

CIVIL AIR PATROL COMMISSION

Staff Report

to the

Sunset Advisory Commission

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FOREWORD

The Texas Sunset Act (Article 5429k V.A.C.S.) terminates named agencies on specific dates unless continued. The Act also requires an evaluation of the operations of each agency be conducted prior to the year in which it terminates to assist the Sunset Commission in developing recommendations to the legislature on the need for continuing the agency or its functions.

To satisfy the evaluation report requirements of Section 1.07, Subsection (3) of the Texas Sunset Act, the Program Evaluation section of the Legislative Budget Board has evaluated the operations of the Civil Air Patrol Commission, which will terminate on September 1, 1981 unless continued by law.

Based on the criteria set out in the Sunset Act, the evaluation report assesses the need to continue the agency or its function and provides alternative approaches to the current method of state regulation. The material contained in the report is divided into seven sections: Summary and Conclusions, Background, Review of Operations, Other Alternatives and Constraints, Compliance, Public Participation, and Statutory Changes. The Summary and Conclusions section summarizes the material developed in the report from the standpoint of whether or not Sunset criteria are being met, assesses the need for the agency or the agency's functions relative to the findings under the various criteria and develops alternative approaches for continued state regulatory activities. The Background section provides a brief history of legislative intent and a discussion of the original need for the agency. The Review of Operations section combines, for the purposes of review, the sunset criteria of efficiency, effectiveness, and the manner in which complaints are handled. The Other Alternatives and Constraints section combines the sunset criteria of overlap and duplication, potential for consolidation, less restrictive means of performing the regulation, and federal impact if the agency were modified or discontinued. The Compliance Section combines the Sunset criteria relating to conflicts of interest, compliance with the Open Meetings Act and the Open Records Act, and the equality of employment opportunities. The Public Participation section covers the sunset criterion which calls for an evaluation of the extent to which the public participates in agency activities. The final section, Statutory Changes, deals with legislation adopted which affected the agency, proposed legislation which was not adopted and statutory changes suggested by the agency in its self-evaluation report.

This report is intended to provide an objective view of agency operations based on the evaluation techniques utilized to date, thus providing a factual base for the final recommendations of the Sunset Commission as to the need to continue, abolish or restructure the agency.

I. SUMMARY AND CONCLUSIONS

The establishment of the Civil Air Patrol Commission in Texas is closely tied to the existence of a private non-profit organization known as the Civil Air Patrol, Incorporated. This private organization was created as an Air Force auxiliary with the purposes of providing assistance in the event of local or national emergencies. A wing of CAP, Inc. exists in all states including Texas. The Texas wing of the organization has performed search and rescue and disaster-related aircraft missions in Texas since 1948. CAP, Inc. missions are authorized by the Air Force Rescue Coordination Center at Scott Air Force Base, Illinois when such missions are requested by the governor or his designee. The Governor's Division of Disaster Emergency Services performs the function of requesting this assistance for the governor. In calendar year 1978, volunteers of the Texas Wing of CAP flew 1,242 mission hours.

Since its creation as a non-profit corporation, the Texas Wing of CAP, Inc. has been funded primarily through members' dues, revenue generated through the lease of CAP, Inc. equipment to trainees, and federal and private reimbursements for necessary expenses. CAP, Inc. members are reimbursed by the Air Force and Red Cross for the costs of fuel, lubricants and necessary telephone calls resulting from authorized missions.

The contribution of CAP, Inc. to the safety and welfare of Texas citizens was recognized by the legislature in 1971 through the establishment of the Civil Air Patrol Commission. The commission, composed of nine members appointed by the governor, is authorized to (1) advise the Governor's Division of Disaster Emergency Services as to (i) the deployment of voluntarily offered aviation resources in search and rescue operations and (ii) disaster-related planning, training, and operations

under the Texas Disaster Act of 1975 (Article 6889-7, V.T.C.S.); and (2) provide assistance to private aviators, including partial reimbursement for funds expended, in meeting the actual costs of aircraft operation requested by the governor or his designee. Administrative services are provided to the commission by the Governor's Division of Disaster Emergency Services.

The legislature has not chosen to fund the commission since its creation in 1971. The commission, therefore, has been inactive in the substantive areas of its operations, meeting only twice in the last four years to adopt budget recommendations to the legislature.

