

**INTERSTATE COMMERCE COMMISSION (ICC)**

**5 CFR Chapter XL**

**49 CFR Part 1000**

**Supplemental Standards of Ethical Conduct For Employees of the  
Interstate Commerce Commission**

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

**[Ex Parte No. 515]**

**58 FR 41989**

**August 6, 1993**

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**ACTION:** Final rule.

**SUMMARY:** The Interstate Commerce Commission, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for employees of the ICC that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE in order to provide for a successful ICC ethics program. The ICC also is repealing its Canons of Conduct that were superseded by these standards.

**EFFECTIVE DATE:** These regulations are effective August 6, 1993.

**FOR FURTHER INFORMATION CONTACT:** Clyde J. Hart, Jr., Designated Agency Ethics Official, (202) 927-6317 (TDD for hearing impaired: (202) 927-5721.)

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On August 7, 1992, OGE published new Standards of Ethical Conduct for Employees of the Executive Branch (*57 FR 35006-35067*). Codified at 5 CFR part 2635, the new standards became effective on February 3, 1993.

With the concurrence of OGE, *5 CFR 2635.105* authorizes agencies to publish agency-specific supplemental regulations that are necessary properly to implement their respective ethics programs. The ICC, with OGE's concurrence, has determined that the following supplemental rules, which will now appear in new 5 CFR chapter XL, are necessary to the success of its ethics program.

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

### **Section 5001.101 General**

Section 5001.101 explains that the regulations contained in the final rule apply to all ICC employees, including members of the Commission, and are supplemental to the executive branch-wide standards. Members and employees of the Interstate Commerce Commission also are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the executive branch financial disclosure regulations at 5 CFR part 2634, and additional regulations regarding their conduct published by the agency at in 49 CFR part 1019.

### **Section 5001.102 Prohibited Interests in For-hire Transportation Companies**

*5 CFR 2635.403(a)* specifically authorizes agencies, by supplemental regulation, to prohibit or restrict the acquisition or holding of a financial interest or a class of financial interests by agency employees based on the determination that the acquisition or holding of such interests would cause reasonable persons to question the impartiality and objectivity with which agency programs are administered. In its Canons of Conduct, the ICC traditionally has prohibited its employees from holding any employment or other official relationship with, or owning securities of, or being otherwise pecuniarily interested in, any for-hire transportation company. For members of the Commission and certain other personnel, these prohibitions are prescribed by *49 U.S.C. 10301(d)* and *10306(e)*. By *49 CFR 1000.735-13*, which is being repealed by this final rule, the ICC extended these prohibitions to all ICC personnel in order to ensure public confidence in the integrity of its programs and operations. New § 5001.102 is a restatement and continuation of this standard.

### **Section 5001.103 Impartiality Determinations Involving Members of the Interstate Commerce Commission**

The Commission, in its "Additional Canons of Conduct for Members", at *49 CFR 1000.736-5*, which is being repealed by this final rule, has provided that "If an interested person suggests that a member should disqualify himself or herself in a particular matter because of bias or prejudice, the member shall be the sole judge of his or her own qualifications." Under *5 CFR 2635.502(d)*, however, such determinations are ultimately to be made by the "agency designee" who, at the ICC, is the Designated Agency Ethics Official (DAEO). Except in the case of the Chairman, the definition of "agency designee" at *5 CFR 2635.102(b)* would preclude a member of the Commission from serving as the agency designee for the purposes of making any determination regarding his or her own conduct.

Traditionally, judges act upon motions to recuse themselves from cases which have been assigned to them. Because Commissioners perform quasi-judicial functions when voting in ICC adjudicatory proceedings, the ICC believes that it would be inappropriate for any person other than the Commissioner to determine whether or not he or she should be disqualified from performing any of these functions on impartiality grounds. In effect, § 5001.103 modifies the definition of "agency designee" to enable the ICC to delegate authority, and, in fact, constitutes a delegation of authority to each member of the Commission to serve as his or her own agency designee, in consultation with the Designated Agency Ethics Official, for the purposes of making the impartiality determination contemplated by *5 CFR 2635.502(d)* in relationship to ICC proceedings.

