

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2606

RIN 3209-AA18

Privacy Act Rules

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule.

SUMMARY: The Office of Government Ethics is issuing a proposed rule that would establish procedures relating to access, maintenance, disclosure, and amendment of records which are in OGE systems of records under the Privacy Act of 1974, and that would establish rules of conduct for OGE personnel who have responsibilities under that Act.

DATES: Public comments are invited and must be received by March 24, 2003.

ADDRESSES: Comments should be sent to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attention: Ms. Newton. Electronic comments may also be sent to OGE's Internet E-mail address at usoge@oge.gov (such comments should include the caption "Proposed Privacy Act Rules").

FOR FURTHER INFORMATION CONTACT: Elaine Newton, Attorney-Advisor, Office of Government Ethics, telephone: 202-208-8000, extension 1137; TDD: 202-208-8025; FAX: 202-208-8037.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, at 5 U.S.C. 552a(f), requires every agency that maintains a system of records covered by the Privacy Act to promulgate regulations that: (1) Establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him; (2) define reasonable times, places, and requirements for identifying an individual who requests his record or information pertaining to him before the agency shall make the record or information available to the individual; (3) establish procedures for the

disclosure to the data subject upon his request of his record or information pertaining to him, including special procedures if deemed necessary, for the disclosure to the data subject of medical records, including psychological records, pertaining to him; (4) establish procedures for reviewing a request from the data subject concerning the amendment of any record or information pertaining to the data subject, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each data subject to be able to exercise fully his rights under the Privacy Act; and (5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of the first copy of the record provided as well as the cost of any search for and review of the record. In addition, section 552a(e)(9) of the Privacy Act requires an agency to establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of the Act, including any other rules and procedures adopted pursuant to the Act and the penalties for noncompliance.

The Privacy Act, at 5 U.S.C. 552a(e)(4), also requires each agency that maintains a system of records to publish in the **Federal Register** upon establishment or revision a notice of the existence and character of the system of records. In a separate notice published in the **Federal Register** today, OGE is proposing to revise and rename two existing Government-wide systems of records under the Privacy Act covering Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records (OGE/GOVT-1) and Executive Branch Confidential Financial Disclosure Reports (OGE/GOVT-2). In addition, OGE is issuing, for the first time, five internal systems of records to cover current and former OGE employees: Pay, Leave and Travel Records (OGE/INTERNAL-1), Telephone Call Detail Records (OGE/INTERNAL-2), Grievance Records (OGE/INTERNAL-3), Computer Systems Activity and Access Records (OGE/INTERNAL-4), and Employee

Locator and Emergency Notification Records (OGE/INTERNAL-5).

I. General Provisions

As proposed, subpart A of the rule would contain general provisions setting forth the purpose of the regulation (§ 2606.101), definitions that apply throughout the part (§ 2606.102), and a description of OGE's executive branch Governmentwide and internal systems of records (§ 2606.103). As proposed, subpart A of the rule would also specify OGE and agency responsibilities for the records systems (§ 2606.104), and would establish procedures whereby an individual can be notified in response to his request if any OGE system of records named by the individual contains a record pertaining to him (§ 2606.105).

In addition, subpart A would set forth Privacy Act rules of conduct and responsibilities for OGE employees who design, develop, operate, or maintain a system of records (§ 2606.106). These conduct and responsibilities rules would not apply to employees of other agencies concerned; they would be subject to their own agency's Privacy Act conduct and responsibilities rules. These conduct and responsibilities rules are authorized by subsection (e)(9) of the Privacy Act, and therefore are separate from the Standards of Ethical Conduct in 5 CFR part 2635. Various provisions in the Standards of Ethical Conduct (*e.g.*, 5 CFR 2635.703 regarding use of nonpublic information) would also apply to an employee's conduct as to records covered by the Privacy Act.

Overall, these proposed OGE Privacy Act rules would apply both to records in the new OGE internal systems of records as maintained by OGE itself, as well as the newly updated and revised OGE executive branch Governmentwide systems of records which are maintained both by OGE and departments and agencies throughout the executive branch. With respect to those other departments and agencies, these proposed regulations would set forth the overall procedures for the Governmentwide systems, while recognizing that most agencies have their own Privacy Act regulations specifying appropriate appeals officials for access and amendment denials as well as schedules of fees. The details of these agency variations are set forth in

the relevant proposed sections of the regulatory text, rather than here.

