

Proposed Rules

Federal Register

Vol. 64, No. 92

Thursday, May 13, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209-AA00

Proposed Revisions to the Public Financial Disclosure Gifts Waiver Provision

AGENCY: Office of Government Ethics.

ACTION: Proposed rule amendments.

SUMMARY: The Office of Government Ethics (OGE) is proposing to amend the regulation which authorizes the Director of OGE to grant a waiver of certain gift disclosure requirements for filers of the public financial disclosure report form, SF 278. The proposed amendments would permit the grant of a waiver, in appropriate cases, if the basis of the relationship between the grantor and grantee of a gift and the motivation behind a gift are personal. The proposed changes also would clarify that the cover letter requesting a waiver will be publicly available if the Director of OGE approves the waiver request, either in whole or in part. Additionally, the proposed amendments would expressly require that a description of the gift and its value be included in a waiver request. Finally, the proposed changes would explicitly require that when a gift has multiple donors, the information required to be in a waiver request pertaining to the donor must include the necessary information for each donor.

DATES: Comments are invited and must be received on or before July 12, 1999.

ADDRESSES: Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917. Attention: Judy H. Mann. Comments may also be sent electronically to OGE's Internet E-mail address: usoge@oge.gov. For E-mail messages, the subject line should include the following reference—"Proposed revisions to the public financial disclosure gifts waiver provision."

FOR FURTHER INFORMATION CONTACT: Judy H. Mann, Attorney-Advisor, or Norman

B. Smith, Senior Associate General Counsel, Office of Government Ethics; telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is proposing to amend the executive branch regulation which requires the disclosure of certain gifts received by the filers of the Standard Form (SF) 278 Public Financial Disclosure Report forms, their spouses, and their dependent children. Title I of the Ethics in Government Act of 1978 (the Ethics Act), 5 U.S.C. appendix, title I, sets forth the requirements which govern the reporting of gifts on the public financial disclosure reports (SF 278). Specifically, 5 U.S.C. app., section 102(a)(2) requires the reporting of gifts on public financial disclosure report forms but also includes, at paragraph (a)(2)(C), authority for granting a waiver which permits the nondisclosure of certain gifts on the SF 278. The Office of Government Ethics has issued regulations at 5 CFR 2634.304 that establish guidelines clarifying the gift reporting requirements set forth in the Ethics Act. Section 2634.304(f) includes the procedures for requesting a waiver of reporting for executive branch filers and the factors which the Director of OGE considers in determining whether to issue a waiver.

Under 5 CFR 2634.304, a person who files an SF 278 is required to report certain gifts that he, his spouse, or his dependent child receives. Section 2634.304 permits a filer not to disclose certain gifts if the filer receives a waiver. The filer must submit a written request for a waiver through his agency to the Director of the Office of Government Ethics, who determines whether to issue the waiver. If the OGE Director issues the waiver, the filer is not required to disclose the gift or gifts for which he receives the waiver on his SF 278, nor is he required to aggregate those gifts for reporting purposes. However, the request cover letter is publicly available.

Currently, in order to grant a waiver under § 2634.304(f)(1), the Director must determine that both the basis of the relationship between the grantor and the grantee and the motivation behind the gift are entirely personal and that no countervailing public purpose requires public disclosure of the nature, source, and value of the gift. One of the proposed amendments would address

the requirement that the basis of the relationship between the grantor and the grantee and the motivation behind the gift be "entirely personal." The experience of OGE over the years has demonstrated that in some situations, a filer has a predominantly social relationship with a grantor of a gift, but has met the grantor through a business relationship, often in connection with a spouse's business activities. Requests for waivers in these circumstances most often occur when the filer receives a gift for a wedding or other similar social occasion. However, these circumstances might be construed as not "entirely personal" under § 2634.304(f)(1)(i). The proposed rule would permit the Director to grant a waiver of reporting if he determines that the basis of the relationship between the grantor and the grantee and the motivation behind the gift are "personal," rather than "entirely personal," provided that no countervailing public purpose requires public reporting. Thus, in the situation described above, the Director could grant a waiver because the relationship between the grantor and grantee and the motivation behind the gift may be construed as personal. The proposed rule would give OGE some flexibility in granting waivers in such appropriate cases.

