(b) To the extent required to prevent a clearly unwarranted invasion of personal privacy, identifying details of the applicant and other persons will be deleted from documents made available for public inspection and copying. Names, addresses, social security numbers, and military service numbers must be deleted. Written justification shall be made for all other deletions and shall be available for public inspection.

(c) The DRB shall ensure that there is a means for relating a decisional document number to the name of the applicant to permit retrieval of the applicant's records when required in processing a complaint in accordance with § 865.121 of this subpart.

(d) Any other privileged or classified material contained in or appended to any documents required to be furnished the applicant and counsel/representative or made available for public inspection and copying may be deleted therefrom only if a written statement of the basis for the deletions is provided the applicant and counsel/representative and made available for public inspection. It is not intended that the statement be so detailed as to reveal the nature of the withheld material.

(e) DRB documents made available for public inspection and copying shall be located in the Armed Forces Discharge Review/Correction Boards Reading Room. The documents shall be indexed in usable and concise form so as to enable the public and those who represent applicants before the DRB to isolate from all these decisions that are indexed those cases that may be similar to an applicant's case and that indicate the circumstances under and/or reasons for which the DRB or the Secretary of the Air Force granted or denied relief.

(1) The reading file index shall include, in addition to any other items determined by the DRB, the case number, the date, character of, reason for, and authority for the discharge. It shall further include the decisions of the DRB and reviewing authority, if any, and the issues addressed in the statement of findings, conclusions and reasons.

(2) The index shall be maintained at selected permanent locations throughout the United States. This ensures reasonable availability to applicants at least 30 days before a regional board review. The index shall also be made available at sites selected for regional Boards for such periods as the DRB is present and in operation. An applicant who has requested a regional board review shall be advised in the notice of scheduled hearings.

(3) The Armed Forces Discharge Review/Correction Board Reading Room shall publish indexes quarterly for the DRB. The DRB shall be responsible for timely submission to the Reading Room of individual case information required for update of indexes. These indexes shall be available for public inspection or purchase (or both) at the Reading Room. This information will be provided to applicants in the notice of acceptance of the application.

(4) Correspondence relating to matters under the cognizance of the Reading Room (including request for purchase of indexes) shall be addressed to:

DA Military Review Board Agency, Attention: SFBA (Reading Room), Room 1E520, The Pentagon, Washington DC 20310

§ 865.119 Privacy Act information.

Information protected under the Privacy Act is involved in discharge review functions. The provisions of 32 CFR part 286a will be observed throughout the processing of a request for review of discharge or dismissal.

§ 865.120 Discharge review standards.

(a) *Objective of review*. The objective of a discharge review is to examine the propriety and equity of the applicant's discharge and to effect changes, if necessary. The standards of review and the underlying factors which aid in determining whether the standards are met shall be historically consistent with criteria for determining honorable service. No factors shall be established which require automatic change or denial of a change in a discharge. Neither the DRB nor the Secretary of the Air Force shall be bound by any methodology of weighing of the factors in reaching a determination. In each case, the DRB or Secretary of the Air Force

shall give full, fair, and impartial consideration to all applicable factors prior to reaching a decision. An applicant may not receive a less favorable discharge than that issued at the time of separation. This does not preclude correction of clerical errors.

(b) *Propriety*. A discharge shall be deemed to be proper unless in the course of discharge review, it is determined that:

(1) There exists an error of fact, law, procedures, or discretion associated with the discharge at the time of issuance; and that the rights of the applicant were prejudiced thereby (such error shall constitute prejudicial error, if there is substantial doubt that the discharge would have remained the same if the error had not been made); or

(2) A change in policy by the Air Force made expressly retroactive to the type of discharge under consideration, requires a change in the discharge.

(c) When a record associated with the discharge at the time of issuance involves a matter in which the primary responsibility for corrective action rests with another organization (for example, another Board, agency, or court), the DRB will recognize an error only to the extent that the error has been corrected by the organization with primary responsibility for correcting the record.

(d) The primary function of the DRB is to exercise its discretion on issues of equity by reviewing the individual merits of each application on a case-by-case basis. Prior decisions in which the DRB exercised its discretion to change a discharge based on issues of equity (including the factors cited in such decisions or the weight given to factors in such decisions) do not blind the DRB in its review of subsequent cases because no two cases present the same issues of equity.

