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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2640

RIN 3209-AA09

Exemption Under 18 U.S.C. 208(b)(2) for Financial Interests of Non-Federal Government Employers in the Decennial Census

AGENCY: Office of Government Ethics (OGE).

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Government Ethics is issuing an interim regulation that would permit certain temporary employees of the Department of Commerce Bureau of the Census (the Bureau) who have been hired under authority of 13 U.S.C. 23 to perform duties in connection with the decennial census, notwithstanding these employees' disqualifying financial interest under 18 U.S.C. 208(a) arising from the interests of their non-Federal employers.

DATES: This interim regulation is effective March 29, 2000. Comments are invited and are due by April 28, 2000.

ADDRESSES: Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917. Attention: Karen Kimball.

FOR FURTHER INFORMATION CONTACT: Karen Kimball, Associate General Counsel, Office of Government Ethics; telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037; Internet E-mail address: usoge@oge.gov. For E-mail messages, the subject line should include the following reference: Interim Rule Exemption Under 18 U.S.C. 208(b)(2).

SUPPLEMENTARY INFORMATION: Section 208(a) of title 18 of the United States Code prohibits Government employees from participating in an official capacity

in particular Government matters in which, to their knowledge, they, or, *inter alia*, any organization in which they are serving as an employee, have a financial interest, if the particular matter would have a direct and predictable effect on that interest. Section 208(b)(2) of title 18 permits the Office of Government Ethics to promulgate executive branchwide regulations describing financial interests that are too remote or inconsequential to warrant disqualification pursuant to section 208(a).

On December 18, 1996, the Office of Government Ethics published an executive branchwide final rule, "Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)," which as corrected is now codified at 5 CFR part 2640. The regulation describes financial interests that OGE has determined are either too remote or too inconsequential to affect an employee's consideration of any particular matter. Employees who have these financial interests, or who have such interests that are imputed to them, are permitted, to the extent described in the final regulation, to participate in matters affecting such interests notwithstanding the general prohibition in section 208(a).

In order to carry out its decennial census responsibilities, the Bureau of the Census must hire approximately 800,000 temporary employees throughout the country, primarily to assist in the enumeration process. Current historic low unemployment rates and demographic and societal changes have rendered traditional sources of decennial census workers insufficient. The Bureau, therefore, must engage in vigorous recruitment efforts to obtain needed personnel. Potential sources of such workers are likely to include teachers and other State, local, or tribal government workers who are available to work nights and weekends. The recruitment of these workers is time-sensitive because of the Constitutional mandate to conduct the census during calendar year 2000. The majority of workers are hired within a period of a few weeks.

The Bureau of the Census has authority under 13 U.S.C. 23 to hire temporary employees, "including employees of Federal, State, or local agencies or instrumentalities * * * to

assist the Bureau" in conducting the census. See 13 U.S.C. 23(c). That statute grants no express relief from the application of 18 U.S.C. 208.

State, local, and tribal governments have a financial interest in the decennial census. Census results are used to apportion funds among the States and among jurisdictions within the States in connection with entitlements under a number of Federal and State programs. We note that the results of the census also are used to allocate representation among the States in the United States House of Representatives and in State legislatures which, presumably, affects a State's ability to pursue its interests, including financial interests.

Conflict-of-interest concerns arise regarding decennial census workers who are directly involved in the enumeration process or in the supervisory chain of command for workers involved in that process. Such employees may be participating personally and substantially in particular matters that have a direct and predictable effect on the financial interests of their non-Federal government employer within the meaning of 18 U.S.C. 208(a). These employees' participation may be "personal and substantial" as those terms are defined in 5 CFR 2635.402(b)(4) of OGE's executive branch standards of ethical conduct and 5 CFR 2640.103(a)(2) of the OGE executive branchwide personal financial interests regulation because they participate directly in the determination of the census count and the numbers which their work produces are the substance of the census. Their work is the basis on which the census count is determined and, thus, their work is of significance to the matters. The decennial census and its administration in various States and localities may be "particular matters" as defined by 5 CFR 2635.402(b)(3) and 2640.103(a)(1), because the matters involve deliberation, decision, or action that is focused upon the interests of specific persons or on a discrete and identifiable class of persons.

