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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209-AA59

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

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The U.S. Office of Government Ethics (OGE) is issuing this final rule to revise the component designations of one agency for purposes of the one-year post-employment conflict of interest restriction for senior employees. Specifically, based on the recommendation of the Department of Health and Human Services, OGE is designating one new component in its regulations.

DATES: This rule is effective September 12, 2024.

FOR FURTHER INFORMATION CONTACT: Kimberly L. Sikora Panza, Senior Associate Counsel, U.S. Office of Government Ethics, 250 E Street SW, Suite 750, Washington, DC 20024-3249; Telephone: 202-482-9300; TTY: 800-877-8339; FAX: 202-482-9237.

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. 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.

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 that there exists no potential for use of undue influence or unfair advantage based on past Government service,” the Director shall by rule designate that agency or bureau as a separate component of that department or agency.

Pursuant to the procedures prescribed in 5 CFR 2641.302(e), the Department of Health and Human Services (HHS) requested that OGE amend its components listed in appendix B to part 2641. On May 28, 2024, OGE published a proposed rule in the **Federal Register** that proposed to designate the Administration for Strategic Preparedness and Response (ASPR) in appendix B to part 2641 as a separate component of HHS for purposes of 18 U.S.C. 207(c). The proposed rule provided for a 30-day comment period, which ended on June 27, 2024; OGE did not receive any comments. The rationale for the rule, which OGE is now adopting as final, is explained in the proposed rule preamble at 89 FR 46036.

For the reasons stated in the preamble to the proposed rule, OGE is granting the request of HHS to amend its listing in appendix B to part 2641 to designate ASPR as a distinct and separate component of the agency 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 designation made in this rule for ASPR is effective on the date this final rule is published in the **Federal Register**.

II. Matters of Regulatory Procedure

Regulatory Flexibility Act

As Acting 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, 13563 and 14094

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 Order 12866, Regulatory Planning and Review (58 FR 51735, Oct. 4, 1993); Executive Order 13563, Improving Regulation and Regulatory Review (76 FR 3821, Jan. 21, 2011); and Executive Order 14094, Modernizing Regulatory Review (88 FR 21879, Apr. 11, 2023). Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs

and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

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 Acting 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.

Executive Order 13715

The Office of Government Ethics has evaluated this final rule under the criteria set forth in Executive Order 13715 and determined that Tribal consultation is not required as this proposed rule has no substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: September 9, 2024.

Shelley K. Finlayson,

Acting Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the U.S. 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 is revised to read as follows:

Authority: 5 U.S.C. ch. 131; 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. Revise appendix B to read as follows:

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

Pursuant to the provisions of 18 U.S.C. 207(h), each of the following agencies is determined, for purposes of 18 U.S.C. 207(c), and 5 CFR 2641.204, to have within it distinct and separate components as set forth below. Except as otherwise indicated, all designations are effective as of January 1, 1991.

Parent: Department of Commerce

Components

Bureau of the Census.
Bureau of Economic Analysis (effective June 26, 2020).
Bureau of Industry and Security (formerly Bureau of Export Administration) (effective January 28, 1992).
Economic Development Administration.
International Trade Administration.
Minority Business Development Agency (formerly listed as Minority Business Development Administration).
National Institute of Standards and Technology (effective March 6, 2008).
National Oceanic and Atmospheric Administration.
National Technical Information Service (effective March 6, 2008).
National Telecommunications and Information Administration.
United States Patent and Trademark Office (formerly Patent and Trademark Office).

Parent: Department of Defense

Components

Defense Advanced Research Projects Agency (DARPA) (effective April 6, 2021).
Department of the Air Force.
Department of the Army.
Department of the Navy.
Defense Information Systems Agency.
Defense Intelligence Agency.
Defense Logistics Agency.
Defense Threat Reduction Agency (effective February 5, 1999).
National Geospatial-Intelligence Agency (formerly National Imagery and Mapping Agency) (effective May 16, 1997).
National Reconnaissance Office (effective January 30, 2003).
National Security Agency.

Parent: Department of Energy

Component

Federal Energy Regulatory Commission.

Parent: Department of Health and Human Services

Components

Administration for Children and Families (effective January 28, 1992).
Administration for Community Living (effective December 4, 2014).
Administration for Strategic Preparedness and Response (effective September 12, 2024).
Agency for Healthcare Research and Quality (formerly Agency for Health Care Policy and Research) (effective May 16, 1997).
Agency for Toxic Substances and Disease Registry (effective May 16, 1997).
Centers for Disease Control and Prevention (effective May 16, 1997).
Centers for Medicare and Medicaid Services (formerly Health Care Financing Administration).
Food and Drug Administration.
Health Resources and Services Administration (effective May 16, 1997).
Indian Health Service (effective May 16, 1997).
National Institutes of Health (effective May 16, 1997).

Substance Abuse and Mental Health Services Administration (effective May 16, 1997).

Parent: Department of the Interior

Components^[1]

Bureau of Indian Affairs (effective January 28, 1992).
Bureau of Land Management (effective January 28, 1992).
Bureau of Reclamation (effective January 28, 1992).
National Park Service (effective January 28, 1992).
Office of Surface Mining Reclamation and Enforcement (effective January 28, 1992).
U.S. Fish and Wildlife Service (effective January 28, 1992).
U.S. Geological Survey (effective January 28, 1992).

Parent: Department of Justice

Components

Antitrust Division.
Bureau of Alcohol, Tobacco, Firearms and Explosives (effective November 23, 2004).
Bureau of Prisons (including Federal Prison Industries, Inc.).
Civil Division.
Civil Rights Division.
Community Relations Service.
Criminal Division.
Drug Enforcement Administration.
Environment and Natural Resources Division.
Executive Office for United States Attorneys^[2] (effective January 28, 1992).
Executive Office for United States Trustees^[3] (effective January 28, 1992).
Federal Bureau of Investigation.
Foreign Claims Settlement Commission.
Independent Counsel appointed by the Attorney General.
Office of Justice Programs.
Office of the Pardon Attorney (effective January 28, 1992).
Offices of the United States Attorney (each of 94 offices).
Offices of the United States Trustee (each of 21 offices).
Office on Violence Against Women^[4] (effective March 8, 2007).
Tax Division.
United States Marshals Service (effective May 16, 1997).
United States Parole Commission.

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.
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 December 29, 2016).
Office of Labor Management Standards (effective December 29, 2016).
Office of Workers' Compensation Programs (effective December 29, 2016).

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

Veterans' Employment and Training Service (effective June 26, 2020).

Wage and Hour Division (effective December 29, 2016).

Parent: Department of State

Component

Foreign Service Grievance Board.

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 December 29, 2016).

Saint Lawrence Seaway Development Corporation.

Parent: Department of the Treasury

Components

Alcohol and Tobacco Tax and Trade Bureau (effective November 23, 2004).

Bureau of Engraving and Printing.

Bureau of the Fiscal Service (effective December 4, 2014).

Comptroller of the Currency.

Financial Crimes Enforcement Network (FinCEN) (effective January 30, 2003).

Internal Revenue Service.

United States Mint (formerly listed as Bureau of the Mint).

Footnotes—Appendix B to Part 2641

^[1] All designated components under the jurisdiction of a particular Assistant Secretary shall be considered a single component for purposes of determining the scope of 18 U.S.C. 207(c) as applied to senior employees serving on the immediate staff of that Assistant Secretary.

^[2] The Executive Office for United States Attorneys shall not be considered separate from any Office of the United States Attorney for a judicial district, but only from other designated components of the Department of Justice.

^[3] The Executive Office for United States Trustees shall not be considered separate from any Office of the United States Trustee for a region, but only from other designated components of the Department of Justice.

^[4] The Office on Violence Against Women shall not be considered separate from the Office of Justice Programs, but only from other designated components of the Department of Justice.

