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Title 7 - AGRICULTURE
Subtitle A - Office of the Secretary of Agriculture
PART 0 - EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A - General Provisions

0.735-1 Purpose.

The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. The confidence of citizens in their Government is influenced not only by the manner in which employees serve the public, but in the way they conduct themselves in the eyes of the public. The avoidance of misconduct and conflicts-of-interests on the part of Government employees through informed judgment is indispensable to the maintenance of these standards. In accord with these concepts, this part sets forth the regulations for employees of the U.S. Department of Agriculture, prescribing standards of conduct and responsibilities and governing the reporting of employment and financial interests.

0.735-2 Definitions.

In this part, the following terms are defined:

(a) "Agency" means an independent subagency or departmental staff office of the U.S. Department of Agriculture.

(b) "Agency Head" means the Administrator or Chief Executive Officer of an independent subagency or departmental staff office.

(c) "Conflict-of-interest" means a situation in which a Federal employee's private interest, usually of an economic nature, conflicts with his or her Government duties and responsibilities.

(d) "Appearance of conflict-of-interest" means a situation in where it could reasonably be concluded that an employee's private interest is in conflict with his or her Government duties and responsibilities, even though there may not actually be such a conflict.

(e) "Employee" means a regular officer or employee of the Department of Agriculture, including excepted and WOC employees, and includes a special Government employee unless otherwise provided.

(f) "Special Government employee" means an officer or employee of the Department of Agriculture who is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days.

(g) "Supervisor" means an employee having authority, in the interest of an agency, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees; or responsibility to direct them, or to

AUTHORITY: Executive Order 11222, as amended, of May 8, 1965, 30 FR 6469, 3 CFR, 1965 Supp; 5 CFR 735.104, Ethics in Government Act of 1978, P.L. 95-521.

Revised as of July 1982.

adjust their grievance, or effectively recommend such action if, in connection with the foregoing, the exercise of authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(h) "Outside employment or activity" means any outside work, service, or activity performed by an employee other than in the performance of official duties. It includes, but is not limited to, such activities as writing, editing, publishing, teaching, lecturing, consulting services, self-employment, working for another employer, management or operation of a private business, personally owned business, partnership, corporation, or any work performed with or without compensation.

(i) "Members of family" means those blood and in-law relations who are residents of the employee's household.

(j) "The Executive Order" means Executive Order 11222, as amended, of May 8, 1965.

0.735-3 Counseling and advisory service.

(a) The General Counsel shall designate an employee of the Office of the General Counsel to serve as the Department Counselor and designee to the Office of Personnel Management on matters covered by the regulations in this part. Employees shall be notified semiannually of the name and title of the Department Counselor and also upon the designation of a new employee to that position. The Department Counselor shall have overall responsibility for coordination of the Department's counseling and advisory service, and for assuring advice and interpretations on questions of conflict or apparent conflicts-of-interest and other matters covered by the regulations in this part are available to Deputy Counselors and Assistant

Deputy Counselors hereinafter designated.

(b) The Director of Personnel and the Chief, Security and Employee Relations Staff, Office of Personnel, shall be Department Deputy Counselors.

(c) Agency heads will be Agency Deputy Counselors. If necessary, in order to assure that counseling and advisory service is available to all Washington and field employees, the agency head may designate as Agency Assistant Deputy Counselors such employees as are qualified and in a position to give authoritative advice and guidance on most matters covered by this part.

(d) All employees are to be notified of the availability of counseling and by whom this service is provided. Initial notification must be made within 90 days after issuance of this part, and periodically thereafter. A new employee or new special Government employee must be notified at or before the time of his or her entrance on duty.

(e) Each new employee shall be furnished, at the time of hiring, a copy of this part. Current employees shall be furnished a copy of these regulations within 90 days following issuance. Subsequent changes to these regulations will be furnished employees upon issuance. Each employee shall be reminded of the regulations in this part semiannually.

(f) The regulations in this part will be discussed with each employee annually in conjunction with the employee's performance evaluation. Each employee will certify on the performance evaluation form or other agency form that he or she has a copy of this part and has discussed it with his or her supervisor.

(g) In addition to the counseling service set forth in paragraphs (a) through (f) of this section, 5 CFR 738 prescribes the naming of a Designated Agency Ethics Official (DAEO) to administer Title II of the

Ethics in Government Act of 1978, to coordinate and manage the agency's ethics program, and to provide liaison with the Office of Government Ethics with regard to all aspects of the ethics program. The Director of Personnel has been designated by the Secretary of Agriculture to serve as DAEO for USDA. The responsibilities and duties of the DAEO can be found in 5 CFR 738 203.

0.735-4 Agency supplementation.

Agencies of the Department may issue such additional regulations as are necessary, consistent, and of necessity more restrictive than the regulations in this part, subject to the prior approval of the Director of Personnel. Agencies are expected to issue such supplemental regulations, with respect to employees assigned to particular programs, as are necessary to prevent such employees from being in a potential conflict-of-interest situation or a situation giving the appearance of a conflict-of-interest. Such agency regulations shall be furnished to employees in the same manner as the regulations in this part.

0.735-5 Remedial action

- (a) A violation of this part by an employee may be cause for remedial action. Remedial action may include, but is not limited to:
- (1) Changes in assigned duties,
 - (2) Divestment by the employee of a conflicting interest,
 - (3) Disqualification for a particular assignment, or
 - (4) Disciplinary action which may be in addition to any penalty prescribed by law.
- (b) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive Orders, and regulations.

0.735-8 Responsibilities of supervisors.

- (a) Supervisors, because of their day-to-day relationships with employees, are responsible to a large degree for maintaining high standards of ethics and conduct. They must become familiar with the regulations in this part and apply the standards to themselves and employees they supervise.
- (b) Supervisors shall advise an employee who comes to them with questions on matters covered by these regulations or, when they consider it appropriate, refer the employee or the questions to a Counselor designated in §0.735-3.

Subpart B-Conduct and Responsibilities of Employees

0.735-11 Prohibited conduct—general.

- (a) An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in or create the appearance of:
- (1) Using public office for private gain,
 - (2) Giving preferential treatment to any person,
 - (3) Impeding Government efficiency or economy,
 - (4) Losing complete independence or impartiality,
 - (5) Making a Government decision outside of official channels, or
 - (6) Affecting adversely the confidence of the public in the integrity of the Government.
- (b) Employees are specifically prohibited from:
- (1) Engaging in criminal, infamous, dishonest, or notoriously disgraceful conduct, or other conduct prejudicial to the Government;

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(2) Betting or participating in any gambling activity, including the operation of a gambling device, conducting a lottery or pool, or selling or buying a number slip or ticket while on Government owned or leased property or while on duty for the Government;

(3) Using intoxicating beverages or narcotic drugs on Government owned or leased property, or transporting such beverages or drugs in Government owned or leased vehicles, or using such beverages or drugs at any time or place to the extent that it adversely affects performance of official duties;

(4) Lending funds at usurious interest rates;

(5) Provoking or harassing other employees, or making unwarranted criticism or accusations against other employees;

(6) Except as authorized by the Inspector General with the consent of a party to the conversation when necessary in criminal investigations, monitoring, recording, or authorizing or permitting others under their administrative control to monitor or record telephone conversations for the purpose of taking a verbatim transcript of all or part of the conversation, unless such monitoring or recording is agreed to in advance by all participants in the conversation;

(7) Except as authorized by the Inspector General with the consent of a party to the conversation when necessary in criminal investigations, utilizing a mechanical or electronic device to monitor or record nontelephone conversations, unless such monitoring or recording is agreed to in advance by all participants in the conversation;

(8) Soliciting, making collections, canvassing for the sale of any article, or distributing or posting literature, advertising matter, or any other graphic matter, in any space occu-

pled by the Department, except as authorized in writing by the Director of Personnel;

(9) Soliciting money from, or selling tickets to persons outside the Government for the benefit of any organization of the Department;

(10) Taking any action which might prejudice the Government's interest in a criminal or civil case;

(11) Giving aid or assistance, other than in the discharge of official duties, to any claimant in prosecuting any claim against the United States;

(12) Distributing through the Department's mail and messenger service, or otherwise distributing or posting, in any space occupied by the Department, any circulars, flyers, announcements, pictures, or other graphic matters, etc., that:

(i) Directly or indirectly attack or adversely reflect on the integrity of any official, officer, or employee of any branch of the Government; or

(ii) Directly or indirectly condemn or criticize the policies of any Government department or agency.

