



Transportation
Security
Administration

Date: April 18, 2006

Subject: OMS 3700: Clarification of Section 18(a) ("Public Statement and Appearances") and Section 19 ("Release of Sensitive or Classified Information")

The purpose of this memo is to address the scope of the right of all FAMS employees to engage in protected public speech regarding FAMS and FAMS management. The applicable standards are provided in OMS Directive 3700, Employee Responsibilities and Conduct, dated July 26, 2005.

This Directive supersedes ADM Directive 3700, which was dated August 9, 2002. OMS Directive 3700 will remain in effect unless cancelled. The provisions of ADM Directive 3700, including section 17 ("Public Statements and Appearances"), have been rescinded and will not be reinstated.

Nothing in OMS Directive 3700 is intended to limit the free public expression of an employee's personal opinions or observations about matters of public concern relating to the FAMS.

Section 18(a) of OMS Directive 3700 does prohibit employees from undermining teamwork or public confidence in FAMS by criticizing or ridiculing other FAMS, TSA, or DHS employees in a manner deemed defamatory, obscene, unlawful, unprofessional, or which constitutes harassment based on sex, race, ethnicity, national origin, or sexual orientation, and which impairs the operation or efficiency of the FAMS, TSA, or DHS. Speech is deemed "unprofessional" only if it violates the principles set forth in section 7 of OMS Directive 3700.

When engaging in public speech, FAMS employees must comply with all laws and policies safeguarding the unauthorized disclosure of critical infrastructure information, classified information, Sensitive Security Information, information protected under the Privacy Act, or other sensitive or secret information, except in conformity with all applicable statutes, regulations, policies and executive orders.

As used in OMS Directive 3700 section 19, the phrase, "other sensitive or secret information," is limited to information that is otherwise designated as not subject to disclosure by statute, regulation, executive order, or a formal written policy of DHS, TSA, or the FAMS.

Supervisors are encouraged to provide this broadcast message to new employees when providing them with copies of OMS Directive 3700.



IMMIGRATION AND CUSTOMS ENFORCEMENT
FEDERAL AIR MARSHAL SERVICE
DIRECTIVES SYSTEM

OMS 3700

07/26/05

SUBJECT: EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. **PURPOSE:** This Directive establishes the standards of behavior required of all Federal Air Marshal Service (FAMS) employees.
2. **DISTRIBUTION:** All FAMS employees.
3. **REFERENCE:**
 - a. Title 18 United States Code Sections 203, 205, 208, and 209.
 - b. *Standards of Ethical Conduct for the Employees of the Executive Branch (Standards)*, 5 C.F.R. Part 2635, dated August 7, 1992.
 - c. *Employee Responsibilities and Conduct*, 5 C.F.R. Part 735, dated November 30, 1992.
 - d. *Principles of Ethical Conduct for Government Office and Employees (Principles)*, Executive Order 12731, dated October 17, 1990.
 - e. Department of Transportation (DOT) Order 3910.1C.
 - f. *Interim Policy on Employee Responsibilities and Conduct*, Transportation Security Administration (TSA) Human Resource Management Policy Manual, HRM Letter No. 735-1.
 - g. U.S. Immigration and Customs Enforcement (ICE), *Interim Table of Offenses and Penalties for Non-Bargaining Unit Employees*, dated April 18, 2005 (see OMS 3752).
 - h. Title 6 United States Code Sections 122, 131.
 - i. *Classified National Security Information*, 6 C.F.R. Part 7, dated January 1, 2005.
4. **ATTACHMENT:** Federal Air Marshal Service, *Standards of Conduct Annual Employee Certification*, FAM F 3700.
5. **RESPONSIBILITY:**
 - a. Supervisors shall:
 1. Ensure that employees under their supervision understand and adhere to the procedure set forth in this Directive.

2. Ensure that all new employees under their supervision receive a personal copy of the requirements and standards contained in this Directive, the *Standards*, and the *Principles* within one week of the new employee's entrance on duty.

3. Provide employees two hours of official duty time to review this Directive, the *Standards*, the *Principles*, and the *TSA Interim Policy on Employee Responsibilities and Conduct*.

