

annually publish an updated compilation. As proposed, renumbered § 2641.301(j)(3)(ii) would merely require that the Director of OGE “maintain a listing” of waived positions in appendix A to 5 CFR part 2641.

Section 2641.301(k)—Miscellaneous Statutory Exceptions

Proposed § 2641.301(k) lists statutory provisions, other than those in 18 U.S.C. 207 itself, which modify the scope of the post-employment statute as it would otherwise apply to specified former employees or classes of former employees. We invite reviewers of this proposed rule to review our list and suggest modifications or additions.

Section 2641.302—Component Designations

The scope of 18 U.S.C. 207(c) can be narrowed through designation, by the Director, of separate departmental or agency components. Authority for the designation of separate components is set forth in section 207(h). On February 1, 1991, OGE published an interim rule establishing procedures, currently codified at 5 CFR 2641.201(e), to designate separate agency components. OGE has published agency component designations as appendix B to 5 CFR part 2641.

We are proposing to make several changes to existing § 2641.201(e), which would be renumbered as § 2641.302. We have reorganized the paragraphs in existing § 2641.201(e) concerning component designations so that the paragraph describing the statutory criteria would appear before the paragraph relating to procedures. In addition, we have reordered the two statutory criteria in renumbered § 2641.302(c). We have also changed the due date for the written updates, required by existing § 2641.201(e)(3)(ii), to July 1 and have dropped the requirement, at existing § 2641.201(e)(3)(iii), that the Director of OGE publish an annual compilation of designated components. OGE would “maintain a listing” of designations in appendix B and would publish amendatory rules only when necessary.

For clarity, we would avoid use of the term “component” in renumbered § 2641.302(a) when referring to an undesignated agency or bureau within a parent agency. We are also proposing to add two examples to follow that section. The first illustrates the effect of a component designation in the case of a former senior employee of a parent agency. The second example concerns a former senior employee of a designated component. Both proposed examples would also show that an agency office

that some might characterize as a “component” will, if not designated by the Director of OGE, nevertheless be considered part of the parent for purposes of determining the scope of the section 207(c) bar.

We propose to list four additional factors that the Director of OGE will consider in connection with the “distinct and separate” finding required by the statute. The first of these additional factors, at renumbered § 2641.302(c)(1)(iii), would indicate that the Director will consider “[t]he degree of supervision exercised by the parent over the component.” In view of this addition, we are proposing to delete much of existing § 2641.201(e)(7). That section had made clear that the Director may designate subordinate agencies or bureaus as distinct and separate from a parent notwithstanding that the parent may exercise some degree of general supervision over the subordinate entity. We would, however, retain the last sentence of existing § 2641.201(e)(7). As reworded and retitled, renumbered § 2641.302(d) would continue to indicate that the Director will not ordinarily designate agencies or other administrative units that are encompassed by or otherwise supervised by an existing designated component.

The other three new factors proposed at renumbered § 2641.302(c)(1) derive from OGE’s experience in deciding several designation requests over the past few years. New § 2641.302(c)(1)(iv) would indicate that the Director will consider “[w]hether the component exercises responsibilities that cut across organizational lines within the parent.” We have declined to designate an office that had been created administratively to provide personnel, payroll, and similar services to the parent and to its designated components. We also declined to designate an Inspector General’s office as a component distinct and separate from the parent and other designated components. The two other new factors will confirm the relevance of the size of the component, both in absolute and relative terms. In one instance, for example, we declined to designate an office of fewer than 25 people that also would have been very small in relation to other designated components of the parent.

In view of the passage of time since the original publication of part 2641, we are also proposing to delete existing § 2641.201(e)(3)(i) concerning the effective date of the Director’s initial post-Ethics Reform Act designations. The introductory paragraph in Appendix B would continue to provide that “[e]xcept as otherwise indicated, all

designations are effective as of January 1, 1991.” We also would reorganize existing § 2641.201(e)(3)(ii) by creating separate paragraphs, proposed § 2641.302(e)(1) and (e)(2), respectively titled “Agency recommendation” and “Agency update.”

Existing § 2641.201(e)(4) currently provides that a new designation “shall be effective as of the effective date of the rule that creates the designation * * *.” Since a designation can substantially affect the scope of 18 U.S.C. 207(c) as applied to particular individuals, it is important that the designation become effective as soon as possible. We are proposing to modify existing § 2641.201(e)(4) to establish the date of publication as the effective date for all future designations. However, since a revocation has the effect of expanding the section 207(c) bar, we propose to retain the 90-day delayed effective date with respect to revocations, now at renumbered § 2641.302(f). As before, a revocation would not apply to any individual who terminated senior service prior to the expiration of the 90-day period.

We also propose to revise existing § 2641.201(e)(4) so that a new component designation “shall be effective as to individuals who terminated senior service either before, on or after that date.” This proposed change, at renumbered § 2641.302(f), would serve to mitigate the consequences of administrative delays in connection with the publication of a rule designating a new component.

As stated earlier in relation to § 2641.204(g), it is necessary to identify a former senior employee’s “former agency” in order to determine the scope of 18 U.S.C. 207(c). If a designated component is determined to be no longer identifiable as substantially the same entity, the section 207(c) bar will not apply to a former senior employee of that component. Example 1 following § 2641.302(g) as proposed illustrates this concept. In the case of a designated component that remains identifiable as substantially the same entity, the bar will apply to a former senior employee as if the whole of the reorganized entity had been designated as a distinct and separate component by the Director. Proposed example 2 as proposed illustrates this idea. The example also points out that a former employee would not be barred from contacting a current employee who had been transferred outside the boundaries of the designated component, as reorganized.

Although OGE has assigned the “appropriate” designated agency ethics official the primary responsibility for applying the standards of proposed