U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
National Policy

ORDER
3750.7A

Effective Date:
10/24/11

SUBJ: Ethical Conduct and Financial Disclosure

1. Purpose of This Order. This order provides guidance to all level employees at the FAA on the procedures and responsibilities of ethical conduct and financial disclosure. Establishes policy and assigns responsibility for ensuring compliance with the Ethics in Government Act of 1978, as amended, Title 5 United States Code, App. 6, and Part 2638 of Title 5 of the Code of Federal Regulations, Office of Government Ethics and Executive Agency Ethics Program Responsibilities, 5 CFR Part 2638, and by the Acquisition Management System.

2. Audience. This order is intended for all employees and for those employees assigned duties related to the administration of the ethics program.

3. Where Can I Find This Order? This order is located in electronic format on both the FAA's Intranet and Internet Web sites at the following links: https://employees.faa.gov/tools_resources/orders_notices and http://www.faa.gov/regulations_policies/orders_notices/.

4. What This Order Cancels. Order 3750.7, Ethical Conduct and Financial Disclosure, issued October 7, 1998, is canceled.

5. Background. The Office of Government Ethics (OGE) has promulgated regulations in Title 5 of the Code of Federal Regulations covering all areas of ethical conduct. Part 2634 contains the regulations on financial disclosure requirements; Part 2635 contains the regulations on standards of ethical conduct; Part 2636 contains the regulations on honoraria; Part 2638 contains the regulations on executive agency ethics program responsibilities and Part 2641 contains the regulations on post employment conflicts of interest. The Acquisition Management System establishes certain requirements applicable to the conduct of employees involved in procurements.

6. Explanation of Changes. This revision incorporates the following changes:

a. Replace the title and associated duties for the Associate Counsel for Ethics (ACE) to the title and associated duties for the Senior Managing Attorney for Ethics (SMAE).

b. Add Ethics Counselor (EC) as a staff attorney appointed by a Designated Ethics Counselor (DEC) to assist in the Ethics Program.

c. Add new responsibility to the SMAE of conducting reviews of confidential disclosure forms to ensure compliance with laws and regulations in accordance with 5 CFR 2634.605 and agency procedures.

d. Change of date from no later than September 1 of each year to not later than November 1 of each year for managers and supervisors to provide the Ethics Program Coordinator (EPC) with a current list of employees under their supervision who are required to file confidential financial disclosure reports.

e. Add to managers and supervisors responsibilities to include completing a Manager's New Employee "Onboarding" Checklist and forwarding a copy to Office of the Chief Counsel, Ethics Staff (AGC-90) and to the employee's designated EPC no later than 10 days after the new employee arrived onboard.

f. Change managers and supervisors responsibilities to provide new employees with a copy of this Order within 60 days instead of 90 days and assigning them to review the Standards of Ethical Conduct.

g. Add to Human Resource Management's (AHR) responsibility to include Notification of Agency Policy on Flight Privileges in position vacancy announcements.

h. Change to include the Agency's implementation of electronic financial disclosure filing program.

i. Change of dates for filing Confidential Financial Reports from October 1 to February 15 of each year.

j. Change of dates for the EPCs to review and update employee filing status in the electronic program from not later than September 1 of each year to not later than December 1 of each year.

k. Add to the duties of the DEC or designee to complete (within 30 days of receiving reports) the initial screening of reports for completeness and correct form, and notifying any filers whose forms are ambiguous, incomplete or not in the correct form, advising how the form should be corrected and setting a date by which the filer must reply.

l. Change of date from not later than April 1 of each year to April 15 of each year for SMAE or DEC to notify employees who are required to file a public financial disclosure form of that requirement and provide access to the electronic filing program.

m. Add Appendix F (Use of Flight Privileges by FAA Employees).

n. Change Appendix G (Standards of Ethical Conduct for Employees of the Executive Branch).

7. Definitions.

a. Designated Agency Ethics Official. The Designated Agency Ethics Official (DAEO) is the person designated by the Secretary of Transportation to be the Department's principal ethics official, as required by OGE regulations on executive agency ethics program responsibilities, 5 CFR Part 2638. The DAEO is responsible for the Department's ethics program. The current designee is the Deputy General Counsel, C-2. The alternate DAEO is the Assistant General Counsel for General Law, C-10.

b. Deputy Ethics Official. The Deputy Ethics Official (DEO) is the person designated by the DAEO to coordinate and manage the FAA's ethics program, as provided for in 5 CFR 2638.204. The Chief

Counsel, AGC-1, is the DEO for FAA. The Chief Counsel has delegated the DEO duties to the Deputy Chief Counsel.

c. Senior Managing Attorney for Ethics. The Senior Managing Attorney for Ethics (SMAE) is designated by the Chief Counsel to carry out the day-to-day functions required for the operation of the program, under the direction of the Deputy Chief Counsel. The SMAE also manages the Ethics Staff (AGC-90) of the Chief Counsel's Office.

d. Designated Ethics Counselor. A Designated Ethics Counselor (DEC) is a person designated by the DEO to carry out program responsibilities in a particular jurisdiction, under the authority of 5 CFR 6001.102. The Region/Center Counsel in each region and center is the DEC for that jurisdiction; the SMAE is the DEC for Washington headquarters.

e. Ethics Counselor. The Ethics Counselor (EC) is a staff attorney appointed by a DEC to assist in the day-to-day operations of the ethics program.

f. Ethics Program Coordinator. An Ethics Program Coordinator (EPC) is a person designated by management to serve as an organization's liaison with Ethical Conduct and Financial Disclosure Program officials and to administer the program details within the organization. Each director or equivalent must designate sufficient EPCs to support the Ethical Conduct and Financial Disclosure Program.

