

§ 2634.801

delays in the receipt of reports by an agency.

[57 FR 11824, Apr. 7, 1992, as amended at 58 FR 38912, July 21, 1993; 67 FR 49857, Aug. 1, 2002]

Subpart H—Ethics Agreements

SOURCE: 57 FR 11825, Apr. 7, 1992, unless otherwise noted.

§ 2634.801 Scope.

This subpart applies to ethics agreements made by any reporting individual under either subpart B or I of this part, to resolve potential or actual conflicts of interest.

§ 2634.802 Requirements.

(a) *Ethics agreement defined.* The term *ethics agreement* shall include, for the purposes of this subpart, any oral or written promise by a reporting individual to undertake specific actions in order to alleviate an actual or apparent conflict of interest, such as:

- (1) Preparation of a written instrument for recusing (disqualifying) the individual from one or more particular matters or categories of official action;
- (2) Divestiture of a financial interest;
- (3) Resignation from a position with a non-Federal business or other entity;
- (4) Procurement of a waiver pursuant to 18 U.S.C. 208(b)(1) or (b)(3); or
- (5) Establishment of a qualified blind or diversified trust under the Act and subpart D of this part.

(b) *Time limit.* The ethics agreement shall specify that the individual must complete the action which he or she has agreed to undertake within a period not to exceed three months from the date of the agreement (or of Senate confirmation, if applicable). Exceptions to the three-month deadline can be made in cases of unusual hardship, as determined by the Office of Government Ethics, for those ethics agreements which are submitted to it (see § 2634.803 (a), (b), or (c) of this subpart), or by the designated agency ethics official for all other ethics agreements.

Example: An official of the ABC Aircraft Company is nominated to a Department of Defense position requiring the advice and consent of the Senate. As a condition of assuming the position, the individual has agreed to divest himself of his ABC Aircraft

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stock which he recently acquired while he was an officer with the company. However, the Securities and Exchange Commission prohibits officers of public corporations from deriving a profit from the sale of stock in the corporation in which they hold office within six months of acquiring the stock, and directs that any such profit must be returned to the issuing corporation or its stockholders. Since meeting the usual three-month time limit specified in this subpart for satisfying an ethics agreement might entail losing any profit that could be realized on the sale of this stock, the nominee requests that the limit be extended beyond the six-month period imposed by the Commission. Written approval would have to be obtained from the Office of Government Ethics to extend the customary three-month period.

§ 2634.803 Notification of ethics agreements.

(a) *Nominees to positions requiring the advice and consent of the Senate.* (1) In the case of a nominee referred to in § 2634.201(c), the designated agency ethics official shall include with the report submitted to the Office of Government Ethics any ethics agreement which the nominee has made.

(2) A designated agency ethics official shall immediately notify the Office of Government Ethics of any ethics agreement of a nominee which is made or becomes known to the designated agency ethics official after the submission of the nominee's report to the Office of Government Ethics. This requirement includes an ethics agreement made between a nominee and the Senate confirmation committee. The nominee shall immediately report to the designated agency ethics official any ethics agreement made with the committee.

(3) The Office of Government Ethics shall immediately apprise the designated agency ethics official and the Senate confirmation committee of any ethics agreements made directly between the nominee and the Office of Government Ethics.

(b) *Incumbents in positions requiring the advice and consent of the Senate.* In the case of a position which required the advice and consent of the Senate, the designated agency ethics official shall keep the Office of Government Ethics apprised of any ethics agreements which the incumbent makes, or which become known to the designated

agency ethics official during the incumbent's term in his position.

(c) *Designated agency ethics officials not holding advice-and-consent positions, and employees of the Offices referred to in § 2634.602(c)(1)(v).* A designated agency ethics official who has entered into an ethics agreement, and who is neither a nominee to, nor an incumbent in, a position which requires the advice and consent of the Senate, as well as each employee of the Executive Office of the President or the Office of the Vice President who is referred to in § 2634.602(c)(1)(v), shall include with his initial financial disclosure report submitted to the Office of Government Ethics any ethics agreement undertaken by such official or employee. He shall also apprise the Office of Government Ethics promptly of any subsequent ethics agreement.

(d) *Other reporting individuals.* Other reporting individuals desiring to enter into an ethics agreement may do so with the designated agency ethics official for the employee's agency. Where an ethics agreement has been made with someone other than the designated agency ethics official, the officer or employee involved shall promptly apprise the designated agency ethics official of the agreement.

[57 FR 11825, Apr. 7, 1992; 57 FR 21855, May 22, 1992, as amended at 73 FR 15388, Mar. 24, 2008]

§ 2634.804 Evidence of compliance.

(a) *Requisite evidence of action taken.*

(1) For ethics agreements of nominees to positions requiring the advice and consent of the Senate, evidence of any action taken to comply with the terms of such ethics agreements shall be submitted by the designated agency ethics official, upon receipt of the evidence, to the Office of Government Ethics and to the Senate confirmation committee.

(2) For ethics agreements of incumbents in positions which required the advice and consent of the Senate, evidence of any action taken to comply with the terms of such ethics agreements shall be submitted promptly by the designated agency ethics official to the Office of Government Ethics. A designated agency ethics official or an employee referred to in § 2634.803(c) of this subpart who is neither a nominee to, nor an incumbent in, an advice-and-

consent position, must also promptly send evidence of any action taken to comply with the terms of an ethics agreement to the Office of Government Ethics.

(3) In the case of all other reporting individuals, evidence of any action taken to comply with the terms of an ethics agreement must be sent promptly to the designated agency ethics official.

(b) The following materials and any other appropriate information constitute evidence of the action taken:

(1) *Recusal.* A copy of any recusal instrument listing and describing the specific matters or subjects to which the recusal applies, a statement of the method by which the agency will enforce the recusal, and a list of the positions of those agency employees involved in the enforcement (*i.e.*, the individual's immediate subordinates and supervisors).

Example: A new employee of a Federal safety board owns stock in Nationwide Airlines. She has entered into an ethics agreement to recuse herself from participating in any accident investigations involving that company's aircraft until such time as she can complete a divestiture of the asset. She must give a copy of the recusal instrument to her immediate subordinates and supervisors, and to the designated agency ethics official. The employee has also agreed to recuse herself from any particular matter (as that term is used in 18 U.S.C. 208) that might arise with respect to any of her present or future holdings. There is no requirement to execute a recusal instrument for this type of general recusal, because it is simply a promise to abide by the terms of the statute.

(2) *Divestiture or resignation.* Written notification that the divestiture or resignation has occurred.

(3) *Waivers.* A copy of any waivers issued pursuant to 18 U.S.C. 208(b)(1) or (b)(3) and signed by the appropriate supervisory official.

(4) *Blind or diversified trusts.* Information required by subpart D of this part to be submitted to the Office of Government Ethics for its certification of any qualified trust instrument. If the Office of Government Ethics does not certify the trust, the designated agency ethics official and, as appropriate,