

(i) *Example.* The following example illustrates the rules in paragraph (a)(1)(i)(g) of this section:

Example. X is a charitable remainder unitrust that calculates the unitrust amount under paragraph (a)(1)(i)(a) of this section. X was created after December 10, 1998. The prorated unitrust amount payable from X for Year 1 is \$100. The trustee does not pay the unitrust amount to the recipient by the end of the Year 1. At the end of Year 1, X has only \$95 in the ordinary income category under section 664(b)(1) and no income in the capital gain or tax-exempt income categories under section 664(b)(2) or (3), respectively. By April 15 of Year 2, in addition to \$95 in cash, the trustee distributes to the unitrust recipient a capital asset with a \$5 fair market value and a \$2 adjusted basis to pay the \$100 unitrust amount due for Year 1. The trust owned the asset at the end of Year 1. Under § 1.664-1(d)(5), the distribution is treated as a sale by X, resulting in X recognizing a \$3 capital gain. The trustee elects to treat the capital gain as occurring on the last day of Year 1. Under § 1.664-1(d)(1), the character of the unitrust amount for Year 1 in the recipient's hands is \$95 of ordinary income, \$3 of capital gain income, and \$2 of trust corpus. For Year 1, X satisfied paragraph (a)(1)(i)(g) of this section.

(j) *Payment under income exception.* When the unitrust amount is computed under paragraph (a)(1)(i)(b) of this section, a trust will not be deemed to have engaged in an act of self-dealing (within the meaning of section 4941), to have unrelated debt-financed income (within the meaning of section 514), to have received an additional contribution (within the meaning of paragraph (b) of this section), or to have failed to function exclusively as a charitable remainder trust (within the meaning of § 1.664-1(a)(4)) merely because payment of the unitrust amount is made after the close of the taxable year if such payment is made within a reasonable time after the close of such taxable year.

(k) *Reasonable time.* For paragraphs (a)(1)(i)(g), (h), and (j) of this section, a reasonable time will not ordinarily extend beyond the date by which the trustee is required to file Form 5227, "Split-Interest Trust Information Return," (including extensions) for the taxable year.

(l) *Effective date.* Paragraphs (a)(1)(i)(g), (h), (i), (j), and (k) of this section are applicable for taxable years ending after April 18, 1997.

(iv) * * * If the governing instrument does not specify the valuation date or dates, the trustee must select such date or dates and indicate the selection on the first return on Form 5227, "Split-Interest Trust Information Return," that the trust must file. * * *

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Par. 6. In § 25.2702-1, paragraph (c)(3) is revised to read as follows:

§ 25.2702-1 Special valuation rules in the case of transfers of interests in trust.

* * * *

(c) * * *

(3) *Charitable remainder trust.* (i) For transfers made on or after May 19, 1997, a transfer to a pooled income fund described in section 642(c)(5); a transfer to a charitable remainder annuity trust described in section 664(d)(1); a transfer to a charitable remainder unitrust described in section 664(d)(2) if under the terms of the governing instrument the unitrust amount can be computed only under section 664(d)(2)(A); and a transfer to a charitable remainder unitrust if under the terms of the governing instrument the unitrust amount can be computed under section 664(d)(2) and (3) and either there are only two consecutive noncharitable beneficial interests and the transferor holds the second of the two interests, or the only permissible recipients of the unitrust amount are the transferor, the transferor's U.S. citizen spouse, or both the transferor and the transferor's U.S. citizen spouse.

(ii) For transfers made before May 19, 1997, a transfer in trust if the remainder interest in the trust qualifies for a deduction under section 2522.

* * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 8. In § 602.101, paragraph (c) is amended by adding a new entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * *	* * *
1.664-1(a)(7)	1545-1536
* * *	* * *

Approved: December 1, 1998.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Donald C. Lubick,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 98-32559 Filed 12-9-98; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 270

RIN 0790-AG67

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

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

ACTION: Interim final rule.

