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AUTHORITY: E.O. 11222, 30 FR 6460; 3 CFR 1964–1965 Comp., p. 306; 5 CFR parts 734, 735 and 737.

SOURCE: 49 FR 7530, Feb. 29, 1984, unless otherwise noted.

Subpart A—General Provisions

§3.100 Purpose.

These regulations set forth the ethical standards which apply to all Environmental Protection Agency (EPA) employees. They are intended to supplement regulations of the Office of Government Ethics at 5 CFR parts 734, 735 and 737.

§3.101 Coverage.

(a) Subparts A, B, C, D and E apply to all regular EPA employees, including Public Health Service commissioned officers assigned to EPA, employees detailed to EPA from other federal agencies and employees detailed or assigned to EPA under the Intergovernmental Personnel Act.

(b) Subpart F applies only to special Government employees.

§3.102 Definitions.

(a) *Employee* means any officer or employee of the Environmental Protection Agency, Public Health Service commissioned officers assigned to EPA, employees detailed to EPA from other federal agencies and employees

detailed or assigned to EPA under the Intergovernmental Personnel Act. The term does not include special Government employees.

(b) *Special Government employee* means an officer or employee of the Environmental Protection Agency who is retained, designated, appointed or employed to perform, with or without compensation, temporary duties either on a full-time or intermittent basis, for not to exceed 130 days during any period of 365 consecutive days.

(c) *Former employee* means a former Environmental Protection Agency employee, or a former special Government employee.

§ 3.103 Ethical standards of conduct for employees.

Employees may not use their official positions for private gain or act in such a manner that creates the reasonable appearance of doing so.

Employees therefore must not:

(a) Engage, directly or indirectly, in any business transaction or arrangement, including buying or selling securities or recommending the purchase or sale of securities to others, on the basis of information derived from their official positions which has not been made available to the general public;

(b) Use information acquired through EPA duties that has not been made available to the general public to further their private interests;

(c) Use their Government positions to coerce, or appear to coerce, anyone to provide any financial benefit to themselves or others; or

(d) Take any action, whether specifically prohibited or not, which would result in or create the reasonable appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any organization or person;

(3) Impeding Government efficiency or economy;

(4) Losing independence or impartiality of action;

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

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

§ 3.104 Other general standards of conduct.

(a) *Use of Government property.* Employees must not use or allow the use of, Government-owned or leased property for other than official purposes. Employees have a duty to protect and conserve Government property, especially equipment, supplies and other property entrusted to them.

(b) *Indebtedness.* Indebtedness of EPA employees is essentially a private matter. EPA generally does not act as a collection agency or determine the validity or amount of debts. However, employees are expected to honor just financial obligations and Pub. L. 93-647 provides for garnishment of employees' wages for nonpayment of alimony or child support. In addition, the Debt Collection Act of 1982 at 5 U.S.C. 5514 authorizes agencies to recover employees' debts to the United States through installment deductions from salaries.

(c) *Gambling, betting, and lotteries.* Employees must not gamble on Government property or while on Government duty. Gambling includes operating a gambling device, conducting a lottery or pool, playing a game for money or property or selling or purchasing a numbers slip. However, employees may participate in federally sponsored fund-raising activities under section 3 of Executive Order 10927 of March 18, 1961, or in similar officially approved activities.

(d) *General conduct prejudicial to the Government.* Employees must not engage in criminal, infamous, dishonest, immoral or disgraceful conduct, or any other conduct prejudicial to the Government.

(e) *Statutory prohibitions relating to gifts and decorations.*

(1) Employees must not solicit contributions from other employees for gifts to official superiors or accept gifts from employees receiving less salary than themselves. 5 U.S.C. 7351. However, small voluntary gifts on special occasions such as marriage, illness, death or retirement are permitted.

(2) Employees may not accept gifts, presents or decorations from foreign governments unless authorized by 5 U.S.C. 7342.

(3) Subpart D contains further guidance on gifts, gratuities and entertainment.

§3.105 Post-employment restrictions affecting former EPA attorneys.

This section applies where a jurisdiction in which a former EPA employee holds bar membership has adopted Rule 1.11 of the American Bar Association's Model Rules of Professional Conduct dated August 1983, in particular Rule 1.11(d)(2) which provides that the term *matter* includes *any other matter covered by the conflict of interest rules of the appropriate government agency*. In such cases, the term *matter* includes participation (in the form of drafting, providing advice or making recommendations) in the development of EPA regulations. Where a former EPA employee participated in the development of an EPA regulation while employed by EPA, he or she may not represent or assist in representing any party or parties as an attorney in any judicial proceeding to contest the validity of the rule. However, this section applies only where the complaint was not filed before the effective date of this regulation or the date when Rule 1.11 became effective in the jurisdiction, whichever occurs later.

[50 FR 39623, Sept. 27, 1985]

§3.106 Statutes relating to employee conduct.

Appendix A of this subpart sets out the *conflict of interest* statutes, together with examples of their application, and appendix B cites other statutory provisions which relate to employees' conduct.

[49 FR 7530, Feb. 29, 1984. Redesignated at 50 FR 39623, Sept. 27, 1985]

APPENDIX A TO SUBPART A—CONFLICT OF INTEREST STATUTES AND EXAMPLES

18 U.S.C. 203

Compensation to Members of Congress, officers, and others in matters affecting the Government.

(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for services rendered or to be rendered either by himself or another—

(1) At a time when he is a Member of Congress, Member of Congress-elect, Resident Commissioner, or Resident Commissioner-elect; or

(2) At a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States including the District of Columbia—in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest before any department, agency, court-martial, officer, or any civil, military, or naval commission, or

(b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when the person to whom the compensation is given, promised, or offered, is or was such a Member, Commissioner, officer, or employee—

Shall be fined not more than \$10,000, or imprisoned for not more than 2 years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

(c) A special Government employee shall be subject to subsection (a) only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, that clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than 60 days during the immediately preceding period of 365 consecutive days.

Discussion

This provision prohibits employees from accepting fees for representing any outside party in any administrative proceeding before a Federal agency and from sharing in fees earned by others for such activities. For example, an attorney could not share in the partnership income of a law firm to the extent such income is attributable to representational activities before Federal agencies. It does not prohibit receipt of compensation for other than actual appearances as an *agent or attorney* for outside parties; a fee for actual work, such as drafting a brief, is not prohibited. (But see the appearance standards of §§3.103 and 3.503). The prohibition covers agreements to receive prohibited fees

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and requests for such fees. Moreover, the restriction applies even after the employee leaves the Government in that a former employee may not share in fees attributable to representational work before administrative agencies which was performed while the former employee was with the Government.

18 U.S.C. 205

Activities of officers and employees in claims against and other matters affecting the Government.

Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties—

(1) Acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

(2) Acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, change, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest—

Shall be fined not more than \$10,000, or imprisoned for not more than 2 years, or both.

A special Government employee shall be subject to the preceding paragraphs only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than 60 days during the immediately preceding period of 365 consecutive days.

Nothing herein prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person

for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility provided that the Government official responsible for appointment to his position approves.

Nothing herein or in section 203 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States provided that the head of the department or agency concerned with the contract shall certify in writing that the national interest so requires.

Such certification shall be published in the FEDERAL REGISTER.

Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

Discussion

This provision generally forbids employees to act as *agent or attorney* (that is, communicate with intent to influence) on behalf of outside parties before Federal agencies or courts in matters in which the United States is a party or has a direct and substantial interest. The prohibition applies to both paid and unpaid representation.

Examples

1. An EPA employee has received permission to work as a consultant to a firm which has been awarded a contract by the Department of Defense. A controversy arises concerning the scope of work of the contract, and the firm asks the EPA employee to discuss the matter with the contracting officer to seek additional compensation for an alleged change in the scope of work.

Answer: The employee may not do so, since he would be acting as agent for an outside party in a claim or controversy to which the Government is a party. (Moreover, under the appearance standards of §3.502(c) the employee should not assist the firm in preparing its claim.)

2. An employee is an officer in an environmental organization and has been asked to present testimony on behalf of the organization at an EPA rulemaking proceeding.

Answer: Although the statute does not apply to testimony under oath, the activity nonetheless violates the appearance standards of §§3.103 and 3.503. However, it would be proper for the employee to appear as a concerned individual rather than as a representative of an outside group.

3. Several years ago, an employee received approval for outside employment as a consultant to an architect/engineer firm which is now competing for a subagreement under an EPA construction grant. The firm has asked the employee to present its proposal to EPA's grantee.

Answer: The statutory restriction does not apply, since the representational activity would not be before EPA or any other Federal agency. Such activity would nonetheless violate the appearance standards of §§ 3.103 and 3.502. Moreover, under the appearance standards, Deputy Ethics Officials would be justified in refusing to approve outside employment involving work on projects funded by EPA.

Exceptions

1. With the approval of the appropriate Deputy Ethics Official, an employee may act as agent or attorney before a Federal court or agency, for his or her parents, spouse, child or any person for whom, or for any estate for which, the employee is serving as guardian, executor, administrator, trustee or other personal fiduciary except where the employee has participated in the same matter on behalf of the Government or where the matter is the subject of the employee's official responsibility.

