

# Rules and Regulations

Federal Register

Vol. 78, No. 177

Thursday, September 12, 2013

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 5 CFR Part 7501

[Docket No. FR-5722-F-01]

RIN 2501-AD61

#### Supplemental Standards of Ethical Conduct for Employees of the Department of Housing and Urban Development; Correction to Standards Governing Prohibited Financial Interests

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** HUD (or Department), with the concurrence of the Office of Government Ethics (OGE), amends its Supplemental Standards of Ethical Conduct, which are regulations for HUD officers and employees that supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by OGE. In its final rule published on August 6, 2012, HUD did not comprehensively describe an exception to the provision that prohibits Department employees from directly or indirectly receiving, acquiring, or owning certain financial interests that may be subsidized by the Department. This final rule corrects this omission and establishes that HUD employees may not hold a financial interest in any grant, loan, cooperative agreement, or other form of assistance provided by the Department, including the insurance or guarantee of a loan, except to the extent that such interest represents assistance on the employee's principal residence. This final rule codifies current policy and practice.

**DATES:** *Effective Date:* October 15, 2013.

**FOR FURTHER INFORMATION CONTACT:** Robert H. Golden, Assistant General Counsel, Ethics and Appeals Division, telephone number 202-402-6334, or Peter J. Constantine, Associate General

Counsel for Ethics Appeals and Personnel Law, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone number 202-402-2377. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:** On August 6, 2012 (77 FR 46601), HUD published a final rule revising its Supplemental Standards of Ethical Conduct regulation. HUD revised its Supplemental Standards of Ethical Conduct regulation to ensure that its ethics program reflected the significant statutory changes to HUD's programs and operations enacted subsequent to 1996, the year that HUD issued its original Supplemental Standards of Ethical Conduct regulation. In this regard, HUD stated that the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110-289, approved July 20, 2008) transferred regulatory authority over the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively known as Government-Sponsored Enterprises or GSEs) from HUD to the Federal Housing Finance Agency. Based on this transfer of regulatory authority, HUD removed provisions of its Supplemental Standards of Ethical Conduct that prohibited all HUD employees from owning financial interests issued by the GSEs. HUD also removed a provision that limited employees whose official duties included the regulation or oversight of the GSEs from owning financial interests in certain mortgage institutions. HUD also issued its August 6, 2012, final rule to clarify and streamline several sections of its Supplemental Standards of Ethical Conduct.

One section that HUD revised in the August 6, 2012, final rule was § 7501.104, entitled "Prohibited financial interests." Specifically, HUD revised this section to remove reference to covered employees under § 7501.106 and to remove paragraphs (a)(1) and (a)(2) of this section, that, respectively, prohibited HUD employees from directly or indirectly receiving, acquiring, or owning securities issued by Fannie Mae or Freddie Mac. HUD removed these provisions consistent

with the transfer of regulatory authority over Fannie Mae and Freddie Mac under HERA.

HUD also revised and reorganized what was § 7501.104(a)(4) for clarity. This section prohibited employees, their spouses, or minor children, from directly or indirectly receiving, acquiring, or owning stock or another financial interest in a multifamily project or single-family dwelling, cooperative unit, or condominium unit which is owned or subsidized by the Department or which is subject to a note or mortgage or other security interest insured by the Department, except to the extent that the stock or other interest represents the employee's principal residence.

Specifically, HUD's August 6, 2012, final rule revised § 7501.104(a)(4) by redesignating it as § 7501.104(a)(2). HUD also removed the phrase, "in a multifamily project or single family dwelling, cooperative unit or condominium unit" and substituted the term "project." HUD intended that this change would cover all HUD projects that exist or that may come into existence in the future. In revising this section, however, HUD did not retain in the redesignated paragraph the language that establishes an exception to the prohibition; specifically, "to the extent that the stock or other interest represents the employee's principal residence."

To correct this omission, HUD is revising, in this rule, its Supplemental Standards of Ethical Conduct regulation by defining "Subsidized by the Department" in § 7501.102. Specifically, HUD is defining this term to mean "any grant, loan, cooperative agreement, or other form of assistance provided by the Department, including the insurance or guarantee of a loan." This definition is intended to ensure that HUD's Supplemental Standards of Conduct regulation comprehensively covers all HUD programs. In addition, this rule revises § 7501.104(a)(2) by restoring the exception to the prohibition that HUD employees, their spouses, or minor children may not receive, acquire, or own financial interests in projects, including any single-family dwelling or unit that is subsidized by the Department, "except to the extent that such subsidy represents assistance on the employee's principal residence."

Providing an exception that permits HUD employees to hold a financial interest in a project, including a single-family dwelling or unit, that is subsidized by the Department to the extent that such interest assists the employee's principal residence is not new. As noted in this preamble, such an exception existed since 1996, when HUD issued its original Supplemental Standards of Ethical Conduct. This long-standing exception recognizes that HUD employees remain subject to ethical requirements that ensure the public's confidence in the impartiality and objectivity with which HUD programs are administered. These requirements include 18 U.S.C. 208, a federal criminal statute, which prohibits employees from participating personally and substantially in any particular matters that will have a direct and predictable effect on the employee's financial interests, and 5 CFR 2635.502, which provides that an employee should not participate in a particular matter when the employee or the agency designee determines that the circumstances may cause a reasonable person with knowledge of the relevant facts to question his or her impartiality in the matter. Additionally, HUD employees must also adhere to the procedures established by the HUD Assistant Secretary with responsibility for the program in order to participate in the program.

**Justification for Final Rulemaking**

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. Part 10, however, provides, in § 10.1, for exceptions from that general rule when HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest."

HUD finds that good cause exists to publish this rule for effect without soliciting public comment, on the basis that public procedure is unnecessary. This rule does not substantively change HUD's Supplemental Standards of Ethical Conduct regulation but is technical in nature, reflecting long-standing policy and practice and correcting an omission in HUD's August 6, 2012, final rule. Specifically, it restores to HUD's Supplemental Standards of Ethical Conduct regulation the language that establishes that HUD employees may not hold a financial interest in any grant, loan, cooperative agreement, or other form of assistance

provided by the Department, including the insurance or guarantee of a loan, except to the extent that such interest represents assistance on the employee's principal residence. To this extent, it relates solely to agency organization, procedure, and practices and is exempt from the provision of the Administrative Procedure Act (5 U.S.C. 551 et seq.) requiring notice and opportunity for public comment.

**Matters of Regulatory Procedure**

*Executive Order 12866 and Executive Order 13563*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select the regulatory approach that maximizes net benefits. Because this rule relates solely to the internal operations of HUD, this rule was determined to be not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by the Office of Management and Budget (OMB).

*Information Collection Requirements*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) does not apply to this regulation because it does not contain information collection requirements subject to the approval of OMB.

*Environmental Impact*

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local

governments or preempt state law within the meaning of the Executive Order.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. Since it is only directed toward HUD employees, this rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

**List of Subjects in 5 CFR Part 7501**

Conflicts of interests.

Accordingly, for the reasons described in the preamble, HUD, with the concurrence of OGE, amends 5 CFR part 7501, as follows:

**PART 7501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

■ 1. The authority citation for part 7501 continues to read as follows:

**Authority:** 5 U.S.C. 301, 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; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803, 2635.807.

■ 2. In § 7501.102, add in alphabetical order a definition of "Subsidized by the Department" to read as follows:

**§ 7501.102 Definitions.**

\* \* \* \* \*

*Subsidized by the Department* means any grant, loan, cooperative agreement, or other form of assistance provided by the Department, including the insurance or guarantee of a loan.

\* \* \* \* \*

■ 3. In § 7501.104, revise paragraph (a)(2) to read as follows:

**§ 7501.104 Prohibited financial interests.**

(a) \* \* \*

(2) A financial interest in a project, including any single family dwelling or unit, which is subsidized by the Department, except to the extent such subsidy represents assistance on the employee's principal residence. The definition of "financial interest" is found at 5 CFR 2635.403(c);

\* \* \* \* \*

Dated: September 9, 2013.

**Shaun Donovan,**

Secretary.

**Walter M. Shaub, Jr.,**

Director, Office of Government Ethics.

[FR Doc. 2013-22214 Filed 9-11-13; 8:45 am]

BILLING CODE 4210-67-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 318

[Docket No. APHIS-2012-0008]

RIN 0579-AD70

#### Interstate Movement of Sharwil Avocados From Hawaii

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the Hawaii quarantine regulations to allow the interstate movement of untreated Sharwil avocados from Hawaii into the continental United States. As a condition of movement, Sharwil avocados from Hawaii will have to be produced in accordance with a systems approach that includes requirements for registration and monitoring of places of production and packinghouses, an orchard trapping program, grove sanitation, limits on harvest periods and distribution areas, and harvesting and packing requirements to ensure that only intact fruit that have been protected against infestation are shipped. This action will allow for the interstate movement of Sharwil avocados from Hawaii into other States while continuing to provide protection against the introduction of quarantine pests.

