§ 300.408 Corrective action.

Upon evidence of failure to comply with these regulations, OPM may, pursuant to its authority, order the agency to take appropriate corrective action.

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1633

Standards of Conduct

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (the Board) is publishing in Part 1633 final regulations governing employee responsibilities and conduct. These regulations are being issued pursuant to Executive Order 11222 of May 8, 1965, as amended, and the Ethics in Government Act of 1978, as amended.

EFFECTIVE DATE: Final rule effective December 21, 1988.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, (202) 523-6367, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The Federal Retirement Thrift Investment Board was established by Pub. L. No. 99-335 (June 6, 1986), the Federal Employees' Retirement System Act of 1986 (codified principally at 5 U.S.C. 8401-8479), as amended by Pub. L. 99-509, the Omnibus Budget Reconciliation Act of 1986; Pub. L. 99-556, the Federal Employees' Retirement System Technical Corrections Act of 1986; Pub. L. 100-20, 100-43 and 100-202; and Pub. L. 100-238, the Federal Employees' Retirement System Technical Corrections Act of 1988, to administer the Thrift Savings Plan for Federal employees. Regulations of the Board are contained in Title 5, CFR, Chapter VI, Parts 1600-1699. The Board's regulations published in Subparts A and B of this Part 1633 govern the standards of honesty, integrity, impartiality, and conduct of government employees and special government employees who are employed by the Board. Subpart C covers Board Members.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only persons who work for the Board as government employees, special government employees, and as Board Members.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553 (b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. The Board, as a new agency, has begun operations and it is necessary for these standards of conduct to be in place for the direction and guidance of its personnel.

List of Subjects in 5 CFR Part 1633

Conflicts of interest, Ethical conduct, Financial disclosure, Government employees, Political activities.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,
Executive Director.

Title 5 of the Code of Federal Regulations is amended to add Part 1633 to Chapter VI to read as follows:

PART 1633—STANDARDS OF CONDUCT

Subpart A—Regular Employees

General Provisions

Authority: 5 U.S.C. 8474; 5 U.S.C. App. 4.

Subpart A—Regular Employees

General Provisions

§ 1633.1 Purpose.

This part describes the standards of conduct required of all employees, special employees, and Board Members of the Federal Retirement Thrift Investment Board. The regulations in this Part implement Office of Personnel Management regulations at 5 CFR Parts 735 and 737. The standards of conduct in this part are not to be considered all-inclusive and may be supplemented to meet specific needs. The absence of a specific published standard of conduct covering an act tending to discredit an employee or the Board does not mean that such an act is condoned, is permissible, or would not call for and result in corrective or disciplinary action.

§ 1633.2 Scope.

This part covers three general types of employment situations as follows:

(a) Subpart A of this Part sets the general policy and defines rules of conduct and procedures for all regular employees excluding Board Members.

(b) Subpart B of this Part applies to special Government employees, primarily advisers and consultants, excluding Board Members.

(c) Subpart C of this Part applies to Board Members.

§ 1633.3 Policy.

(a) Executive Order 11222 of May 8, 1965, 18 U.S.C. 201 note, states the basic philosophy of conduct for those who carry out the public business:

> Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his government. Each individual officer, employee, or adviser of Government must help to earn and must honor that trust by his own integrity and conduct in all official actions.

(b) Personnel of the Federal Retirement Thrift Investment Board are expected to adhere to the above stated principles and to standards of behavior that will reflect credit on the Government. The Board's position is that of having confidence in its employees and of taking a positive and reasonable approach to the matter of maintaining the high standards of conduct necessary in the transaction of Board activities. A violation of the laws or the rules or regulations on conduct in this Part may subject the employee to discipline, or advice regarding other remedial action, in accordance with the gravity of the violation.

(c) Disciplinary action may be in addition to any penalty prescribed by law. Such action may be taken only after consideration of any explanation offered by the employee.

(d)(1) In addition to disciplinary action, remedial action may include, but is not limited to:

(a) Recusal,

(b) Divestiture, resignation, or reassignment,

(c) A Qualified Trust established in consultation with the Office of Government Ethics, pursuant to Subpart D of 5 CFR Part 734.

(2) An employee may avoid a violation of 18 U.S.C. 208(a) if he or she receives a waiver pursuant to 18 U.S.C 208(b).

(e) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive Orders, and regulations.

§ 1633.4 Definitions.

In this part:

(a) "Board" means the Federal Retirement Thrift Investment Board.

(b) "Executive Director" means the Executive Director of the Federal Retirement Thrift Investment Board, as defined in 5 U.S.C. 8401(13) and as further described in 5 U.S.C. 8474.

(c) "Regular employee" or "employee" means an employee of the Board, but does not include a special Government employee or Board Member.

(d) "Special Government employee" means an employee of the Board who is retained, designated, appointed, or employed to perform, with or without compensation, temporary duties either on a full-time or intermittent basis, for not more than 130 days during any period of 365 consecutive days.

(e) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

§ 1633.5 Assignment of responsibilities.

The assignment of responsibilities to carry out the provisions of this Part is described below in §§ 1633.6 to 1633.10 of this Part.

§ 1633.6 Executive Director.

The Executive Director's responsibilities are to (a) issue policy and basic standards of conduct applicable to all Board employees, (b) periodically review the basic standards and initially and periodically review those additional standards issued by the Board, (c) set requirements to ensure that supervisors and employees are aware of the standards of conduct, of their responsibilities in maintaining and adhering to those standards, and of the fact that disciplinary action will be taken in cases of failure to maintain or adhere to them; and (d) establish procedures for furnishing advice to employees on the application of standards of conduct.

§ 1633.7 The General Counsel.

The General Counsel has general oversight responsibility for the administration of the standards of conduct program of the Board.

§ 1633.8 The Ethics Officer.

The Board's Ethics Officer has responsibility for the day to day operation of the standards of conduct program of the Board and is the "designated agency ethics official" under Part 734 of title 5 of the Code of Federal Regulations. The Board's Ethics Officer is the Assistant General Counsel for Administration. The Deputy Ethics Officer shall assist the Board's Ethics Officer and shall act in the latter's absence.

§ 1633.9 Supervisor.

It is the responsibility of each supervisor to:

(a) Know and adhere to the standards of conduct,

(b) Ensure that the employees under his or her supervision know and adhere to the standards of conduct,

(c) Assist employees under his or her supervision, when necessary, to obtain advice on the application of the standards of conduct; and

(d) Take or recommend disciplinary action when appropriate in cases where the employees under his or her supervision violate the standards or the principles upon which they are based.

§ 1633.10 Employees.

Each employee of the Board is required to:

(a) Know the standards of conduct and their application in his or her case,

(b) Seek information from his or her supervisor in case of doubt or misunderstanding on the application of the standards of conduct,

(c) Adhere to the standards of conduct, and

(d) Be aware of the consequences of violation of the laws, rules and regulations regarding conduct.

Conflicts of Interest

§ 1633.20 General.

The elimination of conflicts of interest in the Federal service is one of the most important objectives in establishing general standards of conduct. A conflict of interest situation may be defined as one in which a Federal employee's private interest, usually of an economic nature, conflicts or raises a reasonable question of conflict with his public duties and responsibilities. The potential conflict is of concern whether it is actual or only apparent. The rules of the Board concerning conflicts of interest appear in §§ 1633.33–1633.38.

§ 1633.21 Summary of provisions of criminal code.

The following is a brief summary of the provisions of the criminal conflict of interest statutes at Title 18 of the United States Code that define the conflicts of interest subject to fines and imprisonment. It should be noted that in some situations, different restrictions may apply to special Government employees than to regular employees, as discussed in more detail in Subpart B of this Part.

(a) 18 U.S.C. 203. Section 203 prohibits an employee from receiving, agreeing to receive, or asking for (directly or indirectly) any compensation for services, otherwise than as provided by law for the proper discharge of official duties, rendered by the employee or another in relation to any matter in which the United States is a party or has a direct and substantial interest before any department or agency.