8. Program Elements. The Ethical Conduct and Financial Disclosure Program consists of:

a. Managing the FAA Ethical Conduct and Financial Disclosure Program under the oversight and direction of the DAEO.

b. Attending meetings and DOT-wide ethics initiatives with the DAEO, Alternate Agency Ethics Official (AAEO) and other Department Ethics Officials.

c. Identification and notification of those who must file financial disclosure reports.

d. Collection, filing, and review of financial disclosure reports.

e. Ethics education and training programs.

f. Prompt and effective action, including administrative action to:

(1) Remedy conflicts and apparent conflicts of interest;

(2) Remedy potential or actual violations of applicable laws, regulations, executive orders, and agency policies; and,

(3) Enforce financial disclosure reporting requirements.

g. Counseling of employees, and former employees, as appropriate, on all ethics and standards of ethical conduct matters including procurement and post-government employment matters.

h. Establishing agency-wide precedent for consistent application of ethical principles and the standards of ethical conduct.

i. Reviewing and evaluating the Ethical Conduct and Financial Disclosure Program to assess its effectiveness, including compiling and publishing within the agency a list of those circumstances or situations which have resulted or may result in noncompliance with ethics laws and regulations.

j. Referring matters to appropriate authorities for investigation as necessary.

k. Reviewing and assessing reports and audits from investigative sources, including the Department's Inspector General.

l. Taking all necessary and appropriate actions in response to those reports and audits, including corrective actions to remedy or prevent conflicts and apparent conflicts of interest and violations of agency policies, ethical principles or the standards of ethical conduct.

9. Scope. This order applies to each employee.

10. Responsibilities.

a. The Deputy Chief Counsel is designated by the Chief Counsel (the DEO) to carry out the duties of the DEO, which consists of coordinating and managing the FAA's ethics program. The DEO works under the supervision of the DAEO in carrying out those duties. The DEO also rules on requests for reconsideration and appeals from ethics determinations and orders issued by the DEC for Washington headquarters.

b. The SMAE is responsible for the following:

(1) Training those assigned to be DECs and EPCs, and those designated to act for them, as well as anyone designated to act for the SMAE, to carry out the duties and responsibilities assigned to them by this order and the regulations it implements.

(2) Overall managing of the agency's financial disclosure program to assure that all reporting and reviewing requirements are completed in a timely manner.

(3) Reviewing the Public Financial Disclosure Reports (OGE 278), of all Washington headquarters officials required to file those reports except for the Administrator, Deputy Administrator, Chief Counsel, Deputy Chief Counsel and certain employees in other positions of a confidential or policymaking character, whose reports are reviewed by the DAEO.

(4) Reviewing Confidential Financial Disclosure Reports and Confidential Certificates of No New Interests (OGE-450 and 450A, respectively), filed by Washington headquarters employees, and those filed by other employees of the Office of the Chief Counsel (AGC).

(5) Conducting legal assistance reviews of confidential financial disclosure forms reviewed and/or certified by Region/Center DECs and ECs to ensure compliance with applicable laws and regulations in accordance with 5 CFR 2634.605, and agency procedures.

(6) Issuing appropriate orders to remedy conflicts and apparent conflicts of interest and violations of agency policy on financial interests.

(7) Establishing and disseminating authoritative interpretations of agency policies, conflict of interest laws, and standards of ethical conduct for application throughout the FAA.

(8) Acting on requests for reconsideration and appeals from determinations, decisions, and orders issued by Regional/Center DECs.

(9) Advising management officials with regard to requests for waivers of disqualification based on conflicting financial interests.

(10) Recommending administrative or disciplinary actions for violations of the conflict of interest laws, the standards of ethical conduct, and FAA policies on financial interests and outside aviation employment when appropriate.

(11) Providing information in response to requests from the DAEO, AAEO, or their designee.

(12) Performing all the duties and responsibilities of a DEC for Washington headquarters employees.

(13) Ensuring that any orders to divest, including appropriate timeframes and procedures, will be distributed to all employees when a newly prohibited financial interest is received from AGC.

(14) Maintaining an updated and accurate copy of the list of prohibited investments that the agency utilizes in making its divestiture determinations. This list shall be made available to all employees through a link on the agency's website and shall be provided to new employees during new employee orientation.

(15) Ensuring employees are aware of the timeframes established by the Agency's Office of the Chief Counsel relating to the issuing of a Certificate of Divestiture.

c. The Regional/Center Counsel in each region and center serves as the DEC. DECs may act through appointed subordinates who are qualified as ECs by experience or training. With regard to employees in their respective organizations, DECs are responsible for the following:

(1) Counseling and advising employees in regard to all matters of ethical conduct and conflicts of interest, as provided for in 5 CFR 2635.107, and to the extent permitted by law, counseling and advising former employees within the DEC's jurisdiction in regard to such matters.

(2) Making determinations of agency interest in attendance of employees and, as appropriate, employees' accompanying spouses, at widely attended gatherings, as provided for in 5 CFR 2635.204(g).

