

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF GOVERNMENT ETHICS

### 5 CFR Part 2635

RIN 3209-AA04

#### Standards of Ethical Conduct for Employees of the Executive Branch

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Proposed rule amendments.

**SUMMARY:** The Office of Government Ethics is proposing minor amendments to the sections on seeking other employment and outside activities in the regulation governing standards of ethical conduct for executive branch employees, to conform with interpretive advice and to improve clarity.

**DATES:** Comments are invited and must be received before October 26, 1998.

**ADDRESSES:** Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attention: G. Sid Smith.

**FOR FURTHER INFORMATION CONTACT:** G. Sid Smith, Senior Associate General Counsel, Office of Government Ethics; telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037; Internet E-mail address: usoge@oge.gov (for E-mail messages, the subject line should include the following sentence—Rulemaking to amend standards of ethical conduct sections on seeking employment and outside activities).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Some six years ago, the Office of Government Ethics (OGE) issued a final rule establishing the executive branch standards of ethical conduct, pursuant to section 201(a) of Executive Order 12674 (57 FR 35006-35067, August 7, 1992). These standards and the examples therein, as amended and codified at 5 CFR part 2635, are the primary source of guidance for ethics officials and employees throughout the executive branch in applying the fourteen fundamental principles of

ethical conduct contained in the Executive order. In a final rule published at 62 FR 48746-48748 (September 17, 1997), OGE amended the standards of ethical conduct regulation, by removing superseded references to the former honorarium bar, reflecting statutory changes on procurement integrity, adding references to a recent regulation on conflicts of interest (5 CFR part 2640), and making other minor corrections and updates.

Based on feedback from the executive branch ethics community, OGE believes that the standards of ethical conduct are generally fulfilling the intended goals of the Executive order in establishing useful, practical guidelines for employees. Over the past six years, OGE has provided interpretive advice to department and agency ethics officials on the application of these standards, as specific fact patterns have arisen. As a result, OGE has determined that selected provisions in the standards should now be amended, in order to codify some of that advice and to clarify the intended meaning of the regulatory language. In a separate rulemaking, OGE published a proposed rule to accomplish that with respect to certain provisions in subpart B (Gifts From Outside Sources). By this current rulemaking, OGE is proposing similarly minor amendments to provisions of the standards of ethical conduct in subpart F (Seeking Other Employment) and subpart H (Outside Activities), in order to further codify interpretive advice and to improve clarity.

##### II. Analysis of Proposed Amendments

###### Subpart F

Subpart F of the standards of ethical conduct regulation (5 CFR part 2635) implemented certain provisions of a criminal statute and an Executive order, specifically: (1) 18 U.S.C. 208, restricting employees' official participation in matters wherein a person or organization with whom they are negotiating for or have an arrangement concerning prospective employment has a financial interest, and (2) sections 101(h) and 101(j) of Executive Order 12674, directing employees to act impartially in official matters and not to engage in seeking or negotiating for outside employment that conflicts with official duties and responsibilities. See references to these implementation goals in the preamble to

OGE's proposed rule on standards of ethical conduct (56 FR 33786, July 23, 1991), and in § 2635.601 of the final rule. Because these provisions of the criminal statute and Executive order are so closely related, they were combined for implementation at subpart F, with a requirement generally for disqualification from participation in certain matters when an employee is "seeking other employment," a term that encompasses both negotiating and other specified lesser contacts.

Sections 2635.601 and 2635.602 in that subpart suggest that its coverage may be limited to situations where the employee's "performance or nonperformance of official duties will affect" the financial interests of a prospective employer. A somewhat more accurate test, for purposes of 18 U.S.C. 208, is stated in § 2635.604(a), § 2635.605(a), and § 2635.606(a), which is that coverage extends to participation in "a particular matter that has a direct and predictable effect" on those financial interests. The criminal statute does not limit its application to situations where one's performance of official duties will affect a financial interest, but instead focuses on whether a matter in which the employee participates will affect the financial interest. Further, the statute is triggered only if the effect on the financial interest will be direct and predictable.

