

PART 0—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General Provisions

Sec.

- 0.735-1 Purpose.
- 0.735-2 Cross-references to ethical conduct, financial disclosure, and other applicable regulations.
- 0.735-3 Applicability.
- 0.735-4 Definitions.

Subparts B–C [Reserved]

Subpart D—Regulatory Limitations Upon Employee Conduct

- 0.735-10 Administrative extension of statutory limitations.
- 0.735-10a—0.735-15 [Reserved]
- 0.735-16 Indebtedness.
- 0.735-17 Gambling, betting, and lotteries.
- 0.735-18 General conduct prejudicial to the Government.
- 0.735-19 Reporting undue influence to superiors.

Subpart E [Reserved]

Subpart F—Supplementary Regulations

- 0.735-32 Departmental.
- 0.735-33 Operating units.
- 0.735-34 Effective date of supplementary regulations.

Subpart G—Administration

- 0.735-35 Responsibilities of employees.
- 0.735-36 Responsibilities of operating units.
- 0.735-37 Procedure.
- 0.735-38 Availability for counseling.
- 0.735-39 Authorizations.
- 0.735-40 Disciplinary and other remedial action.
- 0.735-41 Inquiries and exceptions.

Subpart H—Disciplinary Actions Concerning Post-Employment Conflict of Interest Violations

- 0.735-42 Scope.
- 0.735-43 Report of violations and investigation.
- 0.735-44 Initiation of proceedings.
- 0.735-45 Notice.
- 0.735-46 Hearing.
- 0.735-47 Decision absent a hearing.
- 0.735-48 Administrative appeal.
- 0.735-49 Sanctions.
- 0.735-50 Judicial review.

APPENDIX A TO PART 0—STATUTES GOVERNING CONDUCT OF FEDERAL EMPLOYEES

AUTHORITY: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 26

U.S.C. 7214(b); 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 part 2635.

SOURCE: 32 FR 15222, Nov. 2, 1967, unless otherwise noted.

Subpart A—General Provisions

§ 0.735-1 Purpose.

The purpose of this part is to set forth Department of Commerce policy and procedure relating to employee responsibilities and conduct.

§ 0.735-2 Cross-references to ethical conduct, financial disclosure, and other applicable regulations.

Employees of the Department of Commerce should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635 and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

[68 FR 24879, May 9, 2003]

§ 0.735-3 Applicability.

This part applies to all persons included within the term “employee” as defined in § 0.735-4, except as otherwise provided in this part.

§ 0.735-4 Definitions.

For purposes of this part, except as otherwise indicated in this part:

(a) *Employee*. (1) Shall include: (i) Every officer and employee of the Department of Commerce (regardless of location), including commissioned officers of the Environmental Science Services Administration; and

(ii) Every other person who is retained, designated, appointed, or employed by a Federal officer or employee, who is engaged in the performance of a function of the Department under authority of law or an Executive act, and who is subject to the supervision of a Federal officer or employee while engaged in the performance of the duties of his position not only as to what he does but also as to how he performs his duties, regardless of whether the relationship to the Department is created by assignment, detail, contract, agreement or otherwise.

(2) Shall not include: (i) Members of the Executive Reserve except when they are serving as employees of the

§ 0.735-10

Department under the circumstances described in paragraph (a)(1) of this section;

(ii) Members of crews of vessels owned or chartered to the Government and operated by or for the Maritime Administration under a General Agency Agreement; or

(iii) Any other person who is determined legally not to be an officer or employee of the United States.

(b) *Special Government employee* shall mean an employee as defined in paragraph (a) of this section who is retained, designated, appointed, or employed to perform with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties on either a full-time or intermittent basis.

(c) *Personnel officer* means a personnel official to whom the power of appointment is redelegated under Administrative Order 202-250.

(d) *Operating unit* means, for purposes of this part, primary and constituent operating units designated as such in the Department Order Series of the Department of Commerce and, in addition, the Office of the Secretary.

(e) *Head of an operating unit*, for the purposes of this part, includes the Assistant Secretary for Administration with respect to the performance of functions under this part for the Office of the Secretary.

