

Rules and Regulations

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OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2635

RINs 3209-AA00 and 3209-AA04

Technical Updating Amendments to Executive Branch Financial Disclosure and Standards of Ethical Conduct Regulations

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments.

SUMMARY: The Office of Government Ethics is updating its executive branch regulation on financial disclosure to reflect the retroactive statutory increase of the reporting thresholds for gifts and travel reimbursements. As a matter of regulatory policy, OGE is also raising the widely attended gatherings nonsponsor gifts exception dollar ceiling under the executive branchwide standards of ethical conduct regulation, but this change is not retroactive.

DATES: The rule is effective July 1, 2011. The amendments to 5 CFR 2634.304 and 2634.907 (as set forth in amendatory paragraphs 2 and 3) are retroactively applicable as of January 1, 2011.

FOR FURTHER INFORMATION CONTACT: Elaine Newton, Attorney-Advisor, Office of Government Ethics; Telephone: 202-482-9300; TTY: 800-877-8339; FAX: 202-482-9237.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is amending pertinent sections of its executive branchwide ethics regulations on financial disclosure and standards of ethical conduct, as codified at 5 CFR parts 2634 and 2635, in order to update certain reporting and other thresholds.

Increased Gifts and Travel Reimbursements Reporting Thresholds

First, OGE is revising its executive branch financial disclosure regulation at

5 CFR part 2634 applicable as of January 1, 2011 to reflect the increased reporting thresholds for gifts, reimbursements and travel expenses for both the public and confidential executive branch financial disclosure systems. These increases conform to the statutorily mandated public disclosure reporting thresholds under section 102(a)(2)(A) & (B) of the Ethics in Government Act as amended, 5 U.S.C. app. section 102(a)(2)(A) & (B), and are extended to confidential disclosure reporting by OGE's regulation. Under the Ethics Act, the gifts and reimbursements reporting thresholds are tied to the dollar amount for the "minimal value" threshold for foreign gifts as the General Services Administration (GSA) periodically redefines it.

In a recent rulemaking, GSA raised "minimal value" under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, to "\$350 or less" (from the prior level of \$335 or less) for the three-year period 2011–2013. See 76 FR 30550–30551 (May 26, 2011), revising retroactively to January 1, 2011, the foreign gifts minimal value definition as codified at 41 CFR 102-42.10.

Accordingly, applicable as of that same date, OGE is increasing the thresholds for reporting of gifts and travel reimbursements from any one source in 5 CFR 2634.304 and 2634.907(g) (and as illustrated in the examples following those sections, including appropriate adjustments to gift values therein) of its executive branch financial disclosure regulation to "more than \$350" for the aggregation threshold for reporting and "\$140 or less" for the de minimis exception for gifts and reimbursements which do not have to be counted towards the aggregate threshold. As noted, these regulatory increases just reflect the underlying statutory increases effective January 1 of this year.

OGE will continue to adjust the gifts and travel reimbursements reporting thresholds in its part 2634 regulation in the future as needed in light of GSA's redefinition of "minimal value" every three years for foreign gifts purposes. See OGE's prior three-year adjustment of those regulatory reporting thresholds, as published at 73 FR 15387–15388 (March 24, 2008) (for 2008–2010, the aggregate reporting level was more than \$335, with a \$134 or less de minimis exception).

Federal Register

Vol. 76, No. 127

Friday, July 1, 2011

Increased Dollar Ceiling for the Exception for Nonsponsor Gifts of Free Attendance at Widely Attended Gatherings

In addition, OGE is increasing from \$335 to \$350 the exception ceiling for nonsponsor gifts of free attendance at widely attended gatherings under the executive branch standards of ethical conduct regulation, as codified at 5 CFR 2635.204(g)(2) (and as illustrated in the examples following paragraph (g); a sum total value in one example is also being adjusted accordingly). This separate regulatory change is effective upon publication in the **Federal Register**, on July 1, 2011. 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). The nonsponsor gift ceiling was last raised in the March 2008 OGE rulemaking noted in the preceding paragraph above. Thus, it is reasonable to again increase the nonsponsor gift ceiling to match the further increase in the gifts/travel reimbursements reporting thresholds. The other requirements for acceptance of such nonsponsor gifts, including an agency interest determination and expected attendance by more than 100 persons, remain unchanged.

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Acting 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 updating amendments. The notice, comment and delayed effective date provisions are being waived in part because these technical 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 is based on a statutory formula and also lessens the reporting burden somewhat. Therefore, that regulatory revision is being made retroactively effective January 1, 2011,

when the change became effective under the Ethics Act.

Regulatory Flexibility Act

As Acting 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 employees.

Paperwork Reduction Act

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

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

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 will submit a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register**.

Executive Order 12866

In promulgating these technical 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 Acting 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.

List of Subjects

5 CFR Part 2634

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

5 CFR Part 2635

Conflict of interests, Executive branch standards of ethical conduct, Government employees.

Approved: June 27, 2011.

Don W. Fox,

Acting Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR parts 2634 and 2635 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.

Subpart C—Contents of Public Reports

§ 2634.304 [Amended]

- 2. Section 2634.304 is amended by:
 - A. Removing the dollar amount "\$335" in paragraphs (a) and (b) and in examples 1 and 4 following paragraph (d) and adding in its place in each instance the dollar amount "\$350";
 - B. Removing the dollar amount "\$134" in paragraph (d) and in examples 1 and 2 following paragraph (d) and adding in its place in each instance the dollar amount "\$140"; and
 - C. Removing the dollar amounts "\$170" and "\$335" in example 3 following paragraph (d) and adding in their place the dollar amounts "\$180" and "\$350", respectively.

Subpart I—Confidential Financial Disclosure Reports

§ 2634.907 [Amended]

- 3. Section 2634.907 is amended by:
 - A. Removing the dollar amount "\$335" in paragraphs (g)(1) and (g)(2) and in the example to paragraph (g) and adding in its place in each instance the dollar amount "\$350"; and

- B. Removing the dollar amount "\$134" in paragraph (g)(3) and in the example to paragraph (g) and adding in its place in each instance the dollar amount "\$140".

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

- 4. 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.

Subpart B—Gifts from Outside Sources

§ 2635.204 [Amended]

- 5. Section 2635.204 is amended by:
 - A. Removing the dollar amount "\$335" in paragraph (g)(2) and in examples 1 and 2 (in the latter of which it appears twice) following paragraph (g)(6) and adding in its place in each instance the dollar amount "\$350"; and
 - B. Removing the dollar amount "\$670" in example 2 following paragraph (g)(6) and adding in its place the dollar amount "\$700".

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DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

7 CFR Part 3430

[0524-AA61]

Competitive and Noncompetitive Nonformula Federal Assistance Programs—Administrative Provisions for Biomass Research and Development Initiative; Technical Amendments

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Final rule; technical amendments.

SUMMARY: The National Institute of Food and Agriculture (NIFA) published in the **Federal Register** of June 17, 2011, a document adopting as final an interim rule published June 14, 2010, which contained a set of specific administrative requirements for the Biomass Research and Development Initiative (BRDI). This document contains minor changes to those regulations.

DATES: Effective on July 1, 2011.