

obtained as a result of the predecision notice or interview, or both.

(4) In the reconsideration elimination model, we will modify the disability determination process by eliminating the reconsideration step of the administrative review process. If you receive an initial determination on your claim for SSI payments based on disability, and you are dissatisfied with the determination, we will notify you that you may request a hearing before an administrative law judge. If you request a hearing before an administrative law judge, we will apply our usual procedures contained in subpart N of this part.

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Parts 83 and 84**

[DoD Directive 5500.7 and DoD 5500.7-R; 0790-AG12, and 0790-AF83]

**Standards of Conduct and Joint Ethics Regulation**

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Final rule and request for comments.

**SUMMARY:** The changes to these parts, concerning standards of conduct and joint ethics, correct typographical errors and update the regulations in accordance with changes to related statutes. The changes are intended to keep these parts current.

**DATES:** These changes are effective November 2, 1994. Comments must be received no later than June 23, 1995.

**ADDRESSES:** Forward comments to DoD Standards of Conduct Office, Office of General Counsel, 1600 Defense Pentagon, Washington, DC 20301-1600.

**FOR FURTHER INFORMATION CONTACT:** Randi Elizabeth DuFresne, DoD Standards of Conduct Office, (703) 697-5305, FAX (703) 697-1640.

**SUPPLEMENTARY INFORMATION:** On March 21, 1994, the Department of Defense published a final rule and request for comments on Standards of Conduct and Joint Ethics Regulation. See 59 FR 13212 and 13213. Two public comments were received. Both expressed appreciation of the regulation and required no further action.

**Executive Order 12866**

It has been determined that these are not significant changes as defined under

section 3(f)(1) through 3(f)(4) of Executive Order 12866.

**Regulatory Flexibility Act**

It has been certified that these changes are not subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6) because they do not have a significant economic impact on a substantial number of small entities. The changes affects only DoD employees and are to update existing regulations in keeping with changes to related statutes.

**Paperwork Reduction Act**

It has been certified that these changes impose no reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3502).

**List of Subjects in 32 CFR Parts 83 and 84**

Conflicts of interest, Government procurement.

Accordingly, 32 CFR parts 83 and 84 are amended as follows:

**PART 83—[AMENDED]**

1. The authority citation for part 83 continues to read as follows:

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

**§ 83.1 [Amended]**

2. Section 83.1(c) is amended by removing "August 1989."

**PART 84—[AMENDED]**

1. The authority citation for part 84 continues to read as follows:

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

**§ 84.4 [Amended]**

2. Section 84.4 is amended in paragraphs (a)(1) and (a)(4) after the acronyms "DAEO" by adding "or designee".

3. Section 84.7 is amended in paragraph (c)(1) by removing "735.208" and adding in its place "735.201", in paragraph (c)(3) by removing "406" adding in its place "40b"; and by revising paragraph (c)(1)(ii), by removing the period at the end of paragraph (c)(1)(iii) and adding ";or" and by adding paragraph (c)(1)(iv) to read as follows:

**§ 84.7 DoD guidance.**

\* \* \* \* \*

(c) \* \* \*  
(1) \* \* \*

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

\* \* \* \* \*

(iv) Purchases of lottery tickets authorized by any State from blind vendors licensed to operate vending facilities in accordance with 20 U.S.C. 107a(5).

\* \* \* \* \*

4. Section 84.9 is amended in paragraph (b) after the word "entities" by removing the word "where" and adding in its place "when appointed by the head of the DoD Component command or organization who determines"; in paragraph (k)(1)(vi) after the word "composed" by adding "primarily"; in paragraph (k)(2) by revising "paragraph (d)" to read "paragraph (f)"; in paragraph (l)(1) introductory text by revising "DoD equipment" to read "DoD facilities and equipment"; in paragraph (l)(1)(ii) after the word "event" by adding "(OPM generally has no objection to support of events that do not specifically target Federal employees for fundraising)"; and by revising paragraphs (l)(1)(vi), (l)(1)(vii) and (m) introductory text to read as follows:

**§ 84.9 Official participation in non-Federal entities.**

\* \* \* \* \*

(l) \* \* \*  
(1) \* \* \*

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

\* \* \* \* \*

(vii) Except for a charitable fundraising event that meets all other criteria for DoD participation, no admission fee (beyond what will cover the reasonable costs of sponsoring the event) is charged for the event, no admission fee (beyond what will cover the reasonable costs of sponsoring the event) is charged for the portion of the event supported by the DoD, or DoD support to the event is incidental to the entire event in accordance with public affairs guidance.

