

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209-AA00

Proposed Revisions to the Executive Branch Confidential Financial Disclosure Reporting Regulation

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule.

SUMMARY: The Office of Government Ethics proposes to amend the executive branch regulation regarding confidential financial disclosure. The proposed amendments would 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. The rule also would include new examples to illustrate these changes, a technical amendment to delete an obsolete provision, and minor conforming amendments.

DATES: Public comments on these proposed rule amendments are welcome and must be received in writing on or before October 11, 2005.

ADDRESSES: You may submit comments to OGE on this proposed rule, identified by RIN 3209-AA00, by any of the following methods:

- E-mail: usoge@oge.gov. Include RIN 3209-AA00 in the subject line of the message.
- Fax: 202-482-9237.
- Mail: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attention: Amy E. Braud, Attorney-Advisor.
- Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attention: Amy E. Braud, Attorney-Advisor.

Instructions: All submissions must include OGE's agency name and the Regulation Identifier Number (RIN), 3209-AA00, for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Amy E. Braud, Attorney-Advisor, Office of Government Ethics; Telephone: 202-482-9300; TDD: 202-482-9293; Fax: 202-482-9237.

SUPPLEMENTARY INFORMATION:

I. Background: History of the Executive Branch Confidential Financial Disclosure System

The first executive branchwide confidential financial disclosure requirement was established by President Johnson on May 8, 1965, in Executive Order 11222 ("Prescribing Standards of Ethical Conduct for Government Officers and Employees"), 30 FR 6469. Part IV of that order required any agency head, Presidential appointee in the Executive Office of the President who was not subordinate to the head of an agency in that office, and full-time member of a committee, board or commission appointed by the President, to file a financial statement with the Civil Service Commission. It also directed the Civil Service Commission to prescribe financial disclosure regulations requiring the submission of financial disclosure statements by a body of lower level employees to be designated by the Commission.

The confidential financial disclosure regulation implementing Executive Order 11222 was codified at 5 CFR part 735, subpart D, and became effective on October 1, 1965, 30 FR 12529. This regulation required certain executive branch employees (including those compensated pursuant to the executive salary schedule, certain other executive branch employees compensated at GS-16 and above, hearing examiners, and others designated by their agencies as persons who exercise judgment in making or recommending certain decisions) to file financial disclosure statements with their agency heads, and to update them quarterly. This regulation did not cover any agency head, Presidential appointee in the Executive Office of the President who was not subordinate to the head of an agency in that office, or full-time member of a committee, board or commission appointed by the President. Rather, these officials remained subject

to the reporting requirement of Part IV of Executive Order 11222. Part 735 also directed each agency to issue financial disclosure regulations governing the disclosure responsibilities of its own employees and special Government employees containing at minimum the provisions set forth at that time in prior §§ 735.403-735.412 of 5 CFR (see 1989 edition).

This agency-by-agency system of regulating financial disclosure continued for over a decade. In the aftermath of the Watergate scandal, however, some began to criticize the financial disclosure regulation as ineffective. On February 28, 1977, the United States Comptroller General submitted a report to Congress entitled "Action Needed to Make the Executive Branch Financial Disclosure System Effective." The General Accounting Office study found that many employees who were required to file financial disclosure reports failed to do so or filed late; that the procedures and criteria for collecting, processing, reviewing, and controlling financial disclosure statements were ineffective; that many potential conflicts of interest were not being identified and resolved; and that agencies had not developed sufficient methods for enforcing disqualifications and exacting remedial actions for violations. The Comptroller General recommended that a central executive branch office of ethics be created to implement the financial disclosure system, and that President Carter issue a statement to agency and department heads setting forth a firm commitment to the highest standards of ethical conduct.

On October 26, 1978, President Carter signed into law the Ethics in Government Act of 1978 (Pub. L. 95-521, 92 Stat. 1824). This sweeping legislation established the Office of Government Ethics within the Civil Service Commission (which became the Office of Personnel Management in 1979), and charged it with providing the overall direction of executive branch policies related to the prevention of conflicts of interest. 5 U.S.C. app., sec. 402(a). It also created the first public financial disclosure requirement. With respect to confidential financial disclosure, however, the Ethics Act merely provided that the President could require executive branch officers and employees to submit confidential

reports in such form as the President might prescribe by regulation. 5 U.S.C. app., sec. 207(a), as amended.

