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TENNESSEE VALLEY AUTHORITY

5 CFR Chapter LXIX

18 CFR Part 1300

Supplemental Standards of Ethical Conduct for Employees of the Tennessee Valley Authority

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of TVA that supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by OGE by adding a requirement to obtain prior approval for outside employment. By this final rule, TVA also is repealing those sections of its existing conduct standards that are superseded by the new Standards as supplemented by this final rule and by the executive branch financial disclosure regulations inserting in their place a cross-reference to the new 5 CFR provisions, and reissuing those provisions in the TVA conduct standards which have not been superseded.

EFFECTIVE DATE: May 6, 1996.

FOR FURTHER INFORMATION CONTACT: William L. Osteen, Designated Agency Ethics Official, 423-632-4142, FAX 423-632-2422.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch (Standards). See 57 FR 35006-35067, as corrected at 57 FR 48557 and 57 FR 52583, with additional grace period extensions at 59 FR 4779-4780 and 60 FR 6390-6391. Codified at 5 CFR part

2635, the new standards became effective on February 3, 1993.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations that are necessary to implement their respective ethics programs. TVA, with OGE's concurrence, has determined that the following supplemental rules, being codified in new chapter LXIX of 5 CFR, are necessary to the success of its ethics program. Simultaneously, TVA is repealing superseded provisions of 18 CFR part 1300, replacing those provisions with a section that provides cross-references to 5 CFR parts 2634 and 2635 and to TVA's new supplemental regulations, and reissuing existing provisions of 18 CFR part 1300 which have not been superseded.

II. Analysis of the Regulations

Section 7901.101 General

Section 7901.101 explains that these regulations supplement the executive branch-wide Standards and reminds TVA employees that they are subject to the Standards and to the executive branch-wide financial disclosure regulations, in addition to these regulations.

Section 7901.102 Prior Approval for Outside Employment

Where it is determined to be necessary or desirable for the purpose of administering its ethics program, 5 CFR 2635.803 authorizes an individual agency to issue supplemental regulations requiring agency employees to obtain prior approval before engaging in outside employment. TVA has for many years had a prior approval requirement, expressed partly in TVA conduct standards at 18 CFR 1300.735-13(b) and partly in uncodified instructions. Based on its findings that this requirement has helped ensure that employees' outside employment conforms to applicable statutes and regulations, TVA has determined that continuing this requirement is necessary for the purpose of its ethics program. Paragraph (a) clarifies that the outside employment, except for Special Government Employees, must be approved by the employee's supervising TVA vice president or designee. The employee is required to request approval in writing, describing the organizations, duties, hours of work,

and remuneration pertaining to the outside employment. Paragraph (b) clarifies the standard for review and approval. To ensure that § 7901.102 is not in itself construed as authority to totally prohibit outside employment, § 7901.102(b) states that approval will be granted only upon a determination that the prospective outside employment is not expected to involve conduct prohibited by statute or Federal regulations, including 5 CFR part 2635. Paragraph (c) is intended to foster efficient administration by allowing exclusion from the approval requirement for classes of employees as to which outside employment is unlikely to raise issues of compliance with 5 CFR part 2635. Paragraph (d) adds a definition of employment for purposes of applying the requirement for prior approval set forth in paragraph (a) of the section.

