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(2) The Military Heads of DLA field activities will issue security regulations and orders as necessary for the protection of places and property under their jurisdiction pursuant to the provisions of this part 1292 and other pertinent directives.

§ 1292.5 Procedures.

(a) Security regulations and orders will be promulgated by any of the following means:

(1) Written directives of the activity Head.

(2) Signs and similar media.

(3) Orally, when required by a contingency/emergency.

(b) Written directives and orders will contain so much of the following statement as is pertinent:

This order (directive, bulletin, etc.) is issued pursuant to section 21, Internal Security Act of 1950, 50 U.S.C. 797, DoD Directive 5200.8, DLAR 5710.1, (directive issued by the Head of a DLA field activity subordinate to HQ DLA).

(c) Signs used as the sole vehicle for issuing a security regulation or order must contain a recitation of the authority under which issued and the title of the authorized official who issued the regulation or order. DLAM 5710.1, chapter 3, contains instructions on the exact wording of such signs.

(d) Oral orders will include a statement which clearly indicates the authority for issuance similar to the provisions of paragraph (b) of this section.

(e) Written security orders and regulations will be posted in conspicuous and appropriate places to ensure widest dissemination. The posting of a general security regulation/order, or a listing of applicable directives, will suffice provided it cites the authority to issue such directive. The posting of voluminous, individual security regulations and orders will be avoided.

APPENDIX A TO PART 1292—SECTION 21 OF THE INTERNAL SECURITY ACT OF 1950

797. Security regulations and orders; penalty for violation

(a) Whoever willfully shall violate any such regulation or order as, pursuant to lawful authority, shall be or has been promulgated or approved by the Secretary of Defense, or by any military commander designated by the Secretary of Defense, or by the Director of the National Advisory Committee for Aeronautics, for the protection or security of military or naval aircraft, airports, airport facilities, vessels, harbors, ports, piers, waterfront facilities, bases, forts, posts, laboratories, stations, vehicles, equipment, explosives, or other property or places subject to the jurisdiction, administration, or in the custody of the Department of Defense, any Department or agency of which said Department consists, or any officer or employeee of said Department or agency, or of the National Advisory Committee for Aeronautics or any officer or employee thereof, relating to fire hazards, fire protection, lighting, machinery, guard service, disrepair, disuse or other unsatisfactory conditions thereon, or the ingress thereto or egress or removal of persons therefrom, or otherwise providing for safeguarding the same against destruction, loss, or injury by accident or by enemy action, sabotage or other subversive actions, shall be guilty of a misdemeanor and upon conviction thereof shall be liable to a fine of not to exceed $5,000 or to imprisonment for not more than one year or both.

(b) Every such regulation or order shall be posted in conspicuous and appropriate places. Sept. 23, 1950, c. 1024, Title I, Par. 21, 64 Stat. 1005.

PART 1293—STANDARDS OF CONDUCT

1293.1 Reference.
1293.2 Purpose and scope.
1293.3 Policy.
1293.4 Definitions.
1293.5 Significant changes.
1293.6 Responsibilities.
1293.7 Procedures.

APPENDICES TO PART 1293

APPENDIX A—LAWS AFFECTING DLA PERSONNEL
APPENDIX B—CODE OF ETHICS FOR GOVERNMENT SERVICE—PUB. L. 96–303
APPENDIX C—ADDITIONAL GUIDANCE ON GRATUITIES, REIMBURSEMENTS, AND OTHER BENEFITS FROM OUTSIDE SOURCES
APPENDIX D—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REPORT (SF 278)
APPENDIX E—REQUIREMENTS FOR SUBMISSION OF DD FORM 1555, STATEMENT OF AFFILIATIONS AND FINANCIAL INTERESTS
APPENDIX F—REPORTING PROCEDURES FOR DOD AND DEFENSE RELATED EMPLOYMENT
APPENDIX G—ADMINISTRATIVE ENFORCEMENT PROVISIONS

AUTHORITY: E.O. 12222, 30 FR 6469; 18 U.S.C. 201–209.

SOURCE: 53 FR 45462, Nov. 10, 1988, unless otherwise noted.

§ 1293.1 References.

(a) DLAR 1005.1, Decorations and Gifts from Foreign Governments.

(b) DLAR 1430.12, Civilian Employee Development and Training.

(c) DLAR 5035.1, Fund-Raising Within the Defense Logistics Agency.

(d) DLAR 5400.13, Clearance of Information for Public Release.

(e) DLAR 5500.4, Policies Governing Participation of DLA and Its Personnel in Activities of Private Associations.

§ 1293.2 Purpose and scope.

(a) Part 1293 prescribes standards of conduct required of all DLA personnel, military and civilian, regardless of grade or assignment. It also establishes criteria and procedures for reports required of certain individuals who have left Federal service and of former employees of defense contractors presently employed by DLA.

(b) Close adherence to the standards of conduct will ensure compliance with the high ethical standards demanded of all public employees. Violations of the standards prescribed in this regulation, or by Federal laws, including the laws described in enclosure 1, may result in criminal and/or administrative sanctions. Accordingly, all DLA personnel should become familiar with these standards.

(c) The reporting procedures for defense related employment are applicable to former military officers and civilian employees of DLA and to former employees of defense contractors presently employed by DLA.

(d) All retired regular officers are also required to file a statement of employment with the Military Department in which they hold a retired status.

(e) This DLAR is applicable to HQ DLA and all DLA field activities and implements DoD Directive 5500.7, Standards of Conduct.

§ 1293.3 Policy.

(a) *General requirements.* (1) Government employment is a public trust which requires that loyalty to country, ethical principles, and the law be placed above private gain and other interests. All DLA personnel must conduct themselves, both on and off the job, in such a manner as to avoid the existence or appearance of a conflict of interest between their official responsibilities and their personal affairs.

(2) DLA personnel shall become familiar with the scope of, authority for, and limitations on the activities for which they are responsible. DLA personnel also shall acquire a general knowledge of the statutory standards of conduct prohibitions and restrictions. The most commonly encountered of these provisions are summarized in appendix A, and are laws dealing generally with conflicts of interest and postemployment activities.

(3) If DLA personnel are unsure whether a proposed action or decision is proper because it may be contrary to law or regulation, they shall consult the Designated Agency Ethics Official, or Deputy Ethics Official, for guidance. The individuals are identified in § 1293.4.

(4) DLA personnel shall not take or recommend any action or make or recommend any expenditure of funds known or believed to be in violation of Federal laws, Executive Orders, or applicable directives, instructions, or regulations.

(5) Practices that may be accepted in the private business world may not be acceptable for DLA personnel. As public employees, all DLA personnel are accountable for the manner in which they perform their official responsibilities.

(6) DLA personnel shall strictly adhere to the DLA program of equal opportunity regardless of race, color, religion, sex, age, national origin, or handicap.

(7) DLA personnel shall avoid any action, whether or not specifically prohibited by part 1293, which might result in or reasonably be expected to create the appearance of:

(i) Using public office for private gain.

(ii) Giving preferential treatment to any person or entity.

(iii) Impeding Government efficiency or economy.

(iv) Losing complete independence or impartiality.

(v) Making a Government decision outside official channels.

(vi) Affecting adversely the confidence of the public in the integrity of the Government.

(b) *Information to personnel.* (1) All new civilian employees and military personnel newly assigned to DLA will be provided a copy of part 1293 upon their entrance to duty.

(2) DLA personnel shall be reminded at least semiannually of their duty to comply with the required standards of conduct. Appropriate means of accomplishing these reminders include notices, circulation of part 1293 to employees, briefings, or any other means which serve to remind employees of their ethical responsibilities.

(3) Copies of the Code of Ethics for Government Service (appendix B) shall be displayed in appropriate areas of DLA occupied buildings in which 20 or more persons are regularly employed. (Code of Ethics posters are self-service supply items and may be obtained under NSN 7690–01–099–8167.)

(4) All DLA employees (military and civilian) who leave Federal service shall be informed of the restrictions on the postemployment activities of former Federal employees.

(c) *Conflicts of interest*—(1) *Affiliations and Outside Associations.* (i) DLA personnel shall not engage in any personal, business, or professional activity which conflicts with the interests of the Government they serve through the duties and responsibilities of their DLA positions. This prohibition applies to all DLA employees, regardless of whether they are required to file a financial disclosure report. In the event a conflict, or potential conflict of interest arises, it shall be promptly reported and resolved in accordance with § 1293.7(b).

(ii) Membership or activity of DLA personnel in non-Governmental associations or organizations must not be incompatible with their official Government positions (see DLAR 5500.4).[1]

(iii) DLA personnel shall not knowingly deal, on behalf of the Government, with present or former Government personnel, military or civilian, whose participation in the transaction would be in violation of a statute, regulation, or policy set forth in part 1293.

(2) *Financial interests.* DLA personnel shall not receive or retain any direct or indirect financial interest which conflicts with the interests of the Government they serve through the duties and responsibilities of their DLA positions. Matters concerning outside employment by DLA personnel are discussed in paragraph (i) of this section. For the purpose of this prohibition, the financial interests of a spouse, minor child, or any household member are treated as the financial interests of the DLA employee. Thus, not only stocks and other similar holdings, but also the wages, salaries, dividends, or any other income of a spouse, minor child, or household member are considered financial interests of the DLA employee. Particular care must be given in situations involving former DoD contractor employees as they may be entitled to benefits from their former employer (such as pensions, company discounts or concessions, etc.) which could create a criminal conflict of interest situation under 18 U.S.C. 208 if DLA assigns the employee duties and responsibilities involving the former employer. (For reporting requirements unique to former DoD contractor employees see § 1293.7(e). These prohibitions apply to all DLA employees, regardless of whether they are required to file a financial disclosure report. In the event a conflict or potential conflict of interest arises, it shall be promptly reported and resolved in accordance with § 1293.7(b).

(3) *Avoiding Actual or the Appearance of Conflicts of Interest.* Direct or indirect financial interests in a defense related contractor, in any amount and in any form (stocks, bonds, options, employment of spouse, minor child, or any other household member) may be a prohibited conflict or appearance of a conflict of interest. Outside employment or other outside activity, with or without compensation, regarding possible future employment may also create a conflict or the appearance of a conflict of interest. Discussions with a defense contractor regarding possible future employment may require reporting and disqualification under the procedures set forth in paragraph (k) of

[1] Copies may be obtained, if needed, from Defense Logistics Agency, ATTN: DLA–XPD, Cameron Station, Alexandria, VA 22304–6100.

this section. In these situations, DLA personnel are encouraged to seek advice from the Designated Agency Ethics Official or Deputy Ethics Official to protect not only themselves, but also be avoid embarrassment to DLA.

(4) *Assignment of Reserves for training.* DLA personnel who assign Reserves for training shall not assign them to duties in which they will obtain information that could be used by them or their private sector employers to gain unfair advantage over civilian competitors. Prior to entering active duty, reservists must disclose to superiors or assignment personnel, sufficient information to ensure that no conflict exists between their duty assignments and their private interests.

(d) *Use of DLA Position, Property, Resources, and Information*—(1) *Using DLA position.* DLA personnel are prohibited from using their DLA position to induce, coerce, or in any manner influence any person to provide any benefit, financial or otherwise, to themselves or others.

(2) *Use of Civilian and Military Titles or Positions in Connection with Commercial Enterprises.* (i) All DLA personnel are prohibited from using their official titles or positions in connection with the promotion of any commercial enterprise or endorsement of any commercial product. This does not preclude author identification for materials published in accordance with DLAR 5400.13.[2]

(ii) Retired military personnel, and members of Reserve components not on active duty, may use their military titles in connection with commercial enterprises provided that they indicate their Retired or Reserve status. However, if the use of military titles in any way casts discredit on the Military Departments or DoD, or gives the appearance of sponsorship, sanction, endorsement, or approval by a Military Department or DoD, it is prohibited. In addition, a Military Department may further restrict the use of titles, including use by retired military personnel and members of reserve components not on active duty, in overseas areas.

[2] See footnote 1, to § 1293.3(c)(1)(ii).

(3) *Use of Government property and resources.* (i) DLA personnel have a positive duty to protect and conserve Government property and resources and assure that they are used only for official Government business. DLA personnel shall not directly or indirectly use, take, dispose of, or allow the use, taking, or disposing of, Government property including property leased to the Government, for other than official purposes. Government facilities, property, and resources (such as telephones, stationery, stenographic and typing assistance, duplicating and computer equipment) shall be used only for official Government business.

(ii) These provisions do not preclude the use of Government facilities for approved activities in furtherance of DLA community relations, provided they do not interfere with military missions or Government business. Government equipment and clerical support may be authorized for the preparation of papers to be presented to professional associations if appropriate to the mission of the office and approved, in advance, by the Head of the HQ PSE or PLFA.

(iii) All DLA personnel are responsible for using office telecommunication services (telephone, message, data, video, facsimile services, etc.) for official use only. The term *official use* means service directly in support of Government business or as otherwise approved by the Head of the PSE or PLFA, or their designee, as being in the best interest of the Government.

(A) DLA office telecommunications services are resources provided to conduct business directly in support of the Government.

