

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## POSTAL SERVICE

### 5 CFR Chapter LX

RIN 3209-AA04

#### Supplemental Standards of Ethical Conduct for Employees of the United States Postal Service

AGENCY: Postal Service.

ACTION: Proposed rule.

**SUMMARY:** The United States Postal Service, with the concurrence of the Office of Government Ethics (OGE), proposes to issue regulations applicable to employees of the Postal Service to supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The proposed rule, which addresses ethical issues unique to the Postal Service, would prohibit certain outside activities and would require prior approval for employees to engage in other specified outside employment or activities.

**DATES:** Comments must be received on or before May 26, 1995.

**ADDRESSES:** Send comments to Chief Counsel, Ethics and Information Law, United States Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260-1110. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 6427, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mitchell J. Benowitz, Ethics and Information Law, Postal Service, (202) 268-2967.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On August 7, 1992, the Office of Government Ethics published new Standards of Ethical Conduct for Employees of the Executive Branch (Standards), now codified at 5 CFR part 2635. See 57 FR 35006-35067, as corrected at 57 FR 48557 and 52583, with additional grace-period extensions at 59 FR 4779-4780 and 60 FR 6390-

6391. The Standards, which became effective on February 3, 1993, set uniform ethical conduct standards applicable to all executive branch personnel.

Under 5 CFR 2635.105, agencies may issue, with the concurrence of OGE, agency-specific regulations supplementing 5 CFR part 2635 as necessary to fulfill the purposes of that part in light of the agency's particular programs and operations. The Postal Service, with OGE's concurrence, has determined that the following proposed supplemental regulations, to appear in new 5 CFR chapter LX, consisting of part 7001, are necessary to the successful implementation of its ethics program.

The OGE regulations in 5 CFR part 2635 superseded many provisions of the Code of Ethical Conduct for Postal Employees (Code), 39 CFR part 447, including many of its restrictions on outside employment at 39 CFR 447.23 that do not involve compensated outside employment relationships. Certain other provisions of the Code that prohibited the holding of specified financial interests, 39 CFR 447.22(b)(1)-(7), and those provisions of 39 CFR 447.23 that involve compensated outside employment relationships, remained temporarily in effect pursuant to the note following 5 CFR 2635.403(a), as extended at 59 FR 4779-4780 and 60 FR 6390-6391.

The supplemental regulations will include restrictions on outside employment similar to many of those that were or continue to be in effect under 39 CFR 447.23. Upon further consideration of the prohibited financial interest provisions of 39 CFR 447.22(b)(1)-(7) in light of the uniform regulations concerning conflicting interests codified in 5 CFR 2635.401-2635.403, and other provisions of part 2635, the Postal Service has concluded that these financial interest prohibitions should not be retained. These provisions will be repealed in a separate document amending 39 CFR part 447 to remove outdated provisions, which will be published concurrently with the final rule adopting supplemental regulations.

##### II. Analysis of the Regulations

###### Section 7001.101 General

Section 7001.101 explains that the regulations contained in the proposed rule apply to all employees of the Postal

Service and are supplemental to the uniform executive branch standards. Postal Service employees also are subject to the Standards at 5 CFR part 2635, the executive branch financial disclosure regulations at 5 CFR part 2634, and additional rules of conduct published in Postal Service regulations and manuals.

###### Section 7001.102 Restrictions on Outside Employment and Business Activities

Under 5 CFR 2635.802(a), agencies are authorized to issue supplemental regulations prohibiting employees from engaging in outside employment or activities that conflict with their official duties. Under 5 CFR 2635.803, agencies are authorized to issue supplemental regulations requiring employees to obtain prior approval before they engage in outside employment or other outside activities.

###### (a) Prohibited outside employment and business activities.

Under 39 CFR 447.23(a)(1), the Postal Service previously has prohibited its employees from manufacturing or representing a manufacturer of any product produced for exclusive use by the Postal Service or required for use by its customers. Proposed § 7001.102(a)(1)(i) would refine and continue this prohibition, adding an express reference to working for manufacturers of postal employee uniforms. The involvement of Postal Service employees in such activities could cause members of the public to question the impartiality and objectivity with which Postal Service programs are administered, because it could create the appearance that the employees, or the persons they represent or with whom they otherwise are affiliated, are in a position to benefit from knowledge or influence gained by the employees through their official positions.

