

## Office of Government Ethics

## § 2634.1001

and 2634.601(b) (see § 2634.901 (b) and (c) of this subpart).

[57 FR 11826, Apr. 7, 1992, as amended at 58 FR 63024, Nov. 30, 1993; 63 FR 69992, Dec. 18, 1998]

### § 2634.908 Reporting periods.

(a) *Incumbents.* Each confidential financial disclosure report filed under § 2634.903(a) of this subpart shall include on the standard form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, a full and complete statement of the information required to be reported according to the provisions of this subpart for the preceding twelve months ending September 30, or for any portion of that period not covered by a previous confidential or public financial disclosure report filed under this part.

(b) *New entrants.* Each confidential financial disclosure report filed under § 2634.903(b) of this subpart shall include, on the standard form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, a full and complete statement of the information required to be reported according to the provisions of this subpart for the preceding twelve months from the date of filing.

### § 2634.909 Procedures, penalties, and ethics agreements.

(a) The provisions of subpart F of this part govern the filing procedures and forms for, and the custody and review of, confidential disclosure reports filed under this subpart.

(b) For penalties and remedial action which apply in the event that the reporting individual fails to file, falsifies information, or files late with respect to confidential financial disclosure reports, see subpart G of this part.

(c) Subpart H of this part on ethics agreements applies to both the public and confidential reporting systems under this part.

## Subpart J—Certificates of Divestiture

SOURCE: 55 FR 14408, Apr. 18, 1990, unless otherwise noted.

### § 2634.1001 Nonrecognition for sales to comply with conflict of interest requirements; general considerations.

(a) *Purpose.* This subpart establishes the procedures and policies of the Office of Government Ethics with respect to the issuance of Certificates of Divestiture pursuant to section 1043 of the Internal Revenue Code of 1986 (hereinafter in this subpart referred to as “section 1043”).

(b) *Scope.* Section 1043 and the rules of this subpart provide for nonrecognition of gain in the case of sales to comply with conflict of interest requirements. The rules of this subpart relate to the issuance of Certificates of Divestiture and the permitted property into which a reinvestment must be made during the 60-day period beginning on the date of such a sale in order for nonrecognition to be permitted. Such reinvestments are called rollovers, and are limited to obligations of the United States and diversified investment funds as defined in § 2634.1003. The substantive and procedural rules relating to the tax aspects of such sales and rollovers pursuant to the statutory scheme are subject to the jurisdiction of the Internal Revenue Service. Eligible persons should seek the advice of their personal tax advisors for guidance as to the tax aspects of divestiture transactions and whether proposed acquisitions meet the requirements for permitted property. Internal Revenue Service regulations and other guidance should be consulted as to these matters. Internal Revenue Service requirements for reporting dispositions of property and making an election not to recognize gain under section 1043 must be followed by eligible persons wishing to make such an election.

(c) *Policy.* The Federal purpose reflected in section 1043 of the Internal Revenue Code and these rules is to minimize the burden of Government service resulting from gain on the sale of assets for which divestiture is reasonably necessary because of the conflict of interest laws, in order to attract and retain highly qualified personnel in the executive branch and to ensure the confidence of the public in

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the integrity of Government officials and decision-making processes.

[55 FR 14408, Apr. 18, 1990, as amended at 61 FR 32635, June 25, 1996]

### § 2634.1002 Issuance of Certificates of Divestiture.

(a) *General rule.* Pursuant to section 1043, a Certificate of Divestiture with respect to specific property shall be issued by the Director of the Office of Government Ethics pursuant to the procedures of paragraph (b) of this section upon a determination that such divestiture by an eligible person as defined in paragraph (c) of this section is reasonably necessary to comply with 18 U.S.C. 208, or any other Federal conflict of interest statute, regulation, rule, or executive order, or pursuant to the request of a congressional committee as a condition of confirmation.

(b) *Procedural requirements*—(1) *Required submissions.* A determination to issue a Certificate of Divestiture may be made by the Director of the Office of Government Ethics only upon the submission by the designated agency ethics official of the agency of employment or proposed employment of the individual referred to in paragraph (c)(1) of this section of full and complete case materials to the Office of Government Ethics. Such case materials shall include:

(i) A copy of a written request from the eligible person who is to divest the property (a Certificate of Divestiture cannot be issued for property which has already been divested) to the designated agency ethics official to pursue certification in the case of the property to be divested, which includes:

(A) A commitment to complete the divestiture on or before a specified date which is no later than the end of the three-month period referred to by § 2634.802(b) (or a similarly structured agreement in any case to which paragraph (b)(1)(ii)(B) of this section applies), or any extension thereof granted, or concurred with in writing, by the Office of Government Ethics; and

(B) Full and complete information concerning the facts and circumstances relating to the acquisition of such property and its contemplated divestiture;

(ii) In the case of an individual referred to in paragraph (c)(1) of this section who:

(A) Is required by the rules of this part or this title, to file a financial disclosure report, a copy of the latest report which has been filed; or

(B) Is not required to file a report referred to in paragraph (b)(1)(ii)(A) of this section, a memorandum from such individual which discloses the information with respect to the specification of interests in property, income, liabilities, agreements and arrangements, and outside positions which are required to be disclosed on such a report;

(iii) A detailed description of the specific property as to which divestiture is contemplated;

(iv) Complete statements of: (A) The facts and circumstances relevant to whether there is a reasonable necessity for divestiture (including a description of the position or applicable statutory citation setting forth the duties of the subject position); and

(B) Analysis and opinion from such designated agency ethics official concerning the application of the rules of this part in the case of the proposed certification, including specification of the date on which the three-month period referred to by § 2634.802(b) (or a similarly structured agreement in any case to which paragraph (b)(1)(ii)(B) of this section applies), or any extension thereof granted, or concurred with in writing, by the Office of Government Ethics, will lapse; and

(v) In lieu of the materials described in paragraph (b)(1)(iv) of this section, in the case of the contemplated divestiture of specific property pursuant to the request of a congressional committee as a condition of confirmation, such materials shall include the written acknowledgement of the Chairman of such committee of such request, a letter to the committee containing a promise from the nominee to divest specified property in accordance with such request, or a transcript of congressional testimony containing such a commitment by the nominee pursuant to such request.

(2) *Standards for issuance.* Certification pursuant to the rules of this subpart relates to the reasonable necessity for the divestiture of specific