

# 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 2640

RIN 3209-AA09

#### Proposed Exemption Amendments Under 18 U.S.C. 208(b)(2) for Financial Interests in Sector Mutual Funds, De Minimis Securities, and Securities of Affected Nonparty Entities in Litigation

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Proposed rule amendments.

**SUMMARY:** The Office of Government Ethics is proposing to amend the regulation that describes financial interests that are exempt from the prohibition in 18 U.S.C. 208(a) by revising some existing exemptions as well as adding new exemptions. Section 208(a) generally prohibits employees of the executive branch from participating in an official capacity in particular matters in which they or certain others specified in the statute have a financial interest. Section 208(b)(2) of title 18 permits the Office of Government Ethics to promulgate regulations describing financial interests that are too remote or inconsequential to warrant disqualification pursuant to section 208(a). This proposed regulation would raise the de minimis exemption for matters affecting interests in securities to \$15,000 and would identify additional financial interests that would be exempt from the prohibition in section 208(a), including, in limited circumstances, the holdings of sector mutual funds, and securities issued by a nonparty affected by a matter in litigation.

**DATES:** Comments are invited and must be received on or before December 5, 2000.

**ADDRESSES:** Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917. Attention: Judy H. Mann.

**FOR FURTHER INFORMATION CONTACT:** Judy H. Mann, Attorney-Advisor, or Richard

M. Thomas, Associate General Counsel, Office of Government Ethics; telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037; Internet E-mail address: *usoge@oge.gov* (for E-mail messages, the subject line should include the following reference—Proposed Exemptions for Certain Financial Interests Prohibited in 18 U.S.C. 208(a)).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On December 18, 1996, the Office of Government Ethics published a final rule at 61 FR 66830-66851, Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest), which as corrected and amended is now codified at 5 CFR part 2640. The final rule describes a variety of financial interests that OGE has determined are either too remote or too inconsequential to affect an employee's consideration of any particular matter. Employees who have these financial interests are permitted, to the extent described in the final regulation, to participate in matters affecting such interests notwithstanding the general prohibition in section 208(a). The Office of Government Ethics published the final rule after careful consideration of the comments made to the proposed and interim rules, published on September 11, 1995 and August 28, 1995 (at 60 FR 47208-47233 and 60 FR 44706-44709), respectively, concerning the circumstances under which the prohibitions contained in 18 U.S.C. 208(a) would be waived. After reevaluating the final rule to see whether changes to the rule might be needed, OGE has decided to publish this proposed rule that would amend the final rule. (OGE also recently, at 65 FR 16511-16513 (March 29, 2000), published a separate interim rule amendment issuing a new exemption for certain financial interests of non-Federal employers in the decennial census.) This proposed rule is being published after obtaining the concurrence of the Department of Justice pursuant to section 201(c) of Executive Order 12674, as modified by E.O. 12731. Also, as provided in section 402 of the Ethics in Government Act of 1978, as amended, 5 U.S.C. appendix, section 402, OGE has consulted with both the Department of Justice (as

additionally required under 18 U.S.C. 208(d)(2)) and the Office of Personnel Management on this proposed rule.

##### II. Analysis of the Proposed Changes

This proposed regulation would revise the existing regulation as well as establish additional exemptions from the prohibition in section 208(a), permitting employees to participate in certain matters in which they would otherwise have a disqualifying financial interest. The revisions would permit an employee to act in a particular matter where the disqualifying financial interest arises from ownership of no more than \$50,000 in one or more mutual funds invested in the same sector. The regulation would also raise the de minimis exemption for financial interests in securities from its current level of \$5,000 to \$15,000. It would create another new exemption for interests of up to \$25,000 in securities issued by entities affected by a matter in litigation, where those entities are not parties to the litigation. To illustrate these new and revised exemptions, several examples would be changed.

##### A. Sector Mutual Funds

Under proposed § 2640.201(b)(1)(i), an employee would be free to act in a matter affecting the holdings of one or more mutual funds invested in the same sector in which the employee, his spouse or minor child has an interest, where the holdings are invested in the sector in which the fund concentrates, provided that the aggregate value of the family's holdings in all affected funds in the same sector does not exceed \$50,000. A sector mutual fund is one that concentrates its investments in an industry, business, single country other than the United States, or bonds of a single State within the United States.

