

SUMMARY: This document makes a correction concerning the revision of the special additional requirements for packaging and labeling animal biologics appearing in a final rule captioned "Viruses, Serums, Toxins, and Analogous Products; Packaging and Labeling and Standard Requirements," which was published in the Federal Register on May 14, 1985 (50 FR 20085).

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Joseph, Senior Staff Veterinarian, Veterinary Biologics Staff, VS, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6332.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service, USDA, promulgated regulations revising the labeling recommendations for veterinary biological products on May 14, 1985 (50 FR 20085). The recommendation that inactivated rabies vaccine be injected in one site in the thigh, and the statement that "in high risk areas annual revaccination is recommended" were to have been deleted. This was not done in the case of the annual revaccination recommendation. Therefore, § 112.7(c)(4) of the regulations should be deleted. Also, § 112.7(c)(3) should be deleted because the same subject matter is covered by § 112.7(c)(2).

Other revisions of the regulations resulted in reparagraphing. The requirements in 9 CFR 112.7(m) for a cautionary statement to be included on labels for modified live virus canine hepatitis and modified live virus canine adenovirus Type 2 products regarding corneal opacity was revised and the section designation was changed to 9 CFR 112.7(1). Therefore, this document removes 9 CFR 112.7(m) which should have been deleted.

PART 112—PACKAGING AND LABEL REQUIREMENT

Accordingly, 9 CFR Part 112 is corrected as follows:

1. The authority citation for Part 112 is revised to read as follows:

Authority: 21 U.S.C. 151-159; 7 CFR 2.17, 2.51, and 371.2(d).

§ 112.7 [Corrected]

2. For the reasons set out in the Supplementary Information, § 112.7 *Special additional requirements*, is corrected as follows:

In § 112.7, paragraphs (c) (3) and (4) and (m) are removed.

Done at Washington, DC, this 24th day of September, 1986.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

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FEDERAL ELECTION COMMISSION

11 CFR Part 7

[Notice 1986-9]

Standards of Conduct for Agency Employees

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted regulations setting forth Standards of Conduct governing the conduct of Commissioners, employees, special Commission employees, and former employees. This new part implements the Ethics in Government Act of 1978 (Pub. L. 95-521) and other laws and regulations dealing with Federal employee standards of conduct. These regulations seek to facilitate the proper performance of Commission business and to encourage citizen confidence in the impartiality and integrity of the Commission.

Specifically, this part sets forth regulations pertaining to the acceptance of gifts, entertainment, and favors; outside employment; teaching, lecturing, and writing; business and financial interests; political and other outside activities; and the use of Government information and property. In addition, the rules provide procedures for enforcing the post-employment restrictions of the Ethics in Government Act of 1978. These regulations also provide for an Ethics Officer for the Commission whose duties include the investigation of suspected violations of this Part and the maintenance of an interpretation and advisory service to answer questions concerning conflicts of interest and other matters covered by this Part.

The regulations incorporate the Commission's current *Code of Ethics* with the exception of Section D of the *Code*. In addition, they generally follow similar provisions contained in Executive Order 11222, 30 FR 6469, at 5 CFR 735.101 through 735.306, and at § 737.27. Executive Order 11222, issued on May 21, 1965, prescribes standards of ethical conduct for Executive agency personnel. 5 CFR 735.101 through 735.306 contain regulations promulgated by the Office of Government Ethics as model standards of responsibility and conduct for Executive agency employees and

special employees, pursuant to Executive Order 11222 and to the Ethics in Government Act. 5 CFR 737.27 provides procedures for administrative enforcement proceedings concerning violations of the post employment conflict of interest restrictions contained in 18 U.S.C. 207.

EFFECTIVE DATE: October 29, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463. (202) 376-5690 or Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION: On October 21, 1985, the Commission published a Notice of Proposed Rulemaking regarding its proposal to adopt formally regulations setting forth Standards of Conduct governing the conduct of Commissioners, employees, special Commission employees, and former employees. One comment, from the Office of Government Ethics (OGE), was received.

Having considered the comment received, the Commission is now publishing the final rules, together with a statement explaining their basis and purpose in accordance with the Administrative Procedure Act, 5 U.S.C. 553(c). The final rules reflect several clarifying changes from the draft rules.

In its comments OGE urged the Commission to establish a regulatory system for reviewing public financial disclosure reports filed by Commission members and personnel for potential conflicts of interest. The Commission construed this suggestion as one calling for an ongoing review system. Nothing in the model ethics regulations prescribed by OGE addresses this issue. The Commission could find no other agencies which have a written regulatory review procedure for these reports. Because the actual number of reports submitted within the Commission is less than one dozen, the informal review process now being used has been found to be responsive to the goal of maintaining high ethical standards. When conflicts arise, recusal by the interested parties remedies them. Therefore, the Commission will continue to handle such matters as it has in the past.

The Commission has also decided not to include in these rules provisions concerning the filing of confidential statements of financial interests by employees below the GS-16 level pursuant to the Ethics in Government Act as amended, pending OGE development of concrete guidelines as to the extent, shape and form of such confidential financial statements and/or

the publication by OGE of model regulations in this regard.

OGE's final comment on the Commission's proposed regulations was that the Commission had failed to confer with that Office prior to publication. During its consideration of the Notice of Proposed Rulemaking, the Commission considered whether it should submit the proposed rules to OGE prior to publication. Since there is no legal requirement that the Commission comply with such a request, the Commission did not do so. Moreover, the notice procedure granted OGE adequate opportunity to review and comment on the proposed regulations. Therefore, any failure to submit the regulations to OGE prior to publication does not provide a basis for challenging the validity of the regulations.

Basis and Purpose of the Regulations Governing Standards of Conduct, 11 CFR Part 7

Subpart A—General Provisions

Subpart A sets forth general provisions applicable to all employees of the Commission regarding rules of conduct. It also explains the process by which employees, special Commission employees, and new employees are to be notified of these standards of conduct, sets up an interpretation and advisory service provided by the Ethics Officer, and specifies the procedures for reporting and handling suspected violations of this Part and the possible disciplinary and remedial action which can be taken against violators.

Section 7.1 Purpose and applicability.

The first two sentences of section 7.1(a) are taken from the preamble to the Commission's *Code of Ethics*. The remainder summarizes the substance of Part 7, relating the importance of the prescribed ethical standards to the Commission's administration of federal election law. Paragraphs 7.1(b) and (c) make clear that the provisions of Part 7 apply to employees and special Commission employees, cross-reference Executive Order 11222 and 5 CFR Part 735, and state that Part 7 is to be construed as being in accord with any applicable laws, regulations and labor-management agreement between the Commission and a labor organization. The language of § 7.1(b) has been modified since publication of the Notice of Proposed Rulemaking by the substitution of "employee" for "regular employee" and "special Commission employee" for "special Government employee", thereby bringing this paragraph into conformity with the definitional language at § 7.2.

Section 7.2 Definitions.

The definitions at § 7.2 (b), (c), (g), and (h) follow from the Commission's *Code of Ethics*, Subpart A section 2 (a), (b), and (d), and Subpart B section 2(a). The definition of "Designated Agency Ethics Officer" or "Ethics Officer" at § 7.2(d) follows 5 CFR 734.105(d). The definition of "employee" at § 7.2(e) is based on both the Code of Ethics, Subpart A section 2(c), and on 5 CFR 735.102(b). At § 7.2(f), the definition of "former employee" is derived from the policy governing post employment activities adopted by the Commission on February 8, 1980, and from 5 CFR 737.3(a)(4). The definition of "person" at § 7.2(i) is based in part on the *Code of Ethics*, Subpart A section 2(e), and on 5 CFR 735.102(d). Since the Notice of Proposed Rulemaking, the Commission has added "political committee" to the definition of "person" in accordance with the definition of "person" contained in the Federal Election Campaign Act of 1971, as amended. See 2 U.S.C. 431(11). "Special Commission employee" is defined at § 7.2(j) in accordance with the *Code of Ethics*, Subpart A section 2(f), and 5 CFR 735.102(e).

Section 7.3 Notification to employees and special Commission employees.

Paragraph 7.3(a) sets out the intention of the Commission to inform each Commission employee and special employee of the provisions of Part 7. This paragraph follows 5 CFR 735.104(b) (2) and (4).