III. Repeal of Superseded TVA Standards of Conduct Regulations

The Tennessee Valley Authority is repealing those sections of its standards of conduct regulations at 18 CFR part 1300 which have been superseded by the OGE regulations at 5 CFR parts 2634 or 2635 or by the TVA's supplemental regulations at new 5 CFR 7901 made effective by this final rule. To ensure that employees are on notice of the ethical standards to which they are subject, TVA is replacing the superseded standards at 18 CFR part 1300 with a provision that cross-references 5 CFR parts 2634, 2635, and 7901. To accommodate the removal of superseded provisions, TVA is renumbering and reissuing existing sections of 18 CFR part 1300 dealing with gambling, harassment, and conduct prejudicial to the Government which have not been superseded. The Office of Government Ethics (OGE) concurs in the reissuance of these regulations only insofar as it has determined that the substance of new 18 CFR 1300.102-1300.107 need not be issued as part of TVA's supplemental regulations at 5 CFR part 7901. Pursuant to 5 CFR 2635.402(d), TVA is also renumbering and reissuing, with a revised heading, its regulatory waivers at 18 CFR 1300.734-14(c) which were issued under the authority of 18 U.S.C. 208(b)(2); it is anticipated that these waivers will be superseded in the future by new OGE regulations. See 60 FR

44706-44709 (August 28, 1995) and 60 FR 47208-47233 (September 11, 1995).

IV. Matters of Regulatory Procedure

Administrative Procedure Act

TVA has found that good cause exists under 5 U.S.C. 553 (b) and (d)(3) 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 rules and repeals. The supplemental regulations are essentially a restatement of rules previously contained in the standards of conduct, and TVA believes that it is important to a smooth transition from TVA standards of conduct to the Executive branch standards that these rules become effective as soon as possible. Furthermore, this rulemaking is related to TVA organization, procedure, and practice.

Regulatory Flexibility Act

TVA has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these regulations will not have a significant impact on small business entities because they affect only TVA employees.

Paperwork Reduction Act

TVA has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

Environmental Impact

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources

List of Subjects

5 CFR Part 7901

Conflict of interests, Government employees.

18 CFR Part 1300

Government employees.

Dated: April 5, 1996.

William L. Osteen,

Associate General Counsel and Designated Agency Ethics Official, Tennessee Valley Authority.

Approved: April 12, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Tennessee Valley Authority, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal

Regulations and title 18, chapter XIII of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

1. A new chapter LXIX, consisting of part 7901, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER LXIX—TENNESSEE VALLEY AUTHORITY

PART 7901—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE TENNESSEE VALLEY AUTHORITY

Sec.

7901.101 General.

7901.102 Prior approval for outside employment.

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 16 U.S.C. 831-831dd; 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, 2635.803.

§ 7901.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Tennessee Valley Authority (TVA) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition, some TVA employees are subject to the executive branch financial disclosure regulations at 5 CFR part 2634.

§ 7901.102 Prior approval for outside employment.

(a) Before engaging in outside employment, with or without compensation, an employee, other than a special Government employee, must obtain written approval from the supervising TVA vice president or designee. The written request shall be submitted through the employee's supervisor or human resource office and shall, at a minimum, identify the employer or other person for whom the services are to be provided, as well as the duties, hours of work, and compensation involved in the proposed outside employment.

(b) Approval under paragraph (a) of this section shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(c) Vice presidents or other officers of TVA may, after consultation with the Designated Agency Ethics Official, exempt specified classes of employees from this section based upon a determination that the official duties of employees in the class are such that

their outside employment activities are not likely to raise issues of compliance with 5 CFR part 2635.

(d) For purposes of this section, employment means any form of non-Federal employment or business relationship involving the provision of services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement for actual expenses.

18 CFR CHAPTER XIII—TENNESSEE VALLEY AUTHORITY

2. Part 1300 is revised to read as follows:

PART 1300—STANDARDS OF CONDUCT FOR EMPLOYEES OF TENNESSEE VALLEY AUTHORITY

Sec.

1300.101 Cross reference to employee ethical conduct standards and other applicable regulations.

1300.102 Gambling, betting, and lotteries.

1300.103 General conduct prejudicial to TVA.

1300.104 Sexual harassment.

1300.105 National origin harassment.

1300.106 Harassment on the basis of race, color, religion, age, or disability.

1300.107 Financial interest exemptions.

Authority: 16 U.S.C. 831-831dd; 18 U.S.C. 208(b)(2).

§ 1300.101 Cross references to employee ethical conduct standards and other applicable regulations.

Employees of the Tennessee Valley Authority (TVA) are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635 and to the TVA regulations at 5 CFR part 7901 which supplement the executive branch-wide standards. In addition, certain TVA employees are subject to executive branch-wide financial disclosure regulations at 5 CFR part 2634.

§ 1300.102 Gambling, betting, and lotteries.

An employee shall not participate, while on Government- or TVA-owned or leased property or while on TVA duty, in any gambling activity including the operation of a gambling device, in

conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 7 of Executive Order 12353 (47 FR 12785, 3 CFR, 1982 Comp., p. 139) and similar TVA-approved activities.

§ 1300.103 General conduct prejudicial to TVA.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to TVA.

§ 1300.104 Sexual harassment.

It is TVA policy that all TVA employees are responsible for assuring that the workplace is free from sexual harassment. Accordingly, all employees must avoid any action or conduct which could be viewed as sexual harassment including:

(a) Unwelcome sexual advances;
(b) Requests for sexual favors; and
(c) Other verbal or physical conduct of a sexual nature when:

(1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

§ 1300.105 National origin harassment.

It is TVA policy that all TVA employees are responsible for assuring that the workplace is free from national origin harassment. Accordingly, all employees must avoid any action or conduct which could be viewed as national origin harassment, including ethnic slurs and other verbal or physical conduct relating to an individual's national origin when such conduct:

(a) Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;

(b) Has the purpose or effect of unreasonably interfering with an individual's work performance; or

(c) Otherwise adversely affects an individual's employment opportunities.

§ 1300.106 Harassment on the basis of race, color, religion, age, or disability.

It is TVA policy that all TVA employees are responsible for assuring that the workplace is free from

harassment on the basis of race, color, religion, age, or disability. Accordingly, all employees must avoid any action or conduct which could be viewed as harassment on these bases, including any verbal or physical conduct relating to an individual's race, color, religion, age, or disability when such conduct:

(a) Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;

(b) Has the purpose or effect of unreasonably interfering with an individual's work performance; or

(c) Otherwise adversely affects an individual's employment opportunities.

§ 1300.107 Financial interest exemptions.

In accordance with the provisions of 18 U.S.C. 208(b)(2), TVA has exempted the following financial interests of its employees from the requirements of 18 U.S.C. 208(a) upon the ground that such interests are too remote or too inconsequential to affect the integrity of such employees' services. When any of the following exemptions applies only to a limited range of official actions, rather than all official acts, the range of actions will be specified within the language of the exemption.

(a) An investment in a business enterprise in the form of ownership of bonds, notes, and other evidences of indebtedness which are not convertible into shares of preferred or common stock and have no warrants attached entitling the holder to purchase stock provided that the estimated market value of the interest does not exceed \$5,000;

(b) An investment in the form of shares in the ownership of enterprises, including preferred and common stocks whether voting or nonvoting, or warrants to purchase such shares, or evidences of indebtedness convertible into such shares provided that the estimated market value of the interest does not exceed \$5,000 and does not exceed 1 percent of the estimated market value of all the outstanding shares of the enterprise;

(c) Shares or investments in a well-diversified money market or mutual fund;

(d) Vested interests in a pension fund arising out of former employment and to which no further contributions are being made in the employee's behalf, provided that, if the pension plan is a defined benefit plan, the assets of the plan are diversified. For the purpose of this provision, payments are not considered to be made "in the employee's behalf" if they are made solely to maintain adequate plan funding rather than to provide specific benefits for the employee; or

(e) The interest an employee has by virtue of his or her personal or family use of electric power or through his or her interests in an organization using electric power generated or distributed by TVA, for purposes of his or her official actions at TVA in the process of developing or approving TVA power rate schedules.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. FV96-946-2IFR]

Irish Potatoes Grown in Washington; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the State of Washington Potato Committee (Committee) under Marketing Order No. 946 for the 1996-97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in Washington. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective on July 1, 1996. Comments received by June 5, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, FAX 202-720-5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, FAX 202-720-5698, or Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS,