United States
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

Office of the General Counsel

MEMORANDUM

DATE: November 14, 1996

TO : Ann Brown, Chairman
Mary S. Gall, Commissioner
Thomas H. Moore, Commissioner

FROM : Eric A. Rubel, General Counsel and
Designated Agency Ethics Official

SUBJECT: Supplemental Ethics Regulation

BALLOT VOTE DUE: NOV 21 1996

Attached for your approval is a proposed Commission final regulation that retains the agency's requirement that employees obtain approval prior to engaging in outside employment or activities. If approved by the Commission, the regulations will be submitted to the Office of Government Ethics for its concurrence prior to being published as a supplement to the government-wide Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635).

In February 1993, the Office of Government Ethics (OGE) issued new standards of ethical conduct that are applicable to all Federal employees in the Executive Branch. The new standards superseded each Federal agency's standards of conduct, including the Commission's (16 CFR Part 1030). However, OGE allowed agencies to retain their own outside activity regulations for a period of one year from the date the government-wide standards were issued, *i.e.*, until February 1994. The "grace period" was to allow agencies to republish their outside activity regulations as a supplement to the government-wide standards. Subsequently, OGE has extended the grace period until November 1, 1996.

We believe the Commission's requirement that employees obtain prior approval before engaging in outside employment has been useful in avoiding possible conflicts of interest by CPSC employees. Therefore, we recommend that the clearance requirement be continued by adopting the proposed supplemental regulations attached to this memorandum. These proposed regulations are substantively identical to CPSC's present regulations on the subject. Therefore, we propose issuing these final regulations to become effective immediately.

NOTE: This document has not been reviewed or accepted by the Commission.
Initial _____ Date 11/14/96

CPSA 6 (b)(1) Cleared
11/14/96
No Mfrs/PrvtLblrs or Products Identified
Excepted by _____
Firms Notified

This office previously submitted a draft of these proposed regulations to the Commission and OGE in 1995. The Commission approved the draft regulations but OGE suggested a number of minor revisions. This proposed regulation incorporates OGE's suggestions and has been informally reviewed and approved by OGE staff.

1. Approved regulations as drafted

_____ _____
(Signature) (Date)

2. Approved regulations with changes (Please specify):

_____

_____

_____ _____
(Signature) (Date)

3. Do not approve regulations:

_____ _____
(Signature) (Date)

4. Other (Please specify):

_____

_____

_____ _____
(Signature) (Date)

Attachment

[Billing Code: 6355-01-M]

CONSUMER PRODUCT SAFETY COMMISSION

5 CFR Chapter LXXI

16 CFR Part 1030

RIN 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the Consumer Product Safety Commission

AGENCY: Consumer Product Safety Commission (CPSC).

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission, with the concurrence of the Office Government Ethics (OGE), is issuing regulations for CPSC employees that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. These supplemental regulations address outside employment by CPSC employees. The CPSC is also revoking its existing agency employee conduct regulations which addressed outside employment by CPSC employees.

EFFECTIVE DATE: [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Richard W. Allen, Assistant General Counsel for General Law, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0980, extension 2212.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992 the Office of Government Ethics (OGE) published the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards). See 57 FR 35006-35067, as corrected at 57 FR 48557 and 52583 and 60 FR 51667, and amended at 61 FR 42965-42970 (as corrected at 61 FR 48733) and 61 FR 50689-50691, with additional grace period extensions at 59 FR 4779-4780, 60 FR 6390-6391 and 66857-66858, and 61 FR 40950-40952. The Standards, codified at 5 CFR part 2365, became effective February 3, 1993, and established uniform standards of ethical conduct applicable to personnel of all executive branch agencies.

Section 2635.105 of the Standards authorizes executive agencies, with the concurrence of OGE, to publish agency-specific supplemental regulations that are necessary to implement their ethics programs. The CPSC, with OGE's concurrence, has determined that the following supplemental regulations are necessary for successful implementation of the CPSC ethics program. By this notice, CPSC is also revoking its old conduct regulations as codified at 16 CFR part 1030, subpart D and adding a single section in subpart A, previously reserved, that provides cross-references to 5 CFR parts 735, 2634 and 2635, as well as to the CPSC's new supplemental regulation and, for CPSC Commissioners, to the statutory provisions of 15 U.S.C. 2053(c).