Subparts B-C [Reserved]

Subpart D—Regulatory Limitations Upon Employee Conduct

§ 0.735-10 Administrative extension of statutory limitations.

The provisions of the statutes identified in this part which relate to the ethical and other conduct of Federal employees are adopted and will be enforced as administrative regulations, violations of which may in appropriate cases be the basis for disciplinary action, including removal. The fact that a statute which may relate to employee conduct is not identified in this part does not mean that it may not be the basis for disciplinary action against an employee.

15 CFR Subtitle A (1-1-25 Edition)

§§ 0.735-10a—0.735-15 [Reserved]

§ 0.735-16 Indebtedness.

(a) 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 purposes 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, in the view of the Department, does not, under the circumstances, reflect adversely on the Government as his employer.

(b) In the event of dispute between an employee and an alleged creditor, this section does not require the Department to determine the validity or amount of the disputed debt.

§ 0.735-17 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 (relating to solicitations conducted by organizations composed of civilian employees or members of the armed forces among their own members for organizational support or for benefit or welfare funds for their own members) and similar agency-approved activities.

§ 0.735-18 General conduct prejudicial to the Government.

(a) *General policy.* Officers and employees of the Federal Government are servants of the people. Because of this, their conduct must, in many instances, be subject to more restrictions and to higher standards than may be the case in certain private employments. They are expected to conduct themselves in a manner which will reflect favorably upon their employer. Although the

Government is not particularly interested in the private lives of its employees, it does expect them to be honest, reliable, trustworthy, and of good character and reputation. They are expected to be loyal to the Government, and to the department or agency in which they are employed.

(b) *Specific policy.* An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

(c) *Regulations applicable to public buildings and grounds.* Each employee is responsible for knowing and complying with regulations of the General Services Administration and of the Department of Commerce applicable to public buildings and grounds.

§ 0.735-19 Reporting undue influence to superiors.

Each employee shall report to his superior any instance in which another person inside or outside the Federal Government uses or attempts to use undue influence to induce, by reason of his official Government position, former Government employment, family relationship, political position, or otherwise, the employee to do or omit to do any official act in derogation of his official duty.

Subpart E [Reserved]

Subpart F—Supplementary Regulations

§ 0.735-32 Departmental.

The Assistant Secretary for Administration may prescribe supplementary instructions consistent with this part.

§ 0.735-33 Operating units.

Each operating unit is hereby authorized and directed to prescribe, after approval by the Assistant Secretary for Administration, such additional regulations not inconsistent with this part as may be necessary to effectuate the general purpose of this part in the light of its individual operating requirements, including but not limited to pertinent statutory provisions, such as:

(a) 35 U.S.C. 4, 122 (Patent Office);

(b) 46 U.S.C. 1111(b) (Maritime Administration);

(c) Certain provisions of the Defense Production Act of 1950, e.g., 50 U.S.C. App. 2160(b)(2) (avoidance of conflicts of interest), 50 U.S.C. App. 2160(b)(6) (financial statements), and 50 U.S.C. App. 2160(f) (prohibition of use of confidential information for purposes of speculation) (Business and Defense Services Administration and any other primary operating unit affected); and

(d) Certain provisions of Pub. L. 89-136, the Public Works and Economic Development Act of 1965, e.g., section 711 (restriction on employing certain EDA employees by applicants for financial assistance), and section 710(b) (embezzlement), false book entries, sharing in loans, etc., and giving out unauthorized information for speculation).

§ 0.735-34 Effective date of supplementary regulations.

Supplementary regulations prescribed pursuant to § 0.735-33, shall become effective upon approval by the issuing officer unless a different date is required by law or a later date is specified therein.

Subpart G—Administration

§ 0.735-35 Responsibilities of employees.