Paragraph 7.3(b) provides that the Commission will inform each new Commission employee and special Commission employee of the provisions of Part 7 at the time of entrance of duty. It is based on 5 CFR 735.104(b)(3).

Section 7.4 Interpretation and advisory service.

This section identifies the General Counsel, who serves as the Commission's Ethics Officer, as the proper source of advice and guidance for both Commissioners and employees on questions arising under Part 7. Commissioners have been added to those covered by this provision since publication of the Notice of Proposed Rulemaking. This section is based on 5 CFR 735.105(b) and the Commission's *Code of Ethics*, Subpart D section 4.

Section 7.5 Reporting suspected violations.

Paragraph 7.5(a) establishes the procedure for reporting a suspected violation of Part 7. Any suspected violation is to be reported to the Ethics Officer in writing. This paragraph

follows the Commission's *Code of Ethics*, Subpart D section 3, except that the Ethics Officer replaces the Staff Director as the recipient of reports. This paragraph is also based in part on 5 CFR 735.106(b).

Paragraph 7.5(b) provides employees with an opportunity to explain a conflict of interest, or the appearance thereof, in writing. This paragraph is based in part on 5 CFR 735.106(c). The references to "Subpart D of this Part" and to "information from other sources" contained in the Notice of Proposed Rulemaking have been deleted as a result of the Commission's decision not to prescribe rules pertaining to public financial disclosure reports until such time as the Office of Government Ethics publishes model regulations on confidential financial disclosure. "Information available to the Commission" has been added as clarifying language.

Section 7.6 Disciplinary and other remedial action.

Paragraph 7.6(a) asserts the Commission's authority to take appropriate disciplinary action, in addition to any penalty prescribed by law, in the event of violation of this Part by an employee or special Commission employee. This paragraph is based in part on 5 CFR 735.107(a) and on the Code of Ethics, Subpart D section 1(a).

Paragraph 7.6(b) establishes procedures to be followed after a determination by the Ethics Officer that an employee may have, or appears to have, a conflict of interest, and delineates the supervisory personnel who are to be involved in this process. The employee's supervisor and division head are included as persons with the most direct knowledge of the employee and his or her work. Since publication of the Notice of Proposed Rulemaking, the Staff Director has been added to the supervisors to be involved in disciplinary and other remedial actions for those employees outside the Office of General Counsel. This paragraph is based in part on the *Code of Ethics*, Subpart D section 1(a) and on 5 CFR 735.106 (b) and (c).

Paragraph 7.6(c) outlines possible forms of remedial action which the Commission may take in situations of conflicts of interest. This paragraph is based on the *Code of Ethics*, Subpart D section 1(b), and 5 CFR 735.107(b).

Subpart B—Conduct and Responsibilities of Employees and Commissioners.

Subpart B establishes standards of conduct and responsibilities for

Commissioners and employees. It offers general rules regarding Commissioner and employee conduct and lists categories of unacceptable activities. Procedures for submission of outside employment requests by employees are also included.

Section 7.7 Prohibited conduct—general.

Paragraph 7.7 sets forth general proscriptions on certain categories of Commissioner and employee actions. This paragraph follows 5 CFR 735.201(a).

Section 7.8 Gifts, entertainment and favors.

Paragraph 7.8(a) prohibits a Commissioner or employee from soliciting or accepting, directly or indirectly, anything of monetary value from particular categories of persons. This paragraph is based on the *Code of Ethics*, Subpart B section 1(a), and on 5 CFR 375.202(a).

Paragraph 7.8(b) sets out exceptions to the prohibitions established at § 7.8(a). It generally follows the *Code of Ethics*, Subpart B section 1(b), and 5 CFR 735.202(b).

Paragraph 7.8(c) prohibits, with certain exceptions, solicitation of contributions by a Commissioner or employee of another employee for a gift to someone in a superior position, the making of a donation as a gift to an official superior or the acceptance of such a gift from someone receiving less pay than the recipient. This paragraph is based on the *Code of Ethics*, Subpart B section 1(c) and on 5 CFR 735.202(d).

Since publication of the Notice of Proposed Rulemaking, "a Commissioner" has been added to those who are prohibited by § 7.8(d) from accepting things of value from a foreign government. This provision is based on 5 CFR 735.202(e).

Paragraph 7.8(e) concerns acceptance of reimbursements from other than Commission funds for travel expenses incurred on official business by Commissioners or employees. It cites Decision B-128527 of the Comptroller General dated March 7, 1967, (46 Comp. Gen. 689), interpreting 18 U.S.C. 209 which provides that a Federal employee may be compensated for his or her official duties only by the United States Government. See also 36 Comp. Gen. 268 (1956). According to Decision B-128527, an agency without statutory authority to accept gifts may not accept reimbursement by a private source for an officer's or an employee's travel, subsistence, or other expenses because such reimbursement would constitute augmentation of appropriations. The Commission does not have such

statutory gift acceptance authority. 18 U.S.C. 209 does contain exceptions to this general rule; the exceptions relevant to the Commission permit acceptance of compensation from a state or local government, and the acceptance of traveling expenses from certain tax exempt organizations under the Government Employees Training Act (5 U.S.C. 4111).

Since publication of the Notice of Proposed Rulemaking, "a Commissioner" has been added to those covered by § 7.8(e). This provision is based on 5 CFR 735.202(f).

Section 7.9 Outside employment or activities.

Paragraph 7.9(a) prohibits a Commissioner from devoting a substantial portion of his or her time to any other business, vocation or employment. It is based on 2 U.S.C. 437c(a)(3) and in part on the *Code of Ethics*, Subpart B section 2(a). The *Code* incorporates language contained in the Conference Report on the 1976 amendments to the Federal Election Campaign Act. Commenting on 2 U.S.C. 437c(a)(3) which states that "... members of the Commission shall not engage in any other business, vocation, or employment", the Conference Report found that "... the requirement is intended to apply to members who devote a substantial portion of their time to such business, vocation, or employment activities. The conferees, however, do not intend the requirement to apply to the operation of a farm, for example, if a substantial portion of time is not devoted to such operation." H.R. Rep. No. 94-1057, 94th Cong. 2d Sess. 34 (1976) (emphasis added).

Paragraph 7.9(b) prohibits an employee from engaging in outside employment that is not compatible with his or her Government employment and not in compliance with any labor-management agreement between the Commission and a labor organization. This paragraph differs from its counterpart in the Notice of Proposed Rulemaking in that its language has been broadened to cover any labor-management agreement between the Commission and a labor organization rather than a specific agreement entered into with a particular labor organization. Paragraphs 7.9(b) (1)-(10) provide examples of the types of outside employment which are deemed incompatible with employment by the Commission. This listing is not all inclusive. These paragraphs are based in part on 5 CFR 735.203(a), and on the *Code of Ethics*, Subpart B section 2(b) (1) and (2), and (c).

Paragraph 7.9(c) is based on 5 CFR 735.203(b). (See also discussion of Paragraph 7.8(e).)

Paragraph 7.9(d) establishes parameters regarding the information which employees may use when engaging in lawful teaching, lecturing and writing in either a paid or voluntary capacity. It is based in part on the *Code of Ethics*, Subpart B section 2(b)(2)(A), and on 5 CFR 735.203(c).

Paragraph 7.9(e) is based on the *Code of Ethics*, Subpart B section 2(b)(2)(B) and on 5 CFR 735.203(e).

Paragraph 7.9(f) contains the requirement that an employee wishing to engage in outside employment obtain prior approval. In the case of employees of the Office of General Counsel, such approval must come from the General Counsel/Ethics Officer, while all other employees must first obtain the approval of the Staff Director and then that of the Ethics Officer. The language of this paragraph has been altered from that of the Notice of Proposed Rulemaking in order to clarify that an employee of the Office of General Counsel must obtain approval from the General Counsel who also serves as the Ethics Officer, i.e., approval is to be obtained from one individual acting in two separate capacities. Paragraph 7.9(f) also outlines the information to be supplied when making a written request for permission to engage in outside employment, provides that the employee will receive a response approving or disapproving his or her written request pursuant to the provisions of any labor-management agreement in effect between the Commission and a labor organization, and states that a record of the approval is to be placed in the employee's official personnel folder. The language regarding any labor-management agreement differs from that contained in the Notice of Proposed Rulemaking in its applicability to any such agreement rather than to a specific agreement with a particular labor organization. This paragraph is based primarily on the *Code of Ethics*, Subpart B section 2(b)(1).

