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DEPARTMENT OF DEFENSE

5 CFR Chapter XXVI

32 CFR Part 40

RIN 3209–AA00, 3209–AA04, 3209–AA14, 3209–AA15, and 0790–AF08

Supplemental Standards of Ethical Conduct for Employees of the Department of Defense

AGENCY: Department of Defense (DoD).

ACTION: Interim rule, with request for comments.

SUMMARY: DoD, with the concurrence of the Office of Government Ethics (OGE), is issuing an interim rule which establishes standards of ethical conduct for DoD employees that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE effective February 3, 1993. The interim rule is a necessary supplement because it addresses ethical issues specific to DoD. The interim rule: (1) Designates separate agency components; (2) establishes additional exceptions to the prohibitions on gifts from outside sources; (3) imposes additional limitations on gifts between DoD employees; (4) requires notification of disqualifications; (5) limits sales to subordinates; (6) requires prior approval for certain outside activities; and (7) establishes an additional disclaimer requirement for certain speeches and writings. DoD is also revising its existing standards of conduct regulation, 32 CFR part 40, to retain the 18 U.S.C. 208(b) waiver provision and to cross-reference to executive branch-wide standards of ethical conduct, financial disclosure and post-employment regulations, and to this supplemental regulation.

DATES: Interim rule effective September 10, 1993. Comments are invited and must be received on or before October 9, 1993.

ADDRESSES: Send comments to the Standard of Conduct Office, Office of General Counsel, 1600 Defense Pentagon, Washington, DC 20301–1600.

FOR FURTHER INFORMATION CONTACT: Randi Elizabeth DuFresne, DoD Standards of Conduct Office, (703) 697–5305, FAX (703) 697–1640.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published a final rule entitled "Standards of Ethical Conduct for Employees of the Executive Branch" (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557 and 52583. The Standards, codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct that are applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorized executive branch agencies to publish agency-specific supplemental regulations that are necessary to implement their agency ethics programs. The Department of Defense and OGE have determined that the following interim rule which appears in new 5 CFR chapter XXVI, is necessary in light of DoD's particular programs and operations.

II. Analysis of the Regulations

§ 3601.101 Purpose

Section 3601.101 of the interim rule explains that the regulations contained in the interim rule apply to Department of Defense employees and are supplemental to the executive branch-wide Standards in 5 CFR part 2635. Further, all DoD employees must comply with the executive branch-wide regulations, these supplemental regulations and applicable guidance and procedures implementing both.

§ 3601.102 Designation of Separate Agency Components

5 CFR 2635.202(a) prohibits 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 separate agencies components of the department that exercise distinct and separate functions. Designations made pursuant to section 2635.203(a) are used also for purposes of applying the prohibition in 5 CFR 2635.807(a) on receipt of compensation for teaching, speaking or writing related to an employee's duties.

Section 3601.102(a) of the interim rule designates 15 components of the Department of Defense as separate agencies. In addition to the Office of the Inspector General and Uniformed Services University of the Health Sciences, these include each of the three military departments and 10 components that are generally recognized as separate agencies within DoD because they exercise separate and distinct functions. As further amplified in § 3601.102(b), DoD employees not employed in one of the 15 designated agencies are to be deemed employees of an agency that consists of all parts of the Department, other than the 15 designated agencies, and that is separate and distinct from each of those agencies. Thus, for example, an Army contractor would be a prohibited source for all employees of the Department of the Army, but not for employees of the Department of the Navy. Neither would that Army contractor be a prohibited source for employees of the Office of the Secretary of Defense (OSD) unless the contractor had a matter pending before OSD or a DoD component other than one of the 15 designated as separate agencies. The separate agency designations made by § 3601.102(a) are used in § 3601.103(a) of this supplemental for purposes of determining agency interest, in § 3901.107 for determining whether an employee must obtain approval for outside employment or business activities with a prohibited source, and in § 3601.108 for purposes of identifying when a DoD employee engaged in teaching, speaking or writing must make the disclaimer required by that section.

§ 3601.103 Additional Exceptions for Gifts From Outside Sources

Section 3601.103 of this interim rule provides two additional exceptions to the prohibitions in 5 CFR 2635.202(a) on gifts from outside sources. It thus supplements the gift exceptions in 5 CFR 2635.204, paragraph (k) of which permits an employee to accept any gift which is specifically authorized by a supplemental agency regulation.