(b) 18 U.S.C. 205. Section 205 prohibits an employee from (1) acting as an agent or attorney in prosecuting any claim against the United States or receiving any share of or interest in such claim for assistance in its prosecution, or (2) acting as agent or attorney for anyone before any department or agency in connection with any particular matter in which the United States is a party or has a direct and substantial interest. Sections 203 and 205 do not prohibit a regular Government employee from acting with official approval and with or without compensation as agent or attorney for his parents, spouse, or child, or for any estate for which he is serving as guardian or other fiduciary, with certain exceptions set forth in that section. Section 205 does not prevent an employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceeding in connection with such proceeding.

(c) 18 U.S.C. 207(a). Section 207(a) prohibits a former employee, after his employment has ceased, from knowingly acting as agent or attorney for anyone other than the United States in connection with any particular matter involving a specific party or parties in which the United States has a direct and substantial interest and in which he participated personally and substantially as an employee for the lifetime of this matter.

(d) 18 U.S.C. 207(b). Section 207(b)(i) prohibits any such former Government employee within two years after the termination of his employment or the termination of his responsibility in a particular area (if the two events do not occur simultaneously) from appearing personally before any court, department, or agency as agent or attorney for anyone other than the United States in connection with any particular matter involving a specific party or parties in which the United States is a party directly and substantially interested and which was under his official responsibility within 1 year prior to the termination of such responsibility. Section 207(b)(ii) prevents a former employee who occupied a position designated as a Senior Employee (a position which involves significant decisionmaking or supervisory responsibility) for a period of two years after his or her employment has ceased from appearing personally on behalf of another person before a court, department or agency of the United States or the District of Columbia in any matter that was pending under his official responsibility within a one year period prior to the termination of such responsibility or as to which he or she participated personally and substantially as an officer or employee. Section 207(c) prevents a former employee, who served more than sixty days in a given calendar year, and who occupied a position designated as a Senior Employee within one year after such employment has ceased, from acting as agent or attorney for anyone in any appearance or in any written communication before the agency in which he served as an officer or employee in connection with any proceeding pending before such agency. It should be noted that a consultant or adviser usually does not have "official responsibility."

(e) 18 U.S.C. 208. Section 208 prohibits any employee from participating personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, including general rulemaking, in which, to his knowledge, he, his spouse, minor child, partner, or organization in which he is serving as officer, director, trustee, partner or employee or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment or has a financial interest. An employee may be exonerated from the provisions of this section if he makes full disclosure of the financial interest to the official responsible for his appointment and receives in advance a written determination by that official that the interest is not so substantial as to be likely to affect the integrity of his service.

(f) 18 U.S.C. 209. Section 209 prohibits any employee from receiving any salary or any contribution to or supplementation of his salary as compensation for his services as an employee from any source other than the Government. This section does not apply to a special Government employee, and does not prevent participation in any bona fide pension, retirement, profit sharing, or other welfare or benefit plan maintained by a former employer. This section also does not prohibit payment or acceptance of certain contributions, awards, or expenses in connection with Government employee training programs or attendance at meetings authorized under 5 U.S.C. 4111.

Rules of Conduct

§ 1633.30 Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this Part, which might result in, or create the appearance of:

(a) Using public office for private gain.

(b) Giving preferential treatment to any person,

(c) Impeding Government efficiency or economy,

(d) Losing complete independence or impartiality,

(e) Making a Government decision outside official channels, or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 1633.31 Political activity.

Employees have the right to vote as they may choose and to express their opinions on all political subjects and candidates, but are forbidden to take active part in political management or campaigns (Hatch Act, 5 U.S.C. 7324). Political activity in some local elections is permissible; but before employees engage in such activity, they should familiarize themselves with statutory provisions and the Office of Personnel Management's regulations on this subject (5 U.S.C. 7324–7327 and 5 CFR Part 733). It is unlawful for employees to solicit, receive, or to be concerned with political assessments, subscriptions, or contributions for any political purpose whatever from other employees. (18 U.S.C. 602, 603, 606, 607.) Employees may make voluntary contributions to a regularly constituted political organization for its general expenditures subject to the limitations set forth in 18 U.S.C. 608.

§ 1633.32 Gifts or gratuities from Government employees.

Employees of the Federal Government are prohibited from soliciting contributions from other employees or from making a donation for gifts or presents to persons in superior official positions. Neither may such superiors receive any gift or present offered to them from employees in the Government receiving less salary then themselves (5 U.S.C. 7351). A voluntary gift of nominal value or a donation in a nominal amount may be made for gifts upon retirement or resignation or for expressing condolences in cases of illness or death. Solicitations for such gifts should be limited to employees in the immediate office of the employee concerned and a few close associates with whom he or she has worked. Gifts to recipients should not be in cash, except that small amounts (e.g. under $10) remaining after the purchase of a gift may be included with the gift. Within the foregoing limitations, a cash gift may be made to an employee, with the approval of his/her supervisor, to assist in a catastrophic illness or disaster, provided that these voluntary gifts are limited to co-workers of approximately equal status to the recipient employee, and to his immediate supervisors.

§ 1633.33 Gifts or gratuities from outside sources.

(a) Except as provided in paragraphs (b) and (c) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Board;

(2) Conducts operations or activities that are regulated by the Board; or

(3) Has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

(b) General exceptions to the rule in paragraph (a) of this section are as follows unless otherwise precluded by the Board:

(1) Acceptance of gifts, entertainment, and food is acceptable when the circumstances make it clear that obvious family or personal relationships (such as those between the parents, children or spouse of the employee and the employee) rather than the business of the person concerned are the motivating factors.

(2) Acceptance of food and refreshments of nominal value on infrequent occasions is permitted when such action occurs in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour when an employee may properly be in attendance.

(3) Acceptance of food and refreshments at widely-attended functions is permitted to the extent that:

(i) It is in the Board's interest that the employee attend the event;

(ii) Consideration is given to the timing of the event, the reason for the event, and the individual or entity sponsoring the event in order to ensure that attendance will not create an appearance of impropriety;

(iii) The event is a widely-attended gathering of mutual interest to the government and private sector such as a reception, seminar, conference or training session;

(iv) The food and refreshments offered in conjunction with this event are not excessive;

(v) Approval to attend the event is obtained from the Executive Director (or his designee) after consultation with the Board's Ethics Officer.

(4) Employees may accept loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans, except where prohibited by law.

(5) Employees may accept unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) The receipt of payment or reimbursement, by outside sources, for the expenses of travel and subsistence for activities related to Government employment is permited only in accordance with § 1633.38(c) (2) and (3) of this Part.

§ 1633.34 Gifts or gratuities from foreign governments.

The Constitution prohibits employees from accepting from foreign governments, except with the consent of the Congress, presents, emoluments, offices, or titles. The Congress has given its consent in 5 U.S.C. 7342 to the acceptance of certain specified gifts and decorations.

§ 1633.35 Outside financial interests.

An employee shall not participate on a private basis, directly or indirectly, in any financial transaction as a result of, or primarily relying on, confidential information obtained through his employment with the Board. An employee shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties and responsibilities.

§ 1633.36 Using official designation.

Employees shall not permit their official position, status, or designation to be used in a manner that is intended to further, or gives the appearance of furthering, the private business interests of the user or any other private interest. See also § 1633.30(a).

§ 1633.37 Outside employment and other outside activities.

(a) No employee shall engage in any outside employment or other outside activity, with or without compensation, which would be incompatible with Government employment because it (a) would impair the employee's mental or physical capacity and thereby interfere with his or her efficient performance of

Government duties, (b) might bring discredit on or cause unfavorable and justifiable criticism of the Government, or (c) might otherwise result in a conflict of interest, or an appearance of conflict of interest, with official duties and responsibilities; nor may an employee accept a fee, compensation or a gift or any other thing of monetary value in circumstances in which acceptance might result in, or create the appearance of, a conflict of interest. Before engaging in outside employment or in an outside activity, employees shall submit a written request for approval, through any intermediate supervisors, to the appropriate Office Director or, in the case of persons assigned to the General Counsel's Office, to the General Counsel. The written request shall identify the organization, duties, hours of work, and remuneration pertaining to the outside employment or activity. Other restrictions on misuse of Government property, Government title, and official information are found at §§ 1633.36, 1633.43, and 1633.46.

(b) Employees shall not solicit financial aid from or sell tickets to persons outside the Federal Government for the benefit of any organization or association comprised of Board employees. No publication of any such organization shall contain any commercial advertising, and the costs of such publications must be wholly paid by the organization or association. Employee organizations and associations may, however, accept financial aid for convention purposes from boards of trade, chambers of commerce, convention bureaus, and other such organizations which hold conventions.

