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DEPARTMENT OF AGRICULTURE

5 CFR Chapter LXXIII

RIN 3209-AA15

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

AGENCY: Department of Agriculture (Department or USDA).

ACTION: Interim rule.

SUMMARY: The Department of Agriculture (Department or USDA), with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for Department employees that supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), as issued by OGE. The regulations set forth both a general requirement for certain Department employees to obtain prior approval before engaging in outside employment and separate, more-extensive prior approval requirements for employees of the USDA Farm Service Agency (FSA), Food Safety and Inspection Service (FSIS), Office of the General Counsel (OGC), and Office of Inspector General (OIG). They also contain certain restrictions on financial interests applicable to FSA employees.

DATES: These regulations are effective March 24, 2000. Comments must be received or postmarked on or before April 24, 2000.

ADDRESSES: Comments should be submitted to the Office of Ethics, U.S. Department of Agriculture, Room 348-W—Stop 0122, 1400 Independence Avenue, SW., Washington, DC 20250-0122, telephone (202) 720-2251, Attention: John C. Surina, Director, Office of Ethics, or by e-mail at the following address: daeo.ethics@usda.gov.

FOR FURTHER INFORMATION CONTACT: John C. Surina, Director, Office of Ethics, U.S.

Department of Agriculture, Room 348-W—Stop 0122, 1400 Independence Avenue, SW., Washington, DC 20250-0122, telephone (202) 720-2251.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published the new Standards, which became effective on February 3, 1993. The standards, as corrected and amended, are codified at 5 CFR part 2635. On October 3, 1997, the Department's Employee Conduct and Responsibilities regulations were removed. *See* 62 FR 51759-51760.

5 CFR 2635.105 authorizes agencies, with the concurrence of OGE, to publish agency-specific supplemental regulations that are necessary to implement their respective ethics programs. The Department, with OGE concurrence, has determined that the following interim supplemental rules being codified in a new chapter LXXIII of 5 CFR, consisting of part 8301, are necessary to the success of its ethics program.

II. Analysis of the Regulations

Section 8301.101 General

Section 8301.101 explains that the regulations apply to all Department employees and supplement the executive branchwide Standards. In addition, this section notes that employees of the Department are also subject to the Standards at 5 CFR part 2635, the executive branch financial disclosure regulations at 5 CFR part 2634, and additional regulations on employee responsibilities and conduct at 5 CFR part 735. This section also notes that agencies and components of the Department, with concurrence of the Designated Agency Ethics Official (DAEO), may issue explanatory guidance, internal procedures, and delegations of authority consistent with 5 CFR 2635.105. Finally, to facilitate agency employees, across the Department, in accessing and utilizing applicable agency-specific guidance and procedures, the section provides that the Deputy Ethics Official for each USDA agency or component shall retain copies of all such guidance issued by that agency or component.

Section 8301.102 General Prior Approval Requirement for Outside Employment

The Standards, at 5 CFR 2635.803, specifically recognize that an agency may find it necessary or desirable to issue a supplemental regulation requiring its employees, or any category of employees, to obtain approval before engaging in outside employment. Department employees, pursuant to the Department's Employee Conduct and Responsibilities regulations at 7 CFR part 0, long had been required to seek prior approval before engaging in outside employment. This regulatory requirement lapsed after November 1, 1996, upon the expiration of the last grace period extension granted by OGE for agency prior approval requirements and agency prohibitions on holding or acquiring financial interests in effect prior to the effective date of the Standards.

The Department found its prior approval requirement particularly useful in ensuring that the outside employment of USDA employees conformed with all applicable laws and regulations. At the same time, the former requirement for universal prior approval had been viewed as unnecessarily burdensome and intrusive, particularly in those instances in which the employee's outside employment posed little danger to the interests of USDA and its agencies, or where there was little or no nexus between the employee's official duties and his or her outside employment.

In accordance with 5 CFR 2635.803, USDA has determined that it is necessary to the administration of its departmentwide ethics program to again require certain of its employees to seek approval before engaging in any outside employment. The Department has determined that all USDA employees who file either a public or confidential financial disclosure report (SF 278 or OGE Form 450), or an alternative form of reporting approved by OGE, must seek approval before engaging in any outside employment. Financial disclosure report filers occupy high level positions or otherwise hold positions that have a direct and substantial effect on the interests of non-Federal entities. Accordingly, prior approval of these employees' outside employment is warranted. Approval, however, merely constitutes an

assessment that the employment, as described on the submission, generally does not appear likely to violate any criminal statutes or other ethics rules. It is not a determination that a criminal or ethical conflict could not arise. Thus, Department employees should remain sensitive to ethics issues and seek further ethics guidance should their outside work circumstances or official duties significantly change.

