

PART 431—CERTIFICATION OF ANTIBIOTIC DRUGS

19. Part 431 is amended:

§ 431.1 [Amended]

a. In § 431.1 *Requests for certification, check tests and assays, and working standards; information and samples required* in paragraph (a) by changing "National Center for Antibiotic Analysis (HFD-430)" to "Division of Drug Biology (HFN-170)".

§ 431.50 [Amended]

b. In § 431.50 *Forms for certification or exemption of antibiotic drugs* by changing "Certification Services Branch (HFD-332)" to "Product Surveillance Branch (HFN-333)".

Effective date. This regulation is effective March 6, 1985.

[Sec. 701(a), 52 Stat. 1555 (21 U.S.C. 371(a))]

Dated: February 26, 1985.

Joseph P. Hile,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-5329 Filed 3-5-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 184

[Docket No. 82G-0207]

Direct Food Substances Affirmed as Generally Recognized as Safe; Low Erucic Acid Rapeseed Oil**Correction**

In FR Doc. 85-2000 beginning on page 3745 in the issue of Monday, January 28, 1985, make the following corrections:

1. On page 3747, first column, paragraph designated as (1), line thirteen, "without" should appear between "weight" and "adverse".
2. On page 3751, first column, third line from the bottom, "d-HBDH" should read "α-HBDH".

BILLING CODE 1505-01-M

21 CFR Part 184

[Docket No. 82N-0259]

Wheat Gluten, Corn Gluten, and Zein; Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that wheat gluten, corn gluten, and zein are generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

EFFECTIVE DATE: April 5, 1985.

FOR FURTHER INFORMATION CONTACT:

Kenneth J. Falci, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 12, 1983 (48 FR 31887), FDA published a proposal to affirm that wheat gluten, corn gluten, and zein are GRAS for use as direct human food ingredients. FDA published this proposal in accordance with its announced review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review on wheat gluten, corn gluten, and zein and the report of the Select Committee on GRAS Substances (the Select Committee) on wheat gluten, corn gluten, and zein were made available for public review in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents are also available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of wheat gluten, corn gluten, and zein, FDA gave public notice that it was unaware of any prior-sanctioned food uses for these ingredients other than the proposed conditions of use. Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of any prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of these ingredients recognized by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for wheat gluten, corn gluten, and zein were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for the use of these ingredients under conditions different from those set forth in this final rule has been waived.

FDA received four comments in response to the proposal. The comments

and the agency's response to them are as follows:

1. One comment, from a person suffering from celiac disease, stated that labeling foods as "gluten free" would be a helpful label for packaged food products.

FDA discussed in its proposal (48 FR 31888) that persons with celiac disease are unable to ingest gluten from wheat and from some other sources without intestinal upset. However, FDA also noted that these same individuals are able to consume without ill-effects gluten derived from corn, rice, potato, and other foods. Because glutens do not always initiate intestinal upset in persons with celiac disease, the agency finds that labeling packaged foods as "gluten free" would not be as desirable as actually identifying on the food label the source of the gluten that is used in the food. Under 21 CFR 101.4(a), wheat gluten and other gluten sources must be identified by name when they are used in food. FDA believes, therefore, that the labeling already required is adequate to alert the public and protect gluten-sensitive individuals.

2. One comment stated that corn gluten is being investigated for use as a nutrient supplement in food and requested that the ingredient be listed for this technical effect in the final rule. The comment also requested that a cross-reference indicating that zein is produced from corn gluten be added to the proposed regulation for corn gluten.

The agency notes that wheat gluten is used as a nutrient supplement in food. Because corn gluten has a nutrient profile similar to that of wheat gluten, the agency believes that it is reasonable to conclude that corn gluten may also be used for this technical effect. Additionally, FDA concludes that adequate data exist in the Select Committee's report for it to find that the use of corn gluten as a nutrient supplement in food is safe and for it to affirm that corn gluten is GRAS for this use. Therefore, the agency is including the use of corn gluten as a nutrient supplement in § 184.1321(c)(1) (21 CFR 184.1321(c)(1)).

The agency does not agree that the corn gluten regulation should state that it is used to produce zein. The regulation for zein already states that it is made from corn gluten. Inclusion of this statement in the zein regulation is consistent with FDA's practice of describing how and from what sources regulated ingredients are obtained. The agency does not consider it necessary, however, to include a list of the products that may be manufactured from an ingredient in the regulation for that

ingredient. Therefore, the agency is not including the requested cross-reference in the regulation for corn gluten.

3. One comment stated that corn gluten is produced as a byproduct in the manufacture of corn syrups from dry milled corn. The comment stated that corn gluten is produced during the in-situ conversion of the starch in whole or various fractions of dry milled corn to corn syrups.

The agency agrees that this method has been used to prepare corn gluten and has incorporated it into § 184.1321(a).

4. One comment stated that four additional technical effects for wheat gluten should be added to the regulation for that ingredient. These additional technical effects are formulation aid, processing aid, stabilizer and thickener, and surface-finishing agent. The comment contained a substantial amount of information demonstrating that wheat gluten is currently being used for each of these technical effects.

The agency has reviewed the use information submitted in the comment and has determined that wheat gluten is currently used for the additional technical effects reported in this comment. Additionally, the agency concludes that adequate safety data exist in the Select Committee's report to assure that these uses are safe, and that they may be affirmed as GRAS. Therefore, the agency is incorporating these additional technical effects in this final rule.

The agency is also making two minor editorial changes in the regulation for corn gluten to correct errors in the spelling of "glutelin" and "gluten".

In the proposal, FDA stated that it would work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for corn gluten, wheat gluten, and zein used as direct food ingredients and would incorporate those specifications into the regulations when they were developed. To date, however, work on the specifications is still incomplete. Until the specifications are developed, these ingredients for direct food uses must comply with the descriptions in the respective regulations and be of food-grade purity (21 CFR 182.1(b)(3) and 170.30(h)(1)).

The agency had previously determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in threshold assessments which may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

List of Subjects in 21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Food Safety and Applied Nutrition (21 CFR 5.61; see 49 FR 48183; December 11, 1984), Part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. By adding new § 184.1321, to read as follows:

§ 184.1321 Corn gluten.

(a) Corn gluten (CAS Reg. No. 86071-96-3), also known as corn gluten meal, is the principal protein component of corn endosperm. It consists mainly of zein and glutelin. Corn gluten is a byproduct of the wet milling of corn for starch. The gluten fraction is washed to remove residual water soluble proteins. Corn gluten is also produced as a byproduct during the conversion of the starch in

whole or various fractions of dry milled corn to corn syrups.

(b) FDA is developing food-grade specifications for corn gluten in cooperation with the National Academy of Sciences. In the interim, the ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a nutrient supplement as defined in § 170.3(o)(20) of this chapter and a texturizer as defined in § 170.3(o)(32) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

2. By adding new § 184.1322, to read as follows:

§ 184.1322 Wheat gluten.

(a) Wheat gluten (CAS Reg. No. 8002-80-0) is the principal protein component of wheat and consists mainly of gliadin and glutenin. Wheat gluten is obtained by hydrating wheat flour and mechanically working the sticky mass to separate the wheat gluten from the starch and other flour components. Vital gluten is dried gluten that has retained its elastic properties.

(b) FDA is developing food-grade specifications for wheat gluten in cooperation with the National Academy of Sciences. In the interim, the ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a dough strengthener as defined in § 170.3(o)(6) of this chapter; a formulation aid as defined in § 170.3(o)(14) of this chapter; a nutrient supplement as defined in § 170.3(o)(20) of this chapter; a processing aid as defined in § 170.3(o)(24) of this chapter; a stabilizer and thickener as defined in

§ 170.3(o)(28) of this chapter; a surface-finishing agent as defined in § 170.3(o)(30) of this chapter; and a texturizing agent as defined in § 170.3(o)(32) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

3. By adding new § 184.1984, to read as follows:

§ 184.1984 Zein.

(a) Zein (CAS Reg. No. 9010-86-6) is one of the components of corn gluten. It is produced commercially by extraction from corn gluten with alkaline aqueous isopropyl alcohol containing sodium hydroxide. The extract is then cooled, which causes the zein to precipitate.

(b) FDA is developing food-grade specifications for zein in cooperation with the National Academy of Sciences. In the interim, the ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a surface-finishing agent as defined in § 170.3(o)(30) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Effective date. This regulation is effective April 5, 1985.

[Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))]

Dated: February 15, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-5424 Filed 3-5-85; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION

AGENCY

21 CFR Part 561

Animal Drugs, Feeds, and Related Products; Tolerances for Pesticides in Feeds Administered by the Environmental Protection Agency; 3,6-Bis(2-Chlorophenyl)-1,2,4,5-Tetrazine

[FAP 3H5312/R743; FRL-2790-7]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends an established feed additive regulation to permit residues of the acaricide 3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine in or on apple pomace. This extension of the regulation will permit the continued testing and gathering of additional data on the pesticide and marketing of apple pomace in connection with an experimental use program. The extension was requested by the Nor-Am Chemical Co.

EFFECTIVE DATE: Effective on March 16, 1985.

ADDRESS: Written objections, identified by the document control number [FAP 3H5412/R743], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS-767C), Environmental Protection Agency, Rm 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2386).

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the *Federal Register* of September 12, 1984 (49 FR 35767), which established a regulation to permit residues of the acaricide 3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine in or on apple pomace in accordance with an experimental use program to expire March 15, 1985.

At the request of the Nor-Am Chemical Co., Wilmington, DE 19803, the regulation is extended to expire March 16, 1986, to permit the continued testing and gathering of additional data on the pesticide and marketing of apple pomace in connection with an experimental use program.

The data and other relevant material submitted in support of the regulation

have been evaluated and discussed in the final rule document of September 12, 1984.

The pesticide is considered useful for the purpose for which the regulation is sought. It is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, (86 Stat. 973, 89 Stat. 751, U.S.C. 135(a) *et seq.*) and is established as set forth below.

The Office of Management and Budget has exempted this rule from the requirements of section 3 Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the *Federal Register* of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Part 561

Feed additives, Pesticides and pests.

[Sec. 409(c)(1), 72 Stat. 1786 (21 U.S.C. 346(c)(1))]

Dated: February 25, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 561—[AMENDED]

Therefore, 21 CFR 561.92 is revised to read as follows:

§ 561.92 3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine.

A tolerance of 20.0 parts per million is established for residues of the acaricide 3,6-Bis(2-chlorophenyl)-1,2,4,5-tetrazine in apple pomace resulting from application of the acaricide to apples. Such residues may be present therein only as a result of the application of the acaricide in accordance with the provisions of the experimental use permit number 45639-EUP-14 that expires March 15, 1986.

[FR Doc. 85-5349 Filed 3-5-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600, 606, 610, 620, 630, 640, and 660

[Docket No. 80N-0053]

Changes in Proper Names of Certain Biological Products

Correction

In FR Doc. 85-2001 beginning on page 4128 in the issue of Tuesday, January 29, 1985, make the following corrections:

1. On page 4128, in the second column, in the table under paragraph "2", in the fourth line, under the column "Name proposed by FDA", "Cytoprecipitated" should read "Cryoprecipitated".

2. On page 4130, in the third column, in paragraph "23", in the first line, "§ 640" should read "§ 640.4".

3. On page 4131, in the third column, in paragraph "30", in the seventh line, "Anti-Rh₀'" should read "Anti-Rh₀'".

4. On page 4132, in Table I, under the column "Current codified name", in the twenty-first line, "Rh₀ 1(D)" should read "Rh₀ (D)".

§ 600.15 [Corrected]

5. On page 4133, in the second column, in § 600.15(a), in the table, in the column "Temperature", in the ninth line, "° to 10°C." should read "1° to 10°C."

§ 610.53 [Corrected]

6. On page 4134, in the table in § 610.53(c), in column A, the entry reading "Iodinated (¹²⁵I)" should read "Iodinated (¹²⁵I) products"; also in the same column, the entry reading "Antihuman globulin liquid" should read "Anti-Human globulin liquid".

7. On page 4135, in the table in § 610.53(c), in column A, in the twenty-third line, "desoxyribonuclease" should read "desoxyribonuclease"; in paragraph "1" under "Hepatitis B surface antigen", "Unlyophilized" should read "Unlyophilized"; in paragraph "8" under "Immunoglobulins", "globuline" should read "globulin"; in paragraph "10", "Vari-cella-zoster" should read "Varicella-zoster".