4. Ensure that employees under their supervision certify to having received and read this Directive, the *Standards*, and the *Principles* by signing the Federal Air Marshal Service *Standards of Conduct Annual Employee Certification*, FAM F 3700 within 30 days of the effective date of this Directive (07/26/05), and then annually during their annual performance review.

5. Counsel and advise employees under their supervision concerning the requirements and standards set forth in this Directive, and as needed direct them to an agency ethics official for assistance with the application of the *Standards* and *Principles*.

6. Initiate appropriate corrective action when employees under their supervision violate the requirements and standards contained in this Directive, the *Standards*, the *Principles*, and the *TSA Interim Policy on Employee Responsibilities and Conduct*.

7. File a financial disclosure report when required by the FAMS.

8. Attend ethics training as required by the FAMS.

b. Employees shall:

1. Adhere to the procedure set forth in this Directive.

2. Certify to having received and read this Directive, the *Standards*, and the *Principles* within 30 days of the effective date of this Directive (07/26/05), and then annually during their annual performance review. New employees shall make this certification within one week of entry on duty.

3. Seek information from their supervisors or an agency ethics official in case of doubt or misunderstanding on the application of the requirements and standards set forth in this Directive, the *Standards*, and the *Principles*.

4. Be aware that a violation of this Directive, the *Standards*, the *Principles*, or the *TSA Interim Policy on Employee Responsibilities and Conduct* may be cause for appropriate corrective or disciplinary action in addition to any action or penalty prescribed by law.

5. Attend ethics training as required by the FAMS.

6. POLICY:

a. As established by this Directive, each employee of the FAMS is expected to demonstrate standards of behavior, both on and off the job, that reflect favorably on the government and on the public we serve.

b. The absence of a specific published standard of conduct covering an act tending to discredit an employee or the FAMS, ICE, or the Department of Homeland Security

(DHS) does not mean that such an act is condoned, is permissible, or would not call for and result in corrective or disciplinary action.

7. GENERAL RULES OF CONDUCT:

a. When dealing with the public and each other, employees shall be patient, courteous, and respectful. Employees shall be tactful in the performance of their duties, shall control their tempers, and must exercise patience and discretion. Employees shall not engage in argumentative discussions even in the face of provocation, and they shall be attentive to members of the public seeking assistance or information, or who desire to register complaints.

b. When dealing with the public and each other, employees in the performance of their duties shall not intentionally make statements belittling the beliefs or teachings of another, nor shall they make statements that, by their very utterance, would bring discredit upon the FAMS through demonstration of a lack of compassion, tolerance, understanding, or thoughtfulness.

c. When dealing with the public and each other, employees in the performance of their duties will not use coarse, threatening, profane or insolent language or gestures.

d. When dealing with the public and each other, employees in the performance of their duties shall not express any prejudice concerning race, sex, sexual orientation, creed, color, religion, national origin, age, disability, employment, political standing, political beliefs, marital status, pregnancy, or parenthood.

e. Employees shall be punctual in all of their engagements and they shall diligently perform their duties.

f. Employees shall render impartial, efficient, and effective services to the public in the discharge of their duties, and always regard their office as one of public trust.

g. Employees shall perform their duties in a courteous, fair, just, impartial, and reasonable manner and equally to everyone.

h. Employees shall protect and conserve government property, and shall not use or allow its use for any unauthorized purposes.

i. Employees shall report suspected waste, fraud, abuse, corruption or other suspected professional misconduct to their supervisors or to other appropriate FAMS, ICE, or DOT officials, such as the ICE Office of Professional Responsibility or the DHS Office of the Inspector General. Nothing in this Directive shall be interpreted as prohibiting legally protected disclosures, including disclosures to Congress, under 5 U.S.C. § 2302 or other Whistleblower protection laws or regulations.

8. PROHIBITED BEHAVIOR:

a. The FAMS will not condone, permit or tolerate any kind of harassment of others, whether employees, applicants, or members of the public, on the basis of race, sex, sexual orientation, creed, color, religion, national origin, age, disability, employment, political standing, political beliefs, marital status, pregnancy, or parenthood. Employees who

knowingly permit, engage in, or instigate such harassment may be subject to disciplinary action, up to and including removal.

b. Although race and ethnicity may never be the primary or exclusive factors in a decision to investigate, search, or arrest an individual or his or her property, FAMS may consider an individual's race or ethnicity (1) when a compelling government interest is present, such as the protection of the air transportation system and its passengers, to the extent permitted by the Constitution and laws of the United States, or (2) when the race- or ethnicity-based information is specific to particular suspects or incidents, or to ongoing criminal activities, schemes, or operations. Whenever possible, FAMS should consider an individual's connections to countries that are associated with significant terrorist activity rather than relying on race or ethnicity. In no case, however, shall a Federal Air Marshal (FAM) allow race, sex, sexual orientation, creed, color, religion, national origin, age, disability, employment, political opinion or standing, marital status, pregnancy, or parenthood to influence the quality of a FAM's provision of services to the public.