II. Analysis of the Regulations

Section 8101.101 General

Section 8101.101(a) explains that the regulations apply to all CPSC employees and supplement the standards of ethical conduct which are applicable to all executive branch personnel.

Section 8101.102 Prohibitions Applicable to Commissioners

This section references and summarizes the statutory prohibitions on outside employment applicable to the CPSC Commissioners in Section 4(c) of the Consumer Product Safety Act, 15 U.S.C. 2053(c).

Section 8101.103 Prior Approval for Outside Employment

Section 2635.803 of the Standards authorizes agencies to issue supplemental regulations requiring employees to obtain prior approval before engaging in outside employment. The CPSC has long required employees to obtain prior written approval before engaging in outside employment or activities. Provisions of the now superseded CPSC regulations codified at 16 CFR part 1030, subpart D, have required CPSC employees to obtain advance approval for outside employment since those regulations were issued in 1976. The CPSC has found this requirement useful in ensuring that the outside employment of employees conform with all applicable laws and regulations and has determined that it is necessary to the administration of its ethics program that employees now continue to obtain prior approval before engaging in outside employment.

Therefore, section 8101.103(a) of the supplemental regulations reinstates the requirement for prior approval of outside employment of CPSC employees other than special Government employees.

Section 8101.103(b) sets forth the criteria to be used in approving or denying requests for approval of outside employment.

Section 8101.103(c) provides that employees will be notified in writing of the action taken on their requests and that all requests will be maintained in the Designated Agency Ethics Official's files.

Section 8101.103(d) states that approvals will be for a period of up to two years. An employee must submit a new request for approval two years after the date of approval, when the scope of the approved activity changes, or when the employee's position changes, whichever occurs first.

Section 8101.103(e) defines the term "employment" and describes the circumstances in which prior approval must be obtained.

III. Repeal of Existing CPSC Outside Employment Regulations and Addition of Cross-References

The CPSC is repealing its recently superseded conduct regulations governing outside activities, codified at 16 CFR part 1030, subpart D -- Outside Employment and Other Activities. Other portions of the CPSC regulations governing CPSC employees' responsibilities and conduct in 16 CFR Part 1030 were previously superseded when the executive branch wide Standards of Ethical

Conduct at 5 CFR part 2635 became generally effective in February 1993 and were repealed by the CPSC. See 58 Fed. Reg. 12335 (March 4, 1993).

At this time, the CPSC is also issuing a residual provision at 16 CFR part 1030, subpart A, to cross-reference the executive branch-wide Standards, this supplemental regulation, the executive branch-wide financial disclosure regulations at 5 CFR part 2634 and, for CPSC Commissioners, the statutory provisions of section 4(c) of the Consumer Product Safety Act, 15 U.S.C. 2053(c). The CPSC will also leave in 16 CFR part 1030, subpart M, the existing rules of conduct required by the Privacy Act of 1974, at 5 U.S.C. 552 a(e)(9). Subparts B-L of part 1030 are reserved.

IV. Matters of Regulatory Procedure

Generally, the Administrative Procedure Act (APA) (5 U.S.C. 553) requires agencies to publish a notice of proposed rulemaking and provide opportunity for public comment before issuing or revoking regulations. However, the APA provides at 5 U.S.C. 553(b)(B) that the requirement for a notice of proposed rulemaking is not applicable when the agency finds for good cause that notice of proposed rulemaking and public participation are "impracticable, unnecessary, or contrary to the public interest."

The CPSC finds for good cause that notice of proposed rulemaking and public participation are unnecessary because the CPSC is essentially reissuing existing regulations in a different form; the regulations pertain wholly to internal agency personnel

matters; and they affect only CPSC employees. Furthermore, it is in the public interest that these CPSC supplemental ethics rules become effective as soon as possible.