8. On page 4136, in the table in § 610.53(c), in column D, in the thirteenth line from the bottom, "24 hours" should read "(b) 24 hours".

§ 640.25 [Corrected]

9. On page 4139, in the second column, the line reading "§ 604.25 [Amended]" should read "§ 640.25 [Amended]".

§ 660.25 [Corrected]

10. On page 4140, in the third column, in § 660.25(a)(5)(iii), in the third line "Anti-Mg" should read "Anti-M^e".

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 721

Standards of Conduct; Revision

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: These regulations prescribe the standards of conduct required of military and civilian naval personnel. The regulations are being revised to refine policy regarding ethics and standards of conduct, to incorporate statutory changes, and to consolidate procedures regarding financial disclosure. These regulations govern all naval personnel.

EFFECTIVE DATE: October 24, 1984.

FOR FURTHER INFORMATION CONTACT:

Commander G. Sid Smith (Office of the Judge Advocate General), (202) 325-9752 or Mr. James T. Tate, Jr. (Office of General Counsel), (202) 692-7186.

SUPPLEMENTARY INFORMATION: Pursuant to the authority conferred under 5 U.S.C. 301, 10 U.S.C. 133 and 5031, the Secretary of the Navy revises 32 CFR Part 721. This revision reflects the changes made to the underlying Secretary of the Navy instruction, SECNAVINST 5370.2 (series), which delineates the Navy's Standards of Conduct. These Standards of Conduct were reorganized and expanded to increase their value as a normative guide for personnel and to ensure their validity as a legal basis for disciplinary action in appropriate cases. The responsibilities of individuals for observing the Standards of Conduct, and the responsibilities of commands for enforcing the standards, are further delineated. Also, provisions concerning the filing, review, and disposition of Confidential Statements of Affiliations and Financial Interests (DD Form 1555) are expanded.

Numerous substantive modifications and additions have been made in order to reflect current interpretation and practice, eliminate ambiguity and integrate material on fraud, waste and abuse. To reflect a broader scope, the phrase "government ethics" has been included in the title of this instruction. The terms "standards of conduct counselor" have been replaced with the terms "ethics official" and "ethics counselor," in accordance with the Ethics in Government Act of 1978.

This revision, was adopted on October 24, 1984. To the limited extent that this revision could be deemed to originate any requirements within the Department of the Navy, it has been

determined that such requirements relate entirely to internal naval management and personnel practices that can be administered more effectively without public participation in the rule-making process. It has therefore been determined that invitation of public comment on this revision would be impracticable and unnecessary and is therefore not required under the provisions of Parts 296 and 701 of 32 CFR.

List of Subjects in 32 CFR Part 721

Conflict of interests, Government employees, Military personnel.

Accordingly, 32 CFR Part 721 is revised to read as follows:

Sec.

- 721.1 Purpose.
- 721.2 [Reserved]
- 721.3 Scope and effect.
- 721.4 Definitions.
- 721.5 General policies governing the conduct of naval personnel.
- 721.6 Standards of Conduct governing naval personnel.
- 721.7 Related statutes and directives.
- 721.8 Responsibilities for action.
- 721.9 Personal financial disclosure.
- 721.10 Post employment restrictions.
- 721.11 Administrative enforcement of 18 U.S.C. 207.
- 721.12 Reporting of post-retirement employment.
- 721.13 Delegation of authority.
- 721.14 Reports and forms.
- 721.15 Digest of laws.
- 721.16 Submission and processing of reports of financial circumstances (SF-278 and DD Form 1555).
- 721.17 Procedures for administrative enforcement of post employment restrictions of 18 U.S.C. 207.
- 721.18 Bedrock standards of conduct for Department of the Navy personnel.

Authority: 5 U.S.C. 301; 10 U.S.C. 133 and 5031; E.O. No. 11222, May 8, 1965; 5 CFR Part 735; 32 CFR Part 40.

§ 721.1 Purpose.

Part 721 implements and supplements Pub. L. 95-521, as amended by Pub. L. 96-19 and Pub. L. 96-28; Part 40 of this title; E.O. 11222, 3 CFR, 1964-1965 Comp., p. 301; and 5 CFR Parts 734, 735, 737, and 738, by prescribing required standards of ethical conduct governing all personnel in the Department of the Navy, to place responsibility and accountability for ensuring compliance upon commanding officers and supervisors, to publish financial disclosure reporting requirements and procedures applicable to certain naval personnel, to set forth conflict of interest statutes applicable to certain categories of both former and current naval personnel, and to promulgate bedrock

standards of conduct as a concise statement of expected ethical behavior.

§ 721.2 [Reserved]

§ 721.3 Scope and effect.

(a) *Applicability.* The provisions of this Part apply to all naval personnel as defined in § 721.4(a). The provisions of § 721.6(k)(2) apply to all retired military naval personnel and members of Reserve components not on active duty. The provisions of § 721.7(a), § 721.10, and § 721.11 apply to certain former naval personnel. The provisions of § 721.12 apply to all retired Regular officers.

(b) *Violations.* The bracketed portions of § 721.6 are regulatory general orders, apply to all naval personnel individually, and need no further implementation. A violation of these provisions is punishable in accordance with the Uniform Code of Military Justice for military personnel and is the basis for appropriate disciplinary procedures with respect to civilian employees. Noncompliance with other provisions of the instruction is expected to be corrected by timely administrative action.

§ 721.4 Definitions.

(a) *Naval personnel.* All Department of the Navy civilian officers and employees, active-duty officer and enlisted personnel (both Regular and Reserve), special Government employees, and personnel of nonappropriated fund instrumentalities.

(b) *Department of Defense (DOD) components.* The Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the joint, unified, and specified commands, the Defense agencies, and nonappropriated fund instrumentalities.

(c) *Special Government employee.* A person who is retained, designated, appointed or employed to perform, with or without compensation, not to exceed 130 days during any period of 365 consecutive days, temporary duties on either a full-time or intermittent basis. The term also includes a Reserve 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.

(d) *Gratuity.* Any gift, favor, entertainment, hospitality, transportation, loan, any other tangible item, and any intangible benefit (for example, discounts, passes, and promotional vendor training) given or extended to or on behalf of naval

personnel or their spouses, minor children or members of their households for which fair market value is not paid by the recipient or the U.S. Government.

(e) *Appropriate supervisor.* That superior within the chain of authority who is acquainted with the duties of the naval personnel concerned and can best determine the existence and effect of any conflict of interest of such personnel. Ordinarily, this will be the immediate superior of the person concerned. Each commanding officer and head of activity should ensure that all personnel are aware of the identity of their appropriate supervisor.

§ 721.5 General policies governing the conduct of naval personnel.

(a) *Proper conduct of official activities.* (1) Naval personnel shall become familiar with the scope of authority for and the limitations concerning the activities for which they have responsibilities.

(2) The attention of naval personnel is directed to the statutory prohibitions that apply to the conduct of naval personnel. See § 721.15.

(3) Naval personnel shall not make or recommend any expenditure of funds or take or recommend any action known or believed to be in violation of United States laws, Executive Orders, applicable directives, instructions, or regulations.

(4) In cases of doubt of the propriety of a proposed action or decision in terms of regulations or law, naval personnel shall consult legal counsel or, if appropriate, the Designated Agency Ethics Official, a deputy ethics official or ethics counselor (hereafter collectively referred to as "ethics officials"; see paragraphs (a), (b), (g), and (h) of § 721.8) to ensure the proper and lawful conduct of naval programs and activities.

(b) *Conduct prejudicial to the Government.* Naval personnel shall avoid any action whether or not specifically prohibited by this instruction that might result in or reasonably be expected to create the appearance of:

- (1) Using public office for private gain,
- (2) Giving preferential treatment to any person or entity,
- (3) Impeding Government efficiency or economy,
- (4) Losing complete independence or impartiality,
- (5) Making a Government decision outside official channels, or
- (6) Adversely affecting the confidence of the public in the integrity of the Government.

(c) *Standards of personal judgment.* All naval personnel will adhere strictly to the standards of conduct and related

requirements prescribed. In some instances, standards are imposed that require the exercise of personal judgment. Naval personnel must consider each such instance carefully and be prepared to account for the manner in which their judgment is exercised. This is particularly true in situations that involve acceptance of hospitality or favors from persons or entities who do or seek to do business with the Department of Defense.

(d) *Dealings with business and industry representatives.* Persons who represent the Government in business dealings with representatives of industry have positions of trust and grave responsibility that require them to observe the highest ethical standards. Practices that may be accepted in the private business world are not necessarily acceptable for naval personnel. Naval personnel will not allow themselves to be placed in a position in which a conflict of interest might arise or might justifiably be suspected. Such a conflict of interest may arise or appear to arise by reason of the acceptance of gratuities or by any other action that could influence or reasonably be interpreted as influencing the strict impartiality that must prevail in all business relationships involving the Government. Strict impartiality is often particularly difficult to maintain when business relationships are allowed to become overly personal. Naval personnel should at all times ensure that persons doing business or attempting to do business with the Department of the Navy or who represent such entities are not permitted to ingratiate themselves to the extent that naval personnel hesitate to deny requests for special treatment made by such persons or otherwise to follow the rule of strict impartiality when dealing with such persons in their official capacities. Acceptance of gratuities (no matter how innocently tendered or received) from those who have or seek business dealings with the Department of the Navy may be a source of embarrassment to the Department and to the naval personnel involved, may affect the objective judgment of the recipient, and may impair public confidence in the integrity of business relations between the Department and industry. It is emphasized that prohibited conflicts and apparent conflicts of interest can sometimes arise even from relationships and transactions that the personnel concerned perceive as inconsequential. When in doubt, naval personnel will refrain from accepting gratuities, attending functions, or accepting other invitations of a hospitable nature.

(e) *Preferential treatment.* Special treatment must not be accorded to particular individuals or firms unless equivalent treatment is also accorded to other justifiably entitled individuals or firms.

(f) *Acquiring conflicting financial interests.* Notwithstanding that they may be required to submit reports of their personal financial circumstances, naval personnel must at all times avoid acquiring or retaining financial interests that would disqualify them from performing their assigned duties or responsibilities. Some of the more likely situations in which conflicts of interest might arise are where naval personnel have Government duties or responsibilities related to business entities:

(1) With which they, their spouses, minor children, or household members are associated as employees, officers, owners, directors, members, trustees, partners, advisers, or consultants;

(2) With which they, their spouses, minor children, or household members are negotiating or have arrangements for prospective employment; or

(3) In which they, their spouses, minor children, or household members have interests through ownership of stock, stock options, bonds, or other securities or other financial arrangements, such as trusts, or through participation in certain types of pension or retirement plans.

(g) *Membership in associations.* Naval personnel who are members or officers of nongovernmental associations or organizations must avoid activities on behalf of the association or organization that are incompatible with their official Government positions. Under certain circumstances, holding a position of trust or responsibility in a private association or organization or undertaking activities on its behalf could conflict with one's official duties. For example, a commanding officer may not hold a position of trust or responsibility in an insurance company or an employee welfare or benefit organization that sells insurance to its members since the official duties of a commanding officer require the exercise of control over the solicitation of insurance within the command. Secretary of the Navy Instruction (SECNAVINST) 5760.4 (series) sets forth Department of the Navy policy regarding participation by naval activities and naval personnel in the activities of private associations.

(h) *Equal opportunity.* Naval personnel shall scrupulously adhere to the DOD program of equal opportunity regardless of race, color, religion, sex, age, handicapping condition, or national origin in accordance with equal

opportunity directives. See, for example, SECNAVINST 5350.6 (series) and SECNAVINST 5350.10 (series).

(i) *Reporting suspected violations.* Naval personnel who have information that causes them to believe that other DOD personnel have violated a statute or standard of conduct imposed by this instruction should bring the matter to the attention of the appropriate command authority.

(j) *Resolving violations.* Commanding officers or heads of activities shall promptly resolve standards of conduct violations by one or more measures such as divestiture of conflicting interests, disqualification for particular assignments, changes in assigned duties, termination, or disciplinary or other appropriate action as provided by statute or administrative procedures.

(k) *Display of the Code of Ethics for Government Service.* Pub. L. 96-303 requires the display of the *Code of Ethics for Government Service* poster in appropriate areas of federally owned or leased office space. Department of the Navy activities shall display the poster at all installations, facilities, and offices. It may also be displayed in lobbies, conference rooms, reception areas, auditoriums, cafeterias, and other high-traffic areas. To obtain copies, submit requisitions in FEDSTRIP format to the appropriate GSA regional office, requesting national stock number (NSN) 7890-01-099-8167.

§ 721.6 Standards of conduct governing naval personnel.

(a) *Affiliations and financial interests.* [Naval personnel shall not engage in any personal, business, or professional activity or receive or retain any direct or indirect financial interest that places them in a position of conflict between their private interests and the public interests of the United States related to the duties or responsibilities of their official positions. For the purpose of this prohibition, the private interests of a spouse, minor child, or household member are treated as private interests of naval personnel.]

(1) Unless otherwise expressly authorized by action taken under 18 U.S.C. 208(b), all naval personnel who have or acquire an affiliation or a financial interest that creates a conflict or appearance of a conflict with their official duties shall report the possibly disqualifying interest to their appropriate supervisor who shall resolve the matter in accordance with this instruction. If it is determined that the individual should be disqualified from participation in any official activities that are related to the conflicting interest, a formal

memorandum of disqualification must be sent to the concerned individual and to any affected immediate subordinate. If the individual cannot adequately perform his or her official duties after such disqualification, he or she must divest himself or herself of such interest or be removed from that position.

(2) Naval personnel need not be disqualified under this section, however, for having one or more of the financial interests or affiliations set forth below. Such holdings are exempted from the provisions of this instruction otherwise pertaining to disqualification, but not disclosure of, such interests and from the provisions and penalties of 18 U.S.C. 208(a) as being too remote or inconsequential to affect the integrity of the services of naval personnel:

(i) Shares of a widely held and diversified mutual, money market, trust, or similar fund offered for sale by a financial institution or by a regulated investment company;

(ii) Deposits in and loans made by banks or other financial institutions, provided they are at customary and generally available terms and conditions;

(iii) Domestic bonds other than corporate bonds, i.e., federal, state, municipal, or local government bonds, regardless of the value of such interest; and

(iv) Interests resulting from holding a position of trust or responsibility in a private, nonprofit association or other organization that fosters and promotes the general interests of the naval service and depends, in part, upon the voluntary efforts of naval personnel acting in their private capacities for leadership. Provided they disclose their relationship with the organization when doing so, naval personnel so serving may, in their official capacities, render advice and make recommendations within the chain of command with respect to particular matters affecting the organization if the final decision is made by higher authority.

(3) Notwithstanding paragraph (a)(2) of this section, the commanding officer or head of the activity to which an individual is assigned who holds an interest described in paragraph (a)(2)(c) or (a)(2)(d) of this section may, in his or her discretion, require such individual to refrain from taking any official action affecting the interests of an entity in which the individual holds such an interest, if determined to be in the best interest of the Government. In this regard, see § 721.5 (b) and (g), and § 721.6(j) for ethics considerations other than 18 U.S.C. 208.

(b) *Using inside information.* [Naval personnel shall not use, directly or indirectly, inside information to further a private gain for themselves or others if that information is not generally available to the public and was obtained by reason of their DOD positions.]

(c) *Using naval position.* [Naval personnel are prohibited from using their official positions to improperly induce, coerce, or in any other manner improperly influence any person to provide any benefit, financial or otherwise, to themselves or others.]

(d) *Dealing with present and former military and civilian personnel.* [Naval 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 this instruction, § 721.15 or 5 CFR Part 737.]

(e) *Commercial solicitations by naval personnel.* To eliminate the appearance of coercion, intimidation, or pressure from rank, grade, or position, [all naval personnel, are prohibited from making commercial solicitations or sales to DOD personnel who are junior in pay grade, or position, at any time or place] (see also SECNAVINST 1740.2 (series)). Commercial sales, whether or not solicited, are prohibited between officer and enlisted military personnel except as specified in paragraph (e)(2) of this section (see U.S. Navy Regulations, 1973, Article 1131).

(1) This prohibition includes, but is not limited to, the solicitation and sale of insurance, stocks, mutual funds, real estate, and other commodities or goods.

(2) This prohibition is not applicable to the one-time sale, lease, or sublease by an individual of his or her own personal property or privately owned or leased dwelling, or to the off-duty employment of naval personnel as employees in retail stores or other situations not involving solicited sales.

(3) With regard to solicitation by and of civilian personnel, the limitation applies only to solicitation of personnel under the supervision, at any level, of the solicitor.

(f) *Assignment of Reserve personnel for training.* Naval personnel who are responsible for assigning reservists 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.

(g) *Gratuities.* (1) [Except as provided in paragraph (g)(2) of this section, naval personnel and their spouses, minor children, and members of their

households shall not solicit, accept, or agree to accept any gratuity for themselves, members of their families, or others, either directly or indirectly from or on behalf of a defense contractor or other entity 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 significantly affected by DOD decisions; or]

(iii) [Has interests that may be substantially affected by the performance or nonperformance of the official duties of DOD personnel.] A foreign government or any agency thereof shall also constitute a defense contractor under this section where it is engaged in selling to the Department of Defense.

(2) This general prohibition does not apply to the following:

(i) The continued participation in employee welfare or benefit plans of a former employer when permitted by law and approved by the appropriate ethics official;

(ii) The acceptance of unsolicited advertising or promotional items of nominal intrinsic value such as disposable pens or pencils, note pads, or calendars;

(iii) Unsolicited trophies, entertainment, prizes, or awards given for public service or achievement, or in games or contests that are clearly open to the public or that are officially approved for participation by naval personnel;

(iv) Things available to the public (such as university scholarships covered by DOD Directive 1322.6 and free exhibitions by DOD contractors at public trade fairs);

(v) Discounts or concessions extended and realistically available to all naval personnel within a given metropolitan or regional geographic area;

(vi) Participation by naval personnel in civic and community activities when the involvement of DOD contractors is remote from the business purposes of any contractor who is sponsoring, supporting, or participating in the activity (for example, participation in a little league or Combined Federal Campaign luncheon that is subsidized by a DOD contractor);

(vii) Social activities engaged in by officers in command and other naval officials or their representatives with local civic leaders as part of community relations programs of the Department of the Navy in accordance with SECNAVINST 5720.44 (series);

(viii) The participation of naval personnel in widely attended gatherings

of mutual interest to Government and industry, sponsored or hosted by institutions of higher learning, industrial, technical, or professional associations (not by individual contractors), provided that, in the case of the associations, their programs have been approved in accordance with DOD Instruction 5410.20. This exception permits acceptance of a luncheon, dinner, or refreshments which are part of the gathering, but does not extend to the acceptance of transportation or overnight accommodations unless authorized under the terms of paragraphs (g)(2) or (h) of this section;

(ix) Situations in which participation by naval personnel at public ceremonial activities of mutual interest to industry or local communities and the Department of the Navy, such as ship launchings, serves the interests of the Government, and acceptance of the invitation is approved by the commanding officer or head of the activity to which the invitee is attached. This exception permits attendance at appropriate functions incident to the activity, and mementos of nominal intrinsic value;

(x) Contractor-provided transportation, meals, or overnight accommodations in connection with official business when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable and the individual reports the circumstances in writing to his or her appropriate supervisor in advance of acceptance or as soon after as possible;

(xi) Attendance at promotional vendor training sessions (such as tuition-free training or refresher courses, seminars, and the like) offered by contractors to facilitate understanding or utilization of their products. Such attendance may be authorized when it is determined to be in the Government's interest by the appropriate supervisor of the individual concerned. Transportation, accommodations, and meals in connection with such training may be accepted only in accordance with paragraph (g)(2)(x) of this section;

(xii) Attendance of naval personnel at gatherings, including social events such as receptions, that are hosted by foreign governments or international organizations, provided that the acceptance of the invitation is approved by the commanding officer or head of the activity to which the invitee is attached or, when there is doubt as to the propriety of acceptance, by higher authority (see SECNAVINST 1650 (series) for further information

pertaining to gifts from foreign governments);

(xiii) Customary exchanges of gratuities between naval personnel and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where the circumstances make it clear that it is that relationship rather than the business of the persons concerned that is the motivating factor for the gratuity and where it is clear that the gratuity is not paid for by any entity described in paragraph (g)(1) of this section;

(xiv) Reimbursement in cash or in kind for travel, lodging, or subsistence expenses not extravagant or excessive in nature in connection with seeking other employment. In such cases the individual shall first notify his or her appropriate supervisor in writing and shall disqualify himself or herself from participating on behalf of the Government in any particular matter affecting the interests of the prospective employer. The disqualification may be rescinded only if the individual concerned notifies his or her appropriate supervisor in writing that he or she is no longer seeking or actively considering employment with that prospective employer; and

(xv) Situations in which, in the sound judgment of the individual concerned or his or her appropriate supervisor, the Government's interest will be served by naval personnel participating in activities otherwise prohibited. In any such case a written report of the circumstances shall be made by the individual concerned or his or her appropriate supervisor in advance of acceptance, or, when an advance report is not possible, within 48 hours after acceptance to the appropriate supervisor, if the appropriate supervisor is not otherwise aware of the acceptance, and to the cognizant ethics counselor, as defined in § 721.8(h).

(3) Naval personnel who receive gratuities, or have gratuities received for them in circumstances not in conformance with the standards of this section shall promptly report the circumstances to the appropriate supervisor for a determination as to proper disposition. The appropriate supervisor shall consult with the cognizant ethics counselor, as defined in § 721.8(h).

(4) Procedures with respect to NROTC staff members are set forth in DOD Directive 1215.8.

(h) *Receipts in connection with official travel.* (1) The acceptance of transportation, accommodations, meals, or other services furnished in kind in connection with official travel from sources other than those indicated in

paragraph (g)(1) of this section may be authorized by the commanding officer or head of activity to which an individual is assigned if determined to be in the overall interest of the Government when the individual concerned is to be a speaker, panelist, project officer, or other bona fide participant in the event attended and if the entity sponsoring the event customarily provides such services to participants. The acceptance of services of this nature may also be authorized under the foregoing conditions in connection with official travel to participate in events such as symposia, seminars, and the like sponsored by institutions of higher learning, or industrial, technical, or professional associations that are engaged in activities directly or indirectly funded by the Department of Defense, and that are, therefore, entities falling within the scope of paragraph (g)(1) of this section when such activities and the official duties of the naval personnel invited to participate in the event are unrelated.

(2) [Except as indicated in paragraph (h)(1) of this section, naval personnel may not accept personal reimbursement from any source for expenses incident to official travel unless authorized by their commanding officer or head of their activity consistent with guidance provided by the appropriate ethics official] (pursuant to 5 U.S.C. 4111 or other authority). Rather, reimbursement must be made to the Government by check payable to the "Treasurer of the United States". Personnel will be reimbursed by the Government in accordance with regulations relating to reimbursement for official travel.

(3) When transportation, accommodations, meals, or services in kind are furnished to naval personnel by non-Government sources consistent with paragraph (h) of this section, appropriate deductions shall be reported and made in the travel, per diem, or other allowances payable by the Government.

(4) In no case shall naval personnel accept reimbursement either in kind or in cash that is extravagant or excessive in nature.

(i) *Speaking, lecturing, writing, and appearances.* (1) Naval personnel are encouraged to engage in teaching, lecturing, and writing. [Naval personnel (including all Navy and Marine Corps members of both the ready and stand-by reserve), however, shall not, either with or without compensation, engage in activities that are dependent upon 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 and the official authorized to release such information gives written authorization for the use of nonpublic information on the basis that its use is in the public interest.]

(2) Unless there is a definite executive branch, Department of Defense, or Department of the Navy position on a matter addressed in the appearance or writing and the individual has been authorized by appropriate superior authorities to present that position officially, he or she shall expressly present his or her views on that matter as his or her own and not as those of the Department of the Navy or Department of Defense.

(3) [Naval personnel may not accept a payment or fee for any appearance or writing unless undertaken as a private citizen and not in an official capacity.] See also paragraph (j) of this section relating to outside employment generally.

