PART 1280—INVESTIGATING AND PROCESSING CERTAIN NON-CONTRACTUAL CLAIMS AND REPORTING RELATED LITIGATION

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SOURCE: 39 FR 19470, June 3, 1974, unless otherwise noted.

§ 1280.1 Purpose and scope.
(a) This part 1280 provides procedures for investigating and processing claims and related litigation:
   (1) By civilian and military personnel of DLA for property lost or damaged incident to service (31 U.S.C. 240 through 243).
   (2) Incident to use of Government vehicles and other property of the United States not cognizable under other law (10 U.S.C. 2737).
   (3) Based on Negligence of Civilian and Military Employees under the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671 through 2680.
   (4) In favor of the United States, other than contractual, for loss, damage, or destruction of real or personal property in the possession, custody, or control of DLA.

(b) This part 1280 is applicable to HQ DLA and DLA field activities, except nonappropriated funds and related activities established pursuant to DSAR 1330.2, Open Messes and Other Military Sundry Associations and Funds, and DSAR 1330.4, Civilian Nonappropriated Funds and Related Activities. Claims involving these activities are processed pursuant to the regulations referenced therein.

§ 1280.2 Definitions.
(a) Claims Investigating Officer. A military officer or civilian employee of DLA, appointed in accordance with this part 1280, to investigate and process claims within the purview of this part 1280.

(b) Member of the Army, member of the Navy, member of the Marine Corps, member of the Air Force. Officers and enlisted personnel of these Military Services.

§ 1280.3 Significant changes.
This revision provides current citations to the Army regulations which have superseded those previously prescribed for the processing of some claims. It reflects the new Army claims processing procedures effected upon the reorganization of the Army. Finally, it provides specific procedures for Air Force processed claims.

§ 1280.4 Responsibilities.
(a) DLA field activities. (1) Heads of DLA Primary Level Field Activities are responsible for:
   (i) Designating a qualified individual under their command, preferably one experienced in the conduct of investigations, as the Claims Investigating Officer for the activity.
   (ii) Authorizing Heads of subordinate activities to appoint Claims Investigating Officers where necessary.
   (2) The Commander, DLA Administrative Support Center (DLASC) is responsible for designating a qualified individual, preferably one experienced in the conduct of investigations, as the Claims Investigating Officer for DLASC and HQ DLA.

(b) This part 1280 is applicable to HQ DLA and DLA field activities, except nonappropriated funds and related activities established pursuant to DSAR 1330.2, Open Messes and Other Military Sundry Associations and Funds, and DSAR 1330.4, Civilian Nonappropriated Funds and Related Activities. Claims involving these activities are processed pursuant to the regulations referenced therein.

(3) Claims Investigating Officers are responsible for the expeditious conduct of all investigations and the processing of reports in accordance with appropriate Departmental regulations as prescribed by this part 1280. To ensure prompt investigation of every incident while witnesses are available, and before damage has been repaired, the duties of personnel as Claims Investigating Officers will ordinarily have priority over any other assignments they may have.

(4) The Counsel, DLA Field Activities are responsible for:
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(a) Claims by military and civilian personnel of DLA for property lost or damaged incident to service (31 U.S.C. 240 through 243). (1) The Claims Investigating Officer will conduct his investigation and prepare all necessary forms and reports in accordance with the appropriate portions of AR 27–20 where the claimant is a member of the Army or a DLA civilian employee; JAGINST 5800.7A where the claimant is a member of the Navy or Marine Corps; or AFM 112–1 where the claimant is a member of the Air Force.

(2) The completed report will be forwarded by the Claims Investigating Officer to one of the following activities for settlement:
   (i) Where the claimant is a DLA civilian employee or a member of the Army; the Staff Judge Advocate designated in AR 27–20, appendix F, as the Area Claims Authority where the claim arose.
   (ii) Where the claimant is a member of the Navy or Marine Corps the cognizant adjudicating authority as listed in JAGINST 5800.7A, paragraph 2124.
   (iii) Where the claimant is a member of the Air Force; the Base Staff Judge Advocate of the nearest Air Force Base.

(b) Claims incident to the use of Government property not cognizable under any other law (10 U.S.C. 2737). (1) The Claims Investigating Officer will conduct his investigation and prepare all necessary forms and reports in accordance with the appropriate portions of AR 27–20 where the claimant is a member of the Army or a DLA civilian employee; JAGINST 5800.7A where the claimant is a member of the Navy or Marine Corps; or AFM 112–1 where the claimant is a member of the Air Force.

(2) The completed report will be forwarded by the Claims Investigating Officer to the Counsel for his activity or, if the activity has no Counsel, to the next higher echelon having such a position.

(3) The activity Counsel receiving the Claims Investigating Officer’s report will review the report, and take all necessary action to assure that it is complete and in accordance with the appropriate regulation. He will forward the report together with his comments and recommendations to one of the following activities for settlement. Where the incident giving rise to the claim was occasioned by an act or omission of:
   (i) DLA civilian personnel. Counsel, DLA.
   (ii) A member of the Army. The Staff Judge Advocate designated in AR 27–20, appendix F, as the Area Claims Authority where the claim arose.
   (iii) A member of the Navy or Marine Corps. The Director of the Navy Law Center in the Naval District in which the incident giving rise to the claim occurred.
   (iv) A member of the Air Force. The Base Staff Judge Advocate of the Air Force Base nearest the place where the incident giving rise to the claim occurred.

(c) Claims under the Federal Tort Claims Act arising from negligence of DLA military or civilian personnel. (1) The Claims Investigating Officer will conduct his investigation and prepare

1Copies of the Military Department regulations mentioned herein may be obtained from the Departments of the Army and Navy, and the Superintendent of Documents, U.S. Government Printing Office.
all necessary forms and reports in accordance with the appropriate portions of AR 27–20 where the claim involves a member of the Army or a DLA civilian employee; JAGINST 5800.7A where the claim involves a member of the Navy or Marine Corps; or AFM 112–1 where the claim involves a member of the Air Force.

(2) The completed report of investigation will be forwarded by the Claims Investigating Officer to one of the following activities for settlement. Where the incident giving rise to the claim was occasioned by an act or omission of:

(i) DLA civilian personnel or a member of the Army. The Staff Judge Advocate designated in AR 27–20, appendix F, as the Area Claims Authority where the incident giving rise to the claim occurred.

(ii) A member of the Navy or Marine Corps. The Director of the Navy Law Center in the Naval District in which the incident giving rise to the claim occurred.

(iii) A member of the Air Force. The Base Staff Judge Advocate of the Air Force Base nearest the place where the incident giving rise to the claim occurred.

(d) Tort claims in favor of the United States for damage to or loss or destruction of DLA property, or property in its custody or control.

(1) These claims will be investigated and processed in accordance with the provisions of AR 27–40, Chapter 5, except:

(i) The duties of the claims officer will be performed by the Claims Investigating Officer.

(ii) The duties of the Staff Judge Advocate will be performed by Counsel, except where the property is a GSA motor pool system vehicle (see paragraph (e) of this section).

(iii) The reports of the Claims Investigating Officer will be furnished direct to Counsel for his activity, or, if his activity has no Counsel, to the next higher echelon having such a position.

(iv) With respect to reports referred to them, Counsel are authorized to give receipts for any payments received and to execute releases where payment in full is received, except where the property is a GSA motor pool system vehicle (see paragraph (e) of this section).

(e) Claims involving GSA motor pool system vehicles. (1) Where a motor pool system vehicle issued to a DLA activity is involved in an accident giving rise to a claim under the Federal Tort Claims Act, the claim will be handled pursuant to paragraph (c) of this section.

(2) In the event of damage to a motor pool system vehicle which is not due to the fault of the operator, Counsel receiving the report will submit the report to GSA’s Regional Counsel for the region that issued the vehicle pursuant to the Federal Property Management Regulation, §101–39.805. Damages to motor pool system vehicles caused by the negligence of vehicle operator employed by DLA or caused by the negligence or misconduct of any other officer or employee of DLA are reimbursed to General Services Administration (GSA). Determination affixing responsibility will be made by the Counsel to which the report is referred, after considering the views of GSA.

(f) Reporting legal proceedings. (1) All process and pleadings served on any personnel or activity of DLA, and related to a claim covered by this part.

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1280 or involving an incident which may give rise to a claim covered by this part 1280, together with other immediately available data concerning the commencement of legal proceedings, will be promptly referred to Counsel for the activity involved, or, if the activity has no Counsel, to the next higher echelon having such a position.

(2) Any Military Service member or civilian employee of DLA (or his personal representative) against whom a domestic civil action or proceeding is brought for damage to property, or for personal injury or death, on account of his operation of a motor vehicle (Government- or privately-owned) in the scope of his employment (28 U.S.C. 2679) will:

(i) Upon receipt of process and pleadings or any other information regarding the commencement of such action or proceeding, immediately inform the Head of his activity and Counsel as specified in paragraph (f)(1) of this section.

(ii) Promptly deliver all process and pleadings served upon him, or an attested true copy thereof, to Counsel.

(3) Upon receipt of information or process and pleadings pursuant to paragraph (f)(1) or (2) of this section, Counsel will promptly prepare and process reports in accordance with the appropriate portions of AR 27–40 except that:

(i) If the incident giving rise to the litigation was occasioned by an act or omission of a member of the Navy or Marine Corps, or a member of the Air Force, information and reports required to be furnished to The Judge Advocate General of the Army will be furnished instead to The Judge Advocate General of the Navy and Air Force respectively.

(ii) If the litigation is under the Federal Tort Claims Act and no administrative claim has been filed, Counsel will immediately advise the U.S. Attorney and furnish him a report of all information the activity has with respect to the claim and an affidavit by the Claims Investigating Officer to the effect that no administrative claim has been filed. Two copies of the foregoing will be provided to the appropriate Military Service Judge Advocate General. If an administrative claim has been filed and has been referred to a Military Service, a copy of the process and pleadings and any information not previously furnished will be sent to the appropriate Military Service Judge Advocate General.

PART 1285—DEFENSE LOGISTICS AGENCY FREEDOM OF INFORMATION ACT PROGRAM

§ 1285.1 Purpose and scope.

