military labor organization as a representative of individual members of the Armed Forces in connection with any complaint or grievance of any such member arising out of the terms or conditions of service of such member in the Armed Forces, or

(iii) Make any change with respect to the terms or conditions of service in the Armed Forces of individual members of the Armed Forces.

(2) No person may use any military installation for any meeting, march, picketing, demonstration, or other similar activity for the purpose of engaging in any activity prohibited by this part.

(3) No member of the Armed Forces, and no civilian officer or employee, may permit or authorize the use of any military installation for any meeting, march, picketing, demonstration, or other similar activity that is for the purpose of engaging in any activity prohibited by this part.

(d) *Representation.* A military labor organization may not represent, or attempt to represent, any member of the Armed Forces before any civilian officer or employee, or any member of the Armed Forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of service of such member in the Armed Forces.

#### § 143.6 Activity not covered by this part.

(a) This part does not limit the right of any member of the Armed Forces to:

(1) Join or maintain membership in any lawful organization or association not constituting a "military labor organization" as defined in § 146.3 of this part;

(2) Present complaints or grievances concerning the terms or conditions of the service of such member in the Armed Forces in accordance with established military procedures;

(3) Seek or receive information or counseling from any source;

(4) Be represented by counsel in any legal or quasi-legal proceeding, in accordance with applicable laws and regulations;

(5) Petition the Congress for redress of grievances; or

(6) Take such other administrative action to seek such administrative or judicial relief, as is authorized by applicable laws and regulations.

(b) This part does not prevent commanders or supervisors from giving consideration to the views of any member of the Armed Forces presented individually or as a result of participation on command-sponsored or authorized advisory councils, committees, or organizations.

(c) This part does not prevent any civilian employed at a military installation from joining or being a member of an organization that engages in representational activities with respect to terms or conditions of civilian employment.

#### § 143.7 Responsibilities.

(a) The Heads of DoD Components shall:

(1) Ensure compliance with this part and with the guidelines contained in § 143.8 of this part.

(2) Establish procedures to ensure that any action initiated under this part is reported immediately to the Head of the DoD Component concerned.

(3) Report any action initiated under this part immediately to the Secretary of Defense.

(b) The Deputy Under Secretary of Defense (Program Integration) shall serve as the administrative point of contact in the Office of the Secretary of Defense for all matters relating to this part.

#### § 143.8 Guidelines.

The guidelines for making certain factual determinations are as follows:

(a) In determining whether an organization is a military labor organization, whether a person is a member of a military labor organization, or whether such person or organization is in violation of any provision of this part, the history and operation of the organization (including its constitution and bylaws, if any) or person in question may be evaluated, along with evidence on the conduct constituting a prohibited act.

(b) In determining whether the commission of a prohibited act by a

person can be imputed to the organization, examples of factors that may be considered include: The frequency of such act; the position in the organization of persons committing the act; whether the commission of such act was known by the leadership of the organization; whether the commission of the act was condemned or disavowed by the leadership of the organization.

(c) Any information about persons and organizations not affiliated with the Department of Defense needed to make the determinations required by this part shall be gathered in strict compliance with the provisions of DoD Directive 5200.27<sup>1</sup> and shall not be acquired by counterintelligence or security investigative personnel. The organization itself shall be considered a primary source of information.

Dated: December 18, 2006.

**C.R. Choate,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

[DOD-2006-OS-0204]

RIN 0790-AI07

### 32 CFR Part 144

### Service by Members of the Armed Forces on State and Local Juries

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This rule implements 10 U.S.C 982 to establish uniform DoD policies for jury service by members of the Armed Forces on active duty. The provisions of this rule impact active-duty members of the Armed Forces. This updated rule contains editorial changes only as required for internal Department of Defense mandated reconsideration every 5 years.

**DATES:** *Effective Date:* January 22, 2007.

**FOR FURTHER INFORMATION CONTACT:** Colonel C. Garcia, Office of the Deputy Under Secretary of Defense for Program Integration, 4000 Defense Pentagon, Washington DC 20301-4000. Telephone (703) 697-3387.

**SUPPLEMENTARY INFORMATION:** The proposed rule was published on October 10, 2006, at 71 FR 59411. One comment was received. The commenter recommended that the part be changed

<sup>1</sup> Copies are available at <http://www.dtic.mil/whs/directives>.