

# Rules and Regulations

Federal Register

Vol. 61, No. 241

Friday, December 13, 1996

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## CONSUMER PRODUCT SAFETY COMMISSION

### 5 CFR Chapter LXXI

#### 16 CFR Part 1030

RIN 3209-AA15

#### Supplemental Standards of Ethical Conduct for Employees of the Consumer Product Safety Commission

**AGENCY:** Consumer Product Safety Commission (CPSC).

**ACTION:** Final rule.

**SUMMARY:** The Consumer Product Safety Commission, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for CPSC employees that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. These supplemental regulations address outside employment by CPSC employees. The CPSC is also revoking its existing agency employee conduct regulations which addressed outside employment by CPSC employees.

**EFFECTIVE DATE:** December 13, 1996.

**FOR FURTHER INFORMATION CONTACT:** Richard W. Allen, Assistant General Counsel for General Law, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0980, extension 2212.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On August 7, 1992 the Office of Government Ethics (OGE) published the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards). See 57 FR 35006-35067, as corrected at 57 FR 48557 and 52583 and 60 FR 51667, and amended at 61 FR 42965-42970 (as corrected at 61 FR 48733) and 61 FR 50689-50691, with additional grace period extensions at 59

FR 4779-4780, 60 FR 6390-6391 and 66857-66858, and 61 FR 40950-40952. The Standards, codified at 5 CFR part 2365, became effective February 3, 1993, and established uniform standards of ethical conduct applicable to personnel of all executive branch agencies.

Section 2635.105 of the Standards authorizes executive agencies, with the concurrence of OGE, to publish agency-specific supplemental regulations that are necessary to implement their ethics programs. The CPSC, with OGE's concurrence, has determined that the following supplemental regulations are necessary for successful implementation of the CPSC ethics program. By this notice, CPSC is also revoking its old conduct regulations as codified at 16 CFR part 1030, subpart D and adding a single section in subpart A, previously reserved, that provides cross-references to 5 CFR parts 735, 2634 and 2635, as well as to the CPSC's new supplemental regulation and, for CPSC Commissioners, to the statutory provisions of 15 U.S.C. 2053(c).

##### II. Analysis of the Regulations

###### Section 8101.101 General

Section 8101.101(a) explains that the regulations apply to all CPSC employees and supplement the standards of ethical conduct which are applicable to all executive branch personnel.

###### Section 8101.102 Prohibitions Applicable to Commissioners

This section references and summarizes the statutory prohibitions on outside employment applicable to the CPSC Commissioners in Section 4(c) of the Consumer Product Safety Act, 15 U.S.C. 2053(c).

###### Section 8101.103 Prior Approval for Outside Employment

Sections 2635.803 of the Standards authorizes agencies to issue supplemental regulations requiring employees to obtain prior approval before engaging in outside employment. The CPSC has long required employees to obtain prior written approval before engaging in outside employment or activities. Provisions of the now superseded CPSC regulations codified at 16 CFR part 1030, subpart D, have required CPSC employees to obtain advance approval for outside employment since those regulations were issued in 1976. The CPSC has

found this requirement useful in ensuring that the outside employment of employees conform with all applicable laws and regulations and had determined that it is necessary to the administration of its ethics program that employees now continue to obtain prior approval before engaging in outside employment.

Therefore, section 8101.103(a) of the supplemental regulations reinstates the requirement for prior approval of outside employment of CPSC employees other than special Government employees.

Section 8101.103(b) sets forth the criteria to be used in approving or denying requests for approval of outside employment.

Section 8101.103(c) provides that employees will be notified in writing of the action taken on their requests and that all requests will be maintained in the Designated Agency Ethics Official's files.

Section 8101.103(d) states that approvals will be for a period of up to two years. An employee must submit a new request for approval two years after the date of approval, when the scope of the approved activity changes, or when the employee's position changes, whichever occurs first.

Section 8101.103(e) defines the term "employment" and describes the circumstances in which prior approval must be obtained.

##### III. Repeal of Existing CPSC Outside Employment Regulations and Addition of Cross-References

The CPSC is repealing its recently superseded conduct regulations governing outside activities, codified at 16 CFR part 1030, subpart D—Outside Employment and Other Activities. Other portions of the CPSC regulations governing CPSC employees' responsibilities and conduct in 16 CFR Part 1030 were previously superseded when the executive branch wide Standards of Ethical Conduct at 5 CFR part 2635 became generally effective in February 1993 and were repealed by the CPSC. See 58 FR 12335 (March 4, 1993).

