



Department of Defense INSTRUCTION

NUMBER 3001.03
March 14, 2008

USD(P)

SUBJECT: Accounting for Personnel Lost in Past Conflicts – The Armed Forces Identification Review Board (AFIRB)

- References:
- (a) DoD Directive 5110.10, "Defense Prisoner of War/Missing Personnel Office (DPMO)", September 21, 2005
 - (b) DoD Instruction 2310.5, "Accounting for Missing Persons," January 31, 2000
 - (c) Joint Publication 1-02, "Department of Defense Dictionary of Military and Associated Terms," as amended
 - (d) Section 1471 and 1501 of title 10, United States Code
 - (e) through (h), see Enclosure 1

1. PURPOSE

This Instruction:

1.1. Implements policy in Reference (a) and assigns responsibilities for reviewing challenges by the person authorized to direct disposition (PADD) of human remains to identifications of remains recovered from past conflicts.

1.2. Establishes procedures for the AFIRB, the purpose of which is to review, in appropriate cases, forensic evidence identification of military or civilian personnel and either affirm the identification or remand it to the identifying laboratory.

1.3. Rescinds Enclosure 9, "Armed Forces Identification Review Board," of Reference (b).

2. APPLICABILITY

This Instruction applies to the Office of the Secretary of Defense, the Military Departments, the Office of 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 to collectively as the "DoD Components").

3. DEFINITIONS

Terms used in this Instruction are as found in Reference (c) and in Enclosure 2 to this Instruction. Acronyms are listed in Enclosure 3.

4. POLICY

It is DoD policy that accounting for personnel lost as a result of hostile acts is a matter of national priority. The Department of Defense shall implement timely and effective policy and procedures to enhance personnel accounting operations, determine and report accurately the status of those who are missing or unaccounted for, and provide current information to appropriate family members.

5. RESPONSIBILITIES

5.1. The Deputy Assistant Secretary of Defense for Prisoner of War/Missing Personnel Affairs (DASD (POW/MPA)), under the Under Secretary of Defense for Policy (USD(P)), shall:

5.1.1. In accordance with section 1501 of title 10, U.S. Code (Reference (d)), provide policy for and control and oversight of the remains identification review process in order to ensure timely resolution of challenges to an identification made by a central identification laboratory (CIL) and to complete the accounting process.

5.1.2. Provide a non-voting case analyst to serve as an advisory member of the AFIRB.

5.1.3. Direct follow-on actions by the appropriate Service casualty office (SCO) and identification laboratory should an identification be remanded to the laboratory by the AFIRB.

5.2. The Secretaries of the Military Departments shall:

5.2.1. Designate:

5.2.1.1. An O-6 (or civilian equivalent) or higher representative with appropriate security clearance to serve as a voting member of the AFIRB. The AFIRB is a standing board. Secretaries of the Military Departments shall promptly appoint new AFIRB members to replace those who are reassigned or no longer able to serve on the AFIRB.

5.2.1.2. An alternate voting member with appropriate security clearance to serve if necessary.

5.2.1.3. As appropriate, a non-voting Military Department representative to serve as an advisory member of the AFIRB.

5.2.2. Designate a Military Department representative to assist the PADD with collecting information and records in preparation for the AFIRB proceedings, consistent with this

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Instruction. This Military Department representative will NOT represent the PADD during the AFIRB process.

5.2.3. Provide, at the request of the AFIRB president, advisory members who may have special technical knowledge relevant to the identification in question.

5.3. The Secretary of the Army, in addition to the responsibilities addressed in paragraph 5.2, shall:

5.3.1. Retain responsibility for initiating and conducting the AFIRB in accordance with DoD Directive (DoDD) 1300.22 (Reference (e)).

5.3.2. Designate The Adjutant General (TAG) of the U.S. Army, in his or her capacity as the representative of the DoD Executive Agent, as the administrator and oversight authority for the AFIRB.

5.4. The Chairman of the Joint Chiefs of Staff shall, as required:

5.4.1. Coordinate operational implementation of this Instruction.

5.4.2. Monitor program funding requirements and resources for execution of the AFIRB in accordance with DoDD 5101.1 (Reference (f)).

5.5. The Combatant Commanders shall, as required, ensure the appropriate operational command or activity provides an individual familiar with the identification in question to serve as a technical advisory member of the AFIRB.

6. PROCEDURES

Procedures, composition, and duties of the AFIRB, CIL, and PADD are provided in Enclosure 4.

7. INFORMATION REQUIREMENTS

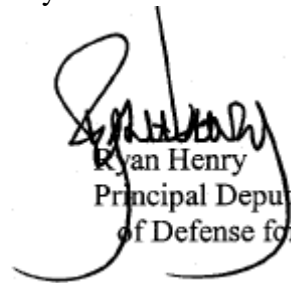
The reporting requirements in this Instruction are exempt from licensing in accordance with paragraph C4.4.3 of DoD 8910.1-M (Reference (g)).

8. RELEASABILITY UNLIMITED. This Instruction is approved for public release. Copies may be obtained through the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.

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9. EFFECTIVE DATE

This Instruction is effective immediately.