Section 7.10 Financial interests.

This section establishes parameters for financial transactions and interests in which Commissioners and employees may engage, and provides for full disclosure and for self-disqualification from proceedings and decision-making where a financial interest is, appears to be, or could be affected.

Paragraph 7.10(a)(1) is based on 5 CFR 735.204(a)(2) and the *Code of Ethics*, Subpart B section 3(a).

Paragraph 7.10(a)(2) is based on 5 CFR 735.204(a)(1), and on the *Code of Ethics*, Subpart B, section 3(b). The language concerning full disclosure and disqualification contained in the Notice of Proposed Rulemaking has been revised to include Commissioners among those covered by this provision. For Commissioners and others required to file public financial disclosure reports pursuant to the Ethics in Government Act, "full disclosure" will be deemed to have been met by the filing of those reports. Employees not required to file public financial disclosure reports must submit a written statement to the Ethics Officer disclosing any particular financial interest which creates, or appears to create, a conflict of interest. Such a procedure will be necessary until such time as the Commission promulgates rules, following publication of model regulations by the Office of Government Ethics, regarding which employees are to file confidential financial disclosure reports and what those reports are to contain.

Paragraph 7.10(a)(3) is based on the *Code of Ethics*, Subpart B section 3(c). Paragraph 7.10(b) follows 5 CFR 735.204(b).

Section 7.11 Political and organization activity.

This section, as noted at § 7.11(a), contains special restrictions on political activities imposed upon Commissioners and Commission employees. These restrictions are in addition to those imposed by the Hatch Act, 5 U.S.C. 7324, *et seq.*, and arise out of the Commission's special role in the political process.

Under paragraph 7.11(a)(1), Commissioners and employees should neither publicly support nor work for a candidate, political party, or political committee within the Commission's jurisdiction; moreover, the paragraph states that contributing to a candidate, party or committee subject to the Commission's jurisdiction is likely to result in a conflict of interest. This paragraph is based in part on the *Code of Ethics*, Subpart B, section 6(a)(1). The final sentence in section 6(a)(1) of the *Code* has been deleted as redundant.

Paragraph 7.11(a)(2) is based on the *Code of Ethics*, Subpart B section 6(a)(2).

Paragraph 7.11(b) follows the *Code of Ethics*, Subpart B section 6(b).

Paragraph 7.11(c) generally follows the *Code of Ethics*, Subpart B section 6(c).

Paragraph 7.11(d) is designed to prevent circumvention of the restrictions of this section through third parties by making an employee accountable for the

political activities of another person acting as the employee's agent or under his or her direction. This paragraph is based on the *Code of Ethics*, Subpart B section 6(d).

Section 7.12 Membership in associations.

Although Commissioners and employees are not prohibited from becoming members of non-governmental associations or organizations, this section provides that they must avoid activities on behalf of such associations or organizations which are incompatible with their official Commission positions. This section is based on the *Code of Ethics*, Subpart D section 2.

Section 7.13 Use of Government property.

This section is based on the *Code of Ethics*, Subpart B section 4, and on 5 CFR 735.205.

Section 7.14 Prohibition against making complaints and investigations public.

This section warns Commission employees of the provisions of 2 U.S.C. 437g(a)(12) (A) and (B) which prohibit making public any notification or investigation of an enforcement matter before the Commission without the written consent of the person complained against or being investigated. The statute provides for monetary penalties to be levied against any Commissioner, employee or other person who breaches this requirement of confidentiality. This section is based on the *Code of Ethics*, Subpart B section 7, although the final line of the latter provision has been deleted as unclear.

Section 7.15 Ex parte communications.

The purpose of this section is to avoid any real or apparent prejudice to the public interest in enforcement actions before the Commission. This provision is intended to govern the internal procedures of the Commission; thus, it differs in emphasis, although not in effect, from the prohibition on ex parte communications at 11 CFR 111.22, which is directed at persons outside the Commission as well as at Commissioners and employees. Paragraph § 7.15(a) is based upon the *Code of Ethics*, Subpart B section 8(a), except that the prohibitions in the *Code* directed at persons outside the Commission have been deleted as outside the scope of these regulations.

Paragraph 7.15(b) establishes the time frame during which the prohibition against ex parte communications established by this section is in effect. It

follows the *Code of Ethics*, Subpart B section 8(b).

Paragraph 7.15(c) requires that any written communication prohibited by § 7.15(a) be delivered to the Ethics Officer who is required to place it in the file of the enforcement matter involved. This paragraph is based on the *Code of Ethics*, Subpart B section 8(c), except that the reference to "Staff Director" in the *Code* has been changed to "Ethics Officer".

Paragraph 7.15(d) outlines the responsibilities of Commissioners and employees who are the targets of ex parte communications. This paragraph is based on the *Code of Ethics*, Subpart B section 8(d).

The Commission received no responses to its question in the Notice of Proposed Rulemaking as to whether it should propose regulations governing ex parte communications in areas of its operations other than enforcement, e.g., with regard to advisory opinions and proposed regulations. Therefore, no such additional regulations are being prescribed at this time.

Section 7.16 Miscellaneous statutory provisions.

This section draws the attention of the employee to a series of statutory provisions which relate to his or her conduct as an employee. These statutory provisions are listed in the *Code of Ethics*, Subpart B section 10(a) through 10(o), and at 5 CFR 735.210(b) through 210(q), and are also reflected in Subpart D of this Part.

Subpart C—Conduct and responsibilities of special Commission employees.

This Subpart pertains to the conduct of special Commission employees as defined at section 7.2(j). The regulations include prohibitions on the misuse of Commission employment or inside information for unlawful private gain, and on the unlawful acceptance of gifts and gratuities from persons having business with the Commission.

Section 7.17 Use of Commission employment.

This section follows the *Code of Ethics*, Subpart C section 1, and 5 CFR 735.302.

Section 7.18 Use of inside information.

Paragraph 7.18(a) is based on the *Code of Ethics*, Subpart C section 2(a), and on 5 CFR 735.303(a).

Paragraph 7.18(b) brings special Commission employees within the provisions of § 7.9 (d) and (e) as regards teaching, lecturing or writing. It is based

on the *Code of Ethics*, Subpart C section 2(b), and on 5 CFR 735.303(b).

Section 7.19 Coercion.

This section is based on the *Code of Ethics*, Subpart C section 3, and on 5 CFR 735.304.

Section 7.20 Gifts, entertainment, and favors.

This section prohibits special Commission employees from receiving or soliciting anything of value from a person having business with the Commission while the special employee is so employed or in connection with that employment. The exceptions to this general prohibition are the same as those granted Commission employees at Subpart B, section 7.8(b). This section is based on the *Code of Ethics*, Subpart C section 4(a), and on 5 CFR 735.305(a).

Section 7.21 Miscellaneous statutory provisions.

Special Commission employees are required by this section to acquaint themselves with each statute related to their ethical or other conduct as a special employee, with particular emphasis upon the statutory provisions listed at § 7.16. This section is based on the *Code of Ethics*, Subpart C section 5, and on 5 CFR 735.306.

Subpart D—Post Employment Conflict of Interest: Procedures for Administrative Enforcement Proceedings.

This Subpart contains procedures for investigating and administratively correcting post employment conflicts of interest. These procedures are generally the same as those approved by the Commission on February 8, 1980, pursuant to 18 U.S.C. 207(j) and 5 CFR 737.1 (see Commission Memorandum #759 dated February 4, 1980), which were found by OGE to conform to the model procedures prescribed by that Office at 5 CFR 737.27

Section 7.22 Scope.

This section states that the procedures set out in this Subpart are to be used in correcting violations of the post employment conflict of interest provisions of 18 U.S.C. 207 (a), (b), and (c). The present language of the section clarifies that former special Commission employees are covered by this provision. The section has also been augmented by language which states that for purposes of Subpart D "former special Commission employee" is to be defined in accordance with 18 U.S.C. 207(c)(1). In addition, the final rule eliminates partners of former employees as persons whose activities are

restricted by 18 U.S.C. 207. The provisions of section 207 extend only to the partners of present employees, not to those of former employees or former special employees. See 18 U.S.C. 207(g).

