



NATIONAL MEDIATION BOARD

5 CFR Chapter CI

[Docket No. C-7188]

RIN 3209-AA47

Supplemental Standards of Ethical Conduct for Employees of the National Mediation Board

AGENCY: National Mediation Board.

ACTION: Interim final rule with request for comments.

SUMMARY: The National Mediation Board (NMB or Board), with the concurrence of the U.S. Office of Government Ethics (OGE), is issuing an interim final regulation for employees of the NMB that supplements the executive branch-wide Standards of Ethical Conduct (Standards) issued by OGE. The supplemental regulation requires NMB employees to obtain approval before engaging in outside employment.

DATES: This interim final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by Docket Number C-7188 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Agency Web Site:* www.nmb.gov. Follow the instructions for submitting comments.
- *E-mail:* legal@nmb.gov. Include docket number in the subject line of the message.
- *Fax:* (202) 692-5085.

- Mail and Hand Delivery: National Mediation Board, 1301 K Street, N.W., Ste. 250E, Washington, DC, 20005.

Instructions: All submissions received must include the agency name and docket number. All comments received will be posted without change to www.nmb.gov, including any personal information provided.

Docket: For access to the docket or to read background documents or comments received, go to www.nmb.gov.

FOR FURTHER INFORMATION CONTACT: Mary Johnson, General Counsel, National Mediation Board, 202-692-5050, infoline@nmb.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published the OGE Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards). See 57 FR 35006-35067, as corrected at 57 FR 48557, 57 FR 52483, and 60 FR 51167, with additional grace period extensions for certain existing provisions at 59 FR 4779-4780, 60 FR 6390-6391, and 60 FR 66857-66858. The OGE Standards, codified at 5 CFR part 2635, effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel. Section 2635.105 of the OGE Standards authorizes an agency, with the concurrence of OGE, to adopt agency-specific supplemental regulations that are necessary to properly implement its ethics program. The NMB, with OGE's concurrence, has determined that the following supplemental regulation is necessary to the successful implementation of its ethics program.

II. Analysis of the Interim Regulations

Section 10101.101 General

Section 10101.101 explains that the supplemental regulations apply to all employees of the National Mediation Board and supplement the OGE Standards.

Section 10101.102 Prior Approval for Outside Employment.

The OGE Standards, at 5 CFR 2635.803, specifically recognize that individual agencies may find it necessary or desirable to supplement the executive branch-wide regulations with a requirement for their employees to obtain approval before engaging in outside employment or activities. In accordance with 5 CFR 2635.803, the NMB has determined that it is desirable for the purpose of administering its ethics program to require employees to obtain approval before engaging in outside employment, regardless of whether that employment is compensated or uncompensated. This approval requirement will help ensure that potential ethical problems are resolved before employees undertake outside employment that could involve a violation of applicable statutes or the OGE Standards. Section 10101.102(a) provides that NMB employees must obtain prior written approval before engaging in compensated or uncompensated outside employment.

Section 10101.102(b) sets forth procedures for requesting such approval. Section 10101.102(b)(1) states that requests for approval of outside employment be submitted in writing in advance of undertaking the employment. Section 10101.102(b)(2) requires that, within 30 calendar days of a significant change in the nature or the scope of the outside employment or in the employee's official position, the employee shall submit a revised request.

Section 10101.102(c) sets forth the standard to be applied by the Board or its designee in acting on requests for prior approval of outside employment. Under this standard, approval shall be granted unless the Board or its designee determines that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635. Section 10101.102(c) further provides that, before granting approval, the Board or its designee shall provide the request to the Designated Agency Ethics Official (DAEO) in order for the employee to receive written ethics guidance and that this written ethics guidance shall be appended to the written approval.

Section 10101.102(d) broadly defines "employment" for purposes of this section to cover any form of non-Federal employment or business relationship involving the provision of personal services, including

writing when done under an arrangement with another person for production or publication of the written product. The definition of employment does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal, and similar organizations unless such activities are for compensation other than the reimbursement of expenses, involve the provision of professional services or advice, or the organization's activities are devoted substantially to matters relating to the employee's official duties as defined in 5 CFR 2635.807(a)(2)(i)(B) through (E).

III. Matters of Regulatory Procedure

Under 5 U.S.C. 553(a)(2), rules relating to agency management or personnel are exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act (APA). In addition, under 5 U.S.C. 553(b)(3)(A), notice and comment rulemaking requirements do not apply to rules concerning matters of agency organization, procedure, or practice. Given that the rule concerns matters of agency management or personnel, and organization, procedure, or practice, the notice and comment requirements of the APA do not apply here. Nor is a public hearing required under 45 U.S.C. 160a. Furthermore, under 5 U.S.C. 553(b)(3)(B), the NMB finds that good cause exists to waive the proposed rulemaking requirements under the APA because the notice and comment procedures would be contrary to the public interest. The Federal Aviation Administration Modernization and Reform Act of 2012 included a provision for the Government Accountability Office (GAO) to evaluate NMB programs and activities every 2 years. In its most recent evaluation, GAO recommended that the NMB implement internal controls to ensure that employee requests for outside employment comply with OGE Standards and federal law. For this reason, the NMB finds good cause to issue this regulation as an interim final rule with a provision for a 60 day public comment period. The NMB will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting this rule as final, with the concurrence of OGE.

Executive Order 12866

This rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

As required by the Regulatory Flexibility Act, the NMB certifies that these regulatory changes will not have a significant impact on small business entities. This rule will not have any significant impact on the quality of the human environment under the National Environmental Policy Act.

Paperwork Reduction Act

The NMB has determined that the Paperwork Reduction Act does not apply because this interim regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 10101

Conflicts of interests, Government employees

Dated: October 18, 2018

By direction of the Board.

Mary Johnson

General Counsel, National Mediation Board

Emory A. Rounds, III

Director, U.S. Office of Government Ethics

For the reasons set forth in the preamble, the National Mediation Board with the concurrence of the U.S. Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by establishing chapter CI, consisting of part 10101, to read as follows:

CHAPTER CI – NATIONAL MEDIATION BOARD

PART 10101-SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL MEDIATION BOARD

Sec.

10101.101 General.

10101.102 Prior approval for outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 44 Stat. 577, as amended; 45 U.S.C. 151, 160a; E.O. 12674, 54 FR 15159, 3 CFR, 189 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803

§10101.101 General.

Purpose. In accordance with 5 CFR 2635.105, the regulations in this part apply all employees of the National Mediation Board (NMB) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR 2635.

§10101.102 Prior approval for outside employment.

(a) *General Requirement.* Before engaging in compensated or uncompensated outside employment, all National Mediation Board employees must obtain written approval from the Board or its designee.

(b) *Procedure for requesting approval.* (1) The approval by the Board or its designee shall be requested in writing in advance of engaging in outside employment.

(2) Upon a significant change in the nature of scope of the outside employment or in the employee's official position, the employee shall submit a revised request for approval within 30 calendar days.

(c) *Standard for approval.* (1) Approval shall be granted unless the Board or its designee determines that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(2) As part of the approval process, the Board or its designee shall provide the request to the Designated Agency Ethics Official (DAEO) in order for the employee to receive written ethics guidance. In the event, the DAEO is the Board's designee, the DAEO shall provide written ethics guidance upon receiving the request. This written ethics guidance shall be appended to the written approval.

(d) *Definition of employment.* For purposes of this section, "employment" means any form of non-Federal employment or business relationship, compensated or uncompensated, 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, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless such activities are for compensation other than reimbursement of expenses; such activities involve the provision of professional services or advice; or the organization's activities are devoted substantially to matters relating to the employee's official duties as defined in 5 CFR 2635.807(a)(2)(i)(B) through (E).

[FR Doc. 2018-23548 Filed: 10/31/2018 8:45 am; Publication Date: 11/1/2018]