

4. Section 219.708 is amended by revising paragraphs (b)(1)(A), (b)(1)(B), and (c)(1)(A) to read as follows:

**219.708 Solicitation provisions and contract clauses.**

(b)(1) (A) Use the clause at 252.219-7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts), in solicitation and contracts that contain the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

(B) In contracts with contractors which have comprehensive subcontracting plans approved under the test program described in 219.702(a), use the clause at 252.219-7004, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program), instead of the clauses at 252.219-7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts), and FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.

\* \* \* \* \*

(c)(1) \* \* \*

(A) When contracting by negotiation, use the clause at 252.219-7005, Incentive for Subcontracting with Small Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities, and Minority Institutions, in all solicitations and contracts that contain the clause at FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan. Incentives for exceeding SDB subcontracting goals shall be paid only if an SDB subcontracting goal was exceeded as a result of actual subcontract awards to SDBs, and not as a result of developmental assistant credit under the Pilot Mentor-Protege Program (see subpart 219.71).

\* \* \* \* \*

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

5. Section 252.219-7004 is amended by revising the section heading, the clause title and date and paragraph (b), (c), and (d) to read as follows:

**252.219-7004 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program).**

\* \* \* \* \*

Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (Test Program) (Jul 1996)

(a) \* \* \*

(b) The Offeror's comprehensive small business subcontracting plan and its successors, which are authorized by and approved under the test program of Section 834 of Pub. L. 101-189, as amended, shall be included in and made a part of the resultant contract. Upon expulsion from the test program or expiration of the test program, the Contractor shall negotiate an individual subcontracting plan for all future contracts that meet the requirements of Section 211 of Pub. L. 95-507.

(c) The Contractor shall submit Standard Form 295, Summary Subcontract Report, in accordance with the instructions on the form, except Item 14, Remarks, shall be completed to include semi-annual cumulative (1) small business, small disadvantaged business, and women-owned small business goals, and (2) small business and small disadvantaged business goals, actual accomplishments, and percentages for each of the two designated industry categories.

(d) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

[FR Doc. 96-19413 Filed 7-30-96; 8:45 am]

BILLING CODE 5000-04-M

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**5 CFR Chapter L**

**49 CFR Part 99**

**RIN 3209-AA15**

**Supplemental Standards of Ethical Conduct for Employees of the Department of Transportation**

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Department of Transportation, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for DOT employees that supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by OGE. These regulations are a necessary supplement to the executive branch-wide Standards because they address ethics matters unique to DOT. In particular, they specify agency designees authorized to make determinations and grant approvals under the Standards, designate DOT components as separate

agencies for purposes, in part, of the gift rules contained in the Standards, and prohibit employees of the Federal Railroad Administration and the Federal Aviation Administration, which are two administrations within DOT, from having certain financial interests.

**EFFECTIVE DATE:** These rules become effective: August 30, 1996.

**FOR FURTHER INFORMATION CONTACT:** William R. Register, Office of the General Counsel (C-10), Department of Transportation, 400 7th Street, S.W., Room 10102, Washington, D.C. 20590, (202) 366-9154.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 7, 1992, OGE published the Standards of Ethical Conduct for Employees of the Executive Branch. See 57 FR 35006-35067, as corrected at 57 FR 48557, 57 FR 52583 and 60 FR 51667, with additional grace period extensions at 59 FR 4779-4780, 60 FR 6390-6391 and 60 FR 66857-66858. The executive branch-wide Standards are now codified at 5 CFR part 2635. Effective February 3, 1993, they established uniform ethical conduct standards applicable to all executive branch personnel.

Also, effective February 3, 1993, DOT canceled most of the regulations on Employee Responsibilities and Conduct in 49 CFR part 99 which apply to DOT employees. See 58 FR 7993-7995. The remaining DOT regulations, which include post-employment guidance and regulatory conflict of interest waivers under 18 U.S.C. 208(b)(2), continue in effect pending issuance of superseding OGE regulations.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Department of Transportation, with OGE's concurrence, has determined that the supplemental regulations in this rulemaking are necessary to the ongoing implementation of DOT's ethics program.