(3) Making determinations of substantial conflict in regard to financial interests as provided for in 5 CFR 2635.403(b), and advising management officials with regard to requests for waivers of disqualification based on conflicting financial interests.

(4) Making determinations regarding whether an employee's impartiality is likely to be questioned in a particular matter and, if so, whether the employee's participation in the matter is authorized, as provided for in 5 CFR 2635.502.

(5) Deciding whether an employee may participate in a particular matter that may have a direct and predictable effect on a financial interest of a party with whom the employee is seeking employment, as provided for in 5 CFR 2635.605, or has been seeking employment, as provided for in 5 CFR 2635.606.

(6) Providing advice to managers and supervisors regarding their decisions that certain positions require financial disclosure reports to be filed by incumbents under 5 CFR 2634.904, Appendix A, Confidential Filer Defined and 5 CFR 2634.906, Appendix B, Exclusions From Filing Requirements. The DEC is also responsible for resolving disputes arising from managers' and supervisors' decisions to require employees to file financial disclosure reports. The DEC decision in such disputes is final.

(7) Reviewing the Public Financial Disclosure Reports (OGE 278) of all officials required to file those reports in the DEC's jurisdiction.

(8) Reviewing confidential financial disclosure statements filed by employees in the DEC's jurisdiction, except those in the office of Regional/Center Counsel, which are reviewed by the SMAE, in accordance with 5 CFR 2634.605.

(9) Requesting additional information from filers of confidential or public financial disclosure reports when reports are incomplete, ambiguous, or raise conflict of interest issues, and establishing the time within which the filers must provide the additional information, in accordance with 5 CFR 2634.605.

(10) Determining compliance of financial disclosure reports with applicable laws and regulations in accordance with 5 CFR 2634.605, and agency procedures.

(11) Directing remedial actions to resolve conflicts or apparent conflicts of interest or potential violations of law, regulation, executive order, or agency policy indicated by review of financial disclosure reports or coming to the DEC's attention through other means, in accordance with 5 CFR 2634.605.

(12) Referring instances of failure to comply with recommended remedial actions within the time limits of 5 CFR 2634.605 for appropriate remedial action by the employee's supervisor and/or manager in accordance with standard agency procedures.

(13) Maintaining all financial disclosure reports and associated information in a secure file until they are destroyed in accordance with OGE regulations. Those regulations, 5 CFR 2634.603 (OGE-278s) and 2634.604 (OGE-450 and OGE-450A), require retention of the reports for a period of 6 years, after which they must be destroyed unless needed for a current investigation.

(14) Providing assistance to financial disclosure report filers in completing their reports.

(15) Conducting training in the application of the standards of ethical conduct, as required by Subpart G of 5 CFR Part 2638, and as requested by management, or as determined to be necessary by the SMAE.

(16) Taking initial action on requests for extensions of the time for filing financial disclosure reports and requests for exclusions from filing requirements.

(17) Notifying employees of the right to request reconsideration, by the SMAE, of an adverse determination or order made by a DEC. Any such request or appeal, if filed within 10 days of the determination or order, will stay the effectiveness of the determination or order, except an order requiring disqualification under section 2635.402 or 2635.502.

NOTE: Reconsideration or appeal of a determination or order initially issued by the SMAE acting in the capacity of Washington headquarters DEC will be decided by the Deputy Chief Counsel.

(18) Referring violations of the standards of ethical conduct, violations of law, regulation, executive order, or agency policy to the appropriate management officials for administrative or disciplinary action as necessary.

d. Managers and supervisors are responsible for:

(1) Deciding which positions in their organizations are required to file financial disclosure reports under the criteria set forth in 5 CFR 2634.904, Appendix A and 5 CFR 2634.905, Appendix B.

(a) Completing AHR's Manager's New Employee "Onboarding" Checklist found at (https://employees.faa.gov/org/staffoffices/ahr/sup_man_services/new_employee_onboarding)

(b) Forwarding a copy of the completed checklist to the employing office's designated EPC and AGC-90, no later than 10 days after the new employee arrives on board.

(2) Appointing a sufficient number of EPCs in their organizations to be responsible for administering the program details in an efficient manner within the organization and for serving as the organization's official point of contact with Ethical Conduct and Financial Disclosure Program officials.

(3) Providing the designated EPC no later than November 1 of each year with a current list of employees, including reemployed annuitants, (by name, position, and grade) under their supervision who are required to file confidential financial disclosure reports.

(4) Notifying employees of the right to request exclusion from filing requirements under 5 CFR 2634.906, Appendix C, Review of Confidential Filer Status.

(5) Notifying the servicing human resource management organization to include notice of financial disclosure requirements, as applicable, in vacancy announcements when filling established positions.

(6) Notifying the servicing human resource management organization to include financial disclosure requirements, as applicable, when submitting position descriptions or job analysis tools (JATs) for classification.

(7) Requiring newly hired employees, including reemployed annuitants entering positions that require the filing of a financial disclosure report, to file that report within 30 days of entering on duty in the position.

(8) Supporting the filing of required financial disclosure reports from employees under their supervision before the filing deadline.

NOTE: Annual confidential reports must be filed by February 15, and public reports must be filed by May 15.

(9) Initiating follow-up action in connection with delinquent reports.

