

*Program, Legislation, and Statutory Reference*

Food Stamp, Food Stamp Act of 1977, as amended; 7 U.S.C. 2020(e)(6)(B).

Employment Security (Unemployment Insurance and Employment Services), Social Security Act (Title III), as amended by the Social Security Act Amendments of 1939, Section 301, on August 10, 1939, and the Wagner-Peyser Act, as amended by Pub. L. 81-775, section 2, on September 8, 1950; 42 U.S.C. 503(a)(1) and 29 U.S.C. 49d(b).

Grants to States for Old-Age Assistance for the Aged (Title I of the Social Security Act); 42 U.S.C. 302(a)(5)(A).<sup>1</sup>

Aid to Families with Dependent Children, (Title IV-A of the Social Security Act); 42 U.S.C. 602(a)(5).<sup>2</sup>

Grants to States for Aid to the Blind, (Title X of the Social Security Act); 42 U.S.C. 1202(a)(5)(A).<sup>1</sup>

Grants to States for Aid to the Permanently and Totally Disabled, (Title XIV of the Social Security Act); 42 U.S.C. 1352(a)(5)(A).<sup>1</sup>

Grants to States for Aid to the Aged, Blind or Disabled. (Title XVI of the Social Security Act); 42 U.S.C. 1382(a)(5)(A).<sup>1</sup>

Medical Assistance (Medicaid), Social Security Act (Title XIX), as amended, section 1902 (a)(4)(A); 42 U.S.C. 1396(a)(4)(A).

State and Community Programs on Aging (Older Americans), Older Americans Act of 1965 (Title III), as amended by the Comprehensive Older Americans Act Amendments of 1976, section 307 on October 18, 1978; 42 U.S.C. 3027(a)(4).

Federal Payments for Foster Care and Adoption Assistance, (Title IV-E of the Social Security Act); 42 U.S.C. 671(a)(5).

Part II: The following programs have a regulatory requirement for the establishment and maintenance of personnel standards on a merit basis.

*Program, Legislation, and Regulatory Reference*

Occupational Safety and Health Standards, Williams-Steiger Occupational Safety and Health Act of 1970; Occupational Safety and Health State Plans for the Development and Enforcement of State Standards; Department of Labor, 29 CFR 1902.3(h). Occupational Safety and Health Statistics, Williams-Steiger

Occupational Safety and Health Act of 1970; BLS Grant Application Kit, May 1, 1973, Supplemental Assurance No. 15A.

Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5196b), as amended; 44 CFR 302.4.

[FR Doc. 97-16425 Filed 6-23-97; 8:45 am]

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**OFFICE OF GOVERNMENT ETHICS****5 CFR Part 2634**

RIN 3209-AA00

**Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture**

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

**ACTION:** Final rule.

**SUMMARY:** The Office of Government Ethics is amending the regulation governing confidential financial disclosure for executive branch employees, to update the standardized confidential disclosure report form's designation as OGE Form 450, which is replacing the Standard Form (SF) 450; and to provide authority for all executive branch agencies to adopt and use a standardized certificate of no new interests (OGE Optional Form 450-A) as an alternative procedure in lieu of OGE Form 450, for regular employee annual confidential disclosure filers who can make the required certifications.

**EFFECTIVE DATE:** July 24, 1997.

**FOR FURTHER INFORMATION CONTACT:** G. Sid Smith, Associate General Counsel, Office of Government Ethics; telephone: 202-208-8000; TDD: 202-208-8025; FAX: 202-208-8037.

**SUPPLEMENTARY INFORMATION:****I. Background**

On January 15, 1997, the Office of Government Ethics (OGE) published a proposed amendment to the confidential financial disclosure regulation for the executive branch, to modify 5 CFR 2634.601 and 2634.905. See 62 FR 2048-2052. Five departments and agencies submitted written comments that suggested modifications to the proposed amendment, and two submitted letters concurring in the amendment as proposed. After considering those comments, as discussed below, OGE has made some clarifying and corrective changes to the rule as proposed and to the draft OGE Optional Form 450-A, in adopting them as final. We are publishing the amended proposal herewith as a final rule, effective July 24, 1997.