Under § 3601.103(a) of the interim rule, a DoD employee may accept free attendance at certain events sponsored by State or local governments or by qualifying civic organizations when his attendance has been determined to serve the DoD employee's agency's community relations interests. The free attendance must not have been solicited by the employee. The cost of DoD employee's attendance and, when invited, the cost of a spouse's attendance must be provided by the sponsor of the event in accordance with the standard set forth in 5 CFR 2635.204(g)(5).

5 CFR 2635.204 contains two exceptions to the prohibitions on gifts from outside sources that are specifically tailored to permit employees to attend certain events. Free attendance at certain widely attended gatherings is permitted by § 2635.204(g)(2) and, under § 2635.204(h), employees may accept certain social invitations from persons who are not prohibited sources. While these two exceptions permit free attendance at a wide range of events, DoD has determined that they do not provide enough flexibility to meet its community relations needs. Largely unique to DoD, these community relations needs arise from DoD's system of installations located throughout the country. Many of these installations are major factors in the local communities where they are located and a reasonable degree of social interchange between DoD personnel and members of the local community is mutually beneficial.

By virtue of utility and other arrangements for installation support services, many State and local governments are prohibited sources for DoD personnel. The commanding officer of a local installation, therefore, may be unable to avail himself of the exception at CFR 2635.204(h) to accept an invitation to attend a local government-sponsored luncheon for local community leaders. Although the particular luncheon may fail to rise to the level of a widely attended gathering, DoD views the commanding officer's attendance at this sort of event as appropriate to meet its community relations interests. The exception at § 3601.103(a) is intended to permit attendance at events of this nature. As used in this section, the term "event" is not intended to permit one-on-one entertainment of a DoD employee, as in the case of a local official taking a military officer and his spouse out to dinner at the expense of the local government. Where such entertainment is provided by a prohibited source or because of the DoD employee's official position, it may be accepted only if covered by an exception contained in 5 CFR 2635.204.

Section 3601.103(b) of the interim rule supplements the authority of 5 CFR 2635.204(d) for acceptance of certain awards for meritorious public service and achievement. While § 2635.204(d) will permit employees to accept many scholarships and grants awarded on the basis of merit, DoD has determined that it will not always permit DoD employees and their dependents to accept many scholarships and grants under programs that have been tailored specifically for DoD personnel. As in the case of a one-time scholarship for DoD personnel who served in Operation Desert Storm, not all such scholarships are funded to ensure continuation on a regular basis nor are they necessarily to be awarded on the basis of merit. Section 3601.103(b)(1) incorporates many of the conditions found in 5 CFR 2635.204(d), but does not limit acceptance to those scholarships and grants given for meritorious public service or meritorious achievement. Section 3601.103(b)(2) permits even one-time scholarships and grants when awarded under written standards approved by the Secretary concerned.

§ 3601.104 Additional Limitations on Gifts Between DoD Employees

Section 3601.104 supplements subpart C of 5 CFR by adding two provisions that limit use of the exceptions in 5 CFR 2635.305 regarding certain gifts between employees.

Under 5 CFR 2635.302 a DoD employee is generally prohibited from accepting a gift from an employee receiving less pay than himself and may not donate toward a gift for an official superior. As an exception to this general prohibition, § 2635.304(b) permits an employee to accept an appropriate gift on certain special, infrequent occasions, such as retirement or marriage. In recognition of such occasions, § 2635.304(c)(1) also permits employees to contribute nominal amounts for an appropriate group gift to a superior and it permits a superior to accept an appropriate group gift, even though a subordinate may have contributed to its purchase. Within DoD, commanding officers and other supervisors may have authority over hundreds, if not thousands, of employees and enlisted personnel. The very size of some DoD components and offices, on occasion, has meant that small amounts collected from subordinates have been sufficient, in the aggregate, to finance gifts that are lavish and beyond what would meet the requirement in 5 CFR 2635.304(b) that the gift be appropriate to the occasion.

To ensure that group gifts are appropriate to the special, infrequent occasions for which they are given, § 3601.104(a) limits to $300 the value of a gift or gifts an employee may accept from any single donating group if the employee knows or has reason to know that one or more of the persons donating to the gift is his subordinate. In addition to those items that are excluded from the definition of a gift by 5 CFR 2635.203(b), this limitation does not apply to the cost of food, refreshments and entertainment provided to the employee and his personal guests at an event, such as a retirement party. The section provides, however, that the value of gifts from two or more groups will be aggregated and treated as gifts from a single group, and thus subject to a single $300 limitation, if the recipient knows or has reason to know that any subordinate is a member of more than one such group. This supplemental regulation places the obligation to decline the gift on the employee who is the recipient of the gift, not on the subordinate who may have contributed.

Nothing in § 3601.104(a) places a limitation on the number of group gifts that may be accepted by an employee to mark the special, infrequent occasions permitted by 5 CFR 2635.304(b). To help ensure, however, that the number of group gifts given is not compounded by individual contributions that fail to meet the requirement in 5 CFR 2635.304(c) that they be nominal in amount, § 3601.104(b) of the interim rule specifies that an employee may not contribute more than $10 to a group gift for a superior. It excludes from the $10 limitation nominal amounts separately and voluntarily contributed for food, refreshments and entertainment for the superior, the superior's personal guests and others who attend the event.

§ 3601.105 Standard for Accomplishing Disqualification

Section 3601.105 of the interim rule supplements the standards for disqualification contained in 5 CFR part 2635. Under § 2635.402(c) of this title, it is the employee's obligation to disqualify from participation in matters affecting his own financial interests or those of persons whose interests are imputed to him under 18 U.S.C. 208(a). Under 5 CFR 2635.502(e) and 2635.604 the same is true when an employee is required to disqualify to avoid an appearance of lack of impartiality or to avoid participating in a matter affecting the financial interests of a prospective employer. Under each of these sections, the executive branch-wide Standards generally permit disqualification to be accomplished simply by not

participating in the matter, although each provides that the disqualified employee should notify the person responsible for his assignment.

For a number of years, it has been the practice throughout DoD to require written notice of employee disqualifications. Because of the problems of managing its vast workforce, DoD has determined that it is necessary to the success of its mission, and to the success of its ethics program, to continue its procedures for written notice of disqualifications. DoD recognizes the problems noted by the Office of Government Ethics in adopting a requirement for written notice of disqualification on an executive branch-wide basis. See 57 FR 35024. It is not DoD's purpose to impose an overly technical requirement that would result in disciplining an employee for failure to provide written notice by some arbitrary deadline. Thus, the notice requirement imposed by § 3601.105 is phrased to give an employee flexibility in determining precisely when he will give notice of disqualification from a matter to which he has been assigned. Notice is to be given when the employee determines that he will not participate in the matter. In no way does this notice requirement affect the employee's primary obligation to not participate in the matter.

§ 3601.106 Limitation on Solicited Sales

5 CFR part 2635 prohibits an employee from using public office for private gain, but contains no specific prohibition on sales to junior personnel where the sale price is fair and does not result in a gift to the superior. Because of its command structure, senior personnel within DoD exert a degree of authority over junior personnel that exceeds that present in most civilian agencies. DoD standards of conduct regulations have long contained a prohibition on sales to subordinates and § 3601.106 of this interim rule is a restatement, with minor modifications, of that prohibition. It prohibits a DoD employee from soliciting or making solicited sales to DoD personnel who are junior in rank, grade or position or to the family members of such personnel, regardless of whether the solicitation or sale takes place on or off duty. The section specifically permits employees to post sales notices on DoD bulletin boards provided for those purposes. And, in the absence of coercion or intimidation, it permits sale or lease of the employee's own personal or real property and sales made by an employee during outside employment in a retail establishment.

§ 3601.107 Prior Approval for Outside Employment and Business Activities

When it is determined that such a requirement is necessary or desirable for the purpose of administering its ethics program, 5 CFR 2635.803 provides that an agency may, by supplemental regulation, require its employees to obtain prior approval before engaging in outside employment or other outside activities. To ensure that the outside activities of its many employees do not violate the executive branch-wide standards in 5 CFR 2635, any provision of these supplemental regulations, or any other provision of law or regulation, DoD has determined that it is necessary to the successful administration of its ethics program to require employees to obtain prior written approval before engaging in a business activity or compensated outside employment with a prohibited source. Section 3601.107(a) of the interim rule imposes a requirement to obtain approval before engaging in such activities and contains definitions of the terms "business activity," "employment," and "prohibited source" used in stating that requirement.