A review of the commission's budget submissions shows that the agency has requested funds to provide "salaries" for private aviators and observers flying search and rescue missions for the state. This request does not appear to be consistent with the intent of the commission's statute which provides that funds may be expended only to meet the "actual costs of aircraft operation," thus excluding salary items.

Need for the Commission and its Functions

The need for search and rescue and disaster-related aircraft missions is recognized through both the national search and rescue plan and the Texas disaster plan. The size and geography of the state as well as the number of hours flown in Texas establish the clear need for the maintenance of a state search and rescue capability for downed aircraft. Final responsibility for search and rescue and disaster functions rests with the state, not the federal government.

In Texas, these functions have historically been performed by volunteers of CAP, Inc. working in cooperation with the Governor's Division of Disaster Emergency Services and receiving partial reimbursement through the federal

government. CAP, Inc. members fly virtually all of the search and rescue missions in the state and have never refused to fly a requested mission.

Under current law the functions of the Civil Air Patrol Commission are limited to advising the Governor's Division of Disaster Emergency Services and providing assistance to private aviators in meeting the actual costs of aircraft operation. If the legislature chooses to continue the state policy of performing search and rescue operations with CAP, Inc. volunteers some means of assisting these private aviators with their necessary costs should be continued. Even though state funds have never been provided, the continuation of a state mechanism is necessary to insure that sufficient resources could be made available by the state to carry out its search and rescue responsibilities should federal funding prove insufficient or cease. There is, however, no need to maintain a separate inactive commission out of a possible future need to provide state funding assistance to private aviators.

It can be concluded, therefore, that there is no need for the continuation of the Civil Air Patrol Commission. It should be noted also that even if the function of the commission of providing a mechanism for reimbursement of costs did not exist, volunteers would still receive partial reimbursement of costs from the federal government. However, if the legislature chooses to continue the policy of performing search and rescue related functions with CAP, Inc. volunteers, and to provide for state assistance to private aviators, some mechanism to flow state funds should be maintained.

Alternatives

If the legislature determines that the functions performed through the commission should be continued, the following alternatives could be considered.

1. CONTINUE THE FUNCTIONS THROUGH THE COMMISSION AS IT CURRENTLY EXISTS.

This approach would allow for the maintenance of a mechanism for reimbursing private aviators who perform a necessary state function. Although the commission has never been funded, a procedure for assisting private aviators performing search and rescue missions could be implemented if funded by the legislature.

2. ABOLISH THE CIVIL AIR PATROL COMMISSION AND TRANSFER THE AUTHORITY TO PROVIDE ASSISTANCE TO PRIVATE AVIATORS IN MEETING THE ACTUAL COSTS OF AIRCRAFT OPERATION REQUESTED BY THE GOVERNOR OR HIS DESIGNEE TO THE GOVERNOR'S DIVISION OF DISASTER EMERGENCY SERVICES.

Elimination of an inactive agency which has not been funded by the legislature would result from this approach. Transfer of the commission's authority to provide assistance to private aviators to the Governor's Division of Disaster Emergency Services would place this funding mechanism within the agency which coordinates search and rescue and disaster services in the state. The State Coordinator of the Division of Disaster Emergency Services indicates that federal funds are available to the division for the administration of such search and rescue operations.

Regardless of organizational setting, if the legislature determines that the state should continue a mechanism for providing state reimbursement to private aviators flying search and rescue missions, the following change could be considered:

CURRENT STATUTORY PROVISIONS COULD BE MODIFIED TO CLEARLY INDICATE EXPENDITURES WHICH ARE REIMBURSABLE BY THE STATE. THE STATUTE COULD ALSO PROVIDE THAT SUCH FUNDS BE USED TO REIMBURSE ONLY THOSE EXPENSES NOT REIMBURSED FROM ANOTHER SOURCE.

Under present law the commission may provide assistance to private aviators in meeting "the actual costs of aircraft operation," however, expenditures comprising the actual costs of aircraft operation have not been clearly identified. The legislature could establish as reimbursable costs expenditures made for fuel, lubricants, overhaul and maintenance. Under this approach, overhaul and maintenance costs could be reimbursed on an hourly pro rata basis. Reimbursements made by the state for requested flights could be limited to expenditures not reimbursed by the Air Force or private organizations.

