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FEDERAL TRADE COMMISSION

16 CFR Parts 4 and 5

RIN 3084-AB85

Rules of Practice

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission" or "FTC") is amending its rules of practice in order to eliminate the agency's post-employment clearance rule.

DATES: These rule revisions are effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Josephine Liu, (202) 326-2170, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The Commission is revising certain rules in parts 4 and 5 of its rules of practice, 16 CFR parts 4 and 5. Specifically, the Commission is eliminating its existing ethics clearance rule, revising part 5 to remind current and former employees of various ethics requirements, and clarifying the disciplinary actions available for violations of those ethics requirements.

I. Revisions to Part 4—Miscellaneous Rules

The Commission is deleting old § 4.1(b)-(c), which previously contained the Commission's ethics clearance rule. The ethics clearance rule is unnecessary, because it is duplicative of other laws, regulations, and professional responsibility requirements. It is also inconsistent with the rules of other agencies, which do not impose the same substantive or procedural requirements. Moreover, because the FTC is one of the few agencies that attempts to impose additional requirements on former employees that exceed the government-wide restrictions, the rule has chilled the agency's ability to recruit and hire specialists such as economists and technologists who do not face similar restrictions at other governmental organizations. Finally, the rule could have the unintended consequence of creating a safe harbor that protects former employees from liability for violating 18 U.S.C. 207, because it requires the FTC to approve a former employee's participation in a matter if the agency lacks sufficient information to deny clearance and that agency approval could provide a defense to violations of Section 207.

In new § 4.1(a)(3), the Commission is adding a cross-reference to new § 5.30, to remind former employees of the Commission that they must comply with the post-government employment restrictions described there. In light of the Commission's elimination of the ethics clearance rule, the Commission is making a corresponding deletion of old § 4.9(b)(10)(ii), which provided that applications for ethics clearance would be part of the Commission's public record.

II. Revisions to Part 5—Employee Standards of Conduct

The Commission is changing part 5 of its rules to remind current and former employees of various ethics requirements, and make clear the disciplinary actions available for violations of those ethics requirements. These changes include a new subpart D (§ 5.30) that describes post-employment restrictions. Subpart E (§§ 5.50-5.54), regarding disciplinary actions concerning post-employment conflict of interest, has been renamed "Disciplinary Actions Concerning Ethics Requirements and Post-Government Employment Restrictions." This subpart has been streamlined and modified to conform to current agency practice.

§ 5.1: Cross-reference to executive branch-wide regulations.

In § 5.1, the Commission is clarifying that all agency employees—including Commissioners, political appointees, and special Government employees—are governed by the executive branch-wide ethics regulations. The Commission is also fixing the citation format and adding an explanatory parenthetical for the cross-reference to the FTC regulations at 5 CFR part 5701.

§ 5.2: Waiver of insubstantial financial conflicts.

The Commission is reorganizing and adding clarifying language to § 5.2. New § 5.2(a) is old § 5.2(d), which has also been revised for clarity. In new § 5.2(c), the Commission describes the process an official responsible for appointment must use to obtain a recommendation from the FTC's Designated Agency Ethics Official for a waiver, pursuant to 18 U.S.C. 208(b)(1) and 5 CFR 2640.301, of certain financial interests of an employee that are determined to be not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. In new § 5.2(d), the Commission is clarifying that the Inspector General is the "official responsible for appointment" for OIG employees. In new § 5.2(e), the Commission is adding a parenthetical to clarify that the Chairman cannot be the "official responsible for appointment" for himself or the Inspector General.

§ 5.10: Cross-reference to executive branch-wide regulations.

In § 5.10, the Commission is clarifying that all agency employees—including Commissioners, political appointees, and special Government employees—are subject to the executive branch-wide financial disclosure regulations. The Commission is also updating the cross-reference to the appropriate chapter of the FTC Administrative Manual that contains the procedures for filing and reviewing financial disclosure reports.

§ 5.30: General prohibitions for former employees.