This rule provides policies and procedures for the DLA implementation of DoD 5400.7–R, DoD Freedom of Information Act Program. It applies to HQ DLA and all DLA field activities and takes precedence over all DLA regulations that supplement the FOIA program. A list of mailing addresses for DLA activities is provided at appendix A to this part.

§ 1285.2 Policy.

(a) General. The public has a right to information concerning the activities of its Government. DLA policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DLA record requested by a member of the public who follows rules established herein shall be withheld only when it is exempt from mandatory public disclosure.
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under the FOIA. In order that the public may have timely information concerning DLA activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

(b) Control system. A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this rule. Any request for DLA records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this rule, unless otherwise required by paragraph (m) of this section.

(c) Compliance with the FOIA. DLA personnel are expected to comply with the FOIA and this rule in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DLA FOIA program and to create conditions that will promote public trust. To promote a positive attitude among DLA personnel, each DLA Primary Level Field Activity (PLFA) will establish education and training programs described in part 286, subpart H, of this title. Training materials, including supplements, will be coordinated with DLA–XAM prior to publication or issuance.

(d) Openness with the public. DLA shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated herein, whether or not the Act is invoked.

(e) Avoidance of procedural obstacles. DLA activities shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DLA records promptly. DLA activities shall provide assistance to requesters to help them understand and comply with procedures established by this rule and any rules published by the DLA PLFA’s.

(f) Prompt action on requests. When a member of the public complies with the procedures established in this rule for obtaining DLA records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days unless a delay is authorized. When a DLA activity has a significant number of requests, e.g., 10 or more, the requests shall be processed in order of receipt. However, this does not preclude an activity from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. A DLA activity may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of the activity processing the request.

(g) Public domain. Nonexempt records released under the authority of this rule are considered to be in the public domain. Such records may also be made available in reading rooms to facilitate public access. Exempt records released pursuant to this rule or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this rule apply if the same individual seeks the records in a private or personal capacity.

(h) Creating a record. (1) There is no obligation to create nor compile a record to satisfy an FOIA request. A DLA activity, however, may compile a new record when doing so would result
in a more useful response to the request or be less burdensome to the activity provided the requester does not object. The cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessments shall be in accordance with §1285.6 of this part and part 286, subpart F, of this title.

(2) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, DLA activities should apply a standard of reasonableness. In other words, if the capability exists to respond to the request and the effort would be a business-as-usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business-as-usual approach.

(i) Description of the requested record.

(1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record that enables DLA to locate the record with a reasonable amount of effort. When a DLA activity receives a request that does not reasonably describe the requested record, it shall notify the requester of the defect. The requester may be asked to provide the type of information outlined in paragraph (i)(2) of this section. Activities are not obligated to act on the request until the requester responds to the specificity letter. When practicable, DLA activities shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

(2) The following guidelines are provided to deal with “fishing expedition” requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on the activity’s filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search. The decision of the DLA activity concerning reasonableness of description must be based on knowledge of its files. If the description enables DLA activity personnel to locate the record with reasonable effort, the description is adequate.

(4) The following guidelines deal with requests for personal records. Ordinarily, when only personal identifiers are provided in connection with a request for records concerning the requester, then only records retrievable by personal identifiers need be searched. The search for such records may be conducted under Privacy Act procedures contained in DLAR 5400.21. No record may be denied that is releasable under the FOIA.

(j) Possession and control. A record must exist and be in the possession and control of DLA at the time of the search to be considered subject to this rule and the FOIA. Mere possession of a record does not presume Agency control. Information created or originated by another activity shall be referred to that activity for release determination and direct response to the requester.

(1) Referring requests. A DLA activity having no responsive records to an FOIA request may refer the request to another DLA activity, DoD component,
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or Federal agency if, after consultation with such activity, component, or agency, the intended recipient confirms that it has the requested record. In cases where the DLA activity receiving the request has reason to believe that the existence or nonexistence or the record may in itself be classified, that activity shall consult the DoD component having cognizance over the record in question before referring the request. If the DoD component that is consulted determines that the existence or nonexistence of the record is in itself classified, the requester shall be so notified by the DLA activity originally receiving the request, and no referral shall take place. Otherwise, the request shall be referred to the other DoD component, and the requester shall be notified of any such referral. Any DLA activity receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

(2) Referring records. (i) Whenever a record or a portion of a record is, after prior consultation, referred to another DLA activity, DoD component, or to a Government agency outside of the DoD for a release determination and direct response, the requester shall be informed of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(ii) A DLA activity shall refer an FOIA request for a classified record that it holds to another DoD component or agency outside the Department of Defense if the record originated in the other DoD component or outside agency or if the classification is derivative. In this situation, provide the record and a release recommendation on the record with the referral action.

(iii) A DLA activity may refer a request for a record that it originated to another DoD component or agency when the record was created for the use of the other DoD component or agency. The DLA activity may refer an FOIA request for a record that was created by another component or agency may have an equally valid interest in withholding the record as the DLA activity that created the record. In such situations, provide the record and a release recommendation on the record with the referral action.

(iv) Within DLA, an activity shall ordinarily refer an FOIA request for a record that it holds but that was originated by another activity or that contains substantial information obtained from another activity to that activity for direct response after coordination and obtaining concurrence from the activity. The requester shall then be notified of such referral. DLA activities shall not, in any case, release or deny such records without prior consultation with the other activity.

(3) On-loan documents. A DLA activity shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to DLA for a specific purpose if the records are restricted from further release and so marked. However if, for investigative or intelligence purposes, the outside agency desires anonymity, a DLA activity may only respond directly to the requester after coordination with the outside agency.

(4) General Accounting Office (GAO) documents. On occasion, the DoD receives FOIA requests for GAO documents containing DoD information. Even though the GAO is outside the executive branch and not subject to the FOIA, all FOIA requests from GAO documents containing DoD information received either from the public or on referral from GAO will be processed under the provisions of the FOIA.

(5) Agencies not subject to the FOIA. A DLA activity may refer an FOIA request for any record that originated in an agency outside the DoD or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DLA activity must respond to the request.

(6) Time to respond. DLA activities that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this rule. Those time limits shall begin to run upon proper receipt of the referral by the PLFA FOIA manager to respond.

(7) Accumulating fees. Requesters receiving the first two hours of search and the first 100 pages of duplication
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without charge (see part 286, subpart F, of this title) are entitled to such only once per request. Consequently, if a DLA activity, after completing its portion of a request, finds it necessary to refer the request to another DLA activity or another DoD component to action their portion of the request, the referring activity shall inform the recipient of the expended amount of search time and duplication cost to date.

(k) Requests for authentication of records. FOIA requests for authentication of records shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function according to DLA Regulation 5105.1.5 This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. DLA activities may charge for the service at a rate of $5.20 for each authentication.

(1) Records management. FOIA records shall be maintained and disposed of in accordance with DLA Manual 5015.1.4

(m) Relationship between the FOIA and the Privacy Act. Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure that requesters receive the greatest amount of access rights under both Acts:

(1) Requesters who seek records about themselves contained in a Privacy Act system of records and who cite or imply the Privacy Act, will have their requests processed under the provisions of the Privacy Act.

(2) Requesters who seek records about themselves which are not contained in a Privacy Act system of records and who cite or imply the Privacy Act, will have their requests processed under the provisions of the FOIA, since they have no access rights under the Privacy Act.

(3) Requesters who seek records about themselves which are contained in a Privacy Act system of records and who cite or imply the FOIA or both Acts will have their requests processed under the time limits of the FOIA and the exemption and fee provisions of the Privacy Act.

(4) Requesters who seek access to Agency records and who cite or imply the Privacy Act, the FOIA, or both will have their requests processed under the FOIA.

(5) Requesters should be advised in final responses why their request was processed under a particular act.

(n) Reading rooms. (1) DLA activities may provide a facility or room where the public may inspect and copy or have copied the so-called "(a)(2)" material (see §1285.3(b) of this part). At those activities where it is impractical to set up a formal reading room, the FOIA manager will arrange for a review of "(a)(2)" material at a suitable time and location. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials prior to placement in reading rooms. However, in every case, justification for the deletion must be fully explained in writing. The public’s right to inspect first and then decide what is to be copied applies only to "(a)(2)" material. Activities may elect to place other documents in their reading room, including so-called "(a)(1)" material (see §1285.3(a) of this part), as a means to provide public access to such documents and allow the public to first inspect them before copying. When appropriate, the cost of copying may be imposed on the person requesting the material in accordance with §1285.6 of this part and part 286, subpart F, of this title.

(2) "(a)(2)" materials index. Each activity maintaining a reading room shall maintain an index of the "(a)(2)" materials that are issued, adopted, or promulgated after 4 July 1967. No "(a)(2)" materials issued, promulgated, or adopted after 4 July 1967 that are not indexed and either made available or published may be relied upon or used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Each index shall be arranged topically or by descriptive words rather than by case name or
numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for the convenience of the DLA activity. Such materials issued, promulgated, or adopted before 4 July 1967 need not be indexed but must be made available upon request if not exempted under part 286, subpart C, of this title.

(3) DLA publications and PLFA supplements may, at the discretion of the DLA activity, be regarded as “(a)(2)” material and placed in reading rooms subject to the restrictions in paragraph (o)(2) of this section. Otherwise, requests for publications will be handled according to paragraph (o)(1) of this section.

(o) Publications of DLA regulations, manuals, handbooks, and uncontrolled forms. (1) Since most DLA publications are available to the public through the publications distribution sales outlet, the requester may be referred to that outlet.

(2) Requests for DLA publications which are classified, marked “FOR OFFICIAL USE ONLY,” or have limited distribution statements will be referred to the issuing activity for release determination and, if appropriate, formal denial. Such publications will not be placed in reading rooms. However, where a public reading room also serves as an activity’s library, restricted publications may be maintained provided they are appropriately safeguarded and not commingled with other nonsensitive regulations.

(3) For DoD regulations, manuals, directives, handbooks and similar issuances, the FOIA manager may refer the requester to the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161–2171.

(p) Exemptions. The types of records described in part 286, subpart C, of this title may be withheld in whole or in part from disclosure under the FOIA unless otherwise prescribed by law.

