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OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2640

RINs 3209–AA00 and 3209–AA09

Revisions to the Executive Branch Confidential Financial Disclosure Reporting Regulation

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing a final rule amending the executive branch regulation regarding confidential financial disclosure. The amendments, once effective January 1, 2007, will change the dates of the annual reporting period; change the annual filing date; clarify the criteria for designating confidential filers; narrow the information required to be reported; create a separate "report contents" section for confidential reports; and highlight an existing provision regarding alternative financial conflict of interest review systems. In addition, the final rule includes new examples to illustrate these changes, and some technical amendments. This rule also makes one minor conforming amendment to the OGE branchwide financial interests regulation.

DATES: *Effective Date:* January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Ira S. Kaye, Associate General Counsel, or Amy E. Braud, Attorney-Advisor, Office of Government Ethics; Telephone: 202–482–9300; TDD: 202–482–9293; Fax: 202–482–9237.

SUPPLEMENTARY INFORMATION:

I. Analysis of Amendments

OGE received comments from 13 executive branch agencies and one individual Federal employee about the proposed amendments that were published at 70 FR 47138–47147 (August 12, 2005). As discussed below, we have incorporated some of these comments into this final rule.

A. Reporting Period: We have decided to finalize our proposal to change the annual confidential financial disclosure reporting period, specified in 5 CFR 2634.903(a) and 2634.908(a), from a fiscal year to a calendar year cycle.

One agency suggested that OGE allow each agency to establish its own reporting period for its employees. We have not adopted this suggestion because we believe that it is important to maintain consistency in the application of the executive branchwide confidential financial disclosure system.

Two agencies expressed concern about the burden of having to review both incumbent OGE Form 450 Confidential Financial Disclosure Reports and incumbent SF 278 Executive Branch Personnel Public Financial Disclosure Reports during the first half of the calendar year. Although we are sensitive to this concern, we also believe that adopting a calendar year reporting period for annual confidential reports would make filing more convenient for filers because they would be able to rely on their year-end financial statements to gather the required data. A calendar year reporting period also is more consistent with the public financial disclosure reporting system. Thus, we believe that, on balance, adopting a calendar year confidential annual reporting period is warranted.

In order to transition to a calendar year reporting period, we expect to waive the forthcoming fiscal year 2005 (10/01/05–09/30/06) annual confidential financial disclosure report filing season, with reports normally due at the end of October 2006. Instead, OGE will require confidential filers to submit their next annual reports, using the forthcoming new reporting format, by February 15, 2007. This first annual confidential financial disclosure report filing under the new system will cover the 15-month period from October 1, 2005 to December 31, 2006 to avoid a gap in reporting period coverage. Subsequent annual reports will cover only the preceding calendar year. New entrant confidential filers will continue to file the current OGE Form 450 reports for the remainder of 2006, but starting January 1, 2007, new entrants will start using the new reporting format with the modified 450 report form.

B. Filing Date: Our proposal to change the annual filing date for incumbent filers from October 31 to February 15 engendered a wide range of comments. Four agencies believed that a filing deadline later than February 15 would be more appropriate, in order to allow filers more time to collect and compile their year-end tax forms (*e.g.*, Form 1099s), which typically are not received until about February 1. Conversely, two agencies expressed a preference for an earlier filing date in order to permit their reviewers more time to review the annual incumbent OGE Form 450 confidential reports before having to collect their employees' annual incumbent SF 278 public reports on May 15. One agency, at which the OGE Form 450s and the SF 278s are reviewed by separate ethics officials, suggested adopting May 15 as the filing deadline for both reports. Another suggested that OGE allow each agency to establish its own filing deadline for its employees.

We have decided to adopt our proposal to set February 15 as the annual incumbent report filing date because we believe that it best strikes the balance between affording filers time to compile their year-end financial data and giving reviewers adequate time to finish reviewing their agencies' OGE Form 450s before the SF 278 annual report due date of May 15. Although we understand that year-end tax documents are not typically received until the beginning of February, filers generally do not need these tax documents in order to complete their OGE Form 450s. Unlike the SF 278 public financial disclosure report, the OGE Form 450 confidential report (for both the current and new form) does not require the filers to report any dollar values. Therefore, filers' year-end statements from banks, brokers, and investment managers, which typically are received in early January, generally will provide all of the information necessary to acquire a "snapshot" of their holdings on December 31, and to complete their OGE Form 450s by February 15.

We have not adopted the suggestion that we allow each agency to establish its own filing deadline because, as stated above, we believe that it is important to maintain consistency in the application of the executive branchwide confidential financial disclosure system. We also have not adopted the suggestion to set May 15 as

the filing deadline because we believe that this would cause difficulties for most agencies which process the SF 278s, and because we believe that OGE Form 450 filers generally do not need more than 45 days to complete their reports after the close of the reporting period.

C. Termination Reports Not Required: We are adding new paragraph (e) to § 2634.903 to make clear that, unlike a public filer, a confidential filer leaving his filing position is not required to file a termination report. We received no substantive comments on this proposal.

D. Confidential Filer Definition: We received five comments supporting our proposal to amend § 2634.904, the provision that defines a confidential filer, by incorporating into it the filing exclusion provisions currently found at § 2634.905(a) and (b). All of these commenters agreed with our belief that, because the exclusion provision helps to determine who is required to file, it would be better to incorporate it into the definition of a confidential filer.

One agency suggested that we retain the provision, currently found at § 2634.905(b)(2), that allows an agency to exclude from the filing requirement an individual the duties of whose position involve such a low level of responsibility that any potential conflict would have an "inconsequential effect" on the Government's integrity. We declined to incorporate the precise language of this provision into proposed § 2634.904 because we believe that its concept is adequately expressed elsewhere in the section.

It is difficult to imagine a situation in which an employee whose duties involve a very low level of responsibility would be required to file an OGE Form 450. The definition of "filer" at new § 2634.904(a)(1)(i) (and current §§ 2634.904(a)(1) and 2634.905(b)(1)) states clearly that an employee should only be designated a filer if the agency determines that the duties and responsibilities of his position require him to exercise "significant judgment," and to do so without "substantial supervision and review." Even if, hypothetically, an agency could determine that an employee with a very low level of responsibility exercises significant judgment, and does so without substantial supervision and review, new § 2634.904(b) retains the agency ethics official's authority to exclude that individual from the filing requirement on the ground that the duties of his position "make remote the possibility that [he] will be involved in a real or apparent conflict of interest." Thus, we continue to believe that the language contained in current § 2634.905(b)(2) does not meaningfully contribute to an agency's determination whether a particular employee should file a confidential report.

Another agency suggested that we require each agency to publish the position titles that it designates as filing positions, and to state the criteria upon which this determination was made. We have not adopted this suggestion because we believe that this requirement would be unduly burdensome on agency ethics officials, and because we have not identified any policy reason for requiring that this determination be made publicly.

One agency suggested that we add an example to illustrate new § 2634.904(a)(1)(ii), regarding requiring an employee to file an OGE Form 450 in order "to carry out the purposes behind any statute, Executive order, rule, or regulation applicable to or administered by the employee." We have not adopted this suggestion because this provision, which is identical to current § 2634.904(a)(2), itself contains an example ("Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law.").