2. Nothing in the statute prevents an employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt. However, this exception does not apply to acting as an expert witness for an outside party in a Government matter.

3. Employees may act without compensation as agent or attorney for anyone who is the subject of disciplinary, loyalty or other personnel proceedings, provided the employee's official duties do not conflict with such representation. Employees are encouraged to seek the advice of the Designated Agency Ethics Official or Deputy Ethics Official before engaging in such representation.

4. The restriction does not apply to special Government employees to the same extent as to employees. Restrictions applicable to such employees are discussed in § 3.604.

18 U.S.C. 207

Disqualification of former officers and employees; disqualification of partners of current officers and employees.

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the

intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to—

(1) Any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or employee thereof, and

(2) In connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3) In which he participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, while so employed; or

(b) Whoever, (i) having been so employed, within two years after his employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, any other person (except the United States), in any formal or informal appearance before, or, with the intent to influence, makes any oral or written communication on behalf of any other person (except the United States) to, or (ii) having been so employed as specified in subsection (d) of this section, within two years after his employment has ceased, knowingly represents or aids, counsels, advises, consults, or assists in representing any other person (except the United States) by personal presence at any formal or informal appearance before—

(1) Any department, agency, court, court-martial, or any civil, military or naval commission of the United States or the District of Columbia, or any or employee thereof, and

(2) In connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in which the United States or the District of Columbia is a party or has a direct and substantial interest, and

(3) As to (i), which was actually pending under his official responsibility as an officer or employee within a period of one year prior to the termination of such responsibility, or, as to (ii), in which he participated personally and substantially as an officer or employee; or

(c) Whoever, other than a special Government employee who serves for less than sixty days in a given calendar year, having been so employed as specified in subsection (d) of this section, within one year after such employment has ceased, knowingly acts as agent or attorney for, or otherwise represents, anyone other than the United States in any formal or informal appearance before,

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or with the intent to influence, makes any oral or written communication on behalf of anyone other than the United States, to—

(1) The department or agency in which he served as an officer or employee, or any officer or employee thereof, and

(2) In connection with any judicial, rule-making, or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter, and

(3) Which is pending before such department or agency or in which such department or agency has a direct and substantial interest—shall be fined not more than \$10,000 or imprisoned for not more than two years, or both.

(d)(1) Subsection (c) of this section shall apply to a person employed—

(A) At a rate of pay specified in or fixed according to subchapter II of chapter 53 of title 5, United States Code, or a comparable or greater rate of pay under other authority;

(B) On active duty as a commissioned officer of a uniformed service assigned to pay grade of 0-9 or above as described in section 201 of Title 37, United States Code; or

(C) In a position which involves significant decision-making or supervisory responsibility, as designated under this subparagraph by the Director of the Office of Government Ethics, in consultation with the department or agency concerned. Only positions which are not covered by subparagraphs (A) and (B) above, and for which the basic rate of pay is equal to or greater than the basic rate of pay for GS-17 of the General Schedule prescribed by section 5332 of title 5, United States Code, or positions which are established within the Senior Executive Service pursuant to the Civil Service Reform Act of 1978, or positions of active duty commissioned officers of the uniformed services assigned to pay 0-7 or 0-8, as described in section 201 of Title 37, United States Code, may be designated. As to persons in positions designated under this subparagraph, the Director may limit the restrictions of subsection (c) to permit a former officer or employee, who served in a separate agency or bureau within a department or agency, to make appearances before or communications to persons in an unrelated agency or bureau, within the same department or agency, having separate and distinct subject matter jurisdiction, upon a determination by the Director that there exists no potential for use of undue influence or unfair advantage based on past Government service. On an annual basis, the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent

with the Director of the Office of Government Ethics in the exercise of his responsibilities under this paragraph.

(2) The prohibition of subsection (c) shall not apply to appearances, communications, or representation by a former officer or employee, who is—

(A) An elected official of a State or local government or

(B) Whose principal occupation or employment is with (i) an agency or instrumentality of a State or local government, (ii) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965, or (iii) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954, and the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization.

(e) For the purposes of subsection (c), whenever the Director of the Office of Government Ethics determines that a separate statutory agency or bureau within a department or agency exercises functions of the department or agency, the Director shall by rule designate such agency or bureau as a separate department or agency; except that such designation shall not apply to former heads of designated bureaus or agencies, or former officers and employees of the department or agency whose official responsibilities included supervision of said agency or bureau.

(f) The prohibitions of subsections (a), (b), and (c) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information under procedures acceptable to the department or agency concerned with the particular matter, or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the FEDERAL REGISTER, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee.

(g) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States before any department, agency, court, court-martial, or any civil, military, or naval commission of the United States or the District of Columbia, or any officer or

employee thereof, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter in which the United States or the District of Columbia is a party or has direct and substantial interest and in which such officer or employer or special Government employee participates or has participated personally and substantially as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of his official responsibility, shall be fined not more than \$5,000, or imprisoned for not more than one year, or both.

(h) Nothing in this section shall prevent a former officer or employee from giving testimony under oath, or from making statements required to be made under penalty of perjury.

(i) The prohibition contained in subsection (c) shall not apply to appearances or communications by a former officer or employee concerning matters of a personal and individual nature, such as personal income taxes or pension benefits; nor shall the prohibition of that subsection prevent a former officer or employee from making or providing a statement, which is based on the former officer's or employee's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received, other than that regularly provided for by law or regulation for witnesses.

(j) If the head of the department or agency in which the former officer or employee served finds, after notice and opportunity for a hearing, that such former officer or employee violated subsection (a), (b), or (c) of this section, such department or agency head may prohibit that person from making, on behalf of any other person (except the United States), any informal or formal appearance before or with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection.

Discussion

The foregoing provision establishes four types of restrictions:

Permanent Restrictions. Former employees are forever barred from representing anyone other than the United States before a federal

court or agency with respect to "a particular matter involving a specific party or parties" in which they ever participated as Government employees. Participation is broadly defined to include advice and recommendations as well as decision-making. However, the restriction applies only to matters which involve specific parties, such as contracts, grants and adjudications, and it covers only actual representation of another. The restriction does not cover rulemaking, and former employees may represent an outside party in proceedings governed by rules they helped to make.

The restriction does not generally prohibit former employees from seeking contracts with EPA nor does it bar work on contracts with which they were involved while at EPA. Of course, representational activity involving contracts in which former employees participated is barred.

Two-Year Restrictions. Former employees who had "official responsibility" for particular matters involving a specific party or parties but who did not actually participate in them are barred for a period of two years from representing outside parties on such matters. This restriction applies only to particular matters which were under a former employee's official responsibility during his or her final year in the responsible position. The terms of this restriction are the same as those of the permanent restriction.

In addition, former Presidential appointees and other employees who have been designated as *senior employees* by the Office of Government Ethics are prohibited for two years from assisting an outside party *by personal presence* in connection with particular matters involving a specific party or parties in which such employees ever participated personally and substantially. This means that a former *senior employee* may not attend a meeting or hearing to assist an outside party's representative where such a matter will be discussed, even if the former employee does not directly communicate with intent to influence. The *senior employee* list is reviewed annually and is published at 5 CFR 737.33.

One-Year Restrictions. Former employees who served for more than 60 days in *senior employee* positions (see 5 CFR 737.33) and who left EPA after February 28, 1980, are subject to a one-year *quarantine* which prohibits any communication with EPA with intent to influence on any matter, including rulemaking, regardless of whether such former employees participated in the matter. There are several exceptions to the one-year restrictions, which are set forth in 5 CFR part 737.

Partners of Current Employees. The prohibition of 18 U.S.C. 207(g) bars partners of current regular and special Government employees from acting as *agent* or *attorney* where the current employee would be barred

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from doing so under 18 U.S.C. 207(a) or 18 U.S.C. 207(b) after he or she leaves the Government. However, after the employee leaves the Government the statutory restriction on partners does not apply. (Lawyers should be aware that the Code of Professional Responsibility, as implemented by most local bar associations, continues to bar such activity by partners of former employees unless the Agency grants a waiver based on screening the former employee from participation and sharing in fees.)

Examples

1. An EPA employee served on a technical evaluation panel for a contract award. After he left EPA, he went to work for the contractor and was assigned to work as project manager for the contract he helped to award. A dispute arises over the meaning of a contract provision and the company's management asks the former employee to present the company's point of view to EPA.

Answer: He may not do so because the contractual matter involved a specific party—the offeror—at the time the former employee participated. It is the same particular matter, and presenting the company's position to EPA would amount to communicating with intent to influence. Note, however, that it is proper for the employee to work on the contract.

2. Same situation, except that the company merely asks the former employee to prepare a written submission to EPA for the signature of the company's president.

Answer: The former employee may do so because the statute bars only representational activity, not aid and assistance.

