

## SUBCHAPTER F—SECURITY

### PART 154—DEPARTMENT OF DEFENSE PERSONNEL SECURITY PROGRAM REGULATION

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## Office of the Secretary of Defense

## § 154.3

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AUTHORITY: E.O. 10450, 18 FR 2489, 3 CFR, 1949–1953 Comp., p. 936; E.O. 12356, 47 FR 14874 and 15557, 3 CFR, 1982 Comp., p. 166; E.O. 10865, 25 FR 1583, 3 CFR, 1959–1963 Comp., p. 398; E.O. 12333, 46 FR 59941, 3 CFR, 1981 Comp., p. 200.

SOURCE: 52 FR 11219, Apr. 8, 1987, unless otherwise noted.

### Subpart A—General Provisions

#### § 154.1 Purpose.

(a) To establish policies and procedures to ensure that acceptance and retention of personnel in the Armed Forces, acceptance and retention of civilian employees in the Department of Defense (DoD), and granting members of the Armed Forces, DoD civilian employees, DoD contractors, and other affiliated persons access to classified information are clearly consistent with the interests of national security.

(b) This part: (1) Establishes DoD personnel security policies and procedures;

(2) Sets forth the standards, criteria and guidelines upon which personnel security determinations shall be based;

(3) Prescribes the kinds and scopes of personnel security investigations required;

(4) Details the evaluation and adverse action procedures by which personnel security determinations shall be made; and

(5) Assigns overall program management responsibilities.

#### § 154.2 Applicability.

(a) This part implements the Department of Defense Personnel Security Program and takes precedence over all other departmental issuances affecting that program.

(b) All provisions of this part apply to DoD civilian personnel, members of the Armed Forces, excluding the Coast Guard in peacetime, contractor personnel and other personnel who are affiliated with the Department of Defense except that the unfavorable administrative action procedures pertaining to contractor personnel requiring

access to classified information are contained in DoD 5220.22–R and in 32 CFR part 155.

(c) The policies and procedures which govern the National Security Agency are prescribed by Public Laws 88–290 and 86–36, Executive Orders 10450 and 12333, DoD Directive 5210.45<sup>1</sup>, Director of Central Intelligence Directive (DCID) 1/14<sup>2</sup> and regulations of the National Security Agency.

(d) Under combat conditions or other military exigencies, an authority in paragraph A, Appendix E, may waive such provisions of this part as the circumstances warrant.

[52 FR 11219, Apr. 8, 1987, as amended at 58 FR 61024, Nov. 19, 1993]

#### § 154.3 Definitions.

(a) *Access*. The ability and opportunity to obtain knowledge of classified information. An individual, in fact, may have access to classified information by being in a place where such information is kept, if the security measures that are in force do not prevent him from gaining knowledge of such information.

(b) *Adverse action*. A removal from employment, suspension from employment of more than 14 days, reduction in grade, reduction in pay, or furlough of 30 days or less.

(c) *Background Investigation (BI)*. A personnel security investigation consisting of both record reviews and interviews with sources of information as prescribed in paragraph 3, Appendix A, this part, covering the most recent 5 years of an individual's life or since the 18th birthday, whichever is shorter, provided that at least the last 2 years are covered and that no investigation will be conducted prior to an individual's 16th birthday.

(d) *Classified information*. Official information or material that requires protection in the interests of national security and that is classified for such

<sup>1</sup>Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

<sup>2</sup>Copies may be obtained, if needed from Central Intelligence Agency (CCIS/ICS), 1225 Ames Building, Washington, DC 20505.

purpose by appropriate classifying authority in accordance with the provisions of Executive Order 12356.

(e) *Defense Clearance and Investigative Index (DCII)*. The DCII is the single, automated, central DoD repository which identifies investigations conducted by DoD investigative agencies, and personnel security determinations made by DoD adjudicative authorities.

(f) *DoD component*. Includes the Office of the Secretary of Defense; the Military Departments; Chairman of the Joint Chiefs of Staff; Directors of Defense Agencies and the Unified and Specified Commands.

(g) *Entrance National Agency Check (ENTNAC)*. A personnel security investigation scoped and conducted in the same manner as a National Agency Check except that a technical fingerprint search of the files of the Federal Bureau of Investigation is not conducted.

(h) *Head of DoD component*. The Secretary of Defense; the Secretaries of the Military Departments; the Chairman of Joint Chiefs of Staff; and the Commanders of Unified and Specified Commands; and the Directors of Defense Agencies.

(i) *Immigrant alien*. Any alien lawfully admitted into the United States under an immigration visa for permanent residence.

(j) *Interim security clearance*. A security clearance based on the completion of minimum investigative requirements, which is granted on a temporary basis, pending the completion of the full investigative requirements.

(k) *Limited access authorization*. Authorization for access to Confidential or Secret information granted to non-US. citizens and immigrant aliens, which is limited to only that information necessary to the successful accomplishment of their assigned duties and based on a background investigation scoped for 10 years (paragraph 3, Appendix A).

(l) *Minor derogatory information*. Information that, by itself, is not of sufficient importance or magnitude to justify an unfavorable administrative action in a personnel security determination.

(m) *National Agency check (NAC)*. A personnel security investigation con-

sisting of a records review of certain national agencies as prescribed in paragraph 1, Appendix A, this part, including a technical fingerprint search of the files of the Federal Bureau of Investigation (FBI).

(n) *National Agency Check Plus Written Inquiries (NACI)*. A personnel security investigation conducted by the Office of Personnel Management, combining a NAC and written inquiries to law enforcement agencies, former employers and supervisors, references and schools.

(o) *National security*. National security means the national defense and foreign relations of the United States.

(p) *Need-to-know*. A determination made by a possessor of classified information that a prospective recipient, in the interest of national security, has a requirement for access to, knowledge, or possession of the classified information in order to perform tasks or services essential to the fulfillment of an official U.S. Government program. Knowledge, possession of, or access to, classified information shall not be afforded to any individual solely by virtue of the individual's office, position, or security clearance.

(q) *Periodic Reinvestigation (PR)*. An investigation conducted every five years for the purpose of updating a previously completed background investigation, special background investigation, single scope background investigation or PR on persons occupying positions referred to in §154.19. Investigative requirements are as prescribed in appendix A to part 154, section 5. The period of investigation will not normally exceed the most recent 5-year period.

(r) *Personnel Security Investigation (PSI)*. Any investigation required for the purpose of determining the eligibility of DoD military and civilian personnel, contractor employees, consultants, and other persons affiliated with the Department of Defense, for access to classified information, acceptance or retention in the Armed Forces, assignment or retention in sensitive duties, or other designated duties requiring such investigation. PSIs include investigations of affiliations with subversive organizations, suitability information, or hostage situations (see §154.9(d)) conducted for the purpose of

making personnel security determinations. They also include investigations of allegations that arise subsequent to adjudicative action and require resolution to determine an individual's current eligibility for access to classified information or assignment or retention in a sensitive position.

(s) *Scope.* The time period to be covered and the sources of information to be contacted during the prescribed course of a PSI.

(t) *Security clearance.* A determination that a person is eligible under the standards of this part for access to classified information.

(u) *Senior Officer of the Intelligence Community (SOIC).* The DoD Senior Officers of the Intelligence Community include: the Director, National Security Agency/Central Security Service; Director, Defense Intelligence Agency; Assistant Chief of Staff for Intelligence, U.S. Army; Assistant Chief of Staff for Intelligence, U.S. Air Force; and the Director of Naval Intelligence, U.S. Navy.

(v) *Sensitive position.* Any position so designated within the Department of Defense, the occupant of which could bring about, by virtue of the nature of the position, a materially adverse effect on the national security. All civilian positions are either critical-sensitive, noncritical-sensitive, or nonsensitive as described in §154.13(b).

(w) *Significant derogatory information.* Information that could, in itself, justify an unfavorable administrative action, or prompt an adjudicator to seek additional investigation or clarification.

(x) *Special access program.* Any program imposing "need-to-know" or access controls beyond those normally provided for access to Confidential, Secret, or Top Secret information. Such a program may include, but not be limited to, special clearance, adjudication, investigative requirements, material dissemination restrictions, or special lists of persons determined to have a need-to-know.

(y) *Special Background Investigation (SBI).* A personnel security investigation consisting of all of the components of a BI plus certain additional investigative requirements as prescribed in paragraph 4, Appendix B, this part.

The period of investigation for an SBI is the last 15 years or since the 18th birthday, whichever is shorter, provided that the last 2 full years are covered and that no investigation will be conducted prior to an individual's 16th birthday.

(z) *Special Investigative Inquiry (SII).* A supplemental personnel security investigation of limited scope conducted to prove or disprove relevant allegations that have arisen concerning a person upon whom a personnel security determination has been previously made and who, at the time of the allegation, holds a security clearance or otherwise occupies a position that requires a personnel security determination under the provisions of this part.

(aa) *Service.* Honorable active duty (including attendance at the military academies), membership in ROTC Scholarship Program, Army and Air Force National Guard, Military Reserve Force (including active status and ready reserve), civilian employment in Government service, or civilian employment with a DoD contractor or as a consultant involving access under the DoD Industrial Security Program. Continuity of service is maintained with change from one status to another as long as there is no single break in service greater than 12 months.

(bb) *Unfavorable administrative action.* Adverse action taken as the result of personnel security determinations and unfavorable personnel security determinations as defined in this part.

(cc) *Unfavorable personnel security determination.* A denial or revocation of clearance for access to classified information; denial or revocation of access to classified information; denial or revocation of a Special Access authorization (including access to SCI); non-appointment to or nonselection for appointment to a sensitive position; non-appointment to or nonselection for any other position requiring a trustworthiness determination under this part; reassignment to a position of lesser sensitivity or to a nonsensitive position; and nonacceptance for or discharge from the Armed Forces when any of the foregoing actions are based on derogatory information of personnel security significance.

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(dd) *United States Citizen (Native Born)*. A person born in one of the 50 United States, Puerto Rico, Guam, American Samoa, Northern Mariana Islands, U.S. Virgin Islands; or Panama Canal Zone (if the father or mother (or both) was or is, a citizen of the United States).

[52 FR 11219, Apr. 8, 1987, as amended at 58 FR 61024, Nov. 19, 1993]

### Subpart B—Policies

#### § 154.6 Standards for access to classified information or assignment to sensitive duties.

(a) *General*. Only U.S. citizens shall be granted a personnel security clearance, assigned to sensitive duties, or granted access to classified information unless an authority designated in Appendix E has determined that, based on all available information, there are compelling reasons in furtherance of the Department of Defense mission, including, special expertise, to assign an individual who is not a citizen to sensitive duties or grant a Limited Access Authorization to classified information. Non-U.S. citizens may be employed in the competitive service in sensitive civilian positions only when specifically approved by the Office of Personnel Management, pursuant to E.O. 11935. Exceptions to these requirements shall be permitted only for compelling national security reasons.

(b) *Clearance and sensitive position standard*. The personnel security standard that must be applied to determine whether a person is eligible for access to classified information or assignment to sensitive duties is whether, based on all available information, the person's loyalty, reliability, and trustworthiness are such that entrusting the person with classified information or assigning the person to sensitive duties is clearly consistent with the interests of national security.

(c) *Military service standard*. The personnel security standard that must be applied in determining whether a person is suitable under national security criteria for appointment, enlistment, induction, or retention in the Armed Forces is that, based on all available information, there is no reasonable basis for doubting the person's loyalty

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to the Government of the United States.

#### § 154.7 Criteria for application of security standards.

The ultimate decision in applying either of the security standards set forth in § 154.6 (b) and (c) must be an overall common sense determination based upon all available facts. The criteria for determining eligibility for a clearance under the security standard shall include, but not be limited to the following:

(a) Commission of any act of sabotage, espionage, treason, terrorism, anarchy, sedition, or attempts thereat or preparation therefor, or conspiring with or aiding or abetting another to commit or attempt to commit any such act.

(b) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, terrorist, revolutionist, or with an espionage or other secret agent or similar representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the Government of the United States or to alter the form of Government of the United States by unconstitutional means.

(c) Advocacy or use of force or violence to overthrow the Government of the United States or to alter the form of Government of the United States by unconstitutional means.

(d) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in any foreign or domestic organization, association, movement, group or combination of persons (hereafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the U.S. or of any State or which seeks to overthrow the Government of the U.S. or any State or subdivision thereof by unlawful means.

(e) Unauthorized disclosure to any person of classified information, or of other information, disclosure of which

is prohibited by statute, Executive Order or regulation.

(f) Performing or attempting to perform one's duties, acceptance and active maintenance of dual citizenship, or other acts conducted in a manner which serve or which could be expected to serve the interests of another government in preference to the interests of the United States.

(g) Disregard of public law, statutes, Executive Orders or regulations including violation of security regulations or practices.

(h) Criminal or dishonest conduct.

(i) Acts of omission or commission that indicate poor judgment, unreliability or untrustworthiness.

(j) Any behavior or illness, including any mental condition, which, in the opinion of competent medical authority, may cause a defect in judgment or reliability with due regard to the transient or continuing effect of the illness and the medical findings in such case.

(k) Vulnerability to coercion, influence, or pressure that may cause conduct contrary to the national interest. This may be

(1) The presence of immediate family members or other persons to whom the applicant is bonded by affection or obligation in a nation (or areas under its domination) whose interests may be inimical to those of the United States, or

(2) Any other circumstances that could cause the applicant to be vulnerable.

(l) Excessive indebtedness, recurring financial difficulties, or unexplained affluence.

(m) Habitual or episodic use of intoxicants to excess.

(n) Illegal or improper use, possession, transfer, sale or addiction to any controlled or psychoactive substance, narcotic, cannabis or other dangerous drug.

(o) Any knowing and willful falsification, coverup, concealment, misrepresentation, or omission of a material fact from any written or oral statement, document, form or other representation or device used by the Department of Defense or any other Federal agency.

(p) Failing or refusing to answer or to authorize others to answer questions or provide information required by a

congressional committee, court, or agency in the course of an official inquiry whenever such answers or information concern relevant and material matters pertinent to an evaluation of the individual's trustworthiness, reliability, and judgment.

(q) Acts of sexual misconduct or perversion indicative of moral turpitude, poor judgment, or lack of regard for the laws of society.

#### § 154.8 Types and scope of personnel security investigations.

(a) *General.* The types of personnel security investigations authorized below vary in scope of investigative effort required to meet the purpose of the particular investigation. No other types are authorized. The scope of a PSI may be neither raised nor lowered without the approval of the Deputy Under Secretary of Defense for Policy.

(b) *National Agency Check.* Essentially, a NAC is a records check of designated agencies of the Federal Government that maintain record systems containing information relevant to making a personnel security determination. An ENTNAC is a NAC (scope as outlined in paragraph 1, Appendix A) conducted on inductees and first-term enlistees, but lacking a technical fingerprint search. A NAC is also an integral part of each BI, SBI, and Periodic Reinvestigation (PR). Subpart C prescribes when a NAC is required.

(c) *National Agency Check plus written inquiries.* The Office of Personnel Management (OPM) conducts a NAC plus Written Inquiries (NACIs) on civilian employees for all departments and agencies of the Federal Government, pursuant to E.O. 10450. NACIs are considered to meet the investigative requirements of this regulation for a nonsensitive or noncritical sensitive position and/or up to a Secret clearance and, in addition to the NAC, include coverage of law enforcement agencies, former employers and supervisors, references, and schools covering the last 5 years.

(d) *DoD National Agency check plus written inquiries.* DIS will conduct a DNACI, consisting of the scope contained in paragraph 2, Appendix A, for DoD military and contractor personnel

for access to Secret information. Subpart C prescribes when a DNACI is required.

(e) *Background investigation.* The BI is the principal type of investigation conducted when an individual requires Top Secret clearance or is to be assigned to a critical sensitive position. The BI normally covers a 5-year period and consists of a subject interview, NAC, LACs, credit checks, developed character references (3), employment records checks, employment references (3), and select scoping as required to resolve unfavorable or questionable information. (See paragraph 3, Appendix A). Subpart C prescribes when a BI is required.

(f) *Special background investigation.* (1) An SBI is essentially a BI providing additional coverage both in period of time as well as sources of information, scoped in accordance with the provisions of DCID 1/14 but without the personal interview. While the kind of coverage provided for by the SBI determines eligibility for access to SCI, DoD has adopted this coverage for certain other Special Access programs. Subpart C prescribes when an SBI is required.

(2) The OPM, FBI, Central Intelligence Agency (CIA), Secret Service, and the Department of State conduct specially scoped BIs under the provisions of DCID 1/14. Any investigation conducted by one of the above-cited agencies under DCID 1/14 standards is considered to meet the SBI investigative requirements of this part.

(3) The detailed scope of an SBI is set forth in paragraph 4, Appendix A.

(g) *Special investigative inquiry.* (1) A Special Investigative Inquiry is a personnel security investigation conducted to prove or disprove allegations relating to the criteria outlined in §154.7(a) of this part except current criminal activities (see §154.9(c)(4)), that have arisen concerning an individual upon whom a personnel security determination has been previously made and who, at the time of the allegation, holds a security clearance or otherwise occupies a position that requires a trustworthiness determination.

(2) Special Investigative Inquiries are scoped as necessary to address the spe-

cific matters requiring resolution in the case concerned and generally consist of record checks and/or interviews with potentially knowledgeable persons. An SII may include an interview with the subject of the investigation when necessary to resolve conflicting information and/or to provide an opportunity to refute or mitigate adverse information.

(3) In those cases when there is a disagreement between Defense Investigative Service (DIS) and the requester as to the appropriate scope of the investigation, the matter may be referred to the Deputy Under Secretary of Defense for Policy for resolution.

(h) *Periodic reinvestigation.* As referred to in §154.19(a) and other national directives, certain categories of duties, clearance, and access require the conduct of a PR every five years according to the scope outlined in paragraph 5, Appendix A. The PR scope applies to military, civilian, contractor, and foreign national personnel.

(i) *Personal interview.* Investigative experience over the years has demonstrated that, given normal circumstances, the subject of a personnel security investigation is the best source of accurate and relevant information concerning the matters under consideration. Further, restrictions imposed by the Privacy Act of 1974 dictate that Federal investigative agencies collect information to the greatest extent practicable directly from the subject when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. Accordingly, personal interviews are an integral part of the DoD personnel security program and shall be conducted in accordance with the requirements set forth in the following paragraphs of this section.

(1) *BI/PR.* A personal interview shall be conducted by a trained DIS agent as part of each BI and PR.

(2) *Resolving adverse information.* A personal interview of the subject shall be conducted by a DIS agent (or, when authorized, by investigative personnel of other DoD investigative organizations designated in this Regulation to conduct personnel security investigations), when necessary, as part of each

Special Investigative Inquiry, as well as during the course of initial or expanded investigations, to resolve or clarify any information which may impugn the subject's moral character, threaten the subject's future Federal employment, raise the question of subject's security clearability, or be otherwise stigmatizing.

(3) *Hostage situation.* A personal interview shall be conducted by a DIS agent (or, when authorized, by investigative personnel of other DoD investigative organizations designated in this Regulation to conduct personnel security investigations) in those instances in which an individual has immediate family members or other persons bound by ties of affection or obligation who reside in a nation whose interests are inimical to the interests of the United States. (See §154.9(d).)

(4) *Applicants/potential nominees for DoD military or civilian positions requiring access to SCI or other positions requiring an SBI.* A personal interview of the individual concerned shall be conducted, to the extent feasible, as part of the selection process for applicants/potential nominees for positions requiring access to SCI or completion of an SBI. The interview shall be conducted by a designee of the Component to which the applicant or potential nominee is assigned. Clerical personnel are not authorized to conduct these interviews. Such interviews shall be conducted utilizing resources in the order of priority indicated below:

(i) Existing personnel security screening systems (e.g., Air Force Assessment Screening Program, Naval Security Group Personnel Security Interview Program, U.S. Army Personnel Security Screening Program); or

(ii) Commander of the nominating organization or such official as he or she has designated in writing (e.g., Deputy Commander, Executive Officer, Security Officer, Security Manager, S-2, Counterintelligence Specialist, Personnel Security Specialist, or Personnel Officer); or

(iii) Agents of investigative agencies in direct support of the Component concerned.

(5) *Administrative procedures.* (i) The personal interview required by para-

graph (i)(4) of this section shall be conducted in accordance with Appendix F.

(ii) For those investigations requested subsequent to the personal interview requirements of paragraph (i)(4) of this section the following procedures apply:

(A) The DD Form 1879 (Request for Personnel Security Investigation) shall be annotated under Item 20 (Remarks) with the statement "Personal Interview Conducted by (cite the duty assignment of the designated official (e.g., Commander, Security Officer, Personnel Security Specialist, etc.))" in all cases in which an SBI is subsequently requested.

(B) Unfavorable information developed through the personal interview required by paragraph (i)(4) of this section, will be detailed in a written report attached to the DD Form 1879 to include full identification of the interviewer. Failure to provide such information may result in conduct of an incomplete investigation by DIS.

(C) Whenever it is determined that it is not feasible to conduct the personal interview required by paragraph (i)(4) of this section prior to requesting the SBI, the DD Form 1879 shall be annotated under Item 20 citing the reason for not conducting the interview.

(j) *Expanded investigation.* If adverse or questionable information relevant to a security determination is developed during the conduct of a personnel security investigation, regardless of type, the investigation shall be expanded, consistent with the restrictions in §154.10(e) to the extent necessary to substantiate or disprove the adverse or questionable information.

#### **§154.9 Authorized personnel security investigative agencies.**

(a) *General.* The DIS provides a single centrally directed personnel security investigative service to conduct personnel security investigations within the 50 States, District of Columbia, and Commonwealth of Puerto Rico for DoD Components, except as provided for in DoD Directive 5100.23.<sup>1</sup> DIS will request the Military Departments or other appropriate Federal Agencies to

<sup>1</sup> See footnote 1 to §154.2(c).



accomplish DoD investigative requirements in other geographic areas beyond their jurisdiction. No other DoD Component shall conduct personnel security investigations unless specifically authorized by the Deputy Under Secretary of Defense for Policy. In certain instances provided for below, the DIS shall refer an investigation to other investigative agencies.

(b) *Subversive affiliations*—(1) *General*. In the context of DoD investigative policy, subversion refers only to such conduct as is forbidden by the laws of the United States. Specifically, this is limited to information concerning the activities of individuals or groups that involve or will involve the violation of Federal law, for the purpose of:

(i) Overthrowing the Government of the United States or the government of a State;

(ii) Substantially impairing for the purpose of influencing U.S. Government policies or decisions:

(A) The functions of the Government of the United States, or

(B) The functions of the government of a State;

(iii) Depriving persons of their civil rights under the Constitution or laws of the United States.

(2) *Military Department/FBI jurisdiction*. Allegations of activities covered by §154.7 (a) through (f) are in the exclusive investigative domain of either the counterintelligence agencies of the Military Departments or the FBI, depending on the circumstances of the case and the provisions of the Agreement Governing the Conduct of Defense Department Counterintelligence Activities in Conjunction with the FBI. Whenever allegations of this nature are developed, whether before or after a security clearance has been issued or during the course of a personnel security investigation conducted by DIS, they shall be referred immediately to either the FBI or to a military department counterintelligence agency, as appropriate.

(3) *DIS jurisdiction*. Allegations of activities limited to those set forth in §154.7 (g) through (j) of this part shall be investigated by DIS.

(c) *Suitability information*—(1) *General*. Most derogatory information developed through personnel security investiga-

tions of DoD military or civilian personnel is so-called suitability information, that is, information pertaining to activities or situations covered by §154.7 (g) through (q). Almost all unfavorable personnel security determinations made by DoD authorities are based on derogatory suitability information, although such information is often used as a basis for unfavorable administrative actions not of a security nature, such as action under the Uniform Code of Military Justice or removal from Federal employment under OPM regulations.

(2) *Pre-clearance investigation*. Derogatory suitability information, except that covered in paragraph (c)(4) of this section, developed during the course of a personnel security investigation, prior to the issuance of an individual's personnel security clearance, shall be investigated by DIS to the extent necessary to confirm or refute its applicability to §154.7 (g) through (q).

(3) *Postadjudication investigation*. Derogatory suitability allegations, except those covered by paragraph (c)(4) of this section arising subsequent to clearance requiring investigation to resolve and to determine the individual's eligibility for continued access to classified information, reinstatement of clearance/access, or retention in a sensitive position shall be referred to DIS to conduct a Special Investigative Inquiry. Reinvestigation of individuals for adjudicative reconsideration due to the passage of time or evidence of favorable behavior shall also be referred to DIS for investigation. In such cases, completion of the appropriate statement of personal history by the individual constitutes consent to be investigated. Individual consent or completion of a statement of personal history is not required when §154.19(b) applies. Postadjudication investigation of allegations of a suitability nature required to support other types of unfavorable personnel security determinations or disciplinary procedures independent of a personnel security determination shall be handled in accordance with applicable Component administrative regulations. These latter categories of allegations lie outside the DoD personnel security program and are not a

proper investigative function for departmental counterintelligence organizations, Component personnel security authorities, or DIS.

(4) *Allegations of criminal activity.* Any allegations of conduct of a nature indicating possible criminal conduct, including any arising during the course of a personnel security investigation, shall be referred to the appropriate DoD, military department or civilian criminal investigative agency. Military department investigative agencies have primary investigative jurisdiction in cases where there is probable cause to believe that the alleged conduct will be the basis for prosecution under the Uniform Code of Military Justice.

(d) *Hostage situations*—(1) *General.* A hostage situation exists when a member of an individual's immediate family or such other person to whom the individual is bound by obligation or affection resides in a country whose interests are inimical to the interests of the United States. The rationale underlying this category of investigation is based on the possibility that an individual in such a situation might be coerced, influenced, or pressured to act contrary to the best interests of national security.

(2) *DIS jurisdiction.* In the absence of evidence of any coercion, influence or pressure, hostage investigations are exclusively a personnel security matter, rather than counterintelligence, and all such investigations shall be conducted by DIS.

(3) *Military Department and/or FBI jurisdiction.* Should indications be developed that hostile intelligence is taking any action specifically directed against the individual concerned—or should there exist any other evidence that the individual is actually being coerced, influenced, or pressured by an element inimical to the interests of national security—then the case becomes a counterintelligence matter (outside of investigative jurisdiction of DIS) to be referred to the appropriate military department or the FBI for investigation.

(e) *Overseas personnel security investigations.* Personnel security investigations requiring investigation overseas shall be conducted under the direction and control of DIS by the appropriate military department investigative or-

ganization. Only postadjudication investigations involving an overseas subject may be referred by the requester directly to the military department investigative organization having investigative responsibility in the overseas area concerned (see Appendix I) with a copy of the investigative request sent to DIS. In such cases, the military department investigative agency will complete the investigation, forward the completed report of investigation directly to DIS, with a copy to the requester.

#### § 154.10 Limitations and restrictions.

(a) *Authorized requesters and personnel security determination authorities.* Personnel security investigations may be requested and personnel security clearances (including Special Access authorizations as indicated) granted only by those authorities designated in §154.31 and Appendix E.

(b) *Limit investigations and access.* The number of persons cleared for access to classified information shall be kept to a minimum, consistent with the requirements of operations. Special attention shall be given to eliminating unnecessary clearances and requests for personnel security investigations.

(c) *Collection of investigative data.* To the greatest extent practicable, personal information relevant to security determinations shall be obtained directly from the subject of a personnel security investigation. Such additional information required to make the necessary personnel security determination shall be obtained as appropriate from knowledgeable personal sources, particularly the subject's peers, and through checks of relevant records including school, employment, credit, medical, and law enforcement records.

(d) *Privacy Act notification.* Whenever personal information is solicited from an individual preparatory to the initiation of a personnel security investigation, the individual must be informed of—

- (1) The authority (statute or Executive order that authorized solicitation);
- (2) The principal purpose or purposes for which the information is to be used;
- (3) The routine uses to be made of the information;

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(4) Whether furnishing such information is mandatory or voluntary;

(5) The effect on the individual, if any, of not providing the information and

(6) That subsequent use of the data may be employed as part of an aperiodic, random process to screen and evaluate continued eligibility for access to classified information.

(e) *Restrictions on investigators.* Investigation shall be carried out insofar as possible to collect only as much information as is relevant and necessary for a proper personnel security determination. Questions concerning personal and domestic affairs, national origin, financial matters, and the status of physical health thus should be avoided unless the question is relevant to the criteria of §154.7. Similarly, the probing of a person's thoughts or beliefs and questions about conduct that have no personnel security implications are unwarranted. When conducting investigations under the provisions of this part, investigators shall:

(1) Investigate only cases or persons assigned within their official duties.

(2) Interview sources only where the interview can take place in reasonably private surroundings.

(3) Always present credentials and inform sources of the reasons for the investigation. Inform sources of the subject's accessibility to the information to be provided and to the identity of the sources providing the information. Restrictions on investigators relating to Privacy Act advisements to subjects of personnel security investigations are outlined in paragraph (d) of this section.

(4) Furnish only necessary identity data to a source, and refrain from asking questions in such a manner as to indicate that the investigator is in possession of derogatory information concerning the subject of the investigation.

(5) Refrain from using, under any circumstances, covert or surreptitious investigative methods, devices, or techniques including mail covers, physical or photographic surveillance, voice analyzers, inspection of trash, paid informants, wiretap, or eavesdropping devices.

(6) Refrain from accepting any case in which the investigator knows of circumstances that might adversely affect his fairness, impartiality, or objectivity.

(7) Refrain, under any circumstances, from conducting physical searches of the subject or his property.

(8) Refrain from attempting to evaluate material contained in medical files. Medical files shall be evaluated for personnel security program purposes only by such personnel as are designated by DoD medical authorities. However, review and collection of medical record information may be accomplished by authorized investigative personnel.

(f) *Polygraph restrictions.* The polygraph may be used as a personnel security screening measure only in those limited instances authorized by the Secretary of Defense in DoD Directive 5210.48.<sup>1</sup>

**Subpart C—Personnel Security Investigative Requirements**

**§ 154.13 Sensitive positions.**

(a) *Designation of sensitive positions.* Certain civilian positions within the Department of Defense entail duties of such a sensitive nature, including access to classified information, that the misconduct, malfeasance, or nonfeasance of an incumbent in any such position could result in an unacceptably adverse impact upon the national security. These positions are referred to in this part as sensitive positions. It is vital to the national security that great care be exercised in the selection of individuals to fill such positions. Similarly, it is important that only positions which truly meet one or more of the criteria set forth in paragraph (b) of this section be designated as sensitive.

(b) *Criteria for security designation of positions.* Each civilian position within the Department of Defense shall be categorized, with respect to security sensitivity, as either nonsensitive, noncritical-sensitive, or critical-sensitive.

(1) The criteria to be applied in designating a position as sensitive are:

(i) Critical-sensitive.

<sup>1</sup> See footnote 1 to §154.2(c).

(A) Access to Top Secret information.

(B) Development or approval of plans, policies, or programs that affect the overall operations of the Department of Defense or of a DoD Component.

(C) Development or approval of war plans, plans or particulars of future major or special operations of war, or critical and extremely important items of war.

(D) Investigative and certain investigative support duties, the issuance of personnel security clearances or access authorizations, or the making of personnel security determinations.

(E) Fiduciary, public contact, or other duties demanding the highest degree of public trust.

(F) Duties falling under Special Access programs.

(G) Category I automated data processing (ADP) positions.

(H) Any other position so designated by the head of the Component or designee.

(ii) Noncritical-sensitive.

(A) Access to Secret or Confidential information.

(B) Security police/provost marshal-type duties involving the enforcement of law and security duties involving the protection and safeguarding of DoD personnel and property.

(C) Category II automated data processing positions.

(D) Duties involving education and orientation of DoD personnel.

(E) Duties involving the design, operation, or maintenance of intrusion detection systems deployed to safeguard DoD personnel and property.

(F) Any other position so designated by the head of the Component or designee.

(2) All other positions shall be designated as nonsensitive.

(c) *Authority to designate sensitive positions.* The authority to designate sensitive positions is limited to those authorities designated in paragraph G, Appendix E. These authorities shall designate each position within their jurisdiction as to its security sensitivity and maintain these designations current vis-a-vis the specific duties of each position.

(d) *Limitation of sensitive positions.* It is the responsibility of those authori-

ties authorized to designate sensitive positions to insure that only those positions are designated as sensitive that meet the criteria of paragraph (b) and (c) of this section that the designation of sensitive positions is held to a minimum consistent with mission requirements. Designating authorities shall maintain an accounting of the number of sensitive positions by category, i.e., critical or non-critical sensitive. Such information will be included in annual report required in subpart K.

(e) *Billet control system for Top Secret.*

(1) To standardize and control the issuance of Top Secret clearances within the Department of Defense, a specific designated billet must be established and maintained for all DoD military and civilian positions requiring access to Top Secret information. Only persons occupying these billet positions will be authorized a Top Secret clearance. If an individual departs from a Top Secret billet to a billet/position involving a lower level clearance, the Top Secret clearance will be administratively rescinded. This Top Secret billet requirement is in addition to the existing billet structure maintained for SCI access.

(2) Each request to DIS for a BI or SBI that involves access to Top Secret or SCI information will require inclusion of the appropriate billet reference, on the request for investigation. Each Component head should incorporate, to the extent feasible, the Top Secret billet structure into the component Manpower Unit Manning Document. Such a procedure should minimize the time and effort required to maintain such a billet structure.

(3) A report on the number of established Top Secret billets will be submitted each year to the DUSD(P) as part of the annual clearance report referred to in subpart K.

#### § 154.14 Civilian employment.

(a) *General.* The appointment of each civilian employee in any DoD Component is subject to investigation, except for reappointment when the break in employment is less than 12 months. The type of investigation required is set forth in this section according to position sensitivity.

(b) *Nonsensitive positions.* In accordance with the OPM Federal Personnel Manual, a NACI shall be requested not later than 3 working days after a person is appointed to a nonsensitive position. Although there is normally no investigation requirement for per diem, intermittent, temporary or seasonal employees in nonsensitive positions provided such employment does not exceed an aggregate of 120 days in either a single continuous or series of appointments, a NAC may be requested of DIS where deemed appropriate by the employing activity.

(c) *Noncritical-sensitive positions.* (1) An NACI shall be requested and the NAC portion favorably completed before a person is appointed to a noncritical-sensitive position (for exceptions see paragraph (e) (1) and (2) of this section). An ENTNAC, NAC or DNACI conducted during military or contractor employment may also be used for appointment provided a NACI has been requested from OPM and there is no more than 12 months break in service since completion of the investigation.

(2) Seasonal employees (including summer hires) normally do not require access to classified information. For those requiring access to classified information the appropriate investigation is required. The request for the NAC (or NACI) should be submitted to DIS by entering "SH" (summer hire) in red letters approximately one inch high on the DD Form 398-2, Personnel Security Questionnaire (National Agency Checklist). Additionally, to ensure expedited processing by DIS, summer hire requests should be assembled and forwarded to DIS in bundles, when appropriate.

(d) *Critical-sensitive positions.* A BI shall be favorably completed prior to appointment to critical-sensitive positions (for exceptions see paragraph (e) (1) and (2) of this section. Certain critical-sensitive positions require a preappointment SBI in accordance with §154.17. Preappointment BIs and SBIs will be conducted by DIS.

(e) *Exceptions—(1) Noncritical-sensitive.* In an emergency, a noncritical-sensitive position may be occupied pending the completion of the NACI if the head of the requesting organization

finds that the delay in appointment would be harmful to the national security and such finding is reduced to writing and made part of the record. In such instances, the position may be filled only after the NACI has been requested.

(2) *Critical-sensitive.* In an emergency, a critical-sensitive position may be occupied pending completion of the BI (or SBI, as appropriate) if the head of the requesting organization finds that the delay in appointment would be harmful to the national security and such finding is reduced to writing and made a part of the record. In such instances, the position may be filled only when the NAC portion of the BI (or SBI) or a previous valid NACI, NAC or ENTNAC has been completed and favorably adjudicated.

(f) *Mobilization of DoD civilian retirees.* The requirements contained in paragraph (a) of this section, regarding the type of investigation required by position sensitivity for DoD civilian retirees temporary appointment when the break in employment is greater than 12 months, should either be expedited or waived for the purposes of mobilizing selected reemployed annuitants under the provisions of title 5, United States Code, depending upon the degree of sensitivity of the position to which assigned. Particular priority should be afforded to newly assigned personnel assigned to the defense intelligence and security agencies with respect to granting security clearances in an expeditious manner under paragraph (a) of this section.

#### § 154.15 Military appointment, enlistment, and induction.

(a) *General.* The appointment, enlistment, and induction of each member of the Armed Forces or their Reserve Components shall be subject to the favorable completion of a personnel security investigation. The types of investigation required are set forth in this section.

(b) *Entrance investigation.* (1) An ENTNAC shall be conducted on each enlisted member of the Armed Forces at the time of initial entry into the service. A DNACI shall be conducted on each commissioned officer, except as

permitted by paragraph (d) of this section, warrant officer, cadet, midshipman, and Reserve Officers Training Candidate, at the time of appointment. A full NAC shall be conducted upon re-entry of any of the above when there has been a break in service greater than 12 months.

(2) If an officer or warrant officer candidate has been the subject of a favorable NAC or ENTNAC and there has not been a break in service of more than 12 months, a new NAC is not authorized. This includes ROTC graduates who delay entry onto active duty pending completion of their studies.

(3) All derogatory information revealed during the enlistment or appointment process that results in a moral waiver will be fully explained on a written summary attached to the DD Form 398-2.

(c) *Reserve Components and National Guard.* Reserve Component and National Guard personnel not on active duty are subject to the investigative requirements of this section.

(d) *Exceptions for certain commissioned officers of Reserve Components.* The requirements for entrance investigation shall be rigidly adhered to except as follows. Health professionals, chaplains, and attorneys may be commissioned in the Reserve Components prior to completion of a DNACI provided that:

(1) A DNACI is initiated at the time an application for a commission is received; and

(2) The applying health professional, chaplain, or attorney agrees in writing that, if the results of the investigation are unfavorable, he or she will be subject to discharge if found to be ineligible to hold a commission. Under this exception, commissions in Reserve Components other than the National Guard may be tendered to immigrant alien health professionals, chaplains, and attorneys.

(e) *Mobilization of military retirees.* The requirements contained in paragraph (c) of this section, regarding a full NAC upon reentry to active duty of any officer or enlisted regular/reserve military retiree or Individual Ready Reserve who has been separated from service for a period of greater than 12 months, should be waived for the purposes of

partial or full mobilization under provisions of title 10, (title 14, pertaining to the U.S. Coast Guard as an element of the Navy) U.S. Code, to include the period of prescribed service refresher training. Particular priority should be afforded to military retirees mobilized and assigned to the defense intelligence and security agencies communities.

#### § 154.16 Security clearance.

(a) *General.* (1) The authorities designated in paragraph A, Appendix E are the only authorities authorized to grant, deny or revoke DoD personnel security clearances. The granting of such clearances shall be limited to only those persons who require access to classified information for mission accomplishment.

(2) Military, DoD civilian, and contractor personnel who are employed by or serving in a consultant capacity to the DoD, may be considered for access to classified information only when such access is required in connection with official duties. Such individuals may be granted either a final or interim personnel security clearance provided the investigative requirements set forth below are complied with, and provided further that all available information has been adjudicated and a finding made that such clearance would be clearly consistent with the interests of national security.

(b) *Investigative requirements for clearance—(1) Top Secret.* (i) Final Clearance:

(A) BI.  
(B) Established billet per §154.13(e) (1) through (3) (except contractors).

(ii) Interim Clearance:  
(A) Favorable NAC, ENTNAC, DNACI, or NACI completed

(B) Favorable review of DD Form 398/SF-86/SF-171/DD Form 49

(C) BI or SBI has been initiated  
(D) Favorable review of local personnel, base/military police, medical, and other security records as appropriate.

(E) Established billet per §154.13(e) (1) through (3) (except contractors)

(F) Provisions of paragraph §154.14(e) (1) and (2) have been met regarding civilian personnel.

(2) *Secret.* (i) Final Clearance:

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(A) DNACI: Military (except first-term enlistees) and contractor employees

(B) NACI: Civilian employees

(C) ENTNAC: First-term enlistees

(ii) Interim Clearance:

(A) When a valid need to access Secret information is established, an interim Secret clearance may be issued in every case, provided that the steps outlined in paragraphs (b)(2)(ii) (B) through (E) of this section have been complied with.

(B) Favorable review of DD Form 398-2/SF-85/SF-171/DD Form 48.

(C) NACI, DNACI, or ENTNAC initiated.

(D) Favorable review of local personnel, base military police, medical, and security records as appropriate.

(E) Provisions of §154.14(e) have been complied with regarding civilian personnel.

(3) *Confidential*. (i) Final Clearance:

(A) NAC or ENTNAC: Military and contractor employees (except for Philippine national members of the United States Navy on whom a BI shall be favorably completed.)

(B) NACI: Civilian employees (except for summer hires who may be granted a final clearance on the basis of a NAC).

(ii) Interim Clearance:

(A) Favorable review of DD Form 398-2/SF 85/SF 171/ DD Form 48.

(B) NAC, ENTNAC or NACI initiated.

(C) Favorable review of local personnel, base military police, medical, and security records as appropriate.

(D) Provisions of §154.14(e) (1) and (2) have been complied with regarding civilian personnel.

(4) *Validity of previously granted clearances*. Clearances granted under less stringent investigative requirements retain their validity; however, if a higher degree of clearance is required, investigative requirements of this directive will be followed.

(c) *Access to classified information by non-U.S. citizens*. (1) Only U.S. citizens are eligible for a security clearance. Therefore, every effort shall be made to ensure that non-United States citizens are not employed in duties that may require access to classified information. However, when there are compelling reasons to grant access to clas-

sified information to an immigrant alien or a foreign national in furtherance of the mission of the Department of Defense, such individuals may be granted a "Limited Access Authorization" (LAA) under the following conditions:

(i) LAAs will be limited to Secret and Confidential level only; LAAs for Top Secret are prohibited.

(ii) Access to classified information is not inconsistent with that determined releasable by designated disclosure authorities, in accordance with DoD Directive 5230.11<sup>1</sup> to the country of which the individual is a citizen.

(iii) Access to classified information must be limited to information relating to a specific program or project.

(iv) Favorable completion of an BI (scoped for 10 years); where the full investigative coverage cannot be completed, a counterintelligence scope polygraph examination will be required in accordance with the provisions of DoD Directive 5210.48.

(v) Security clearances previously issued to immigrant aliens will be re-issued as LAAs.

(vi) The Limited Access Authorization determination shall be made only by an authority designated in paragraph B, Appendix E.

(vii) LAAs issued by the Unified and Specified Commands shall be reported to the central adjudicative facility of the appropriate military department in accordance with the assigned responsibilities in DoD Directive 5100.3<sup>1</sup> for inclusion in the Defense Central Index of Investigation (DCII).

(2) In each case of granting a Limited Access Authorization, a record shall be maintained as to:

(i) The identity (including current citizenship) of the individual to whom the Limited Access Authorization is granted, to include name and date and place of birth;

(ii) Date and type of most recent investigation to include the identity of the investigating agency;

(iii) The nature of the specific program material(s) to which access is authorized (delineated as precisely as possible);

<sup>1</sup> See footnote 1 to §154.2(c).

(iv) The classification level to which access is authorized; and

(v) The compelling reasons for granting access to the materials cited in (iii).

(vi) Status of the individual (i.e., immigrant alien or foreign national).

(3) Individuals granted LAAs under the foregoing provisions shall be the subject of a 5-year periodic reinvestigation as set forth in paragraph 5, Appendix A.

(4) Foreign nationals who are LAA candidates must agree to submit to a counterintelligence-scope polygraph examination prior to being granted access in accordance with DoD Directive 5210.48.

(5) If geographical and political situations prevent the full completion of the BI (and/or counterintelligence-scope polygraph) issuance of an LAA shall not be authorized; exceptions to the policy may only be authorized by the DUSD(P).

(6) A report on all LAAs in effect, including the data required in paragraphs (d)(2) (i) through (vi) of this section shall be furnished to the Deputy Under Secretary of Defense for Policy within 60 days after the end of each fiscal year. (See §154.77).

(d) *Access by persons outside the Executive Branch.* (1) Access to classified information by persons outside the Executive Branch shall be accomplished in accordance with 32 CFR part 159. The investigative requirement shall be the same as for the appropriate level of security clearance, except as indicated below.

(2) Members of the U.S. Senate and House of Representatives do not require personnel security clearances. They may be granted access to DoD classified information which relates to matters under the jurisdiction of the respective Committees to which they are assigned and is needed to perform their duties in connection with such assignments.

(3) Congressional staff members requiring access to DoD classified information shall be processed for a security clearance in accordance with 32 CFR part 353 and the provisions of this part. The Director, Washington Headquarters Services (WHS) will initiate the required investigation (initial or

reinvestigation) to DIS, adjudicate the results and grant, deny or revoke the security clearance, as appropriate. The Assistant Secretary of Defense (Legislative Affairs) will be notified by WHS of the completed clearance action.

(4) State governors do not require personnel security clearances. They may be granted access to specifically designated classified information, on a "need-to-know" basis, based upon affirmation by the Secretary of Defense or the head of a DoD Component or single designee, that access, under the circumstances, serves the national interest. Staff personnel of a governor's office requiring access to classified information shall be investigated and cleared in accordance with the prescribed procedures of this part when the head of a DoD Component, or single designee, affirms that such clearance serves the national interest. Access shall also be limited to specifically designated classified information on a "need-to-know" basis.

(5) Members of the U.S. Supreme Court, the Federal judiciary and the Supreme Courts of the individual States do not require personnel security clearances. They may be granted access to DoD classified information to the extent necessary to adjudicate cases being heard before these individual courts.

(6) Attorneys representing DoD military, civilian or contractor personnel, requiring access to DoD classified information to properly represent their clients, shall normally be investigated by DIS and cleared in accordance with the prescribed procedures in paragraph (b) of this section. This shall be done upon certification of the General Counsel of the DoD Component involved in the litigation that access to specified classified information, on the part of the attorney concerned, is necessary to adequately represent his or her client. In exceptional instances, when the exigencies of a given situation do not permit timely compliance with the provisions of §154.16(b), access may be granted with the written approval of an authority designated in Appendix E provided that as a minimum: a favorable name check of the FBI and the DCII has been completed, and a DoD Non-



Disclosure Agreement has been executed. In post-indictment cases, after a judge has invoked the security procedures of the Classified Information Procedures Act (CIPA) the Department of Justice may elect to conduct the necessary background investigation and issue the required security clearance, in coordination with the affected DoD Component.

(e) *Restrictions on issuance of personnel security clearances.* Personnel security clearances must be kept to the absolute minimum necessary to meet mission requirements. Personnel security clearances shall *not* be issued:

(1) To persons in nonsensitive positions.

(2) To persons whose regular duties do not require authorized access to classified information.

(3) For ease of movement of persons within a restricted, controlled, or industrial area, whose duties do not require access to classified information.

(4) To persons who may only have inadvertent access to sensitive information or areas, such as guards, emergency service personnel, firemen, doctors, nurses, police, ambulance drivers, or similar personnel.

(5) To persons working in shipyards whose duties do not require access to classified information.

(6) To persons who can be prevented from accessing classified information by being escorted by cleared personnel.

(7) To food service personnel, vendors and similar commercial sales or service personnel whose duties do not require access to classified information.

(8) To maintenance or cleaning personnel who may only have inadvertent access to classified information unless such access cannot be reasonably prevented.

(9) To persons who perform maintenance on office equipment, computers, typewriters, and similar equipment who can be denied classified access by physical security measures.

(10) To perimeter security personnel who have no access to classified information.

(11) To drivers, chauffeurs and food service personnel.

(f) *Dual citizenship.* Persons claiming both U.S. and foreign citizenship shall be processed under §154.16(b) and adju-

icated in accordance with the “Foreign Preference” standard in Appendix I.

(g) *One-time access.* Circumstances may arise where an urgent operational or contractual exigency exists for cleared DoD personnel to have one-time or short duration access to classified information at a higher level than is authorized by the existing security clearance. In many instances, the processing time required to upgrade the clearance would preclude timely access to the information. In such situations, and only for compelling reasons in furtherance of the DoD mission, an authority referred to in paragraph (h)(1) of this section, may grant higher level access on a temporary basis subject to the terms and conditions prescribed below. This special authority may be revoked for abuse, inadequate record keeping, or inadequate security oversight. These procedures do not apply when circumstances exist which would permit the routine processing of an individual for the higher level clearance. Procedures and conditions for effecting emergency one-time access to the next higher classification level are as follows:

(1) Authorization for such one-time access shall be granted by a flag or general officer, a general court-martial convening authority or equivalent Senior Executive Service member, after coordination with appropriate security officials.

(2) The recipient of the one-time access authorization must be a U.S. citizen, possess a current DoD security clearance, and the access required shall be limited to classified information one level higher than the current clearance.

(3) Such access, once granted, shall be cancelled promptly when no longer required, at the conclusion of the authorized period of access, or upon notification from the granting authority.

(4) The employee to be afforded the higher level access shall have been continuously employed by a DoD Component or a cleared DoD contractor for the preceding 24-month period. Higher level access is not authorized for part-time employees.

(5) Pertinent local records concerning the employee concerned shall be reviewed with favorable results.

(6) Whenever possible, access shall be confined to a single instance or at most, a few occasions. The approval for access shall automatically expire 30 calendar days from date access commenced. If the need for access is expected to continue for a period in excess of 30 days, written approval of the granting authority is required. At such time as it is determined that the need for access is expected to extend beyond 90 days, the individual concerned shall be promptly processed for the level of clearance required. When extended access has been approved, such access shall be cancelled at or before 90 days from original date of access.

(7) Access at the higher level shall be limited to information under the control and custody of the authorizing official and shall be afforded under the general supervision of a properly cleared employee. The employee charged with providing such supervision shall be responsible for:

(i) Recording the higher-level information actually revealed,

(ii) The date(s) such access is afforded; and

(iii) The daily retrieval of the material accessed.

(8) Access at the next higher level shall not be authorized for COMSEC, SCI, NATO, or foreign government information.

(9) The exercise of this provision shall be used sparingly and repeat use within any 12 month period on behalf of the same individual is prohibited. The approving authority shall maintain a record containing the following data with respect to each such access approved:

(i) The name, and SSN of the employee afforded higher level access.

(ii) The level of access authorized.

(iii) Justification for the access, to include an explanation of the compelling reason to grant the higher level access and specifically how the DoD mission would be furthered.

(iv) An unclassified description of the specific information to which access was authorized and the duration of access along with the date(s) access was afforded.

(v) A listing of the local records reviewed and a statement that no significant adverse information concerning the employee is known to exist.

(vi) The approving authority's signature certifying (h)(9) (i) through (v) of this section.

(vii) Copies of any pertinent briefing/debriefings administered to the employee.

(h) *Access by retired flag/general officers.* (1) Upon determination by an active duty flag/general officer that there are compelling reasons, in furtherance of the Department of Defense mission, to grant a retired flag/general officer access to classified information in connection with a specific DoD program or mission, for a period not greater than 90 days, the investigative requirements of this part may be waived. The access shall be limited to classified information at a level commensurate with the security clearance held at the time of retirement—not including access to SCI.

(2) The flag/general officer approving issuance of the clearance shall, provide the appropriate DoD Component central clearance facility a written record to be incorporated into the DCII detailing:

(i) Full identifying data pertaining to the cleared subject;

(ii) The classification of the information to which access was authorized.

(3) Such access may be granted only after the compelling reason and the specific aspect of the DoD mission which is served by granting such access has been detailed and under the condition that the classified materials involved are not removed from the confines of a government installation or other area approved for storage of DoD classified information.

[52 FR 11219, Apr. 8, 1987, as amended at 55 FR 3223, Jan. 31, 1990]

#### § 154.17 Special access programs.

(a) *General.* It is the policy of the Department of Defense to establish, to the extent possible, uniform and consistent personnel security investigative requirements. Accordingly, investigations exceeding established requirements are authorized only when mandated by statute, national regulations, or international agreement. In this

connection, there are certain Special Access programs originating at the national or international level that require personnel security investigations and procedures of a special nature. These programs and the special investigative requirements imposed by them are described in this section. A Special Access program is any program designed to control access, distribution, and protection of particularly sensitive information established pursuant to section 4–2 of Executive Order 12356 and prior Orders. Title 32 CFR part 159 governs the establishment of Departmental Special Access Programs.

(b) *Sensitive Compartmented Information (SCI)*. (1) The investigative requirements for access to SCI is an SBI (See paragraph 4, appendix A) including a NAC on the individual's spouse or cohabitant. When conditions indicate, additional investigation shall be conducted on the spouse of the individual and members of the immediate family (or other persons to whom the individual is bound by affection or obligation) to the extent necessary to permit a determination by the adjudication agency that the Personnel Security standards of DCID 1/14 are met.

(2) A previous investigation conducted within the past five years which substantially meets the investigative requirements prescribed by this section may serve as a basis for granting access approval provided that there has been no break in the individual's military service, DoD civilian employment, or access to classified information under the Industrial Security Program greater than 12 months. The individual shall submit one copy of an updated PSQ covering the period since the completion of the last SBI.

(c) *Single Integrated Operation Plan—Extremely Sensitive Information (SIOP-ESI)*. The investigative requirement for access to SIOP-ESI is an SBI, including a NAC on the spouse and the individual's immediate family who are 18 years of age or over and who are U.S. citizens other than by birth or who are resident aliens.

(d) *Presidential support activities*. (1) DoD Directive 5210.55<sup>1</sup> prescribes the policies and procedures for the nomina-

tion, screening, selection, and continued evaluation of DoD military and civilian personnel and contractor employees assigned to or utilized in Presidential Support activities. The type of investigation of individuals assigned to Presidential Support activities varies according to whether the person investigated qualifies for Category One or Category Two as indicated below:

(i) *Category one*. (A) Personnel assigned on a permanent or full-time basis to duties in direct support of the President (including the office staff of the Director, White House Military Office, and all individuals under his control):

(1) Presidential aircrew and associated maintenance and security personnel.

(2) Personnel assigned to the White House communications activities and the Presidential retreat.

(3) White House transportation personnel.

(4) Presidential mess attendants and medical personnel.

(5) Other individuals filling administrative positions at the White House.

(B) Personnel assigned on a temporary or part-time basis to duties supporting the President:

(1) Military Social Aides.

(2) Selected security, transportation, flight-line safety, and baggage personnel.

(3) Others with similar duties.

(C) Personnel assigned to the Office of the Military Aide to the Vice President.

(ii) *Category two*. (A) Personnel assigned to honor guards, ceremonial units, and military bands who perform at Presidential functions and facilities.

(B) Employees of contractors who provide services or contractors employees who require unescorted access to Presidential Support areas, activities, or equipment—including maintenance of the Presidential retreat, communications, and aircraft.

(C) Individuals in designated units requiring a lesser degree of access to the President or Presidential Support activities.

(2) Personnel nominated for Category One duties must have been the subject of an SBI, including a NAC on the

<sup>1</sup>See footnote 1 to § 154.2(c).

spouse and all members of the individual's immediate family of 18 years of age or over who are U.S. citizens other than by birth or who are resident aliens. The SBI must have been completed within the 12 months preceding selection for Presidential Support duties. If such an individual marries subsequent to the completion of the SBI, the required spouse check shall be made at that time.

(3) Personnel nominated for Category Two duties must have been the subject of a BI, including a NAC on the spouse and all members of the individual's immediate family of 18 years of age or over who are U.S. citizens other than by birth or who are resident aliens. The BI must have been completed within the 12 months preceding selection for Presidential Support duties. It should be noted that duties (separate and distinct from their Presidential Support responsibilities) of some Category Two personnel may make it necessary for them to have special access clearances which require an SBI.

(4) The U.S. citizenship of foreign-born immediate family members of all Presidential Support nominees must be verified by investigation.

(5) A limited number of Category One personnel having especially sensitive duties have been designated by the Director, White House Military Office as "Category A." These personnel shall be investigated under special scoping in accordance with the requirements of the Memorandum of Understanding between the Director, White House Military Office and the Special Assistant to the Secretary and Deputy Secretary of Defense, July 30, 1980.

(e) *Nuclear Weapon Personnel Reliability Program (PRP)*. (1) DoD Directive 5210.42<sup>1</sup> sets forth the standards of individual reliability required for personnel performing duties associated with nuclear weapons and nuclear components. The investigative requirement for personnel performing such duties is:

(i) *Critical position: BI*. In the event that it becomes necessary to consider an individual for a critical position and the required BI has not been completed, interim certification may be

made under carefully controlled conditions as set forth below.

(A) The individual has had a favorable DNACI, NAC (or ENTNAC) within the past 5 years without a break in service or employment in excess of 1 year.

(B) The BI has been requested.

(C) All other requirements of the PRP screening process have been fulfilled.

(D) The individual is identified to supervisory personnel as being certified on an interim basis.

(E) The individual is not used in a two-man team with another such individual.

(F) Justification of the need for interim certification is documented by the certifying official.

(G) Should the BI not be completed within 150 days from the date of the request, the certifying official shall query the Component clearance authority, who shall ascertain from DIS the status of the investigation. On the basis of such information, the certifying official shall determine whether to continue or to withdraw the interim certification.

(ii) *Controlled position: DNACI/NACI*.

(A) An ENTNAC completed for the purpose of first term enlistment or induction into the Armed Forces does not satisfy this requirement.

(B) Interim certification is authorized for an individual who has not had a DNACI/NACI completed within the past 5 years, subject to the following conditions:

(1) The individual has had a favorable ENTNAC/NAC, or higher investigation, that is more than 5 years old and has not had a break in service or employment in excess of 1 year.

(2) A DNACI/NACI has been requested at the time of interim certification.

(3) All other requirements of the PRP screening process have been fulfilled.

(4) Should the DNACI/NACI not be completed within 90 days from the date of the request, the procedures set forth in paragraph (e)(1)(i)(G) of this section for ascertaining the delay of the investigation in the case of a critical position shall apply.

<sup>1</sup>See footnote 1 to §154.2(c).

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(iii) *Additional requirements apply.* (A) The investigation upon which certification is based must have been completed within the last 5 years from the date of initial assignment to a PRP position and there must not have been a break in service or employment in excess of 1 year between completion of the investigation and initial assignment.

(B) In those cases in which the investigation was completed more than 5 years prior to initial assignment or in which there has been a break in service or employment in excess of 1 year subsequent to completion of the investigation, a reinvestigation is required.

(C) Subsequent to initial assignment to the PRP, reinvestigation is not required so long as the individual remains in the PRP.

(D) A medical evaluation of the individual as set forth in DoD Directive 5210.42.

(E) Review of the individual's personnel file and other official records and information locally available concerning behavior or conduct which is relevant to PRP standards.

(F) A personal interview with the individual for the purpose of informing him of the significance of the assignment, reliability standards, the need for reliable performance, and of ascertaining his attitude with respect to the PRP.

(G) Service in the Army, Navy and Air Force Reserve does not constitute active service for PRP purposes.

(f) *Access to North Atlantic Treaty Organization (NATO) classified information.*

(1) Personnel assigned to a NATO staff position requiring access to NATO Cosmic (Top Secret), Secret, or Confidential information shall have been the subject of a favorably adjudicated BI (10 year scope), DNACI/NACI or NAC/ENTNAC, current within five years prior to the assignment, in accordance with USSAN Instruction 1-69 and § 154.19(f).

(2) Personnel *not* assigned to a NATO staff position, but requiring access to NATO Cosmic, Secret or Confidential information in the normal course of their duties, must possess the equivalent final U.S. security clearance based upon the appropriate personnel security investigation (appendix A) re-

quired by §§ 154.16(b) and 154.19(j) of this part.

(g) *Other special access programs.* Special investigative requirements for Special Access programs not provided for in this paragraph may not be established without the written approval of the Deputy Under Secretary of Defense for Policy.

**§ 154.18 Certain positions not necessarily requiring access to classified information.**

(a) *General.* DoD Directive 5200.8<sup>1</sup> outlines the authority of military commanders under the Internal Security Act of 1950 to issue orders and regulations for the protection of property or places under their command. Essential to carrying out this responsibility is a commander's need to protect the command against the action of untrustworthy persons. Normally, the investigative requirements prescribed in this part should suffice to enable a commander to determine the trustworthiness of individuals whose duties require access to classified information or appointment to positions that are sensitive and do not involve such access. However, there are certain categories of positions or duties which, although not requiring access to classified information, if performed by untrustworthy persons, could enable them to jeopardize the security of the command or otherwise endanger the national security. The investigative requirements for such positions or duties are detailed in this section.

(b) *Access to restricted areas, sensitive information or equipment not involving access to classified information.* (1) Access to restricted areas, sensitive information or equipment by DoD military, civilian or contractor personnel shall be limited to those individuals who have been determined trustworthy as a result of the favorable completion of a NAC (or ENTNAC) or who are under the escort of appropriately cleared personnel. Where escorting such persons is not feasible, a NAC shall be conducted and favorably reviewed by the appropriate component agency or activity prior to permitting such access. DoD Components shall not request, and

<sup>1</sup> See footnote 1 to § 154.2(c).

shall not direct or permit their contractors to request, security clearances to permit access to areas when access to classified information is not required in the normal course of duties or which should be precluded by appropriate security measures. In determining trustworthiness under this paragraph, the provisions of § 154.7 and appendix H will be utilized.

(2) In meeting the requirements of this paragraph, approval shall be obtained from one of the authorities designated in paragraph A, appendix E of this part, for authority to request NACs on DoD military, civilian or contractor employees. A justification shall accompany each request which shall detail the reasons why escorted access would not better serve the national security. Requests for investigative requirements beyond a NAC shall be forwarded to the Deputy Under Secretary of Defense for Policy for approval.

(3) NAC requests shall—

(i) Be forwarded to DIS in accordance with the provisions of paragraph B, appendix C,

(ii) Contain a reference to this paragraph on the DD Form 398-2, and

(iii) List the authority in appendix E who approved the request.

(4) Determinations to deny access under the provisions of this paragraph must not be exercised in an arbitrary, capricious, or discriminatory manner and shall be the responsibility of the military or installation commander as provided for in DoD Directive 5200.8.

(c) *Nonappropriated fund employees.* Each Nonappropriated Fund employee who is employed in a position of trust as designated by an official authorized in paragraph H, appendix E, shall have been the subject of a NAC completed no longer than 12 months prior to employment or a prior personnel security investigation with no break in Federal service or employment greater than 12 months in accordance with DoD Manual 1401.1-M. An individual who does not meet established suitability requirements may not be employed without prior approval of the authorizing official. Issuance of a Confidential or Secret clearance will be based on a DNACI or NACI in accordance with § 154.16(b).

(d) *Customs inspectors.* DoD employees appointed as customs inspectors, under waivers approved in accordance with DoD 5030.49-R shall have undergone a favorably adjudicated NAC completed within the past 5 years unless there has been a break in DoD employment greater than 1 year in which case a current NAC is required.

(e) *Red Cross/United Service Organizations personnel.* A favorably adjudicated NAC shall be accomplished on Red Cross or United Service Organizations personnel as prerequisite for assignment with the Armed Forces overseas (32 CFR part 253).

(f) *Officials authorized to issue security clearances.* Any person authorized to adjudicate personnel security clearances shall have been the subject of a favorably adjudicated BI.

(g) *Personnel security clearance adjudication officials.* Any person selected to serve with a board, committee, or other group responsible for adjudicating personnel security cases shall have been the subject of a favorably adjudicated BI.

(h) *Persons requiring DoD building passes.* Pursuant to DoD Directive 5210.46<sup>1</sup> each person determined by the designated authorities of the Components concerned as having an official need for access to DoD buildings in the National Capital Region shall be the subject of a favorably, adjudicated NAC prior to issuance of a DoD building pass. Conduct of a BI for this purpose is prohibited unless approved in advance by ODUSD(P).

(i) *Foreign national employees overseas not requiring access to classified information.* Foreign nationals employed by DoD organizations overseas, whose duties do not require access to classified information, shall be the subject of the following record checks, initiated by the appropriate military department investigative organization consistent with § 154.9(e) prior to employment:

(1) Host government law enforcement and security agency checks at the city, state (province), and national level, whenever permissible by the laws of the host government; and

(2) DCII.

<sup>1</sup> See footnote 1 to § 154.2(c).

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(3) FBI-HQ/ID. (Where information exists regarding residence by the foreign national in the United States for one year or more since age 18).

(j) *Special agents and investigative support personnel.* Special agents and those noninvestigative personnel assigned to investigative agencies whose official duties require continuous access to complete investigative files and material require an SBI.

(k) *Persons requiring access to chemical agents.* Personnel whose duties involve access to or security of chemical agents shall be screened initially for suitability and reliability and shall be evaluated on a continuing basis at the supervisory level to ensure that they continue to meet the high standards required. At a minimum, all such personnel shall have had a favorably adjudicated NAC completed within the last 5 years prior to assignment in accordance with the provisions of DoD Directive 5210.65.<sup>1</sup>

(l) *Education and orientation personnel.* Persons selected for duties in connection with programs involving the education and orientation of military personnel shall have been the subject of a favorably adjudicated NAC prior to such assignment. This does not include teachers/administrators associated with university extension courses conducted on military installations in the United States. Non-US citizens from a country listed in appendix G shall be required to undergo a BI if they are employed in a position covered by this paragraph.

(m) *Contract guards.* Any person performing contract guard functions shall have been the subject of a favorably adjudicated NAC prior to such assignment.

(n) *Transportation of arms, ammunition and explosives (AA&E).* Any DoD military, civilian or contract employee (including commercial carrier) operating a vehicle or providing security to a vehicle transporting Category I, II or Confidential AA&E shall have been the subject of a favorably adjudicated NAC or ENTNAC.

(o) *Personnel occupying information systems positions designated ADP-I, ADP-II & ADP-III.* DoD military, civilian

personnel, consultants, and contractor personnel performing on unclassified automated information systems may be assigned to one of three position sensitivity designations (in accordance with appendix J) and investigated as follows:

ADP-I: BI  
ADP-II: DNACI/NACI  
ADP-III: NAC/ENTNAC

Those personnel falling in the above categories who require access to classified information will, of course, be subject to the appropriate investigative scope contained in §154.16(b).

(p) *Others.* Requests for approval to conduct an investigation on other personnel, not provided for in §154.18 (b) through (o) considered to fall within the general provisions of §154.18(a) shall be submitted, detailing the justification therefor, for approval to the Deputy Under Secretary of Defense for Policy. Approval of such requests shall be contingent upon an assurance that appropriate review procedures exist and that adverse determinations will be made at no lower than major command level.

**§ 154.19 Reinvestigation.**

(a) *General.* DoD policy prohibits unauthorized and unnecessary investigations. There are, however, certain situations and requirements that necessitate reinvestigation of an individual who has already been investigated under the provisions of this part. It is the policy to limit reinvestigation of individuals to the scope contained in paragraph 5, appendix A to meet overall security requirements. Reinvestigation, generally, is authorized only as follows:

(1) To prove or disprove an allegation relating to the criteria set forth in §154.7 of this part with respect to an individual holding a security clearance or assigned to a position that requires a trustworthiness determination;

(2) To meet the periodic reinvestigation requirements of this part with respect to those security programs enumerated below; and

(3) Upon individual request, to assess the current eligibility of individuals

<sup>1</sup>See footnote 1 to §154.2(c).

who did not receive favorable adjudicative action after an initial investigation, if a potential clearance need exists and there are reasonable indications that the factors upon which the adverse determination was made no longer exists.

(b) *Allegations related to disqualification.* Whenever questionable behavior patterns develop, derogatory information is discovered, or inconsistencies arise related to the disqualification criteria outlined in §154.7 that could have an adverse impact on an individual's security status, a Special Investigative Inquiry (SII), psychiatric, drug or alcohol evaluation, as appropriate, may be requested to resolve all relevant issues in doubt. If it is essential that additional relevant personal data is required from the investigative subject, and the subject fails to furnish the required data, the subject's existing security clearance or assignment to sensitive duties shall be terminated in accordance with §154.56(b).

(c) *Access to Sensitive Compartmented Information (SCI).* Each individual having current access to SCI shall be the subject of a PR conducted on a 5-year recurring basis scoped as set forth in paragraph 5, appendix A.

(d) *Critical-sensitive positions.* Each DoD civilian employee occupying a critical sensitive position shall be the subject of a PR conducted on a 5-year recurring basis scoped as set forth in paragraph 5, appendix A.

(e) *Presidential support duties.* Each individual assigned Presidential Support duties shall be the subject of a PR conducted on a 5-year recurring basis scoped as set forth in paragraph 5, appendix A.

(f) *NATO staff.* Each individual assigned to a NATO staff position requiring a COSMIC clearance shall be the subject of a PR conducted on a 5-year recurring basis scoped as set forth in paragraph 5, appendix A. Those assigned to a NATO staff position requiring a NATO SECRET clearance shall be the subject of a new NAC conducted on a 5-year recurring basis.

(g) *Extraordinarily sensitive duties.* In extremely limited instances, extraordinary national security implications associated with certain SCI duties may require very special compartmentation

and other special security measures. In such instances, a Component SOIC may, with the approval of the Deputy Under Secretary of Defense for Policy, request PR's at intervals of less than 5 years as outlined in paragraph 5, appendix A. Such requests shall include full justification and a recommendation as to the desired frequency. In reviewing such requests, the Deputy Under Secretary of Defense for Policy shall give due consideration to:

(1) The potential damage that might result from the individual's defection or abduction.

(2) The availability and probable effectiveness of means other than re-investigation to evaluate factors concerning the individual's suitability for continued SCI access.

(h) *Foreign nationals employed by DoD organizations overseas.* Foreign nationals employed by DoD organizations overseas who have been granted a "Limited Access Authorization" pursuant to §154.16(d) shall be the subject of a PR, as set forth in paragraph 5, appendix A, conducted under the auspices of DIS by the appropriate military department or other U.S. Government investigative agency consistent with §154.9(e) and appendix I of this part.

(i) *Persons accessing very sensitive information classified Secret.* (1) Heads of DoD Components shall submit a request to the Deputy Under Secretary of Defense for Policy for approval to conduct periodic reinvestigations on persons holding Secret clearances who are exposed to very sensitive Secret information.

(2) Generally, the Deputy Under Secretary of Defense for Policy will only approve periodic reinvestigations of persons having access to Secret information if the unauthorized disclosure of the information in question could reasonably be expected to:

(i) Jeopardize human life or safety.

(ii) Result in the loss of unique or uniquely productive intelligence sources or methods vital to U.S. security.

(iii) Compromise technologies, plans, or procedures vital to the strategic advantage of the United States.

(3) Each individual accessing very sensitive Secret information who has been designated by an authority listed



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in paragraph A, appendix E as requiring periodic reinvestigation, shall be the subject of a PR conducted on a 5-year recurring basis scoped as stated in paragraph 5, appendix A.

(j) *Access to Top Secret information.* Each individual having current access to Top Secret information shall be the subject of a PR conducted on a 5-year recurring basis scoped as outlined in paragraph 5, appendix A.

(k) *Personnel occupying computer positions designated ADP–1.* All DoD military, civilians, consultants, and contractor personnel occupying computer positions designated ADP–I, shall be the subject of a PR conducted on a 5-year recurring basis as set forth in paragraph 5, appendix A.

**§ 154.20 Authority to waive investigative requirements.**

*Authorized officials.* Only an official designated in paragraph G, appendix E, is empowered to waive the investigative requirements for appointment to a sensitive position, assignment to sensitive duties or access to classified information pending completion of the investigation required by this section. Such waiver shall be based upon certification in writing by the designated official that such action is necessary to the accomplishment of a DoD mission. A minor investigative element that has not been met should not preclude favorable.

**Subpart D—Reciprocal Acceptance of Prior Investigations and Personnel Security Determinations**

**§ 154.23 General.**

Previously conducted investigations and previously rendered personnel security determinations shall be accepted within DoD in accordance with the policy set forth below.

**§ 154.24 Prior investigations conducted by DoD investigative organizations.**

As long as there is no break in military service/civilian employment greater than 12 months, any previous personnel security investigation conducted by DoD investigative organizations that essentially is equivalent in

scope to an investigation required by this part will be accepted without requesting additional investigation. There is no time limitation as to the acceptability of such investigations, subject to the provisions of §§ 154.8(h) and 154.25(b) of this part.

**§ 154.25 Prior personnel security determinations made by DoD authorities.**

(a) Adjudicative determinations for appointment in sensitive positions, assignment to sensitive duties or access to classified information (including those pertaining to SCI) made by designated DoD authorities will be mutually and reciprocally accepted by all DoD Components without requiring additional investigation, unless there has been a break in the individual's military service/civilian employment of greater than 12 months or unless derogatory information that occurred subsequent to the last prior security determination becomes known. A check of the DCII should be conducted to accomplish this task.

(b) Whenever a valid DoD security clearance or Special Access authorization (including one pertaining to SCI) is on record, Components shall not request DIS or other DoD investigative organizations to forward prior investigative files for review unless:

(1) Significant derogatory information or investigation completed subsequent to the date of last clearance or Special Access authorization, is known to the requester; or

(2) The individual concerned is being considered for a higher level clearance (e.g., Secret or Top Secret) or the individual does not have a Special Access authorization and is being considered for one; or

(3) There has been a break in the individual's military service/civilian employment of greater than 12 months subsequent to the issuance of a prior clearance.

(4) The most recent SCI access authorization of the individual concerned was based on a waiver.

(c) Requests for prior investigative files authorized by this part shall be made in writing, shall cite the specific justification for the request (i.e., upgrade of clearance, issue Special Access

authorization, etc.), and shall include the date, level, and issuing organization of the individual's current or most recent security clearance or Special Access authorization.

(d) All requests for non-DoD investigative files, authorized under the criteria prescribed by paragraphs (a), (b) (1), (2), (3), and (4) and (c) of this section shall be:

(1) Submitted on DD Form 398-2 to DIS;

(2) Annotated as a "Single Agency Check" of whichever agency or agency developed the investigative file or to obtain the check of a single national agency.

(e) When further investigation is desired, in addition to an existing non-DoD investigative file, a DD Form 1879 will be submitted to DIS with the appropriate security forms attached. The submission of a Single Agency Check via DD Form 398-2 will be used to obtain an existing investigative file or check a single national agency.

(f) Whenever a civilian or military member transfers from one DoD activity to another, the losing organization's security office is responsible for advising the gaining organization of any pending action to suspend, deny or revoke the individual's security clearance as well as any adverse information that may exist in security, personnel or other files. In such instances the clearance shall not be reissued until the questionable information has been adjudicated.