E. Alternative Procedures: By renaming § 2634.905 "Use of Alternative Procedures", OGE hopes to highlight this provision, which permits an agency to seek OGE approval to use an alternative system in lieu of requiring employees to file an OGE Form 450 or an OGE Optional Form 450–A Confidential Certificate of No New Interests (Executive Branch). One agency suggested that we clarify that any alternative procedure established under this provision would apply only to those employees who meet the definition of a "confidential filer" in § 2634.904. We have not adopted this suggestion because we do not believe that it is necessary. We remind agency ethics officials that any procedure used as an alternative to filing would apply only to designated filers.

F. Report Contents:

a. Diversified Mutual Funds: We have decided to adopt as final our proposal to eliminate the requirement for confidential filers to report diversified mutual funds because 5 CFR 2640.201(a) exempts these financial interests from the conflict of interest law on personal financial interests (18 U.S.C. 208). Also as proposed, the regulation will continue to require filers to report all sector mutual funds which they, their spouses, or their dependent children own.

Three agencies expressed concern that these provisions will cause confusion and lead to underreporting on the part of filers, who often have difficulty distinguishing between diversified funds and sector funds. Similarly, one agency suggested that we incorporate or cross-reference the definition of "diversified" at 5 CFR 2640.102(a) in order to help filers better distinguish between diversified funds and sector funds.

We are aware that some filers may need assistance to determine whether a particular mutual fund is diversified. We continue to believe, however, that the burden of providing such assistance to filers is outweighed by the benefit to filers of not having to report most of their mutual fund holdings. To the extent that agencies are concerned about underreporting, we suggest that they encourage their filers to report or seek advice about any funds that they are not certain are "diversified." In this final rule, we have also accepted the suggestion that we incorporate the definition of "diversified" into § 2634.907(c)(3)(vii), and we have cross-referenced, in § 2634.907(c)(2)(viii), the definition of "sector mutual fund" at 5 CFR 2640.102(q). Finally, we plan to issue updated advice to reviewing officials about how to determine whether a particular mutual fund is "diversified."

One agency suggested that, instead of exempting diversified mutual funds from the reporting requirement, we simply require the reporting of *any* mutual fund holding valued at over $50,000. Because one regulatory exemption, 5 CFR 2640.201(a), exempts diversified mutual funds regardless of value, and a second, § 2640.201(b)(2)(i), exempts sector mutual funds valued at $50,000 or less, this agency argues that there is no reason to report *any* mutual fund valued at $50,000 or less. Adopting a $50,000 reporting threshold for *all* mutual funds would eliminate the need for filers to distinguish between diversified funds and sector funds while still dramatically reducing the number of mutual funds that would be reportable.

We have not adopted this recommendation in this final rule. Because the regulatory exemption for interests in sector funds applies only when the *aggregate* market value of an employee's interests in sector funds affected by the particular matter is $50,000 or less, an employee who owns interests in more than one fund concentrating in the same sector may have a disqualifying financial interest that would not be required to be reported on the OGE Form 450 under

this suggestion. Accordingly, we believe that it would be unwise to establish a $50,000 reporting threshold for all mutual fund interests.

One agency also expressed concern that the second example after proposed § 2634.907(c)(3) describes a mutual fund as "widely diversified," rather than "diversified." We agree that the term "widely diversified" should not appear in this example. The term "widely diversified" is used to determine whether a particular asset is an excepted investment fund (EIF), rather than to determine whether an asset is a diversified mutual fund. Thus, we have modified the wording of this example in the final rule by deleting the word "widely."

b. Liabilities: We are adopting as final our proposal to eliminate the requirement to report student loans, credit card debts, and loans from financial institutions which are based on terms generally available to the public because these types of loans do not present conflicts of interest for most confidential filers.

One agency commented that these liabilities should not be excepted from the filing requirement because they *can* raise significant conflicts of interest for the employees of *some* agencies. We note that, to the extent that an agency needs additional information in order to perform a conflict of interest review, that agency can request the authority to collect this information supplementally, in accordance with § 2634.901(b).

c. Type of Income: We are also finalizing our proposal to eliminate the requirement to report the type of income earned on reportable assets. The two agencies that commented on this proposal both agreed with our determination, based on experience with the confidential disclosure system over the years, that this information does not add sufficient value to the conflict of interest review process, executive branchwide, to justify continuation of the resulting burden on filers and their agencies.

d. Dates of Agreements and Arrangements: We also are adopting our proposal to eliminate the requirement to report the dates on which agreements and arrangements, other than for future employment, were entered. One agency commented that we should continue to require filers to report these dates because this information can help agency ethics officials determine whether the employee was in a particular "covered relationship" at a particular point in time. We are sensitive to this concern, but our understanding is that this information does not contribute to the conflict of interest analysis conducted by most reviewing officials.

Many filers do not remember, and have difficulty acquiring information about, the dates on which they entered into long-term arrangements such as pension plans sponsored by former employers. In contrast, a reviewing official who needs this information in a particular case simply can seek it from the filer. Alternatively, agencies that have a need for this information in all or most cases can request the authority to collect this information from their employees supplementally, in accordance with § 2634.901(b). Thus, we continue to believe based on our experience with the confidential system that the burden of reporting this information outweighs its usefulness on an executive branchwide basis in determining conflicts of interest.

Another agency suggested that we add an example to this subsection illustrating the reporting of an employee's continued participation in a Teachers Insurance and Annuity Association—College Retirement Equities Fund (TIAA/CREF) pension plan. We have not accepted this suggestion because there is no special method for reporting a continuing agreement regarding a TIAA/CREF pension. It should be reported in the same manner as any other continuing participation in a pension plan.

e. Report Form: OGE also will publish in the **Federal Register** a second round paperwork notice of the proposed modified version of the OGE Form 450 Executive Branch Confidential Financial Disclosure Report. The new proposed report form will reflect pertinent regulatory changes being made in this final rule. It also has been modified in large measure based on the significant comments received in response to the original first round paperwork notice OGE published at 70 FR 47204–47206 (August 12, 2005), the same day OGE published the proposed rule amendments on confidential disclosure (see 70 FR 47138–47147). Based on the paperwork comments, OGE decided to publish an additional first round paperwork notice (see 71 FR 13848–13850 (March 17, 2006)), in which OGE announced important changes to the proposed modified reporting format in response to the comments on the original notice and provided another 75-day comment period for the public and the agencies. As noted, OGE will separately publish a second round paperwork notice reflecting the comments received in response to both first round notices, once the additional comment period closes. At that time, OGE will also seek three-year clearance from the Office of Management and Budget (OMB) under the Paperwork Reduction Act approval for the OGE Form 450 form as proposed for modification. OGE plans to make effective on January 1, 2007 both the final regulatory amendments in this rulemaking and the mandatory use of the new modified OGE Form 450, once approved by OMB. OGE already has requested from OMB a one-year extension of the Paperwork Reduction Act clearance for the current version of the 450 form to allow its continued use by new entrant confidential filers for the remainder of 2006. See 71 FR 16158–16160 (March 30, 2006). In the future, OGE will make available an electronically fillable version of the new form. We also will allow employees to sign the form digitally, and to file it electronically.

G. Other Amendments Considered:

a. Special Government Employees: One commenter expressed the view that proposed § 2634.904 was unclear as to whether agency ethics officials would continue to have the authority to exclude special Government employees (SGEs) from the confidential filing requirements. This is because current § 2634.905 provides that any individual or class of individuals "including special Government employees" may be excluded from the filing requirement, while new § 2634.904(b) as proposed did not include this specific reference to SGEs. We have revised the wording of that provision in this final rule to add specific reference to SGEs.