(10) Taking appropriate disciplinary actions against individuals who fail to file or who file late a required public or confidential financial disclosure report, who falsify information in any such report, or who fail to take timely remedial action directed by a DEC.

(11) Taking appropriate disciplinary actions against individuals who violate the Standards of Ethical Conduct (Appendix G), consistent with the guidelines established in the Human Resource Policy Manual Volume 4: Employee Relations, ER-4-1, or FAPM Letter 2635, Conduct and Discipline.

(12) Taking appropriate remedial measures, when practical to do so, to relieve employees of conflicts and apparent conflicts of interest created by financial interests or other circumstances, after coordination with the appropriate DEC.

(13) Within two (2) weeks of entering on duty in the position, providing new employees with a copy of this Order, and assigning them to review the Standards of Ethical Conduct (Appendix G) within 60 days of their entry on duty.

(14) Scheduling employees for training in the standards of ethical conduct, upon notification by the DEC that such training is required and maintaining records of such training for six (6) years.

e. Employees are responsible for:

(1) Timely, complete, and accurate filing of financial disclosure reports when required to file by their manager or supervisor, unless a request for exclusion from filing requirements has been made in accordance with 5 CFR 2634.906, Appendix C, within 10 days of being notified to file.

(2) Conforming their conduct to the requirements and intent of Executive Order 12674, as modified by Executive Order 12731; the Standards of Ethical Conduct (Appendix G) and to related FAA

policies including financial interests, 5 CFR 6001.104, Appendix D, Prohibited Financial Interest; Appendix E, Outside Aviation Employment Policy; and Appendix F, Use of Flight Privileges by FAA Employees.

(3) Fully disclosing all relevant facts and circumstances when seeking advice from the appropriate DEC concerning the requirements and intent of the standards of ethical conduct, the financial disclosure filing requirements, and FAA policies.

(4) Responding promptly to requests from DECs for additional information in regard to financial disclosure reports, and for making timely requests for advice and counseling in matters related to the ethics program.

(5) Supporting any requests for extension of the time to file a financial disclosure report or for exclusion from the filing requirements with full disclosure of information and argument.

(6) Taking timely remedial action directed by a DEC to resolve conflicts or apparent conflicts of interest or violations of law, regulation, executive order, or agency policy.

(7) Filing requests for reconsideration of an adverse determination or order within 10 days of receiving the determination or order, and supporting such requests with appropriate information and argument. Timely requests for reconsideration will stay the effectiveness of an order or determination, except an order requiring disqualification under section 2635.402 or 502.

f. EPCs are responsible for carrying out the administrative functions of the program within their organizations.

g. Servicing human resource organizations (AHR) are responsible for including notification of agency policy on financial interests and outside aviation, flight privileges and financial disclosure requirements, as applicable, in position vacancy announcements (or their equivalent), and for including financial disclosure requirements in position descriptions or JATs as to which they apply. AHR organizations are also responsible for providing information concerning the financial disclosure reporting status of positions for inclusion in the Federal Personnel and Payroll System (FPPS) or current agency Personnel Management Information System.

11. Financial Disclosure.

a. The confidential financial disclosure element of the program consists of the following:

(1) Each DEC maintains a current master list of employees within that DEC's jurisdiction who are required to file confidential financial disclosure forms. This list is based on information provided by office and service heads in headquarters and division managers in the regions and centers, or their equivalents, through the EPC designated in each such organization.

(2) Confidential financial disclosure reports are required to be filed within thirty (30) days after entering a designated covered position, annually thereafter by February 15 of each year, reflecting the reporting employee's financial interests as of the December 31 of previous calendar year.

(3) No later than December 1 of each year, each EPC will review and update employee filer's status in the electronic program for employees in the EPC's organization.

(4) Employees designated to file will be given notice and access to file electronic reports no later than the first week in January.

(5) Within thirty (30) days of receiving the electronic reports, the DEC or his designee will complete initial screening of the reports for completeness and correct form, and will notify any filers whose forms are ambiguous, incomplete or not in the correct form, advising how the form should be corrected , and setting a date by which the filer must reply.

(6) Within sixty (60) days of receiving a completed electronic report, the DEC or EC will review the report for indications of possible conflicts or apparent conflicts of interest, and for compliance with agency policy regarding financial interests and outside employment as set out in Department of Transportation regulations, 5 CFR 6001.104, Appendix D, Appendix E, and F respectively.

(7) When a disclosure report raises a question of possible or apparent conflict of interests, or of violation of law, regulation, or executive order, or of inconsistency with agency policy, the DEC or EC will notify the employee promptly in writing. The DEC or EC will offer the employee an opportunity to explain or to identify what remedial action the employee plans to take to rectify the situation, and will specify the time within which the employee must respond.

(8) When the employee's response does not resolve the issue raised in the notification under paragraph 11a (7) of this order, the DEC or EC will notify the employee promptly of the required remedial action. This notification will set a date by which such action must be completed unless an appeal is made to the SMAE, or with regard to reports for which the SMAE has initial review responsibility, to the Deputy Chief Counsel.

(9) Employees who appeal remedial actions must set out in writing all the reasons and arguments relied upon for relief.

(10) In cases where it appears that the employee may have participated in official actions from which he or she should have been disqualified by reason of a financial interest or other relationship, the DEC should, as necessary, consult with the appropriate security element and with management of the organization to which the employee is assigned to ascertain the proper procedures for determining the facts. If the facts warrant, appropriate disciplinary action should be taken. In appropriate cases, the DEC should refer the matter to the SMAE for consideration of possible referral for criminal investigation.