Section 7.23 Initiation of Investigation.

Paragraph 7.23(a)(1) provides for the filing of a complaint with the Ethics Officer of the Commission by anyone who believes that a former employee has violated the post employment conflict of interest provisions of 18 U.S.C. 207 (a), (b), or (c), or of 5 CFR 737.

Paragraph 7.23(a)(2) provides for the notification by certified mail of the former employee named in a complaint and for the submission by that former employee of a written legal or factual response within ten days after his or her receipt of the complaint.

Paragraph 7.23(b)(1) places responsibility upon the Ethics Officer for reviewing the complaint and any response by the former employee, and for preparing a report to the Commission in which he or she recommends either that the Commission open an investigation of the allegations in the complaint or that the Commission dismiss the complaint on its face.

Paragraph 7.23(b)(2) asserts the authority of the Commission to order an investigation of allegations made in a complaint by an affirmative vote of four of its members. This paragraph is based in part on 5 CFR 737.27(a)(2)(ii).

Paragraph 7.23(b)(2)(i) requires that any investigation conducted under this section be kept confidential pending a Commission finding of reasonable cause to believe a violation has occurred. The exception to this prohibition pertains to coordination with the Department of Justice following notification as required by § 7.23(b)(2)(ii). This paragraph is based on 5 CFR 737.27(a)(2)(i) and (ii).

Paragraph 7.23(b)(2)(ii) requires that the Commission's Ethics Officer notify the Director of the Office of Government Ethics and the Criminal Division of the Department of Justice that the Commission has ordered an investigation of the allegations made in the complaint pursuant to § 7.23(b)(2), and specifies the information that must be included with the notification. This paragraph is based on 5 CFR 737.27(a)(2)(i).

According to § 7.23(b)(2)(ii) the Commission is to coordinate its investigation or administrative action with the Department of Justice if criminal proceedings are being considered or pursued. This paragraph is based on 5 CFR 737.27(a)(i).

Paragraph 7.23(b)(3) states that there will be no investigation if the Commission finds the complaint to be

unfounded. In such an event, the Ethics Officer is required to notify both the complainant and the former employee of the Commission's finding.

Section 7.24 Conduct of preliminary investigation.

Paragraph 7.24(a) establishes the responsibility of the Ethics Officer to conduct an investigation into the allegations of a complaint once the Commission has found, pursuant to § 7.23(b)(2), that the complaint appears to be substantiated.

Paragraph 7.24(b) establishes the rights of the former employee to be notified of the Commission's decision to initiate an investigation through receipt of a copy of the report submitted by the Ethics Officer Pursuant to § 7.23(b)(1), and to respond to the allegations and to the report. The Commission must receive the former employee's response within 20 days after his or her receipt of the Ethics Officer's report, although an extension of time may be requested of the Ethics Officer in writing. The language of this paragraph differs from that in the Notice of Proposed Rulemaking by the deletion of "the complaint" as one of the documents the receipt of which triggers a twenty-day response time. Section 7.23(a)(2) already provides a former employee with ten days to submit an initial response after his or her receipt of a copy of the complaint. The twenty days provided at § 7.24(b) for response to the Ethics Officer's report is in addition to the earlier ten-day response period.

Paragraph 7.24(c) provides for the former employee's representation by counsel.

When the investigation is completed, the Ethics Officer is required by Paragraph 7.24(d) to prepare a report to the Commission which is to include any materials provided by the former employee. The report must recommend a finding of reasonable cause to believe or of no reasonable cause to believe that the former employee has violated 18 U.S.C. 207 (a), (b), or (c).

Section 7.25 Initiation of administrative disciplinary proceedings.

Paragraph 7.25(a) provides for review by the Commission in Executive Session of the Ethics Officer's investigative report prepared pursuant to § 7.24(d).

Paragraph 7.25(b) provides that after the Commission, by an affirmative vote of four of its members, determines that there is reasonable cause to believe a violation has occurred, the Commission must initiate an administrative disciplinary proceeding by notifying the former employee pursuant to section

7.26. This paragraph is based on 5 CFR § 737.27(a)(2).

Should the Commission find no reasonable cause to believe a violation has occurred, Paragraph 7.25(c) requires that the file in the matter be closed and no further action be taken. The Director of the Office of Government Ethics, the Criminal Division of the Department of Justice, the complainant, and the former employee are to be notified of this determination and each is to be provided with a statement of reasons.

Section 7.26 Notice to former employee.

If the Commission finds reasonable cause to believe that a violation has occurred, the Ethics Officer is required by § 7.26(a) to provide the former employee with adequate notice of the Commission's intention to institute a disciplinary proceeding and of the employee's opportunity to request a hearing. This paragraph is based in part on 5 CFR 737.27(a)(3).

Paragraph 7.26(b) outlines the contents of the adequate notice required by § 7.26(a). It is based in part on 5 CFR 737.27(a)(3)(ii).

Paragraph 7.26(c)(1) gives a former employee who is sent a notice pursuant to § 7.26(a) ten days after receipt of that notice to notify the Commission by certified mail of his or her desire for a hearing. It also sets out the information which should be included in such a request for a hearing.

Paragraph 7.26(c)(2) provides that if a written request for a hearing from the former employee is not received within the period of time established by § 7.26(c)(1), the right to a hearing will be waived, and the hearing examiner appointed pursuant to § 7.27 (a) and (b) shall consider the written evidence and make a decision.

Section 7.27 Hearing examiner designation and qualifications.

Paragraph 7.27(a) differs from its counterpart in the Notice of Proposed Rulemaking by the deletion of the first sentence in the latter as redundant. It also modifies the language concerning the designation of a hearing examiner to clarify that, following a Commission determination that there is reasonable cause to believe a violation has occurred pursuant to § 7.25, the Ethics Officer shall designate an individual to serve as hearing examiner whether or not the former employee requests a hearing and whether or not the Commission decides to agree to such a request. If there is no hearing, the examiner will make a determination based upon the written evidence before him or her. If there is a hearing, the

examiner also will consider the oral evidence presented. See also § 7.26(c)(2). This paragraph is based in part on 5 CFR 737.27(a)(4)(i).

Paragraph 7.27(b)(1) establishes criteria to be applied in selecting a hearing examiner pursuant to § 7.27(a). It is based in part on 5 CFR 737.27(a)(4)(ii) and (iii).

Paragraph 7.27(b)(2) requires that the hearing examiner be an attorney at the Assistant General Counsel level or higher.

Section 7.28 Hearing date.

Paragraph 7.28(a) requires that the hearing examiner set the hearing at a reasonable date, time and place. It is based on 5 CFR 737.27(a)(5)(i).

Paragraph 7.28(b) requires that, whenever possible, the hearing examiner consider the former employee's needs when setting the date, time and place of the hearing. This paragraph is based in part on 5 CFR 737.27(a)(5)(ii).

Section 7.29 Hearing rights of former employees.

This section lists particular rights which are afforded former employees during a hearing conducted pursuant to Subpart D. It is based on 5 CFR 737.27(a)(6).

Section 7.30 Hearing procedures.

This section establishes the rules of procedure to be followed prior to and during an administrative disciplinary hearing held under this Subpart.

Pursuant to Paragraph 7.30(a)(1), the Ethics Officer must provide the former employee, no later than 10 days before the hearing, with a list of witnesses to be introduced by the Commission. This paragraph specifies the information to be included in this list. It also provides that the former employee must be informed if no witnesses are to be called by the Commission.

Paragraph 7.30(a)(2) sets out the responsibilities of the former employee regarding the provision of a list of witnesses he or she intends to introduce. This list must be provided to the Ethics Officer no later than 5 days prior to the hearing. The Ethics Officer is to be notified if no witnesses are to be called.

According to § 7.30(b) the Commission is to be represented at the hearing by the Ethics Officer. This subsection also reiterates the former employee's right of self-representation or to representation by counsel.

Pursuant to Paragraph 7.30(c), the burden of proof is on the Commission to establish substantial evidence of a violation. This paragraph is based on 5 CFR 737.27(a)(7).

