

§ 530.204 [Amended]

4. In § 530.204, paragraph (d) is removed.

5. A new § 530.206 is added to read as follows:

§ 530.206 Application of aggregate limitation on pay in calendar year 1991.

In calendar year 1991, the aggregate limitation on pay shall be applied to aggregate compensation received by the employee on or after February 3, 1991, and before January 1, 1992.

[FR Doc. 92-2034 Filed 1-27-92; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF GOVERNMENT ETHICS**5 CFR Part 2641**

RIN 3209-AA14

Post-Employment Conflict of Interest; Exemption of Positions and Designation of Additional Agency Components for the Executive Branch

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing this rule (1) to exempt certain senior employee positions for purposes of 18 U.S.C. 207(c); and (2) to designate certain additional departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c) as authorized by 18 U.S.C. 207(h).

EFFECTIVE DATE: January 28, 1992.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attention: Ms. Loring.

FOR FURTHER INFORMATION CONTACT: Julia S. Loring, Office of Government Ethics, telephone (202/FTS) 523-5757, FAX (202/FTS) 523-8325.

SUPPLEMENTARY INFORMATION:**A. Substantive Discussion of Exemption of Positions and Designation of Additional Agency Components***Exemption of Positions*

The Director of the Office of Government Ethics (OGE) is authorized by 18 U.S.C. 207(c)(2)(C) to exempt eligible employee positions from 18 U.S.C. 207(c), the one-year post-employment restriction applicable to "senior" employees. Pursuant to the procedures prescribed in 5 CFR 2641.201(d) (56 FR 3964, February 1, 1991), the Designated Agency Ethics Official at the Securities and Exchange Commission forwarded a letter to OGE dated October 15, 1991, requesting that

the Director exempt two senior employee positions: (1) The Office of General Counsel's Solicitor, and (2) the Division of Enforcement's Chief Litigation Counsel.

After carefully reviewing that letter and other relevant information, the Director determined to exempt the two positions from 18 U.S.C. 207(c) in light of the criteria set forth in 5 CFR 2641.201(d)(5). Although these exemptions became effective on October 29, 1991, the date of the Director's written response to the Securities and Exchange Commission, 5 CFR 2641.201(d)(3)(iii) provides that the Director "shall annually publish in appendix A to this part an updated compilation of all exempted positions * * *." Accordingly, appendix A of part 2641 is being amended by this rule to ensure publication of these two exemptions in the CFR.

Appendix A of this part includes parenthetical entries highlighting the effective dates of the exemptions. As indicated in 5 CFR 2641.201(d)(4), "[a]n exemption shall inure to the benefit of the individual who holds the position when the exemption takes effect, as well as to his successors, but shall not benefit individuals who terminated senior service prior to the effective date of the exemption."

Designation of Executive Agency Components

The Director of OGE is authorized by 18 U.S.C. 207(h) to designate separate departmental and agency components in the executive branch for purposes of 18 U.S.C. 207(c). The one-year representational bar of 18 U.S.C. 207(c) usually extends to any department or agency in which a former senior employee served in any capacity during the year prior to termination from senior service. However, eligible senior employees may be permitted to communicate to or appear before components of their former department or agency if those components have been designated as separate agencies or bureaus by OGE. Initial component designations applicable with respect to employees terminating senior service on or after January 1, 1991, were published in appendix B of 5 CFR part 2641 last year (56 FR 3965, February 1, 1991). Pursuant to the procedures prescribed in 5 CFR 2641.201(e), several departments have subsequently forwarded letters to OGE requesting the designation of additional distinct and separate components for purposes of that statutory provision.

By letter dated April 9, 1991, the Alternate Designated Agency Ethics Official at the Department of Justice

requested that the Director clarify that the Office of Justice Programs (including its five previously designated constituent bureaus) should be treated as one single distinct and separate component for purposes of 18 U.S.C. 207(c). The letter also requested that the Executive Office for United States Attorneys and the Executive Office for United States Trustees each be treated as distinct and separate from the rest of the Justice Department. In each case, however, the particular Executive Office would not be treated as separate from any of the district offices served by it. In a subsequent letter dated October 15, 1991, the Department's Alternate Designated Agency Ethics Official requested that the Office of the Pardon Attorney also be designated as a distinct and separate component.

By letter dated November 6, 1991, the Designated Agency Ethics Official at the Department of the Interior requested designation of ten components as distinct and separate from the rest of the Interior Department. The bureaus proposed for designation were the Bureau of Indian Affairs, the Bureau of Land Management, the Bureau of Mines, the Bureau of Reclamation, the Minerals Management Service, the National Park Service, the Office of Surface Mining, the Office of Territorial and International Affairs, the U.S. Fish and Wildlife Service, and the U.S. Geological Survey. The Department's Designated Agency Ethics Official noted that there are five Assistant Secretaries that have responsibility for one or more of the ten bureaus proposed for designation. These Assistant Secretaries are subject to 18 U.S.C. 207(c), but are not eligible to benefit from the narrowing effect of component designation. For purposes of determining the scope of the post-employment restriction in the case of an eligible senior employee serving on an Assistant Secretary's immediate staff, the Department's Designated Agency Ethics Official recommended that all bureaus under the jurisdiction of a particular Assistant Secretary should be treated as a single component.

