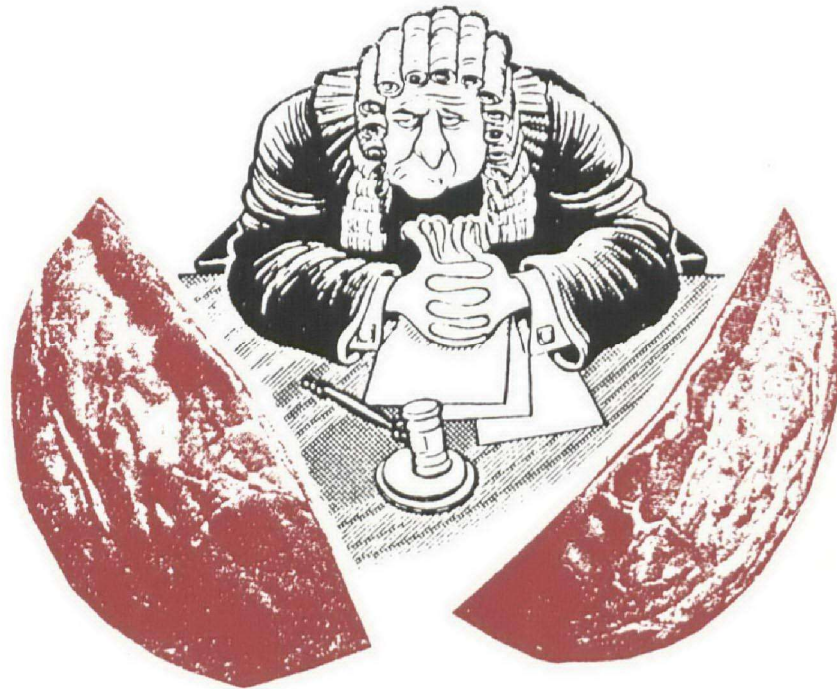


March 1988



# Ethics In A Nutshell

... Ethical Conduct for  
EPA Employees  
... in Brief



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## **Ethics In A Nutshell**

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EPA Employees  
... in Brief

Committee on Integrity  
and Management Improvement

March 1988

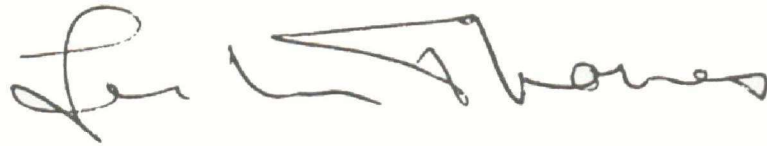
## Foreword

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The Committee on Integrity and Management Improvement (CIMI) has developed this pamphlet, "Ethics in a Nutshell," to explain the thrust and practical applications of ethical laws and regulations.

The question and answer format is designed to anticipate and answer some of the more common concerns facing Federal employees. I'm sure this will be a useful reference guide to all employees as you carry out your official responsibilities.

We appreciate the assistance of Gerald Yamada, the Designated Agency Ethics Official, and Don Nantkes, the Alternate Agency Ethics Official, in the preparation of this pamphlet.



Lee M. Thomas  
Administrator

"Ethics in a Nutshell" is a brief explanation of the conflict of interest statutes and EPA ethical standards. It is not a complete discussion of the subject, and employees are expected to refer to the statutes (18 U.S.C. Sections 202-209) and EPA regulations at 40 C.F.R. Part 3, and to seek advice from Deputy Ethics Officials and from us when questions arise.



Gerald H. Yamada  
Designated Agency Ethics Official



Donnell L. Nantkes  
Alternate Agency Ethics Official

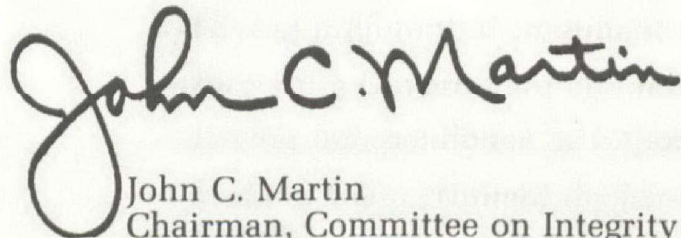
## Introduction

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As officers and employees of the Federal Government, we must all conform to high standards of ethical conduct. We are judged not only by our official actions and conduct, but also by our personal activities when they are related to our work for the Government. The Government relies on us as its representatives to perform Government business properly, to protect Government interests, and to meet the high ethical standards of public service.