(q) Requests for the examination of DLA records. Only those materials described as “(a)(2)” (and “(a)(1)” at the discretion of the PLFA head) are subject to the examination clause of the FOIA. Such requests will be submitted directly to the appropriate DLA activity listed in appendix A. FOIA managers will inform requesters of the location and time the requested record may be examined. Requesters may be charged for the cost to reproduce copies subject to the guidelines §1285.6 of this part and part 286, subpart F, of this title.

(r) Requests for copies of records. Individuals seeking copies of DLA records should address their FOIA requests to the FOIA manager of the appropriate activity. Addresses and brief descriptions of functions are included in appendix A to this part.

(s) Requests from private parties. The provisions of the FOIA are reserved for persons with private interests as opposed to Federal Governments seeking official information. Requests from private persons will be made in writing and will clearly show all other addressees within the Federal Government to whom the request was also sent. This procedure will reduce processing time requirements and ensure better inter-and intra-agency coordination. DLA activities are under no obligation to establish procedures to receive hand delivered requests. Release for records to individuals under the FOIA is considered public release of information, except as provided for in paragraph (g) of this section and §286.13(a) of this title.

(t) Requests from government officials. Requests from Members of Congress for records on behalf for a Congressional Committee, Subcommittee, or either House sitting as a whole will be processed according to DLA Regulation 5400.12.5 Requests from officials of foreign governments which do not invoke the FOIA shall be referred to HQ DLA–I or the appropriate foreign disclosure channel for processing and the requester so notified. Requests invoking the FOIA from the following government officials will be considered the same as any other requested and processed according to this rule:

(1) Officials of State or local governments.

(2) Members of Congress seeking records on behalf of their constituents.

(3) Officials of foreign governments.

(u) Privileged release to U.S. Government officials. (1) Records determined to

5See Footnote 2 to §1285.2(1)(4).
§ 1285.3 Definitions.

The following terms and meanings shall be applicable:
(a) “(a)(1) material”. Material described in 5 U.S.C. 552(a)(1) consisting of descriptions of central and field organizations and, to the extent that they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.
(b) “(a)(2) material”. Material described in 5 U.S.C. 552(a)(2) encompassing:
(1) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.
(2) Statements of policy and interpretations that have been adopted by the agency and are not published in the FEDERAL REGISTER.
(3) Administrative staff manuals and instructions, or portions thereof, that establish DLA policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties or to instructions relating only to the internal management of the DLA activities. Examples of manuals and instructions not normally made available include but are not limited to the following:
(i) Those issued for audit, investigation, and inspection purposes or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.
(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.
(c) Administrative appeal. A request made under the FOIA by a member of the general public asking the appellate authority to reverse an initial denial authority’s decision to withhold all or part of a requested record, to review a “no record found” determination, to reverse a decision to deny a request for waiver or reduction of fees, or to review a category determination for fee assessment purposes.
(d) Agency record. (1) The products of data compilation, such as all books, papers, maps and photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United

See Footnote 1 to §1285.1.
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States Government under Federal law in connection with the transaction of public business and in DLA’s possession and control at the time the FOIA request is made.

(2) The following are not included within the definition of the word “record”:

(i) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value or value as evidence.

(ii) Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of a DLA activity. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.) Exceptions to this position are outlined in paragraph (d)(3) of this section.

(iii) Anything that is not a tangible or documentary record, such as an individual’s memory or oral communication.

(iv) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee and not distributed to other agency employees for their official use.

(v) Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

(3) In some instances, computer software may have to be treated as an agency record and processed under the FOIA. These situations are rare and shall be treated on a case-by-case basis. Examples of when computer software may have to be treated as an agency record are:

(i) When the data is embedded within the software and cannot be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

(ii) Where the software itself reveals information about organizations, policies, functions, decisions, or procedures of a DLA activity, such as computer models used to forecast budget outlays, calculate retirement system costs, or optimization models on travel costs.

(iii) See part 286, subpart C, of this title for guidance on release determinations of computer software.

(4) A record must exist and be in the possession and control of DLA at the time of the request to be considered subject to this rule and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

(5) If unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials are available to the public through an established distribution system with or without charge, the provisions of 5 U.S.C. 552(a)(3) normally do not apply, and requests for such need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the FEDERAL REGISTER also require no processing under the FOIA. In such cases, DLA activities should direct the requester to the appropriate source to obtain the record.

(e) Appellate authority. The Director, DLA, or his designee, except for fee waivers and category determinations. The appellate authority for such appeals is the Staff Director, Office of Administration, HQ DLA.

(f) DLA activity. An element of DLA authorized to receive and act independently on FOIA requests. A DLA activity has its own FOIA manager, initial denial authority, and office of counsel.

(g) Electronic data. Those records and information which are created, stored, and retrievable by electronic means. This does not include computer software, which is the tool by which to create, store, or retrieve electronic data. See paragraphs (d)(2)(ii) and (d)(3) of this section for a discussion of computer software.

(h) FOIA request. A written request for records made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law, that either explicitly or implicitly invokes the FOIA, DoD 5400.7-R, DLAR 5400.14,
this rule, or DLA activity supplementing regulations or instructions.

(i) Initial denial authority (IDA). An official who has been granted authority by the Director, DLA, to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure or to issue a “no record” determination. These include the Directors (or equivalent) of HQ DLA Primary Staff Elements (PSE’s) and the Commanders (or equivalent) of PLFA’s. For fee waiver and requester category determinations, the initial denial authority is the FOIA manager or head of the FOIA unit.

(j) Public interest disclosures. Those disclosures which shed light on DLA performance of its statutory duties and thus inform citizens about what their government is doing. The “public interest”, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files that reveals little or nothing about an agency’s or official’s own conduct. The public interest is one of several factors considered in determining if a fee waiver is appropriate (see part 286, subpart F, of this title).

(k) Releasing official. Any individual with sufficient knowledge of a requested record or program to allow him or her to determine if harm would come through release. Releasing officials are at all levels and may be selected to review a particular document because of their expertise in the subject area. The level must be high enough to make sure that releases are made according to the policies outlined here. The authority to release records of a routine nature, such as fact sheets or local directories, may be delegated to any individual at the discretion of the denial authority. In doubtful cases, releasing officials may consult with the FOIA staff or servicing counsel prior to release.

§ 1285.4 Responsibilities.

(a) The Staff Director, Administration, HQ DLA-X: (1) Has overall responsibility for establishment and implementation of the DLA FOIA program, providing guidance and instructions to PLFA’s and PSE’s.

(2) Designates a FOIA manager to administer the DLA FOIA program.

(3) Serves as the point of contact for referring members of the public to the proper DLA source for Agency records.

(4) Serves as appellate authority on fee waivers and category determinations.

(5) Serve as initial denial authority for record denials where more than one PSE is involved or where a PSE has made a determination that the requested record cannot be found.

(6) Submits required reports to the Office of the Assistant Secretary of Defense, Public Affairs.

(7) Collects and deposits fees for FOIA services performed at HQ DLA and DASC.

(b) The General counsel, HQ DLA-G:

(1) Provides legal advice and assistance to HQ DLA PSE’s and, where appropriate, PLFA’s in determining decisions to withhold records.

(2) Processes appeals to the Director, DLA, of denials to provide records or “no record” determinations.

(3) Coordinates denial actions with Office of the General Counsel, DoD, and the Department of Justice, as appropriate.

(4) Ensures that case files of FOIA appeals are maintained for 6 years after final agency decision.

(c) The Staff Director, Office of Public Affairs, HQ DLA-B, serves as a coordinating office for the release of information to the news media where potential for controversy exists.

(d) The Staff Director, Office of Congressional Affairs, HQ DLA-Y, serves as a coordinating office on final responses to FOIA requests from members of the Congress.

(e) The heads of the DLA principal staff elements (PSE’s): (1) Appoint an individual to serve as FOIA monitor. Letters of appointment will be forwarded to DLA-XAM.

(2) Forward to DLA-XAM any FOIA request received directly from the public so that the request may be administratively controlled.

(3) Ensures that provisions of this regulation are followed in processing requests for records from the public.
(4) Coordinate requests with other HQ DLA staff elements to the extent considered necessary.

(5) Coordinate any proposed denial with the General Counsel.

(6) Serve as initial denial authority.

(7) Ensure that FOIA case files of denials are maintained for 6 years and that full releases are maintained for 2 years.

(8) Make initial determinations to release records or designate individuals to make such determinations.

(f) The PSE FOIA monitors:
(1) Process and control all FOIA requests received from DLA–XAM.

(2) Make sure established suspenses are met.

(3) Request extensions of time from DLA–XAM when necessary and within the limits of §1285.5(j) of this part.

(4) Gather cost estimates when requested.

(5) Ensure costs for processing each Freedom of Information Act request are properly recorded.

(6) Coordinate proposed full and partial denials with DLA–XAM prior to signature by the PSE director. Forward a copy of the final response and cost information to DLA–XAM.

(g) The heads of DLA primary level field activities (PLFA’s):
(1) Designate a FOIA manager to administer the DLA FOIA program within the PLFA. Forward the name, address, and telephone number of the manager to DLA–XAM.

(2) Make sure that the provisions of this regulation are followed in processing requests, including the establishment of safeguards to ensure that FOUO material is protected.

(3) Establish procedures to ensure that a record is maintained of all FOIA requests for logistical data (data on magnetic tape extracted from any of the DLA automated data processing (ADP) systems). The record will contain the requester’s name and address, the date of the request, what information was requested, and what information was furnished. This record will be kept for five years.

(h) Freedom of Information Act managers at all levels:
(1) Establish procedures to receive, control, process, and screen FOIA requests. To provide for rapid retrieval of information, FOIA managers will maintain a central log of all incoming FOIA requests.

(2) Review requests to determine if they meet the requirements of 5 U.S.C. 552. Determine category of the requester before assigning the request for search. Provide instructions to the requester on fees and time limits for response.

(3) Consult with requesters, where necessary, to determine requester category and to resolve fee issues.

(4) Establish training and education program for those personnel who may be involved in responding to FOIA requests.

(5) Approve requests for formal extensions of time and notify requesters in writing of the extension.

(6) Grant or deny requests for fee waivers or requester category determinations and provide DLA–XAM with a copy of each such denial.

(7) Establish procedures to ensure that §1285.5(1) of this part regarding consultation with submitters of information is complied with.

