

communications are made either in accordance with procedures adopted by the agency or agencies to which the communications are directed or the head of such agency or agencies, in consultation with the Director of the Office of Government Ethics, makes a certification published in the **Federal Register**.

(1) *Purpose of information.* A communication made solely for the purpose of furnishing scientific or technological information may be:

(i) Made in connection with a matter that involves an appreciable element of actual or potential dispute;

(ii) Made in connection with an effort to seek a discretionary Government ruling, benefit, approval, or other action; or

(iii) Inherently influential in relation to the matter in dispute or the Government action sought.

(2) *Scientific or technological information.* The former employee must convey information of a scientific or technological character, such as technical or engineering information relating to the natural sciences. The exception does not extend to information associated with a nontechnical discipline such as law, economics, or political science.

(3) *Incidental references or remarks.* Provided the former employee's communication primarily conveys information of a scientific or technological character, the entirety of the communication will be deemed made solely for the purpose of furnishing such information notwithstanding an incidental reference or remark:

(i) Unrelated to the matter to which the post-employment restriction applies;

(ii) Concerning feasibility, risk, cost, speed of implementation, or other considerations when necessary to appreciate the practical significance of the basic scientific or technological information provided; or

(iii) Intended to facilitate the furnishing of scientific or technological information, such as those references or remarks necessary to determine the kind and form of information required or the adequacy of information already supplied.

Example 1 to paragraph (e)(3): After terminating Government service, a former senior employee at the National Security Agency (NSA) accepts a position as a senior manager at a firm specializing in the development of advanced security systems. The former senior employee and another firm employee place a conference call to a current NSA employee to follow up on an earlier discussion in which the firm had sought funding from the NSA to develop a certain

proposed security system. After the other firm employee explains the scientific principles underlying the proposed system, the former employee may not state the system's expected cost. Her communication would not primarily convey information of a scientific or technological character.

Example 2 to paragraph (e)(3): If, in the previous example, the former senior employee explained the scientific principles underlying the proposed system, she could also have stated its expected cost as an incidental reference or remark.

(4) *Communications made under procedures acceptable to the agency.* (i)

An agency may adopt such procedures as are acceptable to it, specifying conditions under which former Government employees may make communications solely for the purpose of furnishing scientific or technological information, in light of the agency's particular programs and needs. In promulgating such procedures, an agency may consider, for example, one or more of the following:

(A) Requiring that the former employee specifically invoke the exception prior to making a communication (or series of communications);

(B) Requiring that the designated agency ethics official for the agency to which the communication is directed (or other agency designee) be informed when the exception is used;

(C) Limiting communications to certain formats which are least conducive to the use of personal influence;

(D) Segregating, to the extent possible, meetings and presentations involving technical substance from those involving other aspects of the matter; or

(E) Employing more restrictive practices in relation to communications concerning specified categories of matters or specified aspects of a matter, such as in relation to the pre-award as distinguished from the post-award phase of a procurement.

(ii) The Director of the Office of Government Ethics may review any agency implementation of this exception in connection with OGE's executive branch ethics program oversight responsibilities. See 5 CFR part 2638.

Example 1 to paragraph (e)(4): A Marine Corps engineer participates personally and substantially in drafting the specifications for a new assault rifle. After terminating Government service, he accepts a job with the company that was awarded the contract to produce the rifle. Provided he acts in accordance with agency procedures, he may accompany the President of the company to a meeting with Marine Corps employees and report the results of a series of metallurgical tests. These results support the company's

argument that it has complied with a particular specification. He may do so even though the meeting was expected to be and is, in fact, a contentious one in which the company's testing methods are at issue. He may not, however, present the company's argument that an advance payment is due the company under the terms of the contract since this would not be a mere incidental reference or remark within the meaning of paragraph (e)(3) of this section.

(5) *Certification for expertise in technical discipline.* A certification issued in accordance with this section shall be effective on the date it is executed (unless a later date is specified), provided that it is transmitted to the **Federal Register** for publication.

(i) *Criteria for issuance.* A certification issued in accordance with this section may not broaden the scope of the exception and may be issued only when:

(A) The former employee has outstanding qualifications in a scientific, technological, or other technical discipline (involving engineering or other natural sciences as distinguished from a nontechnical discipline such as law, economics, or political science);

(B) The matter requires the use of such qualifications; and

(C) The national interest would be served by the former employee's participation.

(ii) *Submission of requests.* The individual wishing to make the communication shall forward a written request to the head of the agency to which the communications would be directed. Any such request shall address the criteria set forth in paragraph (e)(5)(i) of this section.

(iii) *Issuance.* The head of the agency to which the communications would be directed may, upon finding that the criteria specified in paragraph (e)(5)(i) of this section are satisfied, approve the request by executing a certification, which shall be published in the **Federal Register**. A copy of the certification shall be forwarded to the affected individual. The head of the agency shall, prior to execution of the certification, furnish a draft copy of the certification to the Director of the Office of Government Ethics and consider the Director's comments, if any, in relation to the draft. The certification shall specify:

(A) The name of the former employee;

(B) The Government position or positions held by the former employee during his most recent period of Government service;

(C) The identity of the employer or other person on behalf of which the former employee will be acting;