[FR Doc. 2024–20699 Filed 9–11–24; 8:45 am]

BILLING CODE 6345–03–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards: Revised Size Standards Methodology

AGENCY: U.S. Small Business Administration.

ACTION: Notice of availability of white paper on revised size standards methodology.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) advises the public that it has revised its size standards methodology white paper, entitled “SBA’s Size Standards Methodology (June 2024)” (the Revised Methodology or Methodology), explaining how it establishes, reviews, or revises small business size standards. SBA will apply the Revised Methodology to the forthcoming third five-year review of size standards required by the Small Business Jobs Act of 2010. On December 11, 2023, SBA published a notification seeking comments on proposed revisions to its Methodology. This notification describes major changes to the Methodology and their impacts on size standards, followed by a discussion of the comments SBA received on the proposed revisions to the Methodology and Agency’s responses.

DATES: September 12, 2024.

ADDRESSES: The 2024 Revised Methodology is available on the SBA’s website at www.sba.gov/size.

FOR FURTHER INFORMATION CONTACT: Khem R. Sharma, Chief, Office of Size Standards, (202) 205–7189, or sizestandards@sba.gov.

SUPPLEMENTARY INFORMATION:

A. Background

To determine eligibility for Federal small business assistance programs, SBA establishes small business size definitions (commonly referred to as “size standards”) for private sector industries in the United States. Under the Small Business Act (the Act), 15 U.S.C. 632(a) (Pub. L. 85–536, 67 Stat. 232, as amended), the SBA’s Administrator (Administrator) has authority to establish size standards for Federal Government programs. SBA’s existing size standards use two primary measures of business size: average annual receipts and average number of employees. Financial assets and refining capacity are used as size measures for a few specialized industries. In addition, the SBA’s Small Business Investment Company (SBIC), 7(a), and Certified Development Company (CDC/504) Programs determine small business

eligibility using either the industry-based size standards or tangible net worth and net income based alternative size standards. Presently, there are 102 different size standards, covering 978 industries and 14 subindustries, also known as “exceptions.” Of these, 505 are based on average annual receipts, 483 on number of employees (one of which also includes barrels per calendar day total refining capacity), and four on average assets.

The Small Business Jobs Act 2010 (Pub. L. 111–240, 124 Stat. 2504, Sept. 27, 2010) requires SBA to review, every five years, all size standards and make necessary adjustments to reflect market conditions. SBA completed the first five-year review of size standards under the Jobs Act in early 2016¹ and completed the second five-year review of size standards in early 2023.² SBA will begin the next (third) five-year review of size standards in the near future.

The goal of SBA’s size standards review is to determine whether its existing size standards reflect the current industry structure and Federal market conditions and revise them if the latest available data suggests that revisions are warranted. The Act requires that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries. SBA evaluates the structure of each industry in terms of four economic characteristics or factors, namely average firm size, average assets size as a proxy of startup costs and entry barriers, the four-firm concentration ratio as a measure of industry competition, and size distribution of firms using the Gini coefficient (13 CFR 121.102(a)). Besides industry structure, SBA also examines the impact of an existing size standard as well as the potential impact of a revised size standard on small business participation in Federal contracting as an additional primary factor when establishing, reviewing, or modifying the size standards. SBA generally considers these five factors—average firm size, average assets size, four-firm concentration ratio, Gini coefficient, and small business participation in Federal

¹ See Report on the First Five-Year Comprehensive Review of Size Standards at <https://www.sba.gov/sites/sbagov/files/2023-09/Report%20on%20the%20First%205-Year%20Comprehensive%20Size%20Standards%20Review-508F.pdf>.

² See Report on the Second Five-Year Comprehensive Review of Size Standards at https://www.sba.gov/sites/sbagov/files/2023-07/SBA%27s%20Report%20on%20the%20Second%205%20Year%20Review%20of%20Size%20Standards_Final.pdf.