Paragraph 7.30(d)(1) specifies the documents which the Commission is required or permitted to introduce and which will be made part of the hearing record.

Paragraph 7.30(d)(2) provides the former employee with the opportunity to submit a brief or memorandum of law to be included in the hearing record.

Paragraphs 7.30(d)(3) and (4) establish the order of the introduction of witnesses and evidence, with the Commission making the initial presentation, and also establish the right of cross-examination for both the Commission and the former employee.

Paragraph 7.30(d)(5) establishes the right to oral argument for both parties, with the Commission making the first presentation. The Commission is also given the right of rebuttal.

Paragraph 7.30(d)(6) requires that decisions as to the admissibility of evidence or testimony be made under the Federal Rules of Evidence.

Section 7.31 Examiner's decision.

Paragraphs 7.31 (a) and (b) require that the examiner make a determination no later than 15 days after the close of the hearing, that the determination be made exclusively on matters of record in the proceeding, and that the determination set forth all findings of fact and conclusions of law relevant to the matter at issue. These paragraphs are taken from 5 CFR 737.27(a)(8)(i).

Paragraph 7.31(c) requires that the examiner provide copies of his or her determination to the complainant, the former employee, the Ethics Officer and the Commission. The complainant has been added as a recipient since publication of the Notice of Proposed Rulemaking for the sake of consistency with § 7.23(b)(3) which provides that the complainant is to receive notification if the Commission decides that a complaint is unfounded and that no investigation is to be conducted, and with § 7.25(c) which provides that the complainant is to receive notification and a statement of reasons if the Commission finds no reasonable cause to believe a violation has occurred.

Section 7.32 Appeal.

This section establishes the rights of the former employee and of the Ethics Officer to appeal a decision of the hearing examiner to the Commission, sets out the procedures to be followed by the appealing party in filing a notice of appeal, and specifies the powers and responsibilities of the Commission in reviewing the examiner's decision and in reaching its own determination.

Paragraph 7.32(a) permits either the former employee or the Ethics Officer to appeal the decision of the hearing examiner to the Commission by filing a notice of appeal with the Chairman within 10 days of receipt of the decision. This paragraph is based on 5 CFR 737.27(a)(8)(ii).

Paragraph 7.32(b) requires that the notice of appeal be accompanied by a memorandum setting forth the legal and factual reasons why the examiner's decision should be reversed or modified.

Under Paragraph 7.32(c) the Commission may affirm, modify or reverse the examiner's decision. This decision is to be based solely on the hearing record or on those parts of the record cited by the parties in order to limit the issues on appeal. This paragraph is based in part on 5 CFR 737.27(a)(8)(ii).

Pursuant to § 7.32(d), if the Commission decides to modify or reverse the examiner's decision, it must specify those findings of fact or conclusions of law which differ from those of the examiner. This paragraph is based in part on 5 CFR 737.27(a)(8)(iii).

Section 7.33 Administrative sanctions.

This section sets out the authority of the Commission to take appropriate disciplinary action in the case of any individual found to have violated 18 U.S.C. 207 (a), (b) or (c), whether after a final administrative hearing or, if no hearing is held, after adequate notice to the former employee involved. Examples of such appropriate actions are given, including general prohibitions against appearing before the Commission for a period not to exceed five years, letters of reprimand, letters of admonishment, or prohibitions against making appearances in particular matters or on behalf of a particular party. This section is based on 5 CFR 737.27(a)(9).

List of Subjects in 11 CFR Part 7

Administrative practice and procedure, Conflicts of interests, Government employees, Political activities (Government employees).

11 CFR is amended by adding new Part 7 as follows:

PART 7—STANDARDS OF CONDUCT

Subpart A—General Provisions

Sec

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- 7.2 Definitions.
- 7.3 Notification to employees and special Commission employees.
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- 7.6 Disciplinary and other remedial action.

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- 7.17 Use of Commission employment.
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- 7.30 Hearing procedures.
- 7.31 Examiner's decision.
- 7.32 Appeal.
- 7.33 Administrative sanctions.

Authority: 5 U.S.C. 7321 *et seq.*; 18 U.S.C. 207.

Subpart A—General Provisions

§ 7.1 Purpose and applicability.

(a) The Federal Election Commission is committed to honest, independent and impartial monitoring and enforcement of federal election law. To ensure public trust in the fairness and integrity of the federal elections process, all employees must observe the highest standards of conduct. This part prescribes standards of ethical conduct for Commissioners, employees and special Government employees of the Federal Election Commission relating to conflicts of interest arising out of outside employment, private business and professional activities, political activities, and financial interests. The avoidance of misconduct and conflicts of interest on the part of Commission employees through informed judgment is indispensable to the maintenance of these prescribed ethical standards. Attainment of these goals necessitates strict and absolute fairness and impartiality in the administration of the law.

(b) This part applies to all persons included within the terms "employee" and "special Commission employees" of

the Commission as defined in 11 CFR 7.2, except to the extent otherwise indicated herein, and is consistent with Executive Order 11222 and Part 735 of Title 5, Code of Federal Regulations, relating to employee responsibilities and conduct.

(c) These Standards of Conduct shall be construed in accordance with any applicable laws, regulations and agreements between the Federal Election Commission and a labor organization.

§ 7.2 Definitions.

As used in this part:

(a) "Commission" means the Federal Election Commission, 999 E Street, NW, Washington, DC 20463.

(b) "Commissioner" means a voting member of the Federal Election Commission, in accordance with 2 U.S.C. 437c.

(c) "Conflict of interest" means a situation in which an employee's private interest is inconsistent with the efficient and impartial conduct of his or her official duties and responsibilities.

(d) "Designated Agency Ethics Officer" or "Ethics Officer" means the employee designated by the Commission to administer the provisions of the Ethics in Government Act of 1978 (Pub. L. 95-521), as amended, and includes a designee of the Ethics Officer.

(e) "Employee" means an employee of the Federal Election Commission, but does not include a special Commission employee.

(f) "Former employee" means one who was, and is no longer, an employee of the Commission.

(g) "Official responsibility" means the direct administrative or operating authority, whether intermediate or final, to approve, disapprove, or otherwise direct Commission action. Official responsibility may be exercised alone or with others and either personally or through subordinates.

(h) "Outside employment or other outside activity" means any work, service or other activity performed by an employee, but not a Commissioner, other than in the performance of the employee's official duties. It includes such activities as writing and editing, publishing, teaching, lecturing, consulting, self-employment, and other services or work performed, with or without compensation.

(i) "Person" means an individual, corporation, company, association, firm, partnership, society, joint stock company, political committee, or other group, organization, or institution.

(j) "Special Commission employee" means an individual who is retained,

designated, appointed or employed by the Federal Election Commission to perform, with or without compensation, temporary duties either on a full-time or intermittent basis, for not to exceed 130 days during any period of 365 consecutive days, as defined at 18 U.S.C. 202.

§ 7.3 Notification to employees and special Commission employees.

(a) The provisions of this part shall be brought to the attention of, and made available to, each employee and special Commission employee by furnishing a copy at the time of final publication. The provisions of this Part shall further be brought to the attention of such employees at least annually thereafter.

(b) The provisions of this part shall be brought to the attention of each new employee and new special Commission employee by furnishing a copy at the time of entrance of duty, and by such other methods of information and education as the Ethics Officer may prescribe.

§ 7.4 Interpretation and advisory service.

A Commissioner or employee seeking advice and guidance on questions of conflict of interest and on other matters covered by this part should consult with the Commission's General Counsel, who serves as Ethics Officer. The Ethics Officer should be consulted prior to the undertaking of any action which might violate this part governing the conduct of Commissioners or employees.

§ 7.5 Reporting suspected violations.

(a) Personnel who have information which causes them to believe that there has been a violation of a statute or policy set forth in this part should promptly report such incident to the Ethics Officer. If a report is made orally, the Ethics Officer shall require a written report from the complainant before proceeding further.

(b) When information available to the Commission indicates a conflict between the interests of an employee or special Commission employee and the performance of his or her Commission duties, the employee or special Commission employee shall be provided an opportunity to explain the conflict or appearance of conflict in writing.

§ 7.6 Disciplinary and other remedial action.