Ryan Henry
Principal Deputy Under Secretary
of Defense for Policy

Enclosures - 9

- E1. References, continued
- E2. Definitions
- E3. Abbreviations and Acronyms
- E4. The AFIRB
- E5. Timeline of Actions When AFIRB Affirms Identification
- E6. Timeline of Actions When AFIRB Remands Identification
- E7. Letter to the PADD Advising of Right to Request Hearing Before the AFIRB
- E8. Letter to the PADD Advising of Hearing Date Before the AFIRB
- E9. Agreement to Be Signed by the PADD Prior to Private mtDNA Testing -- Sample

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EI. ENCLOSURE 1

REFERENCES, continued

- (e) DoD Directive 1300.22, "Mortuary Affairs Policy," February 3, 2000
- (f) DoD Directive 5101.1, "DoD Executive Agent," September 3, 2002
- (g) DoD Directive 8910.1-M, "Department of Defense Procedures for Management of Information Requirements," June 30, 1998
- (h) DoD Directive 5154.24, "Armed Forces Institute of Pathology (AFIP)," October 3, 2001

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E2. ENCLOSURE 2

DEFINITIONS

E2.1. Circumstantial Information. Indirect information concerning matters surrounding a loss incident, rather than direct information on the event itself.

E2.2. Contested Information. Information that is challenged for its accuracy, completeness, and/or relevancy.

E2.3. Forensic Factual Information. Information of a statistical or empirical nature, together with any analysis thereof (e.g., material presented to provide a factual background to the case under consideration).

E2.4. Person Authorized to Direct Disposition of Human Remains. See Reference (c).

E2.5. Secretary Concerned. For the purposes of this Instruction, the Secretary of the Army, with respect to matters concerning the Army; the Secretary of the Air Force, with respect to matters concerning the Air Force; and the Secretary of the Navy, with respect to matters concerning the Navy and the Marine Corps.

E2.6. Scientific Information. Information derived from examination of technical principles, methods, or data, at times requiring explicit technical measurements and/or analytic assessments.

E2.7. Technical Advisory Member. For the purposes of this Instruction, a non-voting member of an Armed Forces Identification Review Board (AFIRB) who provides special technical knowledge that helps the AFIRB understand the issues related to a contested identification.

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AFDIL	Armed Forces DNA Identification Laboratory
AFIRB	Armed Forces Identification Review Board
CIL	central identification laboratory
CMAOC	Casualty and Mortuary Affairs Operations Center (USA)
DASD(POW/MPA)	Deputy Assistant Secretary of Defense for Prisoner of War/Missing Personnel Affairs
DPMO	Defense Prisoner of War/Missing Personnel Office
mtDNA	mitochondrial deoxyribonucleic acid
PADD	person authorized to direct disposition of human remains
SCO	Service casualty office
SMO	Service mortuary office
TAG	The Adjutant General (USA)
USD(P)	Under Secretary of Defense for Policy

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E4. ENCLOSURE 4

THE AFIRB

E4.1. SCOPE OF THE AFIRB

The AFIRB shall either affirm a challenged identification or remand it to the laboratory based upon the preponderance of the information presented. The AFIRB process covers persons lost in past conflicts, including: members of the Armed Forces on active duty, including Reserve and Guard Components; citizens of the United States who are civilian officers or employees of the Department of Defense or an employee of a DoD contractor; and those persons who have been designated by the USD(P).

E4.1.1. The AFIRB does not have jurisdiction or authority over identifications made by the Armed Forces Medical Examiner in medico-legal death investigations in accordance with DoDD 5154.24 (Reference (h)) and section 1471 of Reference (d).

E4.1.2. The AFIRB does not review or determine casualty status or completeness of remains recovery.

E4.2. COMPOSITION OF THE AFIRB

E4.2.1. Voting Members. The AFIRB shall consist of one primary voting member from each Military Department designated by the respective Secretaries. The Secretary of the Navy may designate a Marine Corps representative as its voting member; however, the Department of the Navy shall be limited to one vote for each laboratory identification report considered by the AFIRB. The voting members shall be in the grade of O-6 (or civilian equivalent) or higher. Voting members of the AFIRB shall have a security clearance that affords access to all information relating to the identification.

E4.2.2. Alternate Voting Members. Each Secretary shall also designate alternate voting members in the event that a primary member cannot serve. Alternate members may serve on the AFIRB without further consultation with TAG. Once added, they assume the obligation to be present at all further proceedings of the AFIRB reviewing a particular identification.

E4.2.3. Non-Voting Members. The AFIRB shall have a non-voting president, non-voting administrative recorder, non-voting case analyst, non-voting technical adviser, and non-voting legal adviser. The non-voting members shall have security clearances that afford access to all information relating to the challenged identification of remains.

E4.2.4. President. The Director, U.S. Army Casualty and Mortuary Affairs Operations Center (CMAOC), will serve as AFIRB president. The AFIRB president shall:

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E4.2.4.1. Preserve order.

E4.2.4.2. Determine time, location, and uniform for sessions of the AFIRB.

E4.2.4.3. Explain voting member responsibilities prior to any deliberations.

E4.2.4.4. Recess or adjourn the AFIRB as necessary.

E4.2.4.5. Decide routine administrative matters necessary for efficient conduct of the business of the AFIRB.

E4.2.4.6. Supervise the administrative recorder (see paragraph E4.2.5.) to ensure all business of the AFIRB is properly conducted and the report of proceedings is submitted promptly.

E4.2.4.7. Rule on evidentiary and procedural matters after considering the guidance and advice of the legal adviser.

E4.2.4.8. Extend any time limit specified herein on a case-by-case basis and only upon a showing of good cause. Any such extension may not be for a period in excess of the period with respect to which the extension is provided. For example, if an action must be taken within 30 calendar days but circumstances prevent doing so, the length of the extension requested may not exceed 30 days.

E4.2.4.9. Track the status of all cases in the AFIRB process and update the Defense Prisoner of War/Missing Personnel Office (DPMO) as required.

E4.2.4.10. Participate in any closed session deliberations as a non-voting member.

E4.2.4.11. Review and sign the completed AFIRB Decision Memorandum prior to submission to TAG.