Two agencies also expressed confusion about the filing requirements for SGEs. Section 2634.903(b) requires SGEs to file new entrant reports, but § 2634.903(a) excludes them from the requirement to file incumbent reports. Thus, these commenters ask whether an SGE who serves on an appointment of over one year (without being reappointed) is required to file a second nominee OGE Form 450 at any point in time.

As we stated in DAEOgram DO–03–021 of October 23, 2003 (at p. 3 thereof), which is posted on OGE's Web site (*http://www.usoge.gov*), "[a]n SGE confidential filer is never required to file an annual OGE Form 450. Instead, the SGE confidential filer will file a new entrant report either upon his reappointment or redesignation as an SGE or upon the anniversary of his initial appointment." In order to avoid the administrative burden of managing these potentially numerous due dates, OGE recommended in that DAEOgram that agencies use May 15 for their SGE report filing anniversary date. Choosing this date gives confidential OGE Form

450 SGE filers the same reporting deadline as public SF 278 SGE filers. It also places all SGE reporting deadlines on the same date as all non-SGE annual public report filers. If an agency chooses not to implement this recommendation, then it will collect new entrant OGE Form 450s from its SGEs on the variously occurring anniversary/reappointment dates throughout each year.

Thus, in this final rule we have not modified § 2634.903 in this regard.

b. Reporting Underlying Holdings of Investment Vehicles: The proposed rule included a note to § 2634.907(c)(1) and (c)(2) clarifying that the underlying holdings of certain investment vehicles must be reported separately. Although we intended to duplicate in this note a provision that currently appears within the text of § 2634.301(a), we had proposed slightly revising its language in the proposed rule amendment. Because one agency noted that the language as proposed might make this note's meaning less clear, we have modified the note to reflect the exact language contained in § 2634.301(a).

c. Gift waiver: Pursuant to § 2634.304(f) of 5 CFR, OGE has the authority to issue to a public filer a waiver from the requirement to report certain gifts. One agency has suggested that we also apply this provision to confidential filers. We have not accepted this recommendation because we do not believe that such an amendment is needed. The waiver provision was promulgated in order to safeguard the personal privacy of individuals who present personal gifts to public filers in particular circumstances (such as upon the occasion of the filer's marriage). Because the OGE Form 450 is not publicly available, this provision is not needed for confidential filers.

d. Exception to Requirement to Report Spouse's or Dependent Child's Assets and Income: Section 2634.907(h)(2) as proposed, which is now being adopted as final, provides an exception to the general requirement that a filer report his or her spouse's and dependent child's assets and investment income. One commenter suggested that we add an example to illustrate a scenario in which this exception properly would be applied. We have not accepted this suggestion because this provision is used so infrequently that we do not believe that it justifies the addition of a specific example.

e. Discussing Assets and Investment Income Separately From Noninvestment Income: New § 2634.907(b), both as proposed and as being adopted as final in this rulemaking, lists the kinds of "noninvestment" (*i.e.*, "earned") income that must be reported on the confidential OGE Form 450. New § 2634.907(c), also both as proposed and as final, lists the kinds of "assets and investment income" that must be reported on the confidential report. This reflects a change from current § 2634.301(b), which will now just apply for public reports, that lists the "types of property reportable" in a single paragraph. We believe that separating this provision into two paragraphs for confidential reporting makes it clearer, whether or not we ultimately decide that investment and noninvestment income should be reported in separate sections of the amended OGE Form 450. Thus, we have not accepted one agency's recommendation that we recombine these provisions into a single paragraph and instead are adopting them as final as proposed.

Finally, as referenced in the proposed rule preamble, OGE is making in this final rule a couple of additional conforming cross-references amendments, one in part 2634 and one in part 2640 (personal financial interests) of this chapter, in order to reflect the renumbering of certain sections in part 2634. Moreover, in this final rule, OGE has corrected a few minor errors in amendatory paragraphs of the proposed rule and the regulatory text as proposed to reflect the correct revisions that OGE intended.

II. Matters of Regulatory Procedure

Regulatory Flexibility Act

As Acting Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final amendatory rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees and members of their immediate families.

Paperwork Reduction Act

As noted above, OGE will separately publish in the **Federal Register** a new second round notice under the Paperwork Reduction Act (44 U.S.C. chapter 35) for the information collection requirements in this regulation—a proposed modified OGE Form 450 Executive Branch Confidential Financial Disclosure Report form (OMB control #3209–0006) to reflect the pertinent changes made in this final rule. At that time, OGE will also seek three-year paperwork clearance from OMB for the modified form, which would be used starting in 2007. As explained in the preamble above, OGE has previously published two first round notices for the proposed modified version of the OGE Form 450 and has considered, and is continuing to consider, the public comments received on the proposed new version of the form. See 70 FR 47204–47206 (August 12, 2005) and 71 FR 13848–13850 (March 17, 2006). In addition, as also noted above, OGE has already requested from OMB a one-year extension of the paperwork clearance for the current version of the OGE Form 450, to allow its continued use by new entrant filers (including SGEs filing upon their reappointment/redesignation or appointment anniversary dates) for the remainder of 2006. See 71 FR 16158–16160 (March 30, 2006). OGE plans to dispense with the annual fiscal year (FY06) incumbent report filing using the current version of the OGE Form 450 that is otherwise due on October 31, 2006. Instead, we will require annual filers to file the new form by the new filing deadline of February 15, 2007. This first annual filing using the new OGE Form 450 will reflect a 15-month reporting period (October 2005–December 2006). Thereafter, the new annual confidential reports due each February will just cover the prior calendar year.

Unfunded Mandates Reform Act

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

Congressional Review Act

The Office of Government Ethics has determined that this rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and submitted a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law at the same time this rulemaking document was sent to the Office of the Federal Register for publication in the **Federal Register**.

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 Review and Planning. In

addition, these amendments have been reviewed by the Office of Management and Budget under that Executive order. Moreover, in accordance with section 6(a)(3)(B) of E.O. 12866, the preamble to these final revisions, which are being codified in a revised 5 CFR part 2634, notes the legal basis and benefits of, as well as the need for, the regulatory action. There should be no appreciable increase in costs to OGE or the executive branch of the Federal Government in administering this amended regulation, since the revisions only clarify and improve the confidential financial disclosure system. Finally, this rulemaking is not economically significant under the Executive order and will not interfere with State, local or tribal governments.

Executive Order 12988

As Acting Director of the Office of Government Ethics, I have reviewed this amendatory 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

5 CFR Part 2634

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

5 CFR Part 2640

Conflict of interests, Government employees.

Approved: May 5, 2006.

Marilyn L. Glynn,

Acting Director, Office of Government Ethics.

■ Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR parts 2634 and 2640 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

■ 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; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); 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 2634.102 is amended by revising paragraph (b) to read as follows:

§ 2634.102 Purpose and overview.

* * * * *

(b) The rules in this part govern both public and confidential (nonpublic) financial disclosure systems. Subpart I of this part contains the rules applicable to the confidential disclosure system.

Subpart B—Persons Required To File Public Financial Disclosure Reports

§ 2634.203 [Amended]

■ 3. Section 2634.203 is amended by removing the citation "§ 2634.904(d)" in the last sentence of paragraph (b) and adding in its place the citation "§ 2634.904(a)(4)".