(a) A violation of this part by an employee or special Commission employee may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law.

(b) When the Ethics Officer determines that an employee may have

or appears to have a conflict of interest, the Ethics Officer, the employee's supervisor, the employee's division head, and the Staff Director or General Counsel may question the employee in the matter and gather other information. The Ethics Officer, the employee's supervisor, the employee's division head, and the Staff Director or General Counsel shall discuss with the employee possible ways of eliminating the conflict or appearance of conflict. If the Ethics Officer, after consultation with the employee's supervisor, the employee's division head, and the Staff Director or General Counsel, concludes that remedial action should be taken, he or she shall refer a statement to the Commission containing his or her recommendation for such action. The Commission, after consideration of the employee's explanation and the results of any investigation, may direct appropriate remedial action as it deems necessary.

(c) Remedial action pursuant to paragraph (b) of this section may include, but is not limited to:

- (1) Changes in assigned duties;
- (2) Divestment by the employee of his or her conflicting interest;
- (3) Disqualification for a particular action; or
- (4) Disciplinary action.

Subpart B—Conduct and Responsibilities of Employees or Commissioners

§ 7.7 Prohibited conduct—General.

A Commissioner or 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 unlawful private gain;
- (b) Giving favorable or unfavorable treatment to any person or organization due to any partisan, political, or other consideration;
- (c) Impeding Government efficiency or economy;
- (d) Losing 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.

§ 7.8 Gifts, entertainment and favors.

(a) A Commissioner or employee of the Federal Election Commission shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a 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 regulated or examined by the Commission; or

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

(b) Paragraph (a) of this section shall not apply:

(1) Where obvious family or personal relationships govern 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) To the acceptance of food, refreshments, and accompanying entertainment of nominal value in the ordinary course of a social occasion or a luncheon or dinner meeting or other function where a Commissioner or an employee is properly in attendance;

(3) To the acceptance of unsolicited advertising or promotional material or other items of nominal intrinsic value such as pens, pencils, note pads, calendars; and

(4) To the acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities, such as home mortgage loans.

(c) A Commissioner or 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 or herself. 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 birthday, holiday, marriage, illness, or retirement.

(d) A Commissioner or 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 Section 7342 of Title 5, United States Code.

(e) Neither this section nor 11 CFR 7.7 precludes a Commissioner or employee from receipt of a 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 section does not allow an employee or Commissioner to be reimbursed, or payment to be made on his or her 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 (46 Comp. Gen. 689).

§ 7.9 Outside employment or activities.

(a) A member of the Commission shall not devote a substantial portion of his or her time to any other business, vocation, or employment. Any individual who is engaging substantially in any other business, vocation, or employment at the time such individual begins to serve as a member of the Commission shall appropriately limit such activity no later than 90 days after beginning to serve as such a member.

(b) An employee shall not engage in outside employment that is not compatible with the full discharge of this or her Government employment and not in compliance with any labor-management agreement between the Federal Election Commission and a labor organization. Incompatible outside employment or other activities include but are not limited to:

(1) Outside employment or other activities which would involve the violation of a Federal or State statute, local ordinance, Executive Order, or regulation to which the employee is subject;

(2) Outside employment or other activities which would give rise to a real or apparent conflict of interest situation even though no violation of a specific statutory provision was involved;

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

(4) Outside employment or other activities that might bring discredit upon the Government or Commission;

(5) Outside employment or other activities that establish relationships or property interests that may result in a conflict between the employee's private interests and official duties;

(6) Outside employment or other activities which would involve any contractor or subcontractor connected with any work performed for the Commission or would involve any person or organization in a position to gain advantage in its dealings with the Government through the employee's exercise of his or her official duties;

(7) Outside employment of other activities that may be construed by the public to be the official acts of the Federal Election Commission. In any

permissible outside employment, care shall be taken to ensure that names and titles of employees are not used to give the impression that the activity is officially endorsed or approved by the Commission or is part of the Commission's activities;

(8) Outside employment or other activities which would involve use by an employee of his or her official duty time; use of official facilities, including office space, machines, or supplies, at any time; or use of the services of other employees during their official duty hours;

(9) Outside employment or other activities which tend to impair the employee's mental or physical capacities to perform Commission duties and responsibilities in an acceptable manner; or

(10) Use of information obtained as a result of Government employment which is not freely available to the general public or would not be made available upon request. However, written authorization for the use of any such information may be given when the Commission determines that such use would be in the public interest.

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

(d) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, Executive Order 11222, or this part. However, an employee shall not, either for or without compensation, engage in teaching or writing that is dependent on information obtained as a result of his or her Commission 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 written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(e) This section does not preclude an individual from participation in the affairs of or acceptance of an award for meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational, recreational, public service or civic organization.

(f) An employee of the Office of General Counsel who intends to engage in outside employment shall obtain the approval of the General Counsel/Ethics Officer. All other employees who intend to engage in outside employment shall obtain the approval of the Staff Director prior to review and approval by the Ethics Officer. The request shall include

the name of the person, group, or organization for whom the work is to be performed, the nature of the services to be rendered, the proposed hours of work, or approximate dates of employment, and the employee's certification as to whether the outside employment (including teaching, writing or lecturing) will depend in any way on information obtained as a result of the employee's official Government position. The employee will receive notice of approval or disapproval of any written request in accordance with any labor-management agreement between the Commission and a labor organization. A record of the approval shall be placed in each employee's official personnel folder.

§ 7.10 Financial interests.

(a)(1) A Commissioner or employee shall not engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his or her Commission employment.

(2) A Commissioner or employee shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his or her Commission duties and responsibilities, except in cases where the Commissioner or employee makes full disclosure, and the Commissioner or employee disqualifies himself or herself from participating in any decisions, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding of the Commission in which the financial interest is or appears to be affected. The filing of public financial disclosure reports will constitute full disclosure for all individuals who are required to file such reports pursuant to the Ethics in Government Act. Until such time as the extent, shape and form of confidential financial disclosure reports required of employees by the Ethics in Government Act has been determined, full disclosure by an employee will require that that employee submit a written statement to the Ethics Officer disclosing the particular financial interest which conflicts substantially, or appears to conflict substantially, with the employee's duties and responsibilities.

(3) A Commissioner or employee should disqualify himself or herself from a proceeding in which his or her impartiality might reasonably be questioned where the Commissioner or employee knows that he or she, or his or her spouse, has an interest in the subject matter in controversy or is a party to the proceeding, or any other interest that

could be substantially affected by the outcome of the proceeding.

(b) This section does not preclude a Commissioner or employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government provided that the activity is not prohibited by law, Executive Order 11222, or Commission regulations.

§ 7.11 Political and organization activity.

(a) Due to the Federal Election Commission's role in the political process, the following restrictions on political activities are required in addition to those imposed by the Hatch Act (5 U.S.C. 7324 *et seq.*):

(1) No Commissioner or employee should publicly support a candidate, political party, or political committee subject to the jurisdiction of the Commission. No Commissioner or employee should work for a candidate, political party or political committee subject to the jurisdiction of the Commission. Commissioners and employees should be aware that contributing to candidates, political parties, or political committees subject to the jurisdiction of the Commission is likely to result in a conflict of interest.

(2) No Commissioner or employee shall display partisan buttons, badges or other insignia on Commission premises.

(b) Special Government employees are subject to the restrictions contained in this section for the entire 24 hours of any day on which the employee is on active duty status.

(c) Employees on leave, leave without pay, or on furlough or terminal leave, even though the employees' resignations have been accepted, are subject to the restrictions of this section. A separated employee who has received a lump-sum payment for annual leave, however, is not subject to the restrictions during the period covered by the lump-sum payment or thereafter, provided he or she does not return to Federal employment during that period. An employee is not permitted to take a leave of absence to work with a political candidate, committee, or organization or become a candidate for office despite any understanding that he or she will resign his or her position if nominated or elected.

(d) An employee is accountable for political activity by another person acting as his or her agent or under the employee's direction or control if the employee is thus accomplishing what he or she may not lawfully do directly and openly.

§ 7.12 Membership in associations.

Commissioners or employees who are members of nongovernmental associations or organizations shall avoid activities on behalf of those associations or organizations that are incompatible with their official governmental positions.

