

determining whether acceptance is appropriate.

4. Proposed § 2601.204 would set forth the conditions for acceptance of gifts.

Proposed § 2601.204(a)(1) would restate the language of the Act that provides that no gift may be accepted that attaches conditions inconsistent with applicable laws or regulations. This prohibition would not bar acceptance of a gift that was donated for a specific purpose as, for example, to support OGE training. Nor would the fact that a donor expressed some nonbinding preference as to how the donor wished a gift be used preclude acceptance.

Proposed § 2601.204(a)(2) would restate the language of the Act that provides that no gift may be accepted that is conditioned upon or will require the expenditure of appropriated funds that are not available to OGE.

Proposed § 2601.204(a)(3) would bar acceptance of a gift that is given in exchange or return for some privilege, concession or other present or future benefit. Such an exchange could imply that the gift would compromise the integrity of the agency's programs.

Proposed § 2601.204(a)(4) would bar acceptance of a gift that would require OGE to adhere to particular requirements as to deposit, investment, or management of funds donated.

Proposed § 2601.204(a)(5) would bar acceptance of a gift that would require OGE to undertake activities that are not related to the agency's mission, programs or statutory authority.

Proposed § 2601.204(a)(6) would bar acceptance of a gift that would reflect unfavorably upon the ability of the agency, or any of its employees, to carry out its responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

#### *C. Accounting Requirements*

Proposed § 2601.301 would set forth guidance for the accounting of gifts. Accounting requirements may help ensure that OGE's gift acceptance authority is used in a way that does not reflect unfavorably on OGE or its employees.

Proposed § 2601.301(a) would provide for the regular accounting of gifts received. Money gifts must be accounted for under the same standards as are applicable to appropriated funds.

Proposed § 2601.301(b) would require OGE to maintain an inventory of donated personal property valued at over \$500.

Proposed § 2601.301(c) would require OGE to maintain a log of accepted gifts valued at over \$500.

The proposed rule does not expressly provide for any type of regular audit of gift funds. Some agencies provide for audits at such intervals as the Comptroller General, in his discretion, deems to be appropriate. Given the size of OGE and the expected relatively low volume of gifts, it is not believed that it is necessary to provide for any regular audit. Such audits could, however, be done as appropriate.

#### **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 August 4, 2003. The Office of Government Ethics will review all comments received and consider any modifications to this proposal which appear warranted in issuing its final rule.

##### *Paperwork Reduction Act*

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation 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 proposed rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will, before the future final rule takes effect, submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law.

##### *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 regulation will not have a significant economic impact on a substantial number of small entities because it primarily affects OGE itself and OGE employees.

##### *Unfunded Mandates Reform Act*

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), the proposed rule would not significantly or uniquely affect small governments and would 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.

#### *Executive Order 12866*

In issuing this proposed regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation as set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This proposed rule has not been reviewed by the Office of Management and Budget under that Executive order since it is not a significant regulatory action within the meaning of the Executive order.

#### *Executive Order 12988*

As Director of the Office of Government Ethics, I have reviewed this proposed 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 in 5 CFR Part 2601**

Conflict of interests, Government employees, Government property.

Approved: April 28, 2003.

**Amy L. Comstock,**

*Director, Office of Government Ethics.*

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to add a new part 2601 to 5 CFR to read as follows:

#### **PART 2601—IMPLEMENTATION OF OFFICE OF GOVERNMENT ETHICS STATUTORY GIFT ACCEPTANCE AUTHORITY**

##### **Subpart A—General Provisions**

Sec.

- 2601.101 Authority.
- 2601.102 Purpose.
- 2601.103 Policy.
- 2601.104 Relationship to other authorities.
- 2601.105 Definitions.

##### **Subpart B—Guidelines for Solicitation and Acceptance of Gifts**

- 2601.201 Delegation.
- 2601.202 Procedure.
- 2601.203 Conflict of interest analysis.
- 2601.204 Conditions for acceptance.

##### **Subpart C—Accounting Requirements**

- 2601.301 Accounting of gifts.

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

##### **Subpart A—General Provisions**

###### **§ 2601.101 Authority.**

Section 2 of the Office of Government Ethics Authorization Act of 1996, amending the Ethics in Government Act of 1978, as codified at 5 U.S.C. app. § 403(b), authorizes the Office of Government Ethics (OGE) to accept and utilize gifts for the purpose of aiding or facilitating the work of OGE.