**DATES:** *Effective Date:* October 15, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Lamb, Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 851-2103.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under the regulations in 7 CFR part 318, "State of Hawaii and Territories Quarantine Notices" (referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA or the Department) prohibits or restricts the interstate movement of fruits, vegetables, and other products

from Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam to the continental United States to prevent the spread of plant pests that occur in Hawaii and the territories.

Among other things, the regulations allow interstate movement of Sharwil avocados from Hawaii to the continental United States only if the avocados undergo fumigation, or combined fumigation and cold treatment for fruit flies. The treatments currently required for the movement of Sharwil avocados can have unacceptable adverse effects on the quality of the fruit.

On February 7, 2013, we published in the **Federal Register** (78 FR 8987-8992, Docket No. APHIS-2012-0008) a proposal<sup>1</sup> to amend the regulations to allow the interstate movement of untreated Sharwil avocados from Hawaii into the continental United States under a systems approach. The proposed conditions included that Sharwil avocados from Hawaii would have to be produced in accordance with a systems approach that includes requirements for registration and monitoring of places of production and packinghouses, an orchard trapping program, grove sanitation, limits on harvest periods and distribution areas, and harvesting and packing requirements to ensure that only intact fruit that have been protected against infestation are shipped.

We solicited comments concerning the proposed rule for 60 days ending April 8, 2013, and received 30 comments by that date. They were from avocado growers and grower associations, researchers, members of Congress, a State plant regulatory agency, and an organization representing State plant regulatory agencies. These comments are discussed below by topic.

##### Support for the Proposed Rule

Many commenters stated that they were confident that Sharwil avocados could safely move to the mainland in accordance with the requirements of the proposed rule and that the strengthened mitigation measures would prevent shipment of any fruit with viable fruit fly larvae. Many commenters also stated that the proposed rule would benefit Hawaii avocado growers, the economy of Hawaii, and consumers on the mainland.

##### Trapping in Production Areas

Two commenters addressed actions to be taken if traps find *Bactrocera*

*dorsalis*, the Oriental fruit fly, in the production area. The proposed rule states "Consistent with the recommendations of the RMD [risk management document], the compliance agreement would initially require bait sprays approved by APHIS to be used to control fruit flies in the orchard if *B. dorsalis* is detected by the trapping at a rate above 0.4 flies per trap per day." One commenter stated that a detection rate of 0.1 flies/trap/day should be used as the trigger for bait spray in place of the proposed 0.4 flies/trap/day.

We are not making any change in response to this comment. *B. dorsalis* is known to exist in Hawaii's agricultural areas, and the purpose of the trapping requirement is only to demonstrate a low level of prevalence in the immediate vicinity of the Sharwil orchards. The suggested trapping rate of 0.1 flies/trap/day (based on the minimum of 2 traps we proposed to require for small orchards) would trigger action if 2 or more flies are caught in a week. This trigger level is more suitable to pest free areas than to low prevalence areas. We believe the proposed trigger of 0.4 flies/trap/day, which equates to 6 flies/week for small orchards, is a more realistic and practical trigger. The Sharwil avocado is considered an extremely poor host to *B. dorsalis*, and demonstrating that places of production have a low prevalence of *B. dorsalis* is an effective mitigation.

This commenter also suggested that Mediterranean fruit fly (Medfly) population size should also be monitored through trapping, with the same bait spray triggers in place as for *B. dorsalis*. We are not making any change based on this comment. As noted in the proposed rule and the pest risk assessment, Sharwil avocado is not a host for Medfly and movement of Sharwil avocados is not a pathway for introduction of Medfly. Therefore, we have determined that restrictions associated with Medfly in this case are not necessary.

Another commenter stated that, in addition to trapping and bait spray requirements for orchards, these requirements should also apply to surrounding buffer areas outside the orchard. The commenter also stated that, if trapping triggers a bait spray response, shipping from the orchard should be discontinued for 30 days and resume only after bait spray completion and subsequent negative trapping results.

We are not making changes in response to these comments for the following reasons. Buffer zones are necessary in cases where articles are grown in a pest-free area, or when

<sup>1</sup>To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#/docketDetail;D=APHIS-2012-0008>.