**II. Analysis of the Regulations**

**Section 6001.101 General**

Section 6001.101 explains that the regulations contained in the final rules apply to DOT employees and are supplemental to the executive branch-wide standards. Employees of DOT are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 and the executive branch financial disclosure regulations at 5 CFR part 2634.

*Section 6001.102 Agency Designees*

Section 6001.102 explains that, within DOT, the "agency designees" are the Department's Designated Agency Ethics Official, the Alternate Agency Ethics Official, the Deputy Ethics Officials, and legal counsel in regional and other offices as designated by Deputy Ethics Officials. As defined in 5 CFR 2635.102(b), "agency designees" are employees having delegated authority to make determinations, give approvals, and take other action required or permitted by 5 CFR part 2635.

*Section 6001.103 Designation of Separate Agency Components*

5 CFR 2035.202(a) prohibits, inter alia, an employee from soliciting or accepting a gift from a prohibited source. A prohibited source is defined by 5 CFR 2635.203(d) to include a person who has a specific relationship with an employee's agency. For purposes of identifying an employee's agency, 5 CFR 2635.203(a) authorizes an executive department, by supplemental regulation, to designate as a separate agency a component of the department that exercises distinct and separate functions. Designations made pursuant to § 2635.203(a) are used also for purposes of applying the prohibition in 5 CFR 2635.807(a) against the receipt of compensation for teaching, speaking, or writing related to an employee's duties.

Section 6001.103(a) designates eight administrations in the Department of Transportation as separate agency components. These designated agency components are the Federal Aviation Administration (FAA), Federal Highway Administration, Federal Railroad Administration (FRA), Federal Transit Administration, Maritime Administration, National Highway Traffic Safety Administration, Saint Lawrence Seaway Development Corporation, and United States Coast Guard. These designated agency components are generally recognized as separate agencies within DOT because they exercise separate and distinct functions. As further amplified in § 6001.103(b), DOT employees not employed in one of these eight designated agency components are deemed to be employees of an agency that consists of all parts of the Department, other than the eight designated agency components, and that is separate and distinct from each of those agency components.

Pursuant to the designations in § 6001.103, an aircraft manufacturer, for example, would be a prohibited source for employees of the Federal Aviation

Administration, but not for employees of the National Highway Traffic Safety Administration. Neither would the aircraft manufacturer be a prohibited source for employees in the Office of the Secretary, the Research and Special Programs Administration, or the Bureau of Transportation Statistics unless the manufacturer was seeking official action by one of those components, or otherwise had a matter pending before those components or had interests substantially affected by official duties of employees of those components.

*Section 6001.104 Prohibited Financial Interests*

To assure public confidence in the integrity of the programs and operations of the FAA and FRA, both of these administrations have prohibited their employees, their spouses, and dependents, as matters of longstanding policy and practice, from having financial interests in entities subject to or substantially affected by regulations issued by those administrations.

Pursuant to the Standards, at 5 CFR 2635.403(a), the supplemental regulations in § 6001.104 continue in effect these longstanding prohibitions. The Standards, at 5 CFR 2635.403(a), provide that an individual agency may, by supplemental regulation, prohibit or restrict the acquisition or holding of a financial interest or a class of financial interests by its employees, and by the spouses and minor children of those employees, based on the agency's determination that the acquisition or holding of such financial interests would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. The FRA and FAA have made such determinations with respect to continuing in effect the above prohibitions. Also, determinations have been made, with respect to the spouses and minor children of FRA and FAA employees, that there continues to be a direct and appropriate nexus between the above prohibition as applied to spouses and minor children and the efficiency of the services provided by the FRA and FAA.

The above prohibitions, as codified in section 6001.104, provide as follows:

Section 6001.104(a)(1) prohibits FRA employees from owning stock or any other financial interest in a railroad company subject to FRA regulation.