The APA also requires at 5 U.S.C. 553(d) that a substantive rule must be published at least 30 days before its effective date unless the agency finds for good cause that such delay is not needed. Again, because the CPSC is essentially reissuing prior longstanding requirements, the CPSC finds for good cause that a delayed effective date is unnecessary. Consequently, this amendment and revocation shall become effective immediately.

List of Subjects

5 CFR Part 8101

Conflict of interests, Government employees.

16 CFR Part 1030

Conflict of interests, Government Employees, Privacy.

Dated: _____, 1996.

_____

Sadye E. Dunn,
Secretary, Consumer Product Safety Commission.

Approved: _____, 1996.

_____

Stephen D. Potts,
Director, Office of Government Ethics.

For the reasons set forth above, the Consumer Product Safety Commission, with the concurrence of the Office of Government Ethics, is amending title 5 and title 16 of the Code of Federal Regulations as follows:

TITLE 5--[AMENDED]

1. A new chapter LXXI, consisting of part 8101, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER LXXI--CONSUMER PRODUCT SAFETY COMMISSION

PART 8101--SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE CONSUMER PRODUCT SAFETY COMMISSION

Sec.

8101.101 General.

8101.102 Prohibitions applicable to Commissioners.

8101.103 Prior approval for outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 15 U.S.C. 2053(c); 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, 2635.803.

§ 8101.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Consumer Product Safety Commission (CPSC) other than special Government employees. These regulations supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

§ 8101.102 Prohibitions applicable to Commissioners.

The Commissioners of the Consumer Product Safety Commission are subject to section 4(c) of the Consumer Product Safety Act, 15 U.S.C. 2053(c). That statutory provision provides that a Commissioner may not engage in any other business, vocation, or employment.

§ 8101.103 Prior approval for outside employment.

(a) Prior approval requirement. Before engaging in any outside employment, with or without compensation, an employee, other than a special Government employee, shall obtain prior written approval from his or her supervisor and the Designated Agency Ethics Official (DAEO) or Alternate DAEO. The Request for Approval of Outside Activity (CPSC Form 241), available from the DAEO or unit administrative officer, may be used to request approval. Requests for approval shall be forwarded through normal supervisory channels.

(b) Standard of approval. Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by Federal statute or regulation, including 5 CFR part 2635.

(c) Notification of action. Employees will be notified in writing of the action taken on their requests. All requests will be maintained in the files of the Designated Agency Ethics Official for the duration of the requester's CPSC employment.

(d) Duration and scope of approval. Approval will be for a period not to exceed two years, after which renewal approval must

n) *Public filer*. For the definition of blic filer," see §2634.202.

ı) *Reimbursement* means any payıt or other thing of value received the reporting individual (other than s, as defined in paragraph (h) of this ion) to cover travel-related exses of such individual, other than se which are:

) Provided by the United States ernment, the District of Columbia, State or local government or politsubdivision thereof;

) Required to be reported by the reing individual under 5 U.S.C. 7342 Foreign Gifts and Decorations); or

) Required to be reported under sec- 304 of the Federal Election Camn Act of 1971 (2 U.S.C. 434) (relating eports of campaign contributions).

TE: Payments which are not made to the vidual are not reimbursements for purs of this part. Thus, payments made to iler's employing agency to cover official el-related expenses do not fit this defini- of reimbursement. For example, pays being accepted by the agency pursuto statutory authority such as 31 U.S.C. as implemented by 41 CFR part 304-1, not considered reimbursements under part 2634, because they are not payments ved by the reporting individual. On the r hand, travel payments made to the emee by an outside entity for private travel considered reimbursements for purposes his part. Likewise, travel payments red from certain nonprofit entities under ority of 5 U.S.C. 4111 are considered reirsements, even though for official travnce that statute specifies that such pays must be made to the individual diy (with prior approval from the individagency).

) *Relative* means an individual who elated to the reporting individual, father, mother, son, daughter, her, sister, uncle, aunt, great e, great aunt, first cousin, nephew, e, husband, wife, grandfather, dmother, grandson, grandhter, father-in-law, mother-in-law, in-law, daughter-in-law, brotherw, sister-in-law, stepfather, stepher, stepson, stepdaughter, stepher, stepsister, half brother, half r, or who is the grandfather or dmother of the spouse of the reing individual, and shall be deemed iclude the fiance or fiancee of the rting individual.

