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DEPARTMENT OF JUSTICE

5 CFR Part 3801

28 CFR Part 45

RIN 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Justice

AGENCY: Department of Justice (Department).

ACTION: Final rule.

SUMMARY: The Department of Justice, with the concurrence of the Office of Government Ethics (OGE), is issuing a final rule for Department employees as a supplement to the Uniform Standards of Ethical Conduct for Employees of the Executive Branch (Uniform Standards) issued by OGE. The regulations established by the final rule, which adopt the prior interim regulations as final with two minor changes, are a necessary supplement to the Uniform Standards because they address statutory requirements and issues that are unique to the Department. The Department is also finalizing the revision of its residual employee responsibilities regulation, with certain changes.

EFFECTIVE DATE: May 2, 1997.

FOR FURTHER INFORMATION CONTACT: Mary Braden, U.S. Department of Justice, Justice Management Division, Departmental Ethics Office, (202) 514-8196.

SUPPLEMENTARY INFORMATION:

I. Rulemaking History

On August 7, 1992, the Office of Government Ethics published the Uniform Standards. See 57 FR 35006-35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, and amended at 61 FR 42965-42970 (as corrected at 61 FR 48733) and 61 FR

50689-50691 (interim rule revisions adopted as final at 62 FR 12531), with additional grace period extensions at 59 FR 4779-4780, 60 FR 6390-6391, 60 FR 66857-66858, and 61 FR 40950-40952. The Uniform Standards, codified at 5 CFR part 2635 and effective February 3, 1993, established uniform standards of ethical conduct for executive branch personnel. Pursuant to 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) and 5 CFR 2635.105, executive branch agencies may issue agency-specific regulations, with the concurrence of OGE, that supplement the Uniform Standards. After considering its unique operations, the Department, with the concurrence of OGE, has determined that the regulations established by the final rule, based on the prior interim rule with two minor changes, are necessary to implement the Department's ethics program successfully.

II. Comments

On November 25, 1996, the Department, with the concurrence of OGE, issued interim supplemental standards regulations. See 61 FR 59811-59815, which provided for a 45-day comment period that ended January 9, 1997. We received only one comment on the interim rule. The comment was in regard to 5 CFR 3801.106 of the interim rule dealing with outside employment. Section 3801.106(b)(1)(i) of the interim rule, which generally prohibits outside employment that involves the practice of law, contains an exception for the practice of law on behalf of certain family members, specifically, the employee, his parents, spouse, or minor children. The commenter noted that the regulation did not conform to the exceptions for representing family members found in 18 U.S.C. 203(d) and 205(e). 18 U.S.C. 203 and 205 generally prohibit an employee from acting as agent or attorney for anyone, with or without compensation, before any agency or court of the United States on a matter in which the United States is a party or has a direct and substantial interest. Exceptions in these two statutes permit representations on behalf of the employee's parents, spouse, child and certain other persons. There is no qualification that the child must be a minor in the language of these statutes.

Therefore, we agree with the commenter that the regulation should conform to the representational statutes and have been told that the Office of Government Ethics has no objection to our amending the rule by removing the word "minor" which appears before the word "children" in 5 CFR 3801.106(b)(1)(i). For ease of reference, the Department is publishing in this rulemaking document the part 3801 regulation in its entirety.

III. Additional Changes to 28 CFR Part 45

We are also making two additional changes to the Department's agency conduct regulations at 28 CFR part 45, as revised in the prior interim rule. First, in addition to the sections the Department repealed because they were superseded by the Uniform Standards, we are now also repealing previously redesignated and amended § 45.3 (old § 45.735-5(b)), because it was superseded by regulations at 5 CFR part 2640 which the Office of Government Ethics issued as a final rule on December 18, 1996, 61 FR 66830-66851 (part III), as corrected at 62 FR 1361 (January 9, 1997), and which became effective January 17, 1997.

Second, pursuant to 5 U.S.C. 301, we are publishing a Department rule at 28 CFR 45.4 which was issued earlier as policy on April 21, 1995. This rule authorizes Department of Justice office and library equipment and facilities. This policy has actually been in effect in a modified form since 1989. We believe that it is reasonable to authorize employees to make certain limited personal use of Department property as long as managers have the right to limit or revoke such use should it interfere with the conduct of official business. We have also amended 5 CFR 3801.105 which refers employees to the Department policy authorizing certain use of Department property to refer instead to 28 CFR 45.4.

IV. Matters of Regulatory Procedure

Executive Order 12866

In promulgating this final regulation, the Department of Justice 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. This regulation has not been reviewed by the Office of Management and Budget under the Executive Order, it

deals with agency organizational, management, and personnel matters and is not in any event, deemed "significant" thereunder.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. chapter 6, as Assistant Attorney General for Administration of the Department of Justice, I have determined that this regulation will not have a significant economic impact on a substantial number of small entities, because it affects only Department of Justice employees.