§ 1633.38 **Teaching, writing, lecturing, and speechmaking.**

(a) Employees may teach, write, lecture, or deliver speeches providing such action is not prohibited by law, Executive Order 11222, 5 CFR Part 735, or the regulations in this Part. The requirements prescribed in § 1633.37 of this Part also apply to engagements to teach, write, lecture, or deliver speeches; however, see paragraph (c)(1) below. An employee shall not, either with or without compensation, engage in teaching, writing, lecturing, or speechmaking (including teaching, writing, lecturing, or speechmaking, for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service) that depends on information obtained as a result of Government employment, except when the information has been made available on request, or when the Ethics Officer gives written authorization for use of nonpublic information on the basis that the use is in the public interest.

(b) A formal speech, a lecture, or an article relating to Board business shall, prior to its release to the public, be submitted to the Executive Director (or to the person designated by the Executive Director).

(c)(1) Determinations by the Executive Director. If the subject matter of any teaching, writing, lecturing, or speechmaking activity is devoted specifically to the responsibilities, programs, or activities of the Board or draws upon official data or ideas which have not been made public, the Executive Director (or designee), after the requestor consults with the Ethics Officer, will determine whether the activity may be undertaken, and if so, whether as official duty or in a private capacity. In determining whether the activity is an official duty or private undertaking, the Executive Director will consider, among other factors, whether the activity will be performed during official hours, whether Government time or facilities will be utilized, whether the official title of the employee will be used, whether the employee will be perceived as conveying agency policy, and whether the activity would justify the expenditure of public funds.

(2) Activities undertaken as an official duty. If the activity is undertaken as an official duty, all expenses will be borne by the Board and the employee may not accept any honorarium or other compensation or permit payment of his or her expenses. However, under 5 U.S.C. 4111 and 5 CFR 410.701–410.706, an employee on official duty may accept reimbursement for actual travel and reasonable lodging and subsistence expenses from organizations determined by the Secretary of the Treasury to be tax exempt, as described in 26 U.S.C. 501(c)(3), if no Government payment or reimbursement is made for the expense, and the acceptance of the payment is consistent with the Board policy of eliminating any conflict of interest or appearance of a conflict of interest with his or her official duties and responsibilities.

(3) Activities undertaken in a private capacity. (i) The Board discourages employees from receiving honoraria or other compensation for teaching, writing, lecturing, or speechmaking on matters relating to Board business, even though the activity is not performed as an official duty. An employee may not receive any such compensation unless, before engaging in the activity, a written request is submitted to and approved by the Executive Director (or designee), after the requestor consults with the Ethics Officer. The request should set forth the facts relating to the amount of compensation, its reasonableness (taking into account the amount of compensation paid to others under similar circumstances), and reasons why its acceptance would be consistent with the Board's policy to eliminate any conflict of interest or appearance of a conflict of interest with the employee's official duties and responsibilities.

(ii) Pursuant to paragraph (3)(i) above, employees may accept payment for travel, lodging, and subsistence expenses actually incurred from the person or group sponsoring an activity which was determined not to be an official duty, if the payment is reasonable in amount and is otherwise consistent with the Board's policy to eliminate any conflict of interest or appearance of a conflict of interest with the official duties and responsibilities of the employee.

(4) Reporting requirements. All employees receiving compensation or reimbursement for expenses for teaching, writing, lecturing, or speechmaking devoted to the responsibilities, programs of activities of the Board or drawing upon official data or ideas which have not been made public, shall immediately submit a written report to the Executive Director stating the amounts paid and by whom, unless this information was previously provided to that official. In addition, the employee may be required by the Executive Director to furnish other relevant information concerning these payments.

(5) Other restrictions. (i) Under 46 Comp. Gen. 689 (1967), no reimbursement or donation may be made to the Board to cover the expenses of travel and subsistence of an employee on official business, unless specifically authorized by law.

(ii) Under 2 U.S.C. 441i, appointed officials are prohibited from receiving honorariums of more than $2,000 for any appearance, speech, or article, and from receiving honorariums aggregating more than $25,000 in any calendar year.

(e) Board employees are prohibited from official attendance at segregated meetings. They should not participate in conferences or speak before audiences where any racial group has been segregated or excluded from the meeting, any of the facilities, the conferences, or from membership in the group.

§ 1633.39 Gambling, betting and lotteries.

While on Government-owned or leased property or while on duty for the Government, an employee shall not participate in any form of gambling, betting, lotteries, or the sending of chain letters, even if such activities are in support of a worthy cause.

§ 1633.40 Use of intoxicants.

Employees must refrain from using intoxicants habitually to excess or in any way which adversely affects their work performance (5 U.S.C. 7352).

§ 1633.41 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. A "just financial obligation," as used in this section, means one acknowledged by the employee; reduced to judgment by a court; or, in the case of taxes, a final administrative determination confirmed by notice of a tax lien issued by a governmental agency, Federal, State, or local. "In a proper and timely manner," as used in this section, means in a manner which the Board determines does not under the circumstances, reflect adversely on the Board as his employer. In the event of dispute between an employeee and an alleged creditor, this section does not require the Board to determine the validity or amount of the disputed debt.

§ 1633.42 Lending or borrowing money.

Employees shall neither directly nor indirectly, lend to or borrow from other employees substantial sums of money. In negotiating loans from authorized sources, such as credit unions, welfare associations, commercial or private banking institutions, etc., if the transaction involves the signature of one or more endorsers or comakers, the borrower must not in any instance solicit, or permit to be affixed to any instrument as endorser or comaker, the signature of any Board employee who is under his or her supervision.

§ 1633.43 Use of Federal property.

Employees may not directly or indirectly use or allow the use of Federal property of any kind for other than officially approved activities. They also have a positive responsibility to protect and conserve all Federal property, including equipment and supplies, which is entrusted or issued to them.

§ 1633.44 Care of documents.

The care of Government documents is a Federal requirement which is regulated by legislation. All records and documents in the custody of employees are in their custody for official purposes only. It is unlawful to remove or conceal, alter, mutilate, obliterate, or destroy records or documents or to remove or attempt to remove them from official custody with the intent of performing any of the above actions (18 U.S.C. 2071). Employees must not remove records and documents from official files without approval from proper authority. Working papers, copies of reports and other official records and documents shall be promptly disposed of when no longer needed for official purposes. Disposal or destruction of records and documents is to be made in accordance with established requirements.

§ 1633.45 Use of Government cars.

Employees are prohibited from using Government cars for other than official purposes. Use of such cars for transportation of employees between their domiciles and places of employment can only be justified where affirmatively authorized by statute, as in 31 U.S.C. 1343 and 1344.

§ 1633.46 Disclosure of information to the public.

Employees may not disclose official information which has not been made available to the general public without either appropriate general or specific authority.

§ 1633.47 Personal communications.

Employees may not conduct personal business while on official duty. Personal use of telephones is restricted to reasonable need. See 41 CFR Part 201–38. Employees who receive personal mail at their office will advise addressors to stop sending such mail to the Board's address.

§ 1633.48 Soliciting, selling, and canvassing.

Except when authorized by the Board, and except as provided by § 1633.33 of this Part, employees are prohibited from soliciting, from making collections, from canvassing for the sale of any article, or from distributing literature or advertising matter in any space occupied by the Board.

§ 1633.49 Influencing legislation or petitioning Congress.

Employees are prohibited from using Government time, money, or property (as, for example, through sending telegrams or letters) to influence a Member of Congress to favor or oppose any legislation. This prohibition does not apply to the official handling through proper channels of matters relating to legislation affecting the Board (18 U.S.C. 1913), or to the rights of employees in their private capacities to petition Members of Congress either individually or collectively or to furnish information to any committee or member of either House of Congress (5 U.S.C. 7102).

§ 1633.50 Civil Service examination processes.