II. BACKGROUND

Historical Perspective

The Civil Air Patrol Commission was established in 1971 by the Sixty-second Legislature. The establishment of the commission was integrally related to the development of a patriotic non-profit organization in the state, the Texas Wing of Civil Air Patrol, Inc. The history of CAP, Inc. extends back to the early days of World War II.

In 1941 the Civil Air Patrol was established under the United States Office of Civil Defense for the purpose of enlisting and training volunteer civilian pilots to aid in national defense. In recognition of its wartime contributions to civil defense the Civil Air Patrol, Inc. was established as a patriotic organization and non-profit civilian corporation in 1946, with wings of the organization in each state. In 1948, CAP, Inc. was made an auxiliary to the United States Air Force with the purpose of providing assistance in the event of local or national emergencies.

While CAP, Inc. conducts a number of programs to achieve its purposes, perhaps the most notable activity is the maintenance of an emergency service capability to meet the requests of the Air Force for search and rescue and disaster relief missions. Under the National Search and Rescue Plan the United States Air Force serves as search and rescue coordinator for the inland region of the United States. As a civilian auxiliary of the Air Force, the Civil Air Patrol, Inc. has been the primary force in performing search and rescue missions both in the United States and in Texas since 1948. In Texas these missions are initiated by the Governor's Division of Disaster Emergency Services, which requests search and rescue assistance from the Air Force Rescue Coordination Center at Scott Air Force Base, Illinois, when overdue planes are reported. The Air Force, in turn,

authorizes the Texas Wing, Civil Air Patrol, Inc. to fly the search and rescue missions. In calendar year 1978, 1,222 hours were flown in search and rescue missions by the Texas Wing, CAP, Inc., resulting in the location of 15 downed aircraft.

Since its creation as a non-profit corporation, the Texas Wing of CAP, Inc., as well as other wings across the nation, have been funded primarily through members' dues, revenue generated through the lease of CAP, Inc. equipment to trainees, and federal and private reimbursements for necessary expenses. CAP members are reimbursed by the Air Force and Red Cross for the costs of fuel, lubricants and necessary telephone calls resulting from assigned missions. In addition to federal and private reimbursements, 35 states, not including Texas, appropriate funds for the support of their CAP, Inc. state wings.

The establishment of the Civil Air Patrol Commission in 1971 reflected the legislature's recognition of the need to support the Civil Air Patrol in its performance of an important state function. According to the current executive director of the agency, because there was a constitutional question involved in appropriating state money directly to a private organization such as CAP, Inc., the commission was needed in case the state wished to support the Texas Wing with public funds.

Among the original statutory purposes of the commission were improving and promoting the voluntary deployment of the Texas Civil Air Patrol and promoting adequate financing for the operations of the Patrol. In 1977, the enabling legislation of the commission was amended to "allow for assistance to private aviators, including partial reimbursement for funds expended, in meeting the actual costs of aircraft operation requested by the Governor or his designee." Although

the amendment grants the commission the authority to reimburse volunteers, no funds have ever been appropriated to the commission for this or any other purpose.

Because the Civil Air Patrol Commission has never been funded by the legislature, commission activities have been very limited. The commission's statute requires the Governor's Division of Disaster Emergency Services to provide administrative services to the agency. Two staff members from this division devote approximately ten percent of their time to commission business. Only two commission meetings have been held since 1975. These meetings were held for the primary purpose of preparing the agency's budget request. Since its establishment, the commission has never possessed a staff of its own, owned property in its name or received or disbursed any state or federal funds.

Comparative Analysis

In terms of organizational patterns, private non-profit branches or "wings" of the Civil Air Patrol, Inc. have been established in all states including Texas. However, Texas is the only state which has created a Civil Air Patrol Commission as a separate state agency for the purposes of 1) advising the Governor's Division of Disaster Emergency Services on the deployment of voluntarily offered aviation resources in search and rescue operations and disaster related planning, training, and operations and 2) providing assistance to private aviators in meeting the actual costs of aircraft operation requested by the governor or his designee. In most states, these functions are performed by the agency responsible for providing disaster and emergency services.

