

(3) All contributions made under this paragraph (a) and associated breakage will be invested according to the participant's contribution allocation on the posting date. Breakage will be calculated using the share prices for the default investment fund in effect for the participant in accordance with § 1605.2 unless otherwise required by the employing agency or the court or other tribunal with jurisdiction over the back pay case.

\* \* \* \* \*

■ 5. Amend § 1605.16 by revising paragraphs (a) and (b) to read as follows:

**§ 1605.16 Claims for correction of employing agency errors; time limitations.**

(a) *Agency's discovery of error.* (1) Upon discovery of an error made within the past six months involving the correct or timely remittance of payments to the TSP (other than a retirement system misclassification error, as covered in paragraph (c) of this section), an employing agency must promptly correct the error on its own initiative. If the error was made more than six months before it was discovered, the agency may exercise sound discretion in deciding whether to correct it, but, in any event, the agency must act promptly in doing so.

(2) For errors involving incorrect dates of birth caused by employing agency error that result in default investment in the wrong L Fund, the employing agency must promptly notify the TSP that the participant is entitled to breakage if the error is discovered within 30 days of either the date the TSP provides the participant with a notice reflecting the error or the date the TSP makes available on its Web site a participant statement reflecting the error, whichever is earlier. If it is discovered after that time, the employing agency may use its sound discretion in deciding whether to pay breakage, but, in any event, must act promptly in doing so.

(b) *Participant's discovery of error.* (1) If an agency fails to discover an error of which a participant has knowledge involving the correct or timely remittance of a payment to the TSP (other than a retirement system misclassification error as covered by paragraph (c) of this section), the participant may file a claim with his or her employing agency to have the error corrected without a time limit. The agency must promptly correct any such error for which the participant files a claim within six months of its occurrence; if the participant files a claim to correct any such error after that time, the agency may do so at its sound discretion.

(2) For errors involving incorrect dates of birth that result in default investment in the wrong L Fund of which a participant or beneficiary has knowledge, he or she may file a claim for breakage with the employing agency no later than 30 days after either the date the TSP provides the participant with a notice reflecting the error or the date the TSP makes available on its Web site a participant statement reflecting the error, whichever is earlier. The employing agency must promptly notify the TSP that the participant is entitled to breakage.

(3) If a participant or beneficiary fails to file a claim for breakage for errors involving incorrect dates of birth in a timely manner, the employing agency may nevertheless, in its sound discretion, pay breakage on any such error that is brought to its attention.

\* \* \* \* \*

■ 6. Amend § 1605.22 by revising paragraphs (b)(2) and (c)(2) and (3) to read as follows:

**§ 1605.22 Claims for correction of Board or TSP record keeper errors; time limitations.**

\* \* \* \* \*

(b) \* \* \*

(2) For errors involving an investment in the wrong fund caused by Board or TSP record keeper error, the Board or the TSP record keeper must promptly pay breakage if it is discovered within 30 days of the issuance of the most recent TSP participant (or loan) statement, transaction confirmation, or other notice that reflected the error, whichever is earlier. If it is discovered after that time, the Board or TSP record keeper may use its sound discretion in deciding whether to pay breakage, but, in any event, must act promptly in doing so.

(c) \* \* \*

(2) For errors involving an investment in the wrong fund of which a participant or beneficiary has knowledge, he or she may file a claim for breakage with the Board or TSP record keeper no later than 30 days after the TSP provides the participant with a transaction confirmation or other notice reflecting the error, or makes available on its Web site a participant statement reflecting the error, whichever is earlier. The Board or TSP record keeper must promptly pay breakage for such errors.

(3) If a participant or beneficiary fails to file a claim for breakage concerning an error involving an investment in the wrong fund in a timely manner, the Board or TSP record keeper may nevertheless, in its sound discretion,

pay breakage for any such error that is brought to its attention.

\* \* \* \* \*

■ 7. Amend § 1605.31 by revising paragraph (d) to read as follows:

**§ 1605.31 Contributions missed as a result of military service.**

\* \* \* \* \*

(d) *Breakage.* The employee is entitled to breakage on agency contributions made under paragraph (c) of this section. The employee will elect to have the calculation based on either the contribution allocation(s) on file for the participant during the period of military service or the default investment fund in effect for the participant; the participant must make this election at the same time his or her makeup schedule is established pursuant to § 1605.11(c).

[FR Doc. 2015-24093 Filed 9-21-15; 8:45 am]

BILLING CODE 6760-01-P

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**OFFICE OF GOVERNMENT ETHICS**

**5 CFR Parts 2600, 2601, and 2604**

**RIN 3209-AA40, 3209-AA41, 3209-AA39**

**Organization and Functions; Implementation of Statutory Gift Acceptance Authority; Freedom of Information Act**

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Office of Government Ethics (OGE) is issuing this final rule to update and streamline its organization and functions regulation and its statutory gift acceptance authority implementation. The final rule also updates and streamlines OGE's Freedom of Information Act (FOIA) regulation to reflect OGE's existing policy and practice and to implement changes to the FOIA. Finally, the final rule extends a requester's time to file an administrative appeal, makes administrative changes, and updates cost figures for calculating and charging fees.

**DATES:** Effective date: October 22, 2015.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Matis, Assistant Counsel, Office of Government Ethics, 202-482-9216.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

On April 3, 2015, OGE published proposed amendments to update and streamline its organization and functions regulation, its statutory gift acceptance authority implementation,

and its FOIA regulation. OGE invited comments from the public and other agencies through June 2, 2015. OGE received one comment regarding the changes to its FOIA regulation, from the Office of Government Information Services (OGIS). This comment was generally supportive of the proposed changes but suggested clarifications and additional revisions beyond those proposed by OGE. OGE also received two comments objecting to OGE's exercise of its statutory gift acceptance authority. The comments are discussed further below.

## II. Discussion of Public Comments and the Final Rule

OGE received two comments objecting to its exercise of its statutory gift acceptance authority, asserting that the receipt of any gift by a government official is a conflict of interest. Part 2601 implements the authority granted to OGE in section 403 of the Ethics in Government Act of 1978, 5 U.S.C. app. 403, to accept gifts on behalf of the United States for the purpose of facilitating the work of the agency. The proposed revisions merely update the regulation to reflect changes to OGE's organizational structure and will have no substantive effect on OGE's implementation of the authority granted it by section 403 of the Ethics in Government Act. Furthermore, potential conflict of interest concerns are sufficiently addressed by §§ 2601.203 and 2601.204, which prohibit OGE from soliciting or accepting a gift that would reflect unfavorably upon the ability of the agency, or any employee of the agency, to carry out OGE responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs. OGE will adopt the revisions to part 2601 as proposed.