To ensure that § 3601.107 is not itself construed as authority to deny permission to engage in any outside activity, it includes a sentence specifying that approval will be granted unless the activity is expected to involve conduct prohibited by statute or regulation. Where a determination can be made that those activities are not likely to be prohibited, § 3601.107(b) delegates to the designated agency ethics official or his designee authority to issue written notice exempting categories of business activities or employment from the requirement for prior approval.

§ 3601.108 Disclaimer for Speeches and Writings Devoted to Agency Matters

Under 5 CFR 2635.807(a) an employee may not accept compensation for, but otherwise may engage in outside teaching, speaking or writing related to his official duties. In connection with such activities, 5 CFR 2635.807(b) prohibits the use of an employee's official title or position to identify the DoD employee in connection with the outside teaching, speaking or writing activity, except when given as one of several biographical details or, when accompanied by a appropriate disclaimer, in connection with an article published in a scientific or professional journal. Nothing in the executive branch-wide Standards, however, limits an employee's use of a military rank to identify himself in connection with the teaching, speaking or writing activity.

Even though not required to do so by 5 CFR 2635.807(b), § 3601.108 of the interim rule requires an employee to make an appropriate disclaimer when any reference is made to the DoD employee's rank, or to his official title or position, in connection with teaching, speaking or writing when the subject matter deals in significant part with an ongoing or announced policy, program or operation of the DoD employee's agency. This supplement to the standards in 5 CFR 2635.807(b) has been determined by DoD to be necessary to avoid any suggestion that a DoD employee is speaking on behalf of his agency or otherwise presenting an agency position. For the purpose of determining whether subject matter deals with a policy, program or operation of the DoD employee's agency, § 3601.108 incorporates the separate agency designations made by § 3601.102 of the interim rule. It also contains a requirement to ensure that the disclaimer is given prominence appropriate to the activity.

32 CFR Part 40 Standards of Conduct

32 CFR part 40 is revised to remove standards of conduct superseded by 5 CFR part 2635. Section 40.1 retains 18 U.S.C. 208(b) waivers for DoD, the Army, the Navy, and the Air Force. Sections 40.2 through 40.7 cross-reference to OGE regulations.

III. Matters of Regulatory Procedure

Administrative Procedure Act

As the Secretary of Defense, I have found good cause, pursuant to 5 U.S.C. 553(b), for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these interim rules. It is important to a smooth transition from DoD's prior ethics rules to the new executive branch-wide Standards that these rule-making actions take place as soon as possible. Furthermore, this rule-making is related to DoD's organization, procedure and practice. As an interim rule, there is provision for a 30-day public comment period. DoD will review comments received within the comment period and will consider modifications that appear appropriate in adopting these rules as final, with the concurrence of OGE.

Executive Order 12291, Federal Regulation

As the Secretary of Defense, I have determined that this is not a major rule

as defined in section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As the Secretary of Defense, I have determined under the regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant economic impact on a substantial number of small entities because it affects only DoD employees.

Paperwork Reduction Act

As the Secretary of Defense, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 3601

Conflict of interests, Ethics standards, Executive branch standards of conduct, Government employees.

32 CFR Part 40

Conflict of interests, Ethics standards, Executive branch standards of conduct, Government employees, Financial disclosure, Honoraria, Post-employment.

Dated: August 30, 1993.

Les Aspin,

Secretary of Defense.

Approved: September 3, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Department of Defense, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 32, chapter I, part 40 of the Code of Federal Regulations as follows:

Title 5—[Amended]

1. A new chapter XXVI, consisting of part 3601, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER XXVI—DEPARTMENT OF DEFENSE

PART 3601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF DEFENSE

Sec.
3601.101 Purpose.
3601.102 Designation of separate agency components.
3601.103 Additional exceptions for gifts from outside sources.
3601.104 Additional limitations on gifts between DoD employees.
3601.105 Standards for accomplishing disqualification.
3601.106 Limitation on solicited sales.
3601.107 Prior approval for outside employment and business activities.
3601.108 Disclaimer for speeches and writing devoted to agency matters.

Authority: 5 U.S.C. 301, 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 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), 2635.204(k), 2635.803.

