

RESTRICTIONS ON THE EMPLOYMENT OF RELATIVES

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1. PURPOSE

This policy provides guidance on interpreting laws and regulations prohibiting inappropriate conduct by federal employees in matters related to the employment of relatives and/or advocating for the employment of relatives by the federal government.

2. SPECIAL INSTRUCTIONS AND REPLACEMENT HIGHLIGHTS

- a. This is a new Marketing and Regulatory Programs (MRP) Directive.
- b. This Mission Area Directive supersedes AMS 320.2 (Employment of Relatives), dated 09/02/1994.

- c. This Mission Area Directive is in force until cancelled or superseded.

3. BACKGROUND

5 U.S. Code (U.S.C.), § 3110, Employment of relatives; restrictions broadly prohibit any public official from advocating for the employment of a relative to any position within an agency in which they serve, exercise jurisdiction over, or perform a supervisory or oversight role. The statute further specifies, “an individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay.” The statute does not prohibit the appointment of “preference eligible” relatives when passing over that individual would result in the appointment of a non-preference eligible person.

The Office of Personnel Management (OPM) implementing regulations, *5 C.F.R. § 310, Employment of Relatives* allow the temporary emergency employment of relatives in the case of a national emergency or other unforeseen circumstances, not to exceed 30 days, with one additional 30-day extension granted by the implementing agency if emergency conditions warrant a continuance.

Provisions of *5 U.S.C. § 2302, Prohibited Personnel Practices*: defines advocating for the appointment, employment, promotion, or advancement of a relative as one of the prohibited personnel practices; specifies the responsibilities of agency heads and those appointed to positions involving personnel management; and describes the various legal remedies available for victims of discrimination, retaliation, and unfair labor practices with respect to the employment of relatives.

The *Standards of Ethical Conduct regulations at 5 C.F.R. § 2635*, are designed to ensure that federal employees remain impartial in the performance of their official duties. The standards of conduct prohibit employees from using his or her government position or the authority associated with his or her public office for their own private gain or for the private gain of friends, relatives, or persons with whom they are affiliated in a non-government capacity, or for the endorsement of any product, service, or enterprise.

The *Standards of Ethical Conduct regulations at 18 U.S.C. § 208*, prohibit official acts affecting a personal financial interest. This statute protects the integrity of federal government operations in instances where an employee’s personal financial interest comes into conflict with their official duties.

4. AUTHORITIES AND REFERENCES

This Mission Area Directive must be applied in conjunction with:

- a. 5 United States Code, Part III, Subpart A, Chapter 21, Section 2108, [Veteran; Disabled Veteran, Preference Eligible](#)
- b. 5 United States Code, Part III, Subpart A, Chapter 23,

- (1) Section 2301, [Merit System Principles](#)
- (2) Section 2302, [Prohibited Personnel Practices](#)

- c. 5 United States Code, Part III, Subpart B, Chapter 31, Subchapter I, Section 3110, [Employment of relatives; restrictions](#)

- d. 18 United States Code, Part I, Chapter 11,
 - (1) Section 208, [Acts affecting a personal financial interest](#)
 - (2) Section 216, [Penalties and injunctions](#)

- e. Executive Order (E.O.) 11222, [Prescribing Standards of Ethical Conduct for Government Officers and Employees](#)

- f. 5 Code of Federal Regulations, Volume 1, Chapter I, Subchapter A, Part 4,
 - (1) Section 4.2 [Prohibition against racial, political, or religious discrimination](#)
 - (2) Section 4.3 [Prohibition against securing withdrawal from competition](#)

- g. 5 Code of Federal Regulations, Volume 1, Chapter I, Subchapter B, Part 310,
 - (1) Section 310.101 [Legal restrictions on public officials in the employment of relatives](#)
 - (2) Section 310.102 [Exceptions to the legal restrictions on the employment of relatives](#)

- h. 5 Code of Federal Regulation, Volume II, Chapter 1, Subchapter B, Part 735, Subpart b, Section 735, Standards of Conduct, Subpart B, Section 735.202, [What are the restrictions on conduct that safeguard the examination process](#)

- i. 5 Code of Federal Regulation, Volume III, Chapter XVI, Subchapter B, Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch,
 - (1) Subpart A, Section 2635.101, [Basic obligation of public service](#)
 - (2) Subpart E, Section 2635.501, [Impartiality in the performing official duties](#)
 - (3) Subpart E, Section 2635.502, [Personal and business relationships](#)
 - (4) Subpart G, Section 2635.702, [Use of public office for private gain](#)

- j. USDA Department Regulation (DR) 4070-735-001, Subject: [Employee Responsibilities and Conduct](#)

5. DEFINITIONS

- a. Advocacy. Any action that promotes, defends, endorses, supports, pleads the cause, or shows interest in another person.