OGE received one comment regarding the proposed revisions to its FOIA regulation, from the Office of Government Information Services (OGIS) of the National Archives and Records Administration. OGIS provided a number of constructive suggestions, primarily regarding language clarity and best practices in processing FOIA requests, many of which OGE has incorporated into the final rule.

As suggested by OGIS, the language of § 2604.102 was revised to further clarify the intersection between the FOIA and the Privacy Act. Definitions of "requester category" and "fee waiver" were added to § 2604.103 and the definition of "person" was expanded. The definitions of "FOIA Public

Liaison" and "FOIA Requester Service Center" were updated to refer to the relevant designations in the FOIA.

OGIS suggested that OGE use the term "perfected" rather than "received" in §§ 2604.301 and 2604.504. OGE acknowledges that it may seem counterintuitive that, under some circumstances, a request may be deemed not to be "received" even though it has been successfully delivered to the agency. Upon consideration, however, OGE concluded that the principles of plain language, which caution against using jargon, support retention of the current language. The term "perfected" is neither found in the text of the FOIA nor is used in this context in everyday language. Therefore, OGE concluded that the term "received" is clearer than the term "perfected." In reaching this conclusion, OGE considered the fact that a number of agencies, including the Department of Justice, continue to use the term "received" in their FOIA fee provisions. Although the suggested revision has not been incorporated into the final rule, OGE decided to clarify § 2604.301 by adding language explaining that if, in the course of negotiating fees, the requester does not respond to correspondence from OGE, OGE will administratively close the request after 30 calendar days. This change has been incorporated into the final rule.

OGE also revised § 2604.304 to extend the period for a requester to appeal from 30 to 45 calendar days. OGIS suggested that OGE allow 60 days for requesters to appeal, noting that mail screening by Federal agencies can slow the time it takes appeals to reach their destination. Because § 2604.304 calculates the period for appeal from the date the requester receives OGE's response until the date the requester sends an appeal, delays in mail processing will have no impact on the requester's right of appeal. Nonetheless, OGE is extending the period to appeal to 45 calendar days in the spirit of cooperation with the requester community, which has publicly advocated for agencies to institute longer appeal deadlines.

With regard to § 2604.301(a), OGIS noted that the FOIA does not require requesters to indicate that their requests are being made under the FOIA. OGE will not refuse to process a request because it is not clearly marked as a FOIA request. The rule's language stating that requesters "should . . . clearly indicate that the subject is a Freedom of Information Act request" is intended to facilitate faster processing, not impose a mandatory requirement on requesters. As such, it is appropriately included in the rule's instructions on

addressing requests and has not been revised in the final rule.

In addition, OGIS made several suggestions regarding best practices in the processing of requests. Although OGE generally agrees with these best practices and follows them, it concluded that it is not necessary or advisable to incorporate all such practices into the agency's FOIA regulation, particularly if the suggested changes, on balance, add administrative burden to OGE's small FOIA program while providing little additional benefit to requestors. Specifically, OGIS suggested that acknowledgements include a brief description of the request and that requesters be advised that they can request an estimated date of completion. Although these suggestions are not incorporated into the final rule, it is OGE's practice to include a description of the request and estimated date of completion in all acknowledgements. Likewise, as suggested, OGE advises requesters when information they have requested is publicly available and directs them to where the information can be located. OGIS suggested that the regulation be revised to notify requesters that OGE will provide a brief description of redacted information when possible. Although this suggestion is not incorporated into the final rule, it is OGE's practice to describe redacted information if it is not clear from the context and if it is possible without revealing exempt information. Finally, OGIS suggested that language be added to § 2604.304(a) advising requesters that they may appeal the adequacy of OGE's search, even if the agency asserts that it has released all records. Although this suggestion is not incorporated into the final rule, OGE provides information on appeal rights in all response letters, including those granting requests in full.

## III. Statutory Authority

OGE is promulgating this rulemaking under the authority of 5 U.S.C. 301, 552 (as amended), and 553 and 5 U.S.C. app 105(b).

## IV. Matters of Regulatory Procedure

*Regulatory Planning and Review  
(Executive Orders 12866 and 13563)*

In promulgating this rulemaking, OGE has adhered to the regulatory philosophy and the applicable principals of regulation set forth in Executive Orders 12866 and 13563. The rule has not been reviewed by the Office of Management and Budget because it is not a significant regulatory action for the purposes of Executive Order 12866.

**Congressional Review Act**

The rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

**Paperwork Reduction Act**

The rule is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, because it does not contain any information collection requirements subject to approval by the Office of Management and Budget.

**Federalism (Executive Order 13132)**

The rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, OGE has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**Unfunded Mandates Reform Act**

The rule neither imposes an unfunded mandate of more than \$100 million per year nor imposes a significant or unique effect on State, local or tribal governments, or the private sector.

**Regulatory Flexibility Act**

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small entities because this regulation will affect only people and organizations who file FOIA requests with OGE.

**Civil Justice Reform (Executive Order 12988)**

It is hereby certified that this rule does not unduly burden the judicial system and meets the requirements of Executive Order 12988.

**List of Subjects****5 CFR Parts 2600 and 2601**

Administrative practice and procedure, Organization and functions (Government agencies).

**5 CFR Part 2604**

Administrative practice and procedure, Archives and records, Confidential business information, Freedom of information, Reporting and recordkeeping requirements.

Approved: September 14, 2015.

**Walter M. Shaub, Jr.,**  
*Director, Office of Government Ethics.*

For the reasons set out in the preamble, OGE amends 5 CFR parts 2600, 2601, and 2604 as follows:

**PART 2600—ORGANIZATION AND FUNCTIONS OF THE OFFICE OF GOVERNMENT ETHICS**

- 1. The authority citation for part 2600 continues to read as follows:

**Authority:** 5 U.S.C. App. (Ethics in Government Act of 1978); 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.

- 2. Amend § 2600.101 by revising the first sentence of paragraph (a) to read as follows:

**§ 2600.101 Mission and history.**

(a) The U.S. Office of Government Ethics (OGE) was established by the Ethics in Government Act of 1978, Public Law 95-521, 92 Stat. 1824 (1978). \* \* \*

\* \* \* \* \*

- 3. Amend § 2600.102 by revising paragraphs (a) and (b) to read as follows:

**§ 2600.102 Contact information.**

(a) **Address.** OGE is located at 1201 New York Avenue NW., Suite 500, Washington, DC 20005-3917. OGE does not have any regional offices. OGE's general email address is *contactoge@oge.gov*.

