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PART 200—EMPLOYEE RESPONSIBILITIES AND CONDUCT

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AUTHORITY: E.O. 11222, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 735.101 *et seq.*, 5 CFR 2638.101 *et seq.*, unless otherwise noted.

SOURCE: 31 FR 2593, Feb. 10, 1966, unless otherwise noted.

Subpart A—General Provisions

§ 200.735–101 Purpose.

The purpose of the regulations in this part is to maintain the highest standards of honesty, integrity, impartiality, and conduct on the part of all employees of the U.S. International Trade Commission and to maintain public confidence that the business of the Commission is being conducted in accordance with such standards.

[31 FR 2593, Feb. 10, 1966, as amended at 46 FR 17542, Mar. 19, 1981]

§ 200.735–102 Definitions.

In this part:

(a) *Commission* means the U.S. International Trade Commission.

(b) *Commissioner* means a Commissioner of the U.S. International Trade Commission.

(c) *Employee* means a Commissioner, employee, or special Government employee of the Commission.

(d) *Executive order* means Executive Order 11222 of May 8, 1965.

(e) *Person* means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(f) *Special Government employee* means a ''special Government employee'' as defined in section 202 of Title 18 of the United States Code who is employed by the Commission.

[31 FR 2593, Feb. 10, 1966, as amended at 44 FR 23823, Apr. 23, 1979; 46 FR 17542, Mar. 19, 1981; 56 FR 36726, Aug. 1, 1991]

§ 200.735–103 Counseling service.

(a) The Chairman shall appoint a Designated Agency Ethics Official (DAEO) who serves as liaison to the Office of Government Ethics and who is responsible for carrying out the Commission's ethics program. The program shall be designed to implement titles II, IV, and V of the Ethics in Government Act of 1978, Executive Order No. 11222, the regulations in this part, and

other statutes and regulations applicable to agency ethics matters. The DAEO will be a senior Commission employee with experience demonstrating the ability to review financial disclosure reports and counsel employees with regard to resolving conflicts of interest, review the financial disclosures of Presidential nominees to the Commission prior to confirmation hearings, counsel employees with regard to ethics standards, assist supervisors in implementing the Commission's ethics program, and periodically evaluate the ethics program.

(b) The Chairman shall select an Alternate Agency Ethics Official who will serve as Deputy DAEO to whom any of the DAEO's statutory and regulatory duties may be delegated.

(c) The DAEO shall coordinate and manage the agency's ethics program. The DAEO duties shall consist of:

(1) Liaison with the Office of Government Ethics;

(2) Review of financial disclosure reports, including reports filed by Presidential nominees to the Commission;

(3) Initiation and maintenance of ethics education and training programs;

(4) Monitoring administrative actions and sanctions; and

(5) Implementation of the specific program elements listed in Office of Government Ethics regulations, 5 CFR 738.203(b).

[46 FR 17542, Mar. 19, 1981, as amended at 56 FR 36726, Aug. 1, 1991]

§ 200.735–104 Disciplinary and other remedial action.

(a) An employee who violates any of the regulations in this part may be disciplined. The disciplinary action may be in addition to any other penalty prescribed by law for the violation. In addition to, or in lieu of, disciplinary action, remedial action to end conflicts or appearance of conflicts of interest may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the employee of his conflicting interest; or

(3) Disqualification for a particular assignment.

(b) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

Subpart B—Provisions Governing Ethical and Other Conduct and Responsibilities of Employees

§ 200.735–104a Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

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

(f) Affecting adversely the confidence of the public in the integrity of the Government.

[32 FR 16210, Nov. 28, 1967]

§ 200.735–105 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from any person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;

(2) Conducts operations or activities that are being investigated by the Commission; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) The prohibitions set forth under paragraph (a) of this section shall not apply to:

(1) Solicitations or acceptances based on obvious family or personal relationships (such as those between parents, children, or spouse of the employee and the employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) The acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course

of a luncheon or dinner meeting or other meeting or on a field trip, and of ground transportation of nominal value in the course of a field trip, where an employee may properly be in attendance.

(3) The acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value.

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(e) Neither this section nor § 200.735–106 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B–128527 of the Comptroller General dated March 7, 1967.

[32 FR 16210, Nov. 28, 1967, as amended at 46 FR 41036, Aug. 14, 1981]

§ 200.735–106 Outside employment and other activities.