E4.2.4.12. Forward a copy of the completed AFIRB Decision Memorandum to the DASD(POW/MPA).

E4.2.5. Administrative Recorder. TAG shall designate an administrative recorder for the AFIRB. The administrative recorder shall arrange necessary facilities, clerical assistance, and other administrative support for the AFIRB and prepare the AFIRB report at the conclusion of the proceedings. The administrative recorder shall present the U.S. Government case. The administrative recorder shall have a security clearance that affords access to all information relating to the cases reviewed by the AFIRB.

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E4.2.6. Legal Adviser. The office that ordinarily provides legal advice to TAG shall provide a judge advocate or a civilian attorney to serve as the legal adviser to the AFIRB. The legal adviser shall have a security clearance that affords access to all information relating to the cases reviewed by the AFIRB.

E4.2.6.1. The legal adviser shall:

E4.2.6.1.1. Be present at all AFIRB meetings and deliberations.

E4.2.6.1.2. Advise the AFIRB on questions of law or procedure pertaining to the AFIRB.

E4.2.6.1.3. Instruct the AFIRB on governing statutes and directives.

E4.2.6.1.4. Advise the President on challenges for cause made during the proceedings.

E4.2.6.1.5. Advise the President on all evidentiary and procedural matters.

E4.2.6.2. The legal adviser shall not directly participate in the AFIRB's closed session deliberations, but shall monitor the AFIRB's deliberations.

E4.2.6.3. If the AFIRB president requires legal advice and the AFIRB's legal adviser is not available, the AFIRB president shall contact the legal office that ordinarily provides legal advice to the appointing authority. If necessary, he or she will request that a judge advocate, or a civilian attorney from the Military Department concerned, be made available for legal consultation.

E4.2.7. Technical Adviser. TAG shall designate a non-voting technical adviser to the AFIRB to clarify and explain mortuary policy, including definitions of unique program terms, as they relate to the particular case under consideration by the AFIRB.

E4.2.8. Additional Technical Advisory Members. The AFIRB president may appoint persons with special technical knowledge as non-voting technical advisory members. Technical advisory members will participate in the AFIRB proceedings only as directed by the AFIRB president. The AFIRB report shall indicate the extent of participation of a technical advisory member. Technical advisory members shall have security clearances that afford access to all information relating to the cases reviewed by the AFIRB.

E4.3. DUTIES OF THE AFIRB

E4.3.1. In its proceedings, the AFIRB shall consider:

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E4.3.1.1. The identification report and other supporting documents that were presented to the PADD prior to submission of his or her decision to request an AFIRB.

E4.3.1.2. Information or evidence presented by the PADD.

E4.3.1.3. Testimony from witnesses presented by the PADD, which may include the reports and findings of other accredited scientists or consultants. These experts shall provide individual written evaluations of their findings to the AFIRB, which will add them to the case resolution file.

E4.3.2. The AFIRB will not consider new evidence presented by the U.S. Government that has not been presented to the PADD first, but may consider any information deemed relevant by the PADD. Should the U.S. Government obtain new evidence that casts doubt on the identification of a Service member, the case will be immediately remanded to the identifying laboratory.

E4.3.2.1. The following is considered new evidence:

E4.3.2.1.1. Scientific or forensic factual information and its interpretation, whether written or oral, not previously presented to the PADD or considered by a CIL or the AFIRB.

E4.3.2.1.2. Physical objects (including photographs and other electronic images of the object) not previously presented to the PADD or considered by a CIL or the AFIRB that affect the interpretation of scientific, forensic, or circumstantial information, as well as the descriptions and explanations of these objects.

E4.3.2.2. New evidence does not include:

E4.3.2.2.1. Clarifications or explanations, whether written or oral, of scientific, forensic, or circumstantial information previously considered by a CIL or the AFIRB, provided that the clarifications or explanations are neither based upon nor include substantive facts or conclusions not previously presented to the PADD.

E4.3.2.2.2. Reinterpretations of scientific, forensic, or circumstantial information previously considered by a CIL or the AFIRB, provided that the reinterpretations are not based upon or include substantive facts or conclusions not previously presented to the PADD.

E4.3.2.2.3. New conclusions drawn from scientific, forensic, or circumstantial information previously considered by the AFIRB, provided that the new conclusions are not based upon or include substantive facts not previously presented to the PADD.

E4.3.3. AFIRB members shall analyze the facts and evidence, make findings that must be supported by a preponderance of the evidence, and draw conclusions as to the identity of the remains.

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E4.3.4. The AFIRB shall determine by a majority vote whether to affirm the identification or remand it to the laboratory.

E4.3.5. In the unusual case in which the U.S. Government obtains new evidence that brings into question an identification after the AFIRB has been formed, TAG may decide to withdraw the identification from consideration by the AFIRB and remand it to the laboratory.

E4.3.5. The AFIRB shall prepare a report of its proceedings, findings, and recommendations. This report will provide the rationale for affirming or remanding the identification.

E4.3.6. The AFIRB may review more than one identification during a session.

E4.4. PADD'S AFIRB RIGHTS AND OBLIGATIONS

The PADD:

E4.4.1. Shall submit a letter of intent to challenge a CIL identification through the SCO or Service mortuary office (SMO) to the administrative recorder of the AFIRB no later than 90 calendar days after the date the identification is presented by the SCO or SMO. (See Enclosure 7.)

E4.4.2. Shall receive notice from the appropriate SCO or SMO of the AFIRB date, time, and place not less than 30 calendar days before the first meeting of the AFIRB. (See Enclosure 8.)

E4.4.3. May attend the proceedings with private counsel at no expense to the U.S. Government.