The amendment to 5 CFR 2634.601 reflects the standardized confidential disclosure form's revision and redesignation in 1996 as OGE Form 450. A camera-ready copy of that form was distributed by OGE on February 27, 1996, to all designated agency ethics officials, for local copying and gradual phase-in as a replacement for the Standard Form (SF) 450. As indicated in the proposed rule, Paperwork Reduction Act clearance for the outdated SF 450 will expire on August 31, 1997, after which that form is no longer usable. This amended section also references the new OGE Optional Form 450-A which the amendment to § 2634.905 authorizes, as discussed below.

The amendment to 5 CFR 2634.905 exercises OGE's authority under current § 2634.905(c) of the regulation to approve, in writing, alternative procedures for confidential disclosure, which in this instance is being accomplished through the regulatory process with a new § 2634.905(d). That new subsection authorizes all executive branch agencies to permit the use of a standardized certificate of no new interests as an alternative procedure in lieu of filing OGE Form 450, for annual confidential disclosure filers (other than special Government employees) who can make the required certifications and who choose to use this method. That standardized certificate has been designated as OGE Optional Form 450-A. Users must certify that they (and their spouse and dependent children) have acquired no new reportable financial interests since filing their most recent previous OGE Form 450 (which they must first reexamine), and that they have not changed jobs (no new position description or other significant change in duties) at their agency since filing that previous report.

A form similar to the new OGE Optional Form 450-A was tested by a Cabinet-level department in 1995, which yielded highly favorable results. Following that test, OGE obtained comments from ethics officials throughout the executive branch by means of a written survey and a focus group. The general consensus of opinions expressed through these information-gathering efforts established the basis for the new OGE Optional Form 450-A and the procedures for its use, as outlined in this regulatory amendment. For those agencies that decide to permit filers to use OGE Optional Form 450-A, this alternative to an annual OGE Form 450 should help ease the administrative burden for both filers and ethics officials, while preserving general uniformity and

<sup>1</sup> Public Law 92-603 repealed Titles I, X, XIV and XVI of the Social Security Act effective January 1, 1974, except that "such repeal does not apply to Puerto Rico, Guam, and the Virgin Islands."

<sup>2</sup> Public Law 104-193 repealed the Aid to Families with Dependent Children program effective July 1, 1997.

continuing to guard against conflicts of interest.

## II. Analysis of Comments to the Proposed Amendments

Only five departments and agencies (hereinafter referred to generally as agencies) submitted written comments that suggested modifications to the proposed amendment, while two additional letters concurred in the amendment as proposed. The following discussion concerns the five letters which offered substantive comments.

### Section 2634.601

One agency asked that it be allowed to continue using the outdated Standard Form (SF) 450, as it still has a large supply of those forms. We are unable to satisfy that request. First, OGE placed all designated agency ethics officials on notice that the old form would gradually be phased out (possibly as early as the fall of 1996), when we distributed for immediate use a camera-ready copy of the new form in a memorandum dated February 27, 1996. That advisory and a subsequent reminder memorandum of June 17, 1996, did suggest that the old SF 450 could continue to be used until supplies were depleted, unless otherwise advised. However, those memoranda also encouraged agencies to begin anticipating their needs and making arrangements for local copying of the new OGE Form 450 in time for the October 1996 filing cycle, which occurred more than six months ago.

Second, the proposed regulatory amendment of January 15, 1997, put ethics officials on notice that Paperwork Reduction Act clearance for the SF 450 would finally expire at the end of August 1997. Third, the SF 450 is no longer considered to be an adequate format, as it is not fully up-to-date regarding certain disclosure requirements, and therefore OGE has not sought a further extension of Paperwork Reduction Act clearance for it from the Office of Management and Budget. For example, the SF 450 does not reflect a 1993 amendment to the confidential disclosure regulation eliminating the requirement to disclose bank accounts, money market funds and accounts, and U.S. Government obligations and securities. The old form also forces filers to determine whether certain mutual funds and pensions are "excepted investment funds," which is no longer required of confidential filers. While OGE has instructed agencies to advise their filers of these changes, that has only served as a temporary stopgap measure. Furthermore, the SF 450 does not contain the improved instructional guidance that the new OGE Form 450

offers. For all these reasons, we have retained in this final rule the parenthetical reference that the old SF 450 remains usable only until August 31, 1997. After that date, the OGE Form 450 must be used by confidential filers.