The current rule contains one exemption for diversified mutual funds at 5 CFR 2640.201(a) and another for interests in a sector mutual fund where the affected holding is not in the sector in which the fund concentrates. See § 2640.201(b). In addition, because the current rule at 5 CFR 2640.102(r) defines the term "security" to include mutual fund, the current de minimis exemptions at 5 CFR 2640.202 apply to interests in sector mutual funds. Since publication of the rule, however, agencies have identified a need for an additional exemption which allows an employee to participate in a particular

matter affecting the holdings of a sector mutual fund where the holdings are invested in the sector in which the fund concentrates.

The Office of Government Ethics has received input from agencies in various forms and contexts, including responses to a survey specifically designed to elicit agency feedback concerning the effectiveness of the existing rule and the need for any modifications. The subject of sector funds has been one of the most commonly raised issues in connection with the exemptions in part 2640. A number of agencies have suggested either that sector funds should be exempted without limitation, as are diversified funds, or that at least they be treated as being less problematic than direct ownership of the securities of a particular company. Some agencies also have noted certain practical difficulties in determining whether a given fund is actually a sector fund or a diversified fund and have argued that such difficulties counsel treating sector funds the same way as diversified funds for purposes of the exemptions.

Although OGE agrees that sector funds warrant an additional, limited exemption, OGE is not persuaded that an unlimited exemption would be justified. Employees whose duties affect companies in a given sector can have an appreciable conflict of interest if they invest heavily in mutual funds that specialize in that very sector. For example, an employee could participate in an important rulemaking proceeding that affects many or all members of a given industry, thus affecting not only certain underlying holdings of a sector fund, but even the overall economic outlook for the sector in which the fund specializes. Interests in sector funds, therefore, pose different and more significant conflict of interest concerns than interests in diversified mutual funds.

Moreover, OGE does not believe that any practical difficulty some agencies may have encountered in distinguishing between sector and diversified funds justifies a complete abandonment of any effort to treat the two differently. The current rule states the test for distinguishing diversified and sector funds as follows: "A mutual fund is diversified [*i.e.*, not a sector fund] for purposes of this part if it does not have a policy of concentrating its investments in an industry, business, country other than the United States, or single State within the United States. Whether a mutual fund meets this standard may be determined by checking the fund's prospectus or by calling a broker or the manager of the fund." 5 CFR 2640.102(a) (Note). As a practical

matter, OGE's experience is that the name of a given fund very often is a good indicator of whether there is any serious question as to the diversification of the fund; for example, "ABC Select Utilities Fund" would suggest that the fund should be viewed as a sector fund, unless the prospectus indicates otherwise, whereas "ABC Large Cap Equity Fund" almost certainly would indicate a diversified fund. Any remaining doubts usually can be resolved by recourse to the fund prospectus, which is often readily available to employees and agency ethics officials through various means, including the Internet.

The Office of Government Ethics does recognize that employees and agency ethics officials sometimes may have questions about whether a fund really concentrates on a given industry, business, etc. Such questions may arise, for example, where the prospectus suggests that the fund may focus on multiple industries, such as a generic "Science and Technology Fund." To date, OGE and agency ethics officials have been able to resolve such questions on a case-by-case basis, usually by examining the degree of relatedness and overlapping interests and operations among the types of companies in which the fund specializes. OGE is not resigned to treating all sector funds the same way as diversified funds because of occasional difficulties in drawing the line between arguably discrete industries. OGE does, however, welcome continuing dialogue with agency ethics officials concerning any practical problems encountered in this area and will provide guidance in the future through oral advice, advisory letters and memoranda, as appropriate.

The proposed rule would now provide one single \$50,000 de minimis exemption for interests in sector mutual funds, except for purposes of 5 CFR 2640.202(d) and (e) (which describe exemptions for interests of tax-exempt organizations and an employee's general partner) and § 2640.203(a) (which describes the exemption for interests in hiring decisions). The definition of "security" at § 2640.102(r) would be revised to include mutual funds only for purposes of these paragraphs. The Office of Government Ethics believes that when an employee participates in a particular matter affecting a holding or holdings in one or more mutual funds invested in the same sector, where the value of the ownership interests in the sector funds does not exceed \$50,000, the interest of the employee can be considered remote and inconsequential. The exemption currently codified at § 2640.201(b), allowing an employee to

participate in any particular matter affecting one or more holdings of a sector mutual fund where the affected holding is not invested in the sector in which the fund concentrates, would be retained under the revised rule at § 2640.201(b)(1)(ii). The proposed rule at § 2640.201(b)(2) would clarify that for purposes of calculating the \$50,000 de minimis amount in § 2640.201(b)(1)(i), an employee must aggregate the market value of all affected funds in the same sector, in which he, his spouse, or minor children have an interest. Generally, the determination of whether two or more different funds concentrate on the same industry, business, etc., would be made by considering the degree of relatedness and overlapping interests and operations among the types of companies in which the funds specialize, as illustrated in new Example 3 following § 2640.201(b) as proposed for revision.