(e) The following applies to applicants who received less than fully honorable administrative discharges because of their civilian misconduct while in an inactive reserve component and who were discharged or had their discharge reviewed on or after April 20, 1971: the DRB shall either recharacterize the discharge to honorable without any additional proceedings or additional proceedings shall be conducted in accordance with the Court's Order of December 3, 1981, in Wood v. Secretary of Defense to determine whether proper grounds exist for the issuance of a less than honorable discharge, taking into account that:

(1) An Under Other Than Honorable (formerly Undesirable) Discharge for an inactive reservist can only be based upon civilian misconduct found to have affected directly the performance of military duties;

(2) A General Discharge for an inactive reservist can only be based upon civilian misconduct found to have had an adverse impact on the overall effectiveness of the military, including military morale and efficiency.

(f) The following applies to applicants who received less than fully honorable administrative discharges (between June 21, 1971 and March 2, 1982) because evidence developed by or as a direct result of complusory urinalysis testing was introduced in the discharge proceedings. Applicants who believe they are members of the above category will so indicate this by writing ''CATEGORY W'' in block 7 of their DD Form 293. AFMPC/MPCDOA1 will expedite processing these applications to the designated ''CATEGORY W'' reviewer. For class members the designated reviewer shall either recharacterize the discharge to honorable without any additional proceedings or complete a review to determine whether proper ground exists for the issuance of a less than honorable discharge. If the applicant is determined not to be a class member, the application is returned to normal review procedure channels. If new administrative proceedings are initiated, the former service member must be notified of:

(1) The basis of separation other than drug abuse or use or possession of drugs based upon compelled urinalysis that was specified in the commander's report and upon which the Air Force now seeks to base a less than honorable discharge.

(2) The full complement of procedural protections that are required by current regulations.

(3) Name, address and telephone number of an Area Defense Counsel with

whom the former service member has a right to consult, and

(4) The right to participate in the new proceedings to be conducted at the Air Force base nearest the former service member's current address, or to elect to maintain his or her present character of discharge.

(g) *Equity*. A discharge shall be deemed to be equitable unless:

(1) In the course of a discharge review, it is determined that the policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of the type under consideration provided that:

(i) Current policies or procedures represent a substantial enhancement of the rights afforded an applicant in such proceedings; and

(ii) There is substantial doubt that the applicant would have received the same discharge if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration.

(2) At the time of issuance, the discharge was inconsistent with standards of discipline in the Air Force; or

(3) In the course of a discharge review, it is determined that a change is warranted based upon consideration of the applicant's military record and other evidence presented to the DRB viewed in conjunction with the factors listed in this section and the regulations under which the applicant was discharged, even though the discharge was determined to have been otherwise equitable and proper at the time of issuance. Areas of consideration include, but are not limited to:

(i) Quality of Service, as evidenced by factors such as:

(A) Service History, including date of enlistment, period of enlistment, highest rank achieved, conduct or efficiency ratings (numerical or narrative).

(B) Awards and decorations.

(C) Letters of commendation or reprimand.

(D) Combat service.

(E) Wounds received in action.

(F) Record of promotions and demotions.

(G) Level of responsibility at which the applicant served.

(H) Other acts of merit that may not have resulted in a formal recognition through an award or commendation.

(I) Length of service during the period which is the subject of the discharge review.

(J) Prior military service and type of discharge received or outstanding post-service conduct to the extent that such matters provide a basis for a more thorough understanding of the performance of the applicant during the period of service which is the subject of the discharge review.

(K) Convictions by court-martial.

(L) Record of non-judicial punishment.

(M) Convictions by civil authorities while a member of the Air Force, reflected in the discharge proceedings or otherwise noted in military records.

(N) Record of periods of unauthorized absence.

(O) Records relating to a discharge in lieu of court-martial.

(ii) Capability to Serve, as evidenced by factors such as:

(A) *Total Capabilities.* This includes an evaluation of matters such as age, educational level, and aptitude scores. Consideration may also be given to whether the individual met normal military standards of acceptability for military service and similar indicators of an individual's ability to serve satisfactorily, as well as ability to adjust to the military service.

(B) *Family/Personal Problems.* This includes matters in extenuation or mitigation of the reason for discharge that may have affected the applicant's ability to serve satisfactorily.

(C) *Arbitrary or Capricious Actions.* This includes actions by individuals in authority which constitute a clear abuse of such authority and which, although not amounting to prejudicial error, may have contributed to the decision to discharge or to the characterization of service.

(D) *Discrimination.* This includes unauthorized acts as documented by records or other evidence.