(B) DLA shall pay only for the official uses of DLA telecommunications services.

(C) Where available and practicable, steps shall be taken to ensure user accountability (i.e., call verification, call restriction, other telecommunications service features).

(D) Employees who make unofficial use of DLA office telecommunications services are subject to appropriate disciplinary action.

(4) *Using inside information.* DLA personnel shall not directly or indirectly use information obtained as a result of their DLA position to further a private

gain for themselves or others if that information is not generally available to the public. This prohibition continues even after a DLA employee leaves Federal service.

(5) *Release of acquisition information.* All releases of acquisition information shall be in accordance with authorized procedures. DLA personnel are prohibited from making an unauthorized disclosure of any information concerning proposed acquisitions or purchases by DLA, or the identity of any contractor, unless the contractor's identity has been made public under established procedures.

(6) *Unauthorized statements or commitments with respect to award of contracts.* Only contracting officers and their duly authorized representatives acting within their authority are authorized to commit the Government to the award of contracts. Unauthorized DLA personnel are prohibited from making any commitment or promise relating to the award of a contract or from making any representation that reasonably can be construed as such a commitment.

(e) *Commercial and charitable solicitations*—(1) *Commercial Soliciting by DLA Personnel.* To eliminate the appearance of coercion, intimidation, or pressure from rank, grade, or position, full-time DLA personnel are prohibited from making personal commercial solicitations or sales to DLA personnel (including their family members) who are junior in rank or grade, or who are under any level of supervision by them, at any time, on or off duty.

(i) This prohibition includes, but is not limited to, the solicitation and sale of insurance, stocks, mutual funds, real estate, and any other commodities, goods, or services.

(ii) This prohibition does not include the sale or lease by individuals of their own personal property or privately-owned residence or to the off-duty employment of DLA personnel as employees in retail stores or other situations not involving solicited sales.

(2) *Charitable solicitations by DLA personnel.* The high visibility of DLA officials generates requests from charitable and nonprofit organizations to use an official's name and title in conjunction with fund-raising activities. The use of names and titles of DLA officials, even regarding fund-raising activities of charitable organizations, may give an improper impression that the Department of Defense or Defense Logistics Agency endorses the activities of a particular organization, thereby resulting in unauthorized assistance for the organization or sponsors of the activities. The presence of DLA officials may be sought, under the guise of bestowing awards upon the official, to promote attendance at programs. DLA officials shall not allow the use of their names or titles in connection with charitable or nonprofit organizations, subject to the following:

(i) DLA personnel may assist only those charitable programs administered by the Office of Personnel Management under its delegation from the President and those other programs authorized by DLAR 5035.1.

(ii) This prohibition does not preclude speeches before such organizations by DLA officials if the speech is designed to express an official position in a public forum.

(iii) This prohibition does not preclude volunteer efforts on behalf of charitable or nonprofit organizations by individuals who do not use their official titles in relation to solicitations and who do not solicit from individuals or entities with whom they do business in their official capacity.

(f) *Other prohibitions*—(1) *Gambling, betting, and lotteries.* While on Government-owned, leased, or controlled property, or otherwise while on duty for the Government, DLA personnel shall not participate in any gambling activity, including a lottery or pool, a game for money or property, and the sale or purchase of a number slip or ticket. The only exceptions are:

(i) Where authorized by law, such as vending stands licensed in accordance with 20 U.S.C. 107a(a)(5) to sell chances for any lottery authorized by state law and conducted by an agency of a state.

(ii) Activities which have been specifically approved by the Director, DLA.

(2) *Indebtedness.* DLA personnel shall pay their just financial obligations in a timely manner, particularly those imposed by law, such as Federal, state, and local taxes. DLA activities are not

required to determine the validity or amount of disputed debts.

(g) *Gratuities, reimbursements, and other benefits from outside sources*—(1) *Policy*. No matter how innocently tendered and received, the acceptance of gratuities, reimbursements, or other benefits by DLA personnel (including their spouse, minor child, or any household member) from those who have or seek business with the Department of Defense or from those whose business interests are affected by Department of Defense functions, may be a source of embarrassment to the Department of Defense, may affect the objective judgment of the DLA personnel involved, and may impair public confidence in the integrity of the Government.

(2) *Bribery and graft*. DLA personnel may be subject to criminal penalties if they solicit, accept, or agree to accept anything of value in return for performing or refraining from performing an official act.

(3) *General prohibition*. Except in the limited circumstances set forth in appendix C, DLA personnel (including their spouse, minor child, or any household member) shall not solicit, accept, or agree to accept any gratuity, reimbursement, or other benefit for themselves, or others, either directly or indirectly from or on behalf of any source that:

(i) Is engaged in or seeks business or financial relations of any sort with any DoD Component.

(ii) Conducts operations or activities that are either regulated by a DoD Component or substantially affected by DoD decisions.

(iii) Has interests that may be substantially affected by the performance or nonperformance of the official duties of DLA personnel.

(iv) Is a foreign government or representative of a foreign government that is engaged in selling to the DoD, where the gratuity is tendered in the context of the foreign government's commercial activities. (See also paragraph (h)(1) of this section.)

(4) Employees who receive gratuities which may not be accepted under the limited circumstances set forth in appendix C shall promptly report the matter to the Designated Agency Ethics Official or Deputy Ethics Official.

(h) *Gifts and donations*. (1) Procedures with respect to gifts from foreign governments are set forth in DLAR 1005.1.[3]

(2) Prohibition of Contributions or Presents to Superiors. DLA personnel shall not solicit a contribution from other DLA personnel for a gift to a superior, make a donation as a gift to a superior, give a gift to a superior, or accept a gift from other DLA personnel subordinate to themselves. This prohibition also applies to gifts, contributions, or donations to immediate family members of a superior. However, this paragraph does not prohibit voluntary gifts of reasonable value or contributions of nominal amounts (or the acceptance thereof) on special occasions such as marriage, illness, transfer, or retirement, provided that any gifts acquired with such contributions will be reasonable in value in view of the occasion.

(i) *Outside employment of DLA personnel*. (1) DLA personnel shall not engage in outside employment or other outside activity, with or without compensation, that:

(i) Interferes with, or is not compatible with, the performance of their Government duties.

(ii) May reasonably be expected to bring discredit on the Government.

(iii) Is otherwise inconsistent with the requirements of part 1293, including the requirements to avoid actions and situations which reasonably can be expected to create the appearance of conflicts of interests.

(2) Enlisted military personnel 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.

(3) Off-duty employment of military personnel by an entity involved in a strike is permissible if the person was on the payroll of the entity prior to the commencement of the strike, and if the employment is otherwise in conformance with the provisions of part 1293.

[3] See footnote 1, to § 1293.3(c)(1)(ii).

After a strike begins and while it continues, no military personnel may accept employment by that involved entity at the strike location.

(4) DLA personnel are encouraged to engage in teaching, lecturing, and writing. However:

(i) DLA personnel shall not, either for or without compensation, engage in activities that are dependent on information obtained as a result of their Government employment, except when: The information has been published or is generally available to the public; or it will be made generally available to the public, and the Director, DLA gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(ii) Employment by a DoD contractor is prohibited unless the circumstances are presented to and approval is obtained from the Designated Agency Ethics Official or Deputy Ethics Official stating that such employment does not constitute either a conflict or the appearance of a conflict of interest between the employee's duties and the outside employment.

(j) *Honoraria*. DLA personnel may not accept honoraria for official activities, nor may they suggest charitable contributions in place of honoraria. Even when acting in a personal, rather than official, capacity:

(1) DLA personnel are prohibited from accepting an honorarium of more than $2,000 (excluding travel and subsistence expenses, agent's fees or commissions) for any appearance, speech, or article;

(2) The acceptance of honoraria from groups doing, or seeking to do business with DLA, presents the potential for a conflict of interest or the appearance of a conflict. Before accepting any honorarium, DLA personnel shall consult the Designated Agency Ethics Official, or Deputy Ethics Official.

(k) *Pursuit of outside employment*. (1) When a military officer assigned to DLA or a civilian DLA employee leaves Federal service and begins working for a business with which the officer or employee conducted official business, or one which might have been affected by the officer or employee's performance of official duties, the public may perceive that the public's interest has been compromised. There is the concern that the former officer or employee may have been more interested in future employment than the diligent performance of official duties and protecting the Government's interests. Officers and employees must be sensitive to this public perception when considering future employment opportunities and avoid any action which would cause loss of public confidence in their performance of official duties.

(2) DLA personnel shall not perform any official duties, or otherwise participate in any official matter dealing with any organization with which the DLA employee is pursuing employment, has any arrangement concerning future employment, or has a financial interest. Pursuing employment is not limited to firm offers of employment; it includes any action which could reasonably be construed as an indication of interest in future employment, including sending letters or résumés, telephone discussions, or the consideration of unsolicited proposals from a business entity regarding possible future employment.

(3) All DLA personnel who have contact (regardless of who initiated the contact) regarding possible future employment, or have any arrangement concerning future employment with any organization that may be affected by the performance of their official duties shall immediately report the contact to the Designated Agency Ethics Official or Deputy Ethics Official. So long as the decision on future employment with the organization remains open, DLA personnel must disqualify themselves from participating in any manner in any official action involving that organization. Thus, if a DLA employee mails resumes to multiple organizations, that may be affected by the performance of official duties, the DLA employee must report the sending of resumes, disqualify himself/herself from participating in matters involving those organizations until either the organization or the employee specifically terminates the employment possibilities. Disqualification procedures are set forth in § 1293.7(c).

(l) *Restrictions on the activities of former officers and employees*. Laws and regulations impose restrictions on the

activities of individuals who have ceased Federal employment. Violation of some of the laws and regulations may result in criminal prosecution. It is the obligation of each military officer assigned to DLA and each civilian employee, upon ending Federal service, to review the post employment restrictions in making decisions regarding their post employment activities. Appendix A contains a summary of the laws and regulations which deal with the conduct of DLA officers and employees and the restrictions on the activities of former officers and employees.

§ 1293.4 Definitions.

(a) *Alternate Agency Ethics Official.* An attorney in the DLA Office of General Counsel who shall serve in the absence of the Designated Agency Ethics Official. The attorney shall be appointed by the General Counsel, DLA.

(b) *Defense contractor.* Any individual, firm, corporation, partnership, association, or other legal entity that enters into a contract directly with the Department of Defense to furnish services, supplies, or both, including construction, to the Department of Defense. Subcontractors are excluded, as are subsidiaries unless they are separate legal entities that contract directly with the Department of Defense in their own names. Foreign governments or representatives of foreign governments that are engaged in selling to the Department of Defense are defense contractors when acting in that context.

(c) *DLA personnel.* All civilian officers and employees of DLA, including special Government employees, and all active duty military officers (commissioned and warrant) and enlisted members of the Army, Navy, Air Force, and Marine Corps, assigned to DLA.

(d) *Deputy ethics officials.* The Counsel of each DLA PLFA and the DLA Counsel, Europe are designated as Deputy Ethics Officials.

(e) *Designated Agency Ethics Official (DAEO).* The General Counsel, DLA is appointed the DLA Designated Agency Ethics Official (DAEO).

(f) *Financial interest.* Any wages, salaries, interest, dividends, or any other form of income or benefit received or to be received in the future by virtue of the relationship; includes potential benefit, such as preemployment contracts with a potential employer; also includes financial interests of a spouse, minor child, and member of household.

(g) *Gratuity.* Any gift, favor, entertainment, hospitality, transportation, loan, or any other tangible item, and any intangible benefits (such as passes, discounts, promotional benefits, vendor training) given or extended to or on behalf of DLA personnel, their spouse, minor child, or member of their household for which fair market value is not paid by the recipient or the U.S. Government.

(h) *Honorarium (and all variations).* A payment of money or anything of value received by an officer or employee of the Federal Government, if it is accepted as consideration for an appearance, speech, or article. The term does not include payment for or provision of actual travel and subsistence, including transportation, accommodations, and meals of an officer or employee and spouse or aide, and does not include amounts paid or incurred for any agent's fees or commissions.

(i) *Special Government employee.* A person 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 while on active duty solely for training for any length of time, one who is serving on active duty involuntarily for any length of time, and one who is serving voluntarily on extended active duty for 130 days or less. It does not include enlisted personnel.

§ 1293.5 Significant changes.

Part 1293 has been revised to incorporate changes necessitated by a new DoD Standards of Conduct Regulation and new statutory reporting and postemployment restrictions. The most significant changes relate to the limited circumstances under which DLA personnel can accept gratuities from DoD contractors and in prescribing which employees are required to file DD Forms 1555, Confidential Statement

of Affiliations and Financial Interests. Finally, the provisions of law which require reports of cetain former DLA employees who have left Federal service and are working for certain DoD contractors, as well as certain former DoD contractor employees currently working for DLA, have been incorporated in part 1293 rather than in a separate part, DLAR 7700.3, Reporting Procedures on Defense Related Employment.[4]

§1293.6 Responsibilities.

(a) *DLA Wide.* (1) All DLA Employees will: (i) Become familiar with the standards of conduct set forth in part 1293.

(ii) Adhere to the highest standards of honesty and integrity.