Included within the definition of employment, for purposes of this regulation, is participation in teaching, speaking, writing or editing that, irrespective of compensation, either relates to the employee's official duties or is undertaken pursuant to an invitation extended by any person who is a prohibited source to any employee of USDA. The Department is obligated, under numerous statutes, to protect from release to the public various types of information regarding its programs. For example, numerous statutes restrict the premature release of various types of information concerning the many different commodities regulated by USDA. Premature release of such information, or of other information from which such information could reasonably be derived, could result in misuse of position through unfair speculation in those commodity markets. The Department believes that its statutory interests in avoiding this result may be protected, with a minimum of interference to its employees, through the imposition of a prior approval requirement limited solely to those situations where there is a heightened potential for risk to USDA—where an employee engages in outside speaking, teaching, writing, or editing that may result in the release of protected information or where the invitation to engage in the outside employment comes from one who has an interest in obtaining such protected information.

In addition to the foregoing, departmentwide requirement for prior approval of outside employment, other USDA component offices and agencies have determined that prior approval is required for their employees not covered under the departmentwide requirement. The Department has determined that it is necessary to the administration of its ethics program to implement the additional component-specific requirements for obtaining prior approval for outside employment specified in paragraph (f) of § 8301.103, and in §§ 8301.104 through 8301.106.

Section 8301.103 Additional Rules for Employees of the Farm Service Agency

The Farm Service Agency has determined that certain additional rules are necessary in order to protect the integrity of its programs. Many FSA programs, particularly farm loan programs, are administered in a highly decentralized manner. Many FSA employees reside in the same small communities as the FSA loan applicants, borrowers, and program participants they serve. At the same time, many FSA employees and/or their family members are themselves farmers. Farm Service Agency employees often are part of the very farm community being serviced by the local FSA office. Given the opportunity and, in many cases, the need for regular, non-official interaction between FSA employees and those persons in their communities serviced by FSA, there is a need to establish for FSA employees certain limitations upon outside employment and to prohibit FSA employees from obtaining certain financial holdings.

Paragraph (a) of § 8301.103 specifies that the additional rules in the section apply solely to FSA personnel who are Federal employees within the meaning of 5 U.S.C. 2105. This specification is necessary to distinguish that FSA community committee members, county committee members, and county office personnel, who serve either by election, or by being employed by a committee or county office, under 16 U.S.C. 590h, are not covered by the additional rules in this section. Such personnel consistently have been deemed by Federal courts not to be Federal employees under 5 U.S.C. 2105. See *Hedman v. Department of Agriculture*, 915 F. 2d 1552 (Fed. Cir. 1990); *Hamlet v. United States*, 14 Cl. Ct. 62 (1988), vacated and remanded, 873 F.2d 1414 (Fed. Cir. 1989); *Hargens v. U.S. Department of Agriculture*, 865 F. Supp. 1314, 1320 (N.D. Iowa 1994). Also contained in this paragraph is a cross-reference to rules that do apply to FSA community committee members, county committee members, and county office personnel, at 7 CFR part 7.

Paragraph (b) defines the phrase "FSA program participant" to include any person who is, or is an applicant to become, an FSA borrower, FSA grantee, or recipient of any other form of FSA financial assistance available under any farm credit, payment or other program administered by FSA.

Section 8103.103 contains two prohibitions on FSA employees acquiring certain financial interests. Paragraph (c) generally prohibits an employee, or a spouse or minor child of

an FSA employee, from directly or indirectly obtaining FSA direct loans. Paragraph (d) generally prohibits an employee, or a spouse or minor child of an FSA employee, from directly or indirectly purchasing certain FSA-related real properties. These prophylactic prohibitions reinstate similar provisions that existed before the executive branchwide Standards regulation superseded agency-specific rules.

