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## OFFICE OF GOVERNMENT ETHICS

### 5 CFR Part 2635

RIN 3209-AA04

#### Standards of Ethical Conduct for Employees of the Executive Branch

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Final rule; amendments.

**SUMMARY:** The Office of Government Ethics is amending portions of the regulation governing standards of ethical conduct for executive branch employees on seeking other employment, to conform with interpretive advice and to improve clarity.

**EFFECTIVE DATE:** April 16, 1999.

**FOR FURTHER INFORMATION CONTACT:** G. Sid Smith, Senior Associate General Counsel, Office of Government Ethics; telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037.

**SUPPLEMENTARY INFORMATION:** On August 26, 1998, the Office of Government Ethics (OGE) published proposed minor amendments to the standards of ethical conduct for executive branch employees (5 CFR part 2635), to codify interpretive advice and clarify intended meaning in subpart F (Seeking Other Employment) and in the definition of "receive" at § 2635.807 of subpart H (Outside Activities). See 63 FR 45415-45417. We received only one comment, which related exclusively to the proposed amendment to § 2635.807. Upon further consideration, and in view of separate concerns about other provisions of § 2635.807, we have decided not to make the proposed definitional revision in § 2635.807 at this time. If, in the future, OGE decides to revive that proposal, we will issue a new proposed rule revision, with opportunity for comments.

No comments were received concerning subpart F, so OGE is

herewith publishing the proposed amendments to subpart F as a final rule, with no changes, effective April 16, 1999. A summary of those amendments follows.

#### Subpart F

Subpart F of the standards of ethical conduct regulation, as promulgated for codification at 5 CFR part 2635 in 1992, implemented certain provisions of a criminal statute and an Executive order, specifically: (1) 18 U.S.C. 208, restricting employees' official participation in matters wherein a person or organization with whom they are negotiating for or have an arrangement concerning prospective employment has a financial interest, and (2) sections 101(h) and 101(j) of Executive Order 12674, directing employees to act impartially in official matters and not to engage in seeking or negotiating for outside employment that conflicts with official duties and responsibilities. Because these provisions of the criminal statute and Executive order are so closely related, they were combined for implementation at subpart F, with a requirement generally for disqualification from participation in certain matters when an employee is "seeking other employment," a term that encompasses both negotiating and other specified lesser contacts.

The existing language of § 2635.601 and § 2635.602 in that subpart suggests that coverage may be limited to situations where the employee's "performance or nonperformance of official duties will affect" the financial interests of a prospective employer. A somewhat more accurate test, for purposes of 18 U.S.C. 208, is contained in the existing § 2635.604(a), § 2635.605(a), and § 2635.606(a), which is that coverage extends to participation in "a particular matter that has a direct and predictable effect" on those financial interests. The criminal statute does not limit its application to situations where one's performance of official duties will affect a financial interest, but instead focuses on whether a matter in which the employee participates will affect the financial interest. Further, the statute is triggered only if the effect on the financial interest will be direct and predictable.

This variation among sections of the regulation was an unintended result of

the process by which provisions on prospective employment in the criminal statute and Executive order were implemented jointly. As questions from ethics officials have arisen concerning these apparent discrepancies, OGE has advised that the requirements of 18 U.S.C. 208 control. In order to more clearly align the provisions of subpart F with that advice and the criminal statute, OGE is amending § 2635.601 and § 2635.602 accordingly, by this current rulemaking.

Additionally, amendments in this current rulemaking to § 2635.601, § 2635.602, § 2635.604, § 2635.605, and § 2635.606 clarify initially in each section that the restrictions apply only when the employee would be "participating personally and substantially" in a particular matter. These modifications will further ensure that subpart F is consistent with 18 U.S.C. 208 and in conformance with OGE advice.

#### Matters of Regulatory Procedure

##### Executive Order 12866

In promulgating these final rule amendments, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have also been reviewed by the Office of Management and Budget under that Executive order.

##### Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities, because it primarily affects Federal executive branch agencies and their employees.

##### Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply, because this rulemaking does not contain any information collection requirements that require the approval of the Office of Management and Budget.

**List of Subjects in 5 CFR Part 2635**

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

Approved: December 7, 1998.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

For the reasons set forth in the preamble, the Office of Government Ethics is amending part 2635 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations, as follows:

**PART 2635—[AMENDED]**

1. The authority citation for part 2635 continues to read as follows:

**Authority:** 5 U.S.C. 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.

**§ 2635.601 [Amended]**

2. Section 2635.601 is amended by removing the words "who otherwise would be affected by the performance or nonperformance of the employees' official duties." from the end of the first sentence and adding the words "whose financial interests would be directly and predictably affected by particular matters in which the employees participate personally and substantially." in their place, and by adding the new sentence "See § 2635.402 and § 2640.103 of this chapter." between the second and third sentences.

**§ 2535.602 [Amended]**

3. Section 2635.602 is amended by removing the words "the employee's official duties would affect" from the first sentence of the undesignated introductory text and adding the words "particular matters in which the employee will be participating personally and substantially would directly and predictably affect" in their place, and by removing the words "affected by the performance or nonperformance of his official duties" from the first sentence of the note following the undesignated introductory text and adding the words "affected directly and predictably by particular matters in which he participates personally and substantially" in their place.

4. Section 2635.603 is amended by revising paragraph (d) to read as follows:

**§ 2635.603 Definitions.**

\* \* \* \* \*

(d) *Direct and predictable effect, particular matter, and personal and*

*substantial* have the respective meanings set forth in § 2635.402(b)(1), (3), and (4).

**§ 2635.604 [Amended]**

5. Section 2635.604 is amended by adding the words "personally and substantially" after the word "participate" in the first sentence of paragraph (a).

**§ 2635.605 [Amended]**

6. Section 2635.605 is amended by adding the words "personally and substantially" after the word "participate" in the first sentence of paragraph (a), and by adding the words "personally and substantially" after the word "participate" in the first sentence of paragraph (b).

**§ 2635.606 [Amended]**

7. Section 2635.606 is amended by removing the words "taking official action" from the first sentence of paragraph (a) and adding the words "participating personally and substantially" in their place.

[FR Doc. 99-6492 Filed 3-16-99; 8:45 am]

BILLING CODE 6345-01-U

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****9 CFR Part 52**

[Docket No. 98-123-3]

RIN 0579-AB10

**Pseudorabies in Swine, Payment of Indemnity; Technical Amendment**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule; technical amendment and notice of extension of comment period.

**SUMMARY:** In an interim rule published in the **Federal Register** on January 15, 1999, and effective as of January 12, 1999, we established animal health regulations to provide for the payment of indemnity by the United States Department of Agriculture for the voluntary depopulation of herds of swine known to be infected with pseudorabies. Although we provided in our interim rule that a premises that has been depopulated of swine may not be restocked for at least 30 days following cleaning and disinfection, it was our intent to also allow an official pseudorabies epidemiologist to allow restocking in less than 30 days or to require a waiting period longer than 30

days as warranted or necessary. In this amendment we are clarifying that intent.

**DATES:** This amendment is effective March 11, 1999. We invite you to comment on Docket No. 98-123-2 as amended by this docket. We will consider all comments that we receive by April 16, 1999.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 98-123-2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 98-123-2.

You may read any comments that we receive on these dockets in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Keith Hand, Senior Staff Veterinarian, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737-1231; (301) 734-8073.

**SUPPLEMENTARY INFORMATION:****Background**

In an interim rule published in the **Federal Register** on January 15, 1999, and effective as of January 12, 1999 (64 FR 2545-2550, Docket No. 98-123-2), we established animal health regulations to provide for the payment of indemnity by the United States Department of Agriculture for the voluntary depopulation of herds of swine known to be infected with pseudorabies. Although we provided in our interim rule that a premises that has been depopulated of swine may not be restocked for at least 30 days following cleaning and disinfection of the premises, it was our intent to allow an official pseudorabies epidemiologist to allow restocking in less than 30 days or to require a waiting period longer than 30 days before restocking.

We included the 30-day waiting period in the interim rule in order to ensure that the vacated premises was completely free of the pseudorabies virus before being repopulated with