SUPPLEMENTARY INFORMATION: In this rulemaking document, the Office of Government Ethics is adopting final rules under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and for fees for copies of SF 278 reports requested under the Ethics in Government Act. As noted in OGE's proposed rules published at 59 FR 50171-50179 (October 3, 1994), this FOIA regulation, being codified at 5 CFR part 2604, will incorporate many of OGE's existing practices for the implementation of the FOIA and follows applicable guidance of the Department of Justice and the Office of Management and Budget. The regulation will also set separate schedules of fees for FOIA requests and for larger SF 278 requests.

The proposed rules provided a 60-day comment period and invited comments by agencies and the public. Only one comment was received. That comment did not suggest any specific changes to the regulations as proposed, but rather recommended more disclosure of certain activities of Federal officials. With respect to disclosure of activities, OGE believes that the existing system of public financial disclosure reporting of high-level officials under title I of the Ethics Act, as implemented for the executive branch by OGE's regulation at 5 CFR part 2634, as well as other pertinent laws and regulations adequately address that separate subject matter. Therefore, in adopting the proposed rules as final, the Office of Government Ethics is not making any substantive changes. The only changes reflect correction of a couple of minor typographical errors (including indication of the correct March 1 due date for annual FOIA reports) and clarification of two passages -§ 2604.102(c) to expressly indicate that a requester can opt for regular FOIA processing in lieu of alternative access for OGE items also available via the Government Printing Office or the National Information Technical Service of the Department of Commerce and § 2604.302(c) to state that OGE will generally provide nonexempt responsive records in existing formats to FOIA requesters.

Executive Order 12866

In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulations set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has been reviewed by the Office of Management and Budget under that Executive order.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this regulation because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2604

Administrative practice and procedure, Archives and records, Confidential business information, Conflict of interests, Freedom of Information, Government employees.

Approved: January 11, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending subchapter A of chapter XVI of title 5 of the Code of Federal Regulations by adding the text of and an authority citation for part 2604, previously reserved, and by revising the title thereof to read as follows:

PART 2604—FREEDOM OF INFORMATION ACT RULES AND SCHEDULE OF FEES FOR THE PRODUCTION OF PUBLIC FINANCIAL DISCLOSURE REPORTS

Subpart A—General Provisions

Sec.

2604.101 Purpose.

2604.102 Applicability.

2604.103 Definitions.

Subpart B—Public Reading Room and Index Identifying Information for the Public

Sec.

2604.201 Public reading room.

2604.202 Index identifying information for the public.

Subpart C—Production and Disclosure of Records Under FOIA

Sec.

2604.301 Requests for records.

2604.302 Response to requests.

2604.303 Form and content of responses.

2604.304 Appeal of denials.

2604.305 Time limits.

Subpart D—Exemptions Under FOIA

Sec.

2604.401 Policy.

2604.402 Business information.

Subpart E—Schedule of Fees

Sec.

2604.501 Fees to be charged—general.2604.502 Fees to be charged—categories of

requesters.

2604.503 Limitations on charging fees. 2604.504 Miscellaneous fee provisions.

Subpart F-Annual Report to Congress

Sec.

2604.601 Submission of report.

2604.602 Contents of the report.

Subpart G—Fees for the Reproduction and Mailing of Public Financial Disclosure Reports

Sec.

2604.701 Policy.

2604.702 Charges.

Authority: 5 U.S.C. 552; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

Subpart A—General Provisions

§ 2604.101 Purpose.

This part contains the regulations of the Office of Government Ethics (OGE) implementing the Freedom of Information Act (FOIA) and Executive Order 12600. It describes how any person may obtain records from OGE under the FOIA. It also implements section 105(b)(1) of the Ethics in Government Act of 1978, as amended, which authorizes an agency to charge reasonable fees to cover the cost of reproduction and mailing of public financial disclosure reports requested by any person.

§ 2604.102 Applicability.

(a) General. The FOIA and this rule apply to all OGE records. However, if another law sets forth procedures for the disclosure of specific types of records, such as section 105 of the Ethics in Government Act of 1978, 5 U.S.C. appendix, OGE will process a request for those records in accordance with the procedures that apply to those specific records. See 5 CFR 2634.603 and subpart G of this part. If there is any record which is not required to be released under those provisions, OGE will consider the request under the FOIA and this rule, provided that the special Ethics Act access procedures cited must be complied with as to any record within the scope thereof.

(b) The relationship between the FOIA and the Privacy Act of 1974. The Privacy Act of 1974, 5 U.S.C. 552a, applies to records that are about individuals, but only if the records are in a system of records as defined in the Privacy Act. Requests from individuals for records about themselves which are contained in an OGE system of records will be processed under the provisions