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**GENERAL SERVICES ADMINISTRATION**

**41 CFR Part 300-3**

[FTR Case 2014-301; Docket No. 2014-0012, Sequence 1]

**RIN 3090-AJ44**

**Federal Travel Regulation (FTR); Terms and Definitions for "Marriage," "Spouse," and "Domestic Partnership"**

**AGENCY:** Office of Government-wide Policy, General Services Administration (GSA).

**ACTION:** Proposed rule.

**SUMMARY:** The General Services Administration (GSA) is proposing to amend the Federal Travel Regulation (FTR) by adding terms and definitions for "Marriage" and "Spouse," and by proposing to revise the definition of "Domestic Partnership".

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat at one of the address shown below on or before **[Insert 60 days after publication in the FEDERAL REGISTER]** to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by FTR Case 2014-301 by any of the following methods:

- Federal eRulemaking Portals:

<http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FTR Case 2014-301". Select the link "Comment Now" that corresponds with

"FTR Case 2014-301" and follow the instructions provided at the screen. Please include your name, company name (if any), and "FTR Case 2014-301" on your attached document.

- Fax: 202-208-1398.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Attn: Hada Flowers, Washington, DC 20405-0001.

Instructions: Please submit comments only and cite FTR case 2014-301 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Rick Miller, Office of Government-wide Policy, Travel and Relocation Policy Division at (202) 501-3822 or email at [rodney.miller@gsa.gov](mailto:rodney.miller@gsa.gov). Contact the U.S. General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405-0001, (202) 501-4755, for information pertaining to status or publication schedules. Please cite FTR Case 2014-301.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 3 of the Defense of Marriage Act (DOMA) provided that, when used in a Federal law, the term

"marriage" would mean only a legal union between one man and one woman as husband and wife, and that the term "spouse" referred only to a person of the opposite sex who is a husband or a wife. Because of DOMA, the Federal Government has been heretofore prohibited from recognizing marriages of same-sex couples for the purposes of travel and relocation entitlements.

On June 17, 2009, President Obama signed a Presidential Memorandum on Federal Benefits and Non-Discrimination stating that "[t]he heads of all other executive departments and agencies, in consultation with the Office of Personnel Management, shall conduct a review of the benefits provided by their respective departments and agencies to determine what authority they have to extend such benefits to same-sex domestic partners of Federal employees." As part of its review, GSA identified a number of changes to the Federal Travel Regulation (FTR) that could be made. Subsequently, on June 2, 2010, President Obama signed a Presidential Memorandum directing agencies to immediately take actions, consistent with existing law, to extend certain benefits, including travel and relocation benefits, to same-sex domestic partners of Federal employees, and, where applicable, to the children of same-sex domestic partners of Federal employees.

GSA published an interim rule and a final rule, respectively in the Federal Register on November 3, 2010, and on September 28, 2011 (75 FR 67629 and 76 FR 59914), that fulfilled the Presidential Memorandum by, among other things, amending the definition of "immediate family" in the FTR to include same-sex domestic partners and their dependents.

On June 26, 2013, in United States v. Windsor, 570 U.S. 12 (2013), the Supreme Court of the United States (Supreme Court) held Section 3 of DOMA unconstitutional. As a result of this decision, GSA is now able to extend travel and relocation entitlements to Federal employees who are legally married to spouses of the same sex. Pursuant to 5 U.S.C. 5707, the Administrator of General Services is authorized to prescribe necessary regulations to implement laws regarding Federal employees who are traveling while in the performance of official business away from their official stations. Similarly, 5 U.S.C. 5738 mandates that the Administrator of General Services prescribe regulations relating to official relocation. The overall implementing authority is the FTR, codified in Title 41 of the Code of Federal Regulations, Chapters 300-304 (41 CFR Chapters 300-304).

Pursuant to this authority, this proposed rule adds a definition for the terms "Marriage" and "Spouse," and proposes to revise the definition of the term "Domestic Partnership." Due to current statutory restrictions, however, this proposed final rule does not apply to the relocation income tax allowance or the income tax reimbursement allowance for state tax laws when the applicable state does not recognize same-sex marriage.

The term "marriage" is proposed to include any marriage, including a marriage between individuals of the same sex, that was entered into in a state (or foreign country) whose laws authorize the marriage, even if the married couple is domiciled in a state (or foreign country) that does not recognize the validity of the marriage. The term also includes common law marriage in states where such marriages are recognized, so long as they are proven according to the applicable state laws. The term "spouse" is proposed to include any individual who has entered into such a marriage.

The term "marriage" will not include registered domestic partnerships, civil unions, or other similar formal relationships recognized under state (or foreign country) law that are not denominated as a marriage under that state's (or foreign country's) law, and the terms

"spouse," "husband and wife," "husband," and "wife" do not include individuals who have entered into such a relationship. This conclusion will apply regardless of whether individuals who have entered into such relationships are of the opposite sex or the same sex.

