

PART 4600 [RESERVED]

PART 4601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF HOMELAND SECURITY

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SOURCE: 81 FR 6167, Jan. 5, 2016, unless otherwise noted.

§ 4601.101 General.

(a) *Applicability.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Homeland Security (DHS) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards) in 5 CFR part 2635.

(b) *Cross-references to other ethics regulations and guidance.* In addition to the OGE Standards in 5 CFR part 2635 and this part, DHS employees are subject to the Executive branch financial disclosure regulations contained in 5 CFR parts 2634, the Executive branch financial interests regulations contained in 5 CFR part 2640, the Executive branch employee responsibilities and conduct regulations contained in 5 CFR part 735, and DHS guidance and procedures on employee conduct, including those issued under paragraph (c) of this section.

(c) *DHS agency instructions.* Prior to issuance, the DHS Designated Agency

Ethics Official (DAEO) must approve any internal instructions or manuals that DHS agencies, as designated in § 4601.102 of this part, issue to provide explanatory ethics-related guidance and to establish procedures necessary to implement 5 CFR part 2635 and this part.

(d) *Definitions*—(1) *Agency designee* as used in this part and in 5 CFR part 2635 means an employee who has been identified in an instruction or manual issued by an agency under paragraph (c) of this section to make a determination, give an approval, or take other action required or permitted by this part or 5 CFR part 2635 with respect to another employee.

(2) *Outside employment or activity* as used in this part means any form of non-Federal employment, business activity, business relationship, or other covered activity as identified in this section, involving the provision of personal services by the employee, whether or not for compensation. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, advisor, consultant, contractor, general partner, trustee, or teacher. There are several exclusions and limitations to the definition as described immediately below.

(i) *Speaking and writing activities.* Outside employment generally does not include speaking and writing activities so long as they are not combined with the provision of other services that do fall within this definition, such as the practice of law and other outside employment or activities covered by paragraph (d)(2)(ii)(A) through (D) of this section. Employees who wish to engage in compensated speaking or writing in a personal capacity are subject to the provisions of 5 CFR 2635.807 and are encouraged to seek additional guidance from an agency ethics official.

(ii) *Nonprofit and other organizations.* Outside employment does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless the participation involves:

(A) Acting in a fiduciary capacity,

(B) Providing professional services for compensation,

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(C) Rendering advice for compensation other than the reimbursement of expenses, or

(D) An activity relating to the employee's official duties as defined in 5 CFR 2635.807(a)(2)(i)(A) through (E), to include activities relating to any ongoing or announced policy, program, or operation of the employee's agency as it is defined at 5 CFR 4601.102.

(iii) *The Hatch Act*. Outside employment does not include activities otherwise permissible by the Hatch Act and related regulations relating to partisan political activities.

(iv) *Military service*. Outside employment does not include state or Federal military service protected by the Uniformed Services Employment and Re-employment Rights Act.

(v) *Additional restrictions for certain employees*. Employees of the Federal Emergency Management Agency, U.S. Customs and Border Protection, and U.S. Immigration and Customs Enforcement should also refer to the agency-specific provisions in this part relating to outside employment.

(3) *Chief Deputy Ethics Official* as used in this part means the persons delegated authority by the DHS DAE0 to manage and coordinate the ethics programs within the DHS components pursuant to the DAE0's authority in 5 CFR 2638.204.

(4) "Special Government Employee" as used in this part has the same meaning as in 18 U.S.C. 202(a).

§ 4601.102 Designation of DHS components as separate agencies.

(a) Pursuant to 5 CFR 2635.203(a), DHS designates each of the following components as a separate agency for purposes of the regulations in subpart B of 5 CFR part 2635 governing gifts from outside sources, including determining whether the donor of a gift is a prohibited source under 5 CFR 2635.203(d); for purposes of the regulations in § 4601.103(c) of this part governing the establishment of procedures for obtaining prior approval for outside employment; for purposes of the regulations in § 4601.103(c) of this part governing the designation of officials; and for the purposes of the regulations in 5 CFR 2635.807 governing teaching, speaking, and writing:

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(1) Federal Emergency Management Agency (FEMA);

(2) Federal Law Enforcement Training Center;

(3) Transportation Security Administration;

(4) U.S. Citizenship and Immigration Services;

(5) U.S. Coast Guard;

(6) U.S. Customs and Border Protection (CBP);

(7) U.S. Immigration and Customs Enforcement (ICE); and

(8) U.S. Secret Service.

