

(b) Penalties for violation of the standards and rules of conduct prescribed in 32 CFR part 84 include the full range of statutory and regulatory sanctions for DoD employees.

(1) The prohibitions and requirements printed in 32 CFR part 84 that are marked as general orders apply to all military members without further implementation. Violations may result in prosecution under the Uniform Code of Military Justice (UCMJ) (10 U.S.C. 801-940), as well as adverse administrative action and other adverse action authorized by the United States Code or Federal regulations.

(2) DoD employees on assignment to another Executive Agency for more than 30 days are subject to 5 CFR part 2635 and the regulations of that agency that supplement 5 CFR part 2635 and have been approved by OGE.

(3) In addition to details within the Federal Government, details of civilian DoD employees (except temporary or non-career employees who may not be so detailed) may be made to State and local governments, institutions of higher education, and certain other agencies. Civilian DoD employees detailed outside the Federal Government remain subject to 32 CFR part 84.

(4) In matters of ethics and standards of conduct, any inconsistencies among applicable regulations shall be resolved by the DoD Component Designated Agency Ethics Official (DAEO).

§ 83.3 Definitions.

Terms used in this part are defined in 32 CFR part 84.

§ 83.4 Policy.

(a) The Department of Defense shall have a single source of standards of ethical conduct and ethics guidance, including direction in the areas of financial and employment disclosure systems, post-employment rules, enforcement, and training embodied in 32 CFR part 84.

(b) A violation of this part and 32 CFR part 84 does not create any right or benefit, substantive or procedural, enforceable at law by any person against the United States, its agencies, its officers or employees, or any other person.

§ 83.5 Responsibilities.

(a) The General Counsel of the Department of Defense shall:

(1) Ensure that appropriate updates, modifications, additions and deletions are made to 32 CFR part 84.

(2) Have approval authority for DoD Component documents supplementing or implementing 32 CFR part 84.

(b) The Heads of the DoD Components shall ensure that:

(1) 32 CFR part 84 is followed within their DoD Components.

(2) No DoD Component documents supplementing or implementing 32 CFR part 84 are issued without the approval of the General Counsel of the Department of Defense.

(3) The DoD Component DAEO or designee distributes copies of 32 CFR part 84 throughout the DoD Component and makes such copies available for review by DoD employees in the offices of each local Ethics Counselor.

(4) The DoD Component DAEO or designee distributes updates, modifications, additions, and deletions for insertion in copies of 32 CFR part 84 throughout the DoD Component.

(5) The DoD Component DAEO resolves inconsistencies among the regulations of applicable Executive Agencies, as appropriate, for DoD employees of the DoD Component.

(6) The DoD Component representative to the Ethics Oversight Committee assists in the development and upkeep of 32 CFR part 84, as needed, through the operation of that committee as a working group.

§ 83.6 Procedures.

32 CFR part 84 shall be a product of a coordinated effort by the General Counsel of the Department of Defense and the DoD Component DAEOs and designees through the Ethics Oversight Committee.

PART 84—JOINT ETHICS REGULATION

Subpart A—General Information

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APPENDIX A TO PART 84—DIGEST OF LAWS

APPENDIX B TO PART 84—EXCERPTS FROM DOD PUBLICATIONS

APPENDIX C TO PART 84—DOD HUMAN GOALS

AUTHORITY: 5 U.S.C. 301, 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215 as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR part 2635.

SOURCE: 59 FR 13214, Mar. 21, 1994, unless otherwise noted.

Subpart A—General Information

§ 84.1 Purpose.

(a) *Single source of guidance.* This part provides a single source of standards of ethical conduct and ethics guidance, including direction in the areas of financial and employment disclosure systems, post-employment rules, enforcement, and training.

(b) *Disclaimer.* A violation of this part does not create any right or benefit,

substantive or procedural, enforceable at law by any person against the U.S., its agencies, its officers or employees, or any other person.

§ 84.2 Definitions.

(a) *Administrative officer.* The individual responsible for the administrative control of personnel within a unit or office, including assistance with training, travel, or personnel actions for individuals of the unit or office.

(b) *Agency.* A DoD component as follows: Department of the Army; Department of the Navy; Department of the Air Force; Defense Commissary Agency; Defense Contract Audit Agency; Defense Finance and Accounting Service; Defense Intelligence Agency; Defense Investigative Service; Defense Logistics Agency; Defense Mapping Agency; Defense Nuclear Agency; Defense Information Systems Agency; National Security Agency; Office of the Inspector General of the Department of Defense (IG, DoD); and the Uniformed Services University of the Health Sciences. Employees of DoD components not designated as separate agencies, including employees of the Office of the Secretary of Defense (OSD), shall be treated as employees of DoD which shall be treated as a separate agency.

(c) *Agency designee.* The first supervisor who is a commissioned military officer or a civilian above GS/GM-11 in the chain of command or supervision of the DoD employee concerned. Except in remote locations, the agency designee may act only after consultation with his local Ethics Counselor. For any military officer in grade 0-7 or above who is in command and any civilian Presidential appointee confirmed by the Senate, the agency designee is his Ethics Counselor.

(d) *Alternate Designated Agency Ethics Official (Alternate DAEO).* An employee of a DoD agency who has been appointed by the DoD component Head to serve in the absence of the DoD component Designated Agency Ethics Official (DAEO).

(e) *Competing defense contractor.* See Federal Acquisition Regulation.¹ 48 CFR 3.104-4(b) or 41 U.S.C. 423(p)(2).

(f) *Conduct of a procurement.* See 48 CFR 3.104-4(c) or 41 U.S.C. 423(p)(1).

(g) *DAEO or designee.* This phrase refers to the Designated Agency Ethics Official, or to the Alternate Designated Agency Ethics Official, Deputy Designated Agency Ethics Official, or Ethics Counselor who has been delegated specific written authority by the DoD component DAEO to perform specific functions on behalf of the DoD component DAEO.

(h) *Defense contractor.* For purposes of 10 U.S.C. 2397, 2397a, and 2397b, any individual, firm, corporation, partnership, association, or other legal non-Federal entity that enters into a contract directly with DoD or a DoD component to furnish services, supplies, or both, including construction. Subcontractors are excluded unless they are separate legal non-Federal entities that contract directly with DoD or a DoD component in their own names. Foreign governments or representatives of foreign governments that are engaged in selling to DoD or a DoD component are defense contractors when acting in that context.

(i) *Deputy Designated Agency Ethics Official (Deputy DAEO).* An employee of a DoD agency who has been appointed, in writing, by the DoD component DAEO and who has been delegated written authority by that DoD component DAEO to act on his behalf.

(j) *Designated Agency Ethics Official (DAEO).* A DoD employee appointed, in writing, by the Head of the DoD agency to administer the provisions of the Ethics in Government Act of 1978, Public Law 95-521 (5 U.S.C. App.), and this part.

(k) *DoD component.* OSD; the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Commands; IG, DoD; the Uniformed Services University of the Health Sciences;

¹For purchase of this Department of Defense document contact Superintendent of Documents, Congressional Sales Office, U.S. Government Printing Office, Washington, DC 20402.

the Defense Agencies; the DoD Field Activities; the Combined Commands and Agencies; and the Special Activities, including non-appropriated fund instrumentalities. See paragraph (b) of this section for those DoD components that are agencies.

(1) *DoD employee.* (1) Any DoD civilian officer or employee (including special Government employees) of any DoD component (including any non-appropriated fund activity).

(2) Any active duty regular or reserve military officer, including warrant officers.

(3) Any active duty enlisted member of the Army, Navy, Air Force, or Marine Corps.

(4) Any reserve or National Guard member on active duty under orders issued pursuant to title 10, United States Code.

(5) Any reserve or National Guard member performing official duties, including while on inactive duty for training or while earning retirement points, pursuant to title 10, United States Code, or while engaged in any activity related to the performance of a Federal duty or function.

(6) Any faculty member in a civil service position or hired pursuant to title 10, United States Code, and any student (including a cadet or midshipman) of an academy, college, university, or school of DoD.

(7) Consistent with labor agreements and international treaties and agreements, and host country laws, any foreign national working for a DoD component except those hired pursuant to a defense contract.

(m) *DoD supplement.* Section 84.6 contains the cross-reference to the DoD Supplement of 5 CFR part 2635.

(n) *Employment.* See 5 CFR 2635.603(a).

(o) *Ethics Counselor.* The DoD component DAEO, Alternate DAEO, Deputy DAEO, or a DoD employee appointed in writing by the DoD component DAEO or designee to generally assist in implementing and administering the DoD component command's or organization's ethics program and to provide ethics advice to DoD employees of the DoD component command or organization in accordance with this part. Except for a DoD component DAEO, Alternate DAEO, or Deputy DAEO, a DoD

employee appointed as an Ethics Counselor shall only serve as a "DAEO or designee" when he has been delegated specific written authority by the DoD component DAEO to perform specific functions on behalf of the DoD component DAEO. Except for a DoD component DAEO, Alternate DAEO, or Deputy DAEO, a DoD employee appointed as an Ethics Counselor shall be an attorney. Legal assistance officers (or equivalent) who also serve as Ethics Counselors must clearly separate these roles. Communications received in an Ethics Counselor capacity are not protected by the attorney-client privilege while communications received in a legal assistance capacity may be. Attorneys who serve as Ethics Counselors must advise individuals being counseled as to the status of that privilege prior to any communications. The term "Ethics Counselor" includes "agency ethics official" as used by the Office of Government Ethics (OGE). See 5 CFR 2635.102.(c).

(p) *Ethics Oversight Committee (EOC).* A working group composed of the DoD component DAEO, or their representatives, and representatives of the Chairman of the Joint Chiefs of Staff, and the Judge Advocates General of the Military Departments.

(q) *Former DoD employee.* Any individual defined in §84.2(l), after termination of active duty or termination of DoD service, including reserve military officers who served on active duty for more than 130 days and who are no longer on active duty, or who are in an inactive or retired status.

(r) *Gratuity.* Gifts as defined in 5 CFR 2635.203(b).

(s) *He, his, him, himself.* These pronouns include she, hers, her and herself.

(t) *Head of DoD component command or organization.* A commander, commanding officer, or other military or civilian DoD employee who exercises command authority within a DoD component.

(u) *Major defense contractor.* Any non-Federal entity which, during the preceding fiscal year, received defense contracts in a total amount equal to or greater than \$10 million.

(v) *Major defense system.* For purposes of 10 U.S.C. 2397b, a combination of elements that will function together to produce the capability required to fulfill a mission need. Elements may include hardware, equipment, software, or any combination thereof, but excludes construction or other improvements to real property. A list is published in the FEDERAL REGISTER. See 10 U.S.C. 2302. A system shall be considered a major defense system if:

(1) DoD is responsible for the system and the total expenditures, for research, development, test, and evaluation for the system, are estimated to exceed \$75 million (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement exceeds \$300 million (based on fiscal year 1980 constant dollars); or

(2) The system is designated a "major system" by the Head of the DoD agency responsible for the system.

(w) *Majority of working days.* More than 50% of days actually worked, excluding holidays, weekends, sick days, and leave days of the two-year period in question.

(x) *Negotiation.* For purposes of 10 U.S.C. 2397b only, the exchange of views between Federal Government and defense contractor representatives regarding respective entitlements, liabilities and responsibilities on a particular defense contract, modification, or claim over \$10 million, including deliberations regarding contract specifications, terms of delivery, allowability of costs, and pricing of change orders. Other statutes using this term may define it differently.

(y) *Non-Federal entity.* A non-Federal entity is generally a self-sustaining, non-Federal person or organization, established, operated and controlled by any individual(s) acting outside the scope of any official capacity as officers, employees or agents of the Federal Government. A non-Federal entity may operate on DoD installations if approved by the installation commander or higher authority under applicable regulations. See 32 CFR part 212.

(z) *Non-public information.* Information generally not available to the public, obtained in the course of one's official DoD duties or position which would normally not be releasable under

the Freedom of Information Act, 5 U.S.C. 552. The term "non-public information" includes "inside information," "proprietary information," and "source selection information." See 5 CFR 2635.703, 32 CFR part 285, and 48 CFR 3.104-4(j) and (k) and 3.104-5.

(aa) *Office of Government Ethics.* The Federal Government agency responsible for overall direction and leadership concerning Executive Branch policies related to ethics in the Federal Government. See 5 CFR part 2638.

(bb) *Personal and substantial.* See 5 CFR 2635.402(b)(4).

(cc) *Personal commercial solicitation.* Any effort to contact an individual to conduct or transact matters involving unofficial business, finance, or commerce. This does not include off-duty employment of DoD employees employed in retail establishments. See 32 CFR part 43.

(dd) *Primary Government representative.* For purposes of 10 U.S.C. 2397b, acting as a "representative" requires personal and substantial participation in the matter by personal presence, telephone conversation, or similar involvement with representatives of a defense contractor. At any time, more than one individual may act as a primary representative for a single matter.

(ee) *Procurement official.* See 48 CFR 3.104-4(h).

(ff) *Procurement function.* For purposes of 10 U.S.C. 2397b, any function relating to:

(1) The negotiation, award, administration, or approval of a contract;

(2) The selection of a defense contractor;

(3) The approval of a change in a contract;

(4) The performance of quality assurance, operational and developmental testing, the approval of payment, or auditing under a contract; or

(5) The management of a procurement program.

(gg) *Prohibited source.* See 5 CFR 2635.203(d).

(hh) *Qualified individual.* See 5 CFR 2638.702(a)(2).

(ii) *Reserve military officer.* An individual who currently holds an appointment in the reserve of a Military Department, or is a military officer of the

National Guard with Federal Government recognition.

(jj) *Retired military officer.* Any military officer entitled to receive military retired pay, even though such pay may be waived or pending.

(kk) *Senior DoD official.* For purposes of 18 U.S.C. 207, a DoD employee is defined as stated in 10 U.S.C. 207(c)(2).

(ll) *Special Government employee.* An individual who is retained, designated, appointed, or employed to perform, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. The term also includes a reserve military officer who is serving on active duty involuntarily or for training for any length of time, and one who is serving voluntarily on active duty for training for 130 days or less. It does not include enlisted members; however, for the purposes of this part, enlisted members shall be considered special Government employees to the same extent that military officers are included in the meaning of the term.

(mm) *Travel benefits.* Travel related gifts, including in kind subsistence and accommodations and payments or reimbursements of expenses, from non-Federal sources.

§ 84.3 General policy.

DoD policy. It is DoD policy that:

(a) A single, uniform source of standards of ethical conduct and ethics guidance shall be maintained within DoD, and each DoD agency shall implement and administer a comprehensive ethics program to ensure compliance with such standards and guidance;

(b) Although OGE regulations, cross-referenced in this part, do not apply to enlisted members of DoD, the provisions of 5 CFR parts 2634, 2635, 2638, 2639, 2640, and 2641, are determined to be appropriate for enlisted members and are hereby made applicable to enlisted members as if the terms “employee,” and “special Government employee,” as used in those OGE regulations, include enlisted members to the same extent that military officers are included within the meaning of those terms. The following exception applies to certain criminal statutes, 18 U.S.C.

203, 205, 207, 208, 209 and 218, and related provisions of OGE regulations, do not apply to enlisted members. Provisions similar to those of 18 U.S.C. 208 and 209 apply to enlisted members as follows:

(1) Except as approved by the DoD component DAEO or designee, an enlisted member, including an enlisted special Government employee, shall not participate personally and substantially as part of his official DoD duties, in any particular matter in which he, his spouse, minor child, partner, entity in which he is serving as officer, director, trustee, partner, or employee, or any entity with which he is negotiating or has an arrangement concerning prospective employment, has a financial interest;

(2) An enlisted member, except an enlisted special Government employee, shall not receive any salary or supplementation of his Federal Government salary, from any entity other than the Federal Government or as may be contributed out of the treasury of any State, county, or municipality, for his services to the Federal Government.

(c) DoD employees shall become familiar with all ethics provisions, including the standards set out in Executive Order 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215–218, and comply with them;

(d) DoD employees shall become familiar with the scope of and authority for the official activities for which they are responsible. Sound judgment must be exercised. All DoD employees must be prepared to account fully for the matter in which that judgment has been exercised;

(e) If the propriety of a proposed action or decision is in question for any reason, DoD employees shall seek guidance from a DoD component legal counsel, the DoD component DAEO or designee, or Ethics Counselor, as appropriate;

(f) Individual conduct, official programs and daily activities within DoD shall be accomplished lawfully and ethically;

(g) DoD employees shall adhere strictly to DoD policy of equal opportunity, regardless of race, color, religion, gender, age, national origin, or

handicap, in accordance with applicable laws and regulations.

§84.4 General responsibilities.

(a) The Head of each DoD component shall:

(1) Exercise personal leadership and take personal responsibility through the DoD component DAEO or designee for establishing and maintaining the DoD component's ethics program and be personally accountable for the DoD component's compliance with every requirement of this part, including the ethics and procurement integrity training requirements;

(2) When authorized, appoint a DoD component DAEO, through a formal written delegation of authority, who is qualified to oversee and supervise the DoD component's ethics programs for DoD employees, both civilian and military (the GC, DoD, may serve as the DAEO for several DoD components);

(3) When authorized, appoint a DoD component Alternate DAEO who shall serve in the absence of the DoD component DAEO;

(4) Provide sufficient resources (including funding and investigative, audit, legal, training and administrative staff) to enable the DoD component DAEO or designee to implement and administer the DoD component's ethics programs in a positive and effective manner.

(b) Each DoD component Designated Agency Ethics Official (DAEO) shall:

(1) Be responsible for the implementation and administration of all aspects of the DoD component ethics program and manage and oversee local implementation and administration of all matters relating to ethics covered by this part.

(2) Appoint DoD component Deputy DAEOs and Ethics Counselors and delegate to them written authority to act on behalf of the DoD component DAEO;

(3) Ensure that ethics advice (and facts relied upon for such advice) is in writing, when practicable;

(4) Ensure that written opinions regarding the applicability of 10 U.S.C. 2397b and 41 U.S.C. 423 are provided within 30 days of request by any DoD employee provided that the requests is accompanied by complete and full in-

formation necessary to render an opinion;

(5) Ensure that proper collection, review, and handling of the DoD component's financial and employment disclosure reports, including those submitted by Presidential appointees for confirmation purposes;

(6) Be responsible for the implementation and administration of ethics and procurement integrity training and ensure that necessary resources are available to accomplish such training;

(7) Provide periodic ethics and procurement integrity training for Ethics Counselors;

(8) Certify Qualified Individuals to conduct ethics training;

(9) Assist agency designees, through the chain of command or supervision, in initiating prompt, effective action to evaluate and process violations, potential violations, and appearances of violations of ethics laws or regulations, in accordance with applicable procedures as discussed in subpart J of this part;

(10) Provide advice and assistance to DoD employees of the DoD component not otherwise served by a local Ethics Counselor;

(11) Oversee and coordinate local ethics programs through a system for periodic evaluation and ensure that the DoD component provides and maintains sufficient funding, staff, space and resources to administer the DoD component's ethics programs;

(12) Maintain liaison with the DoD EOC, OGE, and the DoD Standards of Conduct Office (SOCO), and provide to SOCO and OGE all information required by law or regulation;

(13) Represent the DoD component to OGE, Congress, the Executive Branch and the public on matters relating to ethics and standards of conduct.

(c) Each DoD component Alternate Designated Agency Ethics Official (Alternate DAEO) shall serve in the absence of the DoD component DAEO and, when so serving, is authorized to take any action this part indicates may be taken only by the DoD component DAEO.

(d) Each DoD component Deputy Designated Agency Ethics Official (Deputy DAEO) shall serve on behalf of the DoD

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component DAEO consistent with written delegation of authority from the DoD component DAEO.

(e) The head of each DoD component command or organization shall:

(1) Exercise personal leadership and take personal responsibility for establishing and maintaining the command's or organization's ethics program in coordination with the command's or organization's Ethics Counselors;

(2) Be personally accountable for the command's or organization's ethics program, including its ethics and procurement integrity training program, and the command's or organization's compliance with every requirement of this part;

(3) Provide sufficient resources to enable the command's organization's Ethics Counselors to implement and administer the local aspects of the command's or organization's ethics program in a positive and effective manner;

(4) Ensure the prompt resolution of any actual or apparent conflict of interest involving a DoD employee of the command or organization;

(5) Direct administrative officers (or equivalent) of the command or organization to ensure that the position descriptions of the DoD component command or organization indicate if financial disclosure report filing, annual ethics training or procurement integrity training is required and ensure the accuracy of personnel data provided by the director of the DoD component personnel office (or equivalent) on DoD employees of the command or organization;

(6) Direct administrative officers (or equivalent) of the command or organization to coordinate with the DoD component DAEO or designee to develop lists of all DoD employees of the command or organization who are required to receive ethics and procurement integrity training, schedule such training, annotate such lists to indicate when required training was accomplished and retain annotated lists for three years;

(7) Ensure that DoD employees of the command or organization who are in positions requiring the filing of SF

450,² "Confidential Financial Disclosure Report," July 1992, do so in a timely manner;

(8) Ensure that DoD employees of the command or organization attend required ethics and procurement integrity training.

(f) The General Counsel of each DoD component shall:

(1) Serve as the DAEO for the DoD component unless otherwise delegated;

(2) Support all aspects of the ethics program of the DoD component;

(3) Provide legal guidance and assistance to the DoD component DAEO or designee.

(g) The Judge Advocate General of each Military Department shall:

(1) Provide legal guidance and assistance to Ethics Counselors under his supervision;

(2) Support all aspects of the ethics program of the Military Department.

(h) The General Counsel, DoD (GC, DoD) shall:

(1) Maintain the DoD SOCO and provide sufficient resources to enable SOCO to oversee and coordinate DoD component ethics programs, to produce reports required by Congress and maintain report data, and to manage the DoD EOC;

(2) Represent DoD as a whole to OGE, Congress, the Executive Branch, and the public when called upon to do so on matters relating to ethics policy;

(3) Have the authority to incorporate changes to Government-wide regulations that are reprinted in this part without formal coordination.

(i) Each agency designee shall:

(1) In accordance with §84.10(g), provide prior approval or disapproval of outside activities by DoD employees under his responsibility;

(2) Receive and appropriately process reports of suspected violations of ethics statutes or regulations and possible conflicts of interest;

(3) Receive and appropriately process reports of non-compliance with the filing requirements of subpart G of this part;

²Copies are available from U.S. Office of Government Ethics, 1201 New York Avenue NW., Suite 500, Washington, DC 20005-3917.

(4) Perform all the other duties of an agency designee established in this part and in 5 CFR part 2635;

(5) Annually determine those positions under his responsibility that require the filing of SF 450s, and annual ethics and procurement integrity training.

(j) The DoD Standards of Conduct Office (SOCO) shall:

(1) Manage the DoD EOC and call periodic meetings to consider current issues in ethics and standards of conduct;

(2) Coordinate DoD component ethics programs, including providing uniform guidance and training material;

(3) Collect and publish important written opinions from DoD components, when practicable, to promote uniformity of ethics opinion throughout DoD;

(4) Monitor and assist DoD component DAEOs in ensuring effective corrective action is taken to remedy violations, potential violations and the appearance of violations of ethics laws or this part;

(5) Certify Qualified Individuals to conduct ethics training who may be used by DoD components;

(6) Make ethics and procurement integrity training for ethics trainers available on an ongoing basis to ensure that Qualified Individuals are uniformly prepared to provide such training;

(7) Distribute ethics and procurement integrity training material to all DoD component DAEOs for use in all types of ethics and procurement integrity training;

(8) In the interest of Federal Government efficiency and economy, establish and maintain a resource center of ethics and procurement integrity materials (including training materials) developed by DoD components.

(k) The DoD Ethics Oversight Committee (EOC) shall:

(1) Meet periodically, as necessary;

(2) Consider general ethics issues or current issues and make recommendations to promote uniformity of ethics opinions throughout DoD;

(3) Provide recommendations to DoD component DAEOs on particular ethics matters in accordance with this part;

(4) Provide recommendations for DoD input on proposed ethics legislation and regulations.