It is the responsibility of each employee:

(a) To assure, at the outset of his employment, that each of his interests and activities is consistent with the requirements established by or pursuant to this part;

(b) To submit a statement of employment and financial interests at such times and in such form as may be specified in or pursuant to this part;

(c) To certify, upon entering on duty in the Department, that he has read this part and applicable regulations supplementary thereto;

(d) To obtain prior written authorization of any interest or activity about the propriety of which any doubt exists in the employee's mind, as provided in § 0.735-39;

(e) To confine each of his interests and activities at all times within the

§ 0.735-36

requirements established by or pursuant to this part, including any authorizations granted pursuant to this part; and

(f) To obtain a further written authorization whenever circumstances change, or the nature or extent of the interest or activity changes, in such a manner as to involve the possibility of a violation or appearance of a violation of a limitation or requirement prescribed in or pursuant to this part.

§ 0.735-36 Responsibilities of operating units.

The head of each operating unit, or his designee, shall:

(a) Furnish or make available to each employee a copy of this part (or a comprehensive summary thereof) within 90 days after approval of this part by the Office of Personnel Management, and, upon their issuance, a copy of any regulations supplementary thereto (or a comprehensive summary thereof);

(b) Furnish or make available to each new employee at the time of his entrance on duty a copy of this part as it may be amended and any supplementary regulations (or a comprehensive summary thereof);

(c) Bring this part (or as it may be amended and any supplementary regulations thereto) to the attention of each employee annually, and at such other times as circumstances may warrant as may be determined by the Assistant Secretary for Administration;

(d) Have available for review by employees, as appropriate, copies of laws, Executive orders, this part, supplementary regulations, and pertinent Office of Personnel Management regulations and instructions relating to ethical and other conduct of Government employees;

(e) Advise each employee who is a special Government employee of his status for purposes of 18 U.S.C. 203 and 205;

(f) Require each employee specified in § 0.735-22 to submit a statement of employment and financial interests, as provided by or pursuant to this part;

(g) Develop an appropriate form, with the approval of the counselor of the Department, on which the employee may certify that he has read this part and applicable regulations supplementary

15 CFR Subtitle A (1-1-25 Edition)

thereto, in accordance with § 0.735-35(c), and on which he may, if he so desires, indicate that he has a private activity or interest about which he requests advice and guidance as provided by § 0.735-38.

(h) Require each employee upon entering on duty and at such other times as may be specified, to execute the certification required by § 0.735-35(c);

(i) Report to the program Secretarial Officer concerned and to the Assistant Secretary for Administration promptly any instance in which an employee, after notice, fails to submit the certification required under § 0.735-35(c) or a statement of employment or financial interests required under this part within 14 calendar days following the prescribed time limit for doing so; and

(j) Take action to impress upon each employee required to submit a statement of employment and financial interests, upon his supervisor, and upon employees with whom the employee works, their responsibility as follows:

(1) The employee's supervisor is responsible (i) for excluding from the range of duties of the employee any contracts or other transactions between the Government and his outside employer, clients, or entities in which he has an interest within the purview of this part, and (ii) for overseeing the employee's activities in order to insure that the public interest is protected from improper conduct on his part and that he will not, through ignorance or inadvertence, embarrass the Government or himself.

(2) The employee's supervisor and employees with whom he works are responsible for avoiding the use of the employee's services in any situation in which a violation of law, regulation, or ethical standards is likely to occur or to appear to occur.

(3) The supervisor of an employee is responsible for initiating prompt and proper disciplinary or remedial action when a violation, intentional or innocent, is detected.

(4) Employees shall avoid divulging to a special Government employee privileged Government information which is not necessary to the performance of his governmental responsibility or information which directly involves

the financial interests of his non-Government employer.

(5) An employee shall make every effort in his private work to avoid any personal contact with respect to negotiations with the Department for contracts, grants, or loans, if the subject matter is related to the subject matter of his Government employment. When this is not possible, he may participate if not otherwise prohibited by law (e.g., 18 U.S.C. 203 and 205) in the negotiations for his private employer only with the prior approval of the head of the operating unit concerned.

[32 FR 15222, Nov. 2, 1967, as amended at 55 FR 53489, Dec. 31, 1990]

§ 0.735-37 Procedure.

The review of statements of employment and financial interests shall include the following basic measures, among others:

(a) Statements shall be submitted to the designated officer, who will review each employee's statement of employment and financial interests to ascertain whether they are consistent with the requirements established by or pursuant to this part. (See § 0.735-24(b).)