(a) An employee may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of his Government employment: *Provided,* That no Commissioner shall actively engage in any other business, vocation, or employment than that of serving as a Commissioner (19 U.S.C. 1330(c)). Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(2) Outside employment tending to impair the employee's capacity to perform his Government duties and responsibilities in an acceptable manner.

(b) An employee (except a special Government employee) shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government (18 U.S.C. 209).

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, or this part. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the Foreign Service, that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the Commission gives authorization for the use of nonpublic information (other than information received in confidence) on the basis that the use is in the public interest and would not be in violation of law. In addition, Commissioners shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission, or which draws substantially on official data or

ideas which have not become part of the body of public information.

(d) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law.

(2) Participation in the affairs of, or acceptance of, an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

[33 FR 8447, June 7, 1968]

§ 200.735–107 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties or responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, the Executive order, or this part.

(c) Pursuant to the authority contained in 18 U.S.C. 208(b), the following types of financial interests are considered too remote or inconsequential to affect a Commission employee's integrity or services and do not constitute a conflict of interest under 18 U.S.C. 208(a):

(1) In widely-held, diversified mutual funds or regulated investment companies, regardless of their value; and

(2) In state or local government bonds, or other noncorporate bonds, regardless of their value.

[31 FR 2593, Feb. 10, 1966, as amended at 44 FR 23823, Apr. 23, 1979]

§ 200.735–108 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property issued to him.

§ 200.735–109 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in § 200.735–106(c), directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public.

§ 200.735–110 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State or local taxes. For the purpose of this section a *just financial obligation* means one acknowledged by the employee or reduced to judgment by a court, and *in a proper and timely manner* means in a manner which the Commission determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of a dispute between an employee and an alleged creditor, the Commission shall make no determination of the validity or amount of the disputed debt.

§ 200.735–111 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 3 of Executive Order 10927 and similar Commission-approved activities.

§ 200.735–112 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 200.735–113 Miscellaneous statutory provisions.

Each employee shall familiarize himself with each statute that relates to his ethical and other conduct as a Government employee, including the following statutes:

(a) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the ''Code of Ethics for Government Service.''

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against—

(1) Embezzlement of Government money or property (18 U.S.C. 641);

(2) Failing to account for public money (18 U.S.C. 643); and

(3) Embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(q) The prohibition against an employee acting as an agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

[31 FR 2593, Feb. 10, 1966, as amended at 32 FR 16210, Nov. 28, 1967]

Subpart C—Provisions Governing Statements of Employment and Financial Interests

§ 200.735–114 Employees required to submit statements.

Except as provided in § 200.735–114a, the following employees shall submit confidential statements of employment and financial interests:

(a)(1) Employees in grade GS–13 or above under section 5332 of title 5, United States Code, or in comparable or higher positions not subject to that section, other than those employees who are required to file public financial disclosure reports by title II of the Ethics in Government Act of 1978.

(2) The Director of Personnel shall list all such positions, shall include the listing in the chapter of the Commission's Policy Manual pertaining to the filing of confidential statements of employment and financial interests, and shall furnish copies thereof to the Deputy DAEO and to affected employees.

(3) The Director of Personnel shall update the listing required by paragraph (a)(2) of this section and shall take all other steps required by paragraph (a)(2) as of January 1 and July 1 of each year.

(b)(1) Employees classified below GS–13 under section 5332 of title 5, United States Code, or at a comparable pay

level under other authority, other than those employees who are required to file public financial disclosure reports by title II of the Ethics in Government Act of 1978, who are: (i) Responsible for making a decision or taking an action in regard to Commission contracting or procurement, (ii) responsible for conducting investigative and research activities where the decision to be made or action to be taken could have an economic impact on any non-Federal enterprise, or (iii) responsible for exercising the authority of any supervisory or investigative employee in the absence of such employee.

(2) The Director of Personnel, upon obtaining the advice of the General Counsel, shall be responsible for determining which positions below GS–13 meet the criteria of paragraph (b)(1) of this section. The Director of Personnel shall justify his or her determination in writing and shall submit it to the Office of Personnel Management for its approval. Upon obtaining the approval of the Office of Personnel Management, the Director of Personnel shall include the listing of these positions in the chapter of the Commission's Policy Manual pertaining to the filing of confidential statements of employment and financial interests and shall furnish copies thereof to the Deputy DAEO and to affected employees.