(b)(1) DHS will treat employees of DHS components not designated as separate agencies in paragraph (a) of this section, including employees of the Office of the Secretary, as employees of the remainder of DHS. For purposes of the regulations in subpart B of 5 CFR part 2635 governing gifts from outside sources, including determining whether the donor of a gift is a prohibited source under 5 CFR 2635.203(d); for purposes of the regulations in § 4601.103(c) of this part governing the establishment of procedures for obtaining prior approval for outside employment; for purposes of the regulations in § 4601.103(c) of this part governing the designation of officials; and for purposes of the regulations in 5 CFR 2635.807 governing teaching, speaking, and writing, DHS will treat the remainder of DHS as a single agency that is separate from the components designated as separate agencies in paragraph (a) of this section.

(2) For the limited purposes of establishing procedures for obtaining prior approval for outside employment and designating officials pursuant to § 4601.103(c) of this part, DHS will treat the DHS Office of Inspector General as a separate agency.

(c) An employee on detail from his or her employing agency to another agency for a period in excess of 30 calendar days is subject to the supplemental regulations and instructions of the agency to which he is detailed rather than his or her employing agency.

§ 4601.103 Prior approval for outside employment and activities.

(a) *General requirement for approval*. A DHS employee, other than a Special Government Employee, shall obtain

prior written approval before engaging in any outside employment or activity (as defined by §4601.101 of this part), with or without compensation, unless the employee's agency has exempted the outside employment or activity (or category or class of outside employment or activity) from this requirement by an instruction or manual issued pursuant to paragraph (c) of this section.

(b) *Standard for approval.* Approval shall be granted unless it has been determined that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(c) *Agency responsibilities.* (1) With the approval of the DHS DAE0, each agency as set forth in §4601.102 of this part shall issue internal instructions or a manual governing the submission of requests for approval of outside employment and activities and designating appropriate officials to act on such requests not later than May 5, 2016.

(2) The instructions or manual may exempt particular outside employment or activities (or categories or classes of outside employment or activities) from the prior approval requirement of this section if such outside employment or activities would generally be approved and are not likely to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part. Agencies may include in their instructions or manual examples of outside employment or activities that are permissible or prohibited consistent with 5 CFR part 2635 and this part.

(3) In the absence of a manual or instruction identifying a person designated to act upon a request for approval for outside employment, the Chief Deputy Ethics Official at each agency shall act upon a request.

§4601.104 Additional rules for U.S. Customs and Border Protection (CBP) employees.

The following rules apply to employees of CBP, except Special Government Employees, and are in addition to §§4601.101 through 4601.103 and §§4601.107 and 4601.108 of this part:

(a) *Prohibitions on outside employment and activities.* (1) No CBP employee

shall be employed by or engage in activities in support of or on behalf of a customs broker; international carrier; bonded warehouse; foreign trade zone as defined in 15 CFR 400.2; cartman; law firm engaged in the practice of customs, immigration, or agriculture law; entity engaged in the enforcement of customs, immigration, or agriculture law; importation or exportation department of a business; or business or other entity which engages in services related to agriculture matters where such agriculture matters relate to CBP's mission.

(2) No CBP employee shall, in any private capacity, engage in employment or a business activity related to the importation or exportation of merchandise or agricultural products requiring inspection (other than a personal, routine consumer transaction unrelated to the operation of a business), or the entry of persons into or departure of persons from the United States.

(3) No CBP employee shall engage in outside employment or activities for a non-profit or other organization that involve assisting persons with matters related to the entry of persons or merchandise into or the departure of persons or merchandise from the United States, or matters related to obtaining temporary or permanent residency, citizenship, adjustment of status, or other immigration-related benefits.

(b) *Restrictions arising from employment of the spouse, relatives, members of the employee's household, or financial dependents.* (1) A CBP employee shall notify in writing his or her agency designee when any of the following circumstances exist:

(i) The spouse of the CBP employee is employed in a position that the CBP employee would be prohibited from occupying by paragraph (a) of this section;

(ii) A relative (as defined in 5 CFR 2634.105(o)), who is financially dependent on or who is a member of the household of the CBP employee, is employed in a position that the CBP employee would be prohibited from occupying by paragraph (a) of this section; or

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(iii) Any person, other than the spouse or relative of the CBP employee, who is financially dependent on or who is a member of the household of the CBP employee, is employed in a position that the CBP employee would be prohibited from occupying by paragraph (a) of this section.

(2) The CBP employee shall be disqualified from participating in an official capacity in any particular matter involving the individuals identified in paragraph (b)(1) of this section, or the employer thereof, unless the agency designee, with the advice and clearance of the CBP Chief Deputy Ethics Official, authorizes the CBP employee to participate in the matter using the standard in 5 CFR 2635.502(d), or the waiver provisions in 18 U.S.C. 208(b)(1), as appropriate.

§ 4601.105 Additional rules for Federal Emergency Management Agency (FEMA) employees.

The following rules apply to employees of FEMA, except Special Government Employees, and are in addition to §§ 4601.101 through 4601.103 and 4601.107 and 4601.108 of this part:

(a) *Prohibited outside employment (intermittent employees)*. Except as provided in paragraph (c) of this section, no intermittent FEMA employees hired under the authority of 42 U.S.C. 5149, which includes all Disaster Assistance Employees or Stafford Act Employees and Cadre of On-Call Response Employees, shall be employed by a current FEMA contractor while a FEMA employee, whether or not they are on activated status.

(b) *Prohibited outside employment (non-intermittent employees)*. Except as provided in paragraph (c) of this section, no non-intermittent FEMA employee shall be employed by a current FEMA contractor.

(c) *Waivers*. The FEMA Chief Deputy Ethics Official or his or her agency designee may grant a written waiver of any prohibition in paragraphs (a) and (b) of this section with the DAEO's concurrence. To grant the waiver, the FEMA Chief Deputy Ethics Official or his or her agency designee must determine that the waiver is consistent with 5 CFR part 2635 and not otherwise prohibited by law; that the prohibition is

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not necessary to avoid the appearance of misuse of position or loss of impartiality; and that the waiver will not undermine the public's confidence in the employee's impartiality and objectivity in administering FEMA programs. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification statement.

§ 4601.106 Additional rules for U.S. Immigration and Customs Enforcement (ICE) employees.

The following rules apply to employees of ICE, except Special Government Employees, and are in addition to §§ 4601.101 through 4601.103 and 4601.107 and 4601.108 of this part:

(a) *Prohibitions on outside employment and activities*. (1) No ICE employee shall be employed by or engage in activities in support of or on behalf of a customs broker; international carrier; bonded warehouse; foreign trade zone as defined in 15 CFR 400.2; cartman; law firm engaged in the practice of customs, immigration or agriculture law; entity engaged in the enforcement of customs, immigration or agriculture law; importation department of a business; or business or other entity which engages in agriculture matters where such agriculture matters relate to ICE's mission.

(2) No ICE employee shall, in any private capacity, engage in employment or a business activity related to the importation or exportation of merchandise or agricultural products requiring inspection (other than a personal, routine consumer transaction unrelated to the operation of a business), or the entry of persons into or the departure of persons from the United States.

(3) No ICE employee shall engage in outside employment or activities for a non-profit or other organization that involve assisting persons with matters related to the entry of persons or merchandise into or the departure of persons or merchandise from the United States, or matters related to obtaining temporary or permanent residency, citizenship, adjustment of status, or other immigration-related benefits.

(b) *Restrictions arising from employment of spouse, relatives, members of the*

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employee's household, or financial dependents. (1) An ICE employee shall notify in writing his or her agency designee when any of the following circumstances exist:

(i) The spouse of the ICE employee is employed in a position that the ICE employee would be prohibited from occupying by paragraph (a) of this section;

(ii) A relative (as defined in 5 CFR 2634.105(o)) who is financially dependent on or who is a member of the household of the ICE employee is employed in a position that the ICE employee would be prohibited from occupying by paragraph (a) of this section; or

(iii) Any person, other than the spouse or relative of the ICE employee, who is financially dependent on or who is a member of the household of the ICE employee, is employed in a position that the ICE employee would be prohibited from occupying by paragraph (a) of this section.

(2) The ICE employee shall be disqualified from participating in an official capacity in any particular matter involving the individuals described in paragraph (b)(1) of this section or the employer thereof, unless the agency designee, with the advice and clearance of the ICE Chief Deputy Ethics Official, authorizes the ICE employee to participate in the matter using the standard in 5 CFR 2635.502(d), or the waiver provisions in 18 U.S.C. 208(b)(1), as appropriate.

§4601.107 Prohibited purchases of property.

(a) *General prohibition.* Except as provided in paragraph (c) of this section,

no DHS employee may purchase, directly or indirectly, property that is:

(1) Owned by the Federal Government and under the control of the employee's agency, unless the sale of the property is being conducted by the General Services Administration; or

(2) Seized or forfeited under the direction or incident to the functions of the employee's agency.

(b) *Designated separate components.* For purposes of this section, the employee's agency is the relevant separate agency component as set forth in §4601.102 of this part.

(c) *Waiver.* Employees may make a purchase prohibited by paragraph (a) of this section where a written waiver of the prohibition is issued in advance by the agency designee with the clearance of the DAEO or his or her designee. A waiver may only be granted if it is not otherwise prohibited by law or regulation and the purchase of the property will not cause a reasonable person with knowledge of the particular circumstances to question the employee's impartiality, or create the appearance that the employee has used his or her official position or nonpublic information for his or her personal gain.

§4601.108 Reporting waste, fraud, abuse, and corruption.

Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities, such as the DHS Office of Inspector General.

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