## **Section 5001.104 Approval for Outside Employment**

Under 5 *CFR* 2635.803, agencies may, by supplemental regulation, require employees to obtain prior approval before engaging in outside employment or activities. An ICC Canon of Conduct, 49 *CFR* 1000.735-17, which is being repealed by this final rule, has required such advance authorization. While new § 5001.104 is intended to continue that requirement, it differs from the ICC's old Canon because it requires prior approval only of outside employment. However, a definition of "employment" has been added to clarify the nature of the activities that are subject to this requirement, and it is general enough to include those undertakings referenced in the Commission's Canon. This language also helps to ensure that determinations to approve or disapprove outside employment are not made arbitrarily, but on the basis of standards stated in applicable statutes, the new OGE regulations and this supplemental regulation. In order to centralize all ICC ethics functions, responsibility for approval of outside employment is transferred from the Director of Personnel to the DAEO.

The ICC believes that this prior approval requirement is necessary to ensure that any problems relating to an employee's outside employment are resolved before an employee begins such an undertaking.

## **III. Repeal of the ICC Canons of Conduct**

Because the Commission's Canons of Conduct have been largely superseded by the new executive branch standards of ethical conduct and financial disclosure regulations, 5 *CFR* parts 2634 and 2635, the Commission herewith is repealing existing subparts B, C, and D of 49 *CFR* part 1000. By a separate rulemaking being published simultaneously with this part, the Commission has incorporated provisions regarding use of intoxicants and sexual harassment, which had been contained in repealed subpart B, into a new part 1019 of title 49 of the Code of Federal Regulations.

## **IV. Matters of Regulatory Procedure**

### **Administrative Procedure Act**

The ICC has found that good cause exists under 5 *U.S.C.* 553 (b) and (d)(3) 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 these rules and repeals. The supplemental regulations are essentially a restatement of rules previously contained in the Canons of Conduct, and the ICC believes that it is important to a smooth transition from the Commission's Canons to the executive branch standards that these rules become effective as soon as possible. Furthermore, this rulemaking is related to the ICC's organization, procedure and practice.

### **Regulatory Flexibility Act**

The Commission has determined under the Regulatory Flexibility Act (5 *U.S.C.* chapter 6) that these regulations will not have a significant impact on small business entities because they affect only ICC employees.

## **Paperwork Reduction Act**

The Commission has determined that the Paperwork Reduction Act (*44 U.S.C. chapter 35*) does not apply because these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

## **Environmental Impact**

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

## **List of Subjects**

### *5 CFR Part 5001*

Conflict of interests, Government employees.

### *49 CFR Part 1000*

Administrative practice and procedure, Seals and insignia.

Decided: June 29, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Approved: July 29, 1993.

**Signey L. Strickland, Jr.,**  
*Secretary.*

Approved: August 2, 1993.

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

For the reasons set forth in the preamble, the Interstate Commerce Commission, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations and title 49, chapter X, of the Code of Federal Regulations, as follows:

## **TITLE 5-[AMENDED]**

1. A new chapter XL, consisting of Part 5001, is added to title 5 of the Code of Federal Regulations to read as follows:

## 5 CFR CHAPTER XL-INTERSTATE COMMERCE COMMISSION

### PART 5001-SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE INTERSTATE COMMERCE COMMISSION

Sec.

5001.101 General.

5001.102 Prohibited financial interests in for-hire transportation companies.

5001.103 Impartiality determinations for members of the Interstate Commerce Commission.

5001.104 Approval for outside employment.

**Authority:** 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 49 U.S.C. 10301, 10306, 10321; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp. at 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., at 306; 5 CFR 2635.105, 2635.403, 2635.803.

