

Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

5 CFR Part 6001

RINs 2105-AD08, 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Transportation

AGENCY: Department of Transportation.

ACTION: Final rule; amendment.

SUMMARY: The Department of Transportation, with the concurrence of the Office of Government Ethics (OGE), amends the Supplemental Standards of Ethical Conduct for Employees of the Department of Transportation (Transportation Ethics Regulations). The amendment adds authority to waive the general prohibition against Federal Aviation Administration (FAA) employees holding stock or other securities interests in airlines, aircraft manufacturing companies or suppliers of components or parts to those entities. The exercise of this waiver authority will be conditioned in each case upon a determination that the waiver is not inconsistent with the standards of ethical conduct for employees of the Executive Branch and that application of the general FAA prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality.

EFFECTIVE DATE: December 3, 2001.

FOR FURTHER INFORMATION CONTACT: William R. Register, Senior Ethics Counsel, Office of the General Counsel, Department of Transportation, Room 10102, Washington, DC 20590, (202) 366-9154; or John Walsh, Associate Chief Counsel for Ethics, (202) 366-4099, FAA General Law Division, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

The Transportation Ethics Regulations were issued in 1996 to minimize potential conflicts of interest and supplement OGE's Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2635) (Standards). See 61 FR 39901-39904 (July 31, 1996), as codified at 5 CFR part 6001. The FAA-pertinent part of the Transportation Ethics Regulations, at 5 CFR 6001.104(b), generally prohibits FAA employees from holding any stock or 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. The requirement prevents employees from taking actions that may violate conflict of interest laws or that may appear to do so. Exceptions to the general prohibition permit FAA employees to invest in certain mutual funds that hold the prohibited interests. See 5 CFR 6001.104(c).

The FAA's experience has shown, however, that the absolute prohibition in the current regulation is not needed to preserve the integrity of FAA operations. Also, employees for whom a waiver may be granted will nevertheless be subject to the conflict of interest laws and ethics regulations that apply to all Federal employees. These laws and regulations prohibit employees from taking action in any matter affecting a company in which they have any stock or other financial interest unless a regulatory exemption or a written waiver is obtained. Therefore, an amendment is being adopted to include in the regulation waiver language such as has been used for years by other agencies. See, for example, the regulations of the Department of the Interior at 5 CFR 3501.104(b)(5).

Under new § 6001.104(d), an agency designee, as defined in 5 CFR 6001.102, may grant a waiver from the regulatory restriction in § 6001.104(b) 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 restriction is not necessary to avoid the appearance of misuse of position or loss of impartiality and objectivity with which agency programs are administered. An FAA employee may be required under the waiver to disqualify himself from a particular matter or take other

Federal Register

Vol. 66, No. 232

Monday, December 3, 2001

appropriate action. Initially, this new waiver authority will permit the FAA to consider a broader pool of applicants currently under consideration for temporary security positions at the nation's airports.

In addition, the Department is revising the authority citation of the Transportation Ethics Regulations to add reference to 5 U.S.C. 7353 concerning restrictions on gifts to Federal employees.

II. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(a)(2), (b), and (d), the Department has found that good cause exists for waiving the regular notice of proposed rulemaking, and opportunity for public comment. The Department also finds that good cause exists for making this final rule effective immediately upon publication in the **Federal Register**. We make these findings because it is in the public interest that this rule, which concerns matters of agency management, personnel, organization, practice and procedure, and which relieves certain restrictions placed on FAA employees, become effective on the date of publication.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, no regulatory flexibility analysis is required.

Executive Order 12866 Determination

The Department has determined that this final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866, nor is the rule significant as defined in DOT's Regulatory Policies and Procedures.

Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act)¹ requires that an agency prepare a budgetary impact statement before promulgating a rule

¹ Pub. L. 104-4, 109 Stat. 48 (codified at 2 U.S.C. Chs. 17A-25)

that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. As discussed in the preamble, this rule limits the restrictions on FAA employees holding financial interests in aviation industry entities. The Department therefore has determined that the rule will not result in expenditures by State, local or tribal governments or by the private sector of \$100 million or more. Accordingly, the Unfunded Mandates Act does not apply to this rulemaking.

List of Subjects in 5 CFR Part 6001

Conflict of interests, Ethics, FAA employees, Government employees.

Dated: November 21, 2001.

Norman Y. Mineta,
Secretary of Transportation.

Approved: November 27, 2001.

Amy L. Comstock,
Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Department, with the concurrence of OGE, amends 5 CFR part 6001 as follows:

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

1. The authority citation for part 6001 is revised to read as follows:

Authority: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 49 U.S.C. 322; 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, 2635.203(a), 2635.403(a), 2635.807.

2. Section 6001.104 is amended by:

- Revising paragraph (b);
- Redesignating paragraph (d) as paragraph (e); and
- Adding new paragraph (d).

The revision and addition read as follows:

§ 6001.104 Prohibited financial interests.

(b) *Federal Aviation Administration (FAA).* Except as provided in paragraphs (c) and (d) 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.

* * * * *

(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.

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[FR Doc. 01-29890 Filed 11-30-01; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-CE-87-AD; Amendment 39-12516; AD 2001-23-17]

RIN 2120-AA64

Airworthiness Directives; GARMIN International GNS 430 Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain GARMIN International (GARMIN) GNS 430 units that are installed on aircraft. This AD requires you to modify the unit to incorporate circuitry changes to the GNS 430 unit's deviation and flag outputs. This AD is the result of reports of inaccurate course deviations caused by external electrical noise to the GNS 430 unit's course deviation indicator (CDI). The actions specified by this AD are intended to prevent such external noise from causing inaccurate course deviation displays in the GNS 430 unit's CDI or horizontal situation indicator (HSI). Such displays could result in the pilot making flight decisions that put the aircraft in unsafe flight conditions.

DATES: This AD becomes effective on December 28, 2001.

The Director of the Federal Register approved the incorporation by reference

of certain publications listed in the regulations as of December 28, 2001.

ADDRESSES: You may obtain the service information referenced in this AD from GARMIN International, 1200 East 151st Street, Olathe, Kansas 66062. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-CE-87-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946-4134; facsimile: (316) 946-4407; e-mail: roger.souter@faa.gov.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received information that external electrical noise to the course deviation indicator (CDI) of GARMIN GNS 430 units could result in the CDI or horizontal situation indicator (HSI) displaying inaccurate course deviations. This could prompt the pilot to make flight decisions that put the aircraft in unsafe flight conditions.

Certain GNS 430 installations have received electrical noise between 1 and 3 volts alternating current (AC) peak-peak (induced into the GNS 430 CDI input) from other items installed on the aircraft. This high level of noise causes an undesirable oscillation of the CDI outputs, which results in inaccurate course deviation displays in the GNS 430 unit's CDI/HSI.

The condition is installation dependent. The GNS 430 units continue to meet all requirements in the technical standard order (TSO). The condition occurs in aircraft with installations that impose large noise spikes upon the CDI D-bar control wiring. Such installations are autopilots, fan motors, or similar accessories.

What is the potential impact if FAA took no action? As described above, such external noise could cause inaccurate course deviation displays in the GNS 430 unit's CDI/HSI. This could result in the pilot making flight decisions that put the aircraft in unsafe flight conditions.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include