By letter dated November 26, 1991, the Designated Agency Ethics Official at the Department of Commerce requested designation of three additional components as distinct and separate from the rest of the Commerce Department. The bureaus proposed for designation were the Bureau of Export Administration, the Technology Administration, and the United States Travel and Tourism Administration. Similarly, the Designated Agency Ethics Official at the Department of Health and Human Services forwarded a letter to

the Director of OCE dated November 29, 1991, requesting that the Administration for Children and Families be designated as an additional district and separate component of that Department.

After carefully reviewing the letters from the Department of Justice, the Department of the Interior, the Department of Commerce, and the Department of Health and Human Services in light of the criteria set forth in 5 CFR 2641.201(e)(6), the Director has determined to designate distinct and separate components as requested in that correspondence. As indicated in 5 CFR 2641.201(e)(4), a designation "shall be effective as of the effective date of the rule that creates the designation, but shall not be effective as to employees who terminated senior service prior to that date." The effective date of each designation is indicated in appendix B of this part. (Note that the effective date of the designation of the entire Office of Justice Programs—now listed as a single entity—is January 1, 1991.)

At the request of the Department of Defense, appendix B of this part has also been amended to indicate that the name of the Defense Communications Agency has been changed to the Defense Information Systems Agency.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, the Director of the Office of Government Ethics finds that good cause exists for waiving the general notice of proposed rulemaking and 30-day delayed effective date. It is important that the designation by OCE of exempted positions and separate agency components be published in the *Federal Register* as promptly as possible. Furthermore, since this rule is interpretive in nature, it is exempt from the notice and delayed effectiveness requirements of 5 U.S.C. 553.

E.O. 12291, Federal Regulation

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply

because this rule does not contain an information collection requirement that requires the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2641

Conflicts of interests, Government employees.

Approved: January 8, 1992.

Stephen D. Polts,
Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2641 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2641—[AMENDED]

1. The authority citation for part 2641 is revised to read as follows:

Authority: 5 U.S.C. App. [Ethics in Government Act of 1978, secs. 402 and 404]; 18 U.S.C. 207; 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.

2. Appendix A is amended by adding the text to read as follows:

Appendix A to 5 CFR Part 2641— Positions Exempted From 18 U.S.C. 207(c)

Pursuant to the provisions of 18 U.S.C. 207(c)(2)(C), each of the following positions is exempt from the provisions of 18 U.S.C. 207(c). All exemptions are effective as of the date indicated.

Agency: Securities and Exchange Commission.

Positions: Solicitor, Office of General Counsel (effective October 29, 1991); Chief Litigation Counsel, Division of Enforcement (effective October 29, 1991).

3. In appendix B, the introductory text is revised and the component listings are amended as set forth below:

A. Revising the listing for the Department of Commerce;

B. Revising the listing for the Department of Defense;

C. Revising the listing for the Department of Health and Human Services;

D. Adding in alphabetical order a listing for the Department of the Interior; and

E. Revising the listing (including the footnotes) for the Department of Justice:

The revisions and additions read as follows:

Appendix B to 5 CFR Part 2641— Agency Components for Purposes of 18 U.S.C. 207(c)

Pursuant to the provisions of 18 U.S.C. 207(h), each of the following departments or

agencies is determined, for purposes of 18 U.S.C. 207(c), to have within it distinct and separate components as set forth below. Except as otherwise indicated, all designations are effective as of January 1, 1991.

Parent: Department of Commerce
Components:

Bureau of the Census
Bureau of Export Administration (effective January 28, 1992)
Economic Development Administration
International Trade Administration
Minority Business Development Administration
National Oceanic and Atmospheric Administration
National Telecommunications and Information Administration
Patent and Trademark Office
Technology Administration (effective January 28, 1992)
United States Travel and Tourism Administration (effective January 28, 1992)

Parent: Department of Defense
Components:

Department of the Air Force
Department of the Army
Department of the Navy
Defense Information Systems Agency
Defense Intelligence Agency
Defense Logistics Agency
Defense Mapping Agency
Defense Nuclear Agency
National Security Agency

Parent: Department of Health and Human Services
Components:

Administration for Children and Families (effective January 28, 1992)
Health Care Financing Administration
Food and Drug Administration
Public Health Service
Social Security Administration

Parent: Department of the Interior
Components:¹

Bureau of Indian Affairs (effective January 28, 1992)
Bureau of Land Management (effective January 28, 1992)
Bureau of Mines (effective January 28, 1992)
Bureau of Reclamation (effective January 28, 1992)
Minerals Management Service (effective January 28, 1992)
National Park Service (effective January 28, 1992)
Office of Surface Mining (effective January 28, 1992)
Office of Territorial and International Affairs (effective January 28, 1992)
U.S. Fish and Wildlife Service (effective January 28, 1992)
U.S. Geological Survey (effective January 28, 1992)

Parent: Department of Justice

¹ All designated components under the jurisdiction of a particular Assistant Secretary shall be considered a single component for purposes of determining the scope of 18 U.S.C. 207(c) as applied to senior employees serving on the immediate staff of that Assistant Secretary.

Components:

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 United States Attorneys² (effective January 28, 1992)
 Executive Office for United States Trustees³ (effective January 28, 1992)
 Federal Bureau of Investigation
 Foreign Claims Settlement Commission
 Immigration and Naturalization Service
 Independent Counsel
 Office of Justice Programs
 Office of the Pardons Attorney (effective January 28, 1992)
 Offices of the United States Attorney (94)⁴
 Offices of the United States Marshal (94)⁵
 Offices of the United States Trustee (21)⁶
 Tax Division
 United States Parole Commission

[FR Doc. 92-1809 Filed 1-27-92; 8:45 am]

BILLING CODE 6345-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-156]

Black Stem Rust

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the black stem rust quarantine and regulations to

² 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.

³ 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.

⁴ Each Office of the United States Attorney for a judicial district shall be considered a separate component from each other such office. However, the Office of the United States Attorney for a judicial district shall not be considered separate from the Office of United States Marshal for the same judicial district.

⁵ Each Office of the United States Marshal for a judicial district shall be considered a separate component from each other such office. However, the Office of the United States Marshal for a judicial district shall not be considered separate from the Office of United States Attorney for the same judicial district.

⁶ Each Office of the United States Trustee for a region shall be considered a separate component from each other such office.

require that the seed of certain barberry plants be produced only at properties where it has been verified that no wild or domesticated rust-susceptible barberry plants are growing at or within one-half mile of the property. This action is necessary to help delay and minimize infestations of black stem rust. We are also allowing the issuance of compliance agreements by States that are not protected areas or that do not encompass protected areas. This action is warranted to remove unnecessary restrictions on the issuance of compliance agreements.

EFFECTIVE DATE: February 27, 1992.

FOR FURTHER INFORMATION CONTACT:

Stephen Poe, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 645, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:**Background**

Black stem rust is one of the most destructive plant diseases of small grains that is known to exist in the United States. The disease is caused by a fungus that reduces the quality and yield of wheat, oat, barley, and rye crops by robbing host plants of food and water. In addition to infecting small grains, the fungus lives on a variety of alternate host plants that are species of the genera *Berberis*, *Mahoberberis*, and *Mahonia*. The fungus is spread from host to host by wind-borne spores.

The black stem rust quarantine and regulations in 7 CFR part 301.38 *et seq.* (referred to below as the regulations) quarantine the conterminous 48 States and the District of Columbia and govern the interstate movement of certain plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, also known as barberry plants. The species of these plants are categorized as either rust-resistant or rust-susceptible. Rust-resistant plants do not pose a risk of being infected by and spreading black stem rust; rust-susceptible plants do pose such a risk.

Currently, many small grain varieties are resistant to existing races of black stem rust. However, during the sexual stage of black stem rust organisms, spores from different black stem rust organisms can combine to produce entirely new hybrid races of black stem rust. Some of these hybrid races could successfully attack grain varieties that are not harmed by the "parent" black stem rust races. For this reason, an important factor in controlling infestations of black stem rust is the elimination of rust-susceptible host barberry plants. Additionally, the

presence of rust-susceptible barberry plants can cause infestations to occur earlier in the year than if the plants were not present. These "early" infestations are especially damaging because they affect grains at a stage when the grains are most vulnerable to effects of black stem rust.

The regulations provide criteria for "protected areas." (Movement of regulated articles into or through protected areas is restricted.) Protected areas are those in which rust-susceptible plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* have been eradicated, and in which States conduct periodic inspections, as specified by the regulations, to ensure that rust-resistant nursery stock of those genera do not come into proximity to rust-susceptible plants that might become present in the area. The danger from rust-resistant barberry plants being in proximity to rust-susceptible plants is not that the rust-resistant plants will become hosts to black stem rust organisms capable of spreading. Rather, it is that the rust-susceptible plants could pollinate the rust-resistant plants, and the rust-resistant plants could then produce seeds that would be used to propagate rust-susceptible plants.

In a document published in the *Federal Register* on September 16, 1991 (56 FR 46737-46739, Docket Number 90-038), we proposed to revise the regulations to require that all seed used to propagate barberry plants in protected areas, and all seed used to propagate barberry plants that are certified rust-resistant for interstate movement into protected areas, be produced at properties where a State inspector has verified that no wild or domesticated rust-susceptible plants are growing at, or within one-half mile of, the property.

We also proposed to allow States that are not, or that do not encompass, protected areas to issue compliance agreements. Prior to the effective date of this final rule, the only States that may issue compliance agreements are those that are either protected areas or that encompass protected areas. In non-protected areas, we are responsible for issuing compliance agreements. However, this provision is unnecessarily restrictive, and there will be no increased risk of infestations of black stem rust if compliance agreements are issued by States that are not, or that do not encompass, protected areas.

The proposed rule as published contained two typographical errors. On September 25, 1991, a document was published in the *Federal Register* (FR 56 48611) to correct these errors.