**§ 154.26 Investigations conducted and clearances granted by other agencies of the Federal government.**

(a) Whenever a prior investigation or personnel security determination (including clearance for access to information classified under E.O. 12356 of another agency of the Federal Government meets the investigative scope and standards of this part, such investigation or clearance may be accepted for the investigative or clearance purposes of this part, provided that the employment with the Federal agency concerned has been continuous and there has been no break longer than 12 months since completion of the prior investigation, and further provided that inquiry with the agency discloses

no reason why the clearance should not be accepted. If it is determined that the prior investigation does not meet the provisions of this paragraph, supplemental investigation shall be requested.

(b) A NACI conducted by OPM shall be accepted and considered equivalent to a DNACI for the purposes of this part.

(c) Department of Defense policy on reciprocal acceptance of clearances with the Nuclear Regulatory Commission and the Department of Energy is set forth in DoD Directive 5210.2.<sup>1</sup>

**Subpart E—Requesting Personnel Security Investigations**

**§ 154.30 General.**

Requests for personnel security investigations shall be limited to those required to accomplish the Defense mission. Such requests shall be submitted only by the authorities designated in § 154.31. These authorities shall be held responsible for determining if persons under their jurisdiction require a personnel security investigation. Proper planning must be effected to ensure that investigative requests are submitted sufficiently in advance to allow completion of the investigation before the time it is needed to grant the required clearance or otherwise make the necessary personnel security determination.

**§ 154.31 Authorized requesters.**

Requests for personnel security investigation shall be accepted only from the requesters designated below:

- (a) *Military Departments.* (1) Army.
  - (i) Central Clearance Facility.
  - (ii) All activity commanders.
  - (iii) Chiefs of recruiting stations.
- (2) Navy (including Marine Corps).
  - (i) Central Adjudicative Facility.
  - (ii) Commanders and commanding officers of organizations listed on the Standard Navy Distribution List.
  - (iii) Chiefs of recruiting stations.
- (3) Air Force.
  - (i) Air Force Security Clearance Office.
  - (ii) Assistant Chief of Staff for Intelligence.

<sup>1</sup> See footnote 1 to § 154.2(c).

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- (iii) All activity commanders.
- (iv) Chiefs of recruiting stations.
- (b) Defense Agencies—Directors of Security and activity commanders.
- (c) Organization of the Joint Chiefs of Staff—Chief, Security Division.
- (d) Office of the Secretary of Defense—Director for Personnel and Security, Washington Headquarters Services.
- (e) Commanders of Unified and Specified Commands or their designees.
- (f) Such other requesters approved by the Deputy Under Secretary of Defense for Policy.

**§ 154.32 Criteria for requesting investigations.**

Authorized requesters shall use the tables set forth in appendix C to determine the type of investigation that shall be requested to meet the investigative requirement of the specific position or duty concerned.

**§ 154.33 Request procedures.**

To insure efficient and effective completion of required investigations, all requests for personnel security investigations shall be prepared and forwarded in accordance with Appendix B and the investigative jurisdictional policies set forth in § 154.9.

**§ 154.34 Priority requests.**

To insure that personnel security investigations are conducted in an orderly and efficient manner, requests for priority for individual investigations or categories of investigations shall be kept to a minimum. DIS shall not assign priority to any personnel security investigation or categories of investigations without written approval of the Deputy Under Secretary of Defense for Policy.

**§ 154.35 Personal data provided by the subject of the investigation.**

(a) To conduct the required investigation, it is necessary that the investigative agency be provided certain relevant data concerning the subject of the investigation. The Privacy Act of 1974 requires that, to the greatest extent practicable, personal information shall be obtained directly from the subject individual when the information may result in adverse determinations

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affecting an individual's rights, benefits, and privileges under Federal programs.

(b) Accordingly, it is incumbent upon the subject of each personnel security investigation to provide the personal information required by this part. At a minimum, the individual shall complete the appropriate investigative forms, provide fingerprints of a quality acceptable to the FBI, and execute a signed release, as necessary, authorizing custodians of police, credit, education, employment, and medical and similar records, to provide relevant record information to the investigative agency. When the FBI returns a fingerprint card indicating that the quality of the fingerprints is not acceptable, an additional set of fingerprints will be obtained from the subject. In the event the FBI indicates that the additional fingerprints are also unacceptable, no further attempt to obtain more fingerprints need be made; this aspect of the investigation will then be processed on the basis of the name check of the FBI files. As an exception, a minimum of three attempts will be made for all Presidential Support cases, for SCI access nominations if the requester so indicates, and in those cases in which more than minor derogatory information exists. Each subject of a personnel security investigation conducted under the provisions of this part shall be furnished a Privacy Act Statement advising of the authority for obtaining the personal data, the principal purpose(s) for obtaining it, the routine uses, whether disclosure is mandatory or voluntary, the effect on the individual if it is not provided, and that subsequent use of the data may be employed as part of an aperiodic review process to evaluate continued eligibility for access to classified information.

(c) Failure to respond within the time limit prescribed by the requesting organization with the required security forms or refusal to provide or permit access to the relevant information required by this part shall result in termination of the individual's security clearance or assignment to sensitive duties utilizing the procedures of § 154.59 or further administrative processing of the investigative request.

**Subpart F—Adjudication****§ 154.40 General.**

(a) The standard which must be met for clearance or assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that entrusting the person with classified information or assigning the person to sensitive duties is clearly consistent with the interests of national security.

(b) The principal objective of the DoD personnel security adjudicative function, consequently, is to assure selection of persons for sensitive positions who meet this standard. The adjudication process involves the effort to assess the probability of future behavior which could have an effect adverse to the national security. Since few, if any, situations allow for positive, conclusive evidence of certain future conduct, it is an attempt to judge whether the circumstances of a particular case, taking into consideration prior experience with similar cases, reasonably suggest a degree of probability of prejudicial behavior not consistent with the national security. It is invariably a subjective determination, considering the past but necessarily anticipating the future. Rarely is proof of trustworthiness and reliability or untrustworthiness and unreliability beyond all reasonable doubt.

(c) Establishing relevancy is one of the key objectives of the personnel security adjudicative process in evaluating investigative material. It involves neither the judgment of criminal guilt nor the determination of general suitability for a given position; rather, it is the assessment of a person's trustworthiness and fitness for a responsibility which could, if abused, have unacceptable consequences for the national security.

(d) While equity demands optimal uniformity in evaluating individual cases, assuring fair and consistent assessment of circumstances from one situation to the next, each case must be weighed on its own merits, taking into consideration all relevant facts, and prior experience in similar cases. All information of record, both favorable and unfavorable, must be consid-

ered and assessed in terms of accuracy, completeness, relevance, seriousness, and overall significance. In all adjudications the protection of the national security shall be the paramount determinant.

**§ 154.41 Central adjudication.**

(a) To ensure uniform application of the requirement of this part and to ensure that DoD personnel security determinations are effected consistent with existing statutes and Executive orders, the head of each Military Department and Defense Agencies shall establish a single Central Adjudication Facility for his/her component. The function of such facility shall be limited to evaluating personnel security investigations and making personnel security determinations. The chief of each Central Adjudication Facility shall have the authority to act on behalf of the head of the Component concerned with respect to personnel security determinations. All information relevant to determining whether a person meets the appropriate personnel security standard prescribed by this part shall be reviewed and evaluated by personnel security specialists specifically designated by the head of the Component concerned, or designee.

(b) In view of the significance each adjudicative decision can have on a person's career and to ensure the maximum degree of fairness and equity in such actions, a minimum level of review shall be required for all clearance/access determinations related to the following categories of investigations:

**(1) BI/SBI/PR/ENAC/SII:**

(i) *Favorable*: Completely favorable investigations shall be reviewed and approved by an adjudicative official in the civilian grade of GS-7/9 or the military rank of O-3.

(ii) *Unfavorable*: Investigations that are not completely favorable shall undergo at least two levels of review by adjudicative officials, the second of which must be at the civilian grade of GS-11/12 or the military rank of O-4. When an unfavorable administrative action is contemplated under § 154.56(b), the letter of intent (LOI) to deny or revoke must be approved and signed by an adjudicative official at the civilian grade of GS-13/14 or the military rank

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of O-5. A final notification of unfavorable administrative action, subsequent to the issuance of the LOI, must be approved and signed at the civilian grade of GS-14/15 or the military rank of O-6.

(2) *NACI/DNACI/NAC/ENTNAC*:

(i) *Favorable*: A completely favorable investigation may be finally adjudicated after one level of review provided that the decisionmaking authority is at the civilian grade of GS-5/7 or the military rank of O-2.

(ii) *Unfavorable*: Investigations that are not completely favorable must be reviewed by an adjudicative official in the civilian grade of GS-7/9 or the military rank of O-3. When an unfavorable administrative action is contemplated under § 154.56(b), the letter of intent to deny/revoke must be signed by an adjudicative official at the civilian grade of GS-11/12 or the military rank of O-4. A final notification of unfavorable administrative action subsequent to the issuance of the LOI must be signed by an adjudicative official at the civilian grade of GS-13 or the military rank of O-5 or above.

(c) Exceptions to the above policy may only be granted by the Deputy Under Secretary of Defense for Policy.

### § 154.42 Evaluation of personnel security information.

(a) The criteria and adjudicative policy to be used in applying the principles at § 154.40 are set forth in § 154.7(a) and appendix H of this part. The ultimate consideration in making a favorable personnel security determination is whether such determination is clearly consistent with the interests of national security and shall be an overall common sense evaluation based on all available information. Such a determination shall include consideration of the following factors:

- (1) The nature and seriousness of the conduct;
- (2) The circumstances surrounding the conduct;
- (3) The frequency and recency of the conduct;
- (4) The age of the individual;
- (5) The voluntariness of participation; and
- (6) The absence or presence of rehabilitation.

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(b) Detailed adjudication policy guidance to assist adjudicators in determining whether a person is eligible for access to classified information or assignment to sensitive duties is contained in appendix H. Adjudication policy for access to SCI is contained in DCID 1/14.

### § 154.43 Adjudicative record.

(a) Each adjudicative determinations, whether favorable or unfavorable, shall be entered into the Defense Clearance and Investigations Index (DCII) on a daily basis, but in no case to exceed 5 working days from the date of determination.

(b) The rationale underlying each unfavorable personnel security determination, to include the appeal process, and each favorable personnel security determination where the investigation or information upon which the determination was made included significant derogatory information of the type set forth in § 154.7 and appendix H to part 154, shall be maintained in written or automated form and is subject to the provisions of 32 CFR part 285 and 32 CFR part 310. This information shall be maintained for a minimum of 5 years from the date of determination.

[58 FR 61025, Nov. 19, 1993]

## Subpart G—Issuing Clearance and Granting Access

### § 154.47 General.

(a) The issuance of a personnel security clearance (as well as the function of determining that an individual is eligible for access to Special Access program information, or is suitable for assignment to sensitive duties or such other duties that require a trustworthiness determination) is a function distinct from that involving the granting of access to classified information. Clearance determinations are made on the merits of the individual case with respect to the subject's suitability for security clearance. Access determinations are made solely on the basis of the individual's need for access to classified information in order to

perform official duties. Except for suspension of access pending final adjudication of a personnel security clearance, access may not be finally denied for cause without applying the provisions of § 154.56(b).

(b) Only the authorities designated in paragraph A, appendix E are authorized to grant, deny or revoke personnel security clearances or Special Access authorizations (other than SCI). Any commander or head of an organization may suspend access for cause when there exists information raising a serious question as to the individual's ability or intent to protect classified information, provided that the procedures set forth in § 154.55(b) of this part are complied.

(c) All commanders and heads of DoD organizations have the responsibility for determining those position functions in their jurisdiction that require access to classified information and the authority to grant access to incumbents of such positions who have been cleared under the provisions of this part.

**§ 154.48 Issuing clearance.**

(a) Authorities designated in paragraph A, appendix E shall record the issuance, denial or revocation of a personnel security clearance in the DCII (see § 154.43). A record of the clearance issued shall also be recorded in an individual's personnel/security file or official personnel folder, as appropriate.

(b) A personnel security clearance remains valid until the individual is separated from the Armed Forces, separated from DoD civilian employment, has no further official relationship with DoD, official action has been taken to deny, revoke or suspend the clearance or access, or regular access to the level of classified information for which the individual holds a clearance is no longer necessary in the normal course of his or her duties. If an individual resumes his or her affiliation with DoD no single break in the individual's relationship with DoD exists greater than 24 months and/or, the need for regular access to classified information at or below the previous level recurs, and no record of an unfavorable administrative action exists, the appropriate clearance shall be reissued

without further investigation or adjudication provided there has been no additional investigation or development of derogatory information.

(c) Personnel security clearances of DoD military personnel shall be granted denied or revoked only by the designated authority of the parent Military Department. Issuance, reissuance, denial, or revocation of a personnel security clearance by any DoD Component concerning personnel who have been determined to be eligible for clearance by another component is expressly prohibited. Investigations conducted on Army, Navy, and Air Force personnel by DIS will be returned only to the parent service of the subject for adjudication regardless of the source of the original request. The adjudicative authority will be responsible for expeditiously transmitting the results of the clearance determination. As an exception, the employing DoD Component may issue an interim clearance to personnel under their administrative jurisdiction pending a final eligibility determination by the individual's parent Component. Whenever an employing DoD Component issues an interim clearance to an individual from another Component, written notice of the action shall be provided to the parent Component.

(d) When a Defense agency, to include Chairman of the Joint Chiefs of Staff, initiates an SBI (or PR) for access to SCI on a military member, DIS will return the completed investigation to the appropriate Military Department adjudicative authority in accordance with paragraph (c) of this section for issuance (or reissuance) of the Top Secret clearance. Following the issuance of the security clearance, the military adjudicative authority will forward the investigative file to the Defense agency identified in the "Return Results To" block of the DD Form 1879. The receiving agency will then forward the completed SBI on to DIA for the SCI adjudication in accordance with DCID 1/14.

(e) The interim clearance shall be recorded in the DCSI (§ 154.43) by the parent DoD Component in the same manner as a final clearance.

[52 FR 11219, Apr. 8, 1987, as amended at 58 FR 61025, Nov. 19, 1993]

**§ 154.49 Granting access.**

(a) Access to classified information shall be granted to persons whose official duties require such access and who have the appropriate personnel security clearance. Access determinations (other than for Special Access programs) are not an adjudicative function relating to an individual's suitability for such access. Rather they are decisions made by the commander that access is officially required.

(b) In the absence of derogatory information on the individual concerned, DoD commanders and organizational managers shall accept a personnel security clearance determination, issued by any DoD authority authorized by this part to issue personnel security clearances, as the basis for granting access, when access is required, without requesting additional investigation or investigative files.

(c) The access level of cleared individuals will, wherever possible, be entered into the Defense Clearance and Investigations Index (DCII), along with clearance eligibility. However, completion of the DCII Access field is required effective October 1, 1993 in all instances where the adjudicator with a personnel security investigation. Agencies are encouraged to start completing this field as soon as possible.

[52 FR 11219, Apr. 8, 1987, as amended at 58 FR 61025, Nov. 19, 1993]

**§ 154.50 Administrative withdrawal.**

As set forth in § 154.48 the personnel security clearance and access eligibility must be withdrawn when the events described therein occur. When regular access to a prescribed level of classified information is no longer required in the normal course of an individual's duties, the previously authorized access eligibility level must be administratively downgraded or withdrawn, as appropriate.

### Subpart H—Unfavorable Administrative Actions

**§ 154.55 Requirements.**

(a) *General.* For purposes of this part, an unfavorable administrative action includes any adverse action which is taken as a result of a personnel secu-

rity determination, as defined at § 154.3 and any unfavorable personnel security determination, as defined at § 154.3. This subpart is intended only to provide guidance for the internal operation of the Department of Defense and is not intended to, does not, and may not be relied upon, to create or enlarge the jurisdiction or review authority of any court or administrative tribunal, including the Merit Systems Protection Board.

(b) *Referral for action.* (1) Whenever derogatory information relating to the criteria and policy set forth in § 154.7(a) and appendix H of this part is developed or otherwise becomes available to any DoD element, it shall be referred by the most expeditious means to the commander or the security officer of the organization to which the individual is assigned for duty. The commander or security officer of the organization to which the subject of the information is assigned shall review the information in terms of its security significance and completeness. If further information is needed to confirm or disprove the allegations, additional investigation should be requested. The commander of the duty organization shall insure that the parent Component of the individual concerned is informed promptly concerning the derogatory information developed and any actions taken or anticipated with respect thereto. However, referral of derogatory information to the commander or security officer shall in no way affect or limit the responsibility of the central adjudication facility to continue to process the individual for denial or revocation of clearance or access to classified information, in accordance with § 154.56(b), if such action is warranted and supportable by the criteria and policy contained in § 154.7(a) and appendix H. No unfavorable administrative action as defined in § 154.3 may be taken by the organization to which the individual is assigned for duty without affording the person the full range of protections contained in § 154.56(b) or, in the case of SCI, Annex B, DCID 1/14.

(2) The Director DIS shall establish appropriate alternative means whereby information with potentially serious security significance can be reported

other than through DoD command or industrial organization channels. Such access shall include utilization of the DoD Inspector General "hotline" to receive such reports for appropriate follow-up by DIS. DoD Components and industry will assist DIS in publicizing the availability of appropriate reporting channels. Additionally, DoD Components will augment the system when and where necessary. Heads of DoD Components will be notified immediately to take action if appropriate.

(c) *Suspension.* (1) The commander or head of the organization shall determine whether, on the basis of all facts available upon receipt of the initial derogatory information, it is in the interests of national security to continue subject's security status unchanged or to take interim action to suspend subject's access to classified information or assignment to sensitive duties (or other duties requiring a trustworthiness determination), if information exists which raises serious questions as to the individual's ability to intent to protect classified information or execute sensitive duties (or other duties requiring a trustworthiness determination) until a final determination is made by the appropriate authority designated in appendix F to this part.

(2) Whenever a determination is made to suspend a security clearance for access to classified information or assignment to sensitive duties (or other duties requiring a trustworthiness determination), the individual concerned must be notified of the determination in writing by the commander, or head of the component or adjudicative authority, to include a brief statement of the reason(s) for the suspension action consistent with the interests of national security.

(3) Component field elements must promptly report all suspension actions to the appropriate central adjudicative authority, but not later than 10 working days from the date of the suspension action. The adjudicative authority will immediately update the DCII Eligibility and Access fields to alert all users to the individual's changed status.

(4) Every effect shall be made to resolve suspension cases as expeditiously

as circumstances permit. Suspension cases exceeding 180 days shall be closely monitored and managed by the DoD Component concerned until finally resolved. Suspension cases pending in excess of 12 months will be reported to the DASD(CI&SCM) for review and appropriate action.

(5) A final security clearance eligibility determination shall be made for all suspension actions and the determination entered in the DCII. If, however, the individual under suspension leaves the jurisdiction of the Department of Defense and no longer requires a clearance (or trustworthiness determination), entry of the "Z" Code (adjudication action incomplete due to loss of jurisdiction) if the clearance eligibility field is appropriate. In no case shall a "suspension" code (Code Y) remain as a permanent record in the DCII.

(6) A clearance or access entry in the DCII shall not be suspended or downgraded based solely on the fact that a periodic reinvestigation was not conducted precisely within the 5 year time period for TOP SECRET/SCI or within the period prevailing for SECRET clearances under departmental policy. While every effort should be made to ensure that PRs are conducted within the prescribed time frame, agencies must be flexible in their administration of this aspect of the personnel security program so as not to undermine the ability of the Department of Defense to accomplish its mission.

(d) *Final unfavorable administrative actions.* The authority to make personnel security determinations that will result in an unfavorable administrative action is limited to those authorities designated in appendix E, except that the authority to terminate the employment of a civilian employee of a military department or Defense agency is vested solely in the head of the DoD component concerned and in such other statutory official as may be designated. Action to terminate civilian employees of the Office of the Secretary of Defense and DoD Components, on the basis of criteria listed in §154.7 (a) through (f), shall be coordinated with the Deputy Under Secretary



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of Defense for Policy prior to final action by the head of the DoD Component. DoD civilian employees or members of the Armed Forces shall not be removed from employment or separated from the Service under provisions of this part if removal or separation can be effected under OPM regulations or administrative (nonsecurity) regulations of the military departments. However, actions contemplated in this regard shall not affect or limit the responsibility of the central adjudication facility to continue for process the individual for denial or revocation of a security clearance, access to classified information on or assignment to a sensitive position if warranted and supportable by the criteria and standards contained in this part.

[52 FR 11219, Apr. 8, 1987, as amended at 58 FR 61025, Nov. 19, 1993]

### § 154.56 Procedures.

(a) *General.* No final personnel security determination shall be made on a member of the Armed Forces, an employee of the Department of Defense, a consultant to the Department of Defense, or any other person affiliated with the Department of Defense without granting the individual concerned the procedural benefits set forth in paragraph (b) of this section when such determination results in an unfavorable administrative action (see § 154.55(a)). As an exception, Red Cross/United Service Organizations employees shall be afforded the procedures prescribed by 32 CFR part 253.

(b) *Unfavorable administrative action procedures.* Except as provided for below, no unfavorable administrative action shall be taken under the authority of this part unless the person concerned has been given:

(1) A written statement of the reasons why the unfavorable administrative action is being taken. The statement shall be as comprehensive and detailed as the protection of sources afforded confidentiality under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) and national security permit. The statement will also provide the name and address of the agencies (agencies) to which the individual may write to obtain a copy of the investigative file(s) upon which the unfavorable

administrative action is being taken. Prior to issuing a statement of reasons to a civilian employee for suspension or removal action, the issuing authority must comply with the provisions of Federal Personnel Manual, chapter 732, subchapter 1, paragraph 1-6b. The signature authority must be as provided for in § 154.41(b) (1)(ii) and (2)(ii).

(2) An opportunity to reply in writing to such authority as the head of the Component concerned may designate;

(3) A written response to any submission under subparagraph b. stating the final reasons therefor, which shall be as specific as privacy and national security considerations permit. The signature authority must be as provided for in § 154.41(b) (1)(ii) and (2)(ii). Such response shall be as prompt as individual circumstances permit, not to exceed 60 days from the date of receipt of the appeal submitted under paragraph (b)(2) of this section provided no additional investigative action is necessary. If a final response cannot be completed within the time frame allowed, the subject must be notified in writing of this fact, the reasons therefor, and the date a final response is expected, which shall not, in any case, exceed a total of 90 days from the date of receipt of the appeal under paragraph (b) of this section.

(4) An opportunity to appeal to a higher level of authority designated by the Component concerned.

(c) *Exceptions to policy.* Notwithstanding paragraph (b) of this section or any other provision of this part, nothing in this part shall be deemed to limit or affect the responsibility and powers of the Secretary of Defense to find that a person is unsuitable for entrance or retention in the Armed Forces, or is ineligible for a security clearance or assignment to sensitive duties, if the national security so requires, pursuant to section 7532, title 5, U.S. Code. Such authority may not be delegated and may be exercised only when it is determined that the procedures prescribed in paragraph (b) of this section are not appropriate. Such determination shall be conclusive.

[52 FR 11219, Apr. 8, 1987, as amended at 58 FR 61025, Nov. 19, 1993]

**§ 154.57 Reinstatement of civilian employees.**

(a) *General.* Any person whose civilian employment in the Department of Defense is terminated under the provisions of this part shall not be reinstated or restored to duty or reemployed in the Department of Defense unless the Secretary of Defense, or the head of a DoD Component, finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of national security. Such a finding shall be made a part of the personnel security record.

(b) *Reinstatement benefits.* A DoD civilian employee whose employment has been suspended or terminated under the provisions of this part and who is reinstated or restored to duty under the provisions of section 3571 of title 5 U.S. Code is entitled to benefits as provided for by section 3 of Pub. L. 89-380.

**Subpart I—Continuing Security Responsibilities****§ 154.60 Evaluating continued security eligibility.**

(a) *General.* A personnel security determination is an effort to assess the future trustworthiness of an individual in terms of the likelihood of the individual preserving the national security. Obviously it is not possible at a given point to establish with certainty that any human being will remain trustworthy. Accordingly the issuance of a personnel security clearance or the determination that a person is suitable for assignment to sensitive duties cannot be considered as a final personnel security action. Rather, there is the clear need to assure that, after the personnel security determination is reached, the individual's trustworthiness is a matter of continuing assessment. The responsibility for such assessment must be shared by the organizational commander or manager, the individual's supervisor and, to a large degree, the individual himself. Therefore, the heads of DoD Components shall establish and maintain a program designed to evaluate on a continuing basis the status of personnel under their jurisdiction with respect to security eligibility. This program should insure close coordination between secu-

rity authorities and personnel, medical, legal and supervisory personnel to assure that all pertinent information available within a command is considered in the personnel security process.

(b) *Management responsibility.* (1) Commanders and heads of organizations shall insure that personnel assigned to sensitive duties (or other duties requiring a trustworthiness determination under the provisions of this part) are initially indoctrinated and periodically instructed thereafter on the national security implication of their duties and on their individual responsibilities.

(2) The heads of all DoD components are encouraged to develop programs designed to counsel and assist employees in sensitive positions who are experiencing problems in their personal lives with respect to such areas as financial, medical or emotional difficulties. Such initiatives should be designed to identify potential problem areas at an early stage so that any assistance rendered by the employing activity will have a reasonable chance of precluding long term, job-related security problems.

(c) *Supervisory responsibility.* Security programs shall be established to insure that supervisory personnel are familiarized with their special responsibilities in matters pertaining to personnel security with respect to personnel under their supervision. Such programs shall provide practical guidance as to indicators that may signal matters of personnel security concern. Specific instructions should be disseminated concerning reporting procedures to enable the appropriate authority to take timely corrective action to protect the interests of national security as well as to provide any necessary help to the individual concerned to correct any personal problem which may have a bearing upon the individual's continued eligibility for access.

(1) In conjunction with the submission of PRs stated in §154.19, and paragraph 5, appendix A, supervisors will be required to review an individual's DD Form 398 to ensure that no significant adverse information of which they are aware and that may have a bearing on

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subject's continued eligibility for access to classified information is omitted.

(2) If the supervisor is not aware of any significant adverse information that may have a bearing on the subject's continued eligibility for access, then the following statement must be documented, signed and dated, and forwarded to DIS with the investigative package.

I am aware of no information of the type contained at Appendix D, 32 CFR part 154, relating to subject's trustworthiness, reliability, or loyalty that may reflect adversely on his/her ability to safeguard classified information.

(3) If the supervisor is aware of such significant adverse information, the following statement shall be documented, signed and dated and forwarded to DIS with the investigative package, and a written summary of the derogatory information forwarded to DIS with the investigative package:

I am aware of information of the type contained in Appendix D, 32 CFR part 154, relating to subject's trustworthiness, reliability, or loyalty that may reflect adversely on his/her ability to safeguard classified information and have reported all relevant details to the appropriate security official(s).

(4) In conjunction with regularly scheduled fitness and performance reports of military and civilian personnel whose duties entail access to classified information, supervisors will include a comment in accordance with paragraphs (c) (2) and (3) of this section as well as a comment regarding an employee's discharge of security responsibilities, pursuant to their Component guidance.

(d) *Individual responsibility.* (1) Individuals must familiarize themselves with pertinent security regulations that pertain to their assigned duties. Further, individuals must be aware of the standards of conduct required of persons holding positions of trust. In this connection, individuals must recognize and avoid the kind of personal behavior that would result in rendering one ineligible for continued assignment in a position of trust. In the final analysis, the ultimate responsibility for maintaining continued eligibility for a position of trust rests with the individual.

(2) Moreover, individuals having access to classified information must report promptly to their security office:

(i) Any form of contact, intentional or otherwise, with individuals of any nationality, whether within or outside the scope of the employee's official activities, in which:

(A) Illegal or unauthorized access is sought to classified or otherwise sensitive information.

(B) The employee is concerned that he or she may be the target of exploitation by a foreign entity.

(ii) Any information of the type referred to in § 154.7 or appendix H to this part.

(e) *Co-worker responsibility.* Co-workers have an equal obligation to advise their supervisor or appropriate security official when they become aware of information with potentially serious security significance regarding someone with access to classified information or employed in a sensitive position.

[52 FR 11219, Apr. 8, 1987, as amended at 58 FR 61025, Nov. 19, 1993]

### § 154.61 Security education.

(a) *General.* The effectiveness of an individual in meeting security responsibilities is proportional to the degree to which the individual understands them. Thus, an integral part of the DoD security program is the indoctrination of individuals on their security responsibilities. Moreover, such indoctrination is essential to the efficient functioning of the DoD personnel security program. Accordingly, heads of DoD Components shall establish procedures in accordance with this chapter whereby persons requiring access to classified information, or being assigned to positions that require the occupants to be determined trustworthy are periodically briefed as to their security responsibilities.

(b) *Initial briefing.* (1) All persons cleared for access to classified information or assigned to duties requiring a trustworthiness determination under this part shall be given an initial security briefing. The briefing shall be in accordance with the requirements of 32 CFR part 159 and consist of the following elements:

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(i) The specific security requirements of their particular job.

(ii) The techniques employed by foreign intelligence activities in attempting to obtain classified information and their responsibility for reporting such attempts.

(iii) The prohibition against disclosing classified information, by any means, to unauthorized persons or discussing or handling classified information in a manner that would make it accessible to unauthorized persons.

(iv) The penalties that may be imposed for security violations.

(2) If an individual declines to execute Standard Form 312, "Classified Information Nondisclosure Agreement" (replaced the Standard Form 189), the DoD Component shall initiate action to deny or revoke the security clearance of such person in accordance with § 154.56(b).

(c) *Refresher briefing.* Programs shall be established to provide, at a minimum, annual security training for personnel having continued access to classified information. The elements outlined in 32 CFR part 159 shall be tailored to fit the needs of experienced personnel.

(d) *Foreign travel briefing.* While world events during the past several years have diminished the threat to our national security from traditional cold-war era foreign intelligence services, foreign intelligence service continue to pursue the unauthorized acquisition of classified or otherwise sensitive U.S. Government information, through the recruitment of U.S. Government employees with access to such information. Through security briefings and education, the Department of Defense continues to provide for the protection of information and technology considered vital to the national security interests from illegal or unauthorized acquisition by foreign intelligence services.

(1) DoD Components will establish appropriate internal procedures requiring all personnel possessing a DoD security clearance to report to their security office all contacts with individuals of any nationality, whether within or outside the scope of the employee's official activities, in which:

(i) Illegal or unauthorized access is sought to classified or otherwise sensitive information.

(ii) The employee is concerned that he or she may be the target of exploitation by a foreign entity.

(2) The DoD security manager, security specialist or other qualified individual will review and evaluate the reported information. Any facts or circumstances of a reported contact with a foreign national that appear to:

(i) Indicate an attempt or intention to obtain unauthorized access to proprietary, sensitive, or classified information or technology;

(ii) Offer a reasonable potential for such; or

(iii) Indicate the possibility of continued contact with the foreign national for such purposes, shall be promptly reported to the appropriate counterintelligence agency.

(e) *Termination briefing.* (1) Upon termination of employment administrative withdrawal of security clearance, or contemplated absence from duty or employment for 60 days or more, DoD military personnel and civilian employees shall be given a termination briefing, return all classified material, and execute a Security Termination Statement. This statement shall include:

(i) An acknowledgment that the individual has read the appropriate provisions of the Espionage Act, other criminal statutes, DoD Regulations applicable to the safeguarding of classified information to which the individual has had access, and understands the implications thereof;

(ii) A declaration that the individual no longer has any documents or material containing classified information in his or her possession;

(iii) An acknowledgment that the individual will not communicate or transmit classified information to any unauthorized person or agency; and

(iv) An acknowledgment that the individual will report without delay to the FBI or the DoD Component concerned any attempt by any unauthorized person to solicit classified information.

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(2) When an individual refuses to execute a Security Termination Statement, that fact shall be reported immediately to the security manager of the cognizant organization concerned. In any such case, the individual involved shall be debriefed orally. The fact of a refusal to sign a Security Termination Statement shall be reported to the Director, Defense Investigative Service who shall ensure that it is recorded in the Defense Clearance and Investigations Index.

(3) The Security Termination Statement shall be retained by the DoD Component that authorized the individual access to classified information for the period specified in the Component's records retention schedules, but for a minimum of 2 years after the individual is given a termination briefing.

(4) In addition to the provisions of paragraphs (e)(1), (e)(2), and (e)(3) of this section, DoD Components shall establish a central authority to be responsible for ensuring that Security Termination Statements are executed by senior personnel (general officers, flag officers and GS-16s and above). Failure on the part of such personnel to execute a Security Termination Statement shall be reported immediately to the Deputy Under Secretary of Defense for Policy.

[52 FR 11219, Apr. 8, 1987, as amended at 58 FR 61026, Nov. 19, 1993]

**Subpart J—Safeguarding Personnel Security Investigative Records**

**§ 154.65 General.**

In recognition of the sensitivity of personnel security reports and records, particularly with regard to individual privacy, it is Department of Defense policy that such personal information shall be handled with the highest degree of discretion. Access to such information shall be afforded only for the purpose cited herein and to persons whose official duties require such information. Personnel security investigative reports may be used only for the purposes of determining eligibility of DoD military and civilian personnel, contractor employees, and other per-

sons affiliated with the Department of Defense, for access to classified information, assignment or retention in sensitive duties or other specifically designated duties requiring such investigation, or for law enforcement and counterintelligence investigations. Other uses are subject to the specific written authorization of the Deputy Under Secretary of Defense for Policy.

**§ 154.66 Responsibilities.**

DoD authorities responsible for administering the DoD personnel security program and all DoD personnel authorized access to personnel security reports and records shall ensure that the use of such information is limited to that authorized by this part and that such reports and records are safeguarded as prescribed herein. The heads of DoD Components and the Deputy Under Secretary of Defense for Policy for the Office of the Secretary of Defense shall establish internal controls to ensure adequate safeguarding and limit access to and use of personnel security reports and records as required by §§ 154.67 and 154.68.

**§ 154.67 Access restrictions.**

Access to personnel security investigative reports and personnel security clearance determination information shall be authorized only in accordance with 32 CFR parts 286 and 286a and with the following:

(a) DoD personnel security investigative reports shall be released outside of the DoD only with the specific approval of the investigative agency having authority over the control and disposition of the reports.

(b) Within DoD, access to personnel security investigative reports shall be limited to those designated DoD officials who require access in connection with specifically assigned personnel security duties, or other activities specifically identified under the provisions of § 154.65.

(c) Access by subjects of personnel security investigative reports shall be afforded in accordance with 32 CFR part 286a.

(d) Access to personnel security clearance determination information shall be made available, other than provided for in paragraph (c) of this

section, through security channels, only to DoD or other officials of the Federal Government who have an official need for such information.

**§ 154.68 Safeguarding procedures.**

Personnel security investigative reports and personnel security determination information shall be safeguarded as follows:

(a) Authorized requesters shall control and maintain accountability of all reports of investigation received.

(b) Reproduction, in whole or in part, of personnel security investigative reports by requesters shall be restricted to the minimum number of copies required for the performance of assigned duties.

(c) Personnel security investigative reports shall be stored in a vault, safe, or steel file cabinet having at least a lockbar and an approved three-position dial-type combination padlock or in a similarly protected area/container.

(d) Reports of DoD personnel security investigations shall be sealed in double envelopes or covers when transmitted by mail or when carried by persons not authorized access to such information. The inner cover shall bear a notation substantially as follows:

TO BE OPENED ONLY BY OFFICIALS  
DESIGNATED TO RECEIVE RE-  
PORTS OF PERSONNEL SECURITY  
INVESTIGATION

(e) An individual's status with respect to a personnel security clearance or a Special Access authorization is to be protected as provided for in 32 CFR part 286.

**§ 154.69 Records disposition.**

(a) Personnel security investigative reports, to include OPM NACIs may be retained by DoD recipient organizations, only for the period necessary to complete the purpose for which it was originally requested. Such reports are considered to be the property of the investigating organization and are on loan to the recipient organization. All copies of such reports shall be destroyed within 90 days after completion of the required personnel security determination. Destruction shall be accomplished in the same manner as for classified information in accordance with 32 CFR part 159.

(b) DoD record repositories authorized to file personnel security investigative reports shall destroy PSI reports of a favorable or of a minor derogatory nature 15 years after the date of the last action. That is, after the completion date of the investigation or the date on which the record was last released to an authorized user—which ever is later. Personnel security investigative reports resulting in an unfavorable administrative personnel action or court-martial or other investigations of a significant nature due to information contained in the investigation shall be destroyed 25 years after the date of the last action. Files in this latter category that are determined to be of possible historical value and those of widespread public or congressional interest may be offered to the National Archives after 15 years.

(c) Personnel security investigative reports on persons who are considered for affiliation with DoD will be destroyed after 1 year if the affiliation is not completed.

**§ 154.70 Foreign source information.**

Information that is classified by a foreign government is exempt from public disclosure under the Freedom of Information and Privacy Acts. Further, information provided by foreign governments requesting an express promise of confidentiality shall be released only in a manner that will not identify or allow unauthorized persons to identify the foreign agency concerned.

**Subpart K—Program Management**

**§ 154.75 General.**

To ensure uniform implementation of the DoD personnel security program throughout the Department, program responsibility shall be centralized at DoD Component level.

**§ 154.76 Responsibilities.**

(a) The Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C3I)) shall have primary responsibility for providing guidance, oversight, development and approval for policy and procedures governing personnel security

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program matters within the Department:

(1) Provide program management through issuance of policy and operating guidance.

(2) Provide staff assistance to the DoD Components and defense agencies in resolving day-to-day security policy and operating problems.

(3) Conduct inspections of the DoD Components for implementation and compliance with DoD security policy and operating procedures.

(4) Provide policy, oversight, and guidance to the component adjudication functions.

(5) Approve, coordinate and oversee all DoD personnel security research initiatives and activities.

(b) The General Counsel shall ensure that the program is administered in a manner consistent with the laws; all proceedings are promptly initiated and expeditiously completed; and that the rights of individuals involved are protected, consistent with the interests of national security. The General Counsel shall also ensure that all relevant decisions of the courts and legislative initiatives of the Congress are obtained on a continuing basis and that analysis of the foregoing is accomplished and disseminated to DoD personnel security program management authorities.

(c) The Heads of the Components shall ensure that:

(1) The DoD personnel security program is administered within their area of responsibility in a manner consistent with this part.

(2) A single authority within the office of the head of the DoD Component is assigned responsibility for administering the program within the Component.

(3) Information and recommendations are provided the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C31)) and the General Counsel at their request concerning any aspect of the program.

[52 FR 11219, Apr. 8, 1987, as amended at 58 FR 61026, Nov. 19, 1993]

**§ 154.77 Reporting requirements.**

(a) The OASD(C31) shall be provided personnel security program management data by the Defense Data Man-

power Center (DMDC) by December 31 each year for the preceding fiscal year. To facilitate accurate preparation of this report, all adjudicative determinations must be entered into the DC11 by all DoD central adjudication facilities no later than the end of the fiscal year. The information required below is essential for basic personnel security program management and in responding to requests from the Secretary of Defense and Congress. The report shall cover the preceding fiscal year, broken out by clearance category, according to military (officer or enlisted), civilian or contractor status and by the central adjudication facility that took the action, using the enclosed format:

(1) Number of Top Secret, Secret, and Confidential clearances issued;

(2) Number of Top Secret, Secret, and Confidential clearances denied;

(3) Number of Top Secret, Secret, and Confidential clearances revoked;

(4) Number of SCI access determinations issued;

(5) Number of SCI access determinations denied;

(6) Number of SCI access determinations revoked; and

(7) Total number of personnel holding a clearance for Top Secret, Secret, Confidential and Sensitive Compartmented Information as of the end of the fiscal year.

(b) The Defense Investigative Service (DIS) shall provide the OASD(C3I) a quarterly report that reflects investigative cases opened and closed during the most recent quarter, by case category type, and by major requester. The information provided by DIS is essential for evaluating statistical data regarding investigative workload and the manpower required to perform personnel security investigations. Case category types include National Agency Checks (NACs); Expanded NACs; Single Scope Background Investigations (SSBIs), Periodic Reinvestigations (PRs); Secret Periodic Reinvestigations (SPRs); Post Adjudicative (PA); Special Investigative Inquiries (SIIs); and Limited Inquiries (LIIs). This report shall be forwarded to OASD(C3I) within 45 days after the end of each quarter.

(c) The reporting requirement for DMDC and DIS has been assigned Report Control Symbol DD-C3I(A) 1749.

[58 FR 61026, Nov. 19, 1993]

#### § 154.78 Inspections.

The heads of DoD Components shall assure that personnel security program matters are included in their administrative inspection programs.

#### APPENDIX A TO PART 154— INVESTIGATIVE SCOPE

This appendix prescribes the scope of the various types of personnel security investigations.

1. *National Agency Check (NAC)*. Components of a NAC. At a minimum, the first three of the described agencies (DCII, FBI/HQ, and FBI/ID) below shall be included in each complete NAC; however, a NAC may also include a check of any or all of the other described agencies, if appropriate.

a. DCII records consist of an alphabetical index of personal names and impersonal titles that appear as subjects or incidentals in investigative documents held by the criminal, counterintelligence, fraud, and personnel security investigative activities of the three military departments, DIS, Defense Criminal Investigative Service (DCIS), and the National Security Agency. DCII records will be checked on all subjects of DoD investigations.

b. FBI/HQ has on file copies of investigations conducted by the FBI. The FBI/HQ check, included in every NAC, consists of a review of files for information of a security nature and that developed during applicant-type investigations.

c. An FBI/ID check, included in every NAC (but not ENTNAC), is based upon a technical fingerprint search that consists of a classification of the subject's fingerprints and comparison with fingerprint cards submitted by law enforcement activities. If the fingerprint card is not classifiable, a "name check only" of these files is automatically conducted.

d. OPM. The files of OPM contain the results of investigations conducted by OPM under Executive Orders 9835 and 10450, those requested by the Nuclear Regulatory Commission (NRC), the Department of Energy (DOE) and those requested since August 1952 to serve as a basis for "Q" clearances. Prior to that date, "Q" clearance investigations were conducted by the FBI. A "Q" clearance is granted to individuals who require access to DOE information. In order to receive a "Q" clearance, a full field background investigation must be completed on the individual requiring access in accordance with the Atomic Energy Act of 1954. Also on file are

the results of investigations on the operation of the Merit System, violations of the Veterans Preference Act, appeals of various types, fraud and collusion in Civil Service examinations and related matters, data on all Federal employment, and an index of all BIs on civilian employees or applicants completed by agencies of the Executive Branch of the U.S. Government. The OPM files may also contain information relative to U.S. citizens who are, or who were, employed by a United Nations organization or other public international organization such as the Organization of American States. OPM records are checked on all persons who are, or who have been, civilian employees of the U.S. Government; or U.S. citizens who are, or who have been, employed by a United Nations organization or other public international organization; and on those who have been granted security clearances by the NRC or DOE.

e. Immigration and Naturalization Service (I&NS). The files of I&NS contain (or show where filed) naturalization certificates, certificates of derivative citizenship, all military certificates of naturalization, repatriation files, petitions for naturalization and declaration of intention, visitors' visas, and records of aliens (including government officials and representatives of international organizations) admitted temporarily into the U.S. I&NS records are checked when the subject is:

- (1) An alien in the U.S., or
- (2) A naturalized citizen whose naturalization has not been verified, or
- (3) An immigrant alien, or
- (4) A U.S. citizen who receives derivative citizenship through the naturalization of one or both parents, provided that such citizenship has not been verified in a prior investigation.

f. State Department. The State Department maintains the following records:

(1) Security Division (S/D) files contain information pertinent to matters of security, violations of security, personnel investigations pertinent to that agency, and correspondence files from 1950 to date. These files are checked on all former State Department employees.

(2) Passport Division (P/D) shall be checked if subject indicates U.S. citizenship due to birth in a foreign country of American parents. This is a check of State Department Embassy files to determine if subject's birth was registered at the U.S. Embassy in the country where he was born. Verification of this registration is verification of citizenship.

g. Central Intelligence Agency (CIA). The files of CIA contain information on present and former employees, including members of the Office of Strategic Services (OSS), applicants for employment, foreign nationals, including immigrant aliens in the U.S., and



U.S. citizens traveling outside the U.S. after July 1, 1946. These files shall be checked under the following guidelines.

| Investigation         | Criteria for CIA Checks  |
|-----------------------|--|
| NAC, DNACI or ENTNAC. | Residence anywhere outside of the U.S. for a year or more since age 18 except under the auspices of the U.S. Government; and, travel, education, residence, or employment since age 18 in any designated country (Appendix G).   |
| BI .....              | Same as NAC, DNACI, and ENTNAC requirements plus travel, residence, employment, and education outside the U.S. for more than a continuous 3-month period during the past 5 years, or since age 18, except when under the auspices of the Government.   |
| SBI .....             | Same as BI requirements except the period of the investigation will cover the past 15 years, or since age 18. Also when subject's employment, education or residence has occurred overseas for a period of more than one year under the auspices of the U.S. Government, such checks will be made. |

These files shall also be checked if subject has been an employee of CIA or when other sources indicate that CIA may have pertinent information.

h. Military Personnel Record Center files are maintained by separate departments of the Armed Forces, General Services Administration and the Reserve Records Centers. They consist of the Master Personnel Records of retired, separated, reserve, and active duty members of the Armed Force. These records shall be checked when the requester provides required identifying data indicating service during the last 15 years.

i. Treasury Department. The files of Treasury Department agencies (Secret Service, Internal Revenue Service, and Bureau of Customs) will be checked only when available information indicates that an agency of the Treasury Department may be reasonably expected to have pertinent information.

j. The files of other agencies such as the National Guard Bureau, the Defense Industrial Security Clearance Office (DISCO), etc., will be checked when pertinent to the purpose for which the investigation is being conducted.

2. DoD National Agency Check plus Written Inquires (DNACI):

a. *Scope*: The time period covered by the DNACI is limited to the most recent five (5) years, or since the 18th birthday, whichever is shorter, provided that the investigation covers at least the last two (2) full years of the subject's life, although it may be extended to the period necessary to resolve any questionable or derogatory information. No investigation will be conducted prior to an individual's 16th birthday. All DNACI investigation information will be entered on the DD Form 398-2 and FD-Form 258 and for-

warded to the Defense Investigative Service (paragraph D, Appendix B).

b. *Components of a DNACI*:

(1) *NAC*. This is the same as described in paragraph 1, above.

(2) *Credit*. (a) A credit bureau check will be conducted to cover the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands, at all locations where subject has resided (including duty stations and home ports), been employed, or attended school for 6 months (cumulative) during the past five (5) years.

(b) When information developed reflects unfavorably upon a person's current credit reputation or financial responsibility, the investigation will be expanded as necessary.

(3) *Employment*—(a) *Non-Federal Employment*. (1) Verify, via written inquiry, all employment within the period of investigation with a duration of six (6) months or more. Current employment will be checked regardless of duration.

(2) If all previous employments have been less than 6 months long, the most recent employment, in addition to the current, will be checked in all cases.

(3) Seasonal holiday, part-time and temporary employment need not be checked unless subparagraph 2 above applies.

(b) *Federal employment*. All Federal employment (to include military assignments) within the period of investigation will be verified by the requester through locally available records, and a statement reflecting that such checks have been favorably accomplished will be contained in the investigative request. Those that cannot be verified in this fashion will be accomplished via written inquiry by DIS (within the 50 United States, Puerto Rico, Guam, and the Virgin Islands).

3. *Background Investigation (BI)*. The period of investigation for the BI is 5 years and applies to military, civilian, and contractor personnel.

a. *NAC*. See paragraph 1, above.

b. *Local Agency Checks (LAC)*. Same as paragraph 4j, below, except period of coverage is five years.

c. *Credit checks*. Same as paragraph 4i, below.

d. *SUBJECT Interview (SI)*. This is the principal component of a BI. In some instances an issue will arise after the primary SI and a secondary interview will be conducted. Interviews in the latter category are normally "issue" interviews that will be reported in the standard BI narrative format.

e. *Employment records*. Employment records will be checked at all places where employment references are interviewed with the exception of current Federal employment when the requester indicates that such employment has been verified with favorable results.

f. *Employment reference coverage*. A minimum of three references, either supervisors or

*co-workers*, who have knowledge of the SUBJECT's activities in the work environment will be interviewed. At least one employment reference at the current place of employment will always be interviewed with the exception of an individual attending military basic training, or other military training schools lasting less than 90 days. However, if the SUBJECT has only been at the current employment for less than 6 months, it will be necessary to go not only to his or her current employment (for example, for one employment reference) but also to the preceding employment of at least 6 months for additional employment references. If the SUBJECT has not had prior employment of at least 6 months, interview(s) will be conducted at the most recent short-term employment in addition to the current employment.

g. *Developed and Listed Character References.* A minimum of three developed character references (DCR) whose combined association with the SUBJECT covers the entire period of investigation will be interviewed. If coverage cannot be obtained through the DCRs, listed character reference (LCR) will be contacted to obtain coverage.

h. *Unfavorable information.* Unfavorable information developed in the field will be expanded.

4. *Special Background Investigation (SBI)—a. Components of an SBI.* The period of investigation for an SBI is the last 15 years or since the 18th birthday, whichever is the shorter period, provided that the investigation covers at least the last 2 full years of the subject's life. No investigation will be conducted for the period prior to an individual's 16th birthday. Emphasis shall be placed on peer coverage whenever interviews are held with personal sources in making education, employment, and reference (including developed) contact.

b. *NAC.* In addition to conducting a NAC on the subject of the investigation, the following additional requirements apply.

(1) A DCII, FBI/ID name check only and FBI/HQ check shall be conducted on subject's current spouse or cohabitant. In addition, such other national agency checks as deemed appropriate based on information on the subject's SPH or PSQ shall be conducted.

(2) A check of FBI/HQ files on members of subject's immediate family who are aliens in the U.S. or immigrant aliens who are 18 years of age or older shall be conducted. As used throughout the part, members of subject's immediate family include the following:

- (a) Current spouse.
- (b) Adult children, 18 years of age or older, by birth, adoption, or marriage.
- (c) Natural, adopted, foster, or stepparents.
- (d) Guardians.
- (e) Brothers and sisters either by birth, adoption, or remarriage of either parent.

(3) The files of CIA shall be reviewed on alien members of subject's immediate family who are 18 years of age or older, regardless of whether or not these persons reside in the U.S.

(4) I&NS files on members of subject's immediate family 18 years of age or older shall be reviewed when they are:

- (a) Aliens in the U.S., or
- (b) Naturalized U.S. citizens whose naturalization has not been verified in a prior investigation, or
- (c) Immigrant aliens, or
- (d) U.S. citizens born in a foreign country of American parent(s) or U.S. citizens who received derivative citizenship through the naturalization of one or both parents, provided that such citizenship has not been verified in a prior investigation.

c. *Birth.* Verify subject's date and place of birth (DPOB) through education, employment and/or other records. Verify through Bureau of Vital Statistics (BVS) records if not otherwise verified under d., below, or if a variance is developed.

d. *Citizenship.* Subject's citizenship status must be verified in all cases. U.S. citizens who are subjects of investigation will be required to produce documentation that will confirm their citizenship. Normally such documentation should be presented to the DoD Component concerned prior to the initiation of the request for investigation. When such documentation is not readily available, investigative action may be initiated with the understanding that the designated authority in the DoD Component will be provided with the documentation prior to the issuance of a clearance. DIS will not check the BVS for native-born U.S. citizens except as indicated in 4.c. above. In the case of foreign-born U.S. citizens, DIS will check I&NS records. The citizenship status of all foreign-born members of subject's immediate family shall be verified. Additionally, when the investigation indicates that a member of subject's immediate family has not obtained U.S. citizenship after having been eligible for a considerable period of time, an attempt should be made to determine the reason. The documents listed below are acceptable for proof of U.S. citizenship for personnel security determination purposes:

(1) A birth certificate must be presented if the individual was born in the United States. To be acceptable, the certificate must show that the birth record was filed shortly after birth and must be certified with the registrar's signature and the raised, impressed, or multicolored seal of his office except for States or jurisdictions which, as a matter of policy, do not issue certificates with a raised or impressed seal. Uncertified copies of birth certificates are not acceptable.

(a) A delayed birth certificate (a record filed more than one year after the date of birth) is acceptable provided that it shows

that the report of birth was supported by acceptable secondary evidence of birth as described in subparagraph (b), below.

(b) If such primary evidence is not obtainable, a notice from the registrar stating that no birth record exists should be submitted. The notice shall be accompanied by the best combination of secondary evidence obtainable. Such evidence may include a baptismal certificate, a certificate of circumcision, a hospital birth record, affidavits of persons having personal knowledge of the facts of the birth, or other documentary evidence such as early census, school, or family bible records, newspaper files and insurance papers. Secondary evidence should have been created as close to the time of birth as possible.

(c) All documents submitted as evidence of birth in the United States shall be original or certified documents. Uncertified copies are not acceptable.

(2) A certificate of naturalization shall be submitted if the individual claims citizenship by naturalization.

(3) A certificate of citizenship issued by the I&NS shall be submitted if citizenship was acquired by birth abroad to a U.S. citizen parent or parents.

(4) A Report of Birth Abroad of A Citizen of The United States of America (Form FS-240), a Certification of Birth (Form FS-545 or DS-1350), or a Certificate of Citizenship is acceptable if citizenship was acquired by birth abroad to a U.S. citizen parent or parents.

(5) A passport or one in which the individual was included will be accepted as proof of citizenship.

e. *Education.* (1) Verify graduation or attendance at institutions of higher learning in the U.S. within the last 15 years, if such attendance was not verified during a prior investigation.

(2) Attempts will be made to review records at overseas educational institutions when the subject resided overseas in excess of one year.

(3) Verify attendance or graduation at the last secondary school attended within the past 10 years if there was no attendance at an institution of higher learning within the period of investigation.

(4) Verification of attendance at military academies is only required when the subject failed to graduate.

f. *Employment.* (1) Non-Federal employment. Verify all employment within the period of investigation to include seasonal, holiday, Christmas, part-time, and temporary employment. Interview one supervisor and one co-worker at subject's current place of employment as well as at each prior place of employment during the past 10 years of six months duration or longer. The interview requirement for supervisors and co-workers does not apply to seasonal, holiday, Christmas, part-time, and temporary employment (4 months or less) unless there are

unfavorable issues to resolve or the letter of inquiry provides insufficient information.

(2) *Federal employment.* All Federal employment will be verified within the period of investigation to include Christmas, seasonal temporary, summer hire, part-time, and holiday employment. Do not verify Federal employment through review of records if already verified by the requester. If Federal employment has not been verified by the requester, then subject's personnel file at his/her current place of employment will be reviewed. All previous Federal employment will be verified during this review. In the case of former Federal employees, records shall be examined at the Federal Records Center in St. Louis, Missouri. Interview one supervisor and one co-worker at all places of employment during the past 10 years if so employed for 6 months or more.

(3) *Military employment.* Military service for the last 15 years shall be verified. The subject's duty station, for the purpose of interview coverage, is considered as a place of employment. One supervisor and one co-worker shall be interviewed at subject's current duty station if subject has been stationed there for 6 months or more; additionally, a supervisor and a co-worker at subject's prior duty stations where assigned for 6 months or more during the past 10 years shall be interviewed.

(4) *Unemployment.* Subject's activities during all periods of unemployment in excess of 30 consecutive days, within the period of investigation, that are not otherwise accounted for shall be verified.

(5) When an individual has resided outside the U.S. continuously for over one year, attempts will be made to confirm overseas employments as well as conduct required interviews of a supervisor and co-worker.

g. *References.* Three developed character references who have sufficient knowledge of subject to comment on his background, suitability, and loyalty shall be interviewed personally. Efforts shall be made to interview developed references whose combined association with subject covers the full period of the investigation with particular emphasis on the last 5 years. Employment, education, and neighborhood references, in addition to the required ones, may be used as developed references provided that they have personal knowledge concerning the individual's character, discretion, and loyalty. Listed character references will be interviewed only when developed references are not available or when it is necessary to identify and locate additional developed character references or when it is necessary to verify subject's activities (e.g., unemployment).

h. *Neighborhood investigation.* Conduct a neighborhood investigation to verify each of subject's residences in the U.S. of a period of 6 months or more on a cumulative basis, during the past 5 years or during the period of

investigation, whichever is shorter. During each neighborhood investigation, interview two neighbors who can verify subject's period of residence in that area and who were sufficiently acquainted to comment on subject's suitability for a position of trust. Neighborhood investigations will be expanded beyond this 5-year period only when there is unfavorable information to resolve in the investigation.

i. *Credit.* Conduct credit bureau check in the 50 States, the District of Columbia, Puerto Rico and overseas (where APO/FPO addresses are provided) at all places where subject has resided (including duty stations and home ports), been employed, or attended school for 6 months or more, on a cumulative basis, during the last 7 years or during the period of the investigation, whichever is shorter. When coverage by a credit bureau is not available, credit references located in that area will be interviewed. Financial responsibility, including unexplained affluence, will be stressed in all reference interviews.

j. *Local Agency Checks (LAC's).* LACs, including State central criminal history record repositories, will be conducted on subject at all places of residence to include duty stations and/or home ports, in the 50 States, the District of Columbia, and Puerto Rico, where residence occurred during the past 15 years or during the period of investigation, whichever is shorter. If subject's place of employment and/or education is serviced by a different law enforcement agency than that servicing the area of residence, LACs shall be conducted also in these areas.

k. *Foreign travel.* If subject has been employed, educated, traveled or resided outside of the U.S. for more than 90 days during the period of investigation, except under the auspices of the U.S. Government, additional record checks during the NAC shall be made in accordance with paragraph 1.f. of this Appendix. In addition, the following requirements apply:

(1) Foreign travel not under the auspices of the U.S. Government. When employment, education, or residence has occurred overseas for more than 90 days during the past 15 years or since age 18, which was not under the auspices of the U.S. Government, a check of records will be made at the Passport Office of the Department of State, the CIA, and other appropriate agencies. Efforts shall be made to develop sources, generally in the U.S., who knew the individual overseas to cover significant employment, education, or residence and to determine whether any lasting foreign contacts or connections were established during this period. If the individual has worked or lived outside of the U.S. continuously for over one year, the investigation will be expanded to cover fully this period through the use of such investigative assets and checks of record sources as may be

available to the U.S. Government in the foreign country in which the individual resided.

(2) Foreign travel under the auspices of the U.S. Government. When employment, education, or residence has occurred overseas for a period of more than one year, under the auspices of the U.S. Government, a record check will be made at the Passport Office of the Department of State, the CIA and other appropriate agencies. Efforts shall be made to develop sources (generally in the U.S.) who knew the individual overseas to cover significant employment, education, or residence and to determine whether any lasting foreign contacts or connections were established during this period. Additionally, the investigation will be expanded to cover fully this period through the use of such investigative assets and checks of record sources as may be available to the U.S. Government in the foreign country in which the individual resided.

1. *Foreign connections.* All foreign connections (friends, relatives, and/or business connections) of subject and immediate family in the U.S. or abroad, except where such association was the direct result of subject's official duties with the U.S. Government, shall be ascertained. Investigation shall be directed toward determining the significance of foreign connections on the part of subject and the immediate family, particularly where the association is or has been with persons whose origin was within a country whose national interests are inimical to those of the U.S. When subject or his spouse has close relatives residing in a Communist-controlled country, or subject has resided, visited, or traveled in such a country, not under U.S. Government auspices, the provisions of §154.8(i)(3) of this part apply.

m. *Organizations.* Efforts will be made during reference interviews and record reviews to determine if subject and/or the immediate family has, or formerly had, membership in, affiliation with, sympathetic association towards, or participated in any foreign or domestic organization, association, movement, group, or combination of persons of the type described in §154.7(a) through (d) of this part.

n. *Divorce.* Divorces, annulments, and legal separations of subject shall be verified only when there is reason to believe that the grounds for the action could reflect on subject's suitability for a position of trust.

o. *Military service.* All military service and types of discharge during the last 15 years shall be verified.

p. *Medical records.* Medical records shall not be reviewed unless:

(1) The requester indicates that subject's medical records were unavailable for review prior to submitting the request for investigation, or

(2) The requester indicates that unfavorable information is contained in subject's medical records, or

(3) The subject lists one or more of the following on the SPH or PSQ:

(a) A history of mental or nervous disorders.

(b) That subject is now or has been addicted to the use of habit-forming drugs such as narcotics or barbiturates or is now or has been a chronic user to excess of alcoholic beverages.

q. *Updating a previous investigation to SBI standards.* If a previous investigation does not substantially meet the minimum standards of an SBI or if it is more than 5 years old, a current investigation is required but may be limited to that necessary to bring the individual's file up to date in accordance with the investigative requirements of an SBI. Should new information be developed during the current investigation that bears unfavorably upon the individual's activities covered by the previous investigation, the current inquiries shall be expanded as necessary to develop full details of this new information.

5. *Periodic Reinvestigation (PR).* a. Each DoD military, civilian, consultant and contractor employee (to include non-U.S. citizens (foreign nationals and/or immigrant aliens) holding a limited access authorization) occupying a critical sensitive position, possessing a TOP SECRET clearance, or occupying a special access program position shall be the subject of a PR initiated 5 years from the date of completion of the last investigation. The PR shall cover the period of the last 5 years.

b. *Minimum investigative requirements.* A PR shall include the following minimum scope.

(1) *NAC.* A valid NAC on the SUBJECT will be conducted in all cases. Additionally, for positions requiring SCI access, checks of DCII, FBI/HQ, FBI/ID name check only, and other agencies deemed appropriate, will be conducted on the SUBJECT's current spouse or cohabitant, if not previously conducted. Additionally, NACs will be conducted on immediate family members, 18 years of age or older, who are aliens and/or immigrant aliens, if not previously accomplished.

(2) *Credit.* Credit bureau checks covering all places where the SUBJECT resided for 6 months or more, on a cumulative basis, during the period of investigation, in the 50 States, District of Columbia, Puerto Rico and overseas (where APO/FPO addresses are provided), will be conducted.

(3) *Subject interview.* The interview should cover the entire period of time since the last investigation, not just the last 5-year period. Significant information disclosed during the interview, which has been satisfactorily covered during a previous investigation, need not be explored again unless additional relevant information warrants further coverage. An SI is not required if one of the following conditions exists:

(a) The SUBJECT is aboard a deployed ship or in some remote area that would cause the interview to be excessively delayed.

(b) The SUBJECT is in an overseas location serviced by the State Department or the FBI.

(4) *Employment.* Current employment will be verified. Military and Federal service records will not routinely be checked, if previously checked by the requester when PR was originally submitted. Also, employment records will be checked wherever employment interviews are conducted. Records need be checked only when they are locally available, unless unfavorable information has been detected.

(5) *Employment references.* Two supervisors or co-workers at the most recent place of employment or duty station of 6 months; if the current employment is less than 6 months employment reference interviews will be conducted at the next prior place of employment, which was at least a 6-month duration.

(6) *Developed Character References (DCRs).* Two developed character references who are knowledgeable of the SUBJECT will be interviewed. Developed character references who were previously interviewed will only be reinterviewed when other developed references are not available.

(7) *Local Agency Checks (LACs).* DIS will conduct local agency checks on the SUBJECT at all places of residence, employment, and education during the period of investigation, regardless of duration, including overseas locations.

(8) *Neighborhood Investigation.* Conduct a neighborhood investigation to verify subjects' current residence in the United States. Two neighbors who can verify subject's period of residence in that area and who are sufficiently acquainted to comment on the subject's suitability for a position of trust will be interviewed. Neighborhood investigations will be expanded beyond the current residence when unfavorable information arises.

(9) *Ex-spouse interview.* If the subject of investigation is divorced, the ex-spouse will be interviewed when the date of final divorce action is within the period of investigation.

(10) *Select scoping.* When the facts of the case warrant, additional select scoping will be accomplished, as necessary, to fully develop or resolve an issue.

[52 FR 11219, Apr. 8, 1987, as amended at 58 FR 61026, Nov. 19, 1993]

#### APPENDIX B TO PART 154—REQUEST PROCEDURES

A. *General.* To conserve investigative resources and to insure that personnel security investigations are limited to those essential

to current operations and are clearly authorized by DoD policies, organizations requesting investigations must assure that continuing command attention is given to the investigative request process.

In this connection, it is particularly important that the provision of Executive Order 12356 requiring strict limitations on the dissemination of official information and material be closely adhered to and that investigations requested for issuing clearances are limited to those instances in which an individual has a clear need for access to classified information. Similarly, investigations required to determine eligibility for appointment or retention in DoD, in either a civilian or military capacity, must not be requested in frequency or scope exceeding that provided for in this part.

In view of the foregoing, the following guidelines have been developed to simplify and facilitate the investigative request process:

1. Limit requests for investigation to those that are essential to current operations and clearly authorized by DoD policies and attempt to utilize individuals who, under the provisions of this part, have already met the security standard;
2. Assure that military personnel on whom investigative requests are initiated will have sufficient time remaining in service after completion of the investigation to warrant conducting it;
3. Insure that request forms and prescribed documentation are properly executed in accordance with instructions;
4. Dispatch the request directly to the DIS Personnel Investigations Center;
5. Promptly notify the DIS Personnel Investigations Center if the investigation is no longer needed (notify OPM if a NACI is no longer needed); and
6. Limit access through strict need-to-know, thereby requiring fewer investigations.

In summary, close observance of the above-cited guidelines will allow the DIS to operate more efficiently and permit more effective, timely, and responsive service in accomplishing investigations.

**B. National Agency Check (NAC).** When a NAC is requested an original only of the DD Form 398-2 (National Agency Check Request) and a completed FD 258 (Applicant Fingerprint Card) are required. If the request is for an ENTNANC, an original only of the DD Form 398-2 and a completed DD Form 2280 (Armed Forces Fingerprint Card) are required. Those forms should be sent directly to: Personnel Investigation Center, Defense Investigative Service, P.O. Box 1083, Baltimore, Maryland 21203.

**C. National Agency Check plus written Inquiries (NACI).** When a NACI is requested, an original and one copy of the SF 85 (Data for Nonsensitive or Noncritical-sensitive Posi-

tion), an SF 171 (Personal Qualifications Statement), and an SF 87 (U.S. Civil Service Commission Fingerprint Chart) shall be sent directly to: Office of Personnel Management, Bureau of Personnel Investigations, NACI Center, Boyers, Pennsylvania 16018.

The notation "ALL REFERENCES" shall be stamped immediately above the title at the top of the Standard Form 85.

**D. DoD National Agency Check with Inquiries (DNACI).** 1. When a DNACI is requested, one copy of DD Form 1879, an original and two copies of the DD Form 398-2 (National Agency Check Request), two copies of FD 258 (Fingerprint Card), and an original of DD Form 2221 (Authority for Release of Information and Records) shall be sent directly to: Personnel Investigations Center, Defense Investigative Service, P.O. Box 1083, Baltimore, Maryland 21203.

2. The DD Form 398-2 must be completed to cover the most recent five year period. All information, to include items relative to residences and employment, must be complete and accurate to avoid delays in processing.

**E. Special Background Investigation (SBI)/Background Investigation (BI).** 1. When requesting a BI or SBI, one copy of DD Form 1879 (Request for Personnel Security Investigation), an original and four copies of DD Form 398 (Statement of Personnel History), two copies of FD 258, and an original of DD Form 2221 (Authority for Release of Information and Records) shall be sent directly to the: Personnel Investigations Center, Defense Investigative Service, P.O. Box 454, Baltimore, Maryland 21203.

2. For the BI and SBI, the DD Form 398 must be completed to cover the most recent five and 15 year period, respectively, or since the 18th birthday, whichever is shorter.

**F. Periodic Reinvestigation (PR).** 1. PRs shall be requested only in such cases as are authorized by §154.19 (a) through (k) of this part.

a. For a PR requested in accordance with §154.19 (a) and (k) and the DD Form 1879 must be accompanied by the following documents:

- (1) Original and four copies of DD Form 398.
- (2) Two copies of FD-258.
- (3) Original copy of DD Form 2221.

b. In processing PRs, previous investigative reports will not be requested by the requesting organization, unless significant derogatory or adverse information, postdating the most recent favorable adjudication, is developed during the course of reviewing other locally available records. In the latter instance, requests for previous investigative reports may only be made if it is determined by the requesting organization that the derogatory information is so significant that a review of previous investigative reports is

necessary for current adjudicative determinations.

2. No abbreviated version of DD Form 398 may be submitted in connection with a PR.

3. The PR request shall be sent to the address in paragraph E.1.

G. *Additional investigation to resolve derogatory or adverse information.* 1. Requests for additional investigation required to resolve derogatory or adverse information shall be submitted by DD Form 1879 (Request for Personnel Security Investigation) to the: Defense Investigative Service, P.O. Box 454, Baltimore, Maryland 21203.

Such requests shall set forth the basis for the additional investigation and describe the specific matter to be substantiated or disproved.

2. The request should be accompanied by an original and four copies of the DD Form 398, where appropriate, two copies of FD-258 and an original copy of DD Form 2221, unless such documentation was submitted within the last 12 months to DIS as part of a NAC or other personnel security investigation. If pertinent, the results of a recently completed NAC, NACI, or other related investigative reports available should also accompany the request.

H. *Obtaining results of prior investigations.* Requesters requiring verification of a specified type of personnel security investigation, and/or requiring copies of prior investigations conducted by the DIS shall submit requests by letter or message to: Defense Investigative Service Investigative Files Division, P.O. Box 1211, Baltimore, Maryland 21203, Message Address: DIS PIC BALTIMORE MD/D0640.

The request will include subject's name, grade, social security number, date and place of birth, and DIS case control number if known.

I. *Requesting postadjudication cases.* 1. Requests pertaining to issues arising after adjudication of an investigation

(postadjudication cases) shall be addressed to DIS on a DD Form 1879 accompanied by a DD Form 398, where appropriate.

2. All requests for initial investigations will be submitted to PIC regardless of their urgency. If, however, there is an urgent need for a postadjudication investigation, or the mailing of a request to PIC for initiation of a postadjudication case would prejudice timely pursuit of investigative action, the DD Form 1879 may be directed for initiation, in CONUS, to the nearest DIS Field Office, and in overseas locations, to the military investigative service element supporting the requester (Appendix I). The field element (either DIS or the military investigative agency) will subsequently forward either the DD Form 1879 or completed investigation to PIC.

3. A fully executed DD Form 1879 and appropriate supporting documents may not be immediately available. Further, a case that is based on sensitive security issues may be compromised by a request that the subject submit a DD Form 398. A brief explanation should appear on DD Form 1879s which does not include complete supporting documentation.

J. *Requests involving contractor employees.* To preclude duplicative investigative requests and double handling of contractor employee cases involving access to classified information, all requests for investigation of contractor personnel must be submitted, using authorized industrial security clearance forms, for processing through the Defense Industrial Security Clearance Office, except for programs in which specific approval has been obtained from the Deputy Under Secretary of Defense for Policy to utilize other procedures.

K. *Responsibility for proper documentation of requests.* The official signing the request for investigation shall be responsible for insuring that all documentation is completed in accordance with these instructions.

APPENDIX C TO PART 154—TABLES FOR REQUESTING INVESTIGATIONS

GUIDE FOR REQUESTING BACKGROUND INVESTIGATIONS (BI) (TABLE 1)

| A<br>If the individual is a:   | B<br>And duties require:   | C<br>Then a BI is required before:             |
|--|--|--|
| U.S. national military member, civilian, consultant, or contractor employee. | Top Secret clearance .....   | Granting final clearance.                      |
| U.S. national civilian employee .....  | Assignment to a "Critical" sensitive position.   | Assignment to the position.                    |
| U.S. national military member, DoD civilian or contractor employee.          | Occupying a "critical" position in the Nuclear Weapon Personnel Reliability Program (PRP). | Occupying a "critical" position.               |
| U.S. national military member or civilian employee.                          | Granting, denying clearances .....   | Performing clearance functions.                |
| U.S. national military member or civilian employee.                          | Membership on security screening, hearing, or review board.                                | Appointment to the board.                      |
| Immigrant alien .....  | Limited access to Secret or Confidential information.                                      | Issuing limited access authorization (Note 1). |

GUIDE FOR REQUESTING BACKGROUND INVESTIGATIONS (BI) (TABLE 1)—Continued

| A<br>If the individual is a:   | B<br>And duties require:  | C<br>Then a BI is required before:  |
|--|---|---|
| Non-U.S. national employee excluding immigrant alien.<br>Non-U.S. national nominee military education and orientation program (from a country listed at Appendix G).<br>U.S. national military member DoD civilian or contractor employee.<br>U.S. national military member, DoD civilian or contractor employee assigned to NATO. | Limited access to Secret or Confidential information.<br>Education and orientation for of military personnel.<br>Assignment to a category two Presidential Support position.<br>Access to NATO COSMIC information ..... | Issuing limited access authorization.<br>Before performing duties.<br>Assignment.<br>Access may be granted. |

Note 1: BI will cover a 10 year scope.