(13) Discriminating against any person on the grounds of race, color, national origin, religion, sex, age, marital status, physical or mental handicap, or political affiliation;

(14) Engaging in sexual harassment by participating in coercive or repeated unsolicited and unwelcome verbal comments, gestures, or physical contacts of a sexual nature or by using implicit or explicit coercive sexual behavior in the process of conducting agency business, or to control, influence, or effect the career, salary, or job of an employee. Supervisors and managers who fail to take appropriate action on complaints of sexual harassment will be subject to disciplinary action; or

(15) Displaying discourtesy or disrespect to a member of the public when acting in an official capacity.

0.735-12 Gifts, gratuities, entertainment, and favors.

(a) Except as provided in paragraphs (c) and (f) of this section, employees shall not solicit or accept, for themselves or another person, directly or indirectly, any gift, gratuity, favor, entertainment, loan, unusual discount, special consideration, or any other thing of monetary value (including complimentary meals and beverages, tangible items, tickets, and passes) from any interested party. An "interested party" is any person, firm, corporation, other entity, or individual acting in behalf thereof which:

(1) Has or is seeking to engage in procurement activities or other contractual, business, or financial relations with the Department;

(2) Conducts operations or activities that are regulated by the Department; or

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

(b) Gifts, gratuities, favors, entertainment, loans, unusual discounts, special considerations, and any other thing of monetary value bestowed upon members of the employee's immediate family are considered to be the same as if bestowed upon the employee. Acceptance of items, no matter how innocently offered or accepted from "interested parties" may be a source of embarrassment to the Department and the employee involved, may effect the objective and impartial judgment of the employee, and may impair confidence of the public in the integrity of the employee and the Department.

(c) The restrictions in paragraph (a) of this section do not prohibit:

(1) Exchange of social gifts in an obvious family or personal relationship (such as those between the employee and parents, spouse, chil-

dren, or close personal friends of the employee) when the circumstances make it clear that it is those relationships rather than the business of the "interested party" which are the motivating factors;

(2) Exchange of customary social courtesies that are wholly free of any embarrassing or improper implications and are of trivial value (e.g., soft drink or cup of coffee);

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

(4) Acceptance of unsolicited advertising or promotional material of clearly trivial value, such as pens, pencils, note pads, calendars, and other things of nominal or trifling value. (Acceptance of gifts, such as meat products, alcoholic beverages, fruit baskets, boxes of candy, wallets, jewelry, and cuff links is, however, strictly prohibited); or

(5) Acceptance of food and refreshments of nominal value on infrequent occasions when the interest of the Government is served by participation of Department employees in industry-sponsored activities at which a luncheon or dinner may be served, and where the discussion of matters of mutual interest to the Government and industry will take place.

(d) 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 (5 U.S.C. 7351). However, this paragraph does not prohibit the voluntary giving or acceptance of a gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(e) Pursuant to 5 U.S.C. 7342, the acceptance by an employee of a gift,

present, decoration, or other thing from a foreign government or agent thereof (including an international organization whose membership includes a unit of foreign government or any agent of a foreign government) is subject to the following conditions:

(1) An employee may not request or otherwise encourage the tender of a decoration or gift (including travel and travel expenses);

(2) An employee may accept and retain a gift that is tendered and received as a souvenir or a mark of courtesy if the gift has a retail value in the United States of \$140 or less at the time of acceptance;

(3) An employee may accept a gift of more than \$140 when such gift is in the nature of an educational scholarship, medical treatment, or when it appears that to refuse the gift would likely cause offense or embarrassment, or otherwise adversely affect the foreign relations of the United States. An employee may also accept gifts of travel or expenses for travel entirely outside the United States provided the employee obtains prior approval from the head of the employing agency or his or her designee;

(4) The acceptance of a tangible gift of more than \$140 is deemed to have been accepted on behalf of the United States and becomes the property of the United States. It must be deposited by the employee within 60 calendar days with his or her employing agency's property management officer with a statement indicating:

(i) Name and position of the employee;

(ii) Brief description of the gift and the circumstances justifying acceptance;

(iii) Identity, if known, of the foreign government and name and position of the individual who presented the gift;

(iv) Date of acceptance of the gift;

(v) Estimated value in the United States of the gift at time of acceptance; and

(vi) Disposition and current location of the gift. If the gift is for travel or travel expenses, the employee must file a statement with his or her employing agency head within 30 calendar days after acceptance indicating:

(i) Name and position of the employee;

(ii) Brief description of the gift and the circumstances justifying acceptance; and

(iii) Identity, if known, of the foreign government and name and position of the individual who presented the gift;

(5) An employee may accept, retain, and wear a foreign decoration if tendered in recognition of active field service or unusually meritorious service and if supported by a statement from the donor, preferably in the form of a citation, which shows the basis for tender of the award. A request from the head of the employing agency for approval of the acceptance of the decoration will be forwarded to the Administrator of the Foreign Agricultural Service or his or her designee for concurrence or disapproval. The request from the employing agency must contain a recommendation as to whether or not the acceptance, retention, and wearing of the foreign decoration by the employee would be in the best interest of the United States. The Administrator of the Foreign Agricultural Service shall notify the employing agency of his or her concurrence or disapproval of the retention of the foreign decoration. Disapproval by the Foreign Agricultural Service shall constitute acceptance on behalf of the United States, and the decoration shall be deposited by the employee with the agency's Property Management Officer within 60 calendar days. The Property Management Officer shall report the decoration,

as required by the Agriculture Property Management Regulations;

(6) Violation of the provisions of the law, including the failure by an employee to report such a gift, may result in a civil penalty against the employee for the value of the gift plus \$5,000; and

(7) The definition of "employee" includes all employees of the Department, experts or consultants under contract with the United States, spouses of all such individuals, and blood and in-law relations who are residents of the employee's household.

(f) Neither this section nor §0.735-13(a) precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence, as is compatible with this part, for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his or her behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits; nor does it allow an employee to be reimbursed 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).

0.735-13 Outside employment and activities.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his or her Government employment whether on his or her behalf, or for private individuals, firms, companies, institutions, professional societies, or State or local governments. Incompatible activities include but are not limited to:

(1) Outside employment or activity (including the acceptance of a fee, compensation, gift, payment of expenses or any other thing of monetary value) which may result in or create the appearance of a conflict-of-interest;

(2) Outside employment or activity which tends to impair the employee's mental or physical capacity to perform his or her Government duties and responsibilities in an acceptable manner;

(3) Outside employment or activity that takes the employee's time and attention during his or her official work hours;

(4) Outside employment or activity which may be construed by the public to be official acts of the Department, or of a nature closely paralleling the work of the Department;

(5) Outside employment or activity which involves participation in a commercially-sponsored broadcast, or which relates to a written discussion of policies or official work of the Department, unless authorized in advance by the Office of Governmental and Public Affairs;

(6) Outside employment or activity which involves permission or the appearance of permission to use an employee's name in the advertising of organizations commercializing the results of research conducted by the Department, regardless of any merits which such enterprises may appear to possess;

(7) Outside employment or activity which may involve the use of information secured as the result of employment in the Department and to the detriment of the public service;

(8) Any outside employment or activity which may tend to bring criticism of, or cause embarrassment to, the Department;

(9) Outside employment or activity which would involve the use by the employee of official facilities e.g., office space, office machines, sup-

plies, telephones, or the services of other employees; and

(10) Outside employment or activity which would involve the violation of a Federal or State statute, a local ordinance, Executive Order, or regulation to which the employee is subject.

(b) Outside employment or activity (including self-employment) is permitted to the extent that it does not conflict with other requirements of this part, or tend to create a conflict-of-interest, or appearance of conflict-of-interest, between the private interests of an employee and the employee's official responsibilities. The employee's outside employment or activity shall not reflect discredit on the Government or the Department.