(b) Where the statement raises any question of compliance with the requirements of this part, it shall be submitted to a deputy counselor for the organization unit concerned. The deputy counselor may, in his discretion, utilize the advice and services of others (including departmental facilities) to obtain further information needed to resolve the questions.

(c) The designated officer shall maintain the statements of employment and financial interests in a file apart from the official personnel files and shall take every measure practicable to insure their confidentiality. Statements of employment and financial interests shall be preserved for 5 years following the separation of an employee from the Department or following termination of any other relationship under which the individual rendered service to the Department, except as may be otherwise authorized by the Assistant Secretary for Administration or as required by law.

§ 0.735-38 Availability for counseling.

(a) The General Counsel of the Department shall:

(1) Serve as the counselor for the Department of Commerce with respect to matters covered by the basic provisions cited in § 0.735-2(a) and otherwise by or pursuant to this part;

(2) Serve as the Department of Commerce designee to the Office of Personnel Management on matters covered by this part; and

(3) Coordinate the counseling services provided under this part and assure that counseling and interpretations on questions of conflicts of interest and other matters covered by this part are available to deputy counselors designated under paragraph (b) of this section.

(b) The counselor shall designate employees who shall serve as deputy counselors for employees of the Department of Commerce with respect to matters covered by or pursuant to this part and shall give authoritative advice and guidance to each employee who seeks advice and guidance on questions of conflict of interests and other matters covered by or pursuant to this part.

(c) Each operating unit shall notify its employees of the availability of counseling services and of how and where these services are available. This notification shall be given within 90 days after approval of this part by the Office of Personnel Management and periodically thereafter. In the case of a new employee appointed after the foregoing notification, notification shall be made at the time of his entrance on duty.

(d) In each operating unit a deputy counselor shall advise and counsel each employee concerning any adjustments necessary in his financial interests or activities, or in any contemplated interests or activities, in order to meet the requirements established by or pursuant to this part.

[32 FR 15222, Nov. 2, 1967, as amended at 55 FR 53489, Dec. 31, 1990]

§ 0.735-39 Authorizations.

All requests for authorizations required under this part shall be addressed to the head of the operating unit concerned. In the Office of the

§ 0.735-40

Secretary such requests shall be addressed to the Secretary or such person as he may designate. When granted, authorizations will be in writing, and a copy of each authorization will be filed in the employees' official personnel file.

(a) In case of doubt, or upon the request of the employee concerned, cases or questions will be forwarded to the counselor or a deputy counselor. (See § 0.735-38.)

(b) Where an activity requested to be authorized can be conducted as official business, it shall not be authorized as a private activity, but shall be conducted as official business.

(c) Where authorizations involve speaking, writing, or teaching, use of the official title of the employee for identification purposes may be authorized, provided the employee makes it clear that his statements and actions are not of an official nature.

(d) If an authorization has been granted for a specific activity or interest, and the activity or interest is subsequently deemed to constitute a violation of the limitations or requirements prescribed in or pursuant to this part, the employee concerned shall be notified in writing of the cancellation of the authorization and shall modify or stop the activity or interest involved, as requested.

§ 0.735-40 Disciplinary and other remedial action.

(a) Violation of a requirement established in or pursuant to this part shall be cause for appropriate disciplinary action, which may be in addition to any penalty prescribed by law.

(b) When, after consideration of the explanation of the employee provided by § 0.735-20(c), the reviewing officer, in cooperation with the responsible supervisory official, decides that remedial action is required, he will take or cause to be taken immediate action to end the conflict or appearance of conflict of interest. Remedial action may include, but is not limited to:

- (1) Changes in assigned duties;
- (2) Divestment by the employee of his conflicting interest;
- (3) Disciplinary action (including removal from the service); or

15 CFR Subtitle A (1-1-25 Edition)

(4) Disqualification for a particular assignment.

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

(c) No disciplinary or remedial action may be taken under this section against an employee of another Federal department or agency on detail to the Department of Commerce other than through and with the concurrence of the detailed employee's employing agency.