Example 2 after § 2640.201(a) would be revised to reflect the addition of the exemption involving certain interests of up to \$50,000 in sector mutual funds in proposed § 2640.201(b)(1)(i) and the revised definition of "security" under § 2640.102(r). In addition, two new examples would be added after § 2640.201(b)(2) to illustrate the proposed exemption under § 2640.201(b)(1)(i). Finally, Example 2 after § 2640.202(b) would be deleted, as the revised definition of "security" in proposed § 2640.102(r) makes the example inapplicable.

#### *B. De Minimis Exemption For Matters Involving Parties*

Under the existing rule at 5 CFR 2640.202(a), an employee may participate in a particular matter in which the disqualifying financial interest arises from the employee's ownership of securities issued by an entity affected by the matter if the securities are publicly traded, long-term Federal Government, or municipal securities, and the aggregate market value of the employee's interest in the securities of all entities affected by the matter does not exceed \$5,000. The proposed rule, at 5 CFR 2634.202(a)(2), would raise the de minimis amount from \$5,000 to \$15,000.

When OGE published 5 CFR part 2640 in December of 1996, we determined that an interest in securities valued at \$5,000 could be considered remote or inconsequential. For several reasons, OGE now believes it would be practical to raise the de minimis amount to \$15,000. Since the publication of the final rule, stock prices have risen considerably. Additionally, because the exemption applies to interests in

securities of publicly traded companies listed on the major exchanges, the potential for large gains or losses resulting from an employee's actions remains small. Raising the de minimis amount would also assist ethics officials in their counseling of employees who file the public financial disclosure form (SF 278) because the \$15,000 amount would correspond to a reporting category on the SF 278. Both Schedules A and B of the SF 278 require filers to value assets held in various categories of value. One such category is \$1,001–\$15,000. Finally, many agencies have voiced support for an increase in the de minimis amount.

Examples 2 and 3 after § 2640.202(a)(2) would be revised to reflect the raise in the de minimis amount from \$5,000 to \$15,000 under proposed § 2640.202(a)(2). In addition, two other examples in the regulation contain a reference to the de minimis amount in § 2640.202(a)(2) and would also be revised to reflect the increased de minimis amount under proposed § 2640.202(a)(2). These examples are Example 1 after § 2640.103(a)(2) and Example 1 after § 2640.204.

### C. Litigation

Under proposed § 2640.203(m), an employee would be able, in certain circumstances, to participate in a matter in litigation involving specific parties in which the disqualifying financial interest arises from ownership by the employee, his spouse, or minor children of securities issued by one or more entities that are not parties to the litigation but are nonetheless affected by the litigation. The exemption would apply only if the aggregate value of the interest of the employee, his spouse and minor children in the securities of all affected entities (including securities exempted under § 2640.202(a)) does not exceed \$25,000.

When OGE issued proposed 5 CFR part 2640 on September 11, 1995, it included a proposed additional exemption for employee participation in a particular matter in which the employee has an interest in securities issued by entities which are not parties to the matter but are affected by the matter, if the aggregate value of the interest of the employee, his spouse and minor children did not exceed \$25,000. The Office of Government Ethics deleted the proposed exemption from the final rule published in December 1996, in response to comments received concerning the complexity of the regulation. OGE believed that eliminating the nonparty exemption would alleviate concerns that employees would have difficulty

knowing when the exemption would apply and that agencies would have problems determining when an entity would become a party to a particular matter. After publication of the final rule, some agencies continued to express concern about the need for a de minimis exemption covering participation in litigation matters when the issuer is not a party to the litigation.

After reconsideration of this issue, OGE proposes to amend the rule to include the nonparty exemption specifically for litigation matters. Because of other agencies' concerns about complexity, however, the proposed rule will limit the application of the exemption to particular matters involving litigation.