(l) The Director, Washington Headquarters Services shall:

(1) Prepare an annual report listing all the defense contractors that have been awarded \$10 million or more in defense contracts during the fiscal year and publish the report in the FEDERAL REGISTER not later than December 15 following the end of the fiscal year;

(2) Prepare an annual report listing all the defense contractors that have been awarded \$25,000 or more in defense contracts during the fiscal year and distribute to the DoD component DAEOs not later than December 31 following the end of the fiscal year.

(m) The Under Secretary of Defense for Acquisition shall prepare an annual report listing all the major defense systems as defined by 10 U.S.C. 2302(5), and the prime defense contractors responsible for each, that were in progress during the fiscal year and provide the report to the DoD SOCO for publication in the FEDERAL REGISTER not later than December 31 following the end of the fiscal year;

(n) Each Ethics Counselor shall:

(1) Provide written and oral advice, counseling, and assistance to his DoD component command or organization and to the DoD employees of his DoD component command or organization, on all ethics matters, particularly areas covered by this part and related statutes and regulations;

(2) Request assistance, through appropriate channels, from the DoD component DAEO or designee on any matter than cannot be resolved locally;

(3) Maintain a current copy of this part, and all changes, for review by any DoD employee;

(4) Maintain a thorough understanding of current DoD ethics policy through contact with the DoD component DAEO, attendance at periodic ethics training courses, and other appropriate methods;

(5) Promptly provide a copy to the DoD component DAEO of precedential written decisions to assist uniformity throughout the DoD components;

(6) Perform other duties as assigned by written delegation from the DoD component DAEO;

(7) Review financial disclosure reports in accordance with subpart G of this part.

(o) The Inspector General of each DoD component shall:

(1) Investigate ethics matters arising in the DoD component, and refer any such matters that involve suspected criminal violations to the appropriate criminal investigative office of the DoD component;

(2) Report to the DoD component DAE0 or designee on investigations that result in referrals to the Department of Justice (DoJ) and on disciplinary actions that must be reported in response to the OGE annual ethics survey;

(3) Ensure inspectors and agents are educated in ethics matters to ensure appropriate handling of ethics related cases and calls;

(p) The director of each DoD component personnel office (or equivalent) shall:

(1) Provide the DoD component DAE0 or designee such personnel data on DoD employees, both civilian and military, as may be required by the DoD component DAE0 or designee;

(2) Assign personnel action officers the responsibility of providing the required information at local levels;

(3) In coordination with the DoD component DAE0 or designee, establish procedures to inform new DoD employees of their obligation to receive ethics and procurement integrity training as required;

(4) In coordination with the DoD component DAE0 or designee, establish out-processing procedures and records to advise DoD employees of available counseling regarding post-employment and procurement integrity restrictions prior to departure from DoD;

(5) In coordination with the DoD component DAE0 or designee, establish procedures to advise incoming and outgoing DoD employees of their financial and employment disclosure reporting obligations.

(q) The administrative officer (or equivalent) of each DoD component command and organization shall:

(1) Ensure that each position description of the DoD component command

or organization indicates if an SF 278,³ "Public Financial Disclosure Report," January 1991, or SF 450, and annual ethics and procurement integrity training are required so prospective or new DoD employees are on notice of such requirements prior to employment;

(2) Upon the request of the DAE0 or designee, ensure the accuracy of personnel data provided by the Director of the DoD component personnel office on DoD employees of the DoD component command or organization;

(3) In coordination with the DoD component DAE0 or designee, develop a list of all DoD employees within the DoD component command or organization who are required to receive ethics and procurement integrity training;

(4) In coordination with the DoD component DAE0 or designee, ensure that DoD employees of the DoD component command or organization are scheduled to receive required ethics and procurement integrity training;

(5) Annotate such list to indicate when required training was accomplished and retain annotated list for three years.

(r) Each DoD employee shall:

(1) Abide by the ethical principles established by Executive Order 12674, ethics statutes, and the ethics regulations promulgated by OGE and the DoD thereunder;

(2) Set a personal example for fellow DoD employees in performing official duties within the highest ethical standards;

(3) Report suspected violations of ethics regulations in accordance with § 84.38(a);

(4) Perform all official duties so as to facilitate Federal Government efficiency and economy;

(5) Attend ethics and procurement integrity training as required;

(6) File financial and employment disclosure reports as required.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20029, Apr. 24, 1995]

³Copies are available from U.S. Office of Government Ethics, 1201 New York Avenue NW., Suite 500, Washington, DC 20005-3917.

Subpart B—Standards of Ethical Conduct

§ 84.5 Office of Government Ethics regulation.

See 5 CFR part 2635, “Standards of Ethical Conduct for Employees of the Executive Branch.” The following sections of 5 CFR part 2635 are military general orders: § 2635.202(a); § 2635.202(c)(1), (2), (3), (4), and (5) (excluding example and paragraphs (c)(4) (i) through (iii)); § 2635.302; § 2635.402(a) (excluding note); § 2635.502(a) (excluding paragraphs (a)(1) and (2)); § 2635.503(a) (excluding examples); § 2635.604(a) (excluding the last sentence and examples); § 2635.606(a) (excluding the last sentence and example); the first sentence of § 2635.702; § 2635.702(a) (excluding examples); § 2635.702(b) (excluding examples); § 2635.702(c) (excluding examples); § 2635.703(a); § 2635.704(a); § 2635.705(b) (excluding examples); the first paragraph of § 2635.802; § 2635.802(a); § 2635.802(b) (excluding sentence beginning “Employees are cautioned * * *” and excluding examples); § 2635.805(a); § 2635.807(a) (excluding paragraphs (a)(1) and (2)); the first sentence of § 2635.808; § 2635.808(b) (excluding example); and § 2635.808(c) (excluding paragraph (c)(3) and examples).

§ 84.6 DoD supplement to 5 CFR part 2635.

See 5 CFR 3601.101–3601.108, “Supplemental Standards of Conduct for Employees of the Department of Defense.” The following sections of 5 CFR 3601.101–3601.108 are military general orders: § 3601.104(a) (excluding paragraphs (a)(1) and (2)); § 3601.104(b); § 3601.105(a); § 3601.105(b); § 3601.105(c); § 3601.106; and § 3601.108 (excluding paragraphs (a) through (c)).

§ 84.7 DoD guidance.

(a) *Gifts*—(1) *Procurement officials*. In addition to the restrictions on gifts in 5 CFR part 2635, subpart B, procurement officials are subject to the gift acceptance restrictions of the procurement integrity statute. See 41 U.S.C. 423 and 48 CFR 3.104.

(2) *Gifts from foreign governments*. There are special DoD rules governing gifts from foreign governments. See 5 U.S.C. 7342 and 32 CFR part 95.

(3) *Ship launch and similar ceremonies*. A DoD employee may not accept gifts in connection with a ceremony to mark the completion of a milestone in shipbuilding, aircraft completion, or similar vehicle launch or roll-out unless attendance is official and is approved by the head of the DoD component command or organization and the gifts are limited to the following (see 5 U.S.C. 7301 note):

(i) Attendance at appropriate functions incident to the ceremony, such as a dinner preceding the ceremony and reception following it, and related food, hospitality and entertainment, as long as the function and related benefits are not lavish, excessive, or extravagant;

(ii) Tangible gifts or mementos in connection with the ceremony to DoD employees, their spouses, and their dependent children, who are official participants in the ceremony, as long as the aggregate retail value does not exceed \$100 per family and the cost is not borne by the Federal Government. When such gifts exceed the \$100 limit, the recipient shall pursue one of the following alternatives:

(A) Return the gift to the donor;
 (B) Retain the gift after reimbursing the donor the full value of the gift; or
 (C) Forward the gift to the appropriate DoD component official for disposition as a gift to the Federal Government in accordance with statute. See 10 U.S.C. 2601.

(b) *Use of Federal Government telephone systems*. See GSA regulation 41 CFR part 201–21, subpart 201–21.6, on management of Federal Government telecommunications resources.

(1) The use of Federal Government telephone systems (including calls over commercial systems which will be paid for by the Federal Government), except as provided in paragraph (b)(2) of this section shall be limited to the conduct of official business. Such official business calls may include emergency calls and calls that the DoD components determine are necessary in the interest of the Federal Government.

(2) Personal calls (such as calls to speak to spouse/minor children or to arrange for emergency repairs to residence or automobile) that must be made during working hours over the

commercial local/long distance network may properly be authorized as being in the best interest of the Federal Government if the call is consistent with the following criteria:

(i) It does not adversely affect the performance of official duties by the DoD employee or the DoD employee's organization;

(ii) It is of reasonable duration and frequency; and

(iii) It could not reasonably have been made at another time;

(iv) And, in the case of long distance calls, is:

(A) Charged to the employee's home telephone number or other non-Federal Government number (third number call);

(B) Made to an 800 toll-free number;

(C) Charged to the called party if a non-Federal Government number (collect call);

(D) Charged to a personal telephone credit card; or

(E) When traveling for more than one night on Federal Government business in the United States, a brief call to his residence to notify family of a schedule change.

(c) *Gambling.* (1) [The following is a General Order] A DoD employee shall not participate while on Federally-owned or leased property or while on duty (for military members, this means, in this context, present for duty) for the Federal Government in any gambling activity prohibited by 5 CFR 735.201 except:

(i) Activities necessitated by a DoD employee's law enforcement duties;

(ii) Activities by organizations composed primarily of DoD employees or their dependents for the benefit of welfare funds for their own members or for the benefit of other DoD employees or their dependents, subject to the limitations of local law and of §84.9(k) and (l), when approved by the Head of the DoD Component or designee;

(iii) Private wagers among DoD employees if based on a personal relationship and transacted entirely within assigned Federal Government living quarters and within the limitations of local laws [end of General Order; or

(iv) Purchases of lottery tickets authorized by any State from blind vendors licensed to operate vending facilities

in accordance with 20 U.S.C. 107a(5).

(2) Gambling with a subordinate may be a violation of Articles 133 and 134 of the Uniform Code of Military Justice (UCMJ) (10 U.S.C. 801–940).

(3) Gambling may be prohibited by Federal Government building and grounds regulations, such as 32 CFR part 40b which prohibits gambling in the Pentagon.

(d) *Outside employment and activity.* In addition to 5 CFR 3601.107 except to the extent that when procedures have been established by higher authority for any class of DoD employees (e.g., DoD Directive 6025.7⁴), agency designees may require DoD employees under their jurisdiction to report any outside employment or activity prior to engaging in the employment or activity. See §84.10(g).

(1) The commander, head of the organization, or supervisor may prohibit the employment or activity if he believes that the proposed outside activity will detract from readiness or pose a security risk.

(2) If action is not taken to prohibit the employment or activity, the DoD employee is free to engage in the employment or activity in keeping with other restrictions of this part.

(e) *Use of military title by retirees or reserves.* Retired military members and members of reserve components, not on active duty, may use military titles in connection with commercial enterprises, provided they clearly indicate their retired or inactive reserve status. However, any use of military titles is prohibited if it in any way casts discredit on DoD or gives the appearance of sponsorship, sanction, endorsement, or approval by DoD. In addition, in overseas areas, commanders may further restrict the use of titles by retired military members and members of reserve components.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20029, Apr. 24, 1995]

⁴Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Subpart C—Activities With Non-Federal Entities

§ 84.8 Office of Government Ethics regulation.

See 5 CFR part 2636, “Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments of Charities in Lieu of Honoraria.”

§ 84.9 Official participation in non-Federal entities.

(a) *Attendance.* (1) Agency designees may permit their DoD employees to attend meetings, conferences, seminars or similar events sponsored by non-Federal entities in their official DoD capacities at Federal Government expense if there is a legitimate Federal Government purpose in accordance with 5 U.S.C. 4101 *et seq.* and 37 U.S.C. 412, such as training a DoD employee beyond maintaining professional credentials or gathering information of value to the DoD.

(2) DoD employees are prohibited from attending events in their official DoD capacities at Federal Government expense in order to acquire or maintain professional credentials that are a minimum requirement to hold the DoD position. See 5 U.S.C. 5946 and 31 U.S.C. 1345.

(b) *Membership.* DoD employees may serve as DoD liaisons to non-Federal entities when appointed by the head of the DoD Component command or organization who determines there is a significant and continuing DoD interest to be served by such representation. Liaisons serve as part of their official DoD duties and under DoD component memberships. DoD employees may not accept DoD component membership in a non-Federal entity on behalf of DoD except as provided by statute or regulation. DoD may pay for DoD component memberships in accordance with opinions of the Comptroller General, such as 24 Comp. Gen. 814 (which may be purchased from the U.S. Government Printing Office, Washington, DC 20402). DoD is prohibited from paying for individual memberships by 5 U.S.C. 5946. See also 10 U.S.C. 2601.

(c) *Management.* DoD employees may not participate in their official DoD capacities in the management of non-

Federal entities without authorization from the Head of the DoD component. However, authorized DoD employees may officially represent DoD in discussions of matters of mutual interest with non-Federal entities, may participate in the determinations and conclusions of non-Federal entities, and may cast a vote on issues within the scope of the DoD employees’ official responsibilities.

(d) *Impartiality of agency designee and travel-approving Authority.* When a DoD employee requests permission to travel to or participate in activities of a non-Federal entity and the agency designee or travel approving authority is an active participant in the non-Federal entity, that agency designee or travel approving authority may not act on the DoD employee’s request but shall defer such action to the next higher superior or another independent DoD authority. See 5 CFR 2635.402 and 2635.502 and 18 U.S.C. 208.

(e) *Impartiality of DoD employees.* DoD employees are generally prohibited from engaging in any official activities in which a non-Federal entity is a party or has a financial interest if the DoD employee is an active participant in the non-Federal entity or has been an officer in the non-Federal entity within the last year. See 5 CFR 2635.402 and 2635.502 and 18 U.S.C. 208.

(f) *Endorsement.* [The following is a General Order] Endorsement of a non-Federal entity may be neither stated nor implied by DoD or DoD employees and DoD employees may not use their titles or positions to suggest official endorsement or preferential treatment of any non-Federal entity except those listed in § 84.9(k) [end of General Order]. Use of military grade as part of an individual’s name in relationship to membership in private organizations is permissible. See 5 CFR 2635.702(c).

(g) *Distributing information.* In accordance with public affairs regulations, official channels may be used to notify DoD employees of events sponsored by non-Federal entities.

(h) *Remuneration.* DoD employees may not receive any salary or salary supplement from a non-Federal entity for performance of DoD duties.

(i) *Co-sponsorship.* A DoD component is a sponsor or co-sponsor of an event

when that DoD component is one of the organizations holding the event or in whose name the event is held. Co-sponsorship of events with a non-Federal entity is prohibited except as follows:

(1) A DoD component may co-sponsor a civic or community activity where the head of the DoD component command or organization determines that the activity is unrelated to the purpose or business of the co-sponsoring, non-Federal entity or the purpose or business of any of its members. See DoD Instruction 5410.20⁵;

(2) A DoD component may co-sponsor a conference, seminar, or similar event with a non-Federal entity when all of the following requirements are met:

(i) The head of the DoD component command or organization finds that the subject matter of the conference (or co-sponsored portion) is scientific, technical or professional issues that are relevant to the DoD component's mission;

(ii) The head of the DoD component command or organization finds that the purpose of co-sponsorship is to transfer federally developed technology or to stimulate wider interest and inquiry into the scientific, technical or professional issues previously identified;

(iii) The non-Federal entity is a recognized scientific, technical or professional organization approved by the DoD component DAEO for this purpose; and

(iv) The DoD component accomplishes the co-sponsorship through a contract, grant or cooperative agreement as identified in 31 U.S.C. 6303 through 6306; or a Cooperative Research and Development Agreement (CRDA) as defined in 15 U.S.C. 3710a; or a cooperative agreement or other transaction identified in 10 U.S.C. 2371.

(3) If the DoD component desires to sponsor an event, but requires assistance in making the arrangements, the DoD component may arrange, through normal acquisition procedures, to have a non-Federal entity provide whatever assistance is necessary. If the event is open to individuals outside the Federal Government, attendance may not be limited to members of the supporting

non-Federal entity. The supporting non-Federal entity may be permitted to mention its support in conference materials, but not in terms which imply that it is sponsoring or co-sponsoring the event.

(j) *Participation in conferences and similar events.* Subject to the provisions of paragraph (l) of this section and in accordance with public affairs regulations and 31 U.S.C. 1345, DoD employees may participate in their official DoD capacities as speakers or panel members at conferences, seminars, or similar events sponsored by non-Federal entities.

(k) *Fundraising and membership drives.* (1) [The following is a General Order] Except as provided in paragraph (l) of this section, DoD components shall not officially support and DoD employees shall not officially endorse or officially participate in membership drives or fundraising for any non-Federal entity except the following organizations which are not subject to the provisions of paragraph (l) of this section:

(i) The Combined Federal Campaign (CFC);

(ii) Emergency and disaster appeals approved by the Office of Personnel Management (OPM);

(iii) Army Emergency Relief;

(iv) Navy-Marine Corps Relief Society;

(v) Air Force Assistance Fund, including:

(A) Air Force Enlisted Men's Widows and Dependents Home Foundation, Inc.;

(B) Air Force Village;

(C) Air Force Aid Society;

(D) General and Mrs. Curtis E. LeMay Foundation.

(vi) Other organizations composed primarily of DoD employees or their dependents when fundraising among their own members for the benefit of welfare funds for their own members when approved by the head of the DoD component command or organization [end of General Order].

(2) Fundraising by DoD employees is strictly regulated by Executive Order 12353, 47 FR 12785, 3 CFR, 1982 Comp., p. 139, 5 CFR part 950, DoD Directive

⁵ See footnote 4 to § 84.7(d).

5035.1⁶, DoD Instruction 5035.5⁷, DoD Directive 5410.18⁸, 5 CFR 2635.808 and by the prohibition against preferential treatment established in paragraph (f) of this section.

(l) *Support of non-Federal entity events.* (1) The head of a DoD component command or organization may provide DoD employees in their official capacities as speakers, panel members or other participants, or, on a limited basis, the use of DoD facilities and equipment (and the services of DoD employees necessary to make proper use of the equipment), in support of an event sponsored by a non-Federal entity when the head of the DoD command or organization determines all of the following:

(i) The support does not interfere with the performance of official duties and would in no way detract from readiness;

(ii) The sponsoring, non-Federal entity is not affiliated with the CFC (including local CFC) or, if affiliated with the CFC, the Director, OPM or designee has no objection to DoD support of the event (OPM generally has no objection to support of events that do not specifically target Federal employees for fundraising);

(iii) The community relations with the immediate community and/or other legitimate DoD interests are served by the support;

(iv) It is appropriate to associate DoD, including the concerned Military Department, with the event;

(v) The event is of interest and benefit to the local civilian or military community as a whole;

(vi) The DoD Component command or organization is able and willing to provide the same support to comparable events that meet the criteria of this subsection and are sponsored by other similar non-Federal entities;

(vii) The use is not restricted by other statutes or regulations; and

(viii) Except for a charitable fundraising event that meets all other criteria for DoD participation, no admission fee (beyond what will cover the reasonable costs of sponsoring the

event) is charged for the event, no admission fee (beyond what will cover the reasonable costs of sponsoring the event) is charged for the portion of the event supported by the DoD, or DoD support to the event is incidental to the entire event in accordance with public affairs guidance.

(2) Involvement of DoD resources in air shows sponsored by non-Federal entities is approved or disapproved by the Office of the Assistant Secretary of Defense (Public Affairs).

(3) Speeches by DoD employees at events sponsored by non-Federal entities are not precluded when the speech expresses an official DoD position in a public forum in accordance with public affairs guidance.

(m) *Relationship governed by other authorities.* In addition to the provisions of this section, certain organizations have special relationships with the DoD or its employees specially recognized by law or by other directives. The organizations include:

(1) Certain banks and credit unions (32 CFR part 231);

(2) United Service Organization (DoD Directive 1330.12⁹);

(3) Labor organizations (5 U.S.C. Chapter 71; DoD 1400.25-M¹⁰, Chapter 711);

(4) Combined Federal Campaign (Executive Order 10927, 26 FR 2383, 3 CFR, 1959-1963 Comp., p. 508) DoD Directive 5035.1;

(5) Association of Management Officials and Supervisors (DoD Instruction 5010.30¹¹);

(6) American Registry of Pathology (10 U.S.C. 177); Henry M. Jackson Foundation for the Advancement of Military Medicine (10 U.S.C. 178); American National Red Cross (10 U.S.C. 2542); Boy Scouts Jamborees (10 U.S.C. 2544); Girl Scouts International Events (10 U.S.C. 2545); Shelter for Homeless (10 U.S.C. 2546); National Military Associations; Assistance at National Conventions (10 U.S.C. 2548); Assistance from American National Red Cross (10 U.S.C. 2602); United Seaman's Service Organization (10 U.S.C. 2604); Scouting: Cooperation

⁹ See footnote 4 to § 84.7(d).

¹⁰ Written request should be forwarded to: OASD(P&R)/CPP/EEO, room 3D269, Pentagon, Washington, DC 20301.

¹¹ See footnote 4 to § 84.7(d).

⁶ See footnote 4 to § 84.7(d).

⁷ See footnote 4 to § 84.7(d).

⁸ See footnote 4 to § 84.7(d).

and Assistance in Foreign Areas (10 U.S.C. 2606); and Civil Air Patrol (10 U.S.C. 9441–9442).

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20029, Apr. 24, 1995]

§ 84.10 Personal participation in non-Federal entities.

(a) *Participation*—(1) *Fundraising and other activities.* Subject to other provisions of this part, DoD employees may voluntarily participate in activities of non-Federal entities as individuals in their personal capacities provided they act exclusively outside the scope of their official position. Purely personal, unofficial, volunteer efforts to support fundraising are not prohibited where the efforts do not imply DoD endorsement. The head of the DoD component command or organization may authorize such activities outside the Federal Government workplace, such as at public entrances, in community support facilities and in personal quarters. See 5 CFR part 950 and Executive Order 12353. These activities may be further limited by Federal Government building and grounds regulations.

(2) *Professional associations and learned societies.* Agency designees may permit their DoD employees to voluntarily participate in the activities of non-profit professional associations and learned societies without being charged leave and to use Federal Government equipment or administrative support services to prepare papers to be presented at such association or society events or to be published in professional journals, when:

(i) The participation or paper is related to the DoD employee's official position or to DoD functions, management or mission; and

(ii) The Agency can derive some benefit from the participation or preparation, such as expansion of professional expertise by DoD employees or improved public confidence derived from the professional recognitions of the DoD employee's competence;

(iii) The participation or preparation of the paper does not interfere with the performance of official DoD duties.

(3) *Community support activities.* Agency designees may permit excused absences for reasonable periods of time for their DoD employees to voluntarily

participate in community support activities that promote civic awareness and uncompensated public service such as disaster relief events, blood donations, and voting and registering to vote.

(4) *Impartiality of agency designee and travel approving authority.* When a DoD employee requests permission to travel to or participate in activities of a non-Federal entity and the agency designee or travel approving authority is an active participant in the non-Federal entity, that agency designee or travel approving authority may not act on the DoD employee's request but shall defer such action to the next higher superior or another independent DoD authority. See 5 CFR 2635.402 and 2635.502 and 18 U.S.C. 208.

(b) *Membership and management.* DoD employees may become members and participate in the management of non-Federal entities as individuals in a personal capacity provided they act exclusively outside the scope of their official position. Except for such service in the organizations listed in § 84.9(k)(1), a DoD employee may not serve in a personal capacity as an officer, member of the Board of Directors, or in any other similar position in any non-Federal entity offered because of their DoD assignment or position.

(c) *Impartiality of DoD Employees.* DoD employees are generally prohibited from engaging in any official activities in which a non-Federal entity is a party or has a financial interest if the DoD employee is an active participant in the non-Federal entity or has been an officer in the non-Federal entity within the last year. See 5 CFR 2635.402 and 2635.502 and 18 U.S.C. 208.

(d) *Interference with employment of local civilians.* Enlisted members on active duty may not be ordered or authorized to leave their post to engage in a civilian pursuit, business, or professional activity if it interferes with the customary or regular employment of local civilians in their art, trade, or profession. See 10 U.S.C. 974.