(4) Naval personnel may not accept an honorarium exceeding \$2,000 (excluding actual travel and subsistence expenses for the individual concerned, and for his or her spouse, or an aide, and fees or commissions paid to agents) for any appearance, lecture, speech, or article, unless disbursed to charitable organizations in accordance with procedures of 2 U.S.C. 441i(b). An honorarium is a gratuitous payment which is not intended as compensation for services.

(5) Civilian presidential appointees assigned to the Department of the Navy whose appointments must be made by and with the advice and consent of the Senate shall not receive compensation (excluding travel and subsistence expenses not otherwise prohibited by this instruction) or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to naval responsibilities, programs, or operations or that draws substantially from official material that has not become part of the body of public information. Such personnel are also prohibited in any calendar year from having outside earned income exceeding 15 percent of the rate of pay fixed by law as compensation for their services to the Government or as stipulated and agreed to with the Senate Committee on Armed Services as a condition to the confirmation of their appointment by the Senate, whichever is less. See 5 U.S.C. app. 210.

(j) *Outside employment of naval personnel.* (1) [Naval personnel shall not engage in outside employment or

any 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 upon the Government or the Department of the Navy; or]

(iii) [Is otherwise inconsistent with the requirements of this instruction] including the requirement to avoid actions and situations which reasonably can be expected to create the appearance of a conflict of interest.

(2) Enlisted naval 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. See 10 U.S.C. 974.

(3) Active duty Regular officers of the Navy and Marine Corps, including those on terminal leave, shall not be employed by any person or entity furnishing naval supplies or war materials to the United States. If such an officer is so employed, he or she is not entitled to payment from the United States for the duration of that employment, pursuant to 37 U.S.C. 801(a).

(4) 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 this instruction. After a strike begins and while it continues, no military personnel may accept employment by that involved entity at the strike location.

(k) *Use of civilian and military titles or positions in connection with commercial enterprises.*

(1) [All naval personnel are prohibited from using their grade, rank, title, or position in connection with any commercial enterprise or in endorsing any commercial product.] See also Article 1403, U.S. Navy Uniform Regulations. This does not preclude author identification for materials published in accordance with DOD procedures. A commercial enterprise is any entity that engages in activities that produce income as defined in the Internal Revenue Code of 1954, section 61, and that has not been exempted from paying income taxes pursuant to the Internal Revenue Code of 1954, section 501(a).

(2) All retired military personnel and all members of Reserve components not on active duty are permitted to use their military titles in connection with commercial enterprises, provided that they indicate their inactive Reserve or

retired status. If, however, such use of military titles in any way casts discredit upon the Department of the Navy or the Department of Defense or gives the appearance of sponsorship, sanction, endorsement, or approval by the Department of the Navy or the Department of Defense, it is prohibited. In addition, commanders of overseas installations may further restrict the use of titles in overseas areas including use by retired military personnel and members of Reserve components not on active duty.

(l) *Use of Government facilities, property, and manpower.* [Naval personnel shall not directly or indirectly use, take, dispose of, or allow the use, taking, or disposing of Government manpower, property or facilities of any kind, including property leased to the Government, for other than official government business or purpose.] Naval personnel have a positive duty to protect and conserve Government property. Waste or abuse of any Government asset will not be tolerated. See SECNAVINST 5430.92. These provisions do not preclude the use of Government facilities for approved activities in furtherance of naval community relations, provided they do not interfere with military missions or Government business. See SECNAVINST 5720.44 (series) for community relations guidance.

(m) *Prohibition of contributions or presents to superiors.* [Naval personnel shall not solicit contributions from other DOD personnel for a gift to a superior, make a donation or a gift to a superior, or accept a gift from other DOD personnel subordinate to themselves.] This prohibition does not include voluntary gifts or contributions of nominal value on special occasions such as marriage, illness, transfer, promotion, or retirement, provided any gifts acquired with such contributions shall not be extravagant or excessive in nature.

(n) *Gambling, betting, and lotteries.* [While on Government owned, leased, or controlled property, or otherwise while on duty for the Government, naval personnel shall not participate in any gambling activity including a lottery or pool, a game of chance for money or property, or the sale or purchase of a number slip or ticket.] The only exceptions are for activities that have been specifically approved by the Secretary of the Navy.

(o) *Indebtedness.* Naval personnel shall pay their just financial obligations in a timely manner, particularly those imposed by law (such as Federal, state, and local taxes), so that their indebtedness does not adversely affect

the Government as their employer. The Department of the Navy is not required to determine the validity or amount of disputed debts.

§ 721.7 Related statutes and directives.

Attention is directed to the following related matters governed by other directives:

(a) *Reports of defense related employment.* Certain categories of present naval personnel formerly employed by defense contractors and certain categories of former or retired naval personnel presently employed by defense contractors are required by statute to report their employment, governmental or private. SECNAVINST 5314.5 (series) implements the statutory requirements, provides a form for making the required report (DD Form 1787), and assigns responsibility to commanding officers or heads of activities for ensuring compliance with the filing requirement by affected civilian employees. Failure to file such reports when required may subject individuals to criminal penalties.

(b) *Political activities.* Chapter 733 of the Federal Personnel Manual, article 6210240 of the Naval Military Personnel Manual, and paragraph 1742.3 of the Marine Corps Manual discuss restrictions on political activities of naval personnel. Related statutes are discussed in § 721.15.

(c) *General responsibilities of naval personnel.* Chapter 11 of U.S. Navy Regulations, 1973, prescribes general regulations governing the rights and responsibilities of naval personnel. If any provisions of this instruction is found to conflict with a provision of Navy Regulations, the provision of Navy Regulations shall be controlling.

§ 721.8 Responsibilities for action.

(a) *The General Counsel of the Navy.* The General Counsel of the Navy is assigned overall responsibility for the ethics and standards of conduct program of the Department of the Navy and is appointed as Designated Agency Ethics Official for the Department of the Navy, the duties of which are prescribed in 5 CFR 738.203. Unless a function is specifically reserved or otherwise assigned here, the General Counsel shall act as the designee of the Secretary and for these purposes is empowered to redelegate all such duties to the extent permitted by 5 CFR 738.204.

(b) *Principal Deputy General Counsel of the Navy.* The Principal Deputy General Counsel of the Navy is appointed as the Alternate Designated Agency Ethics Official for the Department of the Navy and shall

assume the responsibilities of the Designated Agency Ethics Official in the absence of the General Counsel of the Navy. In the absence of both the General Counsel of the Navy and the Principal Deputy General Counsel of the Navy, the Acting General Counsel of the Navy shall assume the responsibilities of the Designated Agency Ethics Official.

(c) *Navy Department officials.* The Chief of Naval Operations and the Commandant of the Marine Corps shall ensure that all naval personnel receive an oral briefing on this instruction upon initial appointment, employment or enlistment. This briefing shall be given at a depth and with an emphasis consistent with the nature of the duties to which such personnel are presently assigned and may be assigned in the foreseeable future. All personnel shall attest in writing to their attendance at the required briefing.

(d) *Commanding officers and heads of activities.* Each individual has a basic responsibility for complying with the requirements of this instruction, but commanding officers and naval personnel exercising command or similar authority have as a leadership/management matter the primary responsibility for ensuring compliance, and they will be held accountable. All commanding officers or heads of commands, bureau, offices, or activities are specifically responsible for the following:

(1) The continuing dissemination of the applicable information in this instruction to all naval personnel within their organizations at least annually in a manner that will ensure familiarity and compliance with the pertinent provisions of this instruction. (This is a continuing requirement and is in addition to the initial briefing required by paragraph (c) of this section);

(2) Providing a copy of this instruction to all naval personnel within their organizations upon request and periodically publishing § 721.18, which is a concise summary of the standards;

(3) The establishment and continuing execution of the requirements, procedures and controls prescribed in § 721.16 to ensure that all naval personnel within their organizations who are required to file reports of their financial circumstances do file them in a timely manner, and that the specified reviews are promptly and carefully made;

(4) Making determinations pursuant to this instruction and 18 U.S.C. 208(b) with respect to disqualification of personnel within their organizations from performing duties in which they have

conflicts or apparent conflicts of interest;

(5) Ensuring that Reservists detailed to perform active duty for training in their organizations are assigned duties that will minimize the possibility of obtaining information that could be used by them or their employers to gain an unfair advantage over civilian competitors; and

(6) Receiving and taking prompt and appropriate action on reports concerning violations of this instruction including § 721.15 or related statutes, by personnel within their organizations.

(7) Ensuring that prospective retirees are briefed concerning post-employment requirements and restrictions, as discussed in § 721.12, § 721.15, 5 CFR Part 737, and NAVSO P-1778.

(e) *Inspector General.* The Naval Inspector General and the Inspector General of the Marine Corps shall ensure that periodic administrative inspections of organizations under their cognizance routinely include inquiry into the effectiveness of the organization's compliance with the provisions of this instruction.

(f) *Auditor General.* The Auditor General of the Navy shall ensure that the Naval Audit Service audit program routinely includes inquiry into the effectiveness of the organization's compliance with the provisions of this instruction.

(g) *Deputy ethics officials.* The Judge Advocate General, the Director, Judge Advocate Division (Headquarters Marine Corps), and the Assistant General Counsel of the Navy (Ethics) are appointed as deputy ethics officials and are delegated authority to act for the General Counsel. They shall be responsible for all ethics and standards of conduct functions within their respective areas of jurisdiction including, but not limited to, advice and proper review of all ethics and standards of conduct problems and for finally reviewing, acting upon, and maintaining the Department's file of Financial Disclosure Reports (SF-278's), except that the General Counsel shall perform all standards of conduct functions pertaining to civilian presidential appointees assigned to the Department of the Navy.

(h) *Ethics counselors.* Ethics counselors have been delegated authority for initially reviewing Financial Disclosure Reports (SF-278) and for finally reviewing Statements of Affiliations and Financial Interests (DD Form 1555) submitted by other naval personnel within their organization, activity, or geographical area. In addition, they shall be responsible for providing advice and assistance on

matters relating to ethics, standards of conduct, and conflicts of interest under this instruction. Specific appointments of ethics counselors are contained in § 721.16. Other ethics counselors may be appointed by the General Counsel, the Judge Advocate General, the Director, Judge Advocate Division (Headquarters Marine Corps), or the Assistant General Counsel (Ethics).

(i) *Additional duties of senior officials.* The Commandant of the Marine Corps and the Chief of Naval Material, as appropriate, are responsible for bringing the contents of this instruction to the attention of the principal officers of each contractor doing significant business with the Department of the Navy. Chiefs and heads of commands, bureaus, and offices, commanding officers, and other senior officials shall periodically utilize the opportunity afforded by conferences with representatives of industry to direct attention to the regulations and policies set forth in this instruction.

§ 721.9 Personal financial disclosure.

The Department of the Navy maintains two separate and distinct financial disclosure reporting systems utilizing either DD Form 1555 or Standard Form 278. § 721.16 contains the detailed procedures and standards for the submission, review and custody of reports by affected naval personnel of their financial circumstances under both systems. Individuals required to file the SF-278 are not required to file DD Form 1555.

§ 721.10 Post employment restrictions.

Statutory and regulatory restrictions upon the activities of former or retired naval personnel are discussed in § 721.15 of this part and 5 CFR 737.

§ 727.11 Administrative enforcement of 18 U.S.C. 207.

A provision of the Ethics in Government Act of 1978, as amended (18 U.S.C. 207(j)), requires that each agency establish administrative procedures for the enforcement of the post employment restrictions imposed by 18 U.S.C. 207 (a)-(c). The procedures established for the Department of the Navy are contained in § 721.17. They provide that any former officer of employee, after opportunity to be heard, who is found to have violated any such restriction may be barred from engaging in business with the Department of the Navy for a period of up to five years. The implementing Office of Personnel Management Regulations are contained in 5 CFR Part 737.

§ 721.12 Reporting of post-retirement employment.

