

10/07/98

**SUBJ: ETHICAL CONDUCT AND FINANCIAL DISCLOSURE**

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**1. PURPOSE.** This order establishes procedures and assigns responsibilities for administering the agency's ethics program required by 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. DISTRIBUTION.** This order is distributed to each employee.

**3. CANCELLATION.** This order cancels Order 3750.3C, Orientation to Government-Wide Standards of Conduct, issued February 8, 1993.

**4. 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 2637 contains the regulations on post employment conflicts of interest; and Part 2638 contains the regulations on executive agency ethics program responsibilities. The Acquisition Management System establishes certain requirements applicable to the conduct of employees during procurements.

**5. 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 Environmental, Civil Rights, and 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, AGC-2.

**c. Associate Counsel for Ethics.** The Associate Counsel for Ethics (ACE) is a Senior Attorney in the Office of the Chief Counsel who has been designated by the Chief Counsel to carry out the

day-to-day functions required for operation of the program, under the direction of the Deputy Chief Counsel.

**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 Assistant Chief Counsel in each region and center is the DEC for that jurisdiction; the ACE is the DEC for Washington headquarters.

**e. 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.

**6. PROGRAM ELEMENTS.** The Ethical Conduct and Financial Disclosure Program consists of:

**a.** Liaison with the DAEO and the alternate DAEO.

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

**c.** Collection, filing, and review of financial disclosure reports.

**d.** Ethics education and training programs.

**e.** 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.

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

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

**h.** 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.

**i.** Referring matters to appropriate authorities for investigation as necessary.

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

**k.** 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 conduct.

**7. SCOPE.** This order applies to each employee.

## **8. RESPONSIBILITIES.**

**a.** The Deputy Chief Counsel is designated by the Chief Counsel (the DEO) to carry out the duties of the DEO, which include liaison with the DAEO and coordinating and managing the FAA's ethics program. The Deputy Chief Counsel also rules on requests for reconsideration and appeals from determinations and orders issued by the DEC for Washington headquarters.

**b.** The ACE 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 ACE, 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(SF 278), of all 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.

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

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

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

**(8)** Providing advice to managers and supervisors regarding their decisions that certain positions require financial disclosure reports to be filed by incumbents under 5 CFR2634.904, Appendix 1, Confidential Filer Defined and 5 CFR 2634.905, Appendix 2, Exclusions From Filing Requirements. The ACE is also responsible for resolving disputes arising from managers' and supervisors' decisions to require employees to file financial disclosure reports. The ACE's decision in such disputes is final.

(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 conduct, and FAA policies on financial interests and outside aviation employment when appropriate.

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

c. The Assistant Chief Counsel (Regional/Center Counsel) in each region and center serves as the DEC. DECs may act through appointed subordinates who are qualified as ethics counselors 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) 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 ACE, in accordance with 5 CFR 2634.605.

(7) Requesting additional information from filers of confidential 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.

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

(9) 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.

(10) 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.

(11) 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 (SF-278s) and 2634.604 (OGE-450s and OGE-450As), require retention of the reports for a period of six years, after which they must be destroyed unless needed for a current investigation.

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

(13) 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 ACE.

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

(15) Notifying employees of the right to request reconsideration, by the ACE, 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 ACE acting in the capacity of Washington headquarters DEC will be decided by the Deputy Chief Counsel.**

(16) Referring violations of the standards of 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 1 and 5 CFR 2634.905, Appendix 2.

(2) Providing the appropriate DEC not later than September 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.

(3) Notifying employees of the right to request exclusion from filing requirements under 5 CFR 2634.906, Appendix 3, Review of Confidential Filer Status.

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

(5) Notifying the servicing human resource management organization to include financial disclosure requirements, as applicable, when submitting position descriptions for classification.

(6) 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.

(7) Collecting required financial disclosure reports from employees under their supervision and forwarding them, unopened, before the filing deadline for the reports to the appropriate DEC for review (NOTE: annual confidential reports must be filed by October 31).

(8) Initiating follow-up action to collect delinquent reports.

(9) 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.

(10) Taking appropriate disciplinary actions against individuals who violate the Standards of Ethical Conduct (Appendix 6), consistent with the guidelines established in FAPM Letter 2635, Conduct and Discipline.

(11) 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.

(12) Providing new employees with a copy of this Order, and assigning them to review the standards of conduct (Appendix 6) within 90 days of their entry on duty.

(13) 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 years.

(14) 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.

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 3, within 10 days of being notified to file.

(2) Conforming their conduct to the requirements and intent of the standards of conduct and to FAA policy on financial interests, 5 CFR 6001.104, Appendix 4, Prohibited Financial Interest, and Appendix 5 outside Aviation Employment.

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

(4) Responding promptly to requests from DEC's 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 (HR) are responsible for including notification of agency policy on financial interests and outside aviation employment, and financial disclosure requirements, as applicable, in position vacancy announcements (or their equivalent), and for including financial disclosure requirements in position descriptions to which they apply. HR organizations are also responsible for providing information concerning the financial disclosure reporting status of positions for inclusion in the Central Personnel Management Information System (CPMIS).

## **9. 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 by October 31 each year, reflecting the reporting employee's financial interests as of September 30 of that year.

(3) Not later than September 1 each year, the DEC will notify each appropriate EPC to provide reporting employees in the EPC's organization with an appropriate blank reporting form.

(4) Not later than September 15 each year, the EPC will provide the forms to reporting employees in the EPC's organization.

(5) EPCs will collect their organization's reports and submit them, unopened, to the DEC not later than October 31, along with an updated list of reporting employees.

(6) Within 30 days of receiving the reports, DEC's 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 rectified, and setting a date by which the filer must reply.

(7) Within 60 days of receiving a completed report, the 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 4, and Appendix 5, respectively.

(8) When a disclosure report raises a question of possible or apparent conflict of interest, or of violation of law, regulation, or executive order, or of inconsistency with agency policy, the DEC will notify the employee promptly in writing. The DEC will offer 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.

(9) When the employee's response does not resolve the issue raised in the notification under paragraph 9a (8), the 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 ACE, or with regard to reports for which the ACE has initial review responsibility, to the Deputy Chief Counsel.

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

(11) 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 ACE for consideration of possible referral for criminal investigation.

(12) 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.

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

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

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

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

(a) FAAES 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 1 each year, the ACE will notify each employee who is required to file a public financial disclosure form of that requirement and provide the employee with an appropriate blank reporting form.

(4) Within 30 days of receiving the reports, the ACE 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 rectified, and set a date by which the filer must reply.

(5) Within 60 days of receiving a completed report, the ACE 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 4, and appendix 5, respectively.

(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 ACE will notify the employee promptly, in writing. The DEC will offer 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

(7) When the employee's response does not resolve the issue raised in the notification under 9(b)(6), the ACE 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 ACE 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 ACE 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 ACE will refer the report for signature by the Deputy Chief Counsel, acting on behalf of the DEO as the final reviewer.

(11) The ACE retains Public Financial Disclosure Reports in secure 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.

**10. 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.

c. Employees are expected to conduct themselves in a manner that avoids violations and appearances of violations of the standards of 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 conduct and other applicable laws, regulations, executive orders, and agency policies from the DEC'S. 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 a DEC are not protected by the attorney-client privilege. DEC'S, 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.

  
Jane F. Garvey  
Administrator

**APPENDIX 1. CONFIDENTIAL FILER DEFINED**

Paragraph 8 b (8) covers the responsibilities on financial disclosure forms. This appendix contains 5 CFR 2634.904, Confidential filer defined. 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:

(i) Contracting or procurement;

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

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

(iv) 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 that 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 drafts 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. 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 employees 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 2. EXCLUSIONS FROM FILING REQUIREMENTS

5 CFR 2634.905 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 work under the direct supervision of an agent-in-charge. The agent-in-charge reviews all of the investigator's work product and Then use 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]

**APPENDIX 3. REVIEW OF CONFIDENTIAL FILERSTATUS**

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 4. PROHIBITED FINANCIAL INTERESTS**

**(a)** 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)** 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.

## APPENDIX 5. 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 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 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.