(b) **Web site.** Information about OGE and its role in the executive branch ethics program as well as copies of publications that have been developed for training, educational and reference purposes are available electronically on OGE's Web site ([www.oge.gov](http://www.oge.gov)). OGE has posted on its Web site various Executive Orders, statutes, and regulations that together form the basis for the executive branch ethics program. The site also contains ethics advisory opinions and letters published by OGE, as well as other pertinent information.

\* \* \* \* \*

- 4. Revise § 2600.103 to read as follows:

**§ 2600.103 Office of Government Ethics organization and functions.**

OGE's Director is appointed by the President and confirmed by the Senate for a five-year term. Additional information regarding OGE's organization and functions is available on its Web site at [www.oge.gov](http://www.oge.gov).

**PART 2601—IMPLEMENTATION OF OFFICE OF GOVERNMENT ETHICS STATUTORY GIFT ACCEPTANCE AUTHORITY**

- 5. The authority citation for part 2601 continues to read as follows:

**Authority:** 5 U.S.C. App. (Ethics in Government Act of 1978).

- 6. Amend § 2601.103 by revising the first sentence of paragraph (a) and the first sentence of paragraph (d) to read as follows:

**§ 2601.103 Policy.**

(a) **Scope.** OGE may use its statutory authority to solicit, accept and utilize gifts to the agency that aid or facilitate the agency's work. \* \* \*

\* \* \* \* \*

(d) **Endorsement.** Acceptance of a gift pursuant to this part will not in any way be deemed to be an endorsement of the donor, or the donor's products, services, activities, or policies. \* \* \*

\* \* \* \* \*

- 7. Amend § 2601.105 by revising the introductory text, removing the definition of "Administrative Division" and revising the definitions of "Agency," "Authorized agency official," "Director," and "Employee" to read as follows:

**§ 2601.105 Definitions.**

As used in this part:

**Agency** means the U.S. Office of Government Ethics (OGE).

**Authorized agency official** means the Director of OGE or the Director's delegate.

**Director** means the Director of OGE.

**Employee** means an employee of OGE.

\* \* \* \* \*

- 8. Amend § 2601.202 by revising paragraphs (a), (b), (d), and (f) to read as follows:

**§ 2601.202 Procedure.**

(a) The authorized agency official will have the authority to solicit, accept, refuse, return, or negotiate the terms of acceptance of a gift.

(b) An employee, other than an authorized agency official, will immediately forward all offers of gifts covered by this part regardless of value to an authorized agency official for consideration and will provide a description of the gift offered. An employee will also inform an authorized agency official of all discussions of the possibility of a gift. An employee will not provide a donor with any commitment, privilege, concession or other present or future benefit (other

than an appropriate acknowledgment) in return for a gift.

\* \* \* \* \*

(d) Gifts may be acknowledged in writing in the form of a letter of acceptance to the donor. The amount of a monetary gift will be specified. In the case of nonmonetary gifts, the letter will not make reference to the value of the gift. Valuation of nonmonetary gifts is the responsibility of the donor. Letters of acceptance will not include any statement regarding the tax implications of a gift, which remain the responsibility of the donor. No statement of endorsement should appear in a letter of acceptance to the donor.

\* \* \* \* \*

(f) A gift of money or the proceeds of a gift will be deposited in an appropriately documented agency fund. A check or money order should be made payable to the "U.S. Office of Government Ethics."

■ 9. Amend § 2601.203 by revising paragraph (a) to read as follows:

**§ 2601.203 Conflict of interest analysis.**

(a) A gift will not be solicited or accepted if the authorized agency official determines that such solicitation or acceptance of the gift would reflect unfavorably upon the ability of the agency, or any employee of the agency, to carry out OGE responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

\* \* \* \* \*

■ 10. Amend § 2601.204 by revising the Note to § 2601.204 to read as follows:

**§ 2601.204 Conditions for acceptance.**

\* \* \* \* \*

**Note to § 2601.204:** Nothing in this part will prohibit the agency from offering or providing the donor an appropriate acknowledgment of its gift in a publication, speech or other medium.

■ 11. Amend § 2601.301 by revising paragraphs (a) and (b) and the introductory text of paragraph (c) to read as follows:

**§ 2601.301 Accounting of gifts.**

(a) OGE's Designated Agency Ethics Official (DAEO) will ensure that gifts are properly accounted for by following appropriate internal controls and accounting procedures.

(b) The DAEO will maintain an inventory of donated personal property valued at over \$500. The inventory will be updated each time an item is sold, excessed, destroyed or otherwise disposed of or discarded.

(c) The DAEO will maintain a log of all gifts valued at over \$500 accepted pursuant to this part. The log will include, to the extent known:

\* \* \* \* \*

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

■ 12. Revise part 2604 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.
- 2604.104 Preservation of records.
- 2604.105 Other rights and services.

**Subpart B—FOIA Public Reading Room Facility and Web Site; Index Identifying Information for the Public**

- 2604.201 Public reading room facility and Web site.
- 2604.202 Index identifying information for the public.

**Subpart C—Production and Disclosure of Records Under FOIA**

- 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**

- 2604.401 Policy.
- 2604.402 Business information.

**Subpart E—Schedule of Fees**

- 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 OGE FOIA Report**

- 2604.601 Electronic posting and submission of annual OGE FOIA report.

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

- 2604.701 Policy
- 2604.702 Charges.

**Authority:** 5 U.S.C. 552; 5 U.S.C. App. 101–505; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 13392, 70 FR 75373, 3 CFR, 2005 Comp., p. 216.

**Subpart A—General Provisions**

**§ 2604.101 Purpose.**

This part contains the regulations of the U.S. Office of Government Ethics

(OGE) implementing the Freedom of Information Act (FOIA), as amended. 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 (Ethics Act), 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 Freedom of Information Act applies to third-party requests for documents concerning the general activities of the government and of OGE in particular. 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. When an individual requests access to his or her own records that are contained in an OGE system of records, the individual is making a Privacy Act request, not a FOIA request. Although OGE determines whether a request is a FOIA or Privacy Act request, OGE processes requests in accordance with both laws and will not deny access by a first party to a record under the FOIA or the Privacy Act if the record is available to that individual under both statutes. This provides the greatest degree of lawful access while safeguarding individuals' personal privacy.

(c) *Records available through routine distribution procedures.* When the record requested includes material published and offered for sale (e.g., by the Government Publishing Office) or which is available to the public through an established distribution system (such as that of the National Technical Information Service of the Department of Commerce), OGE will explain how the record may be obtained through

those channels. If the requester, after having been advised of such alternative access, asks for regular FOIA processing instead, OGE will provide the record in accordance with its usual FOIA procedures under this part.

