

Rules and Regulations

Federal Register

Vol. 65, No. 224

Monday, November 20, 2000

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OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634, 2635 and 2638

RINs 3209-AA00 and 3209-AA04

Technical Updating Amendments and Correction to Certain Executive Branch Regulations of the Office of Government Ethics

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments.

SUMMARY: The Office of Government Ethics is updating and correcting some of the sections of its executive branch regulations on financial disclosure, standards of ethical conduct and ethics responsibilities. These amendments include the addition to the financial disclosure regulation of statutorily mandated higher categories of value reporting and adjustment of the reporting thresholds for gifts and travel reimbursements. In addition, OGE is raising the dollar ceiling for widely attended gathering nonsponsor gifts under the standards regulation.

DATES: The amendments in this rulemaking document are effective November 20, 2000, except for the amendments to 5 CFR 2634.304 that are being made retroactively effective to January 1, 1999.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, telephone: 202-208-8000, ext. 1110; TDD: 202-208-8025; FAX: 202-208-8037.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is amending various sections of its executive branchwide ethics regulations on financial disclosure, standards of ethical conduct (the Standards), and Government ethics responsibilities, as codified at 5 CFR parts 2634, 2635 and

2638, in order to update them. These technical amendments also include a correction of a typographical error in 5 CFR 2634.301(d)(6).

These revisions to pertinent provisions of OGE's branchwide financial disclosure regulation, as codified at 5 CFR 2634.301(d) and 2634.302(b)(1), will add to the regulation the higher categories of value for assets, income, transactions and liabilities over \$1,000,000 as required for public reports (on the Standard Form (SF) 278) under the Ethics in Government Act (the Ethics Act), as amended by sections 20 and 22 of the 1995 Lobbying Disclosure Act (Public Law 104-65). See section 102(a)(1)(B), (d)(1) and (e)(1) and the then-newly added section 102(a)(8) of the Ethics Act, 5 U.S.C. appendix, section 102(a)(1)(B), (a)(8), (d)(1) and (e)(1). The higher categories of value for assets, transactions (as recently determined by OGE for reports on the new 2000 edition of the SF 278 only), and liabilities are: \$1,000,001 to \$5,000,000; \$5,000,001 to \$25,000,000; \$25,000,001 to \$50,000,000; and over \$50,000,000. For income, the higher categories are: \$1,000,001 to \$5,000,000; and over \$5,000,000. The new regulatory text would also clarify that the higher categories only apply to items held by the report filer alone or jointly with his or her spouse and/or dependent children. For any such items held *solely* by a filer's spouse and/or dependent children, only the traditional "over \$1,000,000" category would apply. To date, in a series of guidance memorandums over the years, OGE has asked departments and agencies to so notify filers administratively.

In addition, OGE is retroactively adjusting, to January 1, 1999, the reporting thresholds for gifts and travel reimbursements in the OGE executive branchwide regulation at 5 CFR 2634.304 (& as illustrated in examples following that section) for both the public and confidential financial disclosure systems under section 102(a)(2)(A) & (B) of the Ethics Act, 5 U.S.C. appendix, section 102(a)(2)(A) & (B), as extended to the executive branch confidential reporting system in subpart I of OGE's 5 CFR part 2634 regulation. These changes are necessitated by the increase by the General Services Administration (GSA) of the "minimal value" to \$260 or less (from the prior

level of \$245 or less) for the three-year period 1999-2001 under the Foreign Gifts and Decorations Act, to which the Ethics Act and OGE regulatory thresholds are pegged. See 64 FR 13700-13701 (March 22, 1999), revising the GSA foreign gifts regulation, now to be codified at new 41 CFR 102-42.10 (formerly § 101-49.001-5), see 65 FR 45540 (July 24, 2000). The new reporting thresholds being codified in OGE's financial disclosure regulation are "more than \$260" for the aggregation threshold for reporting and "\$104 or less" for gifts and reimbursements which do not have to be counted towards the aggregate threshold (from the prior levels of \$250 and \$100, respectively). Further, OGE will adjust those thresholds in the future as needed in light of GSA's revaluation of "minimal value" every three years for foreign gifts purposes.

Finally, the widely attended gathering gift exception ceiling for nonsponsor gifts of free attendance under the standards of ethical conduct regulation, at 5 CFR 2635.204(g)(2) (& as illustrated in a couple of examples following paragraph (g)), will likewise be raised from \$250 to \$260. As OGE noted in the preambles to the proposed and final rules on such nonsponsor gifts, that ceiling is based in part on the financial disclosure gifts reporting threshold. See 60 FR 31416 (June 15, 1995) and 61 FR 42968 (August 20, 1996). Thus, it is reasonable now to adjust the nonsponsor gift ceiling to match the increase in the reporting threshold. The other requirements for acceptance of such nonsponsor gifts, including an agency interest determination and expected attendance by more than 100 persons, remain unchanged.

In addition, OGE is adding an unrelated reference in the related statutes section of the Standards, at 5 CFR 2635.902(l), to the criminal prohibition at 18 U.S.C. 1030 on fraudulent access and related activity in connection with computers.

Finally, OGE is updating the citations to the Ethics Act financial disclosure provisions, current Executive Order 12674 (as modified by E.O. 12731), and the definition of the executive branch in the pertinent provisions of 5 CFR part 2638 on ethics responsibilities of OGE and designated agency ethics officials.

Matters of Regulatory Procedure**Administrative Procedure Act**

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking, opportunity for public comment and 30-day delay in effectiveness as to these technical updates and the correction. The notice, comment and delayed effective date provisions are being waived in part because these minor amendments concern matters of agency organization, practice and procedure. Further, it is in the public interest that correct and up-to-date information be contained in the affected sections of OGE's regulations as soon as possible. The increase in the reporting thresholds for gifts and reimbursements also lessens the reporting burden somewhat, and thus the effective date of that regulatory revision is being made retroactively effective to January 1, 1999, when the change became effective under the Ethics Act, as amended.

Executive Order 12866

In promulgating these minor amendments, OGE 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 amendments have not been reviewed by the Office of Management and Budget under that Executive order, since they are not deemed "significant" thereunder.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

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.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this amendatory rulemaking does not contain information collection requirements that require the approval of the Office of Management and Budget.

Congressional Review Act

The Office of Government Ethics has determined that this amendatory rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and has provided a report thereon to the Senate, House of Representatives and General Accounting Office in accordance with that law.

List of Subjects**5 CFR Part 2634**

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

5 CFR Part 2635

Conflict of interests, Government employees.

5 CFR Part 2638

Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: November 13, 2000.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, the Office of Government Ethics pursuant to its authority under the Ethics in Government Act and Executive Order 12674, as modified by E.O. 12731, is amending 5 CFR parts 2634, 2635 and 2638 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

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; Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104-134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); 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 2634.301 is amended by removing the dollar amount "\$1,00,000" in paragraph (d)(6) and adding in its place the dollar amount "\$1,000,000", by removing the ":" following paragraph (d)(7) and adding a ";" in its place, and by adding a new paragraph (d)(8) to read as follows:

§ 2634.301 Interests in property.

* * * * *

(d) * * *

(8) Provided that, with respect to items held by the filer alone or held jointly by the filer with the filer's

spouse and/or dependent children, the following additional categories over \$1,000,000 shall apply:

- (i) Greater than \$1,000,000 but not more than \$5,000,000;
- (ii) Greater than \$5,000,000 but not more than \$25,000,000;
- (iii) Greater than \$25,000,000 but not more than \$50,000,000; and
- (iv) Greater than \$50,000,000.

* * * * *

3. Section 2634.302 is amended by removing the ":" following paragraph (b)(1)(viii) and adding a ";" in its place, and by adding a new paragraph (b)(1)(ix) to read as follows:

§ 2634.302 Income.

* * * * *

(b) * * *

(1) * * *

(ix) Provided that, with respect to investment income of the filer alone or joint investment income of the filer with the filer's spouse and/or dependent children, the following additional categories over \$1,000,000 shall apply:

- (A) Greater than \$1,000,000 but not more than \$5,000,000; and
- (B) Greater than \$5,000,000.

* * * * *

§ 2634.304 [Amended]

4. Section 2634.304 is amended by:

- a. Removing the words "\$250 or more" in paragraphs (a) and (b) and in Example 1 following paragraph (d) and adding in their place in each instance the words "more than \$260";

 b. Removing the note following paragraph (b) and the first note following paragraph (d);

 c. Removing the dollar amounts "\$100" in paragraph (d) and in Examples 1 and 2 following paragraph (d) and adding in their place in each instance the dollar amount "\$104";

 d. Removing the dollar amount "\$150" in Example 1 following paragraph (d) and adding in its place the dollar amount "\$190";

 e. Removing the dollar amounts "\$130" and "\$250" in Example 3 following paragraph (d) and adding in their place, respectively, the dollar amount "\$150" and the words "more than \$260"; and

 f. Removing the dollar amount "\$250" in Example 4 following paragraph (d) and adding in its place the dollar amount "\$260".

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

5. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 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.

§ 2635.204 [Amended]

6. Section 2635.204 is amended by removing the dollar amounts “\$250” in paragraph (g)(2) and in Examples 1 and 2 following paragraph (g)(6) and adding in their place in each instance the dollar amount “\$260”, and by removing the dollar amount “\$500” in Example 2 following paragraph (g)(6) and adding in its place the dollar amount “\$520”.

7. Section 2635.902 is amended by adding a new paragraph (l), previously reserved, to read as follows:

§ 2635.902 Related statutes.

* * * * *

(l) The prohibition against fraudulent access and related activity in connection with computers (18 U.S.C. 1030).

* * * * *

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

8. The authority citation for part 2638 continues to read as follows:

Authority: 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.

§ 2638.101 [Amended]

9. Section 2638.101 is amended by removing the references to “II” in paragraphs (a) and (b) and adding in their place in each instance the reference “I”, and by adding the words “executive branch” between the words “These” and “regulations” in paragraph (b).

10. Section 2638.104 is amended by revising the definition of “Executive branch” to read as follows:

§ 2638.104 Definitions.

* * * * *

Executive branch includes each executive agency as defined in 5 U.S.C. 105 and any other entity or administrative unit in the executive branch. However, it does not include any agency, entity, office or commission that is defined by or referred to in 5 U.S.C. app. 109(8)–(11) of the Act as within the judicial or legislative branch.

* * * * *

§ 2638.201 [Amended]

11. Section 2638.201 is amended by removing the references to “II” and

adding in their place in each instance the reference “I”, and by removing the words “11222 (relating to standards of conduct) between the words “Order” and “for” in the last sentence and adding in their place the words “12674 as modified (relating to principles of ethical conduct”.

[FR Doc. 00-29493 Filed 11-17-00; 8:45 am]

BILLING CODE 6345-01-U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572-AB52

General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of confirmation of direct final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby gives notice that comments were received regarding direct final rule on General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans, and reconfirms the effective date of the direct final rule. This notice also serves to address the comments received.

DATES: The direct final rule, which was published on May 17, 2000, at 65 FR 31246, was effective July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Wei M. Moy, Chief, Power Resources & Planning Branch, Power Supply Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1568, 1400 Independence Avenue, SW, Washington, DC 20250-1568. Telephone: (202) 720-1438. FAX (202) 720-1401. E-mail: wmoy@rus.usda.gov.

Background

The Rural Utilities Service (RUS) published a direct final rule on May 17, 2000, at 65 FR 31246, in the **Federal Register** amending § 1710.254, Alternative Sources of Power, to allow flexibility in determining whether a borrower needs to solicit bids from all sources for new or replacement generation. It also deleted the requirement that borrowers seek bids if RUS financial assistance is requested from all sources for generation projects of 10 megawatts or more or for modifications to existing plants if it results in an increase in capacity of 10 percent. RUS reserves the right to review each project on a case-by-case

basis and determine whether there is a need for a borrower to seek bids from all sources for the project.

RUS received comments from three parties on this direct final rule, two of which were deemed adverse. According to RUS policy, should adverse comments be received concerning a direct final rule, the agency would withdraw the direct final rule and the companion proposed rule, which was published in the same issue of the **Federal Register**, would be the ruling action. RUS failed to issue a withdrawal notice. As a result, the direct final rule became effective on July 3, 2000. In lieu of this oversight, RUS feels that this notice of confirmation of direct final rule serves to address the concerns of the commentors and at the same time confirms the effective date of the direct final rule. If not for this oversight, this rule would have become effective through the normal regulatory process through its companion proposed rule and then as a final rule.

A summaries of these comments and responses follows:

Comments

Comment: Tri-State is in agreement with the amendment, and appreciates the flexibility that RUS has written into this amendment. However, Tri State recommended (1) That language be added regarding environmental issues, and (2) that, if RUS requires an applicant to solicit proposals for sources of power, the applicant be allowed to comply with the requirement by submitting competitive bids previously obtained by regional utilities.

Reply: RUS appreciates the support for its efforts to modify the requirement that borrowers must seek bids from all sources if funding is requested for generation projects equal to or greater than 10 megawatt or for modifications to existing plants if it results in an increase in capacity of 10 percent or more. Although the comments on environmental issues and the timing of competitive bid solicitations are appreciated, RUS feels these comments are non-responsive and do not effect language in the regulation.

Comment: Otter Tail suggests that competitive bidding should be a standard imposed on any party seeking federal financing and that the inefficiencies in the review and approval process should not cause delays in an efficiently run business or agency. Otter Tail feels that RUS borrowers should be meeting their power needs within the market place and only when competitive policies have been followed should any