(c) Except as provided in paragraphs (c)(1) through (4) of this section, employees shall obtain advance approval for outside employment or activity whether paid or unpaid. Each agency shall establish the approval level and shall advise each employee. A record of each approval shall be filed in the employee's official personnel folder. The term "outside employment or activity" as used in this paragraph does not include:

(1) Memberships in, or volunteer work with, charitable, religious, social, fraternal, recreational, public service, civic, or similar nonbusiness and nonprofit organizations;

(2) Memberships in professional organizations;

(3) Performance of duties in the Armed Forces, the Reserve, or the National Guard; or

(4) Acting as an officer of a labor organization pursuant to Section 18 of Executive Order 11491, as amended.

(d) In considering requests for approval of outside employment, the following criteria should be applied:

(1) The provisions of applicable laws;

(2) The policies incorporated in

this part, including the possibility of conflict-of-interest or appearance of conflict-of-interest;

(3) The general attendance record of the employee;

(4) The nature of the employee's official duties in relation to the nature of the duties which will comprise the outside employment or activity; and

(5) The amount of time and hours of work required by the outside employment or activity.

(e) Employees are specifically prohibited from acting as the agent of a foreign principal registered under the Foreign Agent's Registration Act (18 U.S.C. 219).

(f) No employee, whether in a duty or nonduty status, shall accept outside employment or activity, with or without compensation, from any foreign government, corporation, partnership, or individual without written prior approval from a Counselor designated under §0.735-3

(g) It is the policy of the Department to grant permission to an employee to teach, lecture, or write (including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service) provided:

(1) Prior written authorization is obtained from the agency head or a Counselor designated under §0.735-3;

(2) Such teaching, lecturing, or writing is not performed at or for any educational institution or other organization that discriminates because of race, creed, color, sex, age, national origin, or physical or mental handicap, in the admission or subsequent treatment of students;

(3) Such teaching, lecturing, or writing is not dependent on information obtained as a result of his or her employment or activity with the Department, except when that infor-

mation has been made available to the general public or when the agency head or agency head's designee gives specific authorization for the use of nonpublic information in the public interest; and

(4) Such teaching, lecturing, or writing is not otherwise incompatible with the provisions of this part.

(h) Articles prepared officially are the property of the Government, and authors thereof may not accept payment for such articles published in outside journals, magazines, or newspapers.

(i) Employees may not accept honorariums for written articles, speaking engagements, or addresses on radio or television, or other appearances performed as part of their official duties. This restriction on the acceptance of honorariums applies even if the Government official endorses the check to a charitable organization or asks that the check be sent to a charitable organization.

(j) No employees, except special Government employees, shall accept compensation for services as consultants or advisors to any organization, public or private, in any manner which draws upon the experience, competence, or professional standing acquired or enhanced by or through their position in this Department unless they have received permission from their agency head. Special Government employees shall not use their employment or activity with the Department for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for themselves or another (41 FR 24108, June 15, 1976).

0.735-14 Conflict-of-interest.

(a) The following prohibitions apply to both a regular employee and a special Government employee:

(1) He or she may not have a direct or indirect financial interest

that conflicts substantially, or appears to conflict substantially, with his or her responsibilities and duties as a Federal employee;

(2) He or she may not engage, directly or indirectly, in a financial transaction relying upon information obtained through his or her employment for his or her personal benefit or disclose such information for the benefit of another;

(3) He or she may not participate directly or indirectly in any transaction concerning the purchase or sale of corporate stocks or bonds, commodities, or other property for speculative purposes if such action might tend to interfere with the proper and impartial performance of his or her duties or bring discredit upon the Department;

(4) If he or she is concerned in any way with the administration of programs for the purchase or sale of commodities, price support programs, commodity loan programs, or other programs which directly affect market prices of agricultural commodities, he or she may not directly or indirectly speculate in any agricultural commodity;

(5) He or she may not, after his or her Government employment has ended, represent any other person (other than the United States), in any formal or informal appearance before, or with the intent to influence, make any communication on behalf of any other person; (i) to the United States, (ii) in connection with any particular Government matter involving a specific party, in which the United States is a party or has an interest and in which he or she participated personally and substantially as a Government employee (18 U.S.C. 207(a));

(6) He or she may not, within 2 years after his or her Government employment has ended, represent any other person (other than the United States), in any formal or informal appearance before, or with

the intent to influence, make any communication on behalf of any other person; (i) to the United States, (ii) in connection with any particular Government matter involving a specific party, in which the United States is a party or has an interest and which was actually pending under his or her official responsibility within a period of 1 year prior to the termination of such responsibility (18 U.S.C. 207(b)(i));

(7) He or she may not, having been employed as specified in 18 U.S.C. 207(d) as a high Government official, for 2 years after his or her Government employment has ended, aid, counsel, advise, consult, or assist in representing any other person (other than the United States) by personal presence at any formal or informal appearance: (i) before the United States, (ii) in connection with any particular Government matter involving a specific party, (iii) in which he or she participated personally and substantially for the Government (18 U.S.C. 207(b)(ii));

(8) He or she may not, having been employed and as specified in 18 U.S.C. 207(d) as a high Government official (other than a special Government employee who serves for fewer than 60 days in a calendar year), for 1 year after his or her Government employment has ended, represent anyone (other than the United States) in any formal or informal appearance before, or with the intent to influence, make any communication on behalf of anyone to the department or agency in which he or she was employed, in connection with any particular Government matter, whether or not involving a specific party, which is pending before that department or agency or in which such department or agency has a direct and substantial interest (18 U.S.C. 207(c)). The above prohibition shall not apply to communications or representations made by a former employee--

(i) Who is an elected official of a State or local government; or

(ii) Whose principal occupation is with--

(A) An agency or instrumentality of a State or local government.

(B) An accredited institution of higher education, or

(C) A hospital or medical research organization when the representation or communication is made on behalf of such government, institution, hospital, or organization (18 U.S.C. 207(d)(2)).

(9) Except as permitted by paragraphs (b) and (c) of this section, he or she may not participate personally and substantially as a Government officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his or her knowledge, he or she, his or her spouse, minor child, partner, organization in which he or she is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest (18 U.S.C. 208(a)).

(b) The prohibition in paragraph (a)(9) of this section shall not apply if the employee first advises his or her agency head or the Director of Personnel of the nature and circumstances of the particular Government matter involved, makes full disclosure of the financial interest, and receives in advance a written determination made by the agency head or the Director of Personnel 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 employee. Authority to

make such written determinations may not be redelegated by the agency head or the Director of Personnel.

(c) Any holding in a widely held mutual fund or regulated investment company which does not specialize in a particular industry or commodity and as to which the employee has no managerial control or directorship, except where otherwise prohibited by statute or regulation, is exempted from the prohibition in paragraph (a)(9) and the requirements of paragraph (b) of this section as being too remote or too inconsequential to affect the integrity of an employee's services to the Government.

(d) The following prohibitions apply only to a regular employee:

(1) He or she may not, except in the discharge of his or her official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest (18 U.S.C. 203 and 205); or

(2) He or she may not receive any salary or supplementation of his or her Government salary from a private source as compensation for his or her services to the Government (18 U.S.C. 209).

(e) The following prohibitions apply only to a special Government employee:

(1) He or she may not, except in the discharge of his or her official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest and in which he or she has at any time participated personally and substantially for the Government (18 U.S.C. 203 and 205); or

(2) He or she may not, except in the discharge of his or her official duties represent anyone else in a matter pending before the Government agency he or she serves unless he or she has served there no more than 60 days during the

past 365 days (18 U.S.C. 203 and 205).

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

(1) Acting without compensation, and if not inconsistent with the faithful performance of his or her duties, as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings;

(2) Giving testimony under oath or making statements required to be made under penalty for perjury or contempt; or

(3) Having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government, provided it is not prohibited by law, Executive Order 11222, as amended, 5 CFR Part 735, this part, or agency regulations supplementing this part.

(g) This section does not purport to paraphrase the restrictions contained in 18 U.S.C., Chapter 11. The omission of a restriction in no way relieves an employee of the legal effect of such restriction.

0.735-15 Attendance and leave.

(a) Employees must observe designated duty hours and be punctual in reporting for work and returning from lunch periods. Tardiness can result in employees being placed in a nonpay status or in a charge against annual or compensatory leave in multiples of 15 minutes or 1 hour as appropriate, and/or subject to disciplinary action.