§ 2634.204 [Amended]

■ 4. Section 2634.204 is amended by removing the citation "§ 2634.904(b)" at the end of the last sentence of paragraph (b) and adding in its place the citation "§ 2634.904(a)(2)".

Subpart C—Contents of Reports

■ 5. The heading for Subpart C is revised to read as follows:

Subpart C—Contents of Public Reports

§ 2634.301 [Amended]

■ 6. Section 2634.301 is amended by:
■ a. Removing the phrase "part, whether public or confidential," in the first sentence of paragraph (a) and adding in its place the word "subpart";
■ b. Removing the beginning phrase "In the case of public financial disclosure reports, the" in the second sentence of paragraph (a) and adding in its place the word "The";
■ c. Removing the phrase "on public financial disclosure reports" in the introductory text of paragraph (d);
■ d. Removing the phrase ", and if he is a public filer the amount," in the fourth sentence of Example 1 following paragraph (e)(7) and adding in its place the phrase "and the amount"; and
■ e. Removing the word "also" and the ending phrase "if she is a public filer" in the second sentence of Example 3 following paragraph (e)(7).

§ 2634.302 [Amended]

■ 7. Section 2634.302 is amended by:
■ a. Removing the phrase "part, whether public or confidential," in the introductory text of paragraph (a)(1) and adding in its place the word "subpart";
■ b. Removing the phrase "in the case of public financial disclosure reports" in the introductory text of paragraph (a)(1);
■ c. Removing the phrase "if he is a public filer" in the third sentence of Example 2 following paragraph (a)(1)(iv);
■ d. Removing the phrase "part, whether public or confidential," in the introductory text of paragraph (b) and adding in its place the word "subpart";
■ e. Removing the beginning phrase "For public financial disclosure reports, the" in the fourth sentence of paragraph (b)(1) and adding in its place the word "The";
■ f. Removing the phrase "in the case of public financial disclosure reports" and the comma between the words "value" and "of" in paragraph (b)(2);
■ g. Removing the phrase "if he is a public filer" in the third sentence of Example 1 following paragraph (b)(2);
■ h. Removing the phrase "if he is a public filer," in the fifth sentence of Example 2 following paragraph (b)(2); and
■ i. Removing the phrase "if she is a public filer" in the second sentence of Example 3 following paragraph (b)(2).

§ 2634.303 [Amended]

■ 8. Section 2634.303 is amended by removing the word "public" and the phrase "subpart B of this part" and adding the phrase "this subpart" in its place in the introductory text of paragraph (a).

§ 2634.304 [Amended]

■ 9. Section 2634.304 is amended by:
■ a. Removing the citation "§§ 2634.308(b) and 2634.907(a)" in the first sentence of paragraph (a) and adding in its place the citation "§ 2634.308(b)";
■ b. Removing the phrase "part, whether public or confidential," in the first sentence of paragraph (a) and adding in its place the word "subpart"
■ c. Removing the phrase "in the case of public financial disclosure reports" and the comma between the words "value" and "of" in the first sentence of paragraph (a);
■ d. Removing the citation "§§ 2634.308(b) and 2634.907(a)" in paragraph (b) and adding in its place the citation "§ 2634.308(b)";
■ e. Removing the phrase "part, whether public or confidential," in paragraph (b) and adding in its place the word "subpart";
■ f. Removing the phrase "in the case of public financial disclosure reports" and the comma between the words "value" and "of" in paragraph (b); and
■ g. Removing the phrase "by public filers" in the introductory text of paragraph (f)(1).

§ 2634.305 [Amended]

■ 10. Section 2634.305 is amended by:

■ a. Removing the phrase "part, whether public or confidential," in the first sentence of paragraph (a) and adding in its place the word "subpart";
■ b. Removing the beginning phrase "For public financial disclosure reports, the" in the second sentence of paragraph (a) and adding in its place the word "The"; and
■ c. Adding the word "also" between the words "report" and "shall" in the second sentence of paragraph (a).

§ 2634.306 [Amended]

■ 11. In § 2634.306, the undesignated introductory text is amended by removing the phrase "part, whether public or confidential," and adding in its place the word "subpart";

§ 2634.307 [Amended]

■ 12. In § 2634.307, the text of paragraph (a) is amended by removing the phrase "part, whether public or confidential," and adding in its place the word "subpart".

§ 2634.308 [Amended]

■ 13. Section 2634.308 is amended by:
■ a. Removing the word "public" in paragraph (a);
■ b. Removing the word "public" in the first sentence of the introductory text of paragraph (b);
■ c. Removing the word "public" between the words "Each" and "financial" in paragraph (c); and
■ d. Removing the word "public" between the words "recent" and "financial" in paragraph (c).

§ 2634.309 [Amended]

■ 14. Section 2634.309 is amended by:
■ a. Removing the word "either" and the phrase "or subpart I" from the introductory text of paragraph (a);
■ b. Removing the comma between the words "source" and "and", the phrase "for a public financial disclosure report", and the comma between the words "value" and "of" in paragraph (a)(1)(ii);
■ c. Removing the phrase "for a public financial disclosure report" in paragraph (a)(1)(iii);
■ d. Removing the ending phrase ", either on a public or confidential financial disclosure report" in the third sentence of Example 1 following paragraph (a)(1)(iii);
■ e. Removing the ending phrase ", either on a public or confidential financial disclosure report" in the second sentence of Example 2 following paragraph (a)(1)(iii);
■ f. Removing the parenthetical phrase "(applicable only to public filers)" in the introductory text of paragraph (a)(3); and
■ g. Removing the phrase "or as a new entrant under § 2634.908(b)," in paragraph (b).

§ 2634.310 [Amended]

■ 15. Section 2634.310 is amended by:
■ a. Removing the phrase "or subpart I of this part" in paragraph (a)(1); and
■ b. Removing the beginning phrase "Public financial disclosure reports" in the second sentence of paragraph (c)(1) and adding in its place the word "Filers".

§ 2634.311 [Amended]

■ 16. Section 2634.311 is amended by:
■ a. Removing the phrase "public financial disclosure" in the first sentence of paragraph (b);
■ b. Removing the word "part" in the first sentence of paragraph (b) and adding in its place the word "subpart";
■ c. Removing the phrase "public financial disclosure" in paragraph (c)(2); and
■ d. Removing the word "part" in paragraph (c)(2) and adding in its place the word "subpart".

Subpart F—Procedure

§ 2634.601 [Amended]

■ 17. Section 2634.601 is amended by:
■ a. Removing the citation "§ 2634.905(d)" in the second sentence of paragraph (a) and adding in its place the citation "§ 2634.905(b)"; and
■ b. Removing the last sentence (in parentheses) in paragraph (a).