Appointment and future advancement in the Federal career service are based on the important principle of individual merit and qualifications. The selection and merit competitive processes are protected by the Civil Service statutory provisions, 5 U.S.C. Chapter 33, and the Office of Personnel Management (OPM) regulations. Employees shall not, either directly or indirectly:

(a) Intentionally make a false statement or practice any deception or fraud in examination or appointment;

(b) Induce persons to withdraw from competition for competitive service positions;

(c) Engage in any improper activity with respect to the taking of Civil Service examinations and examination ratings; or

(d) Obstruct the right of any person to take examinations according to OPM rules and regulations. See 18 U.S.C. 1917 and 5 CFR 735.210(j).

§ 1633.51 Falsification of official records.

Employees shall avoid making false, misleading, or ambiguous statements, deliberately or willfully, whether verbal or written, in connection with any matter of official interest. Some of these matters of official interest are: transactions with the public, other Federal agencies or fellow employees; application forms and other forms which serve as a basis for appointment, reassignment, promotion or other personnel actions; vouchers; leave records; work reports of any nature or accounts of any kind; affidavits; entry or record of any matter relating to or connected with the employee's duties; and report of any moneys or securities received, held or paid to, for or on behalf of the United States. See 18 U.S.C. 1001 and 5 CFR 735.210(k).

§ 1633.52 Miscellaneous statutory provisions.

The attention of every employee is directed to the statutes relating to conduct listed below:

(a) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643) and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(b) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the "Code of Ethics for Government Service" (5 U.S.C. 7301 note).

(c) Section 8477 of Title 5, U.S.C. which describes fiduciary responsibilities, liability, and penalties.

(d) Chapter 11 of Title 18, U.S.C. relating to bribery, graft, and conflicts of interest as appropriate to the employees concerned.

(e) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(f) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(g) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(h) The prohibitions against the employment of a member of a Communist organization (50 U.S.C. 784).

(i) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(j) The prohibition against Federal employment of any person convicted of a felony in furtherance of, or while participating in, a riot or civil disorder (5 U.S.C. 7313).

(k) The tax imposed on certain employees (e.g., Presidential appointees, employees excepted under Schedule C, employees whose compensation is equal to or greater than that for GS–16, or executive assistants or secretaries to any of the foregoing) who knowingly engage in self-dealing with a private foundation (26 U.S.C. 4941, 4946). "Self-dealing" is defined in the statute to include certain transactions involving an employee's receipt of compensation or other benefits such as a loan, or reimbursement for travel or other expenses from, or his sale to or purchase of property from, a private foundation.

(l) The prohibition against a public official appointing or promoting a relative, or advocating such an appointment or promotion (5 U.S.C. 3110).

§ 1633.53 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the government.

§ 1633.54 Insurrection.

Employees may be disqualified for employment for knowingly supporting or advocating the violent overthrow of our constitutional form of government.

§ 1633.55 Strikes.

Employees shall not strike against the Government (5 U.S.C. 7311).

§ 1633.56 Purchase of Government property.

Employees are prohibited from either directly or indirectly, bidding or purchasing at any sale of Government property under the direction of or incident to the functions of the Board. Government property under the control of the Board shall not be sold to a Government employee, either directly or indirectly, unless a properly authorized representative of the office disposing of the property has determined that the sale is in the best interest of the Government. Before purchasing any Government property from any agency of the Government, either directly or indirectly, employees of the Board shall make known to the disposing agency that they are such employees and shall be governed by the disposing agency's rules relating to sales to Government employees.

Statement of Employment and Financial Interests

§ 1633.70 Employees required to submit confidential statements.

Except as provided in § 1633.72, statements of employment and financial interests will be filed by the following employees:

(a) Those classified at GS/GM–13–15 under 5 U.S.C. 5332, or at a comparable pay level under another authority, who are in positions the incumbents of which are responsible for making a Government decision or taking a Government action in regard to:

(1) Contracting or procurement;

(2) Regulating or auditing private or other non-Federal enterprise; or

(3) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise.

(b) All other positions classified at GS/GM–13–15 under 5 U.S.C. 5332, or at a comparable pay level under another authority. The Executive Director has determined that all such positions have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflict of interest situation and carry out the purpose of law, executive order, 5 CFR Part 735, and this Part.

(c) Those classified below GS–13 under 5 U.S.C. 5332, or at a comparable pay level under other authority, who are in positions which otherwise meet the criteria in paragraphs (b) and (c) of this section, but only when the inclusion of the positions in an appendix to this Part has been specifically justified by the Executive Director in writing to the Office of Personnel Management as an exception that is essential to protect the integrity of the Government and avoid employee involvement in a possible conflict of interest situation.

§ 1633.71 Employee's complaint on filing requirement.

An employee shall have, in conformity with the grievance procedures prescribed by the Board, an opportunity for review of a complaint that his or her position has been improperly determined to be one requiring the submission of a statement of employment and financial interests.

§ 1633.72 Exceptions.

(a) Employees in positions that meet the criteria in paragraph (b) of § 1633.70 may be excluded from the reporting requirement when the Executive Director determines that:

(1) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict of interest situation is remote; or

(2) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent, or the inconsequential effect on the integrity of the Government.

(b) A statement of employment and financial interests is not required when the employee is required to file a report pursuant to 5 CFR Part 734.

§ 1633.73 Form and content of statements.

The statements of employment and financial interests required under this subpart for use by employees and special Government employees shall contain, as a minimum, the information required by the formats prescribed by the Office of Personnel Management (OPM). Such Board forms shall not include questions that go beyond, or are in greater detail than, those included in OPM formats without the approval of OPM.

§ 1633.74 Time and place for submission of employees' statements.

Each employee required to submit a statement of employment and financial interests shall submit that statement to the Ethics Officer not later than:

(a) Thirty days after the effective date of the regulations in this Part if employed on or before that effective date; or

(b) Thirty days after entrance on duty.

§ 1633.75 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of May 15 each year, except when OPM authorizes a different date. Complete updated statements will be filed annually; reporting a negative or "no change" statement is not allowed. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflict of interest provisions of 18 U.S.C. 208, or Subpart B of 5 CFR Part 735 or this part.

§ 1633.76 Interests of employees' relatives.

For purposes of completing the statements of employment and financial interests, the interests of a spouse and dependent children are to be considered interests of the employee.

§ 1633.77 Information not known by employees.

If any information required to be included in a statement of employment and financial interests or a supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit the information on his or her behalf, unless the trust is a Qualified Trust meeting the requirements of Subpart D of 5 CFR Part 734. If the trust is a Qualified Trust pursuant to Subpart D of 5 CFR Part 734, then those regulations control as to what information must be submitted by the trustee.

§ 1633.78 Information excluded.

The regulations in this Part do not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purposes of the regulations in this part, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 1633.79 Review of statements.

(a) Board employees will file their statements with the Board's Ethics Officer for his review. The Ethics Officer will, in turn, submit the statements to the supervisor of each submitting employee. The supervisor shall sign and date the statement and indicate that he or she has reviewed such statement. The system of review shall be designed to disclose conflicts of interest or apparent conflicts of interest on the part of employees. If information from the statements submitted or from other sources indicates a conflict of interest or an apparent conflict of interest, the employee concerned shall be given an opportunity to explain the conflict or apparent conflict. The Ethics Officer shall report all cases to the Executive Director for decision. The Ethics Officer will file with the Executive Director his statement, which will be reviewed by the Executive Director or his designee.

(b) The Ethics Officer will review the statement of the Executive Director and shall advise the Executive Director of any conflict or appearance of conflict or of any failure to report. If the Executive Director fails to cooperate in the resolution of the conflict or appearance of conflict or continues to fail to file a report after being notified of the failure, the Ethics Officer will report the matter to the Director, Office of Government Ethics.

§ 1633.80 Confidentiality of employees' statements.

Statements of employment and financial interests, and supplementary statements covered by §§ 1633.70–1633.79 are confidential except as to appropriate reviewing officials. Employees reviewing statements in connection with their official duties are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this Part. Information from a statement may not be disclosed except as OPM or the Board may determine for good cause shown.

§ 1633.81 Employees required to submit public statements.

All personnel paid at a level of the Executive Schedule in Subchapter II of Chapter 53 of Title 5, United States Code and all persons paid at a level of the Senior Executive Service set by the President in accordance with Subchapter VIII of Chapter 53 of Title 5, United States Code, must file a statement of financial interests in accordance with section 202 of the Ethics in Government Act of 1978, as amended, and Part 734 of Title 5 of the Code of Federal Regulations. These statements are available to the public.

