

# 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 2604

RIN 3209-AA22

#### Proposed Amendments to the Office of Government Ethics Freedom of Information Act Regulation

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

**ACTION:** Proposed rule amendments.

**SUMMARY:** The Office of Government Ethics is proposing to amend its rules under the Freedom of Information Act (FOIA) primarily to effectuate various provisions under the 1996 Electronic FOIA Amendments. The proposed revisions include the new response time for FOIA requests, procedures for requesting expedited processing, additional categories of documents available in OGE's FOIA reading room facility, the availability of certain public information on OGE's Web site, and express inclusion of electronic records and automated searches along with paper records and manual searches. In addition, OGE's proposed amendments would increase the general FOIA search fees somewhat. Finally, OGE is proposing some other updating revisions and corrections. This rulemaking only deals with such matters at OGE; it is not an executive branchwide regulation.

**DATES:** Comments from the public and the agencies are invited and are due by February 1, 1999.

**ADDRESSES:** William E. Gressman, Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gressman at the Office of Government Ethics; telephone: 202-208-8000, ext. 1110; TDD: 202-208-8025; FAX: 202-208-8037; Internet E-mail address: usoge@oge.gov (for E-mail messages, the subject line should include the following reference—Proposed

Amendments to the OGE FOIA Regulation).

**SUPPLEMENTARY INFORMATION:** In this rulemaking, the Office of Government Ethics is proposing to amend its regulation at 5 CFR part 2604 under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These proposed amendments do not concern separate subpart G of part 2604, which sets forth certain duplication and mailing fees this Agency can charge under the Ethics in Government Act of 1978 (the Ethics Act), 5 U.S.C. appendix, for large requests for copies of Standard Form 278 Executive Branch Personnel Public Financial Disclosure Reports that are on file at OGE.

The primary focus of these proposed amendments is to effectuate for this Agency various provisions under the 1996 Electronic FOIA Amendments, Public Law No. 104-231. Thus, in a proposed newly redesignated paragraph (a)(1) of § 2604.305, OGE would codify in its FOIA regulations the new statutorily prescribed general 20 working day response time for responding to FOIA requests. The Office of Government Ethics has already been administratively adhering to the new time period (though many requests are still answered in less time), along with the various other requirements of the Electronic FOIA Amendments. The prior statutory response time was 10 working days.

In addition, OGE proposes to add a new paragraph (a)(2) to § 2604.305 to codify the provision for response to requests for expedited processing within 10 calendar days. Pursuant to the Electronic FOIA Amendments, a person can request expedited processing of his or her FOIA request based upon a showing of "compelling need," which the requester must certify in writing to be true and complete to the best of his or her knowledge and belief. Compelling need is defined in the amended FOIA as circumstances in which a failure to obtain records requested on an expedited basis could reasonably be expected to present an imminent threat to the life or physical safety of an individual or, for a person primarily engaged in disseminating information, an urgency to inform the public about actual or alleged Federal Government activity. The Office of Government Ethics is then to respond to expedited processing requests within 10

calendar days, as it has been doing as a matter of administrative practice. These provisions would be codified in new proposed paragraph (e) of § 2604.301 of OGE's FOIA regulation.

The Office of Government Ethics has decided not to propose multitrack processing of its FOIA requests. The Electronic FOIA Amendments provide that an agency can provide by regulation for multiple "tracks" in responding to FOIA requests, depending on the amount of time and work entailed in responding to differing kinds of requests. Since OGE only receives a limited number of FOIA requests each year (currently running at the rate of about 35-45) and is able to respond to them on a timely basis, this Agency does not need to provide for separate processing tracks for more complicated versus simpler FOIA requests. Moreover, in that regard, OGE does not have a FOIA backlog.

The Electronic FOIA Amendments require that deleted portions of copies of documents released in part be identified and that a volume estimation of materials withheld in whole be given, unless exempt information would thereby be revealed. The Office of Government Ethics would codify this requirement in proposed new paragraph (b)(3) of § 2604.303 of its FOIA regulation. In a separate, unrelated proposed revision to § 2604.303, paragraph (a) would be revised to provide expressly that OGE could alternatively consult with another Government agency at which responsive records originated and then decide whether to grant or deny the request, in lieu of the usual course of referring the FOIA request to the originating agency for its direct response to the requester.

The general requirement to honor a form or format request, unless the record requested is not readily reproducible in the requested form or format, would be set forth in paragraph (c) of § 2604.302, as proposed to be revised. The definitions of the terms "records" and "search" in § 2604.103 are proposed to be amended to more explicitly include electronic records and automated searches (along with paper records and manual searches).

The Office of Government Ethics would also clarify in revised subpart B and § 2604.201 headings and text that, as a small agency with a limited FOIA practice, it has a FOIA public reading

room *facility*, rather than a "room" per se. Thus, upon request, OGE makes available information required to be made available under FOIA paragraph (a)(2) and certain other publicly available information in its reception or conference room areas. Such materials created by OGE since October 1, 1996 (and in certain cases before then, if feasible), are also available via computer telecommunications on OGE's Internet Web site at the following address: <http://www.usoge.gov>. The Web site is referenced in new proposed paragraph (a)(2) of § 2604.201 of the OGE FOIA regulation. The Electronic FOIA Amendments also added a new category of such publicly available materials, copies of records created by OGE which are requested and released to individual FOIA requesters which, because of the nature of their subject matter, OGE determines have become or are likely to become the subject of subsequent requests for substantially the same records, together with a general index thereof. In accordance with Department of Justice guidance, any such materials must be the subject of at least three FOIA requests. The Office of Government Ethics would add reference to such documents at proposed new paragraph (b)(4) of § 2604.201 of its FOIA regulation. Further, OGE would add a new paragraph (d) to § 2604.201 regarding permissible deletions from records covered in this section in order to prevent a clearly unwarranted invasion of personal privacy.

In § 2604.501(b)(1)(i), OGE is proposing to raise the hourly rate for manual searches for responsive records by a homogeneous class of OGE personnel by 10% to reflect increased salaries and overhead since the OGE FOIA regulations were issued in February 1995. The new proposed rates would be \$11.00 an hour (versus \$10.00 currently) for such searches by clerical staff and \$22.00 an hour (versus \$20.00) for such searches by professional staff. The charge for individual staff searches would remain unchanged at the particular salary rate (basic pay plus 16%) of the individual employee making the search.

Finally, OGE is proposing to make a couple of updating changes and corrections to its FOIA regulation, including adding its current telephone and FAX numbers.

### Matters of Regulatory Procedure

#### Executive Order 12866

In issuing these proposed amendments to its Freedom of Information Act regulation, OGE 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. These proposed amendments have also been reviewed by the Office of Management and Budget under that Executive order.

#### Regulatory Flexibility Act

As Office of Government Ethics Director, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities because it would only affect Freedom of Information Act matters at OGE.

#### Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these proposed amendments do not contain any information collection requirements that require the approval of the Office of Management and Budget.

#### List of Subjects in 5 CFR Part 2604

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

Approved: October 5, 1998.

**Stephen D. Potts,**

*Director, Office of Government Ethics.*

For the reasons set forth in the preamble, the Office of Government Ethics is proposing to amend 5 CFR part 2604 as follows:

#### PART 2604—[AMENDED]

1. 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.

#### § 2604.103 [Amended]

2. In § 2604.103, the text of the definition of the term "Records" is amended by adding, in the second parenthetical, between the words "as" and "punchcards" the words "electronic documents, electronic mail," and the text of the definition of the term "Search" is amended by adding between the words "material" and "that" the words "manually or by automated means".

3. The heading of subpart B is revised to read as follows:

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

4. Section 2604.201 is amended by:

- a. Revising the heading;
- b. Redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2);
- c. Adding the word "facility" after the word "room" at each place it appears in newly redesignated paragraph (a)(1), including the heading thereof, and in paragraphs (b) and (c);
- d. Removing the telephone number "(202) 523-5757" and the FAX number "(202) 523-6325" in the second sentence of newly redesignated paragraph (a)(1) and adding in their place the new telephone number "202-208-8000" and FAX number "202-208-8037", respectively;
- e. Removing the word "and" at the end of paragraph (b)(3);
- f. Redesignating paragraph (b)(4) as paragraph (b)(5); and
- g. Adding new paragraphs (b)(4) and (d).

The revision and additions read as follows:

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

(a) \* \* \*

(2) *Web site.* The records listed in paragraph (b) of this section, which are created on or after November 1, 1996, or which OGE is otherwise able to make electronically available (if feasible), along with the OGE FOIA and Public Records Guide and OGE's annual FOIA reports, are also available via OGE's Web site (Internet address: <http://www.usoge.gov>).