Constitutional prohibitions in 25 states prevent the making of grants or loans directly to private individuals or corporations such as the Civil Air Patrol, Inc.

Many of the states without such prohibitions have determined that although CAP, Inc. is a private organization, its members provide a necessary state service for which state funds can be expended. Since members of the private organizations are only partially compensated for their services, 35 states directly appropriate funds or authorize general support for their wings of the Civil Air Patrol, Inc. These states and the amounts appropriated are indicated in Exhibit II-1.

EXHIBIT II-1

State Support of Civil Air Patrol, Inc.
(FY 79)

<u>WING</u>	<u>AMOUNT</u>	<u>WING</u>	<u>AMOUNT</u>
Alabama	\$ 35,000	Nevada	\$ 30,000
Alaska	321,700	New Hampshire	22,896
Arizona	55,000	New Mexico	41,600
Arkansas	54,000	New York	80,000
Colorado	55,848	North Carolina	56,699
Connecticut	10,000	North Dakota	28,350
Florida	50,000	Pennsylvania	35,000
Georgia	25,000	Puerto Rico	30,000
Hawaii	75,000	Rhode Island	10,500
Illinois	92,500	South Carolina	77,650
Kansas	4,000	South Dakota	19,500
Kentucky	15,000	Tennessee	37,400
Louisiana	64,255	Utah	66,300
Maine	5,000	Vermont	5,000
Michigan	50,000	Virginia	30,000
Minnesota	32,500	West Virginia	89,000
Mississippi	20,000	Wyoming	2,500
Nebraska	25,000		

Texas has not chosen to provide direct appropriations either to its wing of the Civil Air Patrol, Inc. or to the State Civil Air Patrol Commission. Provisions of Article 3, Sec. 51 of the Texas Constitution stating that "the legislature shall have no power to make any grant or authorize the making of any grant of public moneys

to any individual, association of individuals, municipal or other corporation whatsoever;" may prevent the state from appropriating funds directly to the private organization and the legislature, as a matter of policy, has never chosen to make funds available through the state agency, although there appears to be no constitutional barrier to this approach.

III. REVIEW OF OPERATIONS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the efficiency with which the agency operates; the objectives of the agency and the manner in which these objectives have been achieved; and the promptness and effectiveness with which the agency disposes of complaints concerning persons affected by the agency.

Organization and Objectives

The Civil Air Patrol Commission is composed of nine members appointed by the Governor with the advice and consent of the senate for overlapping six-year terms. The members must be residents of the State of Texas and must have aviation experience.

The commission has no staff of its own and is provided clerical and administrative support by the Governor's Division of Disaster Emergency Services. This Division provides the commission with part-time services of two staff members who spend the majority of their time on Division duties. The total annual value of administrative services provided to the commission is estimated by the commission chairman to be \$2,000.

The objectives of the commission are to: 1) serve in an advisory role to the Governor's Division of Disaster Emergency Services as to the deployment of voluntary aviation services in search and rescue operations and disaster-related operations; and 2) provide assistance to private aviators, including partial reimbursement for costs of aircraft operations requested by the Governor or his designee.

The review of the agency's operations evaluates the performance of the agency in three areas related to the achievement of the agency's objectives. These areas are administration, advisory services, and reimbursement for search and rescue operations.

Administration

The objective of the administration function of the Civil Air Patrol Commission is to operate the commission activities in an efficient manner.

The commission expends no funds as it has never received an appropriation. The board members receive no compensation for attending meetings of the commission which have been held once every two years for the purpose of preparing a biennial budget request to the legislature. The lack of any funds for expenditures renders an evaluation of the efficiency with which they were expended unnecessary.

Advisory Services

Interviews with commission staff and staff of the Governor's Division of Disaster Emergency Services indicate that the objectives of a function of this nature, which are to identify the appropriate areas in which advice is necessary and to respond promptly with advice when requested, have not been met. There have been no planning documents developed by the commission indicating areas that could be appropriate for such advisory services and there is no indication that any advisory services have ever been sought by the Division of Disaster Emergency Services either through the Governor or his designee.

Reimbursement of Search and Rescue Operations

The commission may provide assistance and partial reimbursement to private aviators for funds expended in meeting costs of aircraft operations requested by the Governor or his designee. The objective of this function should be the development of procedures which provide for the definition of costs for which reimbursement will be made, a verification process which will ensure that only those entitled to reimbursement will be paid, and timely handling of the requests for payment.