9. NEGLECT OF DUTY:

a. Employees shall not engage in any activities or personal business that causes them to neglect, or be inattentive to their assigned duties.

b. Employees shall report for duty at the time and place required by assignment or orders, and they shall be physically and mentally fit to perform their duties.

c. Employees shall be properly equipped and cognizant of information required for the proper performance of duty so that they may immediately assume their duties.

d. Employees shall not feign illness or injury, falsely report themselves ill or injured, or otherwise deceive or attempt to deceive the FAMS as to the condition of their health. If requested by a supervisor, an absence reported as 'sick leave' must be supported and verified through written documentation provided by a licensed physician, or other acceptable evidence of incapacity for work or need to care for a family member.

e. Employees are required to remain awake while on-duty. If in the course of FAM duties a rest break is necessary, such breaks must be approved by the Team Leader and will be coordinated with other members of the team. Such rest breaks will not be excessive and are solely at the discretion of the Team Leader.

f. Employees shall not leave their duty area without permission from their supervisor.

10. OBLIGATIONS OF SUBORDINATES:

a. Employees shall obey the lawful orders of their supervisors including orders relayed to them by their supervisor's designee.

b. During official investigations, employees shall truthfully answer all questions specifically directed and narrowly related to:

1. The operations of the FAMS;
2. Any activity that may adversely affect the FAMS; or,

3. The scope of their employment.

11. PROPER PERFORMANCE OF DUTIES:

- a. Employees shall not commit or omit acts, which they know, or should know, would constitute a violation of any rules, regulations, procedures, directives, or orders of the FAMS, ICE, or DHS.
- b. Employees shall truthfully complete and submit all required reports according to established procedures. No employee shall knowingly record, allow or cause to be recorded, any inaccurate, false, misleading or improper information.
- c. Employees shall not make false accusation of any criminal charges. Employees shall not knowingly make false accusations of employee misconduct.
- d. FAMS shall not make any arrest, search, or seizure, which they know, or should know, is not in accordance with law and FAMS, ICE, or DHS policy and procedures.
- e. Employees shall use government equipment for its intended purpose in accordance with established policy and procedures.
- f. Employees shall not abuse, use negligently, negligently damage, or lose government equipment through acts of omission or commission.
- g. Employees shall maintain their equipment in proper order and shall report any defect or hazardous condition to their supervisor.

12. OFF-DUTY CONDUCT:

- a. Employees are expected to conduct themselves in a manner that will not reflect adversely on themselves, the FAMS, ICE, or DHS.
- b. Employees shall not cause embarrassment to the FAMS, ICE, or DHS, or behave in a manner that will cause their co-workers or the public to lose trust in them or question their reliability or judgment.
- c. Misconduct may result in disciplinary action including removal of the employee's security clearance. The following are examples of off-duty misconduct:
 1. Any applicable violation of the requirements and standards of this Directive, the *Standards*, the *Principles*, or the *TSA Interim Policy on Employee Responsibilities and Conduct*;
 2. Criminal, infamous, notorious or dishonest behavior;
 3. Misuse of alcohol;
 4. Deleterious personal or business affairs that affect the employee, disrupt the workplace, or adversely affect the FAMS, ICE, or DHS;
 5. Violation of federal, state, or local law. A conviction for the violation of any law shall be *prima facie* evidence of a violation of this Directive. An acquittal or lack of a formal criminal complaint may not preclude an internal administrative investigation and subsequent disciplinary action;
 6. Possession or use of any controlled substance in violation of federal, state, or local law; or,

7. Gambling activity while on government-owned or leased property. Gambling activity includes, but is not limited to, the operation of a gambling device, conducting a lottery or pool, a game for money or property, or selling or purchasing a numbers slip or ticket.

