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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

5 CFR Chapter LIX

14 CFR Part 1207

RINs 2700-AB44, 2700-AB48, and 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the National Aeronautics and Space Administration

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration, with the concurrence of the Office of Government Ethics (OGE), is issuing a regulation for employees of NASA that supplements the executive branch-wide Standards of Ethical Conduct (Standards) issued by OGE and codified at 5 CFR part 2635. NASA is also repealing those sections of its existing standards of conduct regulations that are now superseded by the new Standards and by the executive branch financial disclosure regulations at 5 CFR part 2634, also issued by OGE, and is adding a cross-reference to the current provisions.

EFFECTIVE DATE: These regulations are effective September 28, 1994.

FOR FURTHER INFORMATION CONTACT: James L. Hoffman, NASA, (202) 358-2465.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch that are now codified at 5 CFR part 2635. See 57 FR 35006-35067, as corrected at 57 FR 48557 and 52583, with an additional grace period extension at 59 FR 4779-

4780. The Standards became effective February 3, 1993, and established uniform ethical conduct standards applicable to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations that are necessary to properly implement their respective ethics programs. NASA, with OGE's concurrence, has determined that the following supplemental regulations, being codified in new chapter LIX of 5 CFR, are necessary for successful implementation of NASA's ethics program, in light of NASA's unique programs and operations.

II. Analysis of the Regulations

Section 6901.101 General

Section 6901.101 explains that the regulations apply to NASA employees and supplement the Standards at 5 CFR part 2635.

Section 6901.102 Designation of Responsible Officials

Although some sections of NASA's existing rules at 14 CFR part 1207 have been temporarily "grandfathered" by the new OGE Standards, and others were not affected, 14 CFR part 1207 will eventually be totally superseded by a combination of the new Standards, the new financial disclosure regulation, the NASA supplemental regulation, NASA internal directives, and a future OGE regulation on regulatory waivers issued under 18 U.S.C. 208(b)(2). Therefore, the designation of NASA Agency Ethics Officials currently at 14 CFR 1207.104 is being modified to include and identify "Agency designees" and is restated at section 6901.102 of the NASA supplemental regulation.

Section 6901.103 Outside Employment

5 CFR 2635.802 and 2635.803, respectively, authorize individual agencies, by supplemental regulation, to prohibit conflicting outside employment and to require employees to obtain approval before engaging in other outside employment or activities. The current NASA rules prohibiting outside employment with certain entities and requiring administrative approval for other particular employment activities have been in effect for many years and have served NASA well in avoiding violations of the standards of conduct

and conflict of interest statutes and, thus, in ensuring public confidence in the integrity of NASA personnel and programs. Accordingly, the rules at 14 CFR 1207.300-1207.306 have been modified from as § 6901.103 of the NASA supplemental regulation.

As permitted by 5 CFR 2635.802, NASA is issuing § 6901.103(c) which sets forth prohibitions on non-Government employment that are substantially similar to those found in 14 CFR 1207.302(f). Prohibited employment listed in § 6901.103(c) includes employment with a NASA contractor, subcontractor, or grantee, in connection with work performed by that entity for NASA, and employment with parties to certain classes of agreements to which NASA is a party, if the employment would be in connection with work to be performed under such an agreement. NASA has determined, in accordance with the standard set forth in 5 CFR 2635.403(a), that such outside employment by employees, other than special Government employees, would cause reasonable persons to question the impartiality and objectivity with which NASA programs are administered.

As permitted by 5 CFR 2635.803, and based on its finding that the long-standing requirements for prior approval for certain categories of outside employment at 14 CFR 1207.306 has helped to ensure that employees' outside activities conform to applicable statutes and regulations, NASA has determined to continue to require prior approval for those outside employment activities that, by their nature, tend to raise questions under the Standards. Before engaging in specified categories of outside employment, with or without compensation, § 6901.103(d) requires a NASA employee, other than a special Government employee, to obtain written approval from an appropriate agency official.

"Outside Employment" is broadly defined at § 6901.103(b)(2) to cover any form of non-Federal employment or business relationship involving the provision of personal services, including writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal, and similar organizations, unless the

organization is a prohibited source as defined in 5 CFR 2635.203(d), or unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement for expenses. Sections 6901.103(f) and (g) set forth the requirements for submission and processing of a written request for approval.