#### **§ 2604.103 Definitions.**

As used in this part:

*Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(f).

*Business information* means trade secrets or other commercial or financial information, provided to OGE by a submitter, which arguably is protected from disclosure under Exemption 4 of the Freedom of Information Act.

*Business submitter* means any person who provides business information, directly or indirectly, to OGE and who has a proprietary interest in the information.

*Chief FOIA Officer* means the OGE official designated in 5 U.S.C. 552(k) to provide oversight of all of OGE's FOIA program operations.

*Commercial use* means, when referring to a request, that the request is from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put. When a request is from a representative of the news media, a purpose or use supporting the requester's news dissemination function is not a commercial use.

*Direct costs* means those expenditures actually incurred in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include the salary of the employee performing the work and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

*Duplication* means the process of making a copy of a record. Such copies include photocopies, flash drives, and optical discs.

*Educational institution* means a preschool, elementary or secondary school, institution of undergraduate or graduate higher education, or institute of professional or vocational education, which operates a program of scholarly research.

*Fee waiver* means waiving or reducing processing fees if a requester can demonstrate that certain statutory standards are satisfied, including that the information is in the public interest

and is not requested for a commercial interest.

*FOIA Officer* means the OGE employee designated to handle various initial FOIA matters, including requests and related matters such as fees.

*FOIA Public Liaison* means the OGE official designated in 5 U.S.C. 552(a)(6)(B)(ii) and 552(l) to review upon request any concerns of FOIA requesters about the service received from OGE's FOIA Requester Service Center and to address any other FOIA-related inquiries.

*FOIA Requester Service Center* means the OGE unit designated under E.O. 13392 and referenced in 5 U.S.C. 552(l) to answer any questions requesters have about the status of OGE's processing of their FOIA requests.

*Freedom of Information Act* or *FOIA* means 5 U.S.C. 552.

*Noncommercial scientific institution* means an institution that is not operated solely for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for purposes of conducting scientific research the results of which are not intended to promote any particular product or industry.

*Office or OGE* means the United States Office of Government Ethics.

*Person* has the meaning given in 5 U.S.C. 551(2), including "an individual, partnership, corporation, association, or public or private organization other than an agency."

*Records* means any handwritten, typed, or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and documentary material in other forms (such as electronic documents, electronic mail, magnetic tapes, cards or discs, paper tapes, audio or video recordings, maps, photographs, slides, microfilm and motion pictures) that are either created or obtained by OGE and are under its control. It does not include objects or articles such as exhibits, models, equipment, and duplication machines or audiovisual processing materials.

*Representative of the news media* means a person or entity that gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who

distribute their products to the general public or who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media, such as electronic dissemination of text. Freelance journalists will be considered as representatives of a news media entity if they can show a solid basis for expecting publication through such an entity. A publication contract is such a basis, and the requester's past publication record may show such a basis.

*Request* means any request for records made pursuant to 5 U.S.C. 552(a)(3).

*Requester* means any person who makes a request for records to OGE.

*Requester category* means one of three classifications that OGE assigns to requesters to determine whether OGE will charge fees for search, review and duplication. These categories are: Commercial requesters; noncommercial scientific or educational institutions or representatives of the news media; and all other requesters.

*Review* means the process of initially, or upon appeal (see § 2604.501(b)(3)), examining documents located in a response to a request to determine whether any portion of any document is permitted to be withheld. It also includes processing documents for disclosure, such as redacting portions which may be withheld. Review does not include time spent resolving general legal and policy issues regarding the application of exemptions.

*Search* means the time spent looking for material manually or by automated means that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

*Working days* means calendar days, excepting Saturdays, Sundays, and legal public holidays.

#### **§ 2604.104 Preservation of records.**

OGE will preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all responsive records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit.

#### **§ 2604.105 Other rights and services.**

Nothing in this part will be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

## Subpart B—FOIA Public Reading Room Facility and Web Site; Index Identifying Information for the Public

### § 2604.201 Public reading room facility and Web site.

(a)(1) *Location of public reading room facility.* OGE maintains a public reading room facility at its offices located at 1201 New York Avenue NW., Suite 500, Washington, DC 20005-3917. Persons desiring to utilize the reading room facility should contact OGE, in writing or by telephone: 202-482-9300, TDD: 202-482-9293, or FAX: 202-482-9237, to arrange a time to inspect the materials available there.

(2) *Web site.* The records listed in paragraph (b) of this section that were created on or after November 1, 1996, or which OGE is otherwise able to make electronically available, along with the OGE FOIA and Public Records Guide and OGE's annual FOIA reports, are also available via OGE's Web site ([www.oge.gov](http://www.oge.gov)). OGE will proactively identify additional records of interest to the public and will post such records on its Web site when practicable.

(b) *Records available.* The OGE public reading room facility contains OGE records which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection and copying, including:

(1) Any final opinions, as well as orders, made in the adjudication of cases;

(2) Any statements of policy and interpretation which have been adopted by OGE and are not published in the **Federal Register**;

(3) Any administrative staff manuals and instructions to staff that affect a member of the public, and which are not exempt from disclosure under section (b) of the FOIA;

(4) Copies of records created by OGE that have been released to any person under subpart C of this part which, because of the nature of their subject matter, OGE determines have become or are likely to become the subject of subsequent requests for substantially the same records, together with a general index of such records; and

(5) A general index of the records referred to under § 2604.201(b)(4).

(c) *Copying.* The cost of copying information available in OGE's public reading room facility will be imposed on a requester in accordance with the provisions of subpart E of this part.

(d) OGE may delete from the copies of materials made available under this section any identifying details necessary to prevent a clearly unwarranted invasion of personal privacy. Any such deletions will be explained in writing and the extent of such deletions will be

indicated on the portion of the records that are made available or published, unless the indication would harm an interest protected by the FOIA exemption pursuant to which the deletions are made. If technically feasible, the extent of any such deletions will be indicated at the place in the records where they are made.

### § 2604.202 Index identifying information for the public.

(a) OGE will maintain and make available for public inspection and copying a current index of the materials available at its public reading room facility which are required to be indexed under 5 U.S.C. 552(a)(2).

(b) The Director of the Office of Government Ethics has determined that it is unnecessary and impracticable to publish quarterly or more frequently and distribute (by sale or otherwise) copies of each index and supplements thereto, as provided in 5 U.S.C. 552(a)(2). The Office will provide copies of such indexes upon request, at a cost not to exceed the direct cost of duplication and mailing, if sending records by other than ordinary mail.