\* \* \* \* \*

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

\* \* \* \* \*

**Footnotes 14 through 26 [Redesignated as 15 through 27].**

5. Redesignate footnotes 14 through 26 as footnotes 15 through 27.

6. Section 84.10 is amended in paragraph (a)(2) introductory text by removing “, in accordance with FPM 252 and 630<sup>12</sup> and related DoD regulations,” and footnote 12; by redesignating paragraph (a)(2)(ii) as paragraph (a)(2)(iii); by revising the first sentence in paragraph (b); by redesignating footnote 13 as footnote 12 in paragraph (g)(5); and by adding a new paragraph (a)(2)(ii) and revising paragraphs (a)(3) and (h)(3) to read as follows:

**§ 84.10 Personal participation in non-Federal entities.**

\* \* \* \* \*

- (a) \* \* \*
- (2) \* \* \*

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

\* \* \* \* \*

(3) *Community support activities.* Agency designees may permit excused absences for reasonable periods of time for their DoD employees to voluntarily participate in community support activities that promote civic awareness and uncompensated public service such as disaster relief events, blood donations, and voting and registering to vote.

\* \* \* \* \*

(b) \* \* \* Except for such service in the organizations listed in § 84.9(k)(1), a DoD employee may not serve in a personal capacity as an officer, member of the Board of Directors, or in any other similar position in any non-Federal entity offered because of their DoD assignment or position. \* \* \*

\* \* \* \* \*

- (h) \* \* \*

(3) *Honoraria.* Compensation for a lecture, speech or writing may be restricted by the honoraria prohibition of 5 U.S.C. App. (Ethics in Government Act of 1978, sec 501); 5 CFR part 2636, and 5 CFR 2635.807. However, the U.S.

Office of Government Ethics, by memorandum dated February 2, 1994,<sup>13</sup> determined in accordance with a Department of Justice letter to the Director, Office of Government Ethics,<sup>14</sup> that the Department of Justice will not seek to impose penalties for violations of 5 U.S.C. App. (Ethics in Government Act of 1978, sec 501); with respect to receipt of honoraria between September 28, 1993 and the date on which the Supreme Court issues its decision on this matter.

**§ 84.16 [Amended]**

7. Section 84.16 is amended by removing paragraph (j)(1), redesignating paragraphs (j)(2) through (j)(4) as paragraphs (j)(1) through (j)(3).

**§ 84.17 [Amended]**

8. Section 84.17 is amended by removing “733” and adding in its place “734”.

9. Section 84.18 is revised to read as follows:

**§ 84.18 Political activities of civilian DoD employees.**

(a) *Policy.*

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

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

(3) It is DoD policy to encourage civilian DoD employees and members of the Armed Forces to carry out the obligations of citizenship to the maximum extent possible consistent with the restrictions imposed by law and by this part.

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

- (1) Be candidates for public office in nonpartisan elections;
- (2) Register and vote as they choose;
- (3) Assist in voter registration drives;
- (4) Express opinions about candidates and issues;
- (5) Contribute money to political organizations;

<sup>13</sup> See footnote 2 to § 84.4(d)(7).

<sup>14</sup> See footnote 2 to § 84.4(d)(7).

(6) Attend political fundraising functions;

(7) Attend and be active at political rallies and meetings;

(8) Join and be an active member of a political party or club;

(9) Sign nominating petitions;

(10) Campaign for or against referendum questions, constitutional amendments, or municipal ordinances;

(11) Campaign for or against candidates in partisan elections (see paragraph (b)(3) of this section);

(12) Make campaign speeches for candidates in partisan elections (see paragraph (b)(3) of this section);

(13) Distribute campaign literature in partisan elections (see paragraph (b)(3) of this section);

(14) Hold office in political clubs or parties (see paragraph (b)(3) of this section).