To ensure that section 6901.103 is not itself construed as authority to deny permission to engage in any outside employment activity, § 6901.103(g)(3) states that approval will be granted unless it is determined that the prospective outside employment is expected to involve conduct prohibited by statute or Federal regulations, including 5 CFR part 2635 and this supplemental regulation.

III. Repeal of NASA Standards of Conduct

Most of NASA's standards of conduct at 14 CFR part 1207 were superseded by the executive branch-wide financial disclosure regulations at 5 CFR part 2634 and by the ethical conduct standards at 5 CFR part 2635. NASA is, therefore, repealing those portions of its existing standards of conduct regulation at 14 CFR part 1207 which were superseded by 5 CFR parts 2634 and 2635 or which will be superseded on the date of the current rulemaking by this NASA supplemental regulation. In the place of the superseded regulations, NASA is substituting cross-references to the new executive branch-wide regulations on ethical conduct and financial disclosure, the Office of Personnel Management provisions on employee responsibilities and conduct at 5 CFR part 735, and the NASA supplemental regulation. Consistent with 5 CFR 2635.402(d)(1), existing § 1207.403 of 14 CFR is being preserved and redesignated as § 1207.102, pending issuance by OGE of superseding regulatory waivers. Similarly, existing sections 1207.800 and 1207.801 of 14 CFR, which provide guidance to former NASA employees who desire to communicate with NASA to provide scientific or technical information in accordance with 18 U.S.C. 207(j)(5), have no counterpart in the new Standards and are being retained and redesignated, with a couple of modifications to reflect the current post-Government employment law, as §§ 1207.201 and 1207.202 of 14 CFR.

IV. Matters of Regulatory Procedure *Administrative Procedure Act*

As Administrator of NASA, I have found that good cause exists under 5 U.S.C. 553(b) and (d)(3) for waiving, as

unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these rules and repeals. The supplemental regulations are essentially similar to rules previously contained in NASA's standards of conduct, and I believe that it is important to a smooth transition from NASA's prior ethics rules to the new executive branch-wide Standards and financial disclosure regulations that these rulemaking actions take place as soon as possible. Furthermore, this rulemaking is related to NASA's organization, procedures, and practices.

Executive Order 12866

In promulgating this final rule, NASA has adhered to the regulatory philosophy and the applicable principles of regulation set forth in Executive Order 12866, Regulatory Planning and Review. This regulation has been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Administrator of NASA, I have determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant impact on small business entities because it affects only NASA employees.

Paperwork Reduction Act

As Administrator of NASA, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 6901

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

14 CFR Part 1207

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

Dated: September 16, 1994.

Daniel S. Goldin,

Administrator, National Aeronautics and Space Administration.

Approved: September 20, 1994.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the National Aeronautics and Space Administration, with the concurrence of the Office of

Government Ethics, is amending title 5 of the Code of Federal Regulations and title 14, chapter V, of the Code of Federal Regulations, as follows:

TITLE 5—[AMENDED]

1. A new chapter LIX, consisting of part 6901, is added to title 5 of the Code of Federal Regulations to read as follows:

5 CFR CHAPTER LIX—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 6901—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Sec.

6901.101 General.

6901.102 Designation of responsible officials.

6901.103 Outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 42 U.S.C. 203(c)(1); 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, 2635.403(a), 2635.802(a), 2635.803.

§ 6901.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the National Aeronautics and Space Administration (NASA) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635 and this part, employees are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2634, and to additional regulations regarding their conduct contained in 5 CFR part 735 and 14 CFR part 1207.

§ 6901.102 Designation of responsible officials.

(a) *Designated Agency Ethics Official.* The General Counsel of NASA is the Designated Agency Ethics Official (DAEO) and as such has the responsibilities, authorities, and duties set forth in 5 CFR 2638.203.

(b) *Alternate Designated Agency Ethics Official.* The Associate General Counsel (General) shall serve as the Alternate Designated Agency Ethics Official in accordance with 5 CFR 2638.202(b).

(c) *Deputy Ethics Officials.* (1) The following officials are designated as NASA Deputy Ethics Officials pursuant to 5 CFR 2638.202(b)(7):

(i) Deputy General Counsel;

- (ii) Associate General Counsel (General);
- (iii) Senior Ethics Attorney assigned to the Associate General Counsel (General); and
- (iv) Chief Counsel at each NASA Field or Component Installation.

(2) Deputy Ethics Officials may carry out responsibilities delegated to them through designated subordinates, but shall retain ultimate responsibility for the ethics functions assigned to them.