(a) Each retired Regular officer of the Navy and Marine Corps shall keep the Department of the Navy advised of his or her postretirement employment activities. All retired Regular officers whose names have been on the retired list for three years or less shall file a statement of employment [DD FORM 1357]. All retired Regular officers whose names have been on the retired list for over three years are encouraged to use DD Form 1357 to report their postretirement employment activities. In any event, officers whose names have been on the retired list for more than three years shall, at a minimum, keep the Department of the Navy advised as to whether they are employed by any agency, instrumentality, or department of the United States, and, if so, the position title and employing agency. Each Regular officer retiring hereafter shall file this statement within 30 days after retirement. Whenever the information reported changes, each such officer shall make an appropriate report within 30 days of that change. The Comptroller of the Navy (for Regular Navy officers) and the Commandant of the Marine Corps (for Regular Marine Corps officers) shall advise each officer required to file of the continuing need to report postretirement employment activities as set forth above.

(b) To determine compliance with 37 U.S.C. 801(b) and 5 U.S.C. 5532, reports of postretirement employment shall be submitted:

(1) In the case of a retired Regular Navy officer, to the Commanding Officer, Navy Finance Center (Retired Pay Division), Cleveland, OH 44199; or

(2) In the case of a retired Regular Marine Corps officer, to the Commanding Officer, Marine Corps Finance Center, Kansas City, MO 64197.

(c) If an apparent violation of law or regulation is noted upon review of a report of postretirement employment, a copy of the report shall be transmitted to the Commander, Navy Accounting and Finance Center, or Commandant of the Marine Corps (Code FD), for appropriate action.

(d) The Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, shall provide each Regular officer retiring hereafter, as part of the retirement check-out procedures, with clear instructions concerning the requirement under this instruction to report postretirement employment. These instructions should be combined, where applicable, with the instructions prescribed in SECNAVINST 5314.5A concerning the possible additional requirement to file reports of DOD and

defense-related employment (DD Form 1787).

§ 721.13 Delegation of authority.

The General Counsel of the Navy is authorized to modify or supplement § 721.15, § 721.16, and § 721.17 of this instruction in a manner consistent with the policies set forth herein.

§ 721.14 Reports and forms.

(a) Symbol DD-SECNAV 5370-1 has been assigned to the Statement of Affiliations and Financial Interests Report submitted on form DD 1555. Symbol SECNAV 5370-2 has been assigned to the Financial Disclosure Report submitted on form SF 278.

(b) Forms are available as indicated: (1) DD 1357, Statement of Employment (Regular Retired Officers), from Commanding Officer, Navy Finance Center, Cleveland, Ohio 44199; (2) DD 1555, Confidential Statement of Affiliations and Financial Interests (DOD Personnel), stock number 0102-LF-001-550, from Ethics Counselor or through normal channels in accordance with NAVSUP P-2002; (3) DD 1787, Report of Report of DOD and Defense Related Employment, stock number 0102LF-025-5090, from Ethics Counselor or through normal supply channels in accordance with NAVSUP P-2002; (4) OPM 1401, Request to Inspect or Review copies of SF 278, Financial Disclosure Report, from Ethics Counselor; (5) SF 278, Executive Personnel Financial Disclosure Report, stock number 7540-01-070-8444, from Ethics Counselor or Local CSA Stores.

§ 721.15 Digest of Laws

(a) *Conflict of interest laws applicable to present officers and employees.*—(1) 18 U.S.C. 203. This statute prohibits a Government employee from soliciting or receiving compensation for a representation by himself or another before any federal agency while he is a Government employee.

(2) 18 U.S.C. 205. (i) This statute prohibits Government personnel from acting as agent or attorney for anyone else before a department, agency, or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

(ii) The following exemptions are allowed:

(A) 18 U.S.C. 205 does not prevent Government personnel from giving testimony under oath or making statements required to be made under penalty of perjury or contempt or from representing another person, without

compensation, in a disciplinary, loyalty, or other personnel matter.

(B) 18 U.S.C. 205 also authorizes a limited waiver of its restrictions and those of 18 U.S.C. 203 for the benefit of an officer or employee, including a special Government employee, who represents his or her own parents, spouse, or child, or a person or estate he or she served as a fiduciary. The waiver is available only if approved by the official making appointments to the position. In no event does the waiver extend to representation of any such person in matters in which the employee has participated personally and substantially or that, even in the absence of such participation, are the subject of his or her official responsibility.

(C) Finally, 18 U.S.C. 205 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.

(3) 18 U.S.C. 208. (i) Subsection (a) of 18 U.S.C. 208 requires executive branch personnel to refrain from participating in an official capacity in any particular matter in which they, their spouses, minor children, or partners have financial interests. It also prohibits such participation in particular matters in which businesses or nonprofit organizations with which such personnel are connected or are seeking employment have financial interests. A "particular matter" may be less concrete than an actual contract, but is something more specific than rule making or abstract scientific principles. The test is whether the individual might reasonably anticipate that his or her Government action, or the decision in which he or she participates or with respect to which he or she advises, will have a direct and predictable effect upon such financial interests.

(ii) Subsection (b) of 18 U.S.C. 208 permits agencies to grant an ad hoc exemption from subsection (a) of the statute if the outside financial interest is deemed not substantial enough to affect the integrity of Government services. Categories of financial interests may also be made nondisqualifying by a general regulation published in the *Federal Register*.

(4) 18 U.S.C. 209. Subsection (a) of 18 U.S.C. 209 prevents executive branch personnel from receiving, and anyone from paying them, any salary or

supplementation of salary from a private source as compensation for their Government service. Subsection (b) of the statute permits participation in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer. Subsection (c) of this statute exempts special Government employees and anyone serving the Government without compensation. Subsection (d) of the statute exempts contributions, awards, or other expenses under the Government Employees Training Act (5 U.S.C. 4101-18).

(5) *37 U.S.C. 801(a)*. A Regular Navy or Regular Marine Corps officer on active duty (including terminal leave) may not be employed by anyone furnishing naval supplies or war materials to the United States. If such an officer is so employed he or she is not entitled to any payment from the United States during that employment.

(b) *Conflict of interest laws applicable to former Government officers and employees.*—(1) *18 U.S.C. 203*. This statute makes it a criminal offense for a former Government employee to share in any fees rendered as compensation for representation before any Government agency in relation to a particular matter in which the United States is a party or has a direct and substantial interest, regardless of whether it was before the agency of which the individual is a former employee during the period of his or her Government service. It covers compensation received only in connection with actual or constructive appearances before an agency. This section does not apply to former Government employees who receive a fixed salary, as opposed to a share of profits, as compensation for their services. It is of concern primarily to professional employees who leave Government service to join an existing partnership.

(2) *18 U.S.C. 207(a) and (b)(i)*, applicable to all former Government officers and employees. (i) Subsection (a) of 18 U.S.C. 207 permanently bars a former officer or employee from acting as agent or attorney for anyone other than the United States in connection with any particular matter involving a specific party or parties in which the United States is interested and in which the individual participated personally and substantially in his or her governmental capacity. Subsection (a) similarly bars written or oral communications to the Government or its employees with regard to such matters. The legislative history of this provision makes it clear that it does not

preclude post employment activities that may be characterized as rendering aid or assistance but not as acting in a representational capacity. Thus, it does not prohibit a former officer or employee from doing in-house work for an organization under a Government contract or grant that he or she negotiated on behalf of the Government, so long as the former officer or employee does not represent the organization in any dealings, formal or informal, with the Government or its employees relating to that contract or grant. In addition, the phrase "involving a specific party or parties" is interpreted as limiting the particular matters in which the former Government employee may not participate to those specific proceedings, generally adversarial in nature, that affect the legal rights of the parties involved. A former Government officer or employee, therefore, would not be barred by subsection (a) from acting as agent or attorney in connection with a particular matter governed by general rules or policies that he or she had a role in establishing, so long as the particular matter itself was not one in which he or she had participated as a Government officer or employee.

(ii) Subsection (b)(i) of 18 U.S.C. 207, as revised by the Ethics in Government Act, imposes a two-year ban against representational activities identical to those covered by subsection (a) of the statute as to all particular matters that were actually pending under the former officer's or employee's official responsibility during his or her last year of Government service, but in which the employee was not personally and substantially involved.

(iii) Past participation in, or official responsibility for, general rule making, the formulation of general policy or standards, or other similar matters does not preclude representational activities. Similarly, in the scientific field, past participation in discussions of scientific or engineering concepts, the feasibility of scientific or technical accomplishments, or proposed Government programs in their early stages, prior to the formulation of a contract or a contract proposal where specific parties become involved in a matter, does not disqualify former Government personnel from representation with respect to a contract entered into at a later time even though the same general scientific matters may be involved in such a contract.

(iv) *Exemptions under 18 U.S.C. 207*. Former officers or employees may be exempted from the restrictions of Section 207 if the Secretary, in consultation with the Director, Office of

Government Ethics, executes a certification published in the *Federal Register* finding that (A) the former officer or employee possesses outstanding qualifications in a scientific, technological, or other technical discipline; (B) the former officer or employee would be acting with respect to a particular matter requiring such qualifications; and (C) to do so would serve the national interest.

(v) *Implementing regulations*. The complete text of the Office of Personnel Management Regulations implementing 18 U.S.C. 207 (as revised by the Ethics in Government Act) are contained in 5 CFR Part 737. These regulations apply to the extent specified therein to all former Government employees who left Government service after June 30, 1979.

(3) *18 U.S.C. 207(b)(ii) and (c)*, applicable to former "senior" Government officers and employees. (i) "Senior employees" are Federal officers or employees who are (A) in positions at Levels I through V of the Executive Schedule, (B) active duty commissioned officers assigned to pay grade O-9 or above, and (C) other flag and general officers and members of the Senior Executive Service in "senior" positions designated by the Director, Office of Government Ethics. For a position to have been so designated, it must have been determined that it involves "significant decision-making or supervisory responsibility." Further, the position must be in the Senior Executive Service or have a basic rate of pay at least equal to GS-17, step 1, or be at military pay grades O-7 or O-8.

(ii) Subsection (b)(ii) of this statute bars former senior employees, for a period of two years after terminating their employment, from assisting in the representation of another person by "personal presence" at an "appearance" before the United States in connection with any particular matter in which the former senior employee could not act as the person's actual representative because of his or her personal and substantial participation in the matter while in Government service. This provision is designed to prevent a former senior employee from appearing to lend personal influence in the resolution of a matter in which he or she was previously personally and substantially involved, simply by being there. A violation of this subsection might occur when the topic of conversation during an appearance shifts from one in which the former senior employee was not personally and substantially involved to one in which he or she was so involved and when such a shift was likely. The subsection

does not, however, bar assisting in the preparation for negotiations, hearings, and similar transactions, so long as such assistance occurs in a context not involving the personal presence of the former senior employee at an appearance before the Government.

(iii) Subsection (c) of this statute precludes a former senior Government employee, for a period of one year after terminating his or her employment, from representing anyone vis-a-vis his former agency (the Department of the Navy) or its officers or employees, whether by formal or informal appearance, or by written or oral communications intended to influence the former employing agency. This restriction pertains to all particular matters regardless of prior involvement, and without regard to whether or not a specific party is involved, if the matter is one that is pending before the agency, or if it is one in which the agency has a direct and substantial interest.

(iv) Subsection (c) further precludes attempts to influence rule making or policy formulation, since the matters covered need not involve specific parties, and also includes self-representation. It is limited to contacts with the employing agency, however; the former senior employee may appear before, or attempt to influence any other part of Government if not otherwise precluded by subsections (a), (b)(i) or (b)(ii). There are, furthermore, a number of exceptions to the restriction such as (A) purely social or informational communications; (B) transmission of filings that do not require governmental action; (C) personal matters; (D) self-representation in connection with a judicial or administrative proceeding to which the former senior employee is an involuntary party; (E) expressions of personal views where the former employee has no direct or distinctive indirect pecuniary interest; (F) responses to requests to the former employee for information by the former agency; and (G) participation as the principal researcher or investigator under Government grants.

(v) In addition to the foregoing exceptions, regarding (A) former senior employees who become elected officials of state or local governments, or (B) former senior employees whose subsequent principal occupation or employment is with a state or local government, with an institution of higher education, or with a hospital or medical research organization, the restriction contained in subsection (c) of this statute does not apply to appearances, communications, or other representation

on behalf of such government, institution, hospital, or organization.