This variation among sections of the regulation was an unintended result of the process by which provisions on prospective employment in the criminal statute and Executive order were implemented jointly. As questions from ethics officials have arisen concerning these apparent discrepancies, OGE has advised that the requirements of 18 U.S.C. 208 control. In order to more clearly align the provisions of subpart F with that advice and the criminal statute, OGE proposes to amend § 2635.601 and § 2635.602 accordingly.

Additionally, OGE proposes to amend § 2635.601, § 2635.602, § 2635.604, § 2635.605, and § 2635.606, to clarify initially in each section that the restrictions apply only when the employee would be "participating personally and substantially" in a particular matter. These modifications will further ensure that subpart F is consistent with 18 U.S.C. 208 and in conformance with OGE advice.

### Subpart H

Section 2635.807(a) in subpart H of the standards of ethical conduct regulation directs that employees shall not receive compensation from any source other than the Government for teaching, speaking or writing that relates to their official duties. This section implemented several principles of Executive Order 12674, primarily the prohibitions in sections 101(c) and 101(g) against employee misuse of nonpublic information and use of public office for private gain, as well as the principle in section 101(n) that an employee shall endeavor to avoid actions creating even the appearance of such violations. See references to these implementation goals in the preamble to OGE's proposed rule on standards of ethical conduct (56 FR 33790, July 23, 1991) and in the preamble to the final regulation (57 FR 35036, August 7, 1992). Section 2635.807(a) also embodies the criminal prohibition at 18 U.S.C. 209 on receipt of any supplementation of Government salary as compensation for services as a Government employee.

Essential to the understanding and meaning of this section of the regulation is a clear definition of the term "receive." Paragraph (a)(2)(iv) thereof defines "receive" to include actual or constructive receipt of compensation, such that the employee has the right to exercise dominion and control over the compensation and to direct its subsequent use, and it includes certain indirect payments to charitable organizations, relatives, and others. When the standards of ethical conduct regulation was issued in 1992, OGE believed that this definition would adequately apprise employees of the extent of the restrictions on receipt of compensation in § 2635.807(a). It has become apparent, however, that there may be some confusion about when receipt occurs for compensation that is deferred or made in advance. For example, some departing employees have negotiated contracts to undertake speaking, teaching or writing activities that may be related to official duties, whereby compensation will be: (1) deferred until after leaving Government service, for activities performed during Government service, or (2) paid while the individual is still a Government employee, as an advance for activities to be performed after leaving Government service. In response to employees and agency ethics officials who have raised these issues, OGE has advised that in both circumstances described above, compensation would be viewed as received, in violation of § 2635.807(a).

In order to codify this interpretive advice and intent with regard to these issues, OGE proposes to amend the definition of "receive" in § 2635.807(a). To the extent possible, this will also promote consistency with a related regulation and OGE advice concerning the term "receive" as it pertains to the statutory 15% limit on outside earned income and restrictions on compensation for outside employment that apply to certain senior noncareer officials (see 5 CFR 2636.303(c)).

### III. Matters of Regulatory Procedure

#### Executive Order 12866

In promulgating these proposed rule amendments, OGE 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. These proposed amendments have also been reviewed by the Office of Management and Budget under that Executive order.

#### Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under 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 Federal executive branch agencies and their employees.

#### Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these proposed amendments do not contain any information collection requirements that require the approval of the Office of Management and Budget.

#### List of Subjects in Part 2635

Conflict of interests, Executive branch standards of ethical conduct, Government employees.

Approved: April 1, 1998.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

For the reasons set forth in the preamble, the Office of Government Ethics proposes to amend part 2635 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations, as follows:

#### PART 2635—[AMENDED]

1. The authority citation for part 2635 continues to read as follows:

**Authority:** 5 U.S.C. 7301, 7351, 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.

#### § 2635.601 [Amended]

2. Section 2635.601 is amended by removing the words "who otherwise would be affected by the performance or nonperformance of the employees' official duties." from the end of the first sentence and adding the words "whose financial interests would be directly and predictably affected by particular matters in which the employees participate personally and substantially." in their place, and by adding the new sentence "See § 2635.402 and § 2640.103 of this chapter." between the second and third sentences.

