

**§ 17.9 Procedures.**

(a) *Notice.* The Bureau of Resource Management, Department of State, shall give written notification to any individual who has received an overpayment promptly by first-class mail to the individual at the individual's most current address in the records of the Bureau of Resource Management. The written notice shall inform the individual of:

- (1) The amount of the overpayment;
- (2) The cause of the overpayment;
- (3) The intention of the Department to seek repayment of the overpayment,
- (4) The date by which payment should be made to avoid the imposition of interest, penalties, and administrative costs;
- (5) The applicable standards for the imposing of interest, penalties, and administrative costs;
- (6) The department's willingness to discuss alternative payment arrangements and how the individual may offer to enter into a written agreement to repay the amount of the overpayment under terms acceptable to the Department; and
- (7) The name, address and telephone number of a contact person within the Bureau of Resource Management. The written notice also shall inform the individual of their right to contest the overpayment, their right to request a waiver of recovery of the overpayment, and the procedures to follow in case of such contest or request for waiver of recovery. The notification shall allow at least 30 days from its date within which the individual may contest in writing the overpayment or request a waiver of recovery, including with their submission all evidence and arguments in support of their position.

(b) *Administrative file.* The Bureau of Resource Management will prepare an administrative file as a basis for determination in each case where an individual contests a claim to recover overpayment or requests waiver of recovery of the overpayment. On the basis of the administrative file, the Chief Financial Officer or his or her delegate, shall make the final administrative determination.

(c) *Additional information.* At any time before the final administrative decision, the Department may request

the individual to supplement his or her submission with additional factual information and may request that the individual authorize the Department of State to have access to bank and other financial records bearing on the application of these regulations. If the individual, without good cause shown, fails or refuses to produce the requested additional information or authorization, the Department of State is entitled to make adverse inferences with respect to the matters sought to be amplified, clarified, or verified.

(d) *Decision and right of appeal.* The final administrative decision shall be reduced to writing and sent to the individual. If the decision is adverse to the individual, the notification of the decision shall include a written description of the individual's rights of appeal to the Foreign Service Grievance Board. The Foreign Service Grievance Board shall consider any appeal under this part in accordance with the regulations of the Board set forth in 22 CFR part 901.

**PART 18—REGULATIONS CONCERNING POST EMPLOYMENT CONFLICT OF INTEREST**

**Subpart A—General Provisions**

- Sec.
- 18.1 Scope.
- 18.2 Definitions.
- 18.3 Director General.
- 18.4 Records.

**Subpart B—Applicable Rules**

- 18.5 Interpretative standards; advisory opinions.

**Subpart C—Administrative Enforcement Proceedings**

- 18.6 Authority to prohibit appearances.
- 18.7 Report of violation by a former employee.
- 18.8 Institution of proceeding.
- 18.9 Contents of complaint.
- 18.10 Service of complaint and other papers.
- 18.11 Answer.
- 18.12 Motions and requests.
- 18.13 Representation.
- 18.14 Hearing examiner.
- 18.15 Hearings.
- 18.16 Evidence.
- 18.17 Depositions.
- 18.18 Proposed findings and conclusions.
- 18.19 Decision of the hearing examiner.

## § 18.1

18.20 Appeal to the Board of Appellate Review.

18.21 Decision of the Board of Appellate Review.

18.22 Notice of disciplinary action.

AUTHORITY: 18 U.S.C. 207, as amended, 92 Stat. 1864.

SOURCE: 46 FR 2608, Jan. 12, 1981, unless otherwise noted.

### Subpart A—General Provisions

#### § 18.1 Scope.

This part contains rules governing disciplinary action against a former officer or employee of the Department of State, including the Foreign Service, because of a violation of the post employment conflict of interest prohibitions. Such disciplinary action may include prohibition from practice before the Department of State and any component thereof as defined in this part.

#### § 18.2 Definitions.

For the purpose of this part—

(a) The term *Department* means the Department of State and includes the Foreign Service.

(b) The term *Director General* means the Director General of the Foreign Service and Director of Personnel.

(c) The term *practice* means any informal or formal appearance before, or, with the intent to influence, any oral or written communication to the Department on a pending matter of business on behalf of any other person (except the United States).

#### § 18.3 Director General.

The Director General shall institute and provide for the conduct of disciplinary proceedings involving former employees of the Department as authorized by 18 U.S.C. 207(j), and perform such other duties as are necessary or appropriate to carry out his/her functions under this part.

#### § 18.4 Records.

The roster of all persons prohibited from practice before the Department shall be available to public inspection at the Office of Director General. Other records may be disclosed upon specific request, in accordance with appropriate disclosure regulations of the Department.