One agency asked that the final rule clarify whether the new certificate of no new interests (OGE Optional Form 450-A) could be used during the fall 1997 confidential disclosure filing cycle. We have made no change to the proposed rule on that question, as it will be clear from the rule's effective date, July 24, 1997, that it is usable in 1997. We will also notify ethics officials of that effective date by separate memorandum, to be issued contemporaneously with the publication of this rule in the **Federal Register**. Of course, prior to permitting the use of OGE Optional Form 450-A for some or all of its eligible confidential filers, an agency head or designee must make the determination required by new § 2634.905(d) that this certificate is adequate to prevent possible conflicts of interest, under the agency's particular circumstances. Agencies should accomplish this through their own established procedures, without consulting OGE. (If, however, an agency wishes to deviate from the prescribed methodology or format for OGE Optional Form 450-A, it must seek separate written OGE approval, pursuant to § 2634.905(c), with appropriate justification. Other formats may also require clearance under the Paperwork Reduction Act from the Office of Management and Budget.)

### Section 2634.905

Two agencies suggested that the regulation should require users of the certificate of no new interests to attach their previous OGE Form 450, as a basis for a full conflicts review by the agency and to inform new supervisors, or as an aid in tracking when filers would be required to submit a new complete OGE Form 450. On the latter point, this amendment was constructed so that agencies will not have to track each individual filer's history to determine when the allowable period of time has passed between OGE Form 450 filings. Instead, all confidential disclosure filers must use the OGE Form 450 every fourth year (or every third or second year, if the agency chooses to use those options), on a uniform basis. The preamble to the proposed amendment discussed this, but for further clarification, we have added a reference in § 2634.905(d)(4) of the final rule to § 2634.905(d)(5), which specifies the uniform periodic filing of OGE Form 450.

Concerning the other comment on how to effectively review a filer's holdings and how to inform new supervisors of those holdings without the previously filed OGE Form 450, we note that the certificate will be a partial update of an OGE Form 450 that has already been reviewed with respect to the filer's current duties and kept on file by the agency, as discussed in the preamble to the proposed rule. In most cases, there will be no need for the agency to re-review the previous OGE Form 450. Any recusals or work assignment screening mechanisms should already have been established and undertaken, based on the original review of that earlier OGE Form 450. Furthermore, by not requiring certificate users to attach their previous OGE Form 450, the rule best advances the fundamental purposes for creating the certificate: to reduce paperwork and to simplify procedures for both filers and ethics officials. The amendment still allows an individual agency to require that its certificate users attach a copy of their previous OGE Form 450, if the agency determines that the previous form should be reexamined by supervisors or other agency reviewers. Note, however, that only the agency's official copy which is maintained in its files will necessarily reflect changes made during the agency review process, along with any steps undertaken to resolve potential conflicts. Therefore, the filer's personal copy will not always be an accurate or reliable indicator of the previously filed OGE Form 450, as reviewed. Based on all these considerations, OGE has not altered the proposed rule to accommodate this request, and will leave any requirement for certificate users to attach their previous OGE Form 450 up to each individual agency.

Even though not required to attach their previous OGE Form 450, users of OGE Optional Form 450-A must first verify that they have reexamined their most recent previous OGE Form 450 before certifying that they have no new interests to report. Two agencies commented that it should be the responsibility of individual filers to retain copies of their prior OGE Form 450s for this purpose, so that they do not unnecessarily burden the agency with requests for copies. As noted in the preamble to the proposed rule, filers should be encouraged to retain copies of their previous filings, so that an agency's ethics office does not become overburdened with providing them copies. We have added a sentence to § 2634.905(d)(6) as a permanent reminder. The final rule does not,

however, require filers to retain their prior OGE Form 450 as a condition of their using the new OGE Optional Form 450-A. If an agency is unable to convince filers to retain such records and believes that this creates an administrative burden, then that agency may decide, as suggested in the preamble to the proposed rule, not to adopt this new alternative procedure, because administrative time-saving would not be realized. Agencies might also want to delay implementation of this alternative procedure, which would provide a base year for filers to retain a copy of their OGE Form 450.

