Rules and Regulations

Federal Register
Vol. 77, No. 67
Friday, April 6, 2012

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

5 CFR Part 9303

RIN 3460–AA01

Supplemental Standards of Ethical Conduct for Employees

AGENCY: Special Inspector General for Afghanistan Reconstruction.

ACTION: Interim rule with request for comments.

SUMMARY: The Special Inspector General for Afghanistan Reconstruction (SIGAR), with the concurrence of the Office of Government Ethics (OGE), is issuing an interim regulation for SIGAR employees that will supplement the executive branch-wide Standards of Ethical Conduct (Standards) issued by OGE. The supplemental regulation includes a requirement that SIGAR employees obtain prior approval for certain types of outside activities.

DATES: *Effective date:* April 6, 2012.

Comment date: Comments are invited and must be received by June 5, 2012.

ADDRESSES: You may submit comments, in writing, to Hugo Teufel on this rule, identified by RIN 3460–AA01, by any of the following methods:

- *Email: hugo.teufel.civ@mail.mil.* Include the reference ''Supplemental Standards of Ethical Conduct for Employees of SIGAR'' in the subject line of the message.
- *Mail:* Special Inspector General for Afghanistan Reconstruction, 2530 Crystal Drive, Arlington, VA 22202–3940. Attention: Hugo Teufel, Designated Agency Ethics Official (DAEO).
- *Hand Delivery/Courier:* Special Inspector General for Afghanistan Reconstruction, 1550 Crystal Drive, 9th Floor, Arlington, VA 22202. Attention: Hugo Teufel, Designated Agency Ethics Official (DAEO).

FOR FURTHER INFORMATION CONTACT: Christina Beach, Ethics Compliance Officer, at 703–545–5994, email: *christina.k.beach.civ@mail.mil.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1992, OGE published the Standards of Ethical Conduct for Employees of the Executive Branch, as codified at 5 CFR part 2635 and effective February 3, 1993, which established uniform standards of ethical conduct applicable to all executive branch personnel.

The National Defense Authorization Act (Pub. L. 110–181) established SIGAR. The agency's mission is to provide independent oversight of the treatment, handling, and expenditure of funds appropriated or otherwise made available for the reconstruction of Afghanistan; detect and deter fraud, waste, and abuse of U.S. funds; and promote actions to increase program economy, efficiency, and effectiveness. Afghanistan reconstruction includes any major contract, grant, agreement, or other funding mechanism entered into by any department or agency of the United States government that involves the use of amounts appropriated, or otherwise made available for the reconstruction of Afghanistan with any private entity to: (1) Build or rebuild physical infrastructure of Afghanistan, (2) establish or reestablish political or societal institutions of Afghanistan, (3) build the Afghanistan National Security Forces, and (4) provide products or services to the people of Afghanistan.

Given the importance of the agency's mission and the need to maintain objectivity and independence, SIGAR, through the proposed provisions, would require prior agency approval before employees engage in certain outside activities. Part 2635.105 authorizes executive branch agencies, with the concurrence of OGE, to publish such agency-specific supplemental regulations as may be necessary to implement their respective ethics programs. SIGAR, with OGE's concurrence, has determined that the following supplemental regulation is necessary, given SIGAR's unique status and mission, to implement the agency's ethics program.

II. Analysis of the Regulations

Section 9303.101 General

Section 9303.101 explains that the regulations apply to all SIGAR employees and supplement the executive branch-wide Standards in 5 CFR part 2635. Section 9303.101 also provides a cross-reference to the executive branch-wide financial disclosure regulations contained in 5 CFR part 2634, the executive branch-wide regulation regarding outside employment at 5 CFR part 2636, and the regulation concerning executive branch financial interests contained in 5 CFR part 2640.

Section 9303.102 Prior Approval for Certain Outside Activities

Under 5 CFR 2635.803, agencies may, by supplemental regulations, require employees to obtain approval before engaging in outside employment and activities. SIGAR has determined that it is necessary to the administration of its ethics program to require its employees, other than special Government employees, to obtain prior approval for certain types of outside employment and activities. This approval requirement will help to ensure that potential ethical problems are resolved before employees begin outside employment or activities that could involve a violation of applicable laws and regulations.

Under § 9303.102(a)(1), SIGAR employees must obtain prior approval regarding the provision of professional services that involve the application of the same specialized skills or the same educational background as performance of the employee's official duties. Such outside activities may raise a strong risk of a violation of the Standards. For purposes of this section, the definition of ''professional services'' in § 9303.102(d)(3) reflects the definition of ''profession'' as provided at 5 CFR 2636.305(b)(1), and means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession. Secretarial and clerical positions are not, for purposes of this requirement, considered to provide ''professional services.''