§ 0.735-41 Inquiries and exceptions.

(a) Inquiries relating to legal aspects of the limitations set forth in or cited in or pursuant to this part should be submitted to the appropriate deputy counselor. Inquiries relating to other aspects of this part or regulations supplementary thereto should be referred to the appropriate personnel office.

(b) Within the limits of administrative discretion permitted to the Department, exceptions to the requirements of this part may be granted from time to time in unusual cases by the head of the operating unit, whenever the facts indicate that such an exception would promote the efficiency of the service. Each request for such an exception should be submitted in writing to the head of the operating unit concerned, and shall contain a full statement of the justification for the request. Reports concerning such requests, if approved, shall be forwarded to the program Secretarial Officer concerned and to the Assistant Secretary for Administration by the head of the operating unit concerned.

Subpart H—Disciplinary Actions Concerning Post-Employment Conflict of Interest Violations

AUTHORITY: 18 U.S.C. 207(j); 5 CFR 737.27.

SOURCE: 49 FR 32057, Aug. 10, 1984; 50 FR 928, Jan. 8, 1985, unless otherwise noted.

§ 0.735-42 Scope.

(a) These regulations establish procedures for imposing sanctions against a former employee for violating the post-employment restrictions of the conflict of interest laws and regulations set

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 (1-1-25 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.

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

§ 0.735-48 Administrative appeal.

(a) Within 30 days after issuance of the initial decision, either party may appeal the initial decision or any portion thereof to the Assistant Secretary. The opposing party shall have 20 days to respond.

(b) If an appeal is filed, the Assistant Secretary shall issue a final decision which shall be based solely on the record, or portions thereof cited by the parties to limit issues, and the appeal and response. The Assistant Secretary shall also decide whether to impose the proposed sanction or a lesser included sanction.

(c) If the final decision modifies or reverses the initial decision, it shall state findings of fact and conclusions of law which differ from the initial decision.

§ 0.735-49 Sanctions.

(a) If there has been a final determination that the former employee has violated post-employment statutes or regulations, the Director shall impose, subject to the authority of the Assistant Secretary under §0.735-48(b), the sanction which was proposed in the notice to the former employee or a lesser included sanction.

(b) Sanctions which may be imposed include:

(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 or any organizational subunit thereof on any matter of business for a period not to exceed five years; and

(2) Other appropriate disciplinary action.

(c) The Director may enforce the sanctions of paragraph (b)(1) of this section by directing any or all employees to refuse to participate in any such appearance or to accept any such communication. As a method of enforcement, the Director may establish a list

of former employees against whom sanctions have been imposed.

§ 0.735-50 Judicial review.

Any former employee found to have violated 18 U.S.C. 207, or regulations issued thereunder, by a final administrative decision under this subpart may seek judicial review of the administrative determination.

APPENDIX A TO PART 0—STATUTES GOVERNING CONDUCT OF FEDERAL EMPLOYEES

There are numerous statutes pertaining to the ethical and other conduct of Federal employees, far too many to attempt to list them all. Consequently, only the more important ones of general applicability are referred to in this appendix.

A. BRIBERY AND GRAFT

.01 Title 18, U.S.C., section 201, prohibits anyone from bribing or attempting to bribe a public official by corruptly giving, offering, or promising him or any person selected by him, anything of value with intent (a) to influence any official act by him, (b) to influence him to commit or allow any fraud on the United States, or (c) to induce him to do or omit to do any act in violation of his lawful duty. As used in section 201, "Public officials" is broadly defined to include officers, employees, and other persons carrying on activities for or on behalf of the Government.

.02 Section 201 also prohibits a public official's solicitation or acceptance of, or agreement to take, a bribe. In addition, it forbids offers or payments to, and solicitations or receipt by, a public official of anything of value "for or because of" any official act performed or to be performed by him.

.03 Section 201 further prohibits the offering to or the acceptance by a witness of anything of value involving intent to influence his testimony at a trial, Congressional hearing, or agency proceeding. A similar provision applies to witnesses "for or because of" testimony given or to be given. The provisions summarized in this section do not preclude lawful witness fees, travel and subsistence expenses, or reasonable compensation for expert testimony.