New § 5.30 mirrors the government-wide post-employment restrictions on former employees, limiting the type of work they may perform for their new employers. This section generally describes the common prohibitions set forth in 18 U.S.C. 207.

New § 5.30(a) reminds former employees that they must comply with the requirements of 18 U.S.C. 207 and its implementing regulations at 5 CFR part 2641 (post-government employment conflict of interest restrictions), 18 U.S.C. 203 (compensation for representational services), 41 U.S.C. 2104 (compensation from contractors), and any other applicable laws, regulations, or rules.

New § 5.30(b)(1) reminds former employees that if they participated personally and substantially in any particular matter involving specific parties, they must never (on behalf of someone other than themselves or the United States) appear before or communicate to any Federal department, agency, or court regarding that same particular matter.

New § 5.30(b)(2) reminds former employees that they are restricted from representing anyone (other than themselves or the United States) before a Federal agency regarding matters pending under their official responsibility during their last year of Government service for two years after they leave the Commission.

New § 5.30(b)(3) reminds former "senior" Commission employees—such as Commissioners, certain Schedule C employees, certain Intergovernmental Personnel Act employees, Senior Level Executives, and Senior Executive Service officials who are subject to 18 U.S.C. 207(c)—that they are subject to a one-year "cooling off" period (this period may vary depending on any applicable Ethics Pledge requirements) in which the former employee must not make any communication to, or appearance before, any FTC employee to seek official action on behalf of someone else.

As with 18 U.S.C. 207, new § 5.30(b)(1)-(3) does not address behind-the-scenes assistance by former employees or a former employee's knowledge of nonpublic information. The Commission has determined that addressing these issues in new § 5.30 is unnecessary to protect against misconduct by former employees. For example, attorney bar rules generally prohibit attorneys who leave Federal government service from providing behind-the-scenes assistance for matters in which the attorney personally and substantially participated during their government employment. *See, e.g.*, District of

Columbia Rules of Professional Conduct, Rule 1.11(a); N.Y. Rules of Professional Conduct, Rule 1.11(a).

§ 5.50: Submission of information.

The Commission is updating its procedures for disciplinary actions concerning alleged violations of ethics requirements and post-employment restrictions to match current agency practice. New § 5.50, which replaces old § 5.53, notes that any person with information about a possible violation of subparts A-B or D of this part or 18 U.S.C. 207 may submit a written statement to the FTC's General Counsel, Designated Agency Ethics Official ("DAEO"), or Inspector General, where appropriate.

§ 5.51: Referrals.

New § 5.51(a) streamlines old § 5.54. As provided in new § 5.51(a), the General Counsel or DAEO will make a preliminary determination of whether the matter warrants or requires the involvement of other agencies or authorities. If so, the General Counsel or DAEO will expeditiously transmit any available information to the FTC's Inspector General or else to the Department of Justice ("DOJ") or the U.S. Office of Government Ethics ("OGE"), as appropriate.

Under new § 5.51(b), which incorporates old § 5.56(b), the General Counsel also will determine whether the matter should be referred to the disciplinary committee of the bar(s) of which any employee or former employee who is an attorney is a member.

To mitigate the possibility of conflicting investigations, new § 5.51(c) specifies that, if the General Counsel or DAEO transmits information alleging a crime or severe misconduct to the DOJ, OGE, or bar disciplinary authority under § 5.51(a) or (b), the General Counsel or DAEO will also notify the FTC's Inspector General.

§ 5.52: Investigation or proceeding.

New § 5.52(a) reinforces the existing requirement, as already specified in 5 U.S.C. 406 and the FTC's Administrative Manual, that the agency must cooperate fully in any Inspector General investigation of possible violations of subparts A-B or D of this part or 18 U.S.C. 207. The agency will also cooperate fully with any similar investigations by the Department of Justice or U.S. Office of Government Ethics.

New § 5.52(b) sets out how the agency will request information from the Inspector General after the conclusion of any Inspector General investigation or Department of Justice prosecution.

Given the Inspector General's investigative role, the Commission no longer requires old §§ 5.55–5.66, which were intended for use if the agency conducted its own investigation of the former employee.