3. A former EPA attorney advised the Office of Air Quality Planning and Standards on a draft emission standard. After she leaves, a private client engages her to represent a company in a court proceeding in which the application of the rule is at issue.

Answer: She may do so, since rulemaking is not "a particular matter involving a specific party or parties."

4. A former Regional Administrator was responsible for an enforcement proceeding during his final year at EPA, but did not personally participate in the matter. Immediately after his resignation from EPA, the firm which was the subject of the enforcement action asks the former Regional Administrator to discuss settlement with EPA and the Justice Department.

Answer: He may not do so during the first two years after leaving EPA. Moreover, since Regional Administrators are *senior employees* they generally may not communicate with EPA with intent to influence on any matter whatever for a period of one year.

18 U.S.C. 208

Acts affecting a personal financial interest.

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, or organization in which he is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be fined not more than \$10,000, or imprisoned not more than 2 years, or both.

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the FEDERAL REGISTER, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services.

Discussion

This prohibition applies to rulemaking and policy matters which directly and predictably affect employees' financial interests as well as to grants, contracts and adjudications. For example, an employee who owns stock in a steel company may not participate in the development of new source performance standards for the steel industry. However, the employee may participate in developing ambient air quality standards because such rules would not distinctively affect the steel industry. Moreover, the restriction applies to parent and subsidiary companies of the firm in which an employee holds stock. Unless a waiver is granted under 18 U.S.C. 208(b), the restriction is rigid. The

size of the financial interest is irrelevant, as is the employee's level of responsibility. Moreover, it does not matter that the organization in which the employee or the employee's spouse or minor child, etc., has a financial interest is a non-profit or public interest group, since such groups nonetheless have financial interests which the employee's EPA duties may affect. (See Section 3.301 concerning waivers under 18 U.S.C. 208(b)).

Retirement plans maintained by a former employer may also amount to a financial interest, depending on the circumstances. For example, a fund managed by a former employer which includes company stock would create a personal financial interest, whereas a pension plan of a State government which is managed by a separate trustee and in which the former employee's right have vested would not create a personal financial interest in the State government in which an EPA employee formerly served. Employees are encouraged to seek the advice of the Designated Agency Ethics Official regarding pension plans.

Examples

1. An employee at grade GS-11 owns 10 shares of common stock in a smelting company which will be required to install additional pollution control equipment if a proposed new source performance standard is promulgated. The employee's EPA duties ordinarily include reviewing drafts of regulations and providing comments.

Answer: The employee may not comment on the regulation, since this would be participation in a matter in which she has a financial interest. However, the Designated Agency Ethics Official might grant a waiver under 18 U.S.C. 208(b) in such a case.

2. Same as above, except that the financial interest is part of a trust bequeathed by the employee's deceased parents for the benefit of her minor children.

Answer: The result is the same, since the prohibition extends to the financial interests of employees' minor children.

3. An employee is the treasurer of an environmental group which has applied to EPA for a grant. The employee receives no pay for this activity.

Answer: The employee is barred from participating in any way, even by advice or recommendation, in the EPA decision on the application, since he is an officer of an organization which has a financial interest in the matter.

4. An EPA employee is serving as Project Officer on a contract with a consulting firm to study emission control technologies for the steel industry. The consulting firm approaches the EPA employee to discuss possible future employment with the firm. The employee indicates that she will consider the matter.

Answer: Until she rejects the offer or the offer is withdrawn, the employee must disqualify herself from any action as Project Officer, since any such action would be likely to affect the financial interests of an organization with which she is negotiating for employment.

5. An EPA employee works in pesticides registration. As part of a retirement plan, his wife holds stock in a company which manufactures pesticides.

Answer: The employee may not participate in processing any application from the firm in which his wife holds stock.

18 U.S.C. 209

Salary of Government officials and employees payable only by United States.

(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection—

Shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

(b) Nothing herein prevents an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profitsharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

(c) This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such.

(d) This section does not prohibit payment or acceptance of contributions, awards, or other expenses under the terms of the Government Employees Training Act (Pub. L. 85-507, 72 Stat. 327; 5 U.S.C. 2301-2319, July 7, 1958).

Discussion

This provision bars supplementation of a regular employee's Government.

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The restriction does not apply to payments by States, counties or municipalities. For example, an employee on a leave of absence under the Intergovernmental Personnel Act could receive a higher salary from the receiving agency than he or she would have received from the Government.

The restriction does not forbid receipt of outside earned or investment income nor does it generally apply to pension or employee welfare or benefit plans maintained by former employers.

[49 FR 7530, Feb. 29, 1984, as amended at 50 FR 39623, Sept. 27, 1985]

APPENDIX B TO SUBPART A—OTHER PROVISIONS

1. House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, "Code of Ethics for Government Service."
2. Chapter 11 of title 18, United States Code, relating to bribery, graft, and conflicts of interests.
3. The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).
4. Disloyalty and striking (5 U.S.C. 7311; 18 U.S.C. 1918).
5. Disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783) and disclosure of confidential information (18 U.S.C. 1905).
6. Habitual excessive use of intoxicants (5 U.S.C. 7352).
7. Misuse of Government motor vehicles or aircraft (31 U.S.C. 638a(c)).
8. Misuse of the franking privilege (18 U.S.C. 1719).
9. Deceit in an examination or personnel actions in connection with Government employment (18 U.S.C. 1917).
10. Fraud or false statements in a Government matter (18 U.S.C. 1001).
11. Mutilating or destroying a public record (18 U.S.C. 2071).
12. Counterfeiting and forging transportation requests (18 U.S.C. 508).
13. Embezzlement of Government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); embezzlement of money or property (18 U.S.C. 564).
14. Unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).
15. Proscribed political activities (Hatch Act—5 U.S.C. 7324–7327; 18 U.S.C. 602, 603, 607, and 608).
16. Acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).
17. Acceptance of excessive honorariums (2 U.S.C. 411i).
18. Outside earned income in excess of 15% of the salaries of Presidential appointees (5 U.S.C. App. I).

APPENDIX C TO SUBPART A—PROCEDURES FOR ADMINISTRATIVE ENFORCEMENT OF POST-EMPLOYMENT RESTRICTIONS

1. Purpose

The purpose of this Appendix is to implement provisions of The Ethics in Government Act which concern restrictions on post-EPA employment. This Appendix contains procedures which EPA follows whenever it believes that a former EPA employee has violated 18 U.S.C. 207 (a), (b), or (c), as implemented by 5 CFR part 737.

AUTHORITY: 18 U.S.C. 207 (a), (b), (c), as implemented by 5 CFR part 737.

2. Delegation

The Administrator delegates the authority to carry out this Appendix to the Inspector General, with the following exceptions:

- (a) A member of the Environmental Appeals Board or its designee is the presiding official as provided by paragraph 9(a) of this appendix;
- (b) The Designated Agency Ethics Official has the authority to designate the Agency Counsel, as provided by paragraph 9(b) of this appendix;
- (c) The Deputy Administrator has the authority to impose appropriate administrative sanctions, as provided by paragraph 13 of this appendix.

3. Preliminary Review and Referral of Information About Violations

The Inspector General receives and reviews written or oral information concerning a possible violation of the post-employment restrictions of 18 U.S.C. 207 (a), (b) or (c) as implemented by 5 CFR part 737. The Inspector General reviews the information to determine whether the matter is clearly frivolous and does not merit further action. If the Inspector General determines that the matter merits further action, the Inspector General informs the Director of the Office of Government Ethics and consults with the Criminal Division of the Department of Justice regarding the conduct of an investigation. The purpose of the consultation is to avoid prejudicing any criminal proceeding that the Justice Department may have under consideration.

4. Investigation by the Inspector General

If the Criminal Division of the Justice Department agrees that EPA should handle the matter, the Inspector General conducts an investigation of the possible violation of the post-employment restrictions of 18 U.S.C. 207 (a), (b) or (c).

*5. Initiating Process To Impose Sanctions:
Notice*

If the Inspector General's investigation establishes that there are reasonable grounds to believe that a former EPA employee has violated the post-employment restrictions of 18 U.S.C. 207 (a), (b) or (c), the Inspector General may initiate the process of imposing sanctions under 18 U.S.C. 207(j). The Inspector General sends the former EPA employee a written notice of charges and a copy of this appendix.

The notice of charges describes the allegations against the former employee in sufficient detail to enable the former employee to prepare an adequate defense and contains the following final paragraph:

You may request a hearing by mailing or otherwise furnishing written notice of your request to me within 30 days after the date you receive this notice of charges. If you do not request a hearing within 30 days, the Agency may nonetheless determine that you have violated the provisions of 18 U.S.C. 207 (a), (b), or (c) as implemented by 5 CFR part 737 and impose administrative sanctions set forth in paragraph 15 of the enclosed Appendix to 40 CFR part 3, Subpart A. You have a right to counsel, at your own expense, at all stages of this administrative enforcement proceeding. The procedures for administrative enforcement of the post-employment restrictions are set forth in the enclosed appendix.

