

the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter 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, has a financial interest:

Shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the FEDERAL REGISTER, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services. (Added Pub. L. 87-849, section 1(a), Oct. 23, 1962, 76 Stat. 1124.)

New 18 U.S.C. 208. This section forbids certain actions by an officer or employee of the Government in his role as a servant or representative of the Government. Its thrust is therefore to be distinguished from that of sections 203 and 205 which forbid certain actions in his capacity as a representative of persons outside the Government.

Subsection (a) in substance requires an officer or employee of the executive branch, an independent agency or the District of Columbia, including a special Government employee, to refrain from participating as such in any matter in which, to his knowledge, he, his spouse, minor child or partner has a financial interest. He must also remove himself from a matter in which a business or nonprofit organization with which he is connected or is seeking employment has a financial interest.

Subsection (b) permits the agency of an officer or employee to grant him an *ad hoc* exemption from subsection (a) if the outside financial interest in a matter is deemed not

substantial enough to have an effect on the integrity of his services. Financial interests of this kind may also be made nondisqualifying by a general regulation published in the FEDERAL REGISTER.

Section 208 is similar in purpose to the former 18 U.S.C. 434 but prohibits a greater variety of conduct than the "transaction of business with * * * [a] business entity" to which the prohibition of section 434 was limited. In addition, the provision in section 208 including the interests of a spouse and others is new, as is the provision authorizing exemptions for insignificant interest.

[Amdt. 99-10, 42 FR 3119, Jan. 14, 1977, as amended by 58 FR 7995, Feb. 11, 1993]

Appendix to Subtitle A—United States Railway Association—Employee Responsibilities and Conduct

SUBPART A—GENERAL

Sec.

- 1 Purpose and policy.
- 3 Definitions.
- 5 Applicability.

SUBPART B—ETHICAL AND OTHER CONDUCT AND RESPONSIBILITIES OF EMPLOYEES

- 7 General.
- 9 Gifts, entertainment, and favors.
- 11 Outside employment and other activities.
- 13 Financial interests.
- 15 Conflicts of interest.
- 17 Disqualification arising from personal financial interests.
- 19 Use of Association property or official title.
- 21 Misuse of information.
- 23 Indebtedness.
- 25 Miscellaneous provisions.

SUBPART C—STATEMENTS OF EMPLOYMENT AND FINANCIAL INTEREST

- 31 Employees required to submit statement.
- 33 Time and place for submission of employee statements.
- 35 Supplementary statements.
- 37 Committee on Commerce, information not known by employee.
- 39 Information not required.
- 41 Confidentiality of employee's statement.
- 43 Interpretation and advisory service.

SUBPART D—DISQUALIFICATION OF FORMER EMPLOYEES IN MATTERS CONNECTED WITH FORMER DUTIES OR OFFICIAL RESPONSIBILITIES; DISQUALIFICATION OF PARTNERS

- 51 Matters in which employee participated personally and substantially.
- 53 Matters under employee's official responsibility.

Subtitle A, App.

- 55 Employee with outstanding scientific or technological qualifications.
- 57 Partner of employee.

APPENDIX 1—CATEGORIES OF FINANCIAL INTERESTS EXEMPTED FROM THE PROHIBITIONS OF SECTIONS 13(A), 15, AND 17(A)

APPENDIX 2—LIST OF EMPLOYEES REQUIRED TO SUBMIT STATEMENTS OF EMPLOYMENT AND FINANCIAL INTERESTS, UNDER SECTION 31 [Reserved]

AUTHORITY: Sec. 202(a)(5)(2) of the Regional Rail Reorganization Act of 1973 (Pub. L. 93-236).

SOURCE: 39 FR 3825, Jan. 30, 1974.

SUBPART A—GENERAL

SECTION 1. *Purpose and policy.* (a) These regulations implement Pub. L. 93-236, The Regional Rail Reorganization Act of 1973. They prescribe standards of ethical and other conduct, and reporting requirements, for employees of the United States Railway Association (the Association). The standards and requirements are appropriate to the particular functions and activities of the Association.

(b) The absence of a specific published standard of conduct covering an act tending to discredit an employee of the Association does not mean that the act is condoned, is permissible, or would not call for and result in corrective or disciplinary action.

(c) Personnel of the Association shall observe standards of conduct that will reflect credit on the Association.

SEC. 3. *Definitions.* Unless the context requires otherwise, the following definitions apply in these regulations:

“Association” means the United States Railway Association established by Pub. L. 93-236.

“Chairman” means the Chairman of the Board of Directors of the Association.

“Employee” means an officer or employee of the Association.

“General Counsel” means the General Counsel of the Association, or his designee.

“Includes” means “includes but is not limited to.”

