

(DO-94-031). This rulemaking codifies that advice by adding a cross-reference in § 2634.904(a)(1) to § 2635.402(b)(4). While there are similar definitions in parts 2637 and 2640 of 5 CFR, the definition in the referenced section will suffice.

Section 2634.907(a) describes the contents of confidential financial disclosure reports by referring generally to the information required for public reports in subpart C of 5 CFR part 2634. While that subpart clearly specifies in § 2634.309 that information must be included about the filer's spouse and dependent children, some agencies and confidential filers have found the reference to be misleading or obscure. In order to eliminate any confusion on that point, this rulemaking amends § 2634.907(a) by specifying that confidential filers must include information about themselves, their spouse and their dependent children.

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 revisions. The notice, comment and delayed effective date are being waived because these technical amendments to certain OGE regulations concern matters of agency organization, practice and procedure. Furthermore, it is in the public interest that the obsolete provisions be removed and that ambiguous provisions be clarified as soon as possible.

Executive Order 12866

In promulgating these technical amendments to its regulations, 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 also been reviewed by the Office of Management and Budget under that Executive order.

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 agencies and their employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply

because this rulemaking, involving technical amendments and corrections, does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2634

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

Approved: November 5, 1998.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is amending part 2634 of chapter XVI of 5 CFR 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 2634.105 is amended by:
a. Removing the word "or" at the end of paragraph (h)(5);
b. Removing the period at the end of paragraph (h)(6) and adding in its place a semicolon followed by the word "or"; and
c. Adding a new paragraph (h)(7).

The addition reads as follows:

§ 2634.105 Definitions.

* * * * *
(h) * * *

(7) Exclusions and exceptions as described at § 2634.304(c) and (d).

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§ 2634.201 [Amended]

3. Section 2634.201 is amended by adding the sentence "In addition, he must file a new entrant report the first time he serves more than 60 days in a calendar year in the position, in accordance with § 2634.201(b) and § 2634.204(c)(1)." at the end of Example 2 following paragraph (a).

§ 2634.304 [Amended]

4. Section 2634.304 is amended by removing Example 2 following paragraph (e), redesignating Example 1 as Example following paragraph (e), and adding the sentence "The value of food and beverages may be excludable under § 2634.105(h)(4), if applicable, by making a good faith estimate, or by determining their actual cost from the

caterer, restaurant, or similar source." at the end of the note after the newly redesignated Example following paragraph (e).

§ 2634.902 [Removed and Reserved]

5. Section 2634.902 is removed and reserved.

§ 2634.903 [Amended]

6. Section 2634.903 is amended by adding the new sentence "This requirement does not apply if the employee has left Government service prior to the due date for the report." following the first sentence of the text in paragraph (a).

§ 2634.904 [Amended]

7. Section 2634.904 is amended by adding the words "(as defined in § 2635.402(b)(4) of this chapter)" following the words "personally and substantially" in the introductory text of paragraph (a)(1).

§ 2634.907 [Amended]

8. Section 2634.907 is amended by adding the words "about himself, his spouse and his dependent children," following the word "information" in the introductory text of paragraph (a).

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RIN 3209-AA04

Standards of Ethical Conduct for Employees of the Executive Branch

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; amendments.

SUMMARY: The Office of Government Ethics is amending portions of the regulation governing standards of ethical conduct for executive branch employees which concern gifts from outside sources, to conform with interpretive advice and to improve clarity.

EFFECTIVE DATE: January 19, 1999.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Senior Associate General Counsel, Office of Government Ethics; telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037.

SUPPLEMENTARY INFORMATION: On August 4, 1998, the Office of Government Ethics (OGE) published proposed minor amendments to the standards of ethical conduct for executive branch employees (5 CFR part 2635), to codify interpretive advice and clarify intended meaning in

subpart B (Gifts From Outside Sources). See 63 FR 41476-41477. No comments to that proposed rulemaking were received. Therefore, OGE is herewith publishing the proposed amendments as a final rule, with no changes, effective January 19, 1999. A summary of the amendments follows.

Sections 2635.202 and 2635.203 of the standards of ethical conduct regulation, as promulgated for codification at 5 CFR part 2635 in 1992, implemented the general ban on soliciting or accepting gifts from certain prohibited sources and gifts given because of an employee's official position. The amendment to § 2635.203(e) in this current rulemaking clarifies the meaning of gifts given because of the employee's official position, by revising the text and adding a new Example 2. The existing definition had been applied too broadly by some, in OGE's view, to encompass gifts based on mere happenstance that the recipient is a Government employee. The amended text and new example clarify that gifts given because of official position only describe those gifts which are motivated by the status, authority, or duties associated with the employee's Federal position.