Under 39 CFR 447.23(a)(3), the Postal Service previously has prohibited employees from engaging in employment that involves the delivery of mail to the postal facility in which the employee works, or to a facility within the delivery area of the post office in which the employee works, if such employment required the employee to conduct business with other employees performing the same type of duties. In proposed § 7001.102(a)(1)(ii), the rule would be revised to prohibit any employment

involving the delivery of mail for a postal contractor to the specified facilities, without regard to the nature of the employee's duties. The revision is intended to simplify the rule. Although the revision would create a somewhat broader prohibition, the Postal Service has concluded that the involvement of employees in the delivery of mail at or near their official workplace might lead reasonable persons to be concerned that the employees' outside employers are receiving preferential treatment from the Postal Service.

Under 39 CFR 447.23(a)(4), the Postal Service previously has prohibited employees from acting as "consultants" for current or potential Postal Service contractors. Such activity could lead members of the public to be concerned that the employees are using knowledge or influence gained through their official positions to benefit their outside employers. Proposed § 7001.102(a)(1)(iii) would provide a similar prohibition, but because the term "consultants" did not clearly define the activity subject to the prohibition, the new section would apply to "consultation, advice, or any subcontracting service." In addition, proposed § 7001.102(a)(1)(iii) would apply to such services only when rendered "with respect to the operations, programs, or procedures of the Postal Service." This limitation has been included to make clear that an employee would not be prohibited from consulting with a business that happens to hold a Postal Service contract when the employee's consulting work is not related to that contract and does not have any other postal connection. Under such circumstances the employee would not be expected to gain any personal benefit, or to provide any benefit for the outside business, from knowledge or influence arising from his or her official position. As explained below, another proposed provision, § 7001.102(b)(1), may require the employee to obtain prior approval before engaging in any employment, including consulting work, with a business that depends heavily on postal contracts.

Under 39 CFR 447.23(g), the Postal Service previously has prohibited employees from engaging in employment with a private business that delivers mailable matter. Proposed § 7001.102(a)(1)(iv) would continue the prohibition, and also would specify that working for a commercial mail receiving agency—an agency registered under Domestic Mail Manual D042.2.5 to receive mail from the Postal Service for delivery to others—would be included in this prohibition. Unlike most Federal agencies, the Postal Service must

compete with certain private businesses. The new section would prohibit employees from working for such businesses because the outside employment might lead members of the public to question the employees' loyalty to the Postal Service, thereby undermining public confidence in the integrity of postal operations. This type of concern is not presented by postal employees having outside employment delivering daily newspapers, which is not prohibited.

Under 39 CFR 447.23(a)(5), the Postal Service previously has prohibited employees from engaging in any sales activity while on duty, in uniform, or in the office where the employee is stationed. Proposed § 7001.102(a)(2) would continue this prohibition, but would extend it to cover sales activities at any postal facility. The prohibition is intended to prevent employees from using influence derived from their official positions as an aid to sales activities, and experience has shown that employees may exert such influence at postal facilities other than their own. Under 5 CFR 2635.702, employees must not use public office for their own private gain or for the benefit of others such as any business with which they are affiliated. The Postal Service considers that a more explicit, supplemental rule is needed to deal with sales activities in the workplace or in uniform, whether or not the employee who would engage in the sales activity is on duty.

