

# Rules and Regulations

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## SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION

### 5 CFR Chapter LXXXII

#### Supplemental Standards of Ethical Conduct for Employees of the Special Inspector General for Iraq Reconstruction

**AGENCY:** Special Inspector General for Iraq Reconstruction.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Special Inspector General for Iraq Reconstruction (SIGIR), with the concurrence of the Office of Government Ethics (OGE), is issuing an interim regulation for employees of the SIGIR that supplement the executive-branch-wide Standards of Ethical Conduct (Standards) issued by OGE. With certain exceptions, this supplemental regulation requires SIGIR employees, except special Government employees, to obtain approval before engaging in outside employment.

**DATES:** This interim rule is effective June 24, 2010. Written comments must be received by August 23, 2010.

**ADDRESSES:** Send or deliver comments to Michael H. Mobbs, Deputy General Counsel and Designated Agency Ethics Official, by any of the following methods:

- *E-mail:* michael.mobbs@sigir.mil

Include the reference "SIGIR Supplemental Standards" in the subject line of the message.

- *Fax:* 703-428-0817.

- *Mail/Hand Delivery/Courier:* SIGIR, 400 Army Navy Drive, Arlington, VA 22202-4704, Attention: Michael H. Mobbs, Deputy General Counsel and Designated Agency Ethics Official (DAEO).

**FOR FURTHER INFORMATION CONTACT:** Michael H. Mobbs, Deputy General Counsel, Telephone 703-604-0429; e-mail: michael.mobbs@sigir.mil.

#### SUPPLEMENTARY INFORMATION:

##### Background

In 1992, OGE published Standards of Ethical Conduct for Employees of the Executive Branch (Standards) which became effective on February 3, 1993. The Standards, as corrected and amended, are codified at 5 CFR part 2635. The Standards set uniform ethical conduct standards applicable to all executive branch personnel. Section 2635.105 of the Standards authorizes agencies, with the concurrence of OGE, to publish agency-specific supplemental regulations that are necessary to properly implement their respective ethics programs. The SIGIR, with OGE's concurrence, has determined that the following interim supplemental rule is necessary for successful implementation of its ethics program.

##### Analysis of the Regulations

###### *Section 9201.101 General*

Section 9201.101 explains that the regulations in part 9201 apply to employees of the SIGIR and supplement the OGE Standards. This section also includes cross-references to other issuances applicable to SIGIR employees, including the regulations concerning executive branch financial disclosure, financial interests, and employee responsibilities and conduct, as well as implementing SIGIR guidance and procedures issued in accordance with OGE Standards.

###### *Section 9201.102 Prior Approval for Outside Employment and Other Outside Activities*

In accordance with 5 CFR 2635.803, the SIGIR has determined it is necessary for the purpose of administering its ethics program to require its employees to obtain approval before engaging in outside employment or activities. This approval requirement will help to ensure that potential ethical problems are resolved before employees begin outside employment or activities that could involve a violation of applicable statutes and standards of conduct.

Section 9201.102(a) provides that a SIGIR employee, other than a special Government employee, must obtain advance written approval from the employee's supervisor and the concurrence of the Designated Agency Ethics Official (DAEO) or alternate DAEO before engaging in any outside

employment except to the extent that the SIGIR DAEO or alternate DAEO has issued an instruction or manual pursuant to paragraph (e) of this section exempting an activity or class of activities from this requirement.

Section 9201.102(b) broadly defines outside employment to cover any form of non-Federal employment or business relationship involving the provision of personal services, whether or not for compensation, other than the discharge of official duties. It includes writing when done under an arrangement with another person or entry for production or publication of the written product. It does not, however, include participation in the activities of non-profit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organizations, unless such activities are for compensation other than reimbursement of expense, the organization's activities are devoted substantially to matters relating to the employee's official duties as defined in 5 CFR 2635.807(a)(2)(i)(B) through (E) and the employee will serve as an officer or director of the organization, or the activities will involve the provision of consultative or professional services. Consultative services means the provision of personal services by an employee, including the rendering of advice or consultation, which requires advanced knowledge in a field of science or learning customarily acquired by a course of specialized instruction and study in an institution of higher education, hospital, or similar facility. Professional services means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession as defined in 5 CFR 2636.305(b)(1) or involves a fiduciary relationship as defined in 5 CFR 2636.305(b)(2). A note following paragraph (b) of § 9201.102 pertains to the special approval requirement set out in both 18 U.S.C. 203(d) and 205(e) respectively, for certain representational activities otherwise covered by the conflict of interest restrictions on compensation and activities of employees in claims against and other matters affecting the Government. The note explains that an employee who wishes to act as agent or attorney for, or otherwise represent his parents, spouse, child, or any person for whom, or any estate for which, he is

serving as guardian, executor, administrator, trustee or other personal fiduciary in such matters must obtain the approval required by law of the Government official responsible for the employee's appointment in addition to the regulatory approval required in § 9201.102.

