

SUBCHAPTER D—PERSONNEL, MILITARY AND CIVILIAN

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

PART 43—PERSONAL COMMERCIAL SOLICITATION ON DoD INSTALLATIONS

Sec.

- 43.1 Reissuance and purpose.
- 43.2 Applicability and scope.
- 43.3 Definitions.
- 43.4 Policy.
- 43.5 Responsibilities.
- 43.6 Procedures.

APPENDIX A TO PART 43—LIFE INSURANCE PRODUCTS AND SECURITIES

APPENDIX B TO PART 43—THE OVERSEAS LIFE INSURANCE ACCREDITATION PROGRAM

AUTHORITY: 5 U.S.C. 301.

SOURCE: 51 FR 7552, Mar. 5, 1986, unless otherwise noted.

§ 43.1 Reissuance and purpose.

This part:

(a) Consolidates into a single document parts 43 and 276 of this title and update DoD policies and procedures governing personal commercial solicitation and insurance sales on DoD installations.

(b) Continues the established annual DoD accreditation requirements for life insurance companies operating in overseas areas where neither Federal nor State consumer protection regulations apply.

§ 43.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components"). The term "Military Services," as used herein, refers to the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) The provisions of this part do not apply to services furnished by commercial companies, such as deliveries of milk, laundry, and related residence services when such services are authorized by the DoD installation commander.

(c) Nothing in this part should be construed to preclude private, non-profit, tax-exempt organizations composed of active and retired members of the Military Services from holding membership meetings which do not involve commercial solicitation on DoD installations. Attendance at these meetings shall be voluntary and the time and place of such meetings are subject to the discretion of the installation commander or his or her designee.

[51 FR 7552, Mar. 5, 1986, as amended at 52 FR 25008, July 2, 1987]

§ 43.3 Definitions.

Agent. An individual who receives remuneration as a salesperson or whose remuneration is dependent on volume of sales of a product or products.

Association. Any organization, whether or not the word "Association" appears in its title, composed of and serving exclusively members of the Military Services on active duty, in a Reserve status, in a retired status, and their dependents, which officers its members life insurance coverage, either as part of the membership dues, or as a separately purchased plan made available through an insurance carrier or the association as a self-insurer, or a combination of both.

DoD installation. Any Federally owned, leased, or operated base, reservation, post, camp, building, or other facility to which DoD personnel are assigned for duty, including barracks, transient housing, and family quarters.

DoD personnel. All active duty officers (commissioned and warrant) and enlisted members of the Military Services and all civilian employees, including nonappropriated fund employees and special Government employees of all offices, agencies, and departments carrying on functions on a Defense installation.

General agent. A person who has a legal contract to represent a company solely and exclusively.

Insurance carrier. An insurance company issuing insurance through an association or reinsuring or coinsuring such insurance.

Insurance product. A policy, annuity, or certificate of insurance issued by an insurer or evidence of insurance coverage issued by a self-insured association.

Insurer. Any company or association engaged in the business of selling insurance policies to DoD personnel.

Normal home enterprises. Sales or services which are customarily conducted in a domestic setting and do not compete with an installation's officially sanctioned commerce.

Securities. Mutual funds, stocks, bonds, or any product registered with the Securities and Exchange Commission except for any insurance or annuity product issued by a corporation subject to supervision by State insurance authorities.

Solicitation. The conduct of any private business, including the offering and sale of insurance on a military installation. Solicitation on installations is a privilege as distinguished from a right, and its control is a responsibility vested in the DoD installation commander.

§ 43.4 Policy.

It is the policy of the Department of Defense to safeguard and promote the welfare of DoD personnel as consumers by setting forth a uniform approach to the conduct of all personal commercial solicitation and sales to them by dealers and their agents.

§ 43.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)) shall be responsible for developing policies and procedures governing personal commercial solicitation activities conducted on DoD installations.

(b) The *Heads of DoD Components*, or their designees, shall assure implementation of this Directive and compliance with its provisions.

§ 43.6 Procedures.

(a) *General.* (1) No person has authority to enter upon a DoD installation and transact personal commercial so-

licitation as a matter of rights. Personal commercial solicitation will be permitted only if the following requirements are met:

(i) The solicitor is duly licensed under applicable Federal, State, or municipal laws and has complied with installation regulations in accordance with paragraph (c) of this section.

(ii) Personal commercial solicitation is permitted by the local installation commander.

(iii) A specific appointment has been made with the individual concerned and conducted in family quarters or in other areas designated by the installation commander.