(b) *Prior approval for outside employment and business activities.* Under 39 CFR 447.23(a)(2), the Postal Service previously has prohibited employees from engaging in employment with persons with whom they have dealings in their official capacities. Proposed § 7001.102(b)(1)(i) would instead require employees to obtain approval before engaging in such employment or business activities. Although there are situations in which outside activities involving such persons would raise issues under 5 CFR part 2635, the duties of many Postal Service employees, such as clerks and letter carriers, might bring them into limited contact with a variety of outside businesses, including large, diversified corporations. Prohibiting such employees from being employed in any phase of a business, merely because the business's mail touches their hands, would be unduly restrictive. Therefore, the Postal Service considers a prior approval requirement more appropriate than a prohibition for this type of outside employment and, under 5 CFR 2635.803, has proposed the prior approval requirement at

§ 7001.102(b)(1)(i). The review required by the approval process can be expected to identify those employment relationships that would present ethical conduct concerns under 5 CFR part 2635.

Under 39 CFR 447.23(a)(6), the Postal Service previously has prohibited employees from engaging in outside employment with (1) persons whose business interests are substantially dependent upon, or may be significantly affected by, postal rates, fees, or classifications; and (2) persons whose interests are substantially dependent on providing goods or services to, or for use in connection with, the Postal Service. Proposed § 7001.102(b)(1)(ii) would require employees to obtain prior approval before engaging in such employment or business activities. Definitions of the outside businesses to which the prior approval requirement would apply are provided in § 7001.102(c)(2) and (c)(3). Whether such outside employment or business activities should be approved will usually depend upon the relationship between the particular postal employee's official duties and the operations or interests of the outside business. Therefore, the Postal Service considers that a prior approval requirement is the appropriate mechanism to bring to light and address outside relationships that are likely to raise ethical conduct issues under 5 CFR part 2635.

Proposed § 7001.102(b)(2) would set forth the procedure by which employees may request approval to engage in outside employment or business activities for which prior approval is required. The standard for approval would be set forth in proposed § 7001.102(b)(3). Under this standard, approval could be granted only when it is determined that the outside employment or business activity will not involve conduct prohibited by law or Federal regulation. Because requests for prior approval might involve situations where the employee's conduct could violate the principle that employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the standards set forth in 5 CFR part 2635, the approval standard includes a specific reference to 5 CFR 2635.101(b)(14).

Proposed § 7001.102(c)(1) would provide a definition of "outside employment or business activity." The definition would clarify that the regulations cover those who would engage in business as a principal—as proprietor, general partner, director, or holder of a franchise—as well as to

those who would serve a business as employee, contractor, or the like. Under the proposed definition, an employee would not, simply by holding shares in a publicly held corporation, be engaged in employment or business activity with or on behalf of that corporation.

*Section 7001.103 Statutory Prohibition Against Interests in Contracts To Carry Mail and Acting as Agent for Contractors*

Proposed § 7001.103 would provide notice to Postal Service employees that certain interests in, and conduct in connection with, mail transportation contracts are prohibited by a criminal statute, 18 U.S.C. 440. The section is for purposes of notification only. Neither the Postal Service nor OGE has issued regulations interpreting this statutory prohibition.

### III. Matters of Regulatory Procedure

Although the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding rulemaking (5 U.S.C. 553(b), (c)), the Postal Service invites comments on this proposed rule.

#### List of Subjects in 5 CFR Part 7001

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

Dated: March 8, 1995.

**Mary S. Elcano,**

*General Counsel and Vice President, United States Postal Service.*

Approved: March 15, 1995.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

For the reasons set forth in the preamble, the United States Postal Service, with the concurrence of the Office of Government Ethics, is proposing to amend title 5 of the Code of Federal Regulations by adding a new chapter LX, consisting of part 7001, as follows:

#### Chapter LX—United States Postal Service

#### PART 7001 — SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE UNITED STATES POSTAL SERVICE

Sec.

7001.101 General.

7001.102 Restrictions on outside employment and business activities.

7001.103 Statutory prohibition against interests in contracts to carry mail and acting as agent for contractors.

**Authority:** 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 39

U.S.C. 401; 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, 2635.802, and 2635.803.

#### § 7001.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635, as applied to employees of the United States Postal Service (Postal Service). Postal Service employees are subject, in addition to the standards in 5 CFR part 2635 and this part, to the executive branch financial disclosure regulations contained in 5 CFR part 2634, and to any rules of conduct issued separately by the Postal Service, including but not limited to, regulations contained in 39 CFR part 447, the Postal Service Employee and Labor Relations Manual, and the Postal Service Procurement Manual.

#### § 7001.102 Restrictions on outside employment and business activities.

(a) *Prohibited outside employment and business activities.* No Postal Service employee shall:

(1) Engage in outside employment or business activities with or for a person, including oneself, engaged in:

(i) The manufacture of any uniform or other product required by the Postal Service for use by its employees or customers;

(ii) The transportation of mail under Postal Service contract to or from the postal facility at which the employee works, or to or from a postal facility within the delivery area of a post office in which the employee works;

(iii) Providing consultation, advice, or any subcontracting service, with respect to the operations, programs, or procedures of the Postal Service, to any person who has a contract with the Postal Service or who the employee has reason to believe will compete for such a contract; or

(iv) The operation of a commercial mail receiving agency registered with the Postal Service, or the delivery outside the mails of any type of mailable matter, except daily newspapers; or

(2) Engage in any sales activity, including the solicitation of business or the receipt of orders, for oneself or any other person, while on duty or in uniform, or at any postal facility.

(b) *Prior approval for outside employment and business activities*—(1) *Requirement for approval.* A Postal Service employee shall obtain approval, in accordance with paragraph (b)(2) of this section, prior to:

(i) Engaging in outside employment or business activities with or for any person with whom the employee has official dealings on behalf of the Postal Service; or

(ii) Engaging in outside employment or business activities, with or for a person, including oneself, whose interests are:

(A) Substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications; or

(B) Substantially dependent upon providing goods or services to, or for use in connection with, the Postal Service.

(2) *Submission and contents of request for approval.* An employee who wishes to engage in outside employment or business activities for which prior approval is required by paragraph (b)(1) of this section shall submit a written request for approval to the Postal Service Ethical Conduct Officer or appropriate delegate. The request shall be accompanied by a statement from the employee's supervisor briefly summarizing the employee's duties and stating any workplace concerns raised by the employee's request for approval. The request for approval shall include:

(i) A brief description of the employee's official duties;

(ii) The name of the outside employer, or a statement that the employee will be engaging in employment or business activities on his or her own behalf;

(iii) The type of employment or business activities in which the outside employer, if any, is engaged;

(iv) The type of services to be performed by the employee in connection with the outside employment or business activities;

(v) A description of the employee's official dealings, if any, with the outside employer on behalf of the Postal Service; and

(vi) Any additional information requested by the Ethical Conduct Officer or delegate that is needed to determine whether approval should be granted.

(3) *Standard for approval.* The approval required by paragraph (b)(1) of this section shall be granted only upon a determination that the outside employment or business activity will not involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635, which includes, among other provisions, the principle stated at 5 CFR 2635.101(b)(14) that employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in part 2635.

(c) *Definitions.* For purposes of this section:

(1) *Outside employment or business activity* means any form of employment or business, whether or not for compensation. It includes, but is not limited to, the provision of personal services as officer, employee, agent, attorney, consultant, contractor, trustee, teacher, or speaker. It also includes, but is not limited to, engagement as principal, proprietor, general partner, holder of a franchise, operator, manager, or director. It does not include equitable ownership through the holding of publicly traded shares of a corporation.

(2) *A person having interests substantially dependent upon, or potentially affected to a significant degree by, postal rates, fees, or classifications* includes a person:

(i) Primarily engaged in the business of publishing or distributing a publication mailed at second-class rates of postage;

(ii) Primarily engaged in the business of sending advertising, promotional, or other material on behalf of other persons, through the mails;

(iii) Engaged in a business that depends substantially upon the mails for the solicitation or receipt of orders for, or the delivery of, goods or services; or

(iv) Who is, or within the past 4 years has been, a party to a proceeding before the Postal Rate Commission.