- b. Agency. Animal and Plant Health Inspection Service (APHIS) and Agricultural Marketing Service (AMS) and all organizational components within the agencies.
- c. Chain of Command. Line of supervisory or management personnel that runs from employee to the Under Secretary for MRP, including officials with a title of Administrator, Associate, Deputy, Assistant, Chief, Manager, Supervisor, or any other commonly accepted title held by persons who, by virtue of their position of record, have the authority to assign work to other employees. The chain of command also includes employees who routinely act in a supervisory capacity in the absence of their immediate supervisor.
- d. Employee. Any employee of MRP.
- e. Household Member. A person who resides in the same residence as an employee.
- f. National Emergency. An unforeseen natural or man-made event, national in scope, declared by the President or Congress that endangers the safety, security, or stability of the United States and requires a national program specifically intended to address or mitigate the event.
- g. Preference Eligible. Person entitled to veteran's preference in federal hiring.
- h. Public Official. A "public official," as defined in 5 U.S.C. § 3110, is anyone who by law, rule, regulation, or delegation has authority "to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency." This would include supervisors and managers at all levels. Members of the Human Resources Division (HRD) and Delegated Employment Officers in the field with the authority to approve personnel actions are also considered officials insofar as this employment issue is concerned.
- i. Relatives. A relative is a public official's father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister.
- j. Supervisor. The individual responsible for rating the performance of his or her employees is defined as a public official for the purposes of this policy.

6. SCOPE

This Directive covers all competitive and excepted service employees of MRP. Although this policy primarily addresses the hiring and placement of personnel into MRP positions, the same concepts are applicable to MRP volunteers or contractors.

7. POLICY AND RESTRICTIONS

- a. It is MRP policy to maintain high standards of honesty, integrity, and impartiality and to adhere to the laws, rules, and regulations referenced in this policy, as well as policies promulgated by USDA.
- b. Executives, managers, supervisors, team leaders, employees, and human resource advisors must avoid the appearance of using their influence to circumvent prohibited hiring practices and regulations regarding the employment of relatives.
- c. A public official is prohibited from advocating the appointment, employment, promotion, or advancement of a relative to a position anywhere in the agency (i.e., MRP-wide) in which he or she serves or where the official exercises any jurisdiction or control. A public official is considered an advocate of a relative's employment if he or she recommends or suggests an individual for employment consideration, either orally or in writing.
- d. A public official is considered an advocate of a relative's employment if the public official refers the individual for consideration to one of his or her subordinates (i.e., to someone lower in the chain of command).
- e. The employment of relatives by public officials within their direct line of supervision is prohibited.

8. ROLES AND RESPONSIBILITIES

The implementation of the policy and procedures established by this Mission Area Directive requires the support and involvement of the following individuals and/or groups:

- a. Director, HRD will provide advice and guidance to managers and supervisors regarding restrictions on employment of relatives and assist with possible solutions to avoid potential violations of this policy.
- b. USDA Office of Ethics will determine whether the employment is appropriate for an exception under the regulation.
- c. Executives, managers, and supervisors are responsible for familiarizing themselves with this policy and ensuring that their supervisory chain of command is promptly notified of any relationship which is contrary to this policy.
- d. Servicing Human Resources (HR) Specialists will ensure that the restrictions listed in this policy are not violated when processing hiring and placement actions.

- e. Employees meeting the definition of public officials (e.g., supervisors, team leaders, management officials, etc.) will familiarize themselves with the guidance in this policy, comply with its provisions, and follow all procedural requirements outlined in this Directive.

9. PROCEDURES

a. Corrective Action

Any employment situation not in conformance with the above policy must be corrected expeditiously. Whenever a known relative is assigned or reassigned within a relative's supervisory chain of command, the supervisor must promptly notify the program area's Deputy Administrator (or designee). To eliminate the chain of command relationship, the program Deputy Administrator (or designee) will ensure one or more of the following steps is taken:

- (1) An employee may request a voluntary reassignment or may be detailed to a position outside the chain of command. During the period that a direct supervisory relationship exists between relatives, the related supervisory employee will not directly or indirectly supervise, control, or influence the work or employment status of his or her relative. Prohibited activities include, but are not limited to developing, approving, or reviewing performance appraisals or awards; setting work hours; granting leave; or assigning work. The employment situation must be resolved within 60 calendar days by reassignment, transfer, or separation of either person.
- (2) If employees are not relatives as defined in 18 U.S.C. § 208(a) but are members of the same household, the USDA Office of Ethics, determines, in accordance with 5 CFR 2635.502(d), whether the employment is appropriate for an exception under the regulation. The Deputy Administrator (or designee) must contact the USDA Office of Ethics, Mission Area Ethics Advisor at Ethics-MRP@usda.gov for guidance in these situations.
- (3) Whenever identified, the employment of relatives in closely associated work offices or staffs of a public official's organization must be reviewed and approved by the Administrator of the Agency (or designee) before an offer of employment or any placement action is given.
- (5) Employees must recuse themselves from involvement in any action that would violate restrictions regarding employment of relatives outlined in policy, law, rule, regulation, and/or have the appearance of such a violation.

b. Hiring and Placement Actions

(1) Advocating for Employment

Supervisors and managers at all levels, members of HRD and Delegated Employment Officers in the field with the authority to influence personnel actions may not:

- (a) advocate for employment, promotion, or advancement of one of his or her relatives.
- (b) advocate for employment, promotion, or advancement to a position the relative of any other official in the agency if that official has recommended or advocated the action.

