

**POSTAL RATE COMMISSION (PRC)**

**5 CFR Chapter XLVI**

**Supplemental Standards of Ethical Conduct for Employees of the  
Postal Rate Commission**

**RIN 3209-AA04, 3209-AA15 and 3211-AA00**

**58 FR 42839**

**August 12, 1993**

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**ACTION:** Interim rule, with request for comments.

**SUMMARY:** The Postal Rate Commission, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of the Postal Rate Commission (Commission) that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The interim rule is a necessary supplement because it addresses ethical issues specific to the Commission. The supplemental rule requires Commission employees to obtain prior approval to engage in outside employment, requires them to report certain employment contacts, and prohibits them from having financial interests in or being employed by persons with certain interests in postal matters.

**DATES:** Interim rule effective August 12, 1993. Comments are invited and must be received on or before September 27, 1993.

**ADDRESSES:** Send comments to the Postal Rate Commission, Washington, D.C. 20268-0001, Attn: David L. Ruderman.

**FOR FURTHER INFORMATION CONTACT:** David L. Ruderman, Postal Rate Commission, Telephone (202) 789-6835, FAX (202) 789-6861.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

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). See FR 35006-35067, as corrected at 57 FR 48557 (October 27, 1992) and 57 FR 53583 (November 4, 1992). The Standards,

codified at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct that are applicable to all executive branch personnel. With the concurrence of OGE, 5 *CFR* 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations that are necessary to implement an agency's ethics program. The Commission, with OGE's concurrence, has determined that the following supplemental rules are necessary to the success of its ethics program.

## **II. Analysis of the Regulations**

The following regulations will appear in new 5 CFR chapter XLVI.

### **Section 5601.101 General**

(a) *Purpose.* Section 5601.101(a) explains that the regulations contained in the interim rule apply to all Postal Rate Commission employees, including Commissioners, and are supplemental to the executive branch-wide Standards.

(b) *Definition of Affected Persons.* For purposes of interpreting the prohibitions on financial interests in § 5601.102 and the restrictions on outside employment in § 5601.104(a), § 5601.101(b) sets forth a definition of the phrase "a person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail, or the operations of the United States Postal Service." The definition reflects the Postal Rate Commission's long-standing interpretation of this phrase as used in the context of similar prohibitions and restrictions contained in its agency standards of conduct regulations in 39 CFR part 3000, which are being repealed and modified, in pertinent part, by the Commission in a separate rulemaking document in which a cross-reference to these new regulations is being included.

### **Section 5601.102 Prohibited Financial Interests**

Under 5 *CFR* 2635.403(a) an agency may, by supplemental regulation, prohibit or restrict the holding by its employees of financial interests that the agency determines would cause a reasonable person to question the impartiality and objectivity with which its programs are administered. The Postal Rate Commission is a small agency with fewer than 100 employees whose principal functions relate to establishing postage rates and classifications. Every two to four years it conducts an omnibus rate proceeding that affects all persons significantly interested in rates and classification. In the intervening years it conducts a number of proceedings having an impact on many of these same persons. In order to avoid the significant staffing problems that would be caused by disqualifying employees with affected financial interests and to ensure public confidence that rate and classification proceedings are being handled by an impartial Commission and staff, the Commission has determined that it is necessary to prohibit all of its employees from holding financial interest in companies or persons significantly affected by rates and classification, or the operations of the United States Postal Service (Postal Service). The prohibition is § 5601.102 continues in effect the prohibition that has been contained in its old agency standards of conduct regulations at 39 CFR 3000.735-302.

### **Section 5601.103 Notice of Disqualification While Seeking Employment**

Under 5 *CFR* 2635.604, it is the employee's obligation to disqualify himself from participation in a particular matter that affects the financial interests of a prospective employer with whom he is

seeking employment. Disqualification can be effected, in many cases, simply by not participating in the matter, although § 2635.604(c) provides that the disqualified employee should notify the person responsible for his assignment. The Commission's omnibus rate proceeding and many of its other proceedings have such a broad impact on those whose financial interests are affected by rate and classification matters that it would be difficult for any Commission employee to effectively disqualify himself from matters affecting a prospective employer without actually giving notice of his disqualification. When a Commission employee determines, in accordance with 5 *CFR* 2635.606, that he will not participate in a matter to which he has been assigned, § 5601.103 requires the employee to provide his supervisor with notice of the disqualification.

### **Section 5601.104 Outside Employment**

(a) *Prohibited Outside Employment.* 5 *CFR* 2635.802 provides that an employee shall not engage in outside employment if it is prohibited by an agency supplemental regulation. To much the same effect, 5 *CFR* 2635.403 permits an agency, by supplemental regulation, to prohibit compensated outside employment on the same basis that it may prohibit employees from holding other financial interests. Under the Commission's previous standards of conduct regulations at 39 *CFR* 3000.735-307(c), Commission employees have been prohibited from engaging in outside employment, with or without compensation, with or for any person whose interests are significantly affected by postal rates, fees or classifications, or who is substantially dependent on providing property, a product, or service to the Postal Service. Section 5601.104(a) has the effect of continuing a substantially similar prohibition based on the Commission's determination that outside employment with persons in essentially those same categories would cause a reasonable person to question the impartiality with which the Commission's proceedings are conducted. As compared to old 39 *CFR* 3000.735-307(c), the new standard for prohibiting employment with Postal Service contractors has been reworded by virtue of the definition in § 5601.101(b) to eliminate small contractors and others whose Postal Service contracts account for a small portion of gross income.

(b) *Prior Approval for Outside Employment.* When it has determined that such a requirement is necessary or desirable for the purpose of administering its ethics program, 5 *CFR* 2635.803 provides that an agency may, by supplemental regulations, require its employees to obtain prior approval before engaging in outside employment. The Commission's old regulations at 39 *CFR* 3000.735-307(g) imposed a requirement for prior approval of outside employment. This requirement, which has been an integral part of the Commission's ethics program, is continued by the substantially identical requirement of § 5601.104(b).

(c) *Definition of Employment.* Section 5601.104(c) sets forth a definition of employment for purposes of applying the prohibitions on outside employment and the requirement for prior approval set forth respectively in paragraphs (a) and (b) of the section.

## **III. Matters of Regulatory Procedure**

### **Administrative Procedure Act**

The Commission has found good cause pursuant to 5 *U.S.C.* 553(b) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to this interim rule. The reason for this determination is that it is important to the smooth transition from the Commission's prior ethics rules to the new executive branch-wide

Standards that these rulemaking actions take place as soon as possible. Furthermore, this rulemaking is related to Postal Rate Commission organization, procedure, and practice. Nonetheless, this is an interim rulemaking, with provision for a 45-day public comment period. The Postal Rate Commission will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence of the Office of Government Ethics.

### **Regulatory Flexibility Act**

The Commission has determined under the Regulatory Flexibility Act (*5 U.S.C. chapter 6*) that this regulation will not have a significant economic impact on a substantial number of small business entities because it affects only Federal employees.

### **Paperwork Reduction Act**

The Commission has 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.

### **E.O. 12291, Federal Regulation**

The Commission has determined that this is not a major rule as defined in section 1 (a) and (b) of Executive Order 12291.

### **List of Subjects in 5 CFR Part 5601**

Conflict of interests, Government employees.

Dated: August 3, 1993.

By direction of the Commission.

**Charles L. Clapp,**  
*Secretary.*

Approved: August 5, 1993.

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

For the reasons set forth in the preamble, the Postal Rate Commission, in concurrence with the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding at new chapter XLVI, consisting of part 5601, to read as follows:

## CHAPTER XLVI-POSTAL RATE COMMISSION

### PART 5601-SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE POSTAL RATE COMMISSION

Sec.

5601.101 General.

5601.102 Prohibited financial interests.

5601.103 Notice of disqualification when seeking employment.

5601.104 Outside employment.

**Authority:** 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 39 U.S.C. 3603; 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, 2635.403(a), 2635.802(a), 2635.803.

#### § 5601.101 -- General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees, including Commissioners, of the Postal Rate Commission and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

(b) *Definition of affected persons.* For purposes of this part, a person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail or the operations of the United States Postal Service (Postal Service):

(1) Includes a company or other person:

(i) Who is or, in the past 4 years, has been a party to a proceeding before the Postal Rate Commission;

(ii) Whose primary business involves entering publications as second-class mail;

(iii) Who is in the business of selling merchandise, and a substantial portion of whose orders are solicited, received, or delivered through the mails;

(iv) Who is primarily engaged in the business of advertising through the mails;

(v) Who is primarily engaged in the business of delivering merchandise or written communications, i.e., a person whose primary business is in competition with the Postal Service; or

(vi) Who provides services or products to the Postal Service that can be expected to produce income that exceeds \$ 100,000 and equals or exceeds 5 percent of its gross income for the current fiscal year; and

(2) Does not include a company or other person whose use of the mails is merely an incidental or a minor factor in the general conduct of its business.

**§ 5601.102 -- Prohibited financial interests.**

Any employee shall not, directly or indirectly, have any financial interest in a person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail, or the operations of the Postal Service.

**§ 5601.103 -- Notice of disqualification when seeking employment.**

An employee who has been assigned to a particular matter which affects the financial interests of a prospective employer and who is required, in accordance with 5 *CFR* 2635.604(a), to disqualify himself from participation in that matter shall, notwithstanding the guidance in 5 *CFR* 2635.604 (b) and (c), provide notice of disqualification to his supervisor upon determining that he will not participate in the matter.

**§ 5601.104 -- Outside employment.**

(a) *Prohibited outside employment.* An employee shall not engage in outside employment, either on a paid or unpaid basis, with or for a company or other person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail, or the operations of the Postal Service.

(b) *Prior approval for outside employment.* An employee who wishes to engage in outside employment, either on a paid or unpaid basis, shall obtain the prior written approval of the designated agency ethics official. A request for such approval shall be submitted in writing with sufficient description of the employment to enable the designated agency ethics official to give approval based on a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including paragraph (a) of this section and 5 *CFR* part 2635.

(c) *Definition of employment.* For purposes of this section employment means any form of non-Federal employment or business relationship 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 or trustee. Employment does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organizations unless such activities involve the practice of a profession within the meaning of 5 *CFR* 2636.305(b)(1), including the giving of professional advice, or are for compensation other than reimbursement of expenses.