

(4) DD Forms 1787 shall be retained by SOCO for six years from the date of filing with SOCO.

(e) *Public availability of reports.* DD Forms 1787 must be made available for public examination upon request after the reports are filed with SOCO, unless exempted pursuant to law. Reporting individuals are personally responsible for ensuring that their reports are accurate, complete, and timely.

(f) *Penalties—(1) Administrative penalties.* Anyone failing to file a report or falsifying or failing to file required information, may be subject to any applicable personnel or other action in accordance with applicable law or regulation, including adverse action. An administrative penalty of up to \$10,000 may be imposed in accordance with 10 U.S.C. 2397.

(2) *Criminal liability.* Any individual who knowingly or willfully falsifies information on a report may be subject to criminal prosecution under 18 U.S.C. 1001.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20032, Apr. 24, 1995]

Subpart J—Enforcement

§ 84.37 Enforcement of the provisions of the Joint Ethics Regulation.

Penalties for violation of the rules republished in, and prescribed by, this part include the full range of applicable criminal, civil and administrative sanctions for current DoD employees, including punishment under the UCMJ for military members. Many of the statutes that regulate the post-Government service employment activities of former or retired DoD employees also provide for specific criminal and administrative sanctions. This subpart sets out the requirements for reporting and inquiry to ensure that ethics-related laws and regulations are properly enforced and that appropriate administrative or disciplinary action is taken.

§ 84.38 Reporting procedures.

(a) *Reporting suspected violations.* With the exception of the provisions of 41 U.S.C. 423 that are addressed in paragraph (c) of this section, DoD employees who suspect that a violation of this part has occurred shall report the matter to any of the following:

(1) The DoD employee's agency designee;

(2) The suspected violator's agency designee;

(3) The head of the DoD component command or organization;

(4) Any Ethics Counselor;

(5) The DoD component's IG;

(6) The DoD component's criminal investigative office; or

(7) The DoD hotline or DoD component hotline.

(b) *Receipt of report.* (1) DoD component investigative offices shall consult local Ethics Counselors as appropriate to ensure that up-to-date expertise is applied in the investigation of each suspected violation of this part in recognition of rapidly changing rules and statutes in the ethics area.

(2) If a suspected violation is reported to some entity other than those named in paragraph (a)(4) through (a)(7) of this section, then the notified person shall promptly report the matter to his Ethics Counselor.

(3) An Ethics Counselor who receives a report shall review the facts and, if the facts tend to support a violation, report the allegation to the appropriate investigative organization or, through the chain of command or supervision, to the head of the DoD component command or organization of the suspected violator. In addition, the Ethics Counselor must ensure that the following is accomplished:

(i) If a violation of 18 U.S.C. 203, 205, 207, 208 or 209 is suspected, the matter shall be reported to the DoD component's criminal investigative organization. The investigative organization is responsible for investigating the allegation and notifying DoJ in accordance with DoD Directive 5525.7²⁶. In addition, the Ethics Counselor shall:

(A) Report to the DoD component DAEO as follows:

(1) The name and position (optional) of the informant;

(2) The name and position of the suspect;

(3) The suspected offense;

(4) The facts, as known or believed;

(5) The status of any action being taken.

²⁶ See footnote 4 to § 84.7(d).

(B) File periodic follow-up reports with the DoD component DAEO until a final determination is made;

(C) If the matter is referred to the DoJ or the U.S. Attorney, include OGE Form 202,²⁷ "Notification of Conflict of Interest Referral," January 1992, in the referral packet and send a copy to the DoD component DAEO for forwarding to OGE.

(ii) If a violation of 18 U.S.C. 201 or 281 is suspected, it shall be handled in the same manner as paragraph (b)(3)(i)(A) of this section except that OGE Form 202 is not used for referrals;

(iii) If a violation of 10 U.S.C. 2397 is suspected, the Ethics Counselor shall inquire into the matter and, if substantiated, attempt to obtain compliance. If these efforts fail, the Ethics Counselor shall forward a written report to the GC, DoD through the DoD component DAEO with a recommendation for action by the Secretary of Defense pursuant to 10 U.S.C. 2397(f);

(A) The report need be filed only when the Ethics Counselor determines that there is sufficient evidence to believe that a violation has occurred;

(B) The report shall include all relevant facts, a summary of witness statements, and a justification for the recommendation to refer or not to refer the violation for enforcement action.

(iv) If a violation of 10 U.S.C. 2397a is suspected, the Ethics Counselor shall report the matter to the DoD component DAEO in the same manner as in paragraph (b)(3)(i)(A) of this section. If the Ethics Counselor believes that the Secretary of Defense should take action pursuant to 10 U.S.C. 2397a(d), the Ethics Counselor shall forward a written report to the GC, DoD through the DoD component DAEO with a recommendation for action;

(A) The report need be filed only when the Ethics Counselor determines that there is sufficient evidence to believe that a violation has occurred;

(v) If a violation of 10 U.S.C. 2397b is suspected, the Ethics Counselor shall report the matter to the DoD compo-

nent DAEO in the same manner as in paragraph (b)(3)(i)(A) of this section;

(vi) If it is suspected that an individual is receiving retired pay contrary to 37 U.S.C. 801, a report of the matter shall be made to the Defense Finance and Accounting Service. A copy of that report shall be sent to the DoD component DAEO;

(vii) If a violation of 5 CFR part 2635 involving a loss to the Federal Government of \$5,000 or more is suspected, the Ethics Counselor shall report the matter to the DoD component DAEO in the same manner as in paragraph (b)(3)(i)(A) of this section.