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¹See Footnote 2 to §1285.2(l)(4).
²See Footnote 2 to §1285.2(l)(4).
§ 1285.5 Procedures.

(a) FOIA channels. If DLA personnel receive a FOIA request directly from the public that has not been logged in and processed through the FOIA office, they will immediately forward it to the local FOIA manager.

(b) Central log system. Each FOIA manager will maintain a central log of FOIA requests received within the activity to ensure compliance with the time limits and accurate cost accounting, fees, assessment, and reporting.

(c) Time limit. FOIA requests must be responded to within 10 business days after proper receipt, except in unusual circumstances outlined in paragraph (j) of this section. A request is considered properly received on the date the FOIA manager receives it provided the request has been reasonably described and the requester has either agreed to pay assessable fees or has provided sufficient justification for a fee waiver.

(d) Screening requests. (1) Before assigning a request for search, the FOIA manager will screen the request for defects in the description, requester category, and the issue of fees. FOIA managers will notify requesters of any such defects and, wherever possible, offer assistance to help remedy the defects. If the FOIA manager must consult with the requester on any of the following issues, then the request is not considered to be properly received and the 10-day time limit does not begin or resume until the requester has satisfactorily addressed the issue.

(i) Payments in arrears. If a requester has failed to pay fees for a previous request, then the FOIA manager need not process the current request until the requester pays the delinquent amount. In such situations, the FOIA manager will notify the requester of the defect and provide an opportunity to forward payment along with any assessable interest. At that time, the FOIA manager may, at his or her discretion, demand that the requester also pay an estimated fee for the current request.

(ii) Faulty description. If the request is not reasonably described, the FOIA manager will notify the requester of the defect and advise that a search cannot be initiated without more specific information. In making such determinations, FOIA managers may consult with offices of primary interest to determine the details that are needed to conduct a search. See also paragraph (f)(2) of this section and §1285.2(i) of this part.

(iii) Requester category and fees. The FOIA manager will analyze the request to determine the category of the requester. If the category of the requester is different than that claimed by the requester, the FOIA manager will:

(A) Notify the requester that he or she should provide additional justification to warrant the category claimed and that a search for responsive records will not be initiated until agreement has been attained relative
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to the category of the requester. Absent further category justification from the requester and within a reasonable period of time (i.e., 30 calendar days), the FOIA manager shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights.

(B) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the FOIA manager. Requesters must submit a fee declaration appropriate for the following categories:

(1) Commercial. Requesters must indicate a willingness to pay all search, review, and duplication costs.

(2) Educational or noncommercial scientific institution or news media. Requesters must indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(3) All others. Requesters must indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

Justification for fee waivers. If the requester has asked for a fee waiver but failed to provide a justification, FOIA managers will ask requesters to address the fee waiver criteria in part 226, subpart F, of this title before further processing the request. FOIA managers are reminded that with some types of records, a final decision cannot be made on waiver until after the records have been surfaced, reviewed, and the public benefit and previous public availability assessed.

(g) Initial determinations—(1) Reasons for not releasing a record. There are seven reasons for not complying with a request for a record:

(i) The request is transferred to another DLA activity, DOD component, or to another Federal agency.

(ii) The DLA activity determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record. Responding officials will advise requesters of the right to appeal such determinations. See paragraph (i)(5) of this section for details on processing “no record” responses.

(iii) A record has not been described with sufficient particularity to enable the DLA activity to locate it by conducting a reasonable search.

(iv) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this rule.
(v) The request is withdrawn by the requester.

(vi) The information requested is not a record within the meaning of the FOIA and this rule.

(vii) The record is denied in accordance with procedures set forth in the FOIA and this rule.

(2) Reasonably segregable portions. Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

(h) Preparing documents for public release—(1) Material containing For Official Use Only marks. When a determination has been made that a FOUO document may be fully released to a requester under any public information program, the FOUO markings will be removed from the requester’s copy prior to release. In cases where a person seeks access to his or her own record and the record is marked FOUO to protect that person’s personal or proprietary interests, the FOUO marks will be deleted from the requester’s copy prior to release. In cases where a person seeks access to his or her own record and the record is marked FOUO, the FOIA manager of the PLFA that incurred the expense. FOIA managers will notify DLA-XAM of names and addresses of requesters who have failed to pay after a second billing has been mailed and 30 days have elapsed without payment.

(4) Full and partial denials. (i) When a request for a record is denied in whole or in part on the basis of one or more of the exemptions in part 286, subpart C, of this title the initial denial authority shall inform the requester in writing and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemption(s) on which the denial is based. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable Executive Order criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to the Director, DLA.

(ii) FOIA managers shall forward a copy of each letter of denial to DLA-XAM, Cameron Station, Alexandria,
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Virginia 22304–6100. Do not include attachments, the incoming request, or any backup material.

(5) Providing “no record” responses. (i) If no documents can be located in response to a FOIA request, the initial denial authority will so advise the requester. Requesters will also be advised that, if they consider the response to be adverse, they may file an appeal within 60 calendar days from the date of the response. Requesters are to be advised to address appeals to the local FOIA manager and include the case number and reasons why they believe the DLA activity should have records on the subject matter.

(ii) Before a formal “no record” response is issued, OPI will verify that the requester has adequately described the record. If additional details will aid the search, then the requester will be asked to provide those details. See paragraph (d)(1)(ii) of this section and §1285.2(i) of this part for procedures for resolving inadequate descriptions.

(iii) In cases where the requested record has been destroyed, the initial denial authority will confirm that the record was retained for the period authorized in DLAM 5015.1 before issuing a formal response. In responding to requesters in these cases, advise the requester that the records were properly destroyed according to Agency rules for record disposition and give the right to appeal as outlined in paragraph (i)(5)(i) of this section. However, do not ask the requester to provide reasons why the activity should have the records.

(iv) Upon receipt of an appeal, the FOIA manager will direct that a second search be conducted using any information supplied by the requester. If the second search produces no documents, the appeal will be forwarded to HQ DLA–G, Cameron Station, Alexandria, Virginia 22304–6100, along with a copy of the case file. The FOIA manager will include the cost information and an explanation of the method of search and the types of offices searched. In cases where the “no record” response was issued because the records have been destroyed, the FOIA manager will verify that the records were destroyed as provided for in DLAM 5015.1 and provide a statement to that effect.

(v) FOIA managers will ensure that a copy of each “no record” response letter is forwarded to DLA–XAM, Cameron Station, Alexandria, Virginia 22304–6100. Do not include attachments, the incoming request, or any backup material.

(6) Coordination. OPI’s will ensure that the proposed response is fully coordinated with offices having an interest in the request. Proposed responses to FOIA requests from members of the Congress will be coordinated with DLA–Y or the local Congressional Affairs focal point.

(j) Extensions of time—(1) Formal extensions. In unusual circumstances, when additional time is needed to respond, the FOIA manager will acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Such extensions will be approved on a case-by-case basis. In these unusual cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. Since the requester still retains the right to treat this delay as a de facto denial with full administrative remedies, such extensions should be issued only when essential. The unusual circumstances that may be cited to justify delay are:

(i) Location. The requested record is located in whole or in part at places other than the office processing the request.

(ii) Volume. The request requires the collection and evaluation of a substantial number of records.

(iii) Consultation. Consultation is required with other DoD components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part.
(2) Informal extensions. Where practical and expedient, the FOIA manager or official designated to respond may negotiate with the requester and arrange for an informal extension. Such extensions may be appropriate in instances where the records have to be ordered from a record repository; where the record has been sent out for commercial printing and is not expected back before the 10-day time has elapsed; and similar circumstances.

(k) Misdirected requests. Misdirected requests shall be forwarded promptly to the FOIA manager of the DLA activity, DoD component, or Federal agency with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the FOIA manager of the PLFA that controls the records requested.

(i) Records of contractors and other non-U.S. government sources. (1) Executive Order 12600 of 23 June 1987 (52 FR 23781) establishes predisclosure notification procedures for confidential commercial information. When a request is received for a record that was obtained from a contractor or other non-U.S. Government source or for a record containing information clearly identified as having been provided by a contractor or other non-U.S. Government source, the source of the record or information (also known as “the submitter” for matters pertaining to proprietary data under 5 U.S.C. 552(b)(4)) (see §286.13(a)(4) of this title) shall be notified promptly of that request and afforded reasonable time (e.g., 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. The following procedures will be followed:

(ii) When a substantial issue has been raised, the DLA activity may seek additional information from the source and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved.

(ii) Any objections to release will be evaluated and the source provided with a copy of the activity’s final decision. Where a decision is made to release information claimed to be exempt, the source will be notified that the information will be released on a specified date unless the source seeks a restraining order or takes court action to prevent disclosure. Evaluators are cautioned that any decision to disclose information claimed to be exempt under 5 U.S.C. 552(b)(4) must be made by an official equivalent in rank to the initial denial authority.

(iv) When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the FOIA manager will notify the requester and suspend action on the request until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the FOIA manager shall promptly notify the submitter of this action.

(2) These procedures are required for those FOIA requests for data not deemed clearly exempt from disclosure under exemption (b)(4). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source.

(3) These coordination provisions also apply to any non-U.S. Government record in the possession and control of DLA from multi-national organizations, such as North Atlantic Treaty Organization (NATO) and North American Aerospace Defense Command (NORAD), or foreign governments. Coordination with foreign governments under the provisions of this paragraph shall be made through the Department of State.

(m) File of initial denials. Copies of all initial denials shall be maintained by each DLA activity in a form suitable
for rapid retrieval, periodic statistical compilation, and management evaluation.

(n) Appeals—(1) General—(i) Appeals to record denials. Requesters denied access to records under the provisions of part 296, subpart C, of this title may appeal such determinations to the Director, DLA. The appeal should be accompanied by a copy of the letter denying the initial request and contain the basis for disagreement with the initial refusal.

(ii) Appeals to a “no record” finding. Requesters have the right to appeal any “no record” finding to the FOIA manager of the activity that issued the finding. The letter of appeal should include the case number and, where appropriate, reasons why the requester believes the activity should have records on the subject matter. Using the information supplied by the requester, the FOIA manager will direct that a second search be conducted. If the second search produces no documents, the appeal will be forwarded to HQ DLA-G, Cameron Station, Alexandria, Virginia 22304-6100, along with a copy of the case file. The FOIA manager will include information on the amount of time spent on the request and provide an explanation of the method of search and the types of offices searched.

(iii) Appeals to fee waiver denials or requester category decisions. Requesters may appeal an initial determination regarding placement in a certain fee assessment category or waiver or reduction of fees when disclosure serves the public interest. Requesters will include a basis for disagreement and submit the appeal to the Staff Director, Office of Administration (Attn: DLA-XAM), Cameron Station, Alexandria, Virginia 22304-6100.

(2) Time limits—(i) Time limits to file appeals. The requester shall be advised to file an appeal so that it reaches the appellate authority no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification.

(ii) Time of receipt. An FOIA appeal is considered received by DLA when it reaches DLA-G or, in the case of fee or requester category appeals, when it reaches DLA-XAM. Misdirected appeals should be referred expeditiously to the appropriate office.

(iii) Time limits to decide appeals. Final determinations on appeals normally shall be made within 20 working days after receipt.

(iv) Delay in responding to an appeal. (A) If additional time is needed due to the unusual circumstances described in paragraph (j) of this section, the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request.

(B) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in paragraph (j) of this section, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. DLA shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(C) When the appellate authority or the authority’s representative must consult with the requester over an issue not previously settled, such as agreement to pay fees for documents previously denied, then any delays on the requester’s part will not count toward the 20-day time limit.

(3) Response to the requester. (i) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of
the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(i) Final refusal to provide a requested record must be made in writing by the DLA Director or his designee. In the case of fee appeals, final refusal to waive or reduce fees must be made in writing by the Staff Director of Administration. Record denial responses, at a minimum, shall conform to the following:

(A) The basis for the refusal shall be explained to the requester with regard to the applicable statutory exemption or exemptions invoked.

(B) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(C) The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

(D) The response shall advise the requester of the right to judicial review.

(4) Consultation. (i) Final refusal involving issues not previously resolved or that are known to be inconsistent with rulings of other DoD components ordinarily should not be made without first consulting with the Office of the General Counsel of the Department of Defense.

(ii) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the Government shall be provided to the Department of Justice, Attn: Office of Legal Policy, Office of Information and Policy, Washington, DC 20530.

(5) Records management. Case files of appeals shall be retained by DLA–G or, in the case of fee or requester category appeals, by DLA–XAM for a period of six years to meet the statute of limitations of claims requirement.

(a) Special mail services. DLA activities are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

(p) Receipt accounts. The Treasurer of the United States has established Receipt Account 3210 for use in depositing search, review, and duplication fees collected under the FOIA. Upon receipt of payment, the FOIA manager will forward the check or money order to DFAS/CO/PDG, P.O. Box 182317, Columbus, Ohio 43218-2317. FOIA managers will advise DFAS that the check is to be deposited to accounting classification 2IR3210.0004. This account will not, however, be used for depositing receipts for technical information released under the FOIA, industrially-funded activities, and non-appropriated funded activities. Instead, payments for these shall be deposited to the appropriate fund.

§ 1285.6 Fees and fee waivers.

The rules and rates published in part 286, subpart F of this title apply to this rule. For purposes of computer search, DLA has established rates of $20 per minute of central processing unit time for mainframe computer use and $20 per hour of wall clock time for personal computer use. These rates represent average operational costs and may be used when the actual computer cost cannot be determined.

§ 1285.7 Reports.

The reporting requirement outlined in this rule is assigned Report Control Symbol DD–PA(A)1365 and will be prepared according to part 286, subpart G, of this title.

APPENDIX A TO PART 1285—GAINING ACCESS TO DLA RECORDS

I. General

The Defense Logistics Agency was established pursuant to authority vested in the Secretary of Defense and is an agency of DoD under the direction, authority, and control of the Assistant Secretary of Defense (Production and Logistics) and is subject to DoD policies, directives, and instructions. DLA is made up of a headquarters and 22 Primary Level Field Activities (PLFA’s). DLA does not have a central repository for its records.
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FOIA requests, therefore, should be addressed to the FOIA Office of the DLA activity that has custody of the record desired. In answering inquiries regarding FOIA requests, DLA personnel will assist requesters in determining the correct DLA activity to address their requests. If there is uncertainty as to the ownership of the DLA record desired, the requester may be referred to the FOIA manager of the DLA activity most likely to have the record or to HQ DLA-XAM.

II. Description of DLA's Central and Field Organization

A. HQ Defense Logistics Agency, Cameron Station, Alexandria, Virginia 22304-6100

The headquarters is organized by broad functional area and includes the following offices and directorates:

Office of the Director.
Executive Director, Contracting.
Executive Director, Supply Operations.
Executive Director, Technical and Logistics Services.
Executive Director, Contract Administration.
Executive Director, Quality Assurance.
Executive Director, Program and Technical Support.
Staff Director, Congressional Affairs.
Staff Director, Public Affairs.
Staff Director, Command Security.
Staff Director, Administration.
Staff Director, Civilian Personnel.
Staff Director, Contracting Integrity.
Staff Director, Military Personnel.
Staff Director, Small and Disadvantaged Business Utilization.
Staff Director, Installation Services and Environmental Protection.
Assistant Director, Information Systems and Technology.
Assistant Director, Policy and Plans.
General Counsel.
Comptroller.

B. The PLFA's

The 22 PLFA’s are organized into six supply centers, four depots, six service centers, and six contract districts.

1. Supply centers. The six supply centers are responsible for materiel management of assigned commodities and items of supply relating to food, clothing, textiles, medical, chemical, petroleum, industrial, construction, electronics, and general items of supply. The six supply centers are:

   a. Defense Construction Supply Center (DCSC). Buys and manages construction materials, automotive, and construction equipment components, and many repair parts used by the Military Services and other Federal agencies. Manages items ranging from common commercial items such as lumber and plumbing accessories to complex repair parts for mechanical, construction, and automotive equipment, and for military aircraft, surface ships, submarines, combat vehicles, and missile systems.

   b. Defense Electronics Supply Center (DESC). Responsible for the acquisition, management, and supply of more than one-half million electronic components such as resistors, capacitors, tubes, transformers, microcircuits, and components for various communications and weapons systems.

   c. Defense Fuel Supply Center (DFSC). Serves as material manager for bulk petroleum and coal and is responsible for its worldwide supply, storage, and distribution.

   d. Defense Industrial Supply Center (DISC). Buys and manages industrial items such as bearings, ferrous and nonferrous metals, electrical wire, gasket material, and certain mineral ores and precious metals.

   e. Defense Personnel Supply Center (DPSC). Buys and manages food, clothing, and medical supplies for all the armed services, some Federal agencies and authorized foreign governments.

   f. Defense General Supply Center (DGSC). Buys and manages such categories of materials as electrical hardware, materials handling equipment, kitchen and laundry equipment, woodworking and metalworking machines, photographic supplies, and precision measuring instruments.

2. Depots. DLA depots are responsible for the receipt, storage, and distribution of DLA-managed materiel. The principal depots are:


3. Service centers. DLA operates six service centers which provide technical and logistics services. The service centers are:

   a. Defense Logistics Services Center (DLSC). Responsible for maintenance of the Federal Supply Catalog System, including the development and dissemination of cataloging and item intelligence data to the Military Departments and other authorized customers.

   b. Defense Reutilization and Marketing Service (DRMS). The central clearinghouse for the reutilization, donation, sale, or disposal of DoD-owned excess property, including scrap and waste.

   c. Defense Industrial Plant Equipment Center (DIP/EC). Manages the reserve of DoD-owned industrial plant equipment. The center repairs, rebuilds, and updates equipment to avoid new procurement costs.

   d. DLA Administrative Support Center (DASC). Provides general administrative support to designated DLA activities.

   e. Defense National Stockpile Center (DNSC). Maintains the national reserve of...
strategic materials stored for use in event of war or other national emergency.

f. DLA Systems Automation Center (DSAC). Develops and maintains DLA's automated and computerized systems.

4. Contract districts. Six districts, each responsible for contracts covering a multistate or specialized area, administer materiel contracts after they are awarded by the military services, defense agencies, some civil agencies, and certain foreign governments. The districts are:

Defense Contract Management District Mid Atlantic (DCMDM).
Defense Contract Management District North Central (DCMDC).
Defense Contract Management District South (DCMDS).
Defense Contract Management District West (DCMDW).

III. Requester Requirements

A. Addressing Requests

Address requests to the DLA PLFA most likely to hold the record (see paragraph V of this appendix for mailing addresses of FOIA managers). If the PLFA is undeterminable, address requests to HQ DLA-XAM for proper routing. Requests must be in writing.

B. Description of Records.

Provide a reasonable description of the documents you are seeking. If you have detailed information which would help reduce the search time involved, please include it in your request. If you have a document which references the DLA record you seek, include a copy of that document.

C. Fees and fee waivers.

State your willingness to pay fees above the $15 automatic waiver or provide a justification for waiver of all or part of the costs. Waiver requests must address with specificity each of the fee waiver elements in part 286, subpart F, of this title.

IV. Availability of DLA Publications

Unrestricted DLA regulations, manuals, and handbooks may be purchased from the DLA publications sales outlet, DLA Handbook 9225.1. Defense Logistics Agency Index of Publications, is published quarterly and may be used to help you identify publications of interest to you. Orders for this and other nonrestricted publications may be placed through DASC-PD, Cameron Station, Alexandria, VA 22304-6130. That office will advise you of cost before completing your order.