(3) The Director of Personnel shall evaluate the determination under paragraph (b)(2) of this section as of January 1 and July 1 of each year. When organizational changes or personnel actions indicate that positions should be either added to or taken from the list of positions which the Director of Personnel has determined meet the criteria of paragraph (b)(1) of this section, the Director of Personnel shall make a new determination under paragraph (b)(2) of this section and shall take all other steps required by paragraph (b)(2) immediately upon the implementation of said organizational changes or personnel actions.

[46 FR 17543, Mar. 19, 1981, as amended at 56 FR 36726, Aug. 1, 1991]

§ 200.735–114a Employees not required to submit statements.

(a) Employees in positions that meet the criteria in paragraphs (b)(1) or (c)(1) of § 200.735–114 of this subpart may be exempted from the reporting requirement of § 200.735–114 if the Director of Personnel, upon obtaining the advice of the General Counsel, determines that:

(1) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote;

(2) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

(b) All determinations made pursuant to paragraph (a) shall be documented in a writing which shall be annexed to the listings required by paragraphs (b)(2) and (c)(2) of § 200.735–114 of this subpart. The factual bases and reasons for determinations under paragraphs (a)(1) and (a)(2) of this section shall be specified by the Director of Personnel in said writing. Said writing shall refer to the *position* only and shall not include the name, or other identifying particular, of the incumbent occupying the position.

(c) A statement of employment and financial interests from commissioners is not required by this subpart. Such employees are subject to separate reporting requirements under section 401 of Executive Order 11222 (3 CFR 306 (1964–1965 Comp.)).

[42 FR 59958, Nov. 23, 1977]

§ 200.735–114b Employee complaints on filing requirements.

Any employee who believes that his position has been improperly included under the reporting requirements of § 200.735–114 may obtain a review thereof through the Commission's grievance procedures.

[42 FR 59958, Nov. 23, 1977]

§ 200.735–114c Voluntary submission by employees.

Any employee not required to submit a statement of employment and financial interests under the criteria established by § 200.735–114 may submit such a statement to the Deputy Counselor

in the manner specified in § 200.735–116 if he or she so desires.

[42 FR 59958, Nov. 23, 1977]

§ 200.735–115 Forms—Interests not to be reported.

(a) Statements required to be submitted by the provisions of this subpart shall be prepared on forms (the format of which is prescribed by the Office of Government Ethics, Office of Personnel Management) available from the Deputy DAEO.

(b) Employees, GS–15 and below, who are required to file a statement of employment and financial interests under § 200.735–114 of this part, need not report to the Deputy DAEO those financial interests specified in § 200.735–107(c) (1) and (2) of this part. Commissioners and Commission employees, GS–16 and above, are required to report the financial interests specified in § 200.735–107(c) (1) and (2) of this part under section 202(a) of the Ethics in Government Act of 1978.

[44 FR 23823, Apr. 23, 1979, as amended at 56 FR 36726, Aug. 1, 1991]

§ 200.735–116 Time and place for submission of employees' statements.

(a) An employee required to submit such a statement shall submit it not later than:

(1) Ninety days after the effective date of the regulations in this part, if employed on or before that effective date; or

(2) Thirty days after his entrance on duty, but not earlier than ninety days after the effective date, if appointed after the effective date.

(b) Each such statement shall be submitted to the Office of the General Counsel of the Commission and shall be marked ''Submitted in Confidence to the Deputy DAEO.'': *Provided*, That the statement of the Deputy DAEO shall be submitted directly to the DAEO.

[31 FR 2593, Feb. 10, 1966, as amended at 56 FR 36726, Aug. 1, 1991]

§ 200.735–117 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report under this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts of interest provisions of section 208 of title 18, United States Code, or the regulations in this part.

[32 FR 16211, Nov. 28, 1967]

§ 200.735–118 Interests of employees' relatives.

The interest of a spouse, minor child or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this section, *member of an employee's immediate household* means those blood relations who are residents of the employee's household.

§ 200.735–119 Information not known by employees.

If any information required to be included in a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information on his behalf.

§ 200.735–120 Information prohibited.

An employee is not required to submit in a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from, or contracts with, the Government are deemed *business enterprises* and are required to be included in an employee's statement of employment and financial interests.

§ 200.735–121 Confidentiality of employees' statements.