(11) When satisfied that a report does not raise any unresolved issue of completeness, ambiguity, real or apparent conflict of interest, violations of law, regulation, or executive order, or inconsistency with agency policy, the DEC will sign the report as the final reviewer.

NOTE: DEC may designate ethics official to sign/date confidential financial disclosure report 450A and 450 with no reportable financial interests.

(12) Confidential financial disclosure reports and associated materials are retained in secure paper and/or electronic files by the responsible DEC until they are destroyed in accordance with approved document destruction schedules.

(13) Any modifications and/or extensions to the above process must be approved by the SMAE.

b. The public financial disclosure element of the program consists of the following:

(1) The SMAE and DECs maintain a current master list of employees who are required to file public financial disclosure forms, based on information provided by the personnel staff of AHR.

(2) Public financial disclosure reports are required to be filed within thirty (30) days after entering a position described in this paragraph, annually thereafter by May 15 each year, and within thirty (30) days after leaving such a position. Employees who must report are:

(a) Federal Aviation Administration Executive System Employees.

(b) Other employees whose rate of basic pay is fixed at a rate equal to or greater than 120 percent of the minimum rate of basic pay for GS-15 of the General Schedule.

(c) Employees in positions of a confidential or policymaking character, unless excluded by OGE under 5 CFR 2634.203.

NOTE: The Administrator, Deputy Administrator, Chief Counsel, Deputy Chief Counsel and certain employees in other positions of a confidential or policymaking character, unless excluded by OGE under 5 CFR 2634.203, file their reports with the DAEO.

(3) Not later than April 15 of each year, the SMAE or DEC will notify each employee who is required to file a public financial disclosure form of that requirement and provide access to the electronic filing program.

(4) Within (thirty) 30 days of receiving the reports, the SMAE or DEC will complete initial screening of the reports for completeness and correct form and will notify any filers whose forms are ambiguous, incomplete or not in the correct form. In that same notice the DEC will advise how the form should be corrected, and set a date by which the filer must reply.

(5) Within (sixty) 60 days of receiving a completed report, the SMAE or DEC will review the report for indications of possible conflicts or apparent conflicts of interest, and for compliance with agency policy regarding financial interests and outside employment as set out in Department of Transportation regulations, 5 CFR 6001.104, Appendix D, Appendix E and Appendix F.

(6) When a disclosure report raises a question of possible conflict or apparent conflict of interest, or of violation of law, regulation, or executive order, or of inconsistency with agency policy, the SMAE or DEC will notify the employee promptly, in writing. The SMAE or DEC will offer an opportunity to explain or to identify what remedial action the employee plans to rectify the situation, and will specify the time within which the employee must respond.

(7) When the employee's response does not resolve the issue raised in the notification under Paragraph (b)(6), the SMAE or DEC will notify the employee promptly of the required remedial action. This notification will set a date by which such action must be completed unless an appeal is made to the Deputy Chief Counsel, acting on behalf of the DEO.

(8) Employees who appeal remedial actions must set out in writing all the reasons and arguments relied upon for relief.

(9) In cases where it appears that the employee may have participated in official actions from which he or she should have been disqualified by reason of a financial interest or other relationship, the SMAE or DEC should, as necessary, consult with the appropriate security element and with management of the organization to which the employee is assigned to ascertain the proper procedures for determining the facts. If the facts warrant, appropriate disciplinary action should be taken. In appropriate cases, the SMAE or DEC should refer the matter for criminal investigation.

(10) When satisfied that a report does not raise any unresolved issue of completeness, ambiguity, real or apparent conflict of interest, violations of law, regulation, or executive order, or inconsistency with agency policy, the SMAE will refer the report for signature by the Deputy Chief Counsel, acting on behalf of the DEO as the final reviewer.

NOTE: For Regions/Centers, DEC is final reviewer. This function cannot be delegated below the DEC level.

(11) The SMAE and DEC retains Public Financial Disclosure Reports in secure paper and/or electronic files until destroyed in accordance with approved document destruction schedules. Public financial disclosure reports are available to the public under procedures prescribed by OGE in 5 CFR 2634.603.

12. Ethical Conduct. The Standards of Ethical Conduct for Employees of the Executive Branch set forth in Part 2635 of Title 5 of the Code of Federal Regulations (5 CFR 2635) are based on the principles of ethical conduct for all government employees set forth in Executive Order 12674, as modified by Executive Order 12731. The standards are established "to ensure that every citizen can have complete confidence in the integrity of the Federal Government."

a. The fourteen principles of ethical conduct established by the executive orders are set forth here, *verbatim,* to remind employees of their obligations to the public trust, as follows:

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.

(2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(5) Employees shall put forth honest effort in the performance of their duties.

