

Proposed Rules

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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 Certificates of Divestiture Regulation

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule amendments.

SUMMARY: The Office of Government Ethics is proposing a plain language revision of its regulation concerning Certificates of Divestiture. The proposed rule also would revise certain procedures for issuing Certificates of Divestiture and the definition of permitted property into which proceeds of the sale of property are reinvested.

DATES: Comments are invited and must be received in writing on or before March 15, 2004.

ADDRESSES: Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917. Attention: Deborah J. Bortot. Comments also may 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: "Comments on proposed revisions to the Certificates of Divestiture regulation."

FOR FURTHER INFORMATION CONTACT: Deborah J. Bortot, Office of Government Ethics; Telephone: 202-482-9300; TDD: 202-482-9293; FAX: 202-482-9237.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1043 of the Internal Revenue Code of 1986, 26 U.S.C. 1043, was enacted as part of the Ethics Reform Act of 1989 (Pub. L. 101-194). Section 1043 authorizes OGE to issue a Certificate of Divestiture to an eligible person who is divesting property in order to comply with a Federal conflict of interest law, regulation, rule, or Executive order, or if requested by a congressional committee as a condition of confirmation. A person

who receives a Certificate of Divestiture may defer payment of capital gains tax as long as he or she timely purchases certain permitted property with the proceeds of the sale. OGE published an interim rule on April 18, 1990 (at 55 FR 14407-14409) implementing section 1043. On June 25, 1996, the Office of Government Ethics published a final rule at 61 FR 32633-32636. The final rule was based on comments to the interim rule and on OGE's experience under the interim rule and the May 1990 Technical Corrections to the Ethics Reform Act of 1989 (Pub. L. 101-280), which amended section 1043 of the Internal Revenue Code of 1986. The Certificates of Divestiture regulation is now codified at subpart J of 5 CFR part 2634. After reevaluating the regulation to see whether changes might be needed, OGE has decided to publish these proposed revisions to make certain improvements.

II. Discussion of Proposed Changes

We are proposing to improve the current Certificates of Divestiture regulation by: Organizing the material more logically; using shorter sentences; eliminating unnecessary technical language; and stating the rule's requirements more clearly. We invite your comments as to whether this proposed rule would be easier to understand and how we could further improve its clarity. The following discussion summarizes the most important changes that OGE is proposing.

To add more harmony and uniformity to ethics program rules, OGE is proposing a change to the meaning of "diversified investment fund." In order to qualify for deferral of capital gains, an eligible person must reinvest proceeds from the sale of property pursuant to a Certificate of Divestiture into "permitted property" during the 60-day period beginning on the date of such sale. "Permitted property" must consist only of obligations of the United States or "diversified investment funds." Subpart J defines what constitutes a "diversified investment fund" for this purpose.

Proposed § 2634.1002 would change the meaning of a "diversified investment fund," in paragraph (2) of the definition of permitted property, to track the definition of "diversified mutual fund" and "diversified unit investment trust" as those terms are

used in 5 CFR 2640.102. However, similar to current § 2634.1003(a), proposed § 2634.1002 would continue to explain that ethics program requirements applicable to specific agencies and positions might, in some cases, limit the choices of "permitted property," including the specific "diversified investment fund" in which an employee may reinvest.

Several changes are proposed that would streamline the procedures OGE uses to issue a Certificate of Divestiture. Unlike the current regulation, the proposed rule would permit an employee to submit a written request for a Certificate of Divestiture on behalf of another eligible person such as a spouse or minor child. Under proposed § 2634.1004(a)(3), the employee would have to state in the request that the eligible person holding the property required to be divested has agreed to divest the property.

Proposed § 2634.1004(b)(1) would clarify the information related to financial disclosure that OGE needs to receive as part of the Certificate of Divestiture request in the case of a Government employee who is not required to file a financial disclosure report. Whereas current § 2634.1002(b)(1)(ii)(B) refers generally to information required to be disclosed on a financial disclosure report, a parallel provision in proposed § 2634.1004(b)(1) would require an employee who does not file a financial disclosure report to submit a listing of the employee's interests that would be required to be disclosed on a confidential financial disclosure report excluding gifts and travel reimbursements. Further, while the current regulation is silent as to the timing and length of the period for reporting this information, the proposed rule would clarify that the reporting period is the preceding twelve months from the date the requirement to divest first applied or the date the employee first agreed that the property would be divested. In the case of an employee who is required to file a financial disclosure report, the proposed rule would continue to require that OGE receive a copy of the latest report filed by the employee. The submission of information related to financial disclosure ensures that OGE can determine whether the employee has