Each statement of employment and financial interests, and each supplementary statement, shall be held in confidence. To ensure this confidentiality, the Deputy DAEO is authorized to review and retain the statements. He shall be responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. The Deputy DAEO may not disclose information from the statement except as the Civil Service Commission or the Chairman of the Tariff Commission may determine for good cause shown.

[32 FR 16211, Nov. 28, 1967, as amended at 56 FR 36726, Aug. 1, 1991]

§ 200.735–122 Special Government employees.

(a) Except as provided in paragraph (b) of this section, each special Government employee shall submit a statement of employment and financial interests which reports:

(1) All of his employment; and

(2) The financial interests of the special Government employee which the Commission determines are relevant in the light of the duties he is to perform.

(b) The Commission may waive the requirement in paragraph (a) of this section for the submission of a statement of employment and financial interests in the case of a special Government employee who is not a consultant or an expert when the Commission finds that the duties of the position held by that special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purpose of this paragraph, *consultant* and *expert* have the meanings given those terms by Chapter 304 of the Federal Personnel Manual.

(c) A statement of employment and financial interests required to be submitted under this section shall be submitted as provided for employees in § 200.735–116. Each special Government employee shall keep his statement current throughout his employment with the Commission by the submission of supplementary statements.

[31 FR 2593, Feb. 10, 1966, as amended at 32 FR 16211, Nov. 28, 1967]

§ 200.735–123 Effect of employees' and special Government employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees and special Government employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee or special Government employee does not permit him or any other person to participate in a matter which his or the other person's participation in is prohibited by law, order, or regulation.

Subpart D—Provisions for Administrative Enforcement of Postemployment Conflict of Interest Restrictions

AUTHORITY: Ethics in Government Act of 1978, Pub. L. 95–521, 92 Stat. 1864 (18 U.S.C. 207), as amended by Pub. L. 96–28, 93 Stat. 76 (1979); 45 FR 7402, (1979) (5 CFR part 737).

SOURCE: 45 FR 31988, May 15, 1980, unless otherwise noted.

§ 200.735–124 General.

The procedures in this subpart are established pursuant to subsection 207(j) of title 18, United States Code, for the administrative enforcement of the restrictions on postemployment activities in Title V of the Ethics in Government Act of 1978 (18 U.S.C. 207 (a), (b), and (c)) and implementing regulations published by the Office of Government Ethics (5 CFR part 737). Subsections 207 (a), (b), and (c) of Title 18, United States Code, prohibit certain forms of representational activity or communications by former Commission employees.

§ 200.735–125 Exemption from restrictions.

(a) *Scientific and technological information solicited by the Commission.* Communications of a former Commission employee solely for the purpose of furnishing scientific or technological information solicited by the Commission in the course of its statutory investigations are exempted from the restrictions on postemployment practices.

(b) *Exemption for persons with special qualifications in a technical discipline*—(1) *Applicability.* A former Commission employee may be exempted from the restrictions on postemployment practices if the Chairman, in consultation with the Director, Office of Government Ethics (the Director), executes a certification published in the FEDERAL REGISTER that the former Commission employee has outstanding qualifications in a scientific, technological, or other technical discipline; that the former Commission employee is acting with respect to a particular matter which requires such qualifications; and that the national interest would be served by the former Commission employee's participation.

(2) *Certification authority.* Certification shall be by the Chairman, or in the absence thereof, by the acting head of the Commission. Consultation with the Director shall precede any certification. The exemption is effective upon the execution of the certification. The Secretary shall immediately transmit the certification to the FEDERAL REGISTER for publication.

(c) *Testimony and statement under oath are subject to penalty of perjury*—(1) *Applicability.* A former Commission employee may testify before any court, board, commission, or legislative body with respect to matters of fact within the personal knowledge of the former Commission employee. This provision does not, however, allow a former Commission employee, otherwise barred under 18 U.S.C. 207 (a), (b), or (c), to testify on behalf of another as an expert witness except (i) to the extent that the former employee may testify from personal knowledge as to occurrences which are relevant to the issues in the proceeding, including those in which the Commission employee participated, utilizing his or her expertise, or (ii) in any proceeding where it is determined that another expert in the field cannot practically be obtained, that it is impracticable for the facts or opinions on the same subject to be obtained by other means, and that the former Commission employee's testimony is required in the interest of justice.

(2) *Statements under penalty of perjury.* A former Commission employee may make any statements required to be made under penalty of perjury, such as those required in registration statements for securities, tax returns, or security clearances. The exception does not, however, permit a former employee to submit pleadings, applications, or other documents in a representational capacity on behalf of another merely because the attorney or other representative must sign the documents under oath or penalty of perjury.