B. COMPENSATION TO OFFICERS AND EMPLOYEES IN MATTERS AFFECTING THE GOVERNMENT

.01 Title 18, U.S.C., section 203, prohibits an officer or employee from receiving compensation for services rendered for others before a Federal department or agency in matters in which the Government is a party or is interested.

.02 Section 203 applies to a special Government employee as follows:

Pt. 0, App. A

15 CFR Subtitle A (1-1-25 Edition)

a. If the special Government employee has served in the Department of Commerce more than 60 days during the preceding period of 365 days, section 203 applies to him only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially in his governmental capacity, or (2) which is pending in the Department of Commerce; or

b. If the special Government employee has served in the Department no more than 60 days during the preceding period of 365 days, section 203 applies to him only in relation to a particular matter involving a specific party or parties in which he has at any time participated personally and substantially in his governmental capacity.

.03 Section 203 does not apply to a retired officer of the uniformed services while not on active duty and not otherwise an officer or employee of the United States.

C. ACTIVITIES OF OFFICERS AND EMPLOYEES IN CLAIMS AGAINST AND OTHER MATTERS AFFECTING THE GOVERNMENT

.01 Title 18, U.S.C., section 205, prohibits an officer or employee, otherwise than in the performance of his official duties, from:

a. Acting as agent or attorney for prosecuting any claim against the United States, or receiving any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claims; or

b. Acting as agent or attorney for anyone before any Government agency, court, or officer in connection with any matter in which the United States is a party or has a direct and substantial interest.

.02 Section 205 applies to a special Government employee as follows:

a. If the special Government employee has served in the Department more than 60 days during the preceding period of 365 days, section 205 applies to him only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially in his governmental capacity, or (2) which is pending in the Department of Commerce; or

b. If the special Government employee has served in the Department no more than 60 days during the preceding period of 365 days, section 205 applies to him only in relation to a particular matter involving a specific party or parties in which he has at any time participated personally and substantially in his governmental capacity.

.03 Section 205 does not preclude:

a. An employee, if not inconsistent with faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings, in connection with those proceedings; or

b. An employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

.04 Sections 203 and 205 do not preclude:

a. An employee from acting as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which he has participated personally and substantially as a Government employee or which are the subject of his official responsibility, provided the head of the operating unit concerned approves; or

b. A special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with, or for the benefit of, the United States, provided the head of the operating unit concerned, with the approval of the appropriate program Secretarial Officer, shall certify in writing that the national interest so requires, and such certification shall be published in the FEDERAL REGISTER.

.05 Section 205 does not apply to a retired officer of the uniformed services while not on active duty and not otherwise an officer or employee of the United States.

D. DISQUALIFICATION OF FORMER OFFICERS AND EMPLOYEES IN MATTERS CONNECTED WITH FORMER DUTIES OR OFFICIAL RESPONSIBILITIES; DISQUALIFICATION OF PARTNERS

.01 Title 18 U.S.C., section 207:

a. Provides that a former Government officer or employee, including a former special Government employee, shall be permanently barred from acting as agent or attorney for anyone other than the United States in any matter in which the United States is a party or is interested and in which he participated personally and substantially in a governmental capacity;

b. Bars a former Government officer or employee, including a special Government employee, of an agency, for a period of 1 year after his employment with it has ceased, from appearing personally as agent or attorney for another person before any court or agency in connection with a matter in which the Government has an interest and which was under his official responsibility at the employing agency (e.g., Department of Commerce) at any time within 1 year prior to the end of such responsibility; and

c. Prohibits a partner of a person employed by the Government, including a special Government employee, from acting as agent or attorney for anyone other than the United States in matters in which the employee participates or has participated personally and substantially for the Government or which are the subject of his official responsibility.

Office of the Secretary, Commerce

Pt. 0, App. A

.02 Subparagraphs .01a. and .01b. of this section do not prevent a former officer or employee or special Government employee who has outstanding scientific or technical qualifications from acting as attorney or agent or appearing personally before the Department of Commerce in connection with a particular matter in a scientific or technological field if the Assistant Secretary of Commerce for Science and Technology 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.

E. ACTS AFFECTING A PERSONAL FINANCIAL INTEREST

.01 Title 18, U.S.C., section 208 prohibits an officer or employee, including a special Government employee, from participating personally and substantially in a governmental capacity in any 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.

.02 Section 208 does not apply:

a. If the officer or employee first advises the head of the operating unit concerned of the nature and circumstances of the matter involved, makes full disclosure of the financial interest, and receives in advance a written determination made by such official, with the approval of the appropriate program Secretarial Officer, 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 the officer or employee; or

b. If, by general rule or regulation published in the FEDERAL REGISTER, the financial interest has been exempted from the requirements of section 208 as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services.

F. SALARY OF GOVERNMENT OFFICIALS AND EMPLOYEES

.01 Title 18, U.S.C., section 209, prohibits:

a. An officer or employee from receiving any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the United States from any source other than the Government of the United States, except as may be contributed out of the treasury of a State, county, or municipality; and

b. Any person or organization from paying, contributing to, or supplementing the salary of an officer or employee under circumstances which would make its receipt a

violation of subparagraph .01a. of this section.

.02 Section 209:

a. Does not prevent a Government employee from continuing to participate in a bona fide pension or other welfare plan maintained by a former employer;

b. Exempts special Government employees and employees serving the Government without compensation, and grants a corresponding exemption to any outside person paying compensation to such individuals; and

c. Does not prohibit the payment or acceptance of sums under the terms of the Government Employees Training Act.

G. CODE OF ETHICS FOR GOVERNMENT SERVICE

"Code of Ethics for Government Service," House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12 of July 11, 1958, which reads as follows:

"Any Person in Government Service Should:

"Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

"UPHOLD the Constitution, laws, and legal regulations of the United States and all governments therein and never be a party to their evasion.

"GIVE a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

"SEEK to find and employ more efficient and economical ways of getting tasks accomplished.

"NEVER discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

"MAKE no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

"ENGAGE in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

"NEVER use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

"EXPOSE corruption wherever discovered.

"UPHOLD these principles, ever conscious that public office is a public trust."

H. PROHIBITIONS

.01 The prohibition against lobbying with appropriated funds (18 U.S.C. 1913) reads as follows:

“No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation, but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

“Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined not more than \$500 or imprisoned not more than 1 year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment.”

.02 The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918). An individual may not accept or hold a position in the Government of the United States if he:

- a. Advocates the overthrow of our constitutional form of government;
- b. Is a member of an organization that he knows advocates the overthrow of our constitutional form of government;
- c. Participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or
- d. Is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia.

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

.04 The prohibitions against (a) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 788); and (b) the disclosure of confidential information (18 U.S.C. 1905). Each employee who has access to classified information, e.g., confidential, secret, or top secret, or to a restricted area is responsible for knowing and for complying strictly with the security regulations of the Department of Commerce. (See Administrative Order 207-2.)

.05 The prohibition against employment in the competitive civil service of any person

who habitually uses intoxicating beverages to excess (5 U.S.C. 7352).

.06 The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)). No employee may willfully use or authorize the use of a Government-owned or Government-leased passenger motor vehicle or aircraft for other than official purposes.

.07 The prohibition against the use of the franking privilege to avoid payment of postage on private mail (18 U.S.C. 1719).

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

.09 The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001). An employee in connection with an official matter shall not knowingly and willfully conceal or cover up a material fact or falsify official papers or documents.

.10 The prohibition against mutilating or destroying a public record (18 U.S.C. 2071). No employee may conceal, remove, mutilate, or destroy Government documents or records except for the disposition of records in accordance with law or regulation.

.11 The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508). Falsely making, altering or forging, in whole or in part, any form of transportation request is prohibited.