(p) *Reporting individual* is used interchangeably with "filer," and may refer to a "confidential filer" as defined in §2634.904, a "public filer" as defined in §2634.202, or a nominee or candidate as described in §2634.201.

(q) *Reviewing official* means the designated agency ethics official or his delegate, the Secretary concerned, the head of the agency, or the Director of the Office of Government Ethics.

(r) *Secretary concerned* has the meaning set forth in 10 U.S.C. 101(8) (relating to the Secretaries of the Army, Navy, Air Force, and for certain Coast Guard matters, the Secretary of Transportation); and, in addition, means:

(1) The Secretary of Commerce, in matters concerning the National Oceanic and Atmospheric Administration;

(2) The Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(3) The Secretary of State with respect to matters concerning the Foreign Service.

(s) *Special Government employee* has the meaning given to that term by the first sentence of 18 U.S.C. 202(a): an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis.

(t) *Value* means a good faith estimate of the fair market value if the exact value is neither known nor easily obtainable by the reporting individual without undue hardship or expense. In the case of any interest in property, see the alternative valuation options in §2634.301(e). For gifts and reimbursements, see §2634.304(e).

[57 FR 11804, Apr. 7, 1992; 57 FR 21854, May 22, 1992]

Subpart B—Persons Required to File Public Financial Disclosure Reports

SOURCE: 57 FR 11806, Apr. 7, 1992, unless otherwise noted.

§2634.201 General requirements, filing dates, and extensions.

(a) *Incumbents*. A public filer as defined in §2634.202 of this subpart who, during any calendar year, performs the duties of his position or office, as described in that section, for a period in excess of 60 days shall file a public financial disclosure report containing the information prescribed in subpart C of this part, on or before May 15 of the succeeding year.

Example 1. An SES official commences performing the duties of his position on November 15. He will not be required to file an incumbent report for that calendar year.

Example 2. An employee, who is classified at GS-15, is assigned to fill an SES position in an acting capacity, from October 15 through December 31. Having performed the duties of a covered position for more than 60 days during the calendar year, he will be required to file an incumbent report.

(b) *New entrants*. (1) Within 30 days of assuming a public filer position or office described in §2634.202 of this subpart, an individual shall file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) However, no report shall be required if the individual:

(i) Has, within 30 days prior to assuming such position, left another position or office for which a public financial disclosure report under the Act was required to be filed; or

(ii) Has already filed such a report as a nominee or candidate for the position.

Example: Y, an employee of the Treasury Department who has previously filed reports in accordance with the rules of this section, terminates employment with that Department on January 12, 1991, and begins employment with the Commerce Department on February 10, 1991, in a Senior Executive Service position. Y is not a new entrant since he has assumed a position described in §2634.202 of this subpart within thirty days of leaving another position so described. Accordingly, he need not file a new report with the Commerce Department.

NOTE: While Y did not have to file a new entrant report with the Commerce Department, that Department should request a copy of the last report which he filed with the Treasury Department, so that Commerce could determine whether or not there would be any conflicts or potential conflicts in connection with Y's new employment. Additionally, Y will have to file an incumbent report

be sought. An employee must submit a new request for approval after two years or earlier upon either a significant change in the nature or scope of the outside employment or a change in the employee's CPSC position.

(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. Employment includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. Employment also includes writing when done under an arrangement with another person for production or publication of the written product. Employment does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, consumer or civic organization, unless such activities are for compensation other than reimbursement for expenses or involve the provision of professional services or advice to, or serving as an officer, trustee, or member of a board or other such body of, an organization that is a prohibited source as defined in 5 CFR 2635.203(d).

Title 16 -- [AMENDED]

CHAPTER II -- CONSUMER PRODUCT SAFETY COMMISSION

PART 1030 -- EMPLOYEE STANDARDS OF CONDUCT [AMENDED]

2. The authority citation for part 1030 is revised to read as follows:

Authority: 5 U.S.C. 552a, 7301; 15 U.S.C. 2053(c).