Paperwork Reduction Act

As Assistant Attorney General for Administration of the Department of Justice, I have determined that the Paperwork Reduction Act, 44 U.S.C. chapter 35, does not apply to the regulation established by the final rule, because the regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 3801 and 28 CFR Part 45

Conflicts of interest, Executive branch standards of conduct, Government employees.

Dated: April 23, 1997.

Stephen R. Colgate.

Assistant Attorney General for Administration, Department of Justice.

Approved: April 25, 1997.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Department of Justice, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and the Department is also amending title 28 of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

CHAPTER XXVIII—DEPARTMENT OF JUSTICE

1. Part 3801 is revised to read as follows:

PART 3801—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF JUSTICE

Sec.

3801.101 General.

3801.102 Detailed or assigned special agents of certain Departmental components.

3801.103 Designation of separate Departmental components.

3801.104 Purchase or use of certain forfeited and other property.

3801.105 Personal use of Government property.

3801.106 Outside employment.

Authority: 5 U.S.C. 301, 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; E.O. 12988, 61 FR 4739; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.701–2635.705, 2635.803, 2635.807(a)(2)(ii); and DOJ Order 1735.1.

§ 3801.101 General.

In accordance with § 2635.105 of this title, the regulations in this part apply to employees of the Department of Justice and supplement the Standards of Ethical Conduct for Employees of the Executive Branch in part 2635 of this title. In addition to the regulations contained in part 2635 of this title and in this part, employees are subject to the conduct regulations contained in part 735 of this title and 28 CFR part 45.

§ 3801.102 Detailed or assigned special agents of certain Departmental components.

Notwithstanding a detail or assignment to another entity, any special agent of the Federal Bureau of Investigation or Drug Enforcement Administration who is subject to the regulations or standards of ethical conduct of that entity pursuant to § 2635.104 of this title shall also remain subject to the regulations in this part.

§ 3801.103 Designation of separate Departmental components.

(a) Pursuant to § 2635.203(a) of this title, each of the following components is designated as a separate agency for purposes of the regulations contained in subpart B of part 2635 of this title governing gifts from outside sources, and, accordingly, § 2635.807 of this title governing teaching, speaking, and writing:

Antitrust Division
Bureau of Prisons
(including Federal Prison Industries, Inc.)
Civil Division
Civil Rights Division
Community Relations Service
Criminal Division
Drug Enforcement Administration
Environment and Natural Resources Division
Executive Office for Immigration Review
Executive Office for United States Attorneys
(The Executive Office for United States Attorneys shall not be considered separate from any Office of the United States Attorney for a judicial district, but only from other designated components of the Department of Justice.)
Executive Office for United States Trustees
(The Executive Office for United States Trustees shall not be considered separate from any Office of the United States Trustee for a region, but only from other

designated components of the Department of Justice.)

Federal Bureau of Investigation
Foreign Claims Settlement Commission
Immigration and Naturalization Service
Independent Counsel appointed by the Attorney General
INTERPOL
National Drug Intelligence Center
Justice Management Division
Office of Information and Privacy
Office of Intelligence Policy and Review
Office of Community Oriented Policing Services
Office of Justice Programs
Office of the Pardon Attorney
Office of Policy Development
Offices of the United States Attorney (94)
(Each Office of the United States Attorney for a judicial district shall be considered a separate component from each other such office.)
Offices of the United States Trustee (21)
(Each Office of the United States Trustee for a region shall be considered a separate component from each other such office.)
Tax Division
United States Marshals Service
United States Parole Commission

(b) Employees serving in positions within the Department but outside of the components designated in paragraph (a) of this section must continue to treat the entire Department of Justice as their employing agency for purposes of the gift rules of subpart B of part 2635 of this title and the application of the teaching, speaking and writing provisions found in § 2635.807 of this title.

§ 3801.104 Purchase or use of certain forfeited and other property.

(a) In the absence of prior approval by the agency designee, no employee shall purchase, directly or indirectly, from the Department of Justice or its agents property forfeited to the United States and no employee shall use property forfeited to the United States which has been purchased, directly or indirectly, from the Department of Justice or its agents by his spouse or minor child. Approval may be granted only on the basis of a written determination by the agency designee that in the mind of a reasonable person with knowledge of the circumstances, purchase or use by the employee of the asset will not raise a question as to whether the employee has used his official position or nonpublic information to obtain or assist in an advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties. A copy of the written determination shall be filed with the Deputy Attorney General.

(b) No employee of the United States Marshals Service, Federal Bureau of Investigation, or Drug Enforcement

Administration shall purchase, directly or indirectly, from his component, the General Services Administration, or the agent of either, property formerly used by that component and no such employee shall use property formerly used by his component which has been purchased, directly or indirectly, by his spouse or minor child from his component, the General Services Administration, or to the agent of either.