6. Request for a Hearing

A former EPA employee must request a hearing within 30 days after receiving the notice of charges. Otherwise, the initial determination of the charges is made without a hearing.

7. Initial Decision Without a Hearing

If a former EPA employee fails to make a timely request for a hearing, the Inspector General prepares an initial decision in writing. The Inspector General furnishes this decision to the former employee within 60 days after the time for requesting a hearing expires. The initial decision sets forth the findings of fact and conclusions of law on which it is based.

8. Appeal of an Initial Decision Made Without a Hearing

A former employee may appeal an initial decision made without a hearing. The appeal must be submitted to the Deputy Administrator in accordance with paragraph 10(b) of this appendix.

9. Initial Decision After a Hearing

If the former employee requests a hearing, an initial decision is made after a hearing takes place.

(a) *The Presiding Official.* A member of the Environmental Appeals Board or its designee presides at the hearing. The Presiding Official, if not a member of the Environmental Appeals Board, must be an attorney and an employee of the Environmental Protection Agency. If the Environmental Appeals Board designates a Presiding Official other than one of its members, it must promptly notify the former employee and the Inspector General of the Presiding Official's name, address and telephone number.

The Presiding Official shall conduct the hearing in a fair and impartial manner and issue an initial decision as promptly as possible after the record is complete, but in no event later than 60 days after the hearing is completed. No person who has participated in any way in the investigation or in the decision to initiate administrative enforcement, or who is a subordinate of the Agency Counsel, or who has had any connection or dealings with the former employee may serve as Presiding Official. The Environmental Appeals Board may remove a Presiding Official for cause.

(b) *Appointment of Agency Counsel.* The Designated Agency Ethics Official shall designate an attorney to act as Agency Counsel. The Designated Agency Ethics Official notifies the Presiding Official and the former employee (or if the former employee is represented by counsel, his or her attorney) of the name, address and telephone number of the Agency Counsel.

(c) *Hearings.* Hearings will be held at EPA Headquarters in Washington, DC, or at an EPA regional office or laboratory. After conferring with the parties, the Presiding Official shall set a reasonable time, date and place for the hearing with due regard for the former employee's need for adequate time to prepare a defense and the need to expeditiously resolve allegations which may damage the former employee's reputation. At least 15 days before the date set for the hearing, the Presiding Official notifies the parties of the time, date and place of the hearing. Hearings will be as informal as reasonably possible, consistent with establishing an orderly record. Federal rules of evidence do not control the hearing, although the Presiding Official may use these rules as guidance. The Presiding Official generally will admit evidence unless it is clearly irrelevant, immaterial or unduly repetitious. The parties have the right to:

- (i) Introduce and examine witnesses;
- (ii) Offer documentary evidence;
- (iii) Confront and cross-examine adverse witnesses; and
- (iv) Present oral argument in the form of brief opening and closing statements.

In addition, the former employee has the right:

(i) To represent himself or herself or be represented by counsel at all stages of administrative enforcement; and

(ii) To require that all persons be excluded from the hearing room except the reporter, the Presiding Official, the Agency Counsel and witnesses during the time they are actually testifying.

Witnesses shall testify under oath or affirmation administered by the Presiding Official.

The Presiding Official must arrange for a transcript of the hearing through the EPA Procurement and Contracts Management Division using the funds of the Office of Administration. The former employee is entitled to a copy of the transcript at no charge, and the Presiding Official must furnish it as soon as it is received from the reporter.

(d) *Burden of Proof.* The Agency has the burden of proof and must establish a violation by clear and convincing evidence.

(e) *Initial Decision.* The Presiding Official must make an initial decision exclusively on matters of record in the proceeding. The initial decision must be made within 60 days after the hearing and must set forth the findings of fact and conclusions of law on which it is based. The Presiding Official must furnish the decision to the former employee or his/her counsel and to the Agency Counsel and the Inspector General.

10. Appeal of an Initial Decision Made After a Hearing

(a) *Initial Decision After a Hearing.* The initial decision of the Presiding Official becomes the final Agency decision unless, within 30 days after receiving the initial decision, either party appeals by mailing or otherwise furnishing to the Deputy Administrator written notice of appeal, with a copy to the opposing party. The notice of appeal may discuss the reasons why the party contends that the initial decision is erroneous, subject to the right of the opposing party to present a written response to the Deputy Administrator within 30 days after receiving a copy of the notice of appeal.

The Deputy Administrator must base his or her decision solely on the record of the proceedings or those portions cited by the parties to limit the issue and the notice of appeal and response. If the Deputy Administrator modifies or reverses the initial decision, he or she must state in writing why the initial decision was erroneous.

(b) *Initial Decision Without a Hearing.* If the former employee did not request a hearing, the initial decision of the Inspector General will become the final Agency decision unless the former employee submits a written notice of appeal to the Deputy Administrator within 30 days after receipt of the initial decision, with a copy to the Inspector General. The notice of appeal may discuss reasons why the initial decision is erroneous, subject

to the right of the Inspector General to present a written response to the Deputy Administrator within 30 days after receiving the notice of appeal. The Deputy Administrator's review will be based on an examination of the Inspector General's evidence and any legal arguments which the former employee or the Inspector General presents.

11. Ex Parte Communications (Communications Outside the Record)

Neither a Presiding Official nor the Deputy Administrator will receive from any person any written or oral communication outside the record about the merits of an administrative enforcement proceeding or appeal. This does not apply to ex parte discussions concerning administrative functions or procedures under this Appendix, or to consultations between the Deputy Administrator and staff members who assist the Deputy Administrator.

12. Calculating Deadlines

If a deadline falls on a Saturday, Sunday or federal holiday, the next working day is considered the deadline.

13. Administrative Sanctions

Whenever a final determination is made that a former employee has violated 18 U.S.C. 207 (a), (b) or (c) as implemented by 5 CFR part 737, the Deputy Administrator may impose an appropriate administrative sanction, which may include one or more of the following:

(i) Prohibiting the former employee from making on behalf of any other person (except the United States) any formal or informal appearance before, or, with the intent to influence, any oral or written communication on any matter of business for a period not to exceed 5 years. This will be accomplished by a memorandum to all EPA employees directing them to refuse to participate in any such appearance or to accept any such communication during the restriction period.

(ii) Debarring the former employee from receiving any EPA contract, grant, cooperative agreement or loan for a period of up to 3 years, provided that the violation was committed in the context of seeking or performing a government contract, grant, cooperative agreement or loan.

(iii) A written reprimand.

The Deputy Administrator may confer with the parties before deciding upon an administrative sanction. The former employee must be notified of any administrative sanction by certified mail, return receipt requested.

14. Confidentiality.

All records and information regarding administrative enforcement proceedings under this appendix will be kept confidential and

will not be disclosed except as required by law or regulation.

15. Judicial Review

Any person found to have violated 18 U.S.C. 207 (a), (b) or (c) as implemented by 5 CFR part 737, may seek judicial review of this administrative determination.

[49 FR 7530, Feb. 29, 1984, as amended at 57 FR 5323, Feb. 13, 1992]

Subpart B—Advice and Enforcement

§ 3.200 Purpose.

This subpart designates EPA officials responsible for advising employees on ethics questions and prescribes procedures for enforcing the requirements of this part. There is no attorney/client relationship between Ethics Officials and employees who seek advice; admissions to Ethics Officials of past violations are *not* privileged.

§ 3.201 Designation.

The following officials are available to advise EPA employees:

(a) The Administrator appoints a Designated Agency Ethics Official who:

- (1) Acts as the principal contact with the Office of Government Ethics;
- (2) Provides guidance to Deputy Ethics Officials;
- (3) Collects, reviews and maintains Executive Personnel Financial Disclosure Reports and provides them to the public as required;
- (4) Makes determinations and provides oral and written advice on ethics questions; and
- (5) Performs all other functions under 5 CFR 738.203.

(b) The Administrator also appoints an Alternate Agency Ethics Official to assist the Designated Agency Ethics Official under 5 CFR 738.202.

(c) The Designated Agency Ethics Official may appoint Deputy Ethics Officials under 5 CFR 738.202 in addition to those listed below.

The Deputy Ethics Officials are the:

- (1) Assistant Administrators;
- (2) Inspector General;
- (3) Office Directors reporting to Assistant Administrators;
- (4) Heads of Staff Offices reporting directly to the Administrator;
- (5) Laboratory Directors; and

- (6) Regional Administrators.
- (d) The Deputy Ethics Officials:
 - (1) Counsel employees on questions arising under this part;
 - (2) Review and maintain Confidential Statements of Employment and Financial Interests filed under subpart C of this part;
 - (3) Direct employees to file Confidential Statements of Employment and Financial Interest under § 3.302(c);
 - (4) Decide requests for approval of outside employment under Subpart E of this part; and
 - (5) Consult, as necessary, with the Designated Agency Ethics Official.

§ 3.202 Reporting, investigating and enforcing.

(a) Any employee who is aware of a possible violation of this part must inform the appropriate Deputy Ethics Official, the Designated Agency Ethics Official or the Inspector General.

