

(e) *“Acting” or temporary positions.* An individual may serve in a position designated pursuant to 18 U.S.C. 207(d) for up to 60 days in an “acting” or temporary capacity without being subject to those restrictions which specially apply to such positions, unless such individual (1) was transferred or detailed from another designated position, or (2) without a significant break in continuity, is named permanently to such position.

(f) *Special Government Employee.* A Special Government Employee who serves on 60 days or less in a given calendar year may serve in a designated position without being subject to the restrictions which specially apply to such position. A Special Government Employee is deemed to serve only on those days actually engaged in work for the Government under his or her Special Government Employee arrangement.

(g) *Publication.* Positions designated by the Director pursuant to 18 U.S.C. 207(d)(1)(C) and not exempted will be published in the FEDERAL REGISTER.

(h) *Computation of time.* An individual who transfers from a designated position to one that is not designated shall compute the commencement of the time periods contained in 18 U.S.C. 207 (b)(ii) and (c) from the time of such transfer, except as indicated in paragraph (i) of this section. (See § 2637.202(e).)

(i) *Position shifting.* In any case where a person transfers from a designated position to one that is not, the agency head shall within one month transmit to the Director a report reciting the functions of each position, the reason for the transfer, and the identities of the prior holder of the position assumed and the successor, if any, to the position departed. If the Director designates the newly assumed position pursuant to section 207(d)(1)(C) of title 18 U.S.C., such designation shall be effective retroactively to the date of transfer notwithstanding paragraph (d) of this section.

(j) *Revocation of Designations.* In the event the Director determines that a position previously designated should not have been, the designation will be revoked. Except for designations made

under paragraph (i) of this section, the revocation may be made retroactive if the initial designation is determined to have been erroneous or if there is a change in standards for designation applicable to the position. Retroactive effect will not be given where the basis for revocation is a change in the functions or importance of a position.

§ 2637.212 Administrative enforcement proceedings.

(a) *Basic procedures.* The following basic guidelines for administrative enforcement of restrictions on post employment activities are designed to expedite consultation with the Director as required pursuant to section 207(j) of title 18 U.S.C.

(1) *Delegation.* The head of an agency may delegate his or her authority under this subpart.

(2) *Initiation of administrative disciplinary hearing.* (i) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information appears substantiated, the agency head shall expeditiously provide such information, along with any comments or agency regulations, to the Director and to the Criminal Division, Department of Justice. The agency should coordinate any investigation on administrative action with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice communicates to the Agency that it does not intend to initiate criminal prosecution.

(ii) Whenever an agency has determined after appropriate review that there is reasonable cause to believe that a former Government employee has violated any of these regulations or 18 U.S.C. 207(a), (b), or (c), it may initiate an administrative disciplinary proceeding by providing the former Government employee with notice as defined in paragraph (a)(3) of this section. Agencies may establish procedures to protect the privacy of former employees as to allegations made prior to a determination of sufficient cause to initiate an administrative disciplinary hearing.

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(3) *Adequate notice.* (i) An agency must provide a former Government employee with adequate notice of an intention to institute a proceeding and an opportunity for a hearing.

(ii) Notice to the former Government employee must include:

(A) A statement of allegations (and the basis thereof) sufficiently detailed to enable the former Government employee to prepare an adequate defense;

(B) Notification of the right to a hearing; and

(C) An explanation of the method by which a hearing may be requested.

(4) *Presiding official.* (i) The presiding official at proceedings under this subpart shall be the agency head or an individual to whom the agency head has delegated authority to make an initial decision (hereinafter referred to as "examiner").

(ii) Appropriate qualifications shall be established for examiners.

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

(5) *Time, date and place.* (i) The hearing shall be conducted at a reasonable time, date, and place.

(ii) In setting a hearing date, the presiding official shall give due regard to the former Government employee's need for:

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

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

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

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

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

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

(iv) To present oral argument, and

(v) To receive a transcript or recording of the proceedings, on request.

(7) *Burden of proof.* In any hearing under this subpart, the agency has the burden of proof and must establish substantial evidence of a violation.

(8) *Hearing decision.* (i) The presiding official shall make a determination ex-

clusively on matters of record in the proceeding, and shall set forth in the decision all findings of fact and conclusions of law relevant to the matters at issue.

(ii) Within a reasonable period of the date of an initial decision, as set by the agency, either party may appeal the decision to the agency head. The agency head shall base his or her decision on such appeal solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues.

(iii) If the agency head modifies or reverses the initial decision, he or she shall specify such findings of fact and conclusions of law as are different from those of the hearing examiner.

(9) *Administrative sanctions.* The agency head may take appropriate action in the case of any individual who was found in violation of 18 U.S.C. 207 (a), (b), or (c) of these regulations after a final administrative decision or who failed to request a hearing after receiving adequate notice, by:

(i) Prohibiting the individual from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on any matter of business for a period not to exceed five years, which may be accomplished by directing agency employees to refuse to participate in any such appearance or to accept any such communication; or

(ii) Taking other appropriate disciplinary action.

(10) *Judicial review.* Any person found to have participated in a violation of 18 U.S.C. 207 (a), (b), or (c) of these regulations may seek judicial review of the administrative determination.

(11) *Consultation and review.* Each agency shall submit a copy of its procedures for administrative enforcement to the Director.

§2637.213 Effective date of restrictions.

(a) *Persons affected.* Any person who holds a Government position after June 30, 1979, becomes subject to any additional restrictions relating to the holder of that position contained in the