Under § 9303.102(a)(2), SIGAR employees must obtain prior approval regarding teaching, speaking, or writing that relates to the employee's official

duties. This section requires prior approval of outside speaking and writing, as well as outside teaching, but only if it ''relates to the employee's official duties.'' Consistent with the Standards, the term ''relates to the employee's official duties'' is defined in § 9303.102(d)(5) as having the meaning provided in 5 CFR 2635.807(a)(2)(i)(B) through (a)(2)(i)(E). To summarize that definition, teaching, speaking, or writing relates to the employee's official duties if the invitation to teach, speak, or write is extended primarily because of the employee's official position; if the invitation or the offer of compensation (when the employee is to be compensated for the activity) is extended by a person whose interests may be affected substantially by the employee's performance or nonperformance of his or her official duties; if the activity draws substantially on ''nonpublic information,'' a term which § 9303.102(d)(2) defines as having the meaning set forth in § 2635.703(b) of the Standards and which therefore includes information that the employee gains by reason of Federal employment and that the employee knows or reasonably should know has not been made available to the general public; if the subject of the activity deals in significant part with SIGAR programs, operations or policies, or with the employee's current or recent assignments; or, in the case of a non-career employee as defined in 5 CFR 2636.303(a), if the subject of the activity deals in significant part with the general subject matter area, industry, or economic sector primarily affected by the programs and operations of SIGAR.

Under § 9303.102(a)(3), SIGAR employees must obtain prior approval regarding certain services for a ''prohibited source.'' The term ''prohibited source'' is defined in § 9303.102(d)(4) as having the meaning set forth in § 2635.203(d) of the Standards, and therefore in summary includes a person or organization, a majority of whose members seek official action by SIGAR, do or seek to do business with SIGAR, are subject to oversight by SIGAR pursuant to sections 1229 and 842 of the National Defense Authorization Act for FY 2008, Pub. L. No. 110–181, or who may be substantially affected by the performance or nonperformance of the employee's duties. The kind of services for a prohibited source for which § 9303.102(a)(3) requires prior approval are those that could raise a question of conflicting financial interests under subpart D of the Standards or a question of loss of impartiality in performing official duties under subpart E of the Standards. Those services include service as an officer, director, trustee, general partner, employee, agent, attorney, consultant, contractor, or ''active participant.'' The term ''active participant'' is defined in § 9303.102(d)(1) as having the meaning set forth in subpart E of the Standards, at 5 CFR 2635.502(b)(1)(v). In accordance with that definition, payment of dues to an organization, or the donation or solicitation of financial support, alone does not constitute active participation.

An exception to the prior approval requirement in § 9303.103(a)(3) excludes from the prior approval requirement therein a number of uncompensated and volunteer activities that are unlikely to raise issues under the Standards. Specifically, employees do not have to obtain approval before providing the services listed in § 9303.102(a)(3), if the service is without compensation (other than reimbursement of expenses) and the prohibited source for which the service is to be provided is a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization. However, prior approval for such an activity is required if the activity is covered by another of the prior approval requirements in this section.

Under § 9303.102(a)(4), SIGAR employees must obtain prior approval regarding the provision of services, other than clerical services or service as a fact witness, on behalf of any other person in connection with a particular matter in which the United States is a party, in which the United States has a direct and substantial interest, or if the provision of services involves the preparation of materials for submission to, or representation before, a Federal court or executive branch agency. Under 5 CFR 2635.805, employees are required to obtain authorization before acting as expert witnesses, other than on behalf of the United States, in any proceeding before a Federal court or agency in a matter in which the United States is a party or has a direct and substantial interest. Paragraph (a)(4) of § 9303.102 is intended to cover such testimony as an outside activity, thus eliminating the need to create a separate procedure for the required authorization. In addition, requiring prior approval under these circumstances will help employees to avoid violating the representational bars in 18 U.S.C. 203 and 205.

Section 9303.102(b) sets forth the procedures for submitting a request for approval of an outside activity, specifying the information to be included in the employee's request, and the contents of a certification the employee is to submit with the request for approval.

Section 9303.102(c) specifies the standard for granting approval. Approval shall be granted only upon a determination by the agency official who is the designated authority to make such a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation.

Section 9303.102(d) defines the terms ''active participant,'' ''nonpublic information,'' ''professional services,'' ''prohibited source,'' and ''relates to the employee's official duties,'' for purposes of the section, as explained above, consistent with the Standards and other regulations issued by OGE.