§ 3801.105 Personal use of Government property.

Employees are prohibited by part 2635 of this title from using Government property for other than authorized purposes. The Department rule authorizing limited personal use of Department of Justice office and library equipment and facilities by its employees is at 28 CFR 45.4.

§ 3801.106 Outside employment.

(a) *Definition.* For purposes of this section, *outside employment* means any form of employment, business relationship or activity, involving the provision of personal services whether or not for compensation, other than in the discharge of official duties. It includes, but is not limited to, services as a lawyer, officer, director, trustee, employee, agent, consultant, contractor, or general partner. Speaking, writing and serving as a fact witness are excluded from this definition, 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. Employees who wish to engage in compensated speaking and writing should review § 2635.807 of this title.

(b) *Prohibited outside employment.* (1) No employee may engage in outside employment that involves:

(i) The practice of law, unless it is uncompensated and in the nature of community service, or unless it is on behalf of himself, his parents, spouse, or children;

(ii) Any criminal or have as corpus matter, be it Federal, State, or local; or

(iii) Litigation, investigations, grants or other matters in which the Department of Justice is or represents a party, witness, litigant, investigator or grant-maker.

(2) Where application of the restrictions of paragraph (b)(1) of this section will cause undue personal or family hardship; unduly prohibit an employee from completing a professional obligation entered into prior to Government service; or unduly restrict the Department from securing necessary and uniquely specialized services, the restrictions may be waived

in writing based upon a determination that the activities covered by the waiver are not expected to involve conduct prohibited by statute or Federal regulation. Employees should refer to DOJ Order 1735.1 on obtaining waivers. The Order is available from the agency designee which, for purposes of this rule, shall be the Deputy Designated Agency Ethics Official for the component.

(c) *Prior approval for outside employment.* (1) An employee must obtain written approval before engaging in outside employment, not otherwise prohibited by paragraph (b) of this section that involves:

(i) The practice of law; or

(ii) A subject matter, policy, or program that is in his component's area of responsibility.

(2) Employees should refer to DOJ Order 1735.1 for procedures on obtaining prior approval. A waiver granted pursuant to paragraph (b)(2) of this section will be sufficient to satisfy this prior approval requirement.

(3) Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct that is prohibited by statute or Federal regulation.

TITLE 28—[AMENDED]

CHAPTER I—DEPARTMENT OF JUSTICE

PART 45—[AMENDED]

2. The authority citation for part 45 is revised to read as follows:

Authority: 5 U.S.C. 301, 7301; 18 U.S.C. 207; 28 U.S.C. 503, 528; DOJ Order 1735.1.

3. Section 45.1 is republished to read as follows:

§ 45.1 Cross-reference to ethical standards and financial disclosure regulations.

Employees of the Department of Justice are subject to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Department of Justice regulations at 5 CFR part 3801 which supplement the executive branch-wide standards, the executive branch-wide financial disclosure regulations at 5 CFR part 2634 and the executive branch-wide employee responsibilities and conduct regulations at 5 CFR part 735.

§ 45.3 [Removed]

§ 45.4 [Redesignated as § 45.3]

4. Section 45.3 is removed and § 45.4 is redesignated as § 45.3.

5. A new § 45.4 is added to read as follows:

§ 45.4 Personal use of Government property.

(a) Employees may use Government property only for official business or as authorized by the Government. See 5 CFR 2635.101(b)(9), 2635.704(a). The following uses of Government office and library equipment and facilities are hereby authorized:

(1) Personal uses that involve only negligible expense (such as electricity, ink, small amounts of paper, and ordinary wear and tear); and

(2) Limited personal telephone/fax calls to locations within the office's commuting area, or that are charged to non-Government accounts.

(b) The foregoing authorization does not override any statutes, rules, or regulations governing the use of specific types of Government property (e.g. internal Departmental policies governing the use of electronic mail; and 41 CFR (FPMR) 101-35.201, governing the authorized use of long-distance telephone services), and may be revoked or limited at any time by any supervisor or component for any business reason.

(c) In using Government property, employees should be mindful of their responsibility to protect and conserve such property and to use official time in an honest effort to perform official duties. See 5 CFR 2635.101(b)(9), 2635.704(a), 2635.705(a).

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97-023-1]

Pink Bollworm Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pink bollworm regulations by removing all or portions of previously regulated areas in Clay, Crittenden, and Mississippi Counties in Arkansas; Dunklin, New Madrid, and Pemiscot Counties in Missouri; and Dyer and Lauderdale Counties in Tennessee from the list of suppressive areas for pink bollworm. We are also removing Missouri and Tennessee from the list of States quarantined because of pink bollworm. We are taking this action because trapping surveys show that the pink