



**OFFICE OF GOVERNMENT ETHICS**

**5 CFR Part 2641**

**RIN 3209-AA14**

**Post-Employment Conflict of Interest Restrictions; Revision of Departmental Component Designations**

**AGENCY:** Office of Government Ethics.

**ACTION:** Final rule.

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**SUMMARY:** The U.S. Office of Government Ethics (OGE) is issuing this final rule to revise the component designations of two agencies for purposes of the one-year post-employment conflict of interest restriction for senior employees. Specifically, OGE is revoking two existing component designations and adding five new component designations, based on the recommendations of the agencies concerned.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], except for the amendments to Appendix B to 5 CFR part 2641 set forth in

amendatory instructions 2.b. and 2.c., which are effective [INSERT DATE 90 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Director of OGE (Director) is authorized by 18 U.S.C. 207(h) to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c), the one-year post-employment conflict of interest restriction for senior employees. The representational bar of 18 U.S.C. 207(c) usually extends to the whole of any department or agency in which a former senior employee served in any capacity during the year prior to termination from a senior employee position. However, 18 U.S.C. 207(h) provides that whenever the Director determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate component of that department or agency. Under 18 U.S.C. 207(h)(2), component designations do not apply to persons employed at a rate of pay

specified in or fixed according to subchapter II of 5 U.S.C. chapter 53 (the Executive Schedule). Component designations are listed in appendix B to 5 CFR part 2641.

Pursuant to the procedures prescribed in 5 CFR 2641.302(e), two agencies forwarded written requests to OGE to amend their listings in appendix B to part 2641, and on October 18, 2016, OGE published a proposed rule in the FEDERAL REGISTER, 81 FR 71644, Oct. 18, 2016, that proposed to revise the component designations of those two agencies. The proposed rule provided a 30-day comment period, which ended on November 17, 2016. OGE did not receive any comments. The rationale for the proposed rule, which OGE is now adopting as final, is explained in the preamble at: <https://www.gpo.gov/fdsys/pkg/FR-2016-10-18/pdf/2016-25054.pdf>.

For the reasons stated in the preamble to the proposed rule, OGE is granting the request of the Department of Labor and is amending the agency's listing in appendix B to part 2641 to remove the designation of the Employment Standards Administration (ESA), and in the place of ESA, designate the Office of Federal Contract Compliance Programs, Office of Labor Management Standards, Office of Workers' Compensation Programs, and the Wage and Hour Division as distinct and separate components of the Department of Labor for purposes of 18 U.S.C. 207(c). OGE also is granting the request of the Department of Transportation and amending the agency's listing in appendix B to part 2641 to remove the designation of the Surface Transportation Board and designate the Pipeline and Hazardous Materials Safety Administration as a distinct and separate component of the Department of Transportation for purposes of 18 U.S.C. 207(c).

As indicated in 5 CFR 2641.302(f), a designation “shall be effective on the date the rule creating the designation is published in the FEDERAL REGISTER and shall be effective as to individuals who terminated senior service either before, on or after that date.” Initial designations in appendix B to part 2641 were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B. The new component designations made in this rule are effective [INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

As also indicated in 5 CFR 2641.302(f), revocation of a component designation is effective 90 days after the publication in the FEDERAL REGISTER of the rule that revokes the designation. Accordingly, the component designation revocations made in this rule will take effect [INSERT DATE 90 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Revocations are not effective as to any individual terminating senior service prior to the expiration of the 90-day period.

## **II. Matters of Regulatory Procedure**

### Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal departments and agencies and current and former Federal employees.

### Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this final rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

#### Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

#### Congressional Review Act

The final rule is not a major rule as defined in 5 U.S.C. chapter 8, Congressional Review of Agency Rulemaking.

#### Executive Orders 12866 and 13563

In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in Executive Orders 12866 and 13563. This rule has not been reviewed by the Office of Management and Budget under Executive Order 12866 because it is not a “significant” regulatory action for the purposes of that order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

**List of Subjects in 5 CFR Part 2641**

Conflict of interests, Government employees.

Approved: December 22, 2016.

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

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2641 as set forth below:

**PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST  
RESTRICTIONS**

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

**Authority:** 5 U.S.C. app. (Ethics in Government Act of 1978); 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. Amend appendix B to part 2641 as follows:

a. Revise the listings for Parent: Department of Labor and Parent: Department of Transportation.

b. Effective [INSERT DATE 90 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], remove the Employment Standards Administration component from the listing for Parent: Department of Labor

c. Effective [INSERT DATE 90 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], remove the Surface Transportation Board component from the listing for Parent: Department of Transportation.

The revisions read as follows:

**Appendix B to Part 2641 – Agency Components for Purposes of 18 U.S.C. 207(c)**

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Parent: Department of Labor

Components:

Bureau of Labor Statistics.

Employee Benefits Security Administration (formerly Pension and Welfare Benefits Administration) (effective May 16, 1997).

Employment and Training Administration.

Employment Standards Administration.

Mine Safety and Health Administration.

Occupational Safety and Health Administration.

Office of Disability Employment Policy (effective January 30, 2003).

Office of Federal Contract Compliance Programs (effective [INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]).

Office of Labor Management Standards (effective [INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]).

Office of Workers' Compensation Programs (effective [INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]).

Pension Benefit Guaranty Corporation (effective May 25, 2011).

Wage and Hour Division (effective [INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]).

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Parent: Department of Transportation

Components:

Federal Aviation Administration.

Federal Highway Administration.

Federal Motor Carrier Safety Administration (effective January 30, 2003).

Federal Railroad Administration.

Federal Transit Administration.

Maritime Administration.

National Highway Traffic Safety Administration.

Pipeline and Hazardous Materials Safety Administration (effective [INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]).

Saint Lawrence Seaway Development Corporation.

Surface Transportation Board (effective May 16, 1997).

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