

FEDERAL TRADE COMMISSION (FTC)

5 CFR Chapter XLVII

**Supplemental Standards of Ethical Conduct for Employees of the
Federal Trade Commission**

RIN 3209-AA04 and 3209-AA15

58 FR 30695

May 27, 1993

ACTION: Interim rule, with request for comments.

SUMMARY: The Federal Trade Commission, with the concurrence of the Office of Government Ethics (OGE), is issuing a regulation for officers and employees of the FTC that supplements the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE on August 7, 1992. The supplemental rule requires FTC employees to receive prior approval to engage in outside employment.

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

ADDRESSES: Send comments to the Federal Trade Commission, 6th and Pennsylvania Ave., NW., Washington, DC 20580, ATTN.: Kathleen A. Rittner.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Rittner, (202) 326-2498 or Ira S. Kaye, (202) 326-2426, Federal Trade Commission, Office of General Counsel.

SUPPLEMENTARY INFORMATION:

I. Analysis of Regulation

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 *57 FR 35006-35067* as corrected at *57 FR 48557* (October 27, 1992) and *57 FR 52583* (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 Standards, at *5 CFR 2635.803*, specifically recognize that individual agencies may find it necessary or desirable to supplement the executive branch-wide regulations with a requirement for their employees to obtain approval prior to engaging in outside employment or activities. The FTC standards of conduct regulations have long required employees, other than Commissioners, to obtain written permission before engaging in outside employment. Because the FTC has found this requirement useful in ensuring that the outside employment activities of employees conform to all applicable laws and regulations, it has determined, in accordance with *5 CFR 2635.803*, that it is necessary to the administration of its ethics program to continue to require prior approval.

Section 5701.101(a) of this supplemental regulation continues, with minor modification, the FTC's past requirement for prior approval for outside employment. Section 5701.101(b) clarifies that this supplemental regulation does not itself provide a basis to deny an employee's request for approval. Section 5701.101(c) includes a definition intended to ensure that the requirement for prior approval of outside employment is not applied to activities appropriately characterized as personal activities or to activities not involving the provision of services, such as an employee's management of his or her own investment portfolio.

II. 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 a smooth transition from the FTC'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 FTC organization, procedure, and practice. Nonetheless, this is an interim rulemaking, with provision for a 45-day public comment period. The Federal Trade 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 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.

List of Subjects in 5 CFR Part 5701

Conflict of interests, Government employees.

Dated: May 4, 1993.

By direction of the Commission.

Donald S. Clark,
Secretary.

Approved: May 21, 1993.

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

For the reasons set forth in the preamble, the Federal Trade Commission, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter XLVII, consisting of part 5701, to read as follows:

5 CFR CHAPTER XLVII-FEDERAL TRADE COMMISSION

PART 5701-SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FEDERAL TRADE COMMISSION

§ 5701.101 -- Prior approval for outside employment.

(a) Before engaging in any outside employment, whether or not for compensation, an employee of the Federal Trade Commission, other than a Commissioner, must obtain the written approval of his or her supervisor and the Designated Agency Ethics Official (DAEO) or his or her designee. 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 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, resource, or facilities not available to the general public will be used in connection with the outside employment;

(4) The employee's certification that he 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. In the case of an employee who wishes to practice a profession involving a fiduciary relationship, as defined in 5 *CFR* 2636.305(b), approval will be granted only on a case-by-case basis.

(c) 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, whether or not for compensation. It includes but it is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee. 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 of expenses.

Authority: 5 *U.S.C.* 7301; 5 *U.S.C.* App. (Ethics in Government Act of 1978); 15 *U.S.C.* 46(g); E.O. 12674, 57 *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.