Section 6001.104(a)(2) prohibits FRA employees hired after December 1991 from holding reemployment rights with a railroad company regulated by the FRA after their first year of employment. However, this prohibition does not extend to employees hired before

January 1992. Most employees hired before January 1992 do not hold employment rights with former employers, except certain employees who have been allowed to retain those rights pursuant to judicial orders issued in *American Federation of Government Employees, Local 2814 v. Andrew Card, Secretary of Transportation and Gilbert Carmichael, Administrator, Federal Railroad Administration*, Civil Action No. 92-1853 (D.D.C. Oct. 1, 1992).

Section 6001.104(a)(3) prohibits the spouse or minor children of an FRA employee from holding stock or other securities interest in a railroad company subject to FRA regulation.

Section 6001.104(b) prohibits FAA employees from holding stock or any other securities interest in an airline or aircraft manufacturing company, or in a supplier of components or parts to an airline or aircraft manufacturing company.

Prohibiting the financial interests described in sections 6001.104(a) and 6001.104(b) will maintain the FRA's and FAA's appearance of impartiality and objectivity in the execution of their regulatory functions; and will avoid inopportune disqualification of employees from official matters, resulting in an inability of the FRA and FAA to fulfill their regulatory functions.

Section 6001.104(c) provides that the prohibitions in § 6001.104 (a)(1) and (b) against holding certain financial interests do not apply to financial interests held in a publicly traded or publicly available investment fund provided that, at the time of the employee's appointment or upon initial investment in the fund, whichever occurs later, the fund does not have invested more than 30 percent of its assets in a particular transportation or geographic sector and the employee neither exercises control or has the ability to exercise control over the financial interests held in the fund.

Section 6001.104(d) provides that an employee, spouse, or minor child who acquires a financial interest that is subject to § 6001.104, through gift, marriage, or inheritance, must divest the interest within a period set by the agency designee.

**III. Amendment of Employee Responsibilities and Conduct Regulations**

To ensure that employees are on notice of the ethical standards to which they are subject, DOT is amending its remaining standards of conduct regulations at 49 CFR part 99 to include a provision that cross references 5 CFR parts 2634 and 2635 and the Department

of Transportation supplemental regulations at 5 CFR part 6001.

#### IV. Matters of Regulatory Procedure *Administrative Procedure Act*

The Department of Transportation has found that good cause exists under 5 U.S.C. 553 for waiving, as unnecessary and contrary to the public interest, the general requirements for a general notice of proposed rulemaking. As noted above, these supplemental rules are a restatement of current and longstanding policy and practices, and their continued effectiveness under OGE's rules is essential to the effectiveness of DOT's ethics program. In addition, these rules relate to agency organization, procedure, and practice, and to matters of agency management and personnel.

#### *Executive Order 12866*

In promulgating this final regulation, the Department of Transportation has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This final rule has not been reviewed by the Office of Management and Budget under that Executive order.

#### *Regulatory Flexibility Act*

The Department of Transportation has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these regulations will not have a significant economic impact on a substantial number of small entities because they effect only DOT employees.

#### *Paperwork Reduction Act*

These supplemental rules do not contain any information collection requirements that require the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*).

#### *DOT Regulatory Policies and Procedures*

These supplemental rules are not significant under DOT Regulatory Policy and Procedures, 44 FR 11040, and their economic impact will be minimal. For this reason, further regulatory evaluation is not necessary.

#### *Federalism Assessment: Executive Order 12012*

These rules have been analyzed in accordance with the principles and criteria contained in Executive Order 12012, and it has been determined that they do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This is

because the rules have no effect on State and local governments since they only apply to Federal employees. Furthermore, there are no reporting or recordkeeping requirements associated with this rulemaking.

#### List of Subjects

##### *5 CFR Part 6001*

Conflict of interests, Government employees.

##### *49 CFR Part 99*

Conflict of interests.

Dated: July 8, 1996.

Federico Peña,  
*Secretary of Transportation.*

Approved: July 16, 1996.