E4.4.4. May submit the remains for private DNA testing if the testing will not wholly consume the remains. Such testing shall be performed subsequent to appointment, but prior to convening of the AFIRB. To ensure the accountability and integrity of the remains, due to the destructive testing involved, the following conditions will apply:

E4.4.4.1. DD Form 2809, "Agreement to be Signed by Person Authorized to Direct Disposition (PADD) Prior to Private mtDNA Testing," must be signed prior to release of the remains for testing. This agreement specifies the legal responsibilities of the parties. (See Enclosure 9.)

E4.4.4.2. The PADD is responsible for any costs associated with the additional DNA testing of the remains and associated interpretation of the results. The U.S. Government shall fund any costs associated with the transport of the remains to or from the private laboratory selected by the PADD.

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E4.4.4.3. The U.S. Government shall retain chain of custody control over remains during the testing process. The laboratory will cut the samples identified as suitable for testing and send them to the laboratory selected by the PADD.

E4.4.4.4. The Director of the AFDIL will recommend to the AFIRB president if a site visit to the proposed laboratory selected by the PADD is necessary. Upon direction by the Army, DoD Executive Agent, the Armed Forces DNA Identification Laboratory (AFDIL), Armed Forces Institute of Pathology will visit the proposed laboratory selected by the PADD to inspect facilities, review work procedures, and evaluate quality control processes. AFDIL personnel shall, if requested by the U.S. Government, observe the testing process as necessary or review data at critical testing checkpoints. AFDIL shall provide the AFIRB president a written assessment of the scientific testing procedures and operational policies of the laboratory selected by the PADD for private DNA testing. This assessment will review laboratory policies, technical procedures, staff training and proficiency testing records, organizational accreditation, and the results of past audits and testimony. Based on its findings, AFDIL shall provide a recommendation on the release of the remains to the private laboratory for testing.

E4.4.4.5. When requested by the AFIRB president, AFDIL shall provide (prior to the convening of the AFIRB) written, general comments that address the independent laboratory's use of sound scientific testing procedures.

E4.4.4.6. At the conclusion of the testing, the PADD may provide a synopsis of the report, together with a copy of the report and any enclosures, through the appropriate SCO or SMO to the Director, CMAOC. The Director, CMAOC, will forward the report to the Joint POW/MIA Accounting Command, AFDIL, and the AFIRB for consideration. The PADD must submit the laboratory's final report within 6 months of the laboratory's receipt of the samples of the remains. If the PADD exceeds the 6-month time limit, the U.S. Government results shall be deemed the accepted results of the mitochondrial deoxyribonucleic acid (mtDNA) testing.

E4.4.4.7. The PADD's selection of a laboratory for testing confers no special acknowledgment, certification, or recognition upon the laboratory by the U.S. Government.

E4.4.4.8. Any discrepancies in DNA testing results shall be noted and presented by AFDIL to the administrative recorder to the AFIRB prior to the convening of the AFIRB. The administrative recorder shall ensure that the SCO receives the report of discrepancies to forward to the PADD prior to the convening of the AFIRB.

E4.4.5. Shall be provided, by the appropriate SCO or SMO, access to any unclassified information or documents in the case file not otherwise privileged that will be considered by the AFIRB. The appropriate SCO or SMO shall also provide an unclassified summary or extract of any classified or privileged information in the case file.

E4.4.6. May present any information he or she deems relevant to the identification during the proceedings of the AFIRB.

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E4.4.7. May be present, with counsel, whenever the legal adviser advises the AFIRB regarding evidentiary or procedural matters.

E4.4.8. May submit in writing an objection to any finding or recommendation made by the AFIRB regarding the identity of the remains, provided the written objection is submitted to the AFIRB president not later than 30 calendar days after the date on the AFIRB report.

E4.4.9. Shall not be entitled to reimbursement by the U.S. Government for any costs associated with attending the proceedings of the AFIRB. This includes travel, lodging, meals, local transportation, legal fees, transcription costs, witness expenses, and other expenses incurred attending such proceedings.

E4.5. AFIRB PROCEDURES

E4.5.1. The AFIRB shall be convened when the SCO or SMO notifies the administrative recorder that a timely challenge to the identification has been received from the PADD.

E4.5.2. The administrative recorder will receive the challenged identification report and related supporting documentation, including copies of the challenge and required PADD notifications from the SCO or SMO. The administrative recorder will review the PADD's documentation and determine, after consultation with the legal adviser, whether the basis of the challenge is within the scope and authority of the AFIRB and:

E4.5.2.1. If the basis of the challenge is within the AFIRB's scope of authority, the administrative recorder will submit the appeal to the AFIRB president for approval to schedule an AFIRB to review the challenge and notify the SCO or SMO. The SCO or SMO shall notify the PADD and provide the PADD with the date, time, and place of the hearing.

E4.5.2.2. If it is determined that the basis of the challenge is not within the AFIRB's scope of authority, the administrative recorder shall submit the appeal to the AFIRB president for approval to return the challenge without action to the SCO or SMO with an explanation. The SCO or SMO shall provide the PADD with the AFIRB president's determination and explanation.

E4.5.3. The administrative recorder shall notify the SCO or SMO, DPMO, Life Sciences Equipment Laboratory, AFDIL, and laboratory of the date, time, and location of the AFIRB.

E4.5.4. The SCO or SMO shall:

E4.5.4.1. Ensure that the PADD receives 30 days' prior notice, in writing, of the date, time, and location of the AFIRB considering the challenge.

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E4.5.4.2. Assist the PADD in obtaining documentary and material evidence in possession of the U.S. Government. The PADD may obtain evidence or witnesses without SCO or SMO assistance and at no expense to the U.S. Government.

