



**BILLING CODE: 6345-03-P**

**OFFICE OF GOVERNMENT ETHICS**

**5 CFR Part 2600, 2601, 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:** Proposed rule.

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**SUMMARY:** The U.S. Office of Government Ethics is updating and streamlining its organization and functions regulation and its statutory gift acceptance authority implementation. OGE is also updating and streamlining its Freedom of Information Act (FOIA) regulation to reflect OGE's existing policy and practice and to implement changes to the FOIA. Finally, the proposed revisions make administrative changes and update cost figures for calculating and charging fees.

**DATES:** Written comments are invited and must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit written comments to OGE on the proposed rule by any of the following methods:

- Email: [usoge@oge.gov](mailto:usoge@oge.gov). Include the appropriate Regulation Identifier Number in the subject line of the message.
- Fax: (202) 482-9237.
- Mail/Hand Delivery/Courier: U.S. Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005-3917, Attention: Jennifer Matis, Assistant Counsel.

Instructions: All submissions must include OGE's agency name and the appropriate Regulation Identifier Number. Use RIN 3209-AA40 to submit comments on the proposed changes to 5 CFR Part 2600; RIN 3209-AA41 to submit comments on the proposed changes to 5 CFR Part 2600; and RIN 3209-AA39 to submit comments on the proposed changes to 5 CFR Part 2604. OGE will post all comments on its website ([www.oge.gov](http://www.oge.gov)). All comments received will be posted without change; OGE generally does not edit a commenter's personal identifying information from submissions. You should submit only information that you wish to make available publicly.

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

**SUPPLEMENTARY INFORMATION:**

## **A. Substantive Discussion**

The rule proposes revisions to standardize, update, and streamline the language of 5 CFR parts 2600, 2601, and 2604. In addition, the proposed revisions to 5 CFR part 2600 remove out-of-date information regarding OGE's organizational structure and instead refer individuals to its website for current information. Likewise, the proposed revisions to 5 CFR part 2601 reflect changes to OGE's organizational structure.

The primary purpose of the proposed revisions to 5 CFR part 2604 is to reflect changes to the FOIA under the Openness Promotes Effectiveness in our National (OPEN) Government Act of 2007, Public Law 110-175, and to incorporate principles established by the 2009 FOIA memorandum. OGE is committed to operating transparently and has been administratively adhering to the developments in FOIA law and to the President's directive. Except as noted below, the proposed revisions reflect OGE's existing policies and practices.

The following is a subpart-by-subpart analysis of the proposed changes to 5 CFR part 2604:

Subpart A--General Provisions. The definition of "duplication" has been updated in accordance with changes in technology. The definition of "representative of the news media" has been revised to incorporate amendments to the FOIA under the OPEN Government Act. Section 2604.104 has been added to inform FOIA requesters about OGE's obligations regarding the preservation of records. Section 2604.105 has been added to clarify that OGE's FOIA regulation does not create an entitlement to additional rights or services beyond those conferred by the FOIA.

Subpart B--FOIA Public Reading Room Facility and Website; Index Identifying Information for the Public. Section 2604.201(a)(2) was revised to reflect OGE's existing practice of proactively identifying and posting on its website records of interest to the public, in accordance with the principles set forth by the 2009 FOIA memorandum. Section 2604.201(b)(5) was revised to parallel the language of the FOIA. After consideration, OGE decided not to revise § 2604.202(b), which contains a notice that the Director of OGE has determined that it is unnecessary and impracticable to publish and distribute a quarterly index of materials available under 5 U.S.C. 552(a)(2). However, OGE will consider whether it would be feasible to publish and update such an index on its website.

Subpart C--Production and Disclosure of Records Under FOIA. Section 2604.301 was revised to remove the option of submitting a request in person or by telephone. This change promotes efficiency in the receipt and tracking of requests, particularly in light of the fact that OGE has received few, if any, requests in person or by telephone. Section 2604.304 was revised to clarify the requirements for submitting an appeal and to correctly reflect the official delegated authority by OGE's Director to make a determination with respect to appeals.