(iii) Promptly file financial disclosure reports when required by part 1293.

(iv) Bring suspected violations of a statute or standards of conduct imposed by part 1293 to the attention of the Designated Agency Ethics Official or Deputy Ethics Official in a timely manner.

(v) Report to their immediate supervisor the acceptance of gratuities under the exceptions provisions of appendix C. Failure to submit these reports will be a basis for disciplinary action.

(vi) Refuse to participate in any matters which appear to violate the provisions of appendix A, call the appropriate provisions of appendix A to the attention of any retired or former officer or employee with whom they deal, and advise that any apparent violations will have to be referred to the Department of Justice.

(2) All DLA Supervisors will: (i) Ensure that the position description of each of their immediate subordinates indicates whether the incumbent of the position is required to submit a financial disclosure report (DD Form 1555 or SF 278).

(ii) Ensure that an individual has filed a DD Form 1555 prior to assuming the duties of a position that requires the incumbent to submit the form.

(iii) Annually review the positions of their immediate subordinates to ensure that the position descriptions accurately reflect whether the incumbent is required to file a financial disclosure report (DD Form 1555).

(iv) Review DD Forms 1555 filed by their immediate subordinates to identify any conflict between the employee's private financial interests and official responsibilities, complete the supervisor's statement contained therein, and forward the completed form to the appropriate DLA ethics official. (See appendix E, §1293.3(g)).

(b) *HQ DLA.* (1) The Heads of HQ DLA Principal Staff Elements will: (i) Remind all personnel in their Directorate/Office at least semiannually of their duty to comply with the required standards of conduct and advise employees that they may obtain clarification of part 1293 from the Office of General Counsel, DLA (DLA–G).

(ii) Report promptly all violations of part 1293 and statutes cited herein to the General Counsel, DLA.

(iii) Review and evaluate the DD Forms 1555 filed by their deputies prior to forwarding them to the General Counsel, DLA.

(iv) Assure that required DD Forms 1555 are filed by officers and employees of their element and forwarded to the General Counsel, DLA, in accordance with part 1293.

(2) The Staff Director, Office of Military Personnel, DLA (DLA–M) will:

(i) Assure that all military personnel, upon assignment to duty with DLA in the Metropolitan Washington area, are informed of the standards of conduct specified in part 1293, and are furnished a copy.

(ii) Maintain a list of all military personnel within the activities furnished personnel services by DLA–M who are required to submit a DD Form 1555.

(iii) Assure that all military officers furnished personnel services by DLA–M, upon separation from active duty when assigned to DLA, are informed of the standards of conduct and post employment restrictions governing former military officers, and are furnished copies of available information and guidance relating to service with DLA.

(3) The Commander, DLA Administrative Support Center (DASC) will: (i)

[4] See footnote 1, to §1293.3(c)(1)(ii).

Furnish a copy of part 1293 to all civilian personnel receiving personnel services by DASC upon entry to duty.

(ii) Assure that each position description for a civilian employee receiving personnel services from DASC indicates whether the incumbent of that position is required to submit a financial disclosure report (DD Form 1555 or SF 278).

(iii) Maintain a list of all civilian employees in DLA activities furnished personnel service by DASC who are required to submit a financial disclosure report (DD Form 1555 or SF 278).

(iv) Assure that all civilian employees receiving personnel services by DASC, upon their separation from Federal service, are informed of the standards of conduct and post employment restrictions governing former civilian employees, and are furnished copies of available information and guidance.

(4) The General Counsel, DLA will:

(i) Have the authority to modify or supplement any of the enclosures to part 1293 in a manner consistent with the policies set forth in part 1293.

(ii) Provide additional clarification of standards of conduct, post employment restrictions and related laws, rules and regulations, and provide advice and assistance on all matters relating to conflicts of interests.

(iii) Coordinate proper and final disposition of all matters that are not resolved by the supervisor or Deputy Ethics Official relating to matters arising under part 1293.

(iv) Receive, review, approve, and make available to the public all SF 278s required to be filed in accordance with part 1293.

(v) Receive, review, and approve DD Forms 1555 required to be submitted to the General Counsel, DLA after review by supervisors.

(vi) Receive, review, and approve DD Form 1787, Report of DoD and Defense Related Employment, required to be filed under the part 1293.

(vii) Receive reports of any favor, gratuity, or entertainment accepted by DLA personnel as being in the Government's interest, when required to be submitted to the Designated Agency Ethics Official and initiate or recommend action as appropriate.

(viii) Review reports of violations of the standards of conduct statutes or regulations required to be submitted under paragraphs (c)(2)(ii) and (iii) of this section and assure proper action has been taken.

(ix) Initiate procedures and take action in accordance with appendix G, Administrative Enforcement Provisions.

(x) Initiate and maintain a counseling, education, and training program concerning all ethics, standards of conduct, and post-employment matters.

(xi) Periodically evaluate DLA's ethics program and disclosure reporting systems.

(xii) Appoint the Alternate Agency Ethics Official.

(c) *Field activities.* Establishment and maintenance of an effective ethics program is a command responsibility. Commanders shall integrate the DLA ethics program into PLFA operations and procedures and provide sufficient resources to enable the Deputy Ethics Official to administer the PLFA ethics program in a positive and effective manner.

(1) Heads of DLA Primary Level Field Activities will: (i) Assure that all employees, military and civilian, upon their separation from military or Federal service, are informed of the standards of conduct and post employment restrictions governing former military or civilian employees, and are furnished copies of available information and guidance.

(ii) Take action to advise employees that they may obtain clarification of part 1293 from the PLFA Office of Counsel.

(iii) Review and evaluate the DD Forms 1555 submitted by their deputies prior to forwarding them to the General Counsel, DLA.

(iv) Assure that required DD Forms 1555 are filed by officers and employees of their activity and forwarded to the appropriate Deputy Ethics Official, in accordance with part 1293.

(2) The Counsel for each DLA PLFA will: (i) Serve as Deputy Ethics Official and provide advice and assistance on matters relating to standards of conduct, post employment restrictions, and conflicts of interest and related

laws, rules, and regulations arising at the activity.

(ii) Issue advice on the applicability of 10 U.S.C. 2397b to personnel assigned to their activity.

(iii) Forward to DLA–G a report of each suspected violation of the standards of conduct statutes or regulations as required under §1293.7(a).

(iv) Provide a summary of all reports of violations of the standards of conduct statutes or regulations and the status of each investigation or other action taken to HQ DLA, ATTN: DLA–G. Such reports shall be furnished semiannually, as of 31 March and 30 September each year, and shall be forwarded to reach HQ DLA no later than 10 calendar days after the reporting date. For those violations that are being reported under other procedures, this reporting requirement may be satisfied by a reference to the identifier of the other procedure. This reporting requirement is assigned report control symbol DLA(SA)2217(G).

(v) Review, approve, and retain DD Forms 1555 for personnel of the activity (except the Head of the PLFA and deputy) and all subordinate DLA activities after review by the supervisor.

(vi) Establish a procedure to identify employees within the activity and subordinate activities who are required by part 1293 to file DD Forms 1555.

(vii) By 10 December of each year, notify DLA–G that all employees of the activity required to file DD Forms 1555 as of 30 September of that year have filed the form, and of any apparent conflicts of interest identified on the forms that have not been resolved.

(3) The responsibilities assigned to PLFA Counsel may be delegated to the Counsel of a subordinate activity.

§1293.7 Procedures.

(a) *Reporting suspected violations.* DLA personnel who have information which causes them to believe that a violation of the policies, procedures, or standards set forth in part 1293 or of the statutes listed in appendix A is foreseeable or has occurred shall report the matter promptly to the General Counsel, DLA or PLFA Counsel who shall:

(1) Evaluate the report and obtain such additional information as may be necessary.

(2) Refer the matter for investigation or other action as appropriate, or advise the reporter that no further action will be taken.

(3) Forward a report of the matter and any action taken to the General Counsel, DLA within 30 days.

(b) *Resolving violations.* The resolution of real, apparent, or potential standards of conduct violations shall be accomplished promptly by one or more measures, such as divestiture of conflicting interests, disqualification for particular assignments, changes in assigned duties, transfer, reassignment, suspension, termination, or other appropriate action, as provided by statute or administrative procedures (see appendix G).

(c) *Disqualification or Divestiture Procedures*—(1) *Affiliations and Financial Interests.* (i) Any DLA employee who has affiliations or financial interests (which includes those of their spouse, minor children, or members of their households) which create conflicts of interest or the appearance of conflict of interest with their official duties, must immediately disqualify themselves from any official activities that are related to those affiliations or interests of the entities involved. If the individual cannot adequately perform assigned official duties after such disqualification, divestiture will be required or the individual must be moved from that position. The requirement to remedy the conflict or the appearance of a conflict exists independently of the requirement to file a financial disclosure report.

(ii) *Exceptions.* (A) DLA personnel need not disqualify themselves for holding shares of a widely-held, diversified mutual fund or regulated investment company. Such holdings are exempt as being too remote or inconsequential to affect the integrity of the services of DLA personnel.

(B) In limited circumstances, the General Counsel, DLA may exempt, under 18 U.S.C. 208(b), certain affiliations and financial interests if they are deemed not substantial enough to affect the integrity of Government services. Written requests for such exemptions will be processed through the appropriate Deputy Ethics Official.

(2) Written notice of disqualification must be promptly delivered to the employee's immediate supervisor, immediate subordinates, and to the Designated Agency Ethics Official or Deputy Agency Ethics Official.

(3) Supervisors shall periodically review disqualification notices to ensure their effectiveness.

(d) *Financial disclosure procedures.* Many military officers and civilian employees of DLA are subject to one of the financial disclosure reporting systems described below. Persons subject to each are identified below. Detailed instructions on the information to be furnished and the procedures for processing the forms are set out in appendices to this part 1293 and in referenced regulations.

(1) *Executive Personnel Financial Disclosure Report (SF 278).* (i) The following military officers and civilian employees are required by the Ethics in Government Act of 1978 to file a Standard Form 278 if they have served in an identified position for 61 days or more during the preceding calendar year. These individuals need not file a DD Form 1555.

(A) Civilian employees, including special Government employees, whose positions are classified at GS–16 or above of the General Schedule, or whose basic rate of pay under other pay schedules is equal to or greater than the minimum rate of basic pay fixed for GS–16 (except for GS/GM–15s).

(B) Members of the uniformed services whose pay grade is O–7 or above.

(C) Civilian employees in SES or in any other position determined by the Director of the Office of Government Ethics to be of equal classification to GS–16.

(D) The Designated Agency Ethics Official and Alternate Agency Ethics Official.

(ii) Detailed instructions on the information to be furnished and the procedures for processing the forms are set forth in appendix D.

(2) *Statements of Affiliations and Financial Interests (DD Form 1555).* (i) The following DLA personnel are required to submit initial and annual Statements of Affiliations and Financial Interests (DD Form 1555), unless they are subject to the Executive Personnel Financial Disclosure Report (SF 278).

(A) PLFA Commanders, Deputy Commanders and Counsel, and PSE Heads and Deputies.

(B) DLA personnel classified at GS/GM–15 or below, or at a comparable pay level under other authority, and members of the military whose pay grade is below O–7 not otherwise required to file under paragraph (d)(2)(i)(A) of this section, whose official duties require the exercise of judgment in making a Government decision or in taking Government action for contracting or procurement, regulating or auditing private or other non-Federal enterprise, or other activities in which the final decision or action may have an economic impact on any non-Federal entity.

(C) DLA personnel, regardless of grade, in the following positions:

(*1*) Attorneys.

(*2*) Contracting Officers.

(*3*) Supervisory Quality Assurance Representatives and Supervisory Quality Assurance Specialists.

(*4*) Quality Assurance Representative-in-Charge.

(*5*) Supervisory Procurement Agents and Analysts.

(*6*) Supervisory Industrial Property Administrators.

(*7*) Supervisory Industrial Specialists.

(*8*) Supervisory Industrial Engineers.

(*9*) Supervisory Property Disposal Specialists and Property Disposal Officers.

(*10*) Value Engineers and Analysts.

(D) Reserve officers assigned to positions meeting the criteria in paragraphs (d)(2)(i) (B) and (C) of this section.

(E) Other special Government employees as set forth in appendix E.

(ii) Detailed instructions on the information to be furnished and the procedures for processing the forms are set forth in appendix E.

(e) Reporting procedures applicable to former military officers and civilians employees, and to former employees of defense contractors now employed by DLA.

(1) *Defense Related Employment (DD Form 1787)*—(i) *Personnel required to file.* The following individuals are required

to file a Report of DoD and Defense Related Employment (DD Form 1787):

(A) A retired former military officer who served on active duty at least 10 years and who held, for any period during that service, the pay grade of O–4 or above, or a former civilian employee whose pay rate at any time during the 3-year period prior to the end of DoD employment was equal to or greater than a the minimum rate for a GS–13 (GS–12, step 7) and:

(*1*) Within the 2-year period immediately following the termination of service or employment with a DoD Component, is employed by a defense contractor who, during the year before the former officer or employee began employment, was awarded $10,000,000 or more in defense contracts; and

(*2*) Is employed by or performs service for the defense contractor and at any time during a year directly receives compensation of or is salaried at a rate of $25,000 per year or more from the defense contractor (''compensation'' is received by a person if it is paid to a business entity with which the person is affiliated in exchange for services rendered by that person).