At this time, the CPSC is also issuing a residual provision at 16 CFR part 1030, subpart A, to cross-reference the executive branch-wide Standards, this supplemental regulation, the executive branch-wide financial disclosure regulations at 5 CFR part 2634 and, for CPSC Commissioners, the statutory

provisions of section 4(c) of the Consumer Product Safety Act, 15 U.S.C. 2053(c). The CPSC will also leave in 16 CFR part 1030, subpart M, the existing rules of conduct required by the Privacy Act of 1974, at 5 U.S.C. 552 a(e)(9). Subparts B–L of part 1030 are reserved.

#### IV. Matters of Regulatory Procedure

Generally, the Administrative Procedure Act (APA) (5 U.S.C. 553) requires agencies to publish a notice of proposed rulemaking and provide opportunity for public comment before issuing or revoking regulations. However, the APA provides at 5 U.S.C. 553(b)(B) that the requirement for a notice of proposed rulemaking is not applicable when the agency finds for good cause that notice of proposed rulemaking and public participation are “impracticable, unnecessary, or contrary to the public interest.”

The CPSC finds for good cause that notice of proposed rulemaking and public participation are unnecessary because the CPSC is essentially reissuing existing regulations in a different form; the regulations pertain wholly to internal agency personnel matters; and they affect only CPSC employees. Furthermore, it is in the public interest that these CPSC supplemental ethics rules become effective as soon as possible.

The APA also requires at 5 U.S.C. 553(d) that a substantive rule must be published at least 30 days before its effective date unless the agency finds for good cause that such delay is not needed. Again, because the CPSC is essentially reissuing prior longstanding requirements, the CPSC finds for good cause that a delayed effective date is unnecessary. Consequently, this amendment and revocation shall become effective immediately.

#### List of Subjects

##### 5 CFR Part 8101

Conflict of interests, Government employees.

##### 16 CFR Part 1030

Conflict of interests, Government employees, Privacy.

Dated: November 22, 1996.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Approved: December 5, 1996.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth above, the Consumer Product Safety Commission, with the concurrence of the Office of Government Ethics, is amending title 5

and title 16 of the Code of Federal Regulations as follows:

#### TITLE 5—[AMENDED]

1. A new chapter LXXI, consisting of part 8101, is added to title 5 of the Code of Federal Regulations to read as follows:

#### CHAPTER LXXI—CONSUMER PRODUCT SAFETY COMMISSION

#### PART 8101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE CONSUMER PRODUCT SAFETY COMMISSION

Sec.

8101.101 General.

8101.102 Prohibitions applicable to Commissioners.

8101.103 Prior approval for outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 15 U.S.C. 2053(c); E.O. 12674, 54 FR 15139, 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, 2635.803.

##### § 8101.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Consumer Product Safety Commission (CPSC). These regulations supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

##### § 8101.102 Prohibitions applicable to Commissioners.

The Commissioners of the Consumer Product Safety Commission are subject to section 4(c) of the Consumer Product Safety Act, 15 U.S.C. 2053(c). That statutory provision provides that a Commissioner may not engage in any other business, vocation, or employment.

##### § 8101.103 Prior approval for outside employment.

(a) *Prior approval requirement.* Before engaging in any outside employment, with or without compensation, an employee, other than a special Government employee, shall obtain prior written approval from his or her supervisor and the Designated Agency Ethics Official (DAEO) or Alternate DAEO. The Request for Approval of Outside Activity (CPSC Form 241), available from the DAEO or unit administrative officer, may be used to request approval. Requests for approval shall be forwarded through normal supervisory channels.

(b) *Standard of approval.* Approval shall be granted only upon a determination that the outside employment is not expected to involve

conduct prohibited by Federal statute or regulation, including 5 CFR part 2635.

(c) *Notification of action.* Employees will be notified in writing of the action taken on their requests. All requests will be maintained in the files of the Designated Agency Ethics Official for the duration of the requester's CPSC employment.

(d) *Duration and scope of approval.* Approval will be for a period not to exceed two years, after which renewal approval must be sought. An employment must submit a new request for approval after two years or earlier upon either a significant change in the nature or scope of the outside employment or a change in the employee's CPSC position.

(e) *Definition of employment.* For purposes of this section, “employment” means any form of non-Federal employment, business relationship or activity involving the provision of personal services by the employee, whether or not for compensation. Employment includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. Employment also includes writing when done under an arrangement with another person for production or publication of the written product. Employment does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, consumer or civic organization, unless such activities are for compensation other than reimbursement for expenses or involve the provision of professional services or advice to, or serving as an officer, trustee, or member of a board or other such body of, an organization that is a prohibited source as defined in 5 CFR 2635.203(d).

#### TITLE 16—[AMENDED]

#### CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

#### PART 1030—EMPLOYEE STANDARDS OF CONDUCT—[AMENDED]

2. The authority citation for part 1030 is revised to read as follows:

Authority: 5 U.S.C. 552a, 7301; 15 U.S.C. 2053(c).