(e) *Competition with civilian musicians.* Members of military bands are very restricted in the degree to which they may compete off base with civilian musicians. See 10 U.S.C. 3634, 6223 and 8634.

(f) *Use of Federal Government resources—(1) Authorized uses.* Other than Federal Government time authorized in paragraphs (a)(2) and (a)(3) of this section, Federal Government assets, employees, or property may not be used in support of personal participation in non-Federal entities, except as follows:

(i) Agency designees may permit occasional use of Federal Government telephone systems in keeping with GSA rules on personal calls, provided that such use does not interfere with the performance of official duties. See §84.7(b) and 41 CFR 201-21.6;

(ii) Because the cost to the Federal Government is minimal, the use of office telecommunications equipment for local calls, word processing equipment, libraries and similar resources and facilities whose use would not affect Federal Government costs significantly, may be permitted by the agency designee if:

(A) The non-Federal entity is not a prohibited source;

(B) The agency designee determines that:

(1) A legitimate public interest is served by the use; or

(2) The use would enhance the professional development or skills of the DoD employee in his current position.

(C) The use of such resources is made only during personal time, such as excused absence, lunch period, or after duty hours; and

(D) The use does not interfere with the performance of official duties.

(2) *Prohibited uses.* (i) [The following is a General Order] Because of the potential for significant cost to the Federal Government, and the potential for abuse, DoD employees, such as secretaries, clerks, and military aides, may not be used to support the unofficial activity of another DoD employee in support of non-Federal entities except as provided in paragraph (a)(1) of this section [end of General Order].

(ii) [The following is a General Order] For the same reasons, copiers and other duplicating equipment may not be used for unofficial activity in support of non-Federal entities [end of General Order].

(g) *Prior approval of outside employment and business activities.* (1) A DoD

employee, other than a special Government employee, who is required to file a financial disclosure report, SF 450 or SF 278, shall obtain written approval from the agency designee before engaging in a business activity or compensated outside employment with a prohibited source, unless general approval has been given in accordance with paragraph (g)(2) of this section. Approval shall be granted unless a determination is made that the business activity or compensated outside employment is expected to involve conduct prohibited by statute or regulation.

(i) Business activity means any business, contractual or other financial relationship not involving the provision of personal services by the DoD employee. It does not include a routine commercial transaction or the purchase of an asset or interest, such as common stock, that is available to the general public.

(ii) Employment means any form of non-Federal Government employment or business relationship involving the provision of personal services by the DoD employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee.

(iii) Prohibited source has the meaning set forth in 5 CFR 2635.203(d), as modified by the separate agency designations in 5 CFR 3601.102.

(2) The DoD component DAEO or designee may, by a written notice, exempt categories of business activities or employment from the requirement of paragraph (g)(1) of this section for prior approval based on a determination that business activities or employment within those categories would generally be approved and are not likely to involve conduct prohibited by statute or regulation.

(3) A copy of the request for prior approval and the written approval shall be kept with the filed copy of the DoD employee's financial disclosure report, SF 450 or SF 278, or with the local Ethics Counselor.

(4) Such DoD employees who have not obtained prior approval and who

are, on the effective date of this supplemental rule, already engaged in an outside activity that requires prior approval shall have 90 days from that date to obtain such approval.

(5) Except to the extent that when procedures have been established by higher authority for any class of DoD employee (e.g., DoD Directive 6025.7¹², agency designees may require DoD employees under their jurisdiction to report any outside employment or activity prior to engaging in the employment or activity.

(i) The commander, head of the organization, or supervisor may prohibit the employment or activity if he believes that the proposed outside activity will detract from readiness or pose a security risk.

(ii) If action is not taken to prohibit the employment or activity, the DoD employee is free to engage in the employment or activity in keeping with other restrictions of this part.

(h) *Teaching, speaking and writing—(1) Disclaimer for speeches and writings devoted to agency matters.* [The following is a General Order] A DoD employee who uses or permits the use of his military grade or who includes or permits the inclusion of his title or position as one of several biographical details given to identify himself in connection with teaching, speaking or writing, in accordance with 5 CFR 2635.807(b)(1), shall make a disclaimer if the subject of the teaching, speaking or writing deals in significant part with any ongoing or announced policy, program or operation of the DoD employee's agency, as defined in 5 CFR 3601.102(a), and the DoD employee has not been authorized by appropriate agency authority to present that material as the agency's position.

(i) The required disclaimer shall expressly state that the views presented are those of the speaker or author and do not necessarily represent the views of DoD or its components.

(ii) Where a disclaimer is required for an article, book or other writing, the disclaimer shall be printed in a reasonably prominent position in the writing itself. Where a disclaimer is required for a speech or other oral presentation,

the disclaimer may be given orally provided it is given at the beginning of the oral presentation [end of General Order].

(2) *Security clearance.* A lecture, speech, or writing that pertains to military matters, national security issues, or subjects of significant concern to DoD shall be reviewed for clearance by appropriate security and public affairs offices prior to delivery or publication.

(3) *Honoraria.* Compensation for a lecture, speech or writing may be restricted by the honoraria prohibition of 5 U.S.C. App. (Ethics in Government Act of 1978, sec. 501); 5 CFR part 2636, and 5 CFR 2635.807. However, the U.S. Office of Government Ethics, by memorandum dated February 2, 1994,¹³ determined in accordance with a Department of Justice letter to the Director, Office of Government Ethics,¹⁴ that the Department of Justice will not seek to impose penalties for violations of 5 U.S.C. App. (Ethics in Government Act of 1978, sec. 501); with respect to reseat of honoraria between September 26, 1993 and the date on which the Supreme Court issues its decision on this matter.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

Subpart D—Travel Benefits

§ 84.11 Acceptance of official travel benefits in kind or payment for official travel expenses.

(a) *Acceptance from non-Federal sources—(1) Official travel.* Official travel by DoD employees shall be funded by the Federal Government except that DoD components may accept official travel benefits, including in kind subsistence and accommodations and payments or reimbursements of expenses, from non-Federal sources as provided in this subpart of this part.

(2) *Personal travel.* This subpart does not apply to travel benefits provided to DoD employees in their personal capacities. However, DoD employees must report such travel expenses when appropriate in accordance with subpart G of this part. There may be limitations

¹² See footnote 4 to § 84.7(d).

¹³ See footnote 2 to § 84.4(d)(7).

¹⁴ See footnote 2 to § 84.4(d)(7).

on acceptance of travel benefits in a personal capacity, including limitations on acceptance from prohibited sources, because of official position, and under 41 U.S.C. 423.

(3) *Acceptance procedures.* Any official travel benefits from non-Federal sources accepted by the travel approving authority must be:

(i) Approved in writing by the travel approving authority with the advice of the DoD employee's Ethics Counselor;

(ii) If accepted under the authority granted by 31 U.S.C. 1353, approved in advance of travel.

(4) *Spousal travel.* The travel approving authorities for travel of a spouse accompanying a DoD employee on official travel that is paid for or provided in kind by a non-Federal source are as follows:

(i) For DoD employees of OSD, Defense Agencies and OSD Field Activities, the Executive Secretary, OSD;

(ii) For DoD employees of Military Departments, the Secretaries concerned or their designees;

(iii) For DoD employees of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the United or Specified Commands, and the Combined Commands and agencies, the Chairman of the Joint Chiefs of Staff, or his designee.

(b) *Acceptance of travel and related expenses by a DoD component from non-Federal sources—(1) Attendance at a meeting or similar function (31 U.S.C. 1353).*

(i) In accordance with 31 U.S.C. 1353 and GSA travel regulations, 41 CFR 301-1.2 and part 304, Heads of DoD components may accept travel benefits from a non-Federal source incurred by DoD employees in connection with their attendance in an official capacity at a meeting or similar function. The Joint Federal Travel Regulations¹⁵ (JFTR), Chapter 7, part W, Paragraphs U7900-7908 (DoD Uniformed Services) and Joint Travel Regulations¹⁶ (JTR), Chapter 4, part Q, Paragraphs C4900-4908 (DoD Civilian Personnel) implement 41 CFR 301-1.2 and part 304. For

¹⁵For sale by Superintendent of Documents, Congressional Sales Office, U.S. Government Printing Office, Washington, DC 20402

¹⁶See footnote 15 to § 84.11(b)

detailed guidance as to the applicability and application of specific authority, these regulations should be consulted directly.

(ii) Where the GSA travel regulations, 41 CFR 301-1.2 and part 304, are inconsistent with the JFTR and JTR, 41 CFR 301-1.2 and part 304 are the controlling authorities.

(iii) A DoD component may not accept travel benefits from non-Federal sources under any other gift acceptance authority if 31 U.S.C. 1353 applies.

(iv) *Payment guidelines.* DoD employees (or their spouses) shall not accept cash payments on behalf of the Federal Government.

(A) When travel benefits are paid for rather than provided in kind, payments from the non-Federal source will be by check or similar instrument made payable to the United States Treasury. Any such payment received by the DoD employee (or spouse) shall be submitted with his travel voucher as soon as practicable.

(B) The DoD employee shall exclude from his travel voucher any request for reimbursement for travel benefits furnished in kind by a non-Federal source on the travel voucher to ensure that appropriate deductions are made in the travel, per diem, or other allowances payable by the United States.

(v) *Reporting.* Each travel-approving authority designated by the DoD component Head to accept travel benefits from non-Federal sources shall submit a report to the DoD component DAEO or designee semiannually on April 30 and October 31 to accommodate the required reporting to OGE on May 31 and November 30 each year. See JFTR, Paragraph U7908 and JTR, Paragraph C4908 for details on what to report.

(2) *DoD component gift acceptance statutes.* In accordance with procedures established by those DoD components with gift acceptance authority under 10 U.S.C. 2601, travel benefits may be accepted by such DoD component Heads or their designees.

(i) This authority may not be used to accept travel benefits covered by 31 U.S.C. 1353.

(ii) This authority may be used to accept, for example, reimbursement for travel benefits of flight crew members that accompany Federal Government

aircraft to international air shows or the expenses incurred by the attendance of DoD employees at ceremonial events in order to enhance a DoD component's public relations. This authority may also be used to accept travel benefits offered after travel has begun or has been completed.

(3) *DoD component DAEO or designee approval.* Acceptance of official travel benefits from non-Federal sources described in §84.11(b)(1) and (2) requires the concurrence of the DoD component DAEO or designee.

(c) *Acceptance of contributions, awards and other payments by DoD employees from tax-exempt organizations (5 U.S.C. 4111)—(1) Applicability.* Military members are permitted to accept contributions, awards and other payments the same as civilian DoD employees in accordance with the requirements of this section.

(2) *Conditions for acceptance.* Except when acceptance is permitted under 5 CFR 2635.204(d), DoD employees are permitted to accept contributions, awards and other payments directly from non-Federal sources only when all of the following conditions are met:

(i) The source is tax-exempt organization described by 26 U.S.C. 501(c)(3) or a State or local government (see 5 CFR part 410, subpart G);

(ii) The contribution, award, or payment of travel benefits is incidental to training in non-Federal Government facilities or attendance at a meeting;

(iii) An appropriate deduction is made from any payment by the Federal Government to the DoD employee for their official travel entitlement;

(iv) The contribution, award, or payment is not a reward for services to the non-Federal source;

(v) Acceptance of the contribution, award or payment would not reflect unfavorably on the DoD employee's ability to perform his duties in a fair and objective manner, nor otherwise compromise the integrity of any Federal Government action; and

(vi) The travel approving authority approves the acceptance of the contribution, award or payment in writing.

(3) *Payments from multiple sources.* When more than one organization participates in making a single contribu-

tion, award, or payment, only the organization that selects the recipient and administers the funds from which the contribution, award, or payment is made will be considered the source.

(4) *Reporting.* (i) Financial disclosure reporting individuals must report acceptance of these travel benefits if the fair market value of those benefits reaches the reportable amount.

(ii) Travel benefits accepted under 5 U.S.C. 4111 shall be reported by the travel-approving authority directly to the DoD component DAEO or designee within 30 days after completion of travel. These reports shall include, at a minimum, the information required for the semiannual reports by the JFTR, Paragraph U7908 and JTR, Paragraph C4908.

(d) *Receipt and disposition of foreign gifts and decorations (5 U.S.C. 7342).* DoD employees may accept travel and travel-related expenses from a foreign government in accordance with 32 CFR part 95.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

§84.12 DoD guidance.

(a) *Acceptance of incidental benefits.* There are two basic principles DoD employees must consider in determining whether they may accept benefits offered incident to their official travel. See DoD travel rules (e.g., DoD Directive 4500.9¹⁷).

(1) *Federal Government property.* Anything that does not fall within a gift exception or exclusion under 5 CFR part 2635, subpart B, or 5 CFR 3601.101-3601.108, which is received by a DoD employee as a result of official travel, belongs to the Federal Government, regardless of the source of the funding.

(i) Travel coupons, tickets, promotional items of more than nominal value, frequent flyer mileage credits, and most other benefits received by DoD employees from non-Federal sources (e.g., airlines, rental car companies, hotels) incident to their official travel belong to the Federal Government. They may not be used for personal purposes.

(ii) If possible, such benefits will be turned over to the appropriate official.

¹⁷See footnote 4 to §84.7(d).

See JFTR, Paragraph U2010B, JTR, Paragraph C1200, 41 CFR part 301 and 41 CFR 101-25.103.

(2) *Gifts from outside sources.* Benefits offered to a DoD employee from a non-Federal source incident to official travel that cannot be used for official purposes must be treated as gifts to the DoD employee. DoD employees may not accept such gifts if acceptance would violate 5 CFR part 2635, subpart B.

(b) *Examples of benefits considered Federal Government property—(1) Frequent flying mileage credits.* Frequent flyer mileage credits earned as a result of official travel are the property of the Federal Government. They shall not be used except in connection with official travel. Credits are used in connection with official travel either by redeeming them for airline tickets which are used for official travel or by using them for travel upgrades while on official travel (e.g., airline seat upgrades, rental car upgrades, hotel upgrades). First consideration should be given to the former. When mileage credits for official and personal travel have been commingled in the same account, only those credits or points that clearly can be shown to have been derived from personal travel may be used for future personal travel. All other points in the account belong to the Federal Government.

(2) *Other awards to users of travel services.* Travel companies sometimes give away merchandise, or award points toward merchandise or other prizes, to users of their services. If the travel services used are paid for by the Federal Government, any resulting award belongs to the Federal Government (e.g., if a DoD employee renting a car for official business is offered either a calculator or points toward a larger prize, both would belong to the Federal Government).

(c) *Examples of benefits treated as gifts to an individual—(1) Travel upgrades.* Travel upgrades are commonly offered for such travel accommodations as airline seats, rental cars, and hotel rooms. Some travel upgrades are given on the spot without any prearranged entitlement. Others are provided pursuant to some prearranged entitlement, such as a coupon. DoD employees on official travel may accept benefits such as an

airline seat upgrade to first class, a luxury rental car in place of a compact, or a hotel room with a view instead of an interior room, for official use as long as there is no extra charge to the Federal Government to obtain the upgrade (see 5 CFR 2635.204(c)), subject to the following:

(i) *On the spot upgrades.* DoD employees may accept an upgrade offered on the spot under circumstances in which such upgrades are generally available to the public or at least to all Federal Government employees or all military members. For example, a travel company may provide upgrades to remedy overbooking or overcrowding, due to a shortage of smaller cars, or simply for customer relation purposes; or upgrades may be offered to all military members in uniform. No upgrade may be accepted, however, if it is provided on the basis of the DoD employee's grade or position. Upgrades resulting from involuntary "bumping" while on official travel may not be used for personal travel. See 5 CFR 2635.202(a)(2);

(ii) *Use of upgrade certificates (other than those obtained for frequent flyer miles).* Some travel companies distribute coupons for free travel upgrades as a promotional offer. DoD employees may accept and use such coupons if they are realistically available to the general public (e.g., widely available coupons usable by bearer) or to all Federal Government employees or all military members (e.g., coupons available to any Federal Government employee for official travel). DoD employees may not use coupons provided on the basis of their grade or position.

(2) *"Gold card" and similar memberships.* Certain airlines offer special benefits, including free upgrades, to members of their traveler incentive programs (e.g., Gold card, Key Club, etc.). Membership in these programs ordinarily is earned by accumulating a large number of travel miles during the current calendar year, or in some cases, memberships may be purchased. DoD employees who obtain eligibility under these circumstances (i.e., by purchasing a membership with their personal funds or by accumulating the

necessary miles, even by official travel) may accept the membership and resulting benefits, including travel upgrades. If membership in the program is offered to DoD employees who have not met the usual requirements for membership, however, primarily because of the DoD employee's grade or position, neither the membership nor its benefits may be accepted.

(3) *Prizes in "open" and "closed" contest.* When travel companies and related organizations offer prizes in a competition that is open to the general public, so that no one must perform official travel to win, a DoD employee may keep any prize he wins, even if he happened to enter the contest only because of official travel (e.g., a DoD employee flying on official business receives the winning entry blank in an airline's contest while on the flight, but individuals not using the airline will be given the entry blank on request). Some travel companies and related organizations offer prizes in connection with official travel. The prize usually is given as a result of a drawing or some kind of contest. If competition for a prize is limited to individuals using a certain kind of travel accommodation, which in the case of the DoD employee is paid for by the Federal Government, any prize won belongs to the Federal Government (e.g., an airline provides contest entry blanks only to passengers on its planes, and the DoD employee receives the winning entry blank while flying on official travel).

(4) *Incentives for voluntary surrender of flight reservations.* DoD employees may keep payments or free tickets received from a carrier for voluntarily giving up a seat on an overbooked flight. DoD employees on official travel may not voluntarily surrender their seats if the resulting delay would interfere with the performance of duties. The delay may not increase the cost to the Federal Government. Therefore, travel vouchers should disclose the voluntary surrender and resulting delays and leave must be taken as appropriate.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

§ 84.13 Procedures and responsibilities.

(a) The *travel-approving authority* shall:

(1) Approve or disapprove acceptance of travel benefits in kind or payments of travel expenses from non-Federal sources in accordance with § 84.11 (c) and (d);

(2) Acquire the concurrence of the DoD component DAEO or designee when approving travel benefits in accordance with the conflict of interest analysis required by 41 CFR 304-1.5;

(3) Prepare and submit a report to the DoD component DAEO or designee reporting all travel benefits over \$250 accepted in accordance with the authority granted under 31 U.S.C. 1353 as implemented in § 84.11(b);

(4) Prepare and submit a report to the DoD component DAEO or designee within 30 days after completion of travel during which travel benefits have been paid by non-Federal sources under 5 U.S.C. 4111. See § 84.11(c)(3).

(b) Each *DoD component DAEO or designee* shall:

(1) Prepare and submit semiannual reports to OGE on acceptance of payments under 31 U.S.C. 1353 due May 31 and November 30 each year. See § 84.11(b)(1)(v);

(2) Retain reports from the travel-approving authority under 5 U.S.C. 4111 for two years. See § 84.11(c)(4);

(3) Provide written concurrence for the approval of travel benefits in accordance with the conflict of interest analysis required by 41 CFR 304-1.5.

(c) Each *traveling DoD employee* shall:

(1) Provide all necessary information to the travel approving authority for a semiannual report to the DoD component DAEO;

(2) Turn in any merchandise, frequent flyer miles or other benefits as required under § 84.12(a).

Subpart E—Conflicts of Interest

§ 84.14 Office of Government Ethics Regulation.

(a) See 5 CFR part 2639, "Interpretation of 18 U.S.C. 209"

(b) See 5 CFR part 2640, "Interpretation of 18 U.S.C. 208"

§ 84.15 Guidance on 18 U.S.C. 208.

(a) *Conflicts and appearance of conflicts under 18 U.S.C. 208.* See 5 CFR part 2635, subpart D and subpart E, OGE opinions (which are available for purchase from the U.S. Office of Government Ethics, 1201 New York Avenue, NW., suite 500, Washington, DC 20005-3917), and 5 CFR 3601.105 for provisions on conflicts of interest under 18 U.S.C. 208.

(b) *Applicability to enlistees.* The provisions of 18 U.S.C. 208 and related provisions of OGE regulations do not apply to enlisted members. However, provisions similar to 18 U.S.C. 208 do apply to enlisted members as follows: [The following is a General Order] except as approved by the DoD component DAEO or designee, an enlisted member, including an enlisted special Government employee, shall not participate personally and substantially as part of his official DoD duties, in any particular matter in which he, his spouse, minor child, partner, entity in which he is serving as officer, director, trustee, partner or employee or any entity with which he is negotiating or has an arrangement concerning prospective employment, has a financial interest [end of General Order].

(c) *Waiver of 18 U.S.C. 208(a).* Pursuant to 18 U.S.C. 208(b), application of 18 U.S.C. 208(a) may be waived.

(1) The regulatory waivers for DoD under 18 U.S.C. 208(b)(2) have been preserved and are reprinted as follows (see 5 CFR 2635.402(d));

(i) For civilian DoD components, such waivers appear in Appendix B to this part;

(ii) For the Department of the Army, such waivers appear in Appendix B to this part;

(iii) For the Department of the Air Force, such waivers appear in Appendix B to this part;

(iv) For the Department of the Navy, such waivers appear in Appendix B to this part.

(2) Application of 18 U.S.C. 208(a) may be waived for individuals when a financial interest is not so substantial as to be likely to affect the integrity of the services that the Federal Government may expect from the DoD employee. Considerations in determining whether the interest is not so substantial as to

be deemed likely to affect the integrity of the services that the Federal Government may expect from the DoD employee include:

(i) The extent to which the DoD employee's exercise of authority and responsibility can affect his interest;

(ii) The relative importance of the interest in the DoD employee's life or finances;

(iii) The potential for harm to the Federal Government and to the DoD employee if the DoD employee's interests influence his decision-making;

(iv) How the situation would appear to an informed public;

(v) The nature of the relationship between the DoD employee and the individual who has the interest concerned.

(3) In order to pursue an individual waiver under 18 U.S.C. 208(b)(1) the following steps are mandatory:

(i) Before a waiver is requested, consideration should first be given to alternative resolutions, such as disqualification, divestiture, reassignment, or rearrangement of duties. Individual waivers are to be considered only when all alternatives have been exhausted. The supervisor should also consider, with the advice of the Ethics Counselor, whether a potential violation of 18 U.S.C. 208(a) exists. See paragraph (d) of this section. Even if the interests are insubstantial, consideration should be given to whether the particular matter will have a direct and predictable effect on the financial interest. See 5 CFR 2635.402(b)(1);

(ii) A request for a waiver shall be forwarded through the chain of command or supervision to the DoD component DAEO. The DoD component DAEO shall consult, if practicable, on the action with OGE;

(iii) Pending the approval of the waiver, the DoD employee shall be disqualified from participation in the particular matter that will have an effect on the financial interest;

(iv) The waiver request shall include the Ethics Counselor's findings of fact on the following:

(A) The manner in which the financial interest was acquired;

(B) The purpose behind the DoD employee's acquisition of the interest;

(C) The dollar value of the interest;

(D) The potential amount by which the DoD employee's official actions may affect the financial interest;

(E) The degree to which the DoD employee has control over official actions which may affect the non-Federal entity;

(F) The size of the non-Federal entity and the degree to which official actions may affect the non-Federal entity;

(G) The value of the financial interest in relation to the DoD employee's net worth and income from other sources;

(H) The degree to which the DoD employee has control over the financial interest, and whether it is capable of being divested.

(4) By statute, authority to grant 18 U.S.C. 208(b)(1) waivers rests with the DoD official responsible for the DoD employee's appointment. By Executive Order 12674, that authority shall not be exercised without prior consultation, if practicable, with OGE. The DoD component DAEO shall consult with OGE regarding the waiver on behalf of the DoD official responsible for the DoD employee's appointment.

(d) *Resolution of conflicts.* Resolution of actual or apparent conflicts of interest is the responsibility of the head of the DoD component command or organization. An Ethics Counselor should be consulted about alternatives for resolution. See subpart J of this part for enforcement information.

§ 84.16 Other conflict of interest laws.

