

prior written approval before engaging in any outside employment or activity (as defined by § 4601.101 of this part), with or without compensation, unless the employee's agency has exempted the outside employment or activity (or category or class of outside employment or activity) from this requirement by an instruction or manual issued pursuant to paragraph (c) of this section.

(b) *Standard for approval.* Approval shall be granted unless it has been determined that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(c) *Agency responsibilities.* (1) With the approval of the DHS DAEO, each agency as set forth in § 4601.102 of this part shall issue internal instructions or a manual governing the submission of requests for approval of outside employment and activities and designating appropriate officials to act on such requests not later than May 5, 2016.

(2) The instructions or manual may exempt particular outside employment or activities (or categories or classes of outside employment or activities) from the prior approval requirement of this section if such outside employment or activities would generally be approved and are not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part. Agencies may include in their instructions or manual examples of outside employment or activities that are permissible or prohibited consistent with 5 CFR part 2635 and this part.

(3) In the absence of a manual or instruction identifying a person designated to act upon a request for approval for outside employment, the Chief Deputy Ethics Official at each agency shall act upon a request.

§ 4601.104 Additional rules for U.S. Customs and Border Protection (CBP) employees.

The following rules apply to employees of CBP, except Special Government Employees, and are in addition to §§ 4601.101 through 4601.103 and §§ 4601.107 and 4601.108 of this part:

(a) *Prohibitions on outside employment and activities.* (1) No CBP employee

shall be employed by or engage in activities in support of or on behalf of a customs broker; international carrier; bonded warehouse; foreign trade zone as defined in 15 CFR 400.2; cartman; law firm engaged in the practice of customs, immigration, or agriculture law; entity engaged in the enforcement of customs, immigration, or agriculture law; importation or exportation department of a business; or business or other entity which engages in services related to agriculture matters where such agriculture matters relate to CBP's mission.

(2) No CBP employee shall, in any private capacity, engage in employment or a business activity related to the importation or exportation of merchandise or agricultural products requiring inspection (other than a personal, routine consumer transaction unrelated to the operation of a business), or the entry of persons into or departure of persons from the United States.

(3) No CBP employee shall engage in outside employment or activities for a non-profit or other organization that involve assisting persons with matters related to the entry of persons or merchandise into or the departure of persons or merchandise from the United States, or matters related to obtaining temporary or permanent residency, citizenship, adjustment of status, or other immigration-related benefits.

(b) *Restrictions arising from employment of the spouse, relatives, members of the employee's household, or financial dependents.* (1) A CBP employee shall notify in writing his or her agency designee when any of the following circumstances exist:

(i) The spouse of the CBP employee is employed in a position that the CBP employee would be prohibited from occupying by paragraph (a) of this section;

(ii) A relative (as defined in 5 CFR 2634.105(o)), who is financially dependent on or who is a member of the household of the CBP employee, is employed in a position that the CBP employee would be prohibited from occupying by paragraph (a) of this section; or

§ 4601.105

(iii) Any person, other than the spouse or relative of the CBP employee, who is financially dependent on or who is a member of the household of the CBP employee, is employed in a position that the CBP employee would be prohibited from occupying by paragraph (a) of this section.

(2) The CBP employee shall be disqualified from participating in an official capacity in any particular matter involving the individuals identified in paragraph (b)(1) of this section, or the employer thereof, unless the agency designee, with the advice and clearance of the CBP Chief Deputy Ethics Official, authorizes the CBP employee to participate in the matter using the standard in 5 CFR 2635.502(d), or the waiver provisions in 18 U.S.C. 208(b)(1), as appropriate.

§ 4601.105 Additional rules for Federal Emergency Management Agency (FEMA) employees.

The following rules apply to employees of FEMA, except Special Government Employees, and are in addition to §§ 4601.101 through 4601.103 and 4601.107 and 4601.108 of this part:

(a) *Prohibited outside employment (intermittent employees)*. Except as provided in paragraph (c) of this section, no intermittent FEMA employees hired under the authority of 42 U.S.C. 5149, which includes all Disaster Assistance Employees or Stafford Act Employees and Cadre of On-Call Response Employees, shall be employed by a current FEMA contractor while a FEMA employee, whether or not they are on activated status.

(b) *Prohibited outside employment (non-intermittent employees)*. Except as provided in paragraph (c) of this section, no non-intermittent FEMA employee shall be employed by a current FEMA contractor.

(c) *Waivers*. The FEMA Chief Deputy Ethics Official or his or her agency designee may grant a written waiver of any prohibition in paragraphs (a) and (b) of this section with the DAEO's concurrence. To grant the waiver, the FEMA Chief Deputy Ethics Official or his or her agency designee must determine that the waiver is consistent with 5 CFR part 2635 and not otherwise prohibited by law; that the prohibition is

5 CFR Ch. XXXVI (1–17 Edition)

not necessary to avoid the appearance of misuse of position or loss of impartiality; and that the waiver will not undermine the public's confidence in the employee's impartiality and objectivity in administering FEMA programs. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification statement.

§ 4601.106 Additional rules for U.S. Immigration and Customs Enforcement (ICE) employees.

The following rules apply to employees of ICE, except Special Government Employees, and are in addition to §§ 4601.101 through 4601.103 and 4601.107 and 4601.108 of this part:

(a) *Prohibitions on outside employment and activities*. (1) No ICE employee shall be employed by or engage in activities in support of or on behalf of a customs broker; international carrier; bonded warehouse; foreign trade zone as defined in 15 CFR 400.2; cartman; law firm engaged in the practice of customs, immigration or agriculture law; entity engaged in the enforcement of customs, immigration or agriculture law; importation department of a business; or business or other entity which engages in agriculture matters where such agriculture matters relate to ICE's mission.

(2) No ICE employee shall, in any private capacity, engage in employment or a business activity related to the importation or exportation of merchandise or agricultural products requiring inspection (other than a personal, routine consumer transaction unrelated to the operation of a business), or the entry of persons into or the departure of persons from the United States.

(3) No ICE employee shall engage in outside employment or activities for a non-profit or other organization that involve assisting persons with matters related to the entry of persons or merchandise into or the departure of persons or merchandise from the United States, or matters related to obtaining temporary or permanent residency, citizenship, adjustment of status, or other immigration-related benefits.

(b) *Restrictions arising from employment of spouse, relatives, members of the*