§ 5.53: Sanctions.

New § 5.53 updates old § 5.67. As specified in new § 5.53, if an employee or former employee is convicted of violating 18 U.S.C. 207 or other Federal laws related to conduct described in part 5, or if the factual findings in the Inspector General's report support a finding that the employee or former employee violated subparts A-B or D of this part, the Commission may adopt the record of the criminal or civil proceeding or Inspector General report as its record. The Commission may order such additional disciplinary action as it deems warranted, including: (a) reprimand; (b) suspension from participating in a particular matter or matters before the Commission; or (c) prohibiting the person from making, with the intent to influence, any formal or informal appearance before, or any oral or written communication to, an FTC employee on any matter or business on behalf of any other person (except the United States) for a period not to exceed 5 years.

§ 5.54: Judicial review.

New § 5.54 incorporates old § 5.68. New § 5.54 explains that a person against whom the Commission has issued an order imposing disciplinary action under this part may seek judicial review of the Commission's determination in the United States District

Court for the District of Columbia by filing a petition for such review within 60 days of receipt of notice of the Commission's final decision.

III. Procedural Requirements

A. The Administrative Procedure Act and Regulatory Flexibility Act

Because these rule revisions relate solely to agency personnel, procedure, or practice, publication for notice and comment is not required under the Administrative Procedure Act. 5 U.S.C. 553(a)(2), (b).

For this reason, the requirements of the Regulatory Flexibility Act are also inapplicable. 5 U.S.C. 601(2), 604(a).

B. E.O. 14215, Ensuring Accountability for All Agencies; E.O. 12866, Regulatory Planning and Review; E.O. 14192, Unleashing Prosperity Through Deregulation

E.O. 12866 states that agencies should assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and distributive impacts). E.O. 14215 requires all executive branch departments and agencies, including independent agencies, to submit all their proposed and final significant regulatory actions to the Office of Management and Budget (OMB) for review. OMB determined that this final rule is not a significant regulatory action under E.O. 12866.

Executive Order 14192 requires that any new incremental costs associated with certain significant regulatory actions "shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations." OMB's guidance to agencies implementing E.O. 14192 defines two types of E.O. 14192 actions: an E.O. 14192 regulatory action and an E.O. 14192 deregulatory action.[1] The guidance

[1] OMB, M-25-20, Guidance Implementing Section 3 of Executive Order 14192, Titled "Unleashing Prosperity Through Deregulation" (Mar. 26, 2025), *https://www.whitehouse.gov/wp-content/uploads/2025/02/M-25-20-Guidance-Implementing-Section-3-of-Executive-Order-14192-Titled-*

defines an E.O. 14192 deregulatory action as “an action that has been finalized and has total costs less than zero.”[2] The guidance further explains that “an E.O. 14192 deregulatory action qualifies as both (1) one of the actions used to satisfy the provision to repeal or revise at least 10 existing regulations for each regulation issued, and (2) a cost savings for purposes of the total incremental cost allowance.”[3] OMB determined that this final rule is an E.O. 14192 deregulatory action.

C. Paperwork Reduction Act

The removal of old § 4.1(b)-(c) will eliminate the need for the Paperwork Reduction Act (PRA) burden associated with these rule provisions, currently estimated at 60 burden hours and $9,000 annually. After publication of this final rule, the FTC will submit a request to OMB to revise PRA information collections associated with OMB Control No. 3084-0169 (FTC Administrative Activities).

D. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

List of Subjects in 16 CFR Part 4

Administrative practice and procedure, Freedom of information, Public record, Sunshine Act.

List of Subjects in 16 CFR Part 5

Administrative practice and procedure, Conflicts of interest, Government employees.

For the reasons set forth in the preamble, under the authority of 15 U.S.C. 46(g), the Federal Trade Commission amends title 16, chapter I, subchapter A of the Code of

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Unleashing-Prosperity-Through-Deregulation.pdf.
[2] *Id.* at 4.
[3] *Id.*

Federal Regulations as follows:

PART 4—MISCELLANEOUS RULES

1. The authority citation for part 4 continues to read as follows:

Authority: 15 U.S.C. 46.