(2) Those seeking to transact personal commercial solicitation on overseas installations shall be required to observe, in addition to the above, the applicable laws of the host country and, upon demand, present documentary evidence to the installation commander, or designee, that the company they represent, and its agents, meet the licensing requirements of the host country.

(3) Organizations involved in sales are permitted to display literature on DoD installations in locations selected by the commander.

(b) *Life insurance products and securities.* (1) Life insurance products and securities offered and sold to DoD personnel must meet the prerequisites described in Appendix A.

(2) Insurers and their agents are authorized to solicit on DoD installations provided they are licensed under the insurance laws of the State in which the installation is located. In overseas areas, DoD Components shall limit this authorization to those insurers accredited under the provisions of Appendix B.

(3) The conduct of all insurance business on DoD installations shall be by specific appointment. When establishing the appointment, insurance agents must identify themselves to the prospective purchaser as an agent for a specific company.

(4) Installation commanders shall designate areas where interviews by appointment may be conducted. Invitations to conduct interviews shall be extended to all agents on an equitable

basis. Where space and other considerations limit the number of agents using the interviewing area, the installation commander may develop and publish local policy consistent with this concept.

(5) Installation commanders shall make disinterested third-party counseling available to DoD personnel desiring counseling.

(6) In addition to the solicitation prohibitions contained in paragraph (d) of this section, DoD Components shall prohibit:

(i) DoD personnel from representing any insurer, or dealing directly or indirectly with any insurer or any recognized representative of any insurer on the installation, as an agent or in any official or business capacity with or without compensation.

(ii) The use of an agent as a participant in any Military Services-sponsored insurance education or orientation program.

(iii) The designation of any agent or the use by any agent of titles such as "Battalion Insurance Counselor," "Unit Insurance Advisor," "Service-men's Group Life Insurance Conversion Consultant," etc.

(iv) The assignment of desk space for interviews for other than a specific pre-arranged appointment. During such appointment, the agent shall not be permitted to display desk or other signs announcing his or her name or company affiliation.

(v) The use of the "Daily Bulletin" or any other notice, official or unofficial, announcing the presence of an agent and his or her availability.

(c) *Supervision of on-base commercial activities.* (1) All pertinent installation regulations shall be posted in a place easily accessible to those conducting personal commercial solicitation activities on the installation.

(2) When practicable, as determined by the installation commander, a copy of the applicable installation regulations shall be given to those conducting on-base commercial activities with the warning that any infractions of the regulations will result in the withdrawal of solicitation privileges.

(d) *Prohibited practices.* The following commercial solicitation practices shall be prohibited on all DoD installations:

(1) Solicitation of recruits, trainees, and transient personnel in a "mass" or "captive" audience.

(2) Making appointments with or soliciting military personnel who are in an "on-duty" status.

(3) Soliciting without appointment in areas utilized for the housing or processing of transient personnel, in barracks areas used as quarters, in unit areas, in family quarters areas, and in areas provided by installation commanders for interviews by appointment.

(4) Use of official identification cards by retired or reserve members of the Military Services to gain access to DoD installations for the purpose of soliciting.

(5) Procuring, or attempting to procure, or supplying roster listings of DoD personnel for purposes of commercial solicitation, except for releases granted in accordance with DoD Directive 5400.7.

(6) Offering unfair, improper, and deceptive inducements to purchase or trade.

(7) Using rebates to facilitate transactions or to eliminate competition.

(8) Using manipulative, deceptive, or fraudulent devices, schemes, or artifices, including misleading advertising and sales literature.

(9) Using oral or written representations to suggest or give the appearance that the Department of Defense sponsors or endorses any particular company, its agents, or the goods, services, and commodities it sells.

(10) Full-time DoD personnel making personal commercial solicitations or sales to DoD personnel who are junior in rank or grade as provided in DoD Directive 5500.7¹.

(11) Entering into any unauthorized or restricted area.

(12) Using any portion of installation facilities, including quarters, as a showroom or store for the sale of goods or services, except as specifically authorized by DoD Directives 1330.9² and

¹Copies may be obtained, if needed, from the US Naval Publications and Forms Center 5801 Tabor Avenue, ATTN: Code 301, Philadelphia PA 19120.

²⁻⁵See footnote 1 to paragraph (d)(10) of this section.

§ 43.6

32 CFR Ch. I (7-1-03 Edition)

1330.17³ and DoD Instructions 1330.18⁴ and 1000.15⁵. This is not intended to preclude normal home enterprises, providing applicable State and local laws are complied with.

(13) Soliciting door to door.

(14) Advertising addresses or telephone numbers of commercial sales activities conducted on the installation, except for authorized activities conducted by members of military families residing in family housing.