II. Access to Records and Accounting of Disclosures

Subpart B of the rule, as proposed, describes the access process, and the accounting of disclosures process. Section 2606.201 would detail what a requester would have to submit to obtain access to a record pertaining to him in a system of records. Section 2606.202 would set forth the procedures when a request for access is received. Section 2606.203 would set forth the procedures for granting access, including the forms of identification necessary to gain access to requested records. Section 2606.203 would also state how a record in a system of records may be accessed on behalf of a minor, by a legal guardian, when the requester is accompanied by another individual, or when the request is for certain medical records. Section 2606.204 would describe the procedure for appealing a denial of an initial request for access to a record or a no record response. Section 2606.205 would describe what should be included in the official decision on an appeal from an initial denial of access. Section 2606.206 would set the fees that may be charged by the Office (or another agency not having its own Privacy Act fee schedule) for making copies of a record. Section 2606.207 would describe the accounting of disclosures that are kept with respect to OGE's systems of records.

III. Amendment of Records

As proposed, subpart C of the rule explains how a data subject may seek to amend his record. Section 2606.301 would set forth the procedures for requesting a record be amended, including the information that must be contained in the request, and would state that the requester has the burden of proof to justify an amendment request. Section 2606.302 would set forth the procedures to be followed when an amendment request is received.

If a request to amend a record is denied, the requester would be able to appeal the denial by following the procedures that would be set forth in § 2606.303. Section 2606.304 would set forth the procedures for responding to an appeal from an initial denial of a request to amend a record. Section 2606.304 also would set forth the information that should be included in the official appeal determination. Finally, § 2606.304(d) would provide procedures for a data subject to file a concise statement setting forth the

reasons for his disagreement with the refusal to amend his records.

IV. Matters of Regulatory Procedure

Administrative Procedure Act

This proposed rulemaking is in compliance with the Administrative Procedure Act (5 U.S.C. 553) and allows for a 60-day comment period. Interested persons are invited to submit written comments to the Office of Government Ethics on this proposed regulation, to be received on or before March 24, 2003. The Office of Government Ethics will review all comments received and consider making any modifications to this proposed rule that appear warranted in issuing its final rule.

Executive Order 12866

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

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this proposed rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed rule will not have a significant economic impact on a substantial number of small entities, because it will primarily affect current and former executive branch Federal employees.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subpart II), the proposed rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this proposed rule because it does not contain information collection requirements that require the approval

of the Office of Management and Budget.

Congressional Review Act

The Office of Government Ethics has determined that this proposed rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will, before the future final rule takes effect, submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law.

List of Subjects in 5 CFR Part 2606

Administrative practice and procedure, Archives and records, Conflict of interests, Government employees, Privacy Act.

Approved: January 10, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is proposing to amend subchapter A of chapter XVI of title 5 of the Code of Federal Regulations by adding part 2606 to read as follows:

PART 2606—PRIVACY ACT RULES

Subpart A—General Provisions

- Sec.
- 2606.101 Purpose.
 - 2606.102 Definitions.
 - 2606.103 Systems of records.
 - 2606.104 OGE and agency responsibilities.
 - 2606.105 Rules for individuals seeking to ascertain if they are the subject of a record.
 - 2606.106 OGE employee Privacy Act rules of conduct and responsibilities.

Subpart B—Access to Records and Accounting of Disclosures

- 2606.201 Requests for access.
- 2606.202 OGE or other agency action on requests.
- 2606.203 Granting access.
- 2606.204 Request for review of an initial denial of access.
- 2606.205 Response to a request for review of an initial denial of access.
- 2606.206 Fees.
- 2606.207 Accounting of disclosures.

Subpart C—Amendment of Records

- 2606.301 Requests to amend records.
- 2606.302 OGE or other agency action on requests.
- 2606.303 Request for review of an initial refusal to amend a record.
- 2606.304 Response to a request for review of a refusal to amend; disagreement statements.

Authority: 5 U.S.C. 552a, 5 U.S.C. App. (Ethics in Government Act of 1978).

Subpart A—General Provisions

§ 2606.101 Purpose.

This part sets forth the regulations of the Office of Government Ethics (OGE) implementing the Privacy Act of 1974, as amended (5 U.S.C. 552a). It governs access, maintenance, disclosure, and amendment of records contained in OGE's executive branch Governmentwide and internal systems of records, and establishes rules of conduct for OGE employees who have responsibilities under the Act.

§ 2606.102 Definitions.

For the purpose of this part, the terms listed below are defined as follows:

Access means providing a copy of a record to, or allowing review of the original record by, the data subject or the requester's authorized representative, parent or legal guardian;

Act means the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

Amendment means the correction, addition, deletion, or destruction of a record or specific portions of a record;

Data subject means the individual to whom the information pertains and by whose name or other individual identifier the information is maintained or retrieved;

He, his, and him include she, hers and her.

Office or *OGE* means the U.S. Office of Government Ethics;

System manager means the Office or other agency official who has the authority to decide Privacy Act matters relative to a system of records;

System of records means a group of any records containing personal information controlled and managed by OGE from which information is retrieved by the name of an individual or by some personal identifier assigned to that individual;

Working day as used in calculating the date when a response is due means calendar days, excepting Saturdays, Sundays, and legal public holidays.

§ 2606.103 Systems of records.

(a) *Governmentwide systems of records.* The Office of Government Ethics maintains two executive branch Governmentwide systems of records: the OGE/GOVT-1 system of records, comprised of Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records; and the OGE/GOVT-2 system of records, comprised of Executive Branch Confidential Financial Disclosure Reports. These Governmentwide systems of records are maintained by OGE, and through Office delegations of authority, by Federal

executive branch departments and agencies with regard to their own employees, applicants for employment, individuals nominated to a position requiring Senate confirmation, candidates for a position, and former employees.

(b) *OGE Internal systems of records.* The Office of Government Ethics internal systems of records are under OGE's physical custody and control and are established and maintained by the Office on current and former OGE employees regarding matters relating to the internal management of the Office. These systems of records consist of the OGE/INTERNAL-1 system, comprised of Pay, Leave and Travel Records; the OGE/INTERNAL-2 system, comprised of Telephone Call Detail Records; the OGE/INTERNAL-3 system, comprised of Grievance Records; the OGE/INTERNAL-4 system, comprised of Computer Systems Activity and Access Records; and the OGE/INTERNAL-5 system, comprised of Employee Locator and Emergency Notification Records.

§ 2606.104 OGE and agency responsibilities.

(a) The procedures in this part apply to:

(1) All initial Privacy Act access and amendment requests regarding records contained in an OGE system of records.

(2) Administrative appeals from an Office or agency denial of an initial request for access to, or to amend, records contained in an OGE system of records.

(b) For records contained in an OGE Governmentwide system of records, each agency is responsible (unless specifically excepted by the Office) for responding to initial requests for access or amendment of records in its custody and administrative appeals of denials thereof.

(c) For records and material of another agency that are in the custody of OGE, but not under its control or ownership, OGE may refer a request for the records to that other agency, consult with the other agency prior to responding, or notify the requester that the other agency is the proper agency to contact.

§ 2606.105 Rules for individuals seeking to ascertain if they are the subject of a record.

An individual seeking to ascertain if any OGE system of records contains a record pertaining to him must follow the access procedures set forth at § 2606.201(a) and (b).

§ 2606.106 OGE employee Privacy Act rules of conduct and responsibilities.

Each OGE employee involved in the design, development, operation, or maintenance of any system of records,

or in maintaining any record covered by the Privacy Act, shall comply with the pertinent provisions of the Act relating to the treatment of such information. Particular attention is directed to the following provisions of the Privacy Act:

(a) 5 U.S.C. 552a(e)(7)—The requirement to maintain in a system of records no record describing how any individual exercises rights guaranteed by the First Amendment of the Constitution of the United States unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(b) 5 U.S.C. 552a(b)—The requirement that no agency shall disclose any record which is contained in a system of records by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, except under certain limited conditions specified in subsections (b)(1) through (b)(12) of the Privacy Act.