(a) *Bribery and graft.* (1) [The following is a General Order] All DoD employees are prohibited from, directly or indirectly, giving, offering, promising, demanding, seeking, receiving, accepting, or agreeing to receive anything of value to influence any official act, to influence commission of fraud on the United States, to induce committing or omitting any act in violation of a lawful duty, or to influence testimony given before an individual or non-Federal entity authorized to hear evidence or take testimony [end of General Order]. See 18 U.S.C. 201(b).

(2) [The following is a General Order] DoD employees are also prohibited, except as provided by law for the proper discharge of official duties, from, directly or indirectly, giving, offering,

promising, demanding, seeking, receiving, accepting, or agreeing to accept anything of value for or because of any official act performed or to be performed, or for or because of any testimony given or to be given before an individual or non-Federal entity authorized to hear evidence or take testimony [end of General Order]. See 18 U.S.C. 201(c).

(3) These prohibitions do not apply to the payment or receipt of witness fees authorized by law, certain travel and subsistence expenses to appear as a witness and value of time lost in attendance at a trial, hearing, or proceeding. Other prohibitions may apply. See 18 U.S.C. 201(d); 5 U.S.C. 5515 and 5751 and paragraph 66 of part IV, MCM, 1984 (10 U.S.C. 801–940).

(b) *Compensation related to matters pending Government decision.* OGE interpretation of prohibitions under 18 U.S.C. 203 appear in 5 CFR 2635.801(d)(3). These prohibitions do not apply to enlisted members. A DoD employee whose salary is not tied to the profitability of the non-Federal entity's Federal Government contracts does not violate this statute. See OGE opinion 86x9¹⁸ (informal). This statute prohibits receiving compensation for any representation, including those where there is no intent to be corrupted or to provide preferential treatment. Representations can be either oral or written.

(1) The prohibition does not apply to a DoD employee's representation of himself, but this exception does not extend to the representation of a distinct, legal, non-Federal entity as a corporation, a partnership, or even a sole proprietorship. 18 U.S.C. 203(a)(2) prohibits an offer or payment of compensation, the solicitation or receipt of which is otherwise barred.

(2) The prohibitions apply to special Government employees but only in relation to a particular matter involving a specific party or parties in which the special Government employee participated personally and substantially or, absent such participation, if he served

¹⁸Copies are available from Office of Government Ethics, 1201 New York Avenue NW., Suite 500, Washington, DC 20005–3917.

more than a total of 60 days in the preceding 365 days, in relation to any particular matter pending in the DoD agency.

(3) 18 U.S.C. 203 does not prohibit giving testimony under oath or making statements required to be made under penalty of perjury.

(4) 18 U.S.C. 203 does not prohibit representation, with or without compensation, of one's parents, spouse, child, or any person or estate the DoD employee serves as administrator, guardian or other personal fiduciary. This exemption is permitted only if approved by the DoD official responsible for appointing the DoD employee to his DoD position. The exemption may not be extended to the DoD employee's representation of any such person in matters in which the DoD employee has officially participated personally and substantially or in matters which, even absent such participation, are the subject of his official responsibility.

(5) The head of a department or agency may authorize a special Government employee to represent his regular employer or other outside organization in the performance of work under a Federal Government grant or contract if the department or agency head certifies and publishes the certification in the FEDERAL REGISTER that the national interest requires such representation.

(c) *Contracts with DoD employees.* Contracts for the procurement of goods and services between the Federal Government and its employees are prohibited unless the needs of the Federal Government cannot otherwise be met. See 48 CFR 3.601 and 3.602.

(d) *Representation of others*—(1) *Prohibition under 18 U.S.C. 205.* 18 U.S.C. 205 prohibits DoD employees, other than enlisted members, whether or not they are employed for compensation, from personally acting as an agent or attorney for anyone else before a department, agency, or court in connection with any covered matter in which the United States is a party or has a direct and substantial interest or from prosecuting any claim against the Federal Government or receiving any gratuity or interest in such claim for assistance in prosecuting the claim. Covered matter means any judicial or other pro-

ceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter.

(2) *Exceptions.* The following are excluded from the scope of 18 U.S.C. 205:

(i) Giving testimony under oath or making statements required to be made under penalty of perjury or representing another person, with or without compensation, in a disciplinary, loyalty, or other personnel administration proceeding;

(ii) Representing, with or without compensation, one's parents, spouse, child, or a person estate the DoD employee serves as a fiduciary, but only if approved by the DoD official responsible for appointing the DoD employee to this DoD position. This exception does not apply to matters in which the DoD employee has participated personally and substantially or which, in the absence of such participation, are the subject of his official DoD responsibility;

(iii) The head of a department or agency may allow a special Governmental employee to represent his regular employer or other outside organization in the performance of work under a Federal Government grant or contract if the department or agency head certifies and publishes the certification in the FEDERAL REGISTER that the national interest requires such representation;

(iv) For special Government employees, the prohibitions apply only to covered matters in which they participated personally and substantially as a special Government employee. Absent such participation, the prohibitions apply only if he served more than a total of 60 days during the preceding 365 days and the covered matter was pending in the DoD agency during that period.

(e) *Compensation from other sources.* (1) The provisions of 18 U.S.C. 209 and related provisions of OGE regulations do not apply to enlisted members. However, provisions similar to 18 U.S.C. 209 do apply to enlisted members as follows: [The following is a General Order] an enlisted member, except an enlisted special Government employee, shall not receive any salary or

supplementation of his Federal Government salary, from any entity other than the Federal Government or as may be contributed out of the treasury of any State, county, or municipality, for his services to the Federal Government [end of General Order].

(2) 18 U.S.C. 209 prohibits DoD employees from receiving pay or allowances or supplements of pay or benefits from any source other than the United States for the performance of official service or duties unless specifically authorized by law. Note that a task or job that is performed outside normal working hours does not necessarily allow acceptance of payment for performing it. If the undertaking is part of one's official duties, pay for its performance may not be accepted from any source other than the United States regardless of when it was performed.

(3) A DoD employee may continue to participate in bona fide pension, retirement, insurance, bonus, or other employee welfare or benefit plan maintained by his former employer. See 18 U.S.C. 209(b).

(4) Reserve military officers and certain temporarily commissioned military officers who are ordered to active duty may continue to receive compensation from individuals who furnished compensation to them prior to being ordered to active duty. See 10 U.S.C. 1033 and 50 U.S.C. App. 454(f).

(f) *Additional pay or allowances.* [The following is a General Order] DoD employees may not receive additional pay or allowances for disbursement of public money or for the performance of any other service or duty unless specifically authorized by law. See 5 U.S.C. 5536 [end of General Order].

(1) 5 U.S.C. 5536 precludes extra pay from the Federal Government for the performance of official duties. Subject to certain limitations, civilian DoD employees may hold two distinctly different Federal Government positions and receive the salaries of both if the duties of each are performed. Absent specific authority, however, military member may not do so because any arrangement by a military member for rendering services to the Federal Government in another position is incompatible with the military member's actual or potential military duties. That

a military member may have leisure hours during which no official duty is performed does not alter the result. See 52 Comp. Gen. 471 and 22 Comp. Gen. 127, 149.

(2) 5 U.S.C. 5536 applies to enlisted members and precludes enlisted members from supplementing their official salaries from outside sources for performing their official duties.

(g) *Interference with military duties.* Military officers on active duty (except while on terminal leave) may not accept employment if it requires separation from their organization, branch, or unit, or interferes with the performance of military duties. See 10 U.S.C. 973(a).

(h) *Civil office prohibition.* Regular military officers on the active duty list and retired regular military officers on active duty from more than 180 days may not hold civil office, unless expressly authorized by law. See 10 U.S.C. 973(b).

(i) *Assignment of reserves for training.* (1) Personnel who assign reserves for training shall not assign them to duties in which they will obtain information that they or their private employers may use to gain unfair advantage over competitors. Reservists must disclose to superiors and assignment personnel information necessary to ensure that no conflict exists between their duty assignment and their private interests.

(2) Commanders, or their designees, shall screen Reservists performing training to ensure that no actual or apparent conflict exists between their private interests and their duty assignment. While Reservists have an affirmative obligation under this rule to disclose material facts in this regard, receiving commands cannot assume compliance and shall independently screen incoming personnel to avoid conflicts of interests.

(j) *Commercial dealings involving DoD employees.* [The following is a General Order] A DoD employee shall not knowingly solicit or make solicited sales to DoD personnel who are junior in rank, grade or position, or to the family members of such personnel, on or off duty. In the absence of coercion or intimidation, this does not prohibit the sale or lease of a DoD employee's

non-commercial personal or real property or commercial sales solicited and made in a retail establishment during off-duty employment. The posting of an advertisement in accordance with Federal Government building management policies does not constitute solicitation for purposes of this section [end of General Order].

(1) [The following is a General Order] This prohibition includes the solicited sale of insurance, stocks, mutual funds, real estate, cosmetics, household supplies, vitamins, and other goods or services [end of General Order].

(2) [The following is a General Order] Both the act of soliciting and the act of selling as a result of soliciting are prohibited. In both cases, however, a solicitation is necessary for a violation to occur. While the standard prohibits a senior from making a solicited sale to a junior or to the junior's family, sales made because a junior approaches the senior and requests the sale to be made are not prohibited, absent coercion or intimidation by the senior [end of General Order].

(3) Personal commercial solicitations by the spouse or other household member of a DoD employee to those who are junior in rank, grade, or position to the DoD employee, may give rise to the appearance that the DoD employee himself is using his public office for personal gain. When a spouse or household member of a DoD employee engages in such activity, the supervisor of the DoD employee must consult an Ethics Counselor, and counsel the DoD employee that such activity should be avoided where it may:

(i) Cause actual or perceived partiality or unfairness;

(ii) Involve the actual or apparent use of rank or position for personal gain; or

(iii) Otherwise undermine discipline, morale, or authority.

(k) *Related rules.* (1) There is a prohibition on holding conflicting financial interests. See 5 CFR 2635.403, 18 U.S.C. 208, and 5 CFR part 2640.

(2) There are requirements regarding seeking outside employment. See 5 CFR 2635.601–2635.606 and subpart H of this part.

(3) There is a prohibition on engaging in outside employment or activities

that conflict with official duties. See 5 CFR 2635.802.

(4) There are limitations on certain outside activities such as receipt of outside earned income by certain DoD Presidential appointees or non-career DoD employees, service as an expert witness, participation in professional associations, teaching, writing, speaking, or fundraising. See 5 CFR 2635.804–2635.808.

(5) There is a prohibition on the receipt of honoraria. See 5 CFR part 2636.

(6) There are prohibitions on the misuse of official position such as improper endorsements or improper use of non-public information. See 5 CFR 2635.701–2635.705.

(7) There are prohibitions on certain post-Government service employment. See subpart I of this part.

[59 FR 13214, Mar. 21, 1994. Redesignated and amended at 60 FR 20030, Apr. 24, 1995]

Subpart F—Political Activities

§ 84.17 Office of Personnel Management regulation.

See 5 CFR part 734, “Political Activities of Federal Employees.”

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

§ 84.18 Political activities of civilian DoD employees.

(a) *Policy.*

(1) The policy governing the political activities of civilian DoD employees is derived from the Hatch Act Amendments, 5 U.S.C. 7321 through 7325. Guidance on the application of the Hatch Act Amendments is provided by the Hatch Act Hotline at the Office of Special Counsel at 1-(800) 854-2824.

(2) Primary enforcement responsibility under the Hatch Act Amendments lies with the Office of Special Counsel under 5 U.S.C. 1216(c); however, DoD Components have responsibility to investigate allegations of prohibited political activity by excepted service employees of the DoD Component.

(3) It is DoD policy to encourage civilian DoD employees and members of the Armed Forces to carry out the obligations of citizenship to the maximum

extent possible consistent with the restrictions imposed by law and by this part.

(b) *Permissible activities.* Subject to paragraphs (b) and (c) of this section, civilian DoD employees may, in their personal capacities:

- (1) Be candidates for public office in nonpartisan elections;
- (2) Register and vote as they choose;
- (3) Assist in voter registration drives;
- (4) Express opinions about candidates and issues;
- (5) Contribute money to political organizations;
- (6) Attend political fundraising functions;
- (7) Attend and be active at political rallies and meetings;
- (8) Join and be an active member of a political party or club;
- (9) Sign nominating petitions;
- (10) Campaign for or against referendum questions, constitutional amendments, or municipal ordinances;
- (11) Campaign for or against candidates in partisan elections (see paragraph (b)(3) of this section);
- (12) Make campaign speeches for candidates in partisan elections (see paragraph (b)(3) of this section);
- (13) Distribute campaign literature in partisan elections (see paragraph (b)(3) of this section);
- (14) Hold office in political clubs or parties (see paragraph (b)(3) of this section).

(c) *Limitations.*

(1) Military members are not covered by the Hatch Act Amendments, 5 U.S.C. 7321 through 7327. Political activities of Military members are covered in § 84.19.

(2) Notwithstanding paragraph (a) of this section, as a matter of longstanding DoD policy, DoD employees who are appointed by the President, by and with the advice and consent of the Senate (e.g. the Secretary of Defense, the Secretaries of the Military Departments, etc.), and DoD employees who are appointed by the Secretary of Defense to non-career Senior Executive Service positions may not engage in activities that could be interpreted as associating the DoD with any partisan political cause or issue.

(3) The following DoD employees (except for Presidential appointees who

are confirmed by and with the consent of the Senate) are prohibited from engaging in the activities described in paragraphs (a)(11) through (a)(14) of this section:

- (i) Employees of the National Security Agency;
 - (ii) Employees of the Defense Intelligence Agency;
 - (iii) Career members of the senior executive service;
 - (iv) Administrative Law Judges; and
 - (v) Contract appeals board members.
- (d) *Prohibited activities.* Civilian DoD employees may not:

- (1) Use official authority or influence for the purpose of interfering with or affecting the result of an election;
- (2) Collect political contributions unless both the collector and the donor are members of the same Federal labor organization or employee organization and the donor is not a subordinate;
- (3) Knowingly solicit or discourage the political activity of any person who has business with DoD;
- (4) Engage in political activity while on duty;
- (5) Engage in political activity while in any Federal workplace;
- (6) Engage in political activity while wearing an official uniform or displaying official insignia identifying the office or position of the DoD employee;
- (7) Engage in political activity while using a Government owned or leased vehicle;
- (8) Solicit political contributions from the general public;
- (9) Be a candidate for public office in partisan elections;
- (10) Wear political buttons on duty;
- (11) Contribute to the political campaign of another Federal Government employee who is in the DoD employee's chain of command or supervision or who is the employing authority, including the political campaign to reelect the President or Vice President.

(e) *DoD employees residing in designated localities.* Notwithstanding the prohibitions of paragraph (c) of this section, a DoD employee (except those DoD employees listed in paragraph (b)(3) of this section) who resides in a municipality or political subdivision, either in the immediate vicinity of the District of Columbia or in which the majority of voters are employed by the

Federal Government, as designated by OPM under 5 CFR 733.102(d) may:

(1) Run as an independent candidate for election to a partisan political office in an election for local office of the municipality or political subdivision provided the candidacy for, and service in, the partisan political office shall not result in neglect of, or interference with, the performance of the duties of the DoD employee or create an actual or apparent conflict of interest; and

(2) Accept or receive political contributions in connection with a local election of the municipality or political subdivision provided the DoD employee does not solicit political contributions from the general public.

(f) *Political recommendations.*

(1) The restrictions of 5 U.S.C. 3303 apply to all personnel actions described in 5 U.S.C. 2302(a)(2)(A) (i) through (x) for individuals in or applicants to the following DoD positions:

- (i) Competitive service employees;
- (ii) Career appointees in the Senior Executive Service; and
- (iii) Excepted service employees other than one who is appointed by the President or whose position has been determined to be of confidential, policy-determining, policy-making, or policy-advocating character.

(2) Each personnel action with respect to a DoD employee or applicant, as described in paragraph (c)(1) of this section, shall be taken without regard to any recommendation or statement, oral or written, made by the following types of individuals:

- (i) Members of Congress or Congressional employees;
- (ii) Elected officials of any State (including the District of Columbia and the Commonwealth of Puerto Rico), county, city, or other subdivision thereof;
- (iii) Officials of political parties; or
- (iv) Other individuals or organizations making such recommendations or statements on the basis of the party affiliations of the DoD employee or applicant recommended.

(3) DoD employees may solicit, accept, and consider any statement with respect to a DoD employee or applicant described in paragraph (c)(1) of this section if the statement meets one of the following conditions:

(i) It is pursuant to a request or requirement of the DoD Component and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of the DoD employee or applicant;

(ii) It relates solely to the character and residence of the DoD employee or applicant;

(iii) It is furnished pursuant to a request made by an authorized representative of the Government of the United States solely in order to determine whether the DoD employee or applicant meets suitability or security standards;

(iv) It is furnished by a former employer of the DoD employee or applicant pursuant to a request of an agency, and consists solely of an evaluation of the work performance, ability, aptitude, and general qualifications of such DoD employee or applicant during employment with such former employer; or

(v) It is furnished pursuant to a provision of law or regulation authorizing consideration of such statement with respect to a specific position or category of positions.

(4) DoD Component Heads are required by 5 CFR 300.801 to ensure that DoD employees and applicants described in paragraph (c)(1) of this section are notified of the provisions of 5 U.S.C. 3303.

[60 FR 20030, Apr. 24, 1995]

§ 84.19 Political activities of military members.

See DoD Directive 1344.10²⁰, “Political Activities by Members of the Armed Forces on Active Duty,” June 15, 1990.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

Subpart G—Financial and Employment Disclosure

§ 84.20 Office of Government Ethics regulation.

See 5 CFR part 2634, “Financial Disclosures, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees”.

²⁰ See footnote 4 to § 84.7(d).

§ 84.21 Public financial disclosure report (SF-278).

(a) *Individuals required to file*—(1) *Covered positions.* For purposes of this section, the following individuals are in “covered positions” and are required by the Ethics in Government Act of 1978, Public Law 95–521 (5 U.S.C. App.) to file an SF 278, with their DoD component DAEO or designee as set out in paragraph (f) of this section:

- (i) Civilian Presidential appointees;
- (ii) Regular and reserve military officers whose pay grade is 0–7 or above;
- (iii) Members of the Senior Executive Service;
- (iv) Other civilian DoD employees, including special Government employees, whose positions are classified above GS/GM–15 prescribed by 5 U.S.C. 5332 or civilian DoD employees under other pay systems whose rate of basic pay is fixed at or above 120% of the minimum rate of basic pay for a GS/GM–15;
- (v) DoD employees in the excepted service in positions that are of a confidential or policy-making character unless they have been excluded by the Director, OGE. See paragraph (a)(4) of this section;
- (vi) Individuals serving by appointment under the Intergovernmental Personnel Act, from State or local governments, institutions of higher education or other eligible organizations. See 5 U.S.C. 3371–3376;
- (vii) Civilian individuals who are detailed to positions described in paragraphs (a)(1)(iii) through (a)(1)(v) of this section;
- (viii) DoD component DAEOs.

(2) *Waiver.* An individual otherwise required to file an SF 278 but who now is expected to perform the duties of a covered position for less than 130 days in a calendar year, may request a waiver of any or all reporting requirements from the Director, OGE, in accordance with 5 CFR part 2634.

(3) *Exception.* An individual who is nominated to or assumes a covered position is not required to file an SF 278 if the Secretary concerned or the DoD component DAEO determines that the individual is not reasonably expected to perform the duties of the position for more than 60 days in a calendar year. If such individual performs the

duties of the position for more than 60 days in a calendar year, an SF 278 shall be filed within 15 days after the 61st day of duty.

(4) *Exclusion.* The Director, OGE, may exclude an individual who is in a covered position under paragraph (a)(1)(v) of this section from the requirement to file an SF 278 in accordance with 5 CFR 2634.203.

(b) *Information on covered positions.* The directors of DoD component personnel offices are responsible for providing the following information to their DoD component DAEOs or designees:

(1) The name, position, grade, organization and entrance-on duty or termination date of each individual assigned to the DoD component who is required to file a new entrant or termination SF 278 immediately upon the appointment of the individual to a position requiring filing, or upon receipt of an SF 52, “Request for Personnel Action,” August 1988, requesting approval of the retirement, resignation, or removal of the individual from such a position;

(2) By January 10 of each year, the name, position, grade, and organization of each individual assigned to the DoD component who is required to file an annual SF 278.

(c) *Notification of requirement to file.* Each DoD component DAEO or designee shall provide appropriate notices and instructions to all reporting individuals to ensure the timely preparation of the reports and submission to supervisors and Ethics Counselors for review and filing.

(d) *Time of filing*—(1) *Nomination reports.* (i) Any time after public announcement but within five days after transmittal by the President to the Senate of the nomination of an individual to a civilian DoD position that requires the advice and consent of the Senate, the DoD component DAEO shall ensure the nominee’s SF 278 is filed with the appropriate authorities.

(ii) The report shall contain the information prescribed in the “Instructions for Completing SF 278” attached to the SF 278. These reports shall be certified by the DoD component DAEO, and processed as prescribed by OGE regulation, 5 CFR part 2634.

(iii) Unless otherwise required by the Senate, nomination reports are not required of individuals nominated to positions as military officers. Such individuals must file new entrant reports as prescribed in the following.

(2) *New entrant reports.* (i) Within 30 days of assuming a covered position, a reporting individual shall submit an SF 278.

(ii) The report shall contain the information prescribed for new entrant reports in the "Instructions for Completing SF 278" attached to the SF 278.

(iii) No new entrant report is necessary if the reporting individual has, within 30 days prior to assuming a new position, left another covered position for which the reporting individual filed an SF 278.

(iv) Notwithstanding paragraph (a)(3) of this section, reserve military officers shall file a new entrant report within 30 days of promotion to grade O-7, regardless of whether they are expected to perform active duty for more than 60 days.

(3) *Annual reports.* Any time after January 1 but not later than May 15, a reporting individual who served in a covered position for more than 60 days during the preceding calendar year shall file an annual SF 278. For reserve military officers, only service pursuant to orders issued under title 10, United States Code, is counted.

(4) *Termination reports.* Not sooner than 15 days before but not later than 30 days after termination from a covered position, a reporting individual shall submit an SF 278. A termination report is not required of a reporting individual who, within 30 days of such termination, assumes another covered position. A termination report is not required of a reserve military officer in the grade of O-7 or above who did not serve more than 60 days on active duty during the calendar year in which the military officer is transferred to the Retired reserve.

(5) *Extension of filing deadlines.* The DoD component DAEO, in the case of civilian Presidential appointees, and the DoD component DAEO or designee in other cases, may grant, for good cause, a filing extension up to 45 days. All requests for extensions shall be provided, in writing, by the reporting indi-

vidual to the DoD component DAEO or designee. The request shall contain a clear statement of the reasons for the request and shall be submitted in advance of the original filing deadline. Requests for additional time beyond the initial 45 day extension shall be forwarded by the appropriate DoD component DAEO or designee with his comments to the Director, OGE, who may grant an additional 45 days extension. The reporting individual shall notify his supervisor of any extension granted.

(6) *Combined annual and termination reports.* Reporting individuals who anticipate terminating their DoD employment before June 30 may request an extension from the appropriate DoD component DAEO or designee of up to 45 days in order to file one consolidated annual and termination report. Combined annual and termination reports must be filed within 30 days after termination of employment or service but not later than July 15.

(7) *Late filing fee.* (i) Any reporting individual who is required to file an SF 278 and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period, shall be subject to a \$200 late filing fee. See 5 CFR part 2634. Such fee shall be collected by the DoD component DAEO or designee for deposit with the U.S. Treasury.

(ii) If the reporting individual fails to remit the \$200 fee within 90 days, the fee shall be subject to DoD component debt collection procedures.

(iii) If extraordinary circumstances existed that caused the late submission of the report, a request for a waiver of the fee may be submitted by the reporting individual with supporting documentation to the DoD component DAEO or designee. The DoD component DAEO or designee shall review the request and forward it with a recommendation for approval or denial to OGE. OGE will grant or deny the waiver.

(e) *Content of report.* (1) Instructions for completing the SF 278 are attached to the form. See detailed instructions at 5 CFR 2634.301 through 2634.408, for

additional guidance or contact the local Ethics Counselor.

(2) A complete report is required even if no changes have occurred since the last submission.