(b) Employees normally must obtain advance authorization for absence from duty. Approval of leave is a discretionary matter reserved to the supervisor. The taking of leave is not an absolute right afforded the employee, but is conditioned on the needs of the Service. Where absence from duty results from illness or an emergency,

employees are required to notify their supervisor or other appropriate person as soon as possible. When an employee fails to properly notify his or her supervisor, absence may be charged as an unauthorized absence. It also may result in appropriate disciplinary action.

(c) Sick leave is to be used by employees only when they are incapacitated from duty because of sickness or injury; when they need to obtain medical, dental, or optical examination or treatment; when they are subject to quarantine imposed by local health authorities; or when they are required to give care to a member of their immediate family who has a contagious disease.

§0.735-16 Use of Government property, facilities, and services.

(a) Employees are prohibited from directly or indirectly using, or allowing the use of, Government property, facilities, or services of any kind, including those leased to or otherwise paid for by the Government, for other than officially approved activities. Employees have a positive duty to conserve and protect Government property.

(b) Personal property offered for sale by the Department may be purchased by employees only when the sale of such property is based upon competitive bids, provided that no purchase may be made either directly or indirectly by the employee who was formerly accountable for the property; who formerly used the property; or who was in any way connected with its condemnation, declaration as excess, or sale, except:

(1) Surplus perishable products may be sold to employees at the best price obtainable in quantities not exceeding the needs of their immediate household;

(2) Special clothing and other articles or personal equipment purchased for the exclusive use of and fitted to an individual employee may,

when not otherwise usable by the Department and in all respects surplus to the needs of the Government, be sold to such employees at the best price obtainable in the event of his or her separation from the Service or permanent assignment to duties not requiring such clothing or equipment.

0.735-17 Use of vehicles.

(a) An employee who willfully uses or authorizes the use of a Government owned or leased passenger motor vehicle or aircraft for other than official purposes shall be suspended for 1 month or removed from office in accordance with 31 U.S.C. 638a(c)(2).

(b) An employee who willfully uses or authorizes the use of any Government owned or leased conveyance, whether passenger-carrying or not, for other than official purposes, is subject to disciplinary action up to and including removal.

(c) An employee shall not store Government owned or leased motor vehicles in or near his or her private residence or use such vehicles for transportation between his or her residence and place of employment unless such storage or use shall have been specifically authorized by the Secretary or another official to whom such authority has been delegated.

0.735-18 Indebtedness.

(a) Employees who fail to pay their just financial obligations in a timely and proper manner will be subject to such disciplinary action as the agency head or his or her designee considers appropriate. For the purpose of this section, "just financial obligations" are those acknowledged by the employee, reduced to judgment by a court, or confirmed by a final administrative determination of a unit of the

Federal, State, or local government. A "proper and timely manner" means in a manner which the agency head or his or her designee determines does not, under the circumstances, reflect adversely on the Department as his or her employer.

(b) In cases where a legal judgment exists against an employee, the employee concerned will be required to satisfy the judgment within a reasonable period of time unless he or she can arrange to have it modified or set aside.

(c) When an employee is the subject of a complaint for failure to pay taxes or other debts that are the subject of a final administrative determination by a unit of the Federal, State, or local government, he or she shall be advised of the complaint and told to make payment arrangements satisfactory with that unit of government.

(d) When an employee is the subject of a letter of complaint from a creditor who does not hold a legal judgment, the agency head or his or her designee shall determine whether the employee acknowledges the debt and call the provisions of this section to the employee's attention. Subsequent action, if any, will be taken in accord with the facts of the case and the provisions of this section.

0.735-19 Political activity.

A Federal employee other than an officer exempted by 5 U.S.C. 7324(d) may not take an active part in political management, in a political campaign, or run for elective political office except when authorized by Department or Office of Personnel Management regulations. He or she may not solicit or receive any assessment, subscription, or contribution for any political purpose from an officer or employee of the Government. Whatever the employee may not do directly, he or she may

not do indirectly or through an agent, officer, or an employee chosen by him or her or one subject to his or her control.

0.735-20 Use, protection, and release of information.

(a) An employee is prohibited from using or giving information acquired through his or her official position, prior to its release to the general public, to advance the interests of himself or herself, his or her family, associates, friends, or any other person or enterprise.

(b) Classified defense information and restricted information shall be safeguarded and released in accordance with the provisions of applicable directives, statutes, or regulations. For further information, consult the USDA Regulations for Classification, Declassification, and Safeguarding Classified Information.

(c) "For Official Use Only" material shall not be examined by, released to, nor discussed with any person except in the performance of official duties or as required by the Freedom of Information Act.

(d) Unauthorized, premature disclosure of information which might influence or affect the market value of any product of the soil grown within the United States, or of information which by law or rule of the Department is required to be withheld from publication until a fixed time is punishable by fine and imprisonment unless such release is determined to be required by the Freedom of Information Act.

(e) The subject matter of public hearings with respect to the proposed issuance of an order, regulation, or other administrative determination, after the close of the hearing and prior to issuance by the Secretary of the order, regulation, or other administrative determination shall not be discussed with any interested person or with any representative of an

Interested person without written permission of the Secretary. However, this shall not preclude an employee who has been assigned to or has supervision over a proceeding from discussing with interested persons or their representatives matters of procedure in connection with such proceeding.

(f) Official mail shall be safeguarded from indiscriminate publication. It is prohibited to use or to quote in whole or in part any letters from the White House to this Department.

(g) Information concerning inventions and patent applications may be revealed only for official purposes. Employee inventors and employees who handle or obtain information concerning inventions of employee inventors or concerning any other inventions in which the Department may have an interest shall not reveal such information prior to the issuance of the patent, except for official purposes, unless such release is determined to be required by the Freedom of Information Act.

(h) Lists of names of farmers, business people, or employees that may be available in the Department shall not be released to anyone unless it is determined that such release is required by the Freedom of Information Act. Lists of manufacturers, dealers, breeders, etc., should not be furnished so as to imply that the Department endorses certain firms to the possible detriment of others, or that the lists necessarily include all dealers of a certain line.

0.735-21 Activities with regard to farm organizations.

(a) Department employees shall refrain from participating actively in meetings and in other activities concerned with the establishment of general or specialized farm organizations, or with recruiting members

for existing organizations such as the National Grange, the American Farm Bureau Federation, the National Farmers Organization, the Farmers' Union, the National Association of Soil Conservation Districts, the National Rural Electric Cooperative Association, the National Council of Farmer Cooperatives, and Breed and Commodity Organizations. This is a necessary corollary of the equally long-established policy of the Department that it shall deal fairly with all organizations and deal with each on the same basis. As a continuation of this policy, it should be understood by employees of the Department that it is not permissible for any of them to:

- (1) Participate in establishing any general or specialized farm organization;
- (2) Act as organizer for any such organization, or hold any other functional office therein;
- (3) Act as financial or business agent for any such organization;
- (4) Participate in any way in any membership campaign or other activity designed to recruit members for any such organization;
- (5) Accept the use of free office space or contributions for salary or traveling expense from any such organization;
- (6) Advocate that any particular general or specialized organization of farmers is better adapted for carrying out the work of this Department than any individual citizen, group of citizens, or organizations;
- (7) Advocate that the responsibilities of any agency of this Department or any other Federal agency should be carried out through any particular general or specialized organization of farmers;
- (8) Advocate or recommend that any State or local agency should carry out its responsibilities through any particular general or specialized organization of farmers; or
- (9) Approve contracts for the

Department with any cooperative or other commercial organization whenever such cooperative or other commercial organization deducts or checks off from payments due farmers, membership dues of such farmers to any general or specialized organization of farmers, except as it is determined that current authorization for such deduction has been knowingly filed by such individual farmers with the cooperative or other commercial organization.

(b) The restrictions set forth in paragraph (a) of this section do not:

(1) Apply to members of an FmHA County Committee;

(2) Apply to specialized organizations of farmers such as cow testing associations and similar groups; or

(3) Prohibit employees from participating in the organization of groups that are needed in carrying out federally authorized programs; for example, an REA cooperative and similar groups determined by the appropriate agency head to be essential in effectuating federally authorized programs.

