



**United States Department of the Interior**  
**BUREAU OF LAND MANAGEMENT**

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1400-734 (CA-945) R

EMS TRANSMISSION: 6/4/04  
Instruction Memorandum No. **CA-2004-042**  
Expires: 9/30/05

To: DSDs, CDD District Manager, All Field Managers

From: DSD, Support Services

Subject: Designation of Positions Subject to Confidential Financial Disclosure Reporting Requirements **DD: 06/25/04**

**Program Areas:** Human Resources

**Purpose:** The purpose of this Instruction Memorandum (IM) is to request that all DSDs and District/Field Managers review the numbers and types of positions that have been designated as confidential and whose incumbents are subject to filing annual financial disclosure reports, Office of Government Ethics (OGE) Form 450s.

**Policy/Action:** Approximately one-third of BLM's employee population is currently identified as being confidential and subject to annual financial disclosure reporting requirements. Current identifications should be reviewed with an eye towards significantly reducing this number.

**Definition of a Confidential Filer:** The definition of a confidential filer includes the incumbents of those positions at the GS-15 level and below who **participate personally and substantially through decision or the exercise of significant judgment**, in taking Government actions regarding:

- Contracting or procurement;
- Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;
- Regulating or auditing non-Federal entities; and
- Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of non-Federal entities.

**Personal and Substantial:** To participate personally means to participate directly. It includes the direct and active supervision of a subordinate who participates substantially in a matter in one of the above categories. To participate substantially means that the employee's involvement is of significance to the matter. Participation may be substantial even though it does not determine the outcome of a particular matter. However, it requires more than perfunctory involvement, or involvement on an administrative or peripheral issue. Personal and substantial participation may occur when, for example, an employee participates through **decision, approval, disapproval, recommendation, investigation or the rendering of substantive advice in a particular matter.**

Exclusions: Some of the factors that may exclude positions from being designated as confidential, even if they fall into one of the categories identified above, include:

- There are substantial levels of supervision and review over the position;
- The position operates with little independence of action;
- The decisions made by the incumbent of the position are subject to multiple levels of review prior to implementation; or
- The position otherwise has inconsequential impacts upon the financial or regulatory interests of outside parties.

It is imperative that supervisors and managers be substantially involved in making these determinations, with oversight and assistance from Ethics Counselors and Classification Specialists. Due to the uniqueness of BLM positions, and the differences in the way these positions may operate from one geographic location to another, it is very difficult to say that all of a certain series and grade level of position should be designated as confidential on a Bureau-wide basis. Positions of the same title, series, and grade levels may have significant differences in the decision-making authorities they exercise concerning the financial or regulatory interests of outside parties. These differences may not be fully described in position descriptions, while individual supervisors will know which positions do, or do not, involve these kinds of responsibilities.

DSDs and District/Field Managers are asked to review the list of positions (to be sent separately to specific DSDs or District/Field Managers) that are currently identified as confidential and determine if the position needs to be removed or if any position not identified needs to be added.

**Timeframe:** Please return the list with or without any revisions to CA's Ethics Counselor, Deb Smith by **June 25, 2004**.

**Budget Impact:** The budget impact is minimal.

**Background:** OGE encourages agencies to regularly review the positions identified as being subject to financial disclosure reporting requirements. OGE emphasizes that agencies should utilize exclusion criteria wherever possible and designate only those positions that genuinely meet filing criteria. Reducing the number of positions subject to confidential financial disclosure requirements will result in reductions in the paperwork burdens of affected employees, and will reduce the numbers of employees required to take mandatory ethics training each year.

**Contact:** Questions concerning this IM may be referred to Deb Smith at 916-978-4477.

Signed by:  
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