

(1) Oversee the nationwide competition to select NDSEG fellowship recipients.

(2) Determine those science, engineering and other fields of priority interest to the Department of Defense in which NDSEG fellowships are to be awarded.

(3) Prepare a regulation, in accordance with 10 U.S.C. 2191, that prescribes.

(i) Procedures for selecting NDSEG fellows.

(ii) The basis for determining the amounts of NDSEG fellowships.

(iii) The maximum NDSEG fellowship amount that may be awarded to an individual during an academic year.

## PART 169—COMMERCIAL ACTIVITIES PROGRAM

Sec.

169.1 Purpose.

169.2 Applicability and Scope.

169.3 Definitions.

169.4 Policy.

169.5 Responsibilities.

AUTHORITY: 5 U.S.C. 301 and 552 and Pub. L. 93-400.

SOURCE: 54 FR 13373, Apr. 3, 1989, unless otherwise noted.

### § 169.1 Purpose.

This document:

(a) Revises 32 CFR part 169.

(b) Updates DoD policies and assigns responsibilities for commercial activities (CAs) as required by E.O. 12615, Pub. L. 100-180, sec. 1111, and OMB Circular A-76.

### § 169.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) Encompasses DoD policy for CAs in the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Is not mandatory for CAs staffed solely with DoD civilian personnel paid by nonappropriated funds, such as military exchanges. However, this part is mandatory for CAs when they are staffed partially with DoD civilian per-

sonnel paid by or reimbursed from appropriated funds, such as libraries, open messes, and other morale, welfare, and recreation (MWR) activities. When related installation support functions are being cost-compared under a single solicitation, a DoD Component may decide that it is practical to include activities staffed solely with DoD civilian personnel paid by nonappropriated funds.

(d) Does not apply to DoD governmental functions as defined § 169.3.

(e) Does not apply when contrary to law, Executive orders, or any treaty or international agreement.

(f) Does not apply in times of a declared war or military mobilization.

(g) Does not provide authority to enter into contracts.

(h) Does not apply to the conduct of research and development, except for severable in-house CAs that support research and development, such as those listed in enclosure 3 of DoD Instruction 4100.33<sup>1</sup> (32 CFR part 169a).

(i) Does not justify conversion to contract solely to avoid personnel ceilings or salary limitations.

(j) Does not authorize contracts that establish an employer-employee relationship between the Department of Defense and contractor employees, as described in FAR 37.104.

### § 169.3 Definitions.

*Commercial Activity Review.* The process of evaluating CAs for the purpose of determining whether or not a cost comparison will be conducted.

*Commercial Source.* A business or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico that provides a commercial product or service.

*Conversion to Contract.* The change-over of a CA from performance by DoD personnel to performance under contract by a commercial source.

*Conversion to In-House.* The change-over of a CA from performance under

<sup>1</sup>Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, ATTN: Code 1053, 5801 Tabor Avenue, Philadelphia, PA 19120.