(b) \* \* \*

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

\* \* \* \* \*

(d) OGE may delete from the copies of materials made available under this section any identifying details necessary to prevent a clearly unwarranted invasion of personal privacy. Any such deletions will be explained in writing and the extent of such deletions will be indicated on the portion of the records that are made available or published, unless the indication would harm an interest protected by the FOIA exemption pursuant to which the deletions are made. If technically feasible, the extent of any such deletions will be indicated at the place in the records where they are made.

5. Section 2604.301 is amended by removing the telephone number "(202) 523-5757" in the first sentence of

paragraph (a) and adding in its place the following text (with the new telephone and FAX numbers) "202-208-8000, or FAX, 202-208-8037", and by adding a new paragraph (e) to read as follows:

**§ 2604.301 Requests for records.**

\* \* \* \* \*

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

(2) "Compelling need" means:

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

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

(3) A requester seeking expedited processing should so indicate in the initial request, and should state all the facts supporting the need to obtain the requested records quickly. The requester must also certify in writing that these facts are true and correct to the best of the requester's knowledge and belief.

6. Section 2604.302 is amended by revising the heading and first sentence of paragraph (b) and revising paragraph (c) to read as follows:

**§ 2604.302 Response to requests.**

\* \* \* \* \*

(b) *Referral to, or consultation with, another agency.* When a requester seeks access to records that originated in another Government agency, 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. \* \* \*

\* \* \* \* \*

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

new form or format, as requested) of information in order to satisfy a request.

\* \* \* \* \*

7. Section 2604.303 is amended by removing the word "and" following paragraph (b)(2), redesignating paragraph (b)(3) as paragraph (b)(4), and adding a new paragraph (b)(3) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

8. Section 2604.305 is amended by redesignating paragraph (a) as paragraph (a)(1), by removing the number "10" in newly redesignated paragraph (a)(1) and adding in its place the number "20", and by adding a new paragraph (a)(2) to read as follows:

**§ 2604.305 Time limits.**

(a) \* \* \*

(2) *Request for expedited processing.* When a request for expedited processing under § 2604.301(e) is received, the General Counsel will respond within ten calendar days from the date of receipt of the request, stating whether or not the request for expedited processing has been granted. If the request for expedited processing is denied, any appeal of that decision will be acted upon expeditiously.

\* \* \* \* \*

**§ 2604.402 [Amended]**

9. Section 2604.402 is amended by removing the initial lower case "e" in the word "exemption" in the first sentence of paragraph (b) and adding in its place an upper case "E".

**§ 2604.501 [Amended]**

10. Section 2604.501 is amended by removing the dollar amounts "\$10.00" and "\$20.00" from the second sentence

of paragraph (b)(1)(i) and adding in their place the dollar amounts "\$11.00" and "\$22.00", respectively, and by removing the citation to "§ 2604.104(q)" in the first sentence of paragraph (b)(3) and adding in its place the citation "§ 2604.103".

11. Subpart F is revised to read as follows:

**Subpart F—Annual OGE FOIA Report**

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

On or before February 1 of each year, OGE shall electronically post on its Web site and submit to the Office of Information and Privacy at the United States Department of Justice a report of its activities relating to the Freedom of Information Act (FOIA) during the preceding fiscal year.

**§ 2604.602 Contents of annual OGE FOIA report.**

(a) The Office of Government Ethics will include in its annual FOIA report the following information for the preceding fiscal year:

(1) The number of FOIA requests for records pending before OGE as of the end of the fiscal year;

(2) The median number of calendar days that such requests had been pending before OGE as of that date;

(3) The number of FOIA requests for records received by OGE;

(4) The number of FOIA requests that OGE processed;

(5) The median number of calendar days taken by OGE to process different types of requests;

(6) The number of determinations made by OGE not to comply with FOIA requests in full or in part;

(7) The reasons for each such determination;

(8) A complete list of all statutes upon which OGE relies to authorize withholding of information under FOIA Exemption 3, 5 U.S.C. 552(b)(3);

(9) A description of whether a court has upheld the decision of the agency to withhold information under each such statute;

(10) A concise description of the scope of any information withheld under each such statute;

(11) The number of appeals made by persons under 5 U.S.C. 552(a)(6);

(12) The result of such appeals;

(13) The reason for the action upon each appeal that results in a denial of information;

(14) The total amount of fees collected by OGE for processing requests; and

(15) The number of full-time staff of OGE devoted to processing requests for records under the FOIA; and

(16) The total amount expended by OGE for processing such requests.

(b) In addition, OGE will include in the report such additional information about its FOIA activities as is appropriate and useful in accordance with Justice Department guidance and as otherwise determined by OGE.

[FR Doc. 98-32193 Filed 12-2-98; 8:45 am]

BILLING CODE 6345-01-P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

#### Domestic Licensing of Production and Utilization Facilities; Public Workshop Meeting

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Advance notice of public workshop meeting.

**SUMMARY:** The Commission has requested the staff to develop and assess options on incorporating risk insights in the Code of Federal Regulations 10 CFR 50.59. This regulation permits licensees to implement certain changes that do not require prior NRC approval. On or about December 19, 1998, the staff will place in the public document room (PDR) a draft report that identifies options for incorporating risk insights into the existing § 50.59 process. At the same time that the document is placed in the PDR, the staff will issue a notice to hold a public workshop on January 19, 1998, at the NRC auditorium, in Rockville, Maryland. That notice will also solicit comments on this program.

**WORKSHOP MEETING INFORMATION:** A 1-day workshop will be held to review the subject document, address comments and answer questions. Persons other than NRC staff and NRC contractors interested in making a presentation at the workshop should notify Jack Guttman, US Nuclear Regulatory Commission, MS T10E50, phone (301) 415-7732, e-mail [jxg@nrc.gov](mailto:jxg@nrc.gov).

**DATES:** January 19, 1999.

**AGENDA:** To be published in January, 1999.

**REGISTRATION:** No registration fee is required for this workshop. Interested parties who plan to attend the meeting should preregister in order to ensure adequate space. Persons interested in attending the workshop should notify Jack Guttman, at US Nuclear Regulatory Commission, MS T10E50, Washington, D.C., 20555, or by phone (301) 415-7732, or by e-mail [jxg@nrc.gov](mailto:jxg@nrc.gov).

Dated at Rockville, Maryland, this 20th day of November, 1998.

For the Nuclear Regulatory Commission.

**Mary Drouin**

*Acting Branch Chief, Probabilistic Risk Analysis Branch Division of Systems Technology, Office of Nuclear Regulatory Research.*

[FR Doc. 98-31933 Filed 12-1-98; 8:45 am]

BILLING CODE 7590-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Parts 2, 157, 284, 375, 380, 381, and 385

[Docket No. RM98-9-000]

#### Revision of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under the Natural Gas Act; Notice of Extension of Time

November 24, 1998.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of Extension of Time.

**SUMMARY:** The Federal Energy Regulatory Commission issued a Notice of Proposed Rulemaking that proposes to update its regulations governing the filing of applications for the construction and operation of facilities to provide service or to abandon facilities or service under section 7 of the Natural Gas Act (63 FR 55682 October 16, 1998). The date for filing comments is being extended at the request of various interested parties.

**DATES:** Comments are extended to and including December 22, 1998.

**ADDRESSES:** Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** David P. Boergers, Secretary, 888 First Street, NE, Washington, DC 20426, (202) 208-0400.

[Docket No. RM98-9-000]

On November 24, 1998, the Interstate Natural Gas Association of America, the American Gas Association, the Process Gas Consumers Group and American Iron and Steel Institute (hereafter "Petitioners") filed a joint motion for an extension of time for the filing of comments in response to the Commission's Notice of Proposed Rulemaking issued September 30, 1998, in the above-docketed proceeding.

In its motion, Petitioners state that due to the sheer number of ongoing rulemaking proceedings at the

Commission and the onset of the Thanksgiving holiday season, additional time is needed within which to prepare and file comments. The motion also states that an extension of time will not unduly delay Commission action on the matters related to this proceeding. Petitioners motion further states that they are authorized to represent that the American Petroleum Association of America and the Natural Gas Supply Association have been contacted and they do not oppose the request for additional time.

Upon consideration, notice is hereby given that an extension of time for the filing of comments is granted to and including December 22, 1998.

**David P. Boergers,**

*Secretary.*

[FR Doc. 98-32159 Filed 12-2-98; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 931

[SPATS No. NM-039-FOR]

#### New Mexico Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to or additions of rules pertaining to the definitions of "material damage" and "occupied residential dwelling and associated structures," adjustment of bond amounts for subsidence damage, subsidence control buffer zones, and impoundments meeting the class B or C criteria for dams in Technical Release-60 published by the U.S. Natural Resources Conservation Service (NRCS). The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations.

**DATES:** Written comments must be received by 4:00 p.m., m.s.t., January 4, 1999. If requested, a public hearing on the proposed amendment will be held