The Office of Government Ethics believes that if the value of the ownership interest in securities of nonparties affected by the matter does not exceed \$25,000, the interest is too remote and inconsequential to affect the integrity of the employee's Government service. In OGE's view, where a particular matter in litigation would also affect the interests of a nonparty, the nonparty's interest in the matter is likely to be less significant than that of a party and is also less likely to be affected directly.

Current Example 2 after § 2640.203(f), relating to interests in mutual insurance companies, would be revised to indicate that the \$25,000 exemption in proposed § 2640.203(m) for matters in litigation may apply in the factual situation described in the example.

### III. 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 December 5, 2000. The Office of Government Ethics will review all comments received and consider any modifications to this rule as proposed which appear warranted before adopting the final rule on this matter.

#### **Executive Order 12866**

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

#### *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 proposed amendatory rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

#### *Paperwork Reduction Act*

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

#### **List of Subjects in 5 CFR Part 2640**

Conflict of interests, Government employees.

Approved: June 29, 2000.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend 5 CFR part 2640 as follows:

#### **PART 2640—INTERPRETATION, EXEMPTIONS AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)**

1. The authority citation for part 2640 continues to read as follows:

**Authority:** 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; 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 A—General Provisions**

2. Section 2640.102 is amended by revising paragraph (r) to read as follows:

#### **§ 2640.102 Definitions.**

\* \* \* \* \*

(r) *Security* means common stock, preferred stock, corporate bond, municipal security, long-term Federal Government security, and limited partnership interest. The term also includes "mutual fund" for purposes of §§ 2640.202(d) and (e) and 2640.203(a).

\* \* \* \* \*

3. Section 2640.103 is amended by revising Example 1 following paragraph (a)(2) to read as follows:

§ 2640.103 Prohibition.

- (a) \* \* \*
(2) \* \* \*

Example 1 to paragraph (a)(2): An agency's Office of Enforcement is investigating the allegedly fraudulent marketing practices of a major corporation. One of the agency's personnel specialists is asked to provide information to the Office of Enforcement about the agency's personnel ceiling so that the Office can determine whether new employees can be hired to work on the investigation. The employee personnel specialist owns \$20,000 worth of stock in the corporation that is the target of the investigation. She does not have a disqualifying financial interest in the matter (the investigation and possible subsequent enforcement proceedings) because her involvement is on a peripheral personnel issue and her participation cannot be considered "substantial" as defined in the statute.

\* \* \* \* \*

Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

- 4. Section 2640.201 is amended by:
a. Revising the heading of Example 1 and revising Example 2 following paragraph (a);
b. Revising paragraph (b); and
c. Revising the heading of Example 1 and adding new Examples 2 and 3 following new paragraph (b)(2)(ii).

The revisions and additions read as follows:

§ 2640.201 Exemptions for interests in mutual funds, unit investment trusts, and employee benefit plans.

- (a) \* \* \*

Example 1 to paragraph (a): \* \* \*

Example 2 to paragraph (a): A

nonsupervisory employee of the Department of Energy owns shares valued at \$75,000 in a mutual fund that expressly concentrates its holdings in the stock of utility companies. The employee may not rely on the exemption in paragraph (a) of this section to act in matters affecting a utility company whose stock is part of the mutual fund's portfolio because the fund is not a diversified fund as defined in § 2640.102(a). The employee may, however, seek an individual waiver under 18 U.S.C. 208(b)(1) permitting him to act.

(b) Sector mutual funds. (1) An employee may participate in a particular matter affecting one or more holdings of a sector mutual fund where the disqualifying financial interest arises from the ownership by the employee, his spouse or minor children of an interest in the fund and:

- (i) The aggregate market value of their interests in any fund or funds does not exceed \$50,000; or
(ii) The affected holding is not invested in the sector in which the fund concentrates.

(2) For purposes of calculating the \$50,000 de minimis amount in

paragraph (b)(1)(i) of this section, an employee must aggregate the market value of all sector mutual funds in which he, his spouse or minor children have an interest, which:

- (i) Concentrate their investments in the same industry, business, single country other than the United States, or bonds of a single State within the United States; and

- (ii) Have one or more holdings that may be affected by the particular matter.

Example 1 to paragraph (b): \* \* \*

Example 2 to paragraph (b): A health scientist administrator employed in the Public Health Service at the Department of Health and Human Services is assigned to serve on a Departmentwide task force that will recommend changes in how Medicare reimbursements will be made to health care providers. The employee owns \$35,000 worth of shares in the XYZ Health Sciences Fund, a sector mutual fund invested primarily in health-related companies such as pharmaceuticals, developers of medical instruments and devices, managed care health organizations, and acute care hospitals. The health scientist administrator may participate in the recommendations.

Example 3 to paragraph (b): The spouse of the employee in the previous Example owns \$40,000 worth of shares in ABC Specialized Portfolios: Healthcare, a sector mutual fund that also concentrates its investments in health-related companies. The two funds focus on the same sector and both contain holdings that may be affected by the particular matter. Because the aggregated value of the two funds exceeds \$50,000, the employee may not rely on the exemption.

\* \* \* \* \*

5. Section 2640.202 is amended by:

- a. Revising paragraph (a)(2);
b. Revising the heading of Example 1 and revising Examples 2 and 3 following paragraph (a)(2); and
c. Revising the heading of Example 1 and removing Example 2 following paragraph (b)(2).

The revisions read as follows:

§ 2640.202 Exemptions for interests in securities.

- (a) \* \* \*

(2) The aggregate market value of the holdings of the employee, his spouse, and his minor children in the securities of all entities does not exceed \$15,000.

Example 1 to paragraph (a): \* \* \*

Example 2 to paragraph (a): In the preceding example, the employee and his spouse each own 100 shares of stock in XYZ Corporation, resulting in ownership of \$16,000 worth of stock by the employee and his spouse. The exemption in paragraph (a) of this section would not permit the employee to participate in the evaluation of bids because the aggregate market value of the holdings of the employee, spouse and minor children in XYZ Corporation

exceeds \$15,000. The employee could, however, seek an individual waiver under 18 U.S.C. 208(b)(1) in order to participate in the evaluation of bids.

Example 3 to paragraph (a): An employee is assigned to monitor XYZ Corporation's performance of a contract to provide computer maintenance services at the employee's agency. At the time the employee is first assigned these duties, he owns publicly traded stock in XYZ Corporation valued at less than \$15,000. During the time the contract is being performed, however, the value of the employee's stock increases to \$17,500. When the employee knows that the value of his stock exceeds \$15,000, he must disqualify himself from any further participation in matters affecting XYZ Corporation or seek an individual waiver under 18 U.S.C. 208(b)(1). Alternatively, the employee may divest the portion of his XYZ stock that exceeds \$15,000. This can be accomplished through a standing order with his broker to sell when the value of the stock exceeds \$15,000.

- (b) \* \* \*

Example 1 to paragraph (b): \* \* \*

\* \* \* \* \*

6. Section 2640.203 is amended by:

- a. Revising the heading of Example 1 and revising Example 2 following paragraph (f); and

- b. Adding a new paragraph (m).

The revisions and addition read as follows:

§ 2640.203 Miscellaneous exemptions.

\* \* \* \* \*

- (f) \* \* \*

Example 1 to paragraph (f): \* \* \*

Example 2 to paragraph (f): An employee of the Department of Justice is assigned to prosecute a case involving the fraudulent practices of an issuer of junk bonds. While developing the facts pertinent to the case, the employee learns that the mutual life insurance company from which he holds a life insurance policy has invested heavily in these junk bonds. If the Government succeeds in its case, the bonds will be worthless and the corresponding decline in the insurance company's investments will impair the company's ability to pay claims under the policies it has issued. The employee may not continue assisting in the prosecution of the case unless another exemption applies or he obtains an individual waiver pursuant to section 208(b)(1).

\* \* \* \* \*

(m) Litigation. An employee may participate in a matter in litigation involving specific parties in which the disqualifying financial interest arises from ownership by the employee, his spouse, or minor children of securities

issued by one or more entities that are not parties to the litigation but are affected by the litigation, if:

(1) The securities are publicly traded or are municipal securities; and

(2) The aggregate market value of the holdings of the employee, his spouse, and his minor children in the securities of all affected entities (including securities exempted under § 2640.202(a)) does not exceed \$25,000.

7. Section 2640.204 is amended by revising Example 1 which follows the section to read as follows:

**§ 2640.204 Prohibited financial interests.**

\* \* \* \* \*

*Example 1 to § 2640.204:* The Office of the Comptroller of the Currency (OCC), in a regulation that supplements part 2635 of this chapter, prohibits certain employees from owning stock in commercial banks. If an OCC employee purchases stock valued at \$2,000 in contravention of the regulation, the exemption at § 2640.202(a) for interests arising from the ownership of no more than \$15,000 worth of publicly traded stock will not apply to the employee's participation in matters affecting the bank.

