

**DEPARTMENT OF LABOR****Office of the Secretary****5 CFR Part 5201****29 CFR Part 0**

RINs 1290-AA15, 3209-AA15

**Supplemental Standards of Ethical Conduct for Employees of the Department of Labor**

AGENCY: Office of the Secretary of Labor.

ACTION: Final rule.

**SUMMARY:** The Department of Labor (Department), with the concurrence of the Office of Government Ethics (OGE), is issuing a final rule for employees of the Department that supplements the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by OGE. The regulations established by the final rule adopt the prior interim regulations as final, with additional technical amendments to the Department's residual agency conduct regulations that reflect changes in underlying law and OGE regulations. The regulations are a necessary supplement to the Standards of Ethical Conduct because they address requirements that are unique to the Department.

**EFFECTIVE DATE:** This final rule is effective January 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** David Apol, Office of the Solicitor, Department of Labor, telephone 202-219-8065, FAX 202-219-6896.

**SUPPLEMENTARY INFORMATION:****I. Rulemaking History**

On August 7, 1992, the Office of Government Ethics published a final rule entitled "Standards of Ethical Conduct for Employees of the Executive Branch" (Standards). The Standards, codified as corrected and amended at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct that apply to all executive branch personnel.

On June 23, 1994, the Department issued a final rule which removed all of the provisions of its Ethics and Conduct Regulations at 29 CFR Part 0 that had been superseded by 5 CFR part 2635 or by OGE's executive branch financial disclosure regulations at 5 CFR part 2634. See 59 FR 32611. The Department preserved those provisions of its Ethics and Conduct Regulations containing regulatory waivers issued under the prior version of 18 U.S.C. 208(b)(2) (1988), and provisions restricting the acquisition or holding of certain financial interests and requiring prior

approval of outside employment or activities. These provisions were permitted to continue in effect until superseded, as provided respectively in 5 CFR 2635.402(d)(1) and the notes following 5 CFR 2635.403(a) and 2635.803, as extended by 59 FR 4779-4780, 60 FR 6390-6391, 60 FR 66857-66858, and 61 FR 40950-40952.

Pursuant to 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) and 5 CFR 2635.105, executive branch agencies, with the concurrence of OGE, were permitted to issue agency-specific supplemental regulations necessary to implement their ethics programs. On November 6, 1996, the Department, with OGE concurrence, issued the interim rule with request for comments, setting forth Supplemental Standards of Ethical Conduct for Employees of the Department of Labor. See 61 FR 57281. The interim rule designated certain components of the Department as separate agencies for the purposes of provisions in the executive branch-wide Standards regarding gifts from outside sources, the receipt of compensation for teaching, speaking or writing, and fundraising in a personal capacity; restricted the outside employment and the holding of certain financial interests by employees of the Mine Safety and Health Administration and by their spouses and minor children; and required employees in the Department's Office of the Inspector General to obtain prior approval for outside employment. The supplemental standards are now codified at 5 CFR part 5201.

The interim rule also repealed 29 CFR 0.735-13, one of the remaining provisions of the Department's Ethics and Conduct Regulations. This provision required prior approval of outside employment or activities. Pursuant to the OGE Standards, this provision was superseded upon issuance of the interim rule. The interim rule also redesignated 29 CFR 0.735-12, the Department's regulatory waiver provision, as § 0.735-2 and inserted a new 29 CFR 0.735-1 cross-referencing the executive branch-wide Standards, the financial disclosure regulations, and the interim rule.

On December 18, 1996, the Office of Government Ethics issued a financial interests final rule, 61 FR 66830-66851 (Part III), as corrected at 62 FR 1361 (January 9, 1997) and further corrected at 62 FR 23127-23128 (April 29, 1997), and which became effective on January 17, 1997. This final rule as codified at 5 CFR part 2640, includes interpretations, and exemption and waiver guidance concerning 18 U.S.C.

208, dealing with official acts affecting a personal financial interest. The rule superseded the regulatory waivers issued by the Department of Labor under the prior 18 U.S.C. 208(b)(2) (1988). See 29 CFR 0.735-2, as redesignated by the Department's prior interim rule.

Amendments to 18 U.S.C. 207 effective January 1, 1991 substantially revised the post-employment restrictions applicable to executive branch employees. As a result, employees terminating Government service on or after that date were no longer subject to the old 18 U.S.C. 207(i) (1988) provision for administrative disciplinary proceedings for possible 18 U.S.C. 207 violations. The Office of Government Ethics issued partial regulations reflecting this change on February 1, 1991 with a retroactive effective date of January 1, 1991. See 5 CFR part 2641.