E4.5.4.2.1. Evidence that is privileged shall not be provided to a PADD or PADD's counsel unless the evidence will be introduced to the AFIRB.

E4.5.4.2.2. Privileged communications or evidence include privileged communications between lawyer and client.

E4.5.4.3. Provide all required copies of the CIL report, a list of technical and subject matter experts to be called as witnesses, and any related documentation to the administrative recorder not later than 30 days prior to the AFIRB convening.

E4.5.5. The AFIRB shall review the identification report and any accompanying documentation. During its review, the AFIRB may request of any U.S. Government department or agency any additional information the AFIRB considers necessary in order to conduct the proceedings. In addition, it may employ private consultants or other advisers from outside the U.S. Government as it deems appropriate. When required, the AFIRB president shall request such support from TAG.

E4.5.6. The AFIRB president shall:

E4.5.6.1. Close the proceeding to persons who do not have appropriate security clearances when the AFIRB is discussing classified information. Participants in a proceeding involving classified information shall agree in writing to comply with all applicable laws and regulations relating to the disclosure of classified information.

E4.5.6.2. Have the power to recess, and then reconvene, the proceedings at any time to consult or appoint as non-voting members persons with special technical knowledge.

E4.5.6.2.1. The AFIRB president shall call a recess whenever a technical question concerning the evidence before the AFIRB requires a person with special technical knowledge to help the AFIRB understand the evidence.

E4.5.6.2.2. This recess shall denote neither an adverse nor affirmative identification finding.

E4.5.7. The PADD may:

E4.5.7.1. Be present, with counsel, at all open sessions of the AFIRB at no expense to the U.S. Government.

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E4.5.7.2. Examine and object to the introduction of material and documentary evidence, including written statements.

E4.5.7.3. Object to the testimony of witnesses and cross-examine witnesses other than the PADD's own witnesses.

E4.5.7.4. Call witnesses and otherwise introduce evidence.

E4.5.7.5. Testify as a witness.

E4.5.7.6. None of the privileges described in subparagraphs E4.5.7.1. through E4.5.7.5. relieve a PADD and counsel from the obligation to exercise due diligence in preparing and presenting the case. The fact that evidence or witnesses desired by the PADD are not reasonably available is not normally a basis for recessing, terminating, or invalidating the proceedings.

E4.5.8. Upon completion of the review, the AFIRB shall render its findings and recommendations as to the identification of the remains based upon the preponderance of the evidence and the majority vote of AFIRB voting members.

E4.6. REPORT OF THE AFIRB

E4.6.1. The administrative recorder shall prepare the AFIRB report within 30 days of completion of the review and submit it to the president. The report shall document AFIRB proceedings and include a discussion of the facts and evidence the AFIRB considered, its findings and recommendations, and a disclosure of whether the AFIRB reviewed classified documents and information or otherwise used such data in reaching its conclusions. The report may include a classified annex.

E4.6.2. Not later than 10 calendar days after receiving the report, the AFIRB president will review it to ensure it is complete and free of administrative error and that all AFIRB members' questions have been answered. If the AFIRB president determines the report is incomplete, has administrative errors, or that AFIRB members' questions remain unanswered, he or she shall return the report to the administrative recorder for appropriate correction and resubmission.

E4.6.3. Upon AFIRB president approval, the administrative recorder shall submit the report to the SCO or SMO, DPMO, laboratory, and PADD (through the appropriate SCO or SMO).

E4.6.4. The SCO or SMO, DPMO, laboratory, and PADD have 30 days from the date of receipt of the AFIRB's report to submit any objections to TAG.

E4.6.5. If TAG concurs with the AFIRB and does not receive an objection by the expiration of the submission period, he or she shall approve the AFIRB findings.

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E4.7. OBJECTIONS TO THE AFIRB REPORT

E4.7.1. Objections to the AFIRB's report must be based upon issues within the AFIRB's scope of authority.

E4.7.2. The objections must rebut statements of fact, scientific procedure, scientific analysis, and/or interpretation.

E4.7.2.1. Documentation from official or credible sources must be provided to substantiate rebuttals of fact.

E4.7.2.2. Accredited subject matter experts must be provided or referred to in order to substantiate rebuttals of scientific procedure, scientific analysis, and/or interpretation.

E4.7.3. When one of the parties identified in paragraph E4.6.4. objects, the administrative recorder will forward the objection to the other parties as appropriate. Responses are due to the AFIRB president within 30 days of receipt of the objection.

E4.7.4. TAG will act upon the objection by either:

E4.7.4.1. Accepting it and remanding the case back to the AFIRB with specific instructions for reconsideration; or

E4.7.4.2. Disapproving the objection and approving the AFIRB's findings and recommendations.

E4.7.5. If the objection is disapproved:

E4.7.5.1. Not later than 60 calendar days after TAG's determination, the SCO or SMO will forward the approved report to the PADD.

E4.7.5.2. After receipt of the findings in the AFIRB report, all DoD agencies and activities shall treat the approval of the identification by TAG as determination of identity.

E4.7.5.3. The appropriate Secretary concerned shall be contacted for directions concerning final disposition of the remains if:

E4.7.5.3.1. The PADD rejects the remains.

E4.7.5.3.2. The PADD neither replies within 60 calendar days after receipt of the AFIRB report nor obtains an extension of the time limit for sending a response.

E4.7.5.4. Disposition of the remains in accordance with directions from the Secretary concerned terminates the matter for the U.S. Government.

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E4.8. IDENTIFICATIONS REMANDED TO A LABORATORY

E4.8.1. If, upon AFIRB recommendation, TAG remands an identification to the laboratory:

E4.8.1.1. Not later than 60 calendar days after identification has been remanded, the AFIRB president will provide the report, a copy of all evidence presented to the AFIRB, and a copy of any objections to the report to the DASD(POW/MPA).

E4.8.1.2. The DASD(POW/MPA) will review the AFIRB findings and, after coordination with the laboratory, CMAOC, and the Secretary concerned, direct subsequent actions that the laboratory will take in accordance with appropriate regulations. The laboratory shall:

E4.8.1.2.1. Provide a timeline to DASD(POW/MPA) for accomplishing the directed actions.

E4.8.1.2.2. Keep the DASD(POW/MPA) informed of its progress through a monthly report that includes the reasons for any change in timeline or task status.

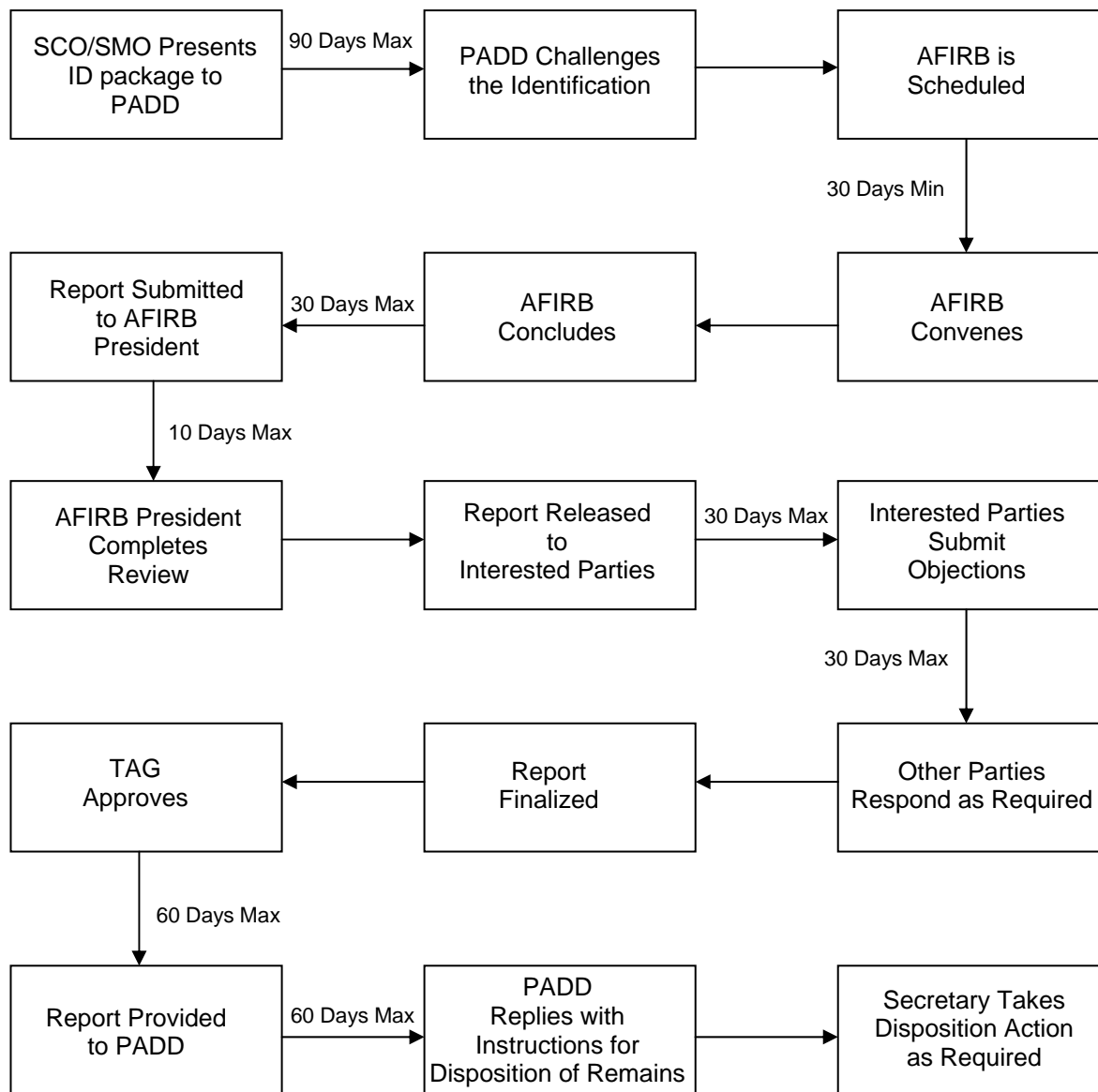
E4.8.2. The DASD(POW/MPA) will review and approve the laboratory identification packages, addressing the concerns of an AFIRB prior to their being resubmitted to the SCO or SMO.

E4.8.3. The appropriate SCO or SMO shall present the resubmitted identification to the PADD for acceptance or rejection. If the PADD rejects the identification, the process will start again in accordance with paragraph E4.4.1.

