

APPENDIX 1

5 C.F.R. 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 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 interest 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 violation of criminal or civil law.

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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 only as a representative of an industry of other outside entity or who is already a Federal employee.

5 C.F.R. 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 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 nonsupervisory 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

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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 11 826, Apr. 7,1992; 57 FR 21855, May 22,1992]

APPENDIX 3

5 C.F.R. 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

PART 6001 – SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF TRANSPORTATION

5 C.F.R. 6001.104 Prohibited financial interests.

- (b) *Federal Aviation Administration (FAA).* Except as provided in paragraph (c) of the 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 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.