Requiring prior approval will give SIGAR managers the opportunity to review the proposed employment or activity in light of the employee's official duties and to consult with an agency ethics official concerning the applicability of Federal conflict of interest statutes and ethics regulations to the proposed activity. The executive branch-wide Standards, at 5 CFR 2635.802, explain that an activity conflicts with an employee's official duties if it is prohibited by statute or by an agency supplemental regulation, or if, under the standards set forth in §§ 2635.402 and 2635.502 of the Standards, it would require the employee's disqualification from matters so central or critical to the performance of the employee's official duties that the employee's ability to perform the duties of his or her position would be materially impaired. Even when prior approval is not required, conflict of interest statutes and the Standards may restrict the actions of employees in connection with participation in such activities or organizations.

III. Matters of Regulatory Procedure

Administrative Procedure Act

Under 5 U.S.C. 1103(b)(1) and 1105, these regulations are not subject to the rulemaking requirements of the Administrative Procedure Act, at 5 U.S.C. 553(b), (c), and (d), because they apply solely to SIGAR or its employees. Furthermore, SIGAR finds good cause that it is in the public interest that these internal regulations take effect as an interim rule upon the date of publication of this **Federal Register** rulemaking document. In issuing a final rule on this matter, SIGAR will consider

all written comments on this rule that are submitted by the June 5, 2012 due date.

Regulatory Flexibility Act

As Acting Inspector General of SIGAR, I have determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant economic impact on a substantial number of small entities because it will primarily affect SIGAR employees.

Paperwork Reduction Act

As Acting Inspector General of SIGAR, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this rule, because it does not contain any information collection requirements that would require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

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

Executive Order 12866

In promulgating this rule, SIGAR has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This rule has not been reviewed by the Office of Management and Budget under that Executive order, since it deals with agency organization, management, and personnel matters and is not in any way event deemed ''significant'' thereunder.

Executive Order 12988

As Acting Inspector General of SIGAR, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 9303

Conflict of interests, Government employees.

Authority and Issuance

For the reasons set forth in the preamble, the Special Inspector General for Afghanistan Reconstruction, with the concurrence of the Office of Government Ethics, is amending chapter LXXXIII of title 5 of the Code of Federal Regulations by adding part 9303 to read as follows:

PART 9303—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE OFFICE OF THE SPECIAL INSPECTOR GENERAL FOR AFGHANISTAN RECONSTRUCTION

Sec.
9303.101 General.
9303.102 Prior approval for certain outside activities.

Authority: 5 U.S.C. Section 7301; 5 U.S.C. App. (Ethics in Government Act of 1978, as amended), 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, 2635.702, 2635.703, 2635.801, 2635.802, 2635.803, and 2635.805.

§ 9303.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Office of the Special Inspector General for Afghanistan Reconstruction (SIGAR) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the regulations in 5 CFR part 2635 and this part, SIGAR employees are subject to the executive branch-wide financial disclosure regulations contained in 5 CFR part 2634; the executive branch regulations regarding outside employment at 5 CFR part 2636; and the regulations concerning executive branch financial interests contained in 5 CFR part 2640.

§ 9303.102 Prior approval for certain outside activities.

(a) *Prior approval requirement.* An employee, other than a special Government employee, shall obtain written approval before engaging—with or without compensation—in the following outside activities:

(1) Providing professional services involving the application of the same specialized skills or the same educational background as performance of the employee's official duties;

(2) Teaching, speaking, or writing that relates to the employee's official duties;

(3) Serving as an officer, director, trustee, general partner, employee, agent, attorney, consultant, contractor, or active participant for a prohibited source, except that prior approval is not required by this paragraph (a)(3) to provide such service without compensation (other than reimbursement of expenses) for a prohibited source that is a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless prior approval for the activity is required by paragraph (a)(1), (a)(2), or (a)(4) of this section; or

(4) Providing services, other than clerical services or service as a fact witness, on behalf of any other person in connection with a particular matter:

(i) In which the United States is a party;

(ii) In which the United States has a direct and substantial interest; or

(iii) If the provision of services involves the preparation of materials for submission to, or representation before, a Federal court or executive branch agency.

(b) *Submission of requests for approval.* (1) Requests for approval shall be submitted in writing to SIGAR's Inspector General or Inspector General's designee through normal supervisory channels. Such requests shall include, at a minimum, the following:

(i) The employee's name and position title;

(ii) The name and address of the person or organization for whom or for which the outside activity is to be performed;

(iii) A description of the proposed outside activity, including the duties and services to be performed while engaged in the activity; and

(iv) The proposed hours that the employee will engage in the outside activity, and the approximate dates of the activity.

(2) Together with the employee's request for approval, the employee shall provide a certification that:

(i) The outside activity will not depend in any way on nonpublic information;

(ii) No official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside activity; and

(iii) The employee has read subpart H (''Outside Activities'') of 5 CFR part 2635.

