

ADAMS Template: SECY-067

DOCUMENT DATE: 01/12/1993

TITLE: PR-0 - 58FR03825 - CONDUCT OF EMPLOYEES;
CONFORMING AMENDMENTS

CASE REFERENCE: PR-0
58FR03825

KEY WORD: RULEMAKING COMMENTS

Document Sensitivity: Non-sensitive - SUNSI Review Complete

STATUS OF RULEMAKING

PROPOSED RULE: PR-0 OPEN ITEM (Y/N) N
RULE NAME: CONDUCT OF EMPLOYEES; CONFORMING AMENDMENTS

PROPOSED RULE FED REG CITE: 58FR03825
PROPOSED RULE PUBLICATION DATE: 01/12/93 NUMBER OF COMMENTS:
ORIGINAL DATE FOR COMMENTS: / / EXTENSION DATE: / /

FINAL RULE FED. REG. CITE: 58FR03825 FINAL RULE PUBLICATION DATE: 01/12/93
NOTES ON PUBLISHED AS A FINAL RULE. FINAL RULE SIGNED BY THE EDO. FILE LOC
STATUS ATED ON P1.
OF RULE
TO FIND THE STAFF CONTACT OR VIEW THE RULEMAKING HISTORY PRESS PAGE DOWN KEY

HISTORY OF THE RULE

PART AFFECTED: PR-0
RULE TITLE: CONDUCT OF EMPLOYEES; CONFORMING AMENDMENTS

PROPOSED RULE PROPOSED RULE DATE PROPOSED RULE
SECY PAPER: SRM DATE: / / SIGNED BY SECRETARY: / /

FINAL RULE FINAL RULE DATE FINAL RULE
SECY PAPER: SRM DATE: / / SIGNED BY SECRETARY: 12/28/92

STAFF CONTACTS ON THE RULE

CONTACT1: L. MICHAEL RAFKY MAIL STOP: 15-G-18 PHONE: 504-1606
CONTACT2: MAIL STOP: PHONE:

DOCKET NO. PR-0
(58FR03825)

In the Matter of
CONDUCT OF EMPLOYEES; CONFORMING AMENDMENTS

DATE DOCKETED	DATE OF DOCUMENT	TITLE OR DESCRIPTION OF DOCUMENT
------------------	---------------------	-------------------------------------

01/23/93	12/28/92	PUBLISHED AS A FINAL RULE ON 1/12/93.
----------	----------	---------------------------------------

Copy to Secretary
Original sent to the
Office of the Federal Register
for publication.

DOCKET NUMBER
PROPOSED RULE ~~PR-0~~
(58 FR 3825)

DOCKETED
USNRC
[7590-01]

'93 JAN 21 P7:46

NUCLEAR REGULATORY COMMISSION

10 CFR Part 0

RIN 3150-AE47

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Conduct of Employees; Conforming Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Nuclear Regulatory Commission ("NRC" or "Commission") is amending its regulations governing the conduct of NRC employees. This amendment removes provisions which have been superseded by recently issued Office of Government Ethics (OGE) regulations, which take effect on February 3, 1993.

EFFECTIVE DATE: February 3, 1993.

FOR FURTHER INFORMATION CONTACT: L. Michael Rafky, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301-504-1606.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 1992 (57 FR 35006), the Office of Government Ethics published its final rule establishing government-wide standards of conduct for executive branch employees. These regulations, which are codified at 5 CFR Part 2635, take effect

Pub. 1/12/93

on February 3, 1993, and will supplant Nuclear Regulatory Commission standards of conduct regulations. Section 2635.105 of that final rule permits individual agencies to issue jointly with OGE supplemental regulations to address particular agency needs.

The purpose of this rule is to abrogate those portions of the NRC's standard of conduct regulations, codified at 10 CFR Part 0, which will be superseded by the government-wide regulations. The NRC has retained those provisions which will likely be subjects of supplemental regulations or relate to procedural issues to be addressed in forthcoming internal NRC Management Directives.

Because the NRC is required to delete superseded provisions of 10 CFR Part 0 with no discretion in the matter, the NRC finds, pursuant to 5 U.S.C. 553(b)(B), that there is good cause not to seek public comment on this rule, as such comment is unnecessary. The rule will become effective on February 3, 1993, the date the OGE regulations take effect. The NRC also finds that good cause exists to waive the 30-day deferred effective date provisions of the Administrative Procedure Act (5 U.S.C. 553(d)(3)). Delaying the effective date of this rule would be contrary to the public interest because it would be confusing for regulations which have been superseded to remain in effect beyond February 3, 1993.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final regulation.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Regulatory Analysis

The Nuclear Regulatory Commission is eliminating regulations that have been superseded by the Office of Government Ethics' government-wide standards of conduct regulations. This rule has no significant impact on health, safety or the environment. There is no substantial cost to licensees, the NRC, or other Federal agencies.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule, because these supplemental regulations do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

Part 0 - Conflict of interest, Criminal penalty.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 0.

PART 0-CONDUCT OF EMPLOYEES

1. The authority citation for Part 0 continues to read as follows:

AUTHORITY: Secs. 25, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2035, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O. 11222, 30 FR 6469, 3 CFR 1964-1965 COMP., p. 306; 5 CFR 735.104.