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

For the reasons set forth in the preamble, the Department of Transportation, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 49, subtitle A, of the Code of Federal Regulations as follows:

#### **TITLE 5—[AMENDED]**

1. A new Chapter L, consisting of part 6001, is added to title 5 of the Code of Federal Regulations to read as follows:

#### **Chapter L—Department of Transportation**

#### **PART 6001—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF TRANSPORTATION**

6001.101 General.

6001.102 Agency designees.

6001.103 Designation of separate agency components.

6001.104 Prohibited financial interests.

Authority: 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 49 U.S.C. 322; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.807.

#### **§ 6001.101 General.**

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Transportation and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635, employees are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2634.

#### **§ 6001.102 Agency designees.**

For purposes of 5 CFR part 2635, the following Department of Transportation officials are agency designees within the meaning of 5 CFR 2635.102(b):

- (a) The Designated Agency Ethics Official;
- (b) The Alternate Agency Ethics Official;
- (c) The Deputy Ethics Officials; and
- (d) As designated by Deputy Ethics Officials, legal counsel in regional and other offices.

#### **§ 6001.103 Designation of separate agency components.**

(a) Pursuant to 5 CFR 2635.203(a), each of the following components of the Department of Transportation is designated as a separate agency for purpose of the regulations in subpart B of 5 CFR part 2635 governing gifts from outside sources and § 2635.807 of this title governing teaching, speaking, or writing:

- (1) Federal Aviation Administration;
- (2) Federal Highway Administration;
- (3) Federal Railroad Administration;
- (4) Federal Transit Administration;
- (5) Maritime Administration;
- (6) National Highway Traffic Safety Administration;
- (7) Saint Lawrence Seaway Development Corporation; and
- (8) United States Coast Guard.

(b) Employees of Department of Transportation components not designated as separate agencies, including employees of the Office of the Secretary of Transportation, the Research and Special Programs Administration, and the Bureau of Transportation Statistics, will be treated as employees of DOT which shall be treated as a single agency that is separate from the above listed agencies for purposes of determining whether the donor of a gift is a prohibited source under 5 CFR 2635.203(d) and for identifying the DOT employee's agency under 5 CFR 2635.807 governing teaching, speaking, and writing.

#### **§ 6001.104 Prohibited financial interests.**

(a) *Federal Railroad Administration (FRA)*. (1) Except as provided in

paragraph (c) of this section, no FRA employee shall hold stock or have any other financial interest, including outside employment, in a railroad company subject to FRA regulation.

(2) No FRA employee appointed after December 1991 shall hold reemployment rights with a railroad company subject to FRA regulation after his or her first year of employment.

(3) No spouse or minor child of an FRA employee shall hold stock or any other securities interest in a railroad company subject to FRA regulation.

(b) *Federal Aviation Administration (FAA)*. Except as provided in paragraph (c) of this section, no FAA employee, or spouse or minor child of the employee, may hold stock or have any other securities interest in an airline or aircraft manufacturing company, or in a supplier of components or parts to an airline or aircraft manufacturing company.

(c) *Exception*. The prohibitions in paragraphs (a)(1) and (b) of this section do not apply to a financial interest in a publicly traded or publicly available investment fund, provided that, at the time of the employee's appointment or upon initial investment in the fund, whichever occurs later, the fund does not have invested, or indicate in its prospectus the intent to invest more than 30 percent of its assets in a particular transportation or geographic sector and the employee neither exercises control nor has the ability to exercise control over the financial interests held in the fund.

(d) *Period to divest*. An individual subject to this section who acquires a financial interest subject to this section, as a result of gift, inheritance, or marriage, shall divest the interest within a period set by the agency designee. Until divestiture, the disqualification requirements of 5 CFR 2635.402 and 2635.502 remain in effect.

TITLE 49—[AMENDED]

#### Subtitle A—Office of the Secretary of Transportation

#### PART 99—EMPLOYEE RESPONSIBILITIES AND CONDUCT

2. The authority citation for part 99 is revised to read as follows:

Authority: 49 U.S.C. 322; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

3. A new subpart A, consisting of § 99.735–1, is added to read as follows:

##### Subpart A—General

##### § 99.735–1 Cross-reference to ethical conduct standards and financial disclosure regulations.

Employees of the Department of Transportation are subject to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Department of Transportation regulations at 5 CFR part 6001 which supplement the executive branch-wide standards and the executive branch-wide financial disclosure regulations at 5 CFR part 2634.

[FR Doc. 96–19493 Filed 7–30–96; 8:45 am]

BILLING CODE 4910–62–P

#### National Highway Traffic Safety Administration

#### 49 CFR Part 571 and 590

[Docket No. 94–70, Notice 4]

RIN 2127–AF35

#### Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule; response to petitions for reconsideration.

**SUMMARY:** This document grants in part and denies in part petitions for reconsideration of a final rule of this agency that extended the performance requirements applicable to vehicle side door latches, hinges, and locks to the back doors of passenger cars and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less.

The agency is granting two of the requests in the petitions. First, the agency is granting a request for a phase-in of the compliance date of the new requirements and establishing the usual reporting and recordkeeping requirements necessary for enforcement of a phase-in. Secondly, the agency is clarifying the definition of “trunk lid” with respect to vehicles in which the seatbacks of rear seats fold down to provide additional cargo space. NHTSA is denying the other two requests in the petitions.

**DATES:** This final rule is effective September 2, 1997.

Any petition for reconsideration of this rule must be received by NHTSA not later than September 16, 1996.

**ADDRESSES:** Petitions for reconsideration should refer to the docket and notice numbers noted above for this rule and be submitted to the Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5109, Washington, DC 20590; telephone (202) 366–4949. Docket room hours are from 9:30 a.m. to 4:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** For technical issues: Dr. William Fan, Light Duty Vehicle Division, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC 20590; telephone (202) 366–4922; FAX (202) 366–4329. For legal issues: Walter Myers, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW,

Washington, DC 20590; telephone (202) 366–2992; FAX (202) 366–3820.

#### SUPPLEMENTARY INFORMATION:

##### Background

Federal motor vehicle safety standard (Standard) No. 206, Door locks and door retention components (49 CFR 571.206), specifies performance requirements for side door latches, hinges, locks, and other supporting means. The requirements of the standard, applicable to all passenger cars, multipurpose passenger vehicles (MPV), and trucks, are intended to minimize occupant ejection from the vehicle in the event of a crash.

On September 28, 1995, NHTSA published a final rule in the Federal Register (60 FR 50124) extending the requirements of the standard to the back doors of passenger cars and MPVs that are so equipped and that have a GVWR of 4,536 kilograms (10,000 pounds) or less, including hatchbacks, station wagons, sport utility vehicles, and passenger vans. The effective date of the new requirements was specified in the rule as September 1, 1997.

The final rule defined “back door” as follows:

[A] door or door system on the back end of a vehicle through which passengers can enter or depart the vehicle, or cargo can be loaded or unloaded, except—

- (1) The trunk lid of a passenger car whose trunk is separated from the passenger compartment by a partition; and
- (2) a door or window composed entirely of glazing material whose latches and/or hinges are attached directly onto the glazing material.

The rule required that each back door system have at least one primary latch and that each primary latch not separate when a load of 11,000 Newtons (2,500 pounds) is applied perpendicular to the face of the latch (Load Test One); when a load of 8,900 Newtons (2,000 pounds) is applied in the direction of fork-bolt opening parallel to the face of the latch (Load Test Two); and when a load of 8,900 Newtons (2,000 pounds) is applied in a direction orthogonal to the other two directions (Load Test Three). The rule further specified that auxiliary latches in multiple-latch back door systems must meet the same strength requirements as primary latches on those doors.

The primary latches of the back doors are required by the rule to have both the fully latched and the secondary latched positions. Auxiliary latches are not required to have a secondary latched position.