Section 9201.102(c) sets out the procedures for requesting prior approval to engage in outside employment initially, or within seven calendar days of a significant change in the nature or scope of the outside employment or the employee's official position.

Section 9201.102(d) sets out the standard to be applied by the employee's supervisor and the DAEO or alternate DAEO in acting on requests for prior approval of outside employment as broadly defined by 9201.102(b). Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

Section 9201.102(e) provides that the SIGIR DAEO or alternate DAEO can issue instructions or manual issuances governing the submission of requests for approval of outside employment, which may exempt categories of employment from the prior approval requirement of this section based on a determination that employment within those categories would generally be approved and is not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635. The instructions or issuances may include examples of outside employment that are permissible or impermissible consistent with this part and 5 CFR part 2635.

#### *Administrative Procedure Act*

Pursuant to 5 U.S.C. 553(b) the SIGIR finds good cause exists for waiving the general notice of proposed rulemaking and opportunity for public comment as to this interim rule.

Notice and comment before the effective date are being waived because this rule concerns matters of agency organization, practice and procedure. However, written comments, which must be received by August 23, 2010, can be submitted on this interim rule; any such comments will be considered before this rule is adopted as final.

#### *Executive Orders 12866 and 12988*

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

#### *Regulatory Flexibility Act*

SIGIR has determined, pursuant to 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 SIGIR employees.

#### *Paperwork Reduction Act*

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

#### *Congressional Review Act*

SIGIR has determined that this rule is not a rule as defined in 5 U.S.C. 804, and thus, does not require review by Congress.

#### **List of Subjects in 5 CFR Part 9201**

Conflict of interest, Government employees.

■ Accordingly, for the reasons set forth in the preamble, the Special Inspector General for Iraq Reconstruction, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter LXXXII, consisting of part 9201, to read as follows:

#### **Chapter LXXXII—Special Inspector General for Iraq Reconstruction**

#### **PART 9201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION**

Sec.

9201.101 General.

9201.102 Prior approval for outside employment and other outside activities.

**Authority:** 5 U.S.C. 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, 2635.802, 2635.803, 2635.807.

#### **§ 9201.101 General.**

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Special Inspector General for Iraq Reconstruction (SIGIR) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

(b) *Cross-references.* In addition to 5 CFR part 2635 and this part, SIGIR employees are required to comply with implementing guidance and procedures issued by SIGIR in accordance with 5

CFR 2635.105(c). SIGIR employees are also subject to the regulations concerning executive branch financial disclosure contained in 5 CFR part 2634, the regulations concerning executive branch financial interests contained in 5 CFR part 2640, and the regulations concerning executive branch employee responsibilities and conduct contained in 5 CFR part 735.

#### **§ 9201.102 Prior approval for outside employment and other outside activities.**

(a) *General requirement.* Before engaging in any outside employment, with or without compensation, an employee of the SIGIR, other than a special Government employee, must obtain written approval from the employee's supervisor and the concurrence of the Designated Agency Ethics Official (DAEO) or the alternate DAEO, except to the extent that the SIGIR DAEO or alternate DAEO has issued an instruction or manual pursuant to paragraph (e) of this section exempting an activity or class of activities from this requirement. Nonetheless, special Government employees remain subject to other statutory and regulatory provisions governing their outside activities, including 18 U.S.C. 203(c) and 205(c), as well as applicable provisions of 5 CFR part 2635.

(b) *Definition of employment.* For purposes of this section, employment means any form of non-Federal employment or business relationship involving the provision of personal services, whether or not for compensation. It includes, but is not limited to, services as an officer, director, employee, agent, advisor, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. The definition does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless:

(1) The employee will receive compensation other than reimbursement of expenses;

(2) The organization's activities are devoted substantially to matters relating to the employee's official duties as defined in 5 CFR 2635.807(a)(2)(i)(B) through (E) and the employee will serve as officer or director of the organization; or

(3) The activities will involve the provision of consultative or professional services. *Consultative services* means the provision of personal services by an

employee, including the rendering of advice or consultation, which requires advanced knowledge in a field of science or learning customarily acquired by a course of specialized instruction and study in an institution of higher education, hospital or similar facility. *Professional services* means the provision of personal service by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession as defined in 5 CFR 2636.305(b)(1) or involves a fiduciary relationship as defined in 5 CFR 2636.305(b)(2).

**Note to § 9201.102(b):** There is a special approval requirement set out in both 18 U.S.C. 203(d) and 205(e) respectively, for certain representational activities otherwise covered by the conflict of interest restrictions on compensation and activities of employees in claims against and other matters affecting the Government. Thus, an employee who wishes to act as agent or attorney for, or otherwise represent his parents, spouse, child, or any person for whom, or any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary in such matters must obtain the approval required by law of the Government official responsible for the employee's appointment in addition to the regulatory approval required by this section.

(c) *Procedure for requesting approval.* (1) The approval required by paragraph (a) of this section shall be requested by e-mail or other form of written correspondence at least 30 calendar days in advance of engaging in outside employment as defined in paragraph (b) of this section.

(2) The request for approval to engage in outside employment or certain other activities shall set forth, at a minimum:

- (i) The name of the employer or organization;
- (ii) The nature of the legal activity or other work to be performed;
- (iii) The title of the position; and
- (iv) The estimated duration of the outside employment.

(3) Upon a significant change in the nature or scope of the outside employment or in the employee's official position within the SIGIR, the employee must, within 7 calendar days of the change, submit a revised request for approval.

(d) *Standard for approval.* Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(e) *DAEO's and alternate DAEO's responsibilities.* The SIGIR DAEO or alternate DAEO may issue instructions or manual issuances governing the submission of requests for approval for outside employment. The instructions

or manual issuances may exempt categories of employment from the prior approval requirement of this section based on a determination that employment within those categories of employment would generally be approved and is not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635. The DAEO or alternate DAEO may include in these instructions or issuances examples of outside employment that are permissible or impermissible consistent with this part and 5 CFR 2635.

**Stuart W. Bowen, Jr.,**

*Special Inspector General for Iraq Reconstruction.*

Approved: June 10, 2010.

**Robert I. Cusick,**

*Director, Office of Government Ethics.*

[FR Doc. 2010-15103 Filed 6-23-10; 8:45 am]

**BILLING CODE 3710-8N-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Doc. No. AMS-FV-09-0075; FV10-989-1 FIR]

#### Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2009-10 Crop Natural (Sun-Dried) Seedless Raisins

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that established final volume regulation percentages of 85 percent free and 15 percent reserve for the 2009-10 crop of Natural (sun-dried) Seedless (NS) raisins covered under the Federal marketing order for California raisins (order). The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

**DATES:** Effective June 25, 2010. The volume regulation percentages apply to acquisitions of NS raisins from the 2009-10 crop until the reserve raisins from that crop are disposed of under the marketing order.

**FOR FURTHER INFORMATION CONTACT:**

Terry Vawter, Senior Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs,

AMS, USDA; Telephone: (559) 487-5901; Fax: (559) 487-5906; or E-mail: [Terry.Vawter@ams.usda.gov](mailto:Terry.Vawter@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>; or by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491; Fax: (202) 720-8938; or E-mail: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 989, both as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

The handling of California raisins is regulated by 7 CFR part 989. The order authorizes the establishment of volume regulations, when warranted, for each crop. Volume regulations: (1) Help the industry address its marketing problems by keeping supplies in balance with demand; (2) strengthen market conditions; (3) fully supply both the domestic and export markets without overburdening them; and (4) provide for market expansion.

Volume regulation is warranted for the 2009-10 crop of NS raisins because the crop estimate (supply) exceeded the trade demand (demand). In an interim rule published in the **Federal Register** on April 22, 2010, and effective on April 23, 2010 (75 FR 20897; Doc No. AMS-FV-09-0075, FV10-989-1 IFR), § 989.257 was amended by incorporating the 2009-10 crop year final free and reserve percentages. This rule continues in effect the rule that established a final free percentage of 85 percent, and a final reserve percentage of 15 percent, of NS raisins acquired by handlers during the crop year, which began August 1, 2009, and ends July 31, 2010.

#### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural