

PART 3400 [RESERVED]

PART 3401—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FEDERAL ENERGY REGULATORY COMMISSION

Sec.

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AUTHORITY: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 42 U.S.C. 7171, 7172; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.402(c), 2635.403, 2635.502(e), 2635.604, 2635.803.

SOURCE: 61 FR 43414, Aug. 23, 1996, unless otherwise noted.

§ 3401.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Federal Energy Regulatory Commission (Commission) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635 and this part, employees are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2634, additional regulations on responsibilities and conduct at 5 CFR part 735, and Commission specific provisions contained in 18 CFR part 3c.

§ 3401.102 Prohibited financial interests.

(a) *General prohibition.* No employee, and no spouse or minor child of an employee, shall acquire or hold any securities issued by an entity on the prohibited securities list described in paragraph (b) of this section. The list shall include, but not be limited to the following:

- (1) Natural gas companies;
- (2) Interstate oil pipelines;
- (3) Hydroelectric licensees or exemptees;
- (4) Public utilities;

(5) Transmitting utilities or electric utilities engaged in the wholesale sale or transmission of electricity or having obtained an interconnection or wheeling order under part II of the Federal Power Act;

(6) Liquefied natural gas terminals as defined by section 3 of the Natural Gas Act; or

(7) Parent companies of an entity identified in paragraphs (a)(1) through (a)(6) of this section.

(b) *Prohibited securities list.* A prohibited securities list shall be maintained, published, and distributed by the Office of the General Counsel's General and Administrative Law section, updated annually or on a more frequent basis to include entities that meet the criteria in paragraph (a) or are otherwise subject to the Commission's jurisdiction and to remove entities that do not raise impartiality concerns after considering the above criteria.

(c) *Exception.* Nothing in this section prohibits an employee, or the spouse or minor child of an employee, from acquiring or holding an interest in a publicly traded or publicly available mutual fund or other collective investment fund, or in a widely held pension or mutual fund, provided: (1) That the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund; or (2) that the fund's prospectus or practice does not indicate the stated objective of concentrating its investments in entities identified in paragraphs (a)(1) through (a)(7) of this section.

(d) *Reporting and divestiture*—(1) *Reporting of prohibited securities.* An employee must promptly report in writing to the DAEO any acquired interest prohibited under paragraphs (a) and (b) of this section. New employees must report in writing to the DAEO prohibited financial interests within 30 days of commencement of employment. Prohibited financial interests acquired after employment commences and without specific intent, such as through gift, inheritance, or marriage, must be reported in writing to the DAEO within 30 days of acquisition of such interest.

(2) *Divestiture of prohibited securities.* A prohibited financial interest must be

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divested within 90 days from the date divestiture is ordered by the DAEO unless the employee obtains a written waiver from the DAEO in accordance with this section.

(3) *Disqualification pending divestiture.* Pending divestiture of prohibited securities, an employee must disqualify himself or herself, in accordance with 5 CFR 2635.402 and 3401.103, from participating in particular matters which, as a result of continued ownership of prohibited securities, could affect the financial interests of the employee or those of the spouse or minor child of the employee. Disqualification is not required where a waiver described in § 2635.402(d) applies.

(4) *Tax treatment of gain on divested securities.* Where divestiture is required by this section, the employee or the spouse or minor child of an employee may be eligible to defer the tax consequences of divestiture by obtaining a Certificate of Divestiture from the Director of the Office of Government Ethics before selling the securities in accordance with subpart J of 5 CFR part 2634.

(e) *Waiver.* The DAEO may grant a written waiver from this section based on a determination that the waiver is not inconsistent with 5 CFR part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of an employee's misuse of position or loss of impartiality, or to otherwise ensure confidence in the impartiality and objectivity with which the Commission's programs are administered, or in the case of a special Government employee, divestiture would result in substantial financial hardship. A waiver under this paragraph must be in writing and may impose appropriate conditions, such as requiring execution of a written disqualification.

(f) *Definitions.* For the purposes of this section:

(1) The term *securities* includes an interest in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets, and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and

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contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(2) The term *parent* means a company that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of an entity identified in paragraphs (a)(1) through (a)(6) of this section.

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§ 3401.103 Procedures for accomplishing disqualification.

(a) An employee, other than a member of the Commission, who is required, in accordance with 5 CFR 2635.402(c), 2635.502(e), or 2635.604(a), to disqualify himself from participation in a particular matter before the Commission shall provide written notice of disqualification to his supervisor and to the DAEO when he becomes aware of the need to disqualify himself from participation in the matter. This procedure is required notwithstanding the guidance in 5 CFR 2635.402(c)(2), 2635.502(e)(2), and 2635.604(c).

(b) An employee may withdraw written notice under paragraph (a) of this section upon determining that disqualification from participation in the matter is no longer required. A withdrawal of disqualification shall be in writing and shall be provided to the employee's supervisor and to the DAEO.

§ 3401.104 Prior approval for outside employment.

(a) *Prior approval requirement.* An employee, other than a special Government employee, must obtain written approval from the DAEO through normal supervisory channels before engaging in outside employment with any person who is a "prohibited source" as that term is defined at 5 CFR 2635.203(d).

(b) *Approval of requests.* Approval under this section shall be denied only upon a determination by the DAEO that the outside activity is expected to involve conduct prohibited by statute

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or Federal regulations, including 5 CFR part 2635.

(c) *Definitions.* For purposes of this section, “employment” means any form of non-Federal employment or business relationship or activity involving the provision of personal services by the employee for compensation

other than reimbursement of actual and necessary expenses. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee.

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