

## CIVIL AIR PATROL

### Civil Air Patrol Cadet Program - Glider Activities

This opinion addresses the nature and extent of support the Air Force may provide the Civil Air Patrol Glider Program (CAPGP). While there is no legal basis to purchase gliders for or provide appropriated funds directly to the CAPGP itself, there are specific CAPGP activities the Air Force can provide support to in accordance with applicable Air Force instructions.

The Civil Air Patrol (CAP) is a federally chartered nonprofit corporation under 36 U.S.C. § 40301. CAP fulfills dual-hatted functions; it conducts activities as the civilian auxiliary of the Air Force (the auxiliary) under 10 U.S.C. § 9442, et seq, and corporate activities under 36 U.S.C. § 40302 et seq. As the auxiliary, CAP assists "the Department of the Air Force in fulfilling its noncombat programs and missions." 36 U.S.C. 40302(5). CAP corporate activities include aerospace education and training of its senior and cadet members. 36 U.S.C. § 40302(2). The CAPGP, a cadet activity, came into being when CAP entered into a Memorandum of Agreement (MOA) with the Soaring Society of America (SSA) in March 1996.

The Air Force provides CAP certain resources, including powered aircraft, to enable CAP to assist the Air Force as the Auxiliary in noncombat programs and missions. 10 U.S.C. § 9444(a). Air Force noncombat missions are defined as any mission for which the Air Force is tasked, by statute, regulation, or higher authority, which does not involve actual combat, combat operations or combat training. When performing an Air Force noncombat mission, CAP is deemed to be an instrumentality of the United States. 32 CFR § 842.138(b).

The various forms of Air Force support to CAP as the Auxiliary are set forth in 10 U.S.C. § 9444. The CAP cadet program is specifically addressed in paragraph (b)(11), which provides that the Air Force may "support the Civil Air Patrol cadet program by furnishing (A) articles of the Air Force uniform to cadets without cost and (B) any other support that the Secretary of the Air Force determines is consistent with Air Force missions and objectives." AFI 65-601, Volume 1, *Budget Guidance and Procedures*, para 7.32.2.7, 16 August 2012, incorporating Change 1, 29 July 2015, states that Air Force funds may be used to support the following CAP cadet programs: Articles of the Air Force uniform that CAP Cadets are authorized to wear; Orientation flights in powered or non-powered aircraft (gliders); CAP Demand Drug Reduction program as approved and funded by AF/SG with the 3400 appropriation (PE 88788F, Fund Code 30); International Air Cadet Exchange Program (IACE); and other activities IAW AFI 10-2701, *Organization and Function of the Civil Air Patrol*, 31 July 2014.

The Air Force is able to provide a significant level of support to CAP as the auxiliary under 10 U.S.C. § 9444, and AFI 10-2701 implements that statutory authority. AFI 10-2701 clearly distinguishes between CAP's activities when carrying out Air Force Assigned Missions (AFAMs) as the auxiliary and when engaging in organic corporate CAP activities and specifies they type of support that may be extended in both cases.

Paragraph 2.2.2.6 of AFI 10-2701 states that CAP orientation flights, both powered and glider, may be designated as AFAMs through proper coordination with the specified authorities. Once

designated an AFAM, glider orientation flights are entitled to support authorized for AFAMs by AFI 10-2701. This support includes third party liability coverage under the Federal Tort Claims Act (FTCA) (see AFI 10-2701, paragraph 3.8, for additional guidance).

In summary, CAP enjoys a unique status as both a congressionally-chartered non-profit corporation and an official civilian auxiliary of the Air Force. While the Air Force is authorized to provide extensive financial and logistical support to CAP, that support is often conditioned on CAP performing its role as the auxiliary. Although the fleet of gliders maintained by CAP for the CAPGP would be best characterized as primarily corporate CAP assets, to the extent they are used to support properly approved AFAMs they are entitled to financial and logistical support authorized by law and defined by applicable Air Force instructions.

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This opinion supersedes and rescinds OpJAGAF 2004/24, 20 May 2004.