(c) 5 U.S.C. 552a(e)(1)—The requirement for an agency to maintain in its systems of records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by Executive order.

(d) 5 U.S.C. 552a(e)(2)—The requirement to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs.

(e) 5 U.S.C. 552a(e)(3)—The requirement to inform each individual asked to supply information to be maintained in a system of records the authority which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary; the principal purpose or purposes for which the information is intended to be used; the routine uses which may be made of the information; and the effects on the individual, if any, of not providing all or any part of the requested information.

(f) 5 U.S.C. 552a(b) and (e)(10)—The requirement to comply with established safeguards and procedures to ensure the security and confidentiality of records and to protect personal data from any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual on whom information is maintained in a system of records.

(g) 5 U.S.C. 552a(c)(1), (c)(2) and (c)(3)—The requirement to maintain an accounting of specified disclosures of personal information from systems of records in accordance with established Office procedures.

(h) 5 U.S.C. 552a(e)(5) and (e)(6)—The requirements to maintain all records in a system of records which are used by the agency in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination; and to make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes, prior to disseminating any record about an individual to any person other than an agency (unless the dissemination is required by the Freedom of Information Act, 5 U.S.C. 552).

(i) 5 U.S.C. 552a(d)(1), (d)(2) and (d)(3)—The requirement to permit individuals to have access to records pertaining to themselves in accordance with established Office procedures and to have an opportunity to request that such records be amended.

(j) 5 U.S.C. 552a(c)(4) and (d)(4)—The requirement to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act of any record that has been disclosed to the person or agency if an accounting of the disclosure was made; and, in any disclosure of information about which an individual has filed a statement of disagreement, to note clearly any portion of the record which is disputed and to provide copies of the statement (and if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested) to persons or other agencies to whom the disputed record has been disclosed.

(k) 5 U.S.C. 552a(n)—The requirement for an agency not to sell or rent an individual's name or address, unless such action is specifically authorized by law.

(l) 5 U.S.C. 552a(i)—The criminal penalties to which an employee may be subject for failing to comply with certain provisions of the Privacy Act.

Subpart B—Access to Records and Accounting of Disclosures

§ 2606.201 Requests for access.

(a) *Records in an OGE Governmentwide system of records.* An individual requesting access to records pertaining to him in an OGE Governmentwide system of records

should submit a written request, which includes the words "Privacy Act Request" on both the envelope and at the top of the request letter, to the appropriate system manager as follows:

(1) *Records filed directly with OGE by non-OGE employees:* The Deputy Director, Office of Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917;

(2) *Records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency:* The DAEO at the department or agency concerned; or

(3) *Records filed with the Federal Election Commission by candidates for President or Vice President:* The General Counsel, Office of General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(b) *Records in an OGE Internal System of Records.* An individual requesting access to records pertaining to him in an OGE internal system of records should submit a written request, which includes the words "Privacy Act Request" on both the envelope and at the top of the request letter, to the Deputy Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

(c) *Content of request.* (1) A request should contain a specific reference to the OGE system of records from which access to the records is sought. Notices of OGE systems of records subject to the Privacy Act are published in the **Federal Register**, and copies of the notices are available on OGE's Web site at <http://www.usoge.gov>, or upon request from OGE's Office of General Counsel and Legal Policy. A biennial compilation of such notices also is made available online and published by the Office of Federal Register at the GPO Access Web site (http://www.access.gpo.gov/su_docs/aces/PrivacyAct.shtml) in accordance with 5 U.S.C. 552a(f) of the Act.

(2) If the written inquiry does not refer to a specific system of records, it should include other information that will assist in the identification of the records for which access is being requested. Such information may include, for example, the individual's full name (including her maiden name, if pertinent), dates of employment, social security number (if any records in the system include this identifier), current or last place and date of Federal employment. If the request for access follows a prior request to determine if an individual is the subject of a record,

the same identifying information need not be included in the request for access if a reference is made to that prior correspondence, or a copy of the response to that request is attached.

(3) The request should state whether the requester wants a copy of the record, or wants to examine the record in person.

§ 2606.202 OGE or other agency action on requests.

A response to a request for access should include the following:

(a) A statement that there is a record or records as requested or a statement that there is not a record in the system of records;

(b) The method of access (if a copy of all the records requested is not provided with the response);

(c) The amount of any fees to be charged for copies of records under § 2606.206 of this part or other agencies' Privacy Act regulations as referenced in that section;

(d) The name, title, and telephone number of the official having operational control over the record; and

(e) If the request is denied in whole or in part, or no record is found in the system, a statement of the reasons for the denial, or a statement that no record has been found, and notice of the procedures for appealing the denial or no record finding.

§ 2606.203 Granting access.

(a) The methods for allowing access to records, when such access has been granted by OGE or the other agency concerned are:

(1) Examination in person in a designated office during the hours specified by OGE or the other agency;

(2) Providing photocopies of the records; or

(3) Transfer of records at the option of OGE or the other agency to another more convenient Federal facility.

(b) When a requester has not indicated whether he wants a copy of the record, or wants to examine the record in person, the appropriate system manager may choose the means of granting access. However, the means chosen should not unduly impede the data subject's right of access. A data subject may elect to receive a copy of the records after having examined them.

(c) Generally, OGE or the other agency concerned will not furnish certified copies of records. When copies are to be furnished, they may be provided as determined by OGE or the other agency and may require payment of any fee levied in accordance with an established fee schedule.

(d) When the data subject seeks to obtain original documentation, the

Office and the other agencies concerned reserve the right to limit the request to copies of the original records. Original records should be made available for review only in the presence of the appropriate system manager or his designee.

Note to paragraph (d) of § 2606.203:

Section 2071(a) of title 18 of the United States Code makes it a crime to conceal, remove, mutilate, obliterate, or destroy any record filed in a public office, or to attempt to do so.

(e) *Identification requirements*—(1) *Access granted in person*—(i) *Current or former employees*. Current or former employees requesting access to records pertaining to them in a system of records may, in addition to the other requirements of this section, and at the sole discretion of the official having operational control over the record, have their identity verified by visual observation. If the current or former employee cannot be so identified by the official having operational control over the records, adequate identification documentation will be required, e.g., an employee identification card, driver's license, passport, or other officially issued document with a picture of the person requesting access.

(ii) *Other than current or former employees*. Individuals other than current or former employees requesting access to records pertaining to them in a system of records must produce adequate identification documentation prior to being granted access. The extent of the identification documentation required will depend on the type of records to be accessed. In most cases, identification verification will be accomplished by the presentation of two forms of identification with a picture of the person requesting access (such as a driver's license and passport). Any additional requirements are specified in the system notices published pursuant to subsection (e)(4) of the Act.

(2) *Access granted by mail*. For records to be accessed by mail, the appropriate system manager shall, to the extent possible, establish identity by a comparison of signatures in situations where the data in the record is not so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom they pertain. No identification documentation will be required for the disclosure to the data subject of information required to be made available to the public by 5 U.S.C. 552, the Freedom of Information Act. When, in the opinion of the system manager, the granting of access through the mail could reasonably be expected to result in harm or embarrassment if

disclosed to a person other than the individual to whom the record pertains, a notarized statement of identity or some similar assurance of identity may be required.

(3) *Unavailability of identification documentation*. If an individual is unable to produce adequate identification documentation, the individual will be required to sign a statement asserting identity and acknowledging that knowingly or willfully seeking or obtaining access to records about another person under false pretenses may result in a criminal fine of up to \$5,000 under subsection (i)(3) of the Act. In addition, depending upon the sensitivity of the records sought to be accessed, the appropriate system manager or official having operational control over the records may require such further reasonable assurances as may be considered appropriate, e.g., statements of other individuals who can attest to the identity of the data subject. No verification of identity will be required of data subjects seeking access to records which are otherwise available to any person under 5 U.S.C. 552.