Standards of conduct and conflict of interest laws apply to all Government officers and employees including special Government employees such as experts, consultants, and most advisory committee members. All employees are responsible for knowing these laws and regulations as well as the specific policies and procedures at EPA.

Employees, supervisors, and management officials all share the responsibility for ensuring that high standards of ethical conduct are maintained at EPA. Employees are required to become familiar with the standards of conduct regulations and to exercise judgment to avoid any action that might result in or create the appearance of misconduct or conflict of interest. Supervisors and managers must become familiar with the standards of conduct regulations and apply the standards to the work they do and supervise.



John C. Martin  
Chairman, Committee on Integrity and  
Management Improvement  
Environmental Protection Agency

## Ethical Conduct

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### Where can you get guidance on the ethics laws and regulations?



You should seek guidance whenever you are unsure whether your actions are consistent with the standards. To seek advice:

- consult your Deputy Ethics Official (Office Director, Staff Office Director, Laboratory Director, Regional Administrator or Deputy Regional Administrator). The Assistant Administrators or their Deputies serve as Deputy Ethics Officials for their immediate Offices and the Regional Counsels serve as Deputy Ethics Officials for their Offices; or
- call the Office of General Counsel or Office of Regional Counsel for legal advice or referral to the Designated Agency Ethics Official or Alternate Agency Ethics Official.

The Office of Government Ethics provides frequent training throughout the country. The EPA Designated Agency Ethics Official and his staff also conduct training by arrangement or request. See 40 C.F.R. Part 3, Subpart B.

### What are the general standards of conduct? (40 C.F.R. Section 3.103)

Employees must avoid any action that might result in or create the appearance of:

- Using public office for private gain.
- Giving preferential treatment to anyone.
- Impeding Government efficiency or economy.
- Losing independence or impartiality.
- Making a Government decision outside official channels.
- Adversely affecting public confidence in the integrity of the Government or of EPA.

Employees must be particularly careful that private interests and activities do not conflict with their public duties. The following sections address specific questions you may have:

### Are you allowed to use Government property for personal reasons?

No. You have a positive duty to protect and conserve Federal property and to obey all rules regarding its use. Federal property (including

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property leased by the Government) cannot be used for other than official purposes. (40 C.F.R. Section 3.104(a))

Examples of improper use of Government property include:

- Using “penalty mail” envelopes to send payroll checks to the bank or for other personal matters.
- Using EPA copying equipment for personal matters.
- Using a Government-owned, leased or rented motor vehicle or aircraft for non-official purposes.
- Using Government telephones for personal calls.
- Selling commercial products or services on EPA premises.
- Using EPA computers and word processors for personal matters.



**What is EPA policy on accepting gifts, entertainment and favors? (40 C.F.R. Part 3, Subpart D)**

You generally may not solicit or accept anything of value, including entertainment and meals (e.g., “business lunches”), from anyone who:

- Has or is seeking to obtain EPA contracts or assistance agreements.
- Is attempting to influence your official action.
- Has interests which your duties may affect.
- Conducts operations regulated by EPA.

There are a few exceptions:

- Modest entertainment, such as meals or refreshments, at widely attended gatherings sponsored by industrial, technical or professional organizations or attendance at public ceremonies or similar activities in connection with official duties.
- Gifts, favors or entertainment where an obvious family or personal relationship clearly motivated the gift.
- Purchases at advantageous rates offered to Government employees as a class.

—Loans from financial institutions on customary terms.

—Unsolicited advertising or promotional items worth less than \$10 U.S. retail.

—Incidental transportation in kind (such as rides to and from airports).

—Reasonable travel expenses in connection with job interviews while on annual leave.

—Unsolicited gifts from foreign governments (gifts worth less than a certain amount - currently \$165 - may be retained while larger gifts must be turned over to EPA).

—Official travel expenses, but only under circumstances listed in 40 C.F.R. Section 3.504(c).

Certain gifts may violate criminal statutes. For example, gifts made to induce or compensate employees for official actions may violate the bribery provision at 18 U.S.C. Section 201. In addition, 18 U.S.C. Section 209 generally prohibits employees from receiving any supplementation of their government salaries.

