

OFFICE OF GOVERNMENT ETHICS

AGENCY: Office of Government Ethics

5 CFR Part 2641

**Post-Employment Conflict of Interest; Exemption of
Positions and Designation of Additional Agency Components
for the Executive Branch**

RIN 3209-AA14

57 FR 3115

Tuesday, January 28, 1992

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing this rule (1) to exempt certain senior employee positions for purposes of 18 U.S.C. 207(c); and (2) to designate certain additional departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c) as authorized by 18 U.S.C. 207(h).

EFFECTIVE DATE: January 28, 1992.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attention: Ms. Loring.

FOR FURTHER INFORMATION CONTACT: Julia S. Loring, Office of Government Ethics, telephone (202/FTS) 523-5757, FAX (202/FTS) 523-6325.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion of Exemption of Positions and Designation of Additional Agency Components

Exemption of Positions

The Director of the Office of Government Ethics (OGE) is authorized by 18 U.S.C. 207(c)(2)(C) to exempt eligible employee positions from 18 U.S.C. 207(c), the one-year post-employment restriction applicable to "senior" employees. Pursuant to the procedures prescribed in 5 CFR 2641.201(d) (56 FR 3964, February 1, 1991), the Designated Agency Ethics Official at the Securities and Exchange Commission forwarded a letter to OGE dated October 15, 1991, requesting that the Director Litigation Counsel.

After carefully reviewing that letter and other relevant information, the Director determined to exempt the two positions from 18 U.S.C.

207(c) in light of the criteria set forth in 5 CFR 2641.201(d)(5).

Although these exemptions became effective on October 29, 1991, the date of the Director's written response to the Securities and Exchange Commission, 5 CFR 2641.201(d)(3)(iii) provides that the Director "shall annually publish in appendix A to this part an updated compilation of all exempted positions* * *." Accordingly, appendix A of part 2641 is being amended by this rule to ensure publication of these two exemptions in the CFR.

Appendix A of this part includes parenthetical entries highlighting the effective dates of the exemptions. As indicated in 5 CFR 2641.201(d)(4), "[a]n exemption shall inure to the benefit of the individual who holds the position when the exemption takes effect, as well as to his successors, but shall not benefit individuals who terminated senior service prior to the effective date of the exemption."

Designation of Executive Agency Components

The Director of OGE is authorized by 18 U.S.C. 207(h) to designate separate departmental and agency components in the executive branch for purposes of 18 U.S.C. 207(c). The one-year representational bar of 18 U.S.C. 207(c) usually extends to any department or agency in which a former senior employee served in any capacity during the year prior to termination from senior service. However, eligible senior employees may be permitted to communicate to or appear before components of their former department or agency if those components have been designated as separate agencies or bureaus by OGE. Initial component

designations applicable with respect to employees terminating senior service on or after January 1, 1991, were published in appendix B of 5 CFR part 2641 last year (56 FR 3965, February 1, 1991). Pursuant to the procedures prescribed in 5 CFR 2641.201(e), several departments have subsequently forwarded letters to OGE requesting the designation of additional distinct and separate components for purposes of that statutory provision.

By letter dated April 9, 1991, the Alternate Designated Agency Ethics Official at the Department of Justice requested that the Director clarify that the Office of Justice Programs (including its five previously designated constituent bureaus) should be treated as one single distinct and separate component for purposes of 18 U.S.C. 207(c). The letter also requested that the Executive Office for United States Attorneys and the Executive Office for United States Trustees each be treated as distinct and separate from the rest of the Justice Department. In each case, however, the particular Executive Office would not be treated as separate from any of the district offices served by it. In a subsequent letter dated October 15, 1991, the Department's Alternate Designated Agency Ethics Official that the Office of the Pardon Attorney also be designated as a distinct and separate component.

By letter dated November 6, 1991, the Designated Agency Official at the Department of the Interior requested designation of ten components as distinct and separate from the rest of the Interior Department. The bureaus proposed for designation were the Bureau of Indian Affairs, the Bureau of Land Management, the Bureau of Mines, the Bureau of Reclamation, the Minerals Management Service, the National Park Service, the Office of Surface Mining, the Office of Territorial and International Affairs, the U.S. Fish and Wildlife Service, and the U.S. Geological Survey. The Department's Designated Agency Ethics Official noted that there are five Assistant Secretaries that have responsibility for one or more of the ten bureaus proposed for designation. These Assistant Secretaries are subject to 18 U.S.C. 207(c), but are not eligible to benefit from the narrowing effect of component designation. For purposes of determining the scope of the post-employment restriction in the case of an eligible senior employee serving on an Assistant Secretary's immediate staff, the Department's Designated Agency Ethics Official recommended that all bureaus under the jurisdiction of a particular Assistant Secretary should be treated as a single component.

By letter dated November 26, 1991, the Designated Agency Ethics Official at the Department of Commerce requested designation of three

additional components as distinct and separate from the rest of the Commerce Department. The bureaus proposed for designation were the Bureau of Export Administration, the Technology Administration, and the United States Travel and Tourism Administration. Similarly, the Designated Agency Ethics Official at the Department of Health and Human Services forwarded a letter to the Director of OGE dated November 29, 1991, requesting that the Administration for Children and Families be designated as an additional district and separate component of that Department.

After carefully reviewing the letters from the Department of Justice, the Department of the Interior, the Department of Commerce, and the Department of Health and Human Services in light of the criteria set forth in 5 CFR 2641.201(e)(6), the Director has determined to designate distinct and separate components as requested in that correspondence. As indicated in 5 CFR 2641.201(e)(4), a designation ``shall be effective as of the effective date of the rule that creates the designation, but shall not be effective as to employees who terminated senior service prior to that date." The effective date of each designation is indicated in appendix B of this part. (Note that the effective date of the designation of the entire Office of Justice Programs now listed as a single entity is January 1, 1991.)

At the request of the Department of Defense, appendix B of this part has also been amended to indicate that the name of the Defense Communications Agency has been changed to the Defense Information Systems Agency.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, the Director of the Office of Government proposed rulemaking and 30-day delayed effective date. It is important that the designation by OGE of exempted positions and separate agency components be published in the Federal Register as promptly as possible. Furthermore, since this rule is interpretive in nature, it is exempt from the notice and delayed effectiveness requirements of 5 U.S.C. 553.

E.O. 12291, Federal Regulation

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of

Executive Order 12291.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rule does not contain an information collection requirement that requires the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2641

Conflicts of interests, Government employees.

Approved: January 8, 1992.

Stephen D. Potts,
Director, Office of Government Ethics.