SUMMARY: This rule amends part 270 to reflect changes necessary as a result of new language in Section 658 of the FY99 National Defense Authorization Act. Section 658 expands the field of beneficiaries of the Vietnamese Commandos Compensation Commission to parents and siblings of deceased Commandos. It also adds words "notwithstanding any agreement (including a power of attorney) to the contrary, the actual disbursement" must be made directly to the person who is eligible for the payment. This rule also amends part 270 to reflect necessary technical changes to accommodate the new language.

EFFECTIVE DATE: This rule is effective October 17, 1998. Comments are requested by February 8, 1999.

ADDRESSES: Forward comments to Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, DC 20301-4000.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Witschonke, (703) 693-1059 or LTC Frank Hudson, (703) 588-6570.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

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

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

It has been determined that this rule will not have a significant economic impact on a substantial number of small entities because it affects only a limited

number of Vietnamese Commandos who were incarcerated in North Vietnam, and as such, does not affect small entities.

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

It has been certified that this rule does not impose reporting and recordkeeping requirements under the Paperwork Reduction Act of 1995. The reporting and recordkeeping requirements are exempt from this Act, as it directly involves active litigation in which the U.S. is a party.

The specific exemption from the Paperwork Reduction Act is found in 5 CFR Part 1320. The information collection in this interim final rule is exempt from OMB approval under Sec. 1320.4(a)(2), "Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act".

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

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

List of Subjects in 32 CFR Part 270

Military personnel, Payments, Prisoners of war, Vietnam.

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

PART 270—[AMENDED]

1. The authority citation for 32 CFR part 270 continues to read as follows:

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

2. Section 270.2, "Definitions," is amended by redesignating paragraphs (c), (d), (e), (f), (g), (h), (i), (j), and (k) as paragraphs (e), (f), (g), (h), (i), (j), (k), (l), and (m), respectively, and by adding paragraphs (c) and (d) to read as follows:

§ 270.2 Definitions.

* * * * *

(c) *Parents of an eligible person.* Natural parents, adoptive parents, or step parents of a deceased person described in Part A of appendix A to this part. (Step parents must show that they established a parent-child relationship with the deceased person described in Part A of appendix A to this part.)

(d) *Siblings by blood of an eligible person.* Siblings related by blood to a deceased person described in Part A of

appendix A to this part, including half-brothers and half-sisters.

* * * * *

3. Section 270.6, "Standards of eligibility," is amended by removing the period and adding ";" or " at the end of paragraph (b)(2), and adding paragraphs (b)(3) and (b)(4) to read as follows:

§ 270.6 Standards of eligibility.

* * * * *

(b) * * *

(3) If there is no surviving spouse of an eligible person and no surviving children of an eligible person, to the surviving parents of an eligible person, in equal shares (step parents take equal shares the same as natural parents); or

(4) If there is no surviving spouse of an eligible person, no surviving children of an eligible person, and no surviving parents of an eligible person, to the surviving siblings of an eligible person, in equal shares. (Half siblings take equal shares in the same manner as full siblings.)

* * * * *

4. Section 270.8, "Authorization of payment," second sentence, is amended by revising the words "spouse or children" to read "spouse, children, parents, or siblings".

5. Section 270.11, "Limitation on disbursements," is revised to read as follows:

§ 270.11 Limitation on disbursement.

Notwithstanding any agreement (including a power of attorney) to the contrary, the Commission must disburse a payment under this part only to the person who is eligible for the payment, i.e., the commando, his surviving spouse, children, parents, or siblings. The Commission may, in its discretion, require the person who is eligible for the payment to appear at any designated Defense Finance Accounting Service disbursement office in the United States to receive payment. The Commission may, in its discretion, coordinate with other U.S. governmental agencies to facilitate disbursement of payments to persons eligible for payments who reside outside the United States. If an eligible person makes a written request that payment be made at an alternate location or in an alternate manner, the Commission may, in its discretion, grant such request, provided that the actual disbursement of the payment (i.e., the physical delivery of the payment) is made only to the eligible person. The Commission will not disburse payment to any person other than an eligible person, notwithstanding any written request, assignment of rights, power of attorney, or other agreement. In the case of an application authorized for

payment but not disbursed as a result of the foregoing, the Secretary will hold the funds in trust for the person authorized to receive payment in an interest bearing account until such time as the person complies with the conditions for disbursement set out in this part.

6. Appendix A to Part 270—

Application for Compensation of Vietnamese Commandos, is amended as follows:

a. The Privacy Act Statement, Principal Purpose, is revised to read as follows:

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

* * * * *

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

* * * * *

b. The last sentence of the Privacy Act Statement is revised to read as follows:

* * * * *

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

* * * * *

c. The introductory text to Part B is revised to read as follows:

* * * * *

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

* * * * *

d. Paragraphs (10) and (11) of Part B are redesignated as (12) and (13), respectively.

e. Part B is amended to add paragraphs (10) and (11), to read as follows:

* * * * *

(10) If you are a surviving parent, the deceased person described in PART A has no surviving spouse or children, list the name and address of the other parent of the deceased person.

(11) If you are a surviving sibling, the deceased person described in Part A has no surviving spouse, children, or parents, list the names and addresses of all other siblings of the deceased person, including half-brothers or half-sisters. Provide the date of death for any who are deceased.

* * * * *

f. The heading "For Surviving Spouse or Child of Deceased Commando (OPLAN 34A or Predecessor Operations-Missions Into North Vietnam)" is

revised to read "For Surviving Spouse, Child, Parent, or Sibling of Deceased Commando (OPLAN 34A or Predecessor Operations-Missions Into North Vietnam)."

g. The heading "For Surviving Spouse or Child of Deceased Commando (OP 35 Units-Missions Into Laos or Along the Viet-Lao Border)" is revised to read "For Surviving Spouse, Child, Parent, or Sibling of Deceased Commando (OP 35 Units-Missions Into Laos or Along the Viet-Lao Border)."

h. The heading "For a Spouse or Surviving Child of a Deceased Person Described in Part A, Above" is revised to read "For a Surviving Spouse, Child, Parent, or Sibling of a Deceased Person Described in Part A, Above."

i. Add new sections "For the Surviving Parent" and "For the Surviving Sibling by Blood" after "For the Surviving Children," paragraph (12)(d), as follows:

* * * * *

For the Surviving Parent

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

(13) An affidavit certifying that the deceased individual described in Part A, above, has no surviving spouse.

(a) In addition to the above affidavit, if the individual described in Part A, above, was divorced at the time of his death, a copy of the divorce decree from his spouse shall be submitted as additional proof that he has no surviving spouse.

(b) In addition to the above affidavit, if the individual described in Part A, above, had been married at some point prior to his death, and his spouse pre-deceased him, one of the following documents as evidence of the death of the spouse of the individual described in Part A, above, shall be submitted as additional proof that he has no surviving spouse:

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

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

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

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

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

(vi) If you cannot obtain any of the above evidence of death of the spouse of the deceased individual described in Part A, above, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

(14) One of the following documents as evidence of the death of all of the children (if any), of the deceased individual described in Part A, above:

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

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

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

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

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

(f) If you cannot obtain any of the above evidence of death of all of the children of the deceased individual described in Part A, above, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

(15) One document as evidence of your relationship to your child (the deceased person described in Part A, above), as follows:

If a Natural Parent:

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

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

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

(ii) The public record of birth or a religious record showing that the deceased person was named as your child.

(iii) Public records, such as records of school or welfare agencies, which show that the deceased individual was named as your child; or

(iv) Other convincing evidence, such as signed, sworn statements of two or more persons who know that the deceased person was your child.

If An Adoptive Parent:

An adoptive parent must submit a certified copy of the decree of adoption. If the adoption took place outside of the United States and there is no decree of adoption, other convincing evidence must be submitted, such as signed, sworn statements of two or more persons with personal knowledge of the adoptive relationship, or a government official who can attest to the adoptive relationship.