§ 1633.82 Effect of employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees under the regulations in this Part are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit the employee or any other person to participate in the matter in which the employee's or the other person's participation is prohibited by law, order, or regulation.

§ 1633.83 Advisory service.

(a) An employee may obtain advice and guidance on questions of conflict of interest covered by these regulations from the Ethics Officer.

(b) If the Ethics Officer determines that there is a conflict of interest, or the appearance of a conflict of interest, on the part of an employee, he or she shall bring this to the attention of the employee. If the employee fails to cooperate in the resolution of the conflict, or the appearance of a conflict, the Ethics Officer shall bring the matter to the attention of the Executive Director. If the Ethics Officer determines that there is a conflict of interest, or the appearance of a conflict of interest on the part of the Executive Director, he or she shall bring this to the attention of the Executive Director. If the Executive Director fails to cooperate in the resolution of the conflict, or the appearance of a conflict, the Ethics Officer will report the matter to the attention of the Director, Office of Government Ethics.

Subpart B—Preventing Conflicts of Interest on the Part of Special Government Employees of the Board

General Provisions

§ 1633.200 Purpose.

This subpart implements the provisions of Executive Orders 11222 and 12565 dated May 8, 1965, relating to special Government employees of the Board.

§ 1633.201 Scope.

This subpart relates basically to special Government employees who are consultants and advisers, including experts. Submission of financial statements by special Government employees other than advisers, consultants, and experts is waived except where statements would otherwise be required under § 1633.70; nevertheless, such special Government employees are subject to the substantive standards of conduct of this Subpart B. Employees who are employed for more than 130 days are treated as regular employees and are subject to the provisions of Subpart A of this Part.

§ 1633.202 Policy.

It is the Board's policy in issuing the instructions in this Part to adhere rigidly to the policy that every citizen is entitled to have complete confidence in the integrity of his Government and that each individual officer, employee, or adviser of the Government must help to earn and must honor that trust by the individual's own integrity and conduct in all official actions.

General Rules of Conduct Applicable to Special Government Employees

§ 1633.203 Applicability of Subpart A of this Part.

In addition to complying with §§ 1633.204–1633.209, special Government employees shall familiarize themselves with the rules of conduct contained in Subpart A of this Part so they can be guided by the principles contained in those rules insofar as their employment with the Board is concerned.

§ 1633.204 Use of Government employment.

A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

§ 1633.205 Use of inside information.

A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. "Inside information" as used in this section means information obtained under Government authority which has not become part of the body of public information.

§ 1633.206 Teaching, lecturing, and writing.

Special Government employees may teach, lecture, or write providing such action is not prohibited by law, Executive Order 11222, or the regulations in this Part. However, a special Government employee shall not, either with or without compensation, engage in teaching, lecturing, or writing that depends upon information obtained as a result of his employment with the Board, except when that information has been made available to the general public or will be made available on request, or when the official to whom he or she reports receives written authorization from the Executive Director for the use of non-public information on the basis that the use is in the public interest.

§ 1633.207 Coercion.

A special Government employee shall not use his or her Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he or she has family, business or financial ties.

§ 1633.208 Gifts, entertainment, and favors.

A special Government employee, while so employed or in connection with employment, shall not receive or solicit from a person having business with the Board anything of value as a gift, gratuity, loan, entertainment, or favor, personally or for another person, particularly one with whom the employee has family, business or financial ties. Exceptions to this are the same exceptions contained in Subpart A of this part for regular employees of the Board.

§ 1633.209 Miscellaneous statutory provisions.

The statutory provisions relating to Board employees referred to in §§ 1633.31, 1633.32, 1633.34, 1633.40, 1633.44, 1633.45, 1633.48, 1633.51, 1633.52, 1633.53, and 1633.55 apply to special Government employees when serving in their official capacities with the Board.

Conflict of Interest Statutes

§ 1633.210 Applicability of 18 U.S.C. 203 and 205.

(a) The prohibitions in 18 U.S.C. 203 and 205 applicable to special Government employees are less stringent than those which affect regular employees, i.e., those who are appointed for more than 130 days a year. These two sections in general operate to preclude a regular Government employee, except in the discharge of his or her official duties, from representing another person before a department, agency or court, whether with or without compensation, in a matter in which the United States is a party or has a direct and substantial interest. However, the same two sections impose only the following major resutrictions upon a special Government employee:

(1) The employee may not, except in the discharge of official duties, represent anyone else before a court or Government agency in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which the employee has at any time participated personally and substantially in the course of Government employment.

(2) The employee may not, except in the discharge of official duties, represent anyone else in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before the agency he or she serves. However, this restraint is not applicable if the employee has served the agency no more than 60 days during the past 365. The employee is bound by the restraint, if applicable, regardless of whether the matter is one in which he or she has ever participated personally and substantially.

(b) These restrictions prohibit both paid and unpaid representation and apply to a special Government employee on the days when the employee does not serve the Government as well as on the days when the employee does.

(c) The rules to be followed by the Board to determine the duration of employment of special Government employees and other temporary employees in order to ascertain the application of these statutes are set forth in the Federal Personnel Manual.

(d) An employee who undertakes service with the Board and another department or agency shall inform each of the arrangements with the other.

(e) There may be situations where a consultant or adviser has a responsible position with a regular employer which requires personal participation in contract negotiations with the Board. In this situation, the consultant or adviser should participate in the negotiations for the employer only with the knowledge of a responsible Board official, i.e., the full-time official to whom the consultant or adviser reports. Prior to permitting such participation, the responsible Board official shall obtain the approval in writing of the Executive Director. See also paragraph (f)(1) of this section.

(f) Section 205 of title 18 of the United States Code, contains two exemptive provisions, which apply under § 203 as well.

(1) The first of these deals with a similar situation which may arise after a Government grant or contract has been negotiated. This provision in certain cases permits both the Government and the private employer of a special Government employee to benefit from performance of work under a grant or contract for which the employee would otherwise be disqualified because of participation in the matter for the Government or it is pending in an agency the employee has served more than 60 days in the past year. More particularly, the provision gives the head of a department or agency the power, notwithstanding any prohibition in either section 203 or section 205 of Title 18 of the United States Code, to allow a special Government employee to represent before such department or agency the regular employer or another person or organization in the performance of work under a grant or contract, if the national interest so requires. A written certification by the head of a department or agency concerned with the grant or contract to exempt the employee must be submitted for publication in the **Federal Register**. Where the Board is the agency concerned with the grant or contract, such written certification will be forwarded, through the General Counsel, to the Executive Director for the latter's signature. The exemption will not take effect until the certification is published in the **Federal Register**.

(2) The other exemptive provision requiring action permits a special Government employee to represent, with or without compensation, a parent, spouse, child, or person or estate for whom or which the employee serves as a fiduciary, but only with the approval of the official responsible for appointments to his or her position, and only if the matter involved is neither one in which the employee has participated personally or substantially nor one under the employee's official responsibility. The term "official responsibility" is defined in 18 U.S.C. 202 to mean, in substance, the direct administrative or operating authority to control Government action. For the Board, the "official responsible for appointments" for these purposes will be the Executive Director.

§ 1633.211 Applicability of 18 U.S.C. 207.

(a) Section 207 of Title 18 of the United States Code applies to individuals who have left Government service, including former special Government employees. Section 207(a) prevents a former employee or special Government employee from representing another person in connection with certain matters in which the employee participated personally and substantially on behalf of the Government. The matters are those particular matters involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. In addition, section 207(b)(i) prevents a former employee or special Government employee, for a period of two years after employment has ceased, or responsibility in a particular area has ceased (if the two do not occur simultaneously) from appearing personally on behalf of another person in such matters before a court, department, or agency of the United States or the District of Columbia if the matters were within the area of his official responsibility at any time during the last year of Government service. Section 207(b)(ii) prevents a former employee who occupied a position designated as a Senior Employee (a position which involves significant decision making or supervisory responsibility) for a period of two years after his or her employment has ceased from appearing personally on behalf of another person before a court, department or agency of the United States or the District of Columbia in any matter that was pending under his official responsibility within a one year period prior to the termination of such responsibility or as to which he or she participated personally and substantially as an officer or employee. Section 207(c) prevents a former employee, who served more than sixty days in a given calendar year, and who occupied a position designated as a Senior Employee within one year after such employment has ceased, from acting as agent or attorney for anyone in any appearance or in any written communication before the agency in which he served as an officer or employee in connection with any proceeding pending before such agency. It should be noted that a consultant or adviser usually does not have "official responsibility."

