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DEPARTMENT OF DEFENSE

Office of the Secretary

5 CFR Part 3601

RINS DoD 0790-AH74; OGE 3209-AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Defense

AGENCY: Department of Defense (DoD).

ACTION: Interim rule; amendments.

SUMMARY: The Department of Defense, with the concurrence of the Office of Government Ethics (OGE), amends the Supplemental Standards of Ethical Conduct for Employees of the Department of Defense to reflect certain administrative changes as a result of DoD reorganizations, as well as to add a component.

EFFECTIVE DATE: These amendments are effective November 18, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Gail Mason, Standards of Conduct Office, DoD; Telephone: 703-697-5305; Facsimile: 703-697-1640.

SUPPLEMENTARY INFORMATION:

I. Background

On September 10, 1993, with the concurrence and co-signature of OGE, DoD published an interim rule (part 3601 of title 5, CFR) establishing supplemental standards of ethical conduct for employees of DoD (58 FR 47622). The Armed Services Board of Contract Appeals (ASBCA) was not included on the list of separate DoD components at § 3601.102 at that time. On March 25, 1996, DoD added the ASBCA to paragraph 2-203.a. of DoD 5500.7-R, the Joint Ethics Regulation (JER). This amendatory rulemaking adds the ASBCA to the list of components. In the interim, the name of the Defense Investigative Service was changed to the Defense Security Service; the Defense

Mapping Agency was reconstituted into the National Imagery and Mapping Agency; and the Defense Nuclear Agency was reorganized as the Defense Threat Reduction Agency. Therefore, DoD is updating the listing of these components in this amendatory rulemaking.

II. Matters of Regulatory Procedure

Administrative Procedure Act

As Deputy Secretary of Defense, I have found good cause, pursuant to 5 U.S.C. 553(a)(2), (b) and (d), for waiving the notice of proposed rulemaking, opportunity for public comment, and 30-day delayed effective date as to these interim rule amendments. The notice, comment and delayed effective date are being waived because it is in the public interest that this amendatory rule, which concerns matters of agency organization, management, and personnel, become effective as soon as possible.

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that these amendments to 5 CFR part 3601 do not constitute a significant regulatory action. The amendatory rule does not: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4)

It has been certified that these amendments to 5 CFR part 3601 do not contain a Federal Mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been determined that this amendatory rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule does not economically impact Federal Government relations with the private sector.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that these amendments to 5 CFR part 3601 do not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Federalism (Executive Order 13132)

It has been certified that 5 CFR part 3601 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on: (1) The States; (2) The relationship between the National Government and the States; or (3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 5 CFR Part 3601

Conflict of interests; Executive Branch Standards of Conduct; Government employees.

Dated: October 29, 2003.

Paul D. Wolfowitz,

Deputy Secretary of Defense, Department of Defense.

Approved: November 4, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

■ Accordingly, for the reasons set forth in the preamble, the Department of Defense, with the concurrence of the Office of Government Ethics, is amending 5 CFR part 3601 as follows:

PART 3601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF DEFENSE

■ 1. The authority citation for 5 CFR part 3601 continues to read as follows:

Authority: 5 U.S.C. 301, 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 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