“May” is used in a permissive sense to state authority or permission to do the act prescribed, and the words “a person may not * * *” mean that a person is not required, authorized, or permitted to do the act prescribed.

“Shall” is used in an imperative sense.

SEC. 5. *Applicability.* These regulations apply to each employee of the Association.

SUBPART B—ETHICAL AND OTHER CONDUCT AND RESPONSIBILITIES OF EMPLOYEES

SEC. 7. *General.* (a) Each employee shall avoid any action, whether or not specifically prohibited by these regulations, which might result in or create the appearance of:

49 CFR Subtitle A (10-1-96 Edition)

(1) Using his Association office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding the efficiency or economy of the Association;

(4) Losing complete independence or impartiality;

(5) Making an Association decision outside of official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Association.

(b) An employee may not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or any conduct prejudicial to the integrity of the Association.

SEC. 9. *Gifts, entertainment, and favors.* (a) Except as provided in paragraphs (b) and (c) of this section, an employee may not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, food, lodging, loan, or other thing of monetary value, from a person or employer of a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relationships with the Association.

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

(b) Notwithstanding paragraph (a) of this section, an employee may:

(1) Accept a gift, gratuity, favor, entertainment, loan, or other thing of value when the circumstances make it clear that an obvious family relationship rather than the business of the persons concerned is the motivating factor;

(2) Accept food or refreshment of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour if the employee is properly in attendance;

(3) Accept unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, or other items of nominal intrinsic value; or

(4) Accept an invitation addressed to the Association, when approved by the General Counsel, to participate in an inaugural trip or similar ceremonial event related to transportation, and accept food, lodging, and entertainment incident thereto.

(c) An employee may not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself. However, this paragraph does not prohibit a voluntary gift of nominal value or a donation in a nominal amount made on a special occasion such as marriage, illness, retirement, or transfer.

SEC. 11. *Outside employment and other activities.* (a) An employee may not engage in any

outside employment or other outside activity which is not compatible with the full and proper discharge of the duties and responsibilities of his employment with the Association. Incompatible activities include:

(1) Acceptance of a fee, compensation, gift, payment of expenses, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, a conflict of interest; and

(2) Outside employment which tends to impair his mental or physical capacity to perform his duties and responsibilities of his employment with the Association in an acceptable manner.

(b) An employee may not receive any salary or anything of monetary value from a private source as compensation for his services to the Association.

(c) This section does not preclude an employee from participating in the affairs of, or accepting an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, or fraternal organization, a nonprofit educational or recreational organization, or a public service or civic organization.

SEC. 13. *Financial interests.* (a) Except where authorized by statute or these regulations, an employee may not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Association duties and responsibilities. In any case in which such a question of financial interest arises the procedures set forth in section 17 apply.

(b) The fact that an employee is on leave of absence from employment with or has served as an attorney or consultant to, a railroad, or a company engaged in the manufacture, construction, or supply of railroad facilities and equipment, or a creditor of a railroad, shall not, of itself, be deemed to be a financial interest conflicting with his Association duties or responsibilities. This provision does not affect the obligation of such an employee to submit a statement of employment and financial interest as required by section 31(a)(1).

(c) The fact that an employee owns shares of stock, corporate bonds, or other corporate securities in any single railroad, or a company engaged in the manufacture, construction or supply of railroad facilities and equipment, or a creditor of a railroad, having a current aggregate market value of \$10,000 or more, or an option to purchase such securities, shall not, in itself, be deemed to be a financial interest conflicting with his Association duties or responsibilities. Such ownership must, however, be reported in a special statement of financial interest, in a manner specified by the General Counsel, which shall be available for public inspection.

SEC. 15. *Conflicts of interest.* (a) Except where specifically exempted by statute or

these regulations, a conflict of interest exists whenever the performance of the duties of an employee has or appears to have a direct and predictable effect upon a financial interest of such employee or of his spouse, minor child, partner, or person or organization with which he is associated or is negotiating for future employment.

(b) A conflict of interest exists even though there is no reason to suppose that the employee will, in fact, resolve the conflict to his own personal advantage rather than to that of the Association.

SEC. 17. *Disqualification arising from personal financial interests.* (a) Except as stated in paragraph (e) of this section, or except as permitted by statute, an employee may not participate personally and substantially as an employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim controversy, charge, accusation, or other particular matter in which, to his knowledge, he, his spouse, minor child, a blood relative who is a resident of the employee's household, partner, 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, has a financial interest, unless he shall cause the financial interest involved to be divested, or request a determination of the propriety of his participation in any matter by informing the General Counsel of the nature and circumstances of the matter and financial interest involved.

