



**BAC 7710-FW-P**

**POSTAL REGULATORY COMMISSION**

**5 CFR Part 5601**

**[Docket No. RM2017-4; Order No. 4177]**

**Supplemental Standards of Ethical Conduct**

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is issuing a set of rules that amend existing rules related to supplemental standards of ethical conduct for Postal Regulatory Commission employees. The rules revise the existing rules in order to better conform to Office of Government Ethics standards and accurately reflect the Commission's regulatory role under the Postal Accountability and Enhancement Act.

**DATES:** *Effective* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

**SUPPLEMENTARY INFORMATION:**

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**I. Introduction**

On May 24, 2017, the Postal Regulatory Commission (Commission) issued a notice of proposed rulemaking to revise its supplemental standards of ethical conduct, 5 CFR part 5601.<sup>1</sup> On the same day, the Commission also issued a notice of proposed rulemaking to revise the ethics rules applicable to Commission employees, 39 CFR subpart A of part 3000.<sup>2</sup>

Executive branch employees are subject to multiple federal ethics laws, regulations issued by the Office of Government Ethics (OGE), and executive orders. The supplemental standards of ethical conduct at issue in this Order are additional restrictions applicable only to Commission employees. These supplemental standards of ethical conduct concern prohibited financial interests, prohibited outside employment, disqualification when seeking non-federal employment, and prior approval to engage in outside employment. For the

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<sup>1</sup> 82 FR 23758 (May 24, 2017). The Commission posted this document on its Web site on May 19, 2017. Notice of Proposed Rulemaking on Amendments to Supplemental Standards of Ethical Conduct for Employees of the Postal Regulatory Commission, May 19, 2017 (Order No. 3906).

<sup>2</sup> 82 FR 23766 (May 24, 2017). The Commission posted this document on its Web site on May 19, 2017. Order No. 3907, Notice of Proposed Rulemaking on Amendments to Ethics Rules, May 19, 2017.

reasons discussed below, the Commission adopts the proposed rules without alteration. OGE concurs with the Commission's proposed revisions to 5 CFR part 5601.

## **II. Background**

In 1991, Executive Order 12674, as amended by Executive Order 12731, authorized OGE to establish a single, comprehensive, and clear set of executive branch standards of ethical conduct.<sup>3</sup> On August 7, 1992, OGE published a final rule titled Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards).<sup>4</sup> The OGE Standards, codified at 5 CFR part 2635, became effective February 3, 1993, and established uniform standards of ethical conduct applicable to all executive branch personnel. On August 12, 1993, the Postal Rate Commission collaborated with OGE to publish existing 5 CFR part 5601 as an interim rule. 58 FR 42839 (Aug. 12, 1993).

In 2006, the Postal Accountability and Enhancement Act (PAEA), Pub. Law No. 109-435, 120 Stat. 3198 (2006) changed the agency's name from the Postal Rate Commission to the Postal Regulatory Commission and made several changes to the Commission's regulatory role. Order No. 3906 at 2-3. The supplemental standards of ethical conduct, existing 5 CFR part 5601, have never been amended or finalized since their 1993 adoption and remain attributed to the

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<sup>3</sup> See Executive Order No. 12674, 54 FR 15159 (Apr. 12, 1989); Executive Order No. 12731, 55 FR 42547 (Oct. 17, 1990).

<sup>4</sup> See 57 FR 35006-35067, as corrected at 57 FR 48557 (Oct. 27, 1992), 57 FR 52583 (Nov. 4, 1992), and 60 FR 66857-66858 (Dec. 27, 1995).

Postal Rate Commission. The PAEA's changes to the Commission's responsibilities drive the need to modernize the Commission's supplemental standards of ethical conduct. Moreover, experience has informed the Commission's view regarding linguistic and organizational revisions to clarify the supplemental standards of ethical conduct.

### **III. Comments**

The Commission received two sets of comments pertaining to the proposed revisions to the supplemental standards of ethical conduct and the Commission's ethics rules.

*Sum Comments.* The Commission received the following comment through the *www.federalregister.gov* Web site: "Any deletion of ethical conduct would not be in the best interest of the American people due to transparency."<sup>5</sup>

*PR Comments.* The Public Representative supports the proposed revisions.<sup>6</sup> He deems it "critical that the Commission's ethics rules accurately reflect its role as a regulator and are reflective of the agency's procedures." PR Comments at 2. He concludes that the proposed revisions serve the public interest, reinforce public perception of the Commission's integrity, and increase

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<sup>5</sup> Comment Received from Beth Sum, June 19, 2017 (Sum Comments). For transparency, this comment was posted to the Commission's Web site and associated with this docket.