A review of commission documents indicates that procedures have not been developed and since funds have not been appropriated to the commission there is no means by which an evaluation can be made of the manner in which reimbursements would be made. The commission has, however, given some indication that its definition of reimburseable costs and that provided by statute may be at variance. Provisions of the statutes clearly limit the commission to providing assistance to private aviators in meeting the actual costs of aircraft operation. In its budget request to the Sixty-sixth Legislature, the commission requested funds for reimbursement at \$17.50 per flying hour and included in this calculation pilot and observer costs. Reimbursement of these types of costs do not constitute the actual costs contemplated by statute and would be contrary to the statutory mandate.

Summary

The evaluation of the activities of the Civil Air Patrol Commission under the elements of this section indicates that due to lack of funding no assessment can be made of the efficiency of operations. In the area of achievement of objectives, lack of funding prevents any assessment of actual accomplishments, but even in the

developmental areas the commission has developed no plan of action. In the one area that documentation exists, it appears that the commission has not properly construed the definition of what constitutes reimburseable costs to private aviators in meeting actual costs of aircraft operation.

IV. OTHER ALTERNATIVES AND CONSTRAINTS

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent of overlap and duplication with other agencies and the potential for consolidation with other agencies; an assessment of less restrictive or alternative methods of performing any regulation that could adequately protect the public; and the impact in terms of federal intervention or the loss of federal funds if the agency is abolished.

Existence of Like Functions

Alternatives to the continuation of the Civil Air Patrol Commission and its functions must be considered in light of current state policy regarding search and rescue operations. Texas geography and the number of hours flown by Texas pilots create a need for a state capability of locating missing aircraft. At present almost all aircraft search and rescue missions are flown by CAP, Inc. and partially reimbursed by the Air Force at no expense to the state. Termination of the commission and the commission's functions would not result in a loss of assistance to private aviators currently flying search and rescue missions. Termination of the commission would eliminate administrative duplication. If, however, the legislature eliminated the commission's functions, the state would possess no mechanism for reimbursing private aviators for requested missions should it wish to do so in the future.

Alternatives in Other States

Should the commission be eliminated and the functions of the commission transferred, the function of providing assistance to private aviators could be

performed by any one of several agencies. Approximately one-half of the states provide assistance to private aviators by channeling funds through the state agency with disaster responsibilities. Funds are provided through the Department of Military Affairs in Kentucky while in Massachusetts funds are passed through the Aeronautics Commission.

Potential Benefits

In Texas, the agency most capable of assuming CAP Commission functions is the Governor's Division of Disaster Emergency Services. This division currently provides staff for the commission and the state coordinator of the division is also the commission's chairman. The state coordinator indicates that federal funds available to the division may be utilized for the administration of a search and rescue program. Under the State Disaster Plan primary responsibility for search and rescue operations is already assigned to the Division of Disaster Emergency Services.

Summary

Alternatives to the state policy of using private volunteers for the performance of search and rescue operations would result in increased costs to the state. If the state continues to rely on private volunteers for the performance of this state function, the CAP Commission mechanism for providing state assistance to private aviators should be continued. The mechanism for assisting private volunteer aviators could be transferred to the Governor's Division of Disaster Emergency Services. Administrative duplication could then be eliminated through abolishment of the Civil Air Patrol Commission.

V. COMPLIANCE

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are the extent to which the agency issues and enforces rules relating to potential conflict of interest of its employees; the extent to which the agency complies with the Open Records Act and the Open Meetings Act; and the extent to which the agency has complied with necessary requirements concerning equality of employment opportunities and the rights and privacy of individuals.

Conflict of Interest

As appointed state officials, Civil Air Patrol commissioners are subject to statutory standards of conduct and conflict-of-interest provisions (Article 6252-9a. and 9b., V.A.C.S.). Commission members have complied with the various filing requirements of Article 6252-9a.

Conflict-of-interest provisions also require that:

members of a board or commission having a personal or private interest in any measure, proposal, or decision pending before the board or commission shall publicly disclose the fact to the board or commission in a meeting called and held in compliance with the Open Meetings Law and shall not vote or otherwise participate in the decision. The disclosure shall be entered in the minutes of the meeting (Article 6252-9b, V.A.C.S.).