(e) *Denial and revocation of on-base solicitation.* (1) The installation commander shall deny or revoke permission to a company and its agents to conduct commercial activities on the base if such action is in the best interests of the command. The grounds for taking this action shall include, but not be limited to, the following:

(i) Failure to meet the licensing and other regulatory requirements prescribed in paragraphs (a) and (b) of this section.

(ii) Commission of any of the practices prohibited in paragraphs (b)(6) and (d) of this section.

(iii) Substantiated complaints or adverse reports regarding quality of goods, services, and commodities and the manner in which they are offered for sale.

(iv) Knowing and willful violations of Pub. L. 90-321.

(v) Personal misconduct by a company's agent or representative while on the installation.

(vi) The possession of or any attempt to obtain supplies of allotment forms used by the Military Departments, or possession or use of facsimiles thereof.

(vii) Failure to incorporate and abide by the Standards of Fairness policies contained in DoD Directive 1344.9.⁶

(2) In withdrawing solicitation privileges, the commander shall determine whether to limit it to the agent alone or extend it to the company the agent represents. This decision shall be communicated to the agent and to the company the agent represents and shall be based on the circumstances of the particular case, including, among others, the nature of the violations, frequency of violations, the extent to

which other agents of the company have engaged in such practices, and any other matters tending to show the company's culpability.

(i) Upon withdrawing solicitation privileges, the commander shall promptly inform the agent and the company the agent represents orally or in writing.

(ii) If the grounds for the action involve the eligibility of the agent or company to hold a State license or to meet other regulatory requirements, the appropriate authorities will be notified.

(iii) The commander shall afford the individual or company an opportunity to show cause why the action should not be taken. To "show cause" means an opportunity must be given for the grievated party to present facts on his or her behalf on an informal basis for the consideration of the installation commander.

(iv) If warranted, the commander shall recommend to the Military Department concerned that the action taken be extended to other DoD installations. If so approved, and when appropriate, the Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)), following consultation with the Military Department concerned, shall order the action extended to other Military Departments.

(v) All denials or withdrawals of privileges will be for a set period of time, at the end of which the individual may reapply for permission to solicit through the Military Department originally imposing the restriction. Denial or withdrawal of soliciting privileges may or may not be continued, as warranted.

(vi) When such denials or withdrawals are lifted, the Office of the ASD(FM&P) shall be notified for parallel action if the same denial or withdrawal has been extended to other Military Departments.

(vii) The commanding officer may, if circumstances dictate, make immediate suspensions of solicitation privileges for a period of 30 days while an investigation is conducted. Exceptions to this amount of time must be approved by the Military Department concerned.

⁶See footnote 1 to paragraph (d)(10) of this section.

(3) Upon receipt of the information outlined above, the Secretaries of the Military Departments may direct the Armed Forces Disciplinary Control Boards in all geographical areas in which the grounds for action have occurred to consider the charges and take appropriate action.

(f) *Advertising policies.* (1) The Department of Defense expects voluntary observance of the highest business ethics both by commercial enterprises soliciting DoD personnel through advertisements in unofficial military publications, and by the publishers of those publications in describing goods, services, and commodities, and the terms of the sale (including guarantees, warranties, and the like).

(2) The advertising of credit terms shall conform to the provisions of Pub. L. 90-321 as implemented by Regulation Z.

(g) *Educational programs.* (1) The Military Departments shall develop and disseminate information and education programs for members of the Military Services on how to conduct their personal commercial affairs, including such subjects as the Truth-in-Lending Act, insurance, Government benefits, savings, and budgeting. The services of representatives of credit unions, banks, and those nonprofit military associations (provided such associations are not underwritten by a commercial insurance company) approved by the Military Departments may be used for this purpose. Under no circumstances shall commercial agents, including representatives of loan, finance, insurance or investment companies, be used for this purpose. Educational materials prepared or presented by outside organizations expert in this field may, with appropriate disclaimers and permission, be adapted or used if approved by the Military Department concerned. Presentations by approved organizations shall only be conducted at the express request of the installation commander.

(2) The Military Departments shall also make qualified personnel and facilities available for individual counseling on loans and consumer credit transactions in order to encourage thrift and financial responsibility and promote a better understanding of the

wise use of credit, as prescribed in DoD Directive 1344.9.⁷

(3) Military members shall be encouraged to seek advice from a legal assistance officer or their own lawyer before making a substantial loan or credit commitment.