GUIDE FOR REQUESTING SPECIAL BACKGROUND INVESTIGATIONS (SBI) (TABLE 2)

| A<br>If the individual is a:   | B<br>And duties require:  | C<br>Then a SBI is required before:   |
|--|---|---|
| U.S. national military member, DoD civilian, consultant, or contractor employee. | Access to SCI .....<br>Assignment to a category one Presidential Support position.<br>Access to SIOP-ESI .....<br>Assignment to the National Security Agency.<br>Access to other Special Access programs approved under § 154.17(g).<br>Assignment to personnel security, counter-intelligence, or criminal investigative or direct investigative support duties. | Granting Access.<br>Assignment.<br>Granting access.<br>Assignment.<br>Granting access.<br>Assignment. |

GUIDE FOR REQUESTING PERIODIC REINVESTIGATIONS (PR) (TABLE 3)

| A<br>If the individual is a:   | B<br>And duties require:  | C<br>Then a PR is required before:   |
|--|---|--|
| U.S. national military member, DoD civilian, consultant, or contractor employee. | Access to SCI .....<br>Top Secret Clearance .....<br>Access to NATO COSMIC .....<br>Assignment to Presidential Support activities.<br>Assignment to a "Critical" sensitive position.<br>Current limited access authorization to Secret or Confidential information. | 5 years from date of last SBI/BI or PR.<br>5 years from date of last SBI/BI or PR.<br>5 years from date of last SBI/BI or PR.<br>5 years from date of last SBI/BI or PR.<br>5 years from last SBI/BI or PR.<br>5 years from last SBI/BI or PR. |
| U.S. national civilian employee .....  | Assignment to a "Critical" sensitive position.  | 5 years from last SBI/BI or PR.  |
| Non-U.S. national employee .....   | Current limited access authorization to Secret or Confidential information.   | 5 years from last SBI/BI or PR.  |

GUIDE FOR REQUESTING DOD NATIONAL AGENCY CHECK WITH INQUIRIES (DNACI) OR NACI (TABLE 4)

| A<br>If the individual is a:  | B<br>And duties require:  | C<br>Then DNACI/NACI is required  |
|---|---|---|
| U.S. national military member or contractor                         | Secret clearance .....  | Before granting clearance (note 1). May be automatically issued (note 2). |
| U.S. national civilian employee or consultant.                      | Interim Secret Clearance .....  | Before granting clearance. May be automatically issued (note 3).          |
| U.S. national military member, DoD civilian or contractor employee. | Appointment to "Non Critical" sensitive position.<br>Occupying a "controlled" position in the Nuclear Weapon PRR. | Before appointment.<br>Before assignment.                                 |



GUIDE FOR REQUESTING DOD NATIONAL AGENCY CHECK WITH INQUIRIES (DNACI) OR NACI (TABLE 4)—Continued

| A<br>If the individual is a:  | B<br>And duties require:                                 | C<br>Then DNACI/NACI is required  |
|---|--|---|
| Applicant for appointment as a commissioned officer.                          | Commission in the Award Forces .....                     | Before appointment (after appointment for health professionals, chaplains, and attorneys, under conditions authorized by § 154.15(d) of this part). |
| Naval Academy Midshipman, Military Academy Cadet, or Air Force Academy Cadet. | Enrollment .....   | To be initiated 90 days after entry.  |
| Reserve Officer Training Corps Cadet of Midshipman.                           | Entry to advanced course or College Scholarship Program. | Then a DNACI is required to be initiated 90 days after entry.   |

Note 1: First term enlistees shall require an ENTNAC.  
 Note 2: Provided DD Form 398-2 is favorably reviewed, local records check favorably accomplished, and DNACI initiated.  
 Note 3: Provided an authority designated in Appendix E finds delay in such appointment would be harmful to national security; favorable review of DD Form 398-2; NACI initiated; favorable local records check accomplished. Table 5.

GUIDE FOR REQUESTING NATIONAL AGENCY CHECKS (NAC) (TABLE 5)

| A<br>If the individual is a:   | B<br>And duties require:   | C<br>Then a NAC is required:                                   |
|--|--|--|
| A first-term enlistee .....  | Retention in the Armed Forces (including National Guard and Reserve).                      | To be initiated NLT three work days after entry (note 1).      |
| Prior service member reentering military service after break in Federal employment exceeding 1 year. | Retention in the Armed Forces (including National Guard and Reserve).                      | To be initiated NLT three work days after reentry.             |
| Nominee for military education and orientation program.  | Education and orientation of military personnel.   | Before performing duties (note 2).                             |
| U.S. national military, DoD civilian, or contractor employee.  | Access to restricted areas, sensitive information, or equipment as defined in § 154.18(b). | Before authorizing entry.                                      |
| Nonappropriated fund instrumentality (NAFI) civilian employee.                                       | Appointment as NAFI custodian .....  | Before appointment.  |
|  | Accountability for non appropriated funds ..   | Before completion of probationary period.                      |
|  | Fiscal responsibility as determined by NAFI custodian.                                     | Before completion of probationary period.                      |
|  | Other "positions of trust" .....   | Before appointment.  |
| Persons requiring access to chemical agents.   | Access to or security of chemical agents ...   | Before assignment.   |
| U.S. national, civilian employee nominee for customs inspection duties.                              | Waiver under provisions of § 154.18(d) .....   | Before appointment (note 3).                                   |
| Red Cross/United States Organization personnel.  | Assignment with the Armed Forces overseas.   | Before assignment (See note 4 for foreign national personnel). |
| U.S. national .....  | DoD building pass .....  | Prior to issuance.   |
| Foreign national employed overseas .....   | No access to classified information .....  | Prior to employment (note 4).                                  |

Note 1: Request ENTNAC only.  
 Note 2: Except where personnel whose country of origin is a country listed at Appendix G, a BI will be required (See § 154.18(1)).  
 Note 3: A NAC not over 5 years old suffices unless there has been a break in employment over 12 months. Then a current NAC is required.  
 Note 4: In such cases, the NAC shall consist of: (a) Host government law enforcement and security agency record checks at the city, state (province), and national level, and (b) DCII.

APPENDIX D TO PART 154—REPORTING OF NONDEROGATORY CASES

Background Investigation (BI) and Special Background Investigation (SBI) shall be considered as devoid of significant adverse information unless they contain information listed below:

1. Incidents, infractions, offenses, charges, citations, arrests, suspicion or allegations of illegal use or abuse of drugs or alcohol, theft or dishonesty, unreliability, irresponsibility, immaturity, instability or recklessness, the

use of force, violence or weapons or actions that indicate disregard for the law due to multiplicity of minor infractions.

2. All indications of moral turpitude, heterosexual promiscuity, aberrant, deviant, or bizarre sexual conduct or behavior, transvestitism, transsexualism, indecent exposure, rape, contributing to the delinquency of a minor, child molestation, wife-swapping, window-peeping, and similar situations from whatever source. Unlisted full-time employment or education; full-time education or employment that cannot be verified by any

reference or record source or that contains indications of falsified education or employment experience. Records or testimony of employment, education, or military service where the individual was involved in serious offenses or incidents that would reflect adversely on the honesty, reliability, trustworthiness, or stability of the individual.

3. Foreign travel, education, visits, correspondence, relatives, or contact with persons from or living in a foreign country or foreign intelligence service.

4. Mental, nervous, emotional, psychological, psychiatric, or character disorders/behavior or treatment reported or alleged from any source.

5. Excessive indebtedness, bad checks, financial difficulties or irresponsibility, unexplained affluence, bankruptcy, or evidence of living beyond the individual's means.

6. Any other significant information relating to the criteria included in paragraphs (a) through (q) of §154.7 or Appendix H of this part.

[52 FR 11219, Apr. 8, 1987, as amended at 58 FR 61026, Nov. 19, 1993]

#### APPENDIX E TO PART 154—PERSONNEL SECURITY DETERMINATION AUTHORITIES

A. *Officials authorized to grant, deny or revoke personnel security clearances (Top Secret, Secret, and Confidential):*

1. Secretary of Defense and/or designee
2. Secretary of the Army and/or designee
3. Secretary of the Navy and/or designee
4. Secretary of the Air Force and/or designee
5. Chairman, Joint Chiefs of Staff and/or designee
6. Directors of the Defense Agencies and/or designee
7. Commanders of the Unified and Specified Commands and/or designee

B. *Officials authorized to grant Limited Access Authorizations:*

1. Secretaries of the Military Departments and/or designee
2. Director, Washington Headquarters Service for OSD and/or designee
3. Chairman, JCS and/or designee
4. Directors of the Defense Agencies and/or designee
5. Commanders, Unified and Specified Commands and/or designee

C. *Officials authorized to grant access to SCI:*  
Director, NSA—for NSA  
Director, DIA—for OSD, OJCS, and Defense Agencies

Senior Officers of the Intelligence Community of the Army, Navy, and Air Force—for their respective Military Departments, or their single designee.

D. Officials authorized to certify personnel under their jurisdiction for access to Restricted Data (to include Critical Nuclear

Weapon Design Information): see enclosure to DoD Directive 5210.2.

E. Officials authorized to approve personnel for assignment to Presidential Support activities: The Executive Secretary to the Secretary and Deputy Secretary of Defense or designee.

F. *Officials authorized to grant access to SIOP-ESI:*

1. Director of Strategic Target Planning
2. Director, Joint Staff, OJCS
3. Chief of Staff, U.S. Army
4. Chief of Naval Operations
5. Chief of Staff, U.S. Air Force
6. Commandant of the Marine Corps
7. Commanders of Unified and Specified Commands
8. The authority to grant access delegated above may be further delegated in writing by the above officials to the appropriate subordinates.

G. *Officials authorized to designate sensitive positions:*

1. Heads of DoD Components or their designees for critical-sensitive positions.
2. Organizational commanders for non-critical-sensitive positions.

H. *Nonappropriated Fund Positions of Trust:*

Officials authorized to designate non-appropriated fund positions of trust: Heads of DoD Components and/or their designees.

#### APPENDIX F TO PART 154—GUIDELINES FOR CONDUCTING PRENOMINATION PERSONAL INTERVIEWS

A. *Purpose.* The purpose of the personal interview is to assist in determining the acceptability of an individual for nomination and further processing for a position requiring an SBI.

B. *Scope.* Questions asked during the course of a personal interview must have a relevance to a security determination. Care must be taken not to inject improper matters into the personal interview. For example, religious beliefs and affiliations, beliefs and opinions regarding racial matters, political beliefs and affiliations of a nonsubversive nature, opinions regarding the constitutionality of legislative policies, and affiliations with labor unions and fraternal organizations are not proper subjects for inquiry. Department of Defense representatives conducting personal interviews should always be prepared to explain the relevance of their inquiries. Adverse inferences shall not be drawn from the refusal of a person to answer questions the relevance of which has not been established.

C. *The interviewer.* Except as prescribed in paragraph B. above, persons conducting personal interviews normally will have broad

latitude in performing this essential and important function and, therefore, a high premium must necessarily be placed upon the exercise of good judgment and common sense. To insure that personal interviews are conducted in a manner that does not violate lawful civil and private rights or discourage lawful political activity in any of its forms, or intimidate free expression, it is necessary that interviewers have a keen and well-developed awareness of and respect for the rights of interviewees. Interviewers shall never offer an opinion as to the relevance or significance of information provided by the interviewee to eligibility for access to SCI. If explanation in this regard is required, the interviewer will indicate that the sole function of the interview is to obtain information and that the determination of relevance or significance to the individual's eligibility will be made by other designated officials.

*D. Interview procedures.* 1. The Head of the DoD Component concerned shall establish uniform procedures for conducting the interview that are designed to elicit information relevant to making a determination of whether the interviewee, on the basis of the interview and other locally available information (DD 398, Personnel Security Investigation Questionnaire, personnel records, security file, etc.), is considered acceptable for nomination and further processing.

2. Such procedures shall be structured to insure the interviewee his full rights under the Constitution of the United States, the Privacy Act of 1974 and other applicable statutes and regulations.

*E. Protection of interview results.* All information developed during the course of the interview shall be maintained in personnel security channels and made available only to those authorities who have a need-to-know in connection with the processing of an individual's nomination for duties requiring access to SCI or those who need access to information either to conduct the required SBI or to adjudicate the matter of the interviewee's eligibility for access to SCI, or as otherwise authorized by Executive order or statute.

*F. Acceptability determination.* 1. The determination of the interviewee's acceptability for nomination for duties requiring access to sensitive information shall be made by the commander, or designee, of the DoD organization that is considering nominating the interviewee for such duties.

2. Criteria guidelines contained in DCID 1/14 upon which the acceptability for nomination determination is to be based shall be provided to commanders of DoD organizations who may nominate individuals for access to SCI and shall be consistent with those established by the Senior Officer of the Intelligence Community of the Component concerned with respect to acceptability for nomination to duties requiring access to SCI.

## APPENDIX G TO PART 154 [RESERVED]

## APPENDIX H TO PART 154—ADJUDICATIVE GUIDELINES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED INFORMATION

1. *Introduction.* The following adjudicative guidelines are established for all U.S. Government civilian and military personnel, consultants, contractors, employees of contractors, licensees, certificate holders or grantees and their employees, and other individuals who require access to classified information. They apply to persons being considered for initial or continued eligibility for access to classified information, to include sensitive compartmented information and special access programs, and are to be used by government departments and agencies in all final clearance determinations. Government departments and agencies may also choose to apply these guidelines to analogous situations regarding persons being considered for access to other types of protected information.

Decisions regarding eligibility for access to classified information take into account factors that could cause a conflict of interest and place a person in the position of having to choose between his or her commitments to the United States, including the commitment to protect classified information, and any other compelling loyalty. Accesses decisions also take into account a person's reliability, trustworthiness and ability to protect classified information. No coercive policing could replace the self-discipline and integrity of the person entrusted with the nation's secrets as the most effective means of protecting them. When a person's life history shows evidence of unreliability or untrustworthiness, questions arise whether the person can be relied on and trusted to exercise the responsibility necessary for working in a secure environment where protecting classified information is paramount.

2. *The adjudicative process.*

(a) The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk. Eligibility for access to classified information is predicated upon the individual meeting these personnel security guidelines. The adjudication process is the careful weighing of a number of variables known as the whole-person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. In evaluating the relevance of an individual's conduct, the adjudicator should consider the following factors:

(1) The nature, extent, and seriousness of the conduct;

(2) The circumstances surrounding the conduct, to include knowledgeable participation;

(3) The frequency and recency of the conduct;

(4) The individual's age and maturity at the time of the conduct;

(5) The extent to which participation is voluntary;

(6) The presence or absence of rehabilitation and other permanent behavioral changes;

(7) The motivation for the conduct;

(8) The potential for pressure, coercion, exploitation, or duress; and

(9) The likelihood of continuation or recurrence;

(b) Each case must be judged on its own merits, and final determination remains the responsibility of the specific department or agency. Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.

(c) The ability to develop specific thresholds for action under these guidelines is limited by the nature and complexity of human behavior. The ultimate determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person.

(1) GUIDELINE A: Allegiance to the United States;

(2) GUIDELINE B: Foreign Influence;

(3) GUIDELINE C: Foreign Preference;

(4) GUIDELINE D: Sexual Behavior;

(5) GUIDELINE E: Personal Conduct;

(6) GUIDELINE F: Financial Considerations;

(7) GUIDELINE G: Alcohol Consumption;

(8) GUIDELINE H: Drug Involvement;

(9) GUIDELINE I: Psychological Conditions;

(10) GUIDELINE J: Criminal Conduct;

(11) GUIDELINE K: Handling Protected Information;

(12) GUIDELINE L: Outside Activities;

(13) GUIDELINE M: Use of Information Technology Systems

(d) Although adverse information concerning a single criterion may not be sufficient for an unfavorable determination, the individual may be disqualified if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior. Notwithstanding the whole-person concept, pursuit of further investigation may be terminated by an appropriate adjudicative agency in the face of reliable, significant, disqualifying, adverse information.

(e) When information of security concern becomes known about an individual who is

currently eligible for access to classified information, the adjudicator should consider whether the person:

(1) Voluntarily reported the information;

(2) Was truthful and complete in responding to questions;

(3) Sought assistance and followed professional guidance, where appropriate;

(4) Resolved or appears likely to favorably resolve the security concern;

(5) Has demonstrated positive changes in behavior and employment;

(6) Should have his or her access temporarily suspended pending final adjudication of the information.

(f) If after evaluating information of security concern, the adjudicator decides that the information is not serious enough to warrant a recommendation of disapproval or revocation of the security clearance, it may be appropriate to recommend approval with a warning that future incidents of a similar nature may result in revocation of access.

#### GUIDELINE A: ALLEGIANCE TO THE UNITED STATES

3. *The concern.* An individual must be of unquestioned allegiance to the United States. The willingness to safeguard classified information is in doubt if there is any reason to suspect an individual's allegiance to the United States.

4. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Involvement in, support of, training to commit, or advocacy of any act of sabotage, espionage, treason, terrorism, or sedition against the United States of America;

(b) Association or sympathy with persons who are attempting to commit, or who are committing, any of the above acts;

(c) Association or sympathy with persons or organizations that advocate, threaten, or use force or violence, or use any other illegal or unconstitutional means, in an effort to:

(1) Overthrow or influence the government of the United States or any state or local government;

(2) Prevent Federal, state, or local government personnel from performing their official duties;

(3) Gain retribution for perceived wrongs caused by the Federal, state, or local government;

(4) Prevent others from exercising their rights under the Constitution or laws of the United States or of any state.

5. *Conditions that could mitigate security concerns include:*

(a) The individual was unaware of the unlawful aims of the individual or organization and severed ties upon learning of these;

(b) The individual's involvement was only with the lawful or humanitarian aspects of such an organization;

(c) Involvement in the above activities occurred for only a short period of time and

was attributable to curiosity or academic interest;

(d) The involvement or association with such activities occurred under such unusual circumstances, or so much time has elapsed, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or loyalty.

#### GUIDELINE B: FOREIGN INFLUENCE

6. *The concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

7. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;

(b) Connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

(c) Counterintelligence information, that may be classified, indicates that the individual's access to protected information may involve unacceptable risk to national security;

(d) Sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion;

(e) A substantial business, financial, or property interest in a foreign country, or in any foreign-owned or foreign-operated business, which could subject the individual to heightened risk of foreign influence or exploitation;

(f) Failure to report, when required, association with a foreign national;

(g) Unauthorized association with a suspected or known agent, associate, or employee of a foreign intelligence service;

(h) Indications that representatives or nationals from a foreign country are acting to increase the vulnerability of the individual

to possible future exploitation, inducement, manipulation, pressure, or coercion;

(i) Conduct, especially while traveling outside the U.S., which may make the individual vulnerable to exploitation, pressure, or coercion by a foreign person, group, government, or country.

8. *Conditions that could mitigate security concerns include:*

(a) The nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.;

(b) There is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest;

(c) Contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation;

(d) The foreign contacts and activities are on U.S. Government business or are approved by the cognizant security authority;

(e) The individual has promptly complied with existing agency requirements regarding the reporting of contacts, requests, or threats from persons, groups, or organizations from a foreign country;

(f) The value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure the individual.

#### GUIDELINE C: FOREIGN PREFERENCE

9. *The concern.* When an individual acts in such a way as to indicate a preference for a foreign country over the United States, then he or she may be prone to provide information or make decisions that are harmful to the interests of the United States.

10. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:

(1) Possession of a current foreign passport;

(2) Military service or a willingness to bear arms for a foreign country;

(3) Accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;

(4) Residence in a foreign country to meet citizenship requirements;

(5) Using foreign citizenship to protect financial or business interests in another country;

(6) Seeking or holding political office in a foreign country;

(7) Voting in a foreign election;

(b) Action to acquire or obtain recognition of a foreign citizenship by an American citizen;

(c) Performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest;

(d) Any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.

11. *Conditions that could mitigate security concerns include:*

(a) Dual citizenship is based solely on parents' citizenship or birth in a foreign country;

(b) The individual has expressed a willingness to renounce dual citizenship;

(c) Exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;

(d) Use of a foreign passport is approved by the cognizant security authority.

(e) The passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated;

(f) The vote in a foreign election was encouraged by the United States Government.

#### GUIDELINE D: SEXUAL BEHAVIOR

12. *The concern.* Sexual behavior that involves a criminal offense indicates a personality or emotional disorder, reflects lack of judgment or discretion, or which may subject the individual to undue influence or coercion, exploitation, or duress can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

13. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Sexual behavior of a criminal nature, whether or not the individual has been prosecuted;

(b) A pattern of compulsive, self-destructive, or high risk sexual behavior that the person is unable to stop or that may be symptomatic of a personality disorder;

(c) Sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress;

(d) Sexual behavior of a public nature and/or that reflects lack of discretion or judgment.

14. *Conditions that could mitigate security concerns include:*

(a) The behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature;

(b) The sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(c) The behavior no longer serves as a basis for coercion, exploitation, or duress.

(d) The sexual behavior is strictly private, consensual, and discreet.

#### GUIDELINE E: PERSONAL CONDUCT

15. *The concern.* Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) Refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation;

(b) Refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

16. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(b) Deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(c) Credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any

other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) Credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) Untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

(2) Disruptive, violent, or other inappropriate behavior in the workplace;

(3) A pattern of dishonesty or rule violations;

(4) Evidence of significant misuse of Government or other employer's time or resources;

(e) Personal conduct or concealment of information about one's conduct that creates a vulnerability to exploitation, manipulation, or duress, such as:

(1) Engaging in activities which, if known, may affect the person's personal, professional, or community standing, or

(2) While in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group;

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment;

(g) association with persons involved in criminal activity.

17. *Conditions that could mitigate security concerns include:*

(a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the

information, the individual cooperated fully and truthfully.

(c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) The information was unsubstantiated or from a source of questionable reliability;

(g) Association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

#### GUIDELINE F: FINANCIAL CONSIDERATIONS

18. *The concern.* Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

19. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Inability or unwillingness to satisfy debts;

(b) Indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.

(c) A history of not meeting financial obligations;

(d) Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

(e) Consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

(f) Financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;

(g) Failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) Unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income;

(i) Compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

20. *Conditions that could mitigate security concerns include:*

(a) The behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) The conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) The person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue;

(f) The affluence resulted from a legal source of income.

#### GUIDELINE G: ALCOHOL CONSUMPTION

21. *The concern.* Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

22. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(b) Alcohol-related incidents at work, such as reporting for work or duty in an intoxi-

cated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(c) Habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(d) Diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of alcohol abuse or alcohol dependence;

(e) Evaluation of alcohol abuse or alcohol dependence by a licensed clinical social worker who is a staff member of a recognized alcohol treatment program;

(f) Relapse after diagnosis of alcohol abuse or dependence and completion of an alcohol rehabilitation program;

(g) Failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

23. *Conditions that could mitigate security concerns include:*

(a) So much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) The individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) The individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress;

(d) The individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

#### GUIDELINE H: DRUG INVOLVEMENT

24. *The concern.* Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:



(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) Inhalants and other similar substances;

(b) Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

25. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Any drug abuse (see above definition);<sup>1</sup>

(b) Testing positive for illegal drug use;

(c) Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

(d) Diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;

(e) Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program;

(f) Failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;

(g) Any illegal drug use after being granted a security clearance;

(h) Expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

26. *Conditions that could mitigate security concerns include:*

(a) The behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) A demonstrated intent not to abuse any drugs in the future, such as:

(1) Disassociation from drug-using associates and contacts;

(2) Changing or avoiding the environment where drugs were used;

(3) An appropriate period of abstinence;

(4) A signed statement of intent with automatic revocation of clearance for any violation;

(c) Abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended;

(d) Satisfactory completion of a prescribed drug treatment program, including but not

limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

#### GUIDELINE I: PSYCHOLOGICAL CONDITIONS

27. *The concern.* Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline. No negative inference concerning the standards in this Guideline may be raised solely on the basis of seeking mental health counseling.

28. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Behavior that casts doubt on an individual's judgment, reliability, or trustworthiness that is not covered under any other guideline, including but not limited to emotionally unstable, irresponsible, dysfunctional, violent, paranoid, or bizarre behavior;

(b) An opinion by a duly qualified mental health professional that the individual has a condition not covered under any other guideline that may impair judgment, reliability, or trustworthiness;<sup>2</sup>

(c) The individual has failed to follow treatment advice related to a diagnosed emotional, mental, or personality condition, e.g., failure to take prescribed medication.

29. *Conditions that could mitigate security concerns include:*

(a) The identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) The individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) Recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

<sup>1</sup>Under the provisions of 10 U.S.C. 986 any person who is an unlawful user of, or is addicted to, a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), may not be granted or have renewed their access to classified information.

<sup>2</sup>Under the provisions of 10 U.S.C. 986, any person who is mentally incompetent, as determined by a credentialed mental health professional approved by the Department of Defense, may not be granted or have renewed their access to classified information.

(d) The past emotional instability was a temporary condition (e.g., one caused by death, illness, or marital breakup), the situation has been resolved, and the individual no longer shows indications of emotional instability;

(e) There is no indication of a current problem.

## GUIDELINE J: CRIMINAL CONDUCT

30. *The concern.* Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

31. *Conditions that could raise a security concern and may be disqualifying include:*

(a) A single serious crime or multiple lesser offenses;

(b) Discharge or dismissal from the Armed Forces under dishonorable conditions;<sup>3</sup>

(c) Allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

(d) Individual is currently on parole or probation;

(e) Violation of parole or probation, or failure to complete a court-mandated rehabilitation program;

(f) Conviction in a Federal or State court, including a court-martial of a crime, sentenced to imprisonment for a term exceeding one year and incarcerated as a result of that sentence for not less than a year.<sup>4</sup>

32. *Conditions that could mitigate security concerns include:*

(a) So much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) The person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

<sup>3</sup>Under the provisions of 10 U.S.C. 986, a person who has received a dishonorable discharge or has been dismissed from the Armed Forces may not be granted or have renewed access to classified information. In a meritorious case, the Secretaries of the Military Departments or designee; or the Directors of WHS, DIA, NSA, DOHA or designee may authorize a waiver of this prohibition.

<sup>4</sup>Under the above mentioned statute, a person who has been convicted in a Federal or State court, including courts martial, sentenced to imprisonment for a term exceeding one year and incarcerated for not less than one year, may not be granted or have renewed access to classified information. The same waiver provision also applies.

(c) Evidence that the person did not commit the offense;

(d) There is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement;

(e) Potentially disqualifying conditions 31. (b) and (f) may not be mitigated unless, where meritorious circumstances exist, the Secretaries of the Military Departments or designee; or the Directors of Washington Headquarters Services (WHS), Defense Intelligence Agency (DIA), National Security Agency (NSA), Defense Office of Hearings and Appeals (DOHA) or designee has granted a waiver.

## GUIDELINE K: HANDLING PROTECTED INFORMATION

33. *The concern.* Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

34. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Deliberate or negligent disclosure of classified or other protected information to unauthorized persons, including but not limited to personal or business contacts, to the media, or to persons present at seminars, meetings, or conferences;

(b) Collecting or storing classified or other protected information at home or in any other unauthorized location;

(c) Loading, drafting, editing, modifying, storing, transmitting, or otherwise handling classified reports, data, or other information on any unapproved equipment including but not limited to any typewriter, word processor, or computer hardware, software, drive, system, gameboard, handheld, "palm" or pocket device or other adjunct equipment;

(d) Inappropriate efforts to obtain or view classified or other protected information outside one's need to know;

(e) Copying classified or other protected information in a manner designed to conceal or remove classification or other document control markings;

(f) Viewing or downloading information from a secure system when the information is beyond the individual's need-to-know;

(g) Any failure to comply with rules for the protection of classified or other sensitive information;

(h) Negligence or lax security habits that persist despite counseling by management.

(i) Failure to comply with rules or regulations that results in damage to the National

Security, regardless of whether it was deliberate or negligent.

35. *Conditions that could mitigate security concerns include:*

(a) So much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) The individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities;

(c) The security violations were due to improper or inadequate training.

#### GUIDELINE L: OUTSIDE ACTIVITIES

36. *The concern.* Involvement in certain types of outside employment or activities is of security concern if it poses a conflict of interest with an individual's security responsibilities and could create an increased risk of unauthorized disclosure of classified information.

37. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Any employment or service, whether compensated or volunteer, with:

(1) The government of a foreign country;

(2) Any foreign national, organization, or other entity;

(3) A representative of any foreign interest;

(4) Any foreign, domestic, or international organization or person engaged in analysis, discussion, or publication of material on intelligence, defense, foreign affairs, or protected technology;

(b) Failure to report or fully disclose an outside activity when this is required.

38. *Conditions that could mitigate security concerns include:*

(a) Evaluation of the outside employment or activity by the appropriate security or counterintelligence office indicates that it does not pose a conflict with an individual's security responsibilities or with the national security interests of the United States;

(b) The individual terminated the employment or discontinued the activity upon being notified that it was in conflict with his or her security responsibilities.

#### GUIDELINE M: USE OF INFORMATION TECHNOLOGY SYSTEMS

39. *The concern.* Noncompliance with rules, procedures, guidelines or regulations pertaining to information technology systems may raise security concerns about an individual's reliability and trustworthiness, calling into question the willingness or ability to properly protect sensitive systems, networks, and information. Information Technology Systems include all related computer hardware, software, firmware, and data used for the communication, transmission, proc-

essing, manipulation, storage, or protection of information.

40. *Conditions that could raise a security concern and may be disqualifying include:*

(a) Illegal or unauthorized entry into any information technology system or component thereof;

(b) Illegal or unauthorized modification, destruction, manipulation or denial of access to information, software, firmware, or hardware in an information technology system;

(c) Use of any information technology system to gain unauthorized access to another system or to a compartmented area within the same system;

(d) Downloading, storing, or transmitting classified information on or to any unauthorized software, hardware, or information technology system;

(e) Unauthorized use of a government or other information technology system;

(f) Introduction, removal, or duplication of hardware, firmware, software, or media to or from any information technology system without authorization, when prohibited by rules, procedures, guidelines or regulations;

(g) Negligence or lax security habits in handling information technology that persist despite counseling by management;

(h) Any misuse of information technology, whether deliberate or negligent, that results in damage to the national security.

41. *Conditions that could mitigate security concerns include:*

(a) So much time has elapsed since the behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) The misuse was minor and done only in the interest of organizational efficiency and effectiveness, such as letting another person use one's password or computer when no other timely alternative was readily available;

(c) The conduct was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation and by notification of supervisor.

[71 FR 51475, Aug. 30, 2006]

#### APPENDIX I TO PART 154—OVERSEAS INVESTIGATIONS

##### 1. Purpose

The purpose of this appendix is to establish, within the framework of this part, 32 CFR part 361 and Defense Investigative Service Manual 20-1, standardized procedures for the military investigative agencies to follow when they perform administrative and investigative functions on behalf of DIS at overseas locations.

### 2. Type Investigation

This part describes in detail Background Investigations (BI) which are conducted for Limited Access Authorizations and those Special Investigative Inquiries conducted for post-adjudicative purposes. Hereafter they are referred to as LAA and Post-adjudicative cases and are briefly described in paragraphs a and b below:

a. *Limited access authorization.* A level of access to classified defense information that may be granted to a non-U.S. citizen under certain conditions, one of which is that a BI must have been completed with satisfactory results. §154.16(d) further describes LAA cases.

b. *Post-adjudication investigation.* A Personnel Security Investigation (PSI) predicated on new, adverse or questionable security, suitability or hostage information that arises and requires the application of investigation procedures subsequent to adjudicative action on a DoD-affiliated person's eligibility for continued access to classified information, assignment to or retention in sensitive duties or other designated duties requiring such investigation. While these cases are normally predicated on the surfacing of unfavorable information subsequent to favorable adjudication, they may also be opened when favorable information is offered to counter a previous unfavorable adjudication. §154.9(c)(3) further describes these cases.

### 3. General

a. As a rule, investigative activity in most PSIs occurs in the U.S. even when the Subject is at an overseas location. Therefore, the submission of requests for investigation to the Personnel Investigation Center (PIC) at Baltimore is a required procedure as it ensures uniform application of DoD PSI policy and the efficient dispatch and coordination of leads.

b. When the purpose of the investigation is for an LAA or post-adjudication on a Subject overseas, much, if not all of the leads are at an overseas location. While these cases also may be submitted directly to PIC for action, there is an inherent delay in the mailing of the request, the exchange of leads and reports with PIC, and transmittal of the reports back to the requester. To avoid this delay, the military investigative agencies, when acting for DIS overseas in accordance with 32 CFR part 361 may, with their Headquarters approval, accept these requests for investigations, initiate them and disseminate the results from the same level as they open, close, and disseminate their own cases. Usually this will greatly improve response time to the requester.

c. Under the procedures in paragraph b., above, DIS will not often be in a position to directly exercise its responsibility for con-

trol and direction until the case or lead is in progress or even completed; therefore, adherence to the policy stated in referenced documents, and as modified herein, is mandatory. When the policy of the military investigative agency is at variance with the above, the matter will be referred to the respective headquarters for resolution.

d. Since DIS is ultimately responsible for the personnel security product, it must be kept informed of all such matters referred to in this appendix. For instance, when the investigative agency overseas receives a DD Form 1879, Request for Personnel Security Investigation, which sets forth an issue outside DIS jurisdiction, it will reject the request, inform the requester of the reason and furnish an information copy of the DD Form 1879 and rejection letter to PIC. When the issue/jurisdiction is unclear to the investigative agency, the DD Form 1879 and the perceived jurisdictional question should be promptly forwarded to DIS for action and, if appropriate, to the component's headquarters for information. Questions on the interpretation of DIS or DoD policy and Directives pertaining to individual PSI cases can usually be resolved through direct communications with PIC.

e. 32 CFR part 361 establishes the supporting relationship of the military investigative agencies to DIS in overseas areas, and DIS provides these agencies with copies of relevant policy and interpretive guidance. For these reasons, the investigative agency vice the requester, is responsible for evaluating the request, processing it, collecting and evaluating the results within their jurisdiction for sufficiency, and forwarding the completed product to the appropriate activity.

f. The magnitude of operations at PIC requires that methods of handling LAA and post-adjudicative cases be consistent to the maximum extent possible. For this reason, the procedures for LAA cases are nearly identical to those for post-adjudicative cases. Briefly, the main exceptions are:

(1) The notification to PIC that a post-adjudication case has been opened will be by message, since an issue is present at the outset, whereas notification of an LAA case should normally be by mail.

(2) The scope of the LAA investigation is 10 years or since the person's 18th birthday, whichever is shortest, whereas the leads in a post-djudication case are limited to resolving the issue.

### 4. Jurisdiction

a. As set-forth in 32 CFR part 361 DIS is responsible for conducting all DoD PSIs in the 50 States, District of Columbia, and Puerto Rico, and will request the military departments to accomplish investigative requirements elsewhere. The military investigative

agencies in overseas locations routinely respond to personnel security investigative leads for DIS.

b. DIS jurisdiction also includes investigation of subversive affiliations, suitability information, and hostage situations when such inquiries are required for personnel security purposes; however, jurisdiction will rest with the military investigative agencies, FBI and/or civil authorities as appropriate when the alleged subversion or suitability issue represents a violation of law or, in the case of a hostage situation, there is an indication that the person concerned is actually being pressured, coerced, or influenced by interests inimical to the United States, or that hostile intelligence is taking action specifically directed against that person. Specific policy guidance on the applicability of these procedures and the jurisdictional considerations are stated in §154.9.

#### 5. Case Opening

a. A request for investigation must be submitted by using DD Form 1879 and accompanied by supporting documentation unless such documentation is not immediately available, or the obtaining of documentation would compromise a sensitive investigation. Upon receipt of the request, the military investigative component will identify the issue(s), scope the leads, and ensure that the proposed action is that which is authorized for DIS as delineated in this part, 32 CFR part 361 and Defense Investigative Service Manual 201-1.

b. Upon such determination, the Component will prepare an Action Lead Sheet (ALS) which fully identifies the Subject and the scope of the case, and specifies precisely the leads which each investigative component (including DIS/PIC when appropriate) is to conduct.

c. Case opening procedures described above are identical for LAA and post-adjudication cases except with respect to notification of case opening to PIC:

(1) Post-adjudication Cases. These cases, because they involve an issue, are potentially sensitive and must be examined as early as possible by PIC for conformity to the latest DoD policy. Accordingly, the initial notification to PIC of case openings will always be by message. The message will contain at a minimum:

- (a) Full identification of the subject;
- (b) A narrative describing the allegation/facts in sufficient detail to support opening of the case; and
- (c) A brief listing of the leads that are planned.

The DD Form 1879 and supporting documents, along with the agency's ALS, should be subsequently mailed to PIC.

(2) LAA Cases. The notification to PIC of case opening will normally be accomplished by mailing the DD Form 1879, DD Form 398

(Personal History Statement), a copy of the ALS, and any other supporting documents to PIC. Message notification to PIC in LAA cases will only be required if there is a security or suitability issue apparent in the DD Form 1879 or supporting documents.

(d) Beyond initial actions necessary to test allegation for investigative merit and jurisdiction, no further investigative action should commence until the notification of case opening to PIC has been dispatched.

(e) PIC will promptly respond to the notification of case opening by mail or message specifying any qualifying remarks along with a summary of previously existing data. PIC will also provide a DIS case control number (CCN). This number must be used by all components on all case related paperwork/reports.

(The investigating agency may assign its unique service CCN for interim internal control; however, the case will be processed, referenced, and entered into the DCII by the DIS case control number.) The first five digits of the DIS CCN will be the Julian date of the case opening when received at DIS.

#### 6. Case Processing

a. The expected completion time for leads in LAA cases is 50 calendar days and for post-adjudication cases, 30 days, as computed from the date of receipt of the request. If conditions preclude completion in this time period, a pending report of the results to date, along with an estimated date of completion will be submitted to PIC.

b. Copies of all ALSs will be furnished to PIC. In addition, PIC will be promptly notified of any significant change in the scope of the case, or the development of an investigative issue.

c. The procedures for implementing the Privacy Act in PSI cases are set in DIS Manual 20-1-M 1. Any other restrictions on the release of information imposed by an overseas source or by regulations of the country where the inquiry takes place will be clearly stated in the report.

d. The report format for these cases will be that used by the military investigative agency.

e. Investigative action outside the jurisdictional area of an investigative component office may be directed elsewhere by ALS as needed in accordance with that agency's procedures and within the following geographical considerations:

(1) Leads will be sent to PIC if the investigative action is in the United States, District of Columbia, Puerto Rico, American Samoa, Bahama Islands, the U.S. Virgin Islands, and the following islands in the Pacific: Wake, Midway, Kwajalin, Johnston, Carolines, Marshalls, and Eniwetok.

(2) Leads to areas not listed above may be dispatched to other units of the investigative agency or even to another military agency's

field units if there is an agreement or memorandum of understanding that provides for such action. For case accountability purposes, copies of such "lateral" leads must be sent to the PIC.

(3) Leads that cannot be dispatched as described in paragraph (2) above, and those that must be sent to a non-DoD investigative agency should be sent to PIC for disposition.

f. The Defense Investigative Manual calls for obtaining PIC approval before conducting a Subject interview on a post-adjudicative investigation. To avoid the delay that compliance with this procedure would create, a military investigative component may conduct the interview provided:

(1) All other investigative leads have been completed and reviewed.

(2) The CCN has been received, signifying DIS concurrence with the appropriateness of the investigation.

(3) Contrary instructions have not been received from the PIC.

(4) The interview is limited to the resolution of the relevant issues disclosed by the investigation.

g. Notwithstanding the provisions of paragraphs f.(1) through (4) of this Appendix, if time is of the essence due to imminent transfer of the subject, a subject interview may be conducted at the discretion of the investigative agency.

#### 7. Case Responsibility LAA and PA

Paragraph 3, above, describes the advantages of timely handling which accrue when the military investigative components act for DIS overseas. These actions for DIS may, however, be limited by the component's staffing and resource limitations, especially since some cases require more administration and management than others. Post-adjudication case leads, for instance, will normally be within the geographical jurisdiction of the component that accepted the request for investigation; therefore, relatively little case management is required. In contrast, LAA cases may require leads worldwide, and, therefore, create more complex case management and administration, especially in the tracking, monitoring and reviewing of leads outside the component's geographical area. Accordingly, an investigative component will accept the case from the requester, but only assign itself the appropriate leads within its own geographical jurisdiction and send the balance to PIC for appropriate disposition in accordance with the following:

a. The investigative agency will accept the request for investigation (thereby saving time otherwise lost in mailing to PIC) but limit its involvement in case management by extracting only those leads it will conduct or manage locally.

b. The agency should then prepare an ALS that shows clearly what leads it will cover

and send PIC a copy of this ALS, along with the request for investigation and any other appropriate documentation. It must be clear in the ALS that PIC is to act on all those leads that the unit has not assigned to itself.

c. PIC, as case manager, will assume responsibility for the complete investigative package and, upon receipt of the last lead, will send the results to the appropriate activity.

d. The agency that accepted the case and assigned itself leads may send a copy of its report to the activity in the "Results to" block at the same time it sends the originals to PIC. If so, the letter of transmittal must inform the recipient that these reports are only a portion of the investigation, and that the balance will be forthcoming from PIC. Similarly, PIC must be informed of which investigative reports were disseminated. (This is normally done by sending PIC a copy of the letter of transmittal.)

#### 8. Scope

a. LAA. The scope of investigation is 10 years or from age 18, whichever is the shortest period.

b. Post-Adjudication Cases. There is no standard scope. The inquiries conducted will be limited to those necessary to resolve the issue(s).

#### 9. Case Closing: LAA and PA

a. Whether the investigative component or PIC closes out an investigation, there are three key elements to consider:

(1) The investigative results must be reviewed for quality and conformance to policy.

(2) The results must be sent to the activity listed in the "Results to" block of the DD Form 1879.

(3) PIC must be informed whether or not any dissemination was made by the investigative agency and, if so, what reports were furnished.

b. Investigative results may also be sent to a requester or higher level activity that makes a statement of need for the results. In such instances, a copy of the letter requesting the results and the corresponding letter of transmittal must be sent to PIC for retention.

c. When an investigative agency disseminates reports for PIC, it may use the transmittal documents, letters, or cover sheets it customarily uses for its own cases.

d. The material that is to be provided to PIC will consist of: The originals of all reports, and all other case documentation such as original statements, confidential source sheets, interview logs, requests for investigation, letters of transmittal to adjudicators/requesters, or communications with the requester, such as those that modify the scope of the investigation.

e. For DIS to fulfill its responsibilities under DoD 5220.22-R and the Privacy Act of 1974 all inquiries conducted in its behalf must be set forth in an ROI for the permanent file, whether the case is completed, terminated early, or referred to another agency.

10. Referral

A case may require premature closing at any time after receipt of the DD Form 1879 by the investigative component if the information accompanying the request, or that which is later developed, is outside DIS jurisdiction. For example, alleged violations of law, a counterintelligence matter, or actual coercion/influence in a hostage situation (see paragraph 4.b. of this Appendix) must be referred to the appropriate agency, and DIS involvement terminated. The requester will be informed by letter or indorsement to the DD Form 1879 of the information developed that, due to jurisdictional consideration, the case was referred to (fill in appropriate address) and that the DIS case is closed. The agency to which referral was made and PIC will be furnished with the results of all investigations conducted under DIS auspices. DIS, however, has an interest in the referral agency's actions and no information should be solicited from that agency.

APPENDIX J TO PART 154—ADP POSITION CATEGORIES AND CRITERIA FOR DESIGNATING POSITIONS

OMB Circular A-71 (and Transmittal Memo #B1), July 1978 OMB Circular A-130, December 12, 1985, and FPM Letter 732, November 14, 1978 contain the criteria for designating positions under the existing categories used in the personnel security program for Federal civilian employees as well as the criteria for designating ADP and ADP related positions. This policy is outlined below:

ADP Position Categories

1. Critical-Sensitive Positions

ADP-I positions. Those positions in which the incumbent is responsible for the planning, direction, and implementation of a computer security program; major responsibility for the direction, planning and design of a computer system, including the hardware and software; or, can access a system during the operation or maintenance in such a way, and with a relatively high risk for causing grave damage, or realize a significant personal gain.

2. Noncritical-Sensitive Positions

ADP-II positions. Those positions in which the incumbent is responsible for the direction, planning, design, operation, or maintenance of a computer system, and whose work is technically reviewed by a higher authority

of the ADP-I category to insure the integrity of the system.

3. Nonsensitive Positions

ADP-III positions. All other positions involved in computer activities.

In establishing the categories of positions, other factors may enter into the determination, permitting placement in higher or lower categories based on the agency's judgment as to the unique characteristics of the system or the safeguards protecting the system.

Criteria for Designating Positions

Three categories have been established for designating computer and computer-related positions—ADP-I, ADP-II, and ADP-III. Specific criteria for assigning positions to one of these categories is as follows:

| Category     | Criteria  |
|--------------|---|
| ADP-I .....  | Responsibility or the development and administration of agency computer security programs, and also including direction and control of risk analysis and/or threat assessment.<br>Significant involvement in life-critical or mission-critical systems.<br>Significant involvement in life-critical or mission-critical systems.<br>Responsibility for the preparation or approval of data for input into a system which does not necessarily involve personal access to the system, but with relatively high risk for effecting grave damage or realizing significant personal gain.<br>Relatively high risk assignments associated with or directly involving the accounting, disbursement, or authorization for disbursement from systems of (1) dollar amounts of \$10 million per year or greater, or (2) lesser amounts if the activities of the individual are not subject to technical review by higher authority in the ADP-I category to ensure the integrity of the system.<br>Positions involving <i>major</i> responsibility for the direction planning, design, testing, maintenance, operation, monitoring, and/or management of systems hardware and software.<br>Other positions as designated by the agency head that involve relatively high risk for effecting grave damage or realizing significant personal gain. |
| ADP-II ..... | Responsibility for systems design, operation, testing, maintenance, and/or monitoring that is carried out under technical review of higher authority in the ADP-I category, includes, but is not limited to:<br>(1) access to and/or processing of proprietary data, information requiring protection under the Privacy Act of 1974, and Government-developed privileged information involving the award of contracts;  |

| Category      | Criteria  |
|---------------|---|
|               | (2) accounting, disbursement, or authorization for disbursement from systems of dollar amounts less than \$10 million per year. Other positions are designated by the agency head that involve a degree of access to a system that creates a significant potential for damage or personal gain less than that in ADP-I positions. |
| ADP-III ..... | All other positions involved in Federal computer activities.  |

## PART 155—DEFENSE INDUSTRIAL PERSONNEL SECURITY CLEARANCE PROGRAM

### Sec.

- 155.1 Purpose.
- 155.2 Applicability and scope.
- 155.3 Definitions.
- 155.4 Policy.
- 155.5 Responsibilities.
- 155.6 Procedures.

### APPENDIX A TO PART 155—ADDITIONAL PROCEDURAL GUIDANCE

AUTHORITY: E.O. 10865, 3 CFR 1959–1963 Comp., p. 398, as amended by E.O. 10909, 3 CFR 1959–1963 Comp., p. 437; E.O. 11382, 3 CFR 1966–1970 Comp., p. 690; and E.O. 12829, 3 CFR 1993 Comp., p. 570.

SOURCE: 57 FR 5383, Feb. 14, 1992, unless otherwise noted.

#### § 155.1 Purpose.

This part updates policy, responsibilities, and procedures of the Defense Industrial Personnel Security Clearance Review Program implementing E.O. 10865, as amended.

[57 FR 5383, Feb. 14, 1992, as amended at 59 FR 48565, Sept. 22, 1994]

#### § 155.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Inspector General of the Department of Defense (IG, DoD), and the Defense Agencies (hereafter referred to collectively as “the DoD Components”).

(b) By mutual agreement, also extends to other Federal Agencies that include:

- (1) Department of Agriculture.
- (2) Department of Commerce.
- (3) Department of Interior.
- (4) Department of Justice.
- (5) Department of Labor.

- (6) Department of State.
- (7) Department of Transportation.
- (8) Department of Treasury.
- (9) Environmental Protection Agency.
- (10) Federal Emergency Management Agency.
- (11) Federal Reserve System.
- (12) General Accounting Office.
- (13) General Services Administration.
- (14) National Aeronautics and Space Administration.
- (15) National Science Foundation.
- (16) Small Business Administration.
- (17) United States Arms Control and Disarmament Agency.
- (18) United States Information Agency.
- (19) United States International Trade Commission.
- (20) United States Trade Representative.

(c) Applies to cases that the Defense Industrial Security Clearance Office (DISCO) forwards to the “Defense Office of Hearings and Appeals (DOHA)” for action under this part to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

(d) Provides a program that may be extended to other security cases at the direction of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C<sup>3</sup>I)).

(e) Does not apply to cases in which:

- (1) A security clearance is withdrawn because the applicant no longer has a need for access to classified information;
- (2) An interim security clearance is withdrawn by the DISCO during an investigation; or
- (3) A security clearance is withdrawn for administrative reasons that are without prejudice as to a later determination of whether the grant or continuance of the applicant’s security clearance would be clearly consistent with the national interest.

(f) Does not apply to cases for access to sensitive compartmented information or a special access program.

[57 FR 5383, Feb. 14, 1992, as amended at 59 FR 35464, July 12, 1994]



## § 155.3

## 32 CFR Ch. I (7-1-16 Edition)

### § 155.3 Definitions.

(a) *Applicant.* Any U.S. citizen who holds or requires a security clearance or any immigrant alien who holds or requires a limited access authorization for access to classified information needed in connection with his or her employment in the private sector; any U.S. citizen who is a direct-hire employee or selectee for a position with the North Atlantic Treaty Organization (NATO) and who holds or requires NATO certificates of security clearance or security assurances for access to U.S. or foreign classified information; or any U.S. citizen nominated by the Red Cross or United Service Organizations for assignment with the Military Services overseas. The term “applicant” does not apply to those U.S. citizens who are seconded to NATO by U.S. Departments and Agencies or to U.S. citizens recruited through such Agencies in response to a request from NATO.

(b) *Clearance Decision.* A decision made in accordance with this part concerning whether it is clearly consistent with the national interest to grant an applicant a security clearance for access to Confidential, Secret, or Top Secret information. A favorable clearance decision establishes eligibility of the applicant to be granted a security clearance for access at the level governed by the documented need for such access, and the type of investigation specified for that level in 32 CFR part 154. An unfavorable clearance decision denies any application for a security clearance and revokes any existing security clearance, thereby preventing access to classified information at any level and the retention of any existing security clearance.

### § 155.4 Policy.

It is DoD policy that:

(a) All proceedings provided for by this part shall be conducted in a fair and impartial manner.

(b) A clearance decision reflects the basis for an ultimate finding as to whether it is clearly consistent with the national interest to grant or continue a security clearance for the applicant.

(c) Except as otherwise provided for by E.O. 10865, as amended, or this part,

a final unfavorable clearance decision shall not be made without first providing the applicant with:

(1) Notice of specific reasons for the proposed action.

(2) An opportunity to respond to the reasons.

(3) Notice of the right to a hearing and the opportunity to cross-examine persons providing information adverse to the applicant.

(4) Opportunity to present evidence on his or her own behalf, or to be represented by counsel or personal representative.

(5) Written notice of final clearance decisions.

(6) Notice of appeal procedures.

(d) Actions pursuant to this part shall cease upon termination of the applicant's need for access to classified information except in those cases in which:

(1) A hearing has commenced;

(2) A clearance decision has been issued; or

(3) The applicant's security clearance was suspended and the applicant provided a written request that the case continue.

[57 FR 5383, Feb. 14, 1992, as amended at 59 FR 48565, Sept. 22, 1994]

### § 155.5 Responsibilities.

(a) The Assistant Secretary of Defense of Command, Control, Communications and Intelligence shall:

(1) Establish investigative policy and adjudicative standards and oversee their application.

(2) Coordinate with the General Counsel of the Department of Defense (GC, DoD) on policy affecting clearance decisions.

(3) Issue clarifying guidance and instructions as needed.

(b) The General Counsel of the Department of Defense shall:

(1) Establish guidance and provide oversight as to legal sufficiency of procedures and standards established by this part.

(2) Establish the organization and composition of the DOHA.

(3) Designate a civilian attorney to be the Director, DOHA.

(4) Issue clarifying guidance and instructions as needed.

(5) Administer the program established by this part.

(6) Issue invitational travel orders in appropriate cases to persons to appear and testify who have provided oral or written statements adverse to the applicant relating to a controverted issue.

(7) Designate attorneys to be Department Counsels assigned to the DOHA to represent the Government's interest in cases and related matters within the applicability and scope of this part.

(8) Designate attorneys to be Administrative Judges assigned to the DOHA.

(9) Designate attorneys to be Administrative Judge members of the DOHA Appeal Board.

(10) Provide for supervision of attorneys and other personnel assigned or attached to the DOHA.

(11) Develop and implement policy established or coordinated with the GC, DoD, in accordance with this part.

(12) Establish and maintain qualitative and quantitative standards for all work by DOHA employees arising within the applicability and scope of this part.

(13) Ensure that the Administrative Judges and Appeal Board members have the requisite independence to render fair and impartial decisions consistent with DoD policy.

(14) Provide training, clarify policy, or initiate personnel actions, as appropriate, to ensure that all DOHA decisions are made in accordance with policy, procedures, and standards established by this part.

(15) Provide for maintenance and control of all DOHA records.

(16) Take actions as provided for in §155.6(b), and the additional procedural guidance in appendix A to this part.

(17) Establish and maintain procedures for timely assignment and completion of cases.

(18) Issue guidance and instructions, as needed, to fulfill the foregoing responsibilities.

(19) Designate the Director, DOHA, to implement paragraphs (b)(5) through (b)(18) of this section, under general guidance of the GC, DoD.

(c) The Heads of the DoD Components shall provide (from resources available to the designated DoD Component) financing, personnel, personnel spaces,

office facilities, and related administrative support required by the DOHA.

(d) The ASD(C<sup>3</sup>I) shall ensure that cases within the scope and applicability of this part are referred promptly to the DOHA, as required, and that clearance decisions by the DOHA are acted upon without delay.

[57 FR 5383, Feb. 14, 1992, as amended at 59 FR 35464, July 12, 1994]

#### § 155.6 Procedures.

(a) Applicants shall be investigated in accordance with the standards in 32 CFR part 154.

(b) An applicant is required to give, and to authorize others to give, full, frank, and truthful answers to relevant and material questions needed by the DOHA to reach a clearance decision and to otherwise comply with the procedures authorized by this part. The applicant may elect on constitutional or other grounds not to comply; but refusal or failure to furnish or authorize the providing of relevant and material information or otherwise cooperate at any stage in the investigation or adjudicative process may prevent the DOHA from making a clearance decision. If an applicant fails or refuses to:

(1) Provide relevant and material information or to authorize others to provide such information; or

(2) Proceed in a timely or orderly fashion in accordance with this part; or

(3) Follow directions of an Administrative Judge or the Appeal Board; then the Director, DOHA, or designee, may revoke any security clearance held by the applicant and discontinue case processing. Requests for resumption of case processing and reinstatement of a security clearance may be approved by the Director, DOHA, only upon a showing of good cause. If the request is denied, in whole or in part, the decision is final and bars reapplication for a security clearance for 1 year from the date of the revocation.

(c) Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria in 32 CFR 154.7 and adjudication policy in appendix H to 32 CFR part 154, including as appropriate:

(1) Nature and seriousness of the conduct and surrounding circumstances.

(2) Frequency and recency of the conduct.

(3) Age of the applicant.

(4) Motivation of the applicant, and the extent to which the conduct was negligent, willful, voluntary, or undertaken with knowledge of the consequences involved.

(5) Absence or presence of rehabilitation.

(6) Probability that the circumstances or conduct will continue or recur in the future.

(d) Whenever there is a reasonable basis for concluding that an applicant's continued access to classified information poses an imminent threat to the national interest, any security clearance held by the applicant may be suspended by the ASD(C<sup>3</sup>I), with the concurrence of the GC, DoD, pending a final clearance decision. This suspension may be rescinded by the same authorities upon presentation of additional information that conclusively demonstrates that an imminent threat to the national interest no longer exists. Procedures in appendix A to this part shall be expedited whenever an applicant's security clearance has been suspended pursuant to this section.

(e) Nothing contained in this part shall limit or affect the responsibility and powers of the Secretary of Defense or the head of another Department or Agency to deny or revoke a security clearance when the security of the nation so requires. Such authority may not be delegated and may be exercised only when the Secretary of Defense or the head of another Department or Agency determines that the hearing procedures and other provisions of this part cannot be invoked consistent with the national security. Such a determination shall be conclusive.

(f) Additional procedural guidance is in appendix A to this part.

[57 FR 5383, Feb. 14, 1992, as amended at 59 FR 35464, July 12, 1994]

#### APPENDIX A TO PART 155—ADDITIONAL PROCEDURAL GUIDANCE

1. When the DISCO cannot affirmatively find that it is clearly consistent with the national interest to grant or continue a secu-

rity clearance for an applicant, the case will be promptly referred to the DOHA.

2. Upon referral, the DOHA shall make a prompt determination whether to grant or continue a security clearance, issue a statement of reasons (SOR) as to why it is not clearly consistent with the national interest to do so, or take interim actions, including but not limited to:

a. Direct further investigation.

b. Propound written interrogatories to the applicant or other persons with relevant information.

c. Requiring the applicant to undergo a medical evaluation by a DoD Psychiatric Consultant.

d. Interviewing the applicant.

3. An unfavorable clearance decision shall not be made unless the applicant has been provided with a written SOR that shall be as detailed and comprehensive as the national security permits. A letter of instruction with the SOR shall explain that the applicant or Department Counsel may request a hearing. It shall also explain the adverse consequences for failure to respond to the SOR within the prescribed time frame.

4. The applicant must submit a detailed written answer to the SOR under oath or affirmation that shall admit or deny each listed allegation. A general denial or other similar answer is insufficient. To be entitled to a hearing, the applicant must specifically request a hearing in his or her answer. The answer must be received by the DOHA within 20 days from receipt of the SOR. Requests for an extension of time to file an answer may be submitted to the Director, DOHA, or designee, who in turn may grant the extension only upon a showing of good cause.

5. If the applicant does not file a timely and responsive answer to the SOR, the Director, DOHA, or designee, may discontinue processing the case, deny issuance of the requested security clearance, and direct the DISCO to revoke any security clearance held by the applicant.

6. Should review of the applicant's answer to the SOR indicate that allegations are unfounded, or evidence is insufficient for further processing, Department Counsel shall take such action as appropriate under the circumstances, including but not limited to withdrawal of the SOR and transmittal to the Director for notification of the DISCO for appropriate action.

7. If the applicant has not requested a hearing with his or her answer to the SOR and Department Counsel has not requested a hearing within 20 days of receipt of the applicant's answer, the case shall be assigned to an Administrative Judge for a clearance decision based on the written record. Department Counsel shall provide the applicant with a copy of all relevant and material information that could be adduced at a hearing. The applicant shall have 30 days from

receipt of the information in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate.

8. If a hearing is requested by the applicant or Department Counsel, the case shall be assigned to an Administrative Judge for a clearance decision based on the hearing record. Following issuance of a notice of hearing by the Administrative Judge, or designee, the applicant shall appear in person with or without counsel or a personal representative at a time and place designated by the notice of hearing. The applicant shall have a reasonable time to prepare his or her case. The applicant shall be notified at least 15 days in advance of the time and place of the hearing, which generally shall be held at a location in the United States within a metropolitan area near the applicant's place of employment or residence. A continuance may be granted by the Administrative Judge only for good cause. Hearings may be held outside of the United States in NATO cases, or in other cases upon a finding of good cause by the Director, DOHA, or designee.

9. The Administrative Judge may require a prehearing conference.

10. The Administrative Judge may rule on questions of procedure, discovery, and evidence and shall conduct all proceedings in a fair, timely, and orderly manner.

11. Discovery by the applicant is limited to non-privileged documents and materials subject to control by the DOHA. Discovery by Department Counsel after issuance of an SOR may be granted by the Administrative Judge only upon a showing of good cause.

12. A hearing shall be open except when the applicant requests that it be closed, or when the Administrative Judge determines that there is a need to protect classified information or there is other good cause for keeping the proceeding closed. No inference shall be drawn as to the merits of a case on the basis of a request that the hearing be closed.

13. As far in advance as practical, Department Counsel and the applicant shall serve one another with a copy of any pleading, proposed documentary evidence, or other written communication to be submitted to the Administrative Judge.

14. Department Counsel is responsible for presenting witnesses and other evidence to establish facts alleged in the SOR that have been controverted.

15. The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.

16. Witnesses shall be subject to cross-examination.

17. The SOR may be amended at the hearing by the Administrative Judge on his or

her own motion, or upon motion by Department Counsel or the applicant, so as to render it in conformity with the evidence admitted or for other good cause. When such amendments are made, the Administrative Judge may grant either party's request for such additional time as the Administrative Judge may deem appropriate for further preparation or other good cause.

18. The Administrative Judge hearing the case shall notify the applicant and all witnesses testifying that 18 U.S.C. 1001 is applicable.

19. The Federal Rules of Evidence (28 U.S.C. 101 *et seq.*) shall serve as a guide. Relevant and material evidence may be received subject to rebuttal, and technical rules of evidence may be relaxed, except as otherwise provided herein, to permit the development of a full and complete record.

20. Official records or evidence compiled or created in the regular course of business, other than DoD personnel background reports of investigation (ROI), may be received and considered by the Administrative Judge without authenticating witnesses, provided that such information has been furnished by an investigative agency pursuant to its responsibilities in connection with assisting the Secretary of Defense, or the Department or Agency head concerned, to safeguard classified information within industry under to E.O. 10865, as amended. An ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence (28 U.S.C. 101 *et seq.*).

21. Records that cannot be inspected by the applicant because they are classified may be received and considered by the Administrative Judge, provided the GC, DoD, has:

a. Made a preliminary determination that such evidence appears to be relevant and material.

b. Determined that failure to receive and consider such evidence would be substantially harmful to the national security.

22. A written or oral statement adverse to the applicant on a controverted issue may be received and considered by the Administrative Judge without affording an opportunity to cross-examine the person making the statement orally, or in writing when justified by the circumstances, only in either of the following circumstances:

a. If the head of the Department or Agency supplying the statement certifies that the person who furnished the information is a confidential informant who has been engaged in obtaining intelligence information for the Government and that disclosure of his or her identity would be substantially harmful to the national interest; or

b. If the GC, DoD, has determined the statement concerned appears to be relevant, material, and reliable; failure to receive and

consider the statement would be substantially harmful to the national security; and the person who furnished the information cannot appear to testify due to the following:

(1) Death, severe illness, or similar cause, in which case the identity of the person and the information to be considered shall be made available to the applicant; or

(2) Some other cause determined by the Secretary of Defense, or when appropriate by the Department or Agency head, to be good and sufficient.

23. Whenever evidence is received under item 21. or 22., the applicant shall be furnished with as comprehensive and detailed a summary of the information as the national security permits. The Administrative Judge and Appeal Board may make a clearance decision either favorable or unfavorable to the applicant based on such evidence after giving appropriate consideration to the fact that the applicant did not have an opportunity to confront such evidence, but any final determination adverse to the applicant shall be made only by the Secretary of Defense, or the Department or Agency head, based on a personal review of the case record.

24. A verbatim transcript shall be made of the hearing. The applicant shall be furnished one copy of the transcript, less the exhibits, without cost.

25. The Administrative Judge shall make a written clearance decision in a timely manner setting forth pertinent findings of fact, policies, and conclusions as to the allegations in the SOR, and whether it is clearly consistent with the national interest to grant or continue a security clearance for the applicant. The applicant and Department Counsel shall each be provided a copy of the clearance decision. In cases in which evidence is received under items 21. and 22., the Administrative Judge's written clearance decision may require deletions in the interest of national security.

26. If the Administrative Judge decides that it is clearly consistent with the national interest for the applicant to be granted or to retain a security clearance, the DISCO shall be so notified by the Director, DOHA, or designee, when the clearance decision becomes final in accordance with item 36., below.

27. If the Administrative Judge decides that it is not clearly consistent with the national interest for the applicant to be granted or to retain a security clearance, the Director, DOHA, or designee, shall expeditiously notify the DISCO, which shall in turn notify the applicant's employer of the denial or revocation of the applicant's security clearance. The letter forwarding the Administrative Judge's clearance decision to the applicant shall advise the applicant that these actions are being taken, and that the

applicant may appeal the Administrative Judge's clearance decision.

28. The applicant or Department Counsel may appeal the Administrative Judge's clearance decision by filing a written notice of appeal with the Appeal Board within 15 days after the date of the Administrative Judge's clearance decision. A notice of appeal received after 15 days from the date of the clearance decision shall not be accepted by the Appeal Board, or designated Board Member, except for good cause. A notice of cross appeal may be filed with the Appeal Board within 10 days of receipt of the notice of appeal. An untimely cross appeal shall not be accepted by the Appeal Board, or designated Board Member, except for good cause.

29. Upon receipt of a notice of appeal, the Appeal Board shall be provided the case record. No new evidence shall be received or considered by the Appeal Board.

30. After filing a timely notice of appeal, a written appeal brief must be received by the Appeal Board within 45 days from the date of the Administrative Judge's clearance decision. The appeal brief must state the specific issue or issues being raised, and cite specific portions of the case record supporting any alleged error. A written reply brief, if any, must be filed within 20 days from receipt of the appeal brief. A copy of any brief filed must be served upon the applicant or Department Counsel, as appropriate.

31. Requests for extension of time for submission of briefs may be submitted to the Appeal Board or designated Board Member.

A copy of any request for extension of time must be served on the opposing party at the time of submission. The Appeal Board, or designated Board Member, shall be responsible for controlling the Appeal Board's docket, and may enter an order dismissing an appeal in an appropriate case or vacate such an order upon a showing of good cause.

32. The Appeal Board shall address the material issues raised by the parties to determine whether harmful error occurred. Its scope of review shall be to determine whether or not:

a. The Administrative Judge's findings of fact are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record. In making this review, the Appeal Board shall give deference to the credibility determinations of the Administrative Judge;

b. The Administrative Judge adhered to the procedures required by E.O. 10865, as amended and this part; or

c. The Administrative Judge's rulings or conclusions are arbitrary, capricious, or contrary to law.

33. The Appeal Board shall issue a written clearance decision addressing the material

issues raised on appeal. The Appeal Board shall have authority to:

- a. Affirm the decision of the Administrative Judge;
- b. Remand the case to an Administrative Judge to correct identified error. If the case is remanded, the Appeal Board shall specify the action to be taken on remand; or
- c. Reverse the decision of the Administrative Judge if correction of identified error mandates such action.

34. A copy of the Appeal Board's written clearance decision shall be provided to the parties. In cases in which evidence was received under items 21. and 22., the Appeal Board's clearance decision may require deletions in the interest of national security.

35. Upon remand, the case file shall be assigned to an Administrative Judge for correction of error(s) in accordance with the Appeal Board's clearance decision. The assigned Administrative Judge shall make a new clearance decision in the case after correcting the error(s) identified by the Appeal Board. The Administrative Judge's clearance decision after remand shall be provided to the parties. The clearance decision after remand may be appealed pursuant to items 28. to 35.

36. A clearance decision shall be considered final when:

- a. A security clearance is granted or continued pursuant to item 2.;
- b. No timely notice of appeal is filed;
- c. No timely appeal brief is filed after a notice of appeal has been filed;
- d. The appeal has been withdrawn;
- e. When the Appeal Board affirms or reverses an Administrative Judge's clearance decision; or
- f. When a decision has been made by the Secretary of Defense, or the Department or Agency head, under item 23.

The Director, DOHA, or designee, shall notify the DISCO of all final clearance decisions.

37. An applicant whose security clearance has been finally denied or revoked by the DOHA is barred from reapplication for 1 year from the date of the initial unfavorable clearance decision.

38. A reapplication for a security clearance must be made initially by the applicant's employer to the DISCO and is subject to the same processing requirements as those for a new security clearance application. The applicant shall thereafter be advised he is responsible for providing the Director, DOHA, with a copy of any adverse clearance decision together with evidence that circumstances or conditions previously found against the applicant have been rectified or sufficiently mitigated to warrant reconsideration.

39. If the Director, DOHA, determines that reconsideration is warranted, the case shall

be subject to this part for making a clearance decision.

40. If the Director, DOHA, determines that reconsideration is not warranted, the DOHA shall notify the applicant of this decision. Such a decision is final and bars further reapplication for an additional one year period from the date of the decision rejecting the application.

41. Nothing in this part is intended to give an applicant reapplying for a security clearance any greater rights than those applicable to any other applicant under this part.

42. An applicant may file a written petition, under oath or affirmation, for reimbursement of loss of earnings resulting from the suspension, revocation, or denial of his or her security clearance. The petition for reimbursement must include as an attachment the favorable clearance decision and documentation supporting the reimbursement claim. The Director, DOHA, or designee, may in his or her discretion require additional information from the petitioner.

43. Claims for reimbursement must be filed with the Director, DOHA, or designee, within 1 year after the date the security clearance is granted. Department Counsel generally shall file a response within 60 days after receipt of applicant's petition for reimbursement and provide a copy thereof to the applicant.

44. Reimbursement is authorized only if the applicant demonstrates by clear and convincing evidence to the Director, DOHA, that all of the following conditions are met:

- a. The suspension, denial, or revocation was the primary cause of the claimed pecuniary loss; and
- b. The suspension, denial, or revocation was due to gross negligence of the Department of Defense at the time the action was taken, and not in any way by the applicant's failure or refusal to cooperate.

45. The amount of reimbursement shall not exceed the difference between the earnings of the applicant at the time of the suspension, revocation, or denial and the applicant's interim earnings, and further shall be subject to reasonable efforts on the part of the applicant to mitigate any loss of earnings. No reimbursement shall be allowed for any period of undue delay resulting from the applicant's acts or failure to act. Reimbursement is not authorized for loss of merit raises and general increases, loss of employment opportunities, counsel's fees, or other costs relating to proceedings under this part.

46. Claims approved by the Director, DOHA, shall be forwarded to the Department or Agency concerned for payment. Any payment made in response to a claim for reimbursement shall be in full satisfaction of any further claim against the United States or any Federal Department or Agency, or any of its officers or employees.

47. Clearance decisions issued by Administrative Judges and the Appeal Board shall be indexed and made available in redacted form to the public.

[57 FR 5383, Feb. 14, 1992, as amended at 59 FR 35464, July 12, 1994; 59 FR 48565, Sept. 22, 1994]

## PART 156—DEPARTMENT OF DEFENSE PERSONNEL SECURITY PROGRAM (PSP)

Sec.

- 156.1 Purpose.
- 156.2 Applicability.
- 156.3 Policy.
- 156.4 Responsibilities.
- 156.5 National security positions.
- 156.6 Common access card (CAC) investigation and adjudication.
- 156.7 Definitions.

**AUTHORITY:** E.O. 12968, as amended; E.O. 10450, as amended; E.O. 10865, as amended; E.O. 13526; E.O. 12829, as amended; E.O. 13467; E.O. 13488; E.O. 12333, as amended; 5 U.S.C. 301 and 7532; section 1072 of Pub. L. 110-181, as amended; 15 U.S.C. 278g-3; 40 U.S.C. 11331; 10 U.S.C. 1564; 50 U.S.C. 3343; 5 CFR parts 731, 731.101, 732, and 736; and HSPD-12.

**SOURCE:** 79 FR 18163, Apr. 1, 2014, unless otherwise noted.

### § 156.1 Purpose.

This part updates policies and responsibilities for the DoD Personnel Security Program (PSP) consistent with E.O. 12968, as amended; E.O. 10450, as amended; E.O. 10865, as amended; E.O. 13526; E.O. 12829, as amended; E.O. 13467; E.O. 13488; E.O. 12333, as amended; 5 U.S.C. 301 and 7532; section 1072 of Public Law 110-181, as amended; 15 U.S.C. 278g-3; 40 U.S.C. 11331; 10 U.S.C. 1564; 32 CFR parts 147, 154 through 156; 50 U.S.C. 3343; 5 CFR parts 731, 731.101, 732 and 736; and HSPD-12.

### § 156.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the DoD, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (hereinafter referred to collectively as the “DoD Components”).

### § 156.3 Policy.

It is DoD policy that:

(a) The Department shall establish and maintain a uniform DoD PSP to the extent consistent with standards and procedures in E.O. 12968, as amended; E.O. 10450, as amended; E.O. 10865, as amended; E.O. 13526; E.O. 12829, as amended; E.O. 13467; E.O. 13488; E.O. 12333, as amended; 32 CFR parts 147, 154 through 156; 5 CFR parts 731, 731.101, 732 and 736; 5 U.S.C. 301 and 7532; section 1072 of Public Law 110-181, as amended; 15 U.S.C. 278g-3; section 11331 of 40 U.S.C.; 10 U.S.C. 1564; 50 U.S.C. 3343; and the Intelligence Community Directive Number 704 (ICD 704) (available on the Internet at <http://www.dni.gov>).

(b) DoD PSP policies and procedures shall be aligned using consistent standards to the extent possible; provide for reciprocal recognition of existing investigations and adjudications; be cost-effective, timely, and provide efficient protection of the national interest; and provide fair treatment of those upon whom the Federal Government relies to conduct the Nation’s business and protect national security.

(c) Discretionary judgments used to determine eligibility for national security positions are an inherently governmental function and shall be performed by appropriately trained and favorably adjudicated Federal Government personnel or appropriate automated procedures.

(d) No negative inference may be raised solely on the basis of mental health counseling. Such counseling may be a positive factor that, by itself, shall not jeopardize the rendering of eligibility determinations or temporary eligibility for access to national security information. However, mental health counseling, where relevant to adjudication for a national security position, may justify further inquiry to assess risk factors that may be relevant to the DoD PSP.

(e) The DoD shall not discriminate nor may any inference be raised on the basis of race, color, religion, sex, national origin, disability, or sexual orientation.

(f) Discretionary judgments that determine eligibility for national security positions shall be clearly consistent with the national security interests of the United States. Any doubt shall be resolved in favor of national security.

(g) No person shall be deemed to be eligible for a national security position merely by reason of Federal service or contracting, licensee, certificate holder, or grantee status, or as a matter of right or privilege, or as a result of any particular title, rank, position, or affiliation.

(h) No person shall be appointed or assigned to a national security position when an unfavorable personnel security determination has been rendered.

(i) Eligibility for national security positions shall be granted only to persons who are U.S. citizens for whom the investigative and adjudicative process has been favorably completed. However, based on exceptional circumstances where official functions must be performed prior to completion of the investigative and adjudicative process, temporary eligibility for access to classified information may be granted while the investigation is underway.

(j) As an exception, a non-U.S. citizen who possesses an expertise that cannot be filled by a cleared or clearable U.S. citizen, may hold a national security position or be granted a limited access authorization to classified information in support of a specific DoD program, project, or contract following a favorable security determination by an authorized adjudication facility.

(k) The DoD shall establish investigative and adjudicative policy and procedures to determine whether to issue, deny or revoke common access cards (CACs) in accordance with the standards of the Homeland Security Presidential Directive (HSPD)-12 (available in the Public Papers of the Presidents of the United States: George W. Bush (2004, Book II, page 1765) found on the Internet at <http://www.gpo.gov/>); Office of Management and Budget Memorandum (OMB) M-05-24 (available on the Internet at <http://www.whitehouse.gov/omb/>); Federal Information Processing Standards Publication 201-1 (FIPS 201-1) or successor

(available on the Internet at <http://csrc.nist.gov/>); 48 CFR, Chapter 1, Parts 1-99 (Federal Acquisition Regulation); 48 CFR, Chapter 2, Parts 201-253 (Defense Federal Acquisition Regulation Supplement), and the Office of Personnel Management (OPM) Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12," dated July 31, 2008 (available on the Internet at <http://www.opm.gov/>), as applicable.

(1) Information about individuals collected as part of the investigative and adjudicative process shall be managed in accordance with applicable laws and DoD policies, including those related to privacy and confidentiality, security of information, and access to information.