§ 7.13 Use of Government property.

A Commissioner or 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. Commissioners and employees have a positive duty to protect and conserve Government property including equipment, supplies, and other property entrusted or issued to him or her.

§ 7.14 Prohibition against making complaints and investigations public.

(a) Commission employees are warned that they are subject to criminal penalties if they discuss or otherwise make public any matters pertaining to a complaint or investigation under 2 U.S.C. 437g, without the written permission of the person complained against or being investigated. Such communications are prohibited by 2 U.S.C. 437g(a)(12)(A).

(b) 2 U.S.C. 437g(a)(12)(B) provides as follows: "Any member or employee of the Commission or any other person, who violates the provisions of subparagraph (A) shall be fined not more than \$2,000. Any such member, employee, or other person who knowingly and willfully violates this subsection shall be fined not more than \$5,000."

§ 7.15 Ex parte communications.

In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to 2 U.S.C. 437g(A) (1) or (2):

(a) Except to the extent required for the disposition of ex parte matters as required by law (as, for example, during the normal course of an investigation or a conciliation effort), no Commissioner or employee involved in the decisional process shall make or entertain any ex parte communications.

(b) The prohibition of this section shall apply from the time a complaint is filed with the Commission pursuant to 2 U.S.C. 437(a)(1) or from the time that the Commission determines on the basis of information ascertained in the normal course of its supervisory responsibilities that it has reason to believe that a violation has occurred or may occur pursuant to 2 U.S.C. 437g(a)(2), and shall

remain in force until the Commission has concluded all action with respect to the enforcement matter in question.

(c) Any written communication prohibited by subsection (a) of this section shall be delivered to the Ethics Officer of the Commission who shall place the communication in the file of the case.

(d) A Commissioner or employee, other than the employee assigned to the case, involved in handling enforcement actions who receives an oral offer or any communication concerning any enforcement action pending before the Commission as described in subsection (a) of this section shall decline to listen to such communication. If unsuccessful in preventing the communication, the Commissioner or employee shall advise the person making the communication that he or she will not consider the communication and shall prepare a statement setting forth the substance and circumstances of the communication within 48 hours of receipt of the communication and shall deliver the statement to the Ethics Officer for placing in the file in the manner set forth in subsection (c) of this section.

§ 7.16 Miscellaneous statutory provisions.

Each employee shall acquaint himself or herself with each statute that relates to his or her ethical and other conduct as an employee of the Commission and of the Government. In particular, the attention of employees is directed to the following statutory provisions:

(a) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

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

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

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

(e) The prohibitions against (1) the disclosure of classified information under 18 U.S.C. 798 and 50 U.S.C. 782 and (2) the disclosure of confidential business information under 18 U.S.C. 1905.

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

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

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

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

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

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

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

(m) The prohibitions against (1) embezzlement of Government money or property under 18 U.S.C. 641; (2) failing to account for public money under 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 or her employment under 18 U.S.C. 654.

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

(o) 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.

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

(q) The prohibition of 18 U.S.C. 207 against certain activities of departing and former employees.

(r) The prohibition of 18 U.S.C. 208 against certain acts affecting a personal financial interest.

Subpart C—Conduct and Responsibilities of Special Commission Employees

§ 7.17 Use of Commission employment.

A special Commission employee shall not use his or her Commission employment for a purpose that is, or gives the appearance of being, motivated by a desire for unlawful private gain for himself or herself, or for another person, particularly one with whom the employee has family, business or financial ties.

§ 7.18 Use of inside information.

(a) A special Commission employee shall not use inside information obtained as a result of his or her Commission employment for unlawful private gain for himself or herself, or for another person, either by direct action on the employee's part or by counsel, recommendation, or suggestion to another person, particularly one with whom the employee has family, business, or financial ties. For the

purpose of this section, "inside information" means information obtained under Commission authority which has not become part of the body of public information.

(b) A special Commission employee may teach, lecture, or write in a manner consistent with 11 CFR 7.9(d) and (e).

§ 7.19 Coercion.

A special Commission employee shall not use his or her Commission employment to coerce, or give the appearance of coercing, a person to provide unlawful financial benefit to himself or herself or to another person, particularly one with whom the employee has family, business, or financial ties.

§ 7.20 Gifts, entertainment, and favors.

Except as provided at 11 CFR 7.8(b), a special Commission employee, while so employed or in connection with his or her employment, shall not receive or solicit from a person having business with the Commission anything of value such as a gift, gratuity, loan, entertainment, or favor for himself or herself, or for another person, particularly one with whom the employee has family, business, or financial ties.

§ 7.21 Miscellaneous statutory provisions.

Each special Commission employee shall acquaint himself or herself with each statute that relates to his or her ethical or other conduct as a special Commission employee. Particular attention should be directed to the statutory provisions listed in 11 CFR 7.16.

Subpart D—Post Employment Conflict of Interest: Procedures for Administrative Enforcement Proceedings

§ 7.22 Scope.

The following are procedures to be followed by the Federal Election Commission in investigating and administratively correcting violations of the post employment conflict of interest provisions contained in 18 U.S.C. 207 (a), (b), and (c), which restrict activities of former employees, including former special Commission employees, which might give the appearance of undue benefit based on prior Commission employment and affiliation. Where appropriate for purposes of this subpart, 'former special Commission employee' shall be defined in accordance with 18 U.S.C. 207(c)(1).

§ 7.23 Initiation of investigation.

(a) *Filing of complaint.* (1) Any person who believes a former employee has

violated the post employment conflict of interest provisions of 18 U.S.C. 207 (a), (b), or (c), or 5 CFR Part 737 may file a signed complaint with the Ethics Officer.

(2) The Ethics Officer, within five days after receipt of the complaint, shall send a copy of the complaint by certified mail to the former employee named in the complaint. The former employee may, within ten days after receipt of the complaint, submit any written legal or factual materials he or she believes demonstrate that the complaint should be dismissed on its face.

(b) *Review of complaint.* (1) The Ethics Officer will review the complaint and any materials submitted by the former employee, and will prepare a report to the Commission recommending whether the complaint should be investigated or should be dismissed on its face.

(2) If the Commission, by an affirmative vote of four members, finds that the complaint appears to be substantiated, it may order an investigation of the allegations made in the complaint.

(i) Except as may be required to coordinate with the Department of Justice under 11 CFR 7.23(b)(2)(iii) any investigation conducted under this section shall be kept confidential until such time as the Commission has determined whether there is reasonable cause to believe a violation has occurred.

(ii) The Ethics Officer shall notify the Director of the Office of Government Ethics and the Criminal Division of the Department of Justice of the Commission's finding that the complaint has merit. The notification shall contain a copy of the complaint, any materials submitted by the former employee, the Ethics Officer's report, and the certification of the Commission's action.

(iii) The Commission will coordinate any investigation or administrative action with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice notifies the Commission that it does not intend to initiate criminal proceedings.

(3) If the Commission finds the complaint to be unfounded, no investigation will be conducted and both the complainant and the former employee will be notified by the Ethics Officer of the Commission's finding.

§ 7.24 Conduct of preliminary investigation.

(a) *Ethics Officer's responsibility.* Upon a finding under 11 CFR 7.23(b)(2) that a complaint appears to be substantiated, the Ethics Officer shall

conduct an investigation into the allegations of the complaint.

(b) *Opportunity to respond.* The former employee will be sent a copy of the Ethics Officer's report and will be given an opportunity to respond in writing and under oath to the allegations made in the complaint and the findings made in the report. The former employee may provide any written legal or factual materials he or she believes demonstrate that no violation has occurred. Such response must be received by the Commission within 20 days after the former employee's receipt of the Ethics Officer's report, unless an extension is authorized in writing by the Ethics Officer.

(c) *Representation by counsel.* The former employee may be represented by counsel during the investigation. Such counsel shall notify the Ethics Officer in writing that he or she is representing the former employee. Thereafter, all communications between the Commission staff and the former employee relating to the investigation shall be made to the former employee's counsel.

(d) *Report to the Commission.* Upon completion of the investigation, the Ethics Officer shall prepare a report to the Commission, including any materials provided by the former employee. The report shall recommend whether there is reasonable cause to believe the respondent has violated 18 U.S.C. 207(a), (b), or (c).