(4) Each Military Department shall provide advice and guidance to military personnel who have a complaint under Pub. L. 90-321 or who allege a criminal violation of its provisions, including referral to the appropriate regulatory agency for processing of the complaint.

[51 FR 7552, Mar. 5, 1986, as amended at 52 FR 25008, July 2, 1987]

APPENDIX A TO PART 43—LIFE INSURANCE PRODUCTS AND SECURITIES

A. LIFE INSURANCE PRODUCT CONTENT PREREQUISITES

1. Insurance products, other than certificates or other evidence of insurance issued by a self-insured association, offered and sold worldwide to personnel on DoD installations, must:

a. Comply with the insurance laws of the State or country in which the installation is located and the procedural requirements of this Directive.

b. Contain no restrictions by reason of military service or military occupational specialty of the insured, unless such restrictions are clearly indicated on the face of the contract.

c. Plainly indicate any extra premium charges imposed by reason of military service or military occupational specialty.

d. Contain no variation in the amount of death benefit or premium based upon the length of time the contract has been in force, unless all such variations are clearly described therein.

2. To comply with paragraphs A.1.b., c., and d., above, an appropriate reference stamped on the face of the contract shall draw the attention of the policyholder to any extra premium charges and any variations in the amount of death benefit or premium based upon the length of time the contract has been in force.

3. Variable life insurance products may be offered provided they meet the criteria of the appropriate insurance regulatory agency and the Securities and Exchange Commission.

4. Premiums shall reflect only the actual premiums payable for the life insurance product.

⁷See footnote 1 to § 43.6(d)(10).

B. SALE OF SECURITIES

1. All securities must be registered with the Securities and Exchange Commission.
2. All sales of securities must comply with existing and appropriate Securities and Exchange Commission regulations.
3. All securities representatives must apply directly to the commander of the installation on which they desire to solicit the sale of securities.
4. Where the accredited insurer's policy permits, an overseas accredited life insurance agent—if duly qualified to engage in security activities either as a registered representative of the National Association of Securities Dealers or as an associate of a broker or dealer registered with the Securities and Exchange Commission—may offer life insurance and securities for sale simultaneously. In cases of commingled sales, the allotment of pay for the purchase of securities cannot be made to the insurer.

C. USE OF THE ALLOTMENT OF PAY SYSTEM

1. Allotments of military pay for life insurance products shall be made in accordance with DoD Directive 7330.1.⁸
2. For personnel in pay grades E-1, E-2, and E-3, at least seven days shall elapse for counseling between the signing of a life insurance application and the certification of an allotment. The purchaser's commanding officer may grant a waiver of this requirement for good cause, such as the purchaser's imminent permanent change of station.

D. ASSOCIATION—GENERAL

The recent growth and general acceptability of quasimilitary associations offering various insurance plans to military personnel are acknowledged. Some associations are not organized within the supervision of insurance laws of either a State or the Federal Government. While some are organized for profit, others function as nonprofit associations under Internal Revenue Service regulations. Regardless of the manner in which insurance plans are offered to members, the management of the association is responsible for complying fully with the instructions contained herein and the spirit of this part.

APPENDIX B TO PART 43—THE OVERSEAS LIFE INSURANCE ACCREDITATION PROGRAM

A. ACCREDITATION CRITERIA

1. *Initial Accreditation.*
 - a. Insurers must demonstrate continuous successful operation in the life insurance business for a period of not less than five

years on December 31 of the year preceding the date of filing the application.

- b. Insurers must be listed in Best's Life-Health Insurance Reports and be assigned a rating of B+ (Very Good) or better for the business year preceding the Government's fiscal year for which accreditation is sought.

2. *Reaccreditation.*

- a. Insurers must demonstrate continuous successful operation in the life insurance business, as described in subsection A.1.a., above.
- b. Insurers must retain a Best's rating of B+ or better, as described in paragraph A.1.b., above.
- c. Insurers must establish an agency sales force in one of the overseas commands within two years of initial accreditation.

3. *Waiver Provisions.*

Waivers of the initial accreditation and reaccreditation provisions will be considered for those insurers demonstrating substantial compliance with the aforementioned criteria.

B. APPLICATION INSTRUCTIONS

1. *Applications Filed Annually.* During the months of May and June of each year insurers may apply for solicitation privileges for personnel assigned to U.S. military installations in foreign areas for the fiscal year beginning the following October 1.

2. *Application Prerequisites.* A letter of application, signed by the president, vice president, or designated official of the insurance company shall be forwarded to the Assistant Secretary of Defense (Force Management and Personnel), Attention: Personnel Administration and Services Directorate, ODASD(MM&PP), The Pentagon, Washington, DC 20301-4000. The letter shall contain the information set forth below, submitted in the order listed. Where not applicable, so state.