(3) *A person having interests substantially dependent upon providing goods or services to or for use in connection with the Postal Service* includes a person:

(i) Providing goods or services under contract with the Postal Service that can be expected to provide revenue exceeding \$100,000 over the term of the contract and that provides five percent or more of the person's gross income for the person's current fiscal year; or

(ii) Substantially engaged in the business of preparing items for others for mailing through the Postal Service.

**§ 7001.103 Statutory prohibition against interests in contracts to carry mail and acting as agent for contractors.**

Section 440 of title 18, United States Code, makes it unlawful for any Postal Service employee to become interested in any contract for carrying the mail, or to act as agent, with or without compensation, for any contractor or person offering to become a contractor in any business before the Postal Service.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

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**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR Part 100**

[INS No. 1677-94]

RIN 1115-AD84

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Part 122**

RIN 1515-AB64

**Customs/INS Field Organizations; Revocations and Designation of International Airport Status for Customs Services and Ports of Entry for Aliens Arriving by Aircraft**

**AGENCIES:** Immigration and Naturalization Service, Justice; Customs Service, Treasury.

**ACTION:** Joint notice of proposed rulemaking.

**SUMMARY:** This document proposes to amend the Customs and Immigration and Naturalization Service (the Service) Regulations pertaining to their respective field organizations. Customs proposes to revoke the international airport designations for the Ranier International Seaplane Base located in Ranier, Minnesota, and the Eagle Pass Municipal Airport located in Eagle Pass, Texas. The Service proposes to remove Ranier, MN, and Eagle Pass, TX, from the port of entry lists for aliens arriving by vessel, land transportation, or by aircraft. This proposal is based on evidence that the facilities at these locations have deteriorated and/or the amount of business clearing through the airports does not justify continued maintenance of inspection equipment and personnel. The document also proposes to designate Maverick County Airport located in Maverick County, Texas, as a new international airport for Customs purposes and as a new port of entry for purposes of the Service. These changes will assist both agencies in their continuing efforts to achieve more efficient use of their personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

**DATES:** Comments must be received on or before May 26, 1995.

**ADDRESSES:** Please submit written comments in triplicate to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229. Comments submitted may be inspected at the

Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street NW., Suite 4000, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** At Customs Service—Darlene Langum Wilder, Office of Passenger Enforcement and Facilitation, Office of Inspection and Control, (202) 927-0530; at Immigration and Naturalization Service—Andrea Sickler, Assistant Chief Inspector, Office of Inspections, Immigration and Naturalization Service, 425 I Street NW., Room 7228, Washington, DC 20536, (202) 616-7993.

**SUPPLEMENTARY INFORMATION:**

**Background**

To achieve more efficient use of their personnel, facilities, and resources, and to provide better services to carriers, importers, and the public in general, U.S. Customs and the Immigration and Naturalization Service (the Service) propose to amend their respective field organization regulations.

Customs proposes to amend § 122.13 of the Customs Regulations (19 CFR 122.13), which lists international airports, to reflect the proposed revocations of the international airport designations for (1) Ranier International Seaplane Base located in Ranier, Minnesota, in the Customs District of Duluth, Minnesota, North Central Region, and (2) Eagle Pass Municipal Airport located in Eagle Pass, Texas, in the Customs District of Laredo, Texas, Southwest Region. Customs further proposes to amend § 122.13 to reflect the proposed designation of Maverick County Airport located in Maverick County, Texas, in the Customs District of Laredo, Texas, Southwest Region, as an international airport. Revocation of the international airport designations will not result in any significant reduction in Customs services in the area, as future Minnesota transactions will be handled at either Sky Harbor Airport or Crane Lake Seaplane Base, both landing rights airports, and future Texas transactions will be handled at Maverick County Airport, also a landing rights airport, which, it is proposed, will be designated as an international airport.

The Service proposes to amend 8 CFR 100.4(c) (2) and (3), which pertain to ports of entry for aliens arriving by vessel, land transportation, or by aircraft, to reflect the removal of the same two ports of entry: (1) Ranier International Seaplane Base located in Ranier, Minnesota, in the Service District of St. Paul, Minnesota, and (2) Eagle Pass Municipal Airport located in Eagle Pass, Texas, in the Service District