For more than another decade, the public financial disclosure system that was established by the Ethics in Government Act of 1978 operated separately from the confidential financial disclosure system, which continued under authority of Executive Order 11222 and 5 CFR part 735. On September 25, 1986, President Reagan issued Executive Order 12565 (later revoked), 51 FR 34437, directing OGE to create an executive branchwide system of confidential financial disclosure that would “complement” the public financial disclosure system. On December 2, 1986, OGE published a significant proposed amendment to part 735, subpart D, that would have required each agency to issue its own regulations, implementing specified general standards, subject to OGE approval. 51 FR 43359. The proposal was poorly received, largely because it would have created a confidential filing system differing substantially from the public filing system. Thus, OGE decided not to implement it.

On April 12, 1989, President Bush issued Executive Order 12674, 54 FR 15159 (later modified by E.O. 12731 of October 17, 1990, 55 FR 42547), revoking the above-noted Executive orders. Among other things, this new Executive order directed OGE to establish a new, uniform branchwide confidential financial disclosure system to complement the public financial disclosure system that had been established by the Ethics Act. Sec. 201(d) of E.O. 12674. Also, on November 30, 1989, President Bush signed into law the Ethics Reform Act of 1989 (Pub. L. 101–194, 103 Stat. 1716), which contained a modified provision for confidential disclosure as prescribed by each supervising ethics office, OGE for the executive branch. 5 U.S.C. app., sec. 107(a). In response, OGE published, on April 7, 1992, an interim regulation covering both the public and confidential financial disclosure systems in a revised part 2634 of 5 CFR. 57 FR 11800, as corrected at 57 FR 21854 and 62605. Unlike OGE’s 1986 proposal, the new confidential filing system was executive branchwide and based on, and linked to, the public financial disclosure rules. The provisions regarding confidential disclosure were published at subpart I of part 2634. Effective October 5, 1992, this regulation superseded old subpart D of 5 CFR part 735 and implementing agency regulations.

The confidential financial disclosure regulation at subpart I of part 2634

differed in many substantive ways from the superseded subpart D of part 735. For example, unlike the part 735 system, which required only the disclosure of financial interests existing on the filing date, the new regulation required that data be supplied for a twelve-month reporting period. 5 CFR 2634.908. The new regulation also described the purpose and policy behind executive branch confidential financial disclosure (§ 2634.901), provided direction for the transition to the new system (§ 2634.902), specified criteria to be used by agencies in determining which of their employees should be required to file (§ 2634.904), provided that a standardized reporting form would be issued (§ 2634.907), and established filing procedures (§ 2634.909). Additionally, this regulation made applicable to confidential filers the same general provisions that applied to public filers regarding review and custody, treatment of ethics agreements, penalties (other than the late filing fee), and other procedural matters. Unlike the prior part 735, subpart D regulations, the new regulation’s filer definition contained no general GS–13 floor. Rather, agencies were instructed to determine, for each employee position classified at GS–15 or below, whether its duties required the exercise of significant judgment in one or more of several listed areas. Subpart I of part 2634 remains substantially identical today, although OGE made several minor amendments during the next decade. See 58 FR 38911 (July 21, 1993); 58 FR 46096 (September 1, 1993—proposed); 58 FR 63023 (November 30, 1993); 63 FR 15273 (March 31, 1998); 63 FR 69991 (December 18, 1998); 64 FR 2421 (January 14, 1999); and 66 FR 55871 (November 5, 2001).

By paperwork notice dated April 13, 1992, 57 FR 12845, OGE announced that it had submitted to the Office of Management and Budget for approval, a new proposed Confidential Financial Disclosure Report form, the Standard Form 450. Although this report form has undergone several minor modifications, it remains substantially similar today. See 60 FR 34258 (June 30, 1995), 60 FR 45722 (September 1, 1995) (to replace the Standard Form 450 with the OGE Form 450); 60 FR 62469 (December 6, 1995); 63 FR 56189 (October 21, 1998); 64 FR 10151 (March 2, 1999); 67 FR 47804 (July 22, 2002); and 67 FR 61761 (October 2, 2002).

On June 24, 1997, OGE amended part 2634 to include a provision that would authorize all executive branch agencies to use a standardized “certificate of no new interests” (OGE Optional Form

450-A) as an alternative reporting procedure for filers who could certify that they (and their spouses and dependent children) had acquired no new reportable financial interests since filing their most recent previous OGE Form 450, and that they had not changed jobs at their agencies since filing that same previous report. See 62 FR 33972 (a proposed rule was published at 62 FR 2048 (January 15, 1997)). This provision was codified at § 2634.905(d) of 5 CFR.