(3) Termination reports shall contain information covering the preceding calendar year, if an annual report was not filed for that year, and that portion of the present calendar year up to the date of termination from the covered position.

(4) A reporting individual shall request required information known only to another person to be submitted by that person to appropriate reviewing authorities. Such a submission may be made with a request for confidentiality which shall be honored by DoD reviewing authorities when appropriate even if it limits disclosure to the reporting individual.

(f) *Chain of submission.* A reporting individual shall submit his SF 278 as follows:

(1) A civilian Presidential appointee shall file directly with his DoD component DAEO or designee;

(2) Any other reporting individual shall submit his SF 278 through his supervisor and through his Ethics Counselor to the DoD component DAEO or designee. In some cases, the Ethics Counselor and the DoD component DAEO or designee are the same person;

(i) A military officer serving in a DoD component or in the Central Intelligence agency shall submit his report through his supervisor directly with the DAEOs or designees of those agencies;

(ii) A military officer serving in OSD or for the Chairman of the Joint Chiefs of Staff and Joint Staff, shall submit his report, through his supervisor, to the GC, DoD, as the DoD component DAEO;

(iii) A military officer serving in a joint, Unified, Specified or Combined Commands, other than a Commander in Chief, shall file through his supervisor directly with his DoD component DAEO or designee. A Commander in Chief of such command shall file with the Legal Advisor to the Chairman of the Joint Chiefs of Staff.

(3) A reporting individual who has more than one immediate supervisor shall submit his report through both

supervisors prior to submitting it to the DoD component DAEO or designee. Such a reporting individual may submit a copy of his report to one supervisor and the original to the other in order to expedite processing;

(4) Reporting individuals on detail to other Executive or Legislative Branch agencies shall follow the filing requirements and procedures of those agencies.

(g) *Review*—(1) *Initial supervisor review.* Upon receipt of an SF 278, the supervisor of the reporting individual shall review the report to determine if any of the reported financial interests reveal a conflict of interest with the reporting individual's current and future official duties. See 5 CFR 2634.605(b). The supervisor shall supplement the report with any required information or data, including comments on the existence of actual or apparent conflicts of interest, and forward the report with all attachments to the Ethics Counselor. If any review reveals a conflict or apparent conflict, the supervisor shall ensure that the matter is resolved in accordance with paragraph (g)(2)(vii) of this section.

(2) *Ethics Counselor review.* (i) When applicable, the Ethics Counselor shall review each report to determine that:

(A) Each item is completed; and

(B) No interest or position disclosed on the report violates or appears to violate;

(1) Any applicable provision of Chapter 11 of title 18, United States Code;

(2) The Ethics in Government Act of 1978, Public Law 95-521 (5 U.S.C. App.), and implementing regulations;

(3) Executive Order 12674 and implementing regulations; or

(4) Any other related laws or regulations applicable to DoD employees.

(ii) The reports are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, to ensure that there are no omissions, the previous report of each reporting individual, if applicable, shall be compared to the current submission.

(iii) If the Ethics Counselor believes that additional information is required, the reporting individual shall

be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the Ethics Counselor.

(A) When the Ethics Counselor amends or revises a report based on additional information obtained from the reporting individual, he shall initial the amendment or revision and make a note of the source of the information in the comment section of the report. For example, if the Ethics Counselor adds to a report that a certain fund is an accepted investment fund based on a telephone conversation with the reporting individual, he shall number and initial the change on Schedule A and add a notation in the comment section of the report, such as "1. per telecon with Mr. Doe on June 16, 1992" and initial the comment.

(B) When a substantial amount of information is missing from the report, it shall be returned to the supervisor for evaluation in accordance with the standards set forth in paragraph (g)(2)(i) of this section, with instructions to return it to the Ethics Counselor with any additional comments or supplementary information.

(iv) If the Ethics Counselor agrees with the supervisor's evaluation that no item violates, or appears to violate, applicable laws or regulations, then:

(A) The Ethics Counselor shall annotate the report or attach an endorsement stating that no conflicts of interest under applicable laws or regulations exist, and forward it to the appropriate DoD Component DAEO or designee; and

(B) If there are no financial interests in non-Federal entities doing or seeking business with DoD reported on the SF 278, the Ethics Counselor may issue a memorandum with the SF 278 to the appropriate DoD Component DAEO or designee.

(v) If the Ethics Counselor disagrees with the supervisor's evaluation, and concludes that the report does not comply with applicable laws and regulations, he shall do the following:

(A) Notify the reporting individual in writing of the preliminary determination;

(B) Afford the reporting individual a reasonable opportunity for an oral or written response; and

(C) Determine, after considering any response, whether or not the reporting individual is in compliance with applicable laws and regulations. If the Ethics Counselor concludes that the report does fulfill the requirements, he shall annotate the report or attach an endorsement stating that no conflicts of interest under applicable laws or regulations exist and dispose of the report in accordance with paragraph (g)(2)(iv) of this section. If the Ethics Counselor determines that it does not, he shall:

(1) Notify the reporting individual of the conclusion;

(2) Afford the reporting individual an opportunity for personal consultation, if practicable;

(3) Determine what remedial action should be taken to bring the reporting individual into compliance;

(4) Notify the reporting individual, in writing, of the remedial action required, indicating a date by which that action must be taken; and

(5) Ensure that the supervisor of the reporting individual is notified of the required remedial action and date by which that action must be taken.

(vi) Except in unusual situations, which must be documented fully to the satisfaction of the Ethics Counselor, remedial action shall be completed within three months from the date the reporting individual was notified that the action is required.

(vii) Remedial steps, in accordance with 5 CFR 2634.605-2634.607, may include the following measures:

(A) Divestiture:

(1) Any reporting individual or the spouse, minor or dependent child of a reporting individual, may be issued a Certificate of Divestiture by the Director, OGE, upon a determination that such divestiture is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal Government conflict of interest statute, regulation, rule, or Executive Order, or pursuant to the request of the Senate as a condition of confirmation;

(2) If obtained before the sale, the Certificate of Divestiture allows for the non-recognition of capital gains that result upon the sale of property to

comply with conflict of interest requirements if the property is rolled over into property permitted by OGE. See 5 CFR 2634.1001;

(3) The following items must be submitted to the Director, OGE, by the DoD component DAEO:

(i) A copy of the written request from the reporting individual to the DoD component DAEO to seek certification in the case of the property to be divested;

(ii) A copy of the latest SF 278 or SF 450;

(iii) A detailed description of the specific property for which divestiture is contemplated;

(iv) A complete statement by the DoD component DAEO or designee of the facts and circumstances relevant to the requirement for divestiture and an explanation of the rules that apply to the requirement for divestiture;

(v) An analysis and recommendation as to whether the certificate should be granted.

(4) The Director, OGE, will issue a Certificate of Divestiture when divestiture is a condition for Senate confirmation or is reasonably necessary to comply with conflict of interest requirements.

(B) Disqualification in accordance with 5 CFR 3601.105;

(C) Limitation of duties;

(D) Transfer or reassignment;

(E) Resignation;

(F) Exemption under 18 U.S.C. 208 (b)(1) or (b)(3);

(G) Establishment of a qualified blind trust.

(viii) When the Ethics Counselor determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the SF 278. The Ethics Counselor shall then follow the procedures set forth in paragraph (g)(2)(iv) of this section.

(ix) If steps ensuring compliance with applicable laws and regulations are not taken by the date established, the Ethics Counselor shall report the matter to the agency designee for appropriate action, with an information copy to the DoD component DAEO.

(3) *DoD component DAEO review.* (i) The DoD component DAEO or designee

shall review the report in accordance with the standards set forth in paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(ii) Additional information required by the DoD component DAEO or designee shall be collected in accordance with paragraph (g)(2)(ii) of this section.

(iii) The DoD component DAEO or designee shall notify the reporting individual of any necessary remedial action in accordance with procedures set forth in paragraph (g)(2)(v) of this section.

(iv) When the DoD component DAEO or designee determines that no item violates, or appears to violate, any applicable law or regulation, or when the DoD component DAEO or designee determines that a reporting individual has complied fully with the remedial measures, the DoD component DAEO or designee shall sign and date the report.

(v) If steps ensuring compliance with applicable laws or regulations are not taken by the date established, the DoD component DAEO or designee shall report the matter to the Head of the DoD component for remedial action, with an information copy to the Director, OGE.

(vi) If the DoD component or designee concludes that no item violates, or appears to violate, any applicable law or regulation, but that there are financial interests in non-Federal entities doing or seeking business with DoD, then the DoD component DAEO or designee may issue a memorandum of caution to the reporting individual.

(vii) All reports shall be reviewed within 60 days after the date of filing. The DoD component DAEO or designee shall record the date of the review and ensure that all reports are reviewed within the 60 day period. After review, the DoD component DAEO or designee may proceed to obtain additional information, seek remedial action, or sign and date the report.

(4) *Special reviewing requirements of O-9 and O-10 Flag and General Officer nominees.* (i) As part of the process for approving nominees for appointment to O-9 and O-10 Flag or General officer positions, the Secretaries of the Military Departments shall ensure that the nominee has a current SF 278 on file and that the report has been reviewed

by the appropriate DoD component DAEO or designee in relation to the position for which he is being considered.

(ii) Secretaries of Military Departments shall cause a review of all relevant systems of records maintained by their departments, including investigative files, to determine if there is any evidence that the nominee has violated the rules or standards of conduct.

(iii) Each nomination forwarded to the Secretary of Defense shall be accompanied by a certification by the Secretary of the Military Department concerned that the required review has been conducted and has or has not disclosed a violation of the rules or standards of conduct.

(h) *Disposition*—(1) *Designation of certifying official.* Only the Head of the DoD component or the DoD component DAEO may certify nomination reports required to be filed by a reporting individual who is nominated by the President to a position requiring the advice and consent of the Senate. For all other reports, the DoD component DAEO may delegate this responsibility to other officials within the DoD component.

(2) *Disposition.* The SF 278 and a complete record of all action taken thereon shall be retained for a period of six years by the DoD component DAEO or designee, and a copy of the report shall be forwarded to OGE, when required. After the six-year period, the report shall be destroyed, unless needed in an ongoing investigation. In the case of a reporting individual who filed a report as a nominee and was not subsequently confirmed by the Senate, the report shall be destroyed one year after the reporting individual is no longer under consideration by the Senate.

(i) *Public availability of reports.* SF 278s must be made available for public inspection 30 days after the reports are filed unless otherwise exempted under law. OGE Form 201, "Request to Inspect or Receive Copies of SF 278, Financial Disclosure Report," shall be filed by a requestor before inspecting an SF 278.

(j) *Penalties*—(1) *Action within a DoD component.* The Head of the DoD component may take appropriate action, including adverse action, in accordance with applicable laws or regulations,

against any reporting individual who fails to file an SF 278 or who falsifies or fails to report required information.

(2) *Action by the U.S. Attorney General.* The U.S. Attorney General may bring a civil action in the U.S. District Court against any individual who knowingly and willfully falsifies or fails to file or report information required to be reported. The court may assess a civil penalty. Knowing and willful falsification of information required to be filed may also result in criminal prosecution under 18 U.S.C. 1001, leading to a fine or imprisonment of not more than five years, or both.

(3) *Misuse of reports.* (i) The U.S. Attorney General may bring a civil action against an individual who obtains or uses an SF 278 filed under the Ethics in Government Act, Public Law 95-521 (5 U.S.C. App.), for the following reasons:

- (A) Any unlawful purpose;
- (B) Any commercial purpose other than by news and communications media for dissemination to the general public;
- (C) Determining or establishing the credit rating of any individual;
- (D) Directly or indirectly, for the solicitation of money for any political, charitable or other purpose.

(ii) The court in which the action is brought may assess a penalty against a person in any amount, not to exceed \$10,000. This shall be in addition to any other remedy available under statutory or common law.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

§ 84.22 Confidential financial disclosure report (SF 450).

(a) *Individuals required to file.* (1) *Covered positions.* For purposes of this section, unless required to file an SF 278 or unless expressly exempted, the following individuals are in "covered positions" and are required by 5 CFR part 2634 to file initial and annual SF 450 through their supervisor to their Ethics Counselor as set out in paragraph (f) of this section:

- (i) Commanding officers, heads and deputy heads, and executive officers of:
 - (A) Navy shore installations with 500 or more military and civilian DoD employees (including foreign nationals

and indirect personnel regularly attached but excluding personnel attached for temporary duty); and

(B) All Army, Air Force, and Marine Corps installations, bases, air stations or activities.

(ii) Special Government employees, except the following categories of DoD employees who are required to file reports only when specifically requested to do so by their supervisor:

(A) Physicians, dentists, and allied medical specialists engaged only in providing services to patients;

(B) Veterinarians providing only veterinary services;

(C) Lecturers participating only in educational activities;

(D) Chaplains performing only religious services;

(E) Individuals in the motion picture or television fields who are utilized only as narrators or actors in DoD productions;

(F) Reservists on active duty for less than 30 consecutive days during a calendar year; and

(G) Members of selection panels for ROTC candidates.

(iii) DoD employees classified at GS/GM-15 or below under 5 U.S.C. 5332 or a comparable pay level under other authority, and members of the military below the grade of O-7 as follows:

(A) When the official responsibilities of such DoD employees require them to participate personally and substantially through decision or exercise of significant judgment in taking an official action for contracting or procurement, administering or monitoring grants, subsidies, licenses or other Federally conferred financial or operational benefits, regulating or auditing any non-Federal entity, or other activities in which the final decision or action may have a direct and substantial economic impact on the interests of any non-Federal entity;

(B) Any DoD employee serving in a position in which his supervisor determines that the duties and responsibilities of the position require the DoD employee to file such a report to avoid an actual or apparent conflict of interest and to carry out the purpose of any statute, Executive Order, or regulation applicable to or administered by that reporting individual;

(iv) Individuals who are detailed to positions described in paragraph (a)(1)(iii) of this section.

(v) Individuals serving on detail under the Intergovernmental Personnel Act, from State or local governments, institutions of higher education or other eligible organizations. See 5 U.S.C. 3371–3376.

(2) *Exclusion.* (i) Any DoD employee or group of DoD employees may be excluded from all or a portion of the reporting requirements when the DoD component Head or designee determines that a report is unnecessary because of the remoteness of any impairment to the integrity of the Federal Government, because of the degree of supervision and review of the DoD employee's work, or because the use of an alternative procedure is adequate to prevent possible conflicts of interest. Any alternative procedure must be approved in writing by OGE.

(ii) DoD employees who are not employed in contracting or procurement and who have decision making responsibilities regarding expenditures of less than \$2,500 per purchase and less than \$25,000 cumulatively per year are excluded from the requirement to file the SF 450. However, Agency Designees may require such DoD employees, in individual cases, to file the SF 450. Such DoD employees remain subject to conflict of interest statutes and regulations.

(b) *Information on covered positions.* (1) The directors of personnel offices are responsible for providing the following information to their DoD component DAEOs or designees they service:

(i) Immediately upon the appointment of covered DoD employees, the name, position, organization and entrance-on-duty date of DoD employees required by their supervisor to file a new entrant SF 450.

(ii) By October 3 of each year, a list of the names, positions and organizations, when applicable, of DoD employees who are required to file an annual SF 450.

(2) Coordination is required as follows:

(i) Administrative officers (or equivalent) of each organization shall coordinate with the supervisors within their organization, in consultation with the

DoD component DAEO or designee, to update the list of annual reporting individuals in their organization and report any additions or deletions to the concerned Ethics Counselor by October 31 of each year. In addition, it is the administrative officers' responsibility to ensure that any new positions are evaluated to determine whether such reports are required; or

(ii) The directors of personnel offices shall coordinate with Ethics Counselors and supervisors to ensure that position or billet descriptions of reporting individuals described in paragraph (a) of this section contain a statement that an SF 450 must be filed. All new or revised position or billet descriptions shall be reviewed to determine whether such reports are required.

(c) *Notification of requirement to file.* DoD component DAEOs or designees shall provide appropriate notices and instructions to ensure the timely preparation of the reports and submission to their supervisors and their Ethics Counselors for review and filing.

(d) *Time of filing—(1) New entrant reports.* (i) Except for a special Government employee, a reporting individual shall submit an SF 450 with information current as of the filing date for the preceding 12 months, through his supervisor to his Ethics Counselor not later than 30 days after assuming duties in a covered position. Upon transfer or reassignment from one covered position to another, a reporting individual shall submit a copy of his previous report to the appropriate supervisor of the new position.

(ii) A special Government employee shall submit an SF 450 with information current as of the filing date for the preceding 12 months, through his supervisor to his Ethics Counselor before assuming duties in a covered position. A special Government employee whose appointment is renewed shall file a new entrant report for the preceding 12 months prior to his reappointment. A special Government employee whose appointment exceeds one year shall file a new entrant report on the anniversary of his appointment.

(2) *Annual reports.* A reporting individual (except a special Government employee) who was employed at least

61 days during the preceding reporting period must submit an SF 450 to his Ethics Counselor by November 30 of each year covering the preceding 12 months (or any portion thereof not covered by a new entrant report), with information current as of September 30 of that year. A reporting individual who is reassigned or transferred from one covered position to another during the reporting period shall file an annual report whether or not he was employed in that position for 61 days.

(3) *Extension of filing deadline.* (i) When required by reason of duty assignment, infirmity, or other good cause affecting a reporting individual, the DoD component DAEO or designee may grant an extension of the filing deadline, not to exceed 60 days for annual reports or 90 days for new entrant reports.

(ii) Requests for extensions shall be submitted in writing.

(iii) Each annual reporting individual is automatically granted a 30 day extension by this part to make the reporting deadline November 30 as stated in paragraph (d)(2) of this section. This automatic extension need not be annotated on an individual report. Any other extension shall be noted.

(e) *Content of report.* (1) Instructions for completing the SF 450 are included on the report. See instructions at 5 CFR 2634.907 and 2634.908 for additional guidance or contact the local Ethics Counselor.

(2) A complete report is required even though no changes have occurred since the last submission.

(3) A reporting individual shall request required information known only to another person to be submitted by that person to appropriate reviewing authorities. Such a submission may be made with a request for confidentiality which shall be honored by DoD reviewing authorities when appropriate, even if it limits disclosure to the reporting individual.

(f) *Chain of submission.* A reporting individual shall submit his SF 450 through his supervisor to his Ethics Counselor. It is the responsibility of the reporting individual to ensure that an annual report is filed by November 30.

(g) *Review.* (1) Upon receipt of an SF 450, the supervisor of the reporting individual shall provide an initial review of the report using the criteria set forth in paragraph (g)(2) of this section and forward it with any comments to the local Ethics Counselor for further review.

(2) The Ethics Counselor shall review each report to determine that:

(i) Each item is completed; and

(ii) No interest or position disclosed on the report violates or appears to violate:

(A) Any applicable provision of Chapter 11 of title 18, United States Code;

(B) The Ethics in Government Act of 1978, Public Law 95-521 (5 U.S.C. App.), and implementing regulations;

(C) Executive Order 12674 and implementing regulations; or

(D) Any other related laws or regulations applicable to DoD employees of the agency.

(3) The Ethics Counselor shall not sign and date the report until the determinations described in paragraph (g)(2) of this section are made. The reports are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report.

(4) If the Ethics Counselor believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the Ethics Counselor.

(i) When the Ethics Counselor amends or revises a report based on additional information obtained from the reporting individual, he shall initial the amendment or revision and make a note of the source of the information in the comment section of the report. For example, if the Ethics Counselor adds to a report that a certain fund is an exempted investment fund based on a telephone conversation with the reporting individual, he shall number and initial the change on Schedule A and add a notation in the comment section of the report such as, "1. per telecon with Mr. Doe on June 16, 1992" and initial the comment.

(ii) When a substantial amount of information is missing from the report, it shall be returned to the supervisor for his evaluation in accordance with the standards set forth in paragraph (g)(2) of this section with instructions to return it to the Ethics Counselor with any additional comments or supplementary information.

(5) If the Ethics Counselor agrees with the supervisor's evaluation that no item violates, or appears to violate, applicable laws or regulations, then the Ethics Counselor shall sign and date the report.

(6) If the Ethics Counselor agrees with the supervisor's evaluation that no item violates, or appears to violate, applicable laws or regulations, but that there are financial interests in non-Federal entities doing or seeking business with DoD, then the Ethics Counselor may issue a memorandum of caution to the reporting individual and shall sign and date the report.

(7) If the Ethics Counselor disagrees with the supervisor's evaluation that no item violates or appears to violate applicable laws or regulations, then the Ethics Counselor shall do the following:

(i) Notify the reporting individual, in writing, of the preliminary determination;

(ii) Afford the reporting individual a reasonable opportunity for an oral or written response; and

(iii) Determine, after considering any response, whether or not the reporting individual is in compliance with applicable laws and regulations. If the Ethics Counselor concludes that the report does fulfill the requirements, he shall sign and date the report. If the Ethics Counselor determines that it does not, he shall:

(A) Notify the reporting individual of the conclusion;

(B) Afford the reporting individual an opportunity for personal consultation, if practicable;

(C) Determine what remedial action shall be taken to bring the reporting individual into compliance; and

(D) Notify the reporting individual, in writing, of the remedial action required, indicating a date by which that action must be taken;

(E) Ensure that the supervisor of the reporting individual is notified of the required remedial action and date by which that action must be taken.

(8) Except in unusual situations, which must be documented fully to the satisfaction of the Ethics Counselor, remedial action shall be completed within 90 days from the date the reporting individual was notified that the action is required.

(9) Remedial steps, in accordance with 5 CFR 2634.605–2635.607 may include the following measures:

(i) Divestiture:

(A) Any DoD employee or the spouse, minor or dependent child of a DoD employee may be issued a Certificate of Divestiture by the Director, OGE, upon a determination that such divestiture is reasonably necessary to comply with 18 U.S.C. 208 or any other Federal Government conflict of interest statute, regulation, rule, or Executive order;

(B) If obtained before the sale, the Certificate of Divestiture allows for the non-recognition of capital gains that result upon the sale of property to comply with conflict of interest requirements if the property is rolled over into property permitted by OGE. See 5 CFR 2634.1001 for additional guidance;

(C) The following items must be submitted to the Director, OGE, by the DoD component DAEO:

(1) A copy of the written request from the individual to the DoD component DAEO to seek certification in the case of the property to be divested;

(2) A copy of the latest SF 278 or SF 450;

(3) A detailed description of the specific property in which divestiture is contemplated;

(4) A complete statement by the DoD component DAEO or designee of the facts and circumstances relevant to the requirement for divestiture and an explanation of the rules that apply to the requirement for divestiture;

(5) An analysis and recommendation as to whether the certificate should be granted.

(D) The Director, OGE, will issue a Certificate of Divestiture when divestiture is reasonably necessary to comply with conflict of interest requirements.

(ii) Disqualification in accordance with 5 CFR 3601.105;

(iii) Limitation of duties;

(iv) Transfer or reassignment;

(v) Resignation;

(vi) Exemption under 18 U.S.C. 208(b)(1) or (b)(3);

(vii) Establishment of a qualified blind trust

(10) When the Ethics Counselor determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made on the SF 450. The Ethics Counselor shall then sign and date the SF 450 and dispose of it in accordance with paragraph (h) of this section.

(11) If steps ensuring compliance with applicable laws and regulations are not taken by the date established, the Ethics Counselor shall report the matter to the agency designee for appropriate action, with an information copy to the DoD component DAEO.

(12) All reports shall be reviewed within 60 days after the date of filing and the Ethics Counselor shall record the date of the initial review. After the initial review, the Ethics Counselor shall obtain additional information, as necessary, seek remedial action, or sign and date the report.

(h) *Disposition.* The SF 450 and a complete record of all action taken thereon shall be retained for a period of six years in a central location within the agency, command or activity to which the reporting individual was assigned at the time of filing, after which they shall be destroyed, unless needed in an ongoing investigation.

(i) *Privacy Act.* The SF 450 is a confidential report. Accordingly, the reports are protected by the Privacy Act, 5 U.S.C. 552 and are exempt from being released to the public under the Freedom of Information Act, 5 U.S.C. 552(b)(3)(A) and (B), (b)(4) and (b)(6).