(c) *Summary of laws particularly applicable to retired Regular officers.*

(1) Prohibited activities. (i) *Claims.* A retired Regular officer of the Armed Forces may not, within two years of retirement, act as agent or attorney for prosecuting any claim against the Government, or assist in the prosecution of such a claim or receive any gratuity or any share of or interest in such a claim in consideration for having assisted in the prosecution of such a claim if such a claim involves the military department in whose service he or she holds a retired status. Nor may a Regular retired officer at any time act as an agent or attorney for prosecuting any claim against the Government, or assist in prosecution of such claim, or receive any gratuity, or any share of or interest in such claim in consideration for having assisted in the prosecution of such claim, if the claim involves any subject matter with which he or she was directly connected while on active duty (see 18 U.S.C. 283).

(ii) *Selling.* (A) A retired Regular officer is prohibited, at all times, from representing any person in the sale of anything to the Government through the military department in whose service he or she holds a retired status (see 18 U.S.C. 281).

(B) Payment may not be made from any appropriation to an officer on a retired list of the Regular Army, the Regular Navy, the Regular Air Force, the Regular Marine Corps, the Regular Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Service, for a period of three years after his or her name is placed on that list, if that officer is engaged for himself, herself, or others in selling, or contracting or negotiating to sell, supplies or war materials to an agency of the Department of Defense, the Coast Guard, the National Oceanic and Atmospheric Administration, or the Public Health Service [see 37 U.S.C. 801(b)].

(C) For the purposes of 37 U.S.C. 801(b), "selling" means:

(1) Signing a bid, proposal, or contract;

(2) Negotiating a contract;

(3) Contacting an officer or employee of any of the foregoing departments or agencies for the purpose of:

(a) Obtaining or negotiating contracts,

(b) Negotiating or discussing changes in specifications, price, cost allowances, 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 therefor is subsequently negotiated by another person.

(iii) Neither these statutes nor this instruction preclude a retired Regular officer from accepting employment with private industry solely because his or her employer is a contractor with the Government.

(d) *Other laws applicable to present or former DOD personnel.* (1) There are legal prohibitions concerning the following activities which may subject present and former DOD personnel to criminal or other penalties:

(i) Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (see 18 U.S.C. 201).

(ii) Concealing or failing to report to proper authorities the commission of a felony under any criminal statute if such personnel knew of the actual commission of the crime (see 18 U.S.C. 4).

(iii) 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 (see 18 U.S.C. 371).

(iv) Lobbying with appropriated funds (see 18 U.S.C. 1913).

(v) Disloyalty and striking (see 5 U.S.C. 7311, 18 U.S.C. 1918).

(vi) Disclosure of classified information (see 18 U.S.C. 798, 50 U.S.C. 783); and disclosure of confidential information (see 18 U.S.C. 1905).

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

(viii) Misuse of a Government vehicle (see 31 U.S.C. 1349).

(ix) Misuse of the franking privilege (see 18 U.S.C. 1719).

(x) Deceit in an examination or personnel action in connection with Government employment (see 18 U.S.C. 1917).

(xi) Committing fraud or making false statements in a Government matter (see 18 U.S.C. 1001).

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

(xiii) Counterfeiting and forging transportation requests (see 18 U.S.C. 508).

(xiv) Embezzlement of Government money or property (see 18 U.S.C. 641); failing to account for public money (see 18 U.S.C. 643); and embezzlement of the money or property of another person in the possession of an employee by reason of his or her Government employment (see U.S.C. 654).

(xv) Unauthorized use of documents relating to claims from or by the Government (see 18 U.S.C. 285).

(xvi) Certain political activities (see 5 U.S.C. 7321-27 and 18 U.S.C. 602, 603, 606, and 607). These statutes apply to civilian employees; regulations govern military personnel.

(xvii) Any person who is required to register under the Foreign Agents Registration Act of 1938 (see 18 U.S.C. 219) may not serve the Government as an officer or employee. The section does not apply to (A) Reservists who are not on active duty or who are on active duty for training, or (B) a special Government employee in any case in which the department head certifies to the Attorney General that his or her employment by the United States Government is in the national interest.

(xviii) Soliciting contributions for gifts or giving gifts to superiors, or accepting gifts from subordinates (see 5 U.S.C. 7351).

(xix) Acceptance of excessive honoraria (see 2 U.S.C. 441 (i)).

(xx) Acceptance, without statutory authority, of any office or title, of any kind whatever, from any king, prince, or foreign state by any person holding any office of profit or trust of the Federal Government, including all retired military personnel. (U.S. Const. Art. I, section 8).

(xxi) Civilian presidential appointees occupying full-time positions, appointment to which are required to be made by the President, by and with the advice and consent of the Senate, may not have in any calendar year outside earned income attributable to such calendar year that is in excess of 15 percent of their Government salary (see 5 U.S.C. app. 210).

(xxii) Commission of prohibited personnel practices (see 5 U.S.C. 2302).

(xxiii) Acceptance of gifts and decorations (awards) from foreign governments or agents and representatives thereof (5 U.S.C. 7342).

§ 721.16 Submission and processing of reports of financial circumstances (SF-278 and DD Form 1555).

(a) *Purpose.* This section implements the requirement and contains the procedures and standards for the submission, review and custody of Financial Disclosure Reports (SF-278) and Confidential Statements of Affiliations and Financial Interests (DD Form 1555) within the Department of the Navy and identifies those who must file such reports.

(b) *Standards for review of reports of financial circumstances (SF-278 and DD Form 1555).* Each reviewing official shall

review each report or statement submitted to determine that:

(1) All items are completed. For SF-278's, see Title II of the Ethics in Government Act of 1978, 5 U.S.C. app. 201 et seq., and the Office of Personnel Management regulations promulgated thereunder, 5 CFR Part 734.

(2) No interest or position is disclosed that violates or appears to violate:

(i) Any applicable provision of law contained in § 721.15; and

(ii) The provisions of this instruction.

(3) A reviewing official shall not sign and date a statement of financial circumstances until the foregoing determination has been made.

(c) *Deputy ethics officials.* Incumbents of the following positions have been appointed deputy ethics officials and have been delegated authority by the General Counsel of the Navy to act for the General Counsel in finally reviewing, acting upon, and maintaining the Department's file of Financial Disclosure Reports (SF-278) and is resolving issues referred to them by commanding officers, other heads of activities or ethics counselors with regard to Confidential Statements of Affiliations and Financial Interests (DD Form 1555): The Judge Advocate General, with respect to Navy officers; The Director, Judge Advocate Division (Headquarters Marine Corps), with respect to Marine Corps officers; and The Assistant General Counsel (Ethics), with respect to civilian employees other than presidential appointees. In exercising this authority they shall comply with applicable statutes, regulations published by the Office of Personnel Management, and additional guidance issued by the Office of Government Ethics or the General Counsel.

(d) *Ethics counselors.* Incumbents of the following positions have been designated ethics counselors and have been delegated authority to initially review Financial Disclosure Reports (SF-278) and to finally review Statements of Affiliations and Financial Interests (DD Form 1555) submitted by other naval personnel within their organization, activity, or geographical area: Counsel for the Comptroller of the Navy; Counsel for the Systems and Facilities Engineering Commands; Counsel for the Military Sealift Command; Counsel for the Office of Naval Research; Counsel for the Naval Data Automation Command; Counsel in charge of Office of the General Counsel field and branch offices; Counsel for the Commandant of the Marine Corps; Deputy Judge Advocate General and Assistant Judge Advocates General; Deputy Assistant Judge Advocate

General (Civil Affairs); Special Counsel to the Chief of Naval Operations (OP-00J); Assistant for Legal and Legislative Matters, Office of the Chief of Naval Operations (OP-09BL); Special Assistant for Law, Office of the Naval Inspector General (OP-008F); Legal Advisor to the Deputy Chief of Naval Operations (Plans, Policy and Operations) (OP-616B); Special Assistant for Medico-Legal Affairs to the Director of Naval Medicine/Surgeon General; Special Assistant for Legal Support to the Commander, Naval Medical Command; Legal Counsel, Naval Military Personnel Command; Staff and force judge advocates on the staffs of all commands having general courtmartial convening authority; Commanding officers of Naval Legal Service Offices; and Other ethics counselors who may hereafter be so designated by the General Counsel, the Assistant General Counsel (Ethics), the Judge Advocate General, or the Director, Judge Advocate Division (Headquarters Marine Corps).

(e) *Naval executive personnel.* The term "naval executive personnel" includes those naval personnel whose rank or position places them in one of the following categories:

(1) Civilian presidential appointees;

(2) Regular Navy and Marine Corps officers who have been appointed (with dates of rank) to grade O-7 or above;

(3) Reserve Navy and Marine Corps officers, serving on voluntary extended active duty in excess of 130 days, who have been appointed (with dates of rank) to grade O-7 or above;

(4) Reserve officers, serving as special Government employees, i.e., on active duty for training, in excess of 60 days in any calendar year and whose basic rate of pay is equal to or exceeds the uncapped rate of basic pay fixed for GS-16, step 1;

(5) Members of the Senior Executive Service;

(6) Other civilian employees, including special Government employees, whose positions are classified at GS-16 or above of the General Schedule prescribed by 5 U.S.C. 5332 (which excludes career civilian employees whose positions are classified at or below GS/GM-15) or whose rate of basic rate of pay is fixed other than under the General Schedule at a rate equal to or greater than the uncapped rate of basic pay fixed for GS-16;

(7) Civilian employees who are not members of the Senior Executive Service but who are detailed to a Senior Executive Service position for more than 60 days in any calendar year; and

(8) Employees in the excepted service in positions which are of a confidential or policy-making character unless they have been excluded by the Director, Office of Government Ethics. See Chapter 213 of the Federal Personnel Manual and 5 CFR 734.203.

(f) *Nomination reports (SF-278).* Within five days of transmittal by the President to the Senator of a nomination of an individual to a civilian position, appointment to which requires the advice and consent of the Senate, the individual so nominated shall submit an SF-278 directly to the General Counsel of the Navy. The report shall contain the information prescribed in the "Instructions" attached to the SF-278. These reports shall be certified personally by the General Counsel as Designated Agency Ethics Official, or in his or her absence by the Alternate Designated Agency Ethics Official, and thereupon processed as prescribed in 5 CFR 734.604(c). Nomination reports are not required of military officers nominated for promotion to O-7 or O-8 level flag or general officer grades.

(g) *Special reviewing requirement in the case of O-9 and O-10 level flag and general officer nominees.* As part of the process for approving nominees for appointment to O-9 and O-10 level flag or general officer positions, the Secretary of the Navy must ensure that the nominee has a current SF-278 on file and that the form has been reviewed in relation to the position for which he or she is being considered. Further, the Secretary of the Navy is required to cause a review of all relevant systems of records maintained by the Department of the Navy, including investigative files, to determine if there is any evidence that the nominee has violated the standards of conduct. Each such nomination forwarded to the Secretary of Defense must be accompanied by a certification of the Secretary of the Navy that the required review has been conducted and that the review has or has not disclosed a violation of the standards of conduct.

(h) *New entrant reports (SF-278).* Within 30 days of first assuming a naval-executive-personnel rank or position, a reporting individual shall submit an SF-278 in the same manner prescribed in paragraph (i)(2) of this section. The report shall contain that information prescribed for new entrant reports in the "Instructions" attached to the SF-278. No such report is necessary if the reporting individual has left another position requiring the submission of an SF-278 within 30 days prior to assumption of the new position, or has submitted an SF-278 as a

nominee for the new position within 30 days of assuming it. As special Government employees, Reserve officers (as defined in paragraph (e)(4) of this section) commencing active duty for training are initially exempt from this reporting requirement. If, however, such an officer performs active duty for training in excess of 60 days in a calendar year, whether or not in a pay status, a report shall be filed within 15 days after serving the sixty-first day. New entrant reports shall be reviewed and forwarded by the appropriate supervisor and ethics counselor in the same manner as annual reports (see paragraph (i) of this section).

(i) *Annual Financial Disclosure Report (SF-278).*

(1) *Execution and signature.* At any time after 1 January, but not later than 1 May, naval executive personnel who served as such for more than 60 days during the preceding calendar year shall submit an annual Financial Disclosure Report. These reports are to be completed in accordance with the "Instructions for Completing SF-278" attached thereto. Even though no changes have occurred since the last filing of an SF-278, a complete report is required for each calendar year. Military officers newly promoted to the grade of O-7 and having dates of rank after 1 November of the preceding calendar year need not file an annual report. Their attention, however, is directed to paragraph (h) of this section.