II. Analysis of Proposed Amendments

Since 1997, the last time that OGE substantively amended the confidential financial disclosure regulation, OGE has continued to reexamine the confidential financial disclosure system in an effort to improve it. In March of 2003, OGE distributed a survey to executive branch ethics officials which sought input on possible improvements to the financial disclosure system, the results of which proved beneficial in identifying what information needs to be reported in order for an agency ethics official to perform a thorough conflict of interest review. After reviewing the results of the survey, and re-examining the current reporting requirements, we have determined that both the confidential report form and filing process should be improved in several ways. In accordance with section 402 of the Ethics Act and section 201(d) of E.O. 12674, as modified, OGE has consulted with the Department of Justice and the Office of Personnel Management on these proposed amendments. An analysis of the changes proposed follows.

A. General Requirements: OGE is proposing to change the annual confidential financial disclosure reporting period, specified in §§ 2634.903(a) and 2634.908(a), from a fiscal year to a calendar year cycle. We believe that this amendment would make filing more convenient, as filers 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. OGE also proposes changing the annual filing deadline, specified in § 2634.903(a), from October 31 to February 15. This would allow filers sufficient time, after the close of the proposed new reporting period, to submit their reports and to compile their year-end financial data. We decided against proposing a filing deadline later than February 15 because we want to give agency ethics officials sufficient time to review and certify their annual confidential filers’ reports

before having to begin reviewing their annual public filers' reports, which are due on May 15 each year.

Finally, we are proposing to add a new paragraph (e) to § 2634.903 to make clear that, unlike a public filer, a confidential filer leaving his filing position need not file a termination report.

B. Confidential Filer Definition: OGE is proposing to amend § 2634.904, the provision that defines a confidential filer, by incorporating into it the language of current § 2634.905(a) and (b). Section 2634.905(b)(1) currently provides an exclusion for positions with low levels of responsibility and substantial degrees of supervision and review. We believe this provision would more accurately define who is not required to file and therefore would be better applied in the definition of confidential filer. Thus, we are proposing to incorporate this subsection and the standard it expresses into the confidential filer definition in § 2634.904. Specifically, we are proposing to add the phrase "and without substantial supervision and review" to the general standard that is currently in § 2634.904(a)(1). Next, we are proposing to move the standard for excluding individuals from the filing requirement, currently found in § 2634.905(a), into a provision of § 2634.904, thereby combining into one section all of the provisions related to the determination of who should be required to file a confidential report.

We believe that combining the exclusion provisions currently under § 2634.905(a) and (b) with the definition of a confidential filer under § 2634.904 is consistent with the current practice, at most agencies, of reading these sections together in determining which employees should file. We also propose to delete 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 integrity of the Government, because we believe that this concept is adequately expressed in the text of new section 2634.904(b). Finally, to better explain how to apply these standards for designating confidential filers, we propose to amend Example 1 to paragraph (a) of § 2634.904 and to add several additional examples following Example 2.

The remaining provisions under § 2634.905 provide alternatives to filing the OGE Form 450; therefore, we are proposing to rename § 2634.905 "Use of Alternative Procedures".

C. Alternative Procedures: By proposing to rename § 2634.905 "Use of Alternative Procedures" and to renumber § 2634.905(c) as § 2634.905(a), 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 Form 450-A. OGE has already approved alternative procedures for several agencies under the existing regulation.

Although we are not proposing to change this provision substantively, agencies should be aware that OGE is receptive to proposals for alternatives to the use of the OGE Forms 450 and 450-A. Some agencies have developed disclosure forms that are more specifically tailored to the types of conflicts of interest and ethics issues that arise at their particular agencies. For example, the use of an alternative form might be especially appropriate for advisory committee members. Similarly, an alternative form might be practical for employees who work solely on individual cases or other matters that involve parties. Additionally, it may be possible for an agency to develop a program of activities, such as training, counseling, and other communications with employees that would make the use of a confidential financial disclosure form unnecessary.

D. Report Contents: The proposed amendment would revise § 2634.907 substantially, by incorporating into this section a complete description of the information required to be included on a confidential financial disclosure report. Currently, this section primarily cross-references subpart C of part 2634 ("Contents of Reports"), which describes the required content of both the public and the confidential financial disclosure reports. As discussed below, this proposed amendment would create a number of additional differences between the required content of the public report and the required content of the confidential report. Thus, we believe that it makes sense, at this point, to create a separate substantive "report contents" section for the confidential report within subpart I.