Several revisions were made to this subpart to incorporate changes to the FOIA under the OPEN Government Act. The new § 2604.302(a) was added to reflect OGE's practice of acknowledging requests when the FOIA Officer determines that they will take longer than 10 working days to process. The redesignated § 2604.302(c) was revised to clarify OGE's practice of referring requests only to agencies subject to the FOIA and providing requesters with a point of contact within the receiving agency. Section

2604.304(e) was added to reflect OGE's practice of notifying requesters of the dispute resolution services of the Office of Government Information Services when a denial of a request for records is upheld in whole or in part on appeal. The new § 2604.305(a)(2) was added to notify requesters regarding the tolling of time limits. The extension of time limits provision in § 2604.305(c) was revised to more closely parallel the current language of the FOIA, including a notification that OGE will make available its Public Liaison to assist in the resolution of disputes.

Subpart D--Exemptions Under FOIA. Section 2604.401 was revised to reflect OGE's existing policy regarding discretionary disclosures of exempt records, as well as to incorporate the principles set forth in the 2009 FOIA memorandum. Section 2604.402 was revised to give a submitter of business information a reasonable time, up to 10 working days, to provide a written statement of objection to a disclosure, rather than restricting the submitter to five working days in all circumstances.

Subpart E--Schedule of Fees. Proposed changes to OGE's FOIA fee schedule are found at § 2604.501. Document search and review charges will increase slightly to \$16 and \$28 per hour for clerical and professional time, respectively. This increase is reasonable in light of the base salaries of OGE employees and is expected to have little impact on requesters. The duplication charge will remain the same at 15 cents per page. Section 2604.503(d) was added to incorporate an amendment to the FOIA under the OPEN Government Act, which limits an agency's authority to assess certain fees if the agency fails to comply with statutory time limits, unless unusual or exceptional circumstances apply.

Subpart F--Annual OGE FOIA Report. Section 2604.601 was revised to incorporate by reference the provisions of 5 U.S.C. 552(e) rather than provide a detailed description of the contents of OGE's annual FOIA report. In light of the changes in annual FOIA reporting requirements made by the OPEN Government Act and the possibility of additional changes, this revision helps to ensure that the public is provided with updated information on OGE's reporting obligations both now and in the future.

Subpart G--Fees for the Reproduction and Mailing of Public Financial Disclosure Reports. Copies of public financial disclosure reports are requested and provided pursuant to section 105 of the Ethics in Government Act of 1978, as amended, and § 2634.603 of this chapter, not pursuant to the FOIA. Section 2604.702 was revised to increase the duplication charge for the reproduction of public financial reports to 15 cents per page, the same charge assessed to FOIA requesters under § 2604.501(b)(2). The documents are also available electronically through OGE's website at no charge.

## **B. Statutory Authority**

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

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

#### Paperwork Reduction Act

The proposed 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 proposed 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 proposed rule

does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### Unfunded Mandates Reform Act

The proposed 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 proposed 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 proposed 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: March 25, 2015.

**Walter M. Shaub, Jr.,**

Director, Office of Government Ethics.

For the reasons set out above, OGE proposes to amend 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, N.W., Suite 500, Washington, DC 20005-3917. OGE does not have any regional offices. OGE's general email address is [contactoge@oge.gov](mailto:contactoge@oge.gov).

(b) Website. 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 website ([www.oge.gov](http://www.oge.gov)). OGE has posted on its website 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 website 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 delegee.

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. The authority citation for part 2604 continues to read as follows:

**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; E.O. 13392, 70 FR 75373, 3 CFR, 2005 Comp., p. 216.

13. Revise § 2604.101 to read as follows:

§ 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.

14. Amend § 2604.102 by revising the first sentence of paragraph (c) to read as follows:

§ 2604.102 Applicability.

\* \* \* \* \*

(c) Records available through routine distribution procedures. When the record requested includes material published and offered for sale (e.g., by the Government Printing 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. \*

\* \*

15. Amend § 2604.103 by:

a. Revising the definitions of “Business information,” “Business submitter,” “Chief FOIA Officer,” “Duplication,” “FOIA Public Liaison,” “FOIA Requester Service Center”;

b. Removing the definition of “He, his and him”; and

c. Revising the definitions of “Office or OGE,” “Records,” and “Representative of the news media.”

The revisions read as follows:

§ 2604.103 Definitions.

\* \* \* \* \*

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 under E.O. 13392 to provide oversight of all of OGE's FOIA program operations.

\* \* \* \* \*

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

\* \* \* \* \*

FOIA Public Liaison means the OGE official designated under E.O. 13392 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 to answer any questions requesters have about the status of OGE's processing of their FOIA requests.

\* \* \* \* \*

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

\* \* \* \* \*

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.

\* \* \* \* \*

16. Add § 2604.104 to subpart A to read as follows:

§ 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.

17. Add § 2604.105 to subpart A to read as follows:

§ 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.

18. Revise the heading of Subpart B to read as follows:

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

19. Amend § 2604.201 by revising the heading, paragraph (a), paragraph (b) introductory text, and paragraphs (b)(2), (b)(5), and (c) to read as follows:

§ 2604.201 Public reading room facility and website.

(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) Website. 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 website ([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 website 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.:

\* \* \* \* \*

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

\* \* \* \* \*

(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.

\* \* \* \* \*

20. Amend § 2604.202 by revising paragraph (a) to read as follows:

§ 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).

\* \* \* \* \*

21. Amend § 2604.301 by revising paragraph (a), paragraph (b) introductory text, and paragraphs (b)(2) and (d) to read as follows:

§ 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 [usoge@oge.gov](mailto:usoge@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.

\* \* \* \* \*

(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.

\* \* \* \* \*

(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.

\* \* \* \* \*

22. Amend § 2604.302 by redesignating paragraphs (a) through (d) as (b) through (e), respectively; adding new paragraph (a); and revising redesignated paragraph (c) to read as follows:

(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.

\* \* \* \* \*

(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.

\* \* \* \* \*

23. Amend § 2604.303 by revising paragraph (a) and the introductory text to paragraph (b) to read as follows:

§ 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:

\* \* \* \* \*

24. Revise § 2604.304 to read as follows:

§ 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 30 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 request for 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.

25. Amend § 2604.305 by redesignating paragraph (a)(2) as (a)(3), adding new paragraph (a)(2), and revising paragraphs (a)(1) and (c) to read as follows:

§ 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."

\* \* \* \* \*

(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.

\* \* \* \* \*

26. Amend § 2604.401 by revising paragraphs (a), (b), and the introductory text to paragraph (c) to read as follows:

§ 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 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:

\* \* \* \* \*

27. Amend § 2604.402 by revising paragraphs (a), (c)(2), (d), paragraph (e) introductory text, and paragraphs (e)(3) and (f) to read as follows:

§ 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.

\* \* \* \* \*

(c) \* \* \*

\* \* \* \* \*

(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 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:

\* \* \* \* \*

(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.

\* \* \* \* \*

28. Amend § 2604.501 by revising paragraphs (a), (b)(1), (b)(2), and (b)(4) to read as follows:

§ 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) \* \* \*

(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.

\* \* \* \* \*

(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.

29. Revise § 2604.502 to read as follows:

§ 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.

30. Amend § 2604.503 by revising paragraphs (a), (b), (c) introductory text, (c)(1) introductory text, (c)(2), and (c)(3), and adding paragraph (d) to read as follows:

§ 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 where OGE determines, based upon information provided by a requester in support of a fee waiver request, that disclosure of the requested 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:

\* \* \* \* \*

(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, a waiver or reduction will be granted only as to that portion.

\* \* \* \* \*

(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).

31. Amend § 2604.504 by revising paragraphs (a), (b), (c)(1) through (3), (d) , and (e) to read as follows:

§ 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 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) \* \* \*

(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 31<sup>st</sup> 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.

32. Revise § 2604.601 to read as follows:

§ 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 website 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).

§ 2604.602 [Removed]

33. Remove § 2604.602.

34. Revise § 2604.701 to read as follows:

§ 2604.701 Policy.

Fees for the reproduction and mailing of public financial disclosure reports (SF 278s) 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.

35. Amend § 2604.702 by revising paragraphs (a), (b), and (c) to read as follows:

§ 2604.702 Charges.

(a) Duplication. Except as provided in paragraph (c) of this section, copies of public financial disclosure reports (SF 278s) 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.

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[FR Doc. 2015-07376 Filed: 4/2/2015 08:45 am; Publication Date: 4/3/2015]