(4) *Inadequate identification*. If the official having operational control over the records in a system of records determines that an individual seeking access has not provided sufficient identification documentation to permit access, the official shall consult with the appropriate system manager prior to denying the individual access. Whenever the system manager determines, in accordance with the procedures herein, that access will not be granted, the response will also include a statement of the procedures to obtain a review of the decision to deny access in accordance with § 2606.205.

(f) *Access by the parent of a minor, or legal guardian*. A parent of a minor, upon presenting suitable personal identification as otherwise provided under this section, may access on behalf of the minor any record pertaining to the minor in a system of records. A legal guardian, upon presentation of documentation establishing guardianship and suitable personal identification as otherwise provided under this section, may similarly act on behalf of a data subject declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction. Minors are not precluded from exercising on their own behalf rights given to them by the Privacy Act.

(g) *Accompanying individual*. A data subject requesting access to his records in a system of records may be accompanied by another individual of

the data subject's choice during the course of the examination of the record. The official having operational control of the record may require the data subject making the request to submit a signed statement authorizing the accompanying individual's access to the record.

(h) *Access to medical records*. When a request for access involves medical or psychological records that the appropriate system manager believes requires special handling, the data subject should be advised that the material will be provided only to a physician designated by the data subject. Upon receipt of the designation and upon verification of the physician's identity as otherwise provided under this section, the records will be made available to the physician, who will disclose those records to the data subject.

(i) *Exclusion*. Nothing in these regulations permits a data subject's access to any information compiled in reasonable anticipation of a civil action or proceeding (see subsection (d)(5) of the Act).

(j) *Maximum access*. This regulation is not intended to preclude access by a data subject to records that are available to that individual under other processes, such as the Freedom of Information Act (5 U.S.C. 552) or the rules of civil or criminal procedure, provided that the appropriate procedures for requesting access thereunder are followed.

§ 2606.204 Request for review of an initial denial of access.

(a)(1) A data subject may submit a written appeal of the decision by OGE or the other agency to deny an initial request for access to records or a no record response.

(i) For records filed directly with OGE, the appeal must be submitted to the Director, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917.

(ii) For records in OGE's executive branch Governmentwide systems of records that are filed directly with an agency (including the Federal Election Commission) other than OGE, the appeal must be submitted to the Privacy Act access appeals official as specified in the agency's own Privacy Act regulations or the respective head of the agency concerned if it does not have any Privacy Act regulations.

(2) The words "Privacy Act Appeal" should be included on the envelope and at the top of the letter of appeal.

(b) The appeal should contain a brief description of the records involved or copies of the correspondence from OGE

or the agency in which the initial request for access was denied. The appeal should attempt to refute the reasons given by OGE or the other agency concerned in its decision to deny the initial request for access or the no record finding.

§ 2606.205 Response to a request for review of an initial denial of access.

(a) If the OGE Director or agency reviewing official determines that access to the records should be granted, the response will state how access will be provided if the records are not included with the response.

(b) Any decision that either partially or fully affirms the initial decision to deny access shall inform the requester of the right to seek judicial review of the decision in accordance with 5 U.S.C. 552a(g) of the Privacy Act.

§ 2606.206 Fees.

(a) *Fees for records filed with OGE—*
(1) *Services for which fees will not be charged:*

- (i) The search and review time expended by OGE to produce a record;
- (ii) The first copy of the records provided; or
- (iii) The Office of Government Ethics making the records available to be personally reviewed by the data subject.

(2) *Additional copies of records.* When additional copies of records are requested, an individual may be charged \$.15 per page.

(i) *Notice of anticipated fees in excess of \$25.00.* If the charge for these additional copies amounts to more than \$25.00, the requester will be notified and payment of fees may be required before the additional copies are provided, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated.

(ii) *Advance payments.* An advance payment before additional copies of the records are made will be required if:

(A) The Office 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 Privacy Act 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

(B) The requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 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 (a)(2)(iii) of this section, and to make an advance payment of the full amount of the estimated fee before the Office begins to process a new request.