In the legislative history of the Ethics Act, the Senate Committee on Governmental Affairs described its intention that waivers be used infrequently. S. Rep. No. 95-170 at 116 (1977). The proposed rule would remain consistent with the Committee's intent. The Office of Government Ethics has received a small number of waiver requests each year and does not expect that there will be an overall increase in the number of requests received, or much of an increase in waivers granted, as a result of the proposed rule.

Under § 2634.304(f)(2), members of the public can access the cover letter requesting a waiver if the Director of OGE approves the waiver request. Public availability of the cover letter is subject to the public disclosure requirements in 5 CFR 2634.603. The Office of Government Ethics proposes to amend § 2634.304(f)(2) by adding language to clarify that the cover letter of a waiver request will be publicly available when the Director of OGE has granted either a partial or complete approval of the waiver request. In such

cases, an item or items contained in the waiver request for which the waiver was granted will not appear on the SF 278. Any item or items contained in the request for which the Director of OGE did not grant a waiver will be listed on the SF 278. If the Director of OGE denies the complete request, the item or items for which the waiver was requested will be contained in the SF 278, and the cover letter requesting the waiver will not be publicly available. This proposed amendment does not alter OGE's current practice regarding the disclosure of the cover letter requesting a waiver; it simply will clarify that the public can access the cover letter of waiver requests for which the Director of OGE has granted either full or partial approval.

The proposed rule would also amend § 2634.304(f)(3) to expressly require a filer to describe the gift for which he is seeking a waiver. Section 2634.304(f)(3) sets forth specific requirements for the contents of a waiver request by the filer, as submitted through his agency to OGE. The filer must include in a waiver request the identity and occupation of the donor, in addition to a statement concerning the relationship between the donor and the filer, as described above. The request also must contain a statement concerning any involvement of the donor with the filer's agency. The current regulation does not expressly require the filer to describe the gift or list its value in the waiver request. Although most filers do include a description of the gift and its value in their waiver requests, in order to eliminate any ambiguity concerning whether this basic information is required, we are proposing to add a new paragraph (f)(3)(ii)(D) to explicitly require that the filer include both a description of the gift and its value in the waiver request. The proposed rule would be consistent with the general requirement under § 2634.304 that an SF 278 filer report a description, as well as the value, of certain gifts. Moreover, knowing the nature and value of the gift will assist OGE in determining whether there is a countervailing public purpose requiring public disclosure.

Under § 2634.304(f)(3), a filer who requests a waiver of reporting certain gifts must provide specified information about the donor of each gift for which a waiver is requested. Included in the proposed revisions to § 2634.304(f)(3) is a new paragraph (f)(3)(iii), which would explicitly require that when a gift for which a waiver is requested has more than one donor, a filer must provide the required information with respect to each donor of the gift. This is not a new requirement. The proposed rule merely serves as a technical clarification of an

existing requirement under the current rule.

The proposed revisions to § 2634.304(f)(3) also include a restructuring of that provision and the correction of a typographical error.

Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons are invited to submit written comments to OGE on this proposed regulation, to be received on or before July 12, 1999. The Office of Government Ethics will review all comments received and consider any modifications to this rule as proposed which appear warranted before adopting the final rule on this matter.

Executive Order 12866

In promulgating this proposed rule, the Office of Government Ethics 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. These proposed amendments have not been reviewed by the Office of Management and Budget under that Executive order, since they are not deemed "significant" thereunder.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch departments and agencies and certain of their employees who file SF 278 reports.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to these proposed amendments because they do not contain information collection requirements that require approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: May 6, 1999.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend part 2634 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2634—[AMENDED]

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; 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.

2. Section 2634.304 is amended by:
- a. Revising paragraph (f)(1)(i);
 - b. Adding an Example after paragraph (f)(1)(ii);
 - c. Revising paragraph (f)(2); and
 - d. Revising paragraph (f)(3).

The revisions and addition read as follows:

§ 2634.304 Gifts and reimbursements.