§ 7.25 Initiation of administrative disciplinary proceeding.

(a) *Commission review of report.* The Commission shall review the Ethics Officer's investigative report in Executive Session.

(b) *Reasonable cause to believe finding.* If the Commission, by an affirmative vote of four members, determines there is reasonable cause to believe a violation has occurred, it shall initiate an administrative disciplinary proceeding by providing the former employee with the notice defined in 11 CFR 7.26.

(c) *No reasonable cause to believe finding.* If the Commission determines that there is no reasonable cause to believe a violation has occurred, it will close its file on the matter and take no further action. The Commission shall notify the Director of the Office of Government Ethics, the Criminal Division of the Department of Justice, the complainant, and the former employee of its determination. Included in this notification will be a statement of

reasons for the Commission's determination.

§ 7.26 Notice to former employee.

(a) *Notice requirement.* After a reasonable cause to believe finding the Ethics Officer shall provide the former Commission employee with adequate notice of an intention to institute a disciplinary proceeding and an opportunity to request a hearing.

(b) *Contents.* The notice required under this section shall contain:

(1) A statement of the allegations (and the basis thereof);

(2) Notification of the right to request a hearing;

(3) An explanation of the method by which a hearing may be requested as set forth at 11 CFR 7.26(c); and

(4) A copy of the post-employment regulations.

(c) *Request for hearing.* (1) A former employee who has received a notice under this section must notify the Commission with ten days after receipt of such notice by certified mail of his or her desire for a hearing. The request for a hearing should include the following information:

(i) The former employee's daytime telephone number;

(ii) The name, address, and telephone number of the former employee's counsel, if he or she intends to be represented by counsel; and

(iii) At least three dates and times at which the former employee will be available for a hearing.

(2) If a written request from the former employee is not received by the Ethics Officer within the stated time period, the right to a hearing shall be waived and the examiner (See 11 CFR 7.27) shall consider the evidence and make a decision.

§ 7.27 Hearing examiner designation and qualifications.

(a) *Designation.* If the Commission decides by an affirmative vote of four of its members to hold a hearing, the Ethics Officer shall designate an individual to serve as examiner at the administrative disciplinary hearing. In the absence of a hearing, the Ethics Officer shall designate an examiner to consider the written evidence and make a decision. (See 11 CFR 7.26(b)(2)). The individual designated as examiner shall have the qualifications set forth in subsection (b) of this section.

(b) *Qualifications.* (1) An examiner shall be impartial. No individual who has participated in any manner in the decision to initiate the proceeding may

serve as an examiner in those proceedings. Therefore, the following persons may not be designated as an examiner:

(i) A Commissioner,

(ii) The Ethics Officer, or

(iii) Any Commission employee who has participated in the preliminary investigation of the complaint.

(2) The examiner shall be an attorney at the Assistant General Counsel level or higher.

§ 7.28 Hearing date.

(a) *Setting of date by examiner.* The examiner shall set the hearing at a reasonable time, date, and place.

(b) *Considerations.* Whenever practicable, the examiner shall choose a time and date from the list submitted by the former employee in the request for a hearing. In setting a hearing date, the examiner shall give due regard to the former 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.

§ 7.29 Hearing rights of former employer.

A hearing conducted under these procedures shall afford the former employee the following rights:

(a) To represent oneself or to be represented by counsel,

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

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

(d) To present oral argument, and

(e) To request a transcript of the recording of proceedings. The requester will be charged according to the fee schedule set out at 11 CFR 5.6.

§ 7.30 Hearing procedures.

(a) *Witness lists.* (1) No later than 10 days prior to the hearing date, the Ethics Officer will provide the former employee with a list of the witnesses the Commission intends to introduce. The list shall include the name and position of each witness and the aspect of the allegation upon which the witness is expected to testify. If no witnesses are to be called, the former employee shall be so notified.

(2) No later than 5 days prior to the hearing date, the former employee shall provide the Ethics Officer with a list of witnesses he or she intends to introduce. The list shall include the name and position of each witness and the aspect

of the allegation upon which the witness is expected to testify. If no witnesses are to be called, the Ethics Officer shall be so notified.

(3) Copies of the witness lists shall be given to the examiner by the Ethics Officer.

(b) *Representation.* (1) The Commission shall be represented at the hearing by the Ethics Officer or his or her designee.

(2) The former employee may represent himself or herself or may be represented by counsel.

(c) *Burden of proof.* The burden of proof shall be on the Commission which must establish substantial evidence of a violation.

(d) *Conduct of hearing.* (1) The following items will be introduced by the Commission and will be made part of the hearing record:

- (i) The complaint;
- (ii) The notification sent to the former employee under 11 CFR 7.27;
- (iii) The former employee's response to the notification; and
- (iv) If the Commission so chooses, a brief or memorandum of law.

(2) The former employee will then be given an opportunity to submit a brief or memorandum of law to be included in the hearing record.

(3) The Commission shall introduce its witnesses and evidence first. At the close of the Commission's examination of each witness, the former employee will be given an opportunity to cross-examine the witness.

(4) The former employee will present his or her witnesses and evidence at the close of the Commission's presentation. At the close of the former employee's examination of each witness, the Commission shall be given an opportunity to cross-examine each witness.

(5) After the former employee has completed his or her presentation, both parties will be given an opportunity for oral argument with the Commission making its arguments first. Time shall be offered during the oral argument for Commission rebuttal.

(6) Decisions as to the admissibility of evidence or testimony shall be made under the Federal Rules of Evidence.

§ 7.31 Examiner's decision.

(a) *Initial determination.* No later than 15 days after the close of the hearing, the examiner shall make a determination exclusively on matters of record in the proceeding.

(b) *Form of determination.* The examiner's determination shall set forth all findings of fact and conclusions of law relevant to the matters at issue.

(c) *Copies.* The examiner shall provide copies of his or her determination to the former employee, the complainant, the Ethics Officer, and the Commission.

§ 7.32 Appeal.

(a) *Right of appeal.* Within ten days after receipt by certified mail of the examiner's decision, either party may appeal such decision to the members of the Commission by filing a notice of appeal with the Chairman.

(b) *Notice of appeal.* The notice of appeal shall be accompanied by a memorandum setting forth the legal and factual reasons why the examiner's decision should be reversed or modified.

(c) *Commission review of appeal.* The Commission, by an affirmative vote of four members, may affirm, modify, or reverse the examiner's decision. The Commission's decision shall be based solely on the hearing record or those portions thereof cited by the parties to limit the issues.

(d) *Commission statement on appeal.* If the Commission modifies or reverses the initial decision, it shall specify such findings of fact or conclusions of law as are different from those of the examiner.

§ 7.33 Administrative sanctions.

The Commission may take appropriate disciplinary action in the case of any individual who is found in violation of 18 U.S.C. 207 (a), (b), or (c) after a final administrative hearing, or in the absence of a hearing, after adequate notice such as by:

(a) Prohibiting the individual from making, on behalf of any 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 years, which may be accomplished by directing agency employees to refuse to participate in any such appearance or to accept any such communication;

(b) Issuing a letter of reprimand;

(c) Issuing a letter of admonishment;

(d) Prohibiting a former employee from making formal or informal appearances or communications in connection with a particular matter or on behalf of a particular party.

(e) Taking other appropriate disciplinary action.

Dated: September 24, 1986.

Joan D. Aikens,
Chairman.

[FR Doc. 86-21898 Filed 9-26-86; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION Federal Aviation Administration 14 CFR Part 39

[Docket No. 86-NM-187-AD; Amdt. 39-5429]

Airworthiness Directives; Aerospatiale Model ATR-42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This action adopts a new airworthiness directive (AD), applicable to Aerospatiale Model ATR-42 series airplanes, which requires the installation of a positive stop to limit the maximum flap setting to 30 degrees, and an amendment to the FAA-approved Airplane Flight Manual (AFM). This amendment is prompted by a report of uncommanded pitch excursions at a flap setting of 45 degrees when tailplane icing was present. This condition, if not corrected, could result in temporary or total loss of control of the airplane.

DATES: Effective October 15, 1986. Comments must be received by October 15, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-187-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on Aerospatiale Model ATR-42 airplanes. When ice is present on the