(2) *Submission.* (i) SF-278's shall be submitted as follows:

(A) Civilian presidential appointees, to the General Counsel of the Navy;

(B) Other naval executive personnel assigned to positions within the Department of the Navy, to their appropriate supervisor for review and forwarding;

(C) Navy and Marine Corps officers serving in the various Defense agencies (e.g., DNA, DCA, DMA, DLA, DIA), or in the Central Intelligence Agency, to the Designated Agency Ethics Officials of those agencies;

(D) Navy and Marine Corps officers serving in the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, National Security Council, National Aeronautics and Space Administration, or in other assignments outside of the Department of the Navy not specifically mentioned in this paragraph, via their appropriate supervisor, to the Director for Personnel and Security, Washington Headquarters Services (OSD); and

(E) Navy and Marine Corps officers serving in joint, unified or specified commands, through their superiors for

processing in accordance with procedures adopted by the unified, specified, or joint commander.

(ii) Naval executive personnel who are double or triple "hatted" shall meet the filing requirements of each position independently of the other.

(3) *Initial action by appropriate supervisor.* When a report is submitted, the appropriate supervisor shall attach to the report an unclassified copy of the official position description and thereupon forward both documents to the cognizant ethics counselor.

(4) *Ethics counselor.* —(i) *Review.* The ethics counselor shall review the report in accordance with the standards set forth in paragraph B. Ethics counselors need not audit reports to ascertain whether the facts reported therein are accurate. They may be taken at face value unless there is an apparent omission or ambiguity, or the ethics counselor has independent knowledge of matters at variance with the report.

(ii) *Disposition by ethics counselor.* (A) If the ethics counselor concludes that no actual or apparent violation of law or regulation is disclosed, he or she shall enter the following endorsement in the "Comments" section of page 1 of the report: "The information contained in this report discloses no conflict of interest under applicable laws and regulations." The ethics counselor shall thereupon date and sign the report with full name, command or activity, and the title "Ethics Counselor," and forward it to the cognizant deputy ethics official.

(B) If the ethics counselor concludes that no violation is disclosed but that the reporting individual has a direct or indirect financial interest or affiliation which, given other circumstances or different duties and responsibilities within the Department, might give rise to a conflict of interest, he or she shall issue a memorandum of caution to the reporting individual. One copy of the memorandum of caution shall be delivered to the appropriate supervisor and a second copy attached to the SF-278. Thereafter, the ethics counselor shall endorse and forward the report in the manner provided in paragraph (i)(4) (ii)(A) of this section.

(C) If the ethics counselor concludes that the information contained in the report discloses an actual or apparent violation of applicable law or regulation, he or she shall so state by making an appropriate endorsement on page 1 of the report and return the report to the appropriate supervisor.

(5) *Appropriate supervisor review.* If an ethics counselor returns to an appropriate supervisor an SF-278 containing an endorsement indicating an

actual or apparent conflict of interest, the appropriate supervisor shall review the report in accordance with the standards set forth in paragraph (b) of this section.

(i) If the appropriate supervisor concludes that no actual or apparent conflict of interest is disclosed, he or she shall endorse, date, sign, and return the report to the ethics counselor. If the ethics counselor agrees with the conclusion of the appropriate supervisor, he or she shall forward the report to the cognizant deputy ethics official, noting concurrence. Otherwise, the matter shall be referred to higher authority within the command or activity for resolution, and the report, noting that resolution is pending, shall be forwarded to the cognizant deputy ethics official.

(ii) If the appropriate supervisor concludes that an actual or apparent conflict is disclosed, he or she shall issue a memorandum of disqualification to the reporting individual. One copy of the memorandum shall be delivered to the ethics counselor and a second copy attached to the SF-278. The appropriate supervisor shall endorse and forward the report to the cognizant deputy ethics official noting the disqualification in the endorsement.

(6) *Time limits for review and disposition.* Action by the ethics counselor and, if required, the appropriate supervisor, must be completed and the report forwarded to the cognizant deputy ethics official within 15 days of submission but not later than 15 May. If necessary to provide sufficient time to accomplish the required review, commanding officers and heads of activities may require subordinate naval executive personnel to submit their SF-278's prior to 1 May. When a filing extension has been granted in accordance with the procedures of paragraph (k) of this section and a report is received after 1 May, review shall be completed and the report forwarded no later than 15 days after the report is received by the appropriate supervisor.

(j) *Termination reports (SF-278).* Within thirty days after termination of employment from a naval-executive-personnel position, a reporting individual shall submit an SF-278 in the same manner prescribed in paragraph (i)(2) of this section. Termination reports shall contain information covering the preceding calendar year, if an annual report was not filed for that year, and that portion of the present calendar year up to the date of termination of employment. A termination report is not required of an individual who, within 30 days of such termination, assumes

another position requiring the submission of an SF-278. Termination reports shall be reviewed and forwarded by the appropriate supervisor and ethics counselor in the same manner as annual reports.

(k) *Extension of filing deadlines (SF-278).* (1) The General Counsel, in the case of civilian presidential appointees, and the cognizant deputy ethics official in other cases (the cognizant Designated Agency Ethics Official in the case of those flag officers serving in entities identified in paragraphs (i)(2) (i)(3) and (5) of this section, may grant, for good cause, a filing extension of up to 45 days. All requests for extensions shall be submitted in writing to the cognizant official. A copy shall be provided concurrently to the appropriate supervisor and cognizant ethics counselor. The request shall contain a clear statement of the reasons for the request and shall be submitted well in advance of the original filing deadline. The Director, Office of Government Ethics may grant a further extension of up to 45 days. Requests necessitating such a further extension of time shall be forwarded by the cognizant official, with his or her comments attached thereto, to the Director, Office of Government Ethics.

(2) Reporting individuals who anticipate termination of their employment on or before 1 September of any given calendar year may request an extension from the cognizant official of up to 90 days in order to file one consolidated annual and termination report. Combined annual and termination reports must be filed within 30 days after termination of employment but not later than 30 July. No further report is required unless a reportable event occurs between the dates of filing and termination of employment.

(l) *Special instructions (SF-278).* (1) The Under Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps shall ensure that by 10 January of each year, the directors of civilian personnel offices provide to commanding officers and heads of activities served by their offices a list of the names and addresses of civilian naval executive personnel assigned to their respective organizations who are required to file an annual Financial Disclosure Report (SF-278) pursuant to paragraph (i) of this section. They shall similarly ensure that the directors of civilian personnel offices provide to commanding officers and heads of activities served by their offices the names and addresses of civilian naval executive personnel assigned to their respective organizations who are required to file

new entrant or termination Financial Disclosure Reports pursuant to paragraphs (h) and (j) of this section. This information shall be provided immediately upon the appointment of such personnel to a naval-executive-personnel position or upon receipt of an SF-52 requesting approval of the retirement, resignation, or removal of an individual from such a position. Copies of these lists shall also be provided concurrently to the Assistant General Counsel (Ethics).

(2) Commanding officers or heads of activities shall provide timely, written notification and an SF-278, individually, to all civilian naval executive personnel under their cognizance whenever such personnel are required to file a new entrant, annual, or termination Financial Disclosure Report and shall ensure that all such reports are timely filed. They shall further provide to the Assistant General Counsel (Ethics) for appropriate action the names and addresses of all civilian naval executive personnel who continue to fail to submit any such report for more than thirty days after the required date of filing. See paragraph (m) of this section.

(3) The Judge Advocate General or the Director, Judge Advocate Division (Headquarters Marine Corps), as appropriate, shall provide timely, written notification and an SF-278, individually, to all flag and general officers whenever they are required to submit a new entrant, annual, or termination Financial Disclosure Report.

(4) The Under Secretary of the Navy, the Chief of Naval Operations, and the Commandant of the Marine Corps shall ensure that agreements with other DOD components and Government agencies involving detailing of Department of the Navy executive personnel contain a requirement that the other DOD component or Government agency shall forward to the cognizant Navy deputy ethics official a copy of the detailed individual's finally reviewed Financial Disclosure Reports, including a statement as to the resolution of any conflict or apparent conflict of interests indicated.

(m) *Penalty for failure to file SF-278.* In addition to sanctions otherwise provided by law or regulation, the Ethics in Government Act of 1978 provides for a fine of up to \$5,000 for anyone who knowingly falsifies or willfully fails to file an SF-278.

(n) *Availability of SF-278.* Supplies of SF-278 are available from ethics counselors and GSA Supply Distribution Facilities under Stock Number 7540-01-070-8444.

(o) *Confidential Statements of Affiliations and Financial Interests (DD Form 1555).*—(1) *Personnel required to file.* The following naval personnel, except those required to file SF-278, are required to submit initial and annual Confidential Statements of Affiliations and Financial Interests (DD Form 1555):

(i) Regular Navy and Marine Corps officers frocked to O-7, and Reserve Navy and Marine Corps officers frocked to O-7 serving on voluntary extended active duty in excess of 130 days;

(ii) Commanding officers or heads of, and executive officers or deputy heads of:

(A) Navy shore installations with 500 or more military and civilian personnel (including foreign national and indirect-hire personnel regularly attached but excluding personnel attached for duty under instruction); and

(B) All Marine Corps bases and air stations;

(iii) Civilian personnel classified at GS-13 or above, or whose positions are classified at a comparable rate of pay under other authority, and military personnel in grades O-5 and O-6, when it is determined by the commanding officer or head of the activity that the responsibilities of such personnel require the exercise of judgment in making a Government decision or in taking Government action in regard to activities in which the final decision or action may have a significant economic impact on the interests of any non-federal entity. Included, among others, are persons who, as part of their basic duties, sign, negotiate, recommend, or approve contracts, or other procurement actions and those who, as part of their basic duties, are engaged in auditing activities, including supervising others who are engaged in auditing activities or participating in the development of policies and procedures for performing audits;

(iv) Other civilian and military personnel of lesser rank or grade, if their commanding officer or head of activity determines that their responsibilities are comparable to those set forth in subparagraph (o)(1)(iii) of this section;

(v) Special Government employees, except those in the following categories (who may, in any case, be required to submit statements when specifically requested to do so by their appropriate supervisor):

(A) Special Government employees, other than members of advisory committees, who are not a "consultant" or "expert" as those terms are defined in Chapter 304 of the *Federal Personnel Manual*;

(B) Physicians, dentists, and allied medical specialists engaged only in providing service to patients;

(C) Veterinarians providing only veterinary services;

(D) Lecturers participating only in educational activities;

(E) Chaplains performing only religious services;

(F) Individuals in the motion picture and television fields who are utilized only as in DOD productions;

(G) Members of selection panels for NROTC candidates;

(H) Reserve officers on active duty solely for training.

(2) *Time of submission.*—(i) *Initial statement.* Affected naval personnel shall submit a DD Form 1555 to their appropriate supervisor within 30 days of assuming duties requiring the submission of such statements. The information shall be current as of the filing date. Upon transfer or reassignment from one position to another for which the filing of a statement is required, individuals shall submit a current statement to the appropriate supervisor of their new position.

(ii) *Annual statements.* Affected naval personnel shall submit a DD Form 1555 to their appropriate supervisor by 31 October of each year, with information current as of 30 September of that year. Even though no changes have occurred since the last filing, a complete statement is required.

(iii) *Extension of filing deadline.* When required by reason of duty assignment, infirmity, or other good cause, an appropriate supervisor, with the concurrence of the cognizant ethics counselor, may grant an extension of the filing deadline, not to exceed 45 days. Any annual statement filed after 31 October shall include an appropriate notation as to whether any extension of the filing deadline has been granted.

(p) *Review and disposition of DD Form 1555.*—(1) *Review.* Upon receipt of a Confidential Statement of Affiliations and Financial Interests, the appropriate supervisor shall review the statement in accordance with the standards set forth in paragraph (b) of this section, record his or her evaluation in the appropriate block on the form, and forward it to the cognizant ethics counselor for further review. If the ethics counselor agrees with the supervisor's evaluation, he or she shall note concurrence on the statement and return it to the appropriate supervisor for disposition in accordance with paragraph (p)(2) below. If the ethics counselor disagrees with the supervisor's evaluation, he or she shall forward a recommendation for appropriate resolution to the reporting

individual's commanding officer or head of activity for implementation. If the commanding officer or head of activity disagrees with the recommendation of the ethics counselor and resolution of the matter is not achieved, the commanding officer or head of activity shall append his or her comments and recommendations to the record and forward the matter to the cognizant deputy ethics official who shall render a final decision. Local review and resolution of conflicts or apparent conflicts of interest disclosed in annual statements shall be accomplished by 30 November of each year and within 30 days after filing in cases where an extension has been granted and in the case of initial reports.