(b) Violation of this part may be cause for disciplinary or remedial action. Remedial action may include a direction to dispose of conflicting interests, waivers under 18 U.S.C. 208(b), disqualification from particular assignments, reassignment or other action such as establishment of an appropriate trust.

Subpart C—Financial Interests and Investments

§ 3.300 Prohibitions against acts affecting a personal financial interest.

(a) As discussed in appendix A to subpart A, section 208(a) of title 18, United States Code, prohibits an employee from knowingly participating in an EPA matter in which the employee, the employee's spouse, minor child, present or prospective employer, or organization in which the employee is an officer, has a financial interest.

(b) Activities which may affect a financial interest are:

- (1) Negotiating, administering or auditing contracts or assistance agreements;
- (2) Selecting or approving contractors or subcontractors;
- (3) Enforcement activities;
- (4) Issuing permits;
- (5) Registering pesticides;
- (6) Certifying motor vehicles; and

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(7) Rulemaking and policy matters which have a direct and predictable effect on the financial interests of companies in which the employee owns stock or has an official or employment relationships. Examples are discussed in appendix A to subpart A.

[49 FR 7530, Feb. 29, 1984, as amended at 50 FR 39623, Sept. 27, 1985]

§ 3.301 Waiver.

(a) The Designated Agency Ethics Official may waive the prohibition of 18 U.S.C. 208(a) for rulemaking and policy matters if the interest is not so substantial as to be deemed likely to affect the integrity of an employee's services. Employees may request such a waiver by submitting a written disclosure of the nature of the financial interest to the Designated Agency Ethics Official, together with a discussion of the employee's duties and the reasons why a waiver is appropriate.

(b) The prohibition of 18 U.S.C. 208(a) may also be waived by general regulation. Financial interests derived from the following have been determined to be too remote or too inconsequential to affect the integrity of employee's services, and employees may participate in matters affecting them:

(1) Mutual funds (including tax-exempt bond funds), except those which concentrate their investments in particular industries;

(2) Life insurance, variable annuity, or guaranteed investment contracts issued by insurance companies;

(3) Deposits in a bank, savings or loan association, credit union or similar financial institution;

(4) Real property used solely as the personal residence of an employee;

(5) Bonds or other securities issued by the U.S. Government or its agencies.

[49 FR 7530, Feb. 29, 1984, as amended at 50 FR 39623, Sept. 27, 1985]

§ 3.302 Financial Disclosure Reports and Confidential Statements of Employment and Financial Interest.

(a) The following employees (including employees expected to serve in an "acting" capacity for more than 60 days or who actually serve in such capacity for more than 60 days) are required to file public Executive Person-

nel Financial Disclosure Reports in accordance with 5 CFR part 734:

(1) Presidential appointees;

(2) Employees whose positions are classified at GS-16 or above of the General Schedule;

(3) Members of the Senior Executive Service;

(4) Administrative Law Judges appointed under 5 U.S.C. 3105;

(5) Schedule C employees;

(6) The Designated Agency Ethics Official, and

(7) Special Government employees whose basic daily rate of pay equals or exceeds the basic daily rate for GS-16 of the General Schedule and who are expected to perform more than 60 days of actual service during a 365 day period. (If such employees are not expected to perform more than 60 days of actual service, but nonetheless exceed 60 days, reports are due within 15 days after the 60th day of actual service.)

(See 5 CFR part 734 for reporting requirements for Presidential nominees.)

Financial Disclosure Reports must be submitted to the Designated Agency Ethics Official within 30 days after an employee assumes a covered position (unless the employee has left another covered position in the Executive Branch within the previous 30 days), by May 15 of each year (unless the Designated Agency Ethics Official or the Office of Government Ethics grants an extension) and within 30 days after leaving a covered position (unless the employee assumes another covered position in the Executive Branch within 30 days). These reports are available to the public. However, the Designated Agency Ethics Official may charge for direct reproduction costs at the rate set forth in 40 CFR 2.120(g). The Designated Agency Ethics Official may also require prepayment of any fee in accordance with 40 CFR 2.120(c) and waive fees under the circumstances described in 40 CFR 2.120(d).

(b) In addition, all employees in the following positions in grades GM or GS-13 or above (or comparable levels under other pay systems) must file Confidential Statements of Employment and Financial Interests unless they are required to file public Executive Personnel Financial Disclosure Reports:

(1) All employees who report to the General Counsel or the Assistant Administrator for Enforcement and Compliance Monitoring, and Regional Counsel employees;

(2) All employees in the immediate Office of the Administrator or Deputy Administrator;

(3) All Branch chiefs in the Facilities and Support Services Division;

(4) Employees in the Procurement and Contracts Management;

(5) Employees in the Grants Administration Division;

(6) Employees in the Office of Inspector General;

(7) Temporary experts and consultants; and

(8) Special Government employees as provided in § 3.602.

(c) The Designated Agency Ethics Official or cognizant Deputy Ethics Official may also require employees other than those whose positions are listed above to file Confidential Statements of Employment and Financial Interest by specific written direction. The following employees should be required to file:

(1) Those in positions classified at GM or GS-13 or above (or comparable levels under other pay systems) whose duties and responsibilities require the exercise of judgment in participating in or making Government decisions with respect to:

(i) Evaluating or selecting contractors, initiating procurement requests, acting as project officer on contracts or auditing contractors;

(ii) Awarding or monitoring assistance agreements; or

(iii) Regulating private enterprise.

(2) Those in positions classified at GS-12 or below (or comparable levels under other pay systems) if their duties directly affect the financial interests of specific parties. Such positions are limited to contracting officers, project officers, inspectors, auditors and On-Scene Coordinator representatives.

(d) Other employees classified below the GM or GS-13 level (or comparable levels under other pay systems) who are in positions which otherwise meet the criteria of paragraph (c)(1) of this section may also be required to file, provided the Office of Government Eth-

ics has approved in writing. Deputy Ethics Officials should consult with the Designated Agency Ethics Official in seeking such approval.

(e) *Financial and employment interests of employees' relatives.* In completing Confidential Statements of Employment and Financial Interests, the financial and employment interests of a spouse or minor child are considered to be interests of the employee and must be reported.

[49 FR 7530, Feb. 29, 1984, as amended at 50 FR 39623, Sept. 27, 1985]

§ 3.303 Special requirements under the Clean Air Act.

(a) Notwithstanding any other provisions of this part, employees whose positions are listed in Appendix B may not be employed by, serve as attorney for, act as consultant to, or hold any other official or contractual relationship to (other than ownership of stock, bonds, or other financial interest)—

(1) The owner or operator of any major stationary source or any stationary source which is subject to a standard of performance or emission standard under section 111 (42 U.S.C. 7411) or section 112 (42 U.S.C. 7412) of the Act;

(2) Any manufacturer of any class or category of mobile sources if such mobile sources are subject to regulation under the Act;

(3) Any trade or business association of which an owner or operator referred to in paragraph (a)(1) of this section or a manufacturer referred to in paragraph (a)(2) of this section is a member;

(4) Any organization (whether non-profit or not) which is a party to litigation or engaged in political, educational or informational activities relating to air quality.

(b) In examining financial interest statements, reviewers must consider whether certain financial interests of a covered employee may be inconsistent with the employee's position and duties. In particular, any financial interest that presents a conflict of interest with an employee's duties under the Act is resolved under § 3.202 of this part.

(c) Under section 318(d) of the Clean Air Act, any employee subject to this provision who knowingly violates the

provisions of this section is subject to a fine of not more than \$2,500 or imprisonment for not more than one year, or both.

§3.304 Special requirements under the Toxic Substances Control Act.

(a) Notwithstanding any other provisions of this part, members of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act (15 U.S.C. 2603(e)) and their designees may not:

(1) Accept employment or compensation from any person subject to any requirement of the Act, or to any rule or order issued under it, for a period of twelve months after their committee service ceases; or

(2) Hold any stocks or bonds or have any substantial pecuniary interest in any person engaged in the manufacture, processing or distribution in commerce of any substance or mixture subject to any requirement of the Act or of any rule or order issued under it.

(b) This provision is enforceable by an action for a court order to restrain violations.

§3.305 Special requirements under the Surface Mining Control and Reclamation Act.

(a) Notwithstanding any other provisions of this part, no employee who performs any function or duty under the Surface Mining Control and Reclamation Act (such as reviewing Environmental Impact Statements of the Office of Surface Mining in the Department of the Interior) may have a direct or indirect interest in underground or surface coal mining operations. Regulations of the Office of Surface Mining at 30 CFR 706.3 define the terms "direct financial interest" and "indirect financial interest" as follows:

(1) *Direct financial interest.* Means ownership or part ownership by an employee of land, stocks, bonds, debentures, warrants, a partnership, shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

(2) *Indirect financial interest.* Means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relative holds a financial interest.

(b) Violation of these restrictions is punishable by a fine of up to \$2,500 or imprisonment for not more than one year, or both.