- a. The overseas commands (e.g., European, Pacific, Atlantic, Southern) where the company is presently soliciting, or planning to solicit on U.S. military installations.

b. A statement that the company has complied with, or will comply with, the applicable laws of the country or countries wherein it proposes to solicit. "Laws of the country" means all natural, provincial, city, or county laws or ordinances of any country, as applicable.

c. A statement that the products to be offered for sale conform to the standards prescribed in Appendix A and contain only the standard provisions such as those prescribed by the laws of the State where the company's headquarters are located.

d. A statement that the company shall assume full responsibility for the acts of its agents with respect to solicitation. Sales personnel will be limited in numbers to one general agent and no more than 50 sales personnel for each overseas area. If warranted,

⁸See footnote 1 to §43.6(d)(10).

the number of agents may be further limited by the overseas command concerned.

e. A statement that the company will not utilize agents who have not been accredited by the appropriate overseas command to sell to DoD personnel on or off its DoD installations.

f. Any explanatory or supplemental comments that will assist in evaluating the application.

g. If the Department of Defense requires facts or statistics beyond those normally involved in accreditation, the company shall make separate arrangements to provide them.

h. A statement that the company's general agent and other accredited agents are appointed in accordance with the prerequisites established in section C., below.

3. If a company is a life insurance company subsidiary, it must be accredited separately on its own merits.

C. AGENT REQUIREMENTS

Unified commanders shall apply the following principles:

1. An agent must possess a current State license. The overseas commander may waive this requirement for an accredited agent continuously residing and successfully selling life insurance in foreign areas, who, through no fault of his or her own, due to State law (or regulation) governing domicile requirements, or requiring that the agent's company be licensed to do business in that State, forfeits eligibility for a State license. The request for a waiver shall contain the name of the State or jurisdiction which would not renew the agent's license.

2. General agents and agents shall represent only one accredited commercial insurance company. This requirement may be waived by the overseas commander if multiple representation can be proven to be in the best interest of DoD personnel.

3. An agent must have at least one year of successful life insurance underwriting in the United States or its territories, generally within the five years preceding the date of application, in order to be designated as accredited and employed for overseas solicitation.

4. Appropriate overseas commanders shall exercise further agent control procedures as deemed necessary.

5. An agent, once accredited in an overseas area, may not change affiliation from the staff of one general agent to another and retain accreditation, unless the previous employer certifies in writing that the release is without justifiable prejudice. Unified commanders will have final authority to determine justifiable prejudice. Indebtedness of an agent to a previous employer is an example of justifiable prejudice.

D. ANNOUNCEMENT OF FINDINGS

1. Accreditation by the Department of Defense upon annual applications of insurers shall be announced as soon as practicable by a notice to each applicant and by a listing released annually in September to the appropriate overseas commander. This approval does not constitute DoD endorsement of the insurer. Any advertising by insurers which suggests such endorsement is prohibited.

2. In the event accreditation is denied, specific reasons for such findings shall be submitted to the applicant.

a. Upon receipt of notification of an unfavorable finding, the insurer shall have 30 days from the receipt of such notification (forwarded certified mail, return receipt requested) in which to request reconsideration of the original decision. This request must be accompanied by substantiating data or information in rebuttal of the specific reasons upon which the adverse findings are based.

b. Action by the Assistant Secretary of Defense (Force Management and Personnel) on appeal is final.

c. If the applicant is presently accredited as an insurer, up to 90 days from final action on an unfavorable finding shall be granted in which to close out operations.

3. Upon receiving the annual letter of accreditation, each company shall send to the applicable unified commander a verified list of agents currently accredited for overseas solicitation. Where applicable, the company shall also include the names of new agents for whom original accreditation and permission to solicit on base is requested. Insurers initially accredited will be furnished instructions by the Department of Defense for agent accreditation procedures in overseas areas.

4. Material changes affecting the corporate status and financial conditions of the company which may occur during the fiscal year of accreditation must be reported as they occur.

a. The Department of Defense reserves the right to terminate accreditation if such material changes appear to substantially affect the financial and operational criteria described in section A., above, on which accreditation was based.

b. Failure to report such material changes can result in termination of accreditation regardless of how it affects the criteria.

5. If an analysis of information furnished by the company indicates that unfavorable trends are developing which may possibly adversely affect its future operations, the Department of Defense may, at its option, bring such matters to the attention of the company and request a statement as to what action, if any, is contemplated to deal with such unfavorable trends.