Section 2635.204 of the standards of ethical conduct regulation, as promulgated in 1992, established certain exceptions to the gift ban in § 2635.202. The introductory text of existing § 2635.204 notes that a gift accepted under one of the exceptions will not be deemed to violate the fourteen general principles of ethical behavior contained in § 2635.101(b) and Executive Order 12674. Some ethics officials and employees had misunderstood the primary intent of this statement, which is that appearance concerns will not preclude use of the gift exceptions or require an employee to reject a gift which otherwise falls within one of the exceptions. The amendment to this text in the current rulemaking highlights the appearance standard as the primary principle among the fourteen that will not be deemed to override acceptance of a gift under one of the exceptions. This will further the original intent of promoting consistency in application of the gift rules, while recognizing that appearance concerns are already built into the various exceptions. A cautionary statement remains in the introductory text of § 2635.204 as promulgated in 1992, to alert employees that it may sometimes be prudent not to accept gifts even though permitted, and § 2635.202(c)(3) continues to limit the over-frequent acceptance of gifts that might appear to use public office for private gain.

Section 2635.204(a) of the standards of ethical conduct regulation, as promulgated in 1992, provided an exception to the general gift ban, for gifts aggregating \$20 or less "per occasion." Some ethics officials and employees had been uncertain whether this meant that all gifts at a particular event must be aggregated, or only gifts from each source at that event. The amendment to the text of this section and new Example 5 clarify that the exception was intended to allow acceptance of gifts aggregating \$20 or less "per source per occasion." This would not, however, permit an employee to accept a gift worth more than \$20 toward which several sources at an event or occasion have each contributed \$20 or less, because a gift is not divisible for acceptance purposes unless it consists of distinct and separate items, as suggested in the remaining original text in § 2635.204(a).

Executive Order 12866

In promulgating these final rule amendments, 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 amendments have also been reviewed by the Office of Management and Budget under that Executive order.

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 agencies and their employees.

Paperwork Reduction Act

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

List of Subjects in 5 CFR Part 2635

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

Approved: October 26, 1998.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Office of Government Ethics is amending part 2635 of subchapter B of chapter XVI of title 5 of

the Code of Federal Regulations, as follows:

PART 2635—[AMENDED]

1. 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.

2. Section 2635.203 is amended by revising paragraph (e) and adding a new Example 2 after that paragraph to read as follows:

§ 2635.203 Definitions.

* * * * *

(e) A gift is solicited or accepted because of the employee's official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his Federal position.

* * * * *

Example 2: Employees at a regional office of the Department of Justice (DOJ) work in Government-leased space at a private office building, along with various private business tenants. A major fire in the building during normal office hours causes a traumatic experience for all occupants of the building in making their escape, and it is the subject of widespread news coverage. A corporate hotel chain, which does not meet the definition of a prohibited source for DOJ, seizes the moment and announces that it will give a free night's lodging to all building occupants and their families, as a public goodwill gesture. Employees of DOJ may accept, as this gift is not being given because of their Government positions. The donor's motivation for offering this gift is unrelated to the DOJ employees' status, authority or duties associated with their Federal position, but instead is based on their mere presence in the building as occupants at the time of the fire.

* * * * *

3. The undesignated introductory text of § 2635.204 is amended by revising the first sentence to read as follows:

§ 2635.204 Exceptions.

The prohibitions set forth in § 2635.202(a) do not apply to a gift accepted under the circumstances described in paragraphs (a) through (l) of this section, and an employee's acceptance of a gift in accordance with one of those paragraphs will be deemed not to violate the principles set forth in § 2635.101(b), including appearances.

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4. Paragraph (a) of § 2635.204 is amended by adding the words "per source" before the words "per occasion"

in the first sentence, and by adding a new Example 5 after paragraph (a) to read as follows:

§ 2635.204 Exceptions.

* * * * *
 (a) * * *
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Example 5: During off-duty time, an employee of the Department of Defense (DOD) attends a trade show involving companies that are DOD contractors. He is offered a \$15 computer program disk at X Company's booth, a \$12 appointments calendar at Y Company's booth, and a deli lunch worth \$8 from Z Company. The employee may accept all three of these items because they do not exceed \$20 per source, even though they total more than \$20 at this single occasion.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV99-984-1 FR]

Walnuts Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Walnut Marketing Board (Board) under Marketing Order No. 984 for the 1998-99 and subsequent marketing years from \$0.0116 to \$0.0133 per kernelweight pound of certified merchantable walnuts. The Board is responsible for local administration of the marketing order which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year began on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: December 19, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, or Mary Kate Nelson, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901; Fax: (559) 487-5906; or

George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 205-6632, or E-mail: Jay_N_Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on August 1, 1998, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the

district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Board for the 1998-99 and subsequent marketing years from \$0.0116 to \$0.0133 per kernelweight pound of certified merchantable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997-98 and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on September 11, 1998, and unanimously recommended 1998-99 expenditures of \$2,620,274 and an assessment rate of \$0.0133 per kernelweight pound of certified merchantable walnuts. In comparison, last year's budgeted expenditures were \$2,391,289. The assessment rate of \$0.0133 is \$0.0017 higher than the rate currently in effect. The quantity of assessable walnuts for 1998-99 is estimated at 198,000,000 kernelweight pounds, which is 9,000,000 kernelweight pounds less than 1997-98. With the anticipated decrease in assessable walnuts and increased budget expenditures, a higher assessment rate is needed to generate sufficient revenue to administer the program for the 1998-99 marketing year as shown in the following table.