

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548



B-103987

APR 20 1977

The Honorable John D. Dingell, Chairman
Subcommittee on Energy and Power
Interstate and Foreign Commerce Committee
House of Representatives

Dear Mr. Chairman:

By letter dated October 26, 1976, this Office responded to a request from you and former Representative Ken Hechler that we review the proposed regulations of the Department of the Interior and the Federal Energy Administration to implement section 522 of the Energy Policy and Conservation Act, 42 U.S.C. § 6392 (Supp. V, 1975), concerning conflicts of interest. Thereafter, by letter dated November 4, 1976, you provided a copy of our response, along with additional comments, to the Secretary of the Interior for his consideration in finalizing his Department's conflict of interest regulations. Your letter also directed the Secretary to:

"Please provide us a copy of the regulations when promulgated together with a statement of the actions taken to carry out the GAO's recommendations. Please also provide a copy thereof to the GAO for review and comment to us."

By letter dated February 8, 1977, Mr. Richard R. Hite, Acting Assistant Secretary, Administration and Management, sent us a copy of the Department of the Interior's revised conflict of interest regulations appearing at 41 Fed. Reg. 56100 (December 23, 1976) as well as copies of two additional letters stating the actions taken by the Department in response to the comments made on its proposed conflict of interest regulations. We have reviewed the Department's final regulations, and we believe that all our concerns have been properly met.

Among the comments made on the Department's proposed regulations was a recommendation that they be revised to make it clear that under section 522 of the Act, all officers and employees are required to file financial disclosure statements unless they are specifically exempted. We note that 43 C.F.R. § 20.735-20(b) now follows this recommendation. It was also recommended that non-policymaking positions be affirmatively identified by reviewing the position's functions rather than by simply using the GS-13 grade level as a division point between policymaking

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and non-policymaking positions. Acting Assistant Secretary Hite's February 8 letter to you indicates that this recommendation has also been implemented. He states:

"* * * While you will see grade level exemptions for subordinate professional and administrative positions, these grade levels vary by organizational unit and were determined after an analysis of the duties and responsibilities of each grade level position."

See also 43 C.F.R. § 20.735-20(b)(2) and Appendix F.

In your letter of November 4, 1976, to the Secretary you expressed concern over the proposed definition of "known financial interests" and questioned whether this definition included continuing financial relationships which a person may have with a prior firm, such as a pension or retirement plan, shared income agreement or an other similar arrangement. The definition of "pecuniary interest" in 43 C.F.R. § 20.735-20(a)(5) now specifically states that relationships with prior firms are included. Further, you expressed a desire that the financial disclosure statements should be made available to the general public in some central location rather than only at the locations where they are to be filed. We note that 43 C.F.R. § 20.735-20(g) now provides that within 30 days after receipt of the statements, they will be available to the public at the Department's Library, 18th and C Streets, N.W., Washington, D.C. 20240.

You also indicated that certain information concerning the term "covered employee" which was set forth in the preamble to the Department's proposed regulations, should be included in the regulations themselves. Now 43 C.F.R. § 20.735-20(a)(1) defines the term "covered employee," and 43 C.F.R. § 20.735-20(b) establishes who shall file financial disclosure statements. Also, under these regulations, all officers or employees performing functions under the Act are required to file unless specifically exempted because they perform non-policymaking and non-regulatory functions. The exempted positions are set forth in Appendix F to part 20 of title 43, Code of Federal Regulations. Appendix F is revised and updated as of September 30 of each year, and does not exempt anyone who either performs or performed any regulatory or policymaking function during the year up to September 30. Thus in practice, the Department not only requires officers and employees who occupy positions where they regularly perform functions of a regulatory or policymaking nature to file financial disclosure statements, but also requires filing for officers

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and employees who occupy positions where they may, even occasionally, during the course of the year perform a function which is of a regulatory or policymaking nature. Following finalization of the list of positions appearing in Appendix F in October, the Ethics Counselor notifies and furnishes to each employee not exempted a financial disclosure statement by December 15 of the same year which the officer or employee must fill out and return by February 1 of the next year.

Since there is a time lag between publication of Appendix F and the end of the year to which the filing applies, it is possible that someone exempted under Appendix F might thereafter perform a policymaking or regulatory function prior to the end of the year. However, we were informally advised that should such a situation arise and become known to an Ethics Counselor, the officer or employee would be requested by the Ethics Counselor to file a financial disclosure statement.

We hope that the foregoing information is of assistance to you.

Sincerely yours,

R. F. KEELER

Deputy Comptroller General
of the United States