

forth in 18 U.S.C. 207 and 5 CFR Part 737. These procedures are established pursuant to the requirement in 18 U.S.C. 207(j). The General Counsel is responsible for resolving questions on the legal interpretation of 18 U.S.C. 207 or regulations issued thereunder and for advising employees on these provisions.

(b) For purposes of this subpart, (1) “Former employee” means a former Government employee as defined in 5 CFR 737.3(a)(4) who had served in the Department;

(2) “Lesser included sanctions” means sanctions of the same type but more limited scope as the proposed sanction; thus a bar on communication with an operating unit is a lesser included sanction of a proposed bar on communication with the Department and a bar on communication for one year is a lesser included sanction of a proposed five year bar;

(3) “Assistant Secretary” means the Assistant Secretary for Administration or designee;

(4) “Director” means the Director for Personnel and Civil Rights, Office of the Secretary, or designee;

(5) “Inspector General” and “General Counsel” include any persons designated by them to perform their functions under this subpart; and

(6) “Days” means calendar days except that a dead-line which falls on a weekend or holiday shall be extended to the next working day.

§ 0.735-43 Report of violations and investigation.

(a) If an employee has information which indicates that a former employee has violated any provisions of 18 U.S.C. 207 or regulations thereunder, that employee shall report such information to the Inspector General.

(b) Upon receiving information as set forth in paragraph (a) of this section from an employee or any other person, the Inspector General, upon a determination that it is nonfrivolous, shall expeditiously provide the information to the Director, Office of Government Ethics, and to the Criminal Division, Department of Justice. The Inspector General shall coordinate any investigation under this subpart with the Department of Justice, unless the Depart-

ment of Justice informs the Inspector General that it does not intend to initiate criminal prosecution.

(c) All investigations under this subpart shall be conducted in such a way as to protect the privacy of former employees. To ensure this, to the extent reasonable and practical, any information received as a result of an investigation shall remain confidential except as necessary to carry out the purposes of this subpart, including the conduct of an investigation, hearing, or judicial proceeding arising thereunder, or as may be required to be released by law.

(d) The Inspector General shall report the findings of the investigation to the Director.

§ 0.735-44 Initiation of proceedings.

If the Director determines, after an investigation by the Inspector General, that there is reasonable cause to believe that a former employee has violated post-employment statutes or regulations, the Director shall initiate administrative proceedings under this subpart by proposing sanctions against the former employee and by providing notice to the former employee as set forth in § 0.735-45.

§ 0.735-45 Notice.

(a) The Director shall notify the former employee of the proposed disciplinary action in writing by registered or certified mail, return receipt requested, or by any means which gives actual notice or is reasonably calculated to give actual notice. Notice shall be considered received if sent to the last known address of the former employee.

(b) The notice shall include:

(1) A statement of allegations and the basis thereof sufficiently detailed to enable the former employee to prepare a defense;

(2) A statement that the former employee is entitled to a hearing if requested within 20 days from date of notice;

(3) An explanation of the method by which the former employee may request a hearing under this subpart including the name, address, and telephone number of the person to contact if there are further questions;

§ 0.735-46

(4) A statement that the former employee has the right to submit documentary evidence to the Director if a hearing is not requested and an explanation of the method of submitting such evidence and the date by which it must be received; and

(5) A statement of the sanctions which have been proposed.

§ 0.735-46 Hearing.

(a) *Examiner.* (1) Upon timely receipt of a request for a hearing, the Director shall refer the matter to the Assistant Secretary who shall appoint an examiner to conduct the hearing and render an initial decision.

(2) The examiner shall be impartial, shall not be an individual who has participated in any manner in the decision to initiate the proceedings, and shall not have been employed under the immediate supervision of the former employee or have been employed under a common immediate supervisor. The examiner shall be admitted to practice law and have suitable experience and training to conduct the hearing, reach a determination and render an initial decision in an equitable manner.

(b) *Time, date, and place.* The hearing shall be conducted at a reasonable time, date, and place as set by the examiner. In setting the date, the examiner shall give due regard to the need for both parties to adequately prepare for the hearing and the importance of expeditiously resolving allegations that may be damaging to the former employee's reputation.

(c) *Former employee's rights.* At a hearing, the former employee shall have the right:

(1) To represent himself or herself or 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 receive a transcript or recording of the proceedings, on request.

(d) *Procedure and evidence.* In a hearing under this subpart, the Federal Rules of Evidence and Civil Procedure do not apply but the examiner shall exclude irrelevant or unduly repetitious evidence and all testimony shall be taken under oath or affirmation. The

15 CFR Subtitle A (1-1-10 Edition)

examiner may make such orders and determinations regarding the admissibility of evidence, conduct of examination and cross-examination, and similar matters which the examiner deems necessary or appropriate to ensure orderliness in the proceedings and fundamental fairness to the parties. There shall be no discovery unless agreed to by the parties and ordered by the examiner. The hearing shall not be open to the public unless the former employee or the former employee's representative waives the right to a closed hearing, in which case the examiner shall determine whether the hearing will be open to the public.

(e) *Ex-parte communications.* The former employee, the former employee's representative, and the agency representative shall not make any ex-parte communications to the examiner concerning the merits of the allegations against the former employee prior to the issuance of the initial decision.

(f) *Initial decision.* (1) The proposed sanctions shall be sustained in an initial decision upon a determination by the examiner that the preponderance of the evidence indicated a violation of post-employment statutes or regulations.

(2) The examiner shall issue an initial decision which is based exclusively on the transcript of testimony and exhibits together with all papers and requests filed in connection with the proceeding and which sets forth all findings of fact and conclusions of law relevant to the matter at issue.

(3) The initial decision shall become final thirty days after issuance if there has been no appeal filed under § 0.735-48.

§ 0.735-47 Decision absent a hearing.

(a) If the former employee does not request a hearing in a timely manner, the Director shall make an initial decision on the basis of information compiled in the investigation, and any submissions made by the former employee.

(b) The proposed sanction or a lesser included sanction shall be imposed if the record indicates a violation of post-employment statutes or regulations by a preponderance of the evidence.