Example:

You are asked to give a speech in your official capacity. You may not accept a fee for a speech given as part of your EPA duties.

#### **Gifts to Superiors:**

You may not solicit a contribution from another employee for a gift to an official superior or make a donation to a superior. Also, you may not accept a gift from an employee receiving less pay than you. There is an exception for small voluntary gifts on special occasions such as marriage, illness, death or retirement. (5 U.S.C. Section 7351 and 40 C.F.R. Section 3.104(e))

Example:

Your office decides to take up a collection for your boss who is being promoted within the office. This would not qualify for the exception for special occasions because it involves a continuing workplace relationship.





### **What about using information picked up on the job?**

You may not use, to further a private interest, information obtained through your EPA job that has not been made available to the general public — even if it would be made available on request. (40 C.F.R. Sections 3.103(a), 3.502(h) and 3.505(c))

### **What if you fail to pay your debts?**

You should promptly meet your financial obligations. Failure to do so reflects adversely on EPA and is considered improper conduct. (40 C.F.R. Section 3.104(b))

### **Can you gamble while on duty or on Government premises?**

No. This includes operating a gambling device or conducting a lottery or pool in a game for money or property or selling or purchasing a numbers slip or ticket. There can be exceptions for officially approved activities, such as the Combined Federal Campaign. (40 C.F.R. Section 3.104(c))

### **Can you have a second job outside EPA? (40 C.F.R. Part 3, Subpart E)**

You may engage in outside employment, with or without compensation, but only if it will not adversely affect or conflict with your official duties. Such work may include civic, charitable, religious and community undertakings. You may not have outside employment which:

- Violates the conflict of interest laws or standards of conduct.
- May reasonably be construed as implying official EPA endorsement of any statement, activity, product or service.
- Takes your time or attention during official working hours.
- Impairs your mental or physical capacity to perform EPA duties.
- Involves use of EPA facilities.
- Involves work on an EPA contract or assistance agreement unless the Designated Agency Ethics Official has approved it in writing.



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The following outside employment requires the advance written approval of your Deputy Ethics Official (you will need to send a memo to your Deputy Ethics Official through your supervisor);

—Regular self-employment.

—Consulting services.

—Holding state or local public office.

—Employment or other activity involving an EPA contractor or sub-contractor or holder of an EPA assistance agreement or subagreement.

—Employment by a firm which is regulated by the program office in which you serve.

You are encouraged to seek approval for other outside activity whenever there is any question of its propriety.

Under 18 U.S.C. Sections 203 and 205, you may not serve as “agent or attorney” (that is, communicate with intent to influence on behalf of another person) before any federal agency or the District of Columbia, with or without pay. This includes court cases where the Federal Government or the District of Columbia is a party. You also may not receive any payment for someone else’s representation before a federal agency or the District of Columbia.

Examples:

Although you may prepare income tax returns for others, you may not attempt to persuade the IRS that the return was properly prepared.

You may not speak or write to a federal agency seeking a grant on behalf of a non-profit organization of which you are a member, even though you receive no pay.

Exceptions:

You may generally represent your parents, your spouse or child or an estate for which you are executor. If consistent with your EPA duties, you may also represent other employees in personnel, EEO and similar matters.

You may provide testimony under oath (but generally not as an expert witness).

If you are assigned to a state or local government under the Inter-governmental Personnel Act, you

may generally represent that government before federal agencies in environmental matters as part of your official duties.

Special Government employees (those appointed to serve less than 130 days in a 365 day period) are not covered by 18 U.S.C. Sections 203 and 205 except for (1) matters involving specific parties (such as contracts) in which they ever participated as Government employees and (2) matters involving specific parties which are pending in EPA where they have actually worked more than 60 days in the past 365 days.

Note: The conflict of interest statutes are reprinted and discussed in detail in 40 C.F.R. Part 3, Subpart A, Appendix A.

### **Can you obtain personal gain from your official position or actions?**



No. Under 18 U.S.C. Section 208, you are barred from participating “personally and substantially” as a Government employee in a “particular matter” in which you have a financial interest.

This prohibition applies to advice and recommendations as well as to actual decisions. A “particular matter” includes a rulemaking or policy matter directed toward a specific industry or industries as well as a matter which involves a specific party, such as a permit or contract. The prohibition also applies if the following individuals or organizations have a financial interest in the matter:

- Your spouse;
- Your minor child;
- Your partner;
- An organization in which you serve as an officer, director, trustee, partner or employee; and
- A person or organization with which you are negotiating for prospective employment or have an arrangement for prospective employment.