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E5. ENCLOSURE 5

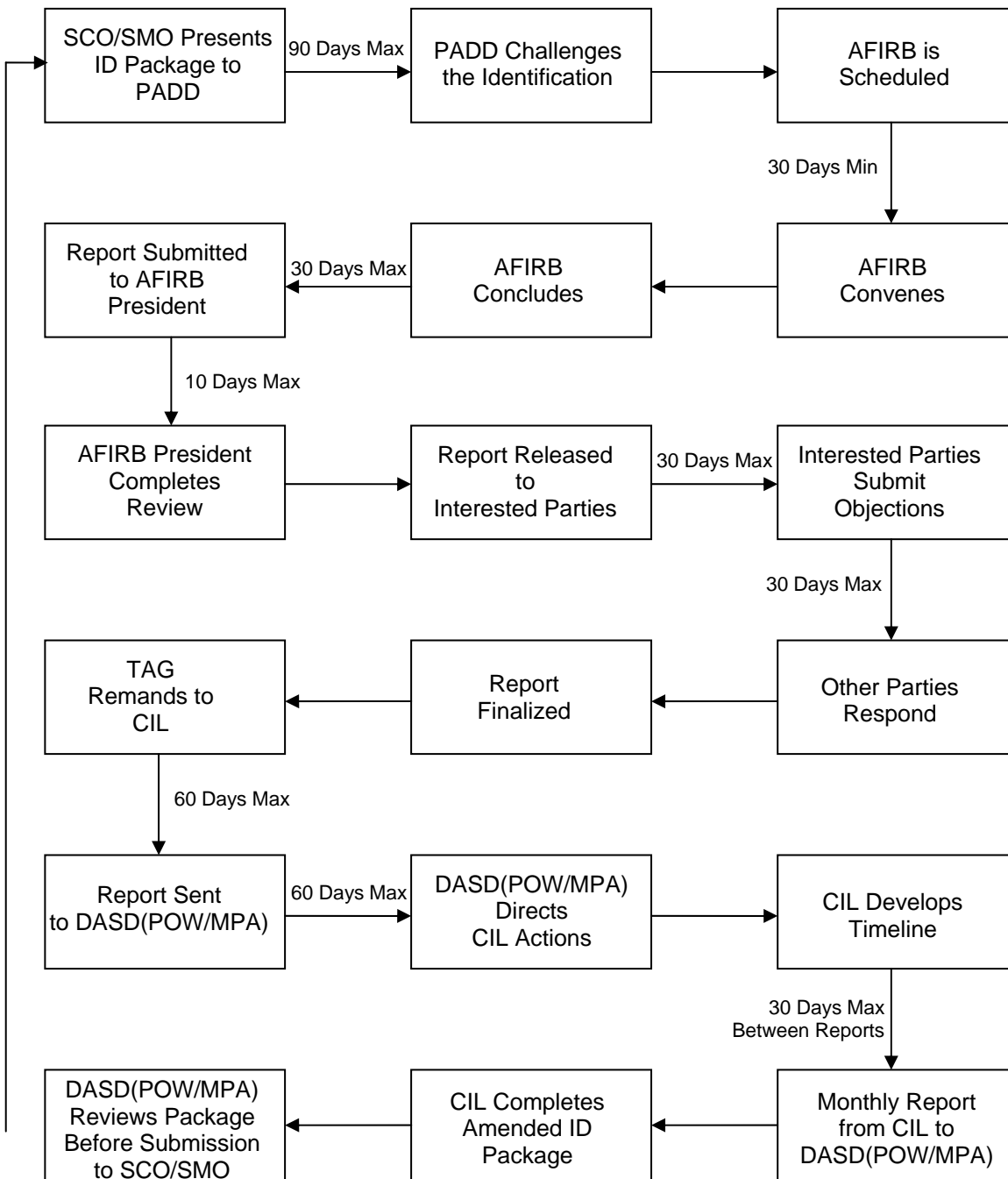
TIMELINE OF ACTIONS WHEN AFIRB AFFIRMS IDENTIFICATION



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E6. ENCLOSURE 6

TIMELINE OF ACTIONS WHEN AFIRB REMANDS IDENTIFICATION



DoDI 3001.03, March 14, 2008

E7. ENCLOSURE 7

LETTER TO THE PADD ADVISING OF RIGHT
TO REQUEST HEARING BEFORE THE AFIRB

(LETTERHEAD)

(OFFICE SYMBOL)

(DATE)

ADDRESSEE:

[Name of person authorized to
Direct disposition of remains
Street
City, State Zip Code]

Dear [Name of Addressee]:

It is my understanding that you are the person authorized to direct the disposition of the remains of [Rank, if any, and name of person]. The Central Identification Laboratory, after a thorough forensic investigation, has identified the remains as being those of [Rank, if any, and name of person]. A representative of the [Military Department or U.S. Government Agency], [Rank, if any, and name of U.S. Government representative], will meet with you and explain the findings of the laboratory. I believe that the identification of the laboratory is accurate. If, after reviewing the laboratory's report and all of your questions are answered to your satisfaction, you agree that the remains are those of [Rank, if any, and name of person], you may accept the remains for final disposition.

In the event that you still have questions or disagree with the identification, you have the right to request a hearing before the Armed Forces Identification Review Board (AFIRB). If you desire a hearing, you must sign and send the enclosed Notice of Intent to the following address: [Name and address of the Service Casualty Office or Service Mortuary Office]. The [Service Casualty Office or Service Mortuary Office] must receive your signed Notice of Intent not later than 90 calendars days after the later of:

(1) The date of this letter advising you of the opportunity to request a hearing before the AFIRB; or

(2) Your meeting with a representative of the [Military Department or U.S. Government Agency]

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If you elect a hearing before the AFIRB, you:

- (1) May attend the proceedings with private counsel;
- (2) Shall have access to any unclassified information or documents in the case file, not otherwise privileged, that will be considered by the AFIRB. You shall be provided an unclassified summary or extract of any classified or privileged information in the case file;
- (3) Shall be afforded the opportunity to present information at the proceedings of the AFIRB that you consider relevant to the case; and
- (4) Shall be given an opportunity to submit in writing an objection to any finding of the Board regarding the identity of the remains provided:
 - (a) A letter of intent is submitted to the AFIRB president not later than 15 calendar days after the date the AFIRB enters its recommendation; and
 - (b) The written objection is submitted to the AFIRB president not later than 30 calendar days after the date the AFIRB enters its recommendation. The AFIRB president shall include any timely objection to Board's finding in its recommendation report.