(d) *Agency Designee*. As used in 5 CFR part 2635, the term "Agency Designee" at NASA refers to the following:

(1) For employees at NASA Headquarters, the DAEO, the Alternate DAEO, or the Associate Administrator for Human Resources and Education; and

(2) For employees at Field or Component Installations, the Director of the Installation, who may delegate specific responsibilities of the Agency Designee to the Installation's Chief Counsel or to another official who reports directly to the Director.

§ 6901.103 Outside employment.

(a) *General*. A NASA employee shall not engage in outside employment prohibited by paragraph (c) of this section and shall obtain approval before engaging in the outside employment activities specified in paragraph (d) of this section.

(b) *Definitions*. For purposes of this section:

(1) *Key official* means an officer or employee, other than a special Government employee, who is required, in accordance with 5 CFR part 2634, to file a public financial disclosure report or who holds a position as astronaut, astronaut candidate, procurement officer, or chief counsel.

(2) *Outside employment* means any form of compensated or uncompensated non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless the organization is a prohibited source or unless such activities involve the provision of professional services or advice, or are

for compensation other than reimbursement of expenses.

(3) *Profession* has the meaning set forth in 5 CFR 2636.305(b)(1).

(4) *Prohibited source* has the meaning set forth in 5 CFR 2635.203(d).

(c) *Prohibited outside employment*. A NASA employee, other than a special Government employee, shall not engage in outside employment with the following:

(1) A NASA contractor, subcontractor, or grantee in connection with work performed by that entity for NASA; or

(2) A party to a Space Act agreement, Commercial Launch Act agreement, or other agreement to which NASA is a party pursuant to specific statutory authority, if the employment is in connection with work performed under that agreement.

(d) *Prior approval for outside employment*. A NASA employee, other than a special Government employee, shall request and obtain administrative approval before engaging in the following outside employment activities:

(1) Teaching, speaking, writing, or editing, unless the subject matter pertains to the private interests of the employee, such as a hobby, cultural activity, or nonwork related professional pursuit;

(2) The practice of a profession or the rendering of professional consulting services;

(3) The management or conduct of a business in which the employee or the employee's spouse has an ownership interest;

(4) Holding a State or local public office, whether by election or appointment;

(5) Employment with a NASA contractor, subcontractor, or grantee;

(6) Employment with a party to a Space Act agreement, Commercial Launch Act agreement, or other agreement to which NASA is a party pursuant to specific statutory authority;

(7) Serving as an officer, trustee, or member of a board, directorate, or other such body of a for profit organization or of a nonprofit organization that is a prohibited source; or

(8) Employment which involves the practice of a NASA-owned invention.

(e) *Prior approval requested by employee*. Even when not required by paragraph (d) of this section, a NASA employee who is in doubt as to the propriety of outside employment or another outside activity may request prior approval using the procedures set forth in this section.

(f) *Form of request for approval*. (1) A request for administrative approval of outside employment shall be in writing and shall include the following:

(i) The employee's name and occupational title;

(ii) The nature of the employment, including a full description of the specific duties or services to be performed;

(iii) The name and address of the person or organization for which work will be done;

(iv) The estimated total time that will be devoted to the activity. If the employment is on a continuing basis, indicate the estimated number of hours per year; for other employment, indicate the anticipated beginning and ending date;

(v) A statement as to whether the work can be performed entirely outside of the employee's regular duty hours and, if not, the estimated number of hours of absence from work that will be required;

(vi) The amount of compensation, if any, to be received; and

(vii) A statement that the employee currently has no official duties involving a matter that affects the outside employer and will disqualify from future participation in matters that could directly affect the outside employer.

(2) Locally prepared forms providing for collection of the information required by paragraph (f)(1) of this section may be used for submission of the request and subsequent approval or disapproval.

(g) *Approval of requests*—(1) *Key Officials*. The Headquarters Associate Administrator for Human Resources and Education has authority to approve requests for approval of outside employment submitted by NASA Key Officials. Prior to approval or disapproval, Key Official requests shall be submitted to the appropriate Official-in-charge of the Headquarters Office or to the Director of the appropriate Field or Component Installation, who shall add a recommendation and forward the request through the General Counsel to the Associate Administrator.

(2) *Employees other than Key Officials*. The appropriate Official-in-Charge of a Headquarters Office, or the Director of a Field or Component Installation, or a person designated to act for the Director, has authority to approve requests for approval of outside employment submitted by employees other than NASA Key Officials. Prior to approval or disapproval:

(i) Requests by NASA Headquarters personnel shall be submitted to and reviewed by the employee's supervisor and by the Office of the Associate General Counsel (General); and

(ii) Requests by Field or Component Installation personnel shall be

submitted to and reviewed by the employee's supervisor and by a Deputy Ethics Official or designee.