§ 200.735–126 Administrative enforcement proceedings.

The following are basic guidelines for administrative enforcement of restrictions on postemployment activities:

(a) *Initiation of administrative disciplinary hearing.* (1) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information does not appear to be frivolous, the Chairman shall expeditiously provide such information, along with any comments or agency regulations, to the Director and to the Criminal Division, Department of Justice. Any investigation or administrative action will be coordinated with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice informs the Commission that it does not intend to initiate criminal prosecution.

(2) Whenever the Chairman has determined after appropriate review that there is reasonable cause to believe that a former Commission employee has violated 18 U.S.C. 207 (a), (b), or (c) or implementing regulations of the Office of Government Ethics (5 CFR part 737), he or she shall initiate an administrative disciplinary proceeding by providing the former Commission employee with notice as defined in paragraph (b).

(3) The Chairman shall take all necessary steps to protect the privacy of former employees prior to a determination of sufficient cause to initiate an administrative disciplinary hearing.

(b) *Notice.* (1) The Chairman shall provide the former Commission employee with notice of an administrative disciplinary proceeding and an opportunity for a hearing.

(2) Notice to the former Commission employee must include—

(i) A statement of allegations and the basis thereof in detail sufficient to enable the former Commission employee to prepare an adequate defense;

(ii) Notification of the right to a hearing;

(iii) An explanation of the method by which a hearing may be requested; and

(iv) A copy of this subpart.

(c) *Examiner.* (1) The presiding official at proceedings under this subpart shall be an individual to whom the Chairman has delegated authority to make a recommended determination (hereinafter referred to as examiner).

(2) An examiner shall be an experienced government attorney of high moral character and sound judgment.

(3) An examiner shall be impartial. No individual who has participated in any manner in the decision to initiate the proceedings may serve as an examiner in those proceedings.

(d) *Scheduling of hearing.* In setting a hearing date, the examiner shall give due regard to the former Commission employee's need for—

(1) Adequate time to prepare a defense properly, and

(2) An expeditious resolution of allegations that may be damaging to his or her reputation.

(e) *Hearing rights.* A hearing shall include, at a minimum, the following rights:

(1) To be represented by counsel,

(2) To introduce and examine witnesses and to submit physical evidence,

(3) To confront and cross-examine adverse witnesses,

(4) To present oral argument; and

(5) To obtain a transcript or recording of the proceeding on request.

(f) *Burden of proof.* In any hearing under this subpart the Commission has the burden of proof and must establish a violation by clear and convincing evidence. The case of the Commission shall be presented by the Office of the General Counsel.

(g) *Recommended determination.* (1) The examiner shall make a recommended determination exclusively on matters of record in the proceeding and shall set forth therein all findings of fact and conclusions of law relevant to the matters at issue. The recommended determination shall be delivered to the parties.

(2) Within ten (10) days of the date of receipt of the recommended determination either party may submit to the Chairman exceptions to the recommended determination and alternative findings of fact and conclusions of law.

(h) *Final administrative decision.* (1) Within forty (40) days of the date of the recommended determination, the Chairman shall make a final administrative decision based solely on the record of the proceedings.

(2) In the event that no hearing is requested, the Chairman shall make a final administrative decision within forty (40) days of the date notice is provided to the former employee and the record of the proceedings shall consist of the statement of allegations as defined in paragraph (b)(2)(i) and whatever written response the former employee shall provide.

(3) The Chairman shall specify in the final administrative decision the findings of fact and conclusions of law that differ from the recommended determination of the hearing examiner.

(i) *Administrative sanctions.* The Chairman may take appropriate action in the case of any individual who is found in violation of 18 U.S.C. 207(a), (b), or (c) or implementing regulations of the Office of Government Ethics (5 CFR part 737) after a final administrative decision by—

(1) Prohibiting the individual 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 Commission on any matter of business for a period not to exceed five (5) years. This prohibition may be enforced by directing Commission employees to refuse to

participate in any such appearance or to accept any such communication;

(2) Taking other appropriate disciplinary action.

(j) *Judicial review.* Any person found to have participated in a violation of 18 U.S.C. 207(a), (b), or (c) or these regulations may seek judicial review of the administrative determination. Review shall be before the appropriate United States district court.