

# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 735

RIN 3206-AJ74

#### Employee Responsibilities and Conduct

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing a plain language rewrite of its regulations regarding the standards that govern employee responsibilities and conduct as part of a review of certain OPM regulations. The purpose of the revisions is to make the regulations more readable.

**DATES:** *Effective Date:* September 11, 2006.

**FOR FURTHER INFORMATION CONTACT:** Wade Plunkett, by telephone at 202-606-1700; or by FAX at 202-606-0082 or by e-mail at [wmplunke@opm.gov](mailto:wmplunke@opm.gov).

**SUPPLEMENTARY INFORMATION:** OPM is revising part 735, which deals with employee responsibility and conduct, as part of a review of certain OPM regulations for plain language purposes. On January 15, 2003 (68 FR 1987) OPM published a proposed regulation. One internal commenter noted that since the original regulation was published, OPM has delegated examining authority to some agencies in certain circumstances. Therefore, the proposed regulations have been modified to recognize this and permit the head of an agency to which examining authority had been delegated or his or her designee to grant exceptions to the prohibition contained in section 735.202(a). Since no other comments were received, we are publishing the proposed rule as final without further modification, except we are updating the reference to General

Accounting Office and changing it to Government Accountability Office. The purpose of this revision to part 735 is not to make substantive changes, but rather to make part 735 more readable, and to convert the regulation to a question and answer format.

#### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

#### E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

#### List of Subjects in 5 CFR Part 735

Conflict of interests, Government employees.

Office of Personnel Management

Linda M. Springer,

Director.

■ Accordingly, OPM is revising part 735 as follows:

### PART 735—EMPLOYEE RESPONSIBILITIES AND CONDUCT

#### Subpart A—General Provisions

Sec.

735.101 Definitions.

735.102 What are the grounds for disciplinary action?

735.103 What other regulations pertain to employee conduct?

#### Subpart B—Standards of Conduct

Sec.

735.201 What are the restrictions on gambling?

735.202 What are the restrictions on conduct that safeguard the examination process?

735.203 What are the restrictions on conduct prejudicial to the Government?

**Authority:** 5 U.S.C. 7301; 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 A—General Provisions

##### § 735.101 Definitions.

In this part:

*Agency* means an Executive agency (other than the Government Accountability Office) as defined by 5 U.S.C. 105, the Postal Service, and the Postal Rate Commission.

*Employee* means any officer or employee of an agency, including a

special Government employee, but does not include a member of the uniformed services.

*Government* means the United States Government.

*Special Government employee* means an officer or employee specified in 18 U.S.C. 202(a) except one who is employed in the legislative branch or by the District of Columbia.

*Uniformed services* has the meaning given that term by 5 U.S.C. 2101(3).

##### § 735.102 What are the grounds for disciplinary action?

An employee's violation of any of the regulations in subpart B of this part may be cause for disciplinary action by the employee's agency, which may be in addition to any penalty prescribed by law.

##### § 735.103 What other regulations pertain to employee conduct?

In addition to the standards of conduct in subpart B of this part, an employee shall comply with the standards of ethical conduct in 5 CFR part 2635, as well as any supplemental regulation issued by the employee's agency under 5 CFR 2635.105. An employee's violation of those regulations may cause the employee's agency to take disciplinary action, or corrective action as that term is used in 5 CFR part 2635. Such disciplinary action or corrective action may be in addition to any penalty prescribed by law.

#### Subpart B—Standards of Conduct

##### § 735.201 What are the restrictions on gambling?

(a) While on Government-owned or leased property or on duty for the Government, an employee shall not conduct or participate in any gambling activity, including operating a gambling device, conducting a lottery or pool, participating in a game for money or property, or selling or purchasing a numbers slip or ticket.

(b) This section does not preclude activities:

(1) Necessitated by an employee's official duties; or

(2) Occurring under section 7 of Executive Order 12353 and similar agency-approved activities.

**§ 735.202 What are the restrictions on conduct that safeguard the examination process?**

(a) An employee shall not, with or without compensation, teach, lecture, or write for the purpose of the preparation of a person or class of persons for an examination of the Office of Personnel Management (OPM) or other agency to which examining authority has been delegated, or Board of Examiners for the Foreign Service that depends on information obtained as a result of the employee's Government employment.

(b) This section does not preclude the preparation described in paragraph (a) of this section if:

(1) The information upon which the preparation is based has been made available to the general public or will be made available on request; or

(2) Such preparation is authorized in writing by the Director of OPM, or his or her designee, or by the head of an agency to which examining authority had been delegated, or his or her designee, or by the Director General of the Foreign Service, or his or her designee, as applicable.