The proposed amendment also narrows in several ways the body of information required to be reported by § 2634.907(a). The proposed rule would eliminate the requirement for confidential filers to report diversified mutual funds because 5 CFR 2640.201(a) establishes an exemption from the conflict of interest laws for these assets. Filers would still be required to report all sector mutual funds which they, their spouses, or their dependent children own.

The proposed amendment also would expand the exceptions to the liability reporting requirements. Under the proposed rule, confidential report filers would no longer be required to report any student loan, credit card debt, or loan from a financial institution which is based on market terms. Because these types of loans do not present conflicts of interest for most confidential filers, we propose to add these to the current list of exceptions. Filers would still be required to report loans from financial institutions that are not based on market terms and loans from most individuals.

Finally, the proposed amendment also would eliminate the requirements to report the type of income earned on reportable assets; the dates on which honoraria were received; and the dates on which agreements or arrangements (other than for future employment) were entered.

We are proposing to eliminate the reporting requirement for the items listed above because, in light of experience over the years, we do not believe that their continued inclusion would add sufficient value to the conflict of interest review process, executive branchwide, to justify the resulting burden on filers and their agencies. As provided in § 2634.901(b), "[t]he confidential reporting system seeks from employees only that information which is relevant to the administration and application of criminal conflict of interest laws, administrative standards of conduct, and agency-specific statutory and program-related restrictions." To the extent that an agency needs any of this information in order to perform a conflict of interest review, that agency could collect this information supplementally, in accordance with § 2634.901(b).

OGE is also publishing in today's issue of the **Federal Register** a first round paperwork notice of a proposed modified version of the OGE Form 450, with comments due by October 26, 2005. The proposed modified version of the confidential report form would reflect various of the changes proposed in this rule. Once comments are received and considered, OGE will seek three-year clearance from the Office of Management and Budget (OMB) under the Paperwork Reduction Act for the modified form.

E. Technical Amendment: Currently, § 2634.601(a) contains an obsolete provision regarding the continued use of a former version of the confidential financial disclosure report form. This section would be deleted. Guidance regarding the phase-in time for mandatory use of the new version of the

form, which would reflect the changes in the financial disclosure regulation once they are adopted as final, would be issued administratively by OGE before the effective date of any final rule. It is anticipated that the new form would be available for use by new entrant confidential filers beginning in January 2006 and by incumbent annual filers in February 2007 for calendar year 2006. In that event, OGE likely would waive the old fiscal year annual filing requirement otherwise due in October 2006.

F. Conforming Amendments: The proposed amendments discussed above would necessitate several conforming amendments to subpart C of part 2634, proposed to be renamed "Contents of Public Reports," which currently establishes the required content of both the public and confidential financial disclosure reports, as well as the differences between them. In addition, if these proposed changes are adopted as final, various cross-references in other sections of part 2634 will have to be amended, in addition to at least one cross-reference in another OGE regulation. These technical cross-reference amendments would be included in the final rule stage of this rulemaking.

III. Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons are invited to submit written comments to OGE on this proposed regulation, to be received on or before October 11, 2005. The Office of Government Ethics will review all comments received and will consider any modifications to this proposed rule that appear warranted before adopting the rule as final.

Regulatory Flexibility Act

As General Counsel of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed amendatory rule, once adopted as final, 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 is separately publishing in today's issue of the **Federal Register** a first round notice under the Paperwork Reduction Act (44 U.S.C. chapter 35) for the information collection requirements in this regulation—a modified confidential financial disclosure report form (OMB control # 3209-0006) to reflect the

pertinent changes proposed in this rule. Once comments are received on the proposed regulatory changes and modified report form, OGE will seek a three-year extension of paperwork clearance from OMB for the modified form at the same time that a final rule is issued.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this proposed rule, once finalized, 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 proposed rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will, before the future final rule takes effect, submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law.

Executive Order 12866

In promulgating this proposed rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Review and Planning. In addition, these proposed 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 proposed revisions, to be codified once finalized 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 regulation, once finalized, since the proposed provisions would only clarify and improve the confidential financial disclosure system. Finally, this proposed rulemaking is not economically significant under the Executive order and will not interfere with State, local or tribal governments.

Executive Order 12988

As General Counsel of the Office of Government Ethics, I have reviewed this proposed 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 in 5 CFR Part 2634

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

Approved: July 25, 2005.