At the time the definition of "immediate family" in the FTR was amended to include same-sex domestic partners and their dependents, Section 3 of DOMA prohibited GSA from recognizing same-sex marriages. Thus, the availability of same-sex marriage in a particular state was not relevant to the determination of coverage eligibility for travel and relocation benefits. Now that, pursuant to Windsor and the amendments proposed by this rule, FTR coverage is available to the same-sex spouses of Federal employees, GSA has reconsidered the need and scope of the extension of FTR coverage to same-sex domestic partners. A minority of states currently permits same-sex marriage, and therefore, many same-sex couples do not have the same access to marriage that is available to opposite-sex couples. Until marriage is available to same-sex couples in all fifty states, the extension of benefits to same-sex domestic partners will continue to play an important role in bridging the gap in legal treatment between same-sex and opposite-sex couples. Therefore, GSA proposes tailoring

FTR coverage to those same-sex couples who would marry, but live in states where same-sex marriage is prohibited.

Same-sex couples living in states that allow them to marry have access to many, if not all, of the protections that married opposite-sex couples enjoy. Therefore, for employees living in states where they are able to marry, there is less need to create a separate path by which same-sex domestic partners are eligible for FTR benefits. For those employees unable to marry under the laws of the states in which they live, however, it is appropriate to extend FTR coverage to same-sex domestic partners in the form described in this regulation.

Therefore, the term "domestic partnership" is proposed to be updated to read that same-sex domestic partners that have a documented domestic partnership, and reside in a state (or foreign country) whose laws do not recognize the validity of same-sex marriage will still be considered an immediate family member under the FTR, only if they certify that they would marry but for the failure of their state of residence to permit same-sex marriage. For those individuals who reside in states (or foreign countries) that authorize the marriage of two individuals of the same sex, the individuals will no longer be considered domestic

partners or immediate family members due to the certification requirement.

**B. Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a "significant regulatory action," and therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. Accordingly, the proposed rule has been reviewed by the Office of Management and Budget. This proposed rule is not a major rule under 5 U.S.C. 804.

**C. Regulatory Flexibility Act**

This proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This proposed rule is also exempt from

Administrative Procedure Act per 5 U.S.C. 553 (a)(2), because it applies to agency management or personnel.

**D. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the Federal Travel Regulation do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

**E. Small Business Regulatory Enforcement Fairness Act**

This proposed rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

**List of Subjects in 41 CFR Part 300-3**

Government employees, Relocation, Travel, and Transportation expenses.

Dated: June 18, 2014

Christine J. Harada,  
Associate Administrator,  
Office of Governmentwide Policy.

For the reasons set forth in the Preamble, under 5 U.S.C. 5701-5709, 5721-5738, and 5741-5742, GSA proposes to amend 41 CFR part 300-3, as set forth below:

**PART 300-3—GLOSSARY OF TERMS**

1. The authority citation for 41 CFR part 300-3 continues to read as follows:

**Authority:** 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118; 5 U.S.C. 5738; 5 U.S.C. 5741-5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; E.O. 11609, as amended; 3 CFR, 1971-1975 Comp., p. 586, OMB Circular No. A-126, revised May 22, 1992.

2. Amend §300-3.1 by—

a. In the definition "Domestic partnership"

1. Removing from paragraph (8) the word "and" at the end of the sentence;

2. Removing from paragraph (9) the period at the end of the sentence and adding "; and" in its place; and

3. Adding paragraph (10); and

b. Adding, in alphabetical order, the definitions "Marriage" and "Spouse".

The additions read as follows:

**§ 300-3.1 What do the following terms mean?**

\* \* \* \* \*

Domestic partnership— \* \* \*

(10) Certify that they would marry but for the failure of their state of residence to permit same-sex marriage.

\* \* \* \* \*

Marriage— A legal union between individuals that was entered into in a state (or foreign country) whose laws authorize the marriage, even if the married couple is domiciled in a state (or foreign country) that does not recognize the validity of the marriage. The term also includes common law marriage in a state (or foreign country) where such marriages are recognized, so long as they are proven according to the applicable state or foreign laws. The term marriage does not include registered domestic partnerships, civil unions, or other similar formal relationships recognized under state (or foreign country) law that are not denominated as a marriage under that state's (or foreign country's) law.

\* \* \* \* \*

Spouse— Any individual who is lawfully married, including an individual married to a person of the same sex who was legally married in a state that recognizes such marriages, regardless of whether or not the individual's state of residency recognizes such marriages. The term "spouse" does not include individuals in a formal relationship recognized

by a state, which is other than marriage, such as a domestic partnership or a civil union.

**[Billing Code 6820-14]**

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