(c) If any violations of any of the provisions of this section should occur, full information with reference thereto should at once be submitted to the Office of the Inspector General by the head of the agency in which the person violating any of these provisions is employed.

0.735-22 Prohibitions upon employees serving abroad.

An employee on foreign assignment may not:

(a) Violate Department of State regulations governing the post to which he or she is assigned;

(b) Receive a "profit" from the sale of his or her personal car or other property when such "profit" accrues from import privileges granted him or her by reason of his or her official status. "Profit" for the purposes of this paragraph is as

defined in the Department of State regulations or directives governing the post of assignment;

(c) Engage in political activities in the country of assignment;

(d) Violate the laws of the country in which he or she is assigned;

(e) Have an interest in any business enterprise or engage in any profession in any country to which assigned; or

(f) Speculate in any foreign real estate, bonds, shares, stocks, and currencies.

0.735-23 Miscellaneous provisions.

(a) Any money, property, or other thing of value received by or coming into custody of an employee in connection with the discharge of his or her duties must be accounted for, deposited, or otherwise disposed of in accordance with established procedures.

(b) Employees are required under Section 5.3 of Civil Service Rule V (5 CFR 5.3) to give the Office of Personnel Management and its authorized representatives all information and testimony in regard to matters arising under laws, rules, and regulations administered by OPM.

(c) Employees are obligated to give information to authorized representatives of the Department when called upon if the inquiry relates to official matters and the information is obtained in the course of employment or as a result of relationships incident to such employment. This shall include the furnishing of a signed statement. Failure to respond to requests for information or to appear as a witness in an official proceeding may result in disciplinary penalty. (Nothing herein shall be deemed to infringe upon an employee's right to invoke the protection of the Fifth Amendment to the Constitution with respect to self-incrimination.)

(d) Agency officials have the authority to transfer and reassign employees within their respective jurisdictions whenever necessary to meet operational needs. Employees have an obligation to the Department to accept transfers and changes in assignment. Failure to accept a transfer or reassignment may result in the separation of the employee.

(e) Employees shall not purchase products or receive services directly or indirectly from persons, firms, or establishments for which employees conduct inspection, grading, or similar regulatory activities without express approval. Each Agency shall establish the approval level and shall advise each employee. Agencies shall utilize the following criteria in granting such approvals:

- (1) Proximity of the employee to other retail outlets,
- (2) The number of retail outlets in the commuting area,
- (3) Whether the outlet is a sole source,
- (4) Whether the firm is selling the item or service at the prevailing price to the general public as well as the employee, and
- (5) Whether the outlet is open to the general public.

0.735-24 Miscellaneous statutory provisions.

(a) Each employee has a positive duty to acquaint himself or herself with each statute that relates to his or her ethical and other conduct as an employee of his or her agency, of the Department, and of the Government. The attention of each employee is directed to the following statutory provisions:

(1) House Concurrent Resolution 175, 85th Congress, second session, 72 Stat. B12, the "Code of Ethics for Government Service;"

(2) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts-of-interest;

(3) The prohibition against wrongful disclosure of individually identifiable information or wrongful maintenance of a system or records (5 U.S.C. 552a (i));

(4) The prohibition against a public official appointing or promoting a relative, or advocating such an appointment or promotion (5 U.S.C. 3110);

(5) The prohibitions against disloyalty and striking (Executive Order 10450, as amended, 5 U.S.C. 7311, 18 U.S.C. 1918);

(6) The prohibition against the employment of a person convicted of a felony for participating in or promoting a riot or civil disorder (5 U.S.C. 7313);

(7) The prohibitions against proscribed political activities (5 U.S.C. 7324, and 18 U.S.C. 602, 603, 607, and 608);

(8) The provisions relating to the receipt and disposition of foreign gifts and decorations (5 U.S.C. 7342);

(9) The prohibition against gifts to superiors by employees (5 U.S.C. 7351);

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

(11) The prohibition against a person licensed or authorized to perform any official function under the U.S. Grain Standards Act, or employed by the Department to carry out the provisions of the Grain Standards Act being financially or otherwise interested in an entity owning or operating a grain elevator or warehouse or engaging in the merchandising of grain, or be employed by or accept gratuities from any such entity (7 U.S.C. 87(a));

(12) The prohibition against the unauthorized release of information, as specified in the Packers and Stockyards Act (7 U.S.C. 222);

(13) The prohibition against the release of information in an

employee's possession concerning cotton standards, estimates, tests, and analysis unless authorized by the Secretary (7 U.S.C. 472);

(14) The prohibitions against the release of information acquired from parties to any marketing agreement and from handlers subject to marketing agreement orders, except as authorized by the Secretary for the purposes of suit or administrative hearings (7 U.S.C. 608d(2));

(15) The prohibition against persons administering activities concerned with cotton option contracts and commodity benefits as provided by the Agricultural Adjustment Act, speculating in agricultural commodities or products to which such contracts or benefits apply, or in contracts relating thereto, or in the stock or membership interests of any association or corporation handling such commodities or products (7 U.S.C. 610(g));

(16) Limitations on the use or availability of information furnished in connection with marketing agreements and orders (7 U.S.C. 610(i));

(17) The availability of information furnished in connection with marketing agreements and orders, and applicable to marketing agreements for anti-hog-cholera serum and hog-cholera virus is restricted (7 U.S.C. 855);

(18) Information furnished in connection with the collection of peanut statistics shall be used only for statistical purposes for which supplied. No publication shall be made where the data furnished by any establishment can be identified (7 U.S.C. 955);

(19) Information furnished in connection with the establishment and adjustment of farm marketing quotas shall be disclosed only as authorized by the Secretary for the purpose of suit or administrative hearing (7 U.S.C. 1373(c));

(20) The prohibition against an officer or employee being the benefi-

ciary of or receiving any fee, commission, or gift for or in connection with any transaction or business under the Consolidated Farm and Rural Development Act other than such salary, fee, or compensation as he or she may receive as an officer or employee. In addition, members of an FmHA County Committee are prohibited from making any certification with respect to a loan to purchase any land in which they or any person related to them have any financial interest (7 U.S.C. 1986);

(21) The prohibition against unauthorized release of information relating to the production and marketing of cotton (7 U.S.C. 2105(c));

(22) The prohibition against unauthorized release of information relating to plant variety protection (7 U.S.C. 2426);

(23) The prohibition against unauthorized release of information relating to the production and marketing of eggs (7 U.S.C. 2706(c));

(24) The prohibition against the unauthorized prediction as to cotton prices in a Governmental publication (12 U.S.C. 1141j(d));

(25) The prohibition against the making of false statements in connection with activities of the Commodity Credit Corporation or embezzlement or conversion of anything of value belonging or pledged to the Corporation, or conspiring to commit such acts (15 U.S.C. 714m);

(26) The prohibition against the acceptance of any fee, gift, or other consideration for compromise, adjustment, or cancellation of farm indebtedness (18 U.S.C. 217);

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

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

(29) The prohibition against an

employee contracting with a Member of Congress (18 U.S.C. 432);

(30) The prohibition against paying a larger sum than appropriated for erection, repair, or furnishing of any public building or improvement thereof (18 U.S.C. 435);

(31) The prohibition against contracting for convict labor (18 U.S.C. 436);

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

(33) The prohibition against acceptance of excessive honorariums (18 U.S.C. 616 repealed, now 2 U.S.C. 441i);

(34) The prohibition against embezzlement of Government money or property (18 U.S.C. 641);

(35) The prohibition against failing to account for public money (18 U.S.C. 643);

(36) The prohibition against misuse of public funds by custodian (18 U.S.C. 648);

(37) The prohibition against a custodian failing to deposit money in his or her possession (18 U.S.C. 649);

(38) The prohibition against disbursing officers falsely certifying full payment (18 U.S.C. 651);

(39) The prohibition against disbursing officers paying less than lawful amount (18 U.S.C. 652);

(40) The prohibition against disbursing officers misusing public funds (18 U.S.C. 653);

(41) The prohibition against embezzlement of the money or property of another person in the possession of an employee by reason of his or her employment (18 U.S.C. 654);

(42) The prohibition against embezzlement of the money or property of the Federal Crop Insurance Corporation and the Farmers Home Administration, and of pledged or entrusted property (18 U.S.C. 657);