(2) *Disposition.* Confidential Statements of Affiliations and Financial Interests and a complete record of all action taken thereon shall be retained for a period of six years in a central location within the command or activity to which the reporting individual was assigned at the time of filing, after which time they may be destroyed.

(q) *Review of positions and notification to file (DD Form 1555).* Commanding officers and heads of activities shall ensure that position descriptions of individuals described in paragraphs (o)(1)(iii) and (o)(1)(iv) of this section contain a statement that the incumbent must file a Confidential Statement of Affiliations and Financial Interests. All new or revised position descriptions shall be reviewed to determine those requiring such statements. Any individual may request review of a decision requiring submission of a statement by him or her through established personnel of the Department. Additionally, commanding officers and heads of activities shall notify in writing naval personnel required to file Confidential Statements by 30 September of each year, and shall furnish a DD Form 1555 to them. Lists shall be maintained to ensure that all statements have been completed and returned by 31 October, or as otherwise specified when extensions have been granted.

(r) *Availability of DD Form 1555.* Supplies of DD Form 1555 are available from the Commanding Officer, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120, under Stock Number 0102-LF-001-5550.

(s) *Privacy Act considerations.* Financial Disclosure Reports (SF-278) and Confidential Statements of Affiliations and Financial Interests (DD Form 1555) contain sensitive personal information. Completed SF-278's are

releasable to Government officers and employees and to the public, but only upon submission of a completed Request to Inspect or Receive Copies of SF-278, Financial Disclosure Report (OPM Form 1401) to the deputy ethics official having custody of the report. Naval personnel officially responsible within the chain of command for reviewing or approving a given individual's SF-278 need not submit such requests. Otherwise, care shall be exercised to ensure that completed SF-278's and DD Forms 1555 are seen only by personnel on a need-to-know basis in connection with their official duties. Adequate safeguards shall be utilized to prevent inadvertent or unauthorized disclosure of the completed forms and statements during review, transmittal, and storage. In addition, SECNAVINST 5211.5C prescribes other general restrictions and requirements applicable to the collection, use, and dissemination of these records, and contains Rules of Conduct under the Privacy Act which are applicable to all naval personnel.

(t) *Effect of disclosure.* The reporting of information or the filing of any report or statement of financial circumstances shall not be deemed to authorize the receipt of income, gifts, honoraria or reimbursements, the holding of assets, liabilities, or positions, or involvement in transactions otherwise prohibited by law, Executive Order, or regulation.

§ 721.17 Procedures for administrative enforcement of post employment restrictions of 18 U.S.C. 207.

(a) *Basic procedures.* The administrative enforcement of restrictions on post employment activities imposed by 18 U.S.C. 207 will be accomplished in accordance with 5 CFR 737.27 and these procedures.

(b) *Delegation of authority.* Authority to administer proceedings under these provisions is delegated to the General Counsel of the Navy with power to redelegate.

(c) *Initiation of administrative disciplinary hearing.* (1) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information is not frivolous, the General Counsel expeditiously shall provide such information, along with any comments, to the Director, Office of Government Ethics, and to the Criminal Division, Department of Justice, and shall coordinate any investigation or possible administrative disciplinary action with the Department of Justice. If that Department advises that it does not intend to institute criminal proceedings, such coordination shall no longer be required.

(2) Upon receipt of advice from the Department of Justice that it does not intend to institute criminal proceedings, in circumstances where it has been determined, after appropriate review, that there is reasonable cause to believe that a former Department of the Navy officer or employee (hereafter referred to as a "former employee") has violated 18 U.S.C. 207 (a), (b), or (c) or implementing regulations, the General Counsel will refer the case to the head of the activity where the alleged violation occurred. The activity head may initiate an administrative disciplinary proceeding by providing the former employee with notice of the alleged violation. The privacy of former employees shall be protected as to allegations made prior to a determination of sufficient cause to initiate an administrative disciplinary proceeding.

(d) *Content of notice.* (1) Notice must include:

(i) A statement of allegations, and the basis thereof, sufficiently detailed to enable the former officer or employee to prepare a defense;

(ii) Notification of the right to a hearing;

(iii) The procedure for requesting a hearing;

(iv) A statement to the effect that if the former employee fails to request such a hearing, the Department of the Navy may, nevertheless, take disciplinary action if the former employee is determined to have violated 18 U.S.C. 207.

(2) A copy of these Procedures for Administrative Enforcement shall be provided with this notice.

(3) *Request for a hearing.* (1) Any former employee who is notified of an alleged violation of 18 U.S.C. 207 pursuant to paragraph (c)(2) of this section may, within 20 days from the date of such notice, request a hearing by writing to the activity head who issued the notice.

(2) If the former employee fails to request a hearing in accordance with paragraph (c)(1) of this section, the activity head will notify the General Counsel who may, nevertheless, render a final administrative decision in the matter and, if appropriate, impose the sanctions specified in paragraph (k) of this section.

(f) *Hearing examiner.* (1) The presiding official shall be an individual to whom the General Counsel has delegated authority to make an initial decision (hereafter referred to as a "hearing examiner").

(2) A hearing examiner shall be an attorney with not less than five years

experience in the practice of law subsequent to admission to the bar.

(3) A hearing examiner shall be impartial. An individual who has participated in any manner in the decision to initiate proceedings may not serve as a hearing examiner in those proceedings.

(g) *Time, date, and place of hearing.*

(1) The hearing shall be held at a reasonable time, date, and place.

(2) The date of the hearing shall be established with due regard to the former employee's need for adequate time to prepare a defense properly and the need to resolve expeditiously allegations that may be damaging to his or her reputation.

(h) *Hearing Rights.* This subject of the hearing shall have, at a minimum, the following rights:

(1) To represent himself or herself, or to be represented by counsel;

(2) To introduce and examine witnesses, and to submit physical evidence;

(3) To confront and cross-examine witnesses;

(4) To stipulate as to facts not in issue;

(5) To present oral argument; and

(6) To receive a transcript or recording of the proceedings.

(i) *Burden of proof.* The Department of the Navy has the burden of proof. A violation is established only by a preponderance of the evidence.

(j) *Decision.* (1) Upon conclusion of the hearing, the hearing examiner shall make a determination exclusively upon matters of record in the proceeding, which determination shall be in the form of a written decision. This decision [hereafter referred to as the "initial decision"] shall include all findings of fact and conclusions of law relevant to the matters at issue, including possibly mitigating circumstances. In cases where a violation is found to have occurred, the initial decision shall also include a recommendation as to what measures would constitute appropriate action. The initial decision shall be transmitted to the General Counsel, via the activity head, and a copy shall be mailed or otherwise furnished to the affected former employee.

(2) Within 20 days following receipt of a copy of the initial decision, the former employee may file an appeal with the General Counsel. An appeal shall be in writing, and shall set forth all errors of fact, or law, or both, together with the reasons therefor, alleged to exist in the initial decision.

(3) Upon review of the initial decision, and any appeal timely filed, the General Counsel shall issue a written decision which shall be based solely upon the

record of the proceedings, or those portions thereof cited by the parties to limit the issues. If the General Counsel modifies or reverses the initial decision, findings of fact or conclusions of law that differ from those of the hearing examiner shall be specified. The decision of the General Counsel shall be deemed a final administrative determination.

(k) *Administrative sanctions.* The General Counsel may take appropriate disciplinary action in the case of any former employee found in violation of 18 U.S.C. 207 (a)-(c) or implementing regulations by:

(1) Prohibiting the former employee from making, on behalf of any other person, except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Department of the Navy, its officers or employees, on any matter of business, for a period not to exceed five years. This may be enforced by directing present officers and employees of the Department to refuse to participate in any such appearance, or to accept any such communication; and

(2) Taking other appropriate disciplinary action.

(l) *Judicial review.* Any person found in violation, as described, may seek judicial review of the final administrative determination.

§ 721.18 Bedrock standards of conduct for Department of the Navy Personnel.

(a) To maintain public confidence in the integrity of the Department of the Navy which is essential to the performance of its mission, all naval personnel shall comply with the standards of conduct listed in this section.

(b) Avoid any action, whether or not specifically prohibited, which might result in or reasonably be expected to create the appearance of:

(1) Using public office for private gain,

(2) Giving preferential treatment to any person or entity,

(3) Impeding Government efficiency or economy,

(4) Losing complete independence or impartiality,

(5) Making a Government decision outside official channels, or

(6) Adversely affecting the confidence of the public in the integrity of the Government.

(c) Do not engage in any activity or acquire or retain any financial interest which results in a conflict between your private interest and the public interest of the United States related to your duties.

(d) Do not engage in any activity that might result in or reasonably be expected to create the appearance of a conflict of interest.

(e) Do not accept gratuities from defense contractors.

(f) Do not use your official position to influence any person to provide any private benefit.

(g) Do not use inside information to further a private gain.

(h) Do not use your rank, title, or position for commercial purposes.

(i) Avoid outside employment or activity that is incompatible with your duties or may bring discredit to the Navy.

(j) Never take or use Government property or services for other than officially approved purposes.

(k) Do not give gifts to your superiors or accept them from your subordinates. (Consult § 721.6 for situations considered to fall outside this rule.)

(l) Conduct no official business with persons whose participation in the transaction would be in violation of law.

(m) Seek ways to promote efficiency and economy in Government operation and public confidence in its integrity.

Dated: February 14, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve;
Federal Register Liaison Officer.

[FR Doc. 85-4881 Filed 3-5-85; 8:45 am]

BILLING CODE 3810-AE-M

POSTAL SERVICE

39 CFR Part 601

Procurement of Property and Services; Amendments to Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Amendments to Postal Contracting Manual.

SUMMARY: The Postal Service announces that it is amending the Postal Contracting Manual to increase the rates for procurement of international mail transportation by water to reflect current marine operating costs.

EFFECTIVE DATE: February 15, 1985.

FOR FURTHER INFORMATION CONTACT: Eugene A. Keller, (202) 245-4818.

SUPPLEMENTARY INFORMATION:

The Postal Contracting Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), has been amended by the issue of PCM Circular 85-1, dated February 15, 1985.

In accordance with 39 CFR 601.105, notice of these changes is hereby

published in the Federal Register and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Postal Contracting Manual, see 39 CFR 601.104.)

List of Subjects in 39 CFR Part 601

Government procurement, Postal Service, Incorporation by reference.

Explanation of Changes

Section 19-504 is revised to increase the rates for procurement of international mail transportation by water to reflect current marine operating costs. This revision supersedes the rates in PCM Circular 83-4, May 5, 1983, and in Section 19-504 of forthcoming Transmittal Letter 35.

(5 U.S.C. 552(a); 39 U.S.C. 401, 404, 410, 411)

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-5358 Filed 3-5-85; 8:45 am]

BILLING CODE 7710-12-M

39 CFR Part 601

Procurement of Property and Services; Cumulation of PCM Circulars Into Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Cumulation of PCM Circulars 82-1 through 84-3 into Postal Contracting Manual.

SUMMARY: Several years ago the Postal Service began a new and more expeditious method of amending the Postal Contracting Manual (PCM) by issuing PCM Circulars. Periodically all circulars previously issued are cumulated in a Transmittal Letter, noticed in the Federal Register, and transmitted to subscribers by GPO in the usual way. This document gives notice of the cumulation in Transmittal Letter 35 of PCM Circulars 82-1 through 84-3.

EFFECTIVE DATE: Transmittal Letter 35—August 15, 1984; Substantive changes to the PCM—date of each PCM Circular.

FOR FURTHER INFORMATION CONTACT: Eugene A. Keller, (202) 245-4818.

SUPPLEMENTARY INFORMATION: For the above reasons, the Postal Contracting Manual, which has been incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), has been amended by the issuance of Transmittal Letter 35, dated August 15, 1984.