Marilyn L. Glynn,

General Counsel, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend 5 CFR part 2634 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 B—Persons Required To File Public Financial Disclosure Reports

§ 2634.203 [Amended]

2. 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]

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

Subpart C—Contents of Reports

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

Subpart C—Contents of Public Reports

§ 2634.301 [Amended]

5. Section 2634.301 is amended by:

- Removing the phrase "part, whether public or confidential," in the first sentence of paragraph (a) and adding in their place the word "subpart";
- Removing the phrase "In the case of public financial disclosure reports, the" in the second sentence of

paragraph (a) and adding in their place the word “The”;

c. Removing the phrase “on public financial disclosure reports” in the introductory text of paragraph (d);

d. Removing the phrase “, if he is a public filer the amount,” in the fourth sentence of Example 1 following paragraph (e)(7) and adding in their place the words “and the amount”; and

e. Removing the word “also” and the phrase “if she is a public filer” in the second sentence of Example 3 following paragraph (e)(7).

§ 2634.302 [Amended]

6. 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 their 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 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 their place the word “subpart”;

e. Removing the phrase “For public financial disclosure reports, the” in the fourth sentence of paragraph (b)(1) and adding in their 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]

7. Section 2634.303 is amended by removing the words “public financial disclosure” in the introductory text of paragraph (a).

§ 2634.304 [Amended]

8. 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 their 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 their 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]

9. 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 their place the word “subpart”;

b. Removing the phrase “For public financial disclosure reports, the” in the second sentence of paragraph (a) and adding in their 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]

10. In § 2634.306, the undesignated introductory text is amended by removing the phrase “part, whether public or confidential,” and adding in their place the word “subpart”;

§ 2634.307 [Amended]

11. In § 2634.307, the introductory text of paragraph (a) is amended by removing the phrase “part, whether public or confidential,” and adding in their place the word “subpart”.

§ 2634.308 [Amended]

12. 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]

13. Section 2634.309 is amended by:

a. Removing the words “either” and “or subpart I” from the introductory text of paragraph (a);

b. Removing the comma between the words “source” and “and”, the words “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 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 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 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]

14. Section 2634.310 is amended by:

a. Removing the words “or subpart I of this part” in paragraph (a)(1); and

b. Removing the beginning words “Public financial disclosure reports” in the second sentence of paragraph (c)(1) and adding in their place the word “Filers”.

§ 2634.311 [Amended]

15. Section 2634.311 is amended by:

a. Removing the words “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 words “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]

16. 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)”;

b. Removing the last sentence (in parentheses) in paragraph (a).

Subpart I—Confidential Financial Disclosure Reports

17. 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 words “twelve-month period ending September 30” in the first sentence of paragraph (a) and adding in their place the words “calendar year”;

c. Removing the words “October 31 immediately following that period” in the first sentence of paragraph (a) and adding in their place the words “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) of this subpart”;

l. Removing the citation “§ 2634.904” in the first sentence of paragraph (b)(3) and adding in its place the citation “§ 2634.904(a)”;

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.

18. 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 O-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 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 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.

19. Section 2634.905 is amended by:

a. Revising the section heading to read as set forth below;

b. Removing the undesigned 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)(4) as paragraphs (b)(1) through (b)(4), respectively;

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

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.

* * *

* * * * *

20. 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;
- (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;
- (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 entities with portfolio holdings, such as Individual Retirement Accounts (IRAs), brokerage accounts, trusts, and mutual or pension funds, each underlying asset must be disclosed separately, unless the entity qualifies for special treatment as a qualified blind or qualified diversified trust, an excepted trust, or an excepted investment fund under the regulations of the Office of Government Ethics.

(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.

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 widely 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 \$200 or more 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 \$10,000 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 non-investment 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 referred to by 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 (as described in paragraph (g) of this section) 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]

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

[FR Doc. 05-15927 Filed 8-11-05; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 304, 308, 310, 320, 327, 381, 416, and 417

[Docket No. 05-024N]

Notice of a Section 610 Regulatory Flexibility Act Review of the Pathogen Reduction/Hazard Analysis Critical Control Point (HACCP) Systems Final Rule

AGENCY: Food Safety and Inspection Service (FSIS), USDA.

ACTION: Request for comments.

SUMMARY: The FSIS is conducting a review of the regulations established by the Pathogen Reduction/Hazard Analysis Critical Control Point (HACCP) final rule under Section 610 of the Regulatory Flexibility Act, as amended. These provisions require that all Federal agencies review existing regulations that have a significant economic impact on a substantial number of small entities to determine whether the associated impact can be minimized. FSIS is seeking comment from the public, especially from small meat and poultry establishments, on the regulations established by the Pathogen Reduction; Hazard Analysis Critical Control Point Systems (HACCP) final rule.

DATES: Comments on this notice must be received on or before October 11, 2005.