**§ 735.203 What are the restrictions on conduct prejudicial to the Government?**

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

[FR Doc. E6-13149 Filed 8-10-06; 8:45 am]

BILLING CODE 6325-48-P

**DEPARTMENT OF AGRICULTURE****Food and Nutrition Service****7 CFR Part 235**

RIN 0584-AD53

**State Administrative Expense Funds**

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule makes changes to the regulations governing State Administrative Expense funds for the Child Nutrition Programs to reflect amendments made by the Child Nutrition and WIC Reauthorization Act of 2004 to the Child Nutrition Act of 1966. This rule implements a provision of the Act that increases the minimum State Administrative Expense grant for each State administering the National School Lunch Program (NSLP), the School Breakfast Program (SBP) and/or the Special Milk Program (SMP) from

\$100,000 to \$200,000 a year, adjusted by an index beginning in fiscal year 2009.

The rule also implements a requirement that for fiscal years 2005 through 2007 no State shall receive less than its fiscal year 2004 allocation for administrative costs. This final rule will increase the available funds to certain States to expand supervision and technical assistance of Child Nutrition Programs.

**DATES:** This rule is effective September 11, 2006.

**FOR FURTHER INFORMATION CONTACT:** Melissa Rothstein, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service (FNS) at 703-305-2595.

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

Section 202 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108-265; June 30, 2004) amended section 7 of the Child Nutrition Act of 1966 (42 U.S.C. 1776) regarding State Administrative Expense (SAE) funds for administration of the Child Nutrition Programs which include the National School Lunch Program (NSLP), the School Breakfast Program (SBP) and/or the Special Milk Program (SMP). Section 202 increased the minimum SAE grant amount to States, from \$100,000 to \$200,000 per year and added an annual adjustment to the minimum grant beginning in fiscal year 2009. It also contained a provision that for fiscal years 2005 through 2007, no State shall receive less than its fiscal year 2004 SAE allocation. Regulations for SAE funds are codified at 7 CFR part 235.

**Non-Discretionary SAE Funds**

This final rule amends § 235.4 to include the requirement that for each of fiscal years 2005 through 2007 no State shall receive less than its fiscal year 2004 allocation for administrative expenses.

**Minimum State Grant for Administrative Expenses**

This final rule amends § 235.4(a)(1) by increasing the minimum SAE grant for each State administering the NSLP, the SBP and/or the SMP from \$100,000 to \$200,000 a year. The minimum SAE grant will be adjusted beginning fiscal year 2009 using the Department of Commerce, Bureau of Economic Analysis index for State and local government purchases. The percentage change between the value of the index for the 12-month period ending June 30 of the second preceding fiscal year and the value of the index for the 12-month

period ending June 30 of the preceding fiscal year will be the basis for the annual adjustment.

It should be noted that the annual adjustment prescribed in the law is not a cumulative adjustment. Rather, the adjustment will be made each year, beginning in fiscal year 2009, to the minimum grant amount of \$200,000. Depending on the performance of the Department of Commerce index, the grant amount levels could increase or decrease from one year to the next.

Pursuant to section 502(b)(2) of Public Law 108-265, these requirements were effective October 1, 2004. FNS issued an implementation memorandum informing State agencies of these changes on July 12, 2004.

Use of funds—Technology infrastructure improvement requirement section 202(b) of Public Law 108-265 also amended section 7 of the Child Nutrition Act of 1966 by adding a new subsection (i) which included a requirement that each State agency submit an amendment to the State agency's plan detailing how SAE funds would be used for technology infrastructure improvement. The amendment to the plan was required to describe how SAE funds would be used by the State agency in part to implement information systems that address potential cost savings and improve program integrity by:

- Monitoring the nutrient content of meals served;
- Providing training to local educational agencies, school food authorities, and schools on how to use technology and information management systems for activities including menu planning, collecting point-of-sale data, and the processing of applications for free and reduced-price meals; and
- Using electronic data to establish benchmarks to compare and monitor program integrity, participation and financial data across schools and school food authorities.

Pursuant to section 502(a) of Public Law 108-265, this requirement was effective on June 30, 2004. FNS issued an implementation memorandum informing State agencies of this requirement on August 30, 2004. All required amendments to SAE plans have been submitted to FNS. No change to the existing regulations at 7 CFR part 235 is needed in order to implement this statutory requirement.

**Executive Order 12866**

This final rule has been determined to be not significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.