V. FOIA Mailing Addresses

| Defense Construction Supply Center, Attn: DCSC-WXA, 3990 E. Broad Street, Columbus, OH 43216-5000. |
| Defense General Supply Center, Attn: DGSC-DB, Richmond, VA 23297-5000. |
| Defense Distribution Region East, Attn: DDRE-WX, New Cumberland, PA 17070-5001. |
| Defense Depot Ogden, Attn: DDOU-G, 800 West 12th Street, Ogden, UT 84407-5000. |
| Defense Distribution Region West, Attn: DDRW-WX, Tracy, California 95376-5000. |
| Defense Logistics Services Center, Attn: DLSC-WXA, 74 N. Washington Avenue, Battle Creek, MI 49017-3084. |
| Defense Reutilization and Marketing Service, c/o Defense Logistics Services Center, Attn: CLSC-WXA, 74 N. Washington Avenue, Battle Creek, MI 49017-3084. |
| DLA Systems Automation Center, Attn: DSAC-E, P.O. Box 1605, Columbus, OH 43216-5002. |
| DLA Administrative Support Center, Attn: DASC-RA, Cameron Station, Alexandria, VA 22304-6130. |
| Defense Contract Management District Northeast, Attn: DCMDN-WX, 495 Summer Street, Boston, MA 02210-2184. |
| Defense Contract Management District North Central, Attn: DCMDC-WX, O'Hare International Airport, P.O. Box 66926, Chicago, IL 60666-9266. |
Defense Logistics Agency


PART 1288—REGISTRATION OF PRIVATELY OWNED MOTOR VEHICLES

Sec.
1288.1 Purpose and scope.
1288.2 Policy.
1288.3 Definitions.
1288.4 Responsibilities.
1288.5 Procedures.
1288.6 Forms and reports.

APPENDIX A TO PART 1288—DECAL SPECIFICATIONS

SOURCE: 43 FR 40806, Sept. 13, 1978, unless otherwise noted.

§ 1288.1 Purpose and scope.
To prescribe policy and procedures for the registration, inspection, and marking of privately owned vehicles (POV) on Defense Logistics Agency (DLA) activities. This regulation is applicable to individuals serving in or employed by the Defense Logistics Agency, and to all other individuals subject to motor vehicle registration requirements set forth in this part 1288 and DLAR 5720.1/AR 190–5/OPNAVINST 11200.5B/AFR 125–14/MCO 5110.1B, Military Police Motor Vehicle Traffic Supervision.

§ 1288.2 Policy.
(a) The operation of a POV on a DLA activity constitutes a conditional privilege extended by the Head of the activity. The Heads of DLA primary level field activities (PLFA’s) have the authority to supplement this regulation to implement additional controls and restraints warranted by existing conditions at a PLFA. For example, commanders of depots and supply centers may impose searches of vehicles as warranted to reduce pilferage, and protect Government interests.
(b) POV’s permanently registered for operation on a DLA activity will be identified by use of one of the decals prescribed in this part 1288 (appendices A and B).

(c) The DLA vehicle decal will be valid for a period of 3 years from the year and month of issue.
(d) Activities will use DLA Form 1454, Vehicle Registration/Driver Record, as the basic vehicle registration and driver record.
(e) DLA tenant activities will comply with host installation policies and procedures for registering POV’s.

§ 1288.3 Definitions.
Terms used in this part 1288 are contained in DLAR 5720.1.

§ 1288.4 Responsibilities.
(a) HQ DLA. (1) The command security officer, DLA (DLA–T) will provide staff supervision and assistance to DLA activities on matters concerning this part 1288.
(2) The inspector general, DLA (DLA–I) will procure, issue, and control inspector general (IG) vehicle decals in accordance with §1288.6 of this part, with the exception of the 3-year validation requirement. (Vehicles bearing such decals will be permitted entry to all DLA activities.)
(b) The heads of DLA primary level field activities will:
(1) Insure that personnel adhere to the provisions of this part 1288 when implemented.
(2) Procure, issue, and control vehicle decals in accordance with this DLAR.
(3) Periodically inform personnel of the requirements of this DLAR, DLAR 5720.1, and local requirements concerning the motor vehicle registration program.
(4) Activity/tenant employees are not considered visitors and will not be issued visitor passes. Employees operating loaner/rental vehicles may be temporarily registered in accordance with DLAR 5720.1, paragraph 3–2c.

§ 1288.5 Procedures.
(a) Issuance of DLA POV decal and 3-year validation sticker. (1) One decal will be affixed to the left front bumper (operator’s side) of a four-wheel vehicle. An additional decal may be placed on the rear bumper of the vehicle. For vehicles not equipped with bumpers and two-wheeled vehicles, the placement of decals will be determined locally.
(2) A 3-year validation sticker indicating the decal expiration will be issued at the same time the DLA decal is issued. Every 3 years, or following a significant change, registrants will be required to update their registration information. Evidence of compliance will be documented by the issuance and display of a new 3-year validation sticker.

(3) The validation sticker will be placed next to the DLA decal affixed to the front bumper of the vehicle. This sticker will reflect the month and year of the decal expiration, e.g., vehicles registered during the month of June 1978 will have affixed a validation sticker with the numbers “6-81”, indicating expiration of the decal at the end of June 1981. The specifications for the validation sticker will be determined locally.

(4) Decals or other media used to identify vehicles of temporary registrants or visitors will be locally prescribed.

(5) Decals will be removed from POV’s by the registrant when activity registration is terminated. See DLAR 5720.1, chapter 3, for information on termination of registration.

(6) Vehicle decals will be purchased with appropriated funds for issuance at no cost to authorized users.

(b) Proof of insurance. (1) Individuals registering vehicles will certify possession of insurance per DLAR 5720.1, paragraph 3-3c.

(2) The certification contained on DLA form 1454 will, as indicated thereon, be witnessed and manifested by a signature.

(c) Vehicle inspection. (1) DLA activities located in States or jurisdictions having mandatory vehicle safety inspections will reflect the provisions of DLAR 5720.1, paragraph 3-3d, in the supplementation of this DLAR.

(2) Vehicle safety inspections are not mandatory for DLA activities located in areas not requiring such inspections.

(d) Registrant. Registrant must inform the vehicle registration office within 72 hours as information on DLA form 1454 becomes invalid.

§ 1288.6 Forms and reports.

(a) DLA form 1454 will be prepared at the time of initial registration of the vehicle and will remain valid for as long as the registrant retains ownership of the vehicle and complies with registration requirements. A Privacy Act statement for use in conjunction with DLA form 1454 will be made available to the individual supplying data on the form.

(b) Data blocks 3, 4, and 14 on DLA form 1454 will be entered in ink; remaining entries will be in pencil.

(c) One copy of DLA form 1454 will also serve as the driver record of the registrant.

(d) Upon permanent change of station of the military service registrant, activity clearance procedures will provide for DLA form 1454 to be included in the registrant’s military personnel folder for transmittal to the gaining activity. DLA forms 1454 for transferring civilian personnel will be forwarded to the security officer of the gaining activity.

(e) The DLA form 1454 for military personnel being discharged or separated will be forwarded to the appropriate personnel office for inclusion in the records folder for subsequent retirement.

APPENDIX A TO PART 1288—DECAL SPECIFICATIONS

A. The design format of the standard DLA decal to be used for identifying POV’s permanently registered for operation on DLA activities is shown in enclosure 2. The IG decal will be of the same design and color as that prescribed for the standard DLA decal except that the registration letter/number scheme will consist of the letters “IG” followed by a number. Standard DLA decals may be procured from the U.S. Disciplinary Barracks, USDB, Fort Leavenworth, Kans. 66027, which is an approved Federal printing plant. Existing stocks of decals with “DSA” inscribed will be used until exhausted.

B. The following specifications apply to the separate elements of the decal:

1. Basic construction. Decal will meet Federal Specification L-5300A, 7 Jan 70, type I, class 4, reflectivity 1.

2. Colors.

a. Background—Silver.

b. DLA emblem, field activity name, and scroll, the letters DLA, and year/date—Black.

c. Registration letters/numbers:

(1) Mandatory categories:

(a) Officer personnel—Blue.

(b) Enlisted personnel—Red.

(c) Civilian employees—Green.
Defense Logistics Agency

(2) The following additional colors will be used to categorize registration further:
   (a) Noncommissioned officer personnel—Brown.
   (b) Civilian employees (nonappropriated fund), Red Cross, concessionaires, contractors, and other similar categories—Black.

3. Registration letters/numbers. For each registration category a combination of letters and number(s) separated by the DLA emblem will be used. The number-letter system will progress from AA–1 to AA–2, and so on, to AA–99, from AB–1 to AB–99, eventually from AZ–1 to AZ–99, and so on from ZZ–1 to ZZ–99.

4. Dimensions:
   a. Maximum size: 3 inches by 6 inches. For economy a reduced size decal may be used on POV's to include those with less than four wheels.
   b. Registration letters and numerals: 1¼ to 1⅛ inches in height.
   c. DLA emblem letters: ½ inches to 1⅛ inches in height.
   d. DLA letters: ⅛ inch to ¾ inch in height.
   e. Activity designation scroll and lettering: See appendix B.

STANDARD DLA PRIVATE VEHICLE IDENTIFICATION DEVICE

APPENDIX A—PREPARATION GUIDE FOR DD FORM 1805, VIOLATION NOTICE

APPENDIX B—TICKET SAMPLE—A PARKING VIOLATION

APPENDIX C—TICKET SAMPLE—A MOVING VIOLATION

APPENDIX D—TICKET SAMPLE—A NONTRAFFIC VIOLATION

AUTHORITY: Department of Defense Instruction 6055.4; 18 U.S.C. 13, 3401, and 3402.

1Reference (a) may be purchased from the Commander, U.S. Army AG Publications Center, 2800 Eastern Blvd., Baltimore, MD 21220; references (b) from the Defense Logistics Agency (DASC–IP), Cameron Station, Alexandria, VA 22314; references (c), (d), and (e) from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.
§ 1290.1 References.

(a) DLAR 5720.1/AR 190–5/OPNAVINST 11290.5B/AFR 125–14/MCO 6110.1B, Motor Vehicle Traffic Supervision.

(b) DLAR 5710.1, Authority of Military Commanders To Issue Security Orders and Regulations for the Protection of Property or Places Under Their Command.

(c) Sections 1, 3401 and 3402, title 18, U.S.C.

(d) Rules of procedures for the Trial of Minor Offenses before United States Magistrates.


§ 1290.2 Purpose and scope.

(a) This part 1290 implements DoD Instruction 6055.4, Department of Defense Traffic Safety Program, and sets forth basic objectives and procedures applicable to implementation of the Federal Magistrate System by DLA. This part 1290 is applicable to HQ DLA, Defense Supply Centers (DSC’s), less Defense Fuel Supply Center and Defense Industrial Supply Center, and to Defense Depots, less Defense Depot Mechanicsburg. DLA activities/personnel tenant on other DoD activities will abide by the requirements of the host.

(b) This part 1290 provides Heads of DLA primary level field activities (PLFAs) with a means of exercising effective control over violators who are not otherwise under their jurisdiction.

§ 1290.3 Policy.

(a) It is the policy of HQ DLA that the Heads of DLA PLFAs will take such steps as are necessary to prevent offenses. Emphasis will be placed on prevention rather than apprehension and prosecution of offenders.

(b) The procedures outlined in this part 1290 may, at the discretion of the Head of the activity concerned, be invoked in lieu of the provisions of the Uniform Code of Military Justice (UCMJ) to deal with minor offenses of a civil nature, other than violations of state traffic laws, committed by military personnel. These procedures may also be invoked to deal with nontraffic minor offenses committed by civilian personnel.

§ 1290.4 Definitions.

For the purpose of this part 1290 the following definitions apply:

(a) Law Enforcement Personnel. Persons authorized by the Head of the PLFA to direct, regulate, control traffic; to make apprehensions or arrests for violations of traffic regulations; or to issue citations or tickets. Personnel so designated will include the Command Security Officer and all other personnel in 080, 083, 085, or 1800 series positions.

(b) Minor Federal Offenses. Those offenses for which the authorized penalty does not exceed imprisonment for a period of 1 year, or a fine of not more than $1000, or both (18 U.S.C. 3401f).

(c) Petty Federal Offenses. Those offenses for which the authorized penalty does not exceed imprisonment for a period of 6 months or a fine of not more than $500, or both (18 U.S.C. 1(3)).

NOTE: A petty offense is a type of minor offense.

(d) Violation Notice. DD Form 1805, Violation Notice, which will be used to refer all petty offenses to the U.S. Magistrate/District Courts for disposition.

NOTE: A complaint, made under oath on forms provided by the magistrate, is the prescribed form for charging minor offenses other than petty offenses.

§ 1290.5 Background.

(a) DoD Instruction 6055.4 requires that all traffic violations occurring on DoD installations be referred to the appropriate United States Magistrate, or State or local system magistrate, in the interest of impartial judicial determination and effective law enforcement. Exceptions will be made only for those rare violations in which military discipline is the paramount consideration, or where the Federal court system having jurisdiction has notified the PLFA commander it will not accept certain offenses for disposition.

(b) Generally, the Federal Magistrate System applies state traffic laws and
appropriated Federal laws to all personnel while on Federal property (section 13, title 18 U.S.C., Assimilative Crimes Act).

§ 1290.6 Significant changes.

This revision incorporates the DoD requirement for referral of traffic violations occurring on military installations to the Federal or local magistrate.

§ 1290.7 Responsibilities.

(a) HQ DLA. (1) The Command Security Officer, DLA (DLA–T) will:
   (i) Exercise staff supervision over the Magistrate system within DLA.
   (ii) Provide guidance and assistance to DLA activities concerning administrative and procedural aspects of this part 1290.
   (2) The Counsel, DLA (DLA–G) will provide guidance and assistance to DLA activities concerning legal aspects of this part 1290.
   (b) The Heads of DLA Primary Level Field Activities will:
      (1) Develop and put into effect the necessary regulatory and supervisory procedures to implement this part 1290.
      (2) Ensure implementing directives authorize law enforcement/security force (080, 083, 085 and 1800 series) personnel to issue DD Form 1805.
      (3) Periodically publish in the PLFA Daily or Weekly Bulletin, a listing of offenses for which mail-in procedures apply, with the amount of the fine for each, and a listing of offenses requiring mandatory appearance of the violator before the U.S. Magistrate. The listings will indicate that they are not necessarily all inclusive and that they are subject to change. A copy of the listings will be provided to the local Union representatives.

§ 1290.8 Procedures.

(a) The U.S. Magistrate Court Provides DLA with:
   (1) The means to process and dispose of certain categories of minor offenses by mail. Under this system, U.S. Magistrate and District Courts will, by local court rule, preset fines for the bulk of petty violations (Federal or Assimilated) and permit persons charged with such violations, who do not contest the charge nor wish to have a court hearing, to pay their fines by using mail-in, preaddressed, postage paid envelopes furnished to them with the violation notice.
   (2) Efficient, minimal commitment of judicial and clerical time by using uniform procedures which centralize the collection of fines, the scheduling of mandatory hearings or hearings where violators request them, and the keeping of violator records.
   (3) A simple but sure method of accounting for fines collected and tickets issued.
   (4) Impartial enforcement of minor offense laws.

(b) Court Appearances—(1) Mandatory Appearances. (i) As required by the Administrative Office of the United States Courts, each District Court will determine, by local court rule, those offenses requiring mandatory appearance of violators. PLFA Counsels will coordinate with local magistrates or district courts and secure a court approved list of offenses requiring mandatory appearance of violators before the local U.S. Magistrate.
      (ii) Mandatory appearance offense categories normally include:
         (A) Indictable offenses.
         (B) Offenses resulting in accidents.
         (C) Operation of motor vehicle while under the influence of intoxicating alcohol or a narcotic or habit producing or other mind altering drug, or permitting another person who is under the influence of intoxicating alcohol, or a narcotic or habit producing or mind altering drug to operate a motor vehicle owned by the defendant or in his/her custody or control.
         (D) Reckless driving or speeding.
   (2) Voluntary Appearances—(1) Requested by violators at the time DD Form 1805 is issued. (A) Personnel issuing DD Form 1805 will refer violator for hearings before U.S. Magistrates in each instance where a hearing is requested by the violator.
         (B) Command security officers will provide security force personnel with necessary information to facilitate scheduling violators to appear before U.S. Magistrates. Box B of the DD Form 1805 will be marked by the issuing official for each violator requesting a hearing. Additionally procedures set forth in appendix A will be
accomplished by the official issuing violation notice.

(ii) Requested by violators by mail. (A) Voluntary appearance procedures are also available for violators who are not present at the time a DD Form 1805 is issued (i.e., parking violations) or who subsequently decide to voluntarily appear before a U.S. Magistrate rather than pay the fine indicated in the DD Form 1805.

(B) Violators who use the mail-in procedure to voluntarily appear before a U.S. Magistrate must follow the instructions in Box B of the DD Form 1805 (violer copy). The violator will be notified by the clerk of the District Court of the time and place to appear for the scheduled hearing.

§ 1290.9 Forms and reports.

(a) General information on preparation and issue of DD Form 1805. (i) The U.S. Magistrate system is based on use of a four-ply ticket designed to provide legal notice to violators and records required by the court, law enforcement authorities, and, if appropriate, the state motor vehicle departments. The DD Form 1805 is printed on chemically carbonized paper and prenumbered in series for accounting control. Heads of DLA primary level field activities are responsible for maintaining accountability for each ticket issued and stocks on hand.

(ii) DLA field activity Counsels will coordinate with the U.S. Magistrate of the judicial district in which the activity is located and maintain the information listed below:

(i) List of petty offenses for which mail-in procedure is authorized and the amount of the fine for each specific offense. The District Court address will be prestamped on the violator’s copy of the DD Form 1805 by the applicable issuing authority.

(ii) List of minor offenses requiring mandatory appearance of the violator before the magistrate. The name and location of the magistrate before whom violators will appear. Schedule will be coordinated with nearest Military Service activity and appearance will be conducted jointly whenever possible.

(b) Issue procedures for DD Form 1805.

(1) Information entered on the DD Form 1805 is dependent upon two considerations:

(i) The type of violation, i.e., parking, (such as blocking a fire lane) moving traffic violation, or nontraffic offenses.

(ii) Whether the offense cited requires the mandatory appearance of the violator before a U.S. Magistrate.

(2) Preparation and disposition of DD Form 1805:

(i) See illustration in appendix B for petty offenses where the mail-in fine procedures are authorized.

(A) The amount of the fine for a specific offense must be recorded in the lower right corner of the DD Form 1805. This amount will always be predetermined by the U.S. Magistrate and provided to on duty enforcement personnel by the activity security officer or equivalent authority. When violation notices are issued for an offense (e.g., parking violation) and the offender is absent, all entries concerning the violator will be left blank.

(B) Disposition of DD Form 1805 will be as follows:

(1) The fourth copy (envelope) will be issued to the violator or placed on the vehicle of the violator.

(2) Copies one (white copy), two (yellow copy), and three (pink copy) will be returned to the Security Officer’s office. The Security Officer will forward copies one and two, by letter of transmittal, to the appropriate U.S. District Court.

(3) Copy three will be filed at the Security Office or equivalent issuing authority. DLA Form 1454, Vehicle Registration/Driver Record, will be annotated with each traffic offense.

(ii) When DD Form 1805 is used to cite personnel for mail-in type violations, the appropriate supervisor will be provided an information copy of DLA Form 635, Security/Criminal Incident Report, denoting the date, time, place, and type of violation, and the amount of fine assessed.

(iii) Heads of DLA primary level field activities or their representative will not accept or otherwise collect any fines or keep records of fines paid or not paid. They also will take no action concerning nonpayment delinquencies.
except where warrants are subsequently issued for the violator concerned by the appropriate court authorities.

(iv) See illustrations in appendices C and D for minor offenses requiring the mandatory appearance of violators before the U.S. Magistrate:

(A) Mail-in fine procedures will not apply in mandatory appearance cases. The law enforcement authority issuing a violation notice for an offense requiring mandatory appearance of the violator, will place a check mark in “Box A”, DD Form 1805. The name and location of the U.S. Magistrate before whom the violator must appear will be inserted on the line below “United States District Court” as shown in appendix C. The date and time of the initial appearance will be entered in the space provided in “Box A”. It is the violator’s responsibility to verify the date, time, and place of required court appearances.

(B) Disposition of DD Form 1805 will be as follows:

(1) The fourth copy (envelope) will be issued to the violator.

(2) Copies one (white copy), two (yellow copy), and three (pink copy) will be returned to the Security Officer’s office. The Security Officer will forward copies one and two, by transmittal as soon as possible, to the magistrate before whom the violator is scheduled to appear.

(3) Copy three will be filed in the office of the Security Officer or equivalent issuing authority.

(C) When DD Form 1805 is used to cite personnel for mandatory appearance type offenses, the individual’s supervisor will be provided an information copy of DLA Form 635, denoting the date, time, place, and type of violation, and the date the violator is scheduled to appear before the U.S. Magistrate.