(B) Each civilian officer and employee of a DoD Component who:

(*1*) Is employed at a pay rate equal to or greater than the minimum rate for GS–13 (GS–12, step 7), and

(*2*) Within the 2-year period prior to the effective date of service or employment with the DoD Component, was employed by a defense contractor who, during a year, was awarded $10,000,000 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 (''compensation'' is received by a person if it is paid to a business entity with which the person is affiliated in exchange for services rendered by the person).

(ii) Detailed instructions concerning this reporting requirement are contained in appendix F.

(2) *Statement of Employment (DD Form 1357).*

(i) Each retired Regular officer of the Armed Forces shall file with the Military Department in which he or she holds retired status a DD Form 1357, Statement of Employment-Regular Retired Officers (appendix H). The DD Form 1357 should not be filed with DLA. Filing shall be within 60 days after retirement and thereafter within 30 days of changing employer or taking on new duties. The filing requirement continues for 3 years after retirement.

(ii) Additional details concerning this reporting requirement are contained in:

(A) AR 600–50.

(B) SECNAVINST 5370.2.

(C) AFR 30–30.

(D) MCO 5330.3C.

APPENDIX A—LAWS AFFECTING DLA PERSONNEL

I. Caution

Employees and former employees are cautioned that the descriptions of the laws and regulations in this enclosure should not be the only thing relied upon to make decisions regarding their activities. Although the descriptions do provide general guidelines, restrictions are dependent on the specific facts in a particular case. Accordingly, employees and former employees are encouraged to discuss specific cases with the Designated Agency Ethics Official or Deputy Ethics Official in their Office of Counsel, or with private counsel.

II. Conflict of Interest Laws

A. 18 U.S.C. 203

1. Subsection (a) prohibits military officers or civilian employees from directly or indirectly receiving or seeking compensation for services rendered or to be rendered before any department or agency in connection with any contract, claim, controversy or particular matter in which the United States is a party or has a direct and substantial interest. The statute does not apply to enlisted military personnel. The purpose of this law is to reach any situation where the judgment or efficiency of a Government agency might be influenced because of payments or gifts to an officer or employee regardless of whether there is any intent to give preferential treatment in a manner otherwise than provided by law.

2. Subsection (b) makes it unlawful for anyone to offer or to pay the compensation prohibited by subsection (a).

B. 18 U.S.C. 205

1. This law prohibits military officers or civilian employees from acting as an agent or attorney for anyone else before a department, agency, or court in connection with

any particular matter in which the United States is a party or has a direct and substantial interest. The law does not apply to enlisted military personnel.

2. The following exemptions are allowed:

a. The law does not prohibit military officers or civilian employees from giving testimony under oath; from making statements required to be made under the penalty of perjury or contempt; or, from representing another person, without compensation, in a personnel matter such as a discrimination complaint or disciplinary action.

b. The law also authorizes a limited waiver of its restrictions and those of section 203 for an officer or employee, including a special Government employee, who represents his or her parents, spouse, or child, or a person or estate he or she serves as a fiduciary. The waiver is available only if approved by the official making appointments to the position. However, the waiver does not allow the officer or employee to represent any person in matters in which the officer or employee has participated personally and substantially or which are the subject of the officer or employee's official responsibility.

c. Finally, section 205 gives the head of a department or agency the authority to allow a special Government employee to represent his or her regular employer or other outside organization in the performance of work under a Government grant or contract if the department or agency head certifies and publishes in the FEDERAL REGISTER that the national interest requires such representation.

C. 18 U.S.C. 208

1. Subsection (a) prohibits military officers and civilian personnel from their personal and substantial participation as Government personnel in any particular matter in which they, their spouse, their minor children, their partners, their employers, their prospective employers, or their organizations have a financial interest. ''Personal and substantial participation'' includes such things as decision, approval, disapproval, recommendation, the rendering of advice, or investigation. A ''particular matter'' may be less concrete than an actual contract, but is something more specific than rule making or abstract scientific principles. If the individual can reasonably anticipate that his/her Government action, or the decision in which he/she participates or with respect to which he/she advises, will have a direct and predictable effect upon financial interests, then a ''particular matter'' is involved.

2. Subsection (b) permits a written exemption from subsection (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 nondisqualifying by a 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.

D. 18 U.S.C. 209

Subsection (a) prohibits military officers and civilian employees from receiving, and prohibits anyone from paying them, any money as additional compensation for their Government service. The law does not apply to enlisted military personnel. Subsection (b) permits military officers and civilian employees to participate in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer. Subsection (c) exempts special Government employees and anyone serving the Government without compensation. Subsection (d) exempts contributions, awards, or other expenses under the Government Employees Training Act. See 5 U.S.C. 4111(a).

E. 10 U.S.C. 2397a

This law applies to DoD employees at pay rates of GS–11 or higher (GS–10, Step 4) and to military officers in pay grades O–4 or higher. These employees must report any contact they have had, or will have, with defense contractors regarding future employment with the defense contractor. These employees must also disqualify themselves from any participation in DoD procurements related to the defense contractor. The penalty for violation is a bar from employment with the defense contractor for up to 10 years after Government service and up to a $10,000 penalty.

III. Restriction on Former Military Officers and Civilian Employees

A. Former Officers and Employees Include the Following Personnel:

1. Full-time civilian employees who have left Federal service.

2. Special Government employees who have left Federal service.

3. Retired military officers released from active duty.

4. Reserve military officers released from active duty. The term does not include enlisted personnel; however, enlisted personnel are subject to the restrictions applicable to retired members of the Armed Forces set forth in subparagraph G.

B. Senior employees are those individuals who have been specifically advised by the Designated Agency Ethics Official that they hold senior employee positions. In general, senior employees within DLA include military officers in pay grades O–7 and above, and most Senior Executive Service (SES) positions.

C. General:

1. Laws and regulations restrict the activities of former officers and employees, establish certain reporting requirements, and, in some cases, restrict employment by former officers and employees with DoD contractors. Violation of some of the laws and regulations may result in criminal prosecution, or civil fines.

2. The purpose of the post employment restrictions is to preclude the actual or apparent use of public office for private gain, and to ensure that the administration of Government is conducted honestly and in an impartial manner.

3. The restrictions are divided into five parts; those applicable to all former officers and employees, those applicable to former senior employees, those applicable to retired military officers, and those applicable to all retired members of the Armed Forces. In addition, the special restrictions applicable to personnel who were engaged in ''procurement functions'' are set out. Because of the expansive definition of the term ''procurement function,'' all civilian employees whose grade was GS–12, step 7 or higher, and all military personnel in grades O–4 and above should review the definition of ''procurement function'' set forth in subparagraph H6i below.

4. In addition to the information contained herein, retired military personnel are encouraged to review parallel regulations of their Military Service:

a. Army—AR 600–50.

b. Navy—SECNAVINST 5370.2H.

c. Air Force—AFR 30–30.

d. Marine Corps—MCO 5330.3C.

5. General professional knowledge acquired while in Federal service generally may be used while employed in the private sector. Laws and regulations do, however, restrict activities of former officers and employees which give the appearance of making unfair use of prior Federal employment and affiliations, or are detrimental to public confidence in the Government. In addition, certain former employees who dealt with DoD contractors may be prohibited from working for those contractors.

D. Restrictions Applicable to all Former Officers and Employees:

1. Permanent bar on representation. (18 U.S.C. 207(a).) Former officers and employees (not including former enlisted personnel) may never represent anyone except the United States or communicate with any Government agency with the intent to influence the United States in any matter with which the former officer or employee was personally and substantially involved while a Government employee, and which involves specific parties where the United States either is a party or has an interest.

a. This provision is aimed at your activities representing anyone, whether or not you make a personal appearance before the Government. The intent of the provision is to prevent you from ''switching sides,'' so that information, influence, and access you acquired during Federal service is not subsequently used for improper or unfair advantage in post-employment dealings with the Government.

b. The matters to which this bar applies are those in which you were involved as a Federal employee. Your involvement as a Federal employee must have been of significance to the matter, or must form the basis for a reasonable appearance that it was significant, and may include involvement by any of your subordinates.

c. Matters of general application such as general policy or program design are not included in this bar.

d. The concept of representation is broadly construed and includes any type of communication whose intent is to influence the United States. Representation includes not only acting as another's attorney or agent, but promotional and contract representations as well. Communications include both oral and written communications.

2. Two-year bar on representation. (18 U.S.C. 207(b)(i).) Former officers and employees (not including enlisted personnel) may not, for a 2-year period after departing from Federal service, represent anyone except the United States in any matter which was pending under the former employee's official responsibility during the final year of Federal service. The bar includes communicating with any Government agency with intent to influence the United States on the matter.

a. The only substantive difference between this 2-year bar and the permanent bar described in subparagraph 1. above is the degree of your closeness to, or involvement in, the matter.

b. The term ''official responsibility'' refers to the direct administrative or operating authority, whether intermediate or final, either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

3. Exception for Scientific or Technological Information. The permanent bar and 2-year bar do not apply to communications made solely for the purpose of furnishing scientific or technological information if approved by the head of the agency to which the communication is directed.

E. Additional Restrictions Applicable to Former Senior Employees:

1. *Two-year bar. (18 U.S.C. 207(b)(ii).)* For 2 years after leaving a senior employee position, you may not represent or assist in representing another person by personally appearing at any proceeding before the Government where the matter that is the subject of the proceeding, is one in which you participated personally and substantially while in Federal service.

a. The matters to which this bar applies are those in which you were involved as a Federal employee. Your involvement as a Federal employee must have been of significance to the matter, or must form the basis for a reasonable appearance that it was significant, and may include involvement by any of your subordinates.

b. This restriction does not bar all forms of behind-the-scenes assistance by you, but only assistance in representing or assisting in representing another person while personally present at any type of proceeding.

2. *One-year bar. (18 U.S.C. 207(c).)* For one year after leaving a senior employee position, you may not represent anyone before your former agency, or have any communication with your former agency on any matter which is pending before or of substantial interest to the agency. This restriction, sometimes called the ''no contract'' bar, is intended to provide a ''cooling-off'' period between you and your former agency.

a. This bar applies regardless of the degree of your involvement with the matter.

b. The bar applies to all matters, whether or not specific parties are involved, and includes matters of general application such as general policy or program design.

c. The bar also extends to matters in which your agency has a substantial interest even though the matter may be pending before another agency.

d. The bar is limited to contracts with your former agency and does not apply Government-wide.

e. Your former agency is specifically defined. As it pertains to former DLA senior employees, the term includes DLA and the DoD less:

(1) The Military Departments.

(2) Defense Mapping Agency.

(3) Defense Communications Agency.

(4) Defense Intelligence Agency.

(5) Defense Nuclear Agency.

(6) National Security Agency.

f. There are several exemptions to this one-year bar. The bar does not cover a former senior employee who is: An elected official of a state or local government; an employee of an accredited degree-granting institution of higher education; or, an employee of a nonprofit hospital or medical research organization, provided that the communication, appearance, or representation is on behalf of such government, institution, hospital, or organization. The bar also does not cover purely social or informational communications, the transmission or filing of documents not requiring governmental action, personal matters, representing oneself in any administrative or judicial proceeding, any expression of personal view where the former senior employee has no monetary interest, responses to the former agency's request for information, or participation as the principal researcher or investigator under Government grants.

F. Additional Restrictions Applicable to Retired Regular Military Officers:

1. *Claims against the United States (18 U.S.C. 281)*

a. A retired officer of the Armed Forces may not, for two years after release from active duty, act as an agent or attorney for prosecuting or assisting in the prosecution of a claim against the United States:

(1) Which involves the Military Department in which the officer is retired, or

(2) Which involves any subject matter with which the officer was directly connected while on active duty.

b. The penalty for violating this restriction includes civil and criminal sanctions.

2. *Selling to the United States (18 U.S.C. 281)*

a. A retired officer of the Armed Forces may not, for two years after release from active duty, receive (or agree to receive), either directly or indirectly, any compensation for representating any person in the sale of anything to the United States through the Military Department in which the officer is retired.

b. The penalty for violating this restriction includes civil and criminal sanctions.

3. *Retired Regular Officers*

For 3 years after retirement, a retired Regular officer may not, either for himself/herself or for others, sell, contract, or negotiate to sell, any supplies or war materials to the DoD (or any of its components), Coast Guard, National Oceanic and Atmospheric Administration, or Public Health Service.

a. This 3-year bar does not prohibit all types of employment by, or association with, a company that does business with the Government. The bar is directed only to those activities related to selling which include:

(1) Signing a bid, proposal, or contract.

(2) Negotiating a contract.

(3) Contracting an officer or employee of any of the agencies listed in subparagraph 2.b. above for the purpose of:

(a) Obtaining or negotiating contracts,

(b) Negotiating or discussing changes in specifications, price, cost allowance, or other terms of a contract, or

(c) Settling disputes concerning performance of a contract, or

(4) Any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefore is subsequently negotiated by another person.

b. Violations of this bar are punishable by loss of retirement pay for that period of time during which the prohibited activity occurs.