(j) *Status reports.* (1) Not later than December 15 of each year, Ethics Counselors shall prepare a consolidated status report concerning the annual filing of the SF 450. The status report shall be sent through the head of the DoD component command or organization to the respective DoD component DAEO or designee and shall contain the following information:

(i) The number of individuals required to file an annual SF 450; and

(ii) The number of individuals who have not filed an SF 450 as of November 30.

(2) Subsequent to December 15, monthly reports may be required by the DoD component DAEO to be filed for those organizations which have not received an SF 450 from all reporting individuals required to file, until 100% compliance has been achieved. These monthly reports shall be forwarded as described in paragraph (j)(1) of this section.

(k) *Penalties*—(1) *Administrative penalties*. Anyone failing to file a report, or falsifying or failing to file required information, may be subject to disciplinary action by the employing organization, including such measures as suspension of consideration for appointment, reassignment of duties and termination of employment.

(2) *Criminal liability*. Anyone who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

§ 84.23 Report of DoD and defense related employment (DD form 1787).

(a) *Individuals required to file*. Each civilian DoD employee of a DoD component who meets the statutory criteria is required by 10 U.S.C. 2397 to file a DD Form 1787,²¹ “Report of DoD and Defense Related Employment,” with his Ethics Counselor. A DoD employee meets the criteria if he:

(1) Is employed at a pay rate equal to or greater than the minimum rate for a GS/GM-13;

(2) Within the two-year period prior to the effective date of service or employment with the DoD component, was employed by a defense contractor who, during the preceding one-year period, was awarded \$10 million or more in defense contracts; and

(3) Was employed by or performed services for the defense contractor and

at any time during that year received compensation of or was salaried at a rate of \$25,000 per year or more at any time during employment.

(i) Compensation is received by an individual if it is paid to a business entity with which the person is affiliated in exchange for services rendered by that individual.

(ii) A rate of \$25,000 per year equates to \$12 per hour.

(b) *Time of filing*. DoD employees shall file a DD Form 1787 with their local Ethics Counselors within 30 days of entering on duty with the DoD component.

(c) *Review*. (1) When a report is filed, the Ethics Counselor shall review the DD Form 1787 to determine whether:

(i) Each item is completed and sufficient information is provided; and

(ii) Whether the information indicates any violation or apparent violation of any of the conflicts of interest, standards of conduct, procurement integrity, or related laws and regulations.

(2) The Ethics Counselor need not audit the report. Disclosures are to be taken at “face value” unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, it is expected that the Ethics Counselor will resolve any apparent violations to ensure there are no actual violations.

(3) If the Ethics Counselor believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the Ethics counselor.

(4) When the Ethics Counselor has completed the review and accomplished any necessary remedial action, the Ethics Counselor shall sign and date the report and dispose of it in accordance with § 84.23(d).

(5) If the Ethics Counselor concludes that the reporting individual is not in compliance with applicable laws or regulations, the Ethics Counselor shall:

(i) Notify the reporting individual, in writing, of the preliminary determination;

²¹ Copies are available for DoD Standards of Conduct Office, Office of General Counsel, 1600 Defense Pentagon, Washington, DC 20301-1600.

(ii) Afford the reporting individual an opportunity for personal consultation, if practicable;

(iii) Determine what remedial action should be taken to bring the reporting individual into compliance; and

(iv) Notify the reporting individual of the remedial action required, indicating a date by which that action must be taken, normally within 90 days.

(6) When the Ethics Counselor determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the report. The Ethics Counselor shall sign and date the report as the reviewing official and dispose of it in accordance with paragraph (d) of this section.

(d) *Disposition.* (1) After the Ethics Counselor signs and dates the report, the Ethics Counselor shall send the original to the entire DoD Component DAEO or designee, who shall forward it, together with all other such reports that were received during the previous calendar year, to SOCO not later than March 15.

(2) The DoD Component DAEO or designee shall ensure that appropriate data from each DD Form 1787 is extracted and sent, together with all other such data from other such reports that were received during the previous calendar year for the entire DoD Component, by March 15, to the Defense Manpower Data Center (DMDC) where a consolidated report to Congress is compiled. DMDC will accept data only on computer disk using any common word processing software or ASCII.

(3) If steps ensuring compliance with applicable laws and regulations are not taken by the date established, the Ethics Counselor shall report the matter to the DoD component DAEO and take whatever other action might be required in accordance with subpart J of this part.

(4) DD Forms 1787 shall be retained by SOCO for six years from the date of filing with SOCO.

(e) *Public availability of reports.* DD Forms 1787 must be available for public examination upon request after the report is filed with SOCO, unless exempted pursuant to law. Reporting individuals are personally responsible for en-

suring that their reports are accurate, complete, and timely.

(f) *Penalties—(1) Administrative penalties.* Anyone failing to file a report, or falsifying or failing to file required information, may be subject to any applicable personnel or other action in accordance with applicable law or regulation, including adverse action. An administrative penalty of up to \$10,000 may be imposed in accordance with 10 U.S.C. 2397.

(2) *Criminal liability.* Any individual who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, 20031, Apr. 24, 1995]

Subpart H—Seeking Other Employment

§ 84.24 General rules.

Office of Government Ethics Regulation. 5 CFR part 2635, subpart F provides rules on seeking other employment that apply to all DoD employees.

§ 84.25 Conflict of interest (18 U.S.C. 208).

(a) *Negotiating for employment.* See 5 CFR 2635.603 for provisions on conflicts of interest in employment negotiations under 18 U.S.C. 208. The provisions of 18 U.S.C. 208 and related provisions of OGE regulations do not apply to enlisted members. However, provisions similar to 18 U.S.C. 208 do apply to enlisted members as follows: [The following is a General Order] except as approved by the DoD component DAEO or designee, an enlisted member, including an enlisted special Government employee, shall not participate personally and substantially as part of his official DoD duties, in any particular matter in which he, his spouse, minor child, partner, entity in which he is serving as officer, director, trustee, partner or employee or any entity with which he is negotiating or has an arrangement concerning prospective employment, has a financial interest [end of General Order]. See 18 U.S.C. 208, § 84.3(a)(2)(i)(A) and § 84.15(b), and 5 CFR 2635.603.

(b) *Penalties.* Violation of 18 U.S.C. 208 is punishable by a fine and imprisonment. The full range of administrative sanctions may also be imposed.

§ 84.26 Procurement integrity (41 U.S.C. 423(b)).

(a) *Soliciting, accepting, or discussing employment.* (1) [The following is a General Order] During the conduct of a procurement, a procurement official may not knowingly, directly or indirectly, solicit or accept from, or discuss with, any officer, employee, representative, agent, or consultant of a competing contractor, any future employment or business opportunity [end of General Order]. See 48 CFR 3.104-6.

(2) This prohibition does not apply to a procurement official:

(i) After he leaves Federal Government service;

(ii) Who is employed by a contractor, subcontractor, consultant, expert, or advisor after he ceases to act on behalf of, or provide advice to, the procuring agency concerning the procurement;

(iii) Who has been granted recusal, in writing, in accordance with the provisions of 48 CFR 3.104-6 and paragraph (a)(4) of this action and who has in fact discontinued participation in the procurement;

(iv) Whose only communication with a competing contractor is to reject an unsolicited offer of employment or business opportunity or advise the competing contractor that he must seek recusal prior to any discussion regarding the unsolicited offer;

(v) Who has made inquiry in good faith of the potential contractor and been advised that the contractor is not or will not become a competing contractor on a procurement on which the individual is a procurement official; or

(vi) Where the procurement official engages in conduct in good faith reliance upon a written ethics advisory opinion;

(vii) After the procurement has been concluded by the award or modification of a contract or the cancellation of the procurement.

(3) A procurement official may discuss employment or business opportunities with a competing contractor only if a written recusal request was submitted and approved in accordance

with the policy and procedures contained in 48 CFR 3.104-6 (c) through (h). The head of the contracting activity has the authority to approve or disapprove a request for recusal; however, he may not approve recusal for a procurement official who has participated personally and substantially in certain evaluation functions listed in 48 CFR 3.104-6(c).

(4) Any DoD procurement official or former DoD procurement official may, by written request, seek advice from his DoD component DAEO or designee regarding whether he may be precluded by the procurement integrity rules from engaging in a specified activity. See 48 CFR 3.104-8.

(i) The request must provide the DoD component DAEO or designee with sufficient information to make a determination.

(ii) The DoD component DAEO shall make his determination, in writing, within 30 days, or as soon thereafter as practicable.

(iii) A copy of the request and the ethics advisory opinion shall be retained for six years, in accordance with DoD component procedures.

(b) *Penalties.* Violation of the provisions of 41 U.S.C. 423 is punishable by the full range of sanctions, including the following:

(1) *Civil penalties.* Individual violators may be subject to a civil fine not to exceed \$100,000. Violators, other than individuals, may be subject to a civil fine not to exceed \$1 million.

(2) *Administrative sanctions.* See § 84.39.

§ 84.27 Reporting employment contacts (10 U.S.C. 2397a).

(a) *Individuals required to file.* The following DoD employees are required by this part and by 10 U.S.C. 2397a to report, in writing, their employment contacts to their supervisor and DoD component DAEO or designee:

(1) Any military officer in grade O-4 or above, or any civilian DoD employee serving in a position for which the rate of pay is equal to or greater than the minimum rate of pay for GS/GM-11 who;

(2) At any time during his DoD service, performed a “procurement function” involving a defense contractor

which received at least \$25,000 a year in DoD business; and

(3) Who contacts or is contacted by that defense contractor regarding future employment.

(b) *Content of report.* Reports of employment contacts shall include:

(1) The name, title, agency address, and telephone number of the reporting individual;

(2) The name of the defense contractor concerned;

(3) The date of each contact covered by the report; and

(4) A brief description of the substance of each contact.

(c) *Disqualification statement—(1) Individuals required to file disqualification.*

(i) Any DoD employee required to submit a report of an employment contact shall submit to his supervisor a written statement disqualifying himself from participating in any “procurement function” involving the defense contractor until such time as the possibility of future employment with that defense contractor has been rejected by either party.

(ii) Procurement officials may be required to request recusal through formal procedures requiring written approval by the head of the contracting agency. See §84.26(a).

(2) *Distribution of disqualification.* The disqualification statement shall be given to the DoD employee’s supervisor and the Ethics Counselor. It also should be provided to others who might contact the DoD employee regarding the defense contractor which is the subject of the disqualification.

(3) *Contents of disqualification.* The disqualification statement shall contain:

(i) The name, title, agency address, and telephone number of the DoD employee submitting the report;

(ii) The extent of disqualification (i.e., a description of duties affecting the defense contractor the DoD employee may not perform as a result of the disqualification);

(iii) Identification of the DoD employee or office that will handle duties during the disqualification period; and

(iv) An explanation of any other steps required to avoid potential conflicts of interests;

(v) If the statement is necessary only because of a second contact which was rejected, information in accordance with paragraphs (c)(3)(iii) and (c)(3)(iv) of this section.

(4) *Withdrawal of disqualification.* A DoD employee may withdraw a disqualification if employment discussions conclude with no arrangement regarding future employment, or if such an arrangement is ended, by notifying, in writing, the same individuals who received copies of his disqualification statement.

(5) *Review and retention of disqualification.* The supervisor, with the assistance of the Ethics Counselor, shall review the disqualification statement to make sure it will prevent any conflict of interest and to determine whether the DoD employee can still carry out his responsibilities adequately. Both the supervisor and the Ethics Counselor shall retain a copy of the disqualification statement for three years.

(d) *Exception.* A DoD employee need not report the contact or disqualify himself from officially participating in a particular matter involving the defense contractor if the first contact was initiated by the defense contractor and the DoD employee immediately terminates the discussion and unequivocally rejects consideration of employment opportunities. If the contact is renewed by either the defense contractor or the DoD employee, all contacts must be reported.

(e) *Penalties.* An individual who fails to report an employment contact or to disqualify himself as required by paragraphs (a) through (c) of this section may be subject to the following administrative penalties:

(1) Prohibition of employment with the defense contractor concerned for up to ten years from the date of separation from DoD; and

(2) An administrative penalty not to exceed \$10,000.

§84.28 DoD guidance.

(a) *Appearances.* DoD employees shall:

(1) Ensure that the prospect of employment does not affect the performance or non-performance of their official duties;

(2) Ensure that they do not communicate inside information to a prospective employer; and

(3) Avoid any activity that would affect the public's confidence in the integrity of the Federal Government, even if it is not an actual violation of the law.

(b) *Written guidance.* DoD employees may obtain counseling and written advice concerning restrictions on seeking other employment from their Ethics Counselor:

(1) Although the counseling and advice are given by DoD attorneys and involve the interpretation of law and regulation and rendering of legal opinion, no attorney-client or other confidential relationship is created. Communications made to an Ethics Counselor in seeking such advice are not privileged.

(2) This counseling and advice is personal to the current or former DoD employee. It does not extend to the individual's business, employer, or prospective employer.

Subpart I—Post-Government Service Employment

§ 84.29 Office of Government Ethics regulation.

(a) See 5 CFR part 2637, "Regulations Concerning Post-Employment Conflict of Interest".

[5 CFR part 2637 applies only to DoD employees who left Federal Government service before 1991]

(b) See 5 CFR part 2641, "Post-Employment Conflict of Interest Restrictions".

[5 CFR part 2641 applies to DoD employees who left Federal Government service on or after January 1, 1991]

§ 84.30 Guidance on 18 U.S.C. 207.

(a) *OGE guidance.* See Office of Government Ethics memorandum,²² "Revised Materials Relating to 18 U.S.C. 207," November 5, 1992.

(b) *DoD guidance.* The restrictions imposed by 18 U.S.C. 207(a), (c) and (d) do not apply to communications made solely to furnish scientific and tech-

nical information that are authorized by the Head of the DoD component.

(1) To obtain such an authorization in the case of former DoD employees:

(i) The head of the DoD component command or organization involved shall submit, in writing, to the Head of the DoD component a request that the former DoD employee be permitted to participate in a particular matter from which he would ordinarily be barred under 18 U.S.C. 207;

(ii) The Head of the DoD component or designee may determine in writing that such participation is appropriate if:

(A) The former DoD employee has outstanding scientific or technological qualifications;

(B) The national interest of the United States would be served by such participation;

(C) The former DoD employee has qualifications that are otherwise unavailable; and

(D) The Head of the DoD component or designee has consulted with the DoD component DAEO.

(2) In cases involving former Federal Government employees other than former DoD employees, authorization may be obtained in accordance with procedures in 18 U.S.C. 207(j)(5).

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

§ 84.31 Post-employment counseling and advice.

(a) *Written advice.* Current and former DoD employees may obtain counseling and written advice concerning post-employment restrictions from the Ethics Counselor of the DoD component command or organization from which they are leaving, or have left, Federal Government service. Current and former DoD employees are, by statute, entitled to written advice from the DoD component DAEO or designee under 10 U.S.C. 2397b and 41 U.S.C. 423. See § 84.32 (a)(3) and (b)(3).

(1) Although ethics counseling and advice are given by DoD attorneys and involve interpretation of law and regulation and rendering of legal opinion, no attorney-client or other confidential relationship is created. Communications made to an Ethics Counselor

²² Copies are available from U.S. Office of Government Ethics, 1201 New York Avenue NW., Suite 500, Washington, DC 20005-3917.

in seeking such advice are not privileged.

(2) Ethics counseling and advice are personal to the current or former DoD employee. They do not extend to anyone else, including his business, employer, or prospective employer.

(b) *Delegation of authority.* The DoD component DAEO may specifically delegate authority in writing for Ethics Counselors within the DoD component to provide written advice under 10 U.S.C. 2397b and 41 U.S.C. 423. In any case where the local Ethics Counselor does not have the authority by written delegation, he shall provide the counseling and obtain the request for advice and necessary supporting information from the DoD employee and forward it to the DoD component DAEO or designee who has been specifically delegated the authority in writing to issue the written advice.

§ 84.32 Restrictions resulting from procurement activities.

(a) *10 U.S.C. 2397b—(1) Restrictions.* This statute prohibits the following three categories of former DoD employees from accepting compensation from the concerned defense contractor during the two-year period after separation from DoD:

(i) 0-4s and above, and civilians serving in positions for which the rate of pay was equal to or higher than the minimum rate of a GS/GM-13, who:

(A) On a majority of their working days during a two-year period prior to separation;

(B) Performed a procurement function relating to a defense contract;

(C) At a site or plant owned or operated by the defense contractor and which was the DoD employee's principal work location.

(ii) 0-4s and above, and civilians serving in positions for which the rate of pay was equal to or higher than the minimum rate of pay for a GS/GM-13, who:

(A) On a majority of their working days during the two-year period prior to separation;

(B) Performed a procurement function related to a major defense system and;

(C) In the performance of the procurement function, participated per-

sonally and substantially on any occasion and in a manner involving decision-making responsibilities with respect to a contract for the system;

(D) Through contact with the defense contractor; and

(iii) 0-7s and above, and civilians serving in positions for which the rate of pay was equal to or higher than the minimum rate of pay for a Senior Executive Service position, who during the two-year period prior to separation, acted as a "primary representative of the United States" in negotiation of a defense contract in an amount in excess of \$10 million or settlement of an unresolved claim exceeding \$10 million. An unresolved claim is valued by the greater of the amount of the claim or the amount of the settlement.

(2) *Penalties and effective dates.* Former DoD employees who knowingly violate this statute are subject to a civil fine up to \$250,000. Defense contractors who knowingly offer or provide any compensation to individuals in violation of this statute are subject to a civil fine up to \$500,000.

(i) The effective date of this law was April 16, 1987. The law does not prohibit the continuation of defense contractor employment begun or compensation accepted before then. If an employee separated from DoD prior to April 16, 1987, the statute does not apply. However, former DoD employees who were still employed or on active duty on or after April 16, 1987 must comply fully with its provisions, if within its scope.

(ii) For the period of December 1, 1989 until May 31, 1991, the statute was suspended and employment or acceptance of compensation during that period could not violate the statute. Questions about the effect of the suspension should be referred to the local Ethics Counselor.

(3) *Written opinion.* (i) Before accepting compensation from a defense contractor, a DoD employee or former DoD employee is, by statute, entitled to a written opinion regarding the applicability of this statute to his specific circumstances. A request for such written opinion shall be submitted in writing to the Ethics Counselor serving the DoD component command or organization the DoD employee is leaving or

from which he has separated. The request shall set forth all information relevant to the request.

(ii) Ethics Counselors who have not been delegated authority in writing to issue 10 U.S.C. 2397b written opinions shall promptly forward the request to the DoD component DAEO or designee who has such authority.

(iii) Written opinions shall be issued within 30 days of receiving the request together with all necessary information.

(iv) A written opinion that this statute is not applicable to a specific situation, if based on a complete disclosure of all relevant information, creates a conclusive presumption that the receipt of compensation from a particular defense contractor is not a violation of the law.

(v) A copy of each 10 U.S.C. 2397b written opinion shall be retained by the DoD component DAEO or designee for three years.

(4) *DoD interpretation of 10 U.S.C. 2397b.* (i) If a DoD employee had been conducting all negotiations with a \$10 million defense contractor on a major defense contract action of \$10 million or more, but a superior DoD employee intervened directly in the negotiating process, both DoD employees would be considered “primary” representatives for that defense contract action.

(ii) 10 U.S.C. 2397b does not prohibit any former DoD employee from accepting compensation from any defense contractor that, during the fiscal year preceding the fiscal year in which compensation is accepted, was not a defense contractor or was a defense contractor whose contracts totalled less than \$10 million.

(iii) 10 U.S.C. 2397b prohibits employment with particular defense contractors, not subcontractors, but former DoD employees cannot avoid its consequences merely by forming their own company and then “subcontracting” themselves to otherwise prohibited defense contractors.

(b) *41 U.S.C. 423—(1) Restrictions.* This statute restricts a former DoD employee who was a procurement official with respect to a particular procurement from knowingly:

(i) Participating in any manner on behalf of a competing contractor in

any negotiations leading to the award or modification of a defense contract for such procurement; or

(ii) Participating personally and substantially on behalf of the competing contractor in the performance of such defense contract.

(2) *Period of restrictions.* Both restrictions apply for a period of two years from the date of the former DoD employee’s last personal and substantial participation in the procurement on behalf of the Federal Government. Neither applies unless the individual was a DoD employee of the Federal Government at the time he served as a procurement official.

(3) *Written opinion.* (i) A DoD employee or former DoD employee who is or was a procurement official is, by statute, entitled to a written opinion regarding the applicability of this statute to his specific circumstances. A request for such an opinion shall be submitted in writing to the Ethics Counselor serving the DoD component command or organization the DoD employee is leaving or from which he has separated. The request shall set forth all information relevant to the request. See 48 CFR 3.104–8(e).

(ii) Ethics Counselors who have not been delegated specific authority in writing to issue 41 U.S.C. 423 written opinions shall promptly forward the request to the DoD component DAEO or designee who has such authority.

(iii) Written opinions shall be issued within 30 days of receiving the request, together with all necessary information.

(iv) Where the DoD employee or former DoD employee relies in good faith on a written opinion that this statute is not applicable to a specific situation, the DoD employee or former DoD employee shall not be found to have knowingly violated the restrictions of the statute.

(v) A copy of each 41 U.S.C. 423 opinion shall be retained by the DoD component DAEO or designee for three years.

§84.33 Restrictions on retired military members.

(a) *18 U.S.C. 281(a).* This statute restricts the selling activities of retired military officers. The provisions of this

statute were suspended by the Federal Acquisition Streamlining Act of 1994 through December 31, 1996.

(1) *Restrictions.* A criminal statute, 18 U.S.C. 281(a), provides that for a period of two years after retiring, no retired military officer may receive compensation for representing any other individual in the sale of anything to the Federal Government through the department in which he holds a retired status.

(i) The term "department" refers to individual DoD components, not DoD as a whole, insofar as it concerns retired military officers. For example, this statute does not prohibit retired Navy and Marine Corps officers from selling to the Departments of the Army or Air Force.

(ii) The term "anything" in the phrase "sale of anything" has been construed by DoJ to encompass both goods and services.

(iii) DoD has determined that this statute does not prohibit the sale of personal services when the retiree is only representing himself. However, sale of personal services may not include the work product of a closely held corporation where individuals other than the retiree contribute to the services provided.

(2) *Definition of "selling."* (i) For the purpose of this statute, "selling" means:

(A) Signing a bid, proposal, or contract;

(B) Negotiating a contract;

(C) Contacting a DoD employee to obtain or negotiate defense contracts, negotiate or discuss changes in specifications, price, cost allowances, or other terms of a defense contract, or settle disputes concerning performance of a defense contract; or

(D) Any other liaison activity with a view toward the ultimate consummation of a sale although the actual defense contract is negotiated subsequently by another person.

(ii) Activities which are not considered "selling" include:

(A) Purely social contacts, as long as there is an independent basis for the social relationship and no promotion of a product or attempt to influence a procurement;

(B) Technical contacts for the purpose of conferring with non-contracting technical specialists to acquire information this is available to all prospective defense contractors, provided that these contacts do not otherwise involve "selling" as discussed in paragraph (a)(2)(i) of this section. See 42 Comp. Gen. 236.241;

(C) Contacts subsequent to the execution of a defense contract relating to performance or progress, if they do not include modification of the defense contract or "selling" as discussed in paragraph (a)(2)(i) of this section.

(b) *18 U.S.C. 281(b).* For a period of two years after terminating service with the Federal Government, a retired military officer may not act as an agent or attorney for the prosecution or assist in the prosecution of any claim against the United States involving the department in which he holds a retired status or which concerns a subject with which the military officer was directly connected while on active duty. A violation on this statute is punishable by a \$10,000 fine and one year imprisonment.

(c) *Restrictions on Federal Government employment—(1) Dual compensation laws.* A retired member of any uniformed service who holds a civilian position with the Federal Government is subject to reduction of retired pay while receiving pay from a Federal Government civilian position. The term "retired member" means anyone, officer or enlisted, entitled to receive retired pay. The term "retired pay" includes both retired and retainer pay. The current law generally applies to retired regular officers, retired at any time, and to all former members of the uniformed services who left active duty after January 11, 1979. See 5 U.S.C. 5532 for exceptions to this general rule.