A review of the commission's minutes indicates no such disclosures or disqualifications have ever been made. It was noted, however, that many members

of the commission are and have been members of the Civil Air Patrol, Inc. On May 6, 1974, the commission adopted a resolution requiring that all funds appropriated to the agency for search and rescue and other substantive functions would be expended solely through CAP, Inc. This resolution may constitute a conflict of interest for those commission members who also belonged to that private organization.

Open Meetings - Open Records

A review of records maintained by the Secretary of State indicates that the commission has complied with the Open Meetings Act (Article 6252-17), Open Records Act (Article 6252-17a) and Administrative Procedure and Texas Register Act (Article 6252-13a).

Summary

In conclusion, the commission has complied with state conflict-of-interest provisions with the apparent exception of one instance in 1974. In this instance, it appears that commissioners who were also members of CAP, Inc. should have disqualified themselves from voting on a resolution to expend specific funds solely through the CAP, Inc. The commission has complied with the Open Meetings, Open Records, and Administrative Procedure and Texas Register Act.

VI. PUBLIC PARTICIPATION

The review under this section covers the sunset criterion which calls for an evaluation of the extent to which the agency has encouraged participation by the public in making its rules and decisions as opposed to participation solely by those it regulates and the extent to which the public participation has resulted in rules compatible with the objectives of the agency.

The degree to which the agency has involved the public in its activities and decisions can be judged on the basis of the availability of information concerning agency rules and operations, the efforts made by the agency to involve the public in its operations, and the existence of public members on the commission.

Public Membership

The review of the Civil Air Patrol Commission indicated that the general public's point of view is represented by the composition of the commission, whose makeup is drawn from the public at large as specified in statute.

Agency Activities

There has been little effort on the part of the agency to inform private aviators or the general public of commission activities. The commission has purchased no advertising and issues no publications to inform the public about agency functions. This lack of effort is attributable to the absence of funding for agency programs and to the nature of the agency's statutory duties.

Summary

The general public's point of view is represented by the composition of the commission which consists entirely of public members. Aside from this public

representation, limited agency resources and activity have resulted in little effort by the Civil Air Patrol Commission to involve and educate the general public on commission functions.

VII. STATUTORY CHANGES

The material presented in this section combines several sunset criteria for the purposes of evaluating the activities of the agency. The specific criteria covered are whether statutory changes recommended by the agency or others were calculated to be of benefit to the public rather than to an occupation, business, or institution the agency regulates; and statutory changes recommended by the agency for the improvement of the regulatory function performed.

Past Legislative Action

The enabling legislation of the Civil Air Patrol Commission has been amended only once since the creation of the agency in 1971. Senate Bill No. 592 of the Sixty-fifth Legislature (1977) amended the commission's act significantly by authorizing the agency to provide partial reimbursement to private aviators flying missions requested by the governor. In addition, the bill specified that the Governor's Division of Disaster Emergency Services would provide clerical and administrative services to the commission.

Proposed Legislative Action

Apart from the one amendment to the basic statute, only one other piece of legislation, House Bill No. 472 of the Sixty-third Legislature, has ever been introduced. Though defeated, this bill would have 1) made the Wing Commander of CAP, Inc. the Executive Director of the commission; and 2) limited agency expenditures to specific purposes, including the acquisition, maintenance, and operation of Texas CAP equipment. Although the Civil Air Patrol Commission did not take an official stand on this measure, several commission members expressed

opposition to the bill based on the opinion that the legislation would have directed efforts only to the needs of the Texas Wing, Civil Air Patrol rather than to the best interests of the flying public of Texas in general.

With respect to possible future changes in the statutes, the commission has suggested no modifications for its enabling legislation in its self-evaluation report to the Sunset Advisory Commission.

Summary

In conclusion, in the history of the commission only two bills modifying the agency have been submitted to the legislature. While a bill introduced in 1973 primarily benefitting CAP, Inc. failed to pass the legislature, legislation introduced in 1977 was signed into law. This bill gave the commission the clear authority to provide partial reimbursement to private aviators flying search and rescue and disaster-related missions.