#### § 156.4 Responsibilities.

(a) The Under Secretary of Defense for Intelligence (USD(I)) shall:

(1) Develop, coordinate, and oversee the implementation of policy, programs, and guidance for the DoD PSP.

(2) In coordination with the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) and the General Counsel of the DoD (GC, DoD), develop policy for DoD personnel for the CAC personnel security investigation (PSI) and adjudication in accordance with HSPD-12; OMB Memorandum M-05-24; FIPS 201-1; and OPM Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12."

(3) In coordination with the Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L)) and the GC, DoD, develop policy for contractor investigations for CAC adjudication, outside the purview of the National Industrial Security Program, under the terms of applicable contracts in accordance with HSPD-12; OMB Memorandum M-05-24; FIPS 201-1; the Federal Acquisition Regulation; the Defense Federal Acquisition Regulation Supplement; and OPM Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12."

(4) Issue guidance implementing the policy in this part.



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(b) The Deputy Under Secretary of Defense for Intelligence & Security (DUSD(I&S)), under the authority, direction, and control of the USD(I) shall:

(1) Ensure that the PSP is consistent, cost-effective, efficient, and balances the rights of individuals with the interests of national security.

(2) Develop and publish revisions to 32 CFR Part 154.

(3) Approve, coordinate, and oversee all DoD personnel security research initiatives and activities to improve the efficiency, effectiveness, and fairness of the DoD PSP.

(4) Ensure that the Defense Security Service (DSS) provides education, training, and awareness support to the DoD PSP.

(5) Serve as the primary contact between DoD, the Red Cross, United Service Organizations, and other organizations with direct DoD affiliation for all matters relating to the DoD PSP.

(6) When appropriate, approve requests for exceptions to the DoD PSP relating to national security eligibility requirements for access to classified information except North Atlantic Treaty Organization (NATO) classified information. Requests for exceptions involving access to NATO classified information shall be sent to the Office of the Under Secretary of Defense for Policy.

(7) Develop guidance, interpretation, and clarification regarding the DoD PSP as needed.

(8) Conduct oversight inspections of the DoD Components for implementation and compliance with DoD personnel security policy and operating procedures.

(9) In furtherance of coordinated Government-wide initiatives under E.O. 13467, develop a framework setting forth an overarching strategy identifying goals, performance measures, roles and responsibilities, a communications strategy, and metrics to measure the quality of security clearance investigations and adjudications to ensure a sound DoD PSP that will continue to meet the needs of DoD.

(c) The USD(AT&L) shall:

(1) Establish acquisition policy, procedures, and guidance, in coordination

with the USD(I) that facilitate DoD Component compliance with the DoD PSP.

(2) Establish regulatory requirements within the Federal Acquisition Regulation and Defense Federal Acquisition Regulation for contracts and agreements that require non-DoD personnel to adhere to personnel security procedures in the performance of a contract or agreement.

(d) The Under Secretary of Defense for Policy (USD(P)) is the approval authority for requests for exceptions to the DoD PSP involving access to NATO classified information.

(e) The GC, DoD shall:

(1) Provide advice and guidance as to the legal sufficiency of procedures and standards involved in implementing the DoD PSP and exercise oversight of the established administrative due process procedures of the DoD PSP.

(2) Perform functions relating to the DoD PSP including the maintenance and oversight of the Defense Office of Hearings and Appeals (DOHA).

(f) The Heads of the DoD Components shall:

(1) Designate a senior agency official, consistent with the provisions of E.O. 12968, as amended, who shall direct and administer the DoD PSP consistent with this part.

(2) Comply with the policy and procedures regarding investigation and adjudication for CAC issuance and distribute this guidance to local and regional organizations.

(3) Provide funding to cover Component requirements for PSIs, adjudication, and recording of results to comply with the DoD PSP.

(4) Enforce requirements for prompt reporting of significant derogatory information, unfavorable administrative actions, and adverse actions to the appropriate personnel security, human resources, and counterintelligence official(s), as appropriate, within their respective Component.

(5) Perform functions relating to the DoD Security Professional Education Development Program to ensure the security workforce in their respective Component has the knowledge and skills required to perform security functional tasks.

(6) Provide requested information and recommendations, as appropriate, on any aspect of this part and the DoD PSP to the USD(I).

(7) Enforce the requirement that DoD personnel security adjudication system(s) of records, within their respective Components, shall only be used as a personnel security system of records and shall not be used as a pre-hiring screening tool.

#### § 156.5 National security positions.

(a) *Procedures.* The objective of the PSP is to ensure persons deemed eligible for national security positions remain reliable and trustworthy.

(1) Duties considered sensitive and critical to national security do not always involve classified activities or classified matters. Personnel security procedures for national security positions are set forth in E.O. 12968, as amended; E.O. 10865, 32 CFR parts 154-155; ICD 704; and DoD Regulation 5220.22-R. The specific procedures applicable in each case type are set forth in DoD issuances.

(2) Employees with access to automated systems that contain active duty, guard, or military reservists' personally identifiable information or information pertaining to Service members that are otherwise protected from disclosure by section 552a of title 5 United States Code, may be designated as national security positions within DoD, where such access has the potential to cause damage to national security.

(b) *Sensitive Compartmented Information (SCI) Eligibility.* Investigative and adjudicative requirements for SCI eligibility shall be executed in accordance with this part and ICD 704.

(c) *Adjudication.* (1) Personnel security criteria and adjudicative standards are described in E.O. 12968, as amended; 32 CFR parts 147, 154 and 155; ICD 704, and DoD Regulation 5220.22-R, as applicable, in accordance with Adjudicative Guidelines for Determining Eligibility for Access to Classified Information and other types of protected information or assignment to national security positions. Adjudications of eligibility for national security positions, regardless of whether they involve access to classified information, must be made

in accordance with the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information.

(2) When an unfavorable personnel security determination is rendered:

(i) Individuals cannot be appointed or assigned to national security positions.

(ii) An individual currently occupying a national security position will be immediately removed from the national security position and placed, in accordance with agency policy, in an existing non-sensitive position if available. Placement in a non-sensitive position requires compliance with employment suitability standards. The national security position is not to be modified or a new position created to circumvent an unfavorable personnel security determination. The individual is to be placed in an appropriate status, in accordance with agency policy, until a final security determination is made. A final security determination is the granting, denial or revocation by an appropriate central adjudications facility or an appeal board decision, whichever is later.

(iii) To ensure consistency and quality in determinations of eligibility for national security positions, adjudicators must successfully complete the full program of professional training provided by the DSS Center for Development of Security Excellence (or equivalent training) and be certified through the DoD Professional Certification Program for Adjudicators within 2 years of program implementation or, for new hires, within 2 years of eligibility for certification testing.

(d) *Appeal Procedures—Denial or Revocation of Eligibility.* Individuals may elect to appeal unfavorable personnel security determinations in accordance with the procedures set forth in E.O. 12968, as amended; parts 154 and 155 of 32 CFR; ICD 704, and DoD Regulation 5220.22-R as applicable or as otherwise authorized by law.

(e) *Polygraph.* Under certain conditions, DoD Components are authorized to use polygraph examinations to resolve credible derogatory information developed in connection with a personnel security investigation; to aid in the related adjudication; or to facilitate classified access decisions.

(f) *Continuous Evaluation.* All personnel in national security positions shall be subject to continuous evaluation.

(g) *Financial Disclosure.* DoD Component implementation of the electronic financial disclosure requirement, consistent with E.O. 12968, shall be completed by the end of calendar year 2012.

(h) *Reciprocal Acceptance of Eligibility Determinations.* (1) DoD reciprocally accepts existing national security eligibility determinations or clearances from other government agencies in accordance with E.O. 13467, OMB Memorandums “Reciprocal Recognition of Existing Personnel Security Clearances” dated December 12, 2005 (Copies available on the Internet at <http://www.whitehouse.gov/omb>) and July 17, 2006 (Copies available on the Internet at <http://www.whitehouse.gov/omb>).

(2) Reciprocity for SCI eligibility shall be executed in accordance with ICD 704 and associated Director of National Intelligence guidance.

(3) Personnel who have been determined eligible for national security positions should not be subjected to additional security reviews, completion of a new security questionnaire, or initiation of a new investigative check, unless credible derogatory information that was not previously adjudicated becomes known, or the previous adjudication was granted by a condition, deviation, or waiver pursuant to the provisions of OMB Memorandums “Reciprocal Recognition of Existing Personnel Security Clearances” dated December 12, 2005, or there has been a break in service of more than 24 months. Exceptions for access to SCI or special access programs are listed in the OMB Memorandums “Reciprocal Recognition of Existing Personnel Security Clearances” dated July 17, 2006.

(i) *National Security Agency (NSA)/Central Security Service (CSS).* Employees, contractors, military assignees, and others with similar affiliations with the NSA/CSS must maintain SCI eligibility for access to sensitive cryptologic information in accordance with 50 U.S.C. chapter 23.

(j) *Wounded Warrior Security and Intelligence Internship Program.* PSIs in support of wounded warriors may be submitted and processed regardless of

the time remaining in military service. Investigations will be accelerated through a special program code established by the Office of the USD(I) to ensure expedited service by the investigating and adjudicating agencies.

(1) Category 2 wounded, ill, or injured uniformed service personnel who expect to be separated with a medical disability rating of 30 percent or greater may submit a PSI for Top Secret clearance with SCI eligibility prior to medical separation provided they are serving in or have been nominated for a wounded warrior internship program.

(2) The investigations will be funded by the DoD Component that is offering the internship. If the DoD Component does not have funds available, the Military Service in which the uniform service personnel served may choose to fund the investigation.

#### **§ 156.6 Common access card (CAC) investigation and adjudication.**

(a) *General.* Individuals entrusted with access to Federal property, information systems, and any other information bearing on national security must not put the Government at risk or provide an avenue for terrorism.

(1) All individuals requiring a CAC must meet credentialing standards of OPM Memorandum, “Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD–12.” For those individuals who are subject to an interim credentialing decision before a security, suitability, or equivalent adjudication is completed, the OPM credentialing standards will be the basis for issuing or denying a CAC. The subsequent credentialing decision will be made upon receipt of the completed investigation from the ISP.

(2) If an individual is found unsuitable for employment in a covered position under 5 CFR 731.101, ineligible for access to classified information under E.O. 12968, or disqualified from appointment in the excepted service or from working on a contract, the unfavorable decision is a sufficient basis for non-issuance or revocation of a CAC, but does not necessarily mandate this result.

(b) *Investigation.* A favorably adjudicated National Agency Check with

Inquiries (NACI) is the minimum investigation required for a final credentialing determination for CAC.

(1) An interim credentialing determination can be made based on the results of a completed National Agency Check or an Federal Bureau of Investigation National Criminal History Check (fingerprint check), and submission of a request for investigation (NACI or greater).

(2) Individuals identified as having a favorably adjudicated investigation on record, equivalent to (or greater than) the NACI do not require an additional investigation for CAC issuance.

(3) There is no requirement to re-investigate CAC holders unless they are subject to reinvestigation for national security or suitability reasons as specified in applicable DoD issuances.

(4) Existing CAC holders without the requisite background investigation on record must be investigated in accordance with OMB Memorandum M-05-24, "Implementation of Homeland Security Presidential Directive (HSPD) 12—Policy for a Common Identification Standard for Federal Employees and Contractors," dated August 5, 2005.

(c) *Adjudication.* The ultimate determination whether to authorize CAC issuance or revoke the CAC must be an overall common-sense judgment after careful consideration of the basic and, if applicable, supplemental credentialing standards in OPM Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12," each of which is to be evaluated in the context of the whole person. These standards shall be evaluated to determine if there is a reasonable basis to believe that issuing a CAC to the individual poses an unacceptable risk.

(1) Each case is unique and must be judged on its own merits. To the extent pertinent to the individual case, when evaluating the conduct, the adjudicator should consider: the nature and seriousness of the conduct, the circumstances surrounding the conduct, the recency and frequency of the conduct, the individual's age and maturity at the time of the conduct, contributing external conditions, and the pres-

ence or absence of rehabilitation or efforts toward rehabilitation.

(2) Final credentialing standards are:

(i) *Basic Credentialing Standards.* All CAC adjudications must apply the basic credentialing standards. CAC shall not be issued when a disqualifying factor cannot be mitigated.

(ii) *Supplemental Credentialing Standards.* The supplemental credentialing standards, in addition to the basic credentialing standards, shall apply generally to individuals who are not subject to adjudication for eligibility for a sensitive position or access to classified information, suitability for Federal employment or fitness. These standards may be applied based on the risk associated with the position or work on the contract.

(3) All interim and final adjudicative determinations shall be made by cleared and trained Federal Government personnel. Automated adjudicative processes shall be used to the maximum extent practicable.

(4) Adjudication decisions of CAC investigations shall be incorporated into the Consolidated Central Adjudication Facility as directed by the Deputy Secretary of Defense.

(5) CAC adjudicators must successfully complete formal training through a DoD adjudicator course from the DSS Center for Development of Security Excellence to achieve maximum consistency and fairness of decisions rendered.

(6) Federal Government credentialing standards do not prohibit employment of convicted felons who have been released from correctional institutions, absent other issues, if they have demonstrated clear evidence of rehabilitation.

(d) *Appeals.* CAC applicants or holders may appeal CAC denial or revocation.

(1) No separate administrative appeal process is allowed when an individual has been denied a CAC as a result of a negative suitability determination under 5 CFR Part 731, an applicable decision to deny or revoke a security clearance, or based on the results of a determination to disqualify the person from an appointment in an excepted service position or from working on a

contract for reasons other than eligibility for a Federal Credential as described in OPM Memorandum, “Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12.” If a later denial or revocation of a CAC results from an applicable denial or revocation of a security clearance, suitability decision, or other action for which administrative process was already provided on grounds that support denial or revocation of a CAC, no separate appeal for CAC denial or revocation is allowed.

(2) Initial civilian and contractor applicants who have been denied a CAC, and for whom an appeal is allowed under this paragraph, may elect to appeal to a three member board containing no more than one security representative from the sponsoring activity.

(3) Contractor employees who have had their CAC revoked, and for whom an appeal is allowed under this paragraph, may appeal to DOHA under the established administrative process set out in 32 CFR Part 155.

(4) Decisions following appeal are final.

(5) Individuals whose CACs have been denied or revoked are eligible for reconsideration 1 year after the date of final denial or revocation, provided the sponsoring activity supports reconsideration. Individuals with a statutory or regulatory bar are not eligible for reconsideration while under debarment.

(e) *Foreign Nationals.* Special considerations for conducting background investigations of non-U.S. nationals (foreign nationals) are addressed in OPM Memorandum, “Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12.” The following criteria shall be met prior to CAC issuance to foreign nationals:

(1) The background investigation must be completed and favorably adjudicated before issuing CACs to foreign nationals.

(2) Foreign nationals are not eligible to receive CAC on an interim basis.

(3) At foreign locations:

(i) Foreign national background investigations may vary based on standing reciprocity treaties concerning identity assurance and information ex-

change that exist between the United States and its allies. This includes foreign military, civilian, or contract support with a visit status and security assurance that has been confirmed, documented, and processed in accordance with USD(P) policy.

(ii) The type of background investigation may also vary based upon agency agreements with the host country when the foreign national CAC applicant (such as a DoD direct or indirect hire) has not resided in the United States for at least 3 of the past 5 years or is residing in a foreign country. The investigation must be consistent with NACI, to the extent possible, and include a fingerprint check against the Federal Bureau of Investigation (FBI) criminal history database, an FBI Investigations Files (name check) search, and a name check against the Terrorist Screening Database.

(4) At U.S.-based locations and in U.S. territories:

(i) Foreign nationals who have resided in the United States or U.S. territory for 3 years or more must have a NACI or greater investigation.

(ii) Components may delay the background investigation of foreign nationals who have resided in the U.S. or U.S. territory for less than 3 years until the individual has been in the U.S. or U.S. territory for 3 years. When the investigation is delayed, the Component may, in lieu of a CAC, issue an alternative facility access credential at the discretion of the relevant Component official based on a risk determination.

(f) *Recording Final Adjudication.* Immediately following final adjudication, the sponsoring activity shall record the final eligibility determination (active, revoked, denied, etc.) in the OPM Central Verification System as directed by OPM Memorandum, “Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12,” and maintain local records for posting in a DoD repository when available.

(g) *Reciprocity of CAC Determinations.*

(1) The sponsoring activity shall not re-adjudicate CAC determinations for individuals transferring from another Federal department or agency, provided:

(i) Possession of a valid personal identity verification (PIV) card or CAC can be verified by the individual's former department or agency.

(ii) The individual has undergone the required NACI or other equivalent suitability, public trust, or national security investigation and received favorable adjudication from the former agency.

(iii) There is no break in service greater than 24 months and the individual has no actionable information since the date of the last completed investigation.

(2) Interim CAC determinations are not eligible to be transferred or reciprocally accepted. Reciprocity shall be based on final favorable adjudication only.

#### § 156.7 Definitions.

These terms and their definitions are for the purposes of this part:

*Continuous evaluation.* Defined in section 1.3(d) of E.O. 13467.

*Contractor.* Defined in E.O. 13467.

*Employee.* Defined in E.O. 12968, as amended.

*Limited access authorization.* Defined in 32 CFR Part 154.

*National security position.* (1) Any position in a department or agency, the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security.

(i) Such positions include those requiring eligibility for access to classified information.

(ii) Other such positions include, but are not limited to, those whose duties include:

(A) Protecting the nation, its citizens and residents from acts of terrorism, espionage, or foreign aggression, including those positions where the occupant's duties involve protecting the nation's borders, ports, critical infrastructure or key resources, and where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(B) Developing defense plans or policies;

(C) Planning or conducting intelligence or counterintelligence activities, counterterrorism activities and related activities concerned with the

preservation of the military strength of the United States;

(D) Protecting or controlling access to facilities or information systems where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(E) Controlling, maintaining custody, safeguarding, or disposing of hazardous materials, arms, ammunition or explosives, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(F) Exercising investigative or adjudicative duties related to national security, suitability, fitness or identity credentialing, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security;

(G) Exercising duties related to criminal justice, public safety or law enforcement, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security; or

(H) Conducting investigations or audits related to the functions described in paragraphs (1)(i)(B) through (G) of this definition, where the occupant's neglect, action, or inaction could bring about a material adverse effect on the national security.

(2) The requirements of this part apply to positions in the competitive service, positions in the excepted service where the incumbent can be non-competitively converted to the competitive service, and career appointments in the Senior Executive Service within the executive branch. Departments and agencies may apply the requirements of this part to other excepted service positions within the executive branch and contractor positions, to the extent consistent with law.

*Unacceptable risk.* Threat to the life, safety, or health of employees, contractors, vendors, or visitors; to the Government's physical assets or information systems; to personal property; to records, privileged, proprietary, financial, or medical records; or to the privacy of data subjects, which will not be tolerated by the Government.

**PART 157—DOD INVESTIGATIVE AND ADJUDICATIVE GUIDANCE FOR ISSUING THE COMMON ACCESS CARD (CAC)**

Sec.

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- 157.5 Responsibilities.
- 157.6 Procedures.

AUTHORITY: HSPD-12, E.O. 13467, E.O. 13488, FIPS 201-2, and OPM Memorandum.

SOURCE: 79 FR 55624, Sept. 17, 2014, unless otherwise noted.

**§ 157.1 Purpose.**

This part establishes policy, assigns responsibilities, and prescribes procedures for investigating and adjudicating eligibility to hold a Common Access Card (CAC). The CAC is the DoD personal identity verification (PIV) credential.

**§ 157.2 Applicability.**

This part applies to:

(a) the Office of the Secretary of Defense, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (hereinafter referred to collectively as the “DoD Components”).

(b) The Commissioned Corps of the U.S. Public Health Service (USPHS), under agreement with the Department of Health and Human Services, and the National Oceanic and Atmospheric Administration (NOAA), under agreement with the Department of Commerce.

**§ 157.3 Definitions.**

These terms and their definitions are for the purpose of this part.

*Actionable information.* Information that potentially justifies an unfavorable credentialing determination.

*CAC.* The DoD Federal PIV card.

*Contractor.* Defined in Executive Order 13467, “Reforming Processes Related to Sustainability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information”.

*Contractor employee fitness.* Defined in E.O. 13467.

*Debarment.* A prohibition from taking a competitive service examination or from being hired (or retained in) a covered position for a specific time period.

*Drugs.* Mood and behavior-altering substances, including drugs, materials, and other chemical compounds identified and listed in 21 U.S.C. 801-830 (also known as “The Controlled Substances Act of 1970, as amended”) (e.g., marijuana or cannabis, depressants, narcotics, stimulants, hallucinogens), and inhalants and other similar substances.

*Drug abuse.* The illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

*Employee.* Defined in E.O. 12968, “Access to Classified Information”.

*Fitness.* Defined in E.O. 13488, “Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust”.

*Fitness determination.* Defined in E.O. 13488.

*Logical and physical access.* Defined in E.O. 13467.

*Material.* Defined in 5 CFR part 731.

*Reasonable basis.* A reasonable basis to believe occurs when a disinterested observer, with knowledge of the same facts and circumstances, would reasonably reach the same conclusion.

*Terrorism.* Defined in 19 U.S.C. 2331.

*Unacceptable risk.* A threat to the life, safety, or health of employees, contractors, vendors, or visitors; to the U.S. Government physical assets or information systems; to personal property; to records, including classified, privileged, proprietary, financial, and medical records; or to the privacy rights established by The Privacy Act of 1974, as amended, or other law that is deemed unacceptable when making risk management determinations.

*U.S. National.* Defined in U.S. OPM Memorandum, “Final Credentialing

Standards for Issuing Personal Identity Verification Cards Under HSPD-12” (available at [http://www.opm.gov/investigate/resources/final\\_credentialing\\_standards.pdf](http://www.opm.gov/investigate/resources/final_credentialing_standards.pdf)).

#### § 157.4 Policy.

It is DoD policy that:

(a) Individuals appropriately sponsored for a CAC consistent with DoD Manual 1000.13, Volume 1, “DoD Identification Cards: ID Card Life-Cycle,” January 23, 2014, (available at [http://www.dtic.mil/whs/directives/corres/pdf/100013\\_vol1.pdf](http://www.dtic.mil/whs/directives/corres/pdf/100013_vol1.pdf)) must be investigated and adjudicated in accordance with this part. Individuals not CAC eligible may be processed for local or regional base passes in accordance with Under Secretary of Defense for Intelligence (USD(I)) policy guidance for DoD physical access control consistent with DoD Regulation 5200.08-R, “Physical Security Program” (available at <http://www.dtic.mil/whs/directives/corres/pdf/520008r.pdf>) and local installation security policies and procedures.

(b) A favorably adjudicated National Agency Check with Inquiries (NACI) or equivalent in accordance with revised Federal investigative standards is the minimum investigation required for a final credentialing determination for a CAC.

(c) Individuals requiring a CAC must meet the credentialing standards in accordance with the U.S. Office of Personnel Management (OPM) Memorandum, “Final Credentialing Standards for Issuing Personal Identity Verification Cards Under HSPD-12”; and U.S. Office of Personnel Management Memorandum, “Introduction of Credentialing, Suitability, and Security Clearance Decision-Making Guide (available at [http://www.opm.gov/investigate/resources/decision\\_making\\_guide.pdf](http://www.opm.gov/investigate/resources/decision_making_guide.pdf)) and this part.

(d) A CAC may be issued on an interim basis based on a favorable National Agency Check or a Federal Bureau of Investigation (FBI) National Criminal History Check (fingerprint check) adjudicated by appropriate approved automated procedures or by a trained security or human resource (HR) specialist and successful submission to the investigative service provider (ISP) of a NACI, or a personnel

security investigation (PSI) equal to or greater in scope than a NACI. Additionally, the CAC applicant must present two identity source documents, at least one of which is a valid Federal or State government-issued picture identification.

(e) The subsequent final credentialing determination will be made upon receipt of the completed investigation from the ISP.

(f) Discretionary judgments used to render an adjudicative determination for issuing the CAC are inherently governmental functions and must only be performed by trained U.S. Government personnel who have successfully completed required training and possess a minimum level of investigation (NACI or equivalent in accordance with revised Federal investigative standards). Established administrative processes in 32 CFR part 156 and DoD Directive 5220.6, “Defense Industrial Personnel Security Clearance Review Program” (available at <http://www.dtic.mil/whs/directives/corres/pdf/522006p.pdf>) must be applied.

(g) Adjudications rendered for eligibility for access to classified information, eligibility to hold a sensitive position, suitability, or fitness for Federal employment based on a NACI or higher level investigation may result in a concurrent CAC decision for that position.

(h) Favorable credentialing adjudications from another Federal department or agency will be reciprocally accepted in accordance with conditions stated in the procedural guidance in this part. Reciprocity must be based on final favorable adjudication only.

(i) CAC applicants or holders may appeal CAC denial or revocation in accordance with the conditions stated in the procedural guidance in this part. Appeals must be processed as indicated in the procedural guidance in this part.

(j) Non-U.S. nationals at foreign locations are not eligible to receive a CAC on an interim basis. Special considerations for conducting background investigations of non-U.S. nationals are addressed in U.S. OPM Memorandum, “Final Credentialing Standards for Issuing Personal Identity Verification Cards Under HSPD-12.” An interim



CAC may be issued to non-U.S. nationals in the U.S. or U.S. territories if they have resided in the U.S. or U.S. territory for at least 3 years, and they satisfy the requirements of paragraph (e) of this section and paragraph (a)(4)(ii)(A) of § 157.6.

(k) Individuals who have been denied a CAC or have had a CAC revoked due to an unfavorable credentialing determination are eligible to reapply for a credential 1 year after the date of final adjudicative denial or revocation.

(l) Individuals with a statutory or regulatory bar are not eligible for reconsideration while under debarment, see paragraph (d)(6) of § 157.6.

(m) The Deputy Secretary of Defense directed all reports of investigations conducted as required for compliance with Homeland Security Presidential Directive-12, “Policy for a Common Identification Standard for Federal Employees and Contractors” (available at <http://www.dhs.gov/homeland-security-presidential-directive-12>) to be sent to the consolidated DoD Central Adjudications Facility.

(n) When eligibility is denied or revoked, CACs shall be recovered whenever practicable, and shall immediately be rendered inoperable. In addition, agencies’ physical and logical access systems shall be immediately updated to eliminate the use of a CAC for access.

#### § 157.5 Responsibilities.

(a) The USD(I) must:

(1) In coordination with the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) and the General Counsel of the Department of Defense (GC, DoD), establish adjudication procedures to support CAC credentialing decisions in accordance with DoD Manual 1000.13, Volume 1, “DoD Identification (ID) Cards; ID Card Life-Cycle”; U.S. Office of Personnel Management Memorandum, “Final Credentialing Standards for Issuing Personal Identity Verification Cards Under HSPD-12”; U.S. Office of Personnel Management Memorandum, “Introduction of Credentialing, Suitability, and Security Clearance Decision-Making Guide; Office of Management and Budget Memorandum M-05-24, “Implementation of Homeland Security Presidential

Directive (HSPD) 12—Policy for a Common Identification Standard for Federal Employees and Contractors” (available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-24.pdf>); U.S. Office of Personnel Management Federal Investigations Notice Number 06-04, “HSPD 12—Advanced Fingerprint Results” (available at [http://www.opm.gov/extra/investigate/FIN06\\_04.pdf](http://www.opm.gov/extra/investigate/FIN06_04.pdf)); Homeland Security Presidential Directive-12, “Policy for a Common Identification Standard for Federal Employees and Contractors”; 5 U.S.C. 552, 552a and 7313; Federal Information Processing Standards Publication 201-2, “Personal Identity Verification (PIV) of Federal Employees and Contractors” (available at <http://csrc.nist.gov/publications/PubsFIPS.html>); Executive Order 13467, “Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information”; Executive Order 13488, “Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust”; 15 U.S.C. 278g-3; 40 U.S.C. 11331; and U.S. Office of Personnel Management Federal Investigations Notice Number 10-05, “Reminder to Agencies of the Standards for Issuing Identity Credentials Under HSPD-12” (available at <http://www.opm.gov/investigate/fins/2010/fin10-05.pdf>) for issuing a CAC to Service members and DoD civilian personnel.

(2) In coordination with the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) and the GC, DoD, establish adjudication procedures to support a CAC credentialing decision for contractors in accordance with the terms of applicable contracts and the references cited in paragraph (a)(1) of this section, the Federal Acquisition Regulation (available at <http://www.acquisition.gov/far/current/pdf/FAR.pdf>), and the Defense Federal Acquisition Regulation Supplement (available at <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>).

(3) Issue, interpret, and clarify CAC investigative and adjudicative guidance in coordination with the Suitability Executive Agent as necessary.

(b) The USD(P&R) must, in coordination with the GC, DoD, implement CAC PSI and adjudication procedures established herein as necessary to support issuance of a CAC to Service members and DoD civilian personnel in accordance with the references cited in paragraph (a)(1) of this section.

(c) The USD(AT&L) must, in coordination with the GC, DoD, implement CAC PSI and adjudication procedures established by the USD(I) for contractors in accordance with the terms of applicable contracts and the references cited in paragraph (a)(1) of this section, Federal Acquisition Regulation, current edition; and Defense Federal Acquisition Regulation Supplement, current edition.

(d) The GC, DoD must:

(1) Provide advice and guidance as to the legal sufficiency of procedures and standards involved in adjudicating CAC investigations.

(2) Perform functions relating to the DoD Homeland Security Presidential Directive (HSPD)-12 Program in accordance with DoD Directive 5220.6, "Defense Industrial Personnel Security Clearance Review Program" (available at <http://www.dtic.mil/whs/directives/corres/pdf/522006p.pdf>) and DoD Directive 5145.01, "General Counsel of the Department of Defense" (available at <http://www.dtic.mil/whs/directives/corres/pdf/514501p.pdf>) including maintenance and oversight of the Defense Office of Hearings and Appeals (DOHA) and its involvement in contractor CAC revocations as specified in paragraph (b)(6)(i)(B) of § 157.6 of this part.

(3) Coordinate on USD(P&R) implementation of CAC PSI and adjudication procedures, in accordance with the references cited in paragraph (a)(1) of this section, for Service members and DoD civilian personnel, and USD(AT&L) implementation of USD(I) procedures for CAC PSI and adjudication in accordance with the terms of applicable contracts and the references cited in paragraph (a)(1) of this section, Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement.

(e) The Heads of the DoD Components must:

(1) Comply with and implement this part.

(2) Provide resources for PSIs, adjudication, appeals, and recording of final adjudicative results in a centralized database.

(3) Require individuals sponsored for a CAC to meet eligibility requirements stated in DTM 08-003.

(4) Provide appeals boards for those individuals appealing CAC denial or revocation as specified in paragraph (b)(6)(i)(A) of § 157.6.

(5) Enforce requirements for reporting of derogatory information, unfavorable administrative actions, and adverse actions to personnel security, HR, and counterintelligence official(s), as appropriate.

(6) Require all PSIs submitted for non-DoD personnel to be supported by and comply with DoD PIV procedures in contracts that implement requirements of paragraphs 4.1303 and 52.204-9 of Federal Acquisition Regulation, current edition.

(7) Require all investigations and adjudications required for non-DoD personnel to be in response to a current, active contract or agreement and that the number of personnel submitted for investigation and adjudication does not exceed the specific requirements of that contract or agreement while ensuring compliance with HSPD-12.

#### § 157.6 Procedures.

(a) *CAC Investigative Procedures*— (1) *Investigative Requirements.* (i) A personnel security investigation (NACI or greater) completed by an authorized ISP is required to support a CAC credentialing determination based on the established credentialing standards promulgated by OPM Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards Under HSPD-12".

(ii) Individuals identified as having a favorably adjudicated investigation on record, equivalent to or greater than the NACI, do not require an additional investigation for CAC issuance.

(iii) There is no requirement to re-investigate CAC holders unless they are subject to reinvestigation for national security or suitability reasons

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as specified in applicable DoD issuances.

(2) *Submission of Investigations.* Investigative packages must be submitted promptly by HR or security personnel to the authorized ISP. Fingerprints for CAC applicants must be taken by HR or security personnel. DoD Components using the OPM as the ISP may request advanced fingerprint check results in accordance with OPM Federal Investigations Notice Number 06-04.

(3) *Reciprocity.* (i) The sponsoring Component must not re-adjudicate CAC determinations for individuals transferring from another Federal department or agency, provided:

(A) The individual's former department or agency verifies possession of a valid PIV.

(B) The individual has undergone the required NACI or other equivalent (or greater) suitability or national security investigation and received favorable adjudication from the former department or agency.

(C) There is no break in service 2 years or more and the individual has no actionable information since the date of the last completed investigation.

(ii) Interim CAC determinations are not eligible to be transferred or reciprocally accepted. Reciprocity must be based on final favorable adjudication only.

(4) *Foreign (Non-U.S.) Nationals.* DoD Components must apply the credentialing process and standards in this part to non-U.S. nationals who work as employees or contractor employees for the DoD. However, special considerations apply to non-U.S. nationals.

(i) *At Foreign Locations.* (A) DoD Components must initiate and ensure completion of a background investigation before applying the credentialing standards to a non-U.S. national at a foreign location. The background investigation must be favorably adjudicated before a CAC can be issued to a non-U.S. national at a foreign location. The type of background investigation may vary based on standing reciprocity treaties concerning identity assurance and information exchanges that exist between the U.S. and its allies or agency agreements with the host country.

(B) The investigation of a non-U.S. national at a foreign location must be consistent with a NACI, to the extent possible, and include a fingerprint check against the FBI criminal history database, an FBI investigations files (name check) search, and a name check against the terrorist screening database.

(ii) *At U.S.-Based Locations and in U.S. Territories (Other than American Samoa and Commonwealth of the Northern Mariana Islands).* (A) Individuals who are non-U.S. nationals in the United States or U.S. territory for 3 years or more must have a NACI or equivalent investigation initiated after employment authorization is appropriately verified.

(B) Non-U.S. nationals who have been in the United States or U.S. territory for less than 3 years do not meet the investigative requirements for CAC issuance. DoD Components may delay the background investigation of a Non-U.S. national who has been in the U.S. or U.S. territory for less than 3 years until the individual has been in the United States or U.S. territory for at least 3 years. In the event of such a delay, an alternative facility access identity credential may be issued at the discretion of the relevant DoD Component official, as appropriate based on a risk determination in accordance with DoD 5200.08-R, "Physical Security Program" (available at <http://www.dtic.mil/whs/directives/corres/pdf/520008r.pdf>) and U.S. Office of Personnel Management Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards Under HSPD-12."

(C) The U.S. territories of American Samoa and the Commonwealth of the Northern Mariana Islands are not included in the "United States" as defined by the Immigration and Nationality Act of 1952, as amended (Pub. L. 82-414).

(5) *Investigations Acceptable for CAC Adjudication.* A list of investigations acceptable for CAC adjudication is located in the Table. These investigations are equivalent to or greater than a NACI. This list will be updated by the USD(I) as revisions to the Federal investigative standards are implemented.

TABLE—FAVORABLY ADJUDICATED INVESTIGATIONS ACCEPTABLE FOR CAC ADJUDICATION

| Investigation  | Description   |
|----------------|---|
| ANACI .....    | Access National Agency Check and Inquires.  |
| BGI-0112 ..... | Upgrade Background Investigation (1–12 months from LBI).  |
| BGI-1336 ..... | Upgrade Background Investigation (13–36 months from LBI).   |
| BGI-3760 ..... | Upgrade Background Investigation (37–60 months from LBI).   |
| BI .....       | Background Investigation.   |
| BIPN .....     | Background Investigation plus Current National Agency Check.  |
| BIPR .....     | Periodic Reinvestigation of Background Investigation.   |
| BITN .....     | Background Investigation (10 year scope).   |
| CNCI .....     | Child Care National Agency Check plus Written Inquires and Credit.  |
| IBI .....      | Interview Oriented Background Investigation.  |
| LBI .....      | Limited Background Investigation.   |
| LBIP .....     | Limited Background Investigation plus Current National Agency Check.  |
| LBIX .....     | Limited Background Investigation—Expanded.  |
| MBI .....      | Moderate Risk Background Investigation.   |
| MBIP .....     | Moderate Risk Background Investigation plus Current National Agency Check.  |
| MBIX .....     | Moderate Risk Background Investigation—Expanded.  |
| NACB .....     | National Agency Check/National Agency Check plus Written Inquires and Credit Check plus Background Investigation Requested. |
| NACI .....     | National Agency Check and Inquires.   |
| NACLC .....    | National Agency Check with Law and Credit.  |
| NACS .....     | National Agency Check/National Agency Check plus Written Inquires and Credit Check plus Single Scope B.I. Requested.        |
| NACW .....     | National Agency Check plus Written Inquires and Credit.   |
| NACZ .....     | National Agency Check plus Written Inquires and Credit plus Special Investigative Inquiry.                                  |
| NLC .....      | National Agency Check, Local Agency Check and Credit.   |
| NNAC .....     | National Agency Check plus Written Inquires and Credit Plus Current National Agency Check.                                  |
| NSI .....      | NSI—NACI/Suitability Determination.   |
| PRI .....      | Periodic Reinvestigation.   |
| PRS .....      | Periodic Reinvestigation Secret.  |
| PRSC .....     | Periodic Reinvestigation Secret or Confidential.  |
| PPR .....      | Phased Periodic Reinvestigation.  |
| SPR .....      | Secret Periodic Reinvestigation.  |
| SSBI .....     | Single Scope Background Investigation.  |
| SSBI-PR .....  | Periodic Reinvestigation for SSBI.  |

(b) *CAC Adjudicative Procedures*—(1) *Guidance for Applying Credentialing Standards During Adjudication.* (i) As established in Homeland Security Presidential Directive–12, credentialing adjudication considers whether or not an individual is eligible for long-term access to Federally controlled facilities and/or information systems. The ultimate determination to authorize, deny, or revoke the CAC based on a credentialing determination of the PSI must be made after consideration of applicable credentialing standards in OPM Memorandum, “Final Credentialing Standards for Issuing Personal Identity Verification Cards Under HSPD–12.”

(ii) Each case is unique. Adjudicators must examine conditions that raise an adjudicative concern, the overriding factor for all of these conditions is unacceptable risk. Factors to be applied consistently to all information available to the adjudicator are:

(A) The nature and seriousness of the conduct. The more serious the conduct,

the greater the potential for an adverse CAC determination.

(B) The circumstances surrounding the conduct. Sufficient information concerning the circumstances of the conduct must be obtained to determine whether there is a reasonable basis to believe the conduct poses a risk to people, property or information systems.

(C) The recency and frequency of the conduct. More recent or more frequent conduct is of greater concern.

(D) The individual’s age and maturity at the time of the conduct. Offenses committed as a minor are usually treated as less serious than the same offenses committed as an adult, unless the offense is very recent, part of a pattern, or particularly heinous.

(E) Contributing external conditions. Economic and cultural conditions may be relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk if the conditions are currently removed or countered (generally considered in cases with relatively minor issues).

(F) The absence or presence of efforts toward rehabilitation, if relevant, to address conduct adverse to CAC determinations.

(1) Clear, affirmative evidence of rehabilitation is required for a favorable adjudication (e.g., seeking assistance and following professional guidance, where appropriate; demonstrating positive changes in behavior and employment).

(2) Rehabilitation may be a consideration for most conduct, not just alcohol and drug abuse. While formal counseling or treatment may be a consideration, other factors (such as the individual's employment record) may also be indications of rehabilitation.

(iii) CAC adjudicators must successfully complete formal training through a DoD CAC adjudicator course from the Defense Security Service Center for Development of Security Excellence or a course approved by the Suitability Executive Agent.

(2) *Credentialing Standards.* HSPD-12 credentialing standards contained in OPM Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards Under HSPD-12" must be used to render a final determination whether to issue or revoke a CAC based on results of a qualifying PSI.

(i) *Basic Standards.* CAC credentialing standards and the adjudicative guidelines described in paragraph (c) of this section are designed to guide the adjudicator who must determine, based on results of a qualifying PSI, whether CAC issuance is consistent with the basic standards, would create an unacceptable risk for the U.S. Government, or would provide an avenue for terrorism.

(ii) *Supplemental Standards.* The supplemental standards are intended to ensure that the issuance of a CAC to an individual does not create unacceptable risk. The supplemental credentialing standards must be applied, in addition to the basic credentialing standards. In this context, an unacceptable risk refers to an unacceptable risk to the life, safety, or health of employees, contractors, vendors, or visitors; to the Government's physical assets or information systems; to personal property; to records, in-

cluding classified, privileged, proprietary, financial, or medical records; or to the privacy of data subjects.

The supplemental credentialing standards, in addition to the basic credentialing standards, must be used for CAC adjudication of individuals who are not also subject to the following types of adjudication:

(A) Eligibility to hold a sensitive position or for access to classified information,

(B) Suitability for Federal employment in the competitive service, or

(C) Qualification for Federal employment in the excepted service.

(3) *Application of the Standards.* (i) CAC credentialing standards shall be applied to all DoD civilian employees, Service members, and contractors who are CAC eligible, have been sponsored by a DoD entity, and require: (a) Physical access to DoD facilities or non-DoD facilities on behalf of DoD; (b) logical access to information systems (whether on site or remotely); or (c) remote access to DoD networks that use only the CAC logon for user authentication.

(ii) If an individual is found unsuitable for competitive civil service consistent with 5 CFR part 731, ineligible for access to classified information pursuant to E.O. 12968, or disqualified from appointment in the excepted service or from working on a contract, the unfavorable decision may be sufficient basis for non-issuance or revocation of a CAC, but does not necessarily mandate this result.

(4) *Adjudication.* The CAC adjudicators will consider the information provided by the CAC PSI in rendering a CAC credentialing determination. The determination will be unfavorable if there is a reasonable basis to conclude that a disqualifying factor in accordance with the basic CAC credentialing standards is substantiated, or when there is a reasonable basis to conclude that derogatory information or conduct relating to supplemental CAC credentialing standards presents an unacceptable risk for the U.S. Government.

(i) If a DoD Component or DOHA proposes to deny or revoke a CAC under conditions other than those cited in paragraph (b)(3)(ii) of this section, the

DoD Component or DOHA, as appropriate in accordance with paragraph (b)(6)(i) of this section, must issue the individual a written statement (also known as a letter of denial (LOD) or revocation (LOR)) identifying the disqualifying condition(s). The statement must contain a summary of the concerns and supporting adverse information, instructions for responding, and copies of the relevant CAC credentialing standards and adjudicative guidelines from this section. The written LOD or LOR must be as comprehensive and detailed as permitted by the requirements of national security and to protect sources that were granted confidentiality, and as allowed pursuant to provisions of 5 U.S.C. 552 and 552a. (Section 552a is also known and hereinafter referred to as “The Privacy Act of 1974, as amended.”)

(ii) The individual may elect to respond in writing to the DoD Component or DOHA, as appropriate, within 30 calendar days from the date of the LOD or LOR. Failure to respond to the LOD or LOR will result in automatic CAC denial or revocation.

(iii) When, subsequent to issuance of an interim or final CAC, the U.S. Government receives credible information that raises questions as to whether a current CAC holder continues to meet the applicable credentialing standards, the DoD Component may reconsider the credentialing determination using the procedures in this part.

(5) *Denial or Revocation.* (i) DoD Components must deny or revoke a CAC if the individual fails to respond to the LOD or LOR within the specified timeframe or the response to the written statement has not provided a basis to reverse the decision.

(ii) Denial or revocation of a CAC must comply with applicable governing laws and regulations:

(A) The U.S. Coast Guard shall afford individuals appeal rights as established in applicable Department of Homeland Security and U.S. Coast Guard Issuances.

(B) CAC provides Service members with Geneva Convention protection in accordance with DoD Instruction 1000.1, “Identification (ID) Cards Required by the Geneva Conventions” (available at <http://www.dtic.mil/whs/di->

[rectives/corres/pdf/100001p.pdf](http://www.dtic.mil/whs/directives/corres/pdf/100001p.pdf)), and authorized benefits (e.g. medical) and must not be revoked or denied pursuant to the provisions of this part. CAC for Military Service members will be surrendered only upon separation, discharge, or retirement.

(C) In certain instances a CAC provides other benefits or specific privileges to civilian employees (e.g. medical, post exchange and commissary) when assigned overseas long-term; or protected status to civilian employees and contractors who are accompanying U.S. forces during overseas deployments in accordance with DoD Instruction 1000.1. CAC for DoD civilians or contractors in this circumstance will not be revoked pursuant to the provisions of this part, but may be surrendered as part of other adverse employment or contracting actions or procedures.

(iii) When eligibility is denied or revoked, the CAC shall be recovered whenever practicable, and shall immediately be rendered inoperable. In addition, agency’s physical and logical access systems shall immediately be updated to eliminate the use of the CAC for access.

(6) *Appeals.* (i) Individuals who have been denied a CAC or have had a CAC revoked due to an unfavorable credentialing determination must be entitled to appeal the determination in accordance with the following procedures:

(A) Except as stated in paragraph (b)(6)(ii) of this section, new civilian and contractor applicants who have been denied a CAC may elect to appeal to a three member board composed of not more than one security representative and one human resources representative.

(B) Contractor employees who have had their CAC revoked may appeal the unfavorable determination to the DOHA in accordance with the established administrative process set out in DoD Directive 5220.6.

(ii) This appeal process does not apply when a CAC is denied or revoked as a result of either an unfavorable suitability determination consistent with 5 CFR part 731 or a decision to deny or revoke eligibility for access to classified information or eligibility for

a sensitive national security position, since the person is already entitled to seek review in accordance with applicable suitability or national security procedures. Likewise, there is no right to appeal when the decision to deny the CAC is based on the results of a separate determination to disqualify the person from an appointment in the expected service or to bar the person from working for or on behalf of a Federal department or agency.

(iii) The DoD Component will notify the individual in writing of the final determination and provide a statement that this determination is not subject to further appeal.

(7) *Recording Final Determination.* Immediately following final adjudication, the sponsoring activity must record the final eligibility determination (e.g., active, revoked, denied) in the OPM Central Verification System as directed by OPM Memorandum, “Final Credentialing Standards for Issuing Personal Identity Verification Cards Under HSPD-12.” DoD Component records will document the adjudicative rationale. Adjudicative records shall be made available to authorized recipients as required for appeal purposes.

(c) *Basic Adjudicative Standards.* (1) A CAC will not be issued to a person if the individual is known to be or reasonably suspected of being a terrorist.

(i) A CAC must not be issued to a person if the individual is known to be or reasonably suspected of being a terrorist. Individuals entrusted with access to Federal property and information systems must not put the U.S. Government at risk or provide an avenue for terrorism.

(ii) Therefore, conditions that may be disqualifying include evidence that the individual has knowingly and willfully been involved with reportable domestic or international terrorist contacts or foreign intelligence entities, counterintelligence activities, indicators, or other behaviors described in DoD Directive 5240.06, “Counterintelligence Awareness and Reporting (CIAR)” (available at <http://www.dtic.mil/whs/directives/corres/pdf/524006p.pdf>).

(2) A CAC will not be issued to a person if the employer is unable to verify the individual’s claimed identity.

(i) A CAC must not be issued to a person if the DoD component is unable to verify the individual’s claimed identity. To be considered eligible for a CAC, the individual’s identity must be clearly authenticated. The CAC must not be issued when identity cannot be authenticated.

(ii) Therefore, conditions that may be disqualifying include:

(A) The individual claimed it was not possible to provide two identity source documents from the list of acceptable documents in Form I-9, Office of Management and Budget No. 1115-0136, “Employment Eligibility Verification,” (available at <http://www.uscis.gov/files/form/i-9.pdf>) or provided only one identity source document from the list of acceptable documents.

(B) The individual did not appear in person as required by Federal Information Processing Standards Publication 201-2.

(C) The individual refused to cooperate with the documentation and investigative requirements to validate his or her identity.

(D) The investigation failed to confirm the individual’s claimed identity.

(iii) No conditions can mitigate inability to verify the applicant’s identity.

(3) A CAC will not be issued to a person if there is a reasonable basis to believe the individual has submitted fraudulent information concerning his or her identity.

(i) A CAC must not be issued to a person if there is a reasonable basis to believe the individual has submitted fraudulent information concerning his or her identity in an attempt to obtain the current credential.

(A) Substitution occurred in the identity proofing process; the individual who appeared on one occasion was not the same person that appeared on another occasion.

(B) The fingerprints associated with the identity do not belong to the person attempting to obtain a CAC.

(ii) No conditions can mitigate submission of fraudulent information in an attempt to obtain a current credential.

(4) A CAC will not be issued to a person if there is a reasonable basis to believe the individual will attempt to gain unauthorized access to classified documents, information protected by the Privacy Act, information that is proprietary in nature, or other sensitive or protected information.

(i) Individuals must comply with information-handling regulations and rules. Individuals must properly handle classified and protected information such as sensitive or proprietary information.

(ii) Individuals should not attempt to gain unauthorized access to classified documents or other sensitive or protected information. Unauthorized access to U.S. Government information or improper use of U.S. Government information once access is granted may pose a significant risk to national security, may compromise individual privacy, and may make public information that is proprietary in nature, thus compromising the operations and missions of Federal agencies.

(iii) A CAC must not be issued if there is a reasonable basis to believe the individual will attempt to gain unauthorized access to classified documents, information protected by the Privacy Act of 1974, as amended, information that is proprietary in nature, or other sensitive or protected information.

(iv) Therefore, conditions that may be disqualifying include any attempt to gain unauthorized access to classified, sensitive, proprietary or other protected information.

(v) Circumstances relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk include:

(A) Since the time of the last act or activities, the person has demonstrated a favorable change in behavior.

(B) The behavior happened so long ago, was minor, or happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's ability to safeguard protected information.

(5) A CAC will not be issued to a person if there is a reasonable basis to believe the individual will use an identity credential outside the workplace unlawfully or inappropriately.

(i) A CAC must not be issued to a person if there is a reasonable basis to believe the individual will use an identity credential outside the workplace unlawfully or inappropriately.

(ii) Therefore, conditions that may be disqualifying include:

(A) Documented history of fraudulent requests for credentials or other official documentation.

(B) Previous incidents in which the individual used credentials or other official documentation to circumvent rules or regulations.

(C) A history of incidents involving misuse of credentials that put physical assets or personal property at risk.

(iii) Circumstances relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk include:

(A) The behavior happened so long ago, was minor, or happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's ability and willingness to use credentials lawfully and appropriately.

(6) A CAC will not be issued to a person if there is a reasonable basis to believe the individual will use Federally-controlled information systems unlawfully, make unauthorized modifications to such systems, corrupt or destroy such systems, or engage in inappropriate uses of such systems.

(i) Individuals must comply with rules, procedures, guidelines, or regulations pertaining to information technology systems and properly protect sensitive systems, networks, and information. The individual should not attempt to use federally-controlled information systems unlawfully, make unauthorized modifications, corrupt or destroy, or engage in inappropriate uses of such systems. A CAC must not be issued to a person if there is a reasonable basis to believe the individual will do so or has done so in the past.

(ii) Therefore, conditions that may be disqualifying include:

(A) Illegal, unauthorized, or inappropriate use of an information technology system or component.

(B) Unauthorized modification, destruction, manipulation of information, software, firmware, or hardware



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to corrupt or destroy information technology systems or data.

(iii) Circumstances relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk include:

(A) The behavior happened so long ago, was minor, or happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's ability and willingness to conform to rules and regulations for use of information technology systems.

(d) *Supplemental Adjudicative Standards.* (1) A CAC will not be issued to a person if there is a reasonable basis to believe, based on the individual's misconduct or negligence in employment, that issuance of a CAC poses an unacceptable risk.

(i) An individual's employment misconduct or negligence may put people, property, or information systems at risk.

(ii) Therefore, conditions that may be disqualifying include:

(A) A previous history of intentional wrongdoing on the job, disruptive, violent, or other acts that may pose an unacceptable risk to people, property, or information systems.

(B) A pattern of dishonesty or rule violations in the workplace which put people, property or information at risk.

(C) A documented history of misusing workplace information systems to view, download, or distribute pornography.

(D) Violation of written or recorded commitments to protect information made to an employer, such as breach(es) of confidentiality or the release of proprietary or other information.

(E) Failure to comply with rules or regulations for the safeguarding of classified, sensitive, or other protected information.

(iii) Circumstances relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk include:

(A) The behavior happened so long ago, was minor, or happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's current trustworthiness or good judgment relating

to the safety of people and proper safeguarding of property and information systems.

(B) The individual was not adequately warned that the conduct was unacceptable and could not reasonably be expected to know that the conduct was wrong.

(C) The individual made prompt, good-faith efforts to correct the behavior.

(D) The individual responded favorably to counseling or remedial training and has since demonstrated a positive attitude toward the discharge of information-handling or security responsibilities.

(2) A CAC will not be issued to a person if there is a reasonable basis to believe, based on the individual's criminal or dishonest conduct, that issuance of a CAC poses an unacceptable risk.

(i) An individual's conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about his or her reliability or trustworthiness and may put people, property, or information systems at risk. An individual's past criminal or dishonest conduct may put people, property, or information systems at risk.

(ii) Therefore, conditions that may be disqualifying include:

(A) A single serious crime or multiple lesser offenses which put the safety of people at risk or threaten the protection of property or information. A person's convictions for burglary may indicate that granting a CAC poses an unacceptable risk to the U.S. Government's physical assets and to employees' personal property on a U.S. Government facility.

(B) Charges or admission of criminal conduct relating to the safety of people and proper protection of property or information systems, regardless of whether the person was formally charged, formally prosecuted, or convicted.

(C) Dishonest acts (e.g., theft, accepting bribes, falsifying claims, perjury, forgery, or attempting to obtain identity documentation without proper authorization).

(D) Deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, or other intentional financial breaches of trust.

(E) Actions involving violence or sexual behavior of a criminal nature that poses an unacceptable risk if access is granted to federally-controlled facilities or federally-controlled information systems. For example, convictions for sexual assault may indicate that granting a CAC poses an unacceptable risk to the life and safety of persons on U.S. Government facilities.

(F) Financial irresponsibility may raise questions about the individual's honesty and put people, property or information systems at risk, although financial debt should not in and of itself be cause for denial.

(G) Deliberate omission, concealment, or falsification of relevant facts or deliberately providing false or misleading information to an employer, investigator, security official, competent medical authority, or other official U.S. Government representative, particularly when doing so results in personal benefit or which results in a risk to the safety of people and proper safeguarding of property and information systems.

(iii) Circumstances relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk include:

(A) The behavior happened so long ago, was minor in nature, or happened under such unusual circumstances that it is unlikely to recur.

(B) Charges were dismissed or evidence was provided that the person did not commit the offense and details and reasons support his or her innocence.

(C) Improper or inadequate advice from authorized personnel or legal counsel significantly contributed to the individual's omission, of information. When confronted, the individual provided an accurate explanation and made prompt, good-faith effort to correct the situation.

(D) Evidence has been supplied of successful rehabilitation, including but not limited to remorse or restitution, job training or higher education, good employment record, constructive com-

munity involvement, or passage of time without recurrence.

(3) A CAC will not be issued to a person if there is a reasonable basis to believe, based on the individual's material, intentional false statement, deception, or fraud in connection with Federal or contract employment, that issuance of a CAC poses an unacceptable risk.

(i) The individual's conduct involving questionable judgment, lack of candor, or unwillingness to comply with rules and regulations can raise questions about an individual's honesty, reliability, trustworthiness, and put people, property, or information systems at risk.

(ii) Therefore, conditions that may be disqualifying include material, intentional falsification, deception or fraud related to answers or information provided during the employment process for the current or a prior Federal or contract employment (e.g., on the employment application or other employment, appointment or investigative documents, or during interviews.)

(iii) Circumstances relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk include:

(A) The misstated or omitted information was so long ago, was minor, or happened under such unusual circumstances that it is unlikely to recur.

(B) The misstatement or omission was unintentional or inadvertent and was followed by a prompt, good-faith effort to correct the situation.

(4) A CAC will not be issued to a person if there is a reasonable basis to believe, based on the nature or duration of the individual's alcohol abuse without evidence of substantial rehabilitation, that issuance of a CAC poses an unacceptable risk.

(i) An individual's abuse of alcohol may put people, property, or information systems at risk. Alcohol abuse can lead to the exercise of questionable judgment or failure to control impulses, and may put people, property, or information systems at risk, regardless of whether he or she is diagnosed as an abuser of alcohol or alcohol dependent. A person's long-term abuse of alcohol without evidence of substantial

rehabilitation may indicate that granting a CAC poses an unacceptable safety risk in a U.S. Government facility.

(ii) Therefore, conditions that may be disqualifying include:

(A) A pattern of alcohol-related arrests.

(B) Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job.

(C) Current continuing abuse of alcohol.

(D) Failure to follow any court order regarding alcohol education, evaluation, treatment, or abstinence.

(iii) Circumstances relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk include:

(A) The individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an abuser of alcohol).

(B) The individual is participating in counseling or treatment programs, has no history of previous treatment or relapse, and is making satisfactory progress.

(C) The individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare. He or she has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in an alcohol treatment program. The individual has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

(5) A CAC will not be issued to a person if there is a reasonable basis to believe, based on the nature or duration of the individual's illegal use of narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation, that issuance of a CAC poses an unacceptable risk.

(i) An individual's abuse of drugs may put people, property, or information systems at risk. Illegal use of narcotics, drugs, or other controlled substances, to include abuse of prescrip-

tion or over-the-counter drugs, can raise questions about his or her trustworthiness, or ability or willingness to comply with laws, rules, and regulations. For example, a person's long-term illegal use of narcotics without evidence of substantial rehabilitation may indicate that granting a CAC poses an unacceptable safety risk in a U.S. Government facility.

(ii) Therefore, conditions that may be disqualifying include:

(A) Current or recent illegal drug use, serious narcotic, or other controlled substance offense.

(B) A pattern of drug-related arrests or problems in employment.

(C) Illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution of illegal drugs, or possession of drug paraphernalia.

(D) Diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence.

(E) Evaluation of drug abuse or drug dependence by a licensed clinical social worker who is a staff member of a recognized drug treatment program.

(F) Failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional.

(G) Any illegal drug use after formally agreeing to comply with rules or regulations prohibiting drug use.

(H) Any illegal use or abuse of prescription or over-the-counter drugs.

(iii) Circumstances relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk include:

(A) The behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur (e.g., clear, lengthy break since last use; strong evidence the use will not occur again).

(B) A demonstrated intent not to abuse any drugs in the future, such as:

(1) Abstaining from drug use.

(2) Disassociating from drug-using associates and contacts.

(3) Changing or avoiding the environment where drugs were used.

(C) Abuse of prescription drugs followed a severe or prolonged illness during which these drugs were prescribed and abuse has since ended.

(D) Satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

(6) A CAC will not be issued to a person if a statutory or regulatory bar prevents the individual's contract employment; or would prevent Federal employment under circumstances that furnish a reasonable basis to believe that issuance of a CAC poses an unacceptable risk.

(i) The purpose of this standard is to verify whether there is a bar on contract employment, and whether the contract employee is subject to a Federal employment debarment for reasons that also pose an unacceptable risk in the contracting context. For example, a person's 5-year bar on Federal employment based on a felony conviction related to inciting a riot or civil disorder, as specified in 5 U.S.C. 7313, may indicate that granting a CAC poses an unacceptable risk to persons, property, and assets in U.S. Government facilities.

(ii) Therefore, conditions that may be disqualifying include:

(A) A debarment was imposed by OPM, DoD, or other Federal agencies when the conduct poses an unacceptable risk to people, property, or information systems.

(B) The suitability debarment was based on the presence of serious suitability issues when the conduct poses an unacceptable risk to people, property, or information systems.

(iii) Circumstances relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk include:

(A) Applicant proves the reason(s) for the debarment no longer exists.

(B) The debarment is job or position-specific and is not applicable to the job currently under consideration.

(7) A CAC will not be issued to a person if the individual has knowingly and willfully engaged in acts or activities

designed to overthrow the U.S. Government by force.

(i) Individuals entrusted with access to U.S. Government property and information systems must not put the U.S. Government at risk.

(ii) Therefore, conditions that may be disqualifying include:

(A) Illegal involvement in, support of, training to commit, or advocacy of any act of sabotage, espionage, treason or sedition against the United States of America.

(B) Association or agreement with persons who attempt to or commit any of the acts in paragraph (d)(7)(ii)(A) of this section with the specific intent to further those unlawful aims.

(C) Association or agreement with persons or organizations that advocate, threaten, or use force or violence, or use any other illegal or unconstitutional means in an effort to overthrow or influence the U.S. Government.

(iii) Circumstances relevant to the determination of whether there is a reasonable basis to believe there is an unacceptable risk include:

(A) The behavior happened so long ago, was minor, or happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's current trustworthiness.

(B) The person was not aware of the person's or organization's dedication to illegal, treasonous, or seditious activities or did not have the specific intent to further the illegal, treasonous, or seditious ends of the person or organization.

(C) The individual did not have the specific intent to incite others to advocate, threaten, or use force or violence, or use any other illegal or unconstitutional means to engage in illegal, treasonous, or seditious activities.

(D) The individual's involvement in the activities was for an official purpose.

## PART 158—OPERATIONAL CONTRACT SUPPORT

|       |                   |
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## § 158.1

158.6 Procedures.

158.7 Guidance for contractor medical and dental fitness.

AUTHORITY: Public Law 110-181; Public Law 110-417.

SOURCE: 76 FR 81808, Dec. 29, 2011, unless otherwise noted.

### § 158.1 Purpose.

This part establishes policy, assigns responsibilities, and provides procedures for operational contract support (OCS), including OCS program management, contract support integration, and integration of defense contractor personnel into contingency operations outside the United States in accordance with the guidance in DoD Directive 3020.49 (see <http://www.dtic.mil/whs/directives/corres/pdf/302049p.pdf>) and the authority in DoD Directive 5134.01 (see <http://www.dtic.mil/whs/directives/corres/pdf/513401p.pdf>).

### § 158.2 Applicability.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense agencies, the DoD field activities, and all other organizational entities within the Department of Defense (hereinafter referred to collectively as the “DoD Components”).

(b) DoD operations (contingency, humanitarian assistance, and other peace operations) outside the United States; other military operations as determined by a Combatant Commander (CCDR); or as directed by the Secretary of Defense (hereinafter referred to collectively as “applicable contingency operations”).

### § 158.3 Definitions.

Unless otherwise noted, the following terms and their definitions are for the purposes of this part.

*Acquisition.* Defined in 48 CFR 2.101.

*Contingency acquisition.* The process of acquiring supplies, services, and construction in support of contingency operations.

*Contingency contract.* A legally binding agreement for supplies, services,

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and construction let by Government contracting officers in the operational area, as well as other contracts that have a prescribed area of performance within a designated operational area. Contingency contracts include theater support, external support, and systems support contracts.

*Contingency contractor personnel.* Individual contractors, individual sub-contractors at all tiers, contractor employees, and sub-contractor employees at all tiers under all contracts supporting the Military Services during contingency operations.

*Contingency operation.* Defined in Joint Publication 1-02 (see [http://www.dtic.mil/doctrine/new\\_pubs/jp1\\_02.pdf](http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf)).

*Contingency program management.* The process of planning, organizing, staffing, controlling, and leading the operational contract support (OCS) efforts to meet joint force commander (JFC) objectives.

*Contract administration.* A subset of contracting that includes efforts that ensure supplies and services are delivered in accordance with the conditions and standards expressed in the contract. Contract administration is the oversight function, from contract award to contract closeout, performed by contracting professionals and designated non-contracting personnel.

*Contract administration delegation.* A CCDR policy or process related to theater business clearance that allows the CCDR to exercise control over the assignment of contract administration for that portion of contracted effort that relates to performance in, or delivery to, designated area(s) of operations and allows the CCDR to exercise oversight to ensure the contractor’s compliance with CCDR and subordinate task force commander policies, directives, and terms and conditions. Whether the CCDR chooses to implement such a process depends on the situation.

*Contracting.* Defined in 48 CFR 2.101.

*Contracting officer.* Defined in 48 CFR 2.101.

*Contracting Officer’s Representative (COR).* Defined in 48 CFR 202.101.

*Contractor management.* The oversight and integration of contractor personnel and associated equipment providing

support to the joint force in a designated operational area.

*Contractors Authorized to Accompany the Force (CAAF).* Contractor personnel, including all tiers of subcontractor personnel, who are authorized to accompany the force in applicable contingency operations and who have been afforded CAAF status through Letter of Authorization (LOA). CAAF generally include all U.S. citizen and Third Country National (TCN) employees not normally residing within the operational area whose area of performance is in the direct vicinity of U.S. forces and who routinely are co-located with U.S. forces (especially in non-permissive environments). Personnel co-located with U.S. forces shall be afforded CAAF status through LOA. In some cases, CCDR subordinate commanders may designate mission-essential Host Nation (HN) or Local national (LN) contractor employees (e.g., interpreters) as CAAF. CAAF includes contractors identified as contractors deploying with the force in DoD Instruction 3020.41 and DoD Directive 3002.01E (see <http://www.dtic.mil/whs/directives/corres/pdf/300201p.pdf>).

CAAF status does not apply to contractor personnel in support of contingencies within the boundaries and territories of the United States.

*Defense contractor.* Any individual, firm, corporation, partnership, association, or other legal non-Federal entity that enters into a contract directly with the DoD to furnish services, supplies, or construction. Foreign governments, representatives of foreign governments, or foreign corporations wholly owned by foreign governments that have entered into contracts with the DoD are not defense contractors.

*Designated reception site.* The organization responsible for the reception, staging, integration, and onward movement of contractors deploying during a contingency. The designated reception site includes assigned joint reception centers and other Service or private reception sites.

*Essential contractor service.* A service provided by a firm or an individual under contract to the DoD to support vital systems including ships owned, leased, or operated in support of military missions or roles at sea and associated support activities, including in-

stallation, garrison, base support, and linguist/translator services considered of utmost importance to the U.S. mobilization and wartime mission. The term also includes services provided to Foreign Military Sales customers under the Security Assistance Program. Services are considered essential because:

(1) The DoD Components may not have military or DoD civilian employees to perform the services immediately.

(2) The effectiveness of defense systems or operations may be seriously impaired and interruption is unacceptable when the services are not available immediately.

*External support contracts.* Pre-arranged contracts or contracts awarded during a contingency from contracting organizations whose contracting authority does not derive directly from theater support or systems support contracting authorities.

*Functional Combatant Commands.* U.S. Joint Forces Command (USJFCOM), U.S. Special Operations Command, U.S. Strategic Command, and U.S. Transportation Command.

*Geographic Combatant Commands.* U.S. Africa Command, U.S. Central Command, U.S. European Command, U.S. Northern Command, U.S. Pacific Command, and U.S. Southern Command.

*Hostile environment.* Defined in Joint Publication 1-02.

*Host nation (HN).* A nation that permits, either by written agreement or official invitation, government representatives and/or agencies of another nation to operate, under specified conditions, within its borders.

*Letter of authorization (LOA).* A document issued by a procuring contracting officer or designee that authorizes contractor personnel to accompany the force to travel to, from, and within an operational area, and outlines Government-furnished support authorizations within the operational area, as agreed to under the terms and conditions of the contract. For more information, see 48 CFR PGI 225.74.

*Local national (LN).* An individual who is a permanent resident of the nation in which the United States is conducting contingency operations.

*Long-term care.* A variety of services that help a person with comfort, personal, or wellness needs. These services assist in the activities of daily living, including such things as bathing and dressing. Sometimes known as custodial care.

*Non-CAAF.* Personnel who are not designated as CAAF, such as LN employees and non-LN employees who are permanent residents in the operational area or TCNs not routinely residing with U.S. forces (and TCN expatriates who are permanent residents in the operational area) who perform support functions away from the close proximity of, and do not reside with, U.S. forces. Government-furnished support to non-CAAF is typically limited to force protection, emergency medical care, and basic human needs (e.g., bottled water, latrine facilities, security, and food when necessary) when performing their jobs in the direct vicinity of U.S. forces.

*Operational contract support (OCS).* The ability to orchestrate and synchronize the provision of integrated contract support and management of contractor personnel providing support to the joint force within a designated operational area.

*Prime contract.* Defined in 48 CFR 3.502.

*Qualifying contingency operation.* In accordance with Article 2(a)(10) of the Uniform Code of Military Justice (UCMJ) (see <http://www.au.af.mil/au/awc/awcgate/ucmj.htm>), a military contingency operation conducted for the purpose of engaging an enemy or a hostile force in combat where disciplinary authority over civilians under Article 2(a)(10) is governed by the UCMJ, the Secretary of Defense Memorandum, “UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations,” dated March 10, 2008 (see <http://www.dtic.mil/whs/directives/corres/pdf/DTM-08-009.pdf>), and the Manual for Courts-Martial, United States, current edition (see <http://www.au.af.mil/au/awc/awcgate/law/mcm.pdf>).

*Replacement center.* The centers at selected installations that ensure per-

sonnel readiness processing actions have been completed prior to an individual reporting to the aerial port of embarkation for deployment to a designated operational area.

*Requiring activity.* The organization charged with meeting the mission and delivering the requirements the contract supports. This activity is responsible for delivering the services to meet the mission if the contract is not in effect. The requiring activity may also be the organizational unit that submits a written requirement, or statement of need, for services required by a contract. This activity is responsible for ensuring compliance with DoD Instruction 1100.22 (see <http://www.dtic.mil/whs/directives/corres/pdf/110022p.pdf>) and Deputy Secretary of Defense Memorandums, “In-sourcing Contracted Services—Implementation Guidance” dated May 28, 2009, and “Implementation of Section 324 of the National Defense Authorization Act for Fiscal Year 2008 (FY 2008 NDAA)—Guidelines and Procedures on In-Sourcing New and Contracted Out Functions” dated April 4, 2008 (for both Deputy Secretary of Defense Memorandums see [http://prhome.defense.gov/RSI/REQUIREMENTS/INSOURCE/INSOURCE\\_GUIDANCE.ASPX](http://prhome.defense.gov/RSI/REQUIREMENTS/INSOURCE/INSOURCE_GUIDANCE.ASPX)).

*Subcontract.* Defined in 48 CFR 3.502.

*Systems support contracts.* Prearranged contracts awarded by Service acquisition program management offices that provide fielding support, technical support, maintenance support, and, in some cases, repair parts support, for selected military weapon and support systems. Systems support contracts routinely are put in place to provide support to many newly fielded weapons systems, including aircraft, land combat vehicles, and automated command and control systems. Systems support contracting authority, contract management authority, and program management authority reside with the Service system materiel acquisition program offices. Systems support contractors, made up mostly of U.S. citizens, provide support in continental U.S. (CONUS) and often deploy with the force in both training and contingency operations. The JFC generally has less control over systems support

contracts than other types of contracts.

*Theater business clearance.* A CCDR policy or process to ensure visibility of and a level of control over systems support and external support contracts executing or delivering support in designated area(s) of operations. The breadth and depth of such requirements will be situational. Theater business clearance is not necessarily discrete and can be implemented to varying degrees on a continuum during all phases of an operation.

*Theater support contracts.* Contingency contracts awarded by contracting officers deployed to an operational area serving under the direct contracting authority of the Service component, special operations force command, or designated joint contracting authority for the designated contingency operation.

*Uniquely military functions.* Defined in DoD Instruction 1100.22, "Policy and Procedures for Determining Workforce Mix."

#### § 158.4 Policy.

It is DoD policy that:

(a) OCS actions (e.g., planning, accountability, visibility, deployment, protection, and redeployment requirements) shall be implemented to:

(1) Incorporate appropriate contingency program management processes during applicable contingency operations.

(2) Comply with applicable U.S., international, and local laws, regulations, policies, and agreements.

(3) Use contract support only in appropriate situations consistent with 48 CFR subpart 7.5, 48 CFR 207.503, and DoD Instruction 1100.22, "Policy and Procedures for Determining Workforce Mix."

(4) Fully consider, plan for, integrate, and execute acquisition of, contracted support, including synchronizing and integrating contracted support flowing into an operational area from systems support, external support and theater support contracts and managing the associated contractor personnel, into applicable contingency operations consistent with CCDR policies and procedures and Joint Publication (JP) 4-10, "Operational Contract Support," (see

[http://www.dtic.mil/doctrine/new\\_pubs/jp4\\_10.pdf](http://www.dtic.mil/doctrine/new_pubs/jp4_10.pdf)).

(b) Contractors are generally responsible for providing their own logistical support. However, in austere, uncertain, and/or hostile environments, the DoD may provide logistical support to ensure continuation of essential contractor services. CAAF may receive Government-furnished support commensurate with the operational situation in accordance with the terms and conditions of their contract.

(c) Contracting officers will ensure that contracts used to support DoD operations require:

(1) That CAAF deploying from outside the operational area be processed through formal deployment (replacement) centers or a DoD-approved equivalent process prior to departure, and through in-theater reception centers upon arrival in the operational area, as specified in § 158.6 of this part.

(2) That contractors provide personnel who are medically, dentally, and psychologically fit, and if applicable, professionally tested and certified, to perform contract duties in applicable contingency operations. Section 158.6 of this part details medical support and evacuation procedures. Section 158.7 of this part provides guidance on contractor medical, psychological, and dental fitness.

(3) Solicitations and contracts address any applicable host country and designated operational area performance considerations.

(d) Contracts for highly sensitive, classified, cryptologic, and intelligence projects and programs shall implement this part to the maximum extent practicable, consistent with applicable laws, Executive orders, Presidential Directives, and DoD issuances.

(e) In applicable contingency operations, contractor visibility and accountability shall be maintained through a common joint database, the Synchronized Predeployment and Operational Tracker (SPOT) or its successor.



**§ 158.5 Responsibilities.**

(a) The Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) shall develop, coordinate, establish, and oversee the implementation of DoD policy for managing OCS.

(b) The Director, Defense Procurement and Acquisition Policy (DPAP), under the authority, direction, and control of the USD(AT&L), shall:

(1) Oversee all acquisition and procurement policy matters including the development of DoD policies for contingency contracting and the coordinated development and publication of contract prescriptions and standardized contract clauses in 48 CFR 207.503, 252.225-7040, and 202.101, and associated contracting officer guidance in 48 CFR PGI 225.74. This includes working collaboratively with OSD Principal Staff Assistants, Chairman of the Joint Chiefs of Staff (CJCS) representatives, and the DoD Component Heads in the development of OCS related policies and ensuring that contracting equities are addressed.

(2) Develop contingency contracting policy and implement other OCS related policies into DFARS in support of applicable contingency operations.

(3) Ensure implementation by contracting officers and CORs of relevant laws and policies in 48 CFR Subparts 4.1301, 4.1303, 52.204-9, 7.5, 7.503(e), 2.101, and 3.502; 48 CFR Subparts 207.503, 252.225-7040 and 202.101; and 48 CFR PGI 225.74.

(4) Propose legislative initiatives that support accomplishment of the contingency contracting mission.

(5) Improve DoD business processes for contingency contracting while working in conjunction with senior procurement executives across the DoD. Assist other OSD Principal Staff Assistants, CJCS representatives, and DoD Component Heads in efforts to improve other OCS related business processes by ensuring contracting equities and interrelationships are properly addressed.

(6) Support efforts to resource the OCS toolset under the lead of the Deputy Assistant Secretary of Defense for Program Support (DASD(PS)) pursuant to paragraph (c)(6)(ii) of this section.

(7) Coordinate activities with other Government agencies to provide unity of effort. Maintain an open, user-friendly source for reports and lessons learned and ensure the coordinated development and publication, through participation on the FAR Council, of standardized contract clauses.

(8) As a member of the Contracting Functional Integrated Planning Team, collaborate with the Defense Acquisition University to offer education for all contingency contracting personnel.

(9) Participate in the OCS Functional Capability Integration Board (FCIB) to facilitate development of standard joint OCS concepts, policies, doctrine, processes, plans, programs, tools, reporting, and training to improve effectiveness and efficiency.

(10) In concert with the supported Combatant Commander, coordinate in advance of execution Executive Agency for Head of Contracting Activity requisite Operational Plans (OPLANS), Concept Plans (CONPLANS), and operations, where a lead service or a Joint Theater Support Contracting Command (JTSCC) will be established.

(c) The DASD(PS), under the authority, direction, and control of the USD(AT&L) through the Assistant Secretary of Defense for Logistics and Materiel Readiness (ASD(L&MR)), is responsible for oversight and management to enable the orchestration, integration, and synchronization of the preparation and execution of acquisitions for DoD contingency operations, and shall:

(1) Coordinate policy relating to field operations and contingency contractor personnel in forward areas and the battlespace. In cooperation with the Joint Staff, Military Departments, and OSD, serve as the DoD focal point for the community of practice and the community of interest for efforts to improve OCS program management and oversight.

(2) Co-chair with the Vice Director, Directorate for Logistics, Joint Staff, (VDJ4) the OCS FCIB to lead and coordinate OCS with OSD, Military Department, and Defense Agency senior procurement officers in accordance with the OCS FCIB Charter (see [http://www.acq.osd.mil/log/PS/fcib/OCS\\_FCIB\\_charter\\_USA000737-09\\_signed.pdf](http://www.acq.osd.mil/log/PS/fcib/OCS_FCIB_charter_USA000737-09_signed.pdf)).

(3) Ensure integration of joint OCS activities across other joint capability areas and joint warfighting functions.

(4) Provide input to the Logistics Capability Portfolio Manager and the CJCS in the development of capability priorities; review final capability priorities; and provide advice to the Under Secretary of Defense for Policy (USD(P)) in developing the Quadrennial Defense Review (see [http://www.defense.gov/qdr/images/QDR\\_as\\_of\\_12Feb10\\_1000.pdf](http://www.defense.gov/qdr/images/QDR_as_of_12Feb10_1000.pdf)) and defense planning and programming guidance, as appropriate.

(5) Serve as the DoD lead to:

(i) Develop a programmatic approach for the preparation and execution of orchestrating, integrating, and synchronizing acquisitions for contingency operations.

(ii) Establish and oversee DoD policies for OCS program management in the planning and execution of combat, post-combat, and other contingency operations involving the Military Departments, other Government agencies, multinational forces, and non-governmental organizations, as required.

(6) Improve DoD business practices for OCS.

(i) In consultation with the Under Secretary of Defense for Personnel and Readiness (USD(P&R)); the Director, DPAP; and the CJCS, ensure a joint web-based contract visibility and contractor personnel accountability system (currently SPOT) is designated and implemented, including business rules for its use.

(ii) Lead the effort to resource the OCS toolset providing improved OCS program management, planning, OCS preparation of the battlefield, systems support, and theater support contracts, contractor accountability systems, and automated contract process capabilities, including reach back from remote locations to the national defense contract base (*e.g.*, hardware and software).

(7) In consultation with the Heads of the OSD and DoD Components, provide oversight of experimentation efforts focusing on concept development for OCS execution.

(8) Serve as the DoD lead for the oversight of training and education of non-acquisition, non-contracting per-

sonnel identified to support OCS efforts.

(d) The Director, DLA, under the authority, direction, and control of the USD(AT&L), through the ASD(L&MR) shall, through the Joint Contingency Acquisition Support Office (JCASO), provide enabler OCS support to CCDR OCS planning efforts and training events, and, when requested, advise, assist, and support JFC oversight of OCS operations. Specifically, the Director, JCASO, shall:

(1) Provide OCS planning support to the CCDR through Joint OCS Planners embedded within the geographic Combatant Command staff. Maintain situational awareness of all plans with significant OCS equity for the purposes of exercise support and preparation for operational deployment. From JCASO forward involvement in exercises and operational deployments, develop and submit lessons learned that result in improved best practices and planning.

(2) When requested, assist the Joint Staff in support of the Chairman's OCS responsibilities listed in paragraph (1) of this section.

(3) Facilitate improvement in OCS planning and execution through capture and review of joint OCS lessons learned. In cooperation with USJFCOM, Military Services, other DoD Components, and interagency partners, collect joint operations focused OCS lessons learned and best practices from contingency operations and exercises to inform OCS policy and recommend doctrine, organization, training, materiel, leadership, personnel, and facilities (DOTMLPF) solutions.

(4) Participate in joint exercises, derive OCS best practices from after-action reports and refine tactics/techniques/procedures, deployment drills, and personal and functional training (to include curriculum reviews and recommendations). Assist in the improvement of OCS related policy, doctrine, rules, tools, and processes.

(5) Provide the geographic CCDRs, when requested, with deployable experts to assist the CCDR and subordinate JFCs in managing OCS requirements in a contingency environment.

(6) Practice continuous OCS-related engagement with interagency representatives and multinational partners, as appropriate and consistent with existing authorities.

(7) Participate in the OCS FCIB to facilitate development of standard joint OCS concepts, policies, doctrine, processes, plans, programs, tools, reporting, and training to improve effectiveness and efficiency.

(e) The Director, Defense Contract Management Agency (DCMA) under the authority, direction, and control of the USD(AT&L), through the Assistant Secretary of Defense for Acquisition (ASD(Acquisition)), plans for and performs contingency contract administration services in support of the CJCS and CCDRs in the planning and execution of military operations, consistent with DCMA's established responsibilities and functions.

(f) The Under Secretary of Defense for Intelligence (USD(I)), as the Principal Staff Assistant for intelligence, counterintelligence, and security in accordance with DoD Directive 5143.01 (see <http://www.dtic.mil/whs/directives/corres/pdf/514301p.pdf>), shall:

(1) Develop, coordinate, and oversee the implementation of DoD security programs and guidance for those contractors covered in DoD Instruction 5220.22 (see <http://www.dtic.mil/whs/directives/corres/pdf/522022p.pdf>).

(2) Assist the USD(AT&L) in determining appropriate contract clauses for intelligence, counterintelligence, and security requirements.

(3) Establish policy for contractor employees under the terms of the applicable contracts that support background investigations in compliance with 48 CFR 4.1301, 4.1303, and 52.204-9.

(4) Coordinate security and counterintelligence policy affecting contract linguists with the Secretary of the Army pursuant to DoD Directive 5160.41E (see <http://www.dtic.mil/whs/directives/corres/pdf/516041p.pdf>).

(g) The Assistant Secretary of Defense for Health Affairs (ASD(HA)), under the authority, direction, and control of the USD(P&R), shall assist in the development of policy addressing the reimbursement of funds for qualifying medical support received by

contingency contractor personnel in applicable contingency operations.

(h) The Deputy Assistant Secretary of Defense for Readiness (DASD(Readiness)) under the authority, direction, and control of the USD(P&R), shall develop policy and set standards for managing contract linguist capabilities supporting the total force to include requirements for linguists and tracking linguist and role players to ensure that force readiness and security requirements are met.

(i) The Director, Defense Manpower Data Center (DMDC), under the authority, direction, and control of the USD(P&R), through the Director, DoD Human Resources Activity, shall:

(1) Serve as the central repository of information for all historical data on contractor personnel who have been issued common access cards (CAC) and are included in SPOT or its successor, that is to be archived.

(2) Ensure all data elements of SPOT or its successor to be archived are USD(P&R)-approved and DMDC-system compatible, and ensure the repository is protected at a level commensurate with the sensitivity of the information contained therein.

(j) The Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD(C)/CFO), DoD, shall develop policy addressing the reimbursement of funds for qualifying medical support received by contingency contractor personnel in applicable contingency operations.

(k) The Secretaries of the Military Departments and the Directors of the Defense Agencies and DoD Field Activities shall incorporate this part into applicable policy, doctrine, programming, training, and operations and ensure:

(1) Assigned contracting activities populate SPOT with the required data in accordance with Assistant Secretary of Defense for Logistics and Materiel Readiness Publication, "Business Rules for the Synchronized Predeployment and Operational Tracker (SPOT)," current edition (see <http://www.acq.osd.mil/log/PS/spot.html>) and that information has been reviewed for security and operational security (OPSEC) concerns in accordance with paragraph (c)(3)(ii)(E) of § 158.6.

(2) CAAF meet all theater and/or joint operational area (JOA) admission procedures and requirements prior to deploying to or entering the theater or JOA.

(3) Contracting officers include in the contract:

(i) Appropriate terms and conditions and clause(s) in accordance with 48 CFR 252.225-7040 and 48 CFR PGI 225.74.

(ii) Specific deployment and theater admission requirements according to 48 CFR 252.225-7040 and 48 CFR PGI 225.74, and the applicable CCDR Web sites.

(iii) Specific medical preparation requirements according to paragraph (c)(8) of § 158.6.

(iv) The level of protection to be provided to contingency contractor personnel in accordance with paragraph (d)(5) of § 158.6. Contracting officers shall follow the procedures on the applicable CCDR Web sites to obtain theater-specific requirements.

(v) Government-furnished support and equipment to be provided to contractor personnel with prior coordination and approval of theater adjudication authorities, as referenced on the applicable CCDR Web sites.

(vi) A requirement for contractor personnel to show and have verified by the COR, proof of professional certifications/proficiencies as stipulated in the contract.

(4) Standardized contract accountability financial and oversight processes are developed and implemented.

(5) Requirements packages are completed to include all required documentation (e.g., letter of justification, performance work statement, nominated COR, independent Government estimate (IGE)) are completed and funding strategies are articulated and updated as required.

(6) CORs are planned for, resourced, and sustained as necessary to ensure proper contract management capabilities are in place and properly executed.

(7) Assigned contracting activities plan for, and ensure the contractor plans for, the resources necessary to implement and sustain contractor accountability in forward areas through SPOT or its successor.

(8) Contract support integration plans (CSIPs) and contractor manage-

ment plans (CMPs) are developed as directed by the supported CCDR.

(9) The risk of premature loss of mission-essential OCS is assessed and the mitigation of the loss of contingency contractor personnel in wartime or contingency operations who are performing essential contractor services is properly planned for.

(10) Assigned contracting activities comply with theater business clearance and contract administration delegation policies and processes when implemented by CCDRs to support any phase of a contingency operation.

(11) Agency equities are integrated and conducted in concert with the CCDR's plans for OCS intelligence of the battlefield.

(12) The implementation of a certification of, and a waiver process for, contractor-performed deployment and re-deployment processing in lieu of a formally designated group, joint, or Military Department deployment center.

(13) Support the effort to resource the OCS toolset under the lead of the DASD(PS) pursuant to paragraph (c)(6)(ii) of this section.

(1) The CJCS shall:

(1) Where appropriate, incorporate program management and elements of this part into joint doctrine, joint instructions and manuals, joint training, joint education, joint capability development, joint strategic planning system (e.g., Joint Operation Planning and Execution System (JOPES)), and CCDR oversight.

(2) Co-chair with the VDJ4 the OCS FCIB to lead and coordinate OCS with OSD, Military Department, and Defense Agency senior procurement officers in accordance with OCS FCIB charter. Provide the OCS FCIB with input and awareness of the CJCS functions and activities as defined in 10 U.S.C. 153 and 155.

(3) Perform OCS related missions and functions as outlined in the Joint Staff Manual 5100.01<sup>1</sup> and the Chairman's authorities as defined in 10 U.S.C. (see

<sup>1</sup>This document is classified Restricted, and is available via Secure Internet Protocol Router Network at <http://js.smil.mil>. If the requester is not an authorized user of the classified network the requestor should contact Joint Staff J-1 at (703) 697-9645.

[http://uscode.house.gov/download/title\\_10.shtml](http://uscode.house.gov/download/title_10.shtml)).

(m) The geographic CCDRs and the CDRUSSOCOM (when they are the supported commander) shall:

(1) Plan and execute OCS program management, contract support integration, and contractor management actions in all applicable contingency operations in their AOR.

(2) Conduct integrated planning to determine and synchronize contract support requirements to facilitate OCS planning and contracting and contractor management oversight.

(3) In coordination with the Services and functional components, identify military capabilities shortfalls in all the joint warfighting functions that require contracted solutions. Ensure these requirements are captured in the appropriate CCDR, subordinate JFC, Service component and combat support agency CSIP or other appropriate section of the CONPLAN with time-phased force and deployment data (TPFDD), OPLAN or operation order (OPORD).

(4) Require Service component commanders and supporting Defense Agencies and DoD Field Activities to:

(i) Identify and incorporate contract support and operational acquisition requirements in supporting plans to OPLANs and CONPLANs with TPFDD, and to synchronize their supporting CSIPs, CMPs, and contracted requirements and execution plans within geographic CCDR OPLANs and CONPLANs with TPFDD.

(ii) Review their supporting CSIPs and CMPs and identify funding strategies for particular contracted capabilities identified to support each OPLAN and CONPLAN.

(iii) Develop acquisition-ready requirements documents as identified in CSIPs including performance work statements, IGEs, task order change documents, and sole source justifications.

(iv) Ensure CAAF and their equipment are incorporated into TPFDD development and deployment execution processes in accordance with CJCS Manual 3122.02C, JOPES Volume III, “Crisis Action Time-Phased Force and Deployment Data Development and Deployment Execution,” June 19, 2006.

(v) Ensure financial management policies and procedures are in place in accordance with DoD 7000.14-R (see <http://comptroller.defense.gov/fmr/>) and applicable service specific financial management implementation guidance.

(5) Develop and publish comprehensive OCS plans. Synchronize OCS requirements among all Service components and Defense Agencies and DoD Field Activities operating within or in support of their area of responsibility (AOR). Optimize operational unity of effort by analyzing existing and projected theater support and external support contracts to minimize, reduce, and eliminate redundant and overlapping requirements and contracted capabilities.

(6) Ensure OCS requirements for the Defense Agencies, multinational partners, and other Governmental agencies are addressed and priorities of effort for resources are deconflicted and synchronized with OCS to military forces.

(7) Ensure policies and procedures are in place for reimbursing Government-furnished support of contingency contractor personnel, including (but not limited to) subsistence, military air, intra-theater lift, and medical treatment, when applicable.

(8) Ensure CAAF and equipment requirements (regardless if provided by the Government or the contractor) in support of an operation are incorporated into plan TPFDDs.

(9) Review Service component assessments of the risk of premature loss of essential contractor services and review contingency plans to mitigate potential premature loss of essential contractor services.

(10) Establish and communicate to contracting officers theater and/or JOA CAAF admission procedures and requirements, including country and theater clearance, waiver authority, immunizations, required training or equipment, and any restrictions necessary to ensure proper deployment, visibility, security, accountability, and redeployment of CAAF to their AORs and/or JOAs. Implement DoD Foreign Clearance Guide, current edition (available at <https://www.fcg.pentagon.mil/>).

(11) Coordinate with the Office of the USD(P) to ensure special area, country, and theater personnel clearance requirements are current in accordance with DoD Foreign Clearance Guide, and coordinate with affected agencies (*e.g.*, Intelligence Community agencies) to ensure that entry requirements do not impact mission accomplishment.

(12) Determine and distribute specific theater OCS organizational guidance in plans, to include command, control, and coordination, and Head Contracting Authority (HCA) relationships.

(13) Develop and distribute AOR/JOA-wide contractor management requirements, directives, and procedures into a separate contractor management plan as an annex or the appropriate section of the appropriate plan.

(14) Establish, staff, and execute appropriate OCS-related boards, centers, and working groups.

(15) Integrate OCS into mission rehearsals and training exercises.

(16) When contracts are being or will be executed in an AOR/JOA, designate and identify the organization responsible for managing and prescribing processes to:

(i) Establish procedures and assign authorities for adjudicating requests for provision of Government-furnished equipment and services to contractors when such support is operationally required. This should include procedures for communicating approval to the requiring activity and the contracting officer for incorporation into contracts.

(ii) Authorize trained and qualified contractor personnel to carry weapons for personal protection not related to the performance of contract-specific duties.

(iii) Establish procedures for, including coordination of, inter-theater strategic movements and intra-theater operational and tactical movements of contractor personnel and equipment.

(iv) Collect information on and refer to the appropriate Government agency offenses, arrests, and incidents of alleged misconduct committed by contractor personnel on or off-duty.

(v) Collect and maintain information relating to CAAF and selected non-CAAF kidnappings, injuries, and deaths.

(vi) Identify the minimum standards for conducting and processing background checks, and for issuing access badges to HN, LN, and TCN personnel employed, directly or indirectly, through Government-awarded contracts.

(vii) Remove CAAF from the designated operational area who do not meet medical deployment standards, whose contract period of performance has expired, or who are noncompliant with contract requirements.

(viii) Designate additional contractor personnel not otherwise covered by personnel recovery policy for personnel recovery support in accordance with DoD Directive 3002.01E.

(ix) Ensure that contract oversight plans are developed, and that adequate personnel to assist in contract administration are identified and requested, in either a separate contractor management plan as an annex of plans and orders and/or within appropriate parts of plans and orders.

(x) Develop a security plan for the protection of contingency contractor personnel according to paragraph (d)(5) of § 156.8.

(xi) Develop and implement theater business clearance and, if required, Contract Administration Delegation policies and procedures to ensure visibility of and a level of control over systems support and external support contracts providing or delivering contracted support in contingency operations.

(17) Enforce the individual arming policy and use of private security contractors in accordance with 32 CFR part 159 and DoD Directive 5210.56 (see <http://www.dtic.mil/whs/directives/correspdf/521056p.pdf>).

(18) Establish a process for reviewing exceptions to medical standards (waivers) for the conditions in paragraph (j) of § 158.7, including a mechanism to track and archive all approved and denied waivers and the medical conditions requiring waiver. Additionally, serve as the final approval/disapproval authority for all exceptions to this policy, except in special operations where the Theater Special Operations Command (TSOC) commander has the final approval or disapproval authority.

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(19) Establish mechanisms for ensuring contractors are required to report offenses alleged to have been committed by or against contractor personnel to appropriate investigative authorities.

(20) Assign responsibility for providing victim and witness protection and assistance to contractor personnel in connection with alleged offenses.

(21) Ensure applicable predeployment, deployment, in-theater management, and redeployment guidance and procedures are readily available and accessible by planners, requiring activities, contracting officers, contractors, contractor personnel and other interested parties on a Web page, and related considerations and requirements are integrated into contracts through contract terms, consistent with security considerations and requirements.

(22) Ensure OCS preparation of the battlefield is vetted with intelligence agencies when appropriate.

(23) Integrate OCS planning with operational planning across all primary and special staff sections.

(n) The functional CCDRs utilizing OCS shall ensure their Commands follow the procedures in this part and applicable operational-specific guidance provided by the supported geographic CCDR.

### § 158.6 Procedures.

(a) *Requirements, Relationships, and Restrictions.* In implementing this part, the Heads of DoD Components shall abide by applicable laws, regulations, DoD policy, and international agreements as they relate to contractor personnel supporting applicable contingency operations.

#### (1) *Status of Contractor Personnel.*

(i) Pursuant to applicable law, contracted services may be utilized in applicable contingency operations for all functions not inherently governmental. Contractor personnel may be utilized in support of such operations in a non-combat role as long as contractor personnel residing with the force in foreign contingencies have been designated as CAAF by the force they accompany and are provided with an appropriate identification card pursuant to the Geneva Convention Relative to

the Treatment of Prisoners of War (see <http://www.icrc.org/ihl.nsf/FULL/375>). If captured during international armed conflict, contractors with CAAF status are entitled to prisoner of war status. Some contractor personnel may be covered by the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (see <http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/6756482d86146898c125641e004aa3c5>) should they be captured during armed conflict. All contractor personnel may be at risk of injury or death incidental to enemy actions while supporting military operations. CAAF status does not apply to contractor personnel supporting domestic contingencies.

(ii) Contractor personnel may support applicable contingency operations such as by providing communications support; transporting munitions and other supplies; performing maintenance functions for military equipment; providing private security services; providing foreign language interpretation and translation services, and providing logistic services such as billeting and messing. Each service to be performed by contractor personnel in applicable contingency operations shall be reviewed on a case-by-case basis in consultation with the cognizant manpower official and servicing legal office to ensure compliance with DoD Instruction 1100.22 and relevant laws and international agreements.

(2) *Local and Third-Country Laws.* Subject to the application of international agreements, all contingency contractor personnel must comply with applicable local and third country laws. Contractor personnel may be hired from U.S., LN, or third country sources and their status may change (*e.g.*, from non-CAAF to CAAF), depending on where they are detailed to work by their employer or on the provisions of the contract. The CCDRs, as well as subordinate commanders and Service component commanders, and the Directors of the Defense Agencies and DoD Field Activities should be cognizant of limiting factors regarding the employment of LN and TCN personnel. Limiting factors may include imported labor worker permits; workforce and hour restrictions; medical, life, and

disability insurance coverage; taxes, customs, and duties; cost of living allowances; hardship differentials; access to classified information; and hazardous duty pay.

(3) *U.S. Laws.* CAAF, with some exceptions, are subject to U.S. laws and Government regulations. For example, all U.S. citizen and TCN CAAF may be subject to prosecution pursuant to Federal law including, but not limited to, 18 U.S.C. 3261 (also known and hereinafter referred to as “The Military Extraterritorial Jurisdiction Act of 2000 (MEJA), as amended”). MEJA extends U.S. Federal criminal jurisdiction to certain defense contractor personnel for offenses committed outside U.S. territory. Additionally, CAAF are subject to prosecution pursuant to 10 U.S.C. chapter 47 (also known and hereinafter referred to as “The Uniform Code of Military Justice (UCMJ)”) in accordance with Secretary of Defense Memorandum (“UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations,” March 10, 2008). Other laws may allow prosecution of offenses by contractor personnel, such as 18 U.S.C. 7(9). Immediate consultation with the servicing legal office and the contracting officer is required in all cases of suspected MEJA and/or UCMJ application to conduct by CAAF personnel, especially in non-combat operations or in undeclared contingencies.

(4) *Contractual Relationships.* The contract is the only legal basis for the relationship between the DoD and the contractor. The contract shall specify the terms and conditions, to include minimum acceptable professional standards, under which the contractor is to perform, the method by which the contractor will be notified of the deployment procedures to process contractor personnel, and the specific support relationship between the contractor and the DoD. The contract shall contain standardized clauses to ensure efficient deployment, accountability, visibility, protection, authorized levels of health service, and other support, sustainment, and redeployment of contractor personnel. It shall

also specify the appropriate flow-down of provisions and clauses to sub-contracts, and shall state that the service performed by contractor personnel is not considered to be active duty or active service in accordance with DoD Directive 1000.20 (see <http://www.dtic.mil/whs/directives/corres/pdf/100020p.pdf>) and 38 U.S.C. 106.

(5) *Restrictions on Contracting Inherently Governmental Functions.* Inherently governmental functions and duties are barred from private sector performance in accordance with DoD Instruction 1100.22, 48 CFR 207.503, 48 CFR 7.5, Public Law (Pub. L.) 105-270, and Office of Management and Budget Circular A-76 (see [http://www.whitehouse.gov/omb/circulars\\_a076\\_a76\\_incl\\_tech\\_correction](http://www.whitehouse.gov/omb/circulars_a076_a76_incl_tech_correction)). As required by 48 CFR 7.503(e), 48 CFR 207.503, and Deputy Secretary of Defense Memorandum, “In-sourcing Contracted Services—Implementation Guidance” dated May 28, 2009, contracting officials shall request requiring officials to certify in writing that functions to be contracted (or to continue to be contracted) are not inherently governmental. Requiring officials shall determine whether functions are inherently governmental based on the guidance in DoD Instruction 1100.22.

(6) *Restrictions on Contracting Functions Exempted From Private Sector Performance.* As required by 48 CFR 207.503 and Deputy Secretary of Defense Memorandum, “In-sourcing Contracted Services—Implementation Guidance,” May 28, 2009, contracting officials shall request requiring officials to certify in writing that functions to be contracted (or continue to be contracted) are not exempted from private sector performance. Requiring officials shall determine whether functions are exempted from private sector performance based on the guidance in DoD Instruction 1100.22.

(7) *Requirements for Contracting Commercial Functions.* As required by 10 U.S.C. 2463 and Deputy Secretary of Defense Memorandum, “In-sourcing Contracted Services—Implementation Guidance,” in advance of contracting for commercial functions or continuing to contract for commercial functions, requiring officials shall consider using DoD civilian employees to perform the



work. Requiring officials shall determine whether DoD civilian employees should be used to perform the work based on the guidance in Deputy Secretary of Defense Memorandum, “In-sourcing Contracted Services—Implementation Guidance” and Deputy Secretary of Defense Memorandum “Implementation of Section 324 of the National Defense Authorization Act for Fiscal Year 2008 (FY 2008 NDAA)—Guidelines and Procedures on In-sourcing New and Contracted Out Functions,” April, 4, 2008.

(8) *International Laws, Local Laws, and Host Nation (HN) Support Agreements.* Planners and requiring activities, in coordination with contracting officers shall take international laws, local laws, and HN support agreements into account when planning for contracted support, through assistance and coordination of the staff judge advocates (SJAs) office of the geographic CCDRs; the Commander, United States Special Operations Command (CDRUSSOCOM); the Commander, United States Transportation Command (CDRUSTRANSCOM); and the Service component commander SJA offices. These laws and support agreements may affect contracting by restricting the services to be contracted, limiting contracted services to LN or HN contractor sources or, in some cases, by prohibiting contractor use altogether.

(9) *Status-of-Forces Agreements (SOFAs).* Planners and requiring activities, in coordination with contracting officers shall review applicable SOFAs and related agreements to determine their affect on the status and use of contractors in support of applicable contingency operations, with the assistance and coordination of the geographic CCDR SJA offices.

(b) *OCS Planning.* Combatant and subordinate JFCs determine whether contracted support capabilities are appropriate in support of a contingency. When contractor personnel and equipment are anticipated to support military operations, military planners will develop orchestrated, synchronized, detailed, and fully developed CSIPs and CMPs as components CONPLANS and OPLANs, in accordance with appropriate strategic planning guidance.

CONPLANS without TPFDD and OPORDs shall contain CSIP- and CMP-like guidance to the extent necessary as determined by the CCDR. OCS planning will, at a minimum, consider HN support agreements, acquisition cross-servicing agreements, and Military logistics support agreements.

(1) *CSIPs.* All CCDR CONPLANS with TPFDD and OPLANs shall include a separate CSIP (*i.e.*, Annex W) in accordance with Chairman of the Joint Chiefs of Staff Manual 3122.02C and Joint Publication 4-0, “Joint Logistics,” July 18, 2008. Further, plans and orders should contain additional contract support guidance, as appropriate, in applicable annexes and appendixes within the respective plans (*e.g.*, contracted bulk fuel support guidance should be addressed in the Class III(B) Appendix to the Logistic Annex). Service component commanders shall provide supporting CSIPs as directed by the CCDR.

(2) *CMPs.* All CCDR CONPLANS with TPFDD and OPLANs shall include a separate CMP and/or requisite contractor management requirements document in the applicable appendix or annex of these plans (*e.g.*, private security contractor rules for the use of force should be addressed in the Rules of Engagement Appendix to the Concept of the Operation Annex) in accordance with Chairman of the Joint Chiefs of Staff Manual 3122.02C and Joint Publication 4-0, “Joint Logistics,” July 18, 2008. Service component commanders shall provide supporting CMPs as directed by the CCDR.

(3) *Continuation of Essential Contractor Services.* To ensure that critical capabilities are maintained, it is necessary to assess the risk of premature loss of mission-essential contracted support. Supported and supporting commanders shall plan for the mitigation from the risk of premature loss of contingency contractor personnel who are performing essential contractor services. Planning for continuation of essential contractor services during applicable contingency operations includes:

(i) Determining all services provided overseas by defense contractors that must continue during an applicable contingency operation. Contracts shall obligate defense contractors to ensure

the continuity of essential contractor services during such operations.

(ii) Developing mitigation plans for those tasks identified as essential contractor services to provide reasonable assurance of continuation during crisis conditions. These mitigation plans should be developed as part of the normal CSIP development process.

(iii) Ensuring the Secretaries of the Military Departments and the geographic CCDRs plan for the mitigation from the risk of premature loss of contingency contractor personnel who are performing essential contractor services. When the cognizant DoD Component Commander or geographic CCDR has a reasonable doubt about the continuation of essential services by the incumbent contractor during applicable contingency operations, the commander shall prepare a mitigation plan for obtaining the essential services from alternative sources (military, DoD civilian, HN, or other contractor(s)). This planning requirement also applies when the commander has concerns that the contractor cannot or will no longer fulfill the terms of the contract:

(A) Because the threat level, duration of hostilities, or other factors specified in the contract have changed significantly;

(B) Because U.S., international, or local laws; HN support agreements; or SOFAs have changed in a manner that affect contract arrangements; or

(C) Due to political or cultural reasons.

(iv) Encouraging contingency contractor personnel performing essential contractor services overseas to remain in the respective operations area.

(4) *Requirements for Publication.* CCDRs shall make OCS planning factors, management policies, and specific contract support requirements available to affected contingency contractor personnel. To implement the OCS-related requirements of DoD Directive 1100.4 (see <http://www.dtic.mil/whs/directives/corres/pdf/110004p.pdf>), DoD Instruction 1100.19 (see <http://www.dtic.mil/whs/directives/corres/pdf/110019p.pdf>), DoD Directive 5205.02 (see <http://www.dtic.mil/whs/directives/corres/pdf/520502p.pdf>), the mandated CCDR Web site at <http://www.acq.osd.mil/dpap/pacc/>

*cc/areas\_of\_responsibility.html* shall include the information in paragraphs (b)(4)(i) through (b)(4)(ix) of this section (the data owner must review this information for security classification and OPSEC considerations prior to its posting).

(i) Theater Business Clearance and Contract Administration Delegation requirements for external support and systems support contracts executing or delivering contracted support in the CCDR's AOR (implemented at the CCDR's discretion).

(ii) Restrictions imposed by applicable international and local laws, SOFAs, and HN support agreements.

(iii) CAAF-related deployment requirements and theater reception.

(iv) Reporting requirements for accountability of contractor personnel and visibility of contracts.

(v) OPSEC plans and restrictions.

(vi) Force protection policies.

(vii) Personnel recovery procedures.

(viii) Availability of medical and other Government-furnished support.

(ix) Redeployment procedures.

(5) *Implementing OCS Plan Decisions Into Contracts.*

(i) Specific contract-related considerations and requirements set forth in Annex Ws of CONPLANS with TPFDD and OPLANs shall be reflected and addressed in CCDR policies (e.g., Theater Business Clearance/Contract Administration Delegation) and orders that apply to contractors and their personnel, maintained on CCDR OCS Web pages and integrated into contracts performing or delivering in a CCDR area of responsibility. When such CCDR policies potentially affect contracts other than those originated in the CCDR AOR, the CCDR should consult the contingency contracting section of the Office of the Director, DPAP, for advice on how best to implement these policies. All contracted services in support of contingency operations shall be included and accounted for in accordance with 10 U.S.C. 235 and 2330a. This accounting shall be completed by the operational CCDR requiring the service.

(ii) When making logistics sustainability recommendations, the DoD Components and acquisition managers shall consider the requirements of DoD

Instruction 5000.02 (see <http://www.dtic.mil/whs/directives/corres/pdf/500002p.pdf>) and paragraph (a)(5) of this section. Early in the contingency or crisis action planning process, they shall coordinate with the affected supported and supporting commands any anticipated requirements for contractor logistics support arrangements that may affect existing CONPLANS, OPLANs, and OPORDs. As part of the supporting plans, supporting organizations (Service components, defense agencies, others) must provide adequate data (e.g., estimates of the numbers of contractors and contracts and the types of supplies or services that will be required to support their responsibilities within the OPLAN) to the supported command planners to ensure the supported commander has full knowledge of the magnitude of contracted support required for the applicable contingency operation.

(6) *TPFDD Development*. Deployment data for CAAF and their equipment supporting the Military Services must be incorporated into TPFDD development and deployment execution processes in accordance with Chairman of the Joint Chiefs of Staff Manual 3122.02C (see <https://ca.dtic.mil/cjcs/directives/cjcs/manuals.htm>). The requirement to provide deployment data shall be incorporated into known system support and external support contracts and shall apply regardless of whether defense contractors will provide or arrange their own transportation.

(c) *Deployment and Theater Admission Requirements and Procedures*. The considerations in this section are applicable during CAAF deployment processing.

(1) *General*. (i) The CCDR or subordinate JFC shall provide specific deployment and theater admission requirements to the DoD Components for each applicable contingency operation. These requirements must be delineated in supporting contracts as explained in 48 CFR PGI 225.74. At a minimum, contracting officers shall ensure that contracts address operational area-specific contract requirements and the means by which the Government will inform contractors of the requirements and procedures applicable to a deployment.

(ii) A formally designated group, joint, or Military Department deployment center (e.g., replacement center, Federal deployment center, unit deployment site) shall be used to conduct deployment and redeployment processing for CAAF, unless contractor-performed theater admission preparation is authorized according to paragraph (c)(5), or waived pursuant to paragraph (c)(15), of this section. However, a Government-authorized process that incorporates all the functions of a deployment center may be used if designated in the contract.

(2) *Country Entry Requirements*. Special area, country, and theater personnel clearance documents must be current in accordance with the DoD Foreign Clearance Guide (available at <https://www.fcg.pentagon.mil/>) and coordinated with affected agencies (e.g., Intelligence Community agencies) to ensure that entry requirements do not impact accomplishment of mission requirements. CAAF employed in support of a DoD mission are considered DoD-sponsored personnel for DoD Foreign Clearance Guide purposes. Contracting officers shall ensure contracts include a requirement that CAAF must meet theater personnel clearance requirements and must obtain personnel clearances prior to entering applicable contingency operations. Contracts shall require CAAF to obtain proper identification credentials (e.g., passport, visa) as required by the terms and conditions of the contract.

(3) *Accountability and Visibility of Contingency Contracts and Contractor Personnel*.

(i) DoD contracts and contractors supporting an applicable contingency operation shall be accountable and visible in accordance with this part, 48 CFR PGI 225.74, and section 862 of Public Law 110–181 (“National Defense Authorization Act for Fiscal Year 2008,” January 28, 2008). Additionally, contract linguist utilization will be tracked using the Contract Linguist Enterprise-wide Database in accordance with DoD Directive 5160.41E. OCS requirements and contractor accountability and visibility must be preplanned and integrated into plans and OPORDs in accordance with Joint Publication 4–10 and Chairman of the

Joint Chiefs of Staff Manual 3122.02C and U.S. citizen, U.S. legal alien contractor, LN, and TCN information provided in accordance with CJCS Manual 3150.13C (see [http://www.dtic.mil/cjcs\\_directives/cdata/unlimit/m315013.pdf](http://www.dtic.mil/cjcs_directives/cdata/unlimit/m315013.pdf)).

(ii) As stated in the Deputy Under Secretary of Defense (Logistics and Materiel Readiness) and Deputy Under Secretary of Defense (Program Integration) Memorandum, “Designation of Synchronized Predeployment and Operational Tracker (SPOT) as Central Repository for Information on Contractors Deploying with the Force,” January 25, 2007 (see <http://www2.centcom.mil/sites/contracts/Synchronized%20Predeployment%20and%20Operational%20Tracker/01-SPOT%20DFARS%20Deviation%202007-00004,%2019%20MAR%2007.pdf>), SPOT was designated as the joint web-based database to assist the CCDRs in maintaining awareness of the nature, extent, and potential risks and capabilities associated with OCS for contingency operations, humanitarian assistance and peacekeeping operations, or military exercises designated by the CCDR. To facilitate integration of contingency contractors and other personnel as directed by the USD(AT&L) or the CCDR, and to ensure accountability, visibility, force protection, medical support, personnel recovery, and other related support can be accurately forecasted and provided, these procedures shall apply for establishing, maintaining, and validating the database:

(A) SPOT or its successor shall:

(1) Serve as the central repository for up-to-date status and reporting on contingency contractor personnel as directed by the USD(AT&L), 48 CFR 252.225-7040 and 48 CFR PGI 225.74, or the CCDR, as well as other Government agency contractor personnel as applicable.

(2) Track contract information for all DoD contracts supporting applicable contingency operations, as directed by the USD(AT&L), 48 CFR PGI 225.74 and Chairman of the Joint Chiefs of Staff Manual 3150.13C, or the CCDR. SPOT data elements are intended to provide planners and CCDRs an awareness of the nature, extent, and potential risks

and capabilities associated with contracted support.

(3) Provide personnel accountability via unique identifier (*e.g.*, Electronic Data Interchange Personnel Identifier (EDI-PI)) of DoD contingency contractor personnel and other personnel as directed by the USD(AT&L), 48 CFR PGI 225.74, Chairman of the Joint Chiefs of Staff Manual 3150.13C, or the CCDR.

(4) Contain, or link to, minimum contract information (*e.g.*, contract number, contract category, period of performance, contracting agency and contracting office) necessary to establish and maintain accountability and visibility of the personnel in paragraph (c)(3)(ii)(A)1. of this section, to maintain information on specific equipment related to private security contracts, and the contract capabilities in contingency operations, humanitarian assistance, and peacekeeping operations, or military exercises designated by the CCDR.

(5) Comply with the personnel identity protection program requirements of DoD Directive 5205.02, DoD 5400.11-R (see <http://www.dtic.mil/whs/directives/corres/pdf/540011r.pdf>), and DoD 6025.18-R (see <http://www.dtic.mil/whs/directives/corres/pdf/602518r.pdf>); be consistent with the DoD Global Information Grid enterprise architecture in DoD Directive 8000.01 (see <http://www.dtic.mil/whs/directives/corres/pdf/800001p.pdf>); and be compliant with DoD Directive 8320.02 (see <http://www.dtic.mil/whs/directives/corres/pdf/832002p.pdf>), DoD Directive 4630.05 (see <http://www.dtic.mil/whs/directives/corres/pdf/463005p.pdf>), and DoD Directive 8500.01E (see <http://www.dtic.mil/whs/directives/corres/pdf/850001p.pdf>).

(B) All required data must be entered into SPOT or its successor before a contractor employee is permitted to deploy to or enter a military theater of operations. Contracting officers, through the terms of the contracts, shall require contractors to enter data before an employee's deployment and to maintain and update the information for all CAAF, as well as non-CAAF as directed by the USD(AT&L), 48 CFR PGI 225.74, or the CCDR. The contract shall require the contractor to use SPOT or its successor, to enter and maintain data on its employees.

(C) A summary of all DoD contract services or capabilities for all contracts that are awarded to support contingency, humanitarian assistance, and peacekeeping operations, to include theater, external, and systems support contracts, shall be entered into SPOT or its successor in accordance with 48 CFR 252.225–7040 and 48 CFR PGI 225.74.

(D) In accordance with applicable acquisition policy and regulations, all defense contractors awarded contracts that support applicable contingency operations shall be required, under the terms and conditions of each affected contract, to input employee data and maintain by-name accountability of designated contractor personnel in SPOT or its successor as required by 48 CFR 252.225–7040 and 48 CFR PGI 225.74. Contractors shall be required under the terms and conditions of their contracts to maintain policies and procedures for knowing the general location of their employees and to follow the procedures provided to them to submit up-to-date, real-time information reflecting all personnel deployed or to be deployed in support of contingency, humanitarian assistance, and peacekeeping operations. Prime contractors shall be required under the terms and conditions of their contract to follow the procedure provided to them to submit into SPOT or its successor, up-to-date, real-time information regarding their sub-contractors at all tiers.

(E) In all cases, classified information responsive to the requirements of this part shall be reported and maintained on systems approved for the level of classification of the information provided.

(4) *LOA*. A SPOT-generated LOA shall be issued by the contracting officer or designee to all CAAF as required by the clause in 48 CFR subpart 252.225–7040 and selected non-CAAF (e.g., LN private security contractors) as required under 48 CFR PGI 225.74 or otherwise designated by the CCDR. The contract shall require that all contingency contractor personnel who are issued an LOA will carry the LOA with them at all times. For systems authorized in accordance with paragraph (c)(3)(ii)(B) of this section, DoD Components shall coordinate with the SPOT program manager to obtain an LOA

handled within appropriate security guidelines.

(5) *Deployment Center Procedures*.

(i) Affected contracts shall require that all CAAF process through a designated deployment center or a Government-authorized, contractor-performed deployment processing facility prior to deploying to an applicable contingency operation. Upon receiving the contracted company's certification that employees meet deployability requirements, the contracting officer or his/her representative will digitally sign the LOA. The LOA will be presented to officials at the deployment center. The deployment process shall be for, but not limited to:

(A) Verifying accountability information in SPOT or its successor.

(B) Issuing applicable Government-furnished equipment.

(C) Verifying medical and dental screening, including required military-specific vaccinations and immunizations (e.g., anthrax, smallpox).

(D) Verifying and, when necessary, providing required training (e.g., Geneva Conventions; law of armed conflict; general orders; standards of conduct; force protection; personnel recovery; first aid; operations security; anti-terrorism; counterintelligence reporting; the use of chemical, biological, radiological, nuclear (CBRN) protective ensemble), country and cultural awareness briefings, and other training and briefings as appropriate.

(ii) Affected contingency contracts shall require that, prior to deployment, contractors certify to the Government authorizing representative named in the contract that all required deployment processing actions have been completed for each individual.

(6) *CAAF Identification, Training, and Security Clearance Requirements*. Contracts shall require eligible CAAF to be issued an identification card with the Geneva Conventions Accompanying the Force designation in accordance with DoD Instruction 1000.13 (see <http://www.dtic.mil/whs/directives/corres/pdf/100013p.pdf>) and DTM 08–003 (see <http://www.dtic.mil/whs/directives/corres/pdf/DTM-08-003.pdf>). CAAF shall be required to present their SPOT generated LOA as proof of eligibility at the time

of ID card issuance. All CAAF shall receive training regarding their status under the law of war and the Geneva Convention. In addition and to the extent necessary, the contract shall require the defense contractor to provide personnel who have the appropriate security clearance or are able to satisfy the appropriate background investigation to obtain access required for the applicable contingency operation.

(7) *Government Support.* Generally, contingency contracts shall require that contractors provide all life, mission, and administrative support to their employees necessary to perform the contract in accordance with DoD Instruction 4161.02 (see <http://www.dtic.mil/whs/directives/corres/pdf/416102p.pdf>) and CCDR guidance as posted on the CCDR OCS Web site. As part of preparing an acquisition requirement, the requiring activity will include an estimate of the Government support that is required to be provided to CAAF and selected non-CAAF in accordance with 48 CFR 4.1301, 4.1303, 52.204-9, 7.5, 7.503(e), 2.101, and 3.502 and 48 CFR PGI 225.74. The requiring activity will confirm with theater adjudication authorities that the Government has the capacity, capability, and willingness to provide the support. However, in many contingency operations, especially those in which conditions are austere, uncertain, and/or non-permissive, the contracting officer may decide it is in the interest of the Government to allow for selected life, mission, medical, and administrative support to some contingency contractor personnel. Prior to awarding the contract, the contracting officer will request the requiring activity to verify that proper arrangements for Government support at the deployment center and within the designated operational area have been made. The contract shall specify the level of Government-furnished support to be provided to CAAF and selected non-CAAF and what support is reimbursable to the Government. The requiring activity will ensure that approved GFS is available.

(8) *Medical Preparation.*

(i) In accordance with §158.7 of this part, contracts shall require that contractors provide medically and phys-

ically qualified contingency contractor personnel to perform duties in applicable contingency operations as outlined in the contract. Any CAAF deemed unsuitable to deploy during the deployment process due to medical or dental reasons will not be authorized to deploy. The Secretary of Defense may direct immunizations as mandatory for CAAF performing DoD-essential contractor services in accordance with Joint Publication 4-0, "Joint Logistics", and Chairman of the Joint Chiefs of Staff Manual 3150.13C. For CAAF who are U.S. citizens, contracts shall require contractors to make available the medical and dental records (including current panoramic x-ray) of the deploying employees who grant release authorization for this purpose, according to contract terms based on this section, DoD Directive 6485.02E (see <http://www.dtic.mil/whs/directives/corres/pdf/648502p.pdf>), applicable joint force command surgeon guidance, and relevant Military Department policy.

(ii) Government personnel cannot force a contractor employee to receive an immunization or disclose private medical records against his or her will; therefore, particularly for medical requirements that arise after contract award, the contracting officer will allow contractors time to notify and/or hire employees who are willing to meet Government medical requirements and disclose their private information.

(iii) Medical threat pre-deployment briefings will be provided to all CAAF to communicate health risks and countermeasures in the designated operational area in accordance with DoD Instruction 6490.03 (see <http://www.dtic.mil/whs/directives/corres/pdf/649003p.pdf>). Health readiness, force health protection capability, either as a responsibility of the contractor or the DoD Components, will be fully delineated in plans, orders, and contracts to ensure appropriate medical staffing in the operational area. Health surveillance activities shall also include plans for contingency contractor personnel who are providing essential contractor services (as detailed in DoD Directive 6490.02E (see <http://www.dtic.mil/whs/directives/corres/pdf/649002Ep.pdf>)). Deoxyribonucleic acid (DNA) collection

and other medical requirements are further addressed in §158.7 of this part.

(9) *Individual Protective Equipment (IPE)*. When necessary and directed by CCDR, the contracting officer will include language in the contract authorizing CAAF and selected non-CAAF, as designated by the CCDR, to be issued military IPE (e.g., CBRN protective ensemble, body armor, ballistic helmet) in accordance with DoD Directive 1100.4. This equipment shall typically be issued at the deployment center, before deployment to the designated operational area, and must be accounted for and returned to the Government or otherwise accounted for in accordance with appropriate DoD Component standing regulations (including DoD Instruction 4161.2 (see <http://www.dtic.mil/whs/directives/corres/pdf/416102p.pdf>), directives, instructions, and supplementing publications). It is important to plan and resource IPE as required by the geographic CCDR or subordinate JFC, and the terms of the contract. Training on the proper care, fitting, and maintenance of issued protective equipment will be provided as part of contractor deployment training. This training will include practical exercises within the context of the various mission-oriented protective posture levels. When a contractor is required under the terms and conditions of the contract to provide IPE, such IPE shall meet minimum standards as defined by the contract.

(10) *Clothing*. Defense contractors or their personnel are responsible for providing their own personal clothing, including casual and working clothing required by the assignment. Generally, commanders shall not issue military clothing to contractor personnel or allow the wearing of military or military look-alike uniforms. However, a CCDR or subordinate JFC deployed forward may authorize contractor personnel to wear standard uniform items for operational reasons. Contracts shall require that this authorization be in writing and maintained in the possession of authorized contractor personnel at all times. When commanders issue any type of standard uniform item to contractor personnel, care must be taken to ensure, consistent with force protection measures, that contractor

personnel are distinguishable from military personnel through the use of distinctive patches, arm bands, nametags, or headgear.

(11) *Weapons*. Contractor personnel shall not be authorized to possess or carry firearms or ammunition during applicable contingency operations except as provided in paragraphs (d)(5) and (d)(6) of this section and in 32 CFR part 159. The contract shall provide the terms and conditions governing the possession of firearms.

(12) *Training*. Joint training policy and guidance for the Military Services, including DoD contractors, is provided in CJCS Instruction 3500.01F (see [http://www.dtic.mil/doctrine/training/cjcsi3500\\_01f.pdf](http://www.dtic.mil/doctrine/training/cjcsi3500_01f.pdf)). Standing training requirements shall be placed on the CCDR OCS Web sites for reference by contractors. Training requirements that are specific to the operation shall be placed on the CCDR Web sites immediately after a declared contingency so contracting officers can incorporate them into the appropriate contracts as soon as possible. Training requirements must be contained or incorporated by reference in contracts employing contractor personnel in support of an applicable contingency operation. Training requirements include specific training requirements established by the CCDR and training required in accordance with this part, 32 CFR part 159, DoD Directive 2000.12 (see <http://www.dtic.mil/whs/directives/corres/pdf/200012p.pdf>), and DoD Instruction 2000.16 (see <http://www.dtic.mil/whs/directives/corres/pdf/200016p.pdf> and DoD Instruction 1300.23 (see <http://www.dtic.mil/whs/directives/corres/pdf/130023p.pdf>).

(13) *Legal Assistance*. Individual contractor personnel are responsible to have their personal legal affairs in order (including preparing and completing powers of attorney, wills, trusts, estate plans, etc.) before reporting to deployment centers. Contractor personnel are not entitled to military legal assistance either in-theater or at the deployment center.

(14) *Contractor Integration*. It is critical that CAAF brought into an operational area are properly integrated into the military operation through a formal reception process. This shall include, at a minimum, ensuring as they

move into and out of the operational area, and commensurate with local threat levels, that they:

(i) Have met theater entry requirements and are authorized to enter the theater.

(ii) Are accounted for.

(iii) Possess any required IPE, including CBRN protective ensemble.

(iv) Have been authorized any required Government-furnished support and force protection.

(15) *Waivers.* For contract support in the operational area that is required for less than 30 consecutive days, the CCDR or designee may waive a portion of the formal procedural requirements in paragraph (c)(5) of this section, which may include waiving the requirement for processing through a deployment center. However, the requirements to possess proper identification cards and to establish and maintain accountability and visibility for all defense contractors in accordance with applicable policy shall not be waived, nor shall any medical requirement be waived without the prior approval of qualified medical personnel. If contingency contractor personnel are authorized to be armed, the requirements of paragraphs (d)(5) and (d)(6) of this section cannot be waived.

(d) *Contractor In-Theater Management Requirements.* The DoD Components shall adhere to the in-theater management policies of this section in managing contingency contractor personnel in support of applicable contingency operations.

(1) *Reception.* All CAAF shall be processed into the operational area through a designated reception site. The site shall verify, based upon a visual inspection of the LOA, that contractor personnel are entered into SPOT or its successor, and verify that personnel meet theater-specific entry requirements. Contractor personnel already in the designated operational area when a contingency is declared must report to the appropriate designated reception site as soon as it is operational. If any CAAF does not have the proper documentation, the person will be refused entry into the theater, and the contracting officer will notify the contractor to take action to resolve the reason for the lack of proper docu-

mentation for performing in that area. Should the contractor fail to take that action, the person shall be sent back to his or her departure point, or directed to the Service component command or Defense Agency responsible for that specific contract for theater entrance processing.

(2) *Contractor Use Restrictions.* CCDRs, through their respective contracting officers or their representatives, may place specific restrictions on locations or timing of contracted support based on the prevailing operational situation, in coordination with subordinate commanders and the applicable Defense Agencies.

(3) *Contractor Security Screening.* Contractor screening requirements for CAAF and non-CAAF who require access to U.S. facilities will be integrated into OPSEC programs and plans.

(4) *Contractor Conduct and Discipline.* Terms and conditions of contracts shall require that CAAF comply with theater orders, applicable directives, laws, and regulations, and that employee discipline is maintained. Non-CAAF who require base access will be directed to follow base force protection and security-related procedures as applicable.

(i) Contracting officers are the legal link between the requiring activity and the contractor. The contracting officer may appoint a designee (usually a COR) as a liaison between the contracting officer and the contractor and requiring activity. This designee monitors and reports contractor performance and requiring activity concerns to the contracting officer. The requiring activity has no direct contractual relationship with or authority over the contractor. However, the ranking military commander may, in emergency situations (*e.g.*, enemy or terrorist actions or natural disaster), urgently recommend or issue warnings or messages urging that CAAF and non-CAAF personnel take emergency actions to remove themselves from harm's way or take other appropriate self-protective measures.

(ii) The contractor is responsible for disciplining contingency contractor personnel. However, in accordance with paragraph (h)(1) of 48 CFR 252.225-7040, the contracting officer may direct the



contractor, at its own expense, to remove and replace any contingency contractor personnel who jeopardize or interfere with mission accomplishment, or whose actual field performance (certification/professional standard) is well below that stipulated in the contract, or who fail to comply with or violate applicable requirements of the contract. Such action may be taken at Government discretion without prejudice to its rights under any other provision of the contract, including the Termination for Default. A commander also has the authority to take certain actions affecting contingency contractor personnel, such as the ability to revoke or suspend security access or impose restrictions from access to military installations or specific work-sites.

(iii) CAAF, with some restrictions (*e.g.*, LN CAAF are not subject to MEJA), are subject to prosecution under MEJA and UCMJ in accordance with 18 U.S.C. 7(9), 2441, and 3261 and Secretary of Defense Memorandum, "UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations," March 10, 2008. Commanders possess significant authority to act whenever criminal activity is committed by anyone subject to MEJA and UCMJ that relates to or affects the commander's responsibilities. This includes situations in which the alleged offender's precise identity or actual affiliation is to that point undetermined. Secretary of Defense Memorandum, "UCMJ Jurisdiction Over DoD Civilian Employees, DoD Contractor Personnel, and Other Persons Serving With or Accompanying the Armed Forces Overseas During Declared War and in Contingency Operations," March 10, 2008, sets forth the scope of this command authority in detail. Contracting officers will ensure that contractors are made aware of their status and liabilities as CAAF and the required training requirements associated with this status. Subject to local or HN law, SOFA, and the jurisdiction of the Department of State (*e.g.*, consulate or chief of mission) over civilians in another country, commanders

retain authority to respond to an incident, restore safety and order, investigate, apprehend suspected offenders, and otherwise address the immediate needs of the situation.

(iv) The Department of Justice may prosecute misconduct under applicable Federal laws, including MEJA and 18 U.S.C. 2441. Contingency contractor personnel are also subject to the domestic criminal laws of the local nation absent a SOFA or international agreement to the contrary. When confronted with disciplinary problems involving contingency contractor personnel, commanders shall seek the assistance of their legal staff, the contracting officer responsible for the contract, and the contractor's management team.

(v) In the event of an investigation of reported offenses alleged to have been committed by or against contractor personnel, appropriate investigative authorities shall keep the contracting officer informed, to the extent possible without compromising the investigation, if the alleged offense has a potential contract performance implication.

(5) *Force Protection and Weapons Issuance.* CCDRs shall develop security plans for protection of CAAF and selected non-CAAF (*e.g.*, those working on a military facility or as otherwise determined by the operational commander) in locations where the civil authority is either insufficient or illegitimate, and the commander determines it is in the interests of the Government to provide security because the contractor cannot obtain effective private security services; such services are unavailable at a reasonable cost; or threat conditions necessitate security through military means.

(i) In appropriate cases, the CCDR may provide security through military means commensurate with the level of security provided DoD civilians. Specific security measures shall be mission and situation dependent as determined by the CCDR and provided to the contracting officer. The contracting officer shall include in the contract the level of protection to be provided to contingency contractor personnel as

determined by the CCDR or subordinate JFC. Specific procedures for determining requirements for and integrating contractors into the JOA force protection structure will be placed on the geographic CCDR Web sites.

(ii) Contracts shall require all contingency contractor personnel to comply with applicable CCDR and local commander force protection policies. Contingency contractor personnel working within a U.S. Military facility or in close proximity of U.S. Military forces may receive incidentally the benefits of measures undertaken to protect U.S. forces in accordance with DoD Directive 2000.12 (see <http://www.dtic.mil/whs/directives/corres/pdf/200012p.pdf>). However, it may be necessary for contingency contractor personnel to be armed for individual self-defense. Procedures for arming for individual self-defense are:

(A) According to applicable U.S., HN, or international law; relevant SOFAs; international agreements; or other arrangements with local authorities and on a case-by-case basis when military force protection and legitimate civil authority are deemed unavailable or insufficient, the CCDR (or a designee no lower than the general/flag officer level) may authorize contingency contractor personnel to be armed for individual self-defense.

(B) The appropriate SJA to the CCDR shall review all applications for arming contingency contractor personnel on a case-by-case basis to ensure there is a legal basis for approval. In reviewing applications, CCDRs shall apply the criteria mandated for arming contingency contractor personnel for private security services provided in paragraph (d)(6) of this section and 32 CFR part 159. In such cases, the contractor will validate to the contracting officer, or designee, that weapons familiarization, qualification, and briefings regarding the rules for the use of force have been provided to contingency contractor personnel in accordance with CCDR policies. Acceptance of weapons by contractor personnel shall be voluntary and permitted by the defense contractor and the contract. In accordance with paragraph (j) of 48 CFR 252.225-7040, the contract shall require that the defense contractor ensure

such personnel are not prohibited by U.S. law from possessing firearms.

(C) When armed for personal protection, contingency contractor personnel are only authorized to use force for individual self-defense. Unless immune from local laws or HN jurisdiction by virtue of an international agreement or international law, the contract shall include language advising contingency contractor personnel that the inappropriate use of force could subject them to U.S. and local or HN prosecution and civil liability.

(6) *Use of Contractor Personnel for Private Security Services.* If, consistent with applicable U.S., local, and international laws; relevant HN agreements, or other international agreements and this part, a defense contractor may be authorized to provide private security services for other than uniquely military functions as identified in DoD Instruction 1100.22. Specific procedures relating to contingency contractor personnel providing private security services are provided in 32 CFR part 159.

(7) *Personnel Recovery, Missing Persons, and Casualty Reporting.*

(i) DoD Directive 3002.01E (see <http://www.dtic.mil/whs/directives/corres/pdf/300201p.pdf>) outlines the DoD personnel recovery program and Joint Publication 3-50 (see [http://www.dtic.mil/dpmo/laws\\_directives/documents/joint\\_pu\\_3\\_50.pdf](http://www.dtic.mil/dpmo/laws_directives/documents/joint_pu_3_50.pdf)) details its doctrine. The DoD personnel recovery program covers all CAAF employees regardless of their citizenship. If a CAAF becomes isolated or unaccounted for, the contractor must expeditiously file a search and rescue incident report (SARIR) (available at [http://www.armystudyguide.com/content/the\\_tank/army\\_report\\_and\\_message\\_formats/search-and-rescue-incident.shtml](http://www.armystudyguide.com/content/the_tank/army_report_and_message_formats/search-and-rescue-incident.shtml)) to the theater's personnel recovery architecture, *i.e.*, the component personnel recovery coordination cell or the Combatant Command joint personnel recovery center.

(ii) Upon recovery following an isolating event, a CAAF returnee shall enter the first of three phases of reintegration in DoD Instruction 2310.4 (see <http://www.dtic.mil/whs/directives/corres/pdf/231004p.pdf>). The additional

phases of reintegration in DoD Instruction 2310.4 shall be offered to the returnee to ensure his or her physical and psychological well being while adjusting to the post-captivity environment.

(iii) Accounting for missing persons, including contractors, is addressed in DoD Directive 2310.07E (see <http://www.dtic.mil/whs/directives/corres/pdf/231007p.pdf>). Evacuation of dependents of contractor personnel is addressed in DoD Directive 3025.14 (see <http://www.dtic.mil/whs/directives/corres/pdf/302514p.pdf>). All CAAF and non-CAAF casualties shall be reported in accordance with Joint Publication 1–0, “Personnel Support to Joint Operations,” October 16, 2006 (see [http://www.dtic.mil/doctrine/new\\_pubs/jp1\\_0.pdf](http://www.dtic.mil/doctrine/new_pubs/jp1_0.pdf)) and ASD(L&MR) Publication, “Business Rules for the Synchronized Predeployment and Operational Tracker (SPOT),” current edition. (See <http://www.acq.osd.mil/log/PS/spot.html>)

(8) *Mortuary Affairs.*

(i) CAAF who die while in support of U.S. forces shall be covered by the DoD mortuary affairs program as described in DoD Directive 1300.22 (see <http://www.dtic.mil/whs/directives/corres/pdf/130022p.pdf>). Every effort shall be made to identify remains and account for unrecovered remains of contractors and their dependents who die in military operations, training accidents, and other multiple fatality incidents. The remains of CAAF who are fatalities resulting from an incident in support of military operations deserve and shall receive the same dignity and respect afforded military remains.

(ii) The DoD may provide mortuary support for the disposition of remains and personal effects at the request of the Department of State. The USD(P&R) shall coordinate this support with the Department of State to include cost reimbursement, where appropriate. The disposition of non-CAAF contractors (LNs and TCNs) shall be given the same dignity and respect afforded U.S. personnel. The responsibility for coordinating the transfer of these remains to the HN or affected nation resides with the geographic CCDR in coordination and conjunction with the Department of State through the embassies or the International Red

Cross, as appropriate, and in accordance with applicable contract provisions.

(9) *Medical Support and Evacuation.* Theater-specific contract language to clarify available healthcare can be found on the CCDR Web sites. During applicable contingency operations in austere, uncertain, and/or hostile environments, CAAF may encounter situations in which they are unable to access medical support on the local economy. Generally, the DoD will only provide resuscitative care, stabilization, hospitalization at Level III medical treatment facilities (MTFs), and assistance with patient movement in emergencies where loss of life, limb, or eyesight could occur. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system in accordance with DoD Instruction 6000.11 (see <http://www.dtic.mil/whs/directives/corres/pdf/600011p.pdf>). All costs associated with the treatment and transportation of CAAF to the selected civilian facility are reimbursable to the Government and shall be the responsibility of contractor personnel, their employers, or their health insurance providers. Nothing in this paragraph is intended to affect the allowability of costs incurred under a contingency contract. Medical support and evacuation procedures are:

(i) *Emergency Medical and Dental Care.* All CAAF will normally be afforded emergency medical and dental care if injured while supporting contingency operations. Additionally, non-CAAF employees who are injured while in the vicinity of U.S. forces will also normally receive emergency medical and dental care. Emergency medical and dental care includes medical care situations in which life, limb, or eyesight is jeopardized. Examples of emergency medical and dental care include examination and initial treatment of victims of sexual assault; refills of prescriptions for life-dependent drugs; repair of broken bones, lacerations, infections; and traumatic injuries to the dentition.

(ii) *Primary Care.* Primary medical or dental care normally will not be authorized or be provided to CAAF by

MTFs. When required and authorized by the CCDR or subordinate JFC, this support must be specifically authorized under the terms and conditions of the contract and detailed in the corresponding LOA. Primary care is not authorized for non-CAAF employees. Primary care includes routine inpatient and outpatient services, non-emergency evacuation, pharmaceutical support, dental services, and other medical support as determined by appropriate military authorities based on recommendations from the joint force command surgeon and on the existing capabilities of the forward-deployed MTFs.

(iii) *Long-Term Care.* The DoD shall not provide long-term care to contractor personnel.

(iv) *Quarantine or Restriction of Movement.* The CCDR or subordinate commander has the authority to quarantine or restrict movement of contractor personnel according to DoD Instruction 6200.03 (see <http://www.dtic.mil/whs/directives/corres/pdf/620003p.pdf>).

(v) *Evacuation.* Patient movement of CAAF shall be performed in accordance with DoD Instruction 6000.11 (see <http://www.dtic.mil/whs/directives/corres/pdf/600011p.pdf>). When CAAF are evacuated for medical reasons from the designated operational area to MTFs funded by the Defense Health Program, normal reimbursement policies will apply for services rendered by the facility. Should CAAF require medical evacuation outside the continental United States (OCONUS), the sending MTF shall assist CAAF in making arrangements for transfer to a civilian facility of their choice. When U.S. forces provide emergency medical care to non-CAAF, these patients will be evacuated or transported via national means (when possible) to their local medical systems.

(10) *Other Government-Furnished Support.* In accordance with DoD Component policy and consistent with applicable laws and international agreements, Government-furnished support may be authorized or required when CAAF and selected non-CAAF are deployed with or otherwise provide support in the theater of operations to U.S. Military forces deployed OCONUS. Types of support are listed in 48 CFR

PGI 225.74 and may include transportation to and within the operational area, mess operations, quarters, phone service, religious support, and laundry.

(i) In operations where no reliable or local mail service is available, CAAF who are U.S. citizens will be authorized postal support in accordance with DoD 4525.6-M (see <http://www.dtic.mil/whs/directives/corres/pdf/452506m.pdf>). CAAF who are not U.S. citizens will be afforded occasional mail service necessary to mail their pay checks back to their homes of record.

(ii) Morale, welfare, and recreation (MWR) and exchange services will be authorized for CAAF who are U.S. citizens in accordance with 10 U.S.C. 133. CAAF who are not U.S. citizens and non-CAAF are not authorized MWR and exchange services.

(e) *Redeployment Procedures.* The considerations in this section are applicable during the redeployment of CAAF.

(1) *Transportation Out of Theater.* When the terms and conditions of the contract state that the Government shall provide transportation out of theater:

(i) Upon completion of the deployment or other authorized release, the Government shall, in accordance with each individual's LOA, provide contractor employees transportation from the theater of operations to the location from which they deployed, unless otherwise directed.

(ii) Prior to redeployment from the AOR, the contractor employee, through their defense contractor, shall coordinate contractor exit times and transportation with CONUS Replacement Center (CRC) or designated reception site. Additionally, intelligence out-briefs must be completed and customs and immigration briefings and inspections must be conducted. CAAF are subject to customs and immigration processing procedures at all designated stops and their final destination during their redeployment. CAAF returning to the United States are subject to U.S. reentry customs requirements in effect at the time of reentry.

(2) *Post-Deployment Health Assessment.* In accordance with DoD Instruction 6490.03, contracts shall require that CAAF complete a post-deployment

health assessment in the Defense Medical Surveillance System (DMSS) at the termination of the deployment (within 30 days of redeployment). These assessments will only be used by the DoD to accomplish population-wide assessments for epidemiological purposes, and to help identify trends related to health outcomes and possible exposures. They will not be used for individual purposes in diagnosing conditions or informing individuals they require a medical followup. Diagnosing conditions requiring medical referral is a function of the contractor.

(3) *Redeployment Center Procedures.* In most instances, the deployment center/site that prepared the CAAF for deployment will serve as the return processing center. As part of CAAF redeployment processing, the deployment center/site personnel will screen contractor records, recover Government-issued identification cards and equipment, and conduct debriefings as appropriate. The amount of time spent at the return processing center will be the minimum required to complete the necessary administrative procedures.

(i) A special effort will be made to collect all CACs from returning deployed contractors.

(ii) Contractor employees are required to return any issued clothing and equipment. Lost, damaged, or destroyed clothing and equipment shall be reported in accordance with procedures of the issuing facility. Contractor employees shall also receive a post-deployment medical briefing on signs and symptoms of diseases to watch for, such as tuberculosis. As some countries hosting an intermediate staging base may not permit certain items to enter their borders, some clothing and equipment, whether issued by the contractor, purchased by the employee, or provided by the Government, may not be permitted to exit the AOR. In this case, alternate methods of accounting for Government-issued equipment and clothing will be used according to CCDR or JFC guidance and contract language.

(4) *Update to SPOT.* Contracting officers or their designated representative must verify that defense contractors have updated SPOT to reflect their employee's change in status within 3 days

of his or her redeployment as well as close out the deployment and collect or revoke the LOA.

(5) *Transportation to Home Destination.* Transportation of CAAF from the deployment center/site to the home destination is the employer's responsibility. Government reimbursement to the employer for travel will be determined by the terms and conditions of the contract.

#### § 158.7 Guidance for contractor medical and dental fitness.

##### (a) *General.*

(1) DoD contracts requiring the deployment of CAAF shall include medical and dental fitness requirements as specified in this section. Under the terms and conditions of their contracts, defense contractors shall provide personnel who meet such medical and dental requirements as specified in their contracts.

(2) The geographic CCDR will establish theater-specific medical qualifications. When exceptions to these standards are requested through the contracting officer, the geographic CCDR will establish a process for reviewing such exceptions and ensuring that a mechanism is in place to track and archive all approved and denied waivers, including the medical condition requiring the waiver.

(3) The geographic CCDR shall also ensure that processes and procedures are in place to remove contractor personnel in theater who are not medically qualified, once so identified by a healthcare provider. The geographic CCDR shall ensure appropriate language regarding procedures and criteria for requiring removal of contractor personnel identified as no longer medically qualified is developed, is posted on the CCDR OCS Web site, and also ensure contracting officers incorporate the same into all contracts for performance in the AOR.

(4) Unless otherwise stated in the contract, all pre-, during-, and post-deployment medical evaluations and treatment are the responsibility of the contractor.

(b) *Medical and Dental Evaluations.* (1) All CAAF deploying in support of a contingency operation must be medically, dentally, and psychologically fit

for deployment as stated in DoD Directive 6200.04 (see <http://www.dtic.mil/whs/directives/corres/pdf/620004p.pdf>). Fitness specifically includes the ability to accomplish the tasks and duties unique to a particular operation and the ability to tolerate the environmental and operational conditions of the deployed location. Under the terms and conditions of their contracts, defense contractors will provide medically, dentally, and psychologically fit contingency contractor personnel to perform contracted duties.

(2) Just as military personnel must pass a complete health evaluation, CAAF shall have a similar evaluation based on the functional requirements of the job. All CAAF must undergo a medical and dental assessment within 12 months prior to arrival at the designated deployment center or Government-authorized contractor-performed deployment processing facility. This assessment should emphasize diagnosing cardiovascular, pulmonary, orthopedic, neurologic, endocrinologic, dermatologic, psychological, visual, auditory, dental, and other systemic disease conditions that may preclude performing the functional requirements of the contract, especially in the austere work environments encountered in some contingency operations.

(3) In accordance with DoD Instruction 6490.03, contracts shall require that CAAF complete a pre-deployment health assessment in the DMSS at the designated deployment center or a Government-authorized contractor-performed deployment processing facility. These assessments will only be used by the DoD to accomplish population-wide assessments for epidemiological purposes, and to help identify trends related to health outcomes and possible exposures. They will not be used for individual purposes in diagnosing conditions or informing individuals they require a medical followup. Diagnosing conditions requiring medical referral is a function of the contractor.

(4) In general, CAAF who have any of the medical conditions in paragraph (j) of this section, based on an individual assessment pursuant to DoD Instruction 6490.03, should not deploy.

(5) Individuals who are deemed not medically qualified at the deployment

center or at any period during the deployment process based upon an individual assessment, or who require extensive preventive dental care (see paragraph (j)(2)(xxv) of this section) will not be authorized to deploy.

(6) Non-CAAF shall be medically screened when specified by the requiring activity, for the class of labor that is being considered (*e.g.*, LNs working in a dining facility).

(7) Contracts shall require contractors to replace individuals who develop, at any time during their deployment, conditions that cause them to become medically unqualified.

(8) In accordance with DoD Instruction 6490.03, contracts shall require that CAAF complete a post-deployment health assessment in DMSS at the termination of the deployment (within 30 days of redeployment).

(c) *Glasses and Contact Lenses.* If vision correction is required, contractor personnel will be required to have two pair of glasses. A written prescription may also be provided to the supporting military medical component so that eyeglass inserts for use in a compatible chemical protective mask can be prepared. If the type of protective mask to be issued is known and time permits, the preparation of eyeglass inserts should be completed prior to deployment. Wearing contact lenses in a field environment is not recommended and is at the contingency contractor employee's own risk due to the potential for irreversible eye damage caused by debris, chemical or other hazards present, and the lack of ophthalmologic care in a field environment.

(d) *Medications.* Other than force health protection prescription products (FHPPPs) to be provided to CAAF and selected non-CAAF, contracts shall require that contractor personnel deploy with a minimum 90-day supply of any required medications obtained at their own expense. Contractor personnel must be aware that deployed medical units are equipped and staffed to provide emergency care to healthy adults. They will not be able to provide or replace many medications required for routine treatment of chronic medical conditions, such as high blood pressure, heart conditions, and arthritis. The

contract shall require contractor personnel to review both the amount of the medication and its suitability in the foreign area with their personal physician and make any necessary adjustments before deploying. The contract shall require the contractor to be responsible for the re-supply of required medications.

(e) *Comfort Items.* The contract shall require that CAAF take spare hearing-aid batteries, sunglasses, insect repellent, sunscreen, and any other supplies related to their individual physical requirements. These items will not be provided by DoD sources.

(f) *Immunizations.* A list of immunizations, both those required for entry into the designated area of operations and those recommended by medical authorities, shall be produced for each deployment; posted to the geographic CCDR Web site or other venue, as appropriate; and incorporated in contracts for performance in the designated AOR.

(1) The geographic CCDR, upon the recommendation of the appropriate medical authority (*e.g.*, Combatant Command surgeon), shall provide guidance and a list of immunizations required to protect against communicable diseases judged to be a potential hazard to the health of those deploying to the applicable theater of operation. The Combatant Command surgeon of the deployed location shall prepare and maintain this list.

(2) The contract shall require that CAAF be appropriately immunized before completing the pre-deployment process.

(3) The Government shall provide military-specific vaccinations and immunizations (*e.g.*, anthrax, smallpox) during pre-deployment processing. However, the contract shall stipulate that CAAF obtain all other immunizations (*e.g.*, yellow fever, tetanus, typhoid, flu, hepatitis A and B, meningococcal, and tuberculin (TB) skin testing) prior to arrival at the deployment center.

(4) Theater-specific medical supplies and FHPPPs, such as anti-malarials and pyridostigmine bromide, will be provided to CAAF and selected non-CAAF on the same basis as they are to active duty military members. Addi-

tionally, CAAF will be issued deployment medication information sheets for all vaccines or deployment-related medications that are dispensed or administered.

(5) A TB skin test is required within 3 months prior to deployment. Additionally, the contract shall stipulate that CAAF and selected non-CAAF bring to the JOA a current copy of Public Health Service Form 791, "International Certificate of Vaccination," (also known as "shot record," available for purchase at <http://bookstore.gpo.gov/collections/vaccination.jsp>).

(g) *Human Immunodeficiency Virus (HIV) Testing.* HIV testing is not mandatory for contingency contractor personnel unless specified by an agreement or by local requirements. HIV testing, if required, shall occur within 1 year before deployment.

(h) *Armed Forces Repository of Specimen Samples for the Identification of Remains (AFRSSIR).* For identification of remains purposes, all CAAF who are U.S. citizens shall obtain a dental panograph and provide a specimen sample suitable for DNA analysis prior to or during deployment processing. The DoD Components shall ensure that all contracts require CAAF who are U.S. citizens to provide specimens for AFRSSIR as a condition of employment according to DoD Instruction 5154.30 (see <http://www.dtic.mil/whs/directives/corres/pdf/515430p.pdf>). Specimens shall be collected and managed as provided in paragraphs (h)(1) through (h)(3) of this section.

(1) All CAAF who are U.S. citizens processing through a deployment center will have a sample collected and forwarded to the AFRSSIR for storage. Contracts shall require contractors to verify in SPOT or its successor that AFRSSIR has received the sample or that the DNA reference specimen sample has been collected by the contractor.

(2) If CAAF who are U.S. citizens do not process through a deployment center or the defense contractor is authorized to process its own personnel, the contract shall require that the contractor make its own arrangements for collection and storage of the DNA reference specimen through a private facility, or arrange for the storage of the

specimen by contacting AFRSSIR. Regardless of what specimen collection and storage arrangements are made, all defense contractors deploying CAAF who are U.S. citizens must provide the CAAF name and Social Security number, location of the sample, facility contact information, and retrieval plan to AFRSSIR. If AFRSSIR is not used and a CAAF who is a U.S. citizen becomes a casualty, the defense contractor must be able to retrieve identification media for use by the Armed Forces Medical Examiner (AFME) or other competent authority to conduct a medical-legal investigation of the incident and identification of the victim(s). These records must be retrievable within 24 hours for forwarding to the AFME when there is a reported incident that would necessitate its use for human remains identification purposes. The defense contractor shall have access to:

- (i) Completed DD Form 93 or equivalent record.
- (ii) Location of employee medical and dental records, including panograph.
- (iii) Location of employee fingerprint record.

(3) In accordance with DoD Instruction 5154.30 (see <http://www.dtic.mil/whs/directives/corres/pdf/515430p.pdf>), AFRSSIR is responsible for implementing special rules and procedures to ensure the protection of privacy interests in the specimen samples and any DNA analysis of those samples. Specimen samples shall only be used for the purposes outlined in DoD Instruction 5154.30. Other details, including retention and destruction requirements of DNA samples, are addressed in DoD Instruction 5154.30.

(i) *Pre-Existing Medical Conditions.* All evaluations of pre-existing medical conditions should be accomplished prior to deployment. Personnel who have pre-existing medical conditions may deploy if all of these conditions are met:

- (1) The condition is not of such a nature that an unexpected worsening is likely to have a medically grave outcome or a negative impact on mission execution.
- (2) The condition is stable and reasonably anticipated by the pre-deploy-

ment medical evaluator not to worsen during the deployment under contractor-provided medical care in-theater in light of the physical, physiological, psychological, environmental, and nutritional effects of the duties and location.

(3) Any required ongoing health care or medications must be available or accessible to the contractor, independent of the military health system, and have no special handling, storage, or other requirements (*e.g.*, refrigeration requirements and/or cold chain, electrical power requirements) that cannot be met in the specific theater of operations. Personnel must deploy with a minimum 90-day supply of prescription medications other than FHPPPs.

(4) The condition does not and is not anticipated to require duty limitations that would preclude performance of duty or to impose accommodation. (The nature of the accommodation must be considered. The Combatant Command surgeon (or his delegated representative) is the appropriate authority to evaluate the suitability of the individual's limitations in-theater.)

(5) There is no need for routine out-of-theater evacuation for continuing diagnostics or other evaluations.

(j) *Conditions Usually Precluding Medical Clearance.* (1) This section is not intended to be comprehensive. A list of all possible diagnoses and their severity that should not be approved would be too expansive to list in this part. In general, individuals with the conditions in paragraphs (j)(2)(i) through (j)(2)(xxx) of this section, based on an individual assessment pursuant to DoD Instruction 6490.03, will not normally be approved for deployment. The medical evaluator must carefully consider whether climate; altitude; nature of available food and housing; availability of medical, behavioral health, and dental services; or other environmental and operational factors may be hazardous to the deploying person's health because of a known physical or mental condition.

(2) Medical clearance for deployment of persons with any of the conditions in this section shall be granted only after consultation with the appropriate Combatant Command surgeon. The



Combatant Command surgeon makes recommendations and serves as the geographic CCDR advisor; however, the geographic CCDR is the final approval or disapproval authority except as provided in paragraph (k)(3) of this section. The Combatant Command surgeon can determine if adequate treatment facilities and specialist support is available at the duty station for:

(i) Physical or psychological conditions resulting in the inability to effectively wear IPE, including protective mask, ballistic helmet, body armor, and CBRN protective ensemble, regardless of the nature of the condition that causes the inability to wear the equipment if wearing such equipment may be reasonably anticipated or required in the deployed location.

(ii) Conditions that prohibit immunizations or use of FHPPs required for the specific deployment. Depending on the applicable threat assessment, required FHPPs, vaccines, and countermeasures may include atropine, epinephrine and/or 2-pam chloride autoinjectors, certain antimicrobials, antimalarials, and pyridostigmine bromide.

(iii) Any chronic medical condition that requires frequent clinical visits, that fails to respond to adequate conservative treatment, or that necessitates significant limitation of physical activity.

(iv) Any medical condition that requires durable medical equipment or appliances or that requires periodic evaluation and/or treatment by medical specialists not readily available in theater (*e.g.*, CPAC machine for sleep apnea).

(v) Any unresolved acute or chronic illness or injury that would impair duty performance in a deployed environment during the duration of the deployment.

(vi) Active tuberculosis or known blood-borne diseases that may be transmitted to others in a deployed environment. (For HIV infections, see paragraph (j)(2)(xvii) of this section.)

(vii) An acute exacerbation of a physical or mental health condition that could affect duty performance.

(viii) Recurrent loss of consciousness for any reason.

(ix) Any medical condition that could result in sudden incapacitation including a history of stroke within the last 24 months, seizure disorders, and diabetes mellitus type I or II, treated with insulin or oral hypoglycemic agents.

(x) Hypertension not controlled with medication or that requires frequent monitoring to achieve control.

(xi) Pregnancy.

(xii) Cancer for which the individual is receiving continuing treatment or that requires periodic specialty medical evaluations during the anticipated duration of the deployment.

(xiii) Precancerous lesions that have not been treated and/or evaluated and that require treatment and/or evaluation during the anticipated duration of the deployment.

(xiv) Any medical condition that requires surgery or for which surgery has been performed that requires rehabilitation or additional surgery to remove devices.

(xv) Asthma that has a Forced Expiratory Volume-1 (FEV-1) of less than or equal to 50 percent of predicted FEV-1 despite appropriate therapy, that has required hospitalization at least 2 times in the last 12 months, or that requires daily systemic oral or injectable steroids.

(xvi) Any musculoskeletal condition that significantly impairs performance of duties in a deployed environment.

(xvii) HIV antibody positive with the presence of progressive clinical illness or immunological deficiency. The Combatant Command surgeon should be consulted in all instances of HIV seropositivity before medical clearance for deployment.

(xviii) Hearing loss. The requirement for use of a hearing aid does not necessarily preclude deployment. However, the individual must have sufficient unaided hearing to perform duties safely.

(xix) Loss of vision. Best corrected visual acuity must meet job requirements to safely perform duties.

(xx) Symptomatic coronary artery disease.

(xxi) History of myocardial infarction within 1 year of deployment.

(xxii) History of coronary artery bypass graft, coronary artery angioplasty, carotid endarterectomy,

other arterial stenting, or aneurysm repair within 1 year of deployment.

(xxiii) Cardiac dysrhythmias or arrhythmias, either symptomatic or requiring medical or electrophysiologic control (presence of an implanted defibrillator and/or pacemaker).

(xxiv) Heart failure.

(xxv) Individuals without a dental exam within the last 12 months or who are likely to require dental treatment or reevaluation for oral conditions that are likely to result in dental emergencies within 12 months.

(xxvi) Psychotic and/or bipolar disorders. For detailed guidance on deployment-limiting psychiatric conditions or psychotropic medications, see ASD(HA) Memorandum "Policy Guidance for Deployment-Limiting Psychiatric Conditions and Medications" November 7, 2006 (see [http://www.ha.osd.mil/policies/2006/061107\\_deployment-limiting\\_psych\\_conditions\\_meds.pdf](http://www.ha.osd.mil/policies/2006/061107_deployment-limiting_psych_conditions_meds.pdf)).

(xxvii) Psychiatric disorders under treatment with fewer than 3 months of demonstrated stability.

(xxviii) Clinical psychiatric disorders with residual symptoms that impair duty performance.

(xxviii) Mental health conditions that pose a substantial risk for deterioration and/or recurrence of impairing symptoms in the deployed environment.

(xxx) Chronic medical conditions that require ongoing treatment with antipsychotics, lithium, or anticonvulsants.

(k) *Exceptions to Medical Standards (Waivers)*. If a contractor believes an individual CAAF employee with one of the conditions listed in paragraphs (j)(2)(i) through (j)(2)(xxx) of this section can accomplish his or her tasks and duties and tolerate the environmental and operational conditions of the deployed location, the contractor may request a waiver for that individual through the contracting officer or designee.

(1) Waivers are unlikely for contractor personnel and an explanation should be given as to why other persons who meet the medical standards could not be identified to fulfill the deployed duties. Waivers and requests for waivers will include a summary of a de-

tailed medical evaluation or consultation concerning the medical condition(s). Maximization of mission accomplishment and the protection of the health of personnel are the ultimate goals. Justification will include statements indicating the CAAF member's experience, position to be placed in, any known specific hazards of the position, anticipated availability and need for care while deployed, and the benefit expected to accrue from the waiver.

(2) Medical clearance to deploy or continue serving in a deployed environment for persons with any of the conditions in paragraphs (j)(2)(i) through (j)(2)(xxx) of this section must have the concurrence by the Combatant Command surgeon, or his designee, who will recommend approval or disapproval to the geographic CCDR. The geographic CCDR, or his designee, is the final decision authority for approvals and disapprovals.

(3) For CAAF employees working with Special Operations Forces personnel who have conditions in paragraphs (j)(2)(i) through (j)(2)(xxx) of this section, medical clearance may be granted after consultation with the appropriate Theater Special Operations Command (TSOC) surgeon. The TSOC surgeon, in coordination with the Combatant Command surgeon and senior in-theater medical authority, will ascertain the capability and availability of treatment facilities and specialist support in the general duty area versus the operational criticality of the particular SOF member. The TSOC surgeon will recommend approval or disapproval to the TSOC Commander. The TSOC Commander is the final approval or disapproval authority.

## PART 159—PRIVATE SECURITY CONTRACTORS OPERATING IN CONTINGENCY OPERATIONS

Sec.

- 159.1 Purpose.
- 159.2 Applicability and scope.
- 159.3 Definitions.
- 159.4 Policy.
- 159.5 Responsibilities.
- 159.6 Procedures.

AUTHORITY: Pub. L. 110-181; Pub. L. 110-417.

## § 159.1

## 32 CFR Ch. I (7–1–16 Edition)

SOURCE: 76 FR 49655, Aug. 11, 2011, unless otherwise noted.

### § 159.1 Purpose.

This part establishes policy, assigns responsibilities and provides procedures for the regulation of the selection, accountability, training, equipping, and conduct of personnel performing private security functions under a covered contract. It also assigns responsibilities and establishes procedures for incident reporting, use of and accountability for equipment, rules for the use of force, and a process for administrative action or the removal, as appropriate, of PSCs and PSC personnel.

### § 159.2 Applicability and scope.

This part:

(a) Applies to:

(1) The Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to as the “DoD Components”).

(2) The Department of State and other U.S. Federal agencies insofar as it implements the requirements of section 862 of Public Law 110–181, as amended. Specifically, in areas of operations which require enhanced coordination of PSC and PSC personnel working for U.S. Government (U.S.G.) agencies, the Secretary of Defense may designate such areas as areas of combat operations or other significant military operations for the limited purposes of this part. In such an instance, the standards established in accordance with this part would, in coordination with the Secretary of State, expand from covering only DoD PSCs and PSC personnel to cover all U.S.G.-funded PSCs and PSC personnel operating in the designated area. The requirements of this part shall not apply to a nonprofit nongovernmental organization receiving grants or cooperative agreements for activities conducted within an area of other significant military operations if the Secretary of

Defense and the Secretary of State agree that such organization may be exempted. An exemption may be granted by the agreement of the Secretaries under this paragraph on an organization-by-organization or area-by-area basis. Such an exemption may not be granted with respect to an area of combat operations.

(b) Prescribes policies applicable to all:

(1) DoD PSCs and PSC personnel performing private security functions during contingency operations outside the United States.

(2) USG-funded PSCs and PSC personnel performing private security functions in an area of combat operations or, with the agreement of the Secretary of State, other significant military operations as designated by the Secretary of Defense.

### § 159.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this part.

*Area of combat operations.* An area of operations designated as such by the Secretary of Defense for the purpose of this part, when enhanced coordination of PSCs working for U.S.G. agencies is required.

*Contingency operation.* A military operation that is either designated by the Secretary of Defense as a contingency operation or becomes a contingency operation as a matter of law (10 U.S.C. 101(a)(13)). It is a military operation that:

(1) Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, 12406, of 10 U.S.C., chapter 15 of 10 U.S.C. or any other provision of law during a war or during a national emergency declared by the President or Congress.

*Contractor.* The contractor, subcontractor, grantee, or other party carrying out the covered contract.

*Covered contract.* (1) A DoD contract for performance of services and/or delivery of supplies in an area of contingency operations outside the United States or a contract of a non-DoD Federal agency for performance of services and/or delivery of supplies in an area of combat operations or other significant military operations, as designated by the Secretary of Defense; a subcontract at any tier under such a contract; or a task order or delivery order issued under such a contract or subcontract.

(2) Also includes contracts or subcontracts funded under grants and subgrants by a Federal agency for performance in an area of combat operations or other significant military operations as designated by the Secretary of Defense.

(3) Excludes temporary arrangements entered into by non-DoD contractors or grantees for the performance of private security functions by individual indigenous personnel not affiliated with a local or expatriate security company. Such arrangements must still be in compliance with local law.

*Other significant military operations.* For purposes of this part, the term 'other significant military operations' means activities, other than combat operations, as part of an overseas contingency operation that are carried out by United States Armed Forces in an uncontrolled or unpredictable high-threat environment where personnel performing security functions may be called upon to use deadly force.<sup>1</sup>

*Private security functions.* Activities engaged in by a contractor under a covered contract as follows:

(1) Guarding of personnel, facilities, designated sites, or property of a Federal agency, the contractor or subcontractor, or a third party.<sup>2</sup>

<sup>1</sup>With respect to an area of other significant military operations, the requirements of this part shall apply only upon agreement of the Secretary of Defense and the Secretary of State. Such an agreement of the Secretaries may be made only on an area-by-area basis. With respect to an area of combat operations, the requirements of this part shall always apply.

<sup>2</sup>Contractors performing private security functions are not authorized to perform inherently governmental functions. In this regard, they are limited to a defensive re-

(2) Any other activity for which personnel are required to carry weapons in the performance of their duties in accordance with the terms of their contract. For the DoD, DoDI Instruction 3020.41, "Contractor Personnel Authorized to Accompany the U.S. Armed Forces,"<sup>3</sup> prescribes policies related to personnel allowed to carry weapons for self defense.

*PSC.* During contingency operations "PSC" means a company employed by the DoD performing private security functions under a covered contract. In a designated area of combat operations or other significant military operations, the term "PSC" expands to include all companies employed by U.S.G. agencies performing private security functions under a covered contract.

*PSC personnel.* Any individual performing private security functions under a covered contract.

#### § 159.4 Policy.

(a) Consistent with the requirements of paragraph (a)(2) of section 862 of Public Law 110-181, the selection, training, equipping, and conduct of PSC personnel including the establishment of appropriate processes shall be coordinated between the DoD and the Department of State. Coordination shall encompass the contemplated use of PSC personnel during the planning stages of contingency operations so as to allow guidance to be developed under paragraphs (b) and (c) of this section and promulgated under section 159.5 of this part in a timely manner that is appropriate for the needs of the contingency operation.

(b) Geographic Combatant Commanders will provide tailored PSC guidance and procedures for the operational environment in their Area of Responsibility (AOR) in accordance with this part, the Federal Acquisition Regulation (FAR)<sup>4</sup> and the Defense

response to hostile acts or demonstrated hostile intent.

<sup>3</sup>Available at <http://www.dtic.mil/whs/directives/corres/pdf/302041p.pdf>.

<sup>4</sup>Published in Title 48 of the Code of Federal Regulations.

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Federal Acquisition Regulation Supplement (DFARS).<sup>5</sup>

(c) In a designated area of combat operations or other significant military operations, the relevant Chief of Mission will be responsible for developing and issuing implementing instructions for non-DoD PSCs and their personnel consistent with the standards set forth by the geographic Combatant Commander in accordance with paragraph (b) of this section. The Chief of Mission has the option to instruct non-DoD PSCs and their personnel to follow the guidance and procedures developed by the geographic Combatant Commander and/or a sub unified commander or joint force commander (JFC) where specifically authorized by the Combatant Commander to do so and notice of that authorization is provided to non-DoD agencies.

(d) The requirements of this part shall not apply to contracts entered into by elements of the intelligence community in support of intelligence activities.

### § 159.5 Responsibilities.

(a) The Deputy Assistant Secretary of Defense for Program Support, under the authority, direction, and control of the Assistant Secretary of Defense for Logistics and Materiel Readiness, shall monitor the registering, processing, and accounting of PSC personnel in an area of contingency operations.

(b) The Director, Defense Procurement and Acquisition Policy, under the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology and Logistics, shall ensure that the DFARS and (in consultation with the other members of the FAR Council) the FAR provide appropriate guidance and contract clauses consistent with this part and paragraph (b) of section 862 of Public Law 110–181.

(c) The Deputy Chief Management Officer of the Department of Defense shall direct the appropriate component to ensure that information systems effectively support the accountability and visibility of contracts, contractors,

and specified equipment associated with private security functions.

(d) The Chairman of the Joint Chiefs of Staff shall ensure that joint doctrine is consistent with the principles established by DoD Directive 3020.49, “Orchestrating, Synchronizing, and Integrating Program Management of Contingency Acquisition Planning and Its Operational Execution,”<sup>6</sup> DoD Instruction 3020.41, “Contractor Personnel Authorized to Accompany the U.S. Armed Forces,” and this part.

(e) The geographic Combatant Commanders in whose AOR a contingency operation is occurring, and within which PSCs and PSC personnel perform under covered contracts, shall:

(1) Provide guidance and procedures, as necessary and consistent with the principles established by DoD Directive 3020.49, “Orchestrating, Synchronizing, and Integrating Program Management of Contingency Acquisition Planning and Its Operational Execution,” DoD Instruction 3020.41, “Contractor Personnel Authorized to Accompany the U.S. Armed Forces,”<sup>7</sup> and this part, for the selection, training, accountability and equipping of such PSC personnel and the conduct of PSCs and PSC personnel within their AOR. Individual training and qualification standards shall meet, at a minimum, one of the Military Departments’ established standards. Within a geographic combatant command, a sub unified commander or JFC shall be responsible for developing and issuing implementing procedures as warranted by the situation, operation, and environment, in consultation with the relevant Chief of Mission in designated areas of combat operations or other significant military operations.

(2) Through the Contracting Officer, ensure that PSC personnel acknowledge, through their PSC, their understanding and obligation to comply with the terms and conditions of their covered contracts.

(3) Issue written authorization to the PSC identifying individual PSC personnel who are authorized to be armed.

<sup>6</sup> Available from <http://www.dtic.mil/whs/directives/corres/pdf/302040p.pdf>.

<sup>7</sup> Available at <http://www.dtic.mil/whs/directives/corres/html/302041.htm>.

<sup>5</sup> Published in Title 48 of the Code of Federal Regulations.

Rules for the Use of Force shall be included with the written authorization, if not previously provided to the contractor in the solicitation or during the course of contract administration. Rules for the Use of Force shall conform to the guidance in the Chairman of the Joint Chiefs of Staff Instruction 3121.01B, "Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces." Access by offerors and contractors to the rules for the use of force may be controlled in accordance with the terms of FAR 52.204-2 (Aug 1996), DFARS 252.204-7000 (Dec 1991), or both.<sup>8</sup>

(4) Ensure that the procedures, orders, directives and instructions prescribed in §159.6(a) of this part are available through a single location (to include an Internet Web site, consistent with security considerations and requirements).

(f) The Heads of the DoD Components shall:

(1) Ensure that all private security-related requirement documents are in compliance with the procedures listed in §159.6 of this part and the guidance and procedures issued by the geographic Combatant Command,

(2) Ensure private security-related contracts contain the appropriate clauses in accordance with the applicable FAR clause and include additional mission-specific requirements as appropriate.

#### § 159.6 Procedures.

(a) *Standing Combatant Command Guidance and Procedures.* Each geographic Combatant Commander shall develop and publish guidance and procedures for PSCs and PSC personnel operating during a contingency operation within their AOR, consistent with applicable law; this part; applicable Military Department publications; and other applicable DoD issuances to

<sup>8</sup>CJCSI 3121.01B provides guidance on the standing rules of engagement (SROE) and establishes standing rules for the use of force (SRUF) for DOD operations worldwide. This document is classified secret. CJCSI 3121.01B is available via Secure Internet Protocol Router Network at <http://js.smil.mil>. If the requester is not an authorized user of the classified network, the requester should contact Joint Staff J-3 at 703-614-0425.

include DoD Directive 3020.49, "Orchestrating, Synchronizing, and Integrating Program Management and Contingency Acquisition Planning and Its Operational Execution," DFARS, DoD Directive 2311.01E, "DoD Law of War Program,"<sup>9</sup> DoD 5200.8-R, "Physical Security Program,"<sup>10</sup> CJCSI 3121.01B, "Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces," and DoD Directive 5210.56, "Use of Deadly Force and the Carrying of Firearms by DoD Personnel Engaged in Law Enforcement and Security Duties."<sup>11</sup> The guidance and procedures shall:

(1) Contain, at a minimum, procedures to implement the following processes, and identify the organization responsible for managing these processes:

(i) Registering, processing, accounting for and keeping appropriate records of PSCs and PSC personnel in accordance with DoD Instruction 3020.41, "Contractor Personnel Authorized to Accompany the U.S. Armed Forces."

(ii) PSC verification that PSC personnel meet all the legal, training, and qualification requirements for authorization to carry a weapon in accordance with the terms and conditions of their contract and host country law. Weapons accountability procedures will be established and approved prior to the weapons authorization.

(iii) Arming of PSC personnel. Requests for permission to arm PSC personnel shall be reviewed on a case-by-case basis by the appropriate Staff Judge Advocate to the geographic Combatant Commander (or a designee) to ensure there is a legal basis for approval. The request will then be approved or denied by the geographic Combatant Commander or a specifically identified designee, no lower than the flag officer level. Requests to arm non-DOD PSC personnel shall be reviewed and approved in accordance with §159.4(c) of this part. Requests for permission to arm all PSC personnel shall include:

<sup>9</sup> Available at <http://www.dtic.mil/whs/directives/corres/html/231101.htm>.

<sup>10</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/520008r.pdf>.

<sup>11</sup> Available at <http://www.dtic.mil/whs/directives/corres/html/521056.htm>.

(A) A description of where PSC personnel will operate, the anticipated threat, and what property or personnel such personnel are intended to protect, if any.

(B) A description of how the movement of PSC personnel will be coordinated through areas of increased risk or planned or ongoing military operations, including how PSC personnel will be rapidly identified by members of the U.S. Armed Forces.

(C) A communication plan, to include a description of how relevant threat information will be shared between PSC personnel and U.S. military forces and how appropriate assistance will be provided to PSC personnel who become engaged in hostile situations. DoD contractors performing private security functions are only to be used in accordance with DoD Instruction 1100.22, "Guidance for Determining Workforce Mix,"<sup>12</sup> that is, they are limited to a defensive response to hostile acts or demonstrated hostile intent.

(D) Documentation of individual training covering weapons familiarization and qualification, rules for the use of force, limits on the use of force including whether defense of others is consistent with host nation Status of Forces Agreements or local law, the distinction between the rules of engagement applicable to military forces and the prescribed rules for the use of force that control the use of weapons by civilians, and the Law of Armed Conflict.

(E) Written acknowledgment by the PSC and its individual PSC personnel, after investigation of background of PSC personnel by the contractor, verifying such personnel are not prohibited under U.S. law to possess firearms.

(F) Written acknowledgment by the PSC and individual PSC personnel that:

(1) Inappropriate use of force by contractor personnel authorized to accompany the U.S. Armed Forces may subject such personnel to United States or

host nation prosecution and civil liability.<sup>13</sup>

(2) Proof of authorization to be armed must be carried by each PSC personnel.

(3) PSC personnel may possess only U.S.G.-issued and/or -approved weapons and ammunition for which they have been qualified according to paragraph (a)(1)(iii)(E) of this section.

(4) PSC personnel were briefed about and understand limitations on the use of force.

(5) Authorization to possess weapons and ammunition may be revoked for non-compliance with established rules for the use of force.

(6) PSC personnel are prohibited from consuming alcoholic beverages or being under the influence of alcohol while armed.

(iv) Registration and identification in the Synchronized Predeployment and Operational Tracker (or its successor database) of armored vehicles, helicopters, and other vehicles operated by PSC personnel.

(v) Reporting alleged criminal activity or other incidents involving PSCs or PSC personnel by another company or any other person. All incidents involving the following shall be reported and documented:

(A) A weapon is discharged by an individual performing private security functions;

(B) An individual performing private security functions is killed or injured in the performance of their duties;

(C) A person other than an individual performing private security functions is killed or injured as a result of conduct by PSC personnel;

(D) Property is destroyed as a result of conduct by a PSC or PSC personnel;

(E) An individual performing private security functions has come under attack including in cases where a weapon is discharged against an individual performing private security functions or

<sup>12</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/110022p.pdf>.

<sup>13</sup> This requirement is specific to arming procedures. Such written acknowledgement should not be construed to limit potential civil and criminal liability to conduct arising from "the use of weapons." For example, PSC personnel could be held criminally liable for any conduct that would constitute a Federal offense (see MEJA, 18 U.S.C. 3261(a)).

personnel performing such functions believe a weapon was so discharged; or

(F) Active, non-lethal counter-measures (other than the discharge of a weapon) are employed by PSC personnel in response to a perceived immediate threat in an incident that could significantly affect U.S. objectives with regard to the military mission or international relations. (Active non-lethal systems include laser optical distracters, acoustic hailing devices, electro-muscular TASER guns, blunt-trauma devices like rubber balls and sponge grenades, and a variety of riot-control agents and delivery systems).

(vi) The independent review and, if practicable, investigation of incidents reported pursuant to paragraphs (a)(1)(v)(A) through (a)(1)(v)(F) of this section and incidents of alleged misconduct by PSC personnel.

(vii) Identification of ultimate criminal jurisdiction and investigative responsibilities, where conduct of U.S.G.-funded PSCs or PSC personnel are in question, in accordance with applicable laws to include a recognition of investigative jurisdiction and coordination for joint investigations (*i.e.*, other U.S.G. agencies, host nation, or third country agencies), where the conduct of PSCs and PSC personnel is in question.

(viii) A mechanism by which a commander of a combatant command may request an action by which PSC personnel who are non-compliant with contract requirements are removed from the designated operational area.

(ix) Interagency coordination of administrative penalties or removal, as appropriate, of non-DoD PSC personnel who fail to comply with the terms and conditions of their contract, as they relate to this part.

(x) Implementation of the training requirements contained below in paragraph (a)(2)(ii) of this section.

(2) Specifically cover:

(i) Matters relating to authorized equipment, force protection, security, health, safety, and relations and interaction with locals in accordance with DoD Instruction 3020.41, "Contractor Personnel Authorized to Accompany the U.S. Armed Forces."

(ii) Predeployment training requirements addressing, at a minimum, the identification of resources and assistance available to PSC personnel as well as country information and cultural training, and guidance on working with host country nationals and military personnel.

(iii) Rules for the use of force and graduated force procedures.

(iv) Requirements and procedures for direction, control and the maintenance of communications with regard to the movement and coordination of PSCs and PSC personnel, including specifying interoperability requirements. These include coordinating with the Chief of Mission, as necessary, private security operations outside secure bases and U.S. diplomatic properties to include movement control procedures for all contractors, including PSC personnel.

(b) *Availability of Guidance and Procedures.* The geographic Combatant Commander shall ensure the guidance and procedures prescribed in paragraph (a) of this section are readily available and accessible by PSCs and their personnel (*e.g.*, on a Web page and/or through contract terms), consistent with security considerations and requirements.

(c) *Subordinate Guidance and Procedures.* A sub unified commander or JFC, in consultation with the Chief of Mission, will issue guidance and procedures implementing the standing combatant command publications specified in paragraph (a) of this section, consistent with the situation and operating environment.

(d) *Consultation and Coordination.* The Chief of Mission and the geographic Combatant Commander/sub unified commander or JFC shall make every effort to consult and coordinate responses to common threats and common concerns related to oversight of the conduct of U.S.G.-funded PSCs and their personnel.



**PART 161—IDENTIFICATION (ID) CARDS FOR MEMBERS OF THE UNIFORMED SERVICES, THEIR DEPENDENTS, AND OTHER ELIGIBLE INDIVIDUALS**

**Subpart A—Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals**

Sec.

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- 161.18 Benefits for abused dependents.
- 161.19 Benefits for former spouses.
- 161.20 Benefits for civilian personnel.
- 161.21 Benefits for retired civilian personnel.
- 161.22 Benefits for foreign affiliates.

AUTHORITY: 10 U.S.C. 1061–1064, 1072–1074, 1074a–1074c, 1076, 1076a, 1077, and 1095(k)(2), and 18 U.S.C. 499, 506, 509, 701, and 1001.

SOURCE: 79 FR 709, Jan. 6, 2014, unless otherwise noted.

**Subpart A—Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals**

**§ 161.1 Purpose.**

This part:

(a) Establishes policy, assigns responsibilities, and provides procedures for the issuing of distinct DoD ID cards. The ID cards shall be issued to uniformed service members, their dependents, and other eligible individuals and will be used as proof of identity and DoD affiliation.

(b) Sets forth responsibilities and procedures for the DoD ID card life-cycle in accordance with this part.

(c) Prescribes the benefits for commissary; exchange; morale, welfare, and recreation (MWR); Military Health Services direct care in military treatment facilities (MTFs); and TRICARE civilian health care (CHC) in support of the members of the uniformed services, their dependents, and other eligible individuals, in accordance with this part.

**§ 161.2 Applicability.**

This part applies to:

(a) The Office of the Secretary of Defense (OSD), the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the “DoD Components”).

(b) The Commissioned Corps of the U.S. Public Health Service (USPHS), under agreement with the Department of Health and Human Services, and the National Oceanic and Atmospheric Administration (NOAA), under agreement with the Department of Commerce.

**§ 161.3 Definitions.**

Unless otherwise noted, these terms and their definitions are for the purpose of this part.

*20/20/20, 20/20/15, or 10/20/10.* See definition of “former spouse.”

*Access to a DoD network.* User logon to a Windows active directory account on the Nonsecure Internet Protocol Router Network (NIPRNet) or an authorized network operating system account on the NIPRNet.

*Access to a DoD network (remote).* Authorized NIPRNet users accessing a NIPRNet resource from:

- (1) Another NIPRNet resource outside of the originating domain; or
- (2) An authorized system that resides outside of the NIPRNet. This includes domain-level access from handheld devices. Remote access includes logon for the purposes of telework, Virtual Private Network, and remote administration by DoD or non-DoD personnel.

*Active duty.* Full-time duty in the active military service of the United States. This includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the Military Department concerned. Active duty does not include full-time National Guard duty.

*Active duty for a period of more than 30 days.* Active duty under a call or order that does not specify a period of 30 days or less. When the “Active Duty for a Period of More than 30 Days” is established by consecutive sets of orders, their eligible dependents become entitled to TRICARE medical benefits on the first day of the set of orders that brings the period of active duty over 30 days.

*Adopted child.* A child adopted before the age of 21 or, if enrolled in a full-time course of study at an institution of higher learning, before the age of 23. Except for entitlement to medical care, a child with an incapacitating condition that existed before the age of 21 or that occurred while the child was a full-time student prior to the age of 23, may be adopted at any age provided it is determined that there is a BONA FIDE parent-child relationship. Surviving children adopted by a non-military member after the death of the

sponsor remain eligible for medical care only.

*Annulled.* The status of an individual, whose marriage has been declared a nullity by a court of competent jurisdiction, that restores unremarried status to a widow, widower, or former spouse for reinstatement of benefits.

*Attainment of age 65.* The first day of the month of the anniversary of the 65th birthday, unless the birthday falls on the first of the month. If the birthday is the first of the month, attainment of age 65 occurs on the first day of the preceding month.

*Benefits.* Entitlements or privileges that are assigned to a person or group of persons.

*CAC PIN reset (CPR).* A portable, single-purpose system capable of providing timely PIN reset capability to the field without requiring a Common Access Card (CAC) holder to return to a CAC issuance facility (i.e. Real-Time Automated Personnel Identification System (RAPIDS), workstation).

*Certified document.* Must be a certified true original and should convey the appropriate seal or markings of the issuer, or have a means to validate the authenticity of the document by a reference or source number, or be a notarized legal document or other document approved by a Judge Advocate, or have the appropriate certificate of authentication by a U.S. Consular Officer in the foreign country of issuance which attests to the authenticity of the signature and seal.

*Certified English translation.* See requirements for certified document.

*CHC.* Medical care provided through the TRICARE program including networks of CHC professionals, institutions, pharmacies, and suppliers to provide access to high-quality health care services.

*Child.* A natural child, stepchild, or adopted child of the sponsor who is younger than 21 years of age. If 21 or older, the child may remain entitled if he or she is:

- (1) 21 or 22 years old and enrolled in a full-time course of education.
- (2) 21 or older but incapable of self-support because of a mental or physical incapacity that existed before the 21st birthday.

(3) 21 or 22 years old and was enrolled full-time in an accredited institution of higher learning but became incapable of self-support because of a mental or physical condition while a full-time student.

*Civilian employee.* DoD civilian employees, as defined in 5 U.S.C. 2105 are individuals appointed to positions by designated officials. Appointments to appropriated fund positions are either permanent or time-limited and the employees are on full-time, part-time, or intermittent work schedules. In some instances, the appointments are seasonal with either a full-time, part-time, or intermittent work schedule. Positions are categorized further as Senior Executive Service (SES), Competitive Service, and Excepted Service positions. In addition, DoD employs individuals paid from NAFs, as well as foreign national citizens outside the United States, its territories, and its possessions, in DoD activities overseas. The terms and conditions of host-nation citizen employment are governed by controlling treaties, agreements, and memoranda of understanding with the foreign nations.

*Civilian noncombatant personnel.* Personnel who have been authorized to accompany military forces of the United States in regions of conflict, combat, and contingency operations and who are liable to capture and detention by the enemy as POWs.

*Commissary.* A benefit granted to eligible personnel in accordance with this part and DoD Instruction 1330.17 (available at <http://www.dtic.mil/whs/directives/corres/pdf/133017p.pdf>).

*Competitive service positions.* See 5 U.S.C. 2102.

*Contingency operation.* Defined in Joint Publication 1-02 (available at [http://www.dtic.mil/doctrine/new\\_pubs/jp1\\_02.pdf](http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf)).

*Contractor employee.* An employee of a firm, or individual under contract or subcontract to the DoD, designated as providing services or support to the Department.

*Contractors authorized to accompany the force.* Defined in Joint Publication 1-02.

*Cross-servicing.* Agreement amongst all uniformed services to assist members regardless of the 'parent service'

of that member or their dependents for all matter ID card or benefits related when appropriate.

*Defense Enrollment Eligibility Reporting System (DEERS).* The definitive centralized person data repository of identity and enrollment and eligibility verification data and associated contact information on members of the DoD Components, members of the Uniformed Services, and other personnel as designated by the DoD, and their eligible dependents and associated contact information.

*Dependent.* An individual whose relationship to the sponsor leads to entitlement to benefits and privileges.

*Direct Care (DC).* Medical care that TRICARE provides through the health care resources of the uniformed services through their clinics and MTFs. This does not include any medical care provided through the TRICARE CHC network.

*Dual eligible.* A person who is entitled to Medicare Part A and enrolled in Medicare Part B and is also entitled to TRICARE medical benefits, in accordance with section 706 of Public Law 106-398 and Public Law 102-190, "National Defense Authorization Act for Fiscal Years 1992 and 1993" (available at <http://thomas.loc.gov/cgi-bin/query/C?c102:/temp/~c102UvpYbH>).

*Dual status.* A person who is entitled to privileges from two sources (e.g., a retired member, who is also the dependent of an active duty member; a retired-with-pay member who is employed overseas as a civilian by the U.S. Government and is qualified for logistical support because of that civilian employment; a member of a Reserve Component who is an eligible dependent of an active duty military sponsor; or a child, who is the natural child of one sponsor and the stepchild and member of a household of another sponsor).

*Eligibility documentation.* Properly certified birth certificate or certificate of live birth authenticated by attending physician or other responsible person from a U.S. hospital or a MTF showing the name of at least one parent; properly certified marriage certification; properly certified final decree of divorce, dissolution, or annulment of marriage and statements attesting to

nonremarriage and status of employer-sponsored healthcare; court order for adoption or guardianship; statement of incapacity from a physician or personnel or medical headquarters of sponsor's parent uniformed service; letter from school registrar; retirement orders (providing entitlement to retired pay is established) or DD Form 214 "Certificate of Release or Discharge from Active Duty;" DD Form 1300, "Report of Casualty;" certification from the Department of Veterans' Affairs of 100 percent disabled status; orders awarding Medal of Honor (MOH); formal determination of eligibility for Medicare Part A benefits from the Social Security Administration (SSA); civilian personnel records; and invitational travel orders.

*Entitlements.* Rights or authorities that are provided based on legislative statute.

*Entry level separation.* As defined in DoD Instruction 1332.14, "Enlisted Administrative Separations" (available at <http://www.dtic.mil/whs/directives/correspdf/133214p.pdf>), an enlisted service member is considered in an entry-level status during the first 180 days of continuous active military service, or the first 180 days of continuous active service after a service break of more than 92 days of active service. A Service member of a Reserve Component who is not on active duty or who is serving under a call or order to active duty for 180 days or less begins entry-level status upon enlistment in a Reserve Component. Entry-level status for such a Service member of a Reserve Component terminates as follows:

(1) 180 days after beginning training if the Service member is ordered to active duty for training for one continuous period of 180 days or more; or

(2) 90 days after the beginning of the second period of active duty training if the Service member is ordered to active duty for training under a program that splits the training into two or more separate periods of active duty. For the purposes of characterization of service or description of separation, the Service member's status is determined by the date of notification as to the initiation of separation proceedings.

*Excepted service positions.* Defined in 5 U.S.C. 2103.

*Exchange.* A benefit that is extended to eligible individuals in accordance with DoD Instruction 1330.21.

*Family member.* An individual who receives benefits based on his or her association to a sponsor. A family member is often a dependent.

*Federally controlled facility.* Defined in Office of Management and Budget (OMB) Memorandum M-05-24, "Implementation of Homeland Security Presidential Directive (HSPD) 12—Policy for a Common Identification Standard for Federal Employees and Contractors" (available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2005/m05-24.pdf>).

*Foreign affiliate.* An individual who is a foreign national, either foreign civilian; foreign contractor; or foreign uniformed services personnel who through assignment, temporary duty, school, training, policy board, or other defined agreement is affiliated with the DoD. They are identified to the DoD for benefits and DoD ID card purposes.

*Foreign national civilians and contractors.* A category of personnel that are CAC-eligible if sponsored by their government as part of an official visit or assigned to work on a DoD facility and/or require access to DoD networks both on site or remotely (remote access must be on an exception only basis for this category).

*Former member.* An individual who is eligible to receive retired pay, at age 60, for non-regular service pursuant to 10 U.S.C. chapter 1223 but who has been discharged and who maintains no military affiliation. These former members, at age 60, and their eligible dependents are entitled to medical care, commissary, exchange, and MWR privileges. Under age 60, they and their eligible dependents are entitled to commissary, exchange, and MWR privileges only.

*Former spouse.* An individual who was married to a uniformed services member for at least 20 years, and the member had at least 20 years of service creditable toward retirement, and the marriage overlapped as follows:

(1) 20 years marriage, 20 years creditable service for retirement, and 20 years overlap between the marriage

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and the service (referred to as 20/20/20). The benefits eligibility begins on the date of divorce;

(2) 20 years marriage, 20 years creditable service for retirement, and 15 years overlap between the marriage and the service (referred to as 20/20/15). The benefits eligibility begins on the date of divorce; or

(3) A spouse whose marriage was terminated from a uniformed service member who has their eligibility to receive retired pay terminated as a result of misconduct based on Service-documented abuse of the spouse and has 10 years of marriage, 20 years of creditable service for retirement, 10 years of overlap between the marriage and the service (referred to as 10/20/10). The benefits eligibility begins on the date of divorce.

*Foster child.* A child without parental support and protection, placed with a person or family, usually by local welfare services or by court order. The foster parent(s) do not have custody, nor is there an adoption, but they are expected to treat the foster child as they would their own in regard to food, housing, clothing, and education. This is a non-medically entitled dependent.

*Full-time work schedule.* Full-time employment with a basic 40-hour work week.

*ID card sponsor.* The person affiliated to a DoD or other Federal agency who takes responsibility for verifying and authorizing the applicant's need for an ID card.

*Inactive National Guard (ING).* Part of the Army National Guard. These individuals are Reservists who are attached to a specific National Guard unit, but who do not participate in training activities. On mobilization, they shall mobilize with their assigned units. These members muster with their units once a year. Issuance of DD Form 1173-1 "United States Uniformed Services Identification and Privilege Card (Guard and Reserve Family Member)" to ING dependents is mandatory.

*Incapacitated person.* An individual who is impaired by physical disability, mental illness, mental deficiency, or other causes that prevent sufficient understanding or capacity to competently manage his or her own affairs.

*Institution of higher learning.* A college, university, or similar institution, including a technical or business school, offering post secondary-level academic instruction that leads to an associate or higher degree, if the school is empowered by the appropriate State education authority under State law to grant an associate or higher degree. When there is no State law to authorize the granting of a degree, the school may be recognized as an institution of higher learning if it is accredited for degree programs by a recognized accrediting agency. The term also includes a hospital offering educational programs at the post secondary level regardless of whether the hospital grants a post secondary degree. The term also includes an educational institution that is not located in a State that offers a course leading to a standard college degree or equivalent and is recognized as such by the Secretary of Education (or comparable official) of the country or other jurisdiction in which the institution is located.

*Individual Ready Reserve (IRR).* Trained individuals who have previously served in the active component or Selected Reserve (SelRes) and have time remaining on their military service obligation. Includes volunteers who do not have time remaining on the military service obligation, but are under contractual agreement to be a member of the IRR. These individuals are mobilization assets and may be called to active duty pursuant to the provisions of 10 U.S.C. chapter 1209. Issuance of DD Form 1173-1 to IRR dependents is mandatory.

*Intergovernmental Personnel Act (IPA) employees.* The IPA mobility program provides temporary assignment of personnel between the Federal Government and State and local governments, colleges and universities, Indian tribal governments, federally funded research and development centers, and other eligible organizations.

*Intermittent work schedule.* Employment without a regularly scheduled tour of duty.

*Medicare.* Health insurance for people age 65 or older, under 65 with certain disabilities, and any age with end-stage renal disease. The different parts of

Medicare help cover specific services if certain conditions are met.

(1) *Medicare part A.* Covers hospice care, home health care, skilled nursing facilities, and inpatient hospital stays.

(2) *Medicare part B.* Covers doctors' services, outpatient hospital care, and other medical services that Part A does not cover, such as physical and occupational therapy. Other examples include X-rays, medical equipment, or limited ambulance service.

*Member.* An individual who is affiliated with a Service, either active duty, Reserve, active duty retired, or Retired Reserve. Retired members are not former members. Also referred to as the sponsor.

*MWR.* A benefit that is extended to eligible individuals in accordance with DoD Instruction 1015.10, "Military Morale, Welfare, and Recreation (MWR) Programs" (available at <http://www.dtic.mil/whs/directives/corres/pdf/101510p.pdf>).

*National Agency Check with Inquiries (NACI).* Is the minimum investigation conducted by the Office of Personnel Management (OPM) for federal employment in nonsensitive positions and for individuals requiring eligibility for logical and physical access. The NACI consists of a records check (of designated agencies of the Federal Government that maintain record systems containing information relevant to making a personnel security determination) plus Written Inquiries to law enforcement agencies, former employers and supervisors, references and schools covering the last 5 years.

*Nonappropriated fund (NAF) employees.* NAF employees are Federal employees within the Department who are paid from NAFs. 5 U.S.C. 2105 explains the status of NAF employees as Federal employees.

*Non-regular service retirement.* A person who, as a member of the Ready Reserve, serves on active duty or performs active service, after the date of the enactment of sections 647 and 1106 of Public Law 110-181 and may receive retired pay in accordance with 10 U.S.C. 12731. Under these provisions the eligibility age for applying for retired pay shall be reduced below 60 years of age by 3 months for each aggregate of 90 days on which the member performs

in any fiscal year after such date, providing the applicant is at least 50 years of age. However, the member must be age 60 to qualify for CHC and CD.

*Part-time work schedule.* Part-time employment of 16 to 32 hours a week under a schedule consisting of an equal or varied number of hours per day.

*Permanent employee.* Career or career-conditional appointment in the Competitive or SES or an appointment in the Excepted Service that carries no restrictions or conditions.

*Placement agency (recognized by the Secretary of Defense).* An authorized placement agency in the United States or U.S. territories must be licensed for adoption by the State or territory in which the adoption procedures will be completed. In all other locations, a request for recognition must be approved by the appropriate Assistant Secretary of the Military Department concerned or an appropriate official to whom he or she has delegated approval authority.

*Pre-adoptive child.* With respect to determinations of dependency made on or after October 5, 1994, an unmarried person who is placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) in anticipation of the legal adoption of the person by the member or former member; AND is:

- (1) Younger than 21 years of age and
- (2) Not an eligible dependent of any other member or a former member; or,
- (3) Between the ages of 21 and 23 and enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary; and is:
  - (4) Dependent on the member or former member for over one-half of the student's support; or
  - (5) Dependent on the member or former member for over one-half of the student's support at the time of the member's or former member's death.
  - (6) Incapable of self support because of a mental or physical incapacity that occurred while the person was considered a dependent of the member or former member; and:
  - (7) Is dependent on the member or former member for over one-half of the person's support or was at the time of

the member's or former member's death.

(8) Resides with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation.

*Privileges.* Rights or authorities that are provided based on position, authority, or status and may be removed by proper authority.

*Ready Reserve.* Military members of the National Guard and Reserve, organized in units or as individuals, liable for recall to active duty to augment the active components in time of war or national emergency. The Ready Reserve consists of three Reserve Component subcategories: The SelRes, the IRR, and the ING.

*Remarried parent.* A dependent parent of a deceased military member who loses dependency-based eligibility for benefits on remarriage.

*Retired Reserve entitled to pay at age 60 (Gray Area Retirees).* Reserve members who have completed 20 qualifying years for retirement and are entitled to receive pay at age 60, but have not yet reached age 60. Reserve Retirees and their dependents receive commissary, MWR, and exchange benefits until the sponsor receives retired pay. Individuals may be recalled to active duty in accordance with 10 U.S.C.

*Seasonal employment.* Annually recurring periods of work of less than 12 months each year. Seasonal employees generally are permanent employees who are placed in non-duty or non-pay status and recalled to duty in accordance with pre-established conditions of employment. Seasonal employees may have full-time, part-time, or intermittent work schedules.

*Selected Reserve (SelRes).* Those National Guard and Reserve units and individuals within the Ready Reserve designated by their respective Services and approved by the Chairman of the Joint Chiefs of Staff, as so essential to initial wartime missions that they have priority over all other Reserves. They must be prepared to mobilize within 24 hours. The issuance of DD Form 1173-1 to their dependents and participation in the Guard and Reserve DEERS Enrollment Program are mandatory.

*Service Project Officer (SPO).* The uniformed services, National Guard and Reserve Component, and agency-level office that coordinates with OUSD(P&R) on policy and functional matters related to DEERS, RAPIDS, and Trusted Associate Sponsorship System (TASS), and manages ID card operations within the respective organization.

*SES positions.* Appropriated fund positions in an agency classified above General Service-15 pursuant to 5 U.S.C. 5108 or in level 4 or 5 of the Executive Schedule, or an equivalent position, which is not required to be filled by an appointment by the President by and with the advice and consent of the Senate.

*Site security manager (SSM).* The SPO-appointed individual that manages the daily operations at a RAPIDS site to include managing users, cardstock, and consumables.

*Sponsor.* The prime beneficiary who derives his or her eligibility based on individual status rather than dependence of another person. This beneficiary receives benefits based on his or her direct affiliation to the DoD.

*Spouse.* A person legally married under the law of the place in which the marriage was celebrated to a current, former, or retired uniformed service member, eligible civilian employee, or other eligible individual, in accordance with Part 1 and Part 2, regardless of gender or state of residence.

*Standby Reserve.* Personnel who maintain their military affiliation without being in the Ready Reserve, who have been designated key civilian employees, or who have a temporary hardship or disability. These individuals are not required to perform training and are not part of units. These individuals are trained and could be mobilized, if necessary, to fill manpower needs in specific skills.

*Temporary assignment.* An appointment for a specified period not to exceed 1 year. A temporary assignment can be extended up to a maximum of 1 additional year.

*Transitional Health Care (THC).* A healthcare system, formerly known as Transition Assistance Management Program (TAMP), instituted in section 502 of Public Law 101-510. It includes

pre-separation and separation services, the Continued Health Care Benefit Program, a voluntary insurance program for sponsors and eligible dependents separating from active service; pre-separation counseling service for separating uniformed services members; and various other transitional initiatives. Uniformed service members separated as uncharacterized entry-level separations do not qualify for THC. Section 706 of Public Law 108-375 replaced the TAMP with the THC program. Section 651 of Public Law 110-181 included the 2-year commissary and exchange privilege for involuntarily separated uniformed service members. The DoD added MWR to the benefit set and extended the same benefits to the eligible dependents. To qualify for benefits under this program, individuals must be separated with service characterized as honorable or general under honorable conditions meeting the separation reasons identified in 10 U.S.C. 1145. The THC program is a permanent program and made the medical eligibility 180 days for all eligible uniformed service members and eligible dependents. Enlisted uniformed service members discharged for reasons of misconduct, discharge in lieu of court-martial, or other reasons for which service normally is characterized as under other than honorable conditions are not eligible for transition benefits. Officers discharged as a result of resignation in lieu of trial by court-martial, or misconduct or moral or professional dereliction if the discharge could be characterized as under other than honorable conditions are not eligible for transition benefits. Pursuant to 10 U.S.C. 1145, the qualifying periods of active duty include:

(1) A member who is involuntarily separated from active duty.

(2) A member of a Reserve Component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is for a period of more than 30 days.

(3) A member who is separated from active duty for which the member is involuntarily retained in accordance with 10 U.S.C. 12305 in support of a contingency operation.

(4) A member who is separated from active duty served pursuant to a voluntary agreement of the member to remain on active duty for a period of less than 1 year in support of a contingency operation.

(5) A member who receives a sole survivorship discharge (as defined in 10 U.S.C. 1174); or

(6) A member who is separated from active duty who agrees to become a member of the SelRes. Section 734 of Public Law 110-417, which took effect on October 14, 2008 extended THC benefits to a uniformed service member who is separated from active duty who agrees to become a member of the SelRes of the Ready Reserve of a Reserve Component.

*Trusted Agent (TA).* An individual appointed by a TASM that serves as a sponsor for eligible populations within TASS, utilizes TASS to register data for the DD Form 1172-2 (available at <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd1172-2.pdf>), re-verifies CAC holder affiliation, and revokes CACs.

*Trusted Agent Security Manager (TASM).* An individual appointed by a SPO to oversee the activity for a specific TASS site and associated TAs. These individuals also serve in the TA role.

*Trusted Associate Sponsorship System (TASS) (formerly known as Contractor Verification System (CVS)).* A Web application used to verify that CAC applicants have the appropriate government sponsorship for the purpose of issuing CACs. The TASS web interface automates the DD Form 1172-2 for tracking the request process and updating DEERS with applicant information required for CAC issuance. The system also provides a mechanism for periodic re-verification of contractor eligibility to ensure that information is current and contractor CACs do not remain active when not appropriate. This capability will be expanded to support registration and background investigation confirmation for additional CAC eligible populations.

*Unmarried.* A widow or widower who remarried and whose marriage terminated by death or divorce, or a former spouse whose subsequent remarriage ended by death or divorce.



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*Unremarried.* A widow or widower who has never remarried, or a former spouse whose only remarriage was to the same military sponsor (periods of marriage in this case may be combined to document eligibility for former spouse benefits).

*Verifying Official (VO).* An individual who is responsible for validating eligibility of bona fide beneficiaries to receive benefits and entitlements.

*Ward.* An unmarried person whose care and physical custody has been entrusted to the sponsor by a legal decree or other instrument that a court of law or placement agency (recognized by the Secretary of Defense) issues. Includes foster children and children for whom a managing conservator has been designated. Wards must be dependent on the sponsor for over half of their support. An identification card issued to a ward may reflect entitlement to medical care benefits with respect to determinations of dependency made on or after July 1, 1994, for children who are placed in the legal custody of the member or former member as a result of an order of a court of competent jurisdiction in the United States (or a territory or possession of the United States) for a period of at least 12 consecutive months; and either:

- (1) Has not attained the age of 21;
- (2) Has not attained the age of 23 and is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary;
- (3) Is incapable of self support because of a mental or physical incapacity that occurred while the person was considered a dependent of the member or former member; or
- (4) Is dependent on the member or former member for over one-half of the person's support; resides with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of disability or incapacitation or under such other circumstances as the administering Secretary may by regulation prescribe; and is not a dependent of a member or a former member under any other subparagraph.

*Widow.* The spouse of a deceased male in the uniformed services.

*Widower.* The spouse of a deceased female in the uniformed services.

### § 161.4 Policy.

(a) It is DoD policy that a distinct DoD ID card shall be issued to uniformed service members, their dependents, and other eligible individuals and will be used as proof of identity and DoD affiliation.

(b) DoD ID cards shall serve as the Geneva Convention Card for eligible personnel in accordance with DoD Instruction 1000.1, "Identity Cards Required by the Geneva Convention" (available at <http://www.dtic.mil/whs/directives/corres/pdf/100001p.pdf>).

(c) DoD ID cards shall be issued through a secure and authoritative process in accordance with DoD Directive 1000.25, "DoD Personnel Identity Protection (PIP) Program" (available at <http://www.dtic.mil/whs/directives/corres/pdf/100025p.pdf>).

(d) The CAC, a form of DoD ID card, shall serve as the Federal Personal Identity Verification (PIV) card for DoD implementation of Homeland Security Presidential Directive 12, "Policy for a Common Identification Standard for Federal Employees and Contractors" (available at [http://www.dhs.gov/xabout/laws/gc\\_1217616624097.shtm](http://www.dhs.gov/xabout/laws/gc_1217616624097.shtm)).

(e) ID cards, in a form distinct from the CAC, shall be issued and will serve as proof of identity and DoD affiliation for eligible communities that do not require the Federal PIV card that complies with Homeland Security Presidential Directive 12 and FIPS Publication 201-1, "Personal Identity Verification (PIV) of Federal Employees and Contractors" (available at <http://csrc.nist.gov/publications/fips/fips201-1/FIPS-201-1-chng1.pdf>).

### § 161.5 Responsibilities.

- (a) The USD(P&R) shall:
- (1) Oversee implementation of the procedures within this part.
  - (2) Establish overall policy and procedures for the issuance of ID cards to members of the uniformed services, their dependents, and other eligible individuals.
  - (3) Establish minimum acceptable criteria for establishment and confirmation of personal identity, policy

for the issuance of the DoD enterprise personnel identity credentials, and approve of additional systems under the PIP Program in accordance with DoD Directive 1000.25.

(4) Act as the Principal Staff Assistant (PSA) for the DEERS, the RAPIDS, and the Personnel Identity Protection (PIP) Program in accordance with DoD Directive 1000.25.

(5) Maintain the DEERS data system in support of the Department of Defense in accordance with applicable law and directives.

(6) Develop and field the required RAPIDS infrastructure and all elements of field support to issue ID cards including but not limited to software distribution, hardware procurement and installation, on-site and depot-level hardware maintenance, on-site and Web-based user training and central telephone center support, and telecommunications engineering and network control center assistance.

(7) In coordination with the Under Secretary of Defense for Intelligence (USD(I)), the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)), and the DoD Chief Information Officer (DoD CIO) establish policy and oversight for CAC life-cycle compliance with FIPS Publication 201-1.

(8) Establish procedures that will uniquely identify personnel with specific associations with the Department of Defense and maintain the integrity of the unique personnel identifier in coordination with the DoD Components in accordance with DoD Directive 8320.03, "Unique Identification (UID) Standards for a Net-Centric Department of Defense" (available at <http://www.dtic.mil/whs/directives/corres/pdf/832003p.pdf>).

(b) The Assistant Secretary of Defense for Reserve Affairs (ASD(RA)), under the authority, direction, and control of the USD(P&R), shall develop policies and establish guidance for the National Guard and Reserve Component communities that affect benefits, entitlements, identity, and ID cards.

(c) The Deputy Assistant Secretary of Defense for Military Community and Family Policy (DASD(MC&FP)), under the authority, direction, and control of the USD(P&R), shall develop policy

and procedures to determine eligibility for access to DoD programs for MWR; commissaries; exchanges; lodging; children and youth; DoD schools; family support; voluntary and post-secondary education; and other military community and family benefits that affect identity and ID cards.

(d) The Director, Defense Human Resources Activity (DHRA), under the authority, direction, and control of the USD(P&R), shall, in accordance with DoD Directive 1000.25:

(1) Develop policies and procedures for the oversight, funding, personnel staffing, direction, and functional management of the PIP Program.

(2) Coordinate with the Principal Under Secretary of Defense for Health Affairs (ASD(HA)), and the ASD(RA) on changes to enrollment and eligibility policy and procedures pertaining to personnel, medical, and dental issues that affect the PIP Program.

(3) Develop policies and procedures to support the functional requirements of the PIP Program, DEERS, and the DEERS client applications.

(4) Secure funding in support of new requirements to support the PIP Program or the enrollment and eligibility functions of DEERS and RAPIDS.

(5) Approve the addition or elimination of population categories eligible for ID cards in accordance with applicable law.

(6) Establish the type and form of ID card issued to eligible populations categories and administer pilot programs to determine the suitable form of ID card for newly identified populations.

(e) The USD(AT&L) shall:

(1) Update the Defense Federal Acquisition Regulation Supplement (DFARS), current edition (available at <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>) to support requirements for CAC and Homeland Security Presidential Directive 12 for contracts.

(2) Ensure that the requirement for contractors to return CACs at the completion or termination of each individual's support on a specific contract is included in all applicable contracts.

(f) The USD(I) shall:

(1) Establish policy for the use of DoD issued ID cards for physical access purposes in accordance with DoD

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5200.08–R, “Physical Security Program” (available at <http://www.dtic.mil/whs/directives/corres/pdf/520008r.pdf>).

(2) Establish policy for military, civilian, and contractor employee background investigation, submission, and adjudication across the Department of Defense, in compliance with Homeland Security Presidential Directive 12 and Office of Personnel Management Memorandum, “Final Credentialing Standards for Issuing Personal Identity Verification (PIV) Cards Under HSPD–12” (available at [http://www.opm.gov/investigate/resources/final\\_credentialing\\_standards.pdf](http://www.opm.gov/investigate/resources/final_credentialing_standards.pdf)).

(g) The DoD CIO shall:

(1) In coordination with the USD(I), USD(P&R), and USD(AT&L), establish policy and oversight for CAC life-cycle compliance with Federal Information Processing Standards Publication 201–1.

(2) Provide guidance regarding the use of DoD and non-DoD identification credentials on DoD information systems, including the Federal PIV cards, for authenticating to DoD network accounts and DoD private Web sites.

(3) Ensure that the DoD Public Key Infrastructure (PKI) conforms to all applicable FIPS to the greatest extent possible.

(h) The Heads of the DoD Components, the Director, USPHS, and the NOAA Administrator, shall:

(1) Develop and implement Component-level procedures for DoD directed policies and statutory requirements to support benefits eligibility through DEERS.

(2) Develop and implement Component-level ID card life-cycle procedures to comply with the provisions of this Instruction.

(3) Ensure all DoD employees, uniformed service members, and all other eligible CAC applicants, including contractor employees and other affiliate CAC applicants, have met the background investigation requirements referenced in paragraph (a)(3) of § 161.6 of this part prior to approving CAC sponsorship and registration. Background investigation status must be verified and documented by the sponsor or sponsoring organization in conjunction with application for CAC issuance.

(4) Establish processes and procedures as part of the normal check-in and check-out process for collection of the CAC for all categories of DoD personnel and contractor employees when there is a separation, retirement, termination, contract termination or expiration, or CAC revocation. Since CACs contain personally identifiable information (PII), they shall be treated and controlled in accordance with 32 CFR part 310, and DoD 5200.1–M, Volume 4, “DoD Information Security Program: Controlled Unclassified Information (CUI)” (available at [http://www.dtic.mil/whs/directives/corres/pdf/520001\\_vol4.pdf](http://www.dtic.mil/whs/directives/corres/pdf/520001_vol4.pdf)). CACs shall be returned to any RAPIDS issuance location for proper disposal in a timely manner once surrendered by the CAC holder.

(5) Provide appropriate space and staffing for all DoD ID card issuing operations, as well as reliable telecommunications to and from the Defense Information Systems Agency managed Non-Classified Internet Protocol Router Network.

(6) Provide funding for CAC cardstock, printer consumables, and electromagnetically opaque sleeves to Defense Manpower Data Center (DMDC).

(7) Protect cardstock and consumables in accordance with the guidelines and standards issued and maintained by DMDC.

(8) In accordance with Federal Information Processing Standards Publication 201–1, provide electromagnetic opaque sleeves or other comparable technologies to protect against any unauthorized contactless access to the cardholder unique identification number stored on the CAC.

(9) Manage the distribution and locations of CAC personal identification number (PIN) reset workstations.

(10) To the maximum extent possible, and in accordance with DoD Components’ designated accrediting authority guidelines, ensure networked workstations are properly configured and available for CAC holders to use the User Maintenance Portal-Post Issuance Portal (UMP-PIP) service.

(11) Oversee supervision of TASS TAs and TA security managers and ensure

the number of contractors overseen by any TA is manageable.

(i) The Secretaries of the Military Departments; Director, USPHS; and Administrator, NOAA, shall:

(1) Appoint project officers from a level that represents the Service position of the active, National Guard, and Reserve Components for personnel policy to serve on the Joint Uniformed Services Personnel Advisory Committee.

(2) Comply with the provisions of this part and other related policy and procedural guidance from the Department of Defense.

#### § 161.6 Procedures.

(a) The DoD ID card life cycle shall be supported by an infrastructure that is predicated on a systems-based model for credentialing as described in FIPS Publication 201-1. Paragraphs (a)(1) through (7) of this section represent the baseline requirements for the life cycle of all DoD ID cards. The specific procedures and sequence of order for these items will vary based on the applicant's employment status or affiliation with the DoD and the type of ID card issued. Detailed procedures of the ID card life cycle for each category of applicant and type of ID card shall be provided by the responsible agency.

(1) *Sponsorship and eligibility.* Sponsorship shall incorporate the processes for confirming eligibility for an ID card. The sponsor is the person affiliated with the DoD or other Federal agency who takes responsibility for verifying and authorizing the applicant's need for an ID card. Applicants for a CAC must be sponsored by a DoD government official or employee.

(2) *Registration and enrollment.* Sponsorship and enrollment information on the ID card applicant shall be registered in DEERS prior to card issuance.

(3) *Background investigation.* A background investigation is required for those individuals eligible for a CAC. A background investigation is not currently required for those eligible for other forms of DoD ID cards. Sponsored CAC applicants shall not be issued a CAC without a favorably adjudicated background investigation stipulated in FIPS Publication 201-1. Applicants

that have been denied a CAC based on an unfavorable adjudication of the background investigation may submit an appeal in accordance with FIPS Publication 201-1 and Office of Personnel Management Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12."

(4) *Identity and eligibility verification.* Identity and eligibility verification shall be completed at a RAPIDS workstation. Verifying officials (VOs) shall inspect identity and eligibility documentation and RAPIDS shall authenticate individuals to ensure that ID cards are provided only to those sponsored and with a current affiliation with the DoD. RAPIDS shall also capture uniquely identifying characteristics that bind an individual to the information maintained on that individual in DEERS and to the ID card issued by RAPIDS. These characteristics may include, but are not limited to, digital photographs and fingerprints.

(5) *Issuance.* ID cards shall be issued at the RAPIDS workstation after all sponsorship, enrollment and registration, background investigation (CAC only), and identity and eligibility verification requirements have been satisfied.

(6) *Use and maintenance.* ID cards shall be used as proof of identity and DoD affiliation to facilitate access to DoD facilities and systems. Additionally, ID cards shall represent authorization for entitled benefits and privileges in accordance with DoD policies.

(7) *Retrieval and revocation.* ID cards shall be retrieved by the sponsor or sponsoring organization when the ID card has expired, when it is damaged or compromised, or when the card holder is no longer affiliated with the DoD or no longer meets the eligibility requirements for the card. The active status of an ID card shall be revoked within the DEERS and RAPIDS infrastructure and the PKI certificates on the CAC shall be revoked.

(b) The guidelines and restrictions of this paragraph apply to all forms of DoD ID cards.

(1) Any person willfully altering, damaging, lending, counterfeiting, or using these cards in any unauthorized

manner is subject to fine or imprisonment or both, as prescribed in 18 U.S.C. 499, 506, 509, 701, and 1001. Section 701 of 18 U.S.C. prohibits photographing or otherwise reproducing or possessing DoD ID cards in an unauthorized manner, under penalty of fine or imprisonment or both. Unauthorized or fraudulent use of ID cards would exist if bearers used the card to obtain benefits and privileges to which they are not entitled. Examples of authorized photocopying include photocopying of DoD ID cards to facilitate medical care processing, check cashing, voting, tax matters, compliance with 50 U.S.C. appendix 501 (also known as “The Service member’s Civil Relief Act”), or administering other military-related benefits to eligible beneficiaries. When possible, the ID card will be electronically authenticated in lieu of photographing the card.

(2) International agreements (including status-of-forces agreements) and host-nation law may limit and/or define the types of support available to personnel in overseas areas. Although an ID card may be used to verify eligibility in the United States for access to, for example, commissary or exchange facilities, the use of such facilities overseas may be limited to persons who are stationed or performing temporary duty in a foreign country under official orders in support of a mutual defense mission with the host nation. ID cards shall be issued only for the purposes identified in and in accordance with this Instruction, and the Heads of the DoD Components shall use other means, such as ration cards, to implement provisions in international agreements or to prevent violations of applicable host-nation law. ID cards shall not be issued for the sole purpose of implementing provisions of international agreements or restrictions based on applicable host-nation law.

(3) All ID cards are property of the U.S. Government and shall be returned upon separation, resignation, firing, termination of contract or affiliation with the DoD, or upon any other event in which the individual no longer requires the use of such ID card.

(4) To prevent any unauthorized use, ID cards that are expired, invalidated, stolen, lost, or otherwise suspected of

potential or actual unauthorized use shall be revoked in DEERS along with the PKI certificates on the CACs immediately revoked.

(5) There are instances where graphical representations of ID cards are necessary to facilitate the DoD mission. When used and distributed, the replicas must not be the same size as the ID card, must have the word “SAMPLE” written on them, and shall not contain an individual’s PII. All SAMPLE ID cards must be maintained in a controlled environment and shall not serve as a valid ID.

(6) Individuals within the DoD who have multiple personnel category codes (e.g., an individual who is both a reservist and a contractor) shall be issued a separate ID card in each personnel category for which they are eligible. Multiple current ID cards of the same form (e.g., CAC) shall not be issued or exist for an individual under a single personnel category code.

(7) ID cards shall not be amended, modified, or overprinted by any means. No stickers or other adhesive materials are to be placed on either side of an ID card. Holes shall not be punched into ID cards, except when a CAC has been requested by the next of kin for an individual who has perished in the line of duty. A CAC provided to next of kin shall have the status of the card revoked in DEERS, have the certificates revoked, and have a hole punched through the integrated circuit chip before it is released to the next of kin.

(8) An ID card shall be in the personal custody of the individual to whom it was issued at all times. If required by military authority, it shall be surrendered for ID or investigation.

(c) *CAC migration to Federal PIV requirements.* The DoD is migrating the CAC to meet the Federal requirements for credentialing contained within Homeland Security Presidential Directive 12 and FIPS Publication 201-1. Migration will take place over multiple years as the card issuance hardware, software, and supporting systems and processes are upgraded. Successful migration will require coordination and collaboration within and among all CAC communities (e.g., personnel security, operational security, industrial

security, information security, physical security, and information technology). The organizations listed in this section will support the migration in conjunction with the responsibilities listed in §161.5:

(1) The Director, DMDC shall:

(i) Procure and distribute CAC consumables, including card stock, electromagnetically opaque sleeves, and printer supplies, commensurate with funding received from the DoD Components.

(ii) In coordination with the Office of the Under Secretary of Defense for Policy, establish an electronic process for securing CAC eligibility information on foreign government military, employee, or contract support personnel whose visit status and background investigation has been confirmed, documented, and processed in accordance with DoD Directive 5230.20, “Visits and Assignments of Foreign Nationals” (available at <http://www.dtic.mil/whs/directives/corres/pdf/523020p.pdf>).

(iii) In accordance with FIPS Publication 201-1, electronically capture and store source documents in the identity-proofing process at the accession points for eligible ID card holders.

(iv) Implement modifications to the CAC applets and interfaces, add contactless capability to the CAC platform and implement modifications to the CAC topology to support compliance with FIPS Publication 201-1.

(v) Establish and implement procedures for capturing biometrics required to support CAC issuance, which includes fingerprints and facial images specified in FIPS Publication 201-1 and National Institute of Standards and Technology Special Publication 800-76-1, “Biometric Data Specification for Personal Identity Verification” (available at [http://csrc.nist.gov/publications/nistpubs/800-76-1/SP800-76-1\\_012407.pdf](http://csrc.nist.gov/publications/nistpubs/800-76-1/SP800-76-1_012407.pdf)).

(vi) In coordination with the Executive Manager for DoD Biometrics and the Office of the USD(AT&L), implement the capability to obtain two segmented images (primary and secondary) fingerprint minutiae from the full 10-print fingerprints captured as part of the initial background investigation process for CAC issuance.

(vii) Maintain a capability for a CAC holder to reset or unlock PINs from a

system outside of the CAC issuance infrastructure.

(2) The Executive Manager for DoD Biometrics, as appointed by the Secretary of the Army as DoD Executive Agent for DoD Biometrics in accordance with DoD Directive 8521.01E, “Department of Defense Biometrics” (available at <http://www.dtic.mil/whs/directives/corres/pdf/852101p.pdf>), shall:

(i) Establish biometric standards for collection, storage, and subsequent transmittal of biometric information in accordance with DoD Directive 8521.01E (available at <http://www.dtic.mil/whs/directives/corres/pdf/852101p.pdf>).

(ii) In coordination with the USD(P&R), the USD(I), and the Heads of the DoD Components, establish capability for biometric collection and enrollment operations to support CAC issuance in accordance with 32 CFR part 310 and National Institute of Standards and Technology Special Publication 800-76-1 (available at [http://csrc.nist.gov/publications/nistpubs/800-76-1/SP800-76-1\\_012407.pdf](http://csrc.nist.gov/publications/nistpubs/800-76-1/SP800-76-1_012407.pdf)).

(3) The Identity Protection and Management Senior Coordinating Group shall:

(i) Monitor the CAC and identity management related activities outlined within this Instruction in accordance with DoD Directive 1000.25 (available at <http://www.dtic.mil/whs/directives/corres/pdf/100025p.pdf>).

(ii) Maintain a configuration management process for the CAC and its related components to monitor DoD compliance with FIPS Publication 201-1.

### Subpart B—DoD Identification (ID) Cards: ID Card Life-Cycle

#### § 161.7 ID card life-cycle procedures.

(a) *Sponsorship and eligibility.* In accordance with this part, sponsorship shall incorporate the processes for confirming eligibility for an ID card. The sponsor is the person affiliated with the DoD or other Federal agency who takes responsibility for verifying and authorizing the applicant’s need for an ID card. Applicants for a CAC shall be sponsored by a DoD Government official or employee.

(1) The population categories and specific ID cards for which applicants are eligible are listed in Appendix 1 of

this section. The majority of these populations are eligible to be sponsored for an ID card based on either their employment status with the DoD or their authorization to receive DoD benefits and entitlements. Examples of these population categories include, but are not limited to: Uniformed services personnel; DoD civilian employees; military retirees; certain DoD beneficiaries; and the eligible dependents for these categories.

(2) Specific populations, listed in paragraph (c)(2)(ii) of Appendix 1 of this section who are eligible to submit for the “U.S. DoD/Uniformed Service ID Card” may only be sponsored if they meet additional criteria. Examples of these population categories include DoD contractors, non-DoD Federal civilians, State employees, and other non-DoD personnel that have an affiliation with the DoD other than through employment or contract. Eligibility for these approved population categories is based on the DoD Government sponsor’s determination of the type and frequency of access required to DoD facilities or networks. For the populations described in this paragraph, the applicant’s sponsor must confirm that the applicant meets one of the requirements in paragraphs (a)(2)(i) and (iii) of this section:

(i) Both physical access to a DoD facility and access, via logon, to DoD networks on-site or remotely. Access to the DoD network must require the use of a computer with Government-controlled configuration or use of a DoD-approved remote access procedure in accordance with the Defense Information Systems Agency Security Technical Implementation Guide, “Secure Remote Computing” (available at <http://iase.disa.mil/stigs/a-z.html> under “Remote. . .”).