Three agencies suggested that the certificate of no new interests be transformed into a certificate of no change. For the reasons discussed in the preamble to the proposed rule, OGE has not done that. As the preamble noted, it was a certificate of no new interests that had been tested at a Cabinet-level department and subsequently favored by 84% of the respondents to OGE's survey, rather than a certificate of no change (no new interests and no divestitures). A certificate of no new interests will permit a greater number of filers to use this alternative to the OGE Form 450. If an agency is concerned that filers may be unnecessarily recusing themselves from matters where they no longer hold a conflicting financial interest, it may want to have supervisors periodically revalidate with employees the continued need for any existing recusals, as a separate matter. If that is not practical, an agency may elect not to adopt this alternative procedure, and instead to continue requiring a new OGE Form 450 each year. Or it could seek written approval from OGE for some other alternative, pursuant to § 2634.905(c), with appropriate justification. (Other formats may also require clearance under the Paperwork Reduction Act from the Office of Management and Budget.)

Two agencies suggested that, instead of a separate form to be submitted as a certificate of no new interests, we should amend OGE Form 450 to include a space for periodic certification by filers, or that we should permit filers to stamp or annotate a certification on the current OGE Form 450. While those are useful suggestions which could help reduce paper and administration, and which might be less confusing for some filers, we have decided to retain the proposed method of filing a separate certificate. Switching to the method suggested by those two commenters on an executive branchwide basis would require OGE to publish a new proposed rule in the **Federal Register** and to seek additional clearance under the

Paperwork Reduction Act for an altered OGE Form 450. Our existing proposal for a separate certificate of no new interests has already been pending or under development for almost two years, and the new OGE Form 450 was issued just last year. For these reasons, we believe that we should now go forward with the separate certificate, as proposed.

One Cabinet-level department advised OGE that the proposal for a separate certificate of no new interests would not be implemented by them, as it would unnecessarily complicate the administration of the financial disclosure program and filing process, and it could confuse filers. They cited the loss of predictability for filers, the need for the department to distribute additional instructions, the possibility of having to provide both blank forms to filers, and the potential of requests from filers for copies of their prior reports.

While we cannot disagree that some of these concerns may be valid to varying degrees, we believe that the majority of agencies will find overall that the certificate of no new interests will reduce paperwork and will provide a welcome relief for both filers and agency ethics officials. In order to further simplify the matter of providing guidance to certificate users on the meaning of "reportable" interests, OGE has made some changes to § 2634.905(d)(3) of the final rule, including a suggestion that agencies may refer filers to electronic sources such as OGE's Internet Web site or software for completing OGE Form 450. Additionally, as noted in the proposed rule, use of this alternative certificate is entirely optional with each agency, and even if the agency does decide it would be beneficial to adopt, each affected employee would retain the option of either using the certificate (if applicable) or filing a new OGE Form 450. Thus, this regulatory amendment does not mandate any new requirements for agencies or their employees. It simply responds to a need for additional flexibility that OGE and a number of agencies and employees have identified. The commenting department's counterproposal for a certification directly on the OGE Form 450 has not been adopted, for the reasons discussed above.

One agency asked that OGE allow local rather than agencywide implementation of OGE Optional Form 450-A. As noted above, this new procedure requires the agency to determine, under § 2634.905(d), that its use is adequate to prevent conflicts of interest, under that agency's particular circumstances. Further, the new rule

permits implementation of this procedure for all or specified groups of its eligible filers. Using these guidelines, the commenting agency may decide to approve the use of OGE Optional Form 450-A for some but not all of its local components.

One commenter asked that OGE allow agencies to develop alternative systems tailored to their particular needs. As discussed in the preamble to the proposed rule, the general regulatory authorization for use of a standardized alternative procedure by executive branch agencies which this amendment accomplishes does not eliminate other alternative procedures that have been approved by OGE in writing on an agency-specific basis, under 5 CFR 2634.905(c). If an agency wishes to deviate from the prescribed methodology or format for OGE Optional Form 450-A, it must seek separate written OGE approval pursuant to § 2634.905(c), with appropriate justification. (Other formats may also require clearance under the Paperwork Reduction Act from the Office of Management and Budget.) This commenter correctly recognized that, absent separate OGE approval, the new OGE Optional Form 450-A must be used in exactly the prescribed format and under the regulatory requirements of § 2634.905(d). It is optional only in the sense that implementation by agencies is discretionary, and that its use will not be mandatory for any employee.

