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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 251

RIN 3206-AH72

Agency Relationships With Organizations Representing Federal Employees and Other Organizations

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing agency relations with managerial, supervisory, professional, and other organizations that are not labor organizations. These regulations will permit greater employee representation of employee organizations under certain circumstances.

EFFECTIVE DATE: January 15, 1998.

FOR FURTHER INFORMATION CONTACT: Lorraine Lewis, General Counsel, U.S. Office of Personnel Management, Office of the General Counsel, 1900 E Street, NW., Washington, DC 20415-0001, Telephone: (202) 606-1700, FAX: (202) 606-2609.

SUPPLEMENTARY INFORMATION:

I. Background

OPM published in the **Federal Register** on April 22, 1997, at 62 FR 19525, proposed regulations on agency relationships with organizations representing Federal employees and other organizations. These regulations reflected a provision of the Federal Employee Representation Improvement Act of 1996 which modified the 18 U.S.C. § 205 restrictions to permit employee representation of employee organizations under certain circumstances. The Federal Employee Representation Improvement Act of

1996; Pub. L. 104-177, 110 Stat. 1563, August 6, 1996.

As amended, 18 U.S.C. Section 205(d)(1)(B) allows a Federal officer or employee, if not inconsistent with the performance of his or her duties, to represent without compensation a non-profit cooperative, voluntary, professional, recreational or similar organization if a majority of the organization's or group's members are Government officers or employees or their spouses or dependent children.

Subsection (d)(2) of amended Section 205 sets forth the circumstances in which a Federal employee may not act as agent or attorney representing an employee organization. There are three situations in which an employee is prohibited from representing the views of the organization or group. The first situation prevents employee representation when the subject of the representation is a claim against the United States. 18 U.S.C. § 205(d)(2)(A). The second situation prohibits the prescribed action during a judicial or administrative proceeding where the organization or group is a party. 18 U.S.C. § 205(d)(2)(B). The third situation expressly disallows Federal employees from requesting grants, contracts or Federal funds on behalf of an employee organization. 18 U.S.C. § 205(d)(2)(C). Accordingly, paragraph (f) of the Part 251 regulation is being revised to reflect the new law.

The proposed rule requested comments and prescribed a 60-day comment period. OPM received four comments on the proposed rule, three by public interest organizations and one by a Federal department. The four comments were timely. OPM has carefully considered the points made in the comments and reviewed the entire Part 251 regulation and relevant portions of the Federal Employee Representation Improvement Act of 1996. OPM has decided to make no change to the proposed rule.

II. Summary of Comments

The three public interest organizations that commented on the proposed rule expressed concern that as currently written it may tend to discourage Federal employees from exercising representation rights they may have. It is suggested that the language of the proposed rule is unnecessarily negative in tone and gives the appearance that its primary purpose

is to caution Federal employees against serving as representatives for organizations other than labor organizations. The Federal department that commented on the proposed rule asserts that the third situation set out in the supplementary information portion of the proposed rule in which an employee is still prohibited from representing the views of the organization or group is not altogether clear.

III. Analysis of Comments

The three public interest organizations that commented on the proposed rule were concerned that the language of the rule is unnecessarily negative in tone and could have the effect of discouraging Federal employees from serving as representatives for organizations under the terms and conditions of the proposed rule. It is suggested that the regulation focuses on the remaining restrictions in 18 U.S.C. § 205 and gives the appearance that its primary purpose is to caution Federal employees against serving as representatives for organizations. When the 5 CFR part 251 regulations were first published, they provided for the new statutory exception and contained a reference in 5 CFR 251.101(f) to the 18 U.S.C. § 205 restrictions which remained. 60 FR 51371-51373, October 2, 1995. The intent was to caution Federal employees and make them aware that this authority exists and restricts them under certain circumstances from representing organizations before Federal agencies. In the Supplementary Information to the final rule OPM responded to a commenter who took issue with the inclusion of subpart (f):

OPM is bound by the Department of Justice's interpretation of 18 U.S.C. § 205 and it would be improper for the regulation to authorize employees to represent non-labor organizations as part of their official duties. Indeed, it was out of concern that some officials might misconstrue these regulations as authorizing dealings with employee representatives of non-labor organizations without regard to 18 U.S.C. § 205 as interpreted by the Department of Justice that OPM included the cautionary note of section 251.101(f). Should a law be passed making the cautionary note unnecessary, OPM will modify its regulations. 61 FR 32914, June 26, 1996.

The Federal Employee Representation Improvement Act of 1996; Public Law

104-177, 110 Stat. 1563, August 6, 1996, modifying the 18 U.S.C. § 205 restrictions to permit employee representation of employee organizations under certain circumstances, prompted OPM to modify its final rule regarding 5 CFR part 251.