The general standards of conduct go farther and bar your participation in matters which create the appearance of conflict or bias — for example, matters involving your parents, adult children, etc.

Examples:

You own a single share of stock in a steel company. You may not participate in developing a

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New Source Performance Standard for the steel industry.

You are an officer in a non-profit organization. You may not participate in the award or administration of an assistance agreement with that organization.

You are administering a contract with a firm owned by your brother-in-law. You probably are not violating 18 U.S.C. Section 208 because your brother-in-law's interests are not considered to be your own, but you would have the appearance of a conflict. This would violate the general standards of conduct.

You are conducting an audit of an EPA contractor. The company president asks you to meet to discuss leaving EPA to join the company. Unless you immediately reject the offer, you must disqualify yourself from further participation in the audit in order to avoid a violation of 18 U.S.C. Section 208.

The Designated Agency Ethics Official may waive the prohibition of 18 U.S.C. Section 208 if the interest is too insubstantial to affect the integrity of your services. Generally, EPA does not grant waivers for matters which involve specific parties (such as permits) or for rulemaking matters which affect more than \$10,000 worth of stocks or bonds. EPA regulations grant general waivers for:

—Diversified mutual funds, including municipal bond funds. This does not apply to funds which concentrate their investments in particular industries.

—Life insurance, variable annuity or guaranteed investment contracts issued by insurance companies.

—Deposits in financial institutions.

—Real property used solely as your personal residence.

—U.S. Government securities. (40 C.F.R. Section 3.301)



### **Are there special statutory requirements for EPA employees?**

Yes. Under Section 318 of the Clean Air Act, certain employees listed in 40 C.F.R. Part 3, Subpart B, Appendix B, may not be employed by, serve as attorney for, act as consultant to, or hold any official or contractual relationship to: (1) the owner or operator of any major stationary source or any stationary source subject to a standard of performance under Section 111 or Section 112 of the Clean Air Act; (2) any manufacturer or any class or category of mobile sources subject to regulation under the Clean Air Act; (3) any trade or business association of which such an owner or operator is a member; or (4) any organization — including a non-profit organization — which is a party to litigation or engaged in political, educational or informational activities relating to air quality. (40 C.F.R. Section 3.303)

In addition, members of the Interagency Testing Committee established under Section 4(e) of the Toxic Substances Control Act and their designees may not (1) accept employment or compensation from any person subject to the Act for twelve months after their committee service ends or (2) hold any stocks or bonds or other “substantial pecuniary interest” in any firm which manufactures, processes or distributes any substance or mixture subject to the Act. (40 C.F.R. Section 3.304)

Finally, employees who perform any “function or duty” under the Surface Mining Control and Reclamation Act (such as reviewing Environmental Impact Statements of the Office of Surface Mining) may not hold any “direct or indirect interest” in underground or surface coal mining activities. (40 C.F.R. Section 3.305)

### **How does EPA monitor compliance with the laws and standards?**

Certain employees are required to report their employment and financial interests. By statute, Presidential appointees, SES employees, Schedule C employees and GS-16's and above (and a few other employees who occupy “equivalent” positions) must submit an SF 278, Executive Personnel Financial Disclosure Report, to the Designated Agency Ethics Official. These reports are available to the public.

In addition, Deputy Ethics Officials must collect and review confidential statements of employment

and financial interests from GS/GM 13-15 (and some other) employees whose duties are likely to affect the financial interests of persons outside the Government. These statements are disclosed only to Ethics Officials and their assistants or as may be required by law (for example, to the Office of Government Ethics, the Office of Inspector General, the General Accounting Office and Congressional committees or subcommittees). (40 C.F.R. Section 3.302)

If a report or statement indicates a potential conflict problem, remedial action is necessary. This may include:

- waiver by the *Designated Agency Ethics Official*;
- divestiture;
- exclusion from participation in certain matters;
- reassignment; or
- setting up a “blind trust” (see 5 C.F.R. Section 734.403).