(iii) *Interest charges.* Interest charges on an unpaid bill may be assessed starting on the 31st day following the day on which the billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of billing. To collect unpaid bills, the Office will follow the provisions of the Debt Collection Act of 1982, as amended (96 Stat. 1749 *et seq.*) and the Debt Collection Improvement Act of 1996 (110 Stat. 1321–358 *et seq.*), including the use of consumer reporting agencies, collection agencies, and offset.

(iv) *Remittance.* Remittance should be made by either a personal check, bank draft or a money order that is payable to the Department of the Treasury of the United States.

(b) *Fees for records filed with agencies other than OGE.* An agency shall apply its own Privacy Act fee schedule for records in OGE's executive branch Governmentwide systems that are filed directly with the agency. An agency that does not have a Privacy Act fee schedule may apply the fee schedule in this section.

§ 2606.207 Accounting of disclosures.

(a) The Office of Government Ethics or the other agency concerned will maintain an accounting of disclosures in cases where records about the data subject are disclosed from OGE's system of records except—

- (1) When the disclosure is made pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552); or
- (2) When the disclosure is made to those officers and employees of OGE or the other agency which maintains the records who have a need for the records in the performance of their duties.

(b) This accounting of disclosures will be retained for at least five years or for the life of the record, whichever is longer, and will contain the following information:

- (1) A brief description of the record disclosed;
- (2) The date, nature, and purpose for the disclosure; and
- (3) The name and address of the individual, agency, or other entity to whom the disclosure is made.

(c) Under sections 102 and 105 of the Ethics in Government Act, 18 U.S.C. 208(d) and 5 CFR parts 2634 and 2640 of OGE's executive branch regulations, a requester other than the data subject must submit a signed, written

application on the OGE Form 201 or agency equivalent form to inspect or receive copies of certain records, such as SF 278 Public Financial Disclosure Reports, Certificates of Divestiture, 18 U.S.C. 208(b)(1) and (b)(3) waivers, and OGE certified qualified blind and diversified trust instruments and other publicly available qualified trust materials. The written application requests the name, occupation and address of the requester as well as lists the prohibitions on obtaining or using the records. These applications are used as the accounting of disclosures for these records.

(d) Except for the accounting of a disclosure made under subsection (b)(7) of the Privacy Act for a civil or criminal law enforcement activity that is authorized by law, the accounting of disclosures will be made available to the data subject upon request in accordance with the access procedures of this part.

Subpart C—Amendment of Records

§ 2606.301 Requests to amend records.

(a) *Amendment request.* A data subject seeking to amend a record or records that pertain to him in a system of records must submit his request in writing in accordance with the following procedures, unless this requirement is waived by the appropriate system manager. Records not subject to the Privacy Act will not be amended in accordance with these provisions.

(b) *Addresses—*(1) *Records in an OGE Governmentwide system of records.* A request to amend a record in an OGE Governmentwide system of records should be sent to the appropriate system manager as follows:

(i) *Records filed directly with OGE by non-OGE employees:* The Deputy Director, Office of Agency Programs, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917;

(ii) *Records filed with a Designated Agency Ethics Official (DAEO) or the head of a department or agency:* The DAEO at the department or agency concerned; or

(iii) *Records filed with the Federal Election Commission by candidates for President or Vice President:* The General Counsel, Office of General Counsel, Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(2) *Records in an OGE internal system of records.* A request to amend a record in an OGE Internal system of records should include the words "Privacy Act Amendment Request" on both the envelope and at the top of the request letter, and should be sent to the Deputy

Director, Office of Administration and Information Management, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917.

(c) *Contents of request.* (1) A request to amend a record in an OGE Governmentwide system of records or an OGE internal system of records should include the words "Privacy Act Amendment Request" on both the envelope and at the top of the request letter.

(2) The name of the system of records and a brief description of the record(s) proposed for amendment must be included in any request for amendment. In the event the request to amend the record(s) is the result of the data subject's having gained access to the record(s) in accordance with the provisions concerning access to records as set in subpart B, copies of previous correspondence between the requester and OGE or the agency will serve in lieu of a separate description of the record.

(3) The exact portion of the record(s) the data subject seeks to have amended should be indicated clearly. If possible, proposed alternative language should be set forth, or, at a minimum, the reasons why the data subject believes his record is not accurate, relevant, timely, or complete should be set forth with enough particularity to permit OGE or the other agency concerned not only to understand the data subject's basis for the request, but also to make an appropriate amendment to the record.

(d) *Burden of proof.* The data subject has the burden of proof when seeking the amendment of a record. The data subject must furnish sufficient facts to persuade the appropriate system manager of the inaccuracy, irrelevance, untimeliness, or incompleteness of the record.

(e) *Identification requirement.* When the data subject's identity has been previously verified pursuant to § 2606.203, further verification of identity is not required as long as the communication does not suggest a need for verification. If the data subject's identity has not been previously verified, the appropriate system manager may require identification validation as described in § 2606.203.

§ 2606.302 OGE or other agency action on requests.

(a) *Time limit for acknowledging a request for amendment.* To the extent possible, OGE or the other agency concerned will acknowledge receipt of a

request to amend a record or records within 10 working days.

(b) *Initial determination on an amendment request.* The decision of OGE or the other agency in response to a request for amendment of a record in a system of records may grant in whole, or deny any part of the request to amend the record(s).

(1) If OGE or the other agency concerned grants the request, the appropriate system manager will amend the record(s) and provide a copy of the amended record(s) to the data subject. Where an accounting of disclosure has been maintained, the system manager shall advise all previous recipients of the record that an amendment has been made and give the substance of the amendment. Where practicable, the system manager shall send a copy of the amended record to previous recipients.

(2) If OGE or the other agency concerned denies the request in whole or in part, the reasons for the denial will be stated in the response letter. In addition, the response letter will state:

(i) The name and address of the official with whom an appeal of the denial may be lodged; and

(ii) A description of any other procedures which may be required of the data subject in order to process the appeal.

§ 2606.303 Request for review of an initial refusal to amend a record.

(a)(1) A data subject may submit a written appeal of the initial decision by OGE or an agency denying a request to amend a record in an OGE system of records.

(i) For records which are filed directly with OGE, the appeal must be submitted to the Director, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917.

(ii) For records which are filed directly with an agency (including the Federal Election Commission) other than OGE, the appeal must be submitted to the Privacy Act amendments appeals official as specified in the agency's own Privacy Act regulations, or to the respective head of the agency concerned if it does not have Privacy Act regulations.

(2) The words "Privacy Act Appeal" should be included on the envelope and at the top of the letter of the appeal.

(b) The request for review should contain a brief description of the record(s) involved or copies of the correspondence from OGE or the agency

in which the request to amend was denied, and the reasons why the data subject believes that the disputed information should be amended.

§ 2606.304 Response to a request for review of an initial refusal to amend; disagreement statements.

(a) The OGE Director or agency reviewing official should make a final determination in writing not later than 30 days from the date the appeal was received. The 30-day period may be extended for good cause. Notice of the extension and the reasons therefor will be sent to the data subject within the 30-day period.

(b) If the OGE Director or agency reviewing official determines that the record(s) should be amended in accordance with the data subject's request, the OGE Director or agency reviewing official will take the necessary steps to advise the data subject, and to direct the appropriate system manager:

(1) to amend the record(s), and

(2) to notify previous recipients of the record(s) for which there is an accounting of disclosure that the record(s) have been amended.

(c) If the appeal decision does not grant in full the request for amendment, the decision letter will notify the data subject that he may:

(1) Obtain judicial review of the decision in accordance with the terms of the Privacy Act at 5 U.S.C. 552a(g); and

(2) File a statement setting forth his reasons for disagreeing with the decision.

(d)(1) A data subject's disagreement statement must be concise. The appropriate system manager has the authority to determine the "conciseness" of the statement, taking into account the scope of the disagreement and the complexity of the issues.

(2) In any disclosure of information about which an individual has filed a statement of disagreement, the appropriate system manager will clearly note any disputed portion(s) of the record(s) and will provide a copy of the statement to persons or other agencies to whom the disputed record or records has been disclosed and for whom an accounting of disclosure has been maintained. A concise statement of the reasons for not making the amendments requested may also be provided.

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