One agency suggested that the OGE Optional Form 450-A be permitted for a maximum of four consecutive years before collection of another complete OGE Form 450, rather than three, as it would be easier to remember that filing a complete OGE Form 450 is required in years ending in "0" or "5" than in years divisible by four. Alternatively, this agency suggested that agencies be allowed to spread the periodic collection of OGE Form 450s from certificate users over several different years, so that it would not have to review all such forms in the same year. The Office of Government Ethics has rejected both suggestions. As noted in the preamble to the proposed rule, over half of the respondents to OGE's survey recommended the four-year maximum. The new regulation permits agencies to adopt fewer than four years as its standard, but we believe that a longer period would significantly reduce the effectiveness of OGE Optional Form 450-A in preventing conflicts. Concerning the requirement that all users of the OGE Optional Form 450-A file a new OGE Form 450 periodically at the same time, rather than staggering

those filings, the discussion above and in the preamble to the proposed rule explains that this was considered necessary in order to avoid the administrative confusion that would result if agencies had to track for individual filers when their next OGE Form 450 would be due. Furthermore, it was preferred by nearly two-thirds of the respondents to OGE's survey.

In order to more accurately track the language of OGE Optional Form 450-A, OGE has amended § 2634.905(d) of the final rule describing the term "changed jobs." As indicated therein, it includes a new position description or other "significant change" in duties at one's agency. Ordinarily, a certificate user should have no difficulty in understanding what is meant by a "significant change" in duties, especially in the context of the potential for conflicts of interest. If an agency anticipates that this could confound employees, it may wish to offer special guidance, tailored to the agency's mission and functions or to categories of position descriptions. The Office of Government Ethics has deliberately not attempted to further define the concept of "significant change" in duties, because it is not amenable to a Governmentwide or rigid interpretation. For some agencies, it may be important to have certificate users consider not only changes in their official responsibilities but also in the outside entities with which they routinely interact, when determining whether there has been a "significant change." If the term proves too elusive for some agencies or filers, then they should simply not use OGE Optional Form 450-A. Again, the purpose of this new form and procedure is to reduce paperwork and administrative burden. If an agency determines that those goals will not be fulfilled, then it should not adopt this new option.

#### *OGE Optional Form 450-A*

One agency asked that OGE revise the parenthetical statement on the new OGE Optional Form 450-A which refers filers to instructions accompanying OGE Form 450 or other agency guidance in determining what interests are considered reportable. The agency suggested that filers should be referred to both sources, not to one or the other, so that an agency might supplement the instructional guidance accompanying OGE Form 450 without having to repeat or reference all of its contents. While we do not concur that supplemental guidance would necessarily have to repeat or reference all other guidance in order to stand alone, we have modified the parenthetical reference on the OGE

Optional Form 450-A by changing "or" to "and/or." Another agency suggested that the new form be revised to include supplementary guidance directly on its face. Because of space limitations, and to further the purpose of this certificate as a short and simple alternative for annual filers, OGE has not adopted that suggestion.

Two agencies suggested that OGE should add a signature block to the OGE Optional Form 450-A for the supervisor and/or ethics official to indicate receipt, or to show completion of review, or to verify whether the filer had changed jobs and if so, its effect on the potential for conflicts. Instead, the form has a space at the bottom, marked "for agency use," with a designated block for "date of receipt" and for general "notes." Agencies are free to use that space as they see fit, which might include the signatures of supervisors or ethics officials, if they deem it appropriate. Recognizing that each agency might want to use different procedures for tracking or examining these certificates, we have decided not to make the specific additions suggested by these two commenters.

We have also not adopted the suggestion of one agency that OGE Optional Form 450-A be revised to more prominently state the penalties for falsification. Because of space limitations, we have decided to leave the penalties section on the second page, along with the Privacy Act statement.

Nor have we adopted an agency's suggestion that OGE Optional Form 450-A be modified to account for changes in a spouse's Federal employment. The form as drafted requires a certification that the certificate user's spouse has not changed jobs with a non-Federal employer, because it is only the spouse's non-Federal employment that must be reported as an earned income source on OGE Form 450. Based on this suggestion about spousal employment, however, we have decided to modify OGE Optional Form 450-A and § 2634.905(d) of the regulatory amendment, to more directly focus on the source of a spouse's non-Federal income rather than on a change in the spouse's responsibilities with an employer. To accomplish this on the form, we have moved spousal employment sources of income to section A ("No New Interests") of the certificate and deleted it from section B ("No Change in Position/Duties"). For certificate users themselves, the form will remain unchanged, as for them the inquiry does relate to their Federal employment and whether their duties have changed,

since that is what will affect the potential for conflict with their financial interests.

### **III. Availability of Forms and Confidentiality**

Previously, OGE provided a camera-ready version of OGE Form 450 to each designated agency ethics official, for copying of supplies locally. Likewise, OGE intends to distribute to all designated agency ethics officials before the effective date a camera-ready version of the new OGE Optional Form 450-A, for local copying. Both forms are also available from OGE in electronic format, from which paper copies may be printed. The electronic format may be obtained through OGE's electronic bulletin board TEBBS ("The Ethics Bulletin Board System") at 202-208-8030, or via OGE's World Wide Web Site at <http://www.access.gpo.gov/usage>.

As indicated in the proposed rule, once the OGE Optional Form 450-A is completed and filed, it is a confidential document and must be accorded the same privacy protections as the OGE Form 450. Thus, no member of the public will have access to a completed certificate of no new interests, except as authorized by law. See 5 CFR 2634.604(b) and 2634.901(d). The OGE Optional Form 450-A includes a Privacy Act statement to that effect.

### **IV. Matters of Regulatory Procedure**

#### *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 Planning and Review. These amendments have also been reviewed by the Office of Management and Budget under that Executive order.

#### *Regulatory Flexibility Act*

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this 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 their agencies.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply, because these amendments do not contain information collection requirements that require the approval of the Office of Management and Budget.

**List of Subjects in 5 CFR Part 2634**

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

Approved: May 5, 1997.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2634 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations, as follows:

**PART 2634—[AMENDED]**

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; 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 F—Procedure**

2. Section 2634.601 is amended by removing the parenthetical phrase following paragraph (c), and by revising paragraph (a) and adding a new paragraph (d) to read as follows:

**§ 2634.601 Report forms.**

(a) The Office of Government Ethics provides, through the Federal Supply Service of the General Services Administration (GSA), a standard form, the SF 278 (Public Financial Disclosure Report), for reporting the information described in subpart B of this part on executive branch public disclosure. The Office of Government Ethics also provides two uniform formats relating to confidential financial disclosure: OGE Form 450 (Confidential Financial Disclosure Report) for reporting the information described in subpart I of this part on executive branch confidential disclosure; and OGE Optional Form 450-A (Confidential Certificate of No New Interests) for voluntary use by certain employees in lieu of filing an annual OGE Form 450, if authorized by their agency, in accordance with § 2634.905(d) of subpart I of this part. Supplies of the two confidential forms are to be reproduced locally by each agency, from a camera-ready copy or an electronic format made available by the Office of Government Ethics. (Until August 31, 1997, the old SF 450 remains usable, rather than the new OGE Form 450, and

is available from GSA's Federal Supply Service.)

\* \* \* \* \*

(d) The information collection and recordkeeping requirements have been approved by the Office of Management and Budget under control number 3209-0001 for the SF 278, and control number 3209-0006 for OGE Form 450/SF 450. OGE Optional Form 450-A has been determined not to require an OMB paperwork control number, as its use is strictly optional for employees, it is used exclusively by current Government employees, and it does not require affirmative disclosure of substantive information.

