



**Billing Code: 4810-25-P**

**DEPARTMENT OF THE TREASURY**

**31 CFR Part 0**

**RIN 1505-AB89**

**Department of the Treasury Employee Rules of Conduct**

**AGENCY:** Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury (the “Department” or “Treasury”) publishes this final rule to update its Employee Rules of Conduct, which prescribe uniform rules of conduct and procedure for all employees and officials in the Department.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Brian Sonfield, Deputy Assistant General Counsel, General Law and Regulation, (202) 622-9804.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On June 1, 1995, the Department issued Employee Rules of Conduct prescribing uniform rules of conduct and procedure for all employees and officials in the Department. On February 19, 2016, Treasury published in the **Federal Register** an interim final rule amending the Employee Rules of Conduct to account for current Department structure resulting from organizational changes that established new bureaus within Treasury and transferred certain functions and/or bureaus from the Department. The interim final rule also amended the Rules of Conduct to remove provisions that pertain solely to standards of ethical conduct. The standards of ethical conduct governing employees of the Department are contained in uniform standards of

ethical conduct promulgated by the Office of Government Ethics that apply to all executive branch personnel, codified at 5 CFR part 2635 (Executive Branch-wide Standards), and in the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury, codified at 5 CFR part 3101 (Treasury Supplemental Standards). Finally, the interim final rule amended the Rules of Conduct to ensure the efficient functioning of the Department and to conform to changes in the law or Department policy.

The interim final rule went into effect on February 19, 2016. The public comment period for the interim final rule closed on April 19, 2016. One written comment responding to the interim final rule was received and is available for public inspection at <http://www.regulations.gov> or upon request. After consideration of the comment, the interim final rule revising part 0 in its entirety is adopted as amended by this final rule.

## **II. Public Comment and Summary of Changes from the Interim Final Rules**

Section 0.216 of the interim final rule states: “Except for the official handling, through the proper channels, of matters relating to legislation in which the Department has an interest, employees shall not use government time, money, or property to petition a Member of Congress to favor or oppose any legislation or proposed legislation, or to encourage others to do so.” The commenter expressed concern that this language has the potential to interfere with the right of an employee representative under the Federal Labor Management Relations Statute, 5 U.S.C. 7101, et seq., to communicate with Congress and to educate its members about legislative proposals. The commenter also observed that interim final rule section 0.216 could impermissibly chill communications between union leaders and bargaining unit employees about such proposals.

Treasury recognizes that it has a duty to bargain with the representatives of its employees over proposals to permit the use of official time for such representatives to lobby Congress

regarding matters affecting conditions of employment. *See AFGE and U.S. Dep't of Labor*, 61 F.L.R.A. 209, 216 (2005). Section 0.216 was not intended to preclude such bargaining. In order to clarify Treasury's intent, section 0.216 has been revised to reflect that the use of government time, to petition a Member of Congress to favor or oppose any legislation or proposed legislation, is not prohibited where permitted by a collective bargaining agreement.

Accordingly, the following additional sentence has been added to the end of section 0.216: "This section does not prohibit the use of government time by union representatives to petition a Member of Congress to favor or oppose any legislation or proposed legislation, where permitted by the terms of a collective bargaining agreement."

Treasury disagrees that section 0.216 can reasonably be construed to limit all communications between union leaders and bargaining unit employees about legislative proposals, including those that would educate union members about legislative proposals affecting their government employment. The rule prohibits only the use of government time, money, or property for communications encouraging others to petition a Member of Congress to favor or oppose any legislation or proposed legislation. Such a prohibition does not interfere with any employee right.

Although not the subject of a public comment, Treasury has also made a clarifying change to section 0.215. That section of the interim final rule provided: "An employee shall not electronically transmit, or create audio or video recordings of, conversations, meetings, or conferences in the workplace or while conducting business on behalf of the Department, except where *doing so is part of the employee's official duties*" (emphasis added). This wording could be construed to preclude ad hoc authorizations to record where doing so is not part of an employee's official duties. That was not Treasury's intention, and the section has therefore been

changed to substitute the phrase “where authorized” for the phrase “where doing so is part of the employee’s official duties.”

### **III. Matters of Regulatory Procedure**

#### *Regulatory Flexibility Act*

Because, as explained at 81 Fed. Reg. 8402 (Feb. 19, 2016), no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

#### *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires an agency to prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. This rule generally sets out the conduct regulations that all Department employees and officials are required to follow. The Department therefore has determined that the rule will not result in expenditures by state, local or tribal governments or by the private sector of \$100 million or more. Accordingly, the Department has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

#### *Administrative Procedure Act*

Under 5 U.S.C. 553(a)(2), rules relating to agency management and personnel are exempt from the rulemaking requirements of the Administrative Procedure Act (APA). As set forth in

the description of the interim rule, this final rule affects only the Department and its personnel; therefore, the APA requirements for prior notice and opportunity to comment and a delayed effective date are inapplicable. Even if this rulemaking were subject to APA procedures, the Department finds that good cause exists, pursuant to 5 U.S.C. 553(b) and (d), that the requirements for prior notice and comment are unnecessary because the rule affects only Treasury employees.

### **List of Subjects in 31 CFR Part 0**

Government employees.

For reasons set forth in the preamble, the interim rule published February 19, 2016, at 81 FR 8402, is adopted as final with the following changes:

### **PART 0 – DEPARTMENT OF THE TREASURY EMPLOYEE RULES OF CONDUCT**

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301.

2. Revise § 0.215 to read as follows:

#### **§ 0.215 Recording government business.**

An employee shall not electronically transmit, or create audio or video recordings of, conversations, meetings, or conferences in the workplace or while conducting business on behalf of the Department, except where authorized.

3. Revise § 0.216 to read as follows:

#### **§ 0.216 Influencing legislation or petitioning Congress.**

Except for the official handling, through the proper channels, of matters relating to legislation in which the Department has an interest, employees shall not use government time,

money, or property to petition a Member of Congress to favor or oppose any legislation or proposed legislation, or to encourage others to do so. This section does not prohibit the use of government time by union representatives to petition a Member of Congress to favor or oppose any legislation or proposed legislation, where permitted by the terms of a collective bargaining agreement.

Dated: October 4, 2017.

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Kody H. Kinsley

Assistant Secretary for Management

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