G. Additional Restrictions Applicable to all Retired members of the Armed Forces:

1. *DoD civilian employment.* A retired member of the Armed Forces may not be appointed to a DoD civilian position within 180 days after retirement unless:

a. The employment is approved by the appropriate authority (D0D Directive 1402.1, Employment of Retired Members of the Armed Forces).

b. The position is one for which an advance hiring pay rate has been authorized by the Office of Personnel Management under 5 U.S.C. 5305, or

c. A state of national emergency exists.

2. *Foreign employment.* A retired member of the Armed Forces may not accept any present, emolument, office, title, or employment from any foreign government unless approved by the Secretary of the Military Department concerned and the Secretary of State. The penalty for a violation is loss of retirement pay.

3. *Use of military titles.* Retired members of the Armed Forces may not use their military title in such a way as to give rise to the appearance of sponsorship, sanction, endorsement, or approval of the Military Service or the DoD in connection with any commercial enterprise. Overseas commanders may further restrict the use of military titles by retired personnel in overseas areas.

H. Special Restrictions on the Activities of Former Employees Who Were Engaged in Procurement Functions:

1. Pursuant to 10 U.S.C. 2397b, certain former military officers and civilian employees may not receive compensation from a major defense contractor for a 2-year period, beginning on the date the former officer or employee separated from Federal service. This restriction prohibits the acceptance of compensation from a particular major defense contractor only if the former officer or employee performed the duties listed in subparagraph 2, below, relating to that same defense contractor.

2. *Personnel to whom restrictions apply.* Individuals in the following categories are subject to the restrictions:

a. Civilian employees whose rate of pay was greater than or equal to that for a GS–13, Step 1 (GS–12, Step 7) and military officers in pay grades of O–4 or higher, if such individuals:

(1) Spent the majority of their working days during the last 2 years of DoD service performing a procurement function relating to a DoD contract, at a site or plant that was owned or operated by a contractor, and which was the principal location of their performance of that procurement function; or

(2) Performed, on a majority of their working days during the last two years of DoD service, a procurement function relating to a major defense system and, in the performance of such a function, participated on any occasion personally and substantially in a manner involving decision-making responsibilities with respect to a contract for that major defense system through contact with the contractor.

b. Civilian employees who served in a Senior Executive Sevice position or higher, and military officers who served in the pay grade of O–7 or higher, if such individuals during the last 2 years of DoD service:

(1) Acted as a primary representative of the United States in the negotiation with a defense contractor of a defense contract in an amount in excess of $10,000,000 (the actual contractual action taken by the individual must have been in an amount in excess of $10,000,000), or

(2) Acted as a primary representative of the United States in the negotiation of a settlement of an unresolved claim of such a defense contractor in an amount in excess of $10,000,000. An unresolved claim shall be, for the purposes of part 1293 valued by the greater of the amount of the claim or the amount of the settlement.

3. *Advice from the designated Agency Ethics Official.*

a. Any person may, before accepting compensation, request that PLFA Counsel or the General Counsel, DLA provide advice on the applicability of 10 U.S.C. 2397b and part 1293 to the acceptance of such compensation.

b. A request for advice shall be in writing and shall contain all relevant information.

c. If the PLFA Counsel or General Counsel, DLA receives a request for advice, he shall issue a written opinion in response thereto not later than 30 days after receipt of all relevant information.

d. If the advice rendered by the PLFA Counsel or General Counsel, DLA states that the law and part 1293 are inapplicable, and that the individual may accept the compensation from the contractor, then there shall be a conclusive presumption that the acceptance of the compensation is not a violation of 10 U.S.C. 2397b.

4. *Apparent violations.* Apparent violations. Apparent violations of these prohibitions shall be referred to the General Counsel, DLA who will review the matter for referral to the DoD Inspector General or the Inspector General of the appropriate Military Department for investigation.

5. *Penalties.* Pursuant to 10 U.S.C 2397b(b)(1), individuals who knowingly violate the prohibitions of this section are subject to a civil fine of up to $250,000.

6. *Special definitions.* For the purpose of subparagraph H of this Appendix, terms used shall have the following meanings:

a. *Armed Forces.* The term ''Armed Forces'' does not include the United States Coast Guard.

b. *Compensation.* Includes any payment, gift, benefit, reward, favor, or gratuity which is provided directly or indirectly for services rendered by the person accepting such payment and which has a fair market value in

excess of $250. Compensation shall be deemed indirectly received if it is paid to an entity or person other than the individual, in exchange for services performed by the individual.

c. *Contractor-operated facility.* Includes any facility leased or loaned by the United States to the contractor by written agreement. It does not include facilities located on a military installation where contractor personnel may work, but which is not either leased or loaned by the United States to the contractor by written agreement.

d. *Defense contractor.* An entity that: Contracts directly with the Department of Defense to supply the Department of Defense with goods or services; or, controls or is controlled by an entity that contracts directly with the Department of Defense to supply the Department of Defense with goods or services; or, is under common control with an entity that contracts directly with the Department of Defense to supply the Department of Defense with goods or services. The term does not include an affiliate or subsidiary of an entity that contracts directly with the Department of Defense to supply the Department of Defense with goods or services if the affiliate or subsidiary is clearly not engaged in the performance of a defense contract, nor does it include a state or local government.

e. *DoD component.* The Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Inspector General, and the Defense Agencies, including nonappropriated fund activities.

f. *Employee.* This term does not include a part-time employee, or a Special Government Employee.

g. *Major defense contractor.* Any business entity which, during the fiscal year preceding the fiscal year in which compensation was received, was a defense contractor that received defense contracts in a total amount equal to or greater than $10,000,000.

h. *Major defense system.* 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 system shall be considered a major defense system if: the Department of Defense is responsible for the system and the total expenditures, for research, development, test and evaluation for the system are estimated to exceed $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement exceeds $300,00,000 (based on fiscal year 1980 constant dollars); or, the system is designated a ''major system'' by the head of the agency responsible for the system.

i. *Majority of working days.* The majority of days actually worked during the period, excluding weekends, holidays, days of leave or sick days when the employee did not actually work. A work day on which an individual performed a procurement function includes any day on which the individual worked on that procurement function for any amount of time during that day.

j. *Negotiation and settlement.* Exchange of views between representatives of the Government and a contractor regarding respective liabilities and responsibilities of the parties on a particular contract or claim. It includes deliberations regarding contract specifications, terms of delivery, allowability of costs, pricing of change orders, etc.

k. *Primary Government representative.* If more than one Government representative is involved in any particular transaction, it is the Government employee who supervised the Government's effort in that matter. To act as a ''representative'' requires personal and substantial participation in the transaction, by personal presence, telephone conversation, or similar involvement with representatives of a contractor.

l. *Procurement related function (or ''procurement function'').* Any function relating to: The negotiation, award, administration, or approval of a contract; the selection of a contractor; the approval of a change in a contract; the performance of quality assurance, operational and developmental testing, the approval of payment, or auditing under a contract; or, the management of a procurement program.

m. *Separation of a member of the Armed Forces.* A person who is a retired or former member of the Armed Forces shall be considered to have been separated from service in the Department of Defense on the effective date of the person's discharge or release from active duty.

IV. Other Laws Applicable to DoD Personnel

Engaging in the following activities may subject present and former DLA personnel to criminal or other penalties:

A. Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (18 U.S.C. 201).

B. Concealing or failing to report to proper authorities the commission of felony under any criminal statute if the person knew of the actual commission of the crime (18 U.S.C. 4).

C. 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 effect the object of the conspiracy (18 U.S.C. 371).

D. Lobbying with appropriated funds (18 U.S.C. 1913).

E. Disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

F. Disclosure of classified information (18 U.S.C. 793 and 798, 50 U.S.C. 783); and disclosure of trade secrets and other confidential information (18 U.S.C. 1905).

G. Habitual use of intoxicants to excess (5 U.S.C. 7352).

H. Misuse of a Government vehicle (31 U.S.C. 1349(b)).

I. Misuse of the mailing privilege (18 U.S.C. 1719).

J. Deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

K. Committing fraud or making false statements in a Government matter (18 U.S.C. 1001).

L. Mutilating or destroying a public record (18 U.S.C. 2071).

M. Counterfeiting and forging transportation requests (18 U.S.C. 641).

N. Embezzlement of Government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); private use of public money (18 U.S.C. 653) and embezzlement of the money or property of another person in the possession of an employee by reason of his/her Government employment (18 U.S.C. 654).

O. Unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

P. Certain political activities (5 U.S.C. 7321–7327 and 18 U.S.C. 600, 601, 602, 603, 606, and 607). These statutes apply to civilian employees; regulations govern military personnel (DoD Directive 1344.10).[5]

Q. Any person (including a special Government employee) who is required to register under the Foreign Agents Registration Act of 1938 (18 U.S.C. 219) may not serve the Government as an officer or employee. The section does not apply to retired Regular military officers who are not on active duty, or Reserves who are not on active duty or who are on active duty for training; or, a special Government employee in any case in which the department head certifies to the Attorney General that his or her employment by the United States Government is in the national interest.

R. Soliciting contributions for gifts or giving gifts to superiors, or accepting gifts from subordinates (5 U.S.C. 7351). This statute applies only to civilian employees; the provisions of §1293.3(h), apply to military personnel.

S. Acceptance of excessive honoraria (2 U.S.C. 441i).

T. Acceptance, without statutory authority, of any present, emolument, office or title, or employment of any kind whatever, from any king, prince, or foreign state by any person holding any office or profit in or trust of the Federal Government, including all retired military personnel and regular enlisted personnel (U.S. Constitution, Art. I., Sec. 9, cl. 8). Exceptions to this prohibition are authorized under 37 U.S.C. 908.

U. Union activities of military personnel (10 U.S.C. 976).

V. Violation of merit system principles (5 U.S.C. 2301).

W. Prohibited personnel practices (5 U.S.C. 2302).

X. Employment of a Regular Navy Officer or a Regular Marine Corps Officer, other than a retired officer, by a person furnishing naval supplies or war materials to the United States (37 U.S.C. 801(a)).

APPENDIX B—CODE OF ETHICS FOR GOVERNMENT SERVICE—PUB. L. 96–303

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 and 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 government duties as a means for making private profit.

IX. Expose corruption wherever discovered.

X. Uphold these principles, ever conscious that public office is a public trust.

APPENDIX C—ADDITIONAL GUIDANCE ON GRATUITIES, REIMBURSEMENTS, AND OTHER BENEFITS FROM OUTSIDE SOURCES

I. General

The general prohibition against accepting gratuities, reimbursements, and other benefits from outside sources does not apply to

[5] See footnote 1, to §1293.3(c)(1)(ii).

the following. These exceptions shall be applied narrowly in keeping with the prohibition in §1293.3(g).

A. The continued participation in employee welfare or benefit plans of a former employee when permitted by law and approved by the General Counsel, DLA, or PLFA Counsel.

B. The acceptance of unsolicited advertising or promotional items that are less than $10 in retail value.

C. The acceptance of trophies, entertainment, prizes, or awards for public service or achievement in an individual, unofficial capacity or given in games or contests that do not relate to official duties and are clearly open to the public generally, or are officially approved for DLA personnel participation.

D. The acceptance of benefits available to the public, such as university scholarships covered by DoD Directive 1322.6, Fellowships, Scholarships, and Grants for Members of the Armed Forces, and free exhibitions by DoD contractors at public trade fairs.

E. The acceptance of discounts or concessions realistically available to all DLA personnel, provided that such discounts or concessions are not used to obtain any item for the purpose of resale at a profit.

F. Participation by DLA personnel in civic and community activities that also involve a DoD contractor, when any relationship between DLA personnel and the contractor is indirect; for example participation in a Little League or Combined Federal Campaign luncheon that is subsidized by a defense contractor.

G. Activities engaged in by DLA personnel with local civic or military leaders as part of authorized community relations programs of DLA.

H. The participation of DLA personnel in widely attended gatherings of mutual interest to Government and industry, sponsored or hosted by industrial, technical, and professional associations (not by individual contractors), provided that they have been approved in accordance with DoD Instruction 5410.20, Public Affairs Relations with Business and Nongovernmental Organizations Representing Business.

I. Situations in which participation by DLA personnel at public ceremonial activities of mutual interest to industry, local communities, and DLA serves the interest of the Government, and acceptance of the invitation is approved by the General Counsel, DLA or PLFA Counsel.

J. When on official Government business and when the DLA personnel reports the circumstances in writing to the immediate supervisor and to the General Counsel, DLA or the PLFA Counsel, as soon as possible:

1. Space available use of previously scheduled ground transportation to or from a DoD contractor's place of business provided by the contractor for its own employees, and

2. Contractor-provided transportation, meals, or overnight accommodations when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable.

K. Attendance or participation of DLA personnel in gatherings, including social events such as receptions, which are hosted by foreign governments (when not acting in their DoD contractor capacity) or international organizations, provided that the acceptance of the invitation is approved by the General Counsel, DLA or PLFA Counsel.

L. Customary exchanges of gratituities between DLA personnel and their friends and relatives or the friends and relatives of their spouse, minor children and members of their household, when the circumstances clearly indicate that it is the relationship, rather than the business of the person concerned, that is the motivating factor for the gratuity and it is clear that the gratuity is not paid for by the United States Government or any DoD contractor.

M. Acceptance of coffee, doughnuts, and similar refreshments of nominal value offered as a normal courtesy incidental to the performance of duty. This exception applies to acceptance on an occasional basis and does not authorize acceptance on a recurring basis.

N. The acceptance of benefits resulting from the business activities of a spouse where it is clear that the benefits are given to the spouse in the normal course of the spouse's employment or business and have not been given or made more attractive because of the DLA employee's status. This exception does not, however, alter the requirement for disqualification under §1293.7(c)(1).

O. Acceptance of transportation and related travel expenses from a potential employer in connection with a job interview, provided that prior to departing on the trip:

1. The DLA employee receiving the gratuity notifies his or her immediate supervisor of the travel arrangements.

2. The DLA employee files a written disqualification statement concerning any possible official actions involving the potential employer.

3. The DLA employee submits some evidence that the potential employer offers the same benefits to all similarly situated individuals, not only those employed in the Department of Defense.

P. Situations in which, in the sound judgment of both the individual involved and his or her immediate supervisor, the Government's interest will be served by DLA personnel participating in activities otherwise prohibited. In any such case, a written report of the circumstances shall be made in advance, or, when an advance report is not possible, within 48 hours, by the individual or supervisor to the General Counsel, DLA or PLFA Counsel.

II. Defense Contracting Training

The guidance in subparagraphs A through C of this section applies whenever defense contractors provide training, orientation, or refresher courses to DLA personnel. These courses range from executive orientation courses in which all expenses are borne by the defense contractor to seminars devoted to technical developments in which the only ''gratuity'' may be lectures given free of charge.

A. Attendance by DLA employees at training sessions provided by defense contractors is permitted when the contractor's products or systems are provided under contract to DoD and the training is to facilitate the utilization of those products or systems by DLA personnel.

B. When a defense contractor provides training pursuant to a contract, the training itself is not a gratuity. Likewise, meals, lodging, and transportation would not be considered a gratuity if the defense contractor was required to furnish them under the terms of the contract, but would result in reductions to the travel and other expenses normally payable to the employee under the Joint Federal Travel Regulation. However, if the defense contractor, without charge, provides something to DLA personnel which is not required by the contract, the contractor is giving a gratuity to the DLA employee.

C. Attendance at tuition-free training, refresher courses, or other educational meetings offered by a defense contractor (although not required to do so by the terms of a contract) may be authorized when attendance is clearly in the best interests of the Government and meets the following criteria of DLAR 1430.12, Civilian Employee Development and Training:[6]

1. Selection of the DLA employees attending the contractor training will be made by the Government.

2. The unavailability of alternative training sources, and confidence that the contractor provided training will not adversely affect the objectivity of the DLA employee.

3. Approval of the training is at a sufficiently high level to assure the need cannot otherwise reasonably be met and has the concurrence of the General Counsel, DLA or PLFA Counsel.

4. No appreciable cost is incurred by the contractor in order to accommodate attendance by DLA employees.

5. An understanding that the contractor will receive no special consideration or benefit because of the Government's participation.

III. Reimbursements

DLA personnel may not accept either personal reimbursement or in kind accommodations, subsistence, transportation, or services for expenses incident to official travel, from any source outside the Government except as indicated in subparagraphs A through F of this section. In cases where acceptance is authorized, appropriate deductions will be made in the travel, per diem, or other allowances payable to the employee. In no event will DLA personnel accept benefits which are excessive.

A. A DLA employee who is to be a speaker, panelist, project officer, or other bona fide participant in the activity attended, may accept accommodations, subsistence, transportation, or other services furnished in-kind in connection with official travel when such attendance and acceptance are authorized by the order-issuing authority as being in the overall Government interest. Under these circumstances, an employee may not accept personal reimbursement.

B. When a DLA employee is summoned to testify in an official capacity on behalf of a private party at a judicial proceeding, the appearance will be on official time and travel expenses may be accepted from the court, authority, or party who caused the person to be summoned. In accordance with 5 U.S.C. 5751, the funds may be turned over to the agency and Government travel orders issued or the employee may use the funds to defray costs directly. Any excess funds must be returned to the party or paid into the U.S. Treasury as miscellaneous receipts. Any employee appearing on behalf of a private party not in an official capacity must use leave to do so and may retain any fees or expenses.

C. Except as indicated in subparagraphs A and B of this section, DLA personnel may not accept personal reimbursement from any source for expenses incident to official travel, unless authorized by their supervisor consistent with guidance provided by the Designated Agency Ethics Official or Deputy Ethics Official pursuant to 5 U.S.C. 4111 or other statutory authority. Rather reimbursement must be made to the Government by check payable to DLA.

D. DLA personnel may accept travel, or reimbursement for travel expenses from a foreign government as provided in DLAR 1005.1, Decorations and Gifts from Foreign Governments.

E. When accommodations, subsistence, or services in kind are furnished to DLA personnel by non-U.S. Government sources, consistent with this paragraph, appropriate deductions shall be reported and made in the travel, per diem, or other allowance payable.

F. DLA personnel who receive gratuities, or have gratuities received on their behalf, in circumstances not in conformance with the standards of part 1293, shall promptly report the circumstances to the Designated Agency Ethics Official or Deputy Ethics Official for disposition determination.

[6] See footnote 1, to § 1293.3(c)(1)(ii).

IV. Ship Launch and Similar Ceremonies

The following guidance applies to ceremonies and gifts associated with the launch or commissioning of a naval vessel, an aircraft or other vehicle, and all similar events:

A. Attendance at Ceremonies

Acceptance of an invitation to attend a ceremony shall be approved by the Head of the PSE or PLFA. Attendance is permitted at appropriate functions incident to the ceremony, such as a dinner preceding the ceremony and the reception following it, as long as the function is not lavish, excessive, or extravagant.

B. Acceptance of Gifts

DLA personnel, their spouses, and their dependent children, who are official participants may accept a tangible thing of value as a gift or memento in connection with the ceremony as long as its retail value does not exceed $100 per family and the cost is not borne by the Government. When a gift exceeds the $100 limit the recipient shall pursue one of the following alternatives:

1. Return the gift to the donor.

2. Retain the gift after reimbursing the donor the full value of the gift.

3. Forward the gift to the Staff Director, Administration (DLA–X) for disposition as a gift to the Government in accordance with statute.

APPENDIX D—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REPORT (SF 278)

I. DLA Personnel Required to File SF 278

A. DLA personnel required to file a Financial Disclosure Report (SF 278) are listed at §1293.7(d)(1). These personnel occupy ''covered positions.''

B. A person who is nominated to or assumes a covered position is not required to file an SF 278 if the Secretary of Defense or the General Counsel, DLA determines that the person is not reasonably expected to perform the duties of the position for more than 60 days in the calendar year. However, if the person performs the duties of the office or position for more than 60 days in the calendar year, an SF 278 shall be filed within 15 days after the 61st day of duty.

C. A person otherwise required to file an SF 278, but who is expected to perform the duties of the position for less than 130 days in the calendar year, may request a waiver of any or all reporting requirements from the Director, Office of Government Ethics, if the person is not a full-time employee of the Government, is able to provide specially needed services, and does not have outside employment or financial interests likely to create a conflict of interest. A request for a waiver shall be initially submitted to the General Counsel, DLA.

II. Time of Filing

An SF 278 shall be submitted under the circumstances described below.

A. Assumption Report

DLA personnel shall submit a SF 278 to the General Counsel, DLA before assuming a covered position. This requirement does not apply if the individual has left another covered position within 30 days before assuming a new position, or already has filed with respect to nomination for the new position.

B. Annual Report

DLA personnel, including special Government employees, occupying a covered position for more than 60 days during a calendar year shall submit an SF 278 annually. The annual report must be filed with the General Counsel, DLA not later than 15 May unless a written extension is granted.

C. Termination Report

DLA personnel occupying a covered position shall submit an SF 278 to the General Counsel, DLA no sooner than 15 days before and no later than 30 days after the date of departure from that position unless they accept another covered position. The termination report will cover the portion of the present calendar year up to the date of termination and, if the annual report has not yet been filed, the preceding calendar year.

III. Contents of Reports

Instructions for completing SFs 278 are included as part of the report forms. Additional guidance for personnel in covered positions is available from the General Counsel, DLA.

IV. Submission and Review of Reports

A. Reports will be submitted to the General Counsel, DLA. After final review, copies of the reports of military officers assigned to DLA will be forwarded by the General Counsel, DLA to the appropriate Military Department official.

B. Final review of an SF 278 is completed when the Genral Counsel, DLA has signed the SF 278, indicating that each item is completed and that the report discloses no unresolved conflict or appearance of a conflict of interest under applicable laws and regulations.

1. If the General Counsel, DLA, after reviewing an SF 278, believes 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 General Counsel, DLA.

2. If the General Counsel, DLA, after reviewing the SF 278, is of the opinion, on the

basis of information submitted, that the reporting person is not in compliance with applicable laws and regualtions, the following steps shall be taken:

a. The person shall be notified in writing of the preliminary determination.

b. After an opportunity for personal consultation, if practicable, the General Counsel, DLA shall notify the person in writing of the remedial measures that should be taken to bring the person into compliance. The notification shall specify a date by which such measures must be taken, which, except in unusual circumstances, must be taken within 90 days.

(1) When the General Counsel, DLA determines that a reporting person has fully complied with the remedial measures, a notation to that effect shall be made in the comment section of the SF 378. The General Counsel, DLA shall then sign and date the SF 278 and send written notice of that action to the person.

(2) If steps assuring compliance with applicable laws and regulations are not taken by the date established, the General Counsel, DLA shall report the matter to the Director, DLA for appropriate action. The Office of Government Ethics and the Attorney General shall also be notified.

3. Remedial action may include the following measures:

a. Disqualification.

b. Limitation of duties.

c. Divestiture.

d. Transfer or reassignment.

e. Resignation.

f. Exemption under 18 U.S.C. 208.

g. Establishment of a qualified blind trust.

V. Public Availability of SFs 278

A. SFs 278 must be made available for public examination upon request 15 days after the report is filed unless otherwise exempted pursuant to law. Receipt of the report by the General Counsel, DLA for final review constitutes official filing and establishes the date from which the 15 days shall run. In most cases, this means the reports are available to the public before final review is completed. Reporting persons are personally responsible for ensuring that their reports are accurate, complete, and timely.

B. Any request for an SF 278 must be in writing and state:

1. The person's name, occupation, and address.

2. The name and address of any other person or organization on whose behalf the inspection or copy is requested.

3. That the person is aware that it is unlawful to obtain or use the report for:

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. Use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

VI. Retention of SFs 278

SFs 278 shall be retained for 6 years from the date of filing.

VII. Penalties

Compliance with the financial disclosure provisions shall be enforced by adminstrative, civil, or criminal remedies, which include:

A. Action Within the DoD Component

The Director, DLA may take appropriate action, including a change in assigned duties or adverse action, in accordance with applicable law or regulation, against any person who fails to file an SF 278, or who falsifies or fails to report required information.

B. Action by the Attorney General

The General Counsel, DLA is required to refer to the Attorney General the name of any person whom he or she has reasonable cause to believe has failed willfully to file an SF 278 on time or has falsified or failed willfully to file information required to be reported. Such referral does not bar additional administrative or judicial enforcement. The Attorney General may bring a civil action in the U.S. District Courts against any person who knowingly and willfully falsifies or fails to file or report any required information. The court may assess a civil penalty not to exceed $5,000. Knowing or willful falsification of information required to be filed also may result in criminal prosecution under 18 U.S.C. 1001, leading to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both.

C. Misuse of Reports

1. The Attorney General may bring a civil action against a person who obtains or uses an SF 278 filed under the Ethics in Government Act for any of 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.

2. The court in which such action is brought may assess a penalty in any amount not to exceed $5,000. This is in addition to any other legal remedy available.

APPENDIX E—REQUIREMENTS FOR SUBMISSION OF DD FORM 1555, STATEMENT OF AFFILIATIONS AND FINANCIAL INTERESTS

I. DLA Personnel Required To Submit Statements

A. DLA personnel required to file Statements of Affiliations and Financial Interests (DD Forms 1555) are those indicated in §1293.7(d)(2).

B. Special Government Employees (as defined in §1293.4(i)).

1. Special Government employees, including Reserve military officers assigned to positions requiring the submission of a DD Form 1555 shall file a DD Form 1555 prior to performing the duties of the position.

2. The following categories of special Government employees are not required to file DD Forms 1555 unless they are specifically notified that they must do so:

a. Physicians, dentists, and allied medical specialists engaged only in providing service 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 and television fields who are utilized only as narrators or actors in DLA productions.

f. A special Government employee who is not a ''consultant'' or ''expert'' as those terms are defined in the Federal Personnel Manual, chapter 304.