**Subpart I—Confidential Financial Disclosure Reports**

3. Section 2634.905 is amended by removing the word "or" at the end of paragraph (b)(2), by removing the period at the end of paragraph (c) and replacing it with the terms "; or", and by revising the introductory text and adding a new paragraph (d) before the examples to read as follows:

**§ 2634.905 Exclusions from filing requirements.**

Any individual or class of individuals described in § 2634.904 of this subpart, 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:

\* \* \* \* \*

(d) The use of OGE Optional Form 450-A (Confidential Certificate of No New Interests) is adequate to prevent possible conflicts of interest. This form may be used by eligible filers, as described in this paragraph, who can certify, after reexamining their most recent previous OGE Form 450, that they (and their spouse and dependent children) have acquired no new interests required to be reported on OGE Form 450, and that they have not changed jobs (no new position description or other significant change in duties) at their agency since filing that previous report. OGE Optional Form 450-A will be used under the following conditions:

(1) OGE Optional Form 450-A will only be made available for use by current employees who are not special Government employees.

(2) OGE Optional Form 450-A will only be used by incumbent filers, as described in § 2634.903(a) of this subpart, in lieu of filing an annual OGE Form 450, who have a previous OGE Form 450 on file with their agency for

the position they currently hold. Its due date is as specified in § 2634.903(a), unless extended under § 2634.903(d).

(3) As indicated on the OGE Optional Form 450-A, eligible filers may use OGE Optional Form 450-A, if applicable to their circumstances, or they may file a new OGE Form 450, at their option. Therefore, a blank OGE Form 450 and its accompanying written instructions should ordinarily be distributed to them, along with the blank OGE Optional Form 450-A. The instructions to OGE Form 450 will also provide guidance on what is meant by "reportable" interests on OGE Optional Form 450-A. In lieu of distributing a blank OGE Form 450 and its instructions, agencies may choose to develop separate guidance on the meaning of "reportable" interests, or they may refer certificate users to guidance contained in any available source, such as the Office of Government Ethics' Web site on the Internet or agency-approved electronic software for OGE Form 450. Filers would then also have to be advised of where to obtain a blank OGE Form 450, if needed.

(4) OGE Optional Form 450-A may be used by eligible filers for a maximum of three consecutive years before they are required to complete a new OGE Form 450 every fourth year, on a uniform basis for all incumbent (annual) filers, as provided in paragraph (d)(5) of this section. Agencies may, however, elect to permit use of the OGE Optional Form 450-A for only one year (or two years), and to require a new OGE Form 450 every second (or third) year, on a uniform basis for all incumbent filers, as provided in paragraph (d)(5) of this section.

(5) In each year divisible by four, beginning in 2000 (or divisible by two or three, beginning in 1998, for agencies that choose one of the more frequent options described in the second sentence of paragraph (d)(4) of this section), all incumbent filers, as described in § 2634.903(a) of this subpart, must file a new OGE Form 450 rather than OGE Optional Form 450-A, regardless of how recently they may have filed an OGE Form 450 (either as a new entrant or as an annual filer who was not eligible to use, or chose not to use, the optional certificate).

(6) When submitting OGE Optional Form 450-A, filers are not required to attach a copy of their previous OGE Form 450, unless their agency determines that it is necessary. Filers should be encouraged, however, to retain a copy of their previous OGE Form 450, so that it will be readily available for their examination prior to

completing an OGE Optional Form 450-A.

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 1

#### Freedom of Information and Privacy Act Regulations

**AGENCY:** Office of the Secretary of Agriculture, USDA.

**ACTION:** Final rule.

**SUMMARY:** The United States Department of Agriculture (USDA or the Department) is amending its regulations pertaining to the Freedom of Information and Privacy Acts to make corrections, clarifications, updates, and to remove unnecessary regulations. This action is part of the USDA regulatory reinvention initiative to improve its regulations.

**EFFECTIVE DATE:** July 24, 1997.

**FOR FURTHER INFORMATION CONTACT:**

Regarding the regulations mentioned in this document, contact Scott C. Safian, Staff Attorney, Regulatory Division, Office of the General Counsel, U.S. Department of Agriculture, Room 2422, South Building, 14th Street and Independence Avenue, SW, Washington, DC 20250-1400, (202) 720-2003. Regarding general information on USDA's "reinvention initiative," contact: Marvin Shapiro, Chief, Legislative, Regulatory and Automated Systems Division, Office of Budget and Program Analysis, U.S. Department of Agriculture, Room 147-E, Jamie L. Whitten Federal Building, 14th Street and Independence Avenue, SW, Washington, DC 20250-1400, (202) 720-1516.

