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## PART 6400 [RESERVED]

## PART 6401—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE ENVIRONMENTAL PROTECTION AGENCY

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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. 203(c)(1); 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, 2635.403(a), 2635.802(a), 2635.803.

SOURCE: 61 FR 40502, Aug. 2, 1996, unless otherwise noted.

### § 6401.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Environmental Protection Agency and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

### § 6401.102 Prohibited financial interests.

(a) The following employees are prohibited from holding the types of financial interests described in this section:

(1) Employees in the Office of Mobile Sources are prohibited from having outside employment with or holding stock or any other financial interest in manufacturers of automobiles and mobile source pollution control equipment.

(2) Employees in the Office of Pesticide Programs are prohibited from having outside employment with or holding stock or any other financial interest in companies that manufacture or provide wholesale distribution of pesticide products registered by the EPA. These restrictions apply to companies with subsidiaries in these areas but do not include retail distributors to the general public.

(3) Employees in the Office of Information Resources Management involved with data management contracting or computer contracting are prohibited from having outside employment with or holding stock or any other financial interest in data management, computer, or information processing firms.

(4) Employees who perform functions or duties under the Surface Mining Control and Reclamation Act (such as reviewing Environmental Impact Statements of the Office of Surface Mining in the Department of Interior) are prohibited by 30 U.S.C. 1211(f) from holding direct or indirect interests in underground or surface coal mining operations.

(i) Implementing regulations of the Office of Surface Mining at 30 CFR 706.3 define the terms ''direct financial interest'' and ''indirect financial interest'' as follows:

(A) *Direct financial interest* means ownership or part ownership by an employee of land, stocks, bonds, debentures, warrants, a partnership, shares, or other holding and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

(B) *Indirect financial interest* means the same financial relationships as for direct ownership but where the employee reaps the benefits of such interests, including interests held by the employee's spouse, minor child or other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor child or other resident relative holds a financial interest.

(ii) Violation of the restrictions in this section is punishable by a fine of up to $2,500 or imprisonment for not more that one year, or both.

(iii) Employees who perform functions or duties under the Surface Mining Control and Reclamation Act are not prohibited thereunder from holding interests in excepted investment funds as defined at 5 CFR 2634.310(c)(2) provided that such funds are widely diversified, that is, hold no more than 5% of the value of their portfolios in the securities of any one issuer (other than

the United States Government) and no more than 20% in any particular economic or geographic sector.

(5) Members of the Interagency Testing Committee established under section 4(e) of the Toxic Substances Control Act (15 U.S.C. 2603(e)) are prohibited thereunder from holding any stocks or bonds, or having any substantial pecuniary interest, in any person engaged in the manufacture, processing, or distribution in commerce of any substance or mixture subject to any requirement of the Act or any rule or order issued under the Act and, for a period of twelve months after their committee service has ceased, are prohibited thereunder from accepting employment or compensation from any person subject to any requirement of the Act or to any rule or order issued under the Act.

(i) The statutory prohibitions in this section are enforceable by an action for a court order to restrain violations.

(ii) Members of the Interagency Testing Committee are not prohibited thereunder from holding interests in excepted investment funds as defined at 5 CFR 2634.310(c)(2) provided that such fund are widely diversified, that is, hold no more than 5% of the value of their portfolios in the securities of any one issuer (other than the United States Government) and no more than 20% in any particular economic sector.

(b) The Designated Agency Ethics Official or the cognizant Deputy Ethics Official may grant a written waiver from the prohibitions in paragraph (a)(1) through (a)(3) of this section based on a determination that the waiver is not inconsistent with 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 misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

### § 6401.103 Prior approval for outside employment.

(a) *Requirement for approval.* An employee shall obtain approval from his or her Deputy Ethics Official before engaging in outside employment, with or without compensation, that involves:

(1) Consulting services;

(2) The practice of a profession as defined in 5 CFR 2636.305(b)(1);

(3) Holding State or local public office;

(4) Subject matter that deals in significant part with the policies, programs or operations of EPA or any matter to which the employee presently is assigned or to which the employee has been assigned during the previous one-year period; or

(5) The provision of services to or for:

(i) An EPA contractor or subcontractor;

(ii) The holder of an EPA assistance agreement or subagreement; or

(iii) A firm regulated by the EPA office or Region in which the employee serves.

(b) *Form and content of request.* The employee's request for approval of outside employment shall be submitted in writing to his or her Deputy Ethics Official. The request shall be sent through the employee's immediate supervisor (for the supervisor's information) and shall include:

(1) Employee's name, title and grade;

(2) Nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;

(3) The name and business of the person or organization for which the work will be done (in cases of self-employment, indicate the type of services to be rendered and estimate the number of clients or customers anticipated during the next 6 months);

(4) The estimated time to be devoted to the activity;

(5) Whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);

(6) The employee's statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;

(7) The basis for compensation (e.g., fee, per diem, per annum, etc.);

(8) The employee's statement that he or she has read, is familiar with, and will abide by the restrictions described in 5 CFR part 2635 and § 6401.102; and

(9) An identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.

(c) *Standard for approval.* Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and § 6401.102. The decision must be in writing.

(d) *Keeping the record up-to-date.* If there is a change in the nature or scope of the duties or services performed or the nature of the employee's business, the employee must submit a revised request for approval. Where an employee transfers to an organization for which a different Deputy Ethics Official has responsibility, the employee must obtain approval from the new Deputy Ethics Official. In addition, each approved request is valid only for five years unless the employee's Deputy Ethics Official specifies a longer time period.

(e) *Definition of employment.* For purposes of this section, ''employment'' means any form of non-Federal employment, business relationship, or activity involving the provision of personal services by the employee, whether or not for compensation. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organizations, unless such activities are for compensation other than reimbursement for expenses.

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