

## CHAPTER XXXVI—DEPARTMENT OF HOMELAND SECURITY

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## PART 4600 [RESERVED]

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

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AUTHORITY: 5 U.S.C. 301, 7301, 7353; 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, 2635.203(a), 2635.403(a), 2635.702, 2635.703, 2635.802(a), 2635.803, 2635.

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 DAEO to manage and coordinate the ethics programs within the DHS components pursuant to the DAEO'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