§ 3601.101 Purpose.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Defense (DoD) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. DoD employees are required to comply with part 2635, this part, and implementing guidance and procedures.

§ 3601.102 Designation of separate agency components.

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

(1) Department of the Army;
(2) Department of the Navy;
(3) Department of the Air Force;
(4) Defense Commissary Agency;
(5) Defense Contract Audit Agency;
(6) Defense Finance and Accounting Service;
(7) Defense Information Systems Agency;
(8) Defense Intelligence Agency;
(9) Defense Investigative Service;
(10) Defense Logistics Agency;
(11) Defense Mapping Agency;
(12) Defense Nuclear Agency;
(13) National Security Agency;
(14) Office of the Inspector General; and
(15) Uniformed Services University of the Health Sciences.

(b) Employees of DoD components not designated as separate agencies, including employees of the Office of the Secretary of Defense, will be treated as employees of DoD 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 DoD employee's agency under 5 CFR 2635.807 governing teaching, speaking and writing.

§ 3601.103 Additional exceptions for gifts from outside sources.

In addition to the gifts which come within the exceptions set forth in 5 CFR 2635.204, and subject to all provisions of 5 CFR 2635.201 through 2635.205, a DoD employee may accept gifts from outside sources otherwise prohibited by 5 CFR 2635.202(a) as follows:

(a) *Events sponsored by States, local governments or civic organizations.* A DoD employee may accept a sponsor's unsolicited gift of free attendance for himself and an accompanying spouse at an event sponsored by a State or local government or by a civic organization exempt from taxation under 26 U.S.C. 501(c)(4) when:

(1) The agency designee has determined that the community relations interests of the agency will be served by the DoD employee's attendance;

(2) The cost of the DoD employee's and the spouse's attendance is provided by the sponsor in accordance with 5 CFR 2635.204(g)(5); and

(3) The gift of free attendance meets the definition in 5 CFR 2635.204(g)(4).

(b) *Scholarships and grants.* A DoD employee, or the dependent of a DoD employee, may accept an educational scholarship or grant from an entity that does not have interests that may be substantially affected by the performance or non-performance of the involved DoD employee's official duties, or from an association or similar entity that does not have a majority of members with such interests, if the designated agency ethics official or designee determines that:

(1) The scholarship or grant is made as part of an established program of grants or awards that is funded, wholly or in part, to ensure its continuation on a regular basis and under which recipients are selected pursuant to written standards; or

(2) The scholarship or grant is established for the benefit of DoD employees, or the dependents of DoD employees, and recipients are selected pursuant to written standards approved by the Secretary of Defense or, where the scholarship or grant is available only to military members or their dependents, by the Secretary of the military department concerned.

§ 3601.104 Additional limitations on gifts between DoD employees.

The following limitations shall apply to gifts from groups of DoD employees that include a subordinate and to voluntary contributions to gifts for superiors permitted under 5 CFR 2635.304(c)(1):

(a) *Gifts from a group that includes a subordinate.* Regardless of the number of DoD employees contributing to a gift on a special, infrequent occasion as permitted by 5 CFR 2635.304(c)(1), a DoD employee may not accept a gift or gifts from a donating group if the market value exceeds an aggregate of $300 and if the DoD employee knows or has reason to know that any member of the donating group is his subordinate.

(1) The cost of items excluded from the definition of a gift by 5 CFR 2635.203(b) and the cost of food, refreshments and entertainment provided to the DoD employee and his personal guests to mark the occasion for which the gift is given shall not be included in determining whether the value of a gift or gifts exceeds the $300 aggregate limit.

(2) The value of a gift or gifts from two or more donating groups shall be aggregated and shall be considered to be from a single donating group if the DoD employee offered the gift knows or has reason to know that an individual who is his subordinate is a member of more than one of the donating groups.

(b) *Voluntary contribution.* For purposes of 5 CFR 2635.304(c)(1), the nominal amount of a voluntary contribution that a DoD employee may solicit from another DoD employee for a group gift to the contributing DoD employee's superior for any special, infrequent occasion shall not exceed $10. A voluntary contribution of a nominal amount for food, refreshments and entertainment for the superior, the personal guests of the superior and other attendees at an event to mark the occasion for which a group gift is given may be solicited as a separate, voluntary contribution not subject to the $10 limit.

§ 3601.105 Standard for accomplishing disqualification.

(a) *Disqualifying financial interests.* A DoD employee who is required, in accordance with 5 CFR 2635.402(c), to disqualify himself from participation in a particular matter to which he has been assigned shall, notwithstanding the guidance in 5 CFR 2635.4029(c) (1) and (2), provide written notice of disqualification to his supervisor upon determining that he will not participate in the matter.

(b) *Disqualification to ensure impartiality.* A DoD employee who is required, in accordance with 5 CFR 2635.502(e), to disqualify himself from participation in a particular matter involving specific parties to which he has been assigned shall, notwithstanding the guidance in 5 CFR 2635.502(e) (1) and (2), provide written notice of disqualification to his supervisor upon determining that he will not participate in the matter.

(c) *Disqualification from matter effecting prospective employees.* A DoD employee who is required, in accordance with 5 CFR 2635.604(a), to disqualify himself from participation in a particular matter to which he has been assigned shall, notwithstanding the guidance in 5 CFR 2635.604 (b) and (c), provide written notice of disqualification to his supervisor upon determining that he will not participate in the matter.

(d) *Withdrawal of notification.* A DoD employee may withdraw written notice under paragraphs (a), (b) or (c) of this section upon deciding that disqualification from participation in the matter is no longer required.

§ 3601.106 Limitation on solicited sales.

A DoD employee shall not knowingly solicit or make solicited sales to DoD personnel who are junior in rank, grade or position, or to the family members of such personnel, on or off duty. In the absence of coercion or intimidation, this does not prohibit the sale or lease of a DoD employee's noncommercial personal or real property or commercial sales solicited and made in a retail establishment during off-duty employment. The posting of an advertisement in accordance with Federal building management policies does not constitute solicitation for purposes of this section.

§ 3601.107 Prior approval for outside employment and business activities.

(a) A DoD employee, other than a special Government employee, who is required to file a financial disclosure report (SF 450 or SF 278) shall obtain written approval from the agency designee before engaging in a business activity or compensated outside employment with a prohibited source, unless general approval has been given in accordance with paragraph (b) of this section. Approval shall be granted unless a determination is made that the business activity or compensated outside employment is expected to involve conduct prohibited by statute or regulation. For purposes of this section, the following definitions apply:

(1) *Business activity.* Any business, contractual or other financial relationship not involving the provision of personal services by the DoD employee. It does not include a routine commercial transaction or the purchase of an asset or interest, such as common stock, that is available to the general public;

(2) *Employment.* Any form of non-Federal employment or business relationship involving the provision of personal services by the DoD employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee; and

(3) *Prohibited source.* See 5 CFR 2635.203(d) (modified by the separate DoD component agency designations in § 3601.102 of this part).

(b) The DoD component designated agency ethics official or designee may, by a written notice, exempt categories of business activities or employment from the requirement of paragraph (a) of this section, for prior approval based on a determination that business activities or employment within those categories would generally be approved and are not likely to involve conduct prohibited by statute or regulation.

§ 3601.108 Disclaimer for speeches and writings devoted to agency matters.

A DoD employee who uses or permits the use of his military rank or who includes or permits the inclusion of his title or position as one of several biographical details given to identify himself in connection with teaching, speaking or writing, in accordance with 5 CFR 2635.807(b), shall make a disclaimer if the subject of the teaching, speaking or writing deals in significant part with any ongoing or announced policy, program or operation of the DoD employee's agency, as defined in § 3601.102, and the DoD employee has not been authorized by appropriate agency authority to present that material as the agency's position. The disclaimer shall be made as follows:

(a) The required disclaimer shall expressly state that the views presented are those of the speaker or author and do not necessarily represent the views of DoD or its components.

(b) Where a disclaimer is required for an article, book or other writing, the disclaimer will be printed in a reasonably prominent position in the writing itself.

(c) Where a disclaimer is required for a speech or other oral presentation, the disclaimer may be given orally provided it is given at the beginning of the oral presentation.

Title 32—National Defense

CHAPTER I—DEPARTMENT OF DEFENSE

2. Part 40 of 32 CFR chapter I is revised to read as follows:

PART 40—STANDARDS OF CONDUCT

Sec.
40.1 18 U.S.C. 208(b) waivers.
40.2 Cross-reference to Standards of Ethical Conduct for Employees of the Executive Branch.
40.3 Cross-reference to Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees.
40.4 Cross-reference to Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria.
40.5 Cross-reference to Regulations Concerning Post-Employment Conflict of Interest.
40.6 Cross-reference to Office of Government Ethics and Executive Agency Ethics Program Responsibilities.
40.7 Cross-reference to Post-Employment Conflict of Interest Restrictions.

Authority: 5 U.S.C. 7301.

§ 40.1 18 U.S.C. 208(b) waivers.

Under 18 U.S.C. 208(b) categories of financial interests may be made non-disqualifying for purposes of 18 U.S.C. 208(a) by a general regulation published in the **Federal Register**. Shares of a widely held, diversified mutual fund or regulated investment company have been exempted by a general regulation as being too remote or inconsequential to affect the integrity of Government personnel.

§ 40.2 Cross-reference to Standards of Ethical Conduct for Employees of the Executive Branch.

DoD employees should refer to the Office of Government Ethics (OGE) regulation, Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and the Department of Defense (DoD) regulation that supplements the OGE regulation, 5 CFR 3601.101, for standards of conduct provisions, including standards for gifts from outside sources, gifts between employees, conflicting financial interests, impartiality in performing official duties, seeking other employment, misuse of position, and outside activities.

§ 40.3 Cross-reference to Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees.

DoD employees should refer to the OGE regulation, Financial Disclosure, Qualified Trusts, and Certificates of Divestiture for Executive Branch Employees, 5 CFR part 2634, for financial disclosure provisions.

§ 40.4 Cross-reference to Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria.

DoD employees should refer to the OGE regulation, Limitations on Outside Employment and Prohibition of Honoraria; Confidential Reporting of Payments to Charities in Lieu of Honoraria, 5 CFR part 2636, for provisions on outside employment and honoraria.

§ 40.5 Cross-reference to Regulations Concerning Post-Employment Conflict of Interest.

DoD employees and former DoD employees should refer to the OGE regulation, Regulations Concerning Post-Employment Conflict of Interest, 5 CFR part 2637, for provisions on post-employment applicable to those who left DoD employment prior to January 1, 1991.

§ 40.6 Cross-reference to Office of Government Ethics and Executive Agency Ethics Program Responsibilities.

DoD employees should refer to the OGE regulation, Office of Government Ethics and Executive Agency Ethics Program Responsibilities, 5 CFR part 2638, for provisions establishing executive branch ethics programs, including ethics training programs.

§ 40.7 Cross-reference to Post-Employment Conflict of Interest Restrictions.

DoD employees and former DoD employees should refer the to OGE regulation, Post-Employment Conflict of Interest Restrictions, 5 CFR part 2641, for provisions on post-employment applicable to those who left DoD employment on or after January 1, 1991.

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 91–006I]

RIN 0583–AB34

Nutrition Labeling of Meat and Poultry Products; Technical Amendments

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final rule; technical amendments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its final nutrition labeling regulations, which were published in the **Federal Register** on January 6, 1993 (58 FR 632). FSIS is taking this action to improve the clarity and accuracy of the regulations, and to provide regulations that parallel the Food and Drug Administration's (FDA) nutrition labeling regulations to the maximum extent possible.

DATES: Interim rule effective date is July 6, 1994; comments must be received on or before October 12, 1993.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments, as provided by the Poultry Products Inspection Act, should be directed to Mr. Charles Edwards, (202) 254–2565. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments concerning this interim final rule. Written comments should be sent to the Policy Office and refer to Docket No. 91–006I. Any person desiring an opportunity for an oral presentation of views, as provided by the Poultry Products Inspection Act, should make such request to Mr. Charles Edwards, so that arrangements can be made for such views to be presented. A transcript will be made of all views orally presented. All comments submitted in response to this interim final rule will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

On January 6, 1993, FSIS published in the **Federal Register** (58 FR 632) final regulations on nutrition labeling for meat and poultry products. FSIS's nutrition labeling regulations parallel, to the extent possible at that time, FDA's nutrition labeling regulations promulgated under the Nutrition Labeling and Education Act. FSIS published its final regulations on nutrition labeling simultaneously with FDA's publication.

After the publication of FSIS's final regulations on nutrition labeling, FSIS received several comments from various interested parties contending that portions of FSIS's regulations were