(i) *The dual compensation reduction formulas.* There are two provisions in the current dual compensation law which may operate to reduce the retired pay of retired members of the uniformed services who hold Federal Government civilian positions.

(A) *The first reduction provision.* The first reduction provision applies only to retired regular officers who retired at any time. This provision operates to

reduce the retired pay of a retired regular military officer receiving pay from a Federal Government civilian position regardless of the amount of salary from that civilian position. It provides that such retired military officer is entitled to receive the full pay of the civilian position, but retired pay will be reduced to an annual rate equal to base amount plus one-half of the remainder of the retired pay, if any. The base amount is increased periodically to reflect changes in the Consumer Price Index, See 5 U.S.C. 5532(b).

(B) *The second reduction provision.* The second reduction provision applies, in general, to all retired military members who first received retired pay after January 11, 1979. The reduction depends upon the amount of pay received from the Federal Government civilian position. This provision operates to reduce the retired pay of a retired member when the annual rate of pay for the civilian position combined with the annual rate of retired pay (reduced in the case of retired regular officers as discussed in §84.33(c)(1)(i)(A)) exceeds the annual rate of basic pay for level V of the Executive Schedule. Reductions are computed as follows:

(1) If the combination of pay from the civilian position and retired pay exceeds the amount currently paid for level V of the Executive Schedule, the retired pay will be reduced to keep the total at the level V limit.

(2) Reductions to retired pay are made per pay period whenever the combination of the two salaries for the pay period exceeds the pay for a level V position for that pay period. Reductions made in such pay periods are not refundable even when the combined pay amounts for the total year is less than the annual rate for level V of the Executive Schedule;

(3) The amount of retired pay may not be reduced to an amount less than the amount deducted from the retired pay as a result of participation in any survivor's benefits in connection with retired pay or veterans insurance programs and no reductions shall be made to retired pay based, in whole or in part, upon disability incurred in the line of duty as a direct result of armed conflict or during a period of war.

(ii) *Waivers.* (A) A retired member may, in certain limited circumstances, obtain a waiver so that his retired pay would not be reduced while holding a Federal Government civilian position. See 5 U.S.C. 5532(g). The circumstances under which a waiver may be granted are:

(1) On a case by-case basis for a retired member holding a Federal Government civilian position for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

(2) For temporary employment that is necessary due to an emergency involving a direct threat to life or property, or under other unusual circumstances.

(B) The Director, OPM, may grant a waiver at the request of the Head of an Executive agency. Additionally, the Director, OPM, may delegate to an agency the authority to grant waivers for the temporary employment of retired members during emergencies or other unusual circumstances, but not for employment necessitated by exceptional difficulties in recruiting or retaining qualified individuals. The Director, OPM, has delegated to DoD authority to approve dual compensation restriction waivers in certain circumstances at installations scheduled for closure.

(C) Waivers are to be the exception, not the rule. If appropriate, however, a waiver may be obtained for either or both of the dual compensation reductions. See 5 CFR part 553 for procedures for obtaining a waiver.

(2) *Post-military service employment in DoD under 5 U.S.C. 3326.* As of November 6, 1992, the suspension of this provision ended. See DoD Directive 1402.1.²³ To avoid appearances of favoritism or preferential treatment, retired military members may not be selected to fill civil service positions in DoD (including non-appropriated fund instrumentalities within 180 days following retirement unless:

(i) The appointment is authorized by the Secretary of a Military Department or designee, or by OPM if the position is in the competitive service;

²³ See footnote 4 to §84.7(d).

(ii) The minimum rate of basic pay for the position has been increased under 5 U.S.C. 5305; or

(iii) A state of national emergency exists.

(d) *Foreign employment restrictions.* (1) Article I, Section 9, Clause 8, of the Constitution of the United States prohibits any person holding any office of profit or trust under the Federal Government from accepting any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state without the consent of Congress.

(i) This provision prohibits employment of all retired military members, both officer and enlisted and both regular and reserve, by a foreign government unless Congressional consent is first granted. See 44 Comp. Gen. 130.

(ii) Employment by educational or commercial institutions owned, operated, or controlled by a foreign government is included within the scope of this restriction.

(iii) The penalty for violation is withholding the retired military member's retired pay in an amount equal to the foreign salary illegally received. See 61 Comp. Gen. 306.

(2) Congress has consented to the acceptance of civil employment with a foreign government by, among others, retired regular military members and reserve military members, if both the Secretary of the Military Department and the Secretary of State approve the employment. See 37 U.S.C. 908. Because approval is prospective only, foreign civil employment should not be accepted until approval has been obtained. Retired military members who wish to accept such employment should submit a written request for approval to the Secretary of their Military Department through appropriate channels. The request must fully describe the contemplated employment and the nature and extent of the involvement with the foreign government.

(3) A former military member desiring employment with a foreign government or any foreign business interest may be required to register as an agent of a foreign principal under the Foreign Agents Registration Act of 1938, 22 U.S.C. 611 *et seq.* Any person who acts as an agent of a foreign principal must

file a registration statement with the U.S. Attorney General.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, 20032, Apr. 24, 1995]

§84.34 Restrictions on former senior appointees.

Executive Order 12834 (58 FR 5911) requires contractual ethics commitments regarding post-Government service employment from full-time, non-career Presidential, Vice-Presidential or agency Head appointees in an Executive agency whose rate of basic pay is not less than the rate for level V of the Executive Schedule, except for those appointed as members of the senior foreign service or solely as uniformed service commissioned officers. See Executive Order 12834 and OGE Form 203,²⁴ "Senior Appointee Pledge," January 1993, and OGE Form 204,²⁵ "Trade Negotiation Pledge," January 1993.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

§84.35 Restrictions on dealing with current or former DoD employees.

(a) *General rule.* Current DoD employees shall not knowingly deal, on behalf of the Federal Government, with current or former DoD employees whose participation in the transaction violates any statute or DoD directive, regulation or policy.

(b) *Terminal leave.*

(1) Military members on terminal leave may accept civilian employment with the Federal Government and are entitled to the pay of that civilian position in addition to the pay and allowances to which entitled while on terminal leave. See 5 U.S.C. 5534a.

(2) A military officer on active duty may not accept a civil office with a State or local government, nor may he perform the duties of such an office. See 10 U.S.C. 973(b)(3). This applies while the military officer is on terminal leave. See 56 Comp. Gen 855.

²⁴Copies are available from U.S. Office of Government Ethics, 1201 New York Avenue NW., Suite 500, Washington, DC 20005-3917.

²⁵See footnote 23 to §84.34.

§ 84.36 Reports of DoD and defense related employment (DD form 1787).

(a) *Individuals required to file.* The following former DoD employees are required by 10 U.S.C. 2397 to file DD Form 1787 with their former DoD component:

(1) Each former DoD employee of a DoD component who:

(i) Served at a pay rate equal to or greater than the minimum rate for a GS/GM-13, or served on active duty at least ten years and held the grade of 0-4 or above at any time during his service;

(ii) Within the two-year period immediately following termination of service or employment with the DoD component, is employed by a defense contractor who, during the preceding one-year period, was awarded \$10 million or more in defense contracts; and

(iii) Is employed by or performs services for the defense contractor and receives compensation of or is salaried at a rate of \$25,000 per year or more from the defense contractor.

(2) Compensation is received by a reporting individual if it is paid to a business entity with which the reporting individual is affiliated in exchange for services rendered by that reporting individual;

(3) A rate of \$25,000 per year equates to \$12 per hour.

(b) *Time of filing.* A former DoD employee shall file a report with his former DoD component DAEO or designee within 90 days of entering on duty with the defense contractor.

(c) *Review.* (1) When the report is filed, the DoD component DAEO or designee shall review the report to determine whether:

(i) Each item is completed and sufficient information is provided; and

(ii) Whether the information indicates any violation or apparent violation of any of the conflicts of interest, standards of conduct, procurement integrity, and related laws and regulations.

(2) The DoD component DAEO or designee need not audit the report. Disclosures are to be taken at "face value" unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, it is expected that the DoD component DAEO or designee will

resolve any apparent violations to ensure there are no actual violations.

(3) If the DoD component DAEO or designee believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the DoD component DAEO or designee.

(4) When the DoD component DAEO or designee has completed the review and accomplished any necessary remedial action, he shall sign and date the report and dispose of it in accordance with paragraph (d)(2) of this section.

(5) If the DoD component DAEO or designee concludes that the reporting individual is not in compliance with applicable laws or regulations, the DoD component DAEO or designee shall:

(i) Notify the reporting individual of the preliminary determination;

(ii) Afford the reporting individual an opportunity for personal consultation, if practicable;

(iii) Determine what remedial action should be taken to bring the reporting individual into compliance; and

(iv) Notify the reporting individual of the remedial action required, indicating a date by which that action must be taken, normally within 90 days.

(6) When the DoD component DAEO or designee determines that a reporting individual has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the report. Then the DoD component DAEO or designee shall sign and date the report as the reviewing official and dispose of it in accordance with paragraph (d)(2) of this section.

(d) *Disposition.*

(1) After the Ethics Counselor signs and dates the report, the Ethics Counselor shall send the original to the DoD Component DAEO or designee, who shall forward it, together with all other such reports that were received during the previous calendar year, to SOCO not later than March 15.

(2) The DoD Component DAEO or designee shall ensure that appropriate data from each DD Form 1787 is extracted and sent, together with all

other such data from other such reports that were received during the previous calendar year for the entire DoD Component, by March 15 to the Defense Manpower Data Center (DMDC) where a consolidated report to Congress is compiled. DMDC will accept data only on computer disk using any common word processing software or ASCII.

(3) If steps ensuring compliance with applicable law and regulations are not taken by the date established, the Ethics Counselor shall report the matter to the DoD Component DAEO and take whatever other action might be required in accordance with subchapter J of this part.

(4) DD Forms 1787 shall be retained by SOCO for six years from the date of filing with SOCO.

(e) *Public availability of reports.* DD Forms 1787 must be made available for public examination upon request after the reports are filed with SOCO, unless exempted pursuant to law. Reporting individuals are personally responsible for ensuring that their reports are accurate, complete, and timely.

(f) *Penalties*—(1) *Administrative penalties.* Anyone failing to file a report or falsifying or failing to file required information, may be subject to any applicable personnel or other action in accordance with applicable law or regulation, including adverse action. An administrative penalty of up to \$10,000 may be imposed in accordance with 10 U.S.C. 2397.

(2) *Criminal liability.* Any individual who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20032, Apr. 24, 1995]

Subpart J—Enforcement

§ 84.37 Enforcement of the provisions of the Joint Ethics Regulation.

Penalties for violation of the rules republished in, and prescribed by, this part include the full range of applicable criminal, civil and administrative sanctions for current DoD employees, including punishment under the UCMJ for military members. Many of the statutes that regulate the post-Govern-

ment service employment activities of former or retired DoD employees also provide for specific criminal and administrative sanctions. This subpart sets out the requirements for reporting and inquiry to ensure that ethics-related laws and regulations are properly enforced and that appropriate administrative or disciplinary action is taken.

§ 84.38 Reporting procedures.

(a) *Reporting suspected violations.* With the exception of the provisions of 41 U.S.C. 423 that are addressed in paragraph (c) of this section, DoD employees who suspect that a violation of this part has occurred shall report the matter to any of the following:

- (1) The DoD employee's agency designee;
- (2) The suspected violator's agency designee;
- (3) The head of the DoD component command or organization;
- (4) Any Ethics Counselor;
- (5) The DoD component's IG;
- (6) The DoD component's criminal investigative office; or
- (7) The DoD hotline or DoD component hotline.

(b) *Receipt of report.* (1) DoD component investigative offices shall consult local Ethics Counselors as appropriate to ensure that up-to-date expertise is applied in the investigation of each suspected violation of this part in recognition of rapidly changing rules and statutes in the ethics area.

(2) If a suspected violation is reported to some entity other than those named in paragraph (a)(4) through (a)(7) of this section, then the notified person shall promptly report the matter to his Ethics Counselor.

(3) An Ethics Counselor who receives a report shall review the facts and, if the facts tend to support a violation, report the allegation to the appropriate investigative organization or, through the chain of command or supervision, to the head of the DoD component command or organization of the suspected violator. In addition, the Ethics Counselor must ensure that the following is accomplished:

- (i) If a violation of 18 U.S.C. 203, 205, 207, 208 or 209 is suspected, the matter

shall be reported to the DoD component's criminal investigative organization. The investigative organization is responsible for investigating the allegation and notifying DoJ in accordance with DoD Directive 5525.7²⁶. In addition, the Ethics Counselor shall:

(A) Report to the DoD component DAEO as follows:

(1) The name and position (optional) of the informant;

(2) The name and position of the suspect;

(3) The suspected offense;

(4) The facts, as known or believed;

(5) The status of any action being taken.

(B) File periodic follow-up reports with the DoD component DAEO until a final determination is made;

(C) If the matter is referred to the DoJ or the U.S. Attorney, include OGE Form 202,²⁷ "Notification of Conflict of Interest Referral," January 1992, in the referral packet and send a copy to the DoD component DAEO for forwarding to OGE.

(ii) If a violation of 18 U.S.C. 201 or 281 is suspected, it shall be handled in the same manner as paragraph (b)(3)(i)(A) of this section except that OGE Form 202 is not used for referrals;

(iii) If a violation of 10 U.S.C. 2397 is suspected, the Ethics Counselor shall inquire into the matter and, if substantiated, attempt to obtain compliance. If these efforts fail, the Ethics Counselor shall forward a written report to the GC, DoD through the DoD component DAEO with a recommendation for action by the Secretary of Defense pursuant to 10 U.S.C. 2397(f);

(A) The report need be filed only when the Ethics Counselor determines that there is sufficient evidence to believe that a violation has occurred;

(B) The report shall include all relevant facts, a summary of witness statements, and a justification for the recommendation to refer or not to refer the violation for enforcement action.

(iv) If a violation of 10 U.S.C. 2397a is suspected, the Ethics Counselor shall report the matter to the DoD compo-

nent DAEO in the same manner as in paragraph (b)(3)(i)(A) of this section. If the Ethics Counselor believes that the Secretary of Defense should take action pursuant to 10 U.S.C. 2397a(d), the Ethics Counselor shall forward a written report to the GC, DoD through the DoD component DAEO with a recommendation for action;

(A) The report need be filed only when the Ethics Counselor determines that there is sufficient evidence to believe that a violation has occurred;

(v) If a violation of 10 U.S.C. 2397b is suspected, the Ethics Counselor shall report the matter to the DoD component DAEO in the same manner as in paragraph (b)(3)(i)(A) of this section;

(vi) If it is suspected that an individual is receiving retired pay contrary to 37 U.S.C. 801, a report of the matter shall be made to the Defense Finance and Accounting Service. A copy of that report shall be sent to the DoD component DAEO;

(vii) If a violation of 5 CFR part 2635 involving a loss to the Federal Government of \$5,000 or more is suspected, the Ethics Counselor shall report the matter to the DoD component DAEO in the same manner as in paragraph (b)(3)(i)(A) of this section.

(4) In addition, if any of the previous violations fall within a DoD component's procurement fraud program, the Ethics Counselor shall ensure that referrals, coordinations, and reports required by that program are accomplished. If the matter includes a suspected violation of the Gratuities Clause in a defense contract, the Ethics Counselor shall report the matter in accordance with DoD component procedures issued pursuant to 48 CFR 3.203. See paragraph (c) of this section.

(5) For matters not handled within the DoD component's procurement fraud program, any civil or criminal referrals to DoJ or the local U.S. Attorney of violations of this part shall be coordinated with the DoD component DAEO. The DoD component DAEO shall be informed of referrals of violations of this part handled within the DoD component's procurement fraud program.

(c) *Violations of 41 U.S.C. 423.*

²⁶ See footnote 4 to § 84.7(d).

²⁷ Copies are available from U.S. Office of Government Ethics, 1201 New York Avenue NW., Suite 500, Washington, DC 20005-3917.

(1) *Administrative sanctions.* Suspected violations of 41 U.S.C. 423 shall be processed in accordance with 48 CFR 3.104-11. See 41 U.S.C. 423(h)(2).

(2) *Civil sanctions.* Suspected civil violations may be referred through the DoD component DAEO to DoJ. See 41 U.S.C. 423(i).

(3) *Criminal sanctions.* Suspected violations that involve the improper release of source selection information should be referred to the appropriate criminal investigative organization. See 41 U.S.C. 423(j).

(4) *Reporting.* Any suspected violation of the provisions of 41 U.S.C. 423 shall be reported as soon as practicable to the appropriate contracting officer. See 41 U.S.C. 423(h)(1). Any actions taken as the result of the above referrals shall be reported to the DoD component DAEO in accordance with paragraph (b)(3)(i)(A) of this section.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, 20032, Apr. 24, 1995]

§ 84.39 Administrative enforcement procedures.

(a) *Statutory authority.* 10 U.S.C. 2397 and 2397a provide for administrative enforcement action and sanctions imposed by the Secretary of Defense against individuals and non-Federal entities not in compliance with these statutes.

(b) *Procedures for pursuing administrative action.* All recommendations for enforcement of 10 U.S.C. 2397 and 2397a forwarded to the Secretary of Defense shall be initiated, investigated and processed in accordance with the requirements of the Administrative Procedure Act. See 5 U.S.C. 551 *et seq.*

(c) *Hearing examiners.* In accordance with 5 U.S.C. 556, DoD shall appoint hearing examiners from within DoD to preside at the taking of evidence and provide recommendations to DoD as to final action.

(d) *Administrative sanctions.* (1) DoD may take appropriate disciplinary action whenever indicated by the outcome of a case involving violations of 10 U.S.C. 2397 and 2397a by:

(i) Imposing an administrative penalty, not to exceed \$10,000;

(ii) With respect to violations of 10 U.S.C. 2397a, imposing an additional administrative penalty of a particular

amount if the individual is determined to have accepted or continued employment with a defense contractor during the ten-year period beginning with the date of separation from Federal Government service.

(2) DoD may take other appropriate disciplinary action when indicated by the outcome of a case in accordance with the laws or regulations violated.

(e) *Judicial review.* Any individual or non-Federal entity found in violation as described, and against whom an administrative sanction is imposed, may seek judicial review of the final administrative determination.

Subpart K—Training

§ 84.40 Office of Government Ethics regulation.

See 5 CFR part 2638, "Office of Government Ethics and Executive Agency Ethics Program Responsibilities."

§ 84.41 DoD guidance.

(a) *Initial and annual ethics training.*

(1) Overall responsibility for initial and annual ethics training programs rests with the Head of each DoD component acting through his DAEO. The Head of the DoD component shall ensure that adequate resources are available to implement the requirements of this subpart. Support shall be provided by the DoD component legal and personnel offices, as necessary.

(2) In the Military Departments, responsibility for implementation of ethics training programs rests with the heads of DoD component commands or organizations who shall ensure that ethics training is accomplished in accordance with this subpart.

(3) Training shall be accomplished using material authorized by the DoD component DAEO or designee in meeting the requirements of this subpart. Ethics Counselors may augment this material with additional training material needed to address specific ethics issues peculiar to their organization.

(4) DoD component Heads and DoD component DAEOs have the authority to require that DoD employees other than the ones covered by 5 CFR part 2638 receive annual ethics training.

(b) *Procurement integrity training.* (1) Each DoD component shall establish,

or insure that its DoD employees have access to, a procurement integrity training program. Such program shall be the responsibility of the DoD component's official in charge of acquisition, with the assistance of the legal and personnel offices, under the overall guidance of the GC, DoD. The procurement integrity training program shall, at a minimum, comply with 48 CFR 3.104-12.

(2) Heads of DoD components shall establish procedures to ensure that DoD employees receive (or have received) procurement integrity training and sign the Option Form (OF) 333, "Procurement Integrity Training Certificate for Procurement Officials," or similar certificate. Out-processing procedures shall also be established to ensure that DoD employees who leave an organization verify their status with regard to the restrictions contained in the Procurement Integrity Act (41 U.S.C. 423). An original copy of OF 333 or similar certificate should be placed in the appropriate personnel folder or other permanent file as determined by the DoD component. The individual executive the certificate should also retain a copy.

(3) The following DoD employees should receive procurement integrity training and execute the required certificate:

(i) All DoD employees who are members of the acquisition workforce;

(ii) All DoD employees who are engaged in, or who might become engaged in, procurement official activities, as set forth in 41 U.S.C. 423 and 48 CFR 3.104.

(4) This requirement may be waived if the head of the DoD component command or organization determines that the DoD employee will not act as a procurement official while assigned to the organization.

§ 84.42 Procedures.

(a) *Combined initial and annual ethics training (CIAET) for calendar year 1993.* (1) By December 31, 1993, all DoD employees, including those required to receive Annual Ethics Training (AET), non-appropriated fund instrumentality employees, and enlisted members, shall receive CIAET.

(2) CIAET shall be accomplished in person by a Qualified Individual or by recording in the presence of a Qualified Individual, subject to the following exceptions:

(i) If the DoD component DAEO determines it is impractical to accomplish CIAET in the presence of a Qualified Individual, DoD employees who are not required to receive AET may be trained by other means within the minimum training requirements set out by OGE in 5 CFR 2638.703 provided that, with the exception of enlisted members, such training was completed by February 3, 1993;

(ii) If the DoD component DAEO determines it is impractical to accomplish CIAET training in the presence of a Qualified Individual, then special Government employees and military officers serving on active duty fewer than 30 consecutive days annually may be trained by other means within the minimum training requirements set out by OGE in 5 CFR 2638.704;

(iii) If the DoD component DAEO makes, with the approval of OGE, a written determination that it is impractical to accomplish CIAET training in the presence of a Qualified Individual, then DoD employees who are required to receive AET may be trained by other means within the minimum training requirement set out by OGE in 5 CFR 2638.704. OGE requires the written determination to identify the particular DoD employees or groups of DoD employees concerned and the specific circumstances that make the presence of a Qualified Individual impractical (mere administrative inconvenience or cost to an agency, standing alone, shall not justify such determination).

(3) The term "immediate office" as used in 5 CFR 2638.703 shall mean the local Ethics Counselor's.

(4) CIAET shall be a minimum of one hour.

(5) Those DoD employees who are required to receive AET will satisfy their 1993 annual ethics training obligation if they attended CIAET in 1992 or 1993.

(b) *Initial ethics training (IET) for new DoD employees.* (1) Within 90 days of entering on duty, all DoD employees who did not receive CIAET, including those required to receive AET and enlisted

members, shall receive IET for new DoD employees.

(2) IET shall be accomplished in person by a Qualified Individual or by recording in the presence of a Qualified Individual, and such IET shall qualify as AET for the year the new DoD employees entered on duty, subject to the following exceptions:

(i) If the DoD component DAEO determines it is impractical to accomplish IET in the presence of a Qualified Individual, DoD employees who are *not* required to receive AET may be trained by other means within the minimum training requirements set out by OGE in 5 CFR 2638.703;

(ii) If the DoD component DAEO determines that it is impractical to accomplish IET in the presence of a Qualified Individual, then DoD employees who are required to receive AET may be trained by other means within the minimum training requirement set out by OGE in 5 CFR 2638.704 provided that such DoD employees receive additional annual ethics training, either CIAET, IET or AET, if more than three months remain of the calendar year in which those DoD employees entered on duty.

(3) The term "immediate office" as used in 5 CFR 2638.703 shall mean the local Ethics Counselor's office.

(4) IET shall be a minimum of one hour.

(c) *Annual ethics training (AET)*. (1) Beginning in calendar year 1994, all DoD employees who file an SF 278 or SF 450, contracting officers and procurement officials, shall receive ethics training annually.

