

**OFFICE OF PERSONNEL MANAGEMENT
OFFICE OF GOVERNMENT ETHICS**

**AGENCIES: Office of Government Ethics and
Office of Personnel Management**

**5 CFR Ch. I
5 CFR Ch. XVI**

**Establishment of New Chapter XVI and
Transfer Thereto and Redesignation of
Certain Regulations From Chapter I
of 5 CFR**

RINs 3206 - AD71; 3206 - AD72

54 FR 50229-50231

December 5, 1989

ACTION: Final rule.

SUMMARY: By this document, the Office of Government Ethics ("OGE" or "Office") established chapter XVI in title 5 of the Code of Federal Regulations for publication of its rules, regulations and policy statements. The Office, formerly part of the Office of Personnel Management, is now a separate agency in the executive branch of the government. OGE was made an executive agency by Public Law 100-598, amending the Ethics in Government Act. OGE is also transferring and redesignating, with the concurrence of the Office of Personnel Management, certain regulations concerning executive branch government ethics which have appeared at chapter I of title 5, Code of Federal Regulations.

EFFECTIVE DATE: December 5, 1989.

ADDRESSES: Any comments on this document may be sent to: The Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attention: Mr. Gressman, Office of the General Counsel; as well as to the Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, Attention: Mr. Rick, Office of the General Counsel.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Office of the General Counsel, Office of Government Ethics, telephone (202/FTS) 523-5757; or Stuart D. Rick, Office of the General Counsel, Office of Personnel Management, telephone (202/FTS) 632-5030.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

Establishment of a New Chapter XVI of 5 CFR

The 1988 reauthorization legislation for the Office of Government Ethics provided for the Office to become a separate executive agency of the United States government effective on October 1, 1989. See sections 3 and 10 of Public Law 100-598 (November 3, 1988, 102 Stat. 3031, 3055) amending section 401 of the Ethics in Government Act of 1978, 5 U.S.C. appendix IV, 401. Previously, OGE was a part of the Office of Personnel Management. In conjunction with its new separate agency status, the Office of Government Ethics is hereby establishing a new chapter XVI of title 5, Code of Federal Regulations. Chapter XVI will contain OGE's substantive and procedural regulations as well as appropriate policy statements of the Office. Table of Contents

The table of contents for chapter XVI, set forth below, includes certain current regulations of the Office which have been codified in 5 CFR chapter I which are being redesignated. In addition, the table includes some of the part titles which OGE intends to issue as soon as practical; these are shown as reserved parts. Additional titles, both substantive and procedural, will be

added as needed in the future by publication in the Federal Register. Two subchapters are being provided for initially --

subchapter A on organization and procedures and subchapter B on government ethics.

Redesignation of Certain Government Ethics Regulations

As noted, certain existing regulations of the Office dealing with the subject of government ethics are being transferred to chapter XVI and redesignated, with the concurrence of OGE's former parent agency, the Office of Personnel Management. The first regulation being redesignated is 5 CFR part 2634 (old 5 CFR part 734) entitled "Executive Personnel Financial Disclosure Requirements." This part constitutes the public financial reporting regulation for high-level executive branch officials pursuant to title II of the Ethics in Government Act, 5 U.S.C. appendix III.

The second redesignated regulation is 5 CFR part 2637 (old 5 CFR part 737), entitled "Regulations Concerning Post Employment Conflict of Interest." Part 2637 gives content to the post government employment restrictions applicable to former executive branch officials in 18 U.S.C. 207 of the conflict of interest laws. The section numbering of this part is also being revised to reflect subpart divisions, as is the case for the other redesignated regulations.

Further, OGE is redesignating 5 CFR 2638 (old 5 CFR part 738). The title of this part, previously entitled "Office of Government Ethics," is being revised to read "Office of Government Ethics and Executive Agency Ethics Program Responsibilities." The revised title will more accurately reflect the scope of this part setting forth ethics program responsibilities for the executive branch under the Ethics in Government Act, especially in light of future rules to implement the additional corrective action and agency reports responsibilities under section 402 of the Ethics Act, as amended by Public Law 100-598. See 5 U.S.C. appendix IV, 402.

Finally, the authority citations for these redesignated parts are being updated, including substitution of applicable United States Code citations in place of public law and Statutes at Large references. No substantive revisions to OGE's regulations are being adopted at this time; the changes in the recent government ethics legislation will be reflected in the redesignated parts in the future.

Retention of Current Designation for One Ethics Regulation

One existing regulation of the Office of Government Ethics and the Office of Personnel Management, 5 CFR part 735, entitled "Employee Responsibilities and Conduct," is not being redesignated at this time for the following reasons. First, that part is a joint responsibility of OGE and OPM. Most sections thereof (subparts A, B and C) are standards of conduct reflective of the Executive Orders on government ethics and the conflict of interest laws. However, certain provisions are derived from the authority of the Office of Personnel Management to regulate federal employee conduct generally.

The government-wide standards which are subject to OPM issuance will stay in part 735 of OPM's chapter I of 5 CFR. The standards in 5 CFR part 735 reflective of government ethics principles will be replaced once OGE issues new standards regulations pursuant to Executive Order 12674. That order provides that OGE, in consultation with the Attorney General and OPM, is to promulgate a new single and comprehensive set of standards of conduct for the executive branch (to be supplemented as appropriate with agency-specific addenda). See sections 201(a) and 301(a) of E.O. 12674. OGE is reserving a new part 2635 of 5 CFR for the forthcoming "Principles of Ethical Conduct."

Moreover, one portion of the current 5 CFR part 735, subpart D, deals with confidential financial reporting by certain mid-level executive branch officials. Section 201(d) of E.O. 12674 reaffirms that there are to be superseding regulations to be promulgated by OGE on that topic as well. OGE has been working on these regulations and is reserving a new part 2633 to accommodate them.

Pending revision, the savings clause in section 502(a) of E.O. 12674 provides for the continuing effectiveness of the current 5 CFR part 735 regulations as well as of other government ethics actions of the executive branch under the prior ethics Executive Orders 11222 and 12565 and the present executive agency standards of conduct promulgated thereunder.

B. Procedural Matters

Administrative Procedure Act

The regulations being transferred and redesignated were previously promulgated in due accordance with the notice and

opportunity for public comment requirements of the Administrative Procedure Act, 5 U.S.C. 553 (some of the provisions were published on an interim basis or deemed exempt from such requirements as justified at the time). Since no substantive changes are being effectuated to these rules by this transfer and redesignation, no notice of proposed rulemaking and comment period are necessary. Further, the designation of a new chapter for OGE does not include any new regulations at this time; thus, notice or comment are likewise unnecessary. Moreover, OGE finds that it is in the public interest that OGE's new chapter be established and that the executive branch government ethics regulations indicated above be transferred thereto as soon as possible. Therefore, the chapter establishment and transfer of regulations to redesignated parts as set forth in this document will be effective immediately and without prior notice and opportunity for public comment.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for these rules and because they will not have a significant economic impact on a substantial number of small entities, no Regulatory Flexibility Act (5 U.S.C. 601 et seq.) analysis is required.

E.O. 12291

The Office of Government Ethics has determined that these are not major rules as defined under section 1(b) of Executive Order 12291, Federal Regulation Requirements.

Paperwork Reduction Act

These rules do not impose any additional information collection requirements requiring Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), since they are simply being transferred and redesignated from OPM's chapter I of 5 CFR to OGE's new chapter XVI of 5 CFR.

List of Subjects in 5 CFR Parts 2634, 2637 and 2638

Conflict of interests, Ethical conduct, Financial disclosure.

Approved: November 27, 1989.

Donald E. Campbell,

Acting Director, Office of Government Ethics.

Approved: November 30, 1989.

**Constance B. Newman,
Director, Office of Personnel Management.**

Authority: Secion 401 of the Ethics in Government Act, as amended by secs. 3, 10, 103 Stat. 3031, 3035 (5 U.S.C. Appendix IV, sec. 401).

Accordingly, the Office of Government Ethics hereby establishes a new chapter XVI and amends, with the concurrence of the Office of Personnel Management, chapter I, both of title 5, Code of Federal Regulations, as set forth below.