* * * * *

- (f) * * * (1) * * *
- (i) Both the basis of the relationship between the grantor and the grantee and the motivation behind the gift are personal; and

(ii) * * *

Example to paragraph (f)(1). i. The Secretary of Education and her spouse receive the following two wedding gifts:

A. Gift 1—A crystal decanter valued at \$285 from the Secretary's former college roommate and lifelong friend, who is a real estate broker in Wyoming.

B. Gift 2—A gift of a print valued at \$300 from a business partner of the spouse, who owns a catering company.

ii. Under these circumstances, the Director of OGE will consider a request for a waiver of reporting for each of these gifts.

(2) *Public disclosure of waiver request.* If approved in whole or in part, the cover letter requesting the waiver shall be subject to the public disclosure requirements in § 2634.603 of this part.

(3) *Procedure.* (i) A public filer seeking a waiver under this paragraph (f) shall submit a request to the Office of Government Ethics, through his agency. The request shall be made by a cover letter which identifies the filer and his position and which states that a waiver is requested under this section.

(ii) On an enclosure to the cover letter, the filer shall set forth:

(A) The identity and occupation of the donor;

(B) A statement that the relationship between the donor and the filer is personal in nature;

(C) A statement that neither the donor nor any person or organization who employs the donor or whom the donor represents, conducts or seeks business with, engages in activities regulated by, or is directly affected by action taken by, the agency employing the filer. If the preceding statement cannot be made without qualification, the filer shall indicate those qualifications, along with

a statement demonstrating that he plays no role in any official action which might directly affect the donor or any organization for which the donor works or serves as a representative; and

(D) A brief description of the gift and the value of the gift.

(iii) With respect to the information required in paragraph (f)(3)(ii) of this section, if a gift has more than one donor, the filer shall provide the necessary information for each donor.

[FR Doc. 99-12047 Filed 5-12-99; 8:45 am]

BILLING CODE 6345-01-U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

[DA-99-02]

Milk in the Iowa Marketing Area; Notice of Reopening and Extension of Time for Filing Comments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and Extension of Time for Filing Comments.

SUMMARY: This document reopens and extends the time for filing comments on a proposed revision to reduce the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order.

DATES: Comments are now due on or before June 14, 1999.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456. Advance, unofficial copies may be faxed to (202) 690-0552 or e-mailed to OFB_FMMO_Comments@usda.gov. Reference should be made to the title of action and docket number. All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Programs offices during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-2357, e-mail address connie.brenner@usda.gov.

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding:

Proposed Rule: Issued April 14, 1999; published April 19, 1999 (64 FR 19071).

Notice is hereby given that the time for filing comments on the proposed revision of the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order is hereby reopened and extended. The comment period closed on April 26, 1999. Comments concerning the months of June, July, and August will now be accepted through June 14, 1999.

On the basis of the original request for revision and one comment filed in partial support of the proposed revision, USDA is reducing the supply plant shipping percentages by 10 percentage points for the months of April and May, and by 5 percentage points for the month of June. These revisions concerning supply plant shipping percentages are published separately in the **Federal Register**. A reduction of 10 percentage points for the months of April through August 1999 was requested by Beatrice Cheese, Inc. A comment, filed on behalf of Anderson-Erickson Dairy Company, argued that the milk supply situation in the Iowa market is too volatile at present to be able to determine whether the requested reduction in the pool supply plant shipping percentage for the months of June, July, and August is appropriate. Therefore, a decision on whether to revise the shipping percentage for the months of July and August and to further revise the shipping percentage for the month of June will be made after the close of the reopened comment period.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

List of Subjects in 7 CFR Part 1079

Milk marketing orders.

Dated: May 7, 1999.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 99-12145 Filed 5-12-99; 8:45 am]

BILLING CODE 3410-02-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM155; Notice No. 25-99-03-SC]

Special Conditions: Boeing Model 767-300 Series Airplanes; Seats With Inflatable Lapbelts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for Boeing Model 767-300 series airplanes. These airplanes as modified by Am-Safe, Inc. will have novel and unusual design features associated with seats with inflatable lapbelts. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before June 28, 1999.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket (ANM-7), Docket No. NM155, 1601 Lind Avenue SW., Renton, Washington, 98055-4506; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM155. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Airframe and Cabin Safety Branch, ANM-115, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (206) 227-2136; facsimile (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications