

Summary of Changes

Revisions to the “Don’t Ask, Don’t Tell” regulations

Prepared by the Office of the Secretary of Defense

Background:

On February 2nd, the Secretary of Defense announced that he had directed the Department of Defense to quickly review the regulations used to implement 10 U.S.C. § 654, the law commonly known as “Don’t Ask, Don’t Tell”, and within 45 days present to him recommended changes to those regulations that will, within the confines of the existing law, enforce the law in a fairer and more appropriate manner. The Don’t Ask Don’t Tell law is implemented by two regulations: DoD Instruction 1332.14 (“Enlisted Administrative Separations”) and 1332.30 (“Separation of Regular and Reserve Commissioned Officers”). The Secretary of Defense has approved revisions to these two regulations in consultation with the Military Services and the Joint Chiefs of Staff. The changes will take effect immediately and meet the Secretary’s directive to implement 10 U.S.C. § 654 in a fairer and more appropriate manner, within the confines of the existing law.

Summary of changes:

The modifications, among other things, raise the level of the commander authorized to initiate inquiries and separation proceedings regarding homosexual conduct; revise what constitutes “credible information” and “reliable persons”; and specify certain categories of information that cannot be used for purposes of homosexual conduct discharges.

Specifically, the changes will:

- Raise the level of the officer who is authorized to initiate a fact-finding inquiry or separation proceedings regarding homosexual conduct to a general or flag officer in the Service member’s chain of command.
- Raise the level of the person who conducts a fact-finding inquiry regarding homosexual conduct to the level of O-5 (Lieutenant Colonel or Navy Commander), or above.
- Raise the level of the officer who is authorized to separate an enlisted service member for homosexual conduct to a general or flag officer in the service member’s chain of command. (Under current policy, the separation authority for officers is the Service Secretary.)
- Revise what constitutes “credible information” to initiate an inquiry or separation proceeding, by, for example, specifying that information provided by third parties should be given under oath, and by discouraging the use of overheard statements and hearsay.
- Revise what constitutes a “reliable person,” upon whose word an inquiry can be initiated, with special scrutiny on third-parties who may be motivated to harm the service member.
- Specify certain categories of confidential information that will not be used for purposes of homosexual conduct discharges:
 - Information provided to lawyers, clergy, and psychotherapists;
 - Information provided to a medical professional in furtherance of medical treatment or a public health official in the course of a public health inquiry;
 - Information provided in the course of seeking professional assistance for domestic or physical abuse;
 - Information about sexual orientation or conduct obtained in the course of security clearance investigations, in accordance with existing Department of Defense policies.