(4) In addition, if any of the previous violations fall within a DoD component's procurement fraud program, the Ethics Counselor shall ensure that referrals, coordinations, and reports required by that program are accomplished. If the matter includes a suspected violation of the Gratuities Clause in a defense contract, the Ethics Counselor shall report the matter in accordance with DoD component procedures issued pursuant to 48 CFR 3.203. See paragraph (c) of this section.

(5) For matters not handled within the DoD component's procurement fraud program, any civil or criminal referrals to DoJ or the local U.S. Attorney of violations of this part shall be coordinated with the DoD component DAEO. The DoD component DAEO shall be informed of referrals of violations of this part handled within the DoD component's procurement fraud program.

(c) *Violations of 41 U.S.C. 423.*

(1) *Administrative sanctions.* Suspected violations of 41 U.S.C. 423 shall be processed in accordance with 48 CFR 3.104-11. See 41 U.S.C. 423(h)(2).

(2) *Civil sanctions.* Suspected civil violations may be referred through the DoD component DAEO to DoJ. See 41 U.S.C. 423(i).

(3) *Criminal sanctions.* Suspected violations that involve the improper release of source selection information should be referred to the appropriate criminal investigative organization. See 41 U.S.C. 423(j).

(4) *Reporting.* Any suspected violation of the provisions of 41 U.S.C. 423 shall be reported as soon as practicable to the appropriate contracting officer.

²⁷ Copies are available from U.S. Office of Government Ethics, 1201 New York Avenue NW., Suite 500, Washington, DC 20005-3917.

§ 84.39

See 41 U.S.C. 423(h)(1). Any actions taken as the result of the above referrals shall be reported to the DoD component DAEO in accordance with paragraph (b)(3)(i)(A) of this section.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, 20032, Apr. 24, 1995]

§84.39 Administrative enforcement procedures.

(a) *Statutory authority.* 10 U.S.C. 2397 and 2397a provide for administrative enforcement action and sanctions imposed by the Secretary of Defense against individuals and non-Federal entities not in compliance with these statutes.

(b) *Procedures for pursuing administrative action.* All recommendations for enforcement of 10 U.S.C. 2397 and 2397a forwarded to the Secretary of Defense shall be initiated, investigated and processed in accordance with the requirements of the Administrative Procedure Act. See 5 U.S.C. 551 *et seq.*

(c) *Hearing examiners.* In accordance with 5 U.S.C. 556, DoD shall appoint hearing examiners from within DoD to preside at the taking of evidence and provide recommendations to DoD as to final action.

(d) *Administrative sanctions.* (1) DoD may take appropriate disciplinary action whenever indicated by the outcome of a case involving violations of 10 U.S.C. 2397 and 2397a by:

(i) Imposing an administrative penalty, not to exceed \$10,000;

(ii) 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 ten-year period beginning with the date of separation from Federal Government service.

(2) DoD may take other appropriate disciplinary action when indicated by the outcome of a case in accordance with the laws or regulations violated.

(e) *Judicial review.* Any individual or non-Federal entity found in violation as described, and against whom an administrative sanction is imposed, may seek judicial review of the final administrative determination.

32 CFR Ch. I (7–1–98 Edition)

Subpart K—Training

§84.40 Office of Government Ethics regulation.

See 5 CFR part 2638, “Office of Government Ethics and Executive Agency Ethics Program Responsibilities.”

§84.41 DoD guidance.

(a) *Initial and annual ethics training.* (1) Overall responsibility for initial and annual ethics training programs rests with the Head of each DoD component acting through his DAEO. The Head of the DoD component shall ensure that adequate resources are available to implement the requirements of this subpart. Support shall be provided by the DoD component legal and personnel offices, as necessary.

(2) In the Military Departments, responsibility for implementation of ethics training programs rests with the heads of DoD component commands or organizations who shall ensure that ethics training is accomplished in accordance with this subpart.

(3) Training shall be accomplished using material authorized by the DoD component DAEO or designee in meeting the requirements of this subpart. Ethics Counselors may augment this material with additional training material needed to address specific ethics issues peculiar to their organization.

(4) DoD component Heads and DoD component DAEOs have the authority to require that DoD employees other than the ones covered by 5 CFR part 2638 receive annual ethics training.

(b) *Procurement integrity training.* (1) Each DoD component shall establish, or insure that its DoD employees have access to, a procurement integrity training program. Such program shall be the responsibility of the DoD component’s official in charge of acquisition, with the assistance of the legal and personnel offices, under the overall guidance of the GC, DoD. The procurement integrity training program shall, at a minimum, comply with 48 CFR 3.104–12.

(2) Heads of DoD components shall establish procedures to ensure that DoD employees receive (or have received) procurement integrity training and sign the Option Form (OF) 333,