Subpart I—Confidential Financial Disclosure Reports

■ 18. Section 2634.903 is amended by:
■ a. Removing the citation "§ 2634.904" in the first sentence of paragraph (a) and adding in its place the citation "§ 2634.904(a)";
■ b. Removing the phrase "twelve-month period ending September 30" in the first sentence of paragraph (a) and adding in its place the phrase "calendar year";
■ c. Removing the phrase "October 31 immediately following that period" in the first sentence of paragraph (a) and adding in its place the phrase "February 15 of the following year";
■ d. Removing the citation "§ 2634.904(b)" in the third sentence of paragraph (a) and adding in its place the citation "§ 2634.904(a)(2)";
■ e. Removing the citation "§ 2634.904(c)" in the fourth sentence of paragraph (a) and adding in its place the citation "§ 2634.904(a)(3)";
■ f. Removing the citation "§ 2634.904" in the first sentence of paragraph (b)(1) and adding in its place the citation "§ 2634.904(a)";
■ g. Removing the citation "§ 2634.904(c)" in the second sentence of paragraph (b)(1) and adding in its place the citation "§ 2634.904(a)(3)";
■ h. Removing the citation "§ 2634.904" in paragraph (b)(2)(i) and adding in its place the citation "§ 2634.904(a)";
■ i. Removing the citation "§ 2634.904" in the first sentence of paragraph (b)(2)(iii) and adding in its place the citation "§ 2634.904(a)";
■ j. Removing the citation "§ 2634.904(a)" in the second sentence of paragraph (b)(2)(iii) and adding in its place the citation "§ 2634.904(a)(1)";
■ k. Removing the citation "§ 2634.904(b)" in the fourth sentence of paragraph (b)(2)(iii) and adding in its place the citation "§ 2634.904(a)(2)";
■ l. Removing the citation "§ 2634.904" in the first sentence of paragraph (b)(3) and adding in its place the citation "§ 2634.904(a)"; and
■ m. Adding a new paragraph (e) at the end of the section to read as follows:

§ 2634.903 General requirements, filing dates, and extensions.

* * * * *

(e) *Termination reports not required.* An employee who is required to file a confidential financial disclosure report is not required to file a termination report upon leaving the filing position.

■ 19. Section 2634.904 is revised to read as follows:

§ 2634.904 Confidential filer defined.

(a) The term *confidential filer* includes:

(1) Each officer or employee in the executive branch whose position is classified at GS–15 or below of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate which is less than 120% of the minimum rate of basic pay for GS–15 of the General Schedule; each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is less than 120% of the minimum rate of basic pay for GS–15 of the General Schedule; each member of a uniformed service whose pay grade is less than 0–7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the designated agency ethics official to be of equal classification; if:

(i) The agency concludes that the duties and responsibilities of the employee's position require that employee to participate personally and substantially (as defined in §§ 2635.402(b)(4) and 2640.103(a)(2) of this chapter) through decision or the exercise of significant judgment, and

without substantial supervision and review, in taking a Government action regarding:

(A) Contracting or procurement;

(B) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;

(C) Regulating or auditing any non-Federal entity; or

(D) Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity; or

(ii) The agency concludes that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, and to carry out the purposes behind any statute, Executive order, rule, or regulation applicable to or administered by the employee. Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law.

Example 1 to paragraph (a)(1). A contracting officer develops the requests for proposals for data processing equipment of significant value which is to be purchased by his agency. He works with substantial independence of action and exercises significant judgment in developing the requests. By engaging in this activity, he is participating personally and substantially in the contracting process. The contracting officer should be required to file a confidential financial disclosure report.

Example 2 to paragraph (a)(1). An agency environmental engineer inspects a manufacturing plant to ascertain whether the plant complies with permits to release a certain effluent into a nearby stream. Any violation of the permit standards may result in civil penalties for the plant, and in criminal penalties for the plant's management based upon any action which they took to create the violation. If the agency engineer determines that the plant does not meet the permit requirements, he can require the plant to terminate release of the effluent until the plant satisfies the permit standards. Because the engineer exercises substantial discretion in regulating the plant's activities, and because his final decisions will have a substantial economic effect on the plant's interests, the engineer should be required to file a confidential financial disclosure report.

Example 3 to paragraph (a)(1). A GS–13 employee at an independent grant making agency conducts the initial agency review of grant applications from nonprofit organizations and advises the Deputy Assistant Chairman for Grants and Awards about the merits of each application. Although the process of reviewing the grant applications entails significant judgment, the employee's analysis and recommendations are reviewed by the Deputy Assistant Chairman, and the Assistant Chairman, before the Chairman decides what grants to award. Because his work is subject to "substantial supervision and review," the employee is not required to file a confidential financial disclosure report unless the agency determines that filing is necessary under § 2634.904(a)(1)(ii).

Example 4 to paragraph (a)(1). As a senior investigator for a criminal law enforcement agency, an employee often leads investigations, with substantial independence, of suspected felonies. The investigator usually decides what information will be contained in the agency's report of the suspected misconduct. Because he participates personally and substantially through the exercise of significant judgment in investigating violations of criminal law, and because his work is not substantially supervised, the investigator should be required to file a confidential financial disclosure report.

Example 5 to paragraph (a)(1). An investigator is principally assigned as the field agent to investigate alleged violations of conflict of interest laws. The investigator works under the direct supervision of an agent-in-charge. The agent-in-charge reviews all of the investigator's work product and then uses those materials to prepare the agency's report which is submitted under his own name. Because of the degree of supervision involved in the investigator's duties, the investigator is not required to file a confidential disclosure report unless the agency determines that filing is necessary under § 2634.904(a)(1)(ii).

(2) Unless required to file public financial disclosure reports by subpart B of this part, all executive branch special Government employees.

Example 1 to paragraph (a)(2). A consultant to an agency periodically advises the agency regarding important foreign policy matters. The consultant must file a confidential report if he is retained as a special Government employee and not an independent contractor.

Example 2 to paragraph (a)(2). A special Government employee serving as a member of an advisory committee (who is not a private group representative) attends four committee meetings every year to provide advice to an agency about pharmaceutical matters. No compensation is received by the committee member, other than travel expenses. The advisory committee member must file a confidential disclosure report because she is a special Government employee.

(3) Each public filer referred to in § 2634.202 on public disclosure who is required by agency regulations and forms issued in accordance with §§ 2634.103 and 2634.601(b) to file a supplemental confidential financial disclosure report which contains information that is more extensive than the information required in the reporting individual's public financial disclosure report under this part.

(4) Any employee who, notwithstanding his exclusion from the public financial reporting requirements of this part by virtue of a determination under § 2634.203, is covered by the criteria of paragraph (a)(1) of this section.

(b) Any individual or class of individuals described in paragraph (a) of this section, including special Government employees unless otherwise noted, may be excluded from all or a portion of the confidential reporting requirements of this subpart, when the agency head or designee determines that the duties of a position make remote the possibility that the incumbent will be involved in a real or apparent conflict of interest.

Example 1 to paragraph (b). A special Government employee who is a draftsman prepares the drawings to be used by an agency in soliciting bids for construction work on a bridge. Because he is not involved in the contracting process associated with the construction, the likelihood that this action will create a conflict of interest is remote. As a result, the special Government employee is not required to file a confidential financial disclosure report.

Example 2 to paragraph (b). An agency has just hired a GS–5 Procurement Assistant who is responsible for typing and processing procurement documents, answering status inquiries from the public, performing office support duties such as filing and copying, and maintaining an on-line contract database. The Assistant is not involved in contracting and has no other actual procurement responsibilities. Thus, the possibility that the Assistant will be involved in a real or apparent conflict of interest is remote, and the Assistant is not required to file.