#### § 2635.602 [Amended]

3. Section 2635.602 is amended by removing the words "the employee's official duties would affect" from the first sentence of the undesignated introductory text and adding the words "particular matters in which the employee will be participating personally and substantially would directly and predictably affect" in their place, and by removing the words "affected by the performance or nonperformance of his official duties" from the first sentence of the note following the undesignated introductory text and adding the words "affected directly and predictably by particular matters in which he participates personally and substantially" in their place.

4. Section 2635.603 is amended by revising paragraph (d) to read as follows:

#### § 2635.603 Definitions.

\* \* \* \* \*

(d) *Direct and predictable effect, particular matter, and personal and substantial* have the respective meanings set forth in § 2635.402(b)(1), (3), and (4).

#### § 2635.604 [Amended]

5. Section 2635.604 is amended by adding the words "personally and substantially" after the word "participate" in the first sentence of paragraph (a).

#### § 2635.605 [Amended]

6. Section 2635.605 is amended by adding the words "personally and substantially" after the word "participate" in the first sentence of paragraph (a), and by adding the words "personally and substantially" after the word "participate" in the first sentence of paragraph (b).

**§ 2635.606 [Amended]**

7. Section 2635.606 is amended by removing the words "taking official action" from the first sentence of paragraph (a) and adding the words "participating personally and substantially" in their place.

**§ 2635.807 [Amended]**

8. Section 2635.807 is amended by adding the new sentence "This includes compensation paid in advance to an employee for activities to be performed in the future, and compensation deferred to the future for activities that are performed while an employee." after the first sentence in paragraph (a)(2)(iv).

[FR Doc. 98-22864 Filed 8-25-98; 8:45 am]

BILLING CODE 6345-01-U

**DEPARTMENT OF AGRICULTURE****Animal and Plant Health Inspection Service****9 CFR Parts 1 and 2**

[Docket No. 97-018-3]

RIN 0579-AA95

**Licensing Requirements for Dogs and Cats**

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

**ACTION:** Notice of reopening and extension of comment period.

**SUMMARY:** We are reopening and extending the comment period for our advance notice of proposed rulemaking that announced that we are considering several changes to the Animal Welfare regulations to ensure the humane handling, care, and treatment of dogs and cats, while concentrating our regulatory efforts on those facilities that present the greatest risk of noncompliance with the regulations. This extension will provide interested persons with additional time in which to prepare comments on the advance notice of proposed rulemaking.

**DATES:** Consideration will be given only to comments on Docket No. 97-018-2 that are received on or before September 23, 1998.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 97-018-2, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 97-018-2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW.,

Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room. Alternatively, comments may be submitted via the Internet on an electronic form located at <http://comments.aphis.usda.gov>. Comments submitted on the electronic form need only be submitted once.

**FOR FURTHER INFORMATION CONTACT:** Dr. Bettye Walters, Veterinary Medical Officer, AC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234, (301) 734-7833.

**SUPPLEMENTARY INFORMATION:** On June 24, 1998, we published in the **Federal Register** (63 FR 34333-34335, Docket No. 97-018-2) an advance notice of proposed rulemaking that announced that we are considering several changes to the Animal Welfare regulations at 9 CFR parts 1 and 2 to ensure the humane handling, care, and treatment of dogs and cats, while concentrating our regulatory efforts on those facilities that present the greatest risk of noncompliance with the regulations. Comments on the advance notice of proposed rulemaking were required to be received on or before August 24, 1998.

In response to requests from several organizations, we are reopening and extending the public comment period on Docket No. 97-018-2 until September 23, 1998. This action will allow interested groups and individuals additional time to prepare and submit comments.

**Authority:** 7 U.S.C. 2131-2159; 7 CFR 2.22, 2.80, and 371.2(g).

Done in Washington, DC, this 21st day of August 1998.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 98-22908 Filed 8-25-98; 8:45 am]

BILLING CODE 3410-34-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 98-NM-184-AD]

RIN 2120-AA64

**Airworthiness Directives; Dassault Model Falcon 2000 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Model Falcon 2000 series airplanes. This proposal would require modification of the front galley and rear lavatory water heaters. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the water heater control thermostat and the associated electrical relay, which could lead to overheating of the water and damage to the adjacent wiring, and consequent smoke and fumes in the passenger cabin and possible injury to the flight crew and passengers.

**DATES:** Comments must be received by September 25, 1998.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-184-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.