

# Rules and Regulations

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## OFFICE OF GOVERNMENT ETHICS

### 5 CFR Parts 2634 and 2638

RINs 3209-AA00 and 3209-AA07

#### **Amendments To Incorporate a Statement Regarding the “Sole and Exclusive” Nature of the Authority That the Regulations of the Office of Government Ethics Confer on Executive Branch Departments and Agencies**

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

**ACTION:** Final rule, clarifying amendments.

**SUMMARY:** The Office of Government Ethics is amending its regulations to clarify the sole and exclusive nature of the authority it has conferred on executive branch departments and agencies and to remove certain language that this clarification makes redundant.

**DATES:** *Effective Date:* November 2, 2007.

#### **FOR FURTHER INFORMATION CONTACT:**

William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, telephone: 202-482-9300; TDD: 202-482-9293; FAX: 202-482-9237.

**SUPPLEMENTARY INFORMATION:** As the supervising ethics office for the executive branch, the Office of Government Ethics (OGE) has promulgated, at subchapter B of chapter XVI of title 5 of the **Code of Federal Regulations**, regulations that, among other things, confer on executive branch departments and agencies (“agencies”) the authority to carry out various functions of the executive branchwide ethics program. Agencies exercise this authority solely and exclusively, in order to ensure consistent and uniform application of the various statutory and regulatory authorities constituting the framework for ethics in the executive branch.

OGE previously amended one section of subchapter B, 5 CFR 2634.906, in order to add language emphasizing the sole and exclusive nature of the authority OGE has conferred on executive branch agencies. 63 FR 15273-15274 (March 31, 1998). In a branchwide issuance to designated agency ethics officials, DAEogram DO-99-014 (April 12, 1999), available on OGE’s Web site (<http://www.usoge.gov>), OGE similarly explained that the provisions of subchapter B that confer authority on executive branch agencies confer sole and exclusive authority. In January 2002, OGE reiterated this longstanding interpretation of subchapter B in connection with a matter pending before another administrative body, which in turn published the following decision taking note of the sole and exclusive authority OGE has conferred on executive branch agencies: 59 FLRA No. 50 (2003).

In order to ensure consistent and uniform application of subchapter B, OGE is issuing these final rule technical clarifying amendments, effective November 2, 2007, which incorporate in subchapter B an express regulatory statement regarding the sole and exclusive nature of the authority that subchapter B confers on executive branch agencies. Because this statement is applicable to all regulatory provisions in subchapter B, the language OGE added to 5 CFR 2634.906 in its 1998 amendment is now redundant. Accordingly, OGE is also removing that amended language from § 2634.906, including the note thereto, and reissuing that section as previously worded.

Finally, in accordance with section 402(b) of the **Ethics in Government Act** and section 201 of E.O. 12674 as modified, OGE has consulted with the Department of Justice and the Office of Personnel Management on these final rule clarifying amendments.

#### **Matters of Regulatory Procedure**

##### *Administrative Procedure Act*

These clarifying amendments to OGE’s executive branchwide regulations constitute interpretative rules that are exempt, pursuant to 5 U.S.C. 553(b)(A), from the general procedures for notice of proposed rulemaking and opportunity for public comment. The purpose of the amendments is to clarify that the agencies concerned have sole and exclusive authority to make specific

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ethics determinations as to their employees. These amendments do not substantively change any existing responsibilities.

#### *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 amendatory rulemaking does not contain any information collection requirements that require the approval of the Office of Management and Budget.

#### *Unfunded Mandates Reform Act*

For purposes of the **Unfunded Mandates Reform Act of 1995** (2 U.S.C. chapter 25, subchapter II), this final rule, once finalized, will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

#### *Congressional Review Act*

The Office of Government Ethics has determined that this rulemaking involves a nonmajor rule under the **Congressional Review Act** (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register**.

#### *Executive Order 12866*

In promulgating these technical amendments to its regulations, OGE 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.

Moreover, in accordance with section 6(a)(3)(B) of E.O. 12866, the preamble to these revisions notes the legal basis and benefits of, as well as the need for, the regulatory action. There should be no appreciable increase in costs to OGE or the executive branch of the federal government in administering these regulatory amendments, since the provisions only clarify OGE's original intent regarding sole and exclusive agency authority under the executive branchwide government ethics regulations. Finally, this rulemaking is not economically significant under the Executive Order and will not interfere with State, local or tribal governments.

#### *Executive Order 12988*

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

#### **List of Subjects**

#### *5 CFR Part 2634*

Certificates of divestiture, Conflict of interests, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

#### *5 CFR Part 2638*

Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Dated: September 21, 2007.

**Robert I. Cusick,**

*Director, Office of Government Ethics.*

■ For the reasons set forth in the preamble, the Office of Government Ethics is amending parts 2634 and 2638 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

#### **Title 5—Administrative Personnel**

#### **CHAPTER XVI—OFFICE OF GOVERNMENT ETHICS**

#### **SUBCHAPTER B—GOVERNMENT ETHICS**

#### **PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE**

■ 1. The authority citation for part 2634 continues to read as follows:

**Authority:** 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); 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 I—Confidential Financial Disclosure Reports**

■ 2. Section 2634.906 is amended by removing the note and revising the regulatory text of the section to read as follows:

#### **§ 2634.906 Review of confidential filer status.**

The head of each agency, or an officer designated by the head of the agency for that purpose, shall review any complaint by an individual that his position has been improperly determined by the agency to be one which requires the submission of a confidential financial disclosure report pursuant to this subpart. A decision by the agency head or designee regarding the complaint shall be final.

#### **PART 2638—OFFICE OF GOVERNMENT ETHICS AND EXECUTIVE AGENCY ETHICS PROGRAM RESPONSIBILITIES**

■ 3. The authority citation for part 2638 continues to read as follows:

**Authority:** 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.

#### **Subpart A—General Provisions**

■ 4. Section 2638.101 is amended by adding a new paragraph (c) to read as follows:

#### **§ 2638.101 Authority and purpose.**

\* \* \* \* \*

(c) *Agency authority.* Subject only to the authority of the Office of Government Ethics as the supervising ethics office for the executive branch, all authority conferred on agencies in this subchapter B of chapter XVI of title 5 of the Code of Federal Regulations is sole and exclusive authority.

[FR Doc. E7–19470 Filed 10–2–07; 8:45 am]

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#### **DEPARTMENT OF AGRICULTURE**

#### **Agricultural Marketing Service**

#### **7 CFR Part 28**

[Docket Number: AMS-CN-07-0060; CN-07-003B]

**RIN 0581-AC75**

#### **2007 Crop Cotton Classification Services and User Fees to Growers**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule.

#### **SUMMARY:** The Smith-Doxey

Amendment of 1937 (7 U.S.C. 473a) to the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–476) provided authority for the USDA to perform cotton classification and market news services to producers at no cost. Prior to that time, authorization for classing services was provided through the Cotton Standards Act of 1923 (7 U.S.C. 51–65) and for statistical purposes through the Cotton Statistics and Estimates Act of 1927. Costs for classing services under the Smith-Doxey Amendment were supplied through appropriated funds until 1981 at which time the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) authorized the USDA to begin collecting user fees for their services and the classing fee structure was implemented through the Smith-Doxey Amendment. The statutory authority for the delivery of classing services and collection of applicable fees under the Smith-Doxey Amendment will lapse on September 30, 2007. This rulemaking is necessary to re-establish the regulatory authority for the program's continued operation and incorporate the current fee structure for the 2007 crop year, which was published in the June 1, 2007, **Federal Register** (72 FR 30457), under the authority of the Cotton Standards Act of 1923.

**DATES:** *Effective Date:* October 1, 2007.

#### **FOR FURTHER INFORMATION CONTACT:**

Darryl Earnest, Deputy Administrator, Cotton Program, AMS, USDA, Room 2639–S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail [darryl.earnest@usda.gov](mailto:darryl.earnest@usda.gov).

#### **SUPPLEMENTARY INFORMATION:**

#### **Executive Order 12866**

This rule has been determined to be not significant for purposes of Executive Order 12866; and, therefore has not been reviewed by the Office of Management and Budget (OMB).