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

(c) *Approval of requests.* Approval shall be granted only upon a determination by SIGAR's Inspector General or Inspector General's designee, in consultation with the General Counsel and the Director of Public

Affairs, that the outside activity is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(d) *Definitions.* For purposes of this section:

(1) ''*Active participant''* has the meaning set forth in 5 CFR 2635.502(b)(1)(v).

(2) ''*Nonpublic information''* has the meaning set forth in 5 CFR 2635.703(b).

(3) ''*Professional services''* means the provision of personal services by an employee, including the rendering of advice or consultation, which involves application of the skills of a profession as defined in 5 CFR 2636.305(b)(1).

(4) ''*Prohibited source''* has the meaning set forth in 5 CFR 2635.203(d).

(5) ''*Relates to the employee's official duties''* has the meaning set forth in 5 CFR 2635.807(a)(2)(i)(B) through (a)(2)(i)(E).

Dated: March 16, 2011.

Steven J. Trent,

Acting Inspector General, Special Inspector General for Afghanistan Reconstruction.

Approved: March 20, 2011.

Don W. Fox,

Acting Director, Office of Government Ethics.

[FR Doc. 2012–8191 Filed 4–5–12; 8:45 am]

BILLING CODE 3710–L9–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0292; Directorate Identifier 2011–NM–056–AD; Amendment 39–16991; AD 2012–06–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

Correction

In rule document 2012–7008 appearing on pages 19071–19074 in the issue of March 30, 2012, make the following correction:

§ 39.13 [Corrected]

■ On page 19073, in § 39.13, beginning in the second column, in the 28th line from the bottom, remove the duplicate section ''(g) Inspection and Corrective Action in Fuel Tank Areas'' which ends in the third column, in the 24th line from the top.

[FR Doc. C1–2012–7008 Filed 4–5–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AB75

Examinations of Work Areas in Underground Coal Mines for Violations of Mandatory Health or Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is revising its requirements for preshift, supplemental, on-shift, and weekly examinations of underground coal mines to require operators to identify violations of health or safety standards related to ventilation, methane, roof control, combustible materials, rock dust, other safeguards, and guarding, as listed in the final rule. Violations of these standards create unsafe conditions for underground coal miners. The final rule also requires that the mine operator record and correct violations of the nine safety and health standards found during these examinations. It also requires that the operator review with mine examiners on a quarterly basis all citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required. The final rule will increase the identification and correction of unsafe conditions in mines earlier, and improve protection for miners in underground coal mines.

DATES: *Effective date:* August 6, 2012.

FOR FURTHER INFORMATION CONTACT: George F. Triebsch, Director, Office of Standards, Regulations, and Variances, MSHA, at *triebsch.george@dol.gov* (email), (202) 693–9440 (voice), or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary
II. Introduction
  A. Statutory and Regulatory History
  B. Background Information
III. General Discussion of Final Rule
IV. Section-by-Section Analysis
  A. § 75.360 Preshift Examination at Fixed Intervals
  B. § 75.361 Supplemental Examination
  C. § 75.362 On-Shift Examination
  D. § 75.363 Hazardous Conditions and Violations of Mandatory Health or Safety Standards; Posting, Correcting, and Recording
  E. § 75.364 Weekly Examination
V. Executive Orders 12866 and 13563: Regulatory Planning and Review
  A. Population at Risk
  B. Benefits
  C. Compliance Costs
VI. Feasibility
  A. Technological Feasibility
  B. Economic Feasibility
VII. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act
  A. Definition of a Small Mine
  B. Factual Basis for Certification
VIII. Paperwork Reduction Act of 1995
  A. Summary
  B. Details
IX. Other Regulatory Considerations
  A. The Unfunded Mandates Reform Act Of 1995
  B. Executive Order 13132: Federalism
  C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families
  D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights
  E. Executive Order 12988: Civil Justice Reform
  F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking
X. References

I. Executive Summary

A. Purpose of the Regulatory Action

Effective preshift, supplemental, on-shift, and weekly examinations are the first line of defense to protect miners working in underground coal mines. After analyzing the Agency's accident reports and enforcement data for underground coal mines covering a 5-year period, MSHA determined that the same types of violations of health or safety standards are found by MSHA inspectors in underground coal mines every year and that these violations present some of the most unsafe conditions for coal miners. These repeated violations expose miners to unnecessary safety and health risks that should be found and corrected by mine operators. The final rule will increase the identification and correction of unsafe conditions in mines earlier, removing many of the conditions that could lead to danger, and improve protection for miners in underground coal mines.

Section 303 of the Federal Mine Safety and Health Act of 1977 (Mine Act), which retained without change the