(b) For the purposes of section 207 of Title 18 of the United States Code, the employment of a special Government employee ceases on the day the employee's appointment expires or is otherwise terminated, as distinguished from the day on which he or she last performs service. Accordingly, the appointment of an adviser or consultant should be terminated promptly as soon as it is determined that the services are no longer required. (See Appendix C of Chapter 735 of the Federal Personnel Manual.)

§ 1633.212 Applicability of 18 U.S.C. 208.

(a) Section 208 of Title 18 of the United States Code, bears on the activities of Government personnel, including special Government employees, in the course of their official duties. In general, it prevents an employee or special Government employee from participating as such in a particular matter in which, to his or her knowledge, the employee's spouse, minor child, partner, or a profit or nonprofit enterprise with which the employee is connected has a financial interest. However, section 208(b)(1) permits such an employee's agency to grant an ad hoc exemption if the interest is not so substantial as to affect the integrity of the services to be rendered. Insignificant interests may also be waived by a general rule or regulation (18 U.S.C. 208(b)(2)).

(b) The matters in which special Government employees are disqualified by section 208 of Title 18 of the United States Code are not limited to those involving a specific party or parties in which the United States is a party or has an interest, as in the case of sections 203, 205, and 207 of Title 18, of the United States Code. Section 208, therefore, undoubtedly extends to matters in addition to contracts, grants, judicial and quasi-judicial proceedings, and other matters of an adversary nature. Accordingly, a special Government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by section 208. However, the power of exemption may be exercised in this situation if the special Government employee renders advice of a general nature from which no preference or advantage over others might be gained by any particular person or organization. The power of exemption may, of course, be exercised also when the financial interests involved are minimal in value.

(c) Exemptions under section 208 of Title 18, of the United States Code may be made by general rule or regulation by the Executive Director.

Consultants and Advisers

§ 1633.220 Advice on rules of conduct and conflict of interest statutes.

If a special Government employee who is a consultant or adviser has doubt as to the ethics of any conduct falling within the standards of conduct and conflict of interest statutes, the employee should confer with the Ethics Officer of the Board.

§ 1633.221 Responsibility of the individual special Government employee.

Each person appointed as a special Government employee with the Board is responsible for:

(a) Becoming familiar with the contents of this part and the applicability of the conflict of interest statutes in the employee's particular case.

(b) Seeking advice and assistance in interpreting the laws and instructions in case of questions concerning them.

(c) Being alert to the possibility of conflicts of interest.

(d) Furnishing the Board with information concerning financial interests and keeping this information current.

Procedures To Be Followed Within the Board

§ 1633.230 Information and assistance to special Government employees and their supervisors.

Each special Government employee and each supervisor of a special Government employee will be given a copy of this part and will be required to become familiar with the conflict of interest laws and the provisions of the instructions applicable to him or her. If a special Government employee or prospective special Government employee or a supervisor desires assistance in interpreting the instructions or laws, the employee will be referred to the Ethics Officer.

§ 1633.231 Disclosure of financial interests.

(a) In order to carry out its responsibility to avoid the use of the services of special Government employees in situations in which violations of the conflict of interest laws or of the regulations in this part may occur, prior to initial employment and each reappointment thereafter, each special Government employee who is a consultant or adviser will be required to supply a statement of all other employment and the financial interests of the special Government employee which the Executive Director determines are relevant in the light of the duties the employee is to perform, including, but not limited to, the name of companies in which he or she has a significant financial interest, and the nature of such financial interest. Each statement of financial interests will be forwarded to the Board's Ethics Officer along with a statement of the duties which the proposed special Government employee will be assigned.

(b) The Board's Ethics Officer will review the statement of employment and financial interests in relationship to the duties to be performed and initially determine whether a conflict of interest exists. Accordingly, such statements must be kept current during the period the special Government employee is on the Government rolls. In any event, special Government employees who are employed intermittently for more than one calendar year shall file the statement as of May 15 of each year of such employment.

§ 1633.232 Service with other Federal agencies.

If a special Government employee is serving in other Federal agencies, he or she will be required to inform the Board and each of the agencies of his or her arrangements with the others so that appropriate administrative measures may be effected. Information on service with other Federal agencies will be submitted along with the statement of employment and financial interests and must be kept current while employed with the Board.

§ 1633.233 Resolution of cases involving a conflict or apparent conflict of interest.

When a situation arises which indicates a conflict of interest or apparent conflict of interest and the matter is not resolved, information about the situation will be reported by the Ethics Officer to the Executive Director. In any such situation, the special Government employee shall be provided an opportunity to explain the conflict or appearance of conflict.

§ 1633.234 Disciplinary and other remedial action.

A violation of the regulations in this part may be cause for appropriate disciplinary action, which may be in addition to any penalty prescribed by law, or other remedial action. In addition to disciplinary action, remedial action may include, but is not limited to:

(a) Recusal,

(b) Divestiture, resignation, or reassignment,

(c) A Qualified Trust established pursuant to Subpart D of 5 CFR Part 734. A special Government employee may avoid a violation of 18 U.S.C. 208(a) if he or she receives an advance written waiver pursuant to 18 U.S.C. 208(b).

§ 1633.235 Legal interpretation.

Whenever the Ethics Officer believes that a substantial legal question is raised by the employment of a particular special Government employee as a consultant or adviser, the Ethics Officer will consult with the Office of Government Ethics and the General Counsel, Office of Personnel Management, and will refer cases of potential criminal violations to the Department of Justice, Criminal Division, Office of Public Integrity, in order to ensure a consistent and authoritative interpretation of the law.

§ 1633.236 Safeguard of information.

Statements of employment and financial interests, and supplementary statements shall be held in confidence. Employees responsible for maintaining or reviewing the statements shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. Information from a statement may not be disclosed except as OPM or the Executive Director may determine for good cause shown.

Subpart C—Members of the Federal Retirement Thrift Investment Board

§ 1633.250 Purpose.

This subpart implements the provisions of Executive Orders 11222 and 12565 for Board Members.

Standards of Conduct

§ 1633.251 General.

(a) General Principles. A Board Member shall avoid any action, whether or not specifically prohibited by these standards of conduct, which might result in or create the appearance of:

(1) Giving preferential treatment to any person;

(2) Impeding Board efficiency or economy;

(3) Losing complete independence or impartiality;

(4) Making a Board decision outside official channels; or

(5) Affecting adversely the confidence of the public in the integrity of the Federal Retirement Thrift Investment Board.

(b) No Board Member shall use his or her position with the Board to coerce, or give the appearance of coercing, a person to provide financial benefit to him or herself or another person.

(c) No Member shall directly or indirectly use, appear or use, or allow the use of, his or her official position or information obtained as a result of his or her position to further any private interest, whether his or her own or that of another person.

(d) The conduct expected and required of a Member will often depend on the particular facts of each instance. Although detailed regulations that will cover every situation cannot practically be prescribed, the following rules provide guidance and illustrate the manner in which the general principles should be applied.

§ 1633.252 Conflicts of interest—financial.

(a) General principles. No Member may have a financial interest, direct or indirect, that conflicts substantially, or appears to conflict substantially, with his or her duties and responsibilities to the Federal Retirement Thrift Investment Board. For purposes of this code, a Member's interests include those of his or her spouse, his or her minor child or children, and other individuals related to the Member by blood who are residents of the Member's household.

(b) No Member shall enter into any contract with the Federal Retirement Thrift Investment Board or otherwise have an interest in any contract with the Federal Retirement Thrift Investment Board unless there has been a prior determination by the Ethics Officer that the interest is so minor that no realistic possibility of a conflict of interest, or the appearance of a conflict of interest, exists. No such determination is required, however, if:

(1) The interest results solely from the Member's ownership of publicly-traded securities of a corporation or the Member's service as a fiduciary of a trust or estate that owns such publicly traded securities; and

(2) Neither the contract, nor a transaction of which it is a part, requires action by the Board.