(b) After examining the information submitted the General Counsel may:

(1) Relieve the employee from participation in the matter and, if possible, reassign it to another employee who is not subordinate to the relieved employee;

(2) Approve the employee's participation upon determining in writing that the interest involved is not so substantial as to be likely to affect the integrity of the services the Association may expect from the employee;

(3) Recommend the reassignment of the employee; or

(4) If none of these alternatives is feasible, direct the employee to cause the financial interest to be divested so that it no longer comes within the scope of this section.

(c) In any case in which the General Counsel has reason to believe that an employee may have an interest that would be disqualifying under this section, he shall discuss the matter with the employee. If he finds that the interest exists, he may take any of the actions stated in paragraph (b) of this section.

Subtitle A, App.

(d) In any case in which the employee is dissatisfied with the General Counsel's decision, the employee may appeal the matter to the Chairman of the Association for reconsideration and final determination of the appropriate action.

(e) Information concerning categories of financial interests which are exempted from the prohibitions of §§13(a), 15, and paragraph (a) of this section as being too remote or too inconsequential to affect the integrity of an employee's interest in a matter, are set forth in Appendix 1.

SEC. 19. *Use of Association property or official title.* (a) An employee may not, directly or indirectly, use or allow the use of Association property of any kind, including property leased to the Association, for other than an officially approved activity. Each employee has a positive duty to protect and conserve Association property, including equipment, supplies, and other property entrusted or issued to him.

(b) An employee may not, directly or indirectly, use or allow the use of his title or position in connection with any commercial enterprise or in endorsing any commercial product or service.

SEC. 21. *Misuse of information.* An employee may not, for the purpose of furthering a private interest, directly or indirectly, use or allow the use of official information obtained through or in connection with his Association employment, if that information has not been made available by the Association to the general public.

SEC. 23. *Indebtedness.* Each employee shall pay his just financial obligations in a proper and timely manner, especially those imposed by law such as Federal, State, or local taxes. For the purposes of this section "just financial obligations" means those that are recognized as such by the employee or reduced to a judgment by a court, and "in a proper and timely manner" means in a manner which the Association determines does not, under the circumstances, reflect adversely on the Association as his employer. The Association will not determine the validity or amount of a disputed debt and will not initiate action to collect such debts.

SEC. 25. *Miscellaneous provisions.* (a) Each employee shall acquaint himself with these regulations which relate to his ethical and other conduct as an employee of the Association.

(b) In the appointment of personnel and in assignment of their duties, the President of the Association shall take steps to avoid, to as great an extent as possible, any conflict between the Association duties and the private interests of such personnel.

SUBPART C—STATEMENTS OF EMPLOYMENT AND FINANCIAL INTEREST

SEC. 31. *Employees required to submit statement.* (a) Each of the following employees

49 CFR Subtitle A (10–1–96 Edition)

shall submit a statement of employment and financial interest on a form provided by the Association:

(1) Each employee who within the preceding two years was employed by or served as an attorney or consultant to, a railroad or a company significantly engaged in the manufacture, construction or supply of railroad facilities and equipment, including, but not limited to, rolling stock, terminal facilities, signal equipment, track and road bed, and electrical and communication transmission equipment. The General Counsel shall decide, in a doubtful case, whether the relationship to the railroad industry is sufficiently significant as to require submission of a statement of employment and financial interest.

(2) Each employee who is in a position identified in Appendix 2.

(b) Any employee who believes that his position has been improperly included as one requiring the submission of a statement of employment and financial interest is entitled to have that inclusion reviewed by the General Counsel.

(c) Any employee in a position which meets the criteria in paragraph (a) of this section may be excluded from the reporting requirements of this section if the General Counsel determines that the duties of the position are at such a level of responsibility that the submission of a statement is not necessary because of the degree of supervision and review and the remote or inconsequential effect on the integrity of the Association.

SEC. 33. *Time and place for submission of employee statements.* Each employee who is subject to the reporting requirements of sec. 31 shall submit his employment and financial interest statement to the General Counsel within 30 days after entering the employ of the Association.

SEC. 35. *Supplementary statements.* (a) Each employee shall, not later than July 31 of each year, file a supplementary statement, showing, as of June 30 of that year, any change in, or addition to, the information contained in his statement of employment and financial interest. If changes or additions have not occurred, a negative report is required.

(b) Compliance with the reporting requirements of this subpart is not an alternative to observance of the conflict-of-interest provisions of subpart B of these regulations, but is to facilitate uniform compliance with, and the orderly administration of subpart B.

SEC. 37. *Committee on Commerce, Information not known by employee.* If any information required to be included on a statement of employment and financial interest or a supplementary statement, including any holding 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 behalf, and the employee shall so notify the General Counsel.