**SUPPLEMENTARY INFORMATION:** The President directed the heads of all Federal departments and agencies to conduct a review of their regulations and to eliminate or revise those that are outdated or otherwise in need of reform. The USDA review identified the Department's Administrative Regulations—Official Records (7 CFR, part 1, subpart A) and Administrative Regulations—Privacy Act Regulations (7 CFR, part 1, subpart G) as two regulations that needed to be revised.

The regulations in 7 CFR, part 1, subpart A (Administrative Regulations—Official Records) establish policy, procedures, requirements, and responsibilities for administration and

coordination of the Freedom of Information Act (FOIA), 5 U.S.C. 552, pursuant to which official records may be obtained by any person. The regulations also provide rules pertaining to the disclosure of records pursuant to compulsory process and serve as the implementing regulations for the Office of the Secretary and for the office within the Department having primary responsibility for the FOIA.

The regulations in 7 CFR, part 1, subpart G (Administrative Regulations—Privacy Act Regulations), contain the regulations of the Department implementing the Privacy Act of 1974, 5 U.S.C. 552a. The regulations set forth the basic responsibilities of each agency of the Department with regard to USDA's compliance with the requirements of the Privacy Act, and offer guidance to members of the public who wish to exercise any of the rights created by the Act with regard to records maintained by an agency of USDA.

On July 25, 1996, we published, in the **Federal Register** (61 FR 38657-38663), a proposed rule to amend the regulations to correct references to statutes, regulations, USDA agencies, and USDA officials; reflect the change of the name of the Administration Building to the Jamie L. Whitten Federal Building; reflect changes in statutes and USDA policy; remove gender specific references; remove unnecessary regulations; and make minor, nonsubstantive changes for clarity. We solicited comments concerning our proposal for 60 days ending on September 23, 1996.

We received two sets of comments. One was from a Freedom of Information Act/Privacy Act officer of one of the Department's subagencies; the other commenter did not identify himself or herself. The commenters supported the proposed rule, but offered suggestions or sought clarification regarding the proposed changes.

One commenter asked, in regard to § 1.9(b) of the FOIA regulations (7 CFR 1.9(b)), whether the regulation was omitting a page-by-page or line-by-line search for the identification of the requested information or material within records for purposes of charging the requester for search services. The commenter noted that sometimes a requester is seeking specific records or information located within a file which contains several drawers full of material. The requester, stated the commenter, wants the particular records or information but does not want a copy of the entire file. However, to locate the particular records or information contained in the file may require

searching the entire file page-by-page or line-by-line.

This final rule does not change the requirements regarding "search services" in § 1.9(b). Search services are services of agency personnel used in locating the requested records. Search services include time spent examining records for the purpose of finding information that is within the scope of the request as well as services to transport personnel or records for the purpose of the search, if such services are reasonable. Search services do not include the time spent locating a record if the record is in its normal location in a file or other facility or the review of records to determine whether the records are exempt. We proposed to amend the language of § 1.9(b) in order to more clearly state the Department's policy and requirements regarding search services. We did not propose, and this final rule does not make, any substantive changes to § 1.9(b) of the regulations. Accordingly, we have not made any change in response to this comment.

The other commenter pointed out several typographical errors contained in the proposed rule that needed to be corrected and suggested other minor, non-substantive changes which should be made for clarification. We agree with the commenter and have made these changes to the regulations. This commenter also suggested that we change all references to the words "him," "her," "himself," or "herself" in the Department's Privacy Act regulations (7 CFR, part 1, subpart G) to "requester" or "individual." We agree with the commenter that these words are appropriate, and should be used whenever possible. We proposed to make these changes throughout the Privacy Act regulations, and this final rule does so. However, in some instances, the use of personal pronouns is both appropriate and necessary. We have made changes to the regulations where appropriate.

In addition to the above, this final rule does not make the proposed changes to § 1.123 of the Department's Privacy Act regulations. Section 1.123 contains the systems of records (or portions thereof) maintained by agencies of the USDA that are exempted from some of the provisions of the Privacy Act. The amendment of these exemption regulations will be left to the individual agencies as they publish amendments to their existing systems notices to reflect agency name changes.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final