[FR Doc. 00-22750 Filed 9-5-00; 8:45 am]

BILLING CODE 6345-01-P

## FEDERAL TRADE COMMISSION

### 16 CFR Part 436

#### Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

**AGENCY:** Federal Trade Commission.

**ACTION:** Invitation to Comment on Requested Exemption from Trade Regulation Rule.

**SUMMARY:** The Commission is requesting public comment with respect to a request from Daewoo Motor America, Inc., for an exemption from the requirements of the Franchise Rule.

**DATES:** Written comments with be accepted until November 6, 2000.

**ADDRESSES:** Comments may be filed in person or mailed to: Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Requests for copies of the petition and the Franchise Rule should be directed to the Public Reference Branch, Room 130, (202) 326-2222.

**FOR FURTHER INFORMATION CONTACT:** Steven Toporoff, Attorney, Room 238, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580, (202) 326-3135.

**SUPPLEMENTARY INFORMATION:** On December 21, 1978, the Federal Trade Commission promulgated a trade

regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" ("the Rule"). 16 CFR Part 436. In general, the Rule provides for pre-sale disclosure to prospective franchisees of important information about the franchisor, the franchise business, and the terms of the proposed franchise relationship. A summary of the Rule is available from the FTC Public Reference Branch, upon request.

Section 18(g) of the Federal Trade Commission Act provides that any person or class of persons covered by a trade regulation rule may petition the Commission for an exemption from such rule, and if the Commission finds that the application of such rule to any person or class or persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates, the Commission may exempt such person or class from all or any part of the rule.

Daewoo Motor America, Inc. ("DMA" or "Petitioner") has filed a petition for an exemption from the Franchise Rule pursuant to Section 18(g) of the Federal Trade Commission Act, 15 U.S.C. 57a(g). DMA's petition asserts that an exemption should be granted because DMA dealers are sophisticated business persons with experience in the industry, and the information-exchange and negotiation process leading to execution of a dealership agreement takes place over a period of several months, ensuring adequate time for review. Petitioner also explains that prospective

Daewoo dealer[s] are highly unlikely to enter into any dealer agreement without a full disclosure of all material information needed for them to fully understand its terms. DMA will not resist supplying such information because its ability to succeed in the domestic market will ultimately depend on its dealers successfully selling Daewoo products according to the terms set forth in the Dealer Agreement.

Pet. at 10. Petitioner asserts that the experience and sophistication of prospective dealers and the company's selection process leading to the execution of dealership agreements make the abuses identified by the Commission as the basis for the Franchise Rule unlikely and render application of the Rule to DMA unnecessary and burdensome.

For a complete presentation of the arguments submitted by Petitioner, please refer to the full text of the petition, which may be obtained from the FTC Public Reference Branch, on request.

In assessing the present exemption request, the Commission solicits

comments on all relevant issues germane to the proceeding, including the following: (1) Is there evidence indicating that Petitioner may engage in unfair or deceptive acts or practices in the offer and sale of automobile franchises? (2) Are there other reasons that might militate against granting Petitioner an exemption from the Franchise Rule?

The Commission has considered the arguments made by Petitioner and concludes that further inquiry is warranted before a decision regarding the petition may be made. The Commission, therefore, seeks comment on the exemption requested by Petitioner.

All interested parties are hereby notified that they may submit written data, views, or arguments on any issues of fact, law, or policy that may have some bearing on the requested exemption, whether or not such issues have been raised by the petition or in this notice. Such submissions may be made for sixty days to the Secretary of the Commission.

Comments should be identified as "Daewoo Franchise Rule Exemption Comment," and three copies should be submitted.

#### List of Subjects in 16 CFR Part 436

Franchising, Trade Practices.

**Authority:** 15 U.S.C. 41-58.

By direction of the Commission.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 00-22824 Filed 9-5-00; 8:45 am]

BILLING CODE 6750-01-P

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 30

#### Foreign Futures and Options Transactions

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed Rule; Interpretative Statement.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to clarify its interpretation of the foreign futures or foreign options secured amount requirement set forth in Commission Rule 30.7 ("secured amount requirement").<sup>1</sup> The Commission previously interpreted Rule 30.7 to require futures commission merchants

<sup>1</sup> Commission rules referred to herein are found at 17 CFR Ch. I (2000).