■ 20. Section 2634.905 is amended by:

■ a. Revising the section heading;

■ b. Removing the undesignated introductory text of the section, paragraphs (a), (b) and (c), and Examples 1, 2 and 3 following paragraph (d);

■ c. Adding a new paragraph (a) and a new example following paragraph (a);

■ d. Redesignating paragraph (d) as paragraph (b), including redesignating paragraphs (d)(1) through (d)(6) as paragraphs (b)(1) through (b)(6), respectively;

■ e. Revising the first sentence of newly redesignated paragraph (b) introductory text;

■ f. Removing the two references to "paragraph (d)(5)" in the first and second sentences of newly redesignated paragraph (b)(4) and adding in their place in each instance references to "paragraph (b)(5)"; and

■ g. Removing the reference to "paragraph (d)(4)" in newly redesignated paragraph (b)(5) and adding in its place a reference to "paragraph (b)(4)".

The addition and revisions read as follows:

§ 2634.905 Use of alternative procedures.

(a) With the prior written approval of OGE, an agency may use an alternative procedure in lieu of filing the OGE Form 450 or OGE Optional Form 450–A. The alternative procedure may be an agency-specific form to be filed in place thereof. An agency must submit for approval a description of its proposed alternative procedure to OGE.

Example to paragraph (a). A nonsupervisory auditor at an agency is regularly assigned to cases involving possible loan improprieties by financial institutions. Prior to undertaking each enforcement review, the auditor reviews the file to determine if she, her spouse, minor or dependent child, or any general partner, organization in which she serves as an officer, director, trustee, employee, or general partner, or organization with which she is negotiating or has an agreement or an arrangement for future employment, or a close friend or relative is a subject of the investigation, or will be in any way affected by the investigation. Once she determines that there is no such relationship, she signs and dates a certification which verifies that she has reviewed the file and has determined that no conflict of interest exists. She then files the certification with the head of her auditing division at the agency. On the other hand, if she cannot execute the certification, she informs the head of her auditing division. In response, the division will either reassign the case or review the conflicting interest to determine whether a waiver would be appropriate. This alternative procedure, if approved by the Office of Government Ethics in writing, may be used in lieu of requiring the auditor to file a confidential financial disclosure report.

(b) An agency may use the OGE Optional Form 450–A (Confidential Certificate of No New Interests) in place of the OGE Form 450 if the agency head or designee determines it is adequate to prevent possible conflicts of interest.

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■ 21. Section 2634.907 is revised to read as follows:

§ 2634.907 Report contents.

(a) Other than the reports described in § 2634.904(a)(3) of this subpart, each confidential financial disclosure report shall comply with instructions issued by the Office of Government Ethics and include on the standardized form prescribed by OGE (see § 2634.601 of subpart F of this part) the information described in paragraphs (b) through (g) of this section for the filer. Each report shall also include the information described in paragraph (h) of this section for the filer's spouse and dependent children.

(b) *Noninvestment income.* Each financial disclosure report shall disclose the source of earned or other noninvestment income in excess of $200 received by the filer from any one source or which has accrued to the filer's benefit during the reporting period, including:

(1) Salaries, fees, commissions, wages and any other compensation for personal services (other than from United States Government employment);

(2) Any honoraria, including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria; and

Note to paragraph (b)(2): In determining whether an honorarium exceeds the $200 threshold, subtract any actual and necessary travel expenses incurred by the filer and one relative, if the expenses are paid or reimbursed by the filer. If such expenses are paid or reimbursed by the honorarium source, they shall not be counted as part of the honorarium payment.

(3) Any other noninvestment income, such as prizes, scholarships, awards, gambling income or discharge of indebtedness.

Example to paragraphs (b)(1) and (b)(3). A filer teaches a course at a local community college, for which she receives a salary of $1,000 per year. She also received, during the previous reporting period, a $250 award for outstanding local community service. She must disclose both.

(c) *Assets and investment income.* Each financial disclosure report shall disclose separately:

(1) Each item of real and personal property having a fair market value in excess of $1,000 held by the filer at the end of the reporting period in a trade or business, or for investment or the production of income, including but not limited to:

(i) Real estate;

(ii) Stocks, bonds, securities, and futures contracts;

(iii) Livestock owned for commercial purposes;

(iv) Commercial crops, either standing or held in storage;

(v) Antiques or art held for resale or investment;

(vi) Vested beneficial interests in trusts and estates;

(vii) Pensions and annuities;

(viii) Sector mutual funds (see definition at § 2640.102(q) of this chapter);

(ix) Accounts or other funds receivable; and

(x) Capital accounts or other asset ownership in businesses.

(2) The source of investment income (dividends, rents, interest, capital gains, or the income from qualified or excepted trusts or excepted investment funds (see paragraph (i) of this section)), which is received by the filer or accrued to his benefit during the reporting period, and which exceeds $200 in amount or value from any one source, including but not limited to income derived from:

(i) Real estate;

(ii) Collectible items;

(iii) Stocks, bonds, and notes;

(iv) Copyrights;

(v) Vested beneficial interests in trusts and estates;

(vi) Pensions;

(vii) Sector mutual funds (see definition at § 2640.102(q) of this chapter);

(viii) The investment portion of life insurance contracts;

(ix) Loans;

(x) Gross income from a business;

(xi) Distributive share of a partnership;

(xii) Joint business venture income; and

(xiii) Payments from an estate or an annuity or endowment contract.

Note to paragraphs (c)(1) and (c)(2): For Individual Retirement Accounts (IRAs), brokerage accounts, trusts, mutual or pension funds, and other entities with portfolio holdings, each underlying asset must be separately disclosed, unless the entity qualifies for special treatment under paragraph (i) of this section.

(3) *Exemptions.* The following assets and investment income are exempt from the reporting requirements of paragraphs (c)(1) and (c)(2) of this section:

(i) A personal residence, as defined in § 2634.105(l), of the filer or spouse;

(ii) Accounts (including both demand and time deposits) in depository institutions, including banks, savings and loan associations, credit unions, and similar depository financial institutions;

(iii) Money market mutual funds and accounts;

(iv) U.S. Government obligations, including Treasury bonds, bills, notes, and savings bonds;

(v) Government securities issued by U.S. Government agencies;

(vi) Financial interests in any retirement system of the United States (including the Thrift Savings Plan) or under the Social Security Act; and

(vii) Diversified mutual funds. ("Diversified" means that the fund does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States and, in the case of an employee benefit plan, means that the plan's trustee has a written policy of varying plan investments. 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.)

Example 1 to paragraph (c). A filer owns a beach house which he rents out for several weeks each summer, receiving annual rental income of approximately $5,000. He must report the rental property, as well as the city and state in which it is located.

Example 2 to paragraph (c). A filer's investment portfolio consists of several stocks, U.S. Treasury bonds, several cash bank deposit accounts, an account in the Government's Thrift Savings Plan, and shares in sector mutual funds and diversified mutual funds. He must report the name of each sector mutual fund in which he owns shares, and the name of each company in which he owns stock, valued at over $1,000 at the end of the reporting period or from which he received income of more than $200 during the reporting period. He need not report his diversified mutual funds, U.S. Treasury bonds, bank deposit accounts, or Thrift Savings Plan holdings.