## Subpart C—Production and Disclosure of Records Under FOIA

### § 2604.301 Requests for records.

(a) *Addressing requests.* Requests for copies of records may be made by mail or email. Requests sent by mail should be addressed to the FOIA Officer, U.S. Office of Government Ethics, 1201 New York Avenue NW., Suite 500, Washington, DC 20005-3917. The envelope containing the request and the letter itself should both clearly indicate that the subject is a Freedom of Information Act request. Email requests should be sent to [usage@oge.gov](mailto:usage@oge.gov) and should indicate in the subject line that the message contains a Freedom of Information Act request.

(b) *Description of records.* Each request must reasonably describe the desired records in sufficient detail to enable OGE personnel to locate the records with a reasonable amount of effort. A request for a specific category of records will be regarded as fulfilling this requirement if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive of OGE operations.

(1) Wherever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record.

(2) If the FOIA Officer determines that a request does not reasonably describe

the records sought, the FOIA Officer will either advise the requester what additional information is needed to locate the record, or otherwise state why the request is insufficient. The FOIA Officer will also extend to the requester an opportunity to confer with OGE personnel with the objective of reformulating the request in a manner which will meet the requirements of this section.

(c) *Agreement to pay fees.* The filing of a request under this subpart will be deemed to constitute an agreement by the requester to pay all applicable fees charged under subpart E of this part, up to \$25.00, unless a waiver of fees is sought. The request may also specify a limit on the amount the requester is willing to spend, or may indicate a willingness to pay an amount greater than \$25.00, if applicable. In cases where a requester has been notified that actual or estimated fees may amount to more than \$25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. If, in the course of negotiating fees, the requester does not respond to correspondence from OGE, OGE will administratively close the FOIA request after 30 calendar days have passed from the date of its last correspondence to the requester.

(d) *Requests for records relating to corrective actions.* No record developed pursuant to the authority of 5 U.S.C. app. 402(f)(2) concerning the investigation of an employee for a possible violation of any provision relating to a conflict of interest will be made available pursuant to this part unless the request for such information identifies the employee to whom the records relate and the subject matter of any alleged violation to which the records relate. Nothing in this subsection will affect the application of subpart D of this part to any record so identified.

(e) *Seeking expedited processing.* (1) A requester may seek expedited processing of a FOIA request if a compelling need for the requested records can be shown.

(2) "Compelling need" means:

(i) Circumstances in which failure to obtain copies of the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if the request is made by a person primarily engaged in disseminating information.

(3) A requester seeking expedited processing should so indicate in the

initial request, and should state all the facts supporting the need to obtain the requested records quickly. The requester must also certify in writing that these facts are true and correct to the best of the requester's knowledge and belief.

#### **§ 2604.302 Response to requests.**

(a) *Acknowledgement of requests.* If the FOIA Officer determines that a request will take longer than 10 working days to process, OGE will send a written acknowledgment that includes the request's individualized tracking number.

(b) *Response to initial request.* The FOIA Officer is authorized to grant or deny any request for a record and to determine appropriate fees.

(c) *Referral to, or consultation with, another agency.* When a requester seeks access to records that originated in another Government agency subject to the FOIA, OGE will normally refer the request to the other agency for response; alternatively, OGE may consult with the other agency in the course of deciding itself whether to grant or deny a request for access to such records. If OGE refers the request to another agency, it will notify the requester of the referral and provide a point of contact within the receiving agency. If release of certain records may adversely affect United States relations with foreign governments, OGE will usually consult with the Department of State. A request for any records classified by some other agency will be referred to that agency for response.

(d) *Honoring form or format requests.* In making any record available to a requester, OGE will provide the record in the form or format requested, if the record already exists or is readily reproducible by OGE in that form or format. If a form or format request cannot be honored, OGE will so inform the requester and provide a copy of a nonexempt record in its existing form or format or another convenient form or format which is readily reproducible. OGE will not, however, generally develop a completely new record (as opposed to providing a copy of an existing record in a readily reproducible new form or format, as requested) of information in order to satisfy a request.

(e) *Record cannot be located.* If a requested record cannot be located from the information supplied, the FOIA Officer will so notify the requester in writing.

#### **§ 2604.303 Form and content of responses.**

(a) *Form of notice granting a request.* After the FOIA Officer has made a determination to grant a request in

whole or in part, the requester will be notified in writing. The notice will describe the manner in which the record will be disclosed, whether by providing a copy of the record with the response or at a later date, or by making a copy of the record available to the requester for inspection at a reasonable time and place. The procedure for such an inspection may not unreasonably disrupt OGE operations. The response letter will also inform the requester in the response of any fees to be charged in accordance with the provisions of subpart E of this part.

(b) *Form of notice denying a request.* When the FOIA Officer denies a request in whole or in part, the FOIA Officer will so notify the requester in writing. The response will be signed by the FOIA Officer and will include:

(1) The name and title or position of the person making the denial;

(2) A brief statement of the reason or reasons for the denial, including the FOIA exemption or exemptions which the FOIA Officer has relied upon in denying the request;

(3) When only a portion of a document is being withheld, the amount of information deleted and the FOIA exemption(s) justifying the deletion will generally be indicated on the copy of the released portion of the document. If technically feasible, such indications will appear at the place in the copy of the document where any deletion is made. If a document is withheld in its entirety, an estimate of the volume of the withheld material will generally be given. However, neither an indication of the amount of information deleted nor an estimation of the volume of material withheld will be included in a response if doing so would harm an interest protected by any of the FOIA exemptions pursuant to which the deletion or withholding is made; and

(4) A statement that the denial may be appealed under § 2604.304, and a description of the requirements of that section.

#### **§ 2604.304 Appeal of denials.**

(a) *Right of appeal.* If a request has been denied in whole or in part, the requester may appeal the denial by mail or email to the Program Counsel of the U.S. Office of Government Ethics. Requests sent by mail should be addressed to 1201 New York Avenue NW., Suite 500, Washington, DC 20005-3917. The envelope containing the request and the letter itself should both clearly indicate that the subject is a Freedom of Information Act appeal. Email requests should be sent to [usoge@oge.gov](mailto:usoge@oge.gov) and should indicate in the

subject line that the message contains a Freedom of Information Act appeal.

(b) *Letter of appeal.* The appeal must be in writing and must be sent within 45 calendar days of receipt of the denial letter. An appeal should include a copy of the initial request, a copy of the letter denying the request in whole or in part, and a statement of the circumstances, reasons or arguments advanced in support of disclosure of the record.

