

COMMISSION ON CIVIL RIGHTS

5 CFR Chapter LXVIII

RINs 3035-AA02, 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the United States Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Proposed rule.

SUMMARY: The United States Commission on Civil Rights (Commission), with the concurrence of the Office of Government Ethics (OGE), is issuing a proposed rule for employees of the Commission that would supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The proposed rule would require employees of the Commission, other than special Government employees, to obtain prior approval before engaging in outside employment.

EFFECTIVE DATE: Comments should be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] to be considered in the formulation of final rules.

ADDRESSES: Interested parties should submit written comments to: United States Commission on Civil Rights, Office of the Staff Director, Attn: Emma Monroig, Esq., Solicitor and Designated Agency Ethics Official, 624 Ninth Street, N.W., Suite 621, Washington, D.C. 20425. E-mail comments should be addressed to emonroig@usccr.gov. Please cite 5 CFR chapter LXVIII in all correspondence related to this proposed rule.

FOR FURTHER INFORMATION CONTACT: Emma Monroig, Esq., Solicitor and Designated Agency Ethics Official, United States Commission on Civil Rights, Office of the Staff Director, 624 Ninth Street, N.W., Suite 621, Washington, D.C. 20425; Telephone: (202) 376-7796; Facsimile: (202) 376-1163.

SUPPLEMENTARY INFORMATION: In 1979, the United States Commission on Civil Rights adopted a set of Employee Responsibilities and Conduct as set forth in 45 CFR part 706. See 44 FR 75152, as

revised in 2002 at 67 FR 70498. That rule in the pertinent part required employees to obtain approval, in writing, from their supervisors before engaging in outside employment. 45 CFR 706.7.

On August 7, 1992, OGE published new executive branch Standards of Ethical Conduct regulations, which became generally effective on February 3, 1993. The Standards, as corrected and amended, are codified at 5 CFR part 2635. These regulations, together with OGE's executive branchwide financial disclosure and financial interests regulations codified at 5 CFR parts 2634 and 2640, superseded the Commission's old Employee Responsibilities and Conduct regulations at 45 CFR part 706, including the provision requiring employees to obtain prior approval before engaging in outside employment. In a separate rulemaking also being published in the FEDERAL REGISTER today, the Commission is proposing to remove its old superseded conduct regulation and replace it with a residual cross-references provision.

The Commission, however, has determined, with OGE concurrence, that it is necessary and desirable for the purpose of administering its ethics program to require its employees again to obtain written approval before engaging in outside employment. Prior approval would be required pursuant to proposed § 7801.102 of new chapter LXVIII of 5 CFR as proposed, in order to ensure that the activity would not otherwise violate a Federal statute or regulation, including the branchwide Standards. The proposed section would include a definition at paragraph (d) of outside employment, basically any form of non-Federal employment, business relationship or activity involving the provision of personal services by the employee, whether or not for compensation. It also would provide at paragraph (c) that upon a significant change in the nature or scope of the outside employment or the employee's official position, the employee would have to submit a revised request for approval. The proposed rule would not include special Government employees in the prior approval provision, since they consist primarily of State Advisory Committee members who serve on the Commission as uncompensated employees. Accordingly, by this rulemaking, the Commission is proposing to reinstitute the prior approval requirement, albeit in a modified form in light of the promulgation of the branchwide Standards. Furthermore, in proposed § 7801.101 of 5 CFR the Commission would state the

purpose of the supplemental regulation and would include cross-references to other Government ethics regulations applicable to Commission employees in addition to the proposed new part. The cross-referenced regulations are the executive branch Standards, as well as the financial disclosure, financial interests and employee responsibilities and conduct regulations noted above. Moreover, the section proposed would identify the Solicitor as the Designated Agency Ethics Official and require that employees seeking prior approval for outside employment obtain the approval of the Designated Agency Ethics Official.

Matters of Regulatory Procedure

Executive Orders 12866 and 12988

Because this proposed rule relates to Commission personnel, it is exempt from the provisions of Executive Orders 12866 and 12988.

Regulatory Flexibility Act

It has been determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule as proposed would not have a significant economic impact on a substantial number of small entities because it would primarily affect Commission employees.

Paperwork Reduction Act

It has been determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this proposed rulemaking document, because it does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Congressional Review Act

The Commission has determined that this rulemaking is not a rule as defined in 5 U.S.C. 804, and, thus, does not require review by Congress.

List of Subjects in 45 CFR Part 7801

Conflict of interests, Government employees.

Dated: August____, 2006.

Emma Monroig,

Solicitor and Designated Agency Ethics Official, United States Commission on Civil Rights.

Dated: August____, 2006.

Kenneth L. Marcus,

Staff Director, United States Commission on Civil Rights.

Approved: August____, 2006.

Robert I. Cusick,

Director, Office of Government Ethics.

For the reasons set forth in this preamble, the United States Commission on Civil Rights, with the concurrence of the Office of Government Ethics, is proposing to amend title 5 of the Code of Federal Regulations by adding a new chapter LXVIII, consisting of part 7801, to read as follows:

CHAPTER LXVIII—COMMISSION ON CIVIL RIGHTS

PART 7801—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS

Sec.

7801.101 General.

7801.102 Prior approval for outside employment.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 42 U.S.C. 1975b(d); 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, 2635.803.

§ 7801.101 General.

(a) Purpose. In accordance with 5 CFR 2635.105, the regulations in this part apply to

employees of the United States Commission on Civil Rights (Commission) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained at 5 CFR part 2635. Employees of the Commission are required to comply with this part, 5 CFR part 2635, the financial disclosure and financial interests regulations at 5 CFR parts 2634 and 2640, and implementing guidance and procedures. Commission employees are also subject to the regulations on responsibilities and conduct at 5 CFR part 735.

(b) Definition. The Designated Agency Ethics Official (DAEO) is the Solicitor for the Commission.

§ 7801.102 Prior approval for outside employment.

(a) An employee, other than a special Government employee, of the Commission who wishes to engage in outside employment shall first obtain the approval, in writing, of the Designated Agency Ethics Official (DAEO).

(b) Standard for approval. Approval shall be granted by the DAEO only upon a determination that the prospective outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(c) Upon a significant change in the nature or scope of the outside employment or the employee's official position, the employee must submit a revised request for approval.

(d) For purposes of this section, "employment" means any form of non-Federal employment, business relationship or activity involving the provision of personal services by the employee, whether or not for compensation. 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 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 involve the provision of professional services or advice or are for compensation other than reimbursement of expenses.