(d) *Liabilities.* Each financial disclosure report filed pursuant to this subpart shall identify liabilities in excess of $10,000 owed by the filer at any time during the reporting period, and the name and location of the creditors to whom such liabilities are owed, except:

(1) Personal liabilities owed to a spouse or to the parent, brother, sister, or child of the filer, spouse, or dependent child;

(2) Any mortgage secured by a personal residence of the filer or his spouse;

(3) Any loan secured by a personal motor vehicle, household furniture, or appliances, provided that the loan does not exceed the purchase price of the item which secures it;

(4) Any revolving charge account;

(5) Any student loan; and

(6) Any loan from a bank or other financial institution on terms generally available to the public.

Example to paragraph (d). A filer owes $2,500 to his mother-in-law and $12,000 to his best friend. He also has a $15,000 balance on his credit card, a $200,000 mortgage on his personal residence, and a car loan. Under the financial disclosure reporting requirements, he need not report the debt to his mother-in-law, his credit card balance, his mortgage, or his car loan. He must, however, report the debt of over $10,000 to his best friend.

(e) *Positions with non-Federal organizations*—(1) *In general.* Each financial disclosure report filed pursuant to this subpart shall identify all positions held at any time by the filer during the reporting period, other than with the United States, as an officer, director, trustee, general partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution.

(2) *Exemptions.* The following positions are exempt from the reporting requirements of paragraph (e)(1) of this section:

(i) Positions held in religious, social, fraternal, or political entities; and

(ii) Positions solely of an honorary nature, such as those with an emeritus designation.

Example to paragraph (e). A filer holds outside positions as the trustee of his family trust, the secretary of a local political party committee, and the "Chairman emeritus" of his town's Lions Club. He also is a principal of a tutoring school on weekends. The individual must report his outside positions as trustee of the family trust and as principal of the school. He does not need to report his positions as secretary of the local political party committee or "Chairman emeritus" because each of these positions is exempt.

(f) *Agreements and arrangements.* Each financial disclosure report filed pursuant to this subpart shall identify the parties to, and shall briefly describe the terms of, any agreement or arrangement of the filer in existence at any time during the reporting period with respect to:

(1) Future employment (including the date on which the filer entered into the agreement for future employment);

(2) A leave of absence from employment during the period of the filer's Government service;

(3) Continuation of payments by a former employer other than the United States Government; and

(4) Continuing participation in an employee welfare or benefit plan maintained by a former employer.

Example 1 to paragraph (f). A filer plans to retire from Government service in eight months. She has negotiated an arrangement for part-time employment with a private-sector company, to commence upon her retirement. On her financial disclosure report, she must identify the future employer, and briefly describe the terms of, this agreement and disclose the date on which she entered into the agreement.

Example 2 to paragraph (f). A new employee who has entered a position which requires the filing of a confidential form is on a leave of absence from his private-sector employment. During his Government tenure, he will continue to receive deferred compensation from this employer, and will continue to participate in its pension plan. He must report and briefly describe his arrangements for a leave of absence, for the receipt of deferred compensation, and for participation in the pension plan.

(g) *Gifts and travel reimbursements*—(1) *Gifts.* Each annual financial disclosure report filed pursuant to this subpart shall contain a brief description of all gifts aggregating more than $305 in value which are received by the filer during the reporting period from any one source, as well as the identity of the source. For in-kind travel-related gifts, the report shall include a travel itinerary, the dates, and the nature of expenses provided.

(2) *Travel reimbursements.* Each annual financial disclosure report filed pursuant to this subpart shall contain a brief description (including a travel itinerary, dates, and the nature of expenses provided) of any travel-related reimbursements aggregating more than $305 in value which are received by the filer during the reporting period from any one source, as well as the identity of the source.

(3) *Aggregation exception.* Any gift or travel reimbursement with a fair market value of $122 or less need not be aggregated for purposes of the reporting rules of this section. However, the acceptance of gifts, whether or not reportable, is subject to the restrictions imposed by Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations on standards of ethical conduct.

(4) *Valuation of gifts and travel reimbursements.* The value to be assigned to a gift or travel reimbursement is its fair market value. For most reimbursements, this will be the amount actually received. For gifts, the value should be determined in one of the following manners:

(i) If the gift has been newly purchased or is readily available in the market, the value shall be its retail price. The filer need not contact the donor, but may contact a retail establishment selling similar items to determine the present cost in the market.

(ii) If the item is not readily available in the market, such as a piece of art, a handmade item, or an antique, the filer may make a good faith estimate of the value of the item.

(iii) The term "readily available in the market" means that an item generally is available for retail purchase in the metropolitan area nearest to the filer's residence.

(5) New entrants, as described in § 2634.903(b) of this subpart, need not report any information on gifts and travel reimbursements.

(6) *Exemptions.* Reports need not contain any information about gifts and travel reimbursements received from relatives (see § 2634.105(o)) or during a period in which the filer was not an

officer or employee of the Federal Government. Additionally, any food, lodging, or entertainment received as "personal hospitality of any individual", as defined in § 2634.105(k), need not be reported. See also exclusions specified in the definitions of "gift" and "reimbursement" at § 2634.105(h) and (n).

Example to paragraph (g). A filer accepts a briefcase, a pen and pencil set, a paperweight, and a palm pilot from a community service organization he has worked with solely in his private capacity. He determines that the value of these gifts is:

Gift 1—Briefcase: $200
Gift 2—Pen and Pencil Set: $35
Gift 3—Paperweight: $5
Gift 4—Palm Pilot: $275

The filer must disclose gifts 1 and 4 since, together, they aggregate more than $305 in value from the same source. He need not aggregate or report gifts 2 and 3 because each gift's value does not exceed $122.

(h) *Disclosure rules for spouses and dependent children*—(1) *Noninvestment income.* (i) Each financial disclosure report required by the provisions of this subpart shall disclose the source of earned income in excess of $1,000 from any one source, which is received by the filer's spouse or which has accrued to the spouse's benefit during the reporting period. If earned income is derived from a spouse's self-employment in a business or profession, the report shall also disclose the nature of the business or profession. The filer is not required to report other noninvestment income received by the spouse such as prizes, scholarships, awards, gambling income, or a discharge of indebtedness.

(ii) Each report shall disclose the source of any honoraria received by or accrued to the spouse (or payments made or to be made to charity on the spouse's behalf in lieu of honoraria) in excess of $200 from any one source during the reporting period.

Example to paragraph (h)(1). A filer's husband has a seasonal part-time job as a sales clerk at a department store, for which he receives a salary of $1,000 per year. He also received, during the previous reporting period, a $250 award for outstanding local community service, and an honorarium of $250 from the state university. The filer need not report either her husband's outside earned income or award because neither exceeded $1,000. She must, however, report the source of the honorarium because it exceeded $200.

(2) *Assets and investment income.* Each confidential financial disclosure report shall disclose the assets and investment income described in paragraph (c) of this section and held by the spouse or dependent child of the filer, unless the following three conditions are satisfied:

(i) The filer certifies that the item represents the spouse's or dependent child's sole financial interest, and that the filer has no specific knowledge regarding that item;

(ii) The item is not in any way, past or present, derived from the income, assets or activities of the filer; and

(iii) The filer neither derives, nor expects to derive, any financial or economic benefit from the item.

Note to paragraph (h)(2): One who prepares a joint tax return with his spouse will normally derive a financial or economic benefit from assets held by the spouse, and will also be charged with knowledge of such items; therefore, he could not avail himself of this exception. Likewise, a trust for the education of one's minor child normally will convey a financial benefit to the parent. If so, the assets of the trust would be reportable on a financial disclosure report.