SEC. 39. *Information not required.* An employee is not required to submit on a statement of employment and financial interest or supplementary statement any information relating to his 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 this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Association are considered to be "business enterprises" and are required to be included in the employee's statement of employment and financial interest.

SEC. 41. *Confidentiality of employee's statement.* (a) Except for special statements of financial interest required by sec. 13(c) each statement of employment and financial interest and each supplementary statement shall be held in confidence. The reviewing officials and others who receive statements are responsible for maintaining them in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purposes of these regulations. Information may not be disclosed to any person outside the Association, except as the General Counsel may determine for good cause shown. No disclosure permitted by this paragraph may be made unless the affected employee has been notified that disclosure is contemplated, and the employee is given an opportunity to present reasons and arguments to maintain the confidentiality of the statement.

(b) Each statement of employment and financial interest and each supplementary statement shall be maintained in the records of the Association.

SEC. 43. *Interpretation and advisory service.* The General Counsel shall provide authoritative counseling and interpretations to employees who require advice and guidance on questions of conflicts of interest or any other matters of legal import covered by these regulations.

SUBPART D—DISQUALIFICATION OF FORMER EMPLOYEES IN MATTERS CONNECTED WITH FORMER DUTIES OR OFFICIAL RESPONSIBILITIES; DISQUALIFICATION OF PARTNERS

SEC. 51. *Matters in which employee participated personally and substantially.* Except as permitted by sec. 55 hereof, an employee of the Association, after his employment has ceased, may not act as agent or attorney for anyone other than the Association in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract claim, controversy,

charge, accusation, arrest, or other particular matter involving a specific party or parties, in which the Association is a party or has a direct and substantial interest and in which he participated personally and substantially as an employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed.

SEC. 53. *Matters under employee's official responsibility.* Except as permitted by sec. 55 hereof, an employee of the Association may not, within one year after his employment has ceased, appear personally before the Association or any court or department or agency of the Government as agent, or attorney, for anyone other than the Association in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties, in which the Association is a party or directly and substantially interested, and which was under his official responsibility as an officer or employee of the Association at any time within a period of one year prior to the termination of such responsibility.

SEC. 55. *Employee with outstanding scientific or technological qualifications.* A former employee with outstanding scientific or technological qualifications may act as attorney or agent or appear personally in connection with a particular matter in a scientific or technological field if the General Counsel certifies in writing, in advance, that the public interest would be served by such action or appearance.

SEC. 57. *Partner of employee.* A partner of an employee of the Association may not act as agent or attorney for anyone other than the Association, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the Association is a party or has a direct and substantial interest and in which such employee of the Association participates personally and substantially as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility.

APPENDIX 1—CATEGORIES OF FINANCIAL INTERESTS EXEMPTED FROM THE PROHIBITIONS OF SECTIONS 13(a), 15, AND 17(a)

I. (a) The following are exempted from the prohibitions of sections 13(a), 15, and 17(a), because they are too remote or too inconsequential to affect the integrity of an employee's services in any matter in which he may act in his official capacity.

(1) Any holding in a widely held mutual fund, or regulated investment company,

Subtitle A, App.

which does not specialize in the transportation industry.

(2) Ownership of shares of stock and of corporate bonds or other corporate securities, if the current aggregate market value of the stocks and other securities so owned in any single corporation is less than \$10,000 and is less than one percent of the outstanding stock of the organization concerned, and if the employee, his spouse, or minor children are not active in the management of the organization and have no other connection with or interest in it.

(3) Continued participation in a bona fide pension, retirement, deferred compensation, group life, health, or accident insurance plan or other employee welfare or benefit plan that is maintained by a business or nonprofit organization by which the employee was formerly employed, to the extent that the employee's rights in the plans are vested and require no additional services by him. To the extent the welfare or benefit plan is a profit

49 CFR Subtitle A (10-1-96 Edition)

sharing or stock bonus plan, this exemption does not apply.

(b) Notwithstanding paragraph 1(a)(2), the interest of an employee, whose position is listed in section II of this appendix, shall not be exempt from the prohibitions of sections 13(a), 15, and 17(a), with respect to any stock or other security holding in an organization to which he is assigned, or for which he has specific responsibility as a part of his regular duties, for conducting inspections or issuing certificates, waivers, exemptions, or approvals.

II. The following is a list of positions to which the exemption in paragraph 1(a)(2) of this appendix does not apply. This list may be amended at any time by the Association.

[To be supplied]

APPENDIX 2—LIST OF EMPLOYEES REQUIRED TO SUBMIT STATEMENTS OF EMPLOYMENT AND FINANCIAL INTEREST UNDER SECTION 31 [RESERVED]

[39 FR 3825, Jan. 30, 1974]