(ii) Remote access, via logon, to a DoD network using DoD-approved remote access procedures.

(iii) Physical access to multiple DoD facilities or multiple non-DoD federally controlled facilities on behalf of the DoD (applicable to DoD contractors only) on a recurring basis for a period of 6 months or more.

(A) The frequency of “recurring basis” for access shall be determined by the DoD Component concerned in

coordination with installation security policies.

(B) CAC eligibility for applicants requiring physical access to multiple DoD facilities on a recurring basis for less than 6 months are risk-based decisions that shall be made by the DoD Component concerned in coordination with installation security policies. These applicants may instead be eligible for local or regional base passes in accordance with Office of the Under Secretary of Defense for Intelligence (USD(I)) and local installation security policies and procedures.

(b) *Registration and enrollment.* In accordance with this part, sponsorship and enrollment information about the ID card applicant shall be registered in the DEERS prior to card issuance.

(1) For uniformed services personnel and DoD civilians, all submissions to DEERS must be made electronically via an authorized data source feed (e.g., Civilian Personnel Management Service). Data source feeds for additional population categories shall be approved and incorporated by the Office of the USD(P&R) (OUSD(P&R)) as they become available.

(2) The population categories that are not registered via an authorized data source feed will be registered in DEERS via the RAPIDS using the DD Form 1172–2 or via the TASS (formerly known as CVS, as described in §161.8 of this subpart.

(c) *Background Investigation.* In accordance with this subpart, a background investigation is required for those individuals eligible for a CAC. A background investigation is not currently required for those eligible for other forms of DoD ID cards. The use of the CAC, as the DoD Federal personal identity verification (PIV) card, is governed and supported by additional policies when compared to non-CAC ID cards. Sponsored CAC applicants shall not be issued a CAC without the required background investigation stipulated in FIPS Publication 201–1, “Personal Identity Verification (PIV) of Federal Employees and Contractors” (available at <http://csrc.nist.gov/publications/fips/fips201-1/FIPS-201-1-chng1.pdf>).

(1) A background investigation shall be initiated by the sponsoring organization before a CAC can be issued. The

mechanisms required to verify completion of background investigation activities for DoD, military, and civilian CAC populations are managed within the DoD human resources and personnel security communities and are linked to the CAC issuance process. An automated means is not currently in place to confirm the vetting for populations other than DoD military and civilian personnel such as CAC-eligible contractors and non-DoD Federal civilian affiliates. When data is not available within the CAC issuance infrastructure on the background investigation status for an applicant, the sponsor shall be responsible for confirming that the required background investigation procedures comply with the FIPS Publication 201-1 before a CAC is authorized for issuance.

(2) Initial issuance of a CAC requires, at a minimum, the completion of the Federal Bureau of Investigation (FBI) fingerprint check with favorable results and submission of a NACI (or investigation approved in Federal Investigative Standards) to the USD(I) approved investigative service provider. Completed NACI's for CAC issuance shall be adjudicated in accordance with Office of Personnel Management Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12" (available at [http://www.opm.gov/investigate/resources/final\\_credentialing\\_standards.pdf](http://www.opm.gov/investigate/resources/final_credentialing_standards.pdf)).

(3) Except for uniformed services members, non-U.S. person CAC applicants that do not meet the criteria to complete a NACI (e.g., U.S. residency requirements), must meet one of the criteria in paragraph (c)(3)(i) or (ii) of this section prior to CAC issuance. CACs issued to these non-U.S. persons shall display a blue stripe as described in Appendix 2 of this section. Procedures for the acceptance of this CAC shall be in accordance with DoD policy for physical and logical access. The specific background investigation conducted on the non-U.S. person may vary based on governing international agreements. Non-U.S. persons must:

(i) Possess (as foreign military, employee, or contract support personnel) a visit status and security assurance that has been confirmed, documented,

and processed in accordance with international agreements pursuant to DoD Directive 5230.20, "Visits and Assignments of Foreign Nationals" (available at <http://www.dtic.mil/whs/directives/corres/pdf/523020p.pdf>).

(ii) Meet (as direct or indirect DoD hire personnel overseas) the investigative requirements for DoD employment as recognized through international agreements pursuant to Volume 1231 of DoD Instruction 1400.25, "DoD Civilian Personnel Management System: Employment of Foreign Nationals" (available at [http://www.dtic.mil/whs/directives/corres/html/CPM\\_table2.html](http://www.dtic.mil/whs/directives/corres/html/CPM_table2.html)). In addition to these investigative requirements, a fingerprint check against the FBI criminal history database, an FBI investigations files (name check search), and a name check against the Terrorist Screening Database shall be required prior to CAC issuance in accordance with Office of Personnel Management Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12."

(d) *Identity and eligibility verification.* In accordance with this part, identity and eligibility verification shall be completed at a RAPIDS workstation. VOs shall inspect identity and eligibility documentation and RAPIDS shall authenticate individuals to ensure that ID cards are provided only to those sponsored and who have a current affiliation with the DoD. RAPIDS shall also capture uniquely identifying characteristics that bind an individual to the information maintained in DEERS and to the ID card issued by RAPIDS. These characteristics may include, but are not limited to, digital photographs and fingerprints.

(1) *Identity documents.* Applicants for initial ID card issuance shall submit two identity documents in original form as proof of identity. A VO at a RAPIDS workstation shall inspect and verify the documents presented by the applicant before ID card issuance. The identity documents must come from the list of acceptable documents included in the Form I-9 "Employment Eligibility Verification" (<http://www.uscis.gov/files/form/i-9.pdf>) in OMB No. 115-0136 or, for non-U.S. persons,



other sources as outlined within paragraph (d)(1)(ii). “Certified true” copies of the identity documentation may be accepted so long as they have been issued by the originating source (e.g., a copy of a birth certificate may be acceptable so long as it has been certified as valid by the issuing State). In accordance with applicable law, at least one of the two identity documents shall be a valid (unexpired) State or Federal Government-issued picture ID. The identity documents shall be inspected for authenticity and scanned and stored in the DEERS in accordance with the DMDC, “Real-time Automated Personnel Identification System (RAPIDS) User Guide” upon issuance of an ID card. The requirement for the primary identity document to have a photo cannot be waived for initial ID card issuance, consistent with applicable statutory requirements. Identity documentation requirements for renewal or re-issuance are provided in paragraph (e)(3) of this section. When it has been determined that a CAC applicant has purposely misrepresented or not provided his or her true identity, the case shall be referred by the relevant RAPIDS Service Project office (SPO) to the sponsoring DoD Component organization. The DoD Component organization concerned shall initiate an investigation or provide appeals procedures as appropriate. Exceptions to the identity documentation requirements for initial ID card issuance are provided in paragraphs (d)(1)(i) and (d)(1)(ii) of this section:

(i) *Children*. Children under the age of 18 applying for a dependent ID card are only required to provide documentation for the initial verification of eligibility or proof of relationship to the sponsor described in paragraph (d)(2) of this section.

(ii) *Documentation for non-U.S. persons*. At foreign locations, eligible non-U.S. persons may not possess identity documentation from the Form I-9 required for ID card issuance. These individuals shall still provide personal ID as required by the intent of this paragraph (d)(1). Non-U.S. persons within the continental United States (CONUS) shall present a valid (unexpired) foreign passport as the primary form of identity source documentation. DoD

organizations based outside the CONUS should work with the local consular affairs office to determine guidelines for the appropriate identity documentation for eligible non-U.S. persons in accordance with agreements with host nations. It is recommended that a foreign passport be used as the primary form of identity source documentation for these individuals. The requirement for the primary identity document to have a photo cannot be waived. Additional documentation used to verify identity must be original or certified true copies. All documentation not in English must have a certified English translation.

(2) *Eligibility documents*. ID card applicants may be required to provide documentation as initial verification of eligibility for benefits or proof of relationship to the sponsor. The eligibility documents shall be inspected for authenticity by the VO and scanned and stored in DEERS in accordance with the procedures in DMDC, “Real-time Automated Personnel Identification System (RAPIDS) User Guide.” Specifications and the types of documents and how they are utilized to verify eligibility for a member or dependent based on their status (e.g., Retired, Reservist, spouse, former spouse, child) shall be established by the uniformed services subject to the guidelines in this subpart. All documentation used to verify eligibility must be original or certified true copies. All documentation not in English must have a certified English translation. Eligibility documentation is not required when DEERS can verify eligibility via an authoritative source or process.

(3) *DEERS verification*. The VO shall utilize DEERS to verify affiliation and eligibility for benefits as described in subpart C of this part.

(4) *Biometrics*. In accordance with DoD Directive 1000.25, ID card applicants shall provide two fingerprint biometric scans and a facial image, to assist with authenticating the applicant’s identity and to bind the information maintained on that individual in DEERS and to the ID card issued by RAPIDS. These requirements shall be integrated into the ID card issuance processes in the following manner:

(i) A digitized, full-face passport-type photograph will be captured for the facial image and stored in DEERS and shall have a plain white or off-white background. No flags, posters, or other images shall appear in the photo. All ID cards issued will display a photograph.

(ii) Two fingerprints are captured for storage within DEERS for applicable ID card applicants. The right and left index fingers shall normally be designated as the primary and secondary finger, respectively. However, if those fingers cannot be imaged, the primary and secondary designations shall be taken in the following order of priority: Right thumb, left thumb, right middle finger, left middle finger, right ring finger, left ring finger, right little finger, left little finger.

(iii) If two fingerprints cannot be captured, the facial image will be the alternative for authenticating ID card applicants and ID card holders during the issuance process. Additionally, when verification or capture of biometrics is not possible, authorization will be provided by the RAPIDS SSM's digital signature. This transaction shall be subject to audit by DMDC and the uniformed services.

(e) *Issuance.* In accordance with this part, ID cards shall be issued at the RAPIDS workstation after all sponsorship, enrollment and registration, background investigation (CAC only), and identity and eligibility verification requirements have been satisfied. Initial issuance of an ID card to an applicant will be contingent on satisfying the criteria in paragraphs (a) through (d) of this section.

(1) *Cross-servicing.* The uniformed services agree to cross-service the issuance of ID cards when affiliation and eligibility can be verified in DEERS. When eligibility cannot be verified through DEERS, presentation of documentation shall be required. The uniformed services shall restrict cross-servicing for verification of the DD Form 1172-2 and eligibility documentation to the parent uniformed service for the categories in paragraphs (e)(1)(i) through (viii) of this section:

(i) Initial application for permanently incapacitated individuals over

age 21 and temporarily incapacitated children over age 21.

(ii) All dependent parents and parents-in-law.

(iii) Illegitimate child of a male sponsor, whose paternity has not been judicially determined.

(iv) Illegitimate child of spouse or sponsor.

(v) Unremarried and unmarried former spouses applying for initial issuance of an ID card.

(vi) Retiree from other services, and former members not currently enrolled in DEERS.

(vii) Surviving dependents of Reserve Retirees on the sponsor's 60th birthday.

(viii) Abused dependents.

(ix) Wards.

(2) *Expiration dates.* (i) Except as noted in paragraphs (e)(2)(i)(A) and (B) of this section, CACs shall be issued for a period not to exceed 3 years from the date of issuance or contract expiration date, whichever is shorter. Unfunded contract options shall be considered in the determination of the length of contract. For example, a contractor hired under DoD contract with a base year plus 2 option years shall be issued a CAC with a 3-year expiration. The expiration date of the PKI certificates on the CAC shall match the expiration date on the card.

(A) DD Form 1173, "United States Uniformed Services ID and Privilege Card," or CACs issued to DoD civilian employees, contractors, and other eligible personnel assigned overseas or deploying in support of contingency operations shall have an expiration date coinciding with their deployment period end date.

(B) Service Academy students shall be issued 4-year cards with 3-year certificates.

(ii) Non-CAC ID cards shall be given expiration dates in accordance with the guidance listed on <http://www.cac.mil>.

(3) *Renewal and reissuance.* Consistent with applicable law, the applicant for ID renewal or reissuance shall be required to surrender the current DoD ID card that is up for renewal or reissuance except as indicated for lost and stolen ID cards in paragraph (e)(3)(iii) of this section. To authenticate renewal or reissuance applicants, the VO shall visually compare

the applicant against the facial image stored in DEERS. For applicants who have fingerprint biometrics stored in DEERS, live fingerprint biometrics samples shall be checked against the applicant's DEERS record. If the biometric check confirms the identity of the renewal or reissuance applicant then no additional documentation is required to verify identity other than the ID card that is being renewed or reissued (documentation may still be required to verify or re-verify eligibility as described in paragraph (d)(2) of this section). As a general practice for renewal or re-issuance, two fresh fingerprint biometric captures may be stored for applicable personnel through the initial procedures in paragraph (d)(4)(ii) of this section to support DMDC's biometric update schedule.

(i) An ID card holder may apply for a renewal starting 90 days prior to the expiration of a valid ID. The SPO can provide exceptions to this requirement.

(ii) An ID card shall be reissued when printed information requires changes (e.g., pay grade, rank, change in eligibility), when any of the media (including printed data, magnetic stripe, bar codes, or integrated circuit chip) becomes illegible or inoperable, or when a CAC is known or suspected to be compromised.

(iii) An ID card shall be reissued when it is reported lost or stolen. The individual reporting a lost or stolen ID card shall be required to provide a valid (unexpired) State or Federal Government-issued picture ID as noted in paragraph (d)(1) of this section, consistent with applicable law, when available. If the individual is unable to present the required identity documentation, a biometric verification shall be used as proof of identity as described in paragraph (e)(3)(iii)(A) of this section. The VO shall verify the cardholder's identity against the biometric information stored in DEERS and confirm the expiration date of the missing ID card. The individual shall also be required to present documentation from the local security office or ID card sponsor confirming that the ID card has been reported lost or stolen. This documentation must be scanned and stored in DEERS. For dependents, the DD Form 1172-2 serves as the sup-

porting documentation for a lost or stolen card. For individuals sponsored through TASS, the replacement ID card shall have the same expiration date as the lost or stolen card.

(A) If no identity documentation is available but biometric information (facial image or fingerprint when applicable) in the DEERS database can be verified by the VO, an ID card can be reissued to the individual upon the additional approval of a SSM. This transaction shall be digitally signed and audited.

(B) If biometric information cannot be verified, the requirements for initial issuance shall apply or a temporary card may be issued in accordance with paragraph (e)(4) of this section.

(4) *Temporary cards*—(i) *Temporary issuance of a CAC*. During contingency operations, in the event there is no communication with the DEERS database or the certificate authority, a temporary CAC may be issued with an abbreviated expiration date for a maximum of 10 days. The temporary card will not have PKI certificates and will be replaced as soon as the member can reach an online RAPIDS station or communications have been restored. Additionally, the temporary CAC does not communicate or imply eligibility to any DoD benefit. This capability will be enabled only at affected RAPIDS sites and must have approval granted by DMDC.

(ii) *Temporary issuance of a Uniformed Services Identification card*. There are multiple scenarios under which a temporary Uniformed Services Identification card may be issued. The uniformed services shall develop standard processes and procedures for scenarios requiring issuance of a temporary DD Forms 2765 "Department of Defense/Uniformed Services Identification and Privilege Card" or DD 1173, including but not limited to those situations where the applicant needs to obtain the necessary legal documentation or the sponsor is unavailable to provide an authorizing signature.

(5) *Multiple cards*. Individuals shall be issued a separate ID card for each population category for which they qualify as described in Appendix 1 of this section. In instances where an individual has been issued more than one ID card

(e.g., an individual that is eligible for an ID card as both a Reservist and as a DoD contractor employee), only the ID card that most accurately depicts the capacity in which the individual is affiliated with the DoD should be utilized at any given time.

(f) *Use and maintenance.* In accordance with this part, ID cards shall be used as proof of identity and DoD affiliation to facilitate access to DoD facilities and systems. Additionally, ID cards shall represent authorization for entitled benefits and privileges in accordance with DoD policies. The CAC, as the DoD Federal PIV card, is governed and supported by additional policies and infrastructure when compared to non-CAC ID cards. This section provides additional guidance on CAC use and maintenance:

(1) *Access.* The granting of access privileges is determined by the facility or system owner as prescribed by the DoD.

(2) *Accountability.* CAC holders will maintain accountability of their CAC at all times while affiliated with the DoD.

(3) *PKI.* Using the RAPIDS platform, DoD PKI identity and PIV authentication certificates will be issued on the CAC at the time of card issuance in compliance with OPM Memorandum, "Final Credentialing Standards for Issuing Personal Identity Verification Cards under HSPD-12." Email signature, email encryption, or PIV authentication certificates may also be available on the CAC either upon issuance or at a later time. If the person receiving a CAC does not have an organization email address assigned to them, they may return to a RAPIDS terminal or use milConnect to receive their email certificate when the email address has been assigned. To help prevent inadvertent disclosure of controlled information, email addresses assigned by an organization shall comply with DoD Instruction 8500.2, "Information Awareness (IA) Implementation" (available at <http://www.dtic.mil/whs/directives/corres/pdf/850002p.pdf>).

(4) *milConnect.* DoD has a self-service Web site available that allows an authenticated CAC holder to add applets to the CAC, change the email address, add/update Email Signature and Email

Encryption Certificates, and activate the Personal Identity Verification (PIV) Authentication certificate. This capability can be utilized from any properly configured UNCLASSIFIED networked workstation. The milConnect Web site is <https://www.dmdc.osd.mil/milconnect>.

(5) *CAC Personal ID Number (PIN) Reset.* DoD has manned workstations capable of resetting the PINs of a CAC holder with a locked card or forgotten PIN. These workstations are intended to provide alternative locations for CAC holders to service their cards other than RAPIDS issuance locations. To authenticate cardholders, live biometric samples shall be checked against the biometrics stored in DEERS prior to resetting CACs. This process requires the presence of a CPR trusted agent (CTA) or TASM or RAPIDS VO or SSM.

(g) *Retrieval and revocation.* In accordance with this part, ID cards shall be retrieved by the sponsor or sponsoring organization when the ID card has expired, when it is damaged or compromised, or when the card holder is no longer affiliated with the DoD or no longer meets the eligibility requirements for the card. The active status of the card shall be terminated within the DEERS and RAPIDS infrastructure. The CAC, as the DoD Federal PIV card, is governed and supported by additional policies and infrastructure when compared to non-CAC ID cards. This section provides additional guidance on CAC retrieval and revocation:

(1) CACs shall be retrieved as part of the normal organizational or command-level check-out processes. The active status of the CAC shall also be terminated in special circumstances (e.g., absent without leave, unauthorized absence, missing in action) in accordance with organization or command-level security policies.

(2) The DoD sponsor or sponsoring organization is ultimately responsible for retrieving CACs from their personnel who are no longer supporting their organization or activity. CAC retrieval will be documented and treated as personally identifiable information, in accordance with DoD Regulation 5200.1-R, and 32 CFR part 310 and receipted to

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a RAPIDS site for disposition in a timely manner.

(3) Upon loss, destruction, or revocation of the CAC, the certificates thereon are revoked and placed on the certificate revocation list in accordance with Assistant Secretary of Defense for Networks and Information Integration Certificate Policy, “X.509 Certificate Policy for the United States Department of Defense” (available at [http://jitc.fhu.disa.mil/pki/documents/dod\\_x509\\_certificate\\_policy\\_v9\\_0\\_9\\_february\\_2005.pdf](http://jitc.fhu.disa.mil/pki/documents/dod_x509_certificate_policy_v9_0_9_february_2005.pdf)). All other situations that pertain to the disposition of the certificates are handled in accordance with Assistant Secretary of Defense for Networks and Information Integration Certificate Policy, “X.509 Certificate Policy for the United States Department of Defense” as implemented.

### APPENDIX 1 TO § 161.7—ID CARD DESCRIPTIONS AND POPULATION ELIGIBILITY CATEGORIES

(a) *Overview.* Paragraphs (b) through (e) of this appendix contain information on the CAC type of ID card. The remaining paragraphs in the appendix contain information on all other versions of DoD enterprise-wide ID cards. This appendix describes these cards and lists some of the categories of populations that are eligible to be sponsored for the cards under the guidelines described in paragraph (a) of § 161.7; additional ID-card eligible categories are codified in subpart C of this part. RAPIDS accesses DEERS information collected by the DD Form 1172-2 to generate all of the ID Cards identified in this appendix. The benefits and entitlements that support ID card eligibility for populations in this appendix are described in subpart C of this part. Guidelines and restrictions that pertain to all forms of DoD ID cards are included in this part.

(b) *Armed Forces of the United States Geneva Conventions ID Card—(1) Description.* This CAC is the primary ID card for uniformed services members and shall be used to identify the member’s eligibility for benefits and privileges administered by the uniformed services as described in subpart C of this part. The CAC shall also be used to facilitate standardized, uniform access to DoD facilities, installations, and computer systems.

(1) The card shall also serve as ID for purposes of Geneva Convention requirements in accordance with DoD Instruction 1000.01.

(i) If a member is captured as a hostage, detainee, or prisoner of war (POW), the card shall be shown to the capturing authorities, but, insofar as possible, should not be surrendered.

(2) *Eligibility.* Those populations eligible for this type of CAC include:

(i) Members of the regular components of the Military Services.

(ii) Members of the Selected Reserve of the Ready Reserve of the Reserve Components.

(iii) Members of the IRR of the Ready Reserve authorized in accordance with regulations prescribed by the Secretary of Defense to perform duty in accordance with 10 U.S.C. 10147.

(iv) Uniformed services members of NOAA and USPHS.

(c) *U.S. DoD or Uniformed Services ID Card—*

(1) *Description.* This CAC is the primary ID card for eligible civilian employees, contractors, and foreign national affiliates and shall be used to facilitate standardized, uniform access to DoD facilities, installations, and computer systems.

(2) *Eligibility.* (i) DoD civilian employees are eligible for this CAC, to include:

(A) Individuals appointed to appropriated fund and NAF positions.

(B) USCG and NOAA civilian employees.

(C) Permanent or time-limited employees on full-time, part-time, or intermittent work schedules for 6 months or more.

(D) SES, Competitive Service, and Excepted Service employees.

(ii) Eligibility for additional populations shall be based on a combination of the personnel category and the DoD Government sponsor’s determination of the type and frequency of access required to DoD networks and facilities described in paragraph (a) of § 161.7 of this subpart. These personnel categories include:

(A) Non-DoD civilian employees to include:

(1) State employees working in support of the National Guard.

(2) IPA employees.

(3) Non-DoD Federal employees that are working in support of DoD but do not possess a Federal PIV card that is accepted by the sponsoring DoD Component. DoD Components shall obtain DHRA approval prior to sponsorship.

(B) DoD contractors.

(C) USCG and NOAA contractors.

(D) Persons whose affiliation with DoD is established through:

(1) *Direct and Indirect Hiring Overseas.* Non-U.S. citizens hired under an agreement with the host nation and paid directly by the uniformed services (direct hire) or paid by an entity other than the uniformed services for the benefits of the uniformed services (indirect hire).

(2) *Assignment as Foreign Military, Foreign Government Civilians, or Foreign Government Contractors to Support DoD Missions.* Non-U.S. citizens who are sponsored by their government as part of an official visit or assignment to work with DoD.

(3) *Procurement Contracts, Grant Agreements or Other Cooperative Agreements.* Individuals who have an established relationship between the U.S. Government and a State, a local

government, or other recipient as specified in 31 U.S.C. 6303, 6304, and 6305.

(d) *U.S. DoD or Uniformed Services ID and Privilege Card*—(1) *Description*. This CAC is the primary ID card for civilian employees, contractors, and foreign national military, as well as other eligible individuals entitled to benefits and privileges administered by the uniformed services as described in subpart C of this part. The CAC shall be used to facilitate standardized, uniform access to DoD facilities, installations, and computer systems.

(2) *Eligibility*. Specific population categories are entitled to benefits and privileges, in accordance with subpart C of this part, and shall be eligible for this CAC, to include:

(i) DoD and uniformed services civilian employees (both appropriated and non-appropriated) when required to reside in a household on a military installation within the CONUS, Hawaii, Alaska, Puerto Rico, and Guam.

(ii) DoD and uniformed services civilian employees when stationed or employed and residing in foreign countries for a period of at least 365 days.

(iii) DoD contractors when stationed or employed and residing in foreign countries for a period of at least 365 days.

(iv) DoD Presidential appointees who have been appointed with the advice and consent of the Senate.

(v) Civilian employees of the Army and Air Force Exchange System, Navy Exchange System, and Marine Corps Exchange System and NAF activity employees of the Coast Guard Exchange Service.

(vi) Uniformed and non-uniformed full-time paid personnel of the Red Cross assigned to duty with the uniformed services within the CONUS, Hawaii, Alaska, Puerto Rico, and Guam, when required to reside in a household on a military installation.

(vii) Uniformed and non-uniformed, full-time, paid personnel of the Red Cross assigned to duty with the uniformed services in foreign countries.

(viii) Foreign military who meet the eligibility requirement of paragraph (a)(2) of §161.7 and are in one of the categories in paragraphs (d)(2)(viii)(A) through (C) of this appendix. Those foreign military not meeting the eligibility requirements for CAC as described in paragraph (a)(2) of §161.7 shall be issued a DD Form 2765 as described in paragraph (l) of this appendix.

(A) Active duty officers and enlisted personnel of North Atlantic Treaty Organization (NATO) and Partnership For Peace (PFP) countries serving in the United States under the sponsorship or invitation of the DoD or a Military Department.

(B) Active duty officers and enlisted personnel of non-NATO countries serving in the

United States under the sponsorship or invitation of the DoD or a Military Department.

(C) Active duty officers and enlisted personnel of NATO and non-NATO countries when serving outside the United States and outside their own country under the sponsorship or invitation of the DoD or a Military Department, or when it is determined by the major overseas commander that the granting of such privileges is in the best interests of the United States and such personnel are connected with, or their activities are related to, the performance of functions of the U.S. military establishment.

(e) *U.S. DoD or Uniformed Service Geneva Conventions ID Card for Civilians Accompanying the Armed Forces*—(1) *Description*. This CAC serves as the DoD and/or Uniformed Services Geneva Conventions ID card for civilians accompanying the uniformed services and shall be used to facilitate standardized, uniform access to DoD facilities, installations, and computer systems.

(2) *Eligibility*. The following population categories are eligible for this CAC:

(i) Emergency-essential employees as defined in DoD Directive 1404.10, "DoD Civilian Expeditionary Workforce" (available at <http://www.dtic.mil/whs/directives/corres/pdf/140410p.pdf>).

(ii) Contractors authorized to accompany the force (contingency contractor employees) as defined in Joint Publication 1-02 (available at [http://www.dtic.mil/doctrine/new\\_pubs/jp1\\_02.pdf](http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf)).

(f) *DD Form 2, "Armed Forces of the United States Identification Card (Reserve)"*—(1) *Description*. This is the primary ID card for RC members not eligible for a CAC. Benefits and privileges shall be administered by the uniformed services as described in subpart C of this part.

(i) The DD Form 2S (RES) shall serve as ID for purposes of the Geneva Convention requirements in accordance with DoD Instruction 1000.01.

(ii) If a member is captured as a hostage, detainee, or POW, the DD Form 2S (RES), shall be shown to the capturing authorities, but, insofar as possible, should not be surrendered.

(2) *Eligibility*. Those populations eligible for the DD Form 2S (RES) include:

(i) Ready Reserve, who are not otherwise entitled to either DD Form 2S (RET), "Armed Forces of the United States Geneva Conventions Identification Card (Retired) (Blue)," or a CAC.

(ii) The Standby Reserve.

(iii) The Reserve Officers' Training Corps College Program students that have signed a contract leading to military service.

(g) *DD Form 2S (Ret)*—(1) *Description*. This is the primary ID card for retired uniformed services members entitled to retired pay. Benefits and privileges shall be administered

by the uniformed services as described in subpart C of this part.

(2) *Eligibility.* Members of the uniformed services who are entitled and in receipt of retired pay, or entitled and have waived their retired pay, are eligible for the DD 2S (RET).

(h) *DD Form 2, “United States Uniformed Services Identification Card (Reserve Retired).”*—(1) *Description.* This is the primary ID card for members of the National Guard or Reserves who have completed 20 creditable years of service and have elected to be transferred to the Retired Reserve. They will qualify for pay at age 60, or earlier if they have qualified contingency service.

(2) *Eligibility.* Members of the Reserve Components who are entitled to retired pay at age 60 (or earlier if they have qualified contingency service) and have not yet attained age 60 are eligible for the DD Form 2 (Reserve Retired).

(i) *DD Form 1173*—(1) *Description.* This is the primary ID card for dependents and other similar categories of individuals eligible for benefits and privileges administered by the uniformed services as described in subpart C of this part.

(2) *Eligibility.* Specific population categories entitled to benefits and privileges as described in subpart C of this part are eligible for the DD Form 1173 to include:

(i) Dependents of active duty Service members of the regular components, Reserve Component Service members on active duty for more than 30 days, and retirees.

(ii) Surviving dependents of active duty members.

(iii) Surviving dependents of retired military members.

(iv) Surviving dependents of MOH recipients and surviving dependents of honorably discharged veterans rated by the Department of Veterans Affairs (VA) as 100 percent disabled from a uniformed services-connected injury or disease at the time of his or her death.

(v) Accompanying dependents of foreign military.

(vi) Dependents of authorized civilian personnel overseas.

(vii) Other benefits eligible categories as described in subpart C of this part.

(j) *DD Form 1173-1, “Department of Defense Guard and Reserve Family Member Identification Card.”*—(1) *Description.* This is the primary ID card for dependents of Ready Reserve and Standby Reserve members not on active duty in excess of 30 days. When accompanied by a set of the sponsor’s valid active duty orders, the card shall be used in place of a DD Form 1173 for a period of time not to exceed 270 days, if the member is called to active duty by congressional decree or Presidential call-up under 10 U.S.C. chapter 1209.

(2) *Eligibility.* Eligible dependents of Reserve Component members and retirees as

described in subpart C of this part are eligible for the DD Form 1173-1.

(k) *DD Form 2764, “United States DoD/Uniformed Services Geneva Conventions Card.”*—(1) *Description.* This is the primary ID for non-CAC eligible civilian noncombatant personnel who are deployed in conjunction with military operations overseas. The DD Form 2764 also replaces DD Form 489, “Geneva Conventions Identity Card for Civilians Who Accompany the Armed Forces.”

(2) *Eligibility.* Civilian noncombatant personnel who have been authorized to accompany U.S. forces in regions of conflict, combat, and contingency operations and who are liable to capture and detention by the enemy as POWs are eligible for the DD Form 2764 in accordance with DoD Instruction 1000.01.

(l) *DD Form 2765*—(1) *Description.* This is the primary ID card for categories of individuals, other than current or retired members of the uniformed services, who are eligible for uniformed services benefits and privileges in their own right without requiring a current affiliation with another sponsor.

(2) *Eligibility.* Those populations eligible for the DD Form 2765 include:

(i) Foreign national military personnel described in paragraph (d)(2)(viii) of this appendix that cannot meet all criteria for CAC issuance.

(ii) Former members.

(iii) Members eligible for transitional health care (THC). These individuals shall be eligible for DD Form 2765 (with a “TA” overstamp) showing expiration date for each benefit, as shown on the reverse of the card.

(iv) MOH recipients.

(v) DAV (rated 100 percent disabled by the Department of Veterans Affairs).

(vi) Former spouse (that qualify as a DoD beneficiary).

(vii) Civilian personnel in the categories listed in paragraphs (1)(2)(vii)(A) through (D) of this appendix:

(A) Other U.S. Government agency civilian employees when stationed or employed and residing in foreign countries for a period of at least 365 days.

(B) Area executives, center directors, and assistant directors of the United Service Organization, when serving in foreign countries.

(C) United Seaman’s Service (USS) personnel in foreign countries.

(D) Military Sealift Command (MSC) civil service marine personnel deployed to foreign countries on MSC-owned and -operated vessels.

(m) *DoD Civilian Retiree Card*—(1) *Description.* This ID shall only be used to establish DoD civilian retiree identity and affiliation with the DoD.

(2) *Eligibility.* Appropriated and NAF civilians that have retired from any DoD Service component or agency are eligible for the DoD Civilian Retiree Card. These civilians

must have their retired status verified in DEERS before an ID card can be issued.

(n) *NOAA Retired Wage Mariner and Family Member Card*—(1) *Description*. The NOAA Retired Wage Mariner and Family Member Card is a sub-category of the DoD Civilian Retiree Card and shall be used to establish identity and affiliation with the DoD and to identify the individual’s eligibility for benefits and privileges administered by the uniformed services as described in subpart C of this part.

(2) *Eligibility*. Retired Wage Mariners of NOAA and their dependents as described in subpart C of this part are eligible for the NOAA Retired Wage Mariners and Family Members Card.

APPENDIX 2 TO §161.7—TOPOLOGY SPECIFICATIONS

(a) *Topology*. Graphical representations of all CACs are maintained at [www.cac.mil](http://www.cac.mil).

(b) *CAC stripe color coding*. The CAC shall be color-coded as indicated in the Table to reflect the status of the holder of the card.

(1) If a person meets more than one condition as shown in the Table, priority will be given to the blue stripe to denote a non-U.S. citizen unless the card serves as a Geneva Conventions card.

(2) FIPS Publication 201-1 reserves the color red to distinguish emergency first responder officials. Until the DoD implementation of Homeland Security Presidential Directive 12 is complete, the color red will also be used to denote non-U.S. personnel in the same manner as the blue stripe in the Table (i.e., some cards with red stripes may continue to exist in circulation until the 3-year life cycle is complete).

TABLE—CAC STRIPE COLOR CODING

|             |  |
|-------------|--|
| No stripe   | U.S. military and DoD civilian personnel or any personnel eligible for a Geneva Conventions card                     |
| Blue .....  | Non-U.S. personnel, including DoD contract employees (other than those persons requiring a Geneva Conventions card). |
| Green ..... | All U.S. citizen personnel under contract to the DoD (other than those persons requiring a Geneva Conventions card). |

(c) *CAC printed statements*—(1) Eligible individuals who are permanently assigned in foreign countries for at least 365 days (it should be noted that local nationals are in their home country, not a foreign country) will have the word “OVERSEAS” printed within the authorized patronage area of the CAC.

(2) The authorized patronage area for eligible individuals permanently assigned within CONUS will be blank. Travel orders authorize access for these individuals while en route to the deployment site.

(3) During a conflict, combat, or contingency operation, civilian employees with a U.S. DoD or Uniformed Services Geneva Conventions ID Card for Civilians Accompanying the Uniformed Services will be granted all commissary; exchange; MWR; and medical privileges available at the site of the deployment, regardless of the statements on the ID card. Contractor employees possessing this ID card shall receive the benefit of those commissary, exchange, MWR, and medical privileges that are accorded to such persons by international agreements in force between the United States and the host country concerned and their letter of authorization.

(4) The medical area on the card for individuals on permanent assignment in a foreign country will contain the statement: “When TAD/TDY or stationed overseas on a

space available fully reimbursable basis.” However, civilian employees and contractor employees providing support when forward deployed during a conflict, combat, or contingency operation are treated in accordance with 10 U.S.C. 10147 and chapters 1209 and 1223 and DoD Instruction 3020.41, “Operational Contract Support” (available at <http://www.dtic.mil/whs/directives/corres/pdf/302041p.pdf>), and the Deputy Secretary of Defense Memorandum, “Policy Guidance for Provision of Medical Care to Department of Defense Civilian Employees Injured or Wounded While Forward Deployed in Support of Hostilities” (available at [http://cpol.army.mil/library/nonarmy/dod\\_092407.pdf](http://cpol.army.mil/library/nonarmy/dod_092407.pdf)).

(d) *Blood type indicators*. A blood type indicator is an optional data element on the ID card and will only appear on the card if the blood type is provided by an authoritative data source prescribed by TRICARE Management Activity.

(e) *Organ donor indicators*. An organ donor indicator is an optional data element on the ID card and will only appear if the card applicant opts for this feature at the time of card issuance.

**§ 161.8 ID card life-cycle roles and responsibilities.**

(a) *General*. This section provides the roles and responsibilities associated



with a series of processes and systems that support the ID card life-cycle. The requirements provided in this section may be supplemented by military Service guidance, DoD Component-level procedures and DMDC procedural and system documentation on DEERS, RAPIDS, TASS, and CPR.

(b) *Separation of duties.* The ID card life-cycle includes a requirement for a separation of duties to support the issuance process. This rule requires more than one person to serve in an official role during the sponsorship and enrollment and issuance processes. Authorizing a RAPIDS SSM or VO to exercise the duties of a TASS TASM, TA, or sponsor would allow a single individual to control the ID card issuance process, from record creation to card issuance. Individuals serving in the role of a RAPIDS SSM or VO shall not exercise the role of the TASS TASM or TA or the role of the signatory sponsor on the DD Form 1172-2. (In the case of their own dependents, a RAPIDS SSM or VO can serve as the sponsor on the DD Form 1172-2 but cannot serve as the VO for card issuance.)

(c) *DD Form 1172-2.* The DD Form 1172-2 shall be used to collect the information necessary to register ID card and CAC applicants in DEERS via RAPIDS who are not enrolled through an authorized personnel data feed or are not registered through TASS. The DD Form 577, “Appointment/Termination Record—Authorized Signature,” shall be used to verify the sponsoring individual’s signature, when verification through RAPIDS is unavailable. This form is to be used primarily for DEERS enrollment and verification of initial and continued association for dependents and DoD affiliates (e.g., foreign national military). The DD Form 1172-2 shall also be used to add benefits conditions for eligible personnel in accordance with DMDC, “Real-time Automated Personnel Identification System (RAPIDS) User Guide” and subpart C of this part. Retention and disposition of the DD Form 1172-2 shall be in accordance with the uniformed services’ regulatory instructions. In the absence of electronic verification of sponsorship for the enrollment or reenrollment of dependents, the sponsor signing block 65 in

Section 5 of the DD Form 1172-2 for the ID card applicant:

(1) Shall be a uniformed services member, retiree, civilian employee working for the sponsoring organization, or an individual entitled to DoD benefits in their own right, without requiring relationship to another sponsor, as described in subpart C of this part.

(2) Must be a DoD ID card or CAC holder.

(3) Shall establish the applicant’s initial and continued relationship to the sponsor, affiliation with DoD, and need for a CAC card in accordance with this subpart and DoD Component-level procedures.

(d) *TASS.* TASS shall serve as the sponsorship and DEERS data registration tool for CAC-eligible DoD contractors and other populations as determined by the Director, DHRM. TASS employs an automated version of the DD Form 1172-2 to collect information necessary for DEERS enrollment. Organizations that use TASS shall adhere to the following guidelines on user roles:

(1) *Service Point of Contact (SPOC).* A DoD Component that utilizes TASS shall appoint a SPOC for TASS management and operation. The SPOC shall coordinate with the DMDC to establish a site with TASS capability. The SPOC shall create policies, operating procedures, and other supporting documentation in support of the Service or agency-specific implementation. The SPOC will oversee TASM registration, and provide any other required field support. The TASS SPOC:

(i) Must be a U.S. citizen.

(ii) Must be a uniformed services member, civilian employee working for the sponsoring organization, or a DoD contractor providing management support to the service or agency implementing TASS (a contractor cannot perform the TA or TASM role).

(iii) Must be capable of sending and receiving digitally signed and encrypted email.

(iv) Must be a CAC holder.

(v) Shall complete the training provided by DMDC for the TASM and TA roles.

(2) *TASM*. The TASM will act as a TA and oversee the activity for TASS site TAs. A TASS TASM:

- (i) Must be a U.S. citizen.
- (ii) Must be a uniformed services member or a DoD civilian employee working for the sponsoring organization.
- (iii) Must be capable of sending and receiving digitally signed and encrypted email.
- (iv) Must be a CAC holder.
- (v) Shall complete the training provided by DMDC for the TASM role.

(3) *TA*. TAs shall be sponsors for eligible populations within TASS and will utilize TASS to register data for the DD Form 1172-2, re-verify CAC holder affiliation, and revoke CACs in accordance with this part and the DMDC “Contractor Verification System TASS (CVS) TASM/TA and Applicant User Guides, Version 3.03” (available at <https://www.dmdc.osd.mil/appj/cvs/login>). Sponsoring an applicant is a multi-step process which includes establishing the individual’s eligibility in accordance with paragraph (a) of §161.7 of this subpart and verifying that the individual has the necessary background investigation completed to be issued a CAC in accordance with paragraph (c) of §161.7 of this subpart. A TASS TA:

- (i) Must be a U.S. citizen.
- (ii) Must be a uniformed services member, a DoD civilian employee working for the sponsoring organization, or a non DoD Federal agency employee approved by DHRA.
- (iii) Must be capable of sending and receiving digitally signed and encrypted email.
- (iv) Must be a CAC holder.
- (v) Shall complete the training provided by DMDC for the TA role.
- (vi) Shall manage no more than 100 active contractors at any given time within TASS. Exceptions to this limit can be authorized by the DoD Component concerned to address specific contract requirements that substantiate a need for a larger contractor-to-TA ratio. The DoD Component SPOC shall document any authorized exceptions to the 100-contractors limit and shall, at a minimum, conduct annual audits on the oversight functions of these specific TAs.

(vii) Shall coordinate with their contracting personnel when establishing the contractor’s initial and continued affiliation with DoD and need for CACs in accordance with agency or Component-level procedures.

(viii) Shall coordinate with their contracting, human resources, or personnel security organizations to confirm that the appropriate background check has been completed for CAC applicants.

(ix) Shall re-verify a CAC holder’s need for a CAC every 6 months (180 days) within TASS.

(x) Shall revoke the CAC within the TASS upon termination of employment or completion of affiliation with the DoD.

(xi) Shall ensure that the CAC is retrieved upon the CAC holder’s termination of employment or completion of affiliation with the DoD.

(e) *RAPIDS*. RAPIDS must be operated in accordance with DMDC, “Real-time Automated Personnel Identification System (RAPIDS) User Guide.” RAPIDS shall be supported by:

(1) *SSM*. The SSM shall manage the daily operations at a RAPIDS site to include managing users, cardstock, and consumables. The SPO shall assign a primary and secondary SSM to each site to ensure the site continues to function in the absence of one of the SSMs. The SSM shall perform all responsibilities of a RAPIDS user (VO), as well as all SSM responsibilities. The SSM shall:

- (i) Be a U.S. citizen.
- (ii) Be a uniformed services member, civilian employee working for the sponsoring organization, or a DoD contractor.
- (iii) Be a CAC holder.
- (iv) Complete the training provided by DMDC for the SSM and VO roles.
- (v) Be responsible for supporting RAPIDS functions delineated in DMDC, “Real-time Automated Personnel Identification System (RAPIDS) User Guide.”
- (vi) Must have a favorably adjudicated NACI.

(2) *VO*. The VO shall complete identity and eligibility verification and card issuance functions in accordance with this part. The VO:

- (i) Must be a U.S. citizen.

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(ii) Must be a uniformed services member, civilian employee working for the sponsoring organization, or a DoD contractor.

(iii) Must be a CAC holder.

(iv) Shall complete the training provided by DMDC for the VO role.

(v) Be responsible for supporting RAPIDS functions delineated in DMDC, “Real-time Automated Personnel Identification System (RAPIDS) User Guide.”

(f) *CPR*. Organizations that utilize CPR shall adhere to the guidelines in this section on user roles:

(1) *CPR project officer*. The CPR project officer (CPO) shall be appointed by the Service or Agency as the focal point for day-to-day CPR management and operation. The CPO:

(i) Must be a U.S. citizen.

(ii) Must be a uniformed services member, civilian employee working for the sponsoring organization, or a DoD contractor.

(iii) Must be a CAC holder.

(iv) Must establish sites with CPR capability, oversee CPR TASM registration, and ensure other required field support in accordance with DMDC and Service- or agency-level guidelines.

(2) *CPR TASM*. The CPR TASM manages the CPR trusted agent (CTA) operations. The CPR TASM:

(i) Must be a U.S. citizen.

(ii) Must be a uniformed services member, civilian employee working for the sponsoring organization, or a DoD contractor.

(iii) Must be a CAC holder.

(iv) Shall complete the required training and manage CTA operations in accordance with DMDC and Service- or agency-level guidelines.

(3) *CTA*. The CTA’s primary role is to provide PIN reset. The CTA:

(i) Must be a U.S. citizen.

(ii) Must be a uniformed services member, civilian employee working for the sponsoring organization, or a DoD contractor.

(iii) Must be a CAC holder.

(iv) Shall complete the required training and conduct CPR operations in accordance with DMDC and Service- or agency-level guidelines.

**Subpart C—DoD Identification (ID) Cards: Benefits for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals**

**§ 161.9 DoD benefits.**

(a) The benefits population is defined by roles. There are roles that have a direct affiliation with the DoD, such as an active duty Service member, or those that have an association to someone who is affiliated, such as the spouse of an active duty member. This section reflects benefit eligibility established by law and affiliated DoD policy, and covers the roles that either receive CHC, direct care at an MTF, commissary, exchange, and MWR benefits, or are only affiliated to be issued a DoD-authorized CAC or uniformed services ID card. Sections 161.10 through 161.22 identify the categories of eligible persons and their authorized benefits as they would be recorded in the Defense Eligibility Enrollment Reporting System (DEERS).

(1) Sections 161.10 through 161.22 reflect the eligibility of persons for benefits.

(2) A sponsor’s begin date for benefit eligibility is based on the date the sponsor begins their affiliation with the Department.

(3) A dependent’s begin date for benefit eligibility is based on the date the dependent becomes associated as an eligible dependent to an eligible sponsor.

(4) Guidance on benefit eligibility begin dates and ID card expiration dates based on benefits will be maintained at <http://www.cac.mil>.

(5) Refer to the figure for abbreviations for the tables in this subpart.

**FIGURE—BENEFITS TABLE ABBREVIATIONS**

|           |                        |
|-----------|------------------------|
| CHC ..... | civilian health care.  |
| DC .....  | direct care at MTFs.   |
| C .....   | commissary privileges. |
| MWR ..... | MWR privileges.        |
| E .....   | exchange privileges.   |

**§ 161.10 Benefits for active duty members of the uniformed services.**

(a) This section describes the benefits for active duty uniformed services members and their eligible dependents administered by the uniformed services

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in accordance with 10 U.S.C. chapter 55 and DoD Instruction 1330.17, “Armed Services Commissary Operations” (available at <http://www.dtic.mil/whs/directives/corres/pdf/133017p.pdf>); DoD Instruction 1330.21, “Armed Services Exchange Regulations” (available at <http://www.dtic.mil/whs/directives/corres/pdf/133021p.pdf>); and DoD Instruction 1015.10. Descriptions of benefits for National Guard and Reserve members and

their eligible dependents are contained in §161.11. Descriptions of benefits for surviving dependents of active duty uniformed services members are contained in §161.17.

(1) *Active duty service members.* Active duty uniformed services members are eligible for benefits administered by the uniformed services as shown in Table 1.

TABLE 1 TO PART 161—BENEFITS FOR ACTIVE DUTY MEMBERS, NOT INCLUDING NATIONAL GUARD OR RESERVE MEMBERS

|                     | CHC      | DC        | C         | MWR       | E    |
|---------------------|----------|-----------|-----------|-----------|------|
| Member (Self) ..... | No ..... | Yes ..... | Yes ..... | Yes ..... | Yes. |

(2) *Dependents of active duty members.* Dependents of active duty members are eligible for benefits as shown in Table 2 to part 161. Benefits for the eligible dependents of National Guard or Reserve members, non-regular Service retirees not yet age 60, or members enti-

tled to retired pay or who are in receipt of retired pay for non-regular service, and non-regular Service retirees who are not in receipt of retired pay are identified in §§161.11 through 161.14.

TABLE 2 TO PART 161—BENEFITS FOR DEPENDENTS OF ACTIVE DUTY MEMBERS

|   | CHC       | DC        | C          | MWR       | E    |
|---|-----------|-----------|------------|-----------|------|
| Spouse .....  | Yes ..... | Yes ..... | Yes .....  | Yes ..... | Yes. |
| Children, Unmarried, Under 21 Years:<br>Legitimate, adopted, stepchild, illegitimate child of record of female member, or illegitimate child of male member whose paternity has been judicially determined or voluntarily acknowledged. | Yes ..... | Yes ..... | 1 .....    | 2 .....   | 2.   |
| Ward .....  | 3 .....   | 3 .....   | 3 .....    | 3 .....   | 3.   |
| Pre-adoptive Child  | 4 .....   | 4 .....   | 4 .....    | 4 .....   | 4.   |
| Foster Child .....  | No .....  | No .....  | 1 .....    | 1 .....   | 1.   |
| Children, Unmarried, 21 Years and Over.   | 5 .....   | 5 .....   | 1, 5 ..... | 5 .....   | 5.   |
| Father, Mother, Father-in-Law, Mother-in-Law, Stepparent, or Parent by Adoption.  | No .....  | 1 .....   | 1 .....    | 2 .....   | 2.   |

Notes:

1. Yes, if a member of a household maintained by or for an authorized sponsor and dependent on that sponsor for over 50 percent of his or her support. Children residing in the household of a separated spouse continue to be eligible for commissary privileges until there is a final divorce decree. In the case of a divorce, children residing in the household of a former spouse ARE NOT considered to be members of the authorized sponsor's household for commissary privileges. Exception: Children who reside with a former spouse meeting requirements for commissary privileges based on 20 years of marriage during a period the member or retired member performed 20 years of service, or the dependent is entitled to privileges as a result of sponsor abuse pursuant to 10 U.S.C. 1408(h).

2. Yes, if dependent on an authorized sponsor for over 50 percent support or children of a sponsor residing in the household of a former spouse (20–20–20 or 10–20–10).

3. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and:

a. Is dependent on the member for over 50 percent support.

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b. Resides with the member unless separated by the necessity of military service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary or Director may, by regulation, prescribe.

4. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member by a placement agency (recognized by the Secretary of Defense) or by another organization authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member.

5. Yes, if the child:  
 a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary and is dependent on the member for over 50 percent of the child's support; or

b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member and is dependent on the member for over 50 percent of the child's support.

**§ 161.11 Benefits for National Guard and Reserve Members of the Uniformed Services.**

(a) This section describes the benefits for National Guard and Reserve members of the uniformed services and their eligible dependents. Benefits for members of the Retired Reserve and their eligible dependents are described in § 161.13. Benefits for surviving dependents of deceased National Guard

and Reserve members are described in § 161.17.

(1) *National Guard and Reserve members.* National Guard and Reserve members are eligible for benefits based on being ordered to periods of active duty or full-time National Guard duty or active status in the SelRes, including Ready Reserve and Standby Reserve and participation in the Reserve Officer Training Corps.

TABLE 3 TO PART 161—BENEFITS FOR NATIONAL GUARD AND RESERVE MEMBERS NOT ON ACTIVE DUTY GREATER THAN 30 DAYS

|                     | CHC      | DC       | C         | MWR       | E    |
|---------------------|----------|----------|-----------|-----------|------|
| Member (Self) ..... | No ..... | No ..... | Yes ..... | Yes ..... | Yes. |

TABLE 4 TO PART 161—BENEFITS FOR NATIONAL GUARD AND RESERVE MEMBERS ON ACTIVE DUTY FOR PERIODS GREATER THAN 30 DAYS

|                     | CHC      | DC        | C         | MWR       | E    |
|---------------------|----------|-----------|-----------|-----------|------|
| Member (Self) ..... | No ..... | Yes ..... | Yes ..... | Yes ..... | Yes. |

**Notes:**

1. This includes reported periods of early identification of Service members in support of a contingency operation in accordance with DoD Instruction 7730.54, "Reserve Components Common Personnel Data System (RCCPDS)" (available at <http://www.dtic.mil/whs/directives/corres/pdf/773054p.pdf>).

(2) *Dependents of National Guard or Reserve Members.* Dependents of National Guard or Reserve members are

eligible for benefits as shown in Table 5.

TABLE 5 TO PART 161—BENEFITS FOR DEPENDENTS OF NATIONAL GUARD OR RESERVE MEMBERS

|   | CHC        | DC         | C         | MWR       | E    |
|---|------------|------------|-----------|-----------|------|
| Spouse .....  | 1 .....    | 1 .....    | Yes ..... | Yes ..... | Yes. |
| Children, Unmarried, Under 21 Years:  |            |            |           |           |      |
| Legitimate, adopted, stepchild, illegitimate child of record of female member, or illegitimate child of male member whose paternity has been judicially determined or voluntarily acknowledged. | 1 .....    | 1 .....    | 2 .....   | 3 .....   | 3.   |
| Ward .....  | 1, 4 ..... | 1, 4 ..... | 4 .....   | 4 .....   | 4.   |
| Pre-adoptive Child .....  | 1, 5 ..... | 1, 5 ..... | 5 .....   | 5 .....   | 5.   |

TABLE 5 TO PART 161—BENEFITS FOR DEPENDENTS OF NATIONAL GUARD OR RESERVE MEMBERS—Continued

|  | CHC        | DC         | C          | MWR     | E  |
|--|------------|------------|------------|---------|----|
| Foster Child .....   | No .....   | No .....   | 2 .....    | 2 ..... | 2. |
| Children, Unmarried,<br>21 Years and Over.                                       | 1, 6 ..... | 1, 6 ..... | 2, 6 ..... | 6 ..... | 6. |
| Father, Mother, Father-in-Law, Mother-in-Law, Stepparent, or Parent by Adoption. | No .....   | 1, 2 ..... | 2 .....    | 3 ..... | 3. |

**Notes:**

1. Yes, if the sponsor is on active duty greater than 30 days. When the order to active duty period is greater than 30 days the eligibility for CHC and DC for eligible dependents begins on the first day of the active duty period.
2. Yes, if a member of a household maintained by or for an authorized sponsor and dependent on that sponsor for over 50 percent of his or her support. Children residing in the household of a separated spouse continue to be eligible for commissary privileges until there is a final divorce decree. In the case of a divorce, children residing in the household of a former spouse ARE NOT considered to be members of the authorized sponsor's household for commissary privileges. Exception: Children who reside with a former spouse meeting requirements for commissary privileges based on 20 years of marriage during a period the member or retired member performed 20 years of service, or the dependent is entitled to privileges as a result of sponsor abuse pursuant to 10 U.S.C. 1408(h).
3. Yes, if dependent on an authorized sponsor for over 50 percent support, or children of a sponsor residing in the household of a former spouse (20-20-20 or 10-20-10).
4. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and:
  - a. Is dependent on the member for over 50 percent support.
  - b. Resides with the member unless separated by the necessity of military service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
5. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member.
6. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member and is dependent on the member for over 50 percent of the child's support.

**§ 161.12 Benefits for former uniformed services members.**

(a) This section describes the benefits for former uniformed services members and their eligible dependents. Former members are eligible to receive retired pay, at age 60, for non-regular service

in accordance with 10 U.S.C. chapter 1223, but have been discharged from their respective Service or agency and maintain no military affiliation.

(1) *Former Members and their Eligible Dependents.* Former members and their dependents are eligible for benefits as shown in Table 6 to part 161.

TABLE 6 TO PART 161—BENEFITS FOR FORMER MEMBERS AND DEPENDENTS

|   | CHC        | DC         | C          | MWR       | E    |
|---|------------|------------|------------|-----------|------|
| Former Member (Self)  | 1 .....    | 1 .....    | Yes .....  | Yes ..... | Yes. |
| Lawful Spouse .....   | 1 .....    | 2 .....    | Yes .....  | Yes ..... | Yes. |
| Children, Unmarried,<br>Under 21 Years:<br>Legitimate, adopted,<br>stepchild, illegitimate<br>child of record of female<br>member, or illegitimate<br>child of male member whose<br>paternity has been judicially<br>determined or voluntarily<br>acknowledged. | 1 .....    | 2 .....    | 3 .....    | 4 .....   | 4.   |
| Ward .....  | 1, 5 ..... | 2, 5 ..... | 5 .....    | 5 .....   | 5.   |
| Pre-adoptive Child  | 1, 6 ..... | 2, 6 ..... | 6 .....    | 6 .....   | 6.   |
| Foster Child .....  | No .....   | No .....   | 3 .....    | 3 .....   | 3.   |
| Children, Unmarried,<br>21 Years and Over.  | 1, 7 ..... | 2, 7 ..... | 3, 7 ..... | 7 .....   | 7    |

TABLE 6 TO PART 161—BENEFITS FOR FORMER MEMBERS AND DEPENDENTS—Continued

|  | CHC      | DC         | C       | MWR     | E |
|--|----------|------------|---------|---------|---|
| Father, Mother, Father-in-Law, Mother-in-Law, Stepparent, or Parent by Adoption. | No ..... | 2, 3 ..... | 3 ..... | 4 ..... | 4 |

- Notes:**
1. Yes, if the former member is age 60 or over and in receipt of retired pay for non-regular service; and is:
    - a. Not entitled to Medicare Part A hospital insurance through the SSA, or
    - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84, “National Defense Authorization Act for Fiscal Year 2010.”
  2. Yes, if former member is age 60 or over and in receipt of retired pay for non-regular service.
  3. Yes, if a member of a household maintained by or for an authorized sponsor and dependent on that sponsor for over 50 percent of his or her support. Children residing in the household of a separated spouse continue to be eligible for commissary privileges until there is a final divorce decree. In the case of a divorce, children residing in the household of a former spouse ARE NOT considered to be members of the authorized sponsor’s household for commissary privileges. Exception: Children who reside with a former spouse meeting requirements for commissary privileges based on 20 years of marriage during a period the member or retired member performed 20 years of service, or the dependent is entitled to privileges as a result of sponsor abuse pursuant to 10 U.S.C. 1408(h).
  4. Yes, if dependent on an authorized sponsor for over 50 percent support, or children of a sponsor residing in the household of a former spouse (20–20–20 or 10–20–10).
  5. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and:
    - a. Is dependent on the member for over 50 percent support.
    - b. Resides with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
  6. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member or former member.
  7. Yes, if the child:
    - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the former member for over 50 percent of the child’s support; or
    - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member, and is dependent on the member or former member for over 50 percent of the child’s support.

**§ 161.13 Benefits for retired members of the uniformed services.**

(a) This section describes the benefits for retired uniformed service members entitled to retired pay and their eligible dependents. Retired uniformed service members are entitled to retired pay and eligible for benefits administered by the uniformed services in accordance with 10 U.S.C., DoD Instruction 1330.17, DoD Instruction 1330.21, DoD Instruction 1015.10, and TRICARE Policy Manual 6010.57–M (available at

[http://www.tricare.mil/contracting/healthcare/t3manuals/change2/tp08/cbs9\\_1.pdf](http://www.tricare.mil/contracting/healthcare/t3manuals/change2/tp08/cbs9_1.pdf)). This includes voluntary, temporary, and permanent disability retired list (PDRL) retirees. Benefits for former members and their eligible dependents are described in § 161.12.

(1) *Retired Members.* Benefits for voluntary retired members and PDRL retirees are shown in Table 7 to part 161. Benefits for temporary disability retired list (TDRL) retirees are shown in Table 8 to part 161.

TABLE 7 TO PART 161—BENEFITS FOR VOLUNTARY RETIRED MEMBERS AND PDRL MEMBERS

|                     | CHC     | DC        | C         | MWR       | E    |
|---------------------|---------|-----------|-----------|-----------|------|
| Member (Self) ..... | 1 ..... | Yes ..... | Yes ..... | Yes ..... | Yes. |

- Notes:**
1. Yes, if:
    - a. Not entitled to Medicare Part A hospital insurance through the SSA or
    - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111–84.

TABLE 8 TO PART 161—BENEFITS FOR TDRL MEMBERS

|                     | CHC        | DC        | C         | MWR       | E    |
|---------------------|------------|-----------|-----------|-----------|------|
| Member (Self) ..... | 1, 2 ..... | Yes ..... | Yes ..... | Yes ..... | Yes. |

**Notes:**

**Office of the Secretary of Defense**

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- 1. If not removed sooner, retention of the service member on the TDRL shall not exceed a period of 5 years. The uniformed service member must be returned to active duty, separated with or without severance pay, or retired as PDRL in accordance with 10 U.S.C. 1210.
- 2. Yes, if:
  - a. Not entitled to Medicare Part A hospital insurance through the SSA or
  - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111-84.

(2) *Retired Reserve.* Benefits for members of the Retired Reserve who have attained 20 creditable years of service, have not reached the age of 60, and are not in receipt of retired pay are shown in Table 9. When a Retired Reserve member is ordered to active duty greater than 30 days, their benefits will reflect what is shown in Table 10 to part 161. When a Retired Reserve member is in receipt of retired pay under age 60 (non-regular Service retirement), or upon reaching age 60, their benefits will reflect what is shown in Table 11 to part 161.

**TABLE 9 TO PART 161—BENEFITS FOR RETIRED RESERVE MEMBERS**

|                     | CHC      | DC       | C         | MWR       | E    |
|---------------------|----------|----------|-----------|-----------|------|
| Member (Self) ..... | No ..... | No ..... | Yes ..... | Yes ..... | Yes. |

**TABLE 10 TO PART 161—BENEFITS FOR RETIRED RESERVE MEMBERS ORDERED TO ACTIVE DUTY GREATER THAN 30 DAYS**

|                     | CHC      | DC        | C         | MWR       | E    |
|---------------------|----------|-----------|-----------|-----------|------|
| Member (Self) ..... | No ..... | Yes ..... | Yes ..... | Yes ..... | Yes. |

**TABLE 11 TO PART 161—BENEFITS FOR NON-REGULAR SERVICE RETIREMENT FOR QUALIFYING READY RESERVE MEMBERS**

|                     | CHC     | DC      | C         | MWR       | E    |
|---------------------|---------|---------|-----------|-----------|------|
| Member (Self) ..... | 1 ..... | 1 ..... | Yes ..... | Yes ..... | Yes. |

**Notes:**

- 1. Yes, if age 60 or over, and:
  - a. Applied for or in receipt of retired pay in accordance with 10 U.S.C. 1074. If in receipt of retired pay in accordance with the provisions of 10 U.S.C. 12731, after the date of the enactment of section 647 of Public Law 110-181, "National Defense Authorization Act for Fiscal Year 2008," the member must be age 60 to qualify for CHC and DC.
  - b. Not entitled to Medicare Part A hospital insurance through the SSA, or
  - c. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111-84.

(3) *Dependents.* Dependents of retired uniformed services members entitled to retired pay, including TDRL and PDRL, non-regular Service retirees not yet age 60 not in receipt of retired pay; non-regular Service retirees entitled to retired pay in accordance with the provisions of 10 U.S.C. 12731 after the date of the enactment of section 647 of Public Law 110-181; and non-regular Service retirees, age 60 or over, in receipt of retired pay for non-regular service in accordance with 10 U.S.C. chapter 1223, are eligible for benefits as shown in Table 12 to part 161.

**TABLE 12 TO PART 161—BENEFITS FOR DEPENDENTS OF RETIRED UNIFORMED SERVICES MEMBERS**

|   | CHC     | DC      | C         | MWR       | E    |
|---|---------|---------|-----------|-----------|------|
| Lawful Spouse .....                     | 1 ..... | 2 ..... | Yes ..... | Yes ..... | Yes. |
| Children, Unmarried,<br>Under 21 Years: |         |         |           |           |      |



TABLE 12 TO PART 161—BENEFITS FOR DEPENDENTS OF RETIRED UNIFORMED SERVICES MEMBERS—Continued

|   | CHC        | DC         | C          | MWR     | E  |
|---|------------|------------|------------|---------|----|
| Legitimate, adopted, stepchild, illegitimate child of record of female member, or illegitimate child of male member whose paternity has been judicially determined or voluntarily acknowledged. | 1 .....    | 2 .....    | 3 .....    | 4 ..... | 4. |
| Ward .....  | 1, 5 ..... | 2, 5 ..... | 5 .....    | 5 ..... | 5. |
| Pre-adoptive Child  | 1, 6 ..... | 2, 6 ..... | 6 .....    | 6 ..... | 6. |
| Foster Child .....  | No .....   | No .....   | 3 .....    | 3 ..... | 3. |
| Children, Unmarried, 21 Years and Over.   | 1, 7 ..... | 2, 7 ..... | 3, 7 ..... | 7 ..... | 7. |
| Father, Mother, Father-in-Law, Mother-in-Law, Stepparent, or Parent by Adoption.  | No .....   | 2, 3 ..... | 3 .....    | 4 ..... | 4. |

**Notes:**

1. Yes, if the sponsor is:
  - a. Retired (as shown in Tables 7 and 8) and the dependent is not entitled to Medicare Part A hospital insurance through the SSA; or if entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111-84;
  - b. A National Guard or Reserve member on a period of active duty in excess of 30 days (as shown in Table 10). When the ordered to active duty period is greater than 30 days the eligibility for CHC and DC for the eligible dependents begins on the first day of the active duty period; or
  - c. A medically eligible non-regular Service Reserve Retiree, age 60 or over, as shown in Table 11.
2. Yes, if the sponsor is:
  - a. Retired (as shown in Tables 7 and 8);
  - b. A National Guard or Reserve member on a period of active duty in excess of 30 days (as shown in Table 10). When the ordered to active duty period is greater than 30 days the eligibility for CHC and DC for the eligible dependents begins on the first day of the active duty period; or
  - c. A medically eligible non-regular Service Reserve Retiree, age 60 or over, as seen in Table 11.
3. Yes, if a member of a household maintained by or for an authorized sponsor and dependent on that sponsor for over 50 percent of his or her support. Children residing in the household of a separated spouse continue to be eligible for commissary privileges until there is a final divorce decree. In the case of a divorce, children residing in the household of a former spouse ARE NOT considered to be members of the authorized sponsor's household for commissary privileges. Exception: Children who reside with a former spouse meeting requirements for commissary privileges based on 20 years of marriage during a period the member or retired member performed 20 years of service, or the dependent is entitled to privileges as a result of sponsor abuse pursuant to 10 U.S.C. 1408(h).
4. Yes, if dependent on an authorized sponsor for over 50 percent of his or her support or children of a sponsor residing in the household of a former spouse (20-20-20 or 10-20-10).
5. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and:
  - a. Is dependent on the member for over 50 percent support.
  - b. Resides with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
6. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member or former member.
7. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the former member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member, and is dependent on the member or former member for over 50 percent of the child's support.

**§ 161.14 Benefits for MOH recipients.**

(a) This section describes the benefits for MOH recipients and their dependents who are authorized pursuant to section 706 of Public Law 106-398, "National Defense Authorization Act for Fiscal Year 2001" and who are not otherwise entitled to military medical and

dental care. Section 706 of Public Law 106-398 authorized MOH recipients not otherwise entitled to military medical and dental care and their dependents to be given care in the same manner that

such care is provided to former uniformed service members who are entitled to military retired pay and the dependents of those former members. Eligibility for the benefits described in Table 13 to part 161 begins on the date of award of the MOH but no earlier than October 30, 2000.

gibility for the benefits described in Table 13 to part 161 begins on the date of award of the MOH but no earlier than October 30, 2000.

TABLE 13 TO PART 161—BENEFITS FOR MOH RECIPIENTS AND DEPENDENTS

|  | CHC        | DC         | C          | MWR       | E    |
|--|------------|------------|------------|-----------|------|
| Self .....   | 1 .....    | 2 .....    | Yes .....  | Yes ..... | Yes. |
| Lawful Spouse .....  | 1 .....    | 2 .....    | Yes .....  | Yes ..... | Yes. |
| Children, Unmarried,<br>Under 21 Years:  |            |            |            |           |      |
| Legitimate, adopted,<br>stepchild, illegitimate<br>child of record of female<br>member, or illegitimate<br>child of male member whose<br>paternity has been judicially<br>determined or voluntarily<br>acknowledged. | 1 .....    | 2 .....    | 3 .....    | 4 .....   | 4.   |
| Ward .....   | 1, 5 ..... | 2, 5 ..... | 5 .....    | 5 .....   | 5.   |
| Pre-adoptive Child .....   | 1, 6 ..... | 2, 6 ..... | 6 .....    | 6 .....   | 6.   |
| Foster Child .....   | No .....   | No .....   | 3 .....    | 3 .....   | 3.   |
| Children, Unmarried,<br>21 Years and Over.   | 1, 7 ..... | 2, 7 ..... | 3, 7 ..... | 7 .....   | 7.   |
| Father, Mother, Father-in-<br>Law, Mother-in-Law, Stepparent, or<br>Parent by Adoption.  | No .....   | 2, 3 ..... | 3 .....    | 4 .....   | 4.   |

**Notes:**

1. Yes, if the sponsor is a MOH recipient and is not otherwise entitled to medical care as of or after October 30, 2000 pursuant to section 706 of Public Law 106-398 and:
  - a. Is not entitled to Medicare Part A hospital insurance through the SSA or
  - b. Is entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111-84.
2. Yes, if the sponsor is a MOH recipient and is not otherwise entitled to medical care as of or after October 30, 2000 pursuant to section 706 of Public Law 106-398.
3. Yes, if a member of a household maintained by or for an authorized sponsor and dependent on that sponsor for over 50 percent of his or her support. Children residing in the household of a separated spouse continue to be eligible for commissary privileges until there is a final divorce decree. In the case of a divorce, children residing in the household of a former spouse ARE NOT considered to be members of the authorized sponsor's household for commissary privileges. Exception: Children who reside with a former spouse meeting requirements for commissary privileges based on 20 years of marriage during a period the member or retired member performed 20 years of service, or the dependent is entitled to privileges as a result of sponsor abuse pursuant to 10 U.S.C. 1408.
4. Yes, if dependent on an authorized sponsor for over 50 percent of his or her support or children of a sponsor residing in the household of a former spouse (20-20-20 or 10-20-10).
5. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and:
  - a. Is dependent on the member for over 50 percent support.
  - b. Resides with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
6. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member or former member.
7. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the former member for over 50 percent of the child's support or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member, and is dependent on the member or former member for over 50 percent of the child's support.

**§ 161.15 Benefits for Disabled American Veterans (DAV).**

(a) This section describes the benefits for DAVs rated as 100 percent disabled or 100 percent unemployable by the VA and their eligible dependents. Neither

DAVs nor their eligible dependents receive CHC or DC benefits from the DoD based on their affiliation. Honorably discharged veterans rated by the VA as 100 percent disabled or 100 percent unemployable from a uniformed service-

connected injury or disease and certified by VA, and their dependents, are eligible for benefits as shown in Table 14 to part 161.

TABLE 14 TO PART 161—BENEFITS FOR 100 PERCENT DAVS AND DEPENDENTS

|  | CHC      | DC       | C          | MWR       | E    |
|--|----------|----------|------------|-----------|------|
| Self .....   | No ..... | No ..... | Yes .....  | Yes ..... | Yes. |
| Lawful Spouse .....  | No ..... | No ..... | Yes .....  | Yes ..... | Yes. |
| Children, Unmarried,<br>Under 21 Years:  |          |          |            |           |      |
| Legitimate, adopted,<br>stepchild, illegitimate<br>child of record of female<br>member, or illegitimate<br>child of male member whose<br>paternity has been judicially<br>determined or voluntarily<br>acknowledged. | No ..... | No ..... | 1 .....    | 2 .....   | 2.   |
| Pre-adoptive Child   | No ..... | No ..... | 4 .....    | 4 .....   | 4.   |
| Children, Unmarried,<br>21 Years and Over.   | No ..... | No ..... | 1, 5 ..... | 5 .....   | 5.   |
| Father, Mother, Father-in-<br>Law, Mother-in-Law, Stepparent,<br>or Parent-by-Adoption.  | No ..... | No ..... | 1 .....    | 2 .....   | 2.   |

**Notes:**

1. Yes, if a member of a household maintained by or for an authorized sponsor and dependent on that sponsor for over 50 percent of his or her support. Children residing in the household of a separated spouse continue to be eligible for commissary privileges until there is a final divorce decree. In the case of a divorce, children residing in the household of a former spouse ARE NOT considered to be members of the authorized sponsor's household for commissary privileges. Exception: Children who reside with a former spouse meeting requirements for commissary privileges based on 20 years of marriage during a period the member or retired member performed 20 years of service, or the dependent is entitled to privileges as a result of sponsor abuse pursuant to 10 U.S.C. 1408.
2. Yes, if dependent on an authorized sponsor for over 50 percent of his or her support or children of a sponsor residing in the household of a former spouse (20-20-20 or 10-20-10).
3. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and:
  - a. Is dependent on the member for over 50 percent support.
  - b. Resides with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
4. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member or former member.
5. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the former member for over 50 percent of the child's support or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member, and is dependent on the member or former member for over 50 percent of the child's support.

**§ 161.16 Benefits for transitional health care members and dependents.**

This section shows the benefits for THC members and their eligible dependents. THC (formerly the TAMP) was instituted in section 502 of Public Law 101-510, "Department of Defense Appropriations Bill Fiscal Year 1991" effective October 1, 1990. Section 706 of Public Law 108-375, "National Defense Authorization Act of for Fiscal Year 2005" made the THC program permanent and made the medical eligibility

180 days for all eligible uniformed services members. Section 651 of Public Law 110-181 extended 2 years' commissary and exchange benefits to THC members. Section 734 of Public Law 110-417, "National Defense Authorization Act for Fiscal Year 2009" extended THC benefits to uniformed service members separating from active duty who agree to become members of the SelRes of the Ready Reserve of a reserve component. Uniformed service members separated as uncharacterized

entry-level separations do not qualify for THC.