d. FAMS occupy safety-sensitive positions and they are therefore subject to testing for use of alcohol and controlled substances per DOT Order 3910.1C. FAMS shall abstain from alcohol for a minimum of 4-hours prior to non-mission duty and a minimum of 8-hours prior to mission duty. FAMS shall not appear for duty or be on-duty with a blood/alcohol concentration of 0.02 or greater. If a FAM, while on-duty, is found to have a blood/alcohol concentration of 0.02 or greater, disciplinary measures will ensue. Refusing to provide breath for testing, tampering with breath alcohol equipment, or failing to cooperate with the testing procedures will be grounds for removal from the FAMS.

e. Employees arrested for any offense other than a minor traffic violation must immediately report that arrest to their supervisor and provide written documentation of that arrest.

f. Notwithstanding any provision in this Directive, an employee has the right to disclose any information that the employee reasonably believes evidences a violation of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, unless such disclosure is prohibited by law, regulation, or executive order.

13. ETHICAL CONDUCT: Employees shall not solicit or accept any gift (including any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or any item having monetary value) where the gift is:

- a. Offered because of the employee's official position; or,
- b. Offered by a prohibited source including, any person who is seeking official action by the FAMS, does business or seeks to do business with the FAMS, conducts activities regulated by the FAMS, or has interests that may be substantially affected by the performance or non-performance of the employee's official duties, unless an exception applies under the *Standards*.

14. ABUSE OF POSITION: Employees shall not use their official position, credentials, official identification cards, or badges to:

- a. Obtain private gain (including financial gain) or the private gain of friends, relatives, or persons with whom the employee is affiliated in a non-governmental capacity;
- b. Obtain privileges not otherwise available to them, except in the performance of official duty; or,

c. Avoid the consequences of illegal acts by improperly requesting relief from traffic ordinances, statutes, or regulations while operating privately owned or government vehicles.

15. OUTSIDE EMPLOYMENT:

a. FAMS employees who are engaged in outside employment shall notify their immediate FAMS supervisor in writing of any outside employment and include the following in the notification:

1. The name of the outside employer or a statement that the employee will be self-employed;
2. The type of employment or business activity;
3. A description of the employee's official dealings on behalf of the FAMS, ICE, or DHS with the outside employer; and,
4. Any additional information requested by the FAMS supervisor or Deputy Ethics Official.

b. Employees may not engage in outside employment or other outside activity that conflicts with their official duties. Outside employment conflicts with an employee's official duties if:

1. It is prohibited by statute, Executive Order, or federal regulations, including, but not limited to, the *Standards*, the financial conflicts of interest statute (18 U.S.C. Section 208), the statutes prohibiting representational activities (18 U.S.C. Sections 203 and 205), and the statute prohibiting the supplementation of an employee's government salary (18 U.S.C. Section 209);
2. It would require the employee's disqualification from matters so central and critical to the employee's official duties that the employee's ability to perform the duties of their position would be materially impaired;
3. It hinders the mission of the FAMS, ICE, or DHS; or,
4. It creates the appearance that the employee is violating the law or ethical standards.

c. No employee will accept employment, compensation, payment of expense, or any other thing of monetary value under circumstances in which acceptance may result in, or create the appearance of, a conflict of interest. The following outside employment activities are examples of activities that conflict with or create the appearance of a conflict of interest:

1. Employment providing security or law enforcement services to, or on behalf of, any outside entity;
2. Employment with any outside entity engaging in the sale, manufacture, or distribution of security equipment, firearms, ammunition, or explosive devices;

3. Employment with any outside entity or person with whom the employee has official dealings on behalf of the FAMS, ICE, or DHS;
4. Engaging in sales activity, including the solicitation of business or the receipt of orders while on duty; or,
5. Engaging in outside employment or other outside business activity that provides goods or services to the FAMS, ICE, or DHS, or with persons or entities whose business interests are affected by FAMS, ICE, or DHS rules or regulations.

d. No employee will engage in outside employment or other outside activity that impairs the employee's mental or physical ability to perform FAMS duties and responsibilities in an acceptable manner.

e. No employee will engage in any outside business or activity, which impairs the operation or efficiency of the FAMS.

f. No employee may use sick leave to engage in outside employment or any activity associated therewith.

g. Outside employment is permitted if there is no realistic possibility of a conflict of interest or the appearance of a conflict of interest. Employees are encouraged to contact the ICE Office of Principal Legal Advisor for guidance on whether outside employment or other outside activities conflict with an employee's official duties.

16. ADVERTISEMENTS, ENDORSEMENTS AND REFERRALS: Employees shall not use or permit the use of their government position or title, or any authority associated with their public office to endorse or promote any product, service, or enterprise, unless approved by the FAMS Director and the ICE Office of Principal Legal Advisor.

17. QUESTIONABLE ASSOCIATIONS AND ESTABLISHMENTS:

a. Employees shall avoid association or participation with extremist organizations or activities that are inconsistent with their duties and responsibilities as FAMS employees. Extremist organizations or activities are defined as ones that:

1. Advocate racial, gender, or ethnic hatred or intolerance;
2. Advocate, create, or engage in illegal discrimination based on race, color, gender, religion, or national origin; or,
3. Advocate the use of force or violence or unlawful means to deprive individuals of their rights under the United States Constitution or the laws of the United States, or of any state.

b. Employees shall avoid regular or continuous associations or dealings with persons whom they know, or should know, are under criminal investigation or indictment or who have a reputation in the community for present involvement in felonious or criminal behavior, except as necessary in the performance of official duties, or where unavoidable because of other personal relationships.

c. Employees shall not knowingly visit or frequent a house of prostitution, gambling house, or any establishment wherein federal, state, or local laws are violated.

18. PUBLIC STATEMENTS AND APPEARANCES:

a. The promotion of teamwork among employees in the workplace and public confidence in FAMS are important interests to the operation of FAMS and to the safety of the public. Employees shall not undermine teamwork or public confidence in FAMS by criticizing or ridiculing other FAMS, ICE, or DHS employees in a manner that is defamatory, obscene, unlawful, unprofessional, or which constitutes harassment based on sex, race, ethnicity, national origin, or sexual orientation, and which impairs the operation or efficiency of the FAMS, ICE, or DHS.

b. FAMS employees should notify the ICE Office of Public Affairs and Internal Communications (OPA) for prior guidance and review before making statements the employee knows are likely to be made available to the general public, that have policy implications or address sensitive policy or political issues, and which:

1. Will be made in the employee's official capacity; or
2. Will be made under circumstances in which the public is reasonably likely to perceive the statement as reflecting the views of FAMS or its management.

c. Nothing in this Directive is intended to limit the free public expression of an employee's personal opinions about matters of public concern, including opinions about issues of public concern relating to the FAMS, provided the individual complies with all laws and policies safeguarding the unauthorized disclosure of official information.

19. RELEASE OF SENSITIVE OR CLASSIFIED INFORMATION:

a. Employees shall not disclose information that is classified, critical infrastructure information, Sensitive Security Information, information protected under the Privacy Act, or other sensitive or secret information, except in conformity with all applicable statutes, regulations, policies, and executive orders, and only when authorized by the FAMS Classified Documents Custodian.

b. Employees who release classified information or records in any form without authorization from the FAMS Classified Documents Custodian are in violation of United States Code and are subject to arrest and prosecution.

c. Employees who release sensitive information without authorization from the FAMS Classified Documents Custodian are in violation of FAMS, ICE, and DHS policy and will be subject to disciplinary action.

20. USE OF GOVERNMENT SYSTEMS:

a. Employees are expected to conduct themselves professionally in the workplace and are prohibited from inappropriate use of government telephones, computers, electronic messaging and Internet connectivity.

b. Employees are prohibited from any government systems usage that may result in congestion, delay, or disruption of service to the FAMS including, but not limited to, viewing, creating, acquiring, downloading, storing, copying, or transmitting audio files, video clips, pictures, or animation files when that use is not in conjunction with the performance of official duties.

c. Employees are specifically prohibited from using any government systems to access or distribute sexually explicit or sexually oriented materials, materials that ridicule or may be offensive to others on the basis of race, sex, sexual orientation, creed, color, religion, national origin, age, handicap, employment, political standing, political beliefs, marital status, pregnancy, or parenthood.

d. Employees are specifically prohibited from any government systems usage for the pursuit of private commercial activities or profit-making ventures, or partisan political activities.



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