(2) Selection of Relatives from Certificates of Eligibles

Preference Eligibles

In accordance with 5 U.S.C. § 3110, restrictions in this policy do not apply to appointment in the competitive service of a relative who is a preference eligible candidate if:

- (a) The relative's name is within reach for selection from an appropriate Delegated Examining Unit or OPM certificate of eligibles.
- (b) An alternative selection cannot be made from the certificate without passing over the preference eligible candidate and selecting a person who is not a preference eligible candidate.

A public official cannot later promote or advocate the promotion of a relative who is appointed under the provisions of paragraph 9b (2) "Selection of Relatives from Certificates of Eligibles." The exemption provision applies to initial appointments only.

(3) Nondiscretionary Actions

Despite the restrictions noted above, officials may take actions affecting a relative, providing those actions are non-discretionary in nature such as:

- (a) Placement of an employee resulting from reduction in force actions.
- (b) Placement of individuals entitled to career transition placement.

- (c) An upgrade due to the correction of a classification error or the issuance of a new classification standard.

(4) All employees

No employee can be involved in a selection process that affects a relative.

This includes:

- (a) Merit Promotion panels.
- (b) Interview panels.
- (c) Recommendations or selections for training.
- (d) Recommendations or selections for awards to include quality step increases.

Employees are responsible for recusing themselves from any actions that would violate restrictions outlined in this policy. The employee must record their recusal in writing and submit a copy to the servicing HR Specialist.

c. Completion of the OF-306 Declaration for Federal Employment

Completion of the OF-306, Declaration for Federal Employment, is required for all applicant appointment actions and employee placement actions. Before finalizing any selection or placement action, the servicing HR Specialist is required to determine if the selectee is a relative of any MRP employee based on the individual's response to Questions 14 and 16 on the OF-306. The HR Specialist must review for the following:

- (1) The relative's name, relationship, and the department or agency for which the relative works. Specifically,
 - (a) If the relative works for an AMS or APHIS program, look up his/her record in the NFC database and document the position held, whether it is supervisory, and the organizational unit in which s/he is employed.
 - (b) If it is determined that the selectee will be in the chain of command of the relative, regardless of how far removed, the servicing HR Specialist must:
 - i. inform the selecting official of the outcome of the review and the restriction on relative-supervisory relationships;

- ii. inform the official that, consistent with restrictions on employment of relatives, adjustment of the supervisory employee relationship must be resolved as outlined under paragraph 9a. “Corrective Action,” before finalizing the personnel action; and
- iii. advise the official that if corrective action is not taken, or another solution does not resolve the matter of the supervisor/subordinate relationship, the subject personnel action will not be processed.

d. Emergency Exceptions

5 C.F.R. § 310 allows temporary employment of relatives when necessary to meet urgent needs resulting from an event posing an immediate threat to life or property or a national emergency as defined in Section five. Temporary appointments under these conditions are not to exceed 30 days but may be extended for an additional 30-days if the emergency need still exists.

e. Penalties

Disciplinary actions, up to and including removal, may be taken against public officials who violate federal regulations and policies that prohibit the appointment of, or advocacy for, the advancement of relatives.

5 U.S.C. § 3310c provides that an individual appointed, employed, promoted, or advance in violation of this section is not entitled to the pay of the position where unlawfully placed.

Any pay to individuals employed in violation of 5 U.S.C. § 3110 must be refunded to the government and the unlawful personnel action must be canceled.

10. RECORDS MANAGEMENT

Federal records created by this Directive must be maintained in accordance with the established [General Records Schedule \(GRS\)](#) and/or the [AMS/APHIS Records Management Handbook](#), when applicable. If employees are named in an active litigation hold, Freedom of Information Act (FOIA) request, and/or other action, those records, regardless of media, must be preserved and maintained in their native format until otherwise notified by MRP’s Records Officer and/or the Office of General Counsel.

- a. The MRP, Information Technology Division, Information Management Branch (MRP-ITD IMB) is the official recordkeeper of this Directive, which is to be preserved permanently, per Paperwork and Data Management (PDM) 4-1.

- (1) HRD is the official recordkeeper of the records documenting placement actions, which will be maintained in accordance with GRS 2.2, Employee Management Records, items 040, 041.
- (2) Individual AMS/APHIS Program offices will maintain employee management records and supervisors' personnel correspondence in accordance with GRS 2.2, Employee Management Records, items 010, 080.

11. INQUIRIES AND ADDITIONAL INFORMATION

- a. Operating guidelines are contained in Human Resources Desk Guide Subchapter 4310, Restrictions on the Employment of Relatives.
- b. Direct inquiries on procedural matters HRD, [Human Resources Operations Service Provider](#).
- c. Direct requests for policy interpretations on complex issues to HRD, [Human Resources Policy Branch](#) or USDA Office of Ethics, MRP Ethics Advisor at Ethics-MRP@usda.gov.
- d. Records management inquiries should be directed to your Program Records Management Liaison for [AMS/APHIS](#).
- e. This Mission Area Directive can be accessed online via the [APHIS/AMS](#) Issuance Website.

/s/

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