TABLE 15 TO PART 161—BENEFITS FOR THC MEMBERS AND DEPENDENTS

|   | CHC        | DC         | C                | MWR              | E           |
|---|------------|------------|------------------|------------------|-------------|
| THC Member (Self) ....  | 1 .....    | 1 .....    | 2, 3, 4 .....    | 2, 3, 4 .....    | 2, 3, 4.    |
| Lawful Spouse .....   | 1 .....    | 1 .....    | 2, 3, 4 .....    | 2, 3, 4 .....    | 2, 3, 4.    |
| Children, Unmarried,<br>Under 21 Years:   |            |            |                  |                  |             |
| Legitimate, adopt-<br>ed, stepchild, il-<br>legitimate child<br>of record of fe-<br>male member,<br>or illegitimate<br>child of male<br>member whose<br>paternity has<br>been judicially<br>determined or<br>voluntarily ac-<br>knowledged. | 1 .....    | 1 .....    | 2, 3, 4, 5 ..... | 2, 3, 4, 6 ..... | 2, 3, 4, 6. |
| Ward .....  | 1, 7 ..... | 1, 7 ..... | 2, 3, 4, 7 ..... | 2, 3, 4, 7 ..... | 2, 3, 4, 7. |
| Pre-adoptive Child  | 1, 8 ..... | 1, 8 ..... | 2, 3, 4, 8 ..... | 2, 3, 4, 8 ..... | 2, 3, 4, 8. |
| Foster Child .....  | No .....   | No .....   | 2, 3, 4, 5 ..... | 2, 3, 4, 5 ..... | 2, 3, 4, 5. |
| Children, Unmarried,<br>21 Years and Over.  | 1, 9 ..... | 1, 9 ..... | 5, 9 .....       | 9 .....          | 9.          |
| Father, Mother, Father-<br>in-Law, Mother-in-<br>Law, Stepparent, or<br>Parent-by-Adoption.   | No .....   | 1, 9 ..... | 2, 3, 4, 5 ..... | 2, 3, 4, 6 ..... | 2, 3, 4, 6. |

**Notes:**

1. Yes, medical entitlement for 180 days beginning on the date after the member separated from the qualifying active duty period. There is no exception based on entitlement to Medicare Part A. The THC eligible sponsor and eligible dependents receive the medical benefits as if they were active duty eligible dependents.
2. No, if the member separated on or after January 1, 2001 but before October 1, 2007; or if separated in accordance with 10 U.S.C. 1145(a)(2)(F).
3. No, if the member separated from active duty to join the SelRes or the Ready Reserve of a Reserve Component.
4. Yes, if the member was separated during the period beginning on October 1, 1990, through December 31, 2001, or after October 1, 2007. Entitlement shall be for 2 years, beginning on the date the member separated.
5. Yes, if a member of a household maintained by or for an authorized sponsor and dependent on that sponsor for over 50 percent of his or her support. Children residing in the household of a separated spouse continue to be eligible for commissary privileges until there is a final divorce decree. In the case of a divorce, children residing in the household of a former spouse are not considered to be members of the authorized sponsor's household for commissary privileges, except children who reside with a former spouse meeting requirements for commissary privileges based on 20 years of marriage during a period the member or retired member performed 20 years of service.
6. Yes, if dependent on the authorized sponsor for over 50 percent of his or her support or children of a sponsor residing in the household of a former spouse (20-20-20 or 10-20-10).
7. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and:
  - a. Is dependent on the member for over 50 percent support.
  - b. Resides with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
8. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member or former member.
9. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the former member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member, and is dependent on the member or former member for over 50 percent of the child's support.

**§ 161.17 Benefits for surviving dependents.**

(a) This section describes the benefits for surviving dependents of active duty deceased uniformed services members, deceased National Guard and Reserve service members, deceased MOH recipients, and deceased 100 percent DAV.

(1) *Surviving dependents of active duty deceased members.* Surviving dependents of members who died while on active duty under orders that specified a period of more than 30 days or members who died while in a retired with pay status are eligible for benefits as shown in Table 16 to part 161.

TABLE 16 TO PART 161—BENEFITS FOR SURVIVING DEPENDENTS OF ACTIVE DUTY DECEASED MEMBERS

|   | CHC        | DC         | C          | MWR       | E    |
|---|------------|------------|------------|-----------|------|
| Widow or widower:   |            |            |            |           |      |
| Unremarried .....   | 1 .....    | Yes .....  | Yes .....  | Yes ..... | Yes. |
| Remarried .....   | No .....   | No .....   | No .....   | No .....  | No.  |
| Unmarried .....   | No .....   | No .....   | Yes .....  | Yes ..... | Yes. |
| Children, Unmarried, or Under 21 Years (Including Orphans):   |            |            |            |           |      |
| Legitimate, adopted, stepchild, illegitimate child of record of female member, or illegitimate child of male member whose paternity has been judicially determined or voluntarily acknowledged. | 1 .....    | Yes .....  | 2 .....    | 3 .....   | 3.   |
| Ward .....  | 1, 4 ..... | 1, 4 ..... | 4 .....    | 4 .....   | 4.   |
| Pre-adoptive Child .....  | 1, 5 ..... | 1, 5 ..... | 5 .....    | 5 .....   | 5.   |
| Foster Child .....  | No .....   | No .....   | 2 .....    | 2 .....   | 2.   |
| Children, Unmarried, 21 Years and Over.   | 1, 6 ..... | 6 .....    | 2, 6 ..... | 6 .....   | 6.   |
| Father, Mother, Father-in-Law, Mother-in-Law, Stepparent, or Parent by Adoption.  | No .....   | 2 .....    | 2 .....    | 3 .....   | 3.   |

**Notes:**

1. Yes, if the sponsor died on active duty (for dependents of National Guard or Reserve members or Retired Reserve members the period of active duty must be in excess of 30 days in order to qualify for the benefits in this table) and:
  - a. If claims are filed less than 3 years from the date of death, there is no Medicare exception for the widow. After 3 years from the date of death, the widow is eligible if:
    - (1) Not entitled to Medicare Part A hospital insurance through the SSA.
    - (2) Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111-84.
  - b. Yes, for children regardless of the number of years from the date of death or entitlement to Medicare they are entitled.
2. Yes, if at the time of the sponsor's death, the person was living in a home provided by or for an authorized sponsor and was dependent on the sponsor for over 50 percent of his or her support. Children residing in the household of the authorized sponsor at the time of death are entitled to commissary privileges.
3. Yes, if dependent on an authorized sponsor for over 50 percent of his or her support at the time of the sponsor's death or children of a sponsor residing in the household of a former spouse (20-20-20 or 10-20-10).
4. Yes, if, for determinations of dependency made on or after July 1, 1994, and prior to the death of the member, the child had been placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and was at the time of the sponsor's death:
  - a. Dependent on the member for over 50 percent support.
  - b. Residing with the member unless separated by the necessity of military service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
5. Yes, if, for determinations of dependency made on or after October 5, 1994, and prior to the death of the member, the child had been placed in the home of the member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member.
6. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is or was at the time of the member's death dependent on the member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member and is or was at the time of the member's death dependent on the member for over 50 percent of the child's support.

(2) *Surviving dependents of deceased National Guard and Reserve members not on an active duty period greater than 30 days.* The surviving dependents of National Guard and Reserve Service members are eligible for the benefits shown in Table 17 to part 161 if:

(i) The National Guard or Reserve member died from an injury or illness

incurred or aggravated while on active duty for a period of 30 days or less, on active duty for training, or on inactive duty training, or while traveling to or from the place at which the member was to perform, or performed, such active duty, active duty for training, or inactive duty training pursuant to 10

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U.S.C. 1076 and 1086(c)(2) and if death occurred on or after October 1, 1985; or (ii) The National Guard or Reserve member died from an injury, illness, or disease incurred or aggravated while performing, or while traveling to or from performing active duty for a pe-

riod of 30 days or less, or active duty for training, or inactive duty training, or while performing service on funeral honors in accordance with 10 U.S.C. 1074a and if death occurred on or after November 15, 1986.

TABLE 17 TO PART 161—BENEFITS FOR SURVIVING DEPENDENTS OF DECEASED NATIONAL GUARD AND RESERVE MEMBERS NOT ON ACTIVE DUTY FOR A PERIOD GREATER THAN 30 DAYS

|   | CHC           | DC         | C             | MWR        | E     |
|---|---------------|------------|---------------|------------|-------|
| Widow or Widower:   |               |            |               |            |       |
| Unremarried .....   | 1, 2 .....    | 2 .....    | 2 .....       | 2 .....    | 2.    |
| Remarried .....   | No .....      | No .....   | No .....      | No .....   | No.   |
| Unmarried .....   | No .....      | No .....   | 2 .....       | 2 .....    | 2.    |
| Children, Unmarried, Under 21 Years (Including Orphans):  | 1, 2 .....    | 2 .....    | 2, 3 .....    | 2, 4 ..... | 2, 4. |
| Legitimate, adopted, stepchild, illegitimate child of record of female member, or illegitimate child of male member whose paternity has been judicially determined or voluntarily acknowledged. |               |            |               |            |       |
| Ward .....  | 1, 2, 5 ..... | 2, 5 ..... | 2, 5 .....    | 2, 5 ..... | 2, 5. |
| Pre-adoptive Child  | 1, 2, 6 ..... | 2, 6 ..... | 2, 6 .....    | 2, 6 ..... | 2, 6. |
| Foster Child .....  | No .....      | No .....   | 2, 3 .....    | 2, 3 ..... | 2, 3. |
| Children, Unmarried, 21 Years and Over.   | 1, 2, 7 ..... | 2, 7 ..... | 2, 3, 7 ..... | 2, 7 ..... | 2, 7. |
| Father, Mother, Father-in-Law, Mother-in-Law, Stepparent, or Parent by Adoption.  | No .....      | 2, 3 ..... | 2, 3 .....    | 2, 4 ..... | 2, 4. |

- Notes:**
1. Yes, if:
    - a. Not entitled to Medicare Part A hospital insurance through the SSA.
    - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111-84.
  2. Yes, only if death occurred on or after 1 October 1985 in accordance with the provisions of 10 U.S.C. 1076, or on or after November 15, 1986 in accordance with the provisions of 10 U.S.C. 1074a.
  3. Yes, if at the time of the sponsor's death the person was living in a home provided by or for an authorized sponsor and was dependent on the sponsor for over 50 percent of his or her support. Children residing in the household of the authorized sponsor at the time of death, but not the household of the sponsor's former spouse, are entitled to commissary privileges.
  4. Yes, if dependent on an authorized sponsor for over 50 percent of his or her support at the time of the sponsor's death or children of a sponsor residing in the household of a former spouse (20-20-20 or 10-20-10).
  5. Yes, if, for determinations of dependency made on or after July 1, 1994, and prior to the death of the member, the child had been placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months and was at the time of the sponsor's death:
    - a. Dependent on the member for over 50 percent support.
    - b. Residing with the member unless separated by the necessity of military service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
  6. Yes, if, for determinations of dependency made on or after October 5, 1994, and prior to the death of the member, the child had been placed in the home of the member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption.
  7. Yes, if the child:
    - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is or was at the time of the member's death dependent on the member for over 50 percent of the child's support; or
    - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member and is or was at the time of the member's or former member's death dependent on the member for over 50 percent of the child's support.

(3) *Surviving dependents of deceased National Guard and Reserve members in receipt of their notice of eligibility (NOE), Retired Reserve members not yet age 60, and former members not in receipt of retired pay. The surviving dependents of*

National Guard and Reserve members who have died before the age of 60 are eligible for the benefits shown in Table 18 to part 161 if the deceased sponsor was:

(i) A Reserve member who had earned 20 qualifying years for retirement and

received their NOE for retired pay at age 60, but HAD NOT transferred to the Retired Reserve.

(ii) A Retired Reserve member eligible for pay at age 60, not yet age 60.

(iii) A former member who had met time-in-service requirements.

TABLE 18 TO PART 161—BENEFITS FOR SURVIVING DEPENDENTS OF NATIONAL GUARD AND RESERVE MEMBERS WHO HAVE DIED BEFORE AGE 60

|   | CHC           | DC         | C             | MWR           | E        |
|---|---------------|------------|---------------|---------------|----------|
| Widow or Widower:   |               |            |               |               |          |
| Unremarried .....   | 1, 2 .....    | 1 .....    | Yes, 8 .....  | Yes, 8 .....  | Yes, 8.  |
| Remarried .....   | No .....      | No .....   | No .....      | No .....      | No.      |
| Unmarried .....   | No .....      | No .....   | Yes, 8 .....  | Yes, 8 .....  | Yes, 8.  |
| Children, Unmarried, Under 21 Years (Including Orphans):  |               |            |               |               |          |
| Legitimate, adopted, stepchild, illegitimate child of record of female member, or illegitimate child of male member whose paternity has been judicially determined or voluntarily acknowledged. | 1, 2 .....    | 1 .....    | 3, 8 .....    | 4, 8 .....    | 4, 8.    |
| Ward .....  | 1, 2, 5 ..... | 1, 5 ..... | 3, 5, 8 ..... | 4, 5, 8 ..... | 4, 5, 8. |
| Pre-adoptive Child .....  | 1, 2, 6 ..... | 1, 6 ..... | 3, 6, 8 ..... | 4, 6, 8 ..... | 4, 6, 8. |
| Foster Child .....  | No .....      | No .....   | 3 .....       | 3 .....       | 3.       |
| Children, Unmarried, 21 Years and Over.   | 1, 2, 7 ..... | 1, 7 ..... | 3, 7, 8 ..... | 4, 7, 8 ..... | 4, 7, 8. |
| Father, Mother, Father-in-Law, Mother-in-Law, Stepparent, or Parent by Adoption.  | No .....      | 3, 8 ..... | 3, 8 .....    | 3, 8 .....    | 3, 8.    |

**Notes:**

1. Yes, on or after the date the member would have become age 60.
2. Yes, if:
  - a. Not entitled to Medicare Part A hospital insurance through the SSA or
  - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111-84.
3. Yes, if at the time of the sponsor's death, the person was living in a home provided by or for an authorized sponsor and was dependent on the sponsor for over 50 percent of his or her support. Children residing in the household of the authorized sponsor at the time of death, but not the household of the sponsor's former spouse, are entitled to commissary privileges. Medical care is only authorized on or after the date the uniformed service member would have become age 60.
4. Yes, if dependent on an authorized sponsor for over 50 percent of his or her support at the time of the sponsor's death or children of a sponsor residing in the household of a former spouse (20-20-20 or 10-20-10).
5. Yes, if, for determinations of dependency made on or after July 1, 1994, and prior to the death of the member, the child had been placed in the legal custody of the member or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and was at the time of the sponsor's death:
  - a. Dependent on the member for over 50 percent support.
  - b. Residing with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
6. Yes, if, for determinations of dependency made on or after October 5, 1994, and prior to the death of the member, the child had been placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption.
7. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is or was at the time of the member's or former member's death dependent on the former member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member and is, or was at the time of the member's or former member's death, dependent on the member or former member for over 50 percent of the child's support.
8. Eligible dependents of deceased former members who died prior to age 60 receive commissary, MWR, and exchange benefits. If the former member dies after applying for pay upon reaching age 60 then the eligible dependents are entitled to medical care only in accordance with notes 1 and 2 as applicable.

(4) *Surviving dependents of deceased uniformed services retirees or deceased MOH recipients.* The surviving dependents of deceased uniformed services retirees or deceased MOH recipients are eligible for the benefits shown in Table 19 to part 161.

TABLE 19 TO PART 161—BENEFITS FOR SURVIVING DEPENDENTS OF DECEASED UNIFORMED SERVICES RETIREES AND DECEASED MOH RECIPIENTS

|  | CHC              | DC            | C          | MWR       | E    |
|--|------------------|---------------|------------|-----------|------|
| Widow or Widower:  |                  |               |            |           |      |
| Unremarried .....  | 1, 2, 3 .....    | 3, 4 .....    | Yes .....  | Yes ..... | Yes. |
| Remarried .....  | No .....         | No .....      | No .....   | No .....  | No.  |
| Unmarried .....  | No .....         | No .....      | Yes .....  | Yes ..... | Yes. |
| Children, Unmarried,<br>Under 21 Years:  |                  |               |            |           |      |
| Legitimate, adopted,<br>stepchild, illegitimate<br>child of member, illegitimate<br>child of spouse. | 1, 2, 3 .....    | 3, 5 .....    | 6 .....    | 4 .....   | 4.   |
| Ward .....   | 1, 2, 3, 7 ..... | 3, 4, 7 ..... | 7 .....    | 7 .....   | 7.   |
| Pre-adoptive Child .....   | 1, 2, 3, 8 ..... | 3, 4, 8 ..... | 8 .....    | 8 .....   | 8.   |
| Foster Child .....   | No .....         | No .....      | 6 .....    | 6 .....   | 6.   |
| Children, Unmarried,<br>21 Years and Over.   | 1, 2, 3, 9 ..... | 3, 4, 9 ..... | 6, 9 ..... | 9 .....   | 9.   |
| Father, Mother, Father-in-Law,<br>Mother-in-Law, Stepparent, or<br>Parent by Adoption.               | No .....         | No .....      | 6 .....    | 4 .....   | 4.   |

**Notes:**

1. Yes, if the deceased uniformed service member was a retired uniformed service member entitled to retired pay, including TDRL or PDRL, or a non-regular Service retiree, age 60 or over, in receipt of retired pay, and if the person is:
  - a. Not entitled to Medicare Part A hospital insurance through the SSA; or
  - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111-84.
2. Yes, if the deceased MOH recipient was not otherwise entitled to medical care as of, or after October 30, 2000 in accordance with section 706 of Public Law 106-398 and if the person is:
  - a. Not entitled to Medicare Part A hospital insurance through the SSA; or
  - b. Entitled to Medicare Part A, hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111-84.
3. No, if the deceased uniformed service member was a non-regular Service Retiree in accordance with the provision of 10 U.S.C. 12731 after the enactment of Public Law 110-181, sections 647 and 1106. The eligible surviving dependents will become eligible for CHC and DC on the anniversary of the 60th birthday of the deceased uniformed service member. Eligibility for CHC also requires that the person is:
  - a. Not entitled to Medicare Part A hospital insurance through the SSA; or
  - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111-84.
4. Yes, if dependent on an authorized sponsor for over 50 percent of his or her support at the time of the sponsor's death or children of a sponsor residing in the household of a former spouse (20-20-20 or 10-20-10).
5. Yes, if the deceased was a retired uniformed services member entitled to retired pay, including TDRL or PDRL, or a non-regular Service retiree, age 60 or over, in receipt of retired pay, or a deceased MOH recipient not otherwise entitled to medical care as of or after, October 30, 2000, or a deceased non-regular Service retiree entitled in accordance with the provisions of 10 U.S.C. 12731 after the enactment of Public Law 110-181, sections 647 and 1106 on the anniversary of the 60th birthday of the deceased uniformed Service member.
6. Yes, if a member of a household maintained by or for an authorized sponsor and dependent on that sponsor for over 50 percent of his or her support. Children residing in the household of a separated spouse continue to be eligible for commissary privileges until there is a final divorce decree. In the case of a divorce, children residing in the household of a former spouse are not considered to be members of the authorized sponsor's household for commissary privileges.
7. Yes, if, for determinations of dependency made on or after July 1, 1994, and prior to the death of the member, the child had been placed in the legal custody of the member or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and was at the time of the sponsor's death:
  - a. Dependent on the member for over 50 percent support.
  - b. Residing with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
8. Yes, if, for determinations of dependency made on or after October 5, 1994, and prior to the death of the member, the child had been placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption.
9. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is or was at the time of the member's or former member's death dependent on the former member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member and is or was at the time of the member's or former member's death dependent on the member or former member for over 50 percent of the child's support.



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(5) *Surviving Dependents of 100 Percent DAVs.* Surviving dependents of honorably discharged veterans rated as 100 percent disabled or 100 percent unemployable by the VA from a uniformed

services-connected injury or disease at the time of his or her death are eligible for benefits as shown in Table 20 to part 161.

TABLE 20 TO PART 161—BENEFITS FOR SURVIVING DEPENDENTS OF 100 PERCENT DAVS

|  | CHC      | DC       | C          | MWR        | E     |
|--|----------|----------|------------|------------|-------|
| Widow or Widower:<br>(DoD Beneficiary):  |          |          |            |            |       |
| Unremarried .....  | No ..... | No ..... | Yes .....  | Yes .....  | Yes.  |
| Remarried .....  | No ..... | No ..... | No .....   | No .....   | No.   |
| Unmarried .....  | No ..... | No ..... | Yes .....  | Yes .....  | Yes.  |
| Children, Unmarried,<br>Under 21 Years:  |          |          |            |            |       |
| Legitimate, adopt-<br>ed, stepchild, il-<br>legitimate child<br>of member, ille-<br>gitimate child of<br>spouse. | No ..... | No ..... | 1 .....    | 4 .....    | 4.    |
| Ward .....   | No ..... | No ..... | 2 .....    | 2 .....    | 2.    |
| Pre-adoptive Child   | No ..... | No ..... | 3 .....    | 3 .....    | 3.    |
| Children, Unmarried,<br>21 Years and Over.   | No ..... | No ..... | 1, 5 ..... | 1, 5 ..... | 1, 5. |
| Father, Mother, Father-<br>in-Law, Mother-in-<br>Law, Stepparent, or<br>Parent by Adoption.                      | No ..... | No ..... | 1 .....    | 4 .....    | 4.    |

**Notes:**

1. Yes, if at the time of the sponsor's death, the person was living in a home provided by or for an authorized sponsor and was dependent on the sponsor for over 50 percent of his or her support. Children residing in the household of the authorized sponsor at the time of death are entitled to commissary privileges.
2. Yes, if, for determination of dependency made on or after July 1, 1994, was placed in the legal custody of the member or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months; and was at the time of the sponsor's death:
  - a. Dependent on the member for over 50 percent support.
  - b. Residing with the member or former member unless separated by the necessity of military service or to receive institutional care as a result of a disability or incapacitation or under such other circumstances as the administering Secretary may, by regulation, prescribe.
3. Yes, if, for determinations of dependency made on or after July 1, 1994, and prior to the death of the member, the child had been placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption.
4. Yes, if dependent on an authorized sponsor for over 50 percent of his or her support at the time of the sponsor's death or children of a sponsor residing in the household of a former spouse (20-20-20 or 10-20-10).
5. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is or was at the time of the member's or former member's death, dependent on the former member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member and is, or was at the time of the member's or former member's death, dependent on the member or former member for over 50 percent of the child's support.

**§ 161.18 Benefits for abused dependents.**

(a) Abused dependents of active duty uniformed services members entitled to retired pay based on 20 or more years of service who, on or after October, 23, 1992, while a member, have their eligibility to receive retired pay terminated as a result of misconduct

involving the abuse of the spouse or dependent child pursuant to 10 U.S.C. 1408(h), are eligible for benefits as shown in Table 21. For the purposes of these benefits the eligible spouse or child may not reside in the household of the sponsor. See §161.19 for additional information on abused dependents under the 10/20/10 former spouse rule.

TABLE 21 TO PART 161—BENEFITS FOR ABUSED DEPENDENTS OF RETIREMENT ELIGIBLE UNIFORMED SERVICES MEMBERS

|                     | CHC           | DC         | C          | MWR        | E     |
|---------------------|---------------|------------|------------|------------|-------|
| Lawful Spouse ..... | 1, 2, 6 ..... | 2, 6 ..... | 2, 6 ..... | 2, 6 ..... | 2, 6. |

TABLE 21 TO PART 161—BENEFITS FOR ABUSED DEPENDENTS OF RETIREMENT ELIGIBLE UNIFORMED SERVICES MEMBERS—Continued

|   | CHC           | DC         | C          | MWR        | E     |
|---|---------------|------------|------------|------------|-------|
| Children, Unmarried, Under 18 Years:<br>Legitimate, adopted, stepchild, pre-adoptive. | 1, 3 .....    | 3 .....    | 4 .....    | 4 .....    | 4.    |
| Children, Unmarried, 18 Years and Over<br>(If entitled above).                        | 1, 4, 5 ..... | 4, 5 ..... | 4, 5 ..... | 4, 5 ..... | 4, 5. |

**Notes:**  
 1. Yes, if:  
 a. Not entitled to Medicare Part A hospital insurance through the SSA.  
 b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111-84.  
 2. Yes, if a court order provides for an annuity for the spouse.  
 3. Yes, if a member of the household where the abuse occurred.  
 4. Yes, if a member of the household where the abuse occurred and dependent on that sponsor for over 50 percent of his or her support at the time the abuse occurred.  
 5. Yes, if the child:  
 a. Is older than 18 years old and is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary; or  
 b. Is incapable of self-support because of a mental or physical incapacity that existed before age 18, or occurred before the age of 23 while a full-time student.  
 6. The spouse must have been married to the uniformed service member for at least 10 years, the uniformed service member must have completed 20 creditable years for retired pay, and they must have been married at least 10 years during the 20 years of creditable service (see §161.19). The uniformed services shall prescribe specific procedures to verify the eligibility of an applicant.

(b) Dependents of active duty uniformed service members (who have served for a continuous period greater than 30 days) not entitled to retired pay who have received a dishonorable or bad-conduct discharge, dismissal from a uniformed service as a result of a court martial conviction for an offense involving physical or emotional abuse of the spouse or child, or was administratively discharged as a result of such an offense, separated on or after November 30, 1993, are eligible for tran-

sitional privileges in accordance with DoD Instruction 1342.24, “Transitional Compensation for Abused Dependents” (available at <http://www.dtic.mil/whs/directives/corres/pdf/134224p.pdf>). For the purposes of these benefits the eligible spouse or child may not reside in the household of the sponsor. A maximum of up to 36 months of medical benefits can be granted by the uniformed services to the transitional compensation dependent.

TABLE 22 TO PART 161—BENEFITS FOR ABUSED DEPENDENTS OF NON-RETIREMENT ELIGIBLE UNIFORMED SERVICES MEMBERS

|  | CHC           | DC         | C          | MWR        | E     |
|--|---------------|------------|------------|------------|-------|
| Lawful Spouse .....  | 1, 2 .....    | 2 .....    | 2 .....    | 2 .....    | 2.    |
| Children, Unmarried, Under 18 Years:<br>Legitimate, adopted, and step-child. | 1, 2 .....    | 2 .....    | 2 .....    | 2 .....    | 2.    |
| Children, Unmarried, 18 Years and Over<br>(If entitled above).               | 1, 2, 3 ..... | 2, 3 ..... | 2, 3 ..... | 2, 3 ..... | 2, 3. |

**Notes:**  
 1. Yes, if:  
 a. Not entitled to Medicare Part A hospital insurance through the SSA.  
 b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111-84.  
 2. Yes, if  
 a. Residing with the member at the time of the dependent-abuse offense and not residing with the member while receiving transitional compensation for abused dependents.  
 b. Married to and residing with the member at the time of the dependent-abuse offense and while receiving transitional compensation for abused dependents.  
 3. Yes, if:

- a. 18 years of age or older and incapable of self-support because of a mental or physical incapacity that existed before the age of 18 and who is (or was when a punitive or other adverse action was carried out on the member) dependent on the member for over one-half of the child's support; or
- b. 18 years of age or older, but less than 23 years of age, is enrolled in a full-time course of study in an institution of higher learning approved by the Secretary of Defense and who is (or was when a punitive or other adverse action was carried out on the member) dependent on the member for over one-half of the child's support.

**§ 161.19 Benefits for former spouses.**

(a) *20/20/20 former spouses.* Unremarried former spouses of a uniformed services member or retired member, married to the member or retired member for a period of at least 20 years, during which period the member or retired member performed at least 20 years of service that is creditable in determining the member's or retired member's eligibility for retired or retainer pay, or equivalent pay pursuant to 10 U.S.C. 1408 and 1072(2)(F), and the

period of the marriage and the service overlapped by at least 20 years are eligible for benefits as shown in Tables 23 and 24 to part 161. The benefit eligibility period begins on qualifying date of divorce from the uniformed services member.

(1) *20/20/20 former spouses of an active duty, regular retired, or a non-regular retired sponsor at age 60.* 20/20/20 former spouses of an active duty, regular retired, or a non-regular retired sponsor at age 60 are eligible for benefits as shown in Table 23 to part 161.

TABLE 23 TO PART 161—BENEFITS FOR 20/20/20 FORMER SPOUSES OF ACTIVE DUTY, REGULAR RETIRED, AND NON-REGULAR RETIRED MEMBERS AT AGE 60

|                   | CHC        | DC       | C         | MWR       | E    |
|-------------------|------------|----------|-----------|-----------|------|
| Former Spouse:    |            |          |           |           |      |
| Unremarried ..... | 1, 2 ..... | 1 .....  | Yes ..... | Yes ..... | Yes. |
| Remarried .....   | No .....   | No ..... | No .....  | No .....  | No.  |
| Unmarried .....   | No .....   | No ..... | Yes ..... | Yes ..... | Yes. |

- Notes:**
- 1. Yes, if the former spouse certifies in writing that he or she has no medical coverage under an employer-sponsored health plan.
  - 2. Yes, if:
    - a. Not entitled to Medicare Part A hospital insurance through the SSA.
    - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance with the exception of those individuals who qualify in accordance with section 706 of Public Law 111-84.

(2) *20/20/20 former spouses of a national guard, reserve member, or retired reserve member under age 60.* (i) In the case of former spouses of National Guard, Reserve, or Retired Reserve members or former members who are entitled to retired pay at age 60, but have not yet reached age 60, the former spouse is only entitled to commissary, MWR, and exchange benefits as shown in Table 24 to part 161. When the Retired Reserve member or former member attains or would have attained, age 60, the former spouse will be entitled to

benefits as shown in Table 23 to part 161.

(ii) In the case of former spouses of National Guard members or Reserve members ordered to active duty, or Retired Reserve members under age 60 recalled to active duty, they continue to receive benefits as shown in Table 24 to part 161 if the orders are for a period of 30 days or less. If the National Guard member, Reserve member, or recalled Retired Reserve member is on active duty orders in excess of 30 days, the former spouse will receive benefits as shown in Table 23 to part 161.

TABLE 24 TO PART 161—BENEFITS FOR 20/20/20 FORMER SPOUSES FOR RETIRED RESERVE UNDER AGE 60

|                   | CHC      | DC       | C         | MWR       | E    |
|-------------------|----------|----------|-----------|-----------|------|
| Former Spouse:    |          |          |           |           |      |
| Unremarried ..... | No ..... | No ..... | Yes ..... | Yes ..... | Yes. |
| Remarried .....   | No ..... | No ..... | No .....  | No .....  | No.  |
| Unmarried .....   | No ..... | No ..... | Yes ..... | Yes ..... | Yes. |

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(b) *20/20/15 former spouses.* Unremarried former spouses described in paragraph (a)(1) of this section, with the period of overlap of marriage and the member's creditable service at least 15 years, but less than 20 years, are not eligible for the commissary, MWR, or exchange benefits.

(1) *20/20/15 former spouses of an active duty, regular retired, or a non-regular retired sponsor at age 60.* 20/20/15 former spouses of an active duty, regular retired, or a non-regular retired sponsor at age 60 are eligible for benefits as shown in Table 25 to part 161.

TABLE 25 TO PART 161—BENEFITS FOR 20/20/15 FORMER SPOUSES OF ACTIVE DUTY, REGULAR RETIRED, AND NON-REGULAR RETIRED AT AGE 60

|                   | CHC           | DC         | C        | MWR      | E   |
|-------------------|---------------|------------|----------|----------|-----|
| Former Spouse:    |               |            |          |          |     |
| Unremarried ..... | 1, 2, 3 ..... | 1, 3 ..... | No ..... | No ..... | No. |
| Remarried .....   | No .....      | No .....   | No ..... | No ..... | No. |
| Unmarried .....   | No .....      | No .....   | No ..... | No ..... | No. |

- Notes:**  
 1. Yes, if former spouse certifies in writing that he or she has no medical coverage under an employer-sponsored health plan.  
 2. Yes, if:  
 a. Not entitled to Medicare Part A hospital insurance through the SSA; or  
 b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111-84.  
 3. Yes, if the:  
 a. Final decree of divorce, dissolution, or annulment of the marriage was before April 1, 1985; or  
 b. Marriage ended on, or after, September 29, 1988, entitlements shall exist for 1 year, beginning on the date of the divorce, dissolution, or annulment pursuant to 10 U.S.C. 1076 and 1072(2)(H).

(2) *20/20/15 former spouses of a retired reserve member under age 60.* (i) In the case of former spouses of Retired Reserve members or former members who are entitled to retired pay at age 60, but have not yet reached age 60, the former spouse has no entitlement under age 60. The benefit eligible period is 1 year from the date of divorce. If any period of eligibility extends beyond the Retired Reserve or former member's 60th birthday then the former spouse will receive benefits as shown in Table 25 to part 161 for that period.

(ii) In the case of former spouses of Reserve members or Retired Reserve members under age 60 recalled to active duty on orders for a period of 30 days or less they are not entitled to any benefits as shown in Table 26 to part 161. If the Reserve member or recalled Retired Reserve member is on active duty orders in excess of 30 days, the former spouse will receive benefits as shown in Table 25 to part 161 if they are within 1 year from the date of divorce from the uniformed service member.

TABLE 26 TO PART 161—BENEFITS FOR 20/20/15 FORMER SPOUSES OF A RETIRED RESERVE MEMBER UNDER AGE 60

|                   | CHC      | DC       | C        | MWR      | E   |
|-------------------|----------|----------|----------|----------|-----|
| Former Spouse:    |          |          |          |          |     |
| Unremarried ..... | No ..... | No ..... | No ..... | No ..... | No. |
| Remarried .....   | No ..... | No ..... | No ..... | No ..... | No. |
| Unmarried .....   | No ..... | No ..... | No ..... | No ..... | No. |

(c) *10/20/10 former spouses.* Unremarried former spouses of a member or retired member, married to the member or retired member for a period of at least 10 years to a member or retired member who performed at least 20 years of service that is creditable in determining the member's or retired

member's eligibility for retired or re-tainer pay, when the period of overlap of marriage and the member's creditable service was at least 10 years and the former spouse is in receipt of an annuity as a result of the member being separated from the service due to misconduct involving dependent abuse

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pursuant to 10 U.S.C. 1408(h), are eligible for benefits as shown in Table 27 to part 161.

TABLE 27 TO PART 161—BENEFITS FOR 10/20/10 FORMER SPOUSES

|                   | CHC        | DC         | C         | MWR       | E    |
|-------------------|------------|------------|-----------|-----------|------|
| Former Spouse:    |            |            |           |           |      |
| Unremarried ..... | 1, 2 ..... | 1, 2 ..... | Yes ..... | Yes ..... | Yes  |
| Remarried .....   | No .....   | No .....   | No .....  | No .....  | No.  |
| Unmarried .....   | 1, 2 ..... | 1, 2 ..... | Yes ..... | Yes ..... | Yes. |

**Notes:**

1. Yes, if:
  - a. Not entitled to Medicare Part A hospital insurance through the SSA.
  - b. Entitled to Medicare Part A hospital insurance and enrolled in Medicare Part B medical insurance or qualified as an exception in accordance with section 706 of Public Law 111-84.
2. The spouse must have been married to the uniformed service member for at least 10 years, the uniformed service member must have completed 20 creditable years for retired pay, and they must have been married at least 10 years during the 20 years of creditable service (see § 161.18, paragraph (a)(1)). The uniformed services shall prescribe specific procedures to verify the eligibility of an applicant.

§ 161.20 Benefits for civilian personnel.

(a) Civilian personnel may be eligible for certain benefits described in this section based on their affiliation with DoD, Service-specific guidelines, or other authorizing conditions. The definition of “civilian personnel” (e.g., civilian employee, DoD contractor, Red Cross employee) is specific to each benefit set described.

(1) Civilian personnel in the United States, to include civilian employees of

the DoD and other Government agencies, as well as DoD contractors and personnel covered by PL 91-648 (also known and hereinafter referred to as Public Law 91-648, “Intergovernmental Personnel Act” (IPA)), may be issued a DoD ID card as a condition of employment or assignment in accordance with subpart B of this part. Civilian personnel in the United States are eligible for benefits as shown in Table 28 to part 161.

TABLE 28 TO PART 161—BENEFITS FOR CIVILIAN EMPLOYEES IN THE UNITED STATES

|                  | CHC      | DC       | C        | MWR      | E   |
|------------------|----------|----------|----------|----------|-----|
| Self .....       | No ..... | No ..... | No ..... | 1 .....  | No. |
| Dependents ..... | No ..... | No ..... | No ..... | No ..... | No. |

**Note:**

1. In accordance with DoD Instruction 1015.10, retired DoD civilian employees are eligible, on a space available basis, to the limited use of MWR facilities based on the discretion of the installation commander.

(2) Civilian personnel required to reside on a military installation within the CONUS, Hawaii, or Alaska and their dependents, when residing in the same household, are eligible for bene-

fits as shown in Table 29 to part 161. For the purposes of this benefit set, “civilian personnel” includes civilian DoD employees and IPA personnel.

TABLE 29 TO PART 161—BENEFITS FOR CIVILIAN PERSONNEL AND DEPENDENTS WHEN REQUIRED TO RESIDE ON A MILITARY INSTALLATION IN CONUS, HAWAII, OR ALASKA

|  | CHC      | DC       | C             | MWR        | E        |
|--|----------|----------|---------------|------------|----------|
| Self .....   | No ..... | No ..... | 1 .....       | Yes .....  | 2.       |
| Lawful Spouse .....  | No ..... | No ..... | 1 .....       | Yes .....  | 2.       |
| Children, Unmarried,<br>Under 21 Years:  |          |          |               |            |          |
| Legitimate, adopted,<br>stepchild, illegitimate<br>child of employee, or<br>illegitimate child of<br>spouse. | No ..... | No ..... | 1, 3 .....    | 3 .....    | 2, 3.    |
| Ward .....   | No ..... | No ..... | 1, 3, 4 ..... | 3, 4 ..... | 2, 3, 4. |

TABLE 29 TO PART 161—BENEFITS FOR CIVILIAN PERSONNEL AND DEPENDENTS WHEN REQUIRED TO RESIDE ON A MILITARY INSTALLATION IN CONUS, HAWAII, OR ALASKA—Continued

|   | CHC      | DC       | C             | MWR        | E        |
|---|----------|----------|---------------|------------|----------|
| Pre-adoptive .....  | No ..... | No ..... | 1, 3, 5 ..... | 3, 5 ..... | 2, 3, 5. |
| Foster Child .....  | No ..... | No ..... | 1, 3 .....    | 3 .....    | 2, 3.    |
| Children, Unmarried,<br>21 Years and Over.  | No ..... | No ..... | 1, 6 .....    | 6 .....    | 2, 6.    |
| Father, Mother, Father-<br>in-Law, Mother-in-<br>Law, Stepparent, or<br>Parent-by-Adoption. | No ..... | No ..... | 1, 3 .....    | 3 .....    | 2, 3.    |

**Notes:**

1. Yes, but commissary privileges do not include the purchase of tobacco products in those States, including the District of Columbia, that impose a tax on such products.
2. Yes, are entitled to limited exchange privileges, which include purchase of all items except uniform articles and State tax-free items.
3. Yes, if dependent on an authorized sponsor for over 50 percent of his or her support.
4. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months.
5. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member.
6. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member and is, dependent on the member or former member for over 50 percent of the child's support.

(3) DoD civilian personnel stationed or employed outside the continental United States (OCONUS) and their accompanying dependents, when residing in the same household, are eligible for benefits as shown in Table 30. For the purposes of this benefit set, "civilian personnel" includes civilian DoD em-

ployees, DoD contractors, and IPA personnel. Overseas commanders may never authorize benefits not authorized by this section, but they may deny privileges indicated when base support facilities cannot handle the burden imposed.

TABLE 30 TO PART 161—BENEFITS FOR DoD CIVILIAN PERSONNEL STATIONED OCONUS AND ACCOMPANYING DEPENDENTS

|   | CHC      | DC            | C          | MWR        | E     |
|---|----------|---------------|------------|------------|-------|
| Self .....  | No ..... | 1 .....       | Yes .....  | Yes .....  | Yes.  |
| Lawful Spouse .....   | No ..... | 1 .....       | Yes .....  | Yes .....  | Yes.  |
| Children, Unmarried,<br>Under 21 Years:   |          |               |            |            |       |
| Legitimate, adopt-<br>ed, stepchild, Il-<br>legitimate child<br>of employee, or<br>illegitimate child<br>of spouse. | No ..... | 1, 2 .....    | 2 .....    | 2 .....    | 2.    |
| Ward .....  | No ..... | 1, 2, 3 ..... | 2, 3 ..... | 2, 3 ..... | 2, 3. |
| Pre-adoptive .....  | No ..... | 1, 2, 4 ..... | 2, 4 ..... | 2, 4 ..... | 2, 4. |
| Foster Child .....  | No ..... | No .....      | 2 .....    | 2 .....    | 2.    |
| Children, Unmarried,<br>21 Years and Over.  | No ..... | 1, 5 .....    | 5 .....    | 5 .....    | 5.    |
| Father, Mother, Father-<br>in-Law, Mother-in-<br>Law, Stepparent, or<br>Parent-by-Adoption.                         | No ..... | No .....      | 1, 2 ..... | 2 .....    | 2.    |

**Notes:**

1. Yes, on a space-available, fully reimbursable basis. Medical care at uniformed services facilities shall be rendered in accordance with Service instructions. Additional guidelines are contained in DoD Instruction 1100.22 and Volume 1231 of DoD Instruction 1400.25.
2. Yes, if dependent on an authorized sponsor for over 50 percent of his or her support.
3. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months.

- 4. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member.
- 5. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member and is, dependent on the member for over 50 percent of the child's support.

(4) Civilian personnel of non-DoD Government agencies stationed or employed OCONUS, and their dependents, when residing in the same household, are eligible for benefits as shown in Table 31. For the purposes of this benefit set, "civilian personnel" includes civilian employees of non-DoD Government agencies (e.g., Federal employees of the Department of State). Commissary, MWR, and exchange privileges

are authorized by overseas commanders to the persons designated in Table 31 when it is within the capability of the facilities and it shall not impair the military mission. Overseas commanders may never authorize benefits beyond those authorized by this section, but they may deny privileges indicated when base support facilities cannot handle the burden imposed.

TABLE 31 TO PART 161—BENEFITS FOR NON-DoD GOVERNMENT AGENCIES CIVILIAN PERSONNEL STATIONED OR EMPLOYED OCONUS AND ACCOMPANYING DEPENDENTS

|   | CHC      | DC            | C          | MWR        | E     |
|---|----------|---------------|------------|------------|-------|
| Self .....  | No ..... | 1 .....       | Yes .....  | Yes .....  | Yes.  |
| Lawful Spouse .....   | No ..... | 1 .....       | Yes .....  | Yes .....  | Yes.  |
| Children, Unmarried,<br>Under 21 Years:   |          |               |            |            |       |
| Legitimate, adopt-<br>ed, stepchild, Il-<br>legitimate child<br>of employee, or<br>illegitimate child<br>of spouse. |          |               |            |            |       |
| Ward .....  | No ..... | 1, 2, 3 ..... | 2, 3 ..... | 2, 3 ..... | 2, 3. |
| Pre-adoptive .....  | No ..... | 1, 2, 4 ..... | 2, 3 ..... | 2, 4 ..... | 2, 4. |
| Foster Child .....  | No ..... | No .....      | 2 .....    | 2 .....    | 2.    |
| Children, Unmarried,<br>21 Years and Over.  | No ..... | 1, 5 .....    | 5 .....    | 5 .....    | 5.    |
| Father, Mother, Father-<br>in-Law, Mother-in-<br>Law, Stepparent, or<br>Parent-by-Adoption.                         | No ..... | 1, 2 .....    | 2 .....    | 2 .....    | 2.    |

**Notes:**

- 1. Yes, on a space-available, fully reimbursable basis. Medical care at uniformed services facilities shall be rendered in accordance with Service instructions. Additional guidelines are contained in DoD Instruction 1100.22 and Volume 1231 of DoD Instruction 1400.25.
- 2. Yes, if dependent on an authorized sponsor for over 50 percent of his or her support.
- 3. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months.
- 4. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member.
- 5. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member and is, dependent on the member or former member for over 50 percent of the child's support.

(5) Civilian personnel stationed or employed in Puerto Rico or Guam and their dependents, when residing in the same household, are eligible for benefits as shown in Table 32. For the purposes of this benefit set, "civilian per-

sonnel" includes civilian DoD employees under a valid transportation agreement, as well as civilian employees of other Government agencies, DoD contractors, and IPA personnel.

TABLE 32 TO PART 161—BENEFITS FOR CIVILIAN PERSONNEL STATIONED OR EMPLOYED IN PUERTO RICO OR GUAM AND ACCOMPANYING DEPENDENTS

|  | CHC      | DC            | C             | MWR        | E        |
|--|----------|---------------|---------------|------------|----------|
| Self .....   | No ..... | 1 .....       | 2 .....       | Yes .....  | 3.       |
| Lawful Spouse .....  | No ..... | 1 .....       | 2 .....       | Yes .....  | 3.       |
| Children, Unmarried,<br>Under 21 Years:  |          |               |               |            |          |
| Legitimate, adopt-<br>ed, stepchild, il-<br>legitimate child<br>of employee or<br>illegitimate child<br>of spouse. | No ..... | 1, 4 .....    | 2, 4 .....    | 4 .....    | 3, 4.    |
| Ward .....   | No ..... | 1, 4, 5 ..... | 2, 4, 5 ..... | 4, 5 ..... | 3, 4, 5. |
| Pre-adoptive .....   | No ..... | 1, 4, 6 ..... | 2, 4, 6 ..... | 4, 6 ..... | 3, 4, 6. |
| Foster Child .....   | No ..... | No .....      | 2, 4 .....    | 2, 4 ..... | 2, 3, 4. |
| Children, Unmarried,<br>21 Years and Over.   |          |               |               |            |          |
| Father, Mother, Father-<br>in-Law, Mother-in-<br>Law, Stepparent, or<br>Parent-by-Adoption.                        | No ..... | 1, 4 .....    | 2, 4 .....    | 4 .....    | 3, 4.    |

**Notes:**

1. Yes, on a space-available, fully reimbursable basis only if residing in a household on a military installation. Additional guidelines are contained in DoD Instruction 1100.22 and Volume 1231 of DoD Instruction 1400.25.
2. In cases where deviations are granted by the Secretary of a Military Department or the Commander of a Combatant Command permitting access to commissary and exchange to non-DoD Federal employees and employees of firms under contract to the U.S. Government, the installation commander shall establish procedures to verify status, maintain databases, and issue appropriate identification.
3. Yes, are entitled to limited exchange privileges, which include purchase of all items except articles of uniform and State tax-free items.
4. Yes, if dependent on an authorized sponsor for over 50 percent of his or her support.
5. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months.
6. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member.
7. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member, and is dependent on the member for over 50 percent of the child's support.

(6) DoD OCONUS hires are foreign nationals in host countries who are employed by U.S. forces, consistent with any agreement with the host country as defined in Volume 1231 of DoD In-

struction 1400.25. They are entered into DEERS for the purposes of issuing a CAC and are not eligible for benefits as shown in Table 33 to part 161.

TABLE 33 TO PART 161—BENEFITS FOR DOD OCONUS HIRES

|            | CHC      | DC       | C        | MWR      | E   |
|------------|----------|----------|----------|----------|-----|
| Self ..... | No ..... | No ..... | No ..... | No ..... | No. |

(7) Uniformed and non-uniformed full-time paid personnel of the Red Cross assigned to duty with the uniformed services within the CONUS, Hawaii, Alaska, and Puerto Rico and

their accompanying dependents, when required to reside in the same household on a military installation are eligible for benefits as shown in Table 34 to part 161.



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TABLE 34 TO PART 161—BENEFITS FOR FULL-TIME PAID PERSONNEL OF THE RED CROSS ASSIGNED TO DUTY WITH THE UNIFORMED SERVICES IN CONUS, HAWAII, OR ALASKA AND REQUIRED TO RESIDE ON A MILITARY INSTALLATION AND ACCOMPANYING DEPENDENTS

|  | CHC      | DC       | C          | MWR        | E        |
|--|----------|----------|------------|------------|----------|
| Self .....   | No ..... | No ..... | Yes .....  | Yes .....  | 1.       |
| Lawful Spouse .....  | No ..... | No ..... | Yes .....  | Yes .....  | 1.       |
| Children, Unmarried, Under 21 Years:   |          |          |            |            |          |
| Legitimate, adopted, stepchild, Illegitimate child of employee, or illegitimate child of spouse. | No ..... | No ..... | 2 .....    | 2 .....    | 1, 2.    |
| Ward .....   | No ..... | No ..... | 2, 3 ..... | 2, 3 ..... | 1, 2, 3. |
| Children, Unmarried, 21 Years and Over.  | No ..... | No ..... | 4 .....    | 4 .....    | 1, 4.    |
| Father, Mother, Father-in-Law, Mother-in-Law, Stepparent, or Parent-by-Adoption.                 | No ..... | No ..... | 2 .....    | 2 .....    | 1, 2.    |

**Notes:**

1. If authorized by installation commander, entitled to exchange privileges.
2. Yes, if dependent on an authorized sponsor for over 50 percent of his or her support.
3. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months.
5. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member, and is dependent on the member for over 50 percent of the child's support.

(8) Uniformed and non-uniformed full-time paid personnel of the Red Cross assigned to duty with the uniformed services OCONUS and their accompanying dependents, when residing in the same household, are eligible for benefits as shown in Table 35 to part 161.

TABLE 35 TO PART 161—BENEFITS FOR FULL-TIME PAID PERSONNEL OF THE RED CROSS ASSIGNED TO DUTY WITH THE UNIFORMED SERVICES OCONUS AND ACCOMPANYING DEPENDENTS

|   | CHC      | DC         | C          | MWR        | E     |
|---|----------|------------|------------|------------|-------|
| Self .....  | No ..... | 1 .....    | Yes .....  | Yes .....  | Yes.  |
| Lawful Spouse .....   | No ..... | 1 .....    | Yes .....  | Yes .....  | Yes.  |
| Children, Unmarried, Under 21 Years:  |          |            |            |            |       |
| Legitimate, adopted, stepchild, Illegitimate child of employee or illegitimate child of spouse. | No ..... | 1, 2 ..... | 2 .....    | 2 .....    | 2.    |
| Ward .....  | No ..... | No .....   | 2, 3 ..... | 2, 3 ..... | 2, 3. |
| Children, Unmarried, 21 Years and Over .....  | No ..... | 1, 4 ..... | 4 .....    | 4 .....    | 4.    |
| Father, Mother, Father-in-Law, Mother-in-Law, Stepparent, or Parent-by-Adoption.                | No ..... | 1, 2 ..... | 2 .....    | 2 .....    | 2.    |

**Notes:**

1. Yes, on a space-available basis at rates specified in uniformed services instructions. Additional guidelines are contained in DoD Instruction 1100.22 and Volume 1231 of DoD Instruction 1400.25.
2. Yes, if dependent on an authorized sponsor for over 50 percent of his or her support.
3. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months.
4. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member, and is dependent on the member for over 50 percent of the child's support.

(9) Area executives, center directors, and assistant directors of the United Service Organizations (USO) serving OCONUS and their accompanying dependents when residing in the same household, are eligible for benefits as shown in Table 36 to part 161.

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household are eligible for benefits as shown in Table 36 to part 161.

TABLE 36 TO PART 161—BENEFITS FOR AREA EXECUTIVES, CENTER DIRECTORS, AND ASSISTANT DIRECTORS OF THE USO AND ACCOMPANYING DEPENDENTS SERVING OCONUS

|   | CHC      | DC         | C          | MWR        | E     |
|---|----------|------------|------------|------------|-------|
| Self .....  | No ..... | 1 .....    | Yes .....  | Yes .....  | Yes.  |
| Lawful Spouse .....   | No ..... | 1 .....    | Yes .....  | Yes .....  | Yes.  |
| Children, Unmarried,<br>Under 21 Years:   |          |            |            |            |       |
| Legitimate, adopt-<br>ed, stepchild, il-<br>legitimate child<br>of employee, or<br>illegitimate child<br>of spouse. | No ..... | 1, 2 ..... | 2 .....    | 2 .....    | 2.    |
| Ward .....  | No ..... | No .....   | 2, 3 ..... | 2, 3 ..... | 2, 3. |
| Children, Unmarried,<br>21 Years and Over.  | No ..... | 1, 4 ..... | 4 .....    | 4 .....    | 4.    |
| Father, Mother, Father-<br>in-Law, Mother-in-<br>Law, Stepparent, or<br>Parent-by-Adoption.                         | No ..... | 1, 2 ..... | 2 .....    | 2 .....    | 2.    |

Notes:

1. Yes, on a space-available, fully reimbursable basis. Additional guidelines are contained in DoD Instruction 1100.22 and Volume 1231 of DoD Instruction 1400.25.
2. Yes, if dependent on an authorized sponsor for over 50 percent of his or her support.
3. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months.
4. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member, and is dependent on the member for over 50 percent of the child's support.

(10) USS personnel serving OCONUS are eligible for benefits as shown in and their accompanying dependents, Table 37 to part 161. when residing in the same household,

TABLE 37 TO PART 161—BENEFITS FOR USS PERSONNEL SERVING OCONUS AND ACCOMPANYING DEPENDENTS

|   | CHC      | DC         | C          | MWR        | E     |
|---|----------|------------|------------|------------|-------|
| Self .....  | No ..... | 1 .....    | Yes .....  | Yes .....  | Yes.  |
| Lawful Spouse .....   | No ..... | 1 .....    | Yes .....  | Yes .....  | Yes.  |
| Children, Unmarried,<br>Under 21 Years:   |          |            |            |            |       |
| Legitimate, adopt-<br>ed, stepchild, il-<br>legitimate child<br>of employee, or<br>illegitimate child<br>of spouse. | No ..... | 1, 2 ..... | 2 .....    | 2 .....    | 2.    |
| Ward .....  | No ..... | No .....   | 2, 3 ..... | 2, 3 ..... | 2, 3. |
| Children, Unmarried,<br>21 Years and Over.  | No ..... | 1, 4 ..... | 4 .....    | 4 .....    | 4.    |
| Father, Mother, Father-<br>in-Law, Mother-in-<br>Law, Stepparent, or<br>Parent-by-Adoption.                         | No ..... | 1, 2 ..... | 2 .....    | 2 .....    | 2.    |

Notes:

1. Yes, on a space-available, fully reimbursable basis. Additional guidelines are contained in DoD Instruction 1100.22 and Volume 1231 of DoD Instruction 1400.25.
2. Yes, if dependent on an authorized sponsor for over 50 percent of his or her support.
3. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months.
4. Yes, if the child:

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- a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the member for over 50 percent of the child's support; or
- b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member, and is dependent on the member for over 50 percent of the child's support.

(11) MSC civil service Marine personnel deployed OCONUS on MSC-owned and operated vessels are eligible for benefits as shown in Table 38 to part 161.

TABLE 38 TO PART 161—BENEFITS FOR MSC PERSONNEL DEPLOYED OCONUS ON MSC-OWNED AND OPERATED VESSELS

|            | CHC      | DC      | C         | MWR       | E  |
|------------|----------|---------|-----------|-----------|----|
| Self ..... | No ..... | 1 ..... | Yes ..... | Yes ..... | 2. |

- Notes:**
- 1. Yes, on a space-available, fully reimbursable basis.
  - 2. Entitled to limited exchange privileges, which includes purchase of all items except distinctive uniform items and State tax-free items.

(12) Ship's officers and members of the crews of NOAA vessels are eligible for benefits in accordance with 33 U.S.C. 3074 as shown in Table 39. Ship's officers are not commissioned officers, but civilian employees of NOAA.

TABLE 39 TO PART 161—BENEFITS FOR SHIP'S OFFICERS AND MEMBERS OF THE CREWS OF NOAA VESSELS

[NOAA Wage Mariner Employees]

|  | CHC      | DC       | C          | MWR        | E     |
|--|----------|----------|------------|------------|-------|
| Self .....   | No ..... | No ..... | Yes .....  | Yes .....  | Yes.  |
| Lawful Spouse .....  | No ..... | No ..... | Yes .....  | Yes .....  | Yes.  |
| Children, Unmarried, Under 21 Years:   |          |          |            |            |       |
| Legitimate, adopted, stepchild, illegitimate child of employee, or illegitimate child of spouse. | No ..... | No ..... | 1 .....    | 1 .....    | 1.    |
| Ward .....   | No ..... | No ..... | 1, 2 ..... | 1, 2 ..... | 1, 2. |
| Pre-adoptive .....   | No ..... | No ..... | 1, 3 ..... | 1, 3 ..... | 1, 3. |
| Foster Child .....   | No ..... | No ..... | 1 .....    | 1 .....    | 1.    |
| Children, Unmarried, 21 Years and Over.  | No ..... | No ..... | 4 .....    | 4 .....    | 4.    |
| Father, Mother, Father-in-Law, Mother-in-Law, Stepparent, or Parent-by-Adoption.                 | No ..... | No ..... | 1 .....    | 1 .....    | 1.    |

- Notes:**
- 1. Yes, if dependent on an authorized sponsor for over 50 percent of his or her support or children of a sponsor residing in the household of a former spouse (20-20-20 or 10-20-10).
  - 2. Yes if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months.
  - 3. Yes if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member.
  - 4. Yes, if the child:
    - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the member for over 50 percent of the child's support; or
    - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member, and is dependent on the member for over 50 percent of the child's support.

(13) Officers and crews of vessels, lighthouse keepers, and depot keepers of the former Lighthouse Service are eligible for benefits as shown in Table 40 to part 161.

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**TABLE 40 TO PART 161—BENEFITS FOR OFFICERS AND CREWS OF VESSELS, LIGHTHOUSE KEEPERS AND DEPOT KEEPERS OF THE FORMER LIGHTHOUSE SERVICE**

|            | CHC      | DC       | C         | MWR       | E    |
|------------|----------|----------|-----------|-----------|------|
| Self ..... | No ..... | No ..... | Yes ..... | Yes ..... | Yes. |

(14) Presidential appointees who have been confirmed by the Senate (PASS), non-career and career SES employees, and SES equivalents of the DoD and the Military Services are eligible for benefits as shown in Table 41 to part 161.

**TABLE 41 TO PART 161—BENEFITS FOR PRESIDENTIAL APPOINTEES**

|            | CHC      | DC      | C        | MWR      | E   |
|------------|----------|---------|----------|----------|-----|
| Self ..... | No ..... | 1 ..... | No ..... | No ..... | No. |

Note:  
1. Designation for PASs and other designated civilian officials within the DoD and the Military Departments. This is a specific reimbursable care value at the interagency rate outside the National Capital Region.

(15) Contract surgeons overseas during the period of their contract are eligible for benefits as shown in Table 42 to part 161.

**TABLE 42 TO PART 161—BENEFITS FOR CONTRACT SURGEONS OVERSEAS**

|            | CHC      | DC       | C        | MWR       | E    |
|------------|----------|----------|----------|-----------|------|
| Self ..... | No ..... | No ..... | No ..... | Yes ..... | Yes. |

(16) State employees of the National Guard may be identified in DEERS for the purpose of issuing a CAC to access DoD networks. There are no benefits assigned and no dependent benefits are extended as shown in Table 43 to part 161.

**TABLE 43 TO PART 161—BENEFITS FOR STATE GUARD EMPLOYEES**

|            | CHC      | DC       | C        | MWR      | E   |
|------------|----------|----------|----------|----------|-----|
| Self ..... | No ..... | No ..... | No ..... | No ..... | No. |

**§ 161.21 Benefits for retired civilian personnel.** of the DoD are eligible for benefits as shown in Table 44 to part 161.

(a) *Retired DoD civilian employees.* Retired appropriated and NAF employees

**TABLE 44 TO PART 161—BENEFITS FOR RETIRED DOD CIVILIAN EMPLOYEES**

|            | CHC      | DC       | C        | MWR     | E   |
|------------|----------|----------|----------|---------|-----|
| Self ..... | No ..... | No ..... | No ..... | 1 ..... | No. |

Note:  
1. In accordance with DoD Instruction 1015.10, retired DoD civilian employees are eligible, on a space available basis, to the limited use of MWR facilities based on the discretion of the installation commander. The August 26, 2008, USD(P&R) Memorandum, "Department of Defense Civilian Retiree Identification Cards" authorized the issuance of a DoD ID card to this population.

(b) *Retired NOAA Wage Mariner employees and their eligible dependents.* Retired NOAA Wage Mariners (retired ship's officers and members of the crews of NOAA vessels) are eligible for

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benefits in accordance with 33 U.S.C. 3074 as shown in Table 45 to part 161.

TABLE 45 TO PART 161—BENEFITS FOR RETIRED NOAA WAGE MARINER EMPLOYEES AND THEIR ELIGIBLE DEPENDENTS

|  | CHC      | DC       | C          | MWR      | E     |
|--|----------|----------|------------|----------|-------|
| Self .....   | No ..... | No ..... | Yes .....  | No ..... | Yes.  |
| Lawful Spouse .....  | No ..... | No ..... | Yes .....  | No ..... | Yes.  |
| Children, Unmarried,<br>Under 21 Years:  |          |          |            |          |       |
| Legitimate, adopt-<br>ed, stepchild, il-<br>legitimate child<br>of record of fe-<br>male member,<br>or illegitimate<br>child of male<br>member, whose<br>paternity has<br>been judicially<br>determined. | No ..... | No ..... | 1 .....    | No ..... | 1.    |
| Ward .....   | No ..... | No ..... | 1, 2 ..... | No ..... | 1, 2. |
| Pre-adoptive Child   | No ..... | No ..... | 1, 3 ..... | No ..... | 1, 3. |
| Foster Child .....   | No ..... | No ..... | 1 .....    | No ..... | 1.    |
| Children, Unmarried,<br>21 Years and Over.   | No ..... | No ..... | 1, 4 ..... | No ..... | 1, 4. |

**Notes:**

1. Yes, if a member of a household maintained by or for an authorized sponsor and dependent on that sponsor for over 50 percent of his or her support. Children residing in the household of a separated spouse continue to be eligible for commissary privileges until there is a final divorce decree. In the case of a divorce, children residing in the household of a former spouse ARE NOT considered to be members of the authorized sponsor's household for commissary privileges.

2. Yes, if, for determinations of dependency made on or after July 1, 1994, placed in the legal custody of the member or former member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months.

3. Yes, if, for determinations of dependency made on or after October 5, 1994, placed in the home of the member or former member by a placement agency (recognized by the Secretary of Defense) or by another source authorized by State or local law to provide adoption placement, in anticipation of the legal adoption by the member or former member.

4. Yes, if the child:

a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the former member for over 50 percent of the child's support; or

b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member or former member, and is dependent on the member or former member for over 50 percent of the child's support.

§ 161.22 Benefits for foreign affiliates.

(a) *Sponsored NATO and PFP personnel in the United States.* Active duty officer and enlisted personnel of NATO and PFP countries serving in the

United States under the sponsorship or invitation of the DoD or a Military Service and their accompanying dependents living in the sponsor's U.S. household are eligible for benefits as shown in Table 46 to part 161.

TABLE 46 TO PART 161—BENEFITS FOR SPONSORED NATO AND PFP PERSONNEL AND ACCOMPANYING DEPENDENTS IN THE UNITED STATES

|  | CHC           | DC            | C          | MWR        | E     |
|--|---------------|---------------|------------|------------|-------|
| Self .....   | No .....      | 1 .....       | Yes .....  | Yes .....  | Yes.  |
| Lawful Spouse .....  | 2 .....       | 1 .....       | Yes .....  | Yes .....  | Yes.  |
| Children, Unmarried,<br>Under 21 Years:  |               |               |            |            |       |
| Legitimate, adopt-<br>ed, stepchild Ille-<br>gitimate child of<br>member, or Ille-<br>gitimate child of<br>spouse. | 2, 3 .....    | 1, 3 .....    | 3 .....    | 3 .....    | 3.    |
| Ward .....   | No .....      | No .....      | 3, 4 ..... | 3, 4 ..... | 3, 4. |
| Children, Unmarried,<br>21 Years and Over.   | 2, 3, 5 ..... | 1, 3, 5 ..... | 1, 5 ..... | 1, 5 ..... | 1, 5. |

TABLE 46 TO PART 161—BENEFITS FOR SPONSORED NATO AND PFP PERSONNEL AND ACCOMPANYING DEPENDENTS IN THE UNITED STATES—Continued

|  | CHC      | DC       | C       | MWR     | E  |
|--|----------|----------|---------|---------|----|
| Father, Mother, Father-in-Law, Mother-in-Law, Stepparent, or Parent by Adoption. | No ..... | No ..... | 3 ..... | 3 ..... | 3. |

**Notes:**  
 1. Yes, for outpatient care no charge and for inpatient care at full reimbursable rate.  
 2. Yes, for outpatient care only.  
 3. Yes, if residing in the household of the foreign service member in the United States.  
 4. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months.  
 5. Yes, if the child:  
 a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the member for over 50 percent of the child's support; or  
 b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member, and is dependent on the member for over 50 percent of the child's support.

(b) *Sponsored non-NATO personnel in the United States.* Active duty officer and enlisted personnel of non-NATO countries serving in the United States under DoD or Service sponsorship or invitation and their dependents, living in the non-NATO personnel's U.S. household, are eligible for benefits as shown in Table 47 to part 161.

TABLE 47 TO PART 161—BENEFITS FOR SPONSORED NON-NATO PERSONNEL AND ACCOMPANYING DEPENDENTS IN THE UNITED STATES

|  | CHC      | DC            | C          | MWR        | E     |
|--|----------|---------------|------------|------------|-------|
| Self .....   | No ..... | 1 .....       | Yes .....  | Yes .....  | Yes.  |
| Lawful Spouse .....  | No ..... | 1 .....       | Yes .....  | Yes .....  | Yes.  |
| Children, Unmarried, Under 21 Years:<br>Legitimate, adopted, stepchild, illegitimate child of member, or illegitimate child of spouse. | No ..... | 1, 3 .....    | 2 .....    | 2 .....    | 2.    |
| Ward .....   | No ..... | No .....      | 2, 3 ..... | 2, 3 ..... | 2, 3. |
| Children, Unmarried, 21 Years and Over.  | No ..... | 1, 2, 4 ..... | 2, 4 ..... | 2, 4 ..... | 2, 4. |
| Father, Mother, Father-in-Law, Mother-in-Law, Stepparent, or Parent by Adoption.   | No ..... | No .....      | 2 .....    | 2 .....    | 2.    |

**Notes:**  
 1. Yes, for outpatient care only on a reimbursable basis.  
 2. Yes, if residing in the household of the foreign service member in the United States.  
 3. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months.  
 4. Yes, if the child:  
 a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the member for over 50 percent of the child's support; or  
 b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member, and is dependent on the member for over 50 percent of the child's support.

(c) *Non-sponsored NATO personnel in the United States.* Active duty officer and enlisted personnel of NATO countries who, in connection with their official NATO duties, are stationed in the United States but are not under DoD or Service sponsorship and their accompanying dependents living in the non-sponsored NATO personnel's U.S. household are eligible for benefits as shown in Table 48 to part 161.

TABLE 48 TO PART 161—BENEFITS FOR NON-SPONSORED NATO AND PFP PERSONNEL IN THE UNITED STATES AND ACCOMPANYING DEPENDENTS

|  | CHC           | DC            | C        | MWR       | E    |
|--|---------------|---------------|----------|-----------|------|
| Self .....   | No .....      | 1 .....       | No ..... | Yes ..... | Yes. |
| Lawful Spouse .....  | 2 .....       | 1 .....       | No ..... | No .....  | No.  |
| Children, Unmarried,<br>Under 21 Years:<br>Legitimate, adopt-<br>ed, stepchild, il-<br>legitimate child<br>of member, or il-<br>legitimate child<br>of spouse. | 2, 3 .....    | 1, 3 .....    | No ..... | No .....  | No.  |
| Ward .....   | No .....      | No .....      | No ..... | No .....  | No.  |
| Children, Unmarried,<br>21 Years and Over.   | 2, 3, 4 ..... | 1, 3, 4 ..... | No ..... | No .....  | No.  |
| Father, Mother, Father-<br>in-Law, Mother-in-<br>Law, Stepparent, or<br>Parent by Adoption.  | No .....      | No .....      | No ..... | No .....  | No.  |

**Notes:**

1. Yes, for outpatient care no charge and for inpatient care at full reimbursable rate.
2. Yes, for outpatient care only.
3. Yes, if residing in the household of the foreign service member in the United States.
4. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member, and is dependent on the member for over 50 percent of the child's support.

(d) *NATO and non-NATO personnel OCONUS.* Active duty officer and enlisted personnel of NATO and non-NATO countries serving OCONUS and outside their own country under DoD or Service sponsorship or invitation and their accompanying dependents living with the sponsor are eligible for benefits as shown in Table 49 to part 161. These benefits may be extended to

this category of personnel not under DoD or Service sponsorship or invitation when it is determined by the major overseas commander that the granting of such privileges is in the best interests of the United States and such personnel are connected with, or their activities are related to, the performance of functions of the Service establishment.

TABLE 49 TO PART 161—BENEFITS FOR NATO, PFP, AND NON-NATO PERSONNEL OCONUS AND ACCOMPANYING DEPENDENTS

|  | CHC      | DC            | C          | MWR        | E     |
|--|----------|---------------|------------|------------|-------|
| Self .....   | No ..... | 1 .....       | Yes .....  | Yes .....  | Yes.  |
| Lawful Spouse .....  | No ..... | 1 .....       | Yes .....  | Yes .....  | Yes.  |
| Children, Unmarried,<br>Under 21 Years:<br>Legitimate, adopt-<br>ed, stepchild, il-<br>legitimate child<br>of member, or il-<br>legitimate child<br>of spouse. | No ..... | 1, 2 .....    | 2 .....    | 2 .....    | 2.    |
| Ward .....   | No ..... | No .....      | 2, 3 ..... | 2, 3 ..... | 2, 3. |
| Children, Unmarried,<br>21 Years and Over.   | No ..... | 1, 2, 3 ..... | 2, 4 ..... | 2, 4 ..... | 2, 4. |
| Father, Mother, Father-<br>in-Law, Mother-in-<br>Law, Stepparent, or<br>Parent by Adoption.  | No ..... | No .....      | 2 .....    | 2 .....    | 2.    |

**Notes:**

1. Yes, for outpatient care only on a reimbursable basis.
2. Yes, if residing in the household of the foreign service member and dependent on over 50 percent support.

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3. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months.

4. Yes, if the child:  
 a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the member for over 50 percent of the child's support; or  
 b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member, and is dependent on the member for over 50 percent of the child's support

(e) *Korean Augmentation to the U.S. Army (KATUSA)*. Military service is mandatory for all Republic of Korea (ROK) male citizens. Those male citizens who speak English often become KATUSA serving with the U.S. Army forces in the ROK. This arrangement is provided for in the status of forces agreement between the United States and ROK. The KATUSAs are identified in DEERS for the purpose of issuing CACs for access to the U.S. installations in the ROK. No other benefits are provided as shown in Table 50 to part 161.

TABLE 50 TO PART 161—BENEFITS FOR KATUSA

|            | CHC      | DC       | C        | MWR      | E   |
|------------|----------|----------|----------|----------|-----|
| Self ..... | No ..... | No ..... | No ..... | No ..... | No. |

(f) *Foreign national civilians*. Civilian employees of a foreign government who are assigned a support role with the DoD or Military Services or attending school at one of the DoD or uniformed services advanced schools may be identified in DEERS for the purpose of issuing a CAC. The foreign national civilian must be sponsored by the DoD or a Military Service regardless of whether the foreign national civilian is from a NATO, PFP, or non-NATO country. There are no benefits assigned and no dependent benefits are extended as shown in Table 51 to part 161.

TABLE 51 TO PART 161—BENEFITS FOR FOREIGN NATIONAL CIVILIANS

|            | CHC      | DC       | C        | MWR      | E   |
|------------|----------|----------|----------|----------|-----|
| Self ..... | No ..... | No ..... | No ..... | No ..... | No. |

(g) *Foreign National Contractors*. Contractor personnel, contracted to a foreign government, who are assigned a support role with the DoD or Military Services or as a representative of a foreign government at one of the DoD or uniformed services advanced schools may be identified in DEERS for the purpose of issuing a CAC for physical and logical access requirements. The foreign national contractor must be sponsored by the DoD or a Military Service regardless of whether the foreign national civilian is from a NATO, PFP, or a non-NATO country. There are no benefits assigned and no dependent benefits are extended as shown in Table 52 to part 161.

TABLE 52 TO PART 161—BENEFITS FOR FOREIGN NATIONAL CONTRACTORS

|            | CHC      | DC       | C        | MWR      | E   |
|------------|----------|----------|----------|----------|-----|
| Self ..... | No ..... | No ..... | No ..... | No ..... | No. |

(h) *Personnel Covered by a Reciprocal Health Care Agreement (RHCA) in the United States*. For countries that have bilateral RHCAs with the DoD, RHCAs provide that a limited number of foreign force members and their dependents in the United States may be provided inpatient medical care at MTFs on a space-available basis without cost (except for a subsistence charge, if it



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applies). Provision of such care is contingent on comparable care being made available to a comparable number of U.S. military personnel and their de-

pendents in the foreign country. Benefits are provided as shown in Table 53 to part 161.

TABLE 53 TO PART 161—BENEFITS FOR FOREIGN FORCE MEMBERS AND ELIGIBLE DEPENDENTS RESIDING IN THE UNITED STATES WHO ARE COVERED BY AN RHCA

|   | CHC      | DC            | C          | MWR        | E     |
|---|----------|---------------|------------|------------|-------|
| Self .....  | No ..... | 1 .....       | 5 .....    | 6 .....    | 7.    |
| Lawful Spouse .....   | No ..... | 1 .....       | 5 .....    | 6 .....    | 7.    |
| Children, Unmarried,<br>Under 21 Years:   |          |               |            |            |       |
| Legitimate, adopt-<br>ed, stepchild, il-<br>legitimate child<br>of member, or il-<br>legitimate child<br>of spouse. | No ..... | 1, 2 .....    | 2 .....    | 2 .....    | 2.    |
| Ward .....  | No ..... | No .....      | 2, 3 ..... | 2, 3 ..... | 2, 3. |
| Children, Unmarried,<br>21 Years and Over.  | No ..... | 1, 2, 4 ..... | 2, 4 ..... | 2, 4 ..... | 2, 4. |
| Father, Mother, Father-<br>in-Law, Mother-in-<br>Law, Stepparent, or<br>Parent by Adoption.                         | No ..... | No .....      | 2 .....    | 2 .....    | 2.    |

Notes:

1. As determined by the appropriate RHCA.
2. Yes, if residing in the household of the foreign force member in the United States.
3. Yes, if, for determination of dependency made on or after July 1, 1994, placed in the legal custody of the member as a result of a court of competent jurisdiction in the United States (or possession of the United States) for a period of at least 12 consecutive months.
4. Yes, if the child:
  - a. Has not attained the age of 23, is enrolled in a full-time course of study at an institution of higher learning approved by the administering Secretary, and is dependent on the member for over 50 percent of the child's support; or
  - b. Is incapable of self-support because of a mental or physical incapacity that existed before age 21, or occurred before the age of 23 while a full-time student, while a dependent of a member, and is dependent on the member for over 50 percent of the child's support.
5. Yes, if authorized by DoD Instruction 1330.17.
6. Yes, if authorized by DoD Instruction 1015.10.
7. Yes, if authorized by DoD Instruction 1330.21.