APPENDIX A TO SUBPART C—PROCEDURES FOR FILING CONFIDENTIAL STATEMENTS OF EMPLOYMENT AND FINANCIAL INTEREST

(1) *Submission*—Each employee required to submit a Confidential Statement of Employment and Financial Interests must submit the completed EPA Form 3120-1 within 30 days after entrance on duty or (where the position is not specifically listed in this part) within 30 days after being notified of the requirement to file. Interests which are exempt from the prohibition of 18 U.S.C. 208(a) (except for interests in mutual funds) need not be reported. See §3.301(b). The completed form is sent to the Deputy Ethics Official for the employee's organization. Headquarters employees in the Office of General Counsel and employees in the immediate Office of the Administrator submit their forms to the Designated Agency Ethics Official.

(2) *Decisions.* When there appears to be a conflict between the employee's financial interests and the performance of Government duties, the reviewer provides the employee an opportunity to discuss the matter. Deputy Ethics Officials should discuss any such problems with the Designated Agency Ethics Official, who determines if divestiture is required. See §3.202(c). The Inspector General may be asked to investigate the circumstances of apparent violations of the conflict of interest laws or these regulations.

(3) *Supplemental Statements*—For purposes of annual review, employees who are required to submit EPA Form 3120-1 must submit a new statement each July by no later than July 31, even if no changes have taken place during the year.

Deputy Ethics Officials must notify such employees of this requirement and must complete review of the statements within 30 days after submission. By September 30 of

each year, Deputy Ethics Officials must submit a statement to the Designated Agency Ethics Official containing the following information: (i) the number of employees in their organization at GM/GS 13–15; (ii) the number required to file; (iii) the number of other employees required to file under §3.302(c) or 3.302(d); (iv) the number of remedial actions taken by type of action (i.e., recusals, waivers, divestitures, reassignments or blind trusts); (v) a certification that no employee who performs any “functions or duties” under the Surface Mining Control and Reclamation Act holds any prohibited interests (see §3.305); and (6) a certification that all required reports have been received, reviewed and signed and that any necessary remedial actions have been taken.

In addition, whenever additions or changes have taken place, employees who are required to file must submit a supplemental statement by the end of the four month period in which the transactions occurred; that is, by November 30 and March 31. Deputy Ethics Officials must notify employees of this requirement during the months when these updates are due, and must review and sign the updates within 30 days after submission. However, they need not provide any report to the Designated Agency Ethics Official regarding the updates.

(4) *Confidentiality*—EPA Form 3120–1 is confidential. No information from this form may be disclosed other than to the Designated Agency Ethics Official and the Alternate Agency Ethics Official, immediate staff assistants whom the responsible Deputy Ethics Official has specifically designated in writing, the Office of Inspector General, committees or subcommittees of Congress on the written request of the chairman, or as the Director of the Office of Government Ethics or the Administrator may determine for good cause.

(5) *Maintenance of statements.* EPA Forms 3120–1 and related records must be kept in a locked container. They are retained for six years after filing and then disposed of (unless needed in an ongoing investigation).

[49 FR 7530, Feb. 29, 1984, as amended at 50 FR 39623, Sept. 27, 1985]

APPENDIX B TO SUBPART C—EMPLOYEES SUBJECT TO SPECIAL REQUIREMENTS UNDER THE CLEAR AIR ACT

The positions listed below have been determined to be of a regulatory or policymaking nature under section 318(d) of the Clean Air Act. Whenever the title of a position is listed, it includes any person who occupies the position as “acting” and any person who occupies a successor position under a subsequent reorganization.

Coverage:

(1) Under the Office of the Administrator: the Administrator, Deputy Administrator, Regional Administrators, General Counsel, Deputy General Counsel, Associate General Counsel for Air, Noise and Radiation, Enforcement Counsel, Deputy Enforcement Counsel, Associate Deputy Enforcement Counsel for Air and Director of the Science Advisory Board.

(2)(i) In the Office of the Administrator: Administrator, Deputy Administrator, and the Director of the Science Advisory Board.

(ii) Regional Administrators.

(iii) In the Office of General Counsel: General Counsel, Deputy General Counsel, Associate General Counsel for Air and Radiation.

(iv) In the Office of Enforcement and Compliance Monitoring: Assistant Administrator for Enforcement and Compliance Monitoring, Senior Enforcement Counsel, Associate Enforcement Counsel for Air Enforcement.

(v) In the Office of Policy, Planning and Evaluation: Assistant Administrator for Policy, Planning and Evaluation, Deputy Assistant Administrator for Policy, Planning and Evaluation, Director of the Office of Policy Analysis, Director of the Office of Standards and Regulations.

(vi) In the Office of Air and Radiation: Assistant Administrator for Air and Radiation, Deputy Assistant Administrator for Air and Radiation, Director of the Office of Policy Analysis and Review, Director of the Office of Program Development, Director of the Office of Air Quality Planning and Standards, Director of the Office of Mobile Sources, and Directors of the following Divisions: Control Programs Development, Emission Standards and Engineering, Monitoring and Data Analysis, Stationary Source Compliance, Strategies and Air Standards, Certification, Emission Control Technology, Engineering Operations, Field Operations and Support and Manufacturers Operations.

(3) *Under the Office of Air, Noise and Radiation:*

The Assistant Administrator for Air, Noise and Radiation, Director of the Office of Policy Analysis, Director of the Office of Transportation and Land Use Policy, Director of the Office of Air Quality Planning and Standards and Division Directors reporting to that official, and the Director of the Office of Mobile Source Air Pollution Control and Division Directors reporting to that official.

[49 FR 7530, Feb. 29, 1984, as amended at 50 FR 39624, Sept. 27, 1985]

Subpart D—Gifts, Gratuities, or Entertainment

§3.400 Policy.

(a) Except as provided in paragraph (d) and in §3.104(e), no employee may

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directly or indirectly (for example, through spouses or children) accept any gift, gratuity, entertainment (including meals), favor, loan or any other thing of value from any person, corporation or group which:

(1) Has or is seeking to obtain contracts or assistance agreements with EPA;

(2) Has interests which may be substantially affected by the employee's performance or nonperformance of official duty;

(3) Is in any way attempting to affect the employee's official action; or

(4) Conducts activities that EPA regulates.

(b) The following are exceptions to the general rule set forth in paragraph (a):

(1) Accepting modest entertainment, such as meals or refreshments, in connection with participation in widely attended gatherings sponsored by industrial, technical or professional organizations or in connection with attendance at public ceremonies or similar activities where the employee officially represents EPA. Acceptance of ordinary *business lunches* is not permitted.

(2) Accepting gifts, favors or entertainment where there is an obvious family or personal relationship between the employee or the employee's family and the donor, and where this relationship clearly motivated the gift.

(3) Purchasing at advantageous rates offered to Government employees as a class.

(4) Accepting loans from banks or other financial institutions on customary terms.

(5) Accepting unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars or other items worth less than \$10 (U.S. retail).

(6) Accepting incidental transportation (such as rides to and from airports) furnished in connection with official duties and customarily provided by private organizations. (For further guidance concerning acceptance of travel and related expenses, see § 3.505.)

(7) Accepting transportation, lodging and meals of modest value in connection with interviews for future employment, provided the employee is in an

annual leave status at the time such interview occurs.

(8) Accepting gifts and honors from foreign governments as authorized by 5 U.S.C. 7342. (See 41 CFR part 101-49).

(9) Awards incident to training or meetings under 5 U.S.C. 4111 and 5 CFR part 410, subpart G. This requires the specific written approval of the Designated Agency Ethics Official or the Alternate Agency Ethics Official. See § 3.504(c)(1).

(c) Where circumstances require temporary acceptance of a prohibited gift or gratuity, the acceptance must be reported to the Designated Agency Ethics Official who shall return it to the donor with an explanation, where practical. Otherwise, the gift or gratuity will be donated to a public or charitable institution and, where practical, the donee will be informed of the disposition. (But see 41 CFR part 101-49 regarding gifts from foreign governments.)

Subpart E—Outside Employment

§ 3.500 Definitions.

Outside employment or other outside activity is any work or service performed by an employee other than the performance of official duties. It includes such activities as writing and editing, publishing, teaching, lecturing, consulting, self-employment and other work or services. Employees must ensure that their outside activities may not reasonably be construed as implying official EPA endorsement of any statement, activity, product or service.

§ 3.501 Policy.

(a) Subject to the approval requirements of § 3.508, employees may engage in outside employment or other outside activity consistent with the standards of this subpart.

(b) Employees may participate in community affairs as private citizens where consistent with these regulations. Such activities include:

(1) Speaking, writing, editing, and teaching;

(2) Participating in charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service or civic organizations;

(3) Participating in the activities of national, State and local political parties to the extent permitted under the Hatch Act (5 U.S.C. 7324–7324) and 18 U.S.C. 602, 603, 607 and 608.

[49 FR 7530, Feb. 29, 1984, as amended at 50 FR 39624, Sept. 27, 1985]

§ 3.502 Guidelines and limitations.

Outside employment and other outside activity is prohibited if it would:

(a) Violate a federal or State statute, local ordinance, Executive Order or regulation;

(b) Involve acceptance of a fee, compensation, gift, payment of expense, or other thing of monetary value under circumstances which would result in, or create the appearance of, a conflict of interest;

(c) Bring discredit upon the Government or EPA, or lead to relationships which would impair public confidence in the integrity of the Government or EPA;

(d) Involve work with any EPA contractor or subcontractor on an EPA project or work with any holder of an EPA assistance agreement or subagreement on an EPA project (unless the Designated Agency Ethics Official approves work on such acquisition or assistance agreement in writing) or would involve work for any person or organization in a position to gain advantage through the employee's exercise of official duties;

(e) Involve use of the employee's time during official working hours;

(f) Involve use of official facilities (for example, office space, telephones, office machines or supplies) or the services of other employees during duty hours;

(g) Interfere with the efficient performance of Government duties or impair the employee's mental or physical capacity to perform such duties;

(h) Involve use of information obtained as a result of Government employment which has not been made available to the general public.

[49 FR 7530, Feb. 29, 1984, as amended at 50 FR 39624, Sept. 27, 1985]

§ 3.503 Distinction between official and outside activities.

Writing, speaking, or editing is normally *official* if it results from a re-

quest to EPA to furnish a speaker, author or editor. If an invitation is addressed to an employee, the invitation is *official* if it is tendered because of the employee's EPA position rather than the employee's individual knowledge or accomplishments. The fact that an activity is prepared for or performed outside normal duty hours is not controlling. Otherwise, such activities are *outside* activities for purposes of § 3.500.

§ 3.504 Compensation, honorariums, travel expenses.

(a) Employees may accept compensation for permissible outside employment or other outside activity. However, under 2 U.S.C. 441 no employee may accept any honorarium of more than \$2,000 for any single appearance, speech or article. In addition, Presidential appointees are prohibited from receiving outside earned income in any year in excess of 15% of their Government salaries. See section 210 of Public Law 95-521, 5 U.S.C. App. 1.

(b) Except as provided below, travel expenses for official activities must be paid by the Government. Conversely, appropriated funds must not be used for nonofficial travel.

(c) The Comptroller General has ruled that acceptance of official travel expenses from outside sources is an impermissible augmentation of agency appropriations in the absence of specific statutory authority. Accordingly, employees may not accept official travel expenses except for:

(1) Attendance at meetings, if paid by organizations listed under section 501(c)(3) of the Internal Revenue Code (*see* 5 U.S.C. 4111), and the prior written approval of the Designated Agency Ethics Official or the Alternate Agency Ethics Official is obtained;

(2) Travel entirely outside the United States paid by foreign governments or public international organizations (5 U.S.C. 7342(c)(1));

(3) Details to State and local governments and to domestic universities and *other organizations* under the Intergovernmental Personnel Act (5 U.S.C. 3374–3375);

(4) Details to public international organizations in which the United States participates as a government (5 U.S.C. 3343);

(5) Details to foreign governments (this requires State Department approval);

(6) Travel approved by the State Department under the Mutual Educational and Cultural Exchange Program of title 22, U.S. Code, Chapter 33;

(7) Travel expenses of EPA witnesses for non-Government parties (5 U.S.C. 5751).

§3.505 Special conditions which apply to teaching, lecturing and speechmaking.

In addition to the limitations of §§3.502 and 3.504(a), employees may engage in outside activities involving teaching, lecturing and speechmaking only if:

(a) Such activities are conducted on the employees' own time without the use of Government property or personnel;

(b) Government travel or per diem funds are not used;

(c) The activities are not for the purpose of special preparation for a civil service or foreign service examination and do not involve the use of information obtained as a result of Government employment that has not been made available to the general public;

(d) The activities do not involve instruction on dealing with specific matters pending before EPA.

§3.506 Special conditions applicable to outside writing and editing activities.

(a) Subject to the limitations of §§3.502 and 3.504(a) and this section, employees may serve as editors and editorial consultants, or on editorial boards, and may contribute articles to publications.

(b) Writing and editing, whether related or unrelated to an employee's official duties, must not express or imply official support in either the material itself or in advertising or promotional material, including book jackets and covers.

(c) Writing or editing, whether related to an employee's official duties or not, must either omit mention of the employee's official title or affiliation with the Agency, or include a disclaimer substantially as follows:

"This (article, book, etc.) was (written, edited) by (employee's name) in his/her private capacity. No official support or endorsement by the Environmental Protection Agency or any other agency of the Federal Government is intended or should be inferred."

§3.507 Special conditions applicable to publishing.

Employees may engage in publishing activities when:

(a) No income is derived from publishing materials which EPA makes available to the general public or which are available to the employee because of his or her official duties but are not available to the general public; and

(b) No income is derived from publishing proceedings or compilations of conferences, symposia or similar gatherings or publishing speeches which are sponsored by the Government or which involve the performance of official duties.

[49 FR 7530, Feb. 29, 1984, as amended at 50 FR 39624, Sept. 27, 1985]

§3.508 Administrative approval.

In addition to avoiding prohibited outside employment, each employee must obtain administrative approval in accordance with appendix A to this subpart before engaging in the following types of outside employment:

(a) Regular self-employment;

(b) Consulting services;

(c) Holding State or local public office;

(d) Outside employment or other outside activity involving an EPA contractor or subcontractor or holder of an EPA assistance agreement or sub-agreement; and

(e) Employment by a firm which is regulated by the EPA program Office or Regional Office in which the employee serves.

Employees are encouraged to seek the advice of Deputy Ethics Officials or the Designated Agency Ethics Official regarding other types of outside employment.

[49 FR 7530, Feb. 29, 1984, as amended at 50 FR 39624, Sept. 27, 1985]

APPENDIX A TO SUBPART E—PROCEDURES FOR PERMISSION TO ENGAGE IN OUTSIDE EMPLOYMENT OR OTHER OUTSIDE ACTIVITY

1. *Form and content of request*—A written request for administrative approval of outside employment must be addressed to the appropriate Deputy Ethics Official, or, in the immediate Office of the Administrator or Deputy Administrator, to the Designated Agency Ethics Official. The request must be sent through the employee's supervisors and must indicate:

- a. Employee's name, title and grade;
- b. Nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;
- c. The name and business of the person or organization for which the work will be done (in cases of self-employment, indicate the type of services to be rendered and estimate the number of clients or customers anticipated during the next 6 months);
- d. The estimated time to be devoted to the activity;
- e. Whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);
- f. The assistance agreements or contracts involved, if the outside employment will include consulting or professional services to institutions which have or may seek federal assistance agreements or contracts. Full details must be provided for any service which involves preparing grant applications, contract proposals or program reports. Indicate the basis for compensation (e.g., fee, per diem, per annum, etc.).

2. *Acting on employee requests*—Requests are reviewed for consistency with § 3.502. Reviewers are encouraged to obtain advice from the Designated Agency Ethics Official. The reviewer's decision must be in writing.

3. *Keeping the record up-to-date*—If there is a change in the nature or scope of the duties or services performed or the nature of the employee's business, the employee must submit a revised request for approval.

4. *Enforcement*—Failure to obtain administrative approval for outside employment or other outside activity where required is grounds for disciplinary action.

5. *Confidentiality of requests*—Requests for approval are confidential and, unless the employee consents, may not be disclosed except to the Designated Agency Ethics Official or the Alternate Agency Ethics Official and designated staff who assist them under this part and to Deputy Ethics Officials and designated staff members who assist them under this part.

[49 FR 7530, Feb. 29, 1984, as amended at 50 FR 39624, Sept. 27, 1985]

Subpart F—Standards of Conduct for Special Government Employees

§ 3.600 Applicability.

The conflict of interest statutes and these regulations apply to special Government employees during their entire period of EPA service, from the date of the oath of office to the date of termination.

§ 3.601 Standards of conduct.

The following standards of conduct apply to special Government employees:

(a) *Use of Government employment.* Special Government employees may not use Government employment for a purpose that is, or gives the appearance of being, motivated by private gain for themselves or others.

(b) *Use of inside information.* Special Government employees may not use inside information obtained as a result of Government employment for private gain. *Inside information* means information obtained as a result of Government employment which has not been made available to the general public.

(c) *Avoiding coercion.* Special Government employees may not use Government employment to coerce anyone to provide a financial benefit to themselves or others.

(d) *Gifts, entertainment or favors.* Except as provided below, special Government employees must not solicit or receive any gift, gratuity, entertainment (including meals), favor, loan or other thing of value, for themselves or others, from persons or organizations having contracts or assistance agreements with EPA or which conduct activities regulated by EPA. The following exceptions apply:

(1) Receiving salary, bonuses or other compensation or benefits from non-Government employers;

(2) Accepting modest entertainment, such as meals or refreshments, in connection with attendance at widely attended gatherings sponsored by industrial, technical or professional organizations, or in connection with attending public ceremonies or similar activities where the special Government employee officially participates on behalf

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of EPA (this does not include ordinary *business lunches*);

(3) Accepting gifts, favors or entertainment where there is an obvious family or personal relationship between the employees or their families and the donor, and where that relationship clearly motivates the gift;

(4) Accepting loans from banks or other financial institutions on customary terms;

(5) Accepting unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars or other items worth less than \$10 (U.S. retail);

(6) Accepting incidental transportation in kind from a private organization (such as rides to and from airports) furnished in connection with official duties and customarily provided by the private organization.

(e) *Gifts and honors from foreign governments.* A special Government employee is not authorized to accept a gift, decoration, or other thing from a foreign government, except as authorized by 5 U.S.C. 7342. (See also 41 CFR part 101-49.)

(f) *Official travel expenses* as authorized by §3.505.

§3.602 Statements of employment and financial interest.

(a) Each special Government employee must submit a Statement of Employment and Financial Interests, EPA Form 3120-1, at the time of initial appointment except where the special Government employee is required to file a public Financial Disclosure Report (SF 278). Annual supplemental statements are also due by July 31 of each year. In addition, if changes occur in the employee's financial interests or investments, a supplemental report is also due by the end of the four month period in which the transaction occurs; that is, by November 30 and March 31.

(b) The Statement of Employment and Financial Interests must be submitted to the cognizant Deputy Ethics Official or to the Designated Agency Ethics Official, as appropriate. (See §3.201.) Public Financial Disclosure Reports must be submitted to the Designated Agency Ethics Official. (See §3.302.)

Special government employees often have income from other employers, and

all such sources of income must be reported. For example, researchers and analysts must disclose the sources of their research contracts, and, where employees of universities or other public bodies or business organizations are working on projects supported by outside parties, the contributors must be identified.

(c) The purpose of the Statement of Employment and Financial Interests is to assist the employee and the Agency in avoiding conflicts of interest. The statement is confidential and will not be disclosed except to the Designated Agency Ethics Official and the Alternate Agency Ethics Official and designated staff members who assist them under this part and to Deputy Ethics Officials and members of their staffs who assist them under this part. The statements will not otherwise be disclosed except to the Office of Inspector General, to committees or subcommittees of Congress on written request, or as authorized by the Administrator or the Director of the Office of Government Ethics for good cause.

(d) Submitting a Statement of Employment and Financial Interests does not relieve employees of the duty to comply with the law. Employees must continue to refrain from participation where prohibited by 18 U.S.C. 208(a). (See §3.606(d).)

(e) Information concerning financial interests which have been exempted from the prohibition of 18 U.S.C. 208(a) may be omitted. (See §3.301(b) of this part.)

(f) The following special Government employees are not required to file a Statement of Employment and Financial Interest:

(1) Temporary and summer employees under 5 U.S.C. 5332 below the grade of GS-13;

(2) Employees participating in intern or other training programs.

§3.603 Review, enforcement, reporting and investigation.

(a) Statements of Employment and Financial Interests are reviewed by the cognizant Deputy Ethics Official or, in the immediate Office of the Administrator, by the Designated Agency Ethics Official. If the review discloses an actual or apparent conflict of interest,

the matter will be discussed with the employee. If necessary, the Deputy Ethics Official or the Designated Agency Ethics Official may: (1) Direct the employee not to participate in certain matters; (2) arrange a reassignment with the employee's supervisor; or (3) the Designated Agency Ethics official may grant a waiver under 18 U.S.C. 208(b) or direct the employee to divest.

(b) Special Government employees are encouraged to consult with the Designated Agency Ethics Official or the cognizant Deputy Ethics Official if they have questions concerning this subpart.

(c) Violation of these regulations may be cause for disciplinary action, and the Inspector General may be asked to investigate alleged or apparent violations.

[49 FR 7530, Feb. 29, 1984, as amended at 50 FR 39624, Sept. 27, 1985]

§ 3.604 Application of conflict-of-interest statutes.

The *conflict-of-interest* statutes (18 U.S.C. 203, 205, 207, 208 and 209) are set forth in appendix A to subpart A of this part. They apply to special Government employees as follows:

(a) Sections 203 and 205 of title 18, United States Code, provide generally that a special Government employee may not:

(1) Represent anyone else before a court or any Government agency in connection with a *particular matter involving a specific party or parties* in which the United States is a party or has a direct and substantial interest, and in which the employee has ever participated *personally and substantially* as a Government employee; or

(2) Act as *agent or attorney*, that is, communicate with intent to influence on behalf of another, in connection with a *particular matter involving a specific party or parties* pending in EPA, if he or she has served as an EPA employee for more than 60 days during the preceding 365 days. This restriction applies regardless of whether the special Government employee has participated in the matter.

(b) Under 18 U.S.C. 207, former special Government employees may not act as *agent or attorney*, that is, communicate with intent to influence, on behalf of

anyone other than the United States before any Federal agency or court in connection with a *particular matter involving a specific party or parties* in which the United States is a party or has a direct and substantial interest and in which they participated *personally and substantially* as Government employees. The two-year restriction of 18 U.S.C. 207(b) is unlikely to affect special Government employees because they are not likely to have exercised *direct supervisory or operating responsibility*. Likewise, the one-year *quarantine* of 18 U.S.C. 207(c) probably will not apply because special Government employees are unlikely to be designated as *senior employees*. See 5 CFR 737.33.

(c) Under 18 U.S.C. 207(g), during the entire period of the special Government employee's appointment, partners of special Government employees are forbidden to act as agent or attorney in connection with *particular matters* in which the United States is a party or has a direct and substantial interest and in which the special Government employee is participating or has participated *personally and substantially* as a special Government employee or which are under the special Government employee's *official responsibility*. This restriction applies to policy and rulemaking matters as well as to contracts, grants and adjudications. However, it applies only during the period of a special Government employee's service.

(d) Under 18 U.S.C. 208 special Government employees are forbidden to participate *personally and substantially* in any *particular matter* in which, to their knowledge, they, their spouses, minor children, partners, organizations in which they are serving as officers, directors, trustees, partners or employees or any persons or organizations with whom they are negotiating or have any arrangement concerning prospective employment, have a financial interest. However, the Designated Agency Ethics Official may waive this restriction if *the interest is not so substantial as to be deemed likely to affect the integrity of the services*. Requests for waiver must be addressed to the Designated Agency Ethics Official and must specifically set forth the nature

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and amount of the financial or employment interest and explain why a waiver should be granted.

The general exemptions of appendix A to §3.301(b) of this part apply to both regular and special Government employees.

(e) Section 209 of title 18, United States Code, does not apply to special Government employees.

§ 3.605 Other statutes.

(a) *Bribery*. Section 201 of title 18, United States Code, prohibits soliciting, receiving or agreeing to receive, directly or indirectly, anything of value in connection with the performance of official duties or in return for committing or aiding in the commission of a fraud on the United States.

(b) *Disclosure of confidential information*. Section 1905 of title 18, United States Code, prohibits disclosing, in any manner and to any extent not authorized by law, any information acquired in the course of Government employment or official duties which concerns or is related to the trade secrets, processes, operations, style or work or apparatus or to the identity, confidential statistical data, amount or source of any income, profits, losses or expenditures of any person, business entity or association.

(c) Other statutes which apply to both regular and special Government employees are listed in appendix B to subpart A of this part.

PART 4—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

AUTHORITY: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note).

§ 4.1 Uniform relocation assistance and real property acquisition.

Effective April 2, 1989, regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act

of 1970 (Pub. L. 91-646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17, 101 Stat. 246-255, 42 U.S.C. 4601 note) are set forth in 49 CFR part 24.

[52 FR 48023, Dec. 17, 1987 and 54 FR 8912, Mar. 2, 1989]

PART 5—TUITION FEES FOR DIRECT TRAINING

Sec.

5.1 Establishment of fees.

5.2 Definitions.

5.3 Schedule of fees.

5.4 Registration offices.

5.5 Procedure for payment.

5.6 Refunds.

5.7 Waiver of fee.

5.8 Appeal of waiver denial.

AUTHORITY: Title V, 65 Stat. 290 (31 U.S.C. 483a).

SOURCE: 38 FR 32806, Nov. 28, 1973, unless otherwise noted.

§ 5.1 Establishment of fees.

The Environmental Protection Agency shall charge the revised schedule of tuition fees for all persons attending EPA direct training courses which commence on or after January 1, 1974.

§ 5.2 Definitions.

Direct Training means all technical and managerial training conducted directly by EPA for personnel of State and local governmental agencies, other Federal agencies, private industries, universities, and other non-EPA agencies and organizations.

Registration office means any of the several offices in EPA which have been designated to receive applications for attendance at direct training courses. (See §5.4 for a listing of such courses.)

§ 5.3 Schedule of fees.

Tuition fees for direct training will be established within the range of \$15 to \$70 per training day depending upon whether the course is predominantly a laboratory, lecture, or survey course, or a course with other similar variables. Each cognitive program and regional office will announce the tuition fee at the time the date for offering the course is announced. As a transition easement, tuition fees for all State and