As participation in census matters may be a conflict of interest pursuant to 18 U.S.C. 208(a), decennial census workers need to know whether they can lawfully engage in the activities required by their employment. Also,

since all aspects of the work that enumerators and their supervisors will do is related to the determination of the census numbers, it would not be possible to disqualify these employees from working on these matters and have them perform services for the agency. Granting waivers or creating an exemption is an appropriate method for removing any legal uncertainty about whether the conflict-of-interest laws in title 18 apply.

In the view of the Department of Commerce, as the department responsible for the administration of the census program, the financial interests of the non-Federal government employers in the work that these temporary census employees perform are both too remote and too inconsequential to affect the integrity of the services which the United States Government may expect from these employees for the following reasons. The nature of the work to be performed is basic data gathering and lower level supervision of the data gathering. No employee in a position covered by the new exemption in this interim rule would be able to affect the count for any census statistical unit to any significant degree due to the extent of the data gathering, the fragmentation of the data-gathering process, and the several quality checking and verification processes that the Department of Commerce has imposed. Additionally, the work of these employees is too far removed from the financial interests of their non-Federal government employers due to the number of independent intervening steps in the census process before final census determinations are made. Thus, the work of these employees is inconsequential to those financial interests due to the limited scope of their duties. Any risks regarding the conduct of an inaccurate and biased census are remote.

In addition, the scope of the exemption is very narrow and will not apply to cover those serving in State, local, and tribal government positions which are filled through public election. While elected officials would not be able to distort the census count to any significant degree because of the procedures that Commerce has imposed and the limited scope of temporary census employees' duties, there is a heightened concern about appearances arising from the greater interest elected officials have regarding the impact of the census count on their employers. The exclusion of such employees from the exemption and the narrowness of the exemption also address any

concerns that the census count might appear to be biased or inaccurate.

The Department of Commerce, under authority of 18 U.S.C. 208(b)(1), could issue individual waivers after determining that the employees' disqualifying financial interests are not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from them. However, senior officials at the Bureau of the Census have determined that it is administratively impractical to implement a system which would assure that individual waivers are granted due to the scale of the workforce it expects to hire, the decentralized nationwide hiring process, and the streamlined hiring process that must be utilized to meet the personnel needs required by the decennial census. According to Bureau of the Census officials, it would not be feasible to issue individual waivers due to the volume of personnel actions anticipated. Hundreds of thousands of positions need to be filled within a three- to four-week period for employment lasting six to eight weeks. In addition, most of this hiring process is administered by temporary clerks who are employed scarcely longer than those whose positions they are attempting to fill. These clerks are required to follow a multitude of complex procedures in order legally to hire and pay new employees. Bureau of the Census officials have concluded that having these clerks perform an additional step to determine whether the new employees are employed by State, local, or tribal government employers in order to determine whether a conflict of interest waiver is required is an unjustified use of very limited time. They also believe that such a process would be inconsistent with permission the Bureau of the Census received from the Office of Management and Budget to reduce and consolidate the number of forms that must be completed for each employee at the time of appointment. The Office of Management and Budget's agreement has permitted the Bureau to streamline its hiring process for the 2000 Census, minimizing the administrative burden wherever possible. Under these circumstances, the Bureau believes that only a regulatory waiver will address the Bureau's administrative needs and will provide reliable protection from inadvertent violations of the conflict of interest statute.

Based on the determinations of the Commerce Department and the Census Bureau, OGE has decided to issue this interim rule exemption. Accordingly, this interim regulation provides an

exemption for the financial interests of State, local, or tribal government employers whose employees are hired on a temporary basis by the Department of Commerce under authority of 13 U.S.C. 23 to participate in activities related to the conduct of the decennial census. While still employed by State, local, or tribal governments, the employees also work on a part-time or intermittent basis at the Bureau of the Census in a Local Census Office or in an Accuracy and Coverage Evaluation (ACE) function as enumerators, crew leaders, or as field operations supervisors. Commerce Department employment is expected to last from six to eight weeks. None of these temporary Commerce employees serve in a State, local, or tribal government position which is filled through public election.

This interim rule is being published after obtaining the concurrence of the Department of Justice pursuant to section 201(c) of Executive Order 12674. Also, as provided in section 402 of the Ethics in Government Act of 1978, as amended, 5 U.S.C. appendix, section 402, OGE has consulted with both the Department of Justice (as additionally required under 18 U.S.C. 208(d)(2)) and the Office of Personnel Management on this rule.