3. Subpart A, previously reserved, is added to read as follows:

Subpart A -- General

§ 1030.101 Cross-references to employee ethical conduct standards and financial disclosure regulations.

Employees of the Consumer Product Safety Commission are subject to the Standards of Ethical Conduct, 5 CFR part 2635, which are applicable to all executive branch personnel; the CPSC regulations at 5 CFR part 8101, which supplement the executive branch standards; the Office of Personnel Management regulations on employee conduct at 5 CFR part 735; and the financial disclosure regulations at 5 CFR part 2634, which are applicable to all executive branch personnel. In addition, the Commissioners of the CPSC are subject to the statutory provisions of 15 U.S.C. 2053(c).

Subpart D--[Removed]

4. Subpart D is removed and reserved.

n) *Public filer*. For the definition of blic filer," see § 2634.202.

) *Reimbursement* means any pay- nt or other thing of value received the reporting individual (other than s, as defined in paragraph (h) of this tion) to cover travel-related ex- ses of such individual, other than se which are:

) Provided by the United States ernment, the District of Columbia, State or local government or polit- subdivision thereof;

) Required to be reported by the re- ting individual under 5 U.S.C. 7342 Foreign Gifts and Decorations); or

) Required to be reported under sec- 304 of the Federal Election Cam- n Act of 1971 (2 U.S.C. 434) (relating eports of campaign contributions).

TE: Payments which are not made to the vidual are not reimbursements for pur- s of this part. Thus, payments made to filer's employing agency to cover official el-related expenses do not fit this defini- of reimbursement. For example, pay- s being accepted by the agency pursu- to statutory authority such as 31 U.S.C. as implemented by 41 CFR part 304-1, not considered reimbursements under part 2634, because they are not payments ved by the reporting individual. On the r hand, travel payments made to the em- ee by an outside entity for private travel considered reimbursements for purposes is part. Likewise, travel payments re- d from certain nonprofit entities under ority of 5 U.S.C. 4111 are considered re- rsements, even though for official trav- nce that statute specifies that such pay- s must be made to the individual di- y (with prior approval from the individ- agency).

) *Relative* means an individual who elated to the reporting individual, father, mother, son, daughter, her, sister, uncle, aunt, great e, great aunt, first cousin, nephew, e, husband, wife, grandfather, dmother, grandson, grand- hter, father-in-law, mother-in-law, in-law, daughter-in-law, brother- w, sister-in-law, stepfather, step- her, stepson, stepdaughter, step- her, stepsister, half brother, half r, or who is the grandfather or dmother of the spouse of the re- ing individual, and shall be deemed clude the fiance or fiancee of the rting individual.

(p) *Reporting individual* is used interchangeably with "filer," and may refer to a "confidential filer" as defined in § 2634.904, a "public filer" as defined in § 2634.202, or a nominee or candidate as described in § 2634.201.

(q) *Reviewing official* means the designated agency ethics official or his delegate, the Secretary concerned, the head of the agency, or the Director of the Office of Government Ethics.

(r) *Secretary concerned* has the meaning set forth in 10 U.S.C. 101(8) (relating to the Secretaries of the Army, Navy, Air Force, and for certain Coast Guard matters, the Secretary of Transportation); and, in addition, means:

(1) The Secretary of Commerce, in matters concerning the National Oceanic and Atmospheric Administration;

(2) The Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(3) The Secretary of State with respect to matters concerning the Foreign Service.

(s) *Special Government employee* has the meaning given to that term by the first sentence of 18 U.S.C. 202(a): an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis.

(t) *Value* means a good faith estimate of the fair market value if the exact value is neither known nor easily obtainable by the reporting individual without undue hardship or expense. In the case of any interest in property, see the alternative valuation options in § 2634.301(e). For gifts and reimbursements, see § 2634.304(e).

[57 FR 11804, Apr. 7, 1992; 57 FR 21854, May 22, 1992]

Subpart B—Persons Required to File Public Financial Disclosure Reports

SOURCE: 57 FR 11806, Apr. 7, 1992, unless otherwise noted.

§ 2634.201 General requirements, filing dates, and extensions.

(a) *Incumbents*. A public filer as defined in § 2634.202 of this subpart who, during any calendar year, performs the duties of his position or office, as described in that section, for a period in excess of 60 days shall file a public financial disclosure report containing the information prescribed in subpart C of this part, on or before May 15 of the succeeding year.

Example 1. An SES official commences performing the duties of his position on November 15. He will not be required to file an incumbent report for that calendar year.

Example 2. An employee, who is classified at GS-15, is assigned to fill an SES position in an acting capacity, from October 15 through December 31. Having performed the duties of a covered position for more than 60 days during the calendar year, he will be required to file an incumbent report.

(b) *New entrants*. (1) Within 30 days of assuming a public filer position or office described in § 2634.202 of this subpart, an individual shall file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) However, no report shall be required if the individual:

(i) Has, within 30 days prior to assuming such position, left another position or office for which a public financial disclosure report under the Act was required to be filed; or

(ii) Has already filed such a report as a nominee or candidate for the position.

Example: Y, an employee of the Treasury Department who has previously filed reports in accordance with the rules of this section, terminates employment with that Department on January 12, 1991, and begins employment with the Commerce Department on February 10, 1991, in a Senior Executive Service position. Y is not a new entrant since he has assumed a position described in § 2634.202 of this subpart within thirty days of leaving another position so described. Accordingly, he need not file a new report with the Commerce Department.

NOTE: While Y did not have to file a new entrant report with the Commerce Department, that Department should request a copy of the last report which he filed with the Treasury Department, so that Commerce could determine whether or not there would be any conflicts or potential conflicts in connection with Y's new employment. Additionally, Y will have to file an incumbent report

e agency concludes that the du- responsibilities of the employ- ition require that employee to ate personally and substan- hrough decision or the exercise ificant judgment, in taking a ment action regarding:

ntracting or procurement;

Administering or monitoring subsidies, licenses, or other fed- conferred financial or oper- benefits;

Regulating or auditing any non- l entity; or

Other activities in which the ecision or action will have a di- d substantial economic effect on erests of any non-Federal en-

ne agency concludes that the du- d responsibilities of the employ- sition require the employee to h a report to avoid involvement al or apparent conflict of inter- d to carry out the purposes be- y statute, Executive order, rule, lation applicable to or adminis- by that employee. Positions might be subject to a reporting ement under this subparagraph e those with duties which involve igating or prosecuting violations inal or civil law.

ple 1. A contracting officer drafts the s for proposals for data processing ent of significant value which is to be sed by his agency. He works with sub- l independence of action. The con- g officer should be required to file a ntial financial disclosure report.

ple 2. An agency environmental engi- ispects a manufacturing plant to as- whether the plant complies with a to release a certain effluent into a stream. Any violation of the permit rds may result in civil penalties for int, and in criminal penalties for the management based upon any action they took to create the violation. If gency engineer determines that the does not meet the permit require- he can require the plant to terminate of the effluent until the plant satis- e permit standards. Because the engi- xercises substantial discretion in regu- the plant's activities, and because his decisions will have a substantial eco- effect on the plant's interests, the en- should be required to file a confiden- nancial disclosure report.

Unless required to file public fi- al 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.

Example 1. A consultant to an agency periodically advises the agency regarding important foreign policy matters. The consultant must file a confidential report if he is retained as a special Government employee and not an independent contractor.

Example 2. An advisory committee member (who is not a private group representative) attends four committee meetings every year to provide advice to an agency about pharmaceutical matters. No compensation is received by the committee member, other than travel expenses. The advisory committee member must file a confidential disclosure report, since she is a special Government employee.

(c) Each public filer referred to in § 2634.202 on public disclosure who is required by agency regulations issued in accordance with § 2634.907(b) of this subpart to file a supplemental confidential financial disclosure report which contains information that is more extensive than the information required in the reporting individual's public financial disclosure report under this part.

(d) Any employee who, notwithstanding his exclusion from the public financial reporting requirements of this part by virtue of a determination under § 2634.203, is covered by the criteria of paragraph (a) of this section.

§ 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 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 ex-