(6) Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees shall not use public office for private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those--such as Federal, State, or local taxes--that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to the executive order.

b. Whether particular circumstances create an appearance of a violation is to be determined from the perspective of a reasonable person with knowledge of the relevant facts, or depending on the matter by the agency designee.

c. Employees are expected to conduct themselves in a manner that avoids violations and appearances of violations of the standards of ethical conduct and other applicable laws, regulations, Executive orders, and agency policies. To assist in accomplishing that objective, employees should seek advice concerning the standards of ethical conduct and other applicable laws, regulations, executive orders, and agency policies from the DECs. When an employee in good faith relies on a DEC's advice that is based on full disclosure by the employee of all relevant facts and circumstances, the employee will not be subjected to disciplinary action for any resulting violation. Where the employee's conduct violates a criminal statute, however, the employee's reliance on a DEC's advice cannot ensure that the employee will not be prosecuted. Employees are cautioned that disclosures to DECs are not protected by the attorney-client

privilege. DECs, like all employees, are required by 28 U.S.C. 535 to report any information they receive relating to a violation of the criminal code, Title 18 U.S.C., that may have occurred.

13. Authority to Change this Order. Only the Administrator or Deputy Administrator may approve substantive changes to this order. The Office of the Chief Counsel has the authority to make minor modifications or updates to this order.

J. Randolph Babbitt
Administrator

Appendix A. Confidential Filer Defined

1. Paragraph 10 b (9) of this order covers the responsibilities on financial disclosure forms. This appendix contains 5 CFR 2634.904, Confidential filer defined.

2. The term confidential filer includes:

a. Each officer or employee in the executive branch whose position is classified at GS-15 or below of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate which is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each member of a uniformed service whose pay grade is less than O-7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the designated agency ethics official to be of equal classification; if:

(1) The agency concludes that the duties and responsibilities of the employee's position require that employee to participate personally and substantially through decision or the exercise of significant judgment, in taking a Government action regarding:

(a) Contracting or procurement;

(b) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;

(c) Regulating or auditing any non-Federal entity; or

(d) Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity; or

(2) The agency concludes that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, and to carry out the purposes behind any statute, Executive Order, rule, or regulation applicable to or administered by the employee. Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law.

Example 1. A contracting officer develops the requests for proposals for data processing equipment of significant value which is to be purchased by his agency. He works with substantial independence of action and exercises significant judgment in developing the requests by engaging in this activity, he is participating personally and substantially in the contracting process. The contracting officer should be required to file a confidential financial disclosure report.

Example 2. An agency environmental engineer inspects a manufacturing plant to ascertain whether the plant complies with a permit to release a certain effluent into a nearby stream. Any violation of the permit standards may result in civil penalties for the plant, and in criminal penalties

for the plant's management based upon any action which they took to create the violation. If the agency engineer determines that the plant does not meet the permit requirements, he can require the plant to terminate release of the effluent until the plant satisfies the permit standards. Because the engineer exercises substantial discretion in regulating the plant's activities, and because his final decisions will have a substantial economic effect on the plant's interests, the engineer should be required to file a confidential financial disclosure report.

b. Unless required to file public financial disclosure reports by subpart B of this part, all executive branch special Government employees as defined in 18 U.S.C. 202(a) and 2634.105(s), including those who serve on advisory committees. The term special Government employee does not include an advisory committee member who serves as a representative of an industry of other outside entity or who is already a Federal employee.

Appendix B. Exclusions from Filing Requirements

Any individual or class of individuals, including special Government employees, described in §2634.904 of this subpart, may be excluded from all or a portion of the confidential reporting requirements of this subpart, when the agency head or designee determines that:

a. The duties of a position make remote the possibility that the incumbent will be involved in a real or apparent conflict of interest;

b. The duties of a position involve such a low level of responsibility that the submission of a confidential financial disclosure report is unnecessary because of:

(1) The substantial degree of supervision and review over the position; or

(2) The inconsequential effect of any potential conflict on the integrity of the Government; or

c. The use of an alternative procedure approved in writing by the Office of Government Ethics is adequate to prevent possible conflicts of interest.

Example 1. An agency special Government employee who is a draftsman prepares the drawings to be used by an agency in soliciting bids for construction work on a bridge. Because he is not involved in the contracting process associated with the construction, the likelihood that his actions will create a conflict of interest is remote. The draftsman need not be required by the agency to file a confidential financial disclosure report.

Example 2. An investigator is principally assigned as the field agent to investigate alleged violations of conflict of interest laws. The investigator works under the direct supervision of an agent-in-charge. The agent-in-charge reviews all of the investigator's work product and then uses those materials to prepare the agency's report which is submitted under his own name. The agency may decide not to require the investigator to file a confidential disclosure report.

Example 3. A non-supervisory auditor at an agency is regularly assigned to cases involving possible loan improprieties by financial institutions. Prior to undertaking each enforcement review, the auditor reviews the file to determine if she, her spouse, minor or dependent child, or any general partner, organization in which she serves as an officer, director, trustee, employee, or general partner, or organization with which she is negotiating or has an agreement or an arrangement for future employment, or a close friend or relative is a subject of the investigation, or will be in any way affected by the investigation. Once she determines that there is no such relationship, she signs and dates a certification which verifies that she has reviewed the file and has determined that no conflict of interest exists. She then files the certification with the head of her auditing division at the agency. On the other hand, if she cannot execute the certification, she informs the head of her auditing division. In response, the division will either reassign the case or review the conflicting interest to determine whether a waiver would be appropriate.

This alternate procedure, if approved by the Office of Government Ethics in writing, will suffice for a conflict of interest review. Therefore, the agency may exclude the auditor from filing a confidential disclosure report under this subpart.

[57 FR 11826, Apr. 7, 1992; 57 FR 21855, May 22, 1992; 71 FR 28234, May 16, 2006]

Appendix C. Review of Confidential Filer Status

5 CFR 2634.906 Review of confidential filer status.

The head of each agency, or an officer designated by the head of the agency for that purpose, shall review any complaint by an individual that his position has been improperly determined by the agency to be one which requires the submission of a confidential financial disclosure report pursuant to this subpart. A decision by the agency head or designee regarding the complaint shall be final.

Appendix D. Prohibited Financial Interests

5 CFR 6001.104 Prohibited Financial Interests.

(b) Federal Aviation Administration (FAA). Except as provided in paragraph (c) of this section, no FAA employee, or spouse or minor child of the employee, may hold stock or have any other securities interest in an airline or aircraft manufacturing company, or in a supplier of components or parts to an airline or aircraft manufacturing company.

(c) Exception. The prohibitions in paragraphs (a)(1) and (b) of this Section do not apply to a financial interest in a publicly traded or publicly available investment fund, provided that, at the time of the employee's appointment or upon initial investment in the fund, whichever occurs later, the fund does not have invested, or indicate in its prospectus the intent to invest more than 30 percent of its assets in a particular transportation or geographic sector and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund.

(d) Waiver. An agency designee may grant a written waiver from the prohibition contained in paragraph (b) of this section, based on a determination that the waiver is not inconsistent with 5 CFR part 2635 or otherwise prohibited by law, and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which FAA programs are administered. A waiver under this paragraph may be accompanied by appropriate conditions, such as requiring execution of a written statement of disqualification. Notwithstanding the granting of any waiver, an employee remains subject to the disqualification requirements of 5 CFR 2635.402 and 2635.502.

(e) Period to divest. An individual subject to this section who acquires a financial interest subject to this section, as a result of gift, inheritance, or marriage, shall divest the interest within a period set by the agency designee. Until divestiture, the disqualification requirements of 5 CFR 2635.402 and 2635.502 remain in effect.

NOTE: Flight Standards (AFS) employees must also comply with Ethical Conduct Policy Memo issued by AFS-1 on April 9, 2008 update of July 18, 1996 memo issued by AFS-1.

Appendix E. Outside Aviation Employment Policy

1. Policy. Outside employment in general is permitted so long as it neither conflicts with official Government duties and responsibilities nor appears to do so. Employees are permitted to engage in outside aviation employment so long as the outside employer does not conduct activities for which the employee's facility or office has official responsibility
(5 CFR 2635.101(b)(10), (14); 2635.801(c), (below).

2. Background. Outside aviation and space employment has been an issue for as long as the agency has been in existence. Historically, employees engaged in regulatory activity, such as flight standards inspectors, were not permitted to engage in outside aviation employment. Air traffic controllers, on the other hand, as well as other employees not directly involved in regulatory activity, have always been permitted to do so. Air traffic controllers, however, have never been permitted to engage in outside aviation employment within the "jurisdiction" of their facility.

a. When the agency faced extensive furloughs in 1982, the general policy was relaxed to permit more employees, including flight standards inspectors, to engage in outside aviation employment, albeit with the same limitation against working in an area or activity for which the employee's facility or office had official responsibility. A year later, when the furlough threat had faded, the policy change was made permanent, and has been in place ever since. Deputy Administrator Fenello's decision to adopt the interim policy on a permanent basis was based in no small measure on a determination to treat all employees on an objectively equal basis while, at the same time, establishing a bright line between permissible and impermissible activities that would allow prompt responses to employee inquiries without an inordinate expenditure of resources. The policy was included in Administrator McArtor's 1988 issuance of the "Plain Language Synopsis of Standards of Ethical Conduct and Conflict of Interest Laws and Regulations."

b. The policy is based on each employee's duty to avoid any appearance of using public office for private gain or of losing the complete impartiality that is required in the performance of official duties. Avoiding such appearances is the key to maintaining public confidence in the integrity of the Federal Government, as required by Executive Order 12674 (as modified by E.O. 12731), which is the source of the Standards of Ethical Conduct for Executive Branch Employees, published as regulations found at 5 CFR Part 2635.

c. Those regulations hold Federal employees to a higher standard of conduct than is expected of employees in many areas of the private sector. It is on the basis of these regulations, particularly taking into account the "appearance" standard, that agency policy has been formulated concerning the outside employment of FAA personnel in aviation-related enterprises or activities.

d. With respect to FAA employees, the appearance problem is much broader in scope than some apparently are willing to acknowledge. As the agency solely responsible for the control of airspace and the promotion and enforcement of aviation safety in the United States, the FAA occupies a position of enormous public visibility. The agency is unusual from the standpoint that a large number of its employees hold airman certificates issued by the very agency for which they work. It is only by virtue of those certificates that employees may engage in flight operations, whether for business or pleasure, in an environment that is, for all practical purposes, totally controlled and regulated by that same agency. The agency's policy on outside aviation employment

was established to avoid the creation of appearances in an attentive public's mind that conflicts of interest might exist while, at the same time, not completely shutting off all opportunities for agency employees to work in aviation enterprises in their off-duty time. Such a policy is not unusual in the Executive Branch, and is less restrictive than some. For example: professional employees of the Department of Justice may not engage in the private practice of their professions; employees of the Office of the Comptroller of the Currency may not work for any bank, banking or loan association, or national bank affiliate, or for any person connected with such an organization; nor may employees of the Nuclear Regulatory Commission work for Commission licensees, organizations directly engaged in activities in the commercial nuclear field, or for trade associations representing clients concerning nuclear matters.

e. The agency's policy is fully consistent with the limitations imposed by the Standards of Ethical Conduct. Under the Standards, an employee is considered to have a financial interest in any employer for whom he or she works, whether or not the employee is compensated for that work, i.e., the employer's interest is imputed to the employee. The law requires that an employee refrain from becoming involved in any official particular matter that can affect a financial interest of the employee, including imputed interests. The Standards require that employees avoid participation in particular matters involving their employers as parties if a reasonable person with knowledge of the facts would question the employee's impartiality in the matter. Further, the Standards require that employees avoid creating any appearance in the mind of a reasonable person with knowledge of the facts that they are violating the Standards or the law. Because working within the "jurisdiction" of one's FAA office or facility creates the very real possibility, if not the probability, of creating at least such an appearance, compliance with the agency's policy is essential to the maintenance of public confidence in the integrity of agency programs and operations.

Appendix F. Use of Flight Privileges by FAA Employees

1. Policy. This policy establishes procedures under which FAA employees may obtain permission to use flight privileges that they have because of their previous employment with an air carrier, or because of air carrier employment of a spouse or family member.

This policy allows FAA employees, other than Executives and Political Appointees, to use flight privileges derived from air carrier employment, absent extraordinary circumstances, as long as a determination has been made that the employee is disqualified from participating in particular matters involving the air carrier or that the employee's disqualification is not required.

Executives and Political Appointees may not use flight privileges derived from air carrier employment.

This policy does not preclude the spouse or other family members of an FAA employee, including an Executive or Political Appointee, from using flight privileges of the employee, absent extraordinary circumstances.

2. Definition. For purposes of this policy, "flight privileges" refer to any arrangement that an air carrier offers to its employees or retirees, or to their families, allowing them to travel on a space-available or reserved-space basis on such carrier or its affiliates on terms not generally available to the public. Flight privileges include, but are not limited to, flight passes and other items treated as fringe benefits under Section 132 of the Internal Revenue Code. (26 U.S.C. Section 132(a), (j)).

3. Background. Certain FAA employees have retiree flight privileges earned through former employment with air carriers. Typically these privileges extend to the immediate family of the employees as well. Other FAA employees have the use of flight privileges because of their spouses' former or current air carrier employment. For employees whose official duties could affect an air carrier on which they may enjoy flight privileges, the privileges may create a real or apparent conflict of interest in the performance of those duties.

Out of concern over potential conflicts of interest, the agency over the years has generally prohibited employees from taking advantage of flight privileges. However, enforcement of the prohibition has not been uniform and, on occasion, has been applied in circumstances that ordinarily do not pose a conflict, e.g., use of flight privileges by an employee whose duties and responsibilities do not affect the air carrier granting the privileges.

4. Procedures.

a. In General. The agency will adopt the procedures outlined in the regulations of the Office of Government Ethics (Title 5 CFR Section 2635.502) for making case-by-case conflict determinations. Under this process, a specific conflict determination will be made with respect to each employee who wishes to use flight privileges under the terms of this policy.

b. Required Notice to the FAA. Any employee who, for his or her own travel, or that of his or her family members, wishes to use flight privileges under the terms of this policy must first provide written notice to his or her immediate supervisor and local ethics officer. The notice should identify the air carrier

involved and describe the terms of the flight privileges that have been extended to the employee or his or her family.

c. Disqualification Required Determination. Any employee who, for his or her own travel, or that of his or her family members, wishes to use flight privileges under the terms of this policy must first obtain a determination from his or her ethics officer as to whether exercising the flight privileges would create a real or apparent conflict so as to require the employee's disqualification from matters that involve the air carrier responsible for granting the flight privileges.

d. Discretionary Waiver of Disqualification.

(1) If in the opinion of the ethics officer, an employee's participation in a particular matter will not result in an actual conflict of interest under Title 18 USC 208, and the FAA has a significant interest in or need for that employee's participation in the matter, then the agency may grant a waiver to the employee under Title 5 CFR Section 2635.502(d) with respect to that particular matter. If a waiver is issued, the employee may be directed to refrain from using flight privileges during the period of the waiver.

(2) In certain cases, disqualification of the employee from one or a series of matters may not be an acceptable option to the agency. The employee's expertise and the agency's needs may require the employee to be available to work on certain matters.

e. Extraordinary Circumstances. In the event of extraordinary circumstances, such as the impending bankruptcy of an air carrier, disqualification of an employee having flight privileges with the air carrier may be required because of a resulting conflict of interest or the appearance of one. In such a case, the employee may be directed to refrain from using, or allowing his or her spouse and any other family member use of, flight privileges with the air carrier during the period of the disqualification.

Appendix G. Standards of Ethical Conduct for Employees of the Executive Branch

http://www.oge.gov/Laws-and-Regulations/Employee-Standards-of-Conduct/Standards-of-Ethical-Conduct-for-Employees-of-the-Executive-Branch-(PDF)

Appendix H. Administrative Information

1. Distribution. This order is distributed to all employees, Washington Headquarters, Regions, Centers and to all field offices and facilities.

2. Delegation of Authority. The Chief Counsel is responsible for issuing, revising, or canceling the material in this order.