Under 5 CFR 2635.403(a), an agency may, by supplemental regulation prohibit or restrict the acquisition or holding by its employees of financial interests that the agency determines would cause a reasonable person to question the impartiality or objectivity with which agency programs are administered. Many FSA farm loan borrowers are recipients of FSA direct loans which involve FSA as a "lender-of-last-resort." Similarly, many FSA employees are themselves farmers. The Farm Service Agency has found that permitting its employees to obtain FSA direct loans creates a high-risk ethics environment for FSA employees. The Department must shield the administration of the loan program against self-dealing and a lack of impartiality. Moreover, the close proximity of FSA employees to FSA program participants, generally, and the dependence of FSA program participants on FSA, especially FSA loan applicants, also warrant supplemental safeguards against any FSA employee in a position to secure private gain for himself or herself, or for any other person, by virtue of the public position he or she holds. Further, the restrictions will avoid the potential for disqualification of critical employees from official duties which might result in FSA being unable to fulfill its mission.

The prohibitions under paragraphs (c) and (d) apply whether the prohibited financial interest involved is obtained directly or indirectly. Thus, for example, an FSA employee would violate paragraph (c) should he or she obtain FSA direct loan funds through an agreement with another person under which the other party poses as a "front" for the FSA employee (e.g., by applying for an FSA loan knowing that a portion of the loan funds will be provided by him or her to the FSA employee for the employee's personal use). The same would be true for utilizing a "front" for the purchase of otherwise prohibited property.

Because application of the prohibitions in paragraphs (c) and (d) may result in undue financial hardship to various FSA employees in certain

instances, the prohibitions are tempered in application by the inclusion of various exceptions and waiver provisions. Paragraph (c) is subject to an exception permitting retention of direct loans secured by FSA employees either prior to the effective date of this regulation, March 24, 2000, or secured after such date, but prior to the FSA employee being appointed to, or nominated for appointment to an FSA position. Also, this prohibition may be waived for FSA State Committee members where the conditions stated in paragraph (c)(3) have been met. As State Committee members are special Government employees, application of the prohibition under paragraph (c) would result in an undue financial hardship to those State Committee members who are farmers by occupation. The exception for pre-existing loans and the waiver for State Committee members are available for use by a relatively small number of employees, to whom application of the prohibition would pose an inordinate financial hardship when compared to any perceived ethical dangers that they are likely to encounter through having an FSA direct loan.

The prohibition under paragraph (d) is subject to waiver based on a determination made by the FSA State Executive Director, in response to a written waiver request submitted jointly to the FSA State Executive Director by both the FSA employee and FSA program participant, that the purchase is not inconsistent with part 2635 of this title; that it is not otherwise prohibited by law, including, 7 U.S.C. 1986; and that, under the circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, nor otherwise needed to ensure confidence in the impartiality and objectivity with which agency programs are administered. FSA has chosen to employ a broad standard for exemption to this prohibition because there exist numerous situations in which the primary benefit from the exemption accrues not to the FSA employee but rather to the FSA program participant. For example, in many small farming communities, an FSA borrower may have difficulty in finding a buyer for his or her property. Since flat application of this prohibition could result in significant financial harm to the very persons whom FSA programs are intended to serve, FSA believes that an effective and fair solution involves a waiver procedure under which the FSA State Executive Director would make a determination balancing ethical

considerations against the potential financial hardship to the FSA program participant. This process provides flexibility and fairness while raising the level of decision making visibility and accountability.

Paragraph (e) of this section sets forth a general prohibition against an FSA employee and a spouse or minor child of an FSA employee engaging in certain transactions with persons whom the FSA employee knows or reasonably should know to be a FSA program participant directly affected by decisions made by the employee's FSA office, unless certain exceptions apply. The transactions covered by this general prohibition include sales of real property, leases of real or personal property, the sale or purchase of personal property, and engaging for personal services. The prohibition does not apply to transactions involving goods available to the general public at posted prices that are customary and usual within the community (e.g., sale of a tractor through placing an advertisement in the local newspaper) or to transactions involving the purchase or sale of property pursuant to a public auction. The prohibition also does not apply where a transaction is determined in advance by the appropriate FSA State Executive Director, after consulting with the FSA Headquarters ethics advisor, to be consistent with the Standards and otherwise not prohibited by law. This general prohibition reflects, in large part, a similar requirement that existed within those current segments of FSA that formerly were part of Farmers Home Administration and which lapsed upon publication of the Standards as a final rule.

Since farm leases and other transactions between FSA employees and FSA program participants are so prevalent within the farming community, FSA has determined that a prohibition without providing FSA employees the opportunity to obtain an advance determination that the transaction would be consistent with ethics requirements would work an undue financial hardship upon both the FSA employees, their spouses and minor children, and the FSA program participants. Requiring requests for advance determinations to be submitted to the FSA State Executive Director pursuant to the exception provides for the agency's need to have control over these interactions without imposing undue financial hardship. As a result, approved transactions will have the visibility and accountability addressed previously with regard to the prohibition in paragraph (d). Further,

the determination of the FSA State Executive Director is to be based upon the same standard employed in paragraph (d).

Paragraph (f) of § 8301.103 requires an FSA employee, not otherwise required to do so under § 8301.102, to obtain prior approval from the agency before engaging in outside employment with a person whom the FSA employee knows, or reasonably should know, to be an FSA program participant directly affected by decisions made by the particular FSA office in which the FSA employee serves. This requirement reflects, in large part, a similar requirement that existed within those segments of FSA that formerly were part of Farmers Home Administration and which lapsed on November 1, 1996. While outside interaction is vital to the FSA employees and to the community in which they live, the potential for outside employment opportunities to lead to favoritism and a loss of impartiality is significant enough to justify agency concerns. Thus, FSA has determined that it is necessary to require approval before *any* of its employees may engage in any outside employment involving an FSA program participant directly affected by decisions made by the office in which the FSA employees serves.

Section 8301.104 Additional Rules for Employees of the Food Safety and Inspection Service

The Food Safety and Inspection Service has determined that it is necessary to require prior approval before *any* of its employees, not otherwise required to do so under section 8301.102, may engage in any outside employment. The implementation of Hazard Analysis and Critical Control Points (HACCP) systems within the regulated industry, as well as the anticipated creation of Consumer Safety Officer positions, means that FSIS employees of all pay levels will be involved in ensuring food safety and, therefore, will be facing increased exposure to the food industry. Given the vital importance to public health of maintaining high standards of food safety in light of the changing nature of FSIS responsibilities through HACCP, FSIS believes that its long-standing requirement of universal prior approval for outside employment is even more necessary.

Section 8301.105 Additional Rules for Employees of the Office of the General Counsel

The USDA Office of the General Counsel previously has required lawyers serving within that office to

obtain prior approval before engaging in the outside practice of law. Given the fiduciary duties performed for the Department by OGC, such a requirement has been particularly useful in ensuring that the outside practice of law does not interfere or conflict with the official duties of attorneys within that Office. Accordingly, the Department has determined that it is necessary to require that all attorneys serving in OGC seek prior approval before engaging in outside employment involving the practice of law.

Section 8301.106 Additional Rules for Employees of the Office of Inspector General

The Office of Inspector General has determined that it is necessary to require prior approval before any of its employees may engage in outside employment involving law enforcement, investigation, security, firearms training, defensive tactics training, protective services, auditing, accounting, tax preparation, practice of law, and employment involving personnel, procurement, budget, computer, or equal employment opportunity services. The OIG had long relied upon the departmental prior approval requirement. The OIG has a wide range of responsibilities for investigation and auditing of departmental operations. These mission activities are of a highly sensitive nature. The aforementioned types of outside employment involve duties that, under certain circumstances, are similar to the mission activities of OIG, and therefore are more likely to create an actual or apparent conflict of interest. The Department has determined that it is necessary to the administration of its ethics program to require prior approval for the identified types of outside employment that pose a potential for OIG employees to engage in conduct that might violate applicable laws and regulations.

III. Matters of Regulatory Procedure

Administrative Procedure Act

The Department has found that good cause exists under 5 U.S.C. 553(b) and (d) for waiving, as unnecessary and contrary to public interest, the general notice of proposed rulemaking, opportunity for comment and the 30-day delay in effectiveness as to this interim rule. This rulemaking contains statements of policy, interpretive rules, and conduct regulations related solely to Department personnel and, in significant part, reissues in revised form the outside employment rules previously published in 7 CFR part 0.

Delaying the effectiveness of this rule could also result in an effort by some employees likely to be affected by the rules on outside employment and prohibited financial interests to engage in covered outside employment or to obtain covered financial interests prior to the effective date of this rule.

However, because this rule may be improved, comments may be submitted on or before April 24, 2000. All comments will be analyzed and any appropriate changes to the rule will be incorporated in the subsequent publication of the final rule.

Congressional Review

The Department has found that this rulemaking is not a rule as defined in 5 U.S.C. 804, and, thus, does not require review by Congress. This rulemaking is related to Department personnel.

Executive Orders Nos. 12866 and 12988

Since this rule relates to Department personnel, it is exempt from the provisions of Executive Orders Nos. 12866 and 12988.

Regulatory Flexibility Act

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Department employees.

Paperwork Reduction Act

The Department has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does 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 in 5 CFR Part 8301

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

Dated: March 16, 2000.

Dan Glickman,

Secretary of Agriculture.

Approved: March 17, 2000.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Department of Agriculture, with the concurrence of the Office of Government Ethics, is amending Title 5 of the Code of Federal

Regulations by adding a new chapter LXXIII, consisting of Part 8301, to read as follows:

CHAPTER LXXIII—DEPARTMENT OF AGRICULTURE

PART 8301—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF AGRICULTURE

Sec.

8301.101 General.

8301.102 Prior approval for outside employment.

8301.103 Additional rules for employees of the Farm Service Agency.

8301.104 Additional rules for employees of the Food Safety and Inspection Service.

8301.105 Additional rules for employees of the Office of the General Counsel.

8301.106 Additional rules for employees of the Office of Inspector General.

Authority: 5 U.S.C. 301, 7301; 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, 2635.403(a), 2635.803, 2635.807(a)(2)(ii).

§ 8301.101 General.

(a) In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Agriculture (Department or USDA) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

(b) In addition to 5 CFR part 2635 and this part, employees also are required to comply with the executive branch financial disclosure regulations at 5 CFR part 2634, the regulations on responsibilities and conduct contained in 5 CFR part 735, and Department guidance and procedures established pursuant to paragraph (c) of this section.

(c) With the concurrence of the Designated Agency Ethics Official (DAEO), agencies and components of the Department may, in accordance with 5 CFR 2635.105(c), issue explanatory guidance for their employees and establish procedures necessary to implement this part and part 2635 of this title. The Deputy Ethics Official for each agency or component shall retain copies of all such guidance issued by that agency or component.

§ 8301.102 Prior approval for outside employment.

(a) *Prior approval requirement.* An employee, other than a special Government employee, who is required to file either a public or confidential financial disclosure report (SF 278 or OGE Form 450), or an alternative form of reporting approved by the Office of Government Ethics, shall, before

engaging in outside employment, obtain written approval in accordance with the procedures set forth in paragraph (c) of this section.

(b) *Definition of employment.* For purposes of this section, "employment" means any form of non-Federal employment or business relationship or activity involving the provision of personal services by the employee for direct, indirect, or deferred compensation other than reimbursement of actual and necessary expenses. It also includes, irrespective of compensation, the following outside activities:

(1) Providing personal services as a consultant or professional, including service as an expert witness or as an attorney;

(2) Engaging in teaching, speaking, writing, or editing that:

(i) Relates to the employee's official duties within the meaning of 5 CFR 2635.807(a)(2)(i)(B) through (E); or

(ii) Would be undertaken as a result of an invitation to engage in the activity that was extended by a person who is a prohibited source within the meaning of 5 CFR 2635.203(d); and

(3) Providing personal services to a non-Federal entity as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee, which involves decision making or policymaking for the non-Federal entity, or the provision of advice, counsel, consultation, unless such personal services are provided:

(i) To a political, religious, employee, social, fraternal, or recreational organization; and (ii) Without compensation other than reimbursement of expenses.

(c) *Submission of requests for approval.* An employee seeking to engage in employment for which advance approval is required shall submit a written request for approval to the employee's supervisor a reasonable time before the employee proposes to begin the employment. Upon a significant change in the nature of the outside employment or in the employee's official position, the employee shall submit a revised request for approval. The supervisor will forward written requests for approval to the agency designee, or to the DAEO where no agency designee exists, through normal supervisory channels. All requests for prior approval shall include the following information:

(1) The employee's name, organizational location, occupational title, grade, and salary;

(2) The nature of the proposed outside employment, including a full description of the specific duties or services to be performed;

(3) A description of the employee's official duties that relate in any way to the proposed employment;

(4) The name and address of the person or organization for whom or with which the employee is to be employed, including the location where the services will be performed;

(5) The estimated total time that will be devoted to the outside employment. If the proposed outside employment is to be performed on a continuing basis, a statement of the estimated number of hours per year; for other employment, a statement of the anticipated beginning and ending dates;

(6) A statement as to whether the work can be performed entirely outside of the employee's regular duty hours and, if not, the estimated number of hours of absence from work that will be required;

(7) The method or basis of any compensation (e.g., fee, per diem, honorarium, royalties, stock options, travel and expenses, or other);

(8) A statement as to whether the compensation is derived from a USDA grant, contract, cooperative agreement, or other source of USDA funding;

(9) For employment involving the provision of consultative or professional services, a statement indicating whether the client, employer, or other person on whose behalf the services are performed is receiving, or intends to seek, a USDA grant, contract, cooperative agreement, or other funding relationship; and

(10) For employment involving teaching, speaking, writing or editing, the proposed text of any disclaimer required by 5 CFR 2635.807(b).

(d) *Standard for approval.* Approval shall be granted by the agency designee (or the DAEO, when there is not an agency designee) unless it is determined that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 or this part.

(e) *Responsibilities of the Designated Agency Ethics Official and component agencies.* (1) The DAEO or, with the concurrence of the DAEO, each separate agency or component of USDA may issue an instruction or manual issuance exempting categories of employment from a requirement of prior written approval based on a determination that employment within those categories would generally be approved and is not likely to involve conduct prohibited by Federal statutes or regulations, including 5 CFR part 2635 and this part.

(2) Department components may specify internal procedures governing the submission of prior approval requests and designate appropriate officials to act on such requests. The

instructions or manual issuances may include examples of outside employment that are permissible or impermissible consistent with 5 CFR part 2635 and this part. With respect to employment involving teaching, speaking, writing, or editing, the instructions or manual issuances may specify pre-clearance procedures and/or require disclaimers indicating that the views expressed do not necessarily represent the views of the agency, USDA or the United States.

(3) The officials within the respective USDA agencies or components responsible for the administrative aspects of these regulations and the maintenance of records shall make provisions for the filing and retention of requests for approval of outside employment and copies of the notification of approval or disapproval.

§ 8301.103 Additional rules for employees of the Farm Service Agency.

(a) *Application.* This section applies only to Farm Service Agency (FSA) personnel who are Federal employees within the meaning of 5 U.S.C. 2105. This section does not apply to FSA community committee members, county committee members, and county office personnel, who are either elected to their positions or are employees of community or county committees established under 16 U.S.C. 590h. For rules applicable to FSA community committee members, county committee members, and county office personnel, see 7 CFR part 7.

(b) *Definition of FSA program participant.* For purposes of this section, the phrase "FSA program participant," includes any person who is, or is an applicant to become, an FSA borrower, FSA grantee, or recipient of any other form of FSA financial assistance available under any farm credit, payment or other program administered by FSA.

(c) *Prohibited borrowing.* (1) No FSA employee, or spouse or minor child of an FSA employee, may directly or indirectly seek or obtain a "direct loan" under paragraph (a)(9) of section 343 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1991(a)(9).

(2) Nothing in this section bars an FSA employee, or spouse or minor child of an FSA employee, from retaining a direct loan secured prior to March 24, 2000 or, if subsequent to March 24, 2000, such direct loan is secured prior to the FSA employee being appointed to, or nominated for appointment to an FSA position. Any FSA employee who either personally has such a pre-existing loan, or whose spouse or minor child has such a pre-existing loan, must

submit a written disqualification from taking any official action on any such loan. Other than through the application of normal FSA loan servicing options set forth under FSA regulations, the terms of any such pre-existing loans shall remain fixed and shall not be subject to renegotiation or renewal unless pursuant to policy decision(s) made by the USDA Secretary or the FSA Administrator.

(3) *Waiver for FSA State Committee members.* A request for an exception to the general prohibition of paragraph (c)(1) of this section may be submitted by an FSA State Committee member (whether on his or her own behalf, or on behalf the FSA State Committee member's spouse or minor child), to the FSA Deputy Administrator for Farm Loans. The Deputy Administrator for Farm Loans may grant a written waiver from this prohibition based on a determination made with the concurrence of the DAEO and the FSA headquarters ethics advisor that:

(i) The applicant is a current FSA State Committee member or the spouse or minor child of a current FSA State Committee member;

(ii) The applicant meets the statutory qualification requirements for obtaining a direct loan; and

(iii) A waiver is not inconsistent with part 2635 of this title nor 7 U.S.C. 1986 nor otherwise prohibited by law, and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position, including the appearance of misuse of non-public information, or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered.

(d) *Prohibited real estate purchases.* (1) No FSA employee, or spouse or minor child of an FSA employee, may directly or indirectly purchase real estate held in the FSA inventory, for sale under forfeiture to FSA, or from an FSA program participant.

(2) *Waiver.* A request for an exception to the prohibition found in paragraph (1)(1) of this section may be submitted jointly by the FSA program participant and FSA employee (whether on his or her own behalf, or on behalf of the employee's own spouse or minor child), to the FSA State Executive Director. The FSA State Executive Director may grant a written waiver from this prohibition based on a determination made with the advice and clearance of the DAEO and the FSA headquarters ethics advisor that the waiver is not inconsistent with part 2635 of this title nor 7 U.S.C. 1986 nor otherwise prohibited by law and that, under the particular circumstances,

application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

(e) *Prohibited transactions with FSA program participants.* (1) Except as provided in paragraph (e)(2) of this section, no FSA employee or spouse or minor child of an FSA employee may directly or indirectly: Sell real property to; lease real property to or from; sell to, lease to or from, or purchase personal property from; or employ for compensation a person whom the FSA employee knows or reasonably should know is an FSA program participant directly affected by decisions of the particular FSA office in which the FSA employee serves.

(2) *Exceptions.* Paragraph (e)(1) of this section does not apply to:

(i) A sale, lease, or purchase of personal property, if it involves:

(A) Goods available to the general public at posted prices that are customary and usual within the community; or

(B) Property obtained pursuant to public auction; or

(ii) Transactions listed in paragraph (e)(1) of this section determined in advance by the appropriate FSA State Executive Director, after consulting with the FSA Headquarters ethics advisor, to be consistent with part 2635 of this title and otherwise not prohibited by law.

(f) *Additional prior approval requirement for outside employment.*

Any FSA employee not otherwise required to obtain approval for outside employment under § 8301.102 shall obtain written approval in accordance with the procedures set forth in paragraph (c) of § 8301.102 before engaging in outside employment, as that term is defined by paragraph (b) of § 8301.102, with or for a person:

(1) Whom the FSA employee knows, or reasonably should know, is an FSA program participant; and

(2) Who is directly affected by decisions made by the particular FSA office in which the FSA employee serves.

§ 8301.104 Additional rules for employees of the Food Safety and Inspection Service.

Any employee of the Food Safety and Inspection Service not otherwise required to obtain approval for outside employment under § 8301.102, shall, before engaging in any form of outside employment, obtain written approval in

accordance with the procedures set forth in paragraph (c) of § 8301.102.

§ 8301.105 Additional rules for employees of the Office of the General Counsel.

Any attorney serving within the Office of the General Counsel, not otherwise required to obtain approval for outside employment under § 8301.102, shall obtain written approval, in accordance with the procedures set forth in paragraph (c) of § 8301.102, before engaging in the outside practice of law, whether compensated or not.

§ 8301.106 Additional rules for employees of the Office of Inspector General.

Any employee of the Office of Inspector General, not otherwise required to obtain approval for outside employment under § 8301.102, shall obtain written approval, in accordance with the procedures set forth in paragraph (c) of § 8301.102, before engaging in any form of outside employment that involves the following:

(a) Law enforcement, investigation, security, firearms training, defensive tactics training, and protective services;

(b) Auditing, accounting, bookkeeping, tax preparation, and other services involving the analysis, use, or interpretation of financial records;

(c) The practice of law, whether compensated or not; or

(d) Employment involving personnel, procurement, budget, computer, or equal employment opportunity services.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 75

[Docket Number LS-99-06]

Increase in Fees for Federal Seed Testing and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing the hourly fee rate charged for voluntary Federal seed testing and certification services. The fee rate is increased to cover increases in salaries of Federal employees, rent, supplies, replacement equipment, and other increased Agency costs.

EFFECTIVE DATE: Effective April 24, 2000.

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