(43) The prohibition against the conversion of property mortgaged or

pledged to the Farmers Home Administration and the Federal Crop Insurance Corporation with intent to defraud (18 U.S.C. 658);

(44) The prohibition against the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783);

(45) The prohibition against extortion by Government employees (18 U.S.C. 872);

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

(47) The prohibition against the making of false entries, or participation in any benefit through any transaction in connection with Departmental activities concerned with agricultural loans (18 U.S.C. 1006);

(48) The prohibition against the making of false statements or reports, or of wilfully overvaluing land, property, or security to influence action in connection with agricultural loans (18 U.S.C. 1014);

(49) The prohibition against depredation of Government property (18 U.S.C. 1361);

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

(51) The prohibition against the wilful disclosure of official information which might influence or affect the market value of crops prior to authorized publication. An employee acquiring, by reason of his or her employment, information as to the market value of agricultural crops, which information is required to be withheld, is prohibited from speculating in such product (18 U.S.C. 1902);

(52) The prohibition against the disclosure of confidential information (18 U.S.C. 1905);

(53) The prohibition against speculation in agricultural commodities to which the Federal Crop Insurance Act applies or to contracts relating thereto, or stock or membership interests of corporations or associations handling such

commodities by any person administering such law (18 U.S.C. 1903);

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

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

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

(57) The prohibition against the compilation or issuance of false crop reports (18 U.S.C. 2072);

(58) The prohibition against employees' making false or fictitious entry or record in a matter related to his or her duties (18 U.S.C. 2073);

(59) The prohibition against any person using information to his or her own advantage or improperly revealing information concerning trade secrets acquired under the Poultry Products Inspection Act (21 U.S.C. 458);

(60) The prohibition against the acceptance by an employee of money or other things of value given with intent to influence a decision in connection with the performance of duties under the Federal Meat Inspection Act, or when received from a person or firm engaged in commerce given for any purpose whatever (21 U.S.C. 622);

(61) The tax imposed on certain employees (e.g., Presidential appointees, employees excepted under Schedule C, employees in GS-16 or above or a comparable pay level) who knowingly engage in self-dealing with a private foundation (26 U.S.C. 4941, 4946). "Self-dealing" is defined in the statute to include certain transactions involving an employee's receipt of pay, a loan, or reimbursement for travel or other expenses from, or his or her sale to or purchase of property from, a private foundation;

(62) The prohibition against any

employee subject to the Surface Mining Control and Reclamation Act from owning any direct or indirect financial, real property, employment, and/or creditor interests in an underground or surface coal-mining operation (30 U.S.C. 1201);

(63) The prohibition against false claims (31 U.S.C. 231);

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

(65) The prohibition against expenditure or obligation in excess of amount apportioned or appropriation available (31 U.S.C. 665);

(66) The prohibition against acceptance of voluntary services (31 U.S.C. 665);

(67) The prohibition against failure to file or the filing of a false financial disclosure report (Sec. 204(a), Pub. L. 95-521; 5 U.S.C. App.);

(68) The prohibitions against prohibited personnel practices (5 U.S.C. 2302); and

(69) The prohibition against the use of information obtained in the course of employment to speculate or to aid another in speculating on any commodity exchange (50 U.S.C. App. 2160(f)).

(b) This section does not purport to enumerate or paraphrase all statutory restrictions imposed on employees. The omission of a restriction in no way relieves an employee of the legal effect of such restriction.

**Subpart C— Statements of
Employment and Financial
Interests**

**0.735-31 Employees required
to submit statements under the
Executive Order.**

Except as provided in 0.735-32, the following employees shall submit a statement of employment and financial interests on USDA Form AD-392 in accordance with this part:

(a) Employees classified at GS-13 through GS-15 under 5 U.S.C. 5332, or at a comparable pay level under other authority, who are in positions of which require the incumbent to exercise judgement in making a Government decision or in taking Government action on contracting or procurement, administering or monitoring grants or subsidies, regulating or auditing private or other non-Federal enterprise, or other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise;

(b) Employees classified at GS-13 through GS-15 under 5 U.S.C. 5332, or at a comparable pay level under other authority, who are in positions which the agency has determined have duties and responsibilities which require that the incumbents report their employment and financial interests in order to avoid involvement in a possible conflict-of-interest situation and carry out the purpose of law, Executive Order, Part 735 of the Office of Personnel Management's regulations, this part, and applicable agency regulations;

(c) Employees classified below GS-13 under 5 U.S.C. 5332, or at a comparable pay level under other authority, where the agency has determined that they are in positions which otherwise meet the criteria in

paragraphs (a) and (b) of this section and that statements from them are essential to protect the integrity of the Government and avoid employee involvement in a possible conflict-of-interest situation, provided such determination has been approved in writing by the Office of Personnel Management; and

(d) All employees regardless of grade, pay level or type of appointment who perform any function or duty under the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87), unless he or she files a financial disclosure report under the provisions of the Ethics in Government Act of 1978 (see §0.735-32(a)).

(e) An employee who refuses to file a statement for reasons other than that the duties and responsibilities of the position do not come within the criteria for reporting, as set forth in this part, or who refuses to file after a final determination that the duties and responsibilities of the position do come within the criteria will be subject to appropriate disciplinary action.

0.735-32 Exceptions.

(a) Employees covered under §0.735-44 are not required to file employment and financial interest statements under §0.735-31.

(b) Employees in positions that meet the criteria in §0.735-31(a) may be excluded from the reporting requirement when the Department Counselor determines that:

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

(2) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconse-

quential effect on the integrity of the Government.

(c) Exceptions will be considered by the Department Counselor at the request of the agency head.

(d) An employee shall be afforded the opportunity for a review through the Departmental grievance procedure as described in Chapter 771 of the Department Personnel Manual, of the designation of his or her position as one requiring the submission of a statement of employment and financial interests.

0.735-33 Identification of employees required to submit statements.

Agency heads are responsible for identifying those employees who are required to file statements of outside employment and financial interests under §0.735-31. For control and reporting purposes, those employees required to submit statements shall be specifically identified in the personnel records system.

0.735-34 Time and place for submission of employees' statements.

(a) When a decision is reached to make an appointment to a position requiring submission of a statement of employment and financial interests, the prospective employee should be informed.

(b) Employees covered under §0.735-31 will submit statements to the agency head or to an employee designated by him or her.

(c) Agencies are responsible for assuring that persons subject to the reporting requirements are notified of those requirements and are provided the necessary forms and instructions.

0.735-35 Supplementary statements.

Changes in, or additions to, the

information contained in an employee's statement of employment and financial interests shall be reported in an annual supplementary statement as of March 31 and submitted no later than April 30 of each year. If no changes or additions occur, a report so stating is required. Notwithstanding the filing of the annual statement required by this section, each employee shall at all times avoid acquiring a financial interest or taking an action that could result in violation of the conflicts-of-interests provisions of Section 208 of Title 18, United States Code, or §0.735-14.

0.735-36 Types of interests to be reported.

The employment and financial interests statements shall include the following:

(a) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions with which the employee is connected as an employee, officer, owner, director, trustee, member, partner, advisor, or consultant; or in which he or she has any continuing financial interest through a pension or retirement plan, shared income or otherwise, as a result of any current or prior employment or business or professional associations, or in which he or she has any financial or beneficial interest through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts. The dollar value of each financial interest must be listed on the financial statement. Shares in credit unions, building and loan associations, social or religious organizations, or deposits in savings and loan associations and banks, and interests exempted under §0.735-14(c) need not be reported.

(b) A list of the names of his or

her creditors other than those to whom he or she may be indebted by reason of a mortgage on property which he or she occupies as a personal residence or to whom he or she may be indebted for current and ordinary household and living expenses, such as household furnishings, automobile, education, vacation, and similar expenses. Indebtedness on owner-occupied farms must be reported.

(c) A list of interests in real property or rights in land and minerals, such as farmland, timberland, and/or undeveloped land with their value, total acreage, total number of farm animals, types of crops, types of farm animals, number of acres of each crop and/or number of each farm animal, average annual income derived from sales of crops and/or farm animals, other than property which the employee occupies as a personal residence. Owner-occupied farms must be listed. Property acquired for the personal use of the employee and members of his or her family, such as beach lots and cemetery lots, need not be listed.