(c) *Limitations.*

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

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

(3) The following DoD employees (except for Presidential appointees who are confirmed by and with the consent of the Senate) are prohibited from engaging in the activities described in paragraphs (a)(11) through (a)(14) of this section:

- (i) Employees of the National Security Agency;
- (ii) Employees of the Defense Intelligence Agency;
- (iii) Career members of the senior executive service;
- (iv) Administrative Law Judges; and
- (v) Contract appeals board members.

(d) *Prohibited activities.* Civilian DoD employees may not:

- (1) Use official authority or influence for the purpose of interfering with or affecting the result of an election;
- (2) Collect political contributions unless both the collector and the donor are members of the same Federal labor organization or employee organization and the donor is not a subordinate;
- (3) Knowingly solicit or discourage the political activity of any person who has business with DoD;

(4) Engage in political activity while on duty;

(5) Engage in political activity while in any Federal workplace;

(6) Engage in political activity while wearing an official uniform or displaying official insignia identifying the office or position of the DoD employee;

(7) Engage in political activity while using a Government owned or leased vehicle;

(8) Solicit political contributions from the general public;

(9) Be a candidate for public office in partisan elections;

(10) Wear political buttons on duty;

(11) Contribute to the political campaign of another Federal Government employee who is in the DoD employee's chain of command or supervision or who is the employing authority, including the political campaign to re-elect the President or Vice President.

(e) *DoD employees residing in designated localities.* Notwithstanding the prohibitions of paragraph (c) of this section, a DoD employee (except those DoD employees listed in paragraph (b)(3) of this section) who resides in a municipality or political subdivision, either in the immediate vicinity of the District of Columbia or in which the majority of voters are employed by the Federal Government, as designated by OPM under 5 CFR 733.102(d) may:

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

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

(f) *Political recommendations.*

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

(i) Competitive service employees;

(ii) Career appointees in the Senior Executive Service; and

(iii) Excepted service employees other than one who is appointed by the President or whose position has been determined to be of confidential, policy-determining, policy-making, or policy-advocating character.

(2) Each personnel action with respect to a DoD employee or applicant, as

described in paragraph (c)(1) of this section, shall be taken without regard to any recommendation or statement, oral or written, made by the following types of individuals:

(i) Members of Congress or Congressional employees;

(ii) Elected officials of any State (including the District of Columbia and the Commonwealth of Puerto Rico), county, city, or other subdivision thereof;

(iii) Officials of political parties; or

(iv) Other individuals or organizations making such recommendations or statements on the basis of the party affiliations of the DoD employee or applicant recommended.

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

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

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

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

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

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

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

10. Section 84.21 is amended in paragraph (a)(1)(iv) after the first time the word "or" appears by adding "civilian DoD employees under other pay systems" and by revising the heading and paragraph (g)(2)(iv) to read as follows:

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

\* \* \* \* \*

(g) \* \* \*

(2) \* \* \*

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

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

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

\* \* \* \* \*

11. In § 84.22, paragraph (a)(2) introductory text is redesignated as paragraph (a)(2)(i) and paragraph (a)(2)(ii) is added to read as follows:

**§ 84.22 Confidential financial disclosure report (SF 450).**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

12. Section 84.23 is amended in paragraph (a) introductory text by removing "August 1989" and paragraphs (d)(1) and (d)(2) are revised to read as follows:

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

\* \* \* \* \*

(d) \* \* \*

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

(2) The DoD Component DAEO or designee shall ensure that appropriate data from each DD Form 1787 is

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

13. Section 84.33 is amended by removing paragraphs (a)(1)(ii) and (a)(3) and removing the paragraph designation "(i)" in paragraph (a)(1); by redesignating paragraphs (a)(1)(A) through (a)(1)(C) as paragraphs (a)(1)(i) through (a)(1)(iii); in paragraph (a)(2) by revising "these two statutes" to read "this statute"; in newly designated paragraph (a)(1)(ii) remove "DoD" and add in its place "DoJ"; and by revising paragraph (a) introductory text to read as follows:

**§ 84.33 Restrictions on retired military members.**

(a) 18 U.S.C. 281(a). This statute restricts the selling activities of retired military officers. The provisions of this statute were suspended by the Federal Acquisition Streamlining Act of 1994 through December 31, 1996.