<sup>6</sup> Public Representative Comments on Notices of Proposed Rulemaking on Amendments to Ethics Rules and Amendments to Supplemental Standards of Ethical Conduct for Employees of the Postal Regulatory Commission, June 26, 2017 (PR Comments). The Public Representative also filed a motion for late acceptance of his comments. Motion of Public Representative for Late Acceptance of Comments, June 26, 2017 (Motion). The Motion is granted.

accessibility and transparency. *Id.* He states that the proposed revisions “ensure that financial holdings and outside employment do not result in the appearance of or in actual conflicts of interest.” *Id.* at 3. He observes that the proposed deletions are primarily editorial revisions made to delete duplicative and outdated sections. *Id.* He notes that the proposed deletions will not limit the ethical obligations of Commission employees. *Id.*

#### **IV. Commission Analysis**

Neither commenter suggested changes to the proposed rules. The Public Representative supports the proposed rules. *Id.* at 2-3. In response to the concern expressed in the Sum Comments, the Commission reiterates its commitment to upholding the highest ethical standards. As executive branch employees, Commission employees remain subject to several statutes governing conflicts of interests (*see, e.g.*, 18 U.S.C. 201-219); the standards of ethical conduct appearing in Executive Order 12674, as amended by Executive Order 12731; and regulations promulgated by OGE relating to several issues including financial disclosure, the standards of ethical conduct, and post-employment conflicts of interest (*see, e.g.*, 5 CFR parts 2634, 2635, and 2641). Commission employees are also subject to the Commission’s ethics rules, 39 CFR subpart A of part 3000, which are also being revised to reflect the Commission’s modern regulatory role under the PAEA and to remove duplicative and outdated

provisions.<sup>7</sup> The regulations at issue in this Order, the supplemental standards of ethical conduct applicable to Commission employees only, concern restrictions imposed upon Commission employees in addition to these laws and standards. The proposed revisions remain consistent with these laws and do not abrogate their application in any way. Streamlining the Commission's supplemental standards of ethical conduct supports OGE's mission to establish a single, comprehensive, and clear set of executive branch standards of ethical conduct in accordance with Executive Order 12731. The proposed revisions will not lead to any reduction in the ethical obligations of Commission employees. Ultimately, the proposed revisions will enhance the Commission's adherence to ethical conduct by more accurately reflecting the Commission's modern regulatory role under the PAEA.

The proposed rules clarify the bounds of ethical conduct in several ways, including linguistic and organizational revisions to delete duplicative and outdated language as well as to improve the specificity of the provisions. For instance, the definition of "affected persons" used in existing § 5601.101(b) is being incorporated into proposed § 5601.102. Existing § 5601.101(b)'s non-exhaustive list of categories of prohibited financial interest are being restructured to form specific categories upon which the Commission will develop a prohibited securities list (PSL) applicable to Commission staff (and their spouses and

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<sup>7</sup> Order No. 4178, Order Amending Ethics Rules, October 25, 2017.

dependent children). Based on years of experience with the existing rules, the Commission believes that developing the PSL will assist employees to identify financial holdings that may pose (or appear to pose) a financial conflict of interest. Having the PSL available to employees as a reference before purchasing securities will improve transparency and adherence to ethical standards. The six categories underlying the PSL properly reflect the Commission's modern regulatory role under the PAEA and are consistent with the laws prohibiting actual or apparent financial conflicts of interests. See Order No. 3906 at 7-12.

The proposed revisions also improve the procedures related to the supplemental standards of ethical conduct. Proposed §§ 5601.101 and 5601.102 define additional terms and provide specific procedures related to exceptions, newly prohibited securities, new employees, acquisition of prohibited securities without specific intent, divestiture, and waiver. Proposed §§ 5601.103 and 5601.104 improve the procedures concerning employees that are seeking employment or prior approval for outside employment to better ensure any disqualification is prompt and appropriate. Therefore, the proposed revisions improve transparency and the ability of Commission employees to adhere to the highest ethical standards.

For these reasons and those reasons detailed in Order No. 3906, the Commission adopts the proposed rules without changes.

## **V. Ordering Paragraphs**

*It is ordered:*

1. Part 5601 of title 5, Code of Federal Regulations, is amended as set forth below the signatures of this Order effective 30 days after the date of publication of this Order in the **Federal Register**.

2. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

**List of Subjects in 5 CFR Part 5601**

Conflicts of interests.

**Stacy L. Ruble,**

*Secretary.*

By the Office of Government Ethics.

**David J. Apol**

*Acting Director and General Counsel, Office of Government Ethics.*

For the reasons discussed in the preamble, the Commission amends chapter XLVI of title 5 of the Code of Federal Regulations by revising part 5601 to read as follows:

**PART 5601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR  
EMPLOYEES OF THE POSTAL REGULATORY COMMISSION**

Sec.

5601.101 General.

5601.102 Prohibited financial interests.

5601.103 Notice of disqualification when seeking employment.

5601.104 Prohibited outside employment.

5601.105 Prior approval for outside employment.

**Authority:** 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 39 U.S.C. 503; 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; 5 CFR 2635.105, 2635.403(a), 2635.802(a), 2635.803.

**§ 5601.101 General.**

(a) *Purpose.* In accordance with § 2635.105 of this title, the regulations in this part apply to employees, including Commissioners, of the Postal Regulatory Commission (Commission) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in part 2635 of this title. In addition, the executive branch financial disclosure regulations contained in part 2634 of this title, additional regulations on responsibilities and conduct at part 735 of this title, and Commission-specific provisions contained in 39 CFR part 3000 apply to Commission employees.

(b) *Definitions.* For the purposes of this part:

(1) The term *securities* includes an interest in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets, and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(2) The term *parent* means a company that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of an entity identified in § 5601.102 (b)(1)(i) through (v).

(3) The term *person* means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity. For purposes of this part, a corporation will be deemed to control a subsidiary if it owns 50 percent or more of the subsidiary's voting securities. The term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State, and local governments, including the Government of the District of Columbia. It does not include any agency or other entity of the Federal Government or any officer or employee thereof when acting in his official capacity on behalf of that agency or entity.

(4) The term *entity* means person.

(5) The term *DAEO* means the Designated Agency Ethics Official, or his delegate under § 2638.601 of this title.

(6) The term *employment* means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee. Employment does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization unless such activities involve the practice of a profession within the meaning of § 2636.305(b)(1) of this title, including the giving of professional advice, or are for compensation, other than reimbursement of expenses.

(7) The term *publicly held corporation* means any corporation issuing any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934.

(8) The term *dependent child* means when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who:

(i) Is unmarried, under age 21, and living in the household of the reporting individual; or

(ii) Is a dependent of the reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986, 26 U.S.C. 152.

**§ 5601.102 Prohibited financial interests.**

(a) *General prohibition.* No employee, and no spouse or dependent child of an employee, shall acquire or hold any securities issued by an entity on the prohibited securities list described in paragraph (b) of this section.

(b) *Prohibited securities list.* At least once a year, the Commission will publish and distribute to employees a list of entities whose securities an employee or the spouse or dependent child of an employee may not own.

(1) The list shall include:

(i) An entity participating in a proceeding before the Commission in the last 4 years, *e.g.*, complainants, appellants, intervenors, and entities filing comments on the record in Commission proceedings;

(ii) A party to a proceeding to which the Commission is a party, *e.g.*, appellate proceedings, administrative proceedings, or civil actions;

(iii) An entity primarily engaged in the business of delivering packages, merchandise, or written communications, *i.e.*, an entity whose primary business competes with the Postal Service;

(iv) An entity providing services or products to the Postal Service that can be expected to produce annual revenue:

(A) to a publicly held corporation exceeding \$1,000,000, *and* if the entity reports its gross revenue publicly, exceeding 10 percent of its annual gross revenue; or

(B) to any other entity exceeding \$100,000, *and* if the entity reports its gross revenue publicly, exceeding 5 percent of the entity's annual gross revenue;

(v) Any other entities not listed above for which a Commission employee holding a security may raise an actual or apparent loss of impartiality affecting the integrity of the Commission's programs and operations, *e.g.*, entities primarily engaged in the business of publishing or distributing publications such as periodicals or sending advertising, promotional, or other material on behalf of itself or another entity through the mails; and

(vi) The parent corporation of any subsidiary described in paragraphs (b)(1)(i) through (v) of this section.

(2) The list shall not include an entity whose use of the mail is merely an incidental or minor factor in the general conduct of its business.