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 CFR 553(b) and (d), I find that good cause exists for waiving the general requirements of notice of proposed rulemaking, opportunity for public comments, and 30-day delayed effective date for this interim rule. It is in the public interest that this regulation take effect as soon as possible in order to enable the Bureau of the Census to conduct the census during the year 2000 as required by Constitutional mandate. Interested persons are invited to submit written comments to OGE on this interim regulation, to be received on or before April 28, 2000. The Office of Government Ethics will review all comments received and consider any modifications to this rule which appear warranted before adopting the final rule on this matter.

Executive Order 12866

In promulgating this interim rule, 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. This interim rule has also been reviewed by the Office of Management and Budget under that Executive order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this interim regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

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 interim rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

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

List of Subjects in 5 CFR Part 2640

Conflict of interests, Government employees.

Approved: March 17, 2000.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2640 as follows:

PART 2640—INTERPRETATION, EXEMPTIONS AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

1. The authority citation for part 2640 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; 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.

Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

2. Section 2640.203 is amended by adding a new paragraph (l) to read as follows:

§ 2640.203 Miscellaneous exemptions.

* * * * *

(l) *Exemption for financial interests of non-Federal government employers in the decennial census.* An employee of the Bureau of the Census at the United States Department of Commerce, who is also an employee of a State, local, or tribal government, may participate in the decennial census notwithstanding the disqualifying financial interests of

the employee's non-Federal government employer in the census provided that the employee:

(1) Does not serve in a State, local, or tribal government position which is filled through public election;

(2) Was hired for a temporary position under authority of 13 U.S.C. 23; and

(3) Is serving in a Local Census Office or an Accuracy and Coverage Evaluation function position as an enumerator, crew leader, or field operations supervisor.

[FR Doc. 00-7769 Filed 3-28-00; 8:45 am]

BILLING CODE 6345-01-U

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Revision of Tennessee Valley Authority Freedom of Information Act Regulations

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its Freedom of Information Act (FOIA) regulations to reflect an organizational reassignment of the FOIA function within TVA. It also provides a new address for filing FOIA requests and FOIA appeals.

EFFECTIVE DATE: March 29, 2000.

FOR FURTHER INFORMATION CONTACT: Denise Smith, FOIA Officer, Tennessee Valley Authority, 400 W. Summit Hill Drive (ET 5D), Knoxville, Tennessee 37902-1499, telephone number (865) 632-6945.

SUPPLEMENTARY INFORMATION: This rule was not published in proposed form since it relates to internal agency organization and administration. Since this rule is nonsubstantive, it is being made effective on March 29, 2000.

List of Subjects in 18 CFR Part 1301

Freedom of information, Government in the Sunshine, Privacy.

For the reasons stated in the preamble, TVA amends 18 CFR Part 1301 as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301, subpart A, continues to read as follows:

Authority: 16 U.S.C. 831-831dd, 5 U.S.C. 552.

2. In § 1301.3, revise the first sentence of paragraph (a) to read as follows:

§ 1301.3 Requirements for making requests.

(a) *How made and addressed.* You may make a request for records of TVA by writing to the Tennessee Valley Authority, FOIA Officer, 400 W. Summit Hill Drive (ET 5D), Knoxville, Tennessee 37902-1499. * * *

* * * * *

3. In § 1301.9, revise the first sentence of paragraph (a) to read as follows:

§ 1301.9 Appeals.

(a) *Appeals of adverse determinations.* If you are dissatisfied with TVA's response to your request, you may appeal an adverse determination denying your request, in any respect, to TVA's FOIA Appeal Official, the General Manager, CAO Business Services, Tennessee Valley Authority, 400 Summit Hill Drive (ET 5D), Knoxville, Tennessee 37902-1499. * * *

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Cleo W. Norman,

General Manager, CAO Business Services.

[FR Doc. 00-7519 Filed 3-28-00; 8:45 am]

BILLING CODE 8120-08-P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 18, 122, 123, 144, and 146

[T.D. 00-22]

Technical Corrections Relating to Customs Forms

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by correcting references to certain Customs Forms that have either been eliminated, substantially revised, or consolidated with another Customs Form. These corrections are made to update the Customs Regulations so that the trade community and vessel operators can be aware of current Customs information requirements.

EFFECTIVE DATE: March 29, 2000.

FOR FURTHER INFORMATION CONTACT: *For legal questions:* Larry Burton, Entry Procedures & Carriers Branch, Office of Regulations and Rulings, (202) 927-1287.

For operational questions: Robert Watt, Office of Field Operations, (202) 927-3654, or Kim Nott, Office of Field Operations, (202) 927-1364.