Sections 0.735-21 and 0.735-29 also issued under 5 U.S.C. 552, 553. Section 0.735-26 also issued under secs. 501, 502, Pub. L. 95-521, 92 Stat. 1864, 1867, as amended by secs. 1, 2, Pub. L. 96-28, 93 Stat. 76, 77 (18 U.S.C. 207).

§§ 0.735-1 - 0.735-2 [Removed]

2. Sections 0.735-1 and 0.735-2 are removed.

3. Section 0.735-3 is revised to read as follows:

§ 0.735-3 Responsibilities and authorities.

The General Counsel:

(a) is the Designated Agency Ethics Official for NRC.

(b) Serves as NRC's designee to the Office of Government Ethics on matters covered by this part.

(c) Designates deputy counselors.

(d) Coordinates counseling services, and assures that counseling and interpretations on questions of conflicts of interest and other matters covered by the part are available to deputy counselors.

§§ 0.735-4 - 0.735-6 [Removed]

4. Sections 0.735-4 through 0.735-6 are removed.

5. Section 0.735-8 is revised to read as follows:

§ 0.735-8 Information collection requirements: OMB approval.

This part contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

§ 0.735-20 [Removed]

6. Section 0.735-20 is removed.

7. In § 0.735-21 paragraph (d) is revised to read as follows:

§ 0.735-21 Acts affecting a personal financial interest (based on 18 U.S.C. 208).

* * * * *

(d) *Special exemption for special Government employees.* Federal Personnel Manual Chapter 735, Appendix C provides that a special Government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by 18 U.S.C. 208. However, that chapter states that the power of exemption may be exercised in this situation "if the special Government employee renders advice of a general nature from which no preference or advantage over others might be gained by any particular person or organization." It is the policy of the Nuclear Regulatory Commission in

conformity with the foregoing, to exercise the power of exemption pursuant to 18 U.S.C. 208(b) in such situations. The authority to grant such an exemption is delegated to the NRC official responsible for appointment or designation of the particular consultant or advisor.

8. Section 0.735-23 is revised to read as follows:

§ 0.735-23 Activities of officers and employees in claims against and other matters affecting the Government (based on 18 U.S.C. 205).

(a)(1) Nothing in 18 U.S.C. 205 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States if the Executive Director for Operations certifies in writing that the national interest so requires. Such certification shall be submitted for publication in the *Federal Register*.

(2) The special Government employee shall immediately notify the NRC when so designated to act as agent or attorney by his private employer.

§§ 0.735-24 - 0.735.25 [Removed]

9. Sections 0.735-24 and 0.735-25 are removed.

10. Section 0.735-26 is revised to read as follows:

§ 0.735-26 Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners of current officers and employees (based on 18 U.S.C. 207).

The prohibitions of 18 U.S.C. 207 shall not apply --

(1) With respect to the making of communications solely for the purpose of furnishing scientific or technological information if the following procedures are observed:

(i) The former employee proposing to make the communication solely for the purpose of furnishing scientific or technological information receives prior written authorization from the Executive Director for Operations. The individual shall provide to the Executive Director for Operations a written statement that indicates he or she is a former employee subject to post-employment restrictions under this section, that briefly summarizes the content of the proposed communication, that describes his or her involvement, if any, as an NRC employee on the matter to be discussed, and that certifies the communication he or she desires to make is solely for the purpose of furnishing scientific or technological information; and

(ii) The Executive Director for Operations before deciding whether to authorize the communication shall consult with the counselor or deputy counselor. The primary factor to be considered by the Executive Director for Operations is whether

receipt of the scientific or technological information would further the agency's mission.

(2) If the Commission, in consultation with the Director of the Office of Government Ethics, makes a certification published in the *Federal Register* that the former employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee. The Commission under this provision may authorize communications that are not limited to transmission of scientific or technological information.

§§ 0.735-27 - 0.735-28a [Removed]

11. Sections 0.735-27 through 0.735-28a are removed.

Subpart C (§ 0.735-30) [Removed]

12. Part 0 is amended by removing Subpart C (§ 0.735-30).

§ 0.735-40 [Amended]

13. Section 0.735-40 is amended by removing paragraphs (e), (g) and (h), and redesignating paragraph (f) as paragraph (e).

§§ 0.735-41 - 0.735-49a [Removed]

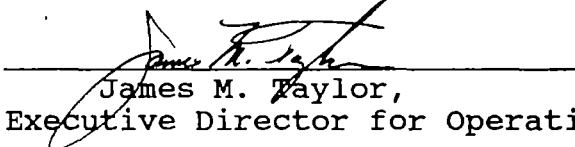
14. Sections 0.735-41 through 0.735-49a are removed.

Subpart E (§§ 0.735-50 - 0.735-55) [Removed]

15. Part 0 is amended by removing Subpart E (§§ 0.735-50 - 0.735-55).

Dated at Rockville, Maryland this 28th day of December,
1992.

For the Nuclear Regulatory Commission,


James M. Taylor,
Executive Director for Operations.