#### § 5001.101 -- General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to members and other employees of the Interstate Commerce Commission and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the standards in 5 CFR part 2635 and this part, members and other employee are subject to the executive branch financial disclosure regulations contained in 5 CFR part 2635 and to additional regulations regarding their conduct contained in 49 CFR part 1019.

#### § 5001.102 -- Prohibited financial interests in for-hire transportation companies.

(a) *General prohibition.* Except as provided in paragraph (c) of this section, no member or other employee of the Interstate Commerce Commission shall, directly or indirectly:

(1) Be employed by or hold any other official relationship with any for-hire transportation company whether or not subject to the Interstate Commerce Act; or

(2) Own securities of or be in any manner pecuniarily interested in any for-hire transportation company whether or not subject to the Interstate Commerce Act.

(b) *Indirect relationships and interests.* (1) For the purposes of paragraph (a) of this section, an indirect relationship with or interest in a for-hire transportation company includes, but is not limited to, an interest in:

(i) Any company that owns or controls and has more than two percent of its assets directly invested in or derives more than two percent of its income directly from a for-hire transportation company whether or not subject to the Interstate Commerce Act; or

(ii) Any company, mutual fund or other enterprise which has an interest of more than ten percent of its assets directly invested in or derives more than ten percent of its income directly from for-hire transportation companies whether or not subject to the Interstate Commerce Act.

(2) For the purposes of determining the applicability of this paragraph, an employee may rely on the most recent financial statement issued to its security holders by the company, fund or other enterprise.

(c) *Exceptions.* (1) Where a previously proper holding of a member or other employee becomes prohibited because of the enterprise's acquisition of an interest in a for-hire transportation company, the employee shall have nine months within which to dispose of the interest.

(2) In cases of financial hardship where the relationship or interest is not prohibited by 49 U.S.C. 10301(d) or 10306(e), the Designated Agency Ethics Official may grant a written waiver of the prohibition in paragraph (a) of this section based on a determination that application of the prohibition is not necessary to ensure public confidence in the impartiality and objectivity with which the Commission's programs are administered or to avoid a violation of part 2635 of this title.

### **§ 5001.103 -- Impartiality determinations for members of the Interstate Commerce Commission.**

A member is an "agency designee" for the purposes of making an impartiality disqualification determination under 5 CFR 2635.502(d) with respect to the member's own participation in a Commission proceeding. This determination must be made in consultation with the Designated Agency Ethics Official.

### **§ 5001.104 -- Prior approval for outside employment.**

(a) Before engaging in any outside employment, whether or not for compensation, an employee of the Interstate Commerce Commission, other than a Commissioner, must obtain the written approval of his or her supervisor and the Designated Agency Ethics Official (DAEO). Requests for approval shall be forwarded through normal supervisory channels to the DAEO and shall include, at a minimum, the following:

(1) A statement of the name of the person, group, or other organization for whom the work is to be performed; the type of work to be performed; and the proposed hours of work and approximate dates of employment;

(2) The employee's certification that the outside employment will not depend in any way on information obtained as a result of the employee's official Government position;

(3) The employee's certification that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;

(4) The employee's certification that he or she has read, is familiar with, and will abide by the restrictions contained in all applicable Federal laws and regulations, including those found in 18 U.S.C. chapter 11 and those found or referenced in subpart H ("Outside Activities") of 5 CFR part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch); and

(5) The written approval of the employee's immediate supervisor.

(b) Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation.

(c) 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 when done under an arrangement with another person for production or publication of the written product. Prior approval is not required, however, to participate 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 for expenses.

## **49 CFR CHAPTER X-INTERSTATE COMMERCE COMMISSION**

### **PART 1000-THE COMMISSION**

2. The authority citation for part 1000 continues to read as follows:

**Authority:** *49 U.S.C. 10303, 10321, 11144, and 11145.*

3. Part 1000 is amended by removing subparts B, C and D.