II. Review of Positions

Immediate supervisors shall annually review each civilian and military position under their supervision, determine whether the position requires the incumbent to file a DD Form 1555, and will notify each employee of the determination. The position description of each position shall state whether or not the incumbent must file a DD Form 1555. Any individual may request a review of the determination requiring submission of a DD Form 1555 from the Deputy Ethics Official. In the event the employee is dissatisfied with this decision, there is an appeal right to the Designated Agency Ethics Official, whose decision shall be final.

III. Manner of Submission

A. Time of Submission

1. Employees will file a DD Form 1555 for review and approval prior to performing the duties of a position that requires filing of a DD Form 1555. Reserve Officers shall file the form upon reporting for duty. If an employee has filed a DD Form 1555 by virtue of a previous position, a copy of the previously submitted form may be submitted to the new supervisor for review rather than filing a new DD Form 1555.

2. DD Forms 1555 shall annually be filed by 31 October each year for all affiliations and financial interests as of the 30th of September of that year. Even if no changes occur from the previous year, a new and complete DD Form 1555 is required to be filed each year.

3. *Excusable Delay*. When required by reason of duty assignment or infirmity, a supervisor may grant an extension of time with concurrence of the DAEO or Deputy Ethics Official. Any extension in excess of 30 days requires the concurrence of the Designated Agency Ethics Official. Any late DD Forms 1555 shall include appropriate notation of any extension of time granted hereunder.

B. To Whom Submitted

1. *HQ DLA*. a. Heads of PSEs required to file DD Forms 1555 will submit them through the General Counsel, DLA to the Director, DLA.

b. Deputy Heads of PSEs required to file DD Forms 1555 will submit them to the Head of the PSE for review and evaluation. After resolution of any conflict, the DD Forms 1555 will be forwarded to the General Counsel, DLA.

c. Other officers and employees of HQ DLA, and their management support activities, will submit DD Forms 1555 to their immediate supervisor for review and evaluation. Upon completion of their review and resolution of any conflicts, supervisors will forward the DD Forms 1555 to the General Counsel, DLA.

2. *Field activities with assigned DLA Counsel.* a. Heads of PLFAs required to file DD Forms 1555 will submit them through the General Counsel, DLA to the Director, DLA.

b. Deputy Heads of PLFAs required to file DD Forms 1555 will submit them to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be submitted to the General Counsel, DLA.

c. Other officers and employees of PLFAs or subordinate activities required to file DD Forms 1555 will submit them to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be forwarded to the appropriate Deputy Ethics Official.

d. Counsel for PLFAs will submit DD Forms 1555 to the Head of the PLFA for review and evaluation. After resolution of any conflict, the forms will be forwarded to the General Counsel, DLA.

e. Heads of DLA activities subordinate to PLFAs, when required to file DD Forms 1555, will submit the forms to the Head of the PLFA, who will review and evaluate, and forward to the appropriate Deputy Ethics Official after resolution of any conflict.

f. Counsel for DLA activities subordinate to a PLFA will submit DD Forms 1555 to the activity Head for review, evaluation, and resolution of any conflict. The forms will be forwarded to the Counsel of the PLFA.

3. *Management Support Activities.* a. Heads of Management Support Activities will submit DD Forms 1555 to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be submitted to the General Counsel, DLA.

b. Other officers and employees of Management Support Activities will submit them to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be forwarded to the Deputy Ethics Official of the PLFA providing personnel services to the Management Support Activity.

4. *Detailed employees.* Agreements with other DoD Components and Government agencies shall contain a requirement that the other Component agency shall, within 60 days, forward to the General Counsel, DLA a copy of the detailed individual's DD Form 1555, if required, and notice concerning the disposition of any conflict or apparent conflict of interest indicated.

C. Content of Report

1. Instructions for completing the DD Form 1555 are included as a part of the form. Additional guidance may be obtained from the Designated Agency Ethics Official or Deputy Ethics Official.

2. The interest of a spouse, minor child, or any member of the employee's household shall be reported as if it were the interest of the employee. The interests of a spouse need not be reported if the employee and spouse have:

a. A final decree of separation,

b. An interim or interlocutory decree, or

c. A separation agreement formally executed by the employee and spouse in anticipation of its incorporation into a final decree of divorce or separation.

3. DLA personnel are not required to submit on a DD Form 1555 any information relating to their connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization, or a similar organization not conducted as a business for profit. However, educational or other institutions doing research and development or related work involving grants of money or contracts with the Government must be reported.

4. Ownership of personal savings or checking accounts in financial institutions, shares in credit unions or savings and loan associations, life or property insurance policies and shares in widely held diversified mutual funds or regulated investment companies need not be reported.

5. An employee need not disclose the assets of, sources of income of, or transactions of, a trust if:

a. The trust is a qualified blind or qualified diversified trust certified by the Office of Government Ethics and is otherwise reported on the DD Form 1555 by name of trust and date of execution, or

b. The trust is an ''excepted'' trust, defined as follows:

(1) A trust that was not created by the DLA employee, or the employee's spouse, or dependent child:

(2) A trust that consists of withholdings or sources of income of which the officer or employee, or spouse, or dependent child have no knowledge, and

(3) Which is disclosed as an asset or income source on the report.

6. DLA personnel shall request submission on their behalf of required information known only to other persons; for example, holdings of spouse or other members of the household, executor of any estate, or trustee. The submissions may be made with a request for confidentiality that will be honored even if it includes a limitation on disclosure to the DLA employee concerned.

D. *Confidentiality of DD Forms 1555 of DLA personnel.* Each DD Form 1555 shall be held in confidence. Information from a DD Form 1555 may not be disclosed except as the Designated Agency Ethics Official or the Office of Government Ethics may determine for good cause. Persons designated to review the DD Forms 1555 are responsible for maintaining the statements in confidence and shall not allow access to or disclosure from the DD Forms 1555 except to carry out the purpose of part 1293.

E. *Effect of statements on other requirements.* The DD Form 1555 required of DLA personnel is in addition to, and not in substitution for, any similar requirement imposed by statute, Executive Order, or regulation. Submission of a DD Form 1555 does not permit DLA personnel to participate in matters in which their participation is prohibited by statute, Executive Order, or regulation.

F. *Review of DD Forms 1555.* 1. The filing employee's immediate supervisor reviews the DD Form 1555 to evaluate whether there is a conflict or apparent conflict between the employee's private financial interests and his or her official responsibilities. The immediate supervisor records the results of the evaluation in block 13. Heads of PSEs and PLFAs will perform the initial review of their deputies' DD Forms 1555 before forwarding them to the General Counsel, DLA. Heads of PLFAs perform the initial review of the PLFA Counsel's forms. After review and completion of the supervisor's statement, the DD Form 1555 should be forwarded to the Designated Agency Ethics Official or Deputy Ethics Official, as appropriate, for final review and filing.

2. DD Forms 1555 shall be reviewed to assure that:

a. Each item is completed, and

b. No interest or position disclosed on the form violates or appears to violate any of the following:

(1) Any applicable provision of chapter 11 of title 18 of the United States Code (part 1).

(2) The ''Ethics in Government Act of 1978,'' as amended, and any regulations promulgated thereunder.

(3) Executive Order 11222 as amended, and any regulations promulgated thereunder.

(4) Any other related statute or regulation applicable to the employees of the agency.

3. The supervisor need not audit the report to ascertain whether the disclosures are correct; 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. The supervisor's signature shall signify that he or she has found that the information in the report discloses no conflict of interest under applicable laws and regulations and that the report fulfills the requirements set out in IIIF2, above.

4. If the supervisor 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.

5. Whenever the supervisor's review of a DD Form 1555 discloses a conflict or an apparent conflict of interest, the employee concerned will be given an opportunity to explain the conflict or apparent conflict to the immediate supervisor. Resolution of a conflict or apparent conflict will be made under §1293.7(b). If the conflict or apparent conflict cannot be resolved by the supervisor, it will be forwarded, along with a copy of the employee's current position description, to the Designated Agency Ethics Official or Deputy Ethics Official, as appropriate, for resolution.

6. If the supervisor concludes that the report is completed properly and that no item violates, or appears to violate, applicable statute or regulation, then such official shall sign and date the report.

G. *Remedial action.*

1. Whenever the designated Agency Ethics Official or Deputy Ethics Official concludes that the filing individual is not in compliance with applicable laws or regulations, the Designated Agency Ethics Official or Deputy Ethics Official shall do the following:

a. Notify the reporting individual of the preliminary determination.

b. Afford the reporting individual an opportunity for personal consultation, if practicable.

c. Determine what remedial action should be taken to bring the reporting individual into compliance.

d. Notify the reporting individual of the remedial action required, indicating a date by which that action must be taken.

2. Except in unusual situations, which must be documented fully to the satisfaction of the appropriate ethics official, remedial action shall be completed within 90 days from the date the reporting individual was notified that the action is required.

3. Remedial action includes any of the following measures:

a. Disqualification.

b. Limitation of duties.

c. Divestiture.

d. Transfer or reassignment.

e. Resignation.

f. Exemption under 18 U.S.C. 208.

g. Establishment of a qualified blind trust.

4. When the ethics official determines that a reporting person has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the DD Form 1555. The ethics official then shall sign and date the form and send written notice of that action to the reporting individual.

5. If steps ensuring compliance with applicable laws and regulation are not taken by the date established, the ethics official shall report the matter to the General Counsel, DLA for appropriate action.

H. *Retention of statements.* DD Forms 1555 shall be retained for 6 years from the date of filing.

I. *Penalties*—1. *Administratives penalties.* Any individual failing to file a report or falsifying or failing to file required information, may be subject to any appropriate personnel or other action in accordance with applicable law or regulation, including adverse action.

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

APPENDIX F—REPORTING PROCEDURES FOR DOD AND DEFENSE RELATED EMPLOYMENT

I. Personnel Required To File

The following military officers and civilian employees are required to file a Report of DoD and Defense Related Employment (DD Form 1787):

A. A retired military officer who served on active duty at least 10 years and who held, for any period during that service, the pay grade of O–4 or above, or a former civilian employee whose pay rate at any time during the 3-year period prior to the end of DoD employment was equal to or greater than the minimum rate for a GS–13 (GS–12, step 7), and who:

1. Within the 2-year period immediately following the termination of service or employment with a DoD Component, is employed by a defense contractor who, during the year before the former officer or employee began employment, was awarded $10,000,000 or more in defense contracts; and

2. Is employed by or performs services for the defense contractor and at any time during a year directly receives compensation of or is salaried at a rate of $25,000 per year or more from the defense contractor (*compensation* is received by a person if it is paid to a business entity with which the person is affiliated in exchange for services rendered by that person).

B. Each civilian employee of a DoD Component who:

1. Is employed at a pay rate equal to or greater than the minimum rate for GS–13 (GS–12, step 7),

2. Within the 2-year period prior to the effective date of service or employment with the DoD Component, was employed by a defense contractor who, during a year, was awarded $10,000,000 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 from or was salaried at a rate of $25,000 per year or more at any time during employment (*compensation* is received by a person if it is paid to a business entity with which the person is affiliated in exchange for services rendered by the person).

II. Content of Report

Instructions for completing DD Forms 1787 are included as part of the form. A DD Form 1787 appears at the end of this appendix. Additional guidance for personnel required to file is available from the Designated Agency Ethics Official (DAEO) or Deputy Ethics Official.

III. Submission and Review of Reports

A. Time of Filing

1. Current military officers and civilian employees shall file a DD Form 1787 within 30 days after entering employment or service with any DoD Component.

2. Former officers and employees shall file an initial report within 90 days after the date on which the individual began employment with the defense contractor.

3. Former officers and employees shall file subsequent reports each time, during the 2-year period after service or employment with the DoD Component ended, that the person's duties with the defense contractor significantly changes or the person begins employment with another defense contractor. Such reports shall be filed within 30 days after the date of the change.

B. Submission

1. Civilians shall submit their reports to the General Counsel, DLA

2. Former military officers shall submit their report in accordance with the procedures set forth in the following:

a. *Army*—AR 600–50, Standards of Conduct for Department of the Army personnel.

b. *Navy*—SECNAVINST 5314.5A, Reporting Procedures on Defense Related Employment.

c. *Air Force*—AFR 30–14, Procedures for Reporting on Defense Related Employment.

3. The General Counsel, DLA shall review DD Forms 1787 to assure that:

a. Each item is completed, and

b. No interest or position disclosed on the form violates or appears to violate the following:

(1) Any applicable provision of chapter 11 of title 18 U.S.C. (part 1).

(2) The ''Ethics in Government Act of 1978,'' as amended, and any regulations promulgated thereunder.

(3) E.O. 11222 as amended, and any regulations promulgated thereunder.

(4) Any other related statute or regulation applicable to the employees of DLA.

4. The reports need not be audited to ascertain whether the disclosures are correct; disclosures are to be taken at ''face value'' unless there is a patent omission or ambiguity or the General Counsel, DLA has independent knowledge of matters outside the report.

5. If the General Counsel, DLA 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 General Counsel, DLA.

6. If the General Counsel, DLA concludes that the report is completed properly and that no item violates, or appears to violate, applicable statute or regulation, then the reports shall be signed and dated.