(2) AET shall be accomplished in person by a Qualified Individual or by recording in the presence of a Qualified Individual, subject to the following exceptions:

(i) If the DoD component DAEO determines it is impractical to accomplish AET in the presence of a Qualified Individual, then special Government employees and military officers serving fewer than 30 consecutive days annually, may be trained by other means within the minimum training requirements set out by OGE in 5 CFR 2638.704;

(ii) If the DoD component DAEO makes a written determination that it

is impractical to accomplish AET in the presence of a Qualified Individual, then DoD employees other than special Government employees and military members serving fewer than 30 days annually may be trained by other means within the minimum training requirement set out by OGE in 5 CFR 2638.704. OGE requires the written determination to identify the particular DoD employees or groups of DoD employees concerned and the specific circumstances that make the presence of a Qualified Individual impractical (mere administrative inconvenience or cost to an agency, standing alone, shall not justify such determination).

(3) AET shall be a minimum of one hour.

(d) *Annual ethics training plans*. DoD agency (see definition of "agency") ethics training plans for 1994 and subsequent ethics training plans in accordance with paragraphs (b) and (c) of this section shall be submitted by DoD component DAEOs or designees directly to OGE with copies furnished to SOCO. DoD components that are not agencies shall submit annual ethics training plans to SOCO for approval and inclusion in the ethics training plan SOCO submits to OGE.

(e) *Ethics training assistance*. (1) SOCO shall make available ethics training for ethics trainers on an ongoing basis to ensure that Qualified Individuals are uniformly prepared to provide ethics training.

(2) SOCO shall distribute ethics training material to all DoD component DAEOs for use in all types of ethics training.

(3) Ethics training material shall include a training video with accompanying pamphlet, modular ethics training packages with copies of overhead slides, facilitator scripts, discussion hypotheticals, and handout material, and a programmed text. Other programmed texts, correspondence courses, and ethics computer games, and materials developed by DoD components will be distributed as they are developed.

(4) In the interest of Federal Government efficiency and economy, DoD components that develop ethics training develop ethics training material independently shall provide a copy of

the material to SOCO for distribution to other DoD components.

(5) At a minimum, all ethics training shall include a review of part I of Executive Order 12674, 5 CFR part 2635 and this part.

§ 84.43 Responsibilities.

(a) The Head of each DoD component shall:

(1) Exercise personal leadership and take personal responsibility through the DoD component DAEO for establishing and maintaining the DoD component's ethics and procurement integrity training program and shall be personally accountable for the DoD component's compliance with the ethics and procurement integrity training requirements;

(2) Provide sufficient resources to enable the DoD component DAEO to implement and administer the DoD component's ethics and procurement integrity training program.

(b) Each DoD component DAEO shall:

(1) Be responsible for the implementation and administration of ethics and procurement integrity training and ensure that necessary resources are available to accomplish such training;

(2) Provide periodic ethics and procurement integrity training for Ethics Counselors;

(3) Certify Qualified Individuals to conduct ethics training.

(c) The head of each DoD component command or organization shall:

(1) Exercise personal leadership and take personal responsibility for establishing and maintaining the command's or organization's ethics and procurement integrity training program;

(2) Be personally accountable for the command's or organization's ethics and procurement integrity program;

(3) Ensure that DoD employees of the command or organization attend required ethics and procurement integrity training; and

(4) Direct administrative officers (or equivalent) of the command or organization to coordinate with the DoD component DAEO or designee to develop lists of all DoD employees of the command or organization who are required to receive ethics and procurement integrity training, schedule such

training, annotate such lists to indicate when required training was accomplished and retain annotated lists for three years.

(d) The DoD SOCO shall:

(1) Make ethics and procurement integrity training for ethics trainers available on an ongoing basis to ensure that Qualified Individuals are uniformly prepared to provide such training;

(2) Distribute ethics and procurement integrity training material to all DoD component DAEOs for use in all types of ethics and procurement integrity training;

(3) Certify Qualified Individuals to conduct ethics training who may be used by DoD components.

(e) The director of each DoD component personnel office shall, in coordination with the DoD component DAEO or designee, establish procedures in coordination with the DoD component DAEO or designee to inform new DoD employees of their obligation to receive ethics and procurement integrity training as required.

(f) The administrative officer (or equivalent) of each DoD component command and organization shall:

(1) In coordination with the DoD component DAEO or designee, develop lists of all DoD employees within the DoD component command or organization who are required to receive ethics and procurement integrity training;

(2) In coordination with the DoD component DAEO or designee, ensure that DoD employees with the DoD component command or organization are scheduled to receive required ethics or procurement integrity training;

(3) Annotate such lists to indicate when required training was accomplished and retain annotated lists for three years.

(g) The DoD employees shall attend ethics and procurement integrity training as required.

Subpart L—Ethical Conduct

§ 84.44 Executive orders.

(a) See Executive Order 12674.

(b) See Executive Order 12834.

§ 84.45 Code of ethics for Government service.

In accordance with 5 U.S.C. 7301 note, each agency shall display, in appropriate areas of any Federal Government building in which at least 20 civilians are regularly employed by the agency, copies of the following Code of Ethics for Government Service:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

- I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.
- II. Uphold the Constitution, laws, and regulations of the United States and of all governments therein and never be a party to their evasion.
- III. Give a full day's labor for a full day's pay; giving earnest effort and best thought to the performance of duties.
- IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
- V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or herself or for family members, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.
- VI. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.
- VII. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.
- VIII. Never use any information gained confidentially in the performance of governmental duties as a means of making private profit.
- IX. Expose corruption wherever discovered.
- X. Uphold these principles, ever conscious that public office is a public trust.

§ 84.46 DoD human goals.

On April 17, 1990, DoD established human goals. See Appendix C of this part.

§ 84.47 Ethical values.

(a) *General.* Ethics are standards by which one should act based on values. Values are core beliefs such as duty, honor, and integrity that motivate attitudes and actions. Not all values are ethical values (integrity is; happiness is not). Ethical values relate to what is right and wrong and thus take precedence

over non-ethical values when making ethical decisions. DoD employees should carefully consider ethical values when making decisions as part of official duties.

(b) *Primary ethical values*—(1) *Honesty.* Being truthful, straightforward and candid are aspects of honesty.

(i) Truthfulness is required. Deceptions are easily uncovered and usually are. Lies erode credibility and undermine public confidence. Untruths told for seemingly altruistic reasons (to prevent hurt feelings, to promote good will, etc.) are nonetheless resented by the recipients.

(ii) Straightforwardness adds frankness to truthfulness and is usually necessary to promote public confidence and to ensure effective, efficient conduct of Federal Government operations. Truths that are presented in such a way as to lead recipients to confusion, misinterpretation or inaccurate conclusions are not productive. Such indirect deceptions can promote ill-will and erode openness, especially when there is an expectation of frankness.

(iii) Candor is the forthright offering of unrequested information. It is necessary in accordance with the gravity of the situation and the nature of the relationships. Candor is required when a reasonable person would feel betrayed if the information were withheld. In some circumstances, silence is dishonest, yet in other circumstances, disclosing information would be wrong and perhaps unlawful.

(2) *Integrity.* Being faithful to one's convictions is part of integrity. Following principles, acting with honor, maintaining independent judgment and performing duties with impartiality help to maintain integrity and avoid conflicts of interest and hypocrisy.

(3) *Loyalty.* There are many synonyms for loyalty: fidelity, faithfulness, allegiance, devotion and fealty. Loyalty is the bond that holds the nation and the Federal Government together and the balm against dissension and conflict. It is not blind obedience or unquestioning acceptance of the status quo. Loyalty requires careful balancing among various interests, values and institutions in the interest of harmony and cohesion.

(4) *Accountability.* DoD employees are required to accept responsibility for their decisions and the resulting consequences. This includes avoiding even the appearance of impropriety because appearances affect public confidence. Accountability promotes careful, well thought-out decision-making and limits thoughtless action.

(5) *Fairness.* Open-mindedness and impartiality are important aspects of fairness. DoD employees must be committed to justice in the performance of their official duties. Decisions must not be arbitrary, capricious or biased. Individuals must be treated equally and with tolerance.

(6) *Caring.* Compassion is an essential element of good government. Courtesy and kindness, both to those we serve and to those we work with, help to ensure that individuals are not treated solely as a means to an end. Caring for others is the counterbalance against the temptation to pursue the mission at any cost.

(7) *Respect.* To treat people with dignity, to honor privacy and to allow self-determination are critical in a government of diverse people. Lack of respect leads to a breakdown of loyalty and honesty within a government and brings chaos to the international community.

(8) *Promise keeping.* No government can function for long if its commitments are not kept. DoD employees are obligated to keep their promises in order to promote trust and cooperation. Because of the importance of promise keeping, it is critical that DoD employees only make commitments that are within their authority.

(9) *Responsible citizenship.* It is the civil duty of every citizen, and especially DoD employees, to exercise discretion. Public servants are expected to engage personal judgment in the performance of official duties within the limits of their authority so that the will of the people is respected in accordance with democratic principals. Just must be pursued and injustice must be challenged through accepted means.

(10) *Pursuit of excellence.* In public service, competence is only the starting point. DoD employees are expected to set an example of superior diligence

and commitment. They are expected to be all they can be and to strive beyond mediocrity.

§ 84.48 Ethical decisionmaking.

(a) *General.* Virtually every one in Federal Government service makes job-related decisions. Some of these decisions may seem more important than others, but all should be preceded by a consideration of ethical ramifications. In some cases, the ethical element of decision-making will go no further than to consciously acknowledge that there are no significant ethical ramifications to consider. In other cases, in-depth ethical analysis is called for in addition to application of ethics rules. The following plan for decision-making ensures careful review of ethical consequences when there are alternative solutions that seem proper under existing laws and regulations. DoD employees should consider incorporating the following plan in official decisionmaking.

(b) *Ethical decisionmaking plan.*

(1) *Define the problem.* Proceed from a general statement of the problem to specific statements of the decisions to be made. As you take the following steps, such as identifying goals and naming stakeholders new problems or needed decisions may become apparent. Be willing to add these to your problem list as you go.

(2) *Identify the goal(s).* Proceed from a general statement of an end result both long term and short term. Be prepared to add to this list as you take the following steps. Goals are something to strive toward. They are statements of the best possible results. The very best is not always achieved for everyone. Many problems do not allow for “win/win” outcomes. Be prepared to fall somewhat short of some goals for the sake of ethics and other considerations.

(3) *List applicable law or regulations.* Laws and regulations are basic constraints within which official decisions are made. Until all relevant laws and regulations are considered, ethical decision-making is impossible. Although it is conceivable that an ethical decision could violate a law or regulation, such circumstances are rare.

(4) *List the ethical values at stake.* Listing the ethical values at stake can awaken you to problems and goals that you may not have otherwise considered. It may alert you to stakeholders you may not have recognized. Listing the values reminds you of your commitment to them at a time when stress of the problem may cause you to forget.

(5) *Name all the stakeholders:* A stakeholder is anyone who is likely to be affected by a decision. Many stakeholders will be apparent because of the previous steps you already followed. More will occur to you as you give the matter a few minutes of thought. Do not forget to include yourself and the people who may depend on you for support, both at work and at home. As you list the stakeholders, try to note the way your decision could affect them. In other words, name what is at stake for the stakeholder.

(6) *Gather additional information.* This step is frequently overlooked. The stress from the problem urges speedy solutions. However, hasty decisions usually create problems of their own. Take the time to gather all necessary information. Ask questions, demand proof when appropriate, check your assumptions.

(7) *State all feasible solutions.* By this time, some feasible solutions will have presented themselves. Others may be found by sharing the lists and information you have pulled together and "brain storming." As you state the feasible solutions, note which stakeholders could be affected and what might be gained or lost.

(8) *Eliminate unethical options.* There may be solutions that seem to resolve the problem and reach the goal but which are clearly unethical. Remember that short term solutions are not worth sacrificing our commitment to ethics. The long term problems of unethical solutions will not be worth the short term advantages. Eliminate the unethical solutions.

(9) *Rank remaining solutions.* Other solutions may not be clearly unethical but may be questionable. You may have to rely on intuition or "gut feelings" to weed out these solutions. Put these possible solutions at the bottom of your list. Rank the remaining solu-

tions, which are all ethical ones, in order of how close they bring you to your goal and solve the problem.

(10) *Commit to and implement the best ethical solution.* Commitment and implementation are vital to the ethical decision-making process. Determining which solution is the best ethical one is a meaningless exercise unless implementation of the ethical solution follows. If the right decision is not implemented, the door is left wide open for others to implement unethical solutions.

APPENDIX A TO PART 84—DIGEST OF LAWS

Section 1. DoD-specific Statutes

(a) *Synopsis of laws.* DoD employees and former DoD employees are cautioned that the descriptions of the laws and regulations in this part should not be the only source relied upon to make decisions regarding their activities. Although the descriptions do provide general guidelines, the descriptions are not exhaustive and restrictions are dependent on the specific facts in a particular case. Accordingly, DoD employees and former DoD employees are encouraged to discuss specific cases with a DoD component Ethics Counselor (no attorney-client privilege) or with private counsel.

(b) *10 U.S.C. 2397a, "Requirements Relating to Private Employment Contacts Between Certain DoD Procurement Officials and Defense Contractors."*

(1) This statute applies to civilian DoD employees at pay rates of GS/GM-11 or above and to military officers in grades 0-4 or above. If such an individual has participated in the performance of a procurement function in connection with a DoD awarded defense contract and is contacted by the defense contractor to whom the defense contract was awarded regarding future employment opportunities with the defense contractor, the individual must:

(i) Promptly report the contact to his supervisor and to the DoD component DAEO; and

(ii) Disqualify himself from all participation in the performance of procurement functions relating to contracts of the defense contractor.

(2) A DoD employee is not required to report an initial contact with a defense contractor or disqualify himself if he terminates the contact immediately and rejects any offer of employment. The individual must make a report and disqualify himself, however, if subsequent contacts are made.

(c) *10 U.S.C. 2397, "Employees or Former Employees of Defense Contractors: Reports."* This

statute requires all former civilian DoD employees GS/GM-13 or above, or military officers 0-4 or above, to file DD Form 1787¹ for a period of two-years after leaving Federal Government service, if the former DoD employee is employed with a defense contractor who had been awarded \$10 million in defense contracts during the year preceding employment of the former DoD employee, and the former DoD employee receives at least \$25,000 a year (\$12 per hour) from the defense contractor.

(d) *10 U.S.C. 2397b, "Certain Former DoD Procurement Officials: Limitations on Employment by Contractors"*. This statute imposes a two year prohibition on former civilian DoD employees GS/GM-13 and above, and former military officers 0-4 and above, from accepting more than \$250 in payment, gift, benefit, reward, favor, or gratuity (i.e., compensation) from defense contractors who had defense contracts in a total amount greater than \$10 million during the fiscal year preceding the fiscal year that such compensation was accepted, if the individual:

(1) Spent the majority of his working days during the two-year period prior to leaving Federal Government service performing a procurement function at a site or plant owned or operated by the defense contractor; or

(2) Performed procurement functions relating to a major system, on a majority of the individual's working days during the two-year period prior to leaving Federal Government service, and in the performance of those functions participated personally and substantially in a manner involving decision-making responsibilities, through contact with the defense contractor; or

(3) In the case of former DoD employees, Senior Executive Service and above, and former military officers 0-7 and above, acted as a primary representative of the United States during the two-year period prior to leaving Federal Government service, in the negotiation of a defense contract in an amount in excess of \$10 million with the defense contractor, or in the negotiation of an unresolved claim in excess of \$10 million.

(e) *18 U.S.C. 281, "Restriction on Retired Military Officers Regarding Certain Matters Affecting the Government."* (1) This statute prohibits a retired military officer of the Armed Forces from accepting any compensation, for a period of two-years after release from active duty, for the representation of any individual in the sale of anything to the United States through the Military Department from which the military officer is retired.

¹Copies are available from DoD Standards of Conduct Office, Office of General Counsel, 1600 Defense Pentagon, Washington, DC 20301-1600.

(2) The statute also prohibits a retired military officer, during the two-year period following the military officer's release from active duty, from prosecuting or assisting in the prosecution of any claim against the United States involving the Military Department from which the military officer is retired, or involving any subject matter with which the military officer was directly connected while in an active duty status.

Section 2. Other Laws Related to Standards of Ethical Conduct

(a) *OGE digest*. Other ethics statutes are summarized in 5 CFR 2635.801(d) and 902.

(b) *Related statutes*. Engaging in the following activities may subject current and former DoD employees to criminal and/or other penalties:

(1) Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (18 U.S.C. 2);

(2) Concealing or failing to report to proper authorities the commission of a felony under any criminal statute if the individual knew of the actual commission of the crime (18 U.S.C. 4);

(3) Conspiring with one or more persons to commit a crime under any criminal statute or to defraud the United States, if any party to the conspiracy does any act to further the object of the conspiracy (18 U.S.C. 371);

(4) Misuse of a Federal Government vehicle (31 U.S.C. 1344 and 1349(b));

(5) Interference in an examination or personnel action in connection with Federal Government employment (18 U.S.C. 1917);

(6) Conversion of Federal Government property (18 U.S.C. 641);

(7) Private use of public money (18 U.S.C. 653), embezzlement of the money or property of another individual in the possession of a DoD employee by reason of his Federal Government employment (18 U.S.C. 654);

(8) Certain political activities (5 U.S.C. 7321-7327, 18 U.S.C. 600-603 and 606-607 apply to civilian DoD employees, and DoD Directive 1344.10² applies to military members);

(9) Failing to register under the Foreign Agents Registration Act of 1983 and acting as an agent of a foreign principal when required to register (18 U.S.C. 219);

(10) Soliciting contributions for gifts or giving gifts to superiors, or accepting gifts from subordinates (5 U.S.C. 7351) applies to civilians; regulations set out in 5 CFR 2635.301 through 2635.304 apply to both military and civilian DoD employees;

(11) Accepting, without statutory authority, any present, emolument, office or title, or employment of any kind, from any king,

²Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

prince, or foreign state without the consent of the Congress; this restriction applies to any person holding any office or profit in or trust of the Federal Government, including all retired military members and regular enlisted members (Article I, Section 9, Clause 8, of the Constitution of the United States; exceptions to this restriction are at 37 U.S.C. 908);

(12) Union activities of military members (10 U.S.C. 976);

(13) Violating merit system principles (5 U.S.C. 2301).

APPENDIX B TO PART 84—EXCERPTS FROM DOD PUBLICATIONS

Section 1. Department of Defense Waiver in Accordance With 18 U.S.C. 208(b)

18 U.S.C. 208(b) permits agencies to grant an exemption in writing from 18 U.S.C. 208(a) if the outside financial interest is deemed in advance not substantial enough to affect the integrity of Government services. Categories of financial interests may also be made non-disqualifying by a general regulation published in the FEDERAL REGISTER. Shares of a widely held, diversified mutual fund or regulated investment company have been exempted as being too remote or inconsequential to affect the integrity of the services of Government personnel.

Section 2. Department of the Army Waiver in Accordance With 18 U.S.C. 208(b)

A conflict does not exist when [Department of the Army] DA personnel hold shares of a widely held, diversified mutual fund or regulated investment company. In accordance with the provisions of 18 U.S.C. 208(b)(2), such holdings are exempted as being too remote or inconsequential to affect the integrity of the services of Government personnel.

Section 3. Department of the Navy Waiver in Accordance With 18 U.S.C. 208(b)

(b) Under 18 U.S.C. 208(b)(2), [Department of the Navy] DON personnel need not be disqualified from participating in matters in which they have the following financial interests:

(1) Shares of widely held and diversified mutual, money market, trust, or similar funds offered for sale by a financial institution or by a regulated investment company;

(2) Deposits in and loans from banks or other financial institutions, provided they are at customary and generally available terms and conditions; and

(3) Federal, State, municipal, or local government bonds, regardless of the value of such interests.

(b) DON personnel who are members or officers of non-governmental associations or organizations must avoid activities on behalf of such groups that are incompatible with

their official Government positions. Under certain circumstances, holding a position in a private association or organization or undertaking activities on its behalf could conflict with one's official duties. Holding, however, a position in a private, non-profit association or other organization that fosters and promotes the general interests of the naval service and which depends, in part, upon the voluntary efforts of DON personnel acting in their private capacities for leadership, is unlikely to affect the integrity of the services of such personnel. Under 18 U.S.C. 208(b)(2), such individuals are not disqualified from rendering advice or making recommendations within their chains of command on particular matters affecting such organizations if:

(1) They disclose their interest or affiliation to their supervisor prior to rendering advice or making recommendations;

(2) The final decision is made by higher authority; and

(3) The individual's commander does not determine that disqualification is otherwise required by the best interest of DON or of the United States.

Section 4. Department of the Air Force Waiver in Accordance With 18 U.S.C. 208(b)

Non-Disqualifying Financial Interest. Air Force personnel need not disqualify themselves if the financial holdings are in shares of a widely held diversified mutual fund or regulated investment company. The indirect interests in business entities of these financial holdings come from ownership by the fund or investment company of stocks in business entities. They are hereby exempted from the requirements of 18 U.S.C. 208(a), according to 18 U.S.C. 208(B)(2), as too remote or inconsequential to affect the integrity of the government officers' or employees' services.

APPENDIX C TO PART 84—DOD HUMAN GOALS

Department of Defense, Human Goals, The Attainment of These Goals Requires That We Strive

To attract to the Department of Defense people with ability, dedication, and capacity for growth;

To provide opportunity for everyone, military and civilian, to rise to as high a level of responsibility as possible, dependent only on individual talent and diligence;

To assure that equal opportunity and safety programs are an integral part of readiness;

To make military and civilian service in the Department of Defense a model of equal opportunity for all regardless of race, color, sex, religion, or national origin;

To provide equity in civilian employment for older persons and disabled individuals and to provide a safe environment that is accessible to and usable by them;

To hold those who do business with or receive assistance from the Department to full compliance with its policies of equal opportunity and safety;

To help each service member in leaving the service to readjust to civilian life;

To provide a safe and healthful work environment, free from recognized occupational hazards for all personnel; and

To contribute to the improvement of our society, including its disadvantaged members, by greater utilization of our human and physical resources while maintaining full effectiveness in the performance of our primary mission.

PART 85—HEALTH PROMOTION

Sec.

85.1 Purpose.

85.2 Applicability and scope.

85.3 Definitions.

85.4 Policy.

85.5 Responsibilities.

85.6 Procedures.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 53 FR 33123, Aug. 30, 1988, unless otherwise noted.

§ 85.1 Purpose.

(a) This part establishes a health promotion policy within the Department of Defense to improve and maintain military readiness and the quality of life of DoD personnel and other beneficiaries.

(b) This part replaces 32 CFR part 203 and establishes policy on smoking in DoD occupied buildings and facilities.

§ 85.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies.

(b) It is directed to all military personnel and retirees, their families, and, where specified, to civilian employees.

§ 85.3 Definitions.

Health Promotion. Any combination of health education and related organizational, social, economic or health care interventions designed to facilitate behavioral and environmental alterations that will improve or protect health. It includes those activities intended to

support and influence individuals in managing their own health through lifestyle decisions and selfcare. Operationally, health promotion includes smoking prevention and cessation, physical fitness, nutrition, stress management, alcohol and drug abuse prevention, and early identification of hypertension.

Lifestyle. The aggregated habits and behaviors of individuals.

Military Personnel. Includes all U.S. military personnel on active duty, U.S. National Guard or Reserve personnel on active duty, and Military Service Academy cadets and midshipmen.

Self-Care. Includes acceptance of responsibility for maintaining personal health, and decisions concerning medical care that are appropriate for the individual to make.

Target Populations. Military personnel, retirees, their families, and civilian employees.

§ 85.4 Policy.

It is DoD policy to:

(a) Encourage military personnel, retirees, their families and civilian employees to live healthy lives through an integrated, coordinated and comprehensive health promotion program.

(b) Foster an environment that enhances the development of healthful lifestyles and high unit performance.

(c) Recognize the right of individuals working or visiting in DoD occupied buildings to an environment reasonably free of contaminants.

(d) Disallow DoD Components' participation with manufacturers or distributors of alcohol or tobacco products in promotional programs, activities, or contests aimed primarily at DoD personnel. This does not prevent accepting support from these manufacturers or distributors for worthwhile programs benefiting military personnel when no advertised cooperation between the Department of Defense and the manufacturer or distributor directly or indirectly identifying an alcohol or tobacco product with the program is required. Neither does it prevent the participation of military personnel in programs, activities, or contests approved by the manufacturers or distributors of such products when that