2. In § 4.1, add paragraph (a)(3) and remove and reserve paragraphs (b) and (c) to read as follows:

§ 4.1 Appearances.

(a) * * *

(3) *Former Commission employees*. Former employees of the Commission must comply with the restrictions described in § 5.30.

* * * * *

3. In § 4.9, remove and reserve paragraph (b)(10)(ii).

4. Revise and republish part 5 to read as follows:

Part 5—Standards of Conduct

Sec.

Authority: 5 U.S.C. 7301; 5 U.S.C. 13105, 13109, 13124, 13142; 15 U.S.C. 46(g); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR part 2635.

Subpart A—Employee Conduct Standards and Financial Conflicts of Interest

§ 5.1 Cross-reference to executive branch-wide regulations.

All employees, including Commissioners, political appointees, and special Government employees, of the Federal Trade Commission (FTC) are subject to and should refer to the "Standards of Ethical Conduct for Employees of the Executive Branch" at 5 CFR part

2635 (“executive branch-wide Standards of Conduct”) and to the FTC regulations at 5 CFR part 5701 (fundraising and prior approval for outside employment) that supplement the executive branch-wide Standards of Conduct.

§ 5.2 Waiver of insubstantial financial conflicts.

(a) Pursuant to 18 U.S.C. 208(b)(1) and 5 CFR 2640.301, certain disqualifying financial interests may be waived by the FTC upon a written determination that they are not so substantial as to be deemed likely to affect the integrity of an employee’s services.

(b) Employees or special Government employees will not be subject to remedial or disciplinary action or to criminal prosecution under 18 U.S.C. 208(a), if they make a full disclosure in writing to the official responsible for their appointment of the nature and circumstances of the particular matter involved and of their conflicting financial interest relating thereto, and receive in advance a written determination made by such official 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 or special Government employee.

(c) Prior to issuing a written determination as described in paragraph (b) of this section, the official responsible for appointment must obtain from the FTC’s Designated Agency Ethics Official a written recommendation to issue the Section 208 waiver. Pursuant to 5 CFR 2640.303, the FTC’s Designated Agency Ethics Official must consult with the U.S. Office of Government Ethics prior to issuing the written recommendation.

(d) For the purposes of paragraph (b) of this section, the “official responsible for appointment” is the Executive Director in all cases where the employee is classified at grade GS-15 or below, or at a comparable pay level, except that each Commissioner is the “official responsible for appointment” of advisors in the Commissioner’s immediate office, and the Inspector General is the “official responsible for appointment” of employees in the Office of the Inspector General.

(e) In all other cases (except with respect to the Chairman himself or the Inspector General), the Chairman is the "official responsible for appointment."

Subpart B—Financial Disclosure Requirements

§ 5.10 Cross-reference to executive branch-wide regulations.

Employees, including Commissioners, political appointees, and special Government employees, of the Federal Trade Commission are subject to and should refer to the executive branch-wide financial disclosure regulations at 5 CFR part 2634, and to the procedures for filing and review of financial disclosure reports found in Chapter 5 of the FTC Administrative Manual.

Subpart C—[Reserved]

Subpart D—Post-Government Employment Restrictions

§ 5.30 General prohibitions for former employees.

(a) Former employees of the Commission must comply with the requirements of 18 U.S.C. 207 and its implementing regulations at 5 CFR part 2641 (post-government employment conflict of interest restrictions), 18 U.S.C. 203 (compensation for representational services), 41 U.S.C. 2104 (compensation from contractors), and any other applicable laws, regulations, or rules.

(b) Former employees should be aware that, among other restrictions, 18 U.S.C. 207 generally:

(1) Prohibits former employees from knowingly, with the intent to influence, communicating to, or appearing before, an employee of the United States on behalf of anyone (other than themselves or the United States) in connection with a particular matter involving a specific party or parties, in which they participated personally and substantially as employees of the Commission, and in which the United States is a party or has a direct and substantial interest;[1]

[1] It is important to note that the same particular matter may continue in another form or

(2) Restricts former employees from representing anyone (other than themselves or the United States) before a Federal agency regarding a particular matter involving a specific party or parties pending under their official responsibility during their last year of Government service for two years after they leave the Commission; and

(3) Imposes upon former "senior" Commission employees who are subject to 18 U.S.C. 207(c) a one-year "cooling off" period (this period may vary depending on any applicable Ethics Pledge requirements) in which such former employees must not make any communication to, or appearance before, any FTC employee to seek official action on behalf of anyone (other than themselves or the United States).

(c) Former employees who are attorneys, and their firms, should consult their respective State bar rules regarding conflicts that are imputed to them and their firms.

Subpart E—Disciplinary Actions Concerning Ethics Requirements and Post-Government Employment Restrictions

§ 5.50 Submission of information.

Any person may submit a written statement to the FTC's General Counsel, the Designated Agency Ethics Official (DAEO), or the Inspector General, where appropriate, setting forth information indicating a possible violation of subparts A-B or D of this part or 18 U.S.C. 207.

§ 5.51 Involvement of other agencies or authorities.

(a) The General Counsel or DAEO will make a preliminary determination of whether the

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in part. In determining whether two particular matters involving specific parties are the same, all relevant factors should be considered, including the extent to which the matters involve the same basic facts, the same or related parties, related issues, the same confidential information, and the amount of time elapsed. 5 CFR 2641.201(h)(5). For example, where a former employee intends to participate in an investigation of compliance with a Commission order, submission of a request to reopen an order, or a proceeding with respect to reopening an order, the matter will be considered the same as the adjudicative proceeding or investigation that resulted in the order. A former employee who is uncertain whether the matter in which they plan to participate is wholly separate from any matter that was pending during their tenure should seek advice from the FTC Designated Agency Ethics Official.

matter warrants or requires the involvement of other agencies or authorities. If so, the General Counsel or DAEO will expeditiously transmit any available information to the agency's Inspector General or else to the Department of Justice or the U.S. Office of Government Ethics, as appropriate.

(b) When the employee or former employee involved is an attorney, the General Counsel will also determine whether the matter should be referred to the disciplinary committee of the bar(s) of which the attorney is a member.

(c) If the General Counsel or DAEO transmits information alleging a crime or severe misconduct to the Department of Justice, U.S. Office of Government Ethics, or bar disciplinary authority under paragraphs (a) or (b) of this section, the General Counsel or DAEO will also notify the agency's Inspector General.

§ 5.52 Investigation or proceeding.

(a) The Office of the General Counsel will ensure that the agency cooperates fully in any investigation of possible violations of subparts A-B or D of this part or 18 U.S.C. 207 by the Office of Inspector General, the Department of Justice, or the U.S. Office of Government Ethics.

(b) Upon the conclusion of an investigation by the Inspector General or a prosecution by the Department of Justice, the Commission will request that the Office of Inspector General provide the Commission with a report.

§ 5.53 Sanctions.

When either an employee or former employee is convicted of violating 18 U.S.C. 207 or other Federal laws related to conduct described in this part, or the factual findings of the Inspector General's report support a conclusion that the employee or former employee violated subparts A-B or D of this part, the Commission may adopt the record of the criminal or civil proceeding or Inspector General report as its record. The Commission may order such additional disciplinary action as it deems warranted, including:

(a) Reprimand;

(b) Suspension from participating in a particular matter or matters before the Commission; or

(c) Prohibiting the person from making, with the intent to influence, any formal or informal appearance before, or any oral or written communication to, an FTC employee on any matter or business on behalf of any other person (except the United States) for a period not to exceed 5 years.

§ 5.54 Judicial review.

A person against whom the Commission has issued an order imposing disciplinary action under this part may seek judicial review of the Commission's determination in the United States District Court for the District of Columbia by filing a petition for such review within 60 days of receipt of notice of the Commission's final decision.

By direction of the Commission.

April J. Tabor,

Secretary.

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