IV. Remedial Action

A. If the General Counsel, DLA concludes that the filing individual is not in compliance with applicable laws or regulations, he shall:

1. Notify the reporting individual in writing of the preliminary determination;

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; and

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

B. Except in unusual situations, which must be fully documented to the satisfaction

of the General Counsel, DLA, remedial action shall be completed within 90 days from the date the reporting individual was notified that the action is required.

C. Remedial steps may include the following measures:

1. Disqualification.
2. Limitation of duties.
3. Divestiture.
4. Transfer or reassignment.
5. Resignation.
6. Exemption under 18 U.S.C. 208(b).
7. Establishment of a qualified blind trust.

D. When the General Counsel, DLA determines that a reporting person has fully complied with the remedial measures, a notation to that effect shall be made in the comment section of the DD Form 1787. The General Counsel, DLA shall then sign and date the DD Form 1787 and send written notice of that action to the reporting individual.

E. If steps assuring compliance with applicable laws and regulations are not taken by the date established, appropriate remedial action shall be instituted. The Office of Government Ethics shall be notified of the remedial action taken.

V. Public Availability of Reports

DD Forms 1787 must be made available for public examination upon request 15 days after the report is filed unless otherwise exempted pursuant to law. Receipt of the report for final review constitutes official filing and establishes the date from which the 15 days shall run. In most cases, this means the reports are available to the public before final review is completed. Reporting persons are personally responsible for ensuring that their reports are accurate, complete, and timely.

VI. Retention of Reports

DD Forms 1787 shall be retained for 6 years from the date of filing.

VII. Penalties

A. Administrative penalties

Any individual failing to file a report or falsifying or failing to file required information, may be subject to any appropriate personnel or other action in accordance with applicable law or regulation, including adverse action. Administrative penalty of up to $10,000 may also be imposed.

B. Criminal Liability

Any individual who knowingly or willfully falsifies information on a report required to be filed under this subpart may be also be subject to criminal prosecution under 18 U.S.C. 1001.

APPENDIX G—ADMINISTRATIVE ENFORCEMENT PROVISIONS

I. Applicability and Scope

A. These provisions shall apply to all DLA Activities.

B. This appendix is adopted pursuant to 18 U.S.C. 207 and 10 U.S.C. 2397, 2397a, and 2397c which require the Department of Defense to develop administrative procedures for the review and disposition of reported violations of post employment restrictions and reporting requirements.

C. The procedures set forth in this appendix may be used, at the discretion of the General Counsel, DLA, to accomplish administrative enforcement of all statutes and regulations which would require or allow their use.

II. Policy

A. Administrative Procedure Act (APA)

In cases in which an APA hearing is required by statute, APA rules shall be used.

B. Rules of Evidence

In the discretion of the hearing examiner, the rules of evidence may be relaxed from those established in the Federal Rules of Evidence. Evidence must be relevant and material to be considered.

C. Burden of Proof

The DLA bears the burden of proof. A violation must be established by substantial evidence.

D. Protection of Privacy

The privacy of suspected individuals or entities shall be protected by safeguarding information concerning allegations and evidence, especially before initiation of administrative disciplinary action.

E. Reporting Suspected Violations

1. If any DLA officer or employee has reason to suspect that an individual or entity has violated a statute or regulation referred to in part 1293 the suspicion shall be reported immediately to the General Counsel, DLA or to the Counsel of the PLFA affected.

2. If other individuals have reason to suspect that an individual or entity has violated a statute or regulation, the suspicion may be reported to any DoD officer or employee.

III. Responsibilities

A. The General Counsel, DLA, shall:

1. Administer the provisions of this appendix.

2. Receive reports of alleged violations from the Inspector General, Department of Defense (IG, DoD).

3. Receive memoranda of results of preliminary investigations from the IG, DoD.

4. Review copies of reports and memoranda from the IG, DoD, to determine if it is reasonable to believe there may have been a violation.

5. Provide copies of reports and memoranda regarding cases where it is reasonable to believe there may have been a violation, to the Director, Office of Government Ethics (OGE).

6. Provide copies of reports and memoranda regarding cases where it is reasonable to believe there may have been a violation, to the Criminal Division, Department of Justice (DoJ).

7. Coordinate investigations and administrative disciplinary actions with the DoJ Criminal Divisions, unless DoJ advises that criminal proceedings will not be pursued.

8. Initiate administrative disciplinary action, in cases where it is reasonable to believe there may have been a violation, by providing the suspected individual or entity with notice as described in IVB, below.

9. Request the Heads of DLA PLFAs or PSEs in which the case arose to appoint a Government representative to present evidence of violations.

10. In cases not subject to the APA, appoint a hearing examiner.

11. Receive written appeals from suspected individuals or entities.

12. Make appeal decisions, when appeals are timely submitted, after reviewing the findings of facts and decision of the hearing examiner and the appeal.

13. Impose administrative disciplinary sanctions when applicable.

14. Mail copies of appeal decisions and/or any sanctions to be imposed to the suspected individuals of entities along with statements notifying of the right to seek judicial review of administrative decisions.

15. Submit written reports of suspected violations, when the information regarding the violations is not frivolous, directly to the IG, DoD, and not through ordinary DoD Component channels.

B. The Hearing Examiner shall:

1. Hear each case in accordance with the hearing procedures specified in subparagraph 4, of this section IV.

2. Make a written report of all findings of fact and conclusions of law, including mitigating factors.

3. Make a written decision and recommendation of administrative disciplinary sanctions to be imposed.

4. Submit the report, the decision, and any recommendations to the General Counsel, DLA through the Head of the cognizant PLFA or PSE.

5. Mail a copy of the report, the decision, and any recommendations to the suspected individual and General Counsel, DLA.

IV. Procedures

A. Initiation of Administrative Disciplinary Action

1. Administrative disciplinary actions are initiated by providing suspected individuals or entities with notice of the report of a violation and notice of the intention to begin administrative disciplinary proceedings at least 20 calendar days prior to the beginning of such proceedings.

2. When hearings are required by statute, a hearing shall be conducted before imposition of administrative disciplinary sanctions unless the suspected individual or entity waives the hearing in writing in accordance with subparagraphs D2c and d, of this section IV.

3. When hearings are not required by statute, a hearing may be requested in writing by the suspected individual or entity in accordance with subparagraphs D2e and f, of this section IV.

B. Content of Notice

Notice to initiate administrative disciplinary proceedings shall include the following:

1. A statement of allegations, and the basis thereof, sufficiently detailed to enable the suspected individual or entity to prepare an adequate defense.

2. Notification of the right to a hearing when a hearing is required by statute.

3. The procedure for waiving the right to appear at the hearing when a hearing is required by statute.

4. A copy of a written waiver that shall include a statement that the signer understands that the signer has the right to appear at a hearing and that administrative disciplinary sanctions may be imposed even if the signer does not appear at a hearing.

5. When a hearing is not required by statute, a statement to the effect that if the suspected individual or entity fails to request such a hearing in writing, the DLA may initiate administrative disciplinary action which may result in imposition of administrative disciplinary sanctions.

6. The procedure for requesting a hearing when a hearing is not required by statute.

7. Notice that the failure to appear at a scheduled hearing shall constitute a constructive waiver of the right to appear at the hearing.

8. The date, time, and place of a scheduled hearing; however, suspected individuals or entities shall be scheduled to appear for hearings in the Federal judicial district in which the individual or entity resides or in the Federal judicial district in which the alleged violation occurred.

9. A statement of hearing rights in accordance with subparagraph D of this section IV.

10. A copy of these Administrative Enforcement Provisions.

C. Hearing Examiners

1. Hearing examiners shall be attorneys with not less than 3 years experience in the practice of law subsequent to admission to the bar.

2. A hearing examiner shall be impartial. An individual who has participated in the decisions to initiate proceedings shall not serve as a hearing examiner in those proceedings.

3. In cases not subject to the APA, the General Counsel, DLA, shall appoint a hearing examiner.

4. In cases subject to the APA, Administrative Law Judges (ALJ) shall be used as hearing examiners. The General Counsel, DLA, shall forward a written request to the office of Administrative Law Judges, Office of Personnel Management. (See 5 U.S.C. 3344.) The request shall contain the following:

a. The requisite authority requiring an APA hearing for the particular statutory violation.

b. The status of the case.

c. The tentative hearing data.

d. The point of contact within the DLA.

e. An acknowledgment that the request is being made on a reimbursable, intermittent basis.

D. Hearings

1. The hearing examiner shall have the power to do the following:

a. Administer oaths and affirmations.

b. Issue subpoenas authorized by law.

c. Rule on offers of proof and recieve relevant evidence.

d. Take depositions or have depositions taken when justice shall be served.

e. Regulate the course of the hearing.

f. Hold conferences for the settlement or simplification of the issues by comment from the suspected individual or entity and the Government representative.

g. Dispose of procedural requests or similar matters.

h. Make decisions, in writing, on the merits of the particular case, as well as written recommendations of administrative disciplinary sanctions.

2. Suspected individuals and entities shall have hearing rights which include the following:

a. The right to self representation, or to be represented by counsel.

b. The right to introduce evidence and witnesses and the right to examine adverse witnesses.

c. The right to stipulate to facts.

d. The right to present oral argument.

e. The right to receive a transcript or recording of the proceedings upon request.

f. Additional rights that may be in the Administrative Procedure Act, if applicable.

3. Before the hearing examiner makes a decision, or the General Counsel, DLA, makes an appeal decision, the suspected individual or entity and the Government representative may submit the following material for consideration:

a. Proposed findings and conclusions.

b. Exceptions to the decisions of the hearing examiner, or to the tentative decisions of the GC, OSD.

c. Supporting reasons for the exceptions or proposed findings or conclusions.

4. The record shall reflect the ruling on each finding, conclusion, or exception. All decisions by the hearing examiner or the General Counsel, DLA, shall be a part of the record, along with the reasons and basis for such findings and decisions.

E. Appeals

1. Within 20 days following the date on the report and recommendations from the hearing examiner, the suspected individual or entity may file an appeal with the General Counsel, DLA. An appeal shall be in writing, and shall set forth all errors of act, law, or both, together with the reasons, alleged to exist in the report from the hearing examiner.

2. Extensions of time to file an appeal may be granted at the discretion of the General Counsel, DLA, upon receipt of written request for an extension from the individual or entity concerned.

3. The General Counsel, DLA shall make a written appeal decision if any appeal is submitted timely, after reviewing the report of findings of facts, the decision, and recommendations from the hearing examiner.

4. If the appeal decision is not in accordance with the report of findings of facts, the decision, or recommendations from the hearing examiner, the reasons shall be specified.

5. The decision of the General Counsel, DLA, shall be the final administrative determination. The appeal decision shall be mailed to the suspected individual or entity along with a statement, if applicable, that the individual or entity may seek judicial review of the administrative determinations.

F. Administrative Sanctions

1. The General Counsel, DLA, may take appropriate disciplinary action when indicated by the outcome of a case involving a violation of 18 U.S.C. 207 by:

a. Prohibiting the individual or entity from making on behalf of any other person except the United States, any formal or informal appearance before, or any oral or written communication with the intent to influence, to the Department of Defense, its officers or employees, on any matter of business for a period not to exceed 5 years. This may be enforced by directing DoD officers and employees to refuse to participate in any such appearance, or to accept any such communication.

b. Barring the individual or entity from employment by the Department of Defense for a period not to exceed 5 years.

2. The General Counsel, DLA, may take appropriate disciplinary action whenever indicated by the outcome of a case involving violations of 10 U.S.C. 2397, 2397a, or 2397c by:

a. Imposing and administrative penalty, not to exceed $10,000.

b. 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 10-year period beginning with the date of separation from Government service.

3. The General Counsel, DLA, may take other appropriate disciplinary action when indicated by the outcome of a case in accordance with the laws or regulations violated.

G. Judicial Review

Any individual or entity found in violation as described, and against whom an administrative sanction is imposed, may seek judicial review of the final administrative determination.

CHAPTER XVI—SELECTIVE SERVICE SYSTEM

Part		*Page*
1600–1601	[Reserved]	
1602	Definitions	334
1605	Selective Service System organization	335
1609	Uncompensated personnel	341
1615	Administration of registration	342
1618	Notice to registrants	343
1621	Duty of registrants	343
1624	Inductions	344
1627	Volunteers for induction	348
1630	Classification rules	348
1633	Administration of classification	354
1636	Classification of conscientious objectors	357
1639	Classification of registrants preparing for the Ministry	361
1642	Classification of registrants deferred because of hardship to dependents	362
1645	Classification of ministers of religion	364
1648	Classification by local board	366
1651	Classification by District Appeal Board	368
1653	Appeal to the President	371
1656	Alternative service	373
1657	Overseas registrant processing	382
1659	Extraordinary expenses of registrants	383
1662	Freedom of Information Act (FOIA) procedures	383
1665	Privacy Act procedures	387
1690	[Reserved]	
1697	Salary offset	393
1698	Advisory opinions	397
1699	Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by Selective Service System	398

CROSS REFERENCES: Regulation governing standards for discharge under the Selective Service Act of 1948: See part 41 of this title.