(v) Additional information governing preparation of DD Form 1805 is provided as appendix A.

APPENDICES TO PART 1290

APPENDIX A—PREPARATION GUIDE FOR DD FORM 1805, VIOLATION NOTICE

All violations will require:

Last four digits of the Social Security Number of the Issuing guard/police officer (placed in space marked “Officer No.”). Date of notice (is also violation date unless otherwise shown) and time. Description of violation, including place noted. Violation code number and issuing location code number (as determined by local Magistrate/District Court). Examples are shown at appendices B, C, and D.

In addition to above items

Parking offenses require: Vehicle description (make, color, body type), licensing state, auto license number; and, if violator is present: Driver permit number, driver address, driver’s name (all of above items and); moving traffic offenses require: Birth date and sex, race (if it appears on driver’s permit), height and weight.

Nontraffic offenses require: Statute violated, person’s name, person’s address, birth date, and sex; and, if applicable: Race, height, and weight.

All mailable disposition offenses—amount of fine (collateral).

All mandatory court offenses—Above data, as appropriate, and the place of court (i.e., Magistrate Court Address), the date and time of appearance (if known by officer), and check mark in Box “A”.

VerDate 11<MAY>2000 01:19 Aug 18, 2001 Jkt 194122 PO 00000 Frm 00275 Fmt 8010 Sfmt 8002 Y:\SGML\194122T.XXX pfrm01 PsN: 194122T
APPENDIX F

TICKET SAMPLE - A PARKING VIOLATION

Last Four Digits Officer's SSN

Officer's Signature

Nature of Violation Place Noted

Description of Automobile

Auto Tag - State and Tag Number

VIOLATION NOTICE
UNITED STATES DISTRICT COURT

VIOLATION CHARGED

John C. Doe

05/07/97

SW Side Bldg 14

VOID

AGAINST OWNER OF THIS VEHICLE
AND/OR PERSON

Chev

STATE TAG NO.

LVD 401-E03

Violation Code

Issuing Location Code:
(Ex. 1. Parking
2. Moving
3. All Other)

Amount of Fine or Collateral

Date, Time and Day of Week of Violation

Pt. 1290, App. B

VerDate 11<MAY>2000 11:16 Jul 24, 2001 Jkt 194122 PO 00000 Frm 00276 Fmt 8010 Sfmt 8006 Y:\SGML\194122T.XXX pfrm12 PsN: 194122T
APPENDIX D

TICKET SAMPLE - A NONTRAFFIC VIOLATION
(In Mandatory Appearance Category)

Last Four Digits of Officer's SSAN

Mandatory Appearance Location

Officer's Signature

Nature of Violation, Place Noted (include statute violated)

VIOLENT

SHOPLIFTING (18.7-311)

AGAINST OWNERS OF THIS VEHICLE

PLACE TIME NOTED

UNITED STATES DISTRICT COURT

200 N. WASHINGTON ST., ALEX. VA.

JOHN C. DOE

04/16

05/10/79

VOID

WILLIAM H. TAYLOR, CLERK

Manditory Appearance Time and Date

Date, Time and Day of Week of Violation

Issuing Location Code: (Ex. - "CS" Cameron Sta)

Mandatory Appearance Location

Violation Code: (Ex.) 1. - Parking

Officer's Description

and Identification

1. - Moving

Date of Violation

2. - All Other

Note: This form is subject to the Privacy Act of 1974.
PART 1292—SECURITY OF DLA ACTIVITIES AND RESOURCES

Sec.
1292.1 Purpose and scope.
1292.2 Policy.
1292.3 Background.
1292.4 Responsibilities.
1292.5 Procedures.

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


SOURCE: 46 FR 13216, Feb. 20, 1981, unless otherwise noted.

§ 1292.1 Purpose and scope.

'To establish policy, assign responsibilities, and prescribe procedures for the issuance of security regulations and orders by Heads of DLA activities. This part 1292 implements DoD Directive 5200.8, Security of Military Installations and Resources, and is applicable to HQ DLA, DLA field activities and property/places subject to the jurisdiction or administration of the Defense Logistics Agency."

§ 1292.2 Policy.

(a) Military Heads of DLA field activities are authorized to issue or approve necessary security regulations and orders for the protection of property and places under their jurisdiction/administration. Regulations and orders for the protection of property and personnel of subordinate activities headed by civilians shall be promulgated by the military commander in the chain of command immediately above such subordinate activity.

(b) Regulations and orders for the protection of property and personnel of primary level field activities (PLFAs) headed by civilians, and subordinate activities of such PLFAs which likewise are headed by civilians, shall be promulgated by the Director, DLA/Deputy Director/Deputy Director, CAS.

(c) Heads of DLA field activities that are tenants on a military reservation, post, camp, station, installation, base, or Government-owned or leased facility administered by another command or agency are responsible for protection of property and places under their command and may issue security regulations and orders in fulfillment of their responsibility to protect property and places under their jurisdiction and administration. However, separate security regulations and orders should not be issued when the host has issued security regulations and orders that afford protection to the DLA activity.

(d) Detailed physical security and emergency plans developed in conjunction with these security regulations and orders will be as prescribed by DLAM 5710.1, Physical Security Manual, and DLA War and Emergency Support Plan (WESP), part II, Annex A.

§ 1292.3 Background.

Section 21 of the Internal Security Act of 1950 (appendix A) authorizes the Secretary of Defense to designate military commanders to promulgate or approve regulations and orders for the protection of property and places under their command. DoD Directive 5200.8 designates military commanders of Army, Navy, Air Force, and Defense Agency activities as having authority to promulgate regulations and orders pursuant to the Internal Security Act of 1950.

§ 1292.4 Responsibilities.

(a) HQ DLA. (1) The Director, DLA/Deputy Director/Deputy Director, CAS will issue necessary security regulations and orders for PLFAs headed by civilians.

(2) The Command Security Officer, DLA (DLA–T) will:

(i) Provide technical staff guidance on the issuance of security regulations and orders.

(ii) Keep the Director, DLA informed of violations of regulations/orders as reported.

(b) Field Activities. (1) The Heads of Primary Level Field Activities will:

(i) Publish a physical security plan which provides proper and economical use of personnel and equipment to prevent or minimize loss or damage from theft, espionage, sabotage, and other criminal or disruptive activities.

(ii) Report violations of security regulations and orders to HQ DLA, ATTN: DLA–T, in accordance with DLAR 5705.1, Reporting of Security and Criminal Violations.
§ 1292.5  
(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 employee 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.
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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 PROVISIONS

APPENDIX G—ADMINISTRATIVE ENFORCEMENT PROVISIONS


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.
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(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.

(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

1Copies may be obtained, if needed, from Defense Logistics Agency, ATTN: DLA–XPD, Cameron Station, Alexandria, VA 22304–8100.
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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.

(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 telecommunication services are resources provided to conduct business directly in support of the Government.

(B) DLA shall pay only for the official uses of DLA telecommunication 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 telecommunication 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
§ 1293.3  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
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required to determine the validity or amount of disputed debts.

(g) **Gratuites, 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.

(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.

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Footnote 1: See footnote 1, to §1293.3(c)(1)(ii).
§ 1293.3  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 resumes, 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 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.
§ 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).

(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 officers 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)
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.

§ 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 Government services. (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.
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(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 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:

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

(ii) 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
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States is a party or has a direct and substantial interest. The law does not apply to enlisted military personnel.

1. 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 206 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 include 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 senior 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:
   b. Navy—SECONAVINST 5567.2H.
   d. Marine Corps—MC 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.
6. Restrictions Applicable to all Former Officers and Employees:
   a. 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.
   b. 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.
   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.
   e. 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.
   c. 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.
7. Additional Restrictions Applicable to Former Senior Employees:
   a. 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.
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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 leases.

(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 non-profit 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 representing 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 position is approved by the appropriate authority (DoD 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.
4. 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 H, 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-7, except those individuals in paragraph 2, below, relating to that same defense contractor.
      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.
   3. 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 Specialized Commands, the Inspector General, and the Defense Agencies, including non-appropriated 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 $300,000,000 (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.

1. 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 the 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).


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

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


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

M. Counterfeiting and forging transportation requests (18 U.S.C. 611).

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 or 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).


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 under the Foreign Agents Registration Act 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 all retired military personnel and regular enlisted personnel (U.S. Constitution, Art. I, Sec. 9, cl. 8). Exceptions to this prohibition are authorized under 57 U.S.C. 908.


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


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

A. The continued participation in employment (and any related 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 gratuities 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 DLA, and in order 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.

6. See footnote 1, to §1293.3(c)(1)(II).

DLA personnel may not accept either personal reimbursement or in-kind accommodations, sustenance, 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, sustenance, 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 other than the Government at any time. Portions of travel expenses for attendance at social events that would be reimbursable if the travel were for official purposes will be reimbursed in accordance with travel regulations.

D. PTFA personnel may accept travel, or reimbursement for travel expenses from a foreign government as provided in DLAR 1008.1, Decorations and Gifts from Foreign Governments.

E. When accommodations, sustenance, 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
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the standards of part 1293, shall promptly report the circumstances to the Designated Agency Ethics Officer or Deputy Ethics Officer for disposition determination.

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, Defense Logistics Agency (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 an 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 no 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 General 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 regulations, 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.
   g. Establishment of a qualified blind trust.

V. Public Availability of SFs 278

A. SFs 278 must be made available for public inspection 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 administrative, 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.
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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 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. 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.

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.

c. DD Forms 1555 are included as a part of the form. Additional guidance may be obtained from the Designated Agency Ethics Official or Deputy Ethics Official.

4. Detailed employees. Agreements with other DoD Component 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 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).
      (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.
      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. 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.

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 DO 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 1555):

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:
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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.
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).
      (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 notify 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.

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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.
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 memoranda of results of preliminary investigations from the IG, DoD.
12. Make a written decision and recommendation of administrative disciplinary sanctions when applicable.
13. Impose administrative disciplinary sanctions when applicable.
14. Mail copies of appeal decisions and/or any sanctions to be imposed to the suspected individuals or 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 30 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 D2e 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 receive 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, 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 an 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.