.12 The prohibitions against:

a. Embezzlement of Government money or property (18 U.S.C. 641). No employee may convert any Government money or Government property to his own use or the use of another person.

b. Failure to account for public money (18 U.S.C. 643). Any employee, who, having received public money which he is not authorized to retain, fails to render his accounts for same as provided by law, is guilty of embezzlement.

c. Embezzlement of the money or property of another person in the possession of the employee by reason of his employment (18 U.S.C. 654). An employee is prohibited from embezzling or wrongfully converting for his own use the money or property of another which comes under his control as the result of his employment.

.13 The prohibition against unauthorized removal or use of documents relating to claims from or by the Government (18 U.S.C. 285). No employee, without authority, may remove from the place where it was kept by authority of the United States any document, record, file, or paper intended to be used to procure the payment of money from or by the United States or the allowance or payment of any claim against the United States, regardless of whether the document or paper has already been used or the claim has already been allowed or paid; and no employee may use or attempt to use any such document, record, file, or paper to procure

Office of the Secretary, Commerce

§ 1.2

the payment of any money from or by the United States or the allowance or payment of any claim against the United States.

.14 The prohibition against proscribed political activities, including the following, among others:

a. Using official authority or influence for the purpose of interfering with or influencing the result of an election, except as authorized by law (5 U.S.C. 7324);

b. Taking an active part in political management or in political campaigns, except as authorized by law (5 U.S.C. 7324);

c. Offering or promising to pay anything of value in consideration of the use of, or promise to use, any influence to procure any appointive office or place under the United States for any person (18 U.S.C. 210);

d. Soliciting or receiving, either as a political contribution or for personal emolument, anything of value in consideration of a promise of support or use of influence in obtaining for any person any appointive office or place under the United States (18 U.S.C. 211);

e. Using official authority to interfere with a Federal election (18 U.S.C. 595);

f. Promising any employment compensation, or other benefit made possible by Act of Congress in consideration of political activity or support (18 U.S.C. 600);

g. Action by a Federal officer or employee to solicit or receive, or to be in any manner concerned with soliciting or receiving, any contribution for any political purpose whatever from any other Federal officer or employee or from any person receiving compensation for services from money derived from the Treasury of the United States (18 U.S.C. 602);

h. Soliciting or receiving (by any person) anything of value for any political purpose whatever on any Government premises (18 U.S.C. 603);

i. Soliciting or receiving contributions for political purposes from anyone on Federal relief or work relief (18 U.S.C. 604);

j. Payment of a contribution for political purposes by any Federal officer or employee to another Federal officer or employee (18 U.S.C. 607); and

k. Payment of a political contribution in excess of statutory limitations and purchase of goods, commodities, advertising, or articles the proceeds of which inure to the benefit of certain political candidates or organizations (18 U.S.C. 608).

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

PART 1—THE SEAL OF THE DEPARTMENT OF COMMERCE

Sec.

1.1 Purpose.

1.2 Description and design.

1.3 Delegation of authority.

AUTHORITY: Sec. 1, 32 Stat. 825, as amended, 15 U.S.C. 1501.

SOURCE: 33 FR 9337, June 26, 1968, unless otherwise noted.

§ 1.1 Purpose.

The purpose of this part is to describe the seal of the Department of Commerce and to delegate authority to affix the seal to certifications and documents of the Department.

§ 1.2 Description and design.

(a) The Act of February 14, 1903 (32 Stat. 825, as amended) (15 U.S.C. 1501), which established the Department of Commerce, provided that “The said Secretary shall cause a seal of office to be made for the said department of such device as the President shall approve, and judicial notice shall be taken of the said seal.” On April 4, 1913, the President approved and declared to be the seal of the Department of Commerce the device which he described as follows:

Arms: Per fesse azure and or, a ship in full sail on waves of the sea, in chief proper; and in base a lighthouse illumined proper.

Crest: The American Eagle displayed. Around the Arms, between two concentric circles, are the words:

DEPARTMENT OF COMMERCE

UNITED STATES OF AMERICA

(b) The design of the approved seal is as shown below. Where necessitated by requirements of legibility, immediate comprehension, or clean reproduction, the concentric circles may be eliminated from the seal on publications and exhibits, and in slides, motion pictures, and television. In more formal uses of the seal, such as on letterheads, the full, proper rendition of the seal shall be used.