**II. Comments and Amendments to Interim Rule**

The Department has received no comments in response to its requests for comments on the interim rule. This final rule, nevertheless, makes a couple of needed further changes in the Department's agency conduct regulations at 29 CFR part 0, as revised in the prior interim rule.

This final rule revokes the regulatory waiver contained in 29 CFR 0.735-2 which has been superseded by the OGE regulations at subpart B of 5 CFR part 2641. The authority citation for part 0 is also being revised to remove reference to the Ethics in Government Act and 18 U.S.C. 207 (1988) and add reference to 18 U.S.C. 208 and 5 CFR part 2640. Moreover, the final rule adds a cross-reference to the conflict of interest regulations at 5 CFR part 2640 in § 0.735-1, and removes an outdated appendix of related statutory authorities which has been superseded by the list of such authorities at 5 CFR 2635.902.

This rule also corrects the applicability provision of the post-employment conflict of interest rule, at 29 CFR 0.737-1, to conform with both the amended 18 U.S.C. 207 (1988) and Office of Government Ethics regulations at 5 CFR part 2641. The final rule will now accurately define the executive branch employees subject to the administrative proceedings section of the previous version of 18 U.S.C. 207 (1988) as those employees terminating Government service on or after July 1, 1979 and prior to January 1, 1991.

**III. Publication in Final**

The Department of Labor has determined, pursuant to 5 U.S.C.

553(b)(3)(B), that good cause exists for waiving public comments on the minor changes being made in this rule. Publication of a proposed rule and solicitation of comments would be neither necessary nor fruitful. This final rule adopts and makes final, with certain revisions, interim regulations that affect only Department of Labor employees or former employees. These additional minor technical amendments bring the Department of Labor's supplemental regulations up-to-date in order to conform with 18 U.S.C. 207 and 208 and Office of Government Ethics regulations.

#### IV. Matters of Regulatory Procedure

##### *Executive Order 12866, Regulatory Planning and Review*

As Secretary of Labor, I have determined that this regulation is not a "regulatory action" under section 3 of Executive Order 12866. Because the rule is limited to agency organization, management and personnel, it falls within the exclusion set forth in section 3(d)(3) of the Executive order. In promulgating this rule, the Department has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of the Executive Order.

##### *Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not classified as a "rule" under the Small Business Regulatory Enforcement Fairness Act of 1996, because it is a rule pertaining to agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3)(C).

##### *Regulatory Flexibility Act*

As Secretary of Labor, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have significant economic impact on a substantial number of small entities because it imposes ethics standards only on Federal employees or former employees and their immediate families. The Secretary of Labor has provided this certification to the Chief Counsel for Advocacy of the Small Business Administration.

##### **Paperwork Reduction Act**

As Secretary of Labor, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget thereunder.

##### **List of Subjects in 5 CFR Part 5201 and 29 CFR Part 0:**

Conflict of interests, Government employees.

Dated: December 23, 1999.

**Alexis M. Herman,**

*Secretary of Labor.*

Approved: December 23, 1999.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

Accordingly, the Department of Labor, with the concurrence of the Office of Government Ethics, is adopting the interim rule amending title 5 and amending title 29, subtitle A, of the Code of Federal Regulations, which was published at 61 FR 57281-57287 on November 6, 1996, as a final rule with the following changes:

#### TITLE 29—LABOR

##### Subtitle A—Office of the Secretary of Labor

##### Part 0—[Amended]

1. The authority citation for part 0 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 207 (1988); 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 part 2634, part 2635, part 2640.

2. Section 0.735-1 is revised to read as follows:

##### **§ 0.735-1 Cross-references to employee ethical conduct standards, financial disclosure regulations and other ethics regulations.**

Employees of the Department of Labor (Department) are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635, the Department's regulations at 5 CFR part 5201 which supplement the executive branch-wide standards, the executive branch financial disclosure regulations at 5 CFR part 2634, the conflicts of interest regulations at 5 CFR part 2640, and the post employment regulations at 5 CFR part 2641.

##### **§ 0.735-2 [Removed]**

3. Section 0.735-2 is removed.

4. Section 0.737-1 is revised to read as follows:

##### **§ 0.737-1 Applicability.**

This subpart is applicable to any former employee of the Department of Labor leaving Government service on or after July 1, 1979 and prior to January 1, 1991.

##### **Appendix A to Part 0—is [Removed]**

5. Appendix A to part 0 removed.

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