(3) *Liabilities.* Each confidential financial disclosure report shall disclose all information concerning liabilities described in paragraph (d) of this section and owed by a spouse or dependent child, unless the following three conditions are satisfied:

(i) The filer certifies that the item represents the spouse's or dependent child's sole financial responsibility, and that the filer has no specific knowledge regarding that item;

(ii) The item is not in any way, past or present, derived from the activities of the filer; and

(iii) The filer neither derives, nor expects to derive, any financial or economic benefit from the item.

(4) *Gifts and travel reimbursements.* (i) Each annual confidential financial disclosure report shall disclose gifts and reimbursements described in paragraph (g) of this section and received by a spouse or dependent child which are not received totally independently of their relationship to the filer.

(ii) A filer who is a new entrant as described in § 2634.903(b) of this subpart is not required to report information regarding gifts and reimbursements received by a spouse or dependent child.

(5) *Divorce and separation.* A filer need not report any information about:

(i) A spouse living separate and apart from the filer with the intention of terminating the marriage or providing for permanent separation;

(ii) A former spouse or a spouse from whom the filer is permanently separated; or

(iii) Any income or obligations of the filer arising from dissolution of the filer's marriage or permanent separation from a spouse.

Example to paragraph (h)(5). A filer and her husband are living apart in anticipation of divorcing. The filer need not report any information about her spouse's sole assets and liabilities, but she must continue to report their joint assets and liabilities.

(i) *Trusts, estates, and investment funds*—(1) *In general.* (i) Except as otherwise provided in this section, each confidential financial disclosure report shall include the information required by this subpart about the holdings of any trust, estate, investment fund or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, the filer, his spouse, or dependent child.

(ii) No information, however, is required about a nonvested beneficial interest in the principal or income of an estate or trust. A vested interest is a present right or title to property, which carries with it an existing right of alienation, even though the right to possession or enjoyment may be postponed to some uncertain time in the future. This includes a future interest when one has a right, defeasible or indefeasible, to the immediate possession or enjoyment of the property, upon the ceasing of another's interest. Accordingly, it is not the uncertainty of the time of enjoyment in the future, but the uncertainty of the right of enjoyment (title and alienation), which differentiates a "vested" and a "nonvested" interest.

Note to paragraph (i)(1): Nothing in this section requires the reporting of the holdings of a revocable inter vivos trust (also known as a "living trust") with respect to which the filer, his spouse or dependent child has only a remainder interest, whether or not vested, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's dependent child. Furthermore, nothing in this section requires the reporting of the holdings of a revocable inter vivos trust from which the filer, his spouse or dependent child receives any discretionary distribution, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's dependent child.

(2) *Qualified trusts and excepted trusts.* (i) A filer should not report information about the holdings of any qualified blind trust (as defined in § 2634.403) or any qualified diversified trust (as defined in § 2634.404).

(ii) In the case of an excepted trust, a filer should indicate the general nature of its holdings, to the extent known, but does not otherwise need to report information about the trust's holdings. For purposes of this part, the term "excepted trust" means a trust:

(A) Which was not created directly by the filer, spouse, or dependent child; and

(B) The holdings or sources of income of which the filer, spouse, or dependent child have no specific knowledge through a report, disclosure, or constructive receipt, whether intended or inadvertent.

(3) *Excepted investment funds.* (i) No information is required under paragraph (i)(1) of this section about the underlying holdings of an excepted investment fund as defined in paragraph (i)(3)(ii) of this section, except that the fund itself shall be identified as an interest in property and/or a source of income.

(ii) For purposes of financial disclosure reports filed under the provisions of this subpart, an "excepted investment fund" means a widely held investment fund (whether a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, or any other investment fund), if:

(A)(*1*) The fund is publicly traded or available; or

(*2*) The assets of the fund are widely diversified; and

(B) The filer neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(iii) A fund is widely diversified if it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the United States Government) and no more than 20% in any particular economic or geographic sector.

(j) *Special rules.* (1) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed under this subpart. However, if the individual has authority to exercise control over the fund's assets for personal use rather than campaign or political purposes, that portion of the fund over which such authority exists must be reported.

(2) In lieu of entering data on a part of the report form designated by the Office of Government Ethics, a filer may attach to the reporting form a copy of a brokerage report, bank statement, or other material, which, in a clear and concise fashion, readily discloses all information which the filer would otherwise have been required to enter on the concerned part of the report form.

(k) For reports of confidential filers described in § 2634.904(a)(3) of this subpart, each supplemental confidential financial disclosure report shall include only the supplemental information:

(1) Which is more extensive than that required in the reporting individual's public financial disclosure report under this part; and

(2) Which has been approved by the Office of Government Ethics for collection by the agency concerned, as set forth in supplemental agency regulations and forms, issued under §§ 2634.103 and 2634.601(b) (see § 2634.901(b) and (c) of this subpart).

§ 2634.908 [Amended]

■ 22. Section 2634.908 is amended by removing the phrase "twelve months ending September 30," in paragraph (a) and adding in its place the phrase "calendar year,".

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

■ 23. 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

§ 2640.102 [Amended]

■ 24. Section 2640.102 is amended by adding the phrase "and 2634.907(i)(3)" after the citation "5 CFR 2634.310(c)" at the end of the fifth sentence in the note to paragraph (a).

[FR Doc. 06–4529 Filed 5–15–06; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 614

RIN 0578–AA16

Appeal Procedures

AGENCY: Natural Resources Conservation Service.

ACTION: Interim final rule with request for comments.

SUMMARY: The Natural Resources Conservation Service (NRCS), United States Department of Agriculture (USDA) issues this interim final rule amending NRCS's informal appeals procedures as required by Title II of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, 7 U.S.C. 6991 *et seq.* (the 1994 Act). This interim final rule amends regulations promulgated by the interim final regulations published by the Secretary of Agriculture for NRCS on December 29, 1995 (60 FR 67313), and also includes new language to address statutory changes and make procedural and structural changes. Because of the substantive changes the agency is making to its informal appeal process under the current regulation, NRCS is publishing this rule as an interim final rule with request for comments.

NRCS has determined that issuing an interim final rule with request for comments rather than a proposed rule was justified in order to implement the changes required by statute as well as to institute procedural improvements. This interim final rule with request for comments puts the public on notice of the changes being made while affording an opportunity to comment. At the same time, much needed changes and improvements to the current regulation may be implemented immediately thereby better serving the public and the USDA.

DATES: *Effective Date:* May 16, 2006. Comments must be received by June 15, 2006.

NRCS invites interested persons to submit comments on this interim final rule. Comments may be submitted by any of the following methods: Mail: Send comments to: Beth Schuler, Natural Resources Conservation Service, 1400 Independence Avenue, SW., 103, Washington, DC 20250, or E-Mail: Send comments to *beth.schuler@wdc.usda.gov.* You may also submit comments via facsimile transmission to: (615) 673–6705; or through the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

ADDRESSES: This interim final rule can be accessed via the internet. Users can access the NRCS homepage at: *http://www.nrcs.usda.gov/programs/appeals/interimfinalrule.*

FOR FURTHER INFORMATION CONTACT: Beth A. Schuler, Conservation Planning and Technical Assistance Division, Room 6015–S, 1400 Independence Ave, SW., 103, Washington, DC 20250. Telephone: (615) 646–9741; E-mail: *beth.schuler@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim final rule has been determined to be not significant under