(c) *Action on appeal.* The disposition of an appeal will be in writing and will constitute the final action of OGE on a request. A decision affirming in whole or in part the denial of a request will include a brief statement of the reason or reasons for affirmance, including each FOIA exemption relied on. If the denial of a request is reversed in whole or in part on appeal, the request will be processed promptly in accordance with the decision on appeal.

(d) *Judicial review.* If the denial of the request for records is upheld in whole or in part, OGE will notify the person making the request of the right to seek judicial review under 5 U.S.C. 552(a)(4).

(e) *Dispute Resolution Services.* If the denial of the request for records is upheld in whole or in part, OGE will notify the requester about the dispute resolution services offered by the Office of Government Information Services (OGIS) and provide contact information for that office.

#### **§ 2604.305 Time limits.**

(a)(1) *Initial request.* Following receipt of a request for records, the FOIA Officer will determine whether to comply with the request and will notify the requester in writing of the determination within 20 working days.

(2) *Tolling.* OGE may toll the 20-working day period once while awaiting a response to information reasonably requested from the requester. OGE may also toll the 20-working day period while awaiting a response to a request for clarification regarding fees. There is no limit on the number of times OGE may toll the statutory time period to request clarification regarding fees. In either case, the tolling period ends upon receipt of the requester's response to the request for information or clarification. If OGE does not receive a response to a request for clarification regarding fees within 30 calendar days, it will consider the request "closed."

(3) *Request for expedited processing.* When a request for expedited processing under § 2604.301(e) is received, the FOIA Officer will respond within 10 calendar days from the date of receipt of the request, stating whether or not the request for expedited processing has been granted. If the request for

expedited processing is denied, any appeal of that decision will be acted upon expeditiously.

(b) *Appeal.* A written determination on an appeal submitted in accordance with § 2604.304 will be issued within 20 working days after receipt of the appeal.

(c) *Extension of time limits.* When additional time is required for one of the reasons stated in paragraph (d) of this section, OGE will, within the statutory 20-working day period, issue written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be made. If more than 10 additional working days are needed, the requester will be notified and provided an opportunity to limit the scope of the request or to arrange for an alternative time frame for processing the request or a modified request. To aid the requester, OGE will make available its FOIA Public Liaison to assist in the resolution of any disputes.

(d) For the purposes of paragraph (c) of this section, *unusual circumstances* means that there is a need to:

(1) Search for and collect records from archives;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) Consult with another agency having a substantial interest in the determination of the request, or consult with various OGE components that have substantial subject matter interest in the records requested.

## Subpart D—Exemptions Under FOIA

### § 2604.401 Policy.

(a) *Policy on application of exemptions.* A requested record will not be withheld from inspection or copying unless it comes within one of the classes of records exempted by 5 U.S.C. 552. In making its determination on withholding, OGE will consider making discretionary disclosures of records exempt under the FOIA whenever disclosure is not prohibited by statute, Executive Order, or regulation and would not foreseeably harm an interest protected by a FOIA exemption.

(b) *Pledge of confidentiality.* Information obtained from any individual or organization, furnished in reliance on a provision for confidentiality authorized by applicable statute, Executive Order or regulation, will not be disclosed to the extent it can be withheld under one of the exemptions. However, this paragraph (b) does not itself authorize the giving of

any pledge of confidentiality by any officer or employee of OGE.

(c) *Exception for law enforcement information.* OGE may treat records compiled for law enforcement purposes as not subject to the requirements of the Freedom of Information Act when:

(1) The investigation or proceeding involves a possible violation of criminal law;

(2) There is reason to believe that the subject of the investigation or proceeding is unaware of its pendency; and

(3) The disclosure of the existence of the records could reasonably be expected to interfere with the enforcement proceedings.

(d) *Partial application of exemptions.* Any reasonably segregable portion of a record will be provided to any person requesting the record after deletion of the portions which are exempt under this subpart.

### § 2604.402 Business information.

(a) *In general.* Business information provided to OGE by a submitter will not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Designation of business information.* Submitters of business information should use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions which they deem to be protected under Exemption 4 of the FOIA (5 U.S.C. 552(b)(4)). Any such designation will expire 10 years after the records were submitted to the Government, unless the submitter requests, and provides reasonable justification for, a designation period of longer duration.

(c) *Predisclosure notification.* The FOIA Officer will provide a submitter with prompt written notice of a FOIA request regarding its business information if:

(1) The information has been designated by the submitter as information deemed protected from disclosure under Exemption 4 of the FOIA; or

(2) The FOIA Officer has reason to believe that the information may be protected from disclosure under Exemption 4 of the FOIA. Such written notice will either describe the exact nature of the business information requested or provide copies of the records containing the business information. The requester also will be notified that notice and an opportunity to object are being provided to a submitter.

(d) *Opportunity to object to disclosure.* OGE will give a submitter a reasonable time, up to 10 working days, from receipt of the predisclosure notification to provide a written statement of any objection to disclosure. Such statement will specify all the grounds for withholding any of the information under any exemption of the FOIA and, in the case of Exemption 4, will demonstrate why the information is deemed to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a submitter pursuant to this paragraph (d) may itself be subject to disclosure under the FOIA.

(e) *Notice of intent to disclose.* The FOIA Officer will consider all objections raised by a submitter and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the FOIA Officer decides to disclose business information over the objection of a submitter, the FOIA Officer will send the submitter a written notice at least 10 working days before the date of disclosure containing:

(1) A statement of the reasons why the submitter's objections were not sustained;

(2) A copy of the records which will be disclosed or a written description of the records; and

(3) A specified disclosure date. The requester will also be notified of the FOIA Officer's determination to disclose records over a submitter's objections.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the FOIA Officer will promptly notify the submitter.

(g) *Exceptions to predisclosure notification.* The notice requirements in paragraph (c) of this section do not apply if:

(1) The FOIA Officer determines that the information should not be disclosed;

(2) The information has been published previously or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The designation made by the submitter in accordance with paragraph (b) of this section appears obviously frivolous; except that, in such a case, the FOIA Officer will provide the submitter with written notice of any final decision to disclose business information within a reasonable number of days prior to a specified disclosure date.

**Subpart E—Schedule of Fees****§ 2604.501 Fees to be charged—general.**

(a) *Policy.* Fees will be assessed according to the schedule contained in paragraph (b) of this section and the category of requesters described in § 2604.502 for services rendered in responding to and processing requests for records under subpart C of this part. All fees will be charged to the requester, except where the charging of fees is limited under § 2604.503(a) and (b) or where a waiver or reduction of fees is granted under § 2604.503(c). Requesters will pay fees by check or money order made payable to the Treasury of the United States.

(b) *Types of charges.* The types of charges that may be assessed in connection with the production of records in response to a FOIA request are as follows:

(1) *Searches—(i) Manual searches for records.* Whenever feasible, OGE will charge at the salary rate (*i.e.*, basic pay plus 16%) of the employee making the search. However, where a homogeneous class of personnel is used exclusively in a search (*e.g.*, all clerical time or all professional time) OGE will charge \$16.00 per hour for clerical time and \$28.00 per hour for professional time. Charges for search time will be billed by 15-minute segments.

(ii) *Computer searches for records.* Requesters will be charged the actual direct cost of conducting a search using existing programming. These direct costs will include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the cost of operator/programmer salary apportionable to the search. OGE will not alter or develop programming to conduct a search.

(iii) *Unproductive searches.* OGE will charge search fees even if no records are found which are responsive to the request, or if the records found are exempt from disclosure.

(2) *Duplication.* The standard copying charge for documents in paper copy is \$0.15 per page. When responsive information is provided in a format other than paper copy, such as in the form of computer tapes, flash drives, and discs, the requester may be charged the direct costs of the medium used to produce the information, as well as any related reproduction costs.

(3) *Review.* Costs associated with the review of documents, as defined in § 2604.103, will be charged at the salary rate (*i.e.*, basic pay plus 16%) of the employee conducting the review. Except as noted below, charges may be assessed

only for review at the initial level, *i.e.*, the review undertaken the first time the documents are analyzed to determine the applicability of specific exemptions to a particular record or portion of the records. A requester will not be charged for review at the administrative appeal level concerning the applicability of an exemption already applied at the initial level. However, when a record has been withheld pursuant to an exemption which is subsequently determined not to apply and the record is reviewed again at the appeal level to determine the potential applicability of other exemptions, the costs of such additional review may be assessed.

(4) *Other services and materials.* Where OGE elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending records by special methods, the actual direct costs of providing the service or materials will be charged.

**§ 2604.502 Fees to be charged—categories of requesters.**

(a) *Fees for various requester categories.* The paragraphs below state, for each category of requester, the type of fees generally charged by OGE. However, for each of these categories, the fees may be limited, waived or reduced in accordance with the provisions set forth in § 2604.503. In determining whether a requester belongs in any of the following categories, OGE will determine the use to which the requester will put the documents requested. If OGE has reasonable cause to doubt the use to which the requester will put the records sought, or where the use is not clear from the request itself, OGE will seek clarification before assigning the request to a specific category.

(b) *Commercial use requester.* OGE will charge the full costs of search, review, and duplication. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of reproduction as described in § 2604.503(a); however, the minimum fees provision of § 2604.503(b) does apply to such requesters.

(c) *Educational and noncommercial scientific institutions and news media.* If the request is from an educational institution or a noncommercial scientific institution, operated for scholarly or scientific research, or a representative of the news media, and the request is not for a commercial use, OGE will charge only for duplication of documents, excluding charges for the first 100 pages.

(d) *All other requesters.* If the request is not one described in paragraph (b) or (c) of this section, OGE will charge the full and direct costs of searching for and reproducing records that are responsive to the request, excluding the first 100 pages of duplication and the first two hours of search time.

**§ 2604.503 Limitations on charging fees.**

(a) *In general.* Except for requesters seeking records for a commercial use as described in § 2604.502(b), OGE will provide, without charge, the first 100 pages of duplication and the first two hours of search time, or their cost equivalent.

(b) *Minimum fees.* OGE will not assess fees for individual requests if the total charge would be \$10.00 or less.

(c) *Waiver or reduction of fees.* Records responsive to a request under 5 U.S.C. 552 will be furnished without charge or at a reduced charge if a requester can demonstrate that certain statutory standards are satisfied, including that the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees will be considered on a case-by-case basis.

(1) In determining whether disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, OGE will consider the following factors:

(i) *The subject of the request: Whether the subject of the requested records concerns the operations or activities of the Government.* The subject matter of the requested records, in the context of the request, must specifically and directly concern identifiable operations or activities of the Federal Government. Furthermore, the records must be sought for their informative value with respect to those Government operations or activities;

(ii) *The informative value of the information to be disclosed: Whether the information is likely to contribute to an understanding of Government operations or activities.* The disclosable portions of the requested records must be meaningfully informative on specific Government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information which is already in the public domain, in either a duplicative or substantially identical form, would not be likely to contribute

to such understanding, as nothing new would be added to the public record;

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to public understanding.* The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester's identity and qualifications—*e.g.*, expertise in the subject area and ability and intention to convey information to the general public—will be considered; and

(iv) *The significance of the contribution to public understanding: Whether the disclosure is likely to contribute significantly to public understanding of Government operations or activities.* The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be significantly enhanced by the disclosure.

(2) In determining whether disclosure of the requested information is not primarily in the commercial interest of the requester, OGE will consider the following factors:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* OGE will consider all commercial interests of the requester, or any person on whose behalf the requester may be acting, which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration will be given to the effect that the information disclosed would have on those commercial interests; and

(ii) *The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.* A fee waiver or reduction is warranted only where the public interest can fairly be regarded as greater in magnitude than the requester's commercial interest in disclosure. OGE will ordinarily presume that, where a news media requester has satisfied the public interest standard, the public interest will be served primarily by disclosure to that requester. Disclosure to data brokers and others who compile and market Government information for direct

economic return will not be presumed to primarily serve the public interest.

(3) Where only a portion of the requested record satisfies the requirements for a waiver or reduction of fees under this paragraph (c), a waiver or reduction will be granted only as to that portion.

(4) A request for a waiver or reduction of fees must accompany the request for disclosure of records, and should include:

(i) A clear statement of the requester's interest in the documents;

(ii) The proposed use of the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from release of the requested documents; and

(iv) If specialized use of the documents is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(5) A requester may appeal the denial of a request for a waiver or reduction of fees in accordance with the provisions of § 2604.304.

(d) If OGE does not comply with one of the time limits under § 2604.305, it will not assess search fees (or, in the case of a requester described under § 2604.502(c), duplication fees), unless unusual or exceptional circumstances apply, as defined in 5 U.S.C. 552(a)(6)(B) and (C).

#### **§ 2604.504 Miscellaneous fee provisions.**

(a) *Notice of anticipated fees in excess of \$25.00.* Where OGE determines or estimates that the fees to be assessed under this section may amount to more than \$25.00, it will notify the requester as soon as practicable of the actual or estimated amount of fees, unless the requester has indicated in advance the willingness to pay fees as high as those anticipated. Where a requester has been notified that the actual or estimated fees may exceed \$25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph (a) will include the opportunity to confer with OGE personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(b) *Aggregating requests.* A requester may not file multiple requests, each seeking portions of a document or documents in order to avoid the payment of fees. Where there is reason to believe that a requester, or group of requesters acting in concert, is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, OGE

may aggregate the requests and charge accordingly. OGE will presume that multiple requests of this type made within a 30-calendar day period have been made in order to evade fees. Multiple requests regarding unrelated matters will not be aggregated.

(c) *Advance payments.* An advance payment before work is commenced or continued will not be required unless:

(1) OGE estimates or determines that the total fee to be assessed under this section is likely to exceed \$250.00. When a determination is made that the allowable charges are likely to exceed \$250.00, the requester will be notified of the likely cost and will be required to provide satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or will be required to submit an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 calendar days of the date of the billing). In such cases the requester may be required to pay the full amount owed plus any applicable interest as provided by paragraph (e) of this section, and to make an advance payment of the full amount of the estimated fee before OGE begins to process a new request.

(3) When OGE requests an advance payment of fees, the administrative time limits described in subsection (a)(6) of the FOIA will begin to run only after OGE has received the advance payment.

(d) *Billing and payment.* Normally OGE will require a requester to pay all fees before furnishing the requested records. However, OGE may send a bill along with, or following the furnishing of records, in cases where the requester has a history of prompt payment.

(e) *Interest charges.* Interest charges on an unpaid bill may be assessed starting on the 31st calendar day following the day on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing. To collect unpaid bills, OGE will follow the provisions of the Debt Collection Act of 1982, as amended (96 Stat. 1749 *et seq.*) including the use of consumer reporting agencies, collection agencies, and offset.

#### **Subpart F—Annual OGE FOIA Report**

##### **§ 2604.601 Electronic posting and submission of annual OGE FOIA report.**

On or before February 1 of each year, OGE will electronically post on its Web site and submit to the Office of Information and Privacy at the United

States Department of Justice a report of its activities relating to the Freedom of Information Act (FOIA) during the preceding fiscal year. The report will include the information required by 5 U.S.C. 552(e).

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

**§ 2604.701 Policy.**

Fees for the reproduction and mailing of public financial disclosure reports requested pursuant to section 105 of the Ethics in Government Act of 1978, as amended, and § 2634.603 of this chapter will be assessed according to the schedule contained in § 2604.702. Requesters will pay fees by check or money order made payable to the Treasury of the United States. Except as provided in § 2604.702(d), nothing concerning fees in subpart E of this part supersedes the charges set forth in this subpart for records covered in this subpart.

**§ 2604.702 Charges.**

(a) *Duplication.* Except as provided in paragraph (c) of this section, copies of public financial disclosure reports requested pursuant to section 105 of the Ethics in Government Act of 1978, as amended, and § 2634.603 of this chapter will be provided upon payment of \$0.15 per page furnished.

(b) *Mailing.* Except as provided in paragraph (c) of this section, the actual direct cost of mailing public financial disclosure reports will be charged for all forms requested. Where OGE elects to comply, as a matter of administrative discretion, with a request for special mailing services, the actual direct cost of such service will be charged.

(c) *Minimum fees.* OGE will not assess fees for individual requests if the total charge would be \$10.00 or less.

(d) *Miscellaneous fee provisions.* The miscellaneous fee provisions set forth in § 2604.504 apply to requests for public financial disclosure reports pursuant to § 2634.603 of this chapter.

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**DEPARTMENT OF ENERGY**

**10 CFR Part 1046**

**RIN 1992-AA40**

**Medical, Physical Readiness, Training, and Access Authorization Standards for Protective Force Personnel**

**AGENCY:** Office of Environment, Health, Safety and Security, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** On September 10, 2013, the Department of Energy (DOE or Department) issued in the **Federal Register** a revision to its regulations governing the standards for medical, physical performance, training, and access authorizations for protective force (PF) personnel employed by contractors providing security services to the Department. Subsequently, the DOE created a new Office of Environment, Health, Safety and Security (AU) to improve the effectiveness and efficiency of its environmental, health, safety and security policy. Certain functions that previously were carried out by the Office of Health, Safety and Security have been transferred to the new office. This final rule makes technical amendments to DOE's regulations to substitute the officials to whom or offices to which functions have been transferred pursuant to the reorganization. Today's regulatory amendments do not alter substantive rights or obligations under current law.

**DATES:** The effective date of this rule is September 22, 2015.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Section by Section Analysis
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**I. Background**

Pursuant to the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) and the DOE Organization Act of 1977 (42 U.S.C. 7101 *et seq.*), DOE owns and leases defense nuclear and other facilities in various locations in the United States. These facilities are operated by DOE or by contractors (including subcontractors at all tiers) with DOE oversight. Protection of the DOE facilities is provided by armed and unarmed PF personnel employed by Federal Government contractors. These PF personnel are required to perform both routine and emergency duties, which include patrolling DOE sites, manning security posts, protecting government and contractor employees, property, and sensitive and classified information, training for potential crisis or emergency situations, and responding to security incidents. PF personnel are required to meet various job-related minimum medical and physical readiness qualification standards designed to ensure they are capable of performing all essential functions of normal and emergency PF duties without posing a direct threat to themselves or others. DOE's regulations in 10 CFR part 1046 establish the medical, physical readiness, training and performance standards for contractor PF personnel.

On September 10, 2013, DOE issued in the **Federal Register** a revision to its regulations at 10 CFR part 1046 (78 FR 55174). Subsequently, on May 4, 2014, DOE created a new office, AU, to improve the effectiveness and efficiency of its environment, health, safety and security policy. DOE transferred certain health, safety and security functions to the new office that previously were carried out by the Office of Health, Safety and Security. This final rule amends 10 CFR part 1046 to reflect DOE's new organizational structure. None of the regulatory amendments in this final rule alter substantive rights or obligations under current law. The modifications to 10 CFR part 1046 are described in the Section by Section Analysis in section II.

**II. Section by Section Analysis**

In this final rule, the Office of Health, Safety and Security organization has been renamed to the Office of Environment, Health, Safety and Security. The position title of Chief Health, Safety and Security Officer has been renamed to the Associate Under Secretary for the Office of Environment, Health, Safety and Security. DOE has removed reference(s) to the Chief Medical Officer and, where appropriate,