Unfortunately, the U.S. Government cannot reimburse you for any costs (including, but not limited to, travel, lodging, meals, local transportation, legal fees, transcription costs, witness expenses, and other expenses) you may incur attending and participating in the proceedings. You will be notified of the hearing date not less than 30 calendar days in advance of the hearing.

If you fail to file a timely request for a hearing before the AFIRB and/or decline to accept the remains, the Secretary of the [Military Department] will be contacted for directions concerning final disposition of the remains.

Sincerely yours,

[SIGNATURE BLOCK]

Enclosure:
Notice of Intent

DoDI 3001.03, March 14, 2008

NOTICE OF INTENT

TO: [Pre-printed Name and Address of SCO or SMO where notice should be mailed]

I am the person authorized to direct disposition of the remains of [Rank, if any, and name of person]. My name, address, and telephone number are (please type or print):

(Name) _____

(Street address) _____

(City, State, Zip Code) _____

(Telephone) _____

I have been advised that the Central Identification Laboratory has identified the remains of [Rank, if any, and name of person]. I understand that if I disagree with the identification, I may request a hearing before the Armed Forces Identification Review Board (AFIRB). I further understand that in order to have a hearing, I must return this Notice of Intent to you. The Notice of Intent must be returned within 90 calendar days after the later of the date of the letter advising me of my right to such a hearing or my meeting with a representative of the [Military Department or Agency].

I understand that I may attend the proceedings of the AFIRB with private counsel and that I am entitled to reasonable access to the information that will be presented to the AFIRB. Further, I understand that I will have the opportunity to present information to the Board that I consider relevant to the proceedings. I also understand that I can file a written objection to the AFIRB's findings so long as I notify the AFIRB president in writing of this within 15 calendar days after the AFIRB enters its recommendation and submit my written objection within 30 calendar days after the AFIRB enters its recommendation.

Finally, I understand that I will not be entitled to reimbursement by the United States for any costs (including, but not limited to, travel, lodging, meals, local transportation, legal fees, transcription costs, and witness expenses) incurred by me in attending such proceedings.

Please check one of the following:

_____ I agree with the identification and accept the remains.

_____ I request a hearing before the AFIRB.

DATE: _____

Signature: _____

Printed Name: _____

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E8. ENCLOSURE 8

LETTER TO THE PADD ADVISING OF
HEARING DATE BEFORE THE AFIRB

(LETTERHEAD)

(OFFICE SYMBOL)

(DATE)

ADDRESSEE:

[Name of person authorized to
direct disposition of remains
Street
City, State Zip Code]

Dear [Name of Addessee]:

Please be advised that the Armed Forces Identification Review Board will convene to review the identification of the remains believed to be those of [Rank, if any, and name of person]. The Board will convene on [insert date and time of hearing that shall be not less than 30 calendar days after the mailing of this letter] at [insert location]. Driving directions and a map are enclosed to assist you in finding the location.

If you have any questions, please feel free to contact [rank, if any, and name and telephone number of point of contact].

Sincerely yours,

(SIGNATURE BLOCK)

Enclosures:
Driving directions
Map

DoDI 3001.03, March 14, 2008

E9. ENCLOSURE 9

AGREEMENT TO BE SIGNED BY THE PADD
PRIOR TO PRIVATE mtDNA TESTING--SAMPLE

**AGREEMENT TO BE SIGNED BY PERSON AUTHORIZED TO DIRECT DISPOSITION (PADD)
PRIOR TO PRIVATE mtDNA TESTING**

I, JANE A. DOE of ANYTOWN, VERMONT, state that I am the Person Authorized to Direct Disposition (PADD) of the remains of SGT RICHARD R. ROE, a covered person as defined in the Missing Persons Act. In an effort to confirm the identity of certain remains, which have been identified by the United States Government to be those of SGT RICHARD R. ROE, I hereby request, and consent to, the conduct of private mitochondrial DNA testing upon said remains.

FURTHERMORE, I consent to said mitochondrial (mtDNA) testing being performed pursuant to the following terms and conditions:

- 1) the private laboratory must complete its testing within six months of its receipt of the sample; if it fails to do so, the U.S. Government results will be deemed to be the accepted results for the mtDNA testing;
- 2) the Armed Forces DNA Identification Laboratory must participate in an oversight role for the private laboratory selected by me to conduct the test;
- 3) the government will retain custody and control over the remains during the testing;
- 4) the conduct of the test by the private laboratory gives it no special acknowledgment, certification and/or recognition by the government;
- 5) all costs associated with the private mtDNA testing will be borne by me except for the cost to transport the remains to the laboratory which cost shall be borne by the government, and
- 6) upon completion of the test, the results thereof will be submitted to the Armed Forces Identification Review Board with a copy thereof being provided to the Director, Casualty and Memorial Affairs Operations Center, U.S. Army.

I HEREBY FURTHER REQUEST THAT ABC LABORATORY, INC., of DOWNTOWN, CALIFORNIA, conduct this private mtDNA test.

[(If applicable) I make this request with full knowledge that ABC LABORATORY, INC. has been employed occasionally by the United States Government in the past and is currently so employed in the present. Nevertheless, I consent to this testing being performed by (it/him/her).]

DATED THIS 1ST DAY OF NOVEMBER, 20 01.

/SIGNED/
WITNESS

/SIGNED/
PADD

DD FORM 2809, NOV 1999