1. Title 5 is amended by adding a chapter XVI (consisting of subchapters A and B) to read as follows:

CHAPTER XVI -- OFFICE OF GOVERNMENT ETHICS

SUBCHAPTER A -- ORGANIZATION AND PROCEDURES

Part

2600 Organization and Functions [Reserved] 2602 Employee Responsibilities and Conduct, Addendum [Reserved]

2604 Freedom of Information Act Rules [Reserved]

2606 Privacy Act Rules [Reserved]

2608 Rules of Practice [Reserved]

2610 Implementation of the Equal Access to Justice Act [Reserved]

2612 Use of Penalty Mail in the Location and Recovery of Missing Children [Reserved]

SUBCHAPTER B -- GOVERNMENT ETHICS

Part

2633 Executive Agency Regulations Governing Non-Public Financial Disclosure Reports [Reserved].

2634 Executive Personnel Financial Disclosure Requirements

2635 Principles of ethical conduct [Reserved].

2637 Regulations Concerning Post Employment Conflict of Interest.

2638 Office of Government Ethics and Executive Agency Ethics Program Responsibilities.

2. Title 5 of the Code of Federal Regulations is amended by transferring and redesignating certain regulations from 5 CFR chapter I to 5 CFR chapter XVI as set forth in the following redesignation table which shows the relationship of each former CFR part, subpart and section number under 5 CFR chapter I and the new part, subpart and section number under 5 CFR chapter XVI:

Redesignation Table

5 CFR chapter I, subchapter B, old 5 CFR chapter XVI,
subchapter B, new

section numbers	section numbers
Part 734	Part 2634
Subpart A	Subpart A
734.101	2634.101
734.102	2634.102
734.103	2634.103
734.104	2634.104
734.105	2634.105
Subpart B	Subpart B
734.201	2634.201

734.202 2634.202

734.203 2634.203

734.204 2634.204

734.205 2634.205

Subpart C Subpart C

734.301 2634.301

734.302 2634.302

734.303 2634.303

734.304 2634.304

Subpart D Subpart D

734.401 2634.401

734.402 2634.402

734.403 2634.403

734.404 2634.404

734.405 2634.405

734.406 2634.406

734.407 2634.407

734.408 2634.408

Subpart E Subpart E

734.501 2634.501

734.502 2634.502

Subpart F Subpart F

734.601 2634.601

734.602	2634.602
734.603	2634.603
734.604	2634.604
734.605	2634.605
Subpart G	Subpart G
734.701	2634.701
734.702	2634.702
734.703	2634.703
Subpart H	Subpart H
734.801	2634.801
734.802	2634.802
734.803	2634.803
734.804	2634.804
734.805	2634.805
Subpart I	Subpart I
734.901	2634.901
734.902	2634.902
734.903	2634.903
Appendix A to Part 734	Appendix A to Part 2634
Appendix B to Part 734	Appendix B to Part 2634
Part 737	Part 2637
Subpart A	Subpart A
737.1	2637.101

737.3	2637.102
Subpart B	Subpart B
737.5	2637.201
737.7	2637.202
737.9	2637.203
737.11	2637.204
737.13	2637.205
737.15	2637.206
737.17	2637.207
737.19	2637.208
737.21	2637.209
737.23	2637.210
737.25	2637.211
737.27	2637.212
737.29	2637.213
737.31	2637.214
737.32	2637.215
737.33	2637.216
Part 738	Part 2638
Subpart A	Subpart A
738.101	2638.101
738.102	2638.102
738.103	2638.103

738.104	2638.104
Subpart B	Subpart B
738.201	2638.201
738.202	2638.202
738.203	2638.203
738.204	2638.204
Subpart C	Subpart C
738.301	2638.301
738.302	2638.302
738.303	2638.303
738.304	2638.304
738.305	2638.305
738.306	2638.306
738.307	2638.307
738.308	2638.308
738.309	2638.309
738.310	2638.310
738.311	2638.311
738.312	2638.312
738.313	2638.313

3. All internal references in the redesignated parts and sections are changed accordingly.

4. The authority citation for newly designated part 2634 is

revised to read as follows:

Authority: 5 U.S.C. appendixes III, IV.

5. The authority citation for newly designated part 2637 is revised to read as follows:

Authority: 5 U.S.C. appendixes III, IV; 18 U.S.C. 207.

6. The authority citation for newly designated part 2638 is revised to read as follows:

Authority: 5 U.S.C. appendixes III, IV.

7. The title of newly designated part 2638 is revised to read as follows:

PART 2638 -- OFFICE OF GOVERNMENT ETHICS AND EXECUTIVE
AGENCY
ETHICS PROGRAM RESPONSIBILITIES