

OFFICE OF GOVERNMENT ETHICS

AGENCY: Office of Government Ethics (OGE)

5 CFR Part 2634

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

RIN 3209-AAOO

58 FR 38911 - 38913

Wednesday, July 21, 1993

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Government Ethics is amending its interim rule on executive branch financial disclosure. The amendments contain procedural clarifications for filing public and confidential financial disclosure reports. With regard to public reports, OGE is eliminating the requirement that agencies provide an annual update to the list of nonpolicy-making positions excluded from filing. Additionally, the amendments clarify what constitutes the date of filing for purposes of determining when a public report is subject to a late filing fee. For confidential report filers, the amendments codify earlier informal OGE guidance to agencies on two matters: the exclusion of special Government employees (SGEs) from the requirement for incumbent reports, and the exclusion of employees (other than SGEs) from the requirement for new entrant reports if they are not expected to serve for more than 60 days in a position otherwise designated for filing. Finally, the amendments supply the form number for the standard confidential disclosure form, which was not known when the interim rule was first published.

DATES: Interim rule amendments effective July 21, 1993. Public comments on these amendments are welcome and must be received on or before September 20, 1993.

ADDRESSES: Comments should be sent to the Office of Government Ethics, suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917, Attention: G. Sid Smith.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Office of Government Ethics, telephone (202) 523-5757, FAX (202) 523-6325

SUPPLEMENTARY INFORMATION: This document amends an interim rule which revised both the public and confidential financial disclosure systems for executive branch employees, pursuant to title I of the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended by, inter alia, the Ethics Reform Act of 1989, Pub. L. 101-194), and Executive Order 12674 of April 12, 1989 (as amended). That interim rule was published on April 7, 1992 (57 FR 11800-11830) and corrected on May 22 and December 31, 1992 at 57 FR 21854-21855 and 57 FR 62605, respectively.

Executive branch employees in certain positions of a confidential or policy-making character which are excepted from the competitive service are required to file public financial disclosure reports, unless excluded under regulatory guidelines. The interim rule which was published in April 1992 requires agencies to provide OGE with a list of such positions being excluded prior to the due dates for reports which such employees would otherwise have to file. That interim rule also required agencies to provide an annual update to that list, reflecting deletions, additions, or an indication of no change. It has been determined that the annual update is unnecessary and redundant. Therefore, that requirement is being eliminated by an amendment to section 2634.203 of subpart B of the interim rule.

For filers of public financial disclosure reports, the interim rule of April 1992 implemented a statutory late filing fee for reports filed more than thirty-days after the normal due date, including any authorized extensions. Questions have arisen as to what should constitute the date of filing for purposes of determining whether a report is filed more than thirty days late. After examining the nature of this thirty-day period, OGE concluded that the date of filing for purposes of determining whether a public report is more than thirty days late should be the date of receipt by the agency (which the rule already requires agencies to note on reports when received), not the filer's submission date.

Accordingly, an amendment to section 2634.704 of subpart G of the interim rule specifies that the date of receipt by the agency will constitute the date of filing for purposes of determining whether a report is filed more than thirty days late and therefore subject to a late filing fee. The thirty-day period was not intended to be an extension of the due date, but merely a grace period for purposes of imposing the late filing fee. While it would be reasonable for agencies to consider the filer's submission date and to allow for any attendant administrative delays in determining whether a report meets normal due dates, it would not be reasonable to leave similarly indeterminate the thirty-day grace period for purposes of imposing a late filing fee. That grace period is itself full allowance for administrative delays. To extend the thirty-day grace period for additional administrative delays inappropriately suggests to filers that they may view the thirty days as a due date extension. This has resulted in submission delays by some of those subject to public disclosure until the end of the grace period.

For filers of confidential financial disclosure reports, the April 1992 interim rule included SGEs among those required to file was not intended, since SGEs are also required to file new entrant reports upon each annual appointment or reappointment. Therefore, an amendment to section 2634.903 of subpart I of the interim rule eliminates the requirement for SGEs to file incumbent confidential disclosure reports.

The April 1992 interim rule included as new entrant confidential disclosure filers all employees who serve in positions designated for filing, regardless of the number of days it was anticipated that they would be performing duties in the position. That was not intended for employees (other than SGEs) who are not anticipated to perform duties for more than 60 days in a designated filing position, such as employees who serve temporarily in a position in an acting capacity. Therefore, another amendment to section 2634.903 of subpart I of the interim rule eliminates the requirement for employees (other than SGEs) to file new entrant reports when the agency ethics official determines that they are not anticipated to perform duties for more than 60 days in a confidential filer position.

Finally, at the time the interim rule was published, the form number for the standard confidential disclosure form was not yet known. Therefore, an amendment to section 2634.601 of subpart F of the interim rule supplies that number, SF 450.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), as Director of the Office of Government Ethics, I find good cause for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to these revisions. The notice and delayed effective date are being waived because these amendments to an interim rule concern minor procedural clarifications which conform with current practice. The Office of Government Ethics will review any comments received during the comment period and consider any modifications which appear warranted prior to issuing a final rule.

Executive Order 12291

As Director of the Office of Government Ethics, I have determined that these amendments do not constitute a major rule as defined under section 1(b) of Executive Order 12291.

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 these amendments to the interim rule will not have a significant economic impact on a substantial number of small entities because they will affect only Federal executive branch agencies and employees.

Paperwork Reduction Act

The Paperwork Reduction Act (5 U.S.C. chapter 35) does not apply to these amendments to the interim rule because they do not contain any additional information collection requirements which 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, and Trusts and trustees.

Approved: April 26, 1993.

Stephen D. Potts,
Director, Office of Government Ethics.