(3) *Standard for approval.* Approval will be granted unless a determination is made that the prospective outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(4) *Scope of approval.* Approval will be for a period not to exceed 3 years. Upon a significant change in the nature or scope of the outside employment or in the employee's NASA position, the employee shall submit a revised request for approval.

(5) *Notification of approval or disapproval.* Employees will be notified in writing of the action taken on their requests.

(6) *Records of requests.* All requests for approval will be maintained in the local Human Resources/Personnel Office for the duration of the requester's NASA employment.

14 CFR CHAPTER V—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

PART 1207—STANDARDS OF CONDUCT

2. The authority citation for part 1207 is revised to read as follows:

Authority: 5 U.S.C. 7301; 42 U.S.C. 203(c)(1).

3. Subpart A of part 1207 is amended by removing §§ 1207.100 and 1207.102 through 1207.104, redesignating § 1207.403 as § 1207.102 and revising § 1207.101 to read as follows:

§ 1207.101 Cross-references to ethical conduct, financial disclosure, and other applicable regulations.

Employees of the National Aeronautics and Space Administration (NASA) should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the NASA regulation at 5 CFR part 6901 which supplements the executive branch-wide standards with respect to prohibitions and prior approval requirements applicable to certain outside employment activities, the Office of Personnel Management provisions on employee responsibilities and conduct at 5 CFR part 735, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

4. In part 1207, subpart B, consisting of §§ 1207.200 through 1207.203; subpart C, consisting of §§ 1207.300 through 1207.306; subparts E and F; and subpart G, consisting of §§ 1207.700 through 1207.704, are removed.

5. In part 1207, subpart D, consisting of §§ 1207.400 through 1207.402, 1207.404, and 1207.405, is removed.

6. In part 1207, subpart H, consisting of §§ 1207.800 and 1207.801 is redesignated as subpart B, consisting of §§ 1207.201 and 1207.202 respectively, and paragraph (a) of newly designated § 1207.202 is amended by revising the reference in the introductory text to "section 207(f)" to read "section 207(j)(5)", and by revising the citation in paragraph (a)(1) to "18 U.S.C. 207(a), (b), or (c)" to read "18 U.S.C. 207(a), (c), or (d)".

[FR Doc. 94-23735 Filed 9-27-94; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV-92-303]

Apricots: Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the United States Standards for Grades of Apricots. The revision specifies definitions that do not appear in the standard but are described in the inspection instructions and brings up to date any obsolete terms and definitions. In addition, the revision will provide metric equivalents for dimensions given in terms of U.S. Customary units and contains conforming and editorial changes.

EFFECTIVE DATE: October 28, 1994.

FOR FURTHER INFORMATION CONTACT:

Frank O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Washington D.C. 20090-6456, (202) 720-2185.

SUPPLEMENTARY INFORMATION: This rule is exempt from Executive Order 12866 review.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities. This final rule for the revision of U.S. Standards for Grades of Apricots will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market

share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The United States Standards for Grades of Apricots became effective on May 25, 1928, and has not been revised since then. In June 1992, the Washington Apricot Marketing Committee (WAMC) requested the USDA to revise the standard. Consisting of producers from various districts throughout the State, the WAMC recommends minimum size, pack, and grade requirements each year for the Federal Marketing Order on Washington State grown apricots. Specifically, the WAMC requested that skin breaks (cuts and stem punctures), and stem pulls be changed from "free from" defects to "free from damage" or "serious damage" defects in the U.S. No. 1 and U.S. No. 2 grades, respectively. Such changes would have the effect of allowing these defects on fruit in various degrees without being scored against the grade (versus "free from" which means they are scored on sight). According to the WAMC, "This will provide the industry with the opportunity to expand markets into Canada." WAMC also suggested that the Department should make any other revisions deemed necessary.

AMS reviewed these issues to ascertain the need for the change proposed by WAMC as well as other technical changes or updates that the Agency believed may be helpful. Many suggestions and comments were received pertaining to an informal market survey by AMS. These comments reinforced that updating changes were necessary to bring the standard in line with today's marketing practices.

These changes as well as the request by the WAMC pertaining to skin breaks were incorporated in the proposed rule, United States Standards for Grades of