3. Subpart A, previously reserved, is added to read as follows:

##### Subpart A—General

##### § 1030.101 Cross-references to employee ethical conduct standards and financial disclosure regulations.

Employees of the Consumer Product Safety Commission are subject to the

Standards of Ethical Conduct, 5 CFR part 2635, which are applicable to all executive branch personnel; the CPSC regulations at 5 CFR part 8101, which supplement the executive branch standards; the Office of Personnel Management regulations on employee conduct at 5 CFR part 735; and the financial disclosure regulations at 5 CFR part 2634, which are applicable to all executive branch personnel. In addition, the Commissioners of the CPSC are subject to the statutory provisions of 15 U.S.C. 2053(c).

#### Subpart D—[Removed]

4. Subpart D is removed and reserved.

[FR Doc. 96-31591 Filed 12-12-96; 8:45 am]

BILLING CODE 6355-01-M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 96-063-2]

#### Imported Fire Ant; Approved Treatments

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Withdrawal of a direct final rule.

**SUMMARY:** This document withdraws the direct final rule that notified the public of our intention to amend the imported fire ant regulations. The direct final rule was to lengthen the certification period for containerized nursery stock treated with a 10 parts per million dosage of the insecticide tefluthrin in its granular formulation and to remove the 15 parts per million dosage rate for granular tefluthrin. This withdrawal is necessary because we received a written adverse comment in response to the direct final rule.

**EFFECTIVE DATE:** December 13, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-5255; or E-mail: [rmilberg@aphis.usda.gov](mailto:rmilberg@aphis.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

In a direct final rule published in the Federal Register on October 15, 1996 (61 FR 53601-53603, Docket No. 96-063-1), we notified the public of our intention to amend the imported fire ant regulations to lengthen the certification

period for containerized nursery stock treated with a 10 parts per million (ppm) dosage of the insecticide tefluthrin in its granular formulation and to remove the 15 ppm dosage rate for granular tefluthrin.

We solicited comments concerning the direct final rule for 30 days ending November 14, 1996. We stated that the effective date of the direct final rule would be 60 days after publication of the direct final rule in the Federal Register, unless we received a written adverse comment or a written notice of intent to submit an adverse comment. We also stated that if we received any written adverse comment or any written notice of intent to submit an adverse comment, we would publish a notice in the Federal Register withdrawing the direct final rule before the scheduled effective date and would publish a proposed rule for public comment.

We received one written adverse comment and a written notice of intent to submit an adverse comment. Therefore, we are withdrawing the direct final rule and, at a later date, we will publish a proposed rule in the Federal Register.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164-167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 9th day of December 1996.

A. Strating,

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 96-31602 Filed 12-12-96; 8:45 am]

BILLING CODE 3410-34-P

## Food Safety and Inspection Service

#### 9 CFR Part 391

[Docket No. 96-013F]

RIN 0583-AC13

#### Fee Increase for Inspection Services

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is increasing the fees charged to meat and poultry establishments, importers, and exporters for providing voluntary inspection, identification, and certification services; overtime and holiday services. The fee increases are based on the Agency's analysis of projected costs for fiscal year 1996, which identifies increased costs resulting from the January 1996 FSIS national and locality pay raise average of 2.4 percent for Federal employees and increased health insurance costs.

At the same time, FSIS is reducing the fees charged for providing laboratory services to meat and poultry establishments. The Agency's analysis of projected costs for fiscal year 1996 identified decreased costs resulting from the use of automated equipment for testing laboratory samples.

**EFFECTIVE DATE:** December 13, 1996.

**ADDRESSES:** FSIS's cost analysis is on file with the FSIS Docket Clerk, Room 3806, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250-3700. It is available for public inspection in the FSIS Docket Room from 8:30 a.m. to 1 p.m. and from 2 p.m. to 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** William L. West, Director, Budget and Finance Division, Administrative Management, (202) 720-3367.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) provide for mandatory inspection of meat and poultry slaughtered or processed at official establishments. Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products. The costs of mandatory inspection (excluding services performed on holidays or on an overtime basis) are borne by FSIS.

In addition to mandatory inspection, FSIS provides a range of voluntary inspection services. Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), FSIS provides these services to assist in the orderly marketing of various animal products and byproducts not subject to the FMIA or the PPIA. The costs of voluntary inspection are totally recoverable by the Federal Government.

Each year, FSIS reviews the fees it charges meat and poultry establishments, importers, and exporters for providing voluntary inspection, identification, and certification services, as well as overtime and holiday services, and performs a cost analysis to determine whether such fees are adequate to recover the costs FSIS incurs in providing the services. In its analysis of projected costs for fiscal year 1996, FSIS identified increases in the costs of providing voluntary inspection, identification, and certification services, as well as overtime and holiday services. The increases are attributable to the average FSIS national and locality pay raise of 2.4 percent for Federal employees effective January 1996 and increased health insurance costs.