(c) No Member shall engage, directly or indirectly, in a financial transaction as a result of, or primarily relying on, confidential information obtained as a result of his or her position as Board Member.

(d) No Member shall sell or lease property to the Federal Retirement Thrift Investment Board.

(e) No Member shall recommend or suggest the employment of any private person offering services as a consultant, agent, attorney, expeditor or the like for the purpose of assisting a private party in any negotiations, transactions or other business with the Federal Retirement Thrift Investment Board.

(f) Section 203 of title 18, United States Code, prohibits any Member from soliciting or accepting any fee or other compensation for services rendered by him or herself or another person in representing any person other than the United States before any executive department, agency, court martial, officer or commission in relation to any proceeding or other particular matter involving a specific party or parties in which a Member has participated personally and substantially during his or her term.

(g) Section 208(a) of Title 18, United States Code, prohibits participation by any Member in any decision or other matter in which, to the Member's knowledge, he or she, any entity of which he or she is an employee, director, partner, or other fiduciary, or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, has a financial interest. Although this statute applies even though the interest is minimal, section 208(b) permits the application of section 208(a) to be waived, if it is properly determined that the interest is not so substantial as to be deemed likely to affect the integrity of the services which may be expected from a Member. Under Executive Order 11222, Part V, the waiver decision is made by the Chairman of the Board with respect to Members and is made by the President with respect to the Chairman of the Board.

§ 1633.253 Conflicts of interest—employment.

(a) General principles. No Member shall accept employment, compensation, payment of expense, or any other thing of monetary value under circumstances in which acceptance may result in, or create the appearance of, a conflict of interest.

(b) No Member shall engage in any activity for compensation, or accept any outside employment, or receive any salary or other thing of monetary value which is, directly or indirectly, a form of compensation from a private source for his or her services to the Federal Retirement Thrift Investment Board.

(c) Section 205 of Title 18, United States Code, prohibits any Member, as a special Government employee, from acting as agent or attorney in representing a private party before any department, agency, court, court-martial, officer, or commission in connection with any claim, proceeding or other particular matter involving a specific party or parties in which a Member has participated personally and substantially during his or her term.

(d) No Member shall use his or her official title, position, or authority in the endorsement or advertisement of a commercial product or service.

(e) Within the limitations imposed by this section, a Member may engage in teaching, lecturing, and writing. He or she shall not, however, receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance whose subject matter is devoted substantially to the responsibilities, programs, or operations of the Federal Retirement Thrift Investment Board, or which draws substantially on official data or ideas which have not become part of the body of public information.

(f) This section shall not apply if the Member has been granted a waiver under § 1633.252.

§ 1633.254 Conflicts of interest—gifts, entertainment, and favors.

(a) A Member, even though a special Government employee, while so employed or in connection with employment, shall not receive or solicit from a person having business with the Board anything of value as a gift, gratuity, loan, entertainment, or favor, personally or for another person, particularly one with whom the employee has family, business or financial ties. Exceptions to this are the same exceptions contained in Subpart A of this part for regular employees of the Board.

(b) The Constitution prohibits persons holding Federal office, such as Board Members, from accepting from foreign governments, except with the consent of the Congress, presents, emoluments, offices, or titles. The Congress has given its consent in 5 U.S.C. 7342 to the acceptance of certain specified gifts and decorations.

Ethical Conduct Advisory Services and Post-Employment Activities

§ 1633.255 Advisory service.

(a) A Member may obtain advice and guidance on questions of conflicts on interest covered by this code from the Ethics Officer.

(b) If the Ethics Officer determines that there is a conflict of interest, or the appearance of a conflict of interest, on the part of a Member, he or she shall bring this to the attention of the Member. If the matter is not resolved, the Ethics Officer will report the matter to the Director, Office of Government Ethics.

§ 1633.256 Post-employment activities.

Members of the Federal Retirement Thrift Investment Board are subject to the restrictions on the post-employment activities of special Government employees imposed by section 207 (a) and (b)(i) of Title 18, United States Code. These post-employment restrictions are set out in the Standards of Conduct for Board employees at §§ 1633.21 and 1633.211 of this title.

Statement of Employment and Financial Interests

§ 1633.257 Financial disclosure.

(a) Statement required. All members must annually file a financial disclosure statement (SF 278) with the Ethics Officer pursuant to the Ethics in Government Act unless:

(1) The Member is beginning his or her first year of service on the Board, reasonably expects to work less than 60 days in the calendar year, and obtains a determination from the Director of the Office of Government Ethics to that effect; or

(2) The Member has completed one year of service on the Board and did not work more than 60 days in the preceding calendar year.

(b) Loss of exemption. Any Member who claimed an exemption from filing a financial disclosure report pursuant to paragraph (a) (1) and (2) of this section and who works more than 60 days in the affected calendar year must file the statement within 15 days of the date on which the Member works his or her 61st day.

(c) Reviewing statements. (1) Financial disclosure statements filed in accordance with the provisions of this section shall, within 60 days after the date of filing, be reviewed by the Ethics Officer who shall either approve the statement, or make an initial determination that a conflict or appearance thereof exists. If the Ethics Officer determines initially that a conflict or the appearance of a conflict exists, he or she shall inform the Member of his determination.

(2) If the Ethics Officer considers that additional information is needed to complete the statement or to allow an adequate review to be conducted, he or she shall request the reporting Member to furnish that information by a specified date.

(3) Whenever the Ethics Officer has reasonable cause to believe that a Member refuses to file a statement or refuses to report required information, he or she will report the matter to the Director, Office of Government Ethics.

(d) Custody of and public access to statements.

(1) Retention of statements. Each statement filed with the Ethics Officer shall be retained by him or her for a period of six years. After the six-year period, the statement shall be destroyed unless needed in connection with an investigation then pending.

(2) The financial disclosure statements filed by Members shall be available to the public.

[FR Doc. 88-29202, Filed 12-20-88; 8:45 am]

BILLING CODE 6760-01-M

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

9 CFR Part 202

Rules of Practice Governing Proceedings Under the Packers and Stockyards Act; Rules Applicable to Rate Proceedings

AGENCY: Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: This action establishes procedures for handling rate proceedings under the Packers and Stockyards Act (7 U.S.C. 181, *et seq.*). These new sections, along with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes, 7 CFR Part 1, Subpart H, will be applicable to rate proceedings. Adoption of these rules of practice will provide procedures for conducting rate proceedings, thereby avoiding the necessity for motions adopting special rules of practice for rate proceedings on a case-by-case basis.

EFFECTIVE DATE: January 23, 1989. There is no such proceeding pending at this time and, if any such proceeding is instituted prior to the effective date of these rules, it will be handled in accordance with these rules.

FOR FURTHER INFORMATION CONTACT: Harold W. Davis, Director, Livestock Marketing Division, Packers and Stockyards Administration, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6951.

SUPPLEMENTARY INFORMATION: In October 1978 the Act was amended to reduce the Department's review of rates and charges at posted stockyards and it did not seem likely that rate proceedings would continue to be needed. Thus, the Rules of Practice Governing Rate Proceedings were revoked on December 14, 1979 (44 FR 72575). However, changing industry practices make it apparent that occasional rate proceedings will be required. Since the revocation, formal rate proceedings have been initiated and it has been necessary to adopt special rules of practice for these cases.

Adoption of these rules of practice will provide procedures for conducting rate proceedings, thereby avoiding the necessity for motions adopting special rules of practice for rate proceedings on a case-by-case basis.

Notice of proposed rulemaking and public participation are not required by law for these rules on the basis that they constitute "rules of agency . . . procedures, or practice" under 5 U.S.C. 553(b)(A).

Executive Order

Regulatory impact analysis is not required for this amendment because it has been determined not to be a "major" rule as defined by section 1(b) of E.O. 12291. It will not have an annual effect on the economy of $100 million or more, will not result in major increases in costs or prices for consumers, individual industries, Government agencies, or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

This amendment has been determined not to have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1980

No information collection requirements are affected by these rules of practice.

List of Subjects in 9 CFR Part 202

Administrative practices and procedures, rate proceedings, reparation proceedings.

Accordingly 9 CFR Part 202 is amended as set forth below.

Done at Washington, DC, this 16th day of December 1988.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

PART 202—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE PACKERS AND STOCKYARDS ACT

1. The table of contents of Part 202 is amended by adding the following immediately after the heading:

Rules of Practice Applicable to Rate Proceedings

Sec.

2. The authority citation of Part 202 is revised to read as follows:

Authority: 7 U.S.C. 228(a), 7 CFR 2.17(e), 2.56.

3. Part 202 is amended by adding a center heading and §§ 202.1 through 202.7.

Rules of Practice Applicable to Rate Proceedings

§ 202.1 Applicability of other rules.

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes, 7 CFR Part 1, Subpart H, are applicable to all rate proceedings under Sections 304, 305, 306, 307 and 310 of the Packers and Stockyards Act, 1921, as amended, 7 U.S.C. 205, 206, 207, 208 and 211, except insofar as those Rules are in conflict with any provision herein.

§ 202.2 Definitions.

As used in these rules:

(a) "Rate proceeding" means a proceeding involving the determination and prescription of any rate or charge made or proposed to be made for any stockyard service furnished at a stockyard by a stockyard owner or market agency, or a proceeding involving any rule, regulation or practice affecting any such rate or charge; and

(b) "Administrator" means the Administrator of the Packers and Stockyards Administration (P&SA), or any officer or employee of P&SA to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act for the Administrator.

§ 202.3 Institution of proceedings.

(a) *Informal complaint.* Any interested person desiring to complain of the lawfulness of any rate or charge made or proposed to be made for any stockyard service furnished at a stockyard by a stockyard owner or market agency, or rule, regulation or practice affecting any such rate or charge, may file an informal complaint with the Administrator.

(b) *Investigation.* If there appears to be any reasonable ground for doing so, the Administrator will investigate the matter complained of. If the Administrator reasonably believes that there are not sufficient facts to form the basis for further proceeding, the matter may be dropped. If it is dropped, the person filing the informal complaint will be informed.

(c) *Status of person filing.* A person filing an informal complaint will be a party to a rate proceeding if the Administrator files such person's informal complaint as a formal complaint, or if the Judge permits such person to intervene upon written application.

(d) *Formal complaint.* A rate proceeding may be instituted only upon filing of a formal complaint by the Administrator. A formal complaint may be filed on the initiative of the Administrator, or on the basis of an informal complaint, or by filing the informal complaint as a formal complaint. A formal complaint filed by the Administrator, or a summary thereof, will be published in the **Federal Register**, together with notice of the time by which, and the place where, any interested person may file a written request to be heard.

§ 202.4 Answer and reply.

Respondent is not required to file an answer. If an answer is filed, complainant is not required to file a reply.

§ 202.5 Hearing.

The hearing will be oral unless all parties waive oral hearing. It will be written if not oral. Notice of the date, time and place of oral hearing, or of the date and place for filing of written submissions in a written hearing, will be served on the Administrator and the respondent, and on such other persons as have requested in writing to be heard.

§ 202.6 Taking no position on the merits.

The proceeding may be instituted by filing of the informal complaint as a formal complaint, and the Administrator may take no position on the merits of the case.

§ 202.7 Modification or vacation of final order.

(a) *Informal petition.* Any interested person may file an informal petition to modify or vacate a final order at any time. Any such petition must be filed with the Administrator, be based on matters arising after the issuance of the final order, and set forth such matters, and the reasons or conditions relied on, with such particularity as is practicable. Any such informal petition will be handled as otherwise provided for an informal complaint.

(b) *Formal motion.* A final order may be modified or vacated at any time only upon filing of a formal motion by the Administrator. Such a motion may be filed on the initiative of the Administrator, on the basis of an informal petition, or by filing of an informal petition as a formal motion.

(c) *Publication.* If the modification or vacation sought would involve an increase of a rate or charge lawfully prescribed by the Secretary, or involve a rate or charge in addition to what is specified in the final order, or involve a regulation or practice so affecting such a rate or charge, the formal motion, or a summary thereof, will be published in the **Federal Register**, together with notice of the place, and the time by which, any interested person may file a written request to be heard.

(d) *Proceedings.* Proceedings upon such a formal motion will be as otherwise provided for a formal complaint.

[FR Doc. 88-29215 Filed 12-20-88; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 309

[Docket No. 60969-7158]

Financial Assistance Requirements; Project Modification

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Affirmation of interim rule.

SUMMARY: This rule adopts as final the Economic Development Administration's (EDA) interim regulations at 13 CFR 309.26—"*Project Modification.*" This rule provides standards and states that EDA will not allow project modification which would constitute a change of scope.

EFFECTIVE DATE: October 20, 1986.

FOR FURTHER INFORMATION CONTACT: James F. Marten, Deputy Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Room 7001, Washington, DC (202) 377-5441.

SUPPLEMENTARY INFORMATION: EDA published an interim rule for project modification on October 20, 1986 (51 FR 37175) and allowed interested persons 60 days to comment. No comments were received. EDA is adopting as a final rule, 13 CFR Part 309, "*General Requirements for Financial Assistance*", § 309.26 "*Project Modification.*"

Under Executive Order 12291 the Department must judge whether a regulation is "major" within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has to be or will be prepared.

This final rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date because it relates to public property, loans, grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for the rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget that dispensing with notice and opportunity for comment is consistent with the Administrative Procedure Act (APA) and all other relevant laws.

Since notice and an opportunity for comment are not required to be given for this rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has been or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

List of Subjects in 13 CFR Part 309

Community development, Grant programs—community development, Loan programs—community development, Penalties.

PART 309—[AMENDED]

Under authority of section 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); sec. 1-105, Department of Commerce Organization Order 10-4, as amended (40 FR 56702), as amended, the interim regulation amending 13 CFR Part 309 which was published October 20, 1986 (51 FR 37175) is adopted as final without changes.

Date: December 9, 1988.

Orson G. Swindle, III,

Assistant Secretary for Economic Development.

[FR Doc. 88-29229 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-24-M

13 CFR Part 314

[Docket No. 40333-7161]

Property Management Standards; Real Property

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Affirmation of interim rule.

SUMMARY: This rule adopts as final the Economic Development Administration's (EDA) interim regulations at 13 CFR 314.5—*"Mortgages" without change.* This rule provides that funds obtained from loans secured by mortgages on property which has been financed by an EDA grant shall be provided only to the grantee for use on the project which is being mortgaged, or for working capital purposes relating to that project. This is consistent with and clarifies EDA regulations concerning waiver of the prohibition against placing mortgages on property improved by an EDA grant.

EFFECTIVE DATE: May 30, 1984.

FOR FURTHER INFORMATION CONTACT: James F. Marten, Deputy Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street, between Pennsylvania and Constitution Avenues, NW., Room 7001, Washington, DC 20230, (202) 377-5441.

SUPPLEMENTARY INFORMATION: EDA published this interim rule regarding mortgage waivers on May 20, 1984 (49 FR 22463) and allowed interested persons 60 days to comment. No comments were received.

Under Executive Order 12291 the Department must judge whether a regulation is "major" within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This regulation is not major because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Accordingly, neither a preliminary nor final Regulatory Impact Analysis has to be or will be prepared.

This final rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date because it relates to public property, loans, grants, benefits and contracts.

No other law requires that notice and opportunity for comment be given for the rule.

Accordingly, the Department's General Counsel has determined and so certified to the Office of Management and Budget, that dispensing with notice and opportunity for comment is consistent with the Administrative Procedure Act (APA) and all other relevant laws.

Since notice and an opportunity for comment are not required to be given for this rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has been or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96-511).

List of Subjects in 13 CFR Part 314

Economic development, Grant programs—economic development, Government property management, Public works grants.

PART 314—[AMENDED]

Under authority of section 701, Pub. L. 89-136, 79 Stat. 570 (42 U.S.C. 3211); sec. 1-105, Department of Commerce Organization Order 10-4, as amended (40 FR 56702, as amended), the interim regulation amending 13 CFR Part 314 which was published May 30, 1984 (49 FR 22463) is adopted as final without changes.

Date: December 9, 1988.

Orson G. Swindle, III,

Assistant Secretary for Economic Development.

[FR Doc. 88-29230 Filed 12-20-88; 8:45 am]

BILLING CODE 3510-24-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 316

49 CFR Part 89

[OST Docket No. 45431; Amdt 316-1; Amdt 89-1]

Collection of Claims Owed the United States

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Final rule.