

PART 7400 [RESERVED]

PART 7401—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE MERIT SYSTEMS PROTECTION BOARD

Sec.

7401.101 General.

7401.102 Prior approval for outside employment.

AUTHORITY: 5 U.S.C. 1204(h), 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 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; 5 CFR 2635.105, 2635.803.

SOURCE: 72 FR 26534, May 10, 2007, unless otherwise noted.

§ 7401.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Merit Systems Protection Board (MSPB) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

(b) *Cross-references.* In addition to 5 CFR part 2635 and this part, MSPB employees are required to comply with implementing guidance and procedures issued by the MSPB in accordance with 5 CFR 2635.105(c). MSPB employees are also subject to the regulations concerning executive branch financial disclosure contained in 5 CFR part 2634, the regulations concerning executive branch financial interests contained in 5 CFR part 2640, and the regulations concerning executive branch employee responsibilities and conduct contained in 5 CFR part 735.

§ 7401.102 Prior approval for outside employment.

(a) *General requirement.* Before engaging in any outside employment, with or without compensation, an employee of the MSPB, other than a special Government employee, must obtain written approval from the employee's supervisor and the concurrence of the Designated Agency Ethics Official (DAEO) or the alternate DAEO, except to the extent that the MSPB DAEO or alternate DAEO has issued an instruction or manual pursuant to paragraph (e) of this section exempting an activ-

ity or class of activities from this requirement. Nonetheless, special Government employees remain subject to other statutory and regulatory provisions governing their outside activities, including 18 U.S.C. 203(c) and 205(c), as well as applicable provisions of 5 CFR part 2635.

(b) *Definition of employment.* For purposes of this section, employment means any form of non-Federal employment or business relationship involving the provision of personal services, whether or not for compensation. It includes, but is not limited to, services as an officer, director, employee, agent, advisor, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. The definition does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless:

(1) The employee will receive compensation other than reimbursement of expenses;

(2) The organization's activities are devoted substantially to matters relating to the employee's official duties as defined in 5 CFR 2635.807(a)(2)(i)(B) through (E) and the employee will serve as officer or director of the organization; or

(3) The activities will involve the provision of consultative or professional services. *Consultative services* means the provision of personal services by an employee, including the rendering of advice or consultation, which requires advanced knowledge in a field of science or learning customarily acquired by a course of specialized instruction and study in an institution of higher education, hospital, or similar facility. *Professional services* means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession as defined in 5 CFR 2636.305(b)(1) or involves a fiduciary relationship as defined in 5 CFR 2636.305(b)(2).

NOTE TO § 7401.102(b): There is a special approval requirement set out in both 18 U.S.C.