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(b) *New entrants.* (1) Not later than 30 days after assuming a new position or office described in § 2634.904 of this subpart (which also encompasses the reappointment or redesignation of a special Government employee, including one who is serving on an advisory committee), a confidential filer shall file a confidential report containing the information prescribed in §§ 2634.907 and 2634.908 of this subpart. For confidential filers under § 2634.904(c) of this subpart, consult agency supplemental regulations.

(2) However, no report shall be required if the individual:

(i) Has, within 30 days prior to assuming his position, left another position or office referred to in § 2634.904 of this subpart or in § 2634.202, and has previously satisfied the reporting requirements applicable to that former position, but a copy of the report filed by the individual while in that position should be made available to the appointing agency, and the individual must comply with any agency requirement for a supplementary report for the new position;

(ii) Has already filed such a report in connection with consideration for appointment to the position. The agency may request that the individual update such a report if more than six months has expired since it was filed; or

(iii) Is not reasonably expected to perform the duties of an office or position referred to in § 2634.904 of this subpart for more than 60 days in the following twelve-month period, as determined by the designated agency ethics official or delegate. That may occur most commonly in the case of an employee who temporarily serves in an acting capacity in a position described by § 2634.904(a) of this subpart. If the individual actually performs the duties of such position for more than 60 days in the twelve-month period, then a confidential financial disclosure report must be filed within 15 calendar days after the sixtieth day of such service in the position. Paragraph (b)(2)(iii) of § 2634.903 does not apply to new entrants filing as special Government employees under § 2634.904(b) of this subpart.

(3) Notwithstanding the filing deadline prescribed in paragraph (b)(1) of

this section, agencies may at their discretion, require that prospective entrants into positions described in § 2634.904 of this subpart file their new entrant confidential financial disclosure reports prior to serving in such positions, to insure that there are no insurmountable ethics concerns. Additionally, a special Government employee who has been appointed to serve on an advisory committee shall file the required report before any advice is rendered by the employee to the agency, or in no event, later than the first committee meeting.

(c) *Advisory committee definition.* For purposes of this subpart, the term *advisory committee* shall have the meaning given to that term under section 3 of the Federal Advisory Committee Act (5 U.S.C. app). Specifically, it means any committee, board, commission, council, conference, panel, task force, or other similar group which is established by statute or reorganization plan, or established or utilized by the President or one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government. Such term includes any subcommittee or other subgroup of any advisory committee, but does not include the Advisory Commission on Intergovernmental Relations, the Commission on Government Procurement, or any committee composed wholly of full-time officers or employees of the Federal Government.

(d) *Extensions.* The agency reviewing official may, for good cause shown, grant to any employee or class of employees a filing extension or several extensions totaling not more than 90 days.

[57 FR 11826, Apr. 7, 1992, as amended at 58 FR 38912, July 21, 1993; 63 FR 69992, Dec. 18, 1998]

§ 2634.904 Confidential filer defined.

The term *confidential filer* includes:

(a) 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:

(1) 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) of this chapter) through decision or the exercise of significant judgment, in taking a Government action regarding:

- (i) Contracting or procurement;
- (ii) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;
- (iii) Regulating or auditing any non-Federal entity; or
- (iv) 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

(2) 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 that 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. A contracting officer drafts 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. The contracting officer should be required to file a confidential financial disclosure report.

Example 2. An agency environmental engineer inspects a manufacturing plant to ascertain whether the plant complies with a permit 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.

(b) Unless required to file public financial disclosure reports by subpart B of this part, all executive branch special Government employees as defined in 18 U.S.C 202(a) and §2634.105(s), including those who serve on advisory committees. The term special Government employees does not include an advisory committee member who serves only as a representative of an industry or other outside entity or who is already a Federal employee.

Example 1. 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. An advisory committee member (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, since she is a special Government employee.

(c) Each public filer referred to in §2634.202 on public disclosure who is required by agency regulations issued in accordance with §2634.907(b) of this subpart 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.

(d) Any employee who, notwithstanding his exclusion from the public financial reporting requirements of this part by virtue of a determination

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under § 2634.203, is covered by the criteria of paragraph (a) of this section.

[57 FR 11826, Apr. 7, 1992, as amended at 63 FR 69992, Dec. 18, 1998; 64 FR 2422, Jan. 14, 1999]

§ 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:

(a) The duties of a position make remote the possibility that the incumbent will be involved in a real or apparent conflict of interest;

(b) The duties of a position involve such a low level of responsibility that the submission of a confidential financial disclosure report is unnecessary because of:

(1) The substantial degree of supervision and review over the position; or

(2) The inconsequential effect of any potential conflict on the integrity of the Government;

(c) The use of an alternative procedure approved in writing by the Office of Government Ethics is adequate to prevent possible conflicts of interest; or

(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