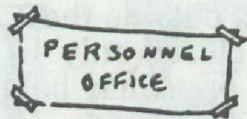
### **What are post-employment restrictions?**

Under 18 U.S.C. Section 207, you are permanently barred from acting as “agent or attorney” (that is, communicating with intent to influence on behalf of another) before the Federal Government regarding a matter involving specific parties (such as a contract or permit) in which you ever participated “personally and substantially” as a Government employee.

If such a matter was under your “official responsibility” during your final year of Government service, you are barred from acting as “agent or attorney” regarding the matter for two years. This restriction applies even though you had nothing to do with the matter personally.

Former confirmed Presidential appointees and a few dozen “designated senior employees” (see 5 C.F.R. Section 737.33) are subject to an additional general one-year bar against communicating with EPA with intent to influence.

Finally, EPA contract regulations generally prohibit sole source awards to or involving former employees for one year after they leave EPA. This prohibition may be waived where there is no appearance of bias or favoritism and the award would be in the best interest of EPA.



## Examples:

You would be prohibited from representing (that is communicating with the Government with intent to influence on behalf of another) anyone regarding a contract you administered while you were with EPA, but you could assist the contractor in performing the work.

As a former supervisor, you would be barred for two years from representing the contractor on a project which was awarded or administered in your office during your final year with EPA, even though you never got involved with the contract personally.

### **Are experts, consultants and advisory committee members covered by the standards of conduct regulations and the conflict of interest laws?**

Yes. With some exceptions, the standards of conduct regulations generally apply to such "special Government employees." See 40 C.F.R. Part 3, Subpart F.

### **What if you want to report a violation of the standards of conduct or the conflict of interest laws?**

If you know of criminal violations, you are responsible for reporting them to the Office of the Inspector General. Failure on the part of an EPA employee to report a criminal violation promptly could result in disciplinary action against that employee. You may use the Inspector General's "Hotline" for this purpose — call (800) 424-4000 or (202) 382-4977. If you are aware of any violations of the standards of conduct regulations, you are responsible for reporting them to your supervisor, the Office of the Inspector General, or your Designated Agency Ethics Official.

### **Are you required to give statements to investigative officials?**

You are required to assist the Inspector General and other investigative officials. This requirement includes giving statements or evidence to investigators or auditors of the Office of Inspector General, the Federal Bureau of Investigation and others authorized to investigate potential violations. (Note: You always retain your constitutional rights, including the right to counsel and the right against self-incrimination.)

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## **What happens if you violate the standards of conduct regulations or the conflict of interest laws?**

You are subject to disciplinary action if you violate any of the standards. This type of action depends on the nature of the violation and may include admonishment, written reprimand, suspension, demotion or removal. Applicable statutes, regulations and procedures must be followed. Of course, violators of the conflict of interest statutes are subject to criminal prosecution. In addition, violations of the post-employment provisions may be dealt with administratively — after notice and hearing, a former employee may be barred from official dealings with EPA for up to five years or be suspended or debarred from receiving EPA contracts or assistance agreements.

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## **Political Do's & Don'ts For Federal Employees**

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### **Covered Employees**

With very few exceptions, all employees in the executive branch of the Federal Government are subject to the political activity provisions of the Hatch Act. Employees of the U. S. Postal Service and the District of Columbia government are also subject to this law.

- May register and vote as they choose*
- May assist in voter registration drives*
- May express opinions about candidates and issues*
- May participate in campaigns where none of the candidates represent a political party*
- May contribute money to political organizations or attend political fund-raising functions*
- May wear or display political badges, buttons, or stickers*
- May attend political rallies and meetings*

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- May join political clubs or parties
  - May sign nominating petitions
  - May campaign for or against referendum questions, constitutional amendments, and municipal ordinances
  - May not be candidates for public office in partisan elections
  - May not campaign for or against a candidate or slate of candidates in partisan elections
  - May not make campaign speeches or engage in other campaign activities to elect partisan candidates
  - May not collect contributions or sell tickets to political fundraising functions
  - May not distribute campaign material in partisan elections
  - May not organize or manage political rallies or meetings
  - May not hold office in political clubs or parties
  - May not circulate nominating petitions
  - May not work to register voters for one party only

An election is partisan if any candidate for an elected public office is running as a representative of a political party whose presidential candidate received electoral votes in the last presidential election.

Provided Courtesy of the Office of the Special Counsel, U.S. Merit Systems Protection Board. These guidelines are valid as of the date of this publication.





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