(d) The interests and obligations as listed above of a spouse, minor child, or relative who are full-time residents of the employee's household.

0.735-37 Information prohibited.

The regulations in this part do not require an employee to submit any information relating to the employee's connection with, or interest in, a union, professional society; or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization, or similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from

or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

0.735-38 Interests of employee's relatives.

(a) The financial interest of a spouse, minor child, or other member of an employee's immediate household shall be reported to the same extent as the financial interest of the reporting employee. An "other member" of the immediate household means a relative who is a full-time resident of the employee's household (§0.735-2(i)).

(b) The employment of such persons need not be reported unless such person is engaged in an activity, which if held by the employee, would place him or her in a conflict or apparent conflict-of-interest situation.

0.735-39 Information not known by employee.

If any information required to be included on a statement of employment and financial interests or supplement thereto, including holdings placed in trusts, is not known to the employee but is known to another person, the employee shall ask such person to furnish the information in his or her behalf.

0.735-40 Effect of employee's statement.

The statements of employment and financial interests and supplementary statements required under this part are in addition to, and not in substitution for or in derogation of any similar requirement imposed by law, the Executive Order, or regulation. The submission of a statement or supplementary statement by an employee does not permit him or her or any other person to participate in

a matter in which his or her or the other person's participation is prohibited by law, the Executive Order, or the regulations in this part.

0.735-41 Specific provisions for special Government employees.

(a) Except as provided in paragraph (b) of this section, each special Government employee shall submit a statement of employment and financial interests on USDA Form AD-392A which reports:

(1) All other employment; and
 (2) The financial interests of the special Government employee which relate either directly or indirectly to the duties and responsibilities of the special Government employee with the Department.

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

(1) A physician, dentist, or allied medical specialist whose services are procured to provide care and service to patients; or
 (2) A veterinarian whose services are procured to provide care and service to animals.

(c) A statement of employment and financial interests required to be submitted under this section shall be submitted to the head of the agency in which the special Government

employee is to serve not later than the time of employment. Each special Government employee shall keep his or her statement of employment and financial interests current throughout his or her employment with the Department by the submission of supplementary statements.

0.735-42 Review of statements and determination of conflicting interests.

(a) The Assistant Secretary for Administration is responsible for assuring that all personnel required to file are properly identified, all statements are submitted timely, and that agency heads identify review officials who possess the knowledge and experience to be able to properly evaluate the listed interest. This pertains to filings under both Executive Order 11222 and the Surface Mining Control and Reclamation Act of 1977. All agencies shall report to the Assistant Secretary for Administration by May 30 of each year the number of statements submitted, the number that have been closed favorably, and the number that have not been closed. In the latter instance, the Assistant Secretary for Administration shall be advised the reasons for the cases remaining open and shall be advised on a monthly basis of the status of all open cases.

(b) The Director of Personnel is responsible for the review of and determination on those statements submitted directly to him or her pursuant to §0.735-44.

(c) Agency heads will be responsible for annually identifying employees required to file employment and financial statements, for collecting and initially reviewing the statements, for identifying and designating those employment and financial interests that are not in conflict, and for signing and dating the statements.

Agency heads are responsible for

the review of and determination on those statements submitted to an agency official. Original and supplementary statements shall be reviewed and determinations made within 2 months of receipt of such statements. Disciplinary action will be taken against those who falsely certify that the employment and financial interests statements have been received and reviewed. This responsibility may be delegated, subject to the following restrictions:

(1) Responsibility for review and determination may be delegated only to a responsible agency official in the national office, who the agency head determines has sufficient experience, judgement, and understanding of the conflict-of-interest problem to properly carry out such responsibilities. The initial processing and receiving of the statements can be delegated to the field facilities where the person is employed. If the statement, when received, shows any holding of any sort, it shall be referred for review to the official identified by the agency head as having the responsibility, with a statement indicating whether the holding does, does not, or appears to have some relationship to the duties the employee performs.

(2) Responsibility for final determinations in cases involving substantial conflict questions may be delegated only to associate, deputy, and assistant agency heads. The agency head shall set criteria identifying the types of cases which must be referred to such officials for final determination.

(d) Delegations of review and determination responsibility must be in writing from the Director of Personnel or the agency head, as appropriate.

(e) The Director of Personnel shall issue general guidelines covering the review of statements, recognizing possible conflicts or the appearance thereof, obtaining additional

information, resolving conflict situations, documentation, and remedial action. Agencies shall supplement these with more specific guidelines applicable to the particular agency. A copy of both the general and the specific guidelines shall be furnished to each employee to whom review and determination responsibility has been delegated.

(f) Whenever a question of a conflict or appearance of conflict arises, a written determination must be made. The basis of the determination must also be documented in writing. The employee must be advised in writing of the determination, and, if the determination involves a change in duties or disqualification for a particular assignment, a copy of the determination should be furnished to the employee's immediate supervisor. Where affirmative action by the employee is required, a report of his or her compliance shall be obtained and made a part of the record.

(g) If a determination cannot be made at the agency level, the case shall be referred to the Director of Personnel. If the Director of Personnel cannot make a determination, he or she shall refer the case to the Department Counselor for his or her determination or referral to the Secretary for determination. The record shall include copies of all pertinent documents and a written statement from each referring official setting forth his or her recommendation as to a final determination and the reasons therefor.

(h) Before a final determination requiring any remedial action is made, the employee concerned shall be given an opportunity to explain the conflict or appearance thereof and to offer any suggestions he or she may wish as to how the matter might be resolved. If an employee feels that the final determination will cause him or her undue hardship, or objects to the decision on other

grounds, he or she may request a review and modification by forwarding to the Chief, Security and Employee Relations Staff, a written statement setting forth all the facts and circumstances in support of his or her request and any alternative solution which he or she thinks appropriate.

(i) If the final determination requires positive action on the part of the employee, he or she shall take such action as soon as possible and advise the determining official when he or she has done so. Failure to take a required action within a reasonable time may result in disciplinary action.

(j) Where special circumstances exist, the Director of Personnel may grant, in writing, an exception to the requirements of paragraph (c)(1) of this section to allow delegation or review and determination authority to others than national office officials.

0.735-43 Protection of employees' statements.

(a) The statements of employment and financial interests, and supplements thereto, required by or pursuant to the regulations in this part shall be held in confidence and afforded adequate physical security. No information as to the contents thereof shall be disclosed, except to the head of the employing agency and such other persons as may be designated custodians or reviewers of such reports unless specific authorization has been obtained from the Department Counselor. An official, custodian, reviewer, or other employee having possession of a statement of employment and financial interests shall not allow access to, or allow information to be disclosed from, the statement except to carry out the purpose of this subpart.

(b) Information from a statement

of employment and financial interests shall not be disclosed outside of the Department, except as the Office of Personnel Management or the Secretary of Agriculture may determine for good cause shown.

(c) Reports shall be separately maintained by the officials designated as custodians for such reports and shall not be made a part of the official personnel folders.

(d) Regardless of the means or manner of transmission, when these reports leave the physical custody of employees or a designated reviewer, they shall be enclosed in a double sealed envelope. The inner envelope shall be marked, "For Official Use Only," "Contains AD-392 (or AD-392A)," as appropriate, and "To Be Opened by Addressee Only."

0.735-44 Financial disclosure under the Ethics in Government Act.

(a) The following individuals are covered by the financial reporting requirements of the Ethics in Government Act of 1978 and shall submit a financial disclosure report on Office of Personnel Management Standard Form 278 in accordance with this section:

(1) Members of the Senior Executive Service and other officers or employees in the executive branch, including a special Government employee as defined in 18 U.S.C. 202, whose position is classified at GS-16 or above of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed at a rate equal to or greater than the minimum rate of basic pay for GS-16;

(2) Employees who are administrative law judges appointed pursuant to 5 U.S.C. 3105;

(3) Employees not described in paragraph (a)(2) of this section who are in a position in the executive branch which is excepted from the competitive service by reason of

being of a confidential or policymaking nature;

(4) The Designated Agency Ethics Official; and

(5) Employees on detail to a position normally occupied by an individual described in paragraphs (a)(1) through (a)(4) above, irrespective of the detailed employee's actual grade level or compensation, if the detail can reasonably be expected to last for more than 60 days in a calendar year.

(b) Financial disclosure reports required under this section shall be submitted to the Designated Agency Ethics Official at USDA (the Director of Personnel) or his or her designee. Reports are due as follows:

(1) Within 30 days of assuming a position or office described in paragraph (a) of this section—unless the employee has already filed a current Standard Form 278 either for a similarly covered position which he or she left within 30 days of assuming the duties of the new one, or has filed as a nominee for the position assumed;

(2) Within 30 days of termination of employment from a position or office described in paragraph (a) of this section, unless the employee enters a similarly covered position within 30 days of such termination; and

(3) On or before May 15 of each calendar year during the incumbency of an employee in a covered position, when he or she has served more than 60 days in such position during the previous calendar year.

(c) Instructions covering the types of information to be provided on a Standard Form 278 are included with the form. The basic categories of information required are: income from and interests in property; purchases, sales, and exchanges; gifts and reimbursements; liabilities; positions held; and relations with other employers.

(d) Financial disclosure reports

submitted under the provisions of this section shall be reviewed by the Director of Personnel as the Designated Agency Ethics Official, or by those individuals delegated authority for that purpose as Deputy Ethics Officials (subject to the restrictions of 5 CFR 738.204).

(e) The official responsible for reviewing the disclosure statement shall either approve it, or make an initial determination that a conflict or appearance thereof exists, or may determine that additional information is needed to resolve potential problems. The reporting individual shall be afforded the opportunity for written or oral response to any initial determinations other than approval, and should a final determination of a conflict be made, shall be afforded the opportunity for a personal consultation where practicable. If after these steps have been taken the reviewing official determines that a conflict or appearance of a conflict continues to exist, the reporting individual shall be notified in writing of what steps must be taken to resolve the problems. Failure to take any required remedial actions will result in appropriate disciplinary action against the individual involved in accordance with the provisions of 5 CFR 734.604(b)(6).

(f) Financial disclosure reports filed under the Ethics in Government Act of 1978 shall be made available for public inspection within 15 days of their receipt within the parameters established in 5 CFR 734.603.

(g) The Ethics in Government Act of 1978 provides that the Office of Government Ethics, Office of Personnel Management, shall be responsible for developing rules and regulations affecting financial disclosure procedures under the Act. These regulations are found in 5 CFR Part 734. Employees with questions concerning this section may consult the complete regulations in 5 CFR Part 734, ask their servicing

personnel office, or address their inquiries directly to the Designated Agency Ethics Official, Director of Personnel, Room 16-W, U.S. Department of Agriculture, Washington, D.C. 20250.

Subpart D—Administrative Enforcement of Restriction on Post-Employment Activities

0.735-51 Purpose.

The purpose of this subpart is to set forth regulations governing administrative enforcement of the prohibitions on post-employment activities contained in 18 U.S.C. 207.

0.735-52 Notice of Violation.

Whenever there is reasonable cause to believe that a former employee has violated the provisions of 18 U.S.C. 207, an investigation and referral of the matter to the Department of Justice for possible prosecution shall be made in accordance with applicable regulations and Department procedures. A copy of such referral shall be provided to the Office of Government Ethics. Thereafter any action to be taken by the Department shall be coordinated with the Department of Justice unless the Department of Justice declines to prosecute.

0.735-53 Initiation of administrative action.

Whenever the Director of Personnel has reasonable cause to believe that a former employee of the Department has committed acts which violate 18 U.S.C. 207(a), (b), or (c) he or she shall initiate administrative action pursuant to this subpart by notifying such employee (hereinafter respondent), in writing that:

(a) Action is being instituted against him or her pursuant to this subpart as a result of allegations of a violation or violations of 18 U.S.C. 207. The respondent shall be informed of the allegations and the basis for them in sufficient detail to prepare an adequate defense;

(b) He or she may request a hearing in writing within 15 working days by addressing the request to the Director of Personnel of the Department;

(c) In the absence of such a request, the Director of Personnel shall decide the matter on its merits based upon the evidence gathered to date; and

(d) The respondent may elect to supply a written rebuttal to the allegations in lieu of requesting a hearing. Such material shall be incorporated in the record and reviewed by the Director of Personnel prior to reaching a determination on the matter.

0.735-54 Hearing officer.

If the respondent, after receiving notice of action under this subpart, requests a hearing, the Secretary shall appoint a hearing officer for the matter. The hearing officer shall be an individual who has not been involved in any of the events specified in the allegations and who did not participate in the investigation of the allegations, the decision to institute the proceeding, or the referral of the matter, if any, to the Department of Justice. The hearing officer shall be an individual with suitable experience and training to conduct the hearing, reach a determination, and render an initial decision in an equitable manner.

0.735-55 Department representative.

The Director of Personnel shall appoint a Department representative

(hereinafter petitioner) to present evidence and otherwise participate in the hearing.

0.735-56 Time, date and place of hearing.

The hearing shall be held at a time and place specified by the hearing officer. The hearing officer shall give due regard in setting a hearing date to:

(a) Allowing the respondent adequate time to prepare a defense properly; and

(b) Providing the respondent an expeditious resolution of allegations that may be damaging to his or her reputation.

0.735-57 Representation.

Respondent shall be entitled to appear personally, or to appear through or be accompanied by a representative, at the hearing.

0.735-58 Rights of parties at hearing.

Petitioner and respondent shall be entitled to introduce, examine and cross examine witnesses, submit evidence, and present oral arguments.

0.735-59 Oaths and rules of evidence.

All testimony shall be taken under oath. The hearing officer shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the hearing officer shall exclude irrelevant or unduly repetitious evidence.

0.735-60 Transcript.

The hearing officer shall cause a transcript to be made of the hearing and a copy of it shall be made avail-

able to petitioner and to respondent.

0.735-61 Briefs and discovery.

There shall be no discovery prior to the hearing, nor shall any briefs be submitted, absent specific request of the hearing officer.

0.735-62 Open hearing.

All hearings shall be open to the public unless closed for good cause by the hearing officer. Such a finding shall be made a part of the record by the hearing officer.

0.735-63 Ex-parte communications.

Neither petitioner or respondent, nor any representative thereof, shall make any ex-parte communications to the hearing officer concerning merits of the allegations against respondent prior to the issuance of his or her initial decision.

0.735-64 Administrative record.

The record of any proceeding shall consist of the statement of allegations conveyed to respondent, the transcript of the testimony at the hearing, the documents and other evidence produced and made a part of the record at the hearing, all pleadings, and the initial decisions of the hearing officer.

0.735-65 Burden of proof.

The petitioner shall have the burden of proof in this proceeding and must establish a violation by substantial evidence.

0.735-66 Initial decision.

Within 30 days of the termination of the hearing, the hearing officer shall issue an initial decision on the matter. In his or her initial decision, he or she shall set forth all findings of fact and conclusions of law

relevant to the matters at issue.

0.735-67 Appeal.

Within 15 days of the date of receipt of the initial decision, either party may appeal the initial decision or any portion thereof to the Assistant Secretary for Administration, in writing, pointing to errors in the findings of fact or conclusions of law contained in the initial decision. The opposing party shall have ten days after receipt of a copy of the appeal to reply.

0.735-68 Final decision.

The Assistant Secretary for Administration shall accept or reject the findings and conclusions of the hearing officer. This decision shall be based solely on the record of the proceeding and the letters of the parties commenting on the initial decision. Neither party shall make an ex-parte communication to the Assistant Secretary for Administration concerning the merits of the appeal prior to issuance of his or her final decision.

0.735-69 Sanctions.

In event of a finding, not overturned on appeal, of a violation of 18 U.S.C.

207, the Assistant Secretary for Administration may:

(a) Prohibit the respondent 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 on any matter of business for a period not to exceed five years, which may be accomplished by directing Department employees to refuse to participate in any such appearances or to accept any such communications; and

(b) Take other appropriate disciplinary action.

0.735-70 Finality.

There shall be no appeal within the Department from the decisions of the Assistant Secretary for Administration made pursuant to this subpart.

These regulations were approved by the Office of Government Ethics, Office of Personnel Management, on March 25, 1982.