

several departmental components, to revoke an existing component designation, and to change the names of two existing departmental components, for purposes of the one-year post-employment conflict of interest restriction at 18 U.S.C. 207(c).

EFFECTIVE DATES: This amendatory rule is effective January 30, 2003, except for the removal of the listing for the International Joint Commission, United States and Canada (American Section), as set forth in amendatory instruction 3, which is effective on April 30, 2003.

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SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

The Director of OGE (Director) is authorized by 18 U.S.C. 207(h) to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c). The representational bar of 18 U.S.C. 207(c) usually extends to the whole of any department or agency in which a former senior employee served in any capacity during the year prior to termination from a senior employee position. However, eligible senior employees may be permitted to communicate to or appear before parts of their former department or agency if one or more components of the department or agency have been designated as separate agencies or bureaus by OGE.

As specified in 5 CFR 2641.201(e)(3)(iii), the Director of OGE "shall by rule make or revoke a component designation after considering the recommendation of the designated agency ethics official." Component designations are listed in appendix B of 5 CFR part 2641. Pursuant to the procedures prescribed in 5 CFR 2641.201(e), several departments have forwarded letters to OGE recommending the amendment of appendix B since it was last revised in 1999 (64 FR 5709-5710 (February 5, 1999)). After carefully reviewing these recommendations in light of the criteria in 18 U.S.C. 207(h) as implemented in 5 CFR 2641.201(e)(6), the Director has determined to revise appendix B as explained below.

At the recommendation of the Department of Defense (DOD), the Director is designating the National Reconnaissance Office (NRO) as a distinct and separate component of that Department. NRO is charged, under 50

U.S.C. 403-5(b)(3), with responsibility for the "continued operation of an effective unified organization for the research and development, acquisition, and operation of overhead reconnaissance systems necessary to satisfy the requirements of all elements of the intelligence community." NRO is the sole designer, builder and operator of the United States' reconnaissance satellites. According to DOD, NRO was omitted from the Department's original list of recommended components in 1990 because the existence of the NRO was, at that time and for several years thereafter, a highly classified fact. That is no longer the case, and NRO can now be designated as a new component of the DOD.

The Director is also granting the request of the Department of Labor to designate the Office of Disability Employment Policy (ODEP) as a distinct and separate component of that Department. ODEP is a new office established by legislation enacted on December 21, 2000, section 1(a)(1), Pub. L. 106-554, as codified at 29 U.S.C. 557b. The office, which is headed by an Assistant Secretary, is charged to "provide leadership, develop policy and initiatives, and award grants furthering the objective of eliminating barriers to the training and employment of people with disabilities." 29 U.S.C. 557b.

As recommended by the Department of Transportation (DOT), the Director is designating the Federal Motor Carrier Safety Administration (FMCSA) as a distinct and separate component of that Department. The FMCSA commenced operations on January 2, 2000. It was created pursuant to the Motor Carrier Safety Improvement Act of 1999, section 101(a), Pub. L. 106-159, as codified at 49 U.S.C. 113, to perform functions relating to motor carriers and motor carrier safety. These functions were previously performed by DOT's Federal Highway Administration.

Also pursuant to the recommendation of DOT, the Director is designating the Transportation Security Administration (TSA) as a distinct and separate component of that Department. Under the Aviation and Transportation Security Act, section 101(a), Pub. L. 107-71, as codified at 49 U.S.C. 114, TSA was created as an administration of DOT, with the responsibility for civil aviation security as well as the security of other modes of transportation. Although the functions of TSA are expected to be transferred to the new Department of Homeland Security at a later time during 2003, this separate component designation will define the relationship between DOT and TSA

with respect to section 207(c) immediately.

As requested by the Department of the Treasury (Treasury), the Director is designating the Financial Crimes Enforcement Network (FinCEN) as a distinct and separate component of that Department. Under 31 U.S.C. 310, FinCEN is designated as a bureau in Treasury to provide trend analysis and threat assessments, regulate financial and other institutions under the Bank Secrecy Act, and foster international cooperation in efforts to deter and detect money laundering.

Additionally, as recommended by the Department of State, the Director is revoking the designation of the International Joint Commission, United States and Canada (American Section) (IJC). Section 207(h) of 18 U.S.C. authorizes the designation of agencies and bureaus "within" a department or agency. Although the IJC receives funding from the Department of State and Federal employees serve in its American Section, IJC is not a part of the Department of State. Rather, it is an international organization in which the United States participates. *See, e.g.*, 22 U.S.C. 288 (IJC is among the international organizations in which the United States participates which are entitled to certain privileges, exemptions, and immunities).

Finally, the Department of Health and Human Services (HHS) has advised that the names of two HHS components currently listed in appendix B of part 2641 have been changed. According to HHS, the "Agency for Health Care Policy and Research" is now the "Agency for Healthcare Research and Quality," and the "Health Care Financing Administration" is now the "Centers for Medicare and Medicaid Services." Accordingly, the Director is amending the HHS listing in appendix B to reflect the current names of these components.

As indicated in 5 CFR 2641.201(e)(4), a designation "shall be effective as of the effective date of the rule that creates the designation, but shall not be effective as to employees who terminated senior service prior to that date." Initial designations were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B. The new component designations made by this rulemaking document, as well as the component name changes being reflected herein (which do not affect their underlying component designation dates), are effective January 30, 2003. As also provided in 5 CFR 2641.201(e)(4), a revocation is effective 90 days after the