If a Step-Parent:

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

(a) One document as evidence of birth of the deceased person to the natural parent, or other convincing evidence that reasonably supports the existence of a parent-child relationship between the deceased person and the natural parent (see "If a Natural Parent," above).

(b) One document as evidence that you had established a parent-child relationship with the deceased person; and

(c) One of the following documents as evidence that you were married to the natural parent of the deceased person:

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

(ii) An official report from a public agency as to a marriage which occurred while either parent was employed by such agency;

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

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

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

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

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

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

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

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

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

(d) One document of evidence of guardianship. If you are executing this document as the guardian of the person identified as a surviving parent of the deceased person described in Part A, above, you must submit evidence of your authority. If you are a legally-appointed guardian, submit a certificate executed by the proper official of the court appointment. If you are

not such a legally-appointed guardian, submit an affidavit describing your relationship to the parent and the extent to which you are responsible for the care of the parent, or your position as an officer of the institution in which the parent is institutionalized.

For the Surviving Sibling by Blood

In addition to documents described in Part C items (1) through (8), above, each surviving sibling by blood should submit the following:

(17) An affidavit certifying that the deceased individual described in Part A, above, has no surviving spouse.

(a) In addition to the above affidavit, if the individual described in Part A, above, was divorced at the time of his death, a copy of the divorce decree from his spouse shall be submitted as additional proof that he has no surviving spouse.

(b) In addition to the above affidavit, if the individual described in Part A, above, had been married at some point prior to his death, and his spouse pre-deceased him, one of the following documents as evidence of the death of the spouse of the deceased individual described in Part A, above, shall be submitted as additional proof that he has no surviving spouse:

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

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

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

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

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

(vi) If you cannot obtain any of the above evidence of death of the spouse of the deceased individual described in Part A, above, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

(18) One of the following documents as evidence of the death of all of the children (if any), of the deceased individual described in Part A, above:

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

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

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

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

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

(f) If you cannot obtain any of the above evidence of death of the children of the deceased individual described in Part A, above, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

(19) One of the following documents as evidence of the death of the parents of the deceased in individual described in Part A, above:

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

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

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

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

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

(f) If you cannot obtain any of the above evidence of death of the parents of the deceased individual described in Part A, above, you must submit other convincing evidence, such as signed sworn statements of two or more persons with personal knowledge of the death, giving the place, date, and cause of death.

Each surviving sibling should submit the following:

(20) One document as evidence of your relationship to your sibling (the deceased individual described in Part A, above), as follows:

(a) Birth certificate showing that at least one of your deceased parents was also the natural parent of the deceased person described in Part A, above;

(b) If the birth certificate does not show the deceased individual described in Part A, above, as your sibling, a certified copy of:

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

(ii) The public record of birth or a religious record showing that the deceased person was named as your sibling.

(iii) Affidavit of a person who knows that the deceased person was your sibling; or

(iv) Public records, such as records of school or welfare agencies, which show that the deceased individual was named as your sibling.

(v) If you cannot obtain any of the above evidence of your sibling relationship to the deceased individual described in Part A, above, you must submit any other evidence that would reasonably support a belief that a valid sibling relationship actually existed.

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

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

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

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

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

Dated: December 1, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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BILLING CODE 5000-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95-116; FCC 98-275]

Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document addresses database issues, location portability, 500 and 900 number portability, and wireless issues, all of which were raised in petitions for reconsideration of the *First Report and Order* in this proceeding, and not addressed in the *First Order on Reconsideration*. We address these because their resolution will foster deployment of number portability and promote competition in the local telecommunications marketplace.

EFFECTIVE DATE: January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Jonathan Askin, Attorney, Common Carrier Bureau, Policy and Program Planning Division, (202) 418-1580, or via the Internet at jaskin@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted October 15, 1998, and released October 20, 1998. The full text of this