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§ 98.9 Decision if hearing waived.

(a) If the former employee waives or, in accordance with § 98.5(b) of this part, is deemed to have waived a hearing under this part, the examiner shall, after review of the record as it exists, make a decision as to whether the former employee is in violation of 18 U.S.C. 207.

(b) In a decision under paragraph (a) of this section, the requirements of § 98.8 of this part apply.

§ 98.10 Appeal.

(a) Within 30 working days after receipt of a decision issued under § 98.8 or § 98.9 of this part, either the Departmental counsel or the former employee may appeal the decision to the Secretary.

(b) In making a decision on an appeal, the Secretary shall consider only the evidence admitted during the prior proceeding and contained in the record of that proceeding.

(c) If the Secretary modifies or reverses the initial decision, the Secretary shall specify the findings of fact and conclusions of law that are different from those of the examiner.

§ 98.11 Final administrative decision.

The final administrative decision under this part shall be:

(a) The decision of the examiner under § 98.8(b), if there is no appeal under § 98.10;

(b) The decision by the examiner under § 98.9, if a hearing is waived or is deemed to have been waived and there is no appeal under § 98.10; or

(c) The decision of the Secretary on an appeal under § 98.10.

Subpart B—Administrative Sanctions

§ 98.12 Administrative sanctions.

(a) The Secretary, in decisions under § 98.10 of this part, and the examiner, in decisions under § 98.8 and § 98.9 of this part, may impose an administrative sanction against a former employee who, after a final administrative decision under this part, is found to be in violation of 18 U.S.C. 207.

(b) The administrative sanctions that may be imposed under subsection (a) of this section are:

(1) Prohibiting the former employee from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Department of any of its administrations on any matter of business for a period not to exceed five years; or

(2) Taking other appropriate disciplinary action, such as a reprimand or suspension from participation in a particular matter or matters before the Department.

Subpart C—Judicial Review

§ 98.13 Judicial review.

Any former employee found to have violated 18 U.S.C. 207 by a final administrative decision under this part may seek judicial review of disciplinary action imposed under this part.

PART 99—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General

Sec.

99.735–1 Cross-reference to ethical conduct standards and financial disclosure regulations.

Subparts B–E [Reserved]

Subpart F—Responsibilities of the Government Employee and Special Government Employee Following Departure From Government Service

99.735–80 Applicability.
99.735–81 Post-employment duties and responsibilities.
APPENDIX A TO PART 99—CATEGORIES OF FINANCIAL INTERESTS EXEMPTED FROM THE PROHIBITIONS OF SECTION 208(A) OF TITLE 18, UNITED STATES CODE
APPENDIXES B–D TO PART 99 [RESERVED]
APPENDIX E TO PART 99—STATUTES REGULATING POST-EMPLOYMENT RESPONSIBILITIES OF GOVERNMENT AND SPECIAL GOVERNMENT EMPLOYEES

AUTHORITY: 49 U.S.C. 322; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

SOURCE: Amdt. 99–10, 42 FR 3119, Jan. 14, 1977, unless otherwise noted.

Subpart A—General

§ 99.735–1 Cross-reference to ethical conduct standards and financial disclosure regulations.

Employees of the Department of Transportation are subject to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Department of Transportation regulations at 5 CFR part 6001 which supplement the executive branch-wide standards and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

[61 FR 39904, July 31, 1996]

Subparts B–E [Reserved]

Subpart F—Responsibilities of the Government Employee and Special Government Employee Following Departure From Government Service

§ 99.735–80 Applicability.

The provisions of this subpart apply only to employees who terminated government service before January 1, 1991.

[58 FR 7995, Feb. 11, 1993]

§ 99.735–81 Post-employment duties and responsibilities.

The duties and obligations of a Government employee (or a special Government employee) do not end when government service terminates by retirement, resignation, or for any other reason. In fact the U.S. Code sets forth specific criminal penalties for certain activities by former Government employees. To summarize broadly, section 207 of title 18, U.S. Code, prohibits a former Government employee from acting as agent or attorney in various types of proceedings and matters on behalf of a non-Government party when the employee was involved in the subject matter while working for the Government. The duration and nature of the prohibitions depend in part on the depth of the employee's involvement in the matter while in Government service. Section 208 of the same title relates to activities performed while a Government employee that benefit an employee's prospective private employer. All Government employees and special Government employees should become familiar with the provisions of the two statutory sections cited, which have been made a part of this regulation as appendix E, so that they will be aware of the restrictions which might affect them upon their termination from the Government service.

APPENDIX A TO PART 99—CATEGORIES OF FINANCIAL INTERESTS EXEMPTED FROM THE PROHIBITIONS OF SECTION 208(A) OF TITLE 18, UNITED STATES CODE

I. (a) Pursuant to the authority of section 208(b) of title 18, United States Code, the following are exempted from the prohibitions of section 208(a) of title 18, United States Code, because they are too remote or too inconsequential to affect the integrity of an employee's services in any matter in which he may act in his governmental capacity.

(1) Any holding in a widely held mutual fund, or regulated investment company, which does not specialize in an industry in which the possibility of conflict arise.

(2) Continued participation in a bona fide pension, retirement, group life, health, or accident insurance plan or other employee welfare or benefit plan that is maintained by a business or nonprofit organization by which the employee was formerly employed, to the extent that the employee's rights in the plans are vested and require no additional services by him or further payments to the plans by the organization with respect to the services of the employee. In addition, to the extent that the welfare or benefit plan is a profit sharing or stock bonus plan, this exemption does not apply and the procedures prescribed in § 99.735–15c (c) through (e) will apply to the interest of that employee in the plan.

(3) Participation in an air carrier frequent flyers or substantially similar program that is available to the general public on the same terms and conditions and involves no direct financial interest in the carrier, such as stockholdings or similar types of investment interests.

[Amdt.99–10, 42 FR 3119, Jan. 14, 1977, as amended by Amdt. 99–14, 53 FR 16414, May 9, 1988]

APPENDIXES B–D TO PART 99
[RESERVED]

APPENDIX E TO PART 99—STATUTES REGULATING POST-EMPLOYMENT RESPONSIBILITIES OF GOVERNMENT AND SPECIAL GOVERNMENT EMPLOYEES

NOTE: This appendix applies only to employees who terminated government service before January 1, 1991.

§ 207 *Disqualification of former officers and employees in matters connected with former duties or offical responsibilities; disqualification of partners.*

(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 anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other 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 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, having been so employed, within one year after his employment has ceased, appears personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or directly and substantially interested, and which was under his official responsibility as an officer or employee of the Government at any time within a period of one year prior to the termination of such responsibility:

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both: *Provided*, That nothing in subsection (a) or (b) prevents a former officer or employee, including a former special Government employee, with outstanding scientific or technological qualifications from acting as attorney or agent or appearing personally in connection with a particular matter in a scientific or technological field if the head of the department or agency concerned with the matter shall make a certification in writing, published in the FEDERAL REGISTER, that the national interest would be served by such action or appearance by the former officer or employee.

(c) 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, in connection with any judicial or other 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 and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government 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 not more than one year, or both.

A partner of a present or former 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 or of a present or former special Government employee shall as such be subject to the provisions of sections 203, 205, and 207 of this title only as expressly provided in subsection (c) of this section. (Added Pub. L. 87–349, section 1(a), Oct. 23, 1962, 76 Stat. 1123.)

§ 203 *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, 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 two 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. (Added Pub. L. 87–849, section 1(a), Oct. 23, 1962, 76 Stat. 1124.)

New 18 U.S.C. 208. This section forbids certain actions by an officer or employee of the Government in his role as a servant or representative of the Government. Its thrust is therefore to be distinguished from that of sections 203 and 205 which forbid certain actions in his capacity as a representative of persons outside the Government.

Subsection (a) in substance requires an officer or employee of the executive branch, an independent agency or the District of Columbia, including a special Government employee, to refrain from participating as such in any matter in which, to his knowledge, he, his spouse, minor child or partner has a financial interest. He must also remove himself from a matter in which a business or nonprofit organization with which he is connected or is seeking employment has a financial interest.

Subsection (b) permits the agency of an officer or employee to grant him an *ad hoc* exemption from subsection (a) if the outside financial interest in a matter is deemed not substantial enough to have an effect on the integrity of his services. Financial interests of this kind may also be made nondisqualifying by a general regulation published in the FEDERAL REGISTER.

Section 208 is similar in purpose to the former 18 U.S.C. 434 but prohibits a greater variety of conduct than the ''transaction of business with * * * [a] business entity'' to which the prohibition of section 434 was limited. In addition, the provision in section 208 including the interests of a spouse and others is new, as is the provision authorizing exemptions for insignificant interest.

[Amdt. 99-10, 42 FR 3119, Jan. 14, 1977, as amended by 58 FR 7995, Feb. 11, 1993]

APPENDIX TO SUBTITLE A—UNITED STATES RAILWAY ASSOCIATION—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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APPENDIX 1—CATEGORIES OF FINANCIAL INTERESTS EXEMPTED FROM THE PROHIBITIONS OF SECTIONS 13(A), 15, AND 17(A)
APPENDIX 2—LIST OF EMPLOYEES REQUIRED TO SUBMIT STATEMENTS OF EMPLOYMENT AND FINANCIAL INTERESTS UNDER SECTION 31 [RESERVED]

AUTHORITY: Sec. 202(a)(5)(2) of the Regional Rail Reorganization Act of 1973 (Pub. L. 93–236).

SOURCE: 39 FR 3825, Jan. 30, 1974.

SUBPART A—GENERAL

SECTION 1. *Purpose and policy*. (a) These regulations implement Pub. L. 93–236, The