

## SUBCHAPTER C—PERSONNEL, MILITARY AND CIVILIAN

CROSS REFERENCE: For a revision of Standards for a Merit System of Personnel Administration, see 5 CFR part 900.

### PART 40—STANDARDS OF CONDUCT CROSS-REFERENCES

Sec.

- 40.1 18 U.S.C. 208(b) waivers.
- 40.2 Cross-reference to Standards of Ethical Conduct for Employees of the Executive Branch.
- 40.3 Cross-reference to Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees.
- 40.4 Cross-reference to Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria.
- 40.5 Cross-reference to Regulations Concerning Post-Employment Conflict of Interest.
- 40.6 Cross-reference to Office of Government Ethics and Executive Agency Ethics Program Responsibilities.
- 40.7 Cross-reference to Post-Employment Conflict of Interest Restrictions.

AUTHORITY: 5 U.S.C. 7301.

SOURCE: 58 FR 47624, Sept. 10, 1993, unless otherwise noted.

#### **§40.1 18 U.S.C. 208(b) waivers.**

Under 18 U.S.C. 208(b) categories of financial interests may be made non-disqualifying for purposes of 18 U.S.C. 208(a) by a general regulation published in the FEDERAL REGISTER. Shares of a widely held, diversified mutual fund or regulated investment company have been exempted by a general regulation as being too remote or inconsequential to affect the integrity of Government personnel.

#### **§40.2 Cross-reference to Standards of Ethical Conduct for Employees of the Executive Branch.**

DoD employees should refer to the Office of Government Ethics (OGE) regulation, Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and the Department of Defense (DoD) regulation that supplements the OGE regulation, 5 CFR 3601.101, for standards of conduct provisions, including standards for gifts

from outside sources, gifts between employees, conflicting financial interests, impartiality in performing official duties, seeking other employment, misuse of position, and outside activities.

#### **§40.3 Cross-reference to Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees.**

DoD employees should refer to the OGE regulation, Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees, 5 CFR part 2634, for financial disclosure provisions.

#### **§40.4 Cross-reference to Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria.**

DoD employees should refer to the OGE regulation, Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria, 5 CFR part 2636, for provisions on outside employment and honoraria.

#### **§40.5 Cross-reference to Regulations Concerning Post-Employment Conflict of Interest.**

DoD employees and former DoD employees should refer to the OGE regulation, Regulations Concerning Post-Employment Conflict of Interest, 5 CFR part 2637, for provisions on post-employment applicable to those who left DoD employment prior to January 1, 1991.

#### **§40.6 Cross-reference to Office of Government Ethics and Executive Agency Ethics Program Responsibilities.**

DoD employees should refer to the OGE regulation, Office of Government Ethics and Executive Agency Ethics Program Responsibilities, 5 CFR part 2638, for provisions establishing executive branch ethics programs, including ethics training programs.

**§ 40.7 Cross-reference to Post-Employment Conflict of Interest Restrictions.**

DoD employees and former DoD employees should refer to the OGE regulation, Post-Employment Conflict of Interest Restrictions, 5 CFR part 2641, for provisions on post-employment applicable to those who left DoD employment on or after January 1, 1991.

**PART 41—ENLISTED ADMINISTRATIVE SEPARATIONS**

Sec.

- 41.1 Purpose.
- 41.2 Applicability and scope.
- 41.3 Policy.
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- 41.5 Effective date and implementation.
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**APPENDIX A TO PART 41—STANDARDS AND PROCEDURES**

**AUTHORITY:** 10 U.S.C. 1162, 1163, 1169, 1170, 1172, and 1173.

**SOURCE:** 47 FR 10174, Mar. 9, 1982, unless otherwise noted.

**§ 41.1 Purpose.**

This part establishes policies, standards, and procedures governing the administrative separation of enlisted members from the Military Services.

**§ 41.2 Applicability and scope.**

The provisions of this part apply to Office of the Secretary of Defense and the Military Departments (including their reserve components). The term “Military Services,” as used herein, refers to the Army, Navy, Air Force and Marine Corps.

**§ 41.3 Policy.**

(a) It is the policy of the Department of Defense to promote the readiness of the Military Services by maintaining high standards of conduct and performance. Separation policy promotes the readiness of the Military Services by providing an orderly means to:

(1) Ensure that the Military Services are served by individuals capable of meeting required standards of duty performance and discipline;

(2) Maintain standards of performance and conduct through characterization of service in a system that em-

phasizes the importance of honorable service;

(3) Achieve authorized force levels and grade distributions; and

(4) Provide for the orderly administrative separation of enlisted personnel in a variety of circumstances.

(b) DoD separation policy is designed to strengthen the concept that military service is a calling different from any civilian occupation.

(1) The acquisition of military status, whether through enlistment or induction, involves a commitment to the United States, the service, and one’s fellow citizens and servicemembers to complete successfully a period of obligated service. Early separation for failure to meet required standards of performance or discipline represents a failure to fulfill that commitment.

(2) Millions of Americans from diverse backgrounds and with a wide variety of aptitudes and attitudes upon entering military service have served successfully in the armed forces. It is the policy of the Department of Defense to provide servicemembers with the training, motivation, and professional leadership that inspires the dedicated enlisted member to emulate his or her predecessors and peers in meeting required standards of performance and discipline.

(3) The Military Services make a substantial investment in training, time, equipment, and related expenses when persons are enlisted or inducted into military service. Separation prior to completion of an obligated period of service is wasteful because it results in loss of this investment and generates a requirement for increased accession. Consequently, attrition is an issue of significant concern at all levels of responsibility within the armed forces. Reasonable efforts should be made to identify enlisted members who exhibit a likelihood for early separation, and to improve their chances for retention through counseling, retraining, and rehabilitation prior to initiation of separation proceedings. Enlisted members who do not demonstrate potential for further military service should be separated in order to avoid the high costs in terms of pay, administrative efforts, degradation of morale, and substandard