14. Section 84.36 (d)(1) through (d)(3) are revised to read as follows:

**§ 84.36 Reports of DoD and defense related employment (DD Form 1787).**

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

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

(3) If steps ensuring compliance with applicable law and regulations are not taken by the date established, the Ethics Counselor shall report the matter to the DoD Component DAEO and take whatever other action might be required

in accordance with subchapter J of this part.

**§ 84.38 [Amended]**

15. Section 84.38 is amended in paragraph (c)(2) by revising "shall" to read "may".

**Appendix A to Part 84 [Amended]**

16. Appendix A to Part 84 is amended by removing paragraph (f) of section 1.

Dated: April 18, 1995.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 95-9967 Filed 4-21-95; 8:45 am]

BILLING CODE 5000-04-M

**32 CFR Part 298**

**[DIS Regulation 01-12]**

**Defense Investigative Service Freedom of Information Act Program**

**AGENCY:** Defense Investigative Service (DIS), DOD.

**ACTION:** Final rule.

**SUMMARY:** This revision regarding implementation of the DIS Freedom of Information Act program makes organizational and administrative changes and conforms these regulations to the DOD Freedom of Information Act program.

**EFFECTIVE DATE:** April 24, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dale L. Hartig, Chief, Office of Information and Public Affairs, (703) 325-5324.

**SUPPLEMENTARY INFORMATION:** It has been certified that this final rule does not exert a significant economic impact on a substantial number of small entities. This determination is based upon the fact that the rule merely recodifies the procedural aspects of the Defense Investigative Service Freedom of Information Act Program, which includes guidance on how and from whom to request information pertaining to the agency; imposes no new requirements, rights, or benefits on small entities; and will have neither a beneficial nor adverse affect on small entities. This rule conforms to 32 CFR part 286. A notice of proposed rulemaking was published in the **Federal Register** on May 6, 1994 (59 FR 23649).

Interested parties were given until July 5, 1994 to respond. No comments were received.

**List of Subjects in 32 CFR Part 298**

Freedom of information.

Accordingly, 32 CFR Part 298 is revised to read as follows:

**PART 298—DEFENSE INVESTIGATIVE SERVICE (DIS) FREEDOM OF INFORMATION ACT PROGRAM**

Sec.

- 298.1 Purpose.
- 298.2 Organization.
- 298.3 Records maintained by DIS.
- 298.4 Procedure for release of DIS records.
- 298.5 Information requirements.

**Authority:** 5 U.S.C. 552.

**§ 298.1 Purpose.**

This part states the intent of the agency regarding policy and procedures for the public to obtain information from the Defense Investigative Service (DIS) under the Freedom of Information Act (FOIA).

**§ 298.2 Organization.**

(a) The DIS organization includes a Headquarters located in Alexandria, Virginia; four Regions and one operational area with subordinate operating locations throughout the Continental United States (CONUS), Alaska, Hawaii, and Puerto Rico; the Defense Industrial Security Clearance Office (DISCO), Columbus, Ohio; the Personnel Investigations Center (PIC) and National Computer Center (NCC) in Baltimore, Maryland; Office of Industrial Security International Europe (OISI-E), located in Brussels, Belgium with a subordinate office in Mannheim, Germany; Office of Industrial Security International Far East (OISI-FE) located at Camp Zama, Japan; and the Department of Defense Security Institute, located in Richmond, Virginia.

(b) A copy of the DIS Directory showing the addresses of all offices, is available to the public upon request and may be obtained by following the procedures outlined in § 298.4. The names and duty addresses of DIS personnel serving overseas are not released.

**§ 298.3 Records maintained by DIS.**

It is the policy of DIS to make publicly available all information which may be released under the Freedom of information Act (FOIA), consistent with its other responsibilities. In implementing this policy, DIS follows the procedures set forth in 32 CFR part 286. DIS maintains the following records which may be of interest to the public:

(a) The Defense Clearance and Investigations Index (DCII), which contains references to investigative records created and held by DoD Components. The records indexed are primarily those prepared by the