(c) *Exception.* Nothing in this section prohibits an employee, or the spouse or dependent child of an employee, from acquiring or holding an interest in a publicly traded or publicly available mutual fund or other collective investment fund, or in a widely held pension or mutual fund, provided that the fund's prospectus or practice does not indicate the stated objective of concentrating its investments in entities identified in paragraphs (b)(1)(i) through (vi) of this section.

(d) *Newly prohibited securities or new employees.* Within 30 days after the Commission disseminates the prohibited securities list to an employee, an employee who owns, or whose spouse or dependent child owns, prohibited securities shall report that ownership to the DAEO. The employee's report must be in writing and include the name of the prohibited security and the date of acquisition. Except as provided in paragraph (g) of this section, the employee, or the spouse or dependent child of the employee, shall divest prohibited securities within 90 days after dissemination of the prohibited securities list.

(e) *Securities acquired without specific intent.* Within 30 days after an employee, or the spouse or dependent child of an employee, acquires securities of an entity on the prohibited securities list as a result of marriage, inheritance, gift or otherwise without specific intent to acquire the securities, the employee shall report the acquisition to the DAEO. The employee's report must be in writing and include the name of the prohibited security, the date of acquisition, and the method of acquisition. Except as provided in paragraph (g) of this section, an employee, or the spouse or dependent child of an employee, shall divest prohibited securities within 90 days after the date of acquisition.

(f) *Divestiture—(1) Procedure for accomplishing divestiture.* To alleviate an actual or apparent conflict of interest, an employee divesting prohibited securities shall obtain written confirmation from the DAEO that divestiture has been accomplished. A request for such confirmation shall be submitted in writing with sufficient proof to enable the DAEO to confirm that the employee has

divested the prohibited security. The employee shall continue to be recused until the date of the DAEO's written confirmation that divestiture has been accomplished.

(2) *Extension of period to divest.* Upon a showing of undue hardship, the DAEO may extend the 90 day period for divestiture specified in paragraphs (e) through (f) of this section.

(3) *Disqualification pending divestiture.* Pending divestiture of prohibited securities, an employee must disqualify himself or herself, in accordance with § 2635.402 of this title, from participation in particular matters which, as a result of continued ownership of the prohibited securities, would affect the financial interests of the employee, or those of the spouse or dependent child of the employee.

(g) *Waivers.* The DAEO may grant a written waiver from this section based on a determination that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of an employee's misuse of position or loss of impartiality, or to otherwise ensure confidence in the impartiality and objectivity with which the Commission's programs are administered, or in the case of a special Government employee, divestiture would result in substantial financial hardship. A waiver under this paragraph must be in writing and may impose conditions, such as requiring execution of a written disqualification.

**§ 5601.103 Notice of disqualification when seeking employment.**

(a) An employee who has been assigned to or is supervising work on a particular matter that affects the financial interests of a prospective employer and who is required, in accordance with § 2635.604(a) of this title, to disqualify himself or herself from participation in that matter shall provide written notice of disqualification to the DAEO within 3 business days. The DAEO shall inform the employee's supervisor that the employee is disqualified from the matter. Public filers must comply with the notification requirement set forth in § 2635.607 of this title even when not required to disqualify from participation in a particular matter. Employees who file a notification statement in compliance with § 2635.607 of this title are not required to file a separate notice under this section.

(b) An employee may withdraw written notice under paragraph (a) of this section upon determining that disqualification from participation in the matter is no longer required. A withdrawal of disqualification shall be in writing and shall be provided to the DAEO. The DAEO shall inform the employee's supervisor that the employee is no longer disqualified from the matter.

**§ 5601.104 Prohibited outside employment.**

An employee shall not engage in outside employment, either on a paid or unpaid basis, with or for an entity on the prohibited securities list described in § 5601.102(b)(1)(i) through (vi).

**§ 5601.105 Prior approval for outside employment.**

(a) *Prior approval for outside employment.* An employee who wishes to engage in outside employment, either on a paid or unpaid basis, shall obtain the prior written approval of the DAEO. A request for such approval shall be submitted in writing with sufficient description of the employment to enable the DAEO to give approval based on an informed determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including paragraph (a) of this section and part 2635 of this title. The DAEO shall provide a copy of any written approvals for outside employment to the employee's supervisor.

(b) *Scope of approval.* An employee must submit a new request for approval upon either a significant change in the nature or scope of the outside employment or a change in the employee's Commission position or assigned responsibilities.

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