OPM, in its proposed rule, captures the essence of that relaxed restriction, while noting that subsection (d)(2) of amended Section 205 sets forth the circumstances in which a Federal employee may not act as agent or attorney representing an employee organization. It would be misleading to exclude the restrictions the law maintains, especially since violations of the Section 205 restrictions subject individual employees to the civil and/or criminal penalties set forth in 18 U.S.C. § 216.

The Federal department commented on the third restriction set forth in the amendment and reflected in the supplementary information portion of the proposed rule. The commenter suggested that the third situation which disallows Federal employees from requesting grants, contracts or Federal funds on behalf of an employee organization is not clear in the supplementary information portion of the proposed rule. It is suggested that the language does not make clear whether an employee could negotiate with a Federal agency on behalf of an organization over the terms of a contract. The commenter points out that a review of the law and the legislative history make it clear that the restriction is meant to apply only when the contract involves the expenditure of Federal funds. For example, an employee could represent a day-care center in the day-care center's rent, but the employee could not represent the center in the center's application for a grant from the U.S. Department of Education.

We agree with the commenter that the restriction on representation remains for any matter that "involves a grant, contract, or other agreement (including a request for any such grant, contract, or agreement) providing for the disbursement of Federal funds to the organization or group." Federal Employee Representation Improvement Act of 1996, Public Law 104-177, Sec. 2(d)(2)(C). The relevant legislative history states: "[d]ue to limited Federal resources, employee organizations should be on the same footing as other[s] looking for Federal funds." House Report No. 104-230, August 4, 1995. OPM believes, however, that the language in the supplementary

information of the proposed regulations is clear and does not need modification.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will only affect Federal Government employees and non-labor organizations representing such employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 251

Government employees.

Office of Personnel Management.

Janice R. Lachance,
Director.

Accordingly, OPM is amending 5 CFR part 251 as follows:

PART 251—AGENCY RELATIONSHIPS WITH ORGANIZATIONS REPRESENTING FEDERAL EMPLOYEES AND OTHER ORGANIZATIONS

1. The authority citation for part 251 continues to read as follows:

Authority: 5 U.S.C. § 1104; 5 U.S.C. Chap 7; 5 U.S.C. § 7135; 5 U.S.C. § 7301; E.O. 11491.

2. In § 251.101, paragraph (f) is revised to read as follows:

§ 251.101 Introduction

* * * * *

(f) Federal employees, including management officials and supervisors, may communicate with any Federal agency, officer, or other Federal entity on the employee's own behalf. However, Federal employees should be aware that 18 U.S.C. 205, in pertinent part, restricts Federal employees from acting, other than in the proper discharge of their official duties, as agents or attorneys for any person or organization other than a labor organization, before any Federal agency or other Federal entity in connection with any matter in which the United States is a party or has a direct and substantial interest. An exception to the prohibition found in 18 U.S.C. 205 permits Federal employees to represent certain nonprofit organizations before the Government except in connection with specified matters. Agency officials and employees are therefore advised to consult with their designated agency ethics officials

for guidance regarding any conflicts of interest that may arise.

[FR Doc. 98-974 Filed 1-14-98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Chlortetracycline, Sulfathiazole, Penicillin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Hoffmann-La Roche, Inc. The ANADA provides for use of Type A medicated article containing chlortetracycline, sulfathiazole, and penicillin to make a Type C medicated swine feed.

EFFECTIVE DATE: January 15, 1998

FOR FURTHER INFORMATION CONTACT:

Lonnie W. Luther, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-0209.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110-1199, filed ANADA 200-167 that provides using Aureozol®, a Type A medicated article containing chlortetracycline calcium complex equivalent to 40 grams per pound (g/lb) chlortetracycline hydrochloride, sulfathiazole 8.8 percent (40 g/lb), and penicillin (from penicillin procaine) 20 g/lb, to make a Type C medicated swine feed. The Type C swine feed contains 100 g of chlortetracycline, 100 g of sulfathiazole, and 50 g of penicillin per ton of feed. It is a complete feed for swine raised in confinement (dry lot) or on limited pasture. It is used in swine pre-starter and starter feeds for reduction of incidence of cervical abscesses, treatment of bacterial enteritis (salmonellosis or necrotic enteritis caused by *Salmonella choleraesuis* and vibronic dysentery), maintenance of weight gain in the presence of atropic rhinitis, increased rate of weight gains and improved feed efficiency from 10 pounds of body weight to 6 weeks post-weaning. It is used for swine grower and finisher feed for reduction of incidence of cervical abscesses, treatment of bacterial