## 22 CFR Ch. I (4–1–15 Edition)

### Subpart B—Applicable Rules

#### § 18.5 Interpretative standards; advisory opinions.

(a) A determination that a former officer or employee of the Department violated 18 U.S.C. 207(a), (b) or (c) will be made in conformance with the standards established in the interpretative regulations promulgated, either in interim or final form by the Office of Government Ethics and published at 5 CFR part 737.

(b) Former officers and employees of the Department wanting to know whether a proposed course of conduct would be in conformity with the Act or the interpretive regulations thereunder may contact the Assistant Legal Adviser for Management to request an advisory opinion.

### Subpart C—Administrative Enforcement Proceedings

#### § 18.6 Authority to prohibit appearances.

Pursuant to 18 U.S.C. 207(j), if the Director General finds, after notice and opportunity for a hearing, that a former officer or employee of the Department has violated 18 U.S.C. 207(a), (b) or (c), the Director General in his/her discretion may prohibit that person from engaging in practice before the Department for a period not to exceed five years, or may take other appropriate disciplinary action.

#### § 18.7 Report of violation by a former employee.

(a) If an officer or employee of the Department has reason to believe that a former officer or employee of the Department has violated any provision of this part, or if any such officer or employee receives information to that effect, he/she shall promptly make a written report thereof, which report or a copy thereof shall be forwarded to the Director General. If any other person has information of such violations, he/she may make a report thereof to the Director General or to any officer or employee of the Department.

(b) The Director General shall coordinate proceedings under this part with the Department of Justice in cases where it initiates criminal prosecution.

**§ 18.8 Institution of proceeding.**

Whenever the Director General determines that there is sufficient reason to believe that any former officer or employee of the Department has violated 18 U.S.C. 207(a), (b) or (c), he/she may institute an administrative disciplinary proceeding. The proceeding may be for that person's suspension from practice before the Department or for some lesser penalty. The proceeding shall be instituted by a complaint which names the respondent and is signed by the Director General and filed in his/her office. Except in cases of willfulness, or where time, the nature of the proceeding, or the public interest does not permit, a proceeding will not be instituted under this section until facts or conduct which may warrant such action have been called to the attention of the proposed respondent in writing and he/she has been accorded the opportunity to provide his/her position on the matter.

**§ 18.9 Contents of complaint.**

A complaint shall plainly and concisely describe the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against him/her so that the respondent is able to prepare a defense. Written notification shall be given of the place and of the time within which the respondent shall file his/her answer, which time shall not be less than 15 days from the date of service of the complaint. Notice shall be given that a decision by default may be rendered against the respondent in the event he/she fails to file an answer.

**§ 18.10 Service of complaint and other papers.**

(a) *Complaint.* The complaint or a copy thereof may be served upon the respondent by certified mail; by delivering it to the respondent or his/her attorney or agent of record either in person; or by leaving it at the office or place of business of the respondent, attorney or agent; in any other manner which has been agreed to by the respondent; or by first-class mail in case of a person resident abroad.

(b) *Service of papers other than complaint.* Any paper other than the com-

plaint may be served upon a respondent as provided in paragraph (a) of this section or by mailing the paper by first-class mail to the respondent at the last address known to the Director General, or by mailing the paper by first-class mail to the respondent's attorney or agent of record. Such mailing shall constitute complete service.

(c) Whenever the filing of a paper is required or permitted in connection with a proceeding, and the place of filing is not specified by this subpart or by rule or order of the hearing examiner, the paper shall be filed with the Director General, Department of State, Washington, DC 20520. All papers shall be filed in duplicate.

**§ 18.11 Answer.**

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint or notice of institution of the proceeding, unless on application the time is extended by the Director General. The answer shall be filed in duplicate with the Director General.

(b) *Contents.* The answer shall contain a statement of facts which constitute the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as proved. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the Director General shall constitute a waiver of hearing, and the Director General may make his/her decision by default without a hearing or further procedure.

**§ 18.12 Motions and requests.**

Motions and requests, including requests to intervene, may be filed with the Director General.

**§ 18.13 Representation.**

A respondent or proposed respondent may appear in person or he/she may be represented by counsel or other representative. The Director General may

#### **§ 18.14**

be represented by an attorney or other employee of the Department.

#### **§ 18.14 Hearing examiner.**

(a) After an answer is filed, if the Director General decides to continue the administrative disciplinary proceedings, he/she shall appoint a hearing examiner to conduct those proceedings under this part.

(b) *Authorities.* Among other powers, the hearing examiner shall have authority, in connection with any proceeding assigned or referred to him/her, to do the following:

(1) Take evidence under appropriate formalities;

(2) Make rulings upon motions and requests;

(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(10) Make initial decisions.

#### **§ 18.15 Hearings.**

Hearings shall be stenographically recorded and transcribed and the testimony of witnesses shall be taken under oath or affirmation. Hearings will be closed unless an open hearing is requested by the respondent, except that if classified information or protected information of third parties is likely to be adduced at the hearing, it will remain closed. If either party to the proceeding fails to appear at the hearing, after due notice thereof has been sent to him/her, he/she shall be deemed to have waived the right to a hearing and the hearing examiner may make a de-

#### **22 CFR Ch. I (4-1-15 Edition)**

cision against the absent party by default.

#### **§ 18.16 Evidence.**

The rules of evidence prevailing in courts of law and equity are not controlling in hearings under this part. However, the hearing examiner shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

#### **§ 18.17 Depositions.**

Depositions for use at a hearing may, with the consent of the parties in writing or the written approval of the hearing examiner, be taken by either the Director General or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories. There shall be at least 10 days written notice to the other party. The requirement of a 10-day written notice may be waived by the parties in writing. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogation shall be mailed or delivered to the opposing party at least 5 days before the date of taking the depositions, unless the parties mutually agree otherwise. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

#### **§ 18.18 Proposed findings and conclusions.**

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the hearing examiner, prior to making his/her decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

#### **§ 18.19 Decision of the hearing examiner.**

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the hearing examiner shall make the initial decision. The decision shall include

(a) A statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and

(b) An order of suspension from practice before the Department or other appropriate disciplinary action, or an order of dismissal of the complaint. The hearing examiner shall file the decision with the Director General and shall transmit a copy thereof to the respondent or his/her attorney of record. A party adversely affected by the decision shall be given notice of his or her right to appeal to the Board of Appellate Review (part 7 of this chapter) within 30 days from the date of the hearing examiner's decision.

**§ 18.20 Appeal to the Board of Appellate Review.**

Within 30 days from the date of the hearing examiner's decision, either party may appeal to the Board of Appellate Review. The appeal shall be taken by filing notice of appeal, in triplicate, with the Board of Appellate Review, which shall state with particularity exceptions to the decision of the hearing examiner and reasons for such exceptions. If an appeal is by the Director General, he/she shall transmit a copy thereof to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief, in triplicate, with the Board of Appellate Review. If the reply brief is filed by the Director General, he/she shall transmit a copy of it to the respondent. The Director General shall transmit the entire case record to the Board of Appellate Review within 30 days after an appeal has been taken.

**§ 18.21 Decision of the Board of Appellate Review.**

The Board of Appellate Review shall decide the appeal on the basis of the record. The decision of the Board shall be final, and not subject to further administrative review. Copies of the Board's decision shall be forwarded promptly to the parties by the Board.

**§ 18.22 Notice of disciplinary action.**

Upon the issuance of a final order suspending a former officer or employee from practice before the Department,

the Director General shall give notice thereof to appropriate officers and employees of the Department. Officers and employees of the Department shall refuse to participate in any appearance by such former officer or employee or to accept any communication which constitutes the prohibited practice before the Department during the period of suspension. The Director General shall take other appropriate disciplinary action as may be required by the final order.

**PART 19—BENEFITS FOR SPOUSES AND FORMER SPOUSES OF PARTICIPANTS IN THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM**

Sec.

- 19.1 Authorities.
- 19.2 Definitions.
- 19.3 Participants.
- 19.4 Special rules for computing creditable service for purposes of payments to former spouses.
- 19.5 Required notifications to department respecting spouses and former spouses.
  - 19.5-1 Notification from participant or annuitant.
  - 19.5-2 Notification to Department from former spouses.
  - 19.5-3 Residence of spouse during service at unhealthful post.
- 19.6 Court orders and divorce decrees.
  - 19.6-1 Orders by a court.
  - 19.6-2 Qualifying court order.
  - 19.6-3 Application for payment.
  - 19.6-4 Date of court orders.
  - 19.6-5 Preliminary review.
  - 19.6-6 Notification.
  - 19.6-7 Decision.
  - 19.6-8 Allotment to beneficiary.
  - 19.6-9 Limitations.
  - 19.6-10 Liability.
- 19.7 Spousal agreements.
  - 19.7-1 Purpose.
  - 19.7-2 Agreement with spouse.
  - 19.7-3 Agreement with former spouse.
  - 19.7-4 Form of agreement.
  - 19.7-5 Limitations.
  - 19.7-6 Duration and precedence of spousal agreements.
- 19.8 Obligations of members.
- 19.9 Pension benefits for former spouses.
  - 19.9-1 Entitlement.
  - 19.9-2 Commencement and termination.
  - 19.9-3 Computation and payment of pension to former spouse.
  - 19.9-4 Effect on annuitant.
- 19.10 Types of annuities to members.
  - 19.10-1 Full annuity.