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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 900

Certifying the Use of a Merit Personnel System as Required by the Intergovernmental Personnel Act of 1970

AGENCY: Office of Personnel Management.

ACTION: Guidance.

SUMMARY: The Office of Personnel Management (OPM) is revising guidance issued on April 19, 2019, regarding the available range of staffing options for federally funded and state-administered low-income programs that are required to comply with the Intergovernmental Personnel Act of 1970 (IPA) and its implementing regulations.

DATES: Effective June 10, 2024.

FOR FURTHER INFORMATION CONTACT: For questions, please contact Latonia Page, Deputy Associate Director, Workforce Policy and Innovation, Talent Acquisition, Classification, and Veterans Programs at employ@opm.gov or 202-936-3459.

SUPPLEMENTARY INFORMATION: Pursuant to 5 CFR 900.604(b)(3), OPM is tasked with responding to requests for guidance regarding compliance with the Intergovernmental Personnel Act of 1970 (IPA) and its implementing regulations. When a federally funded program requires state and local agencies to establish a merit personnel system in order to receive funds, the IPA and the regulations in 5 CFR part 900, subpart F, are applicable. These regulations establish the standards that must be included in a merit personnel system when it is certified by a state or local agency. OPM's current guidance issued at 84 FR 16381 (April 19, 2019) states that "[t]he IPA and the regulations do not prescribe the use of a particular staffing method such as utilizing state or contract employees. In the absence of any other statutory or regulatory

requirement to use a specific staffing method, the state or local agency has the discretion to determine the most appropriate staffing method. Regardless of the staffing method chosen, the state or local agency must certify that it is using a merit personnel system that meets the standards outlined in 5 CFR 900.603."

OPM has reviewed its 2019 guidance and is updating it in accordance with the recent recommendations of the White House Task Force on Worker Organizing and Empowerment, established by E.O. 14025 titled, "Executive Order on Worker Organizing and Empowerment." The White House Task Force recommended that state and local government agencies that receive Federal grants be limited to utilizing state and local government personnel in the administration of the grant-aided program. OPM agrees with implementing this recommendation and is therefore revising its guidance accordingly. To the extent that any state or local governments relied upon OPM's 2019 guidance on this matter and began utilizing contract employees to administer federally funded programs, these states should take steps to transition to utilizing state or local government employees to administer such programs at the earliest opportunity when it is feasible to do so. Until this happens, state and local governments must continue to certify they are using a merit personnel system that meets the standards outlined in section 5 CFR 900.603, regardless of the staffing model they are using to administer federally funded programs.

Office of Personnel Management.

Kayyonne Marston,
Federal Register Liaison.

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OFFICE OF MANAGEMENT AND BUDGET

5 CFR Parts 1302 and 1303

RIN 0348-AB87

Privacy Act and Freedom of Information Act Regulations

AGENCY: Office of Management and Budget.

ACTION: Final rule.

SUMMARY: The Office of Management and Budget ("OMB") is issuing a final rule revising its regulations implementing the Privacy Act and the Freedom of Information Act ("FOIA"). These revisions update OMB's regulations to reflect changes in OMB's current organizational structure and best practices. The revisions also ensure consistency between the access to records procedures in OMB's Privacy Act regulations and OMB's FOIA regulations, and with applicable law and policies that were enacted after OMB originally issued its Privacy Act regulations in 1976. Finally, the revisions align OMB's regulations with those of other agencies.

DATES: This rule is effective July 10, 2024.

FOR FURTHER INFORMATION CONTACT: Timothy Ziese, 202-395-8693, OMBPA@omb.eop.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 20, 2023, the Office of Management and Budget ("OMB") published a proposed rule in the **Federal Register** to revise its regulations at 5 CFR part 1302 governing requests and responses under the Privacy Act of 1974, as amended, 5 U.S.C. 552a ("Privacy Act"), and corresponding changes at 5 CFR part 1303 governing requests and responses under the Freedom of Information Act, as amended, 5 U.S.C. 552 ("FOIA"). 88 FR 87960 (Dec. 20, 2023). OMB received one comment in response to its proposed rule, specifically regarding the proposed revisions to OMB's FOIA regulations at 5 CFR part 1303. As described below, in this final rule OMB has made certain revisions, including in light of the helpful comment.

II. Response to Comment

The commenter addressed three topics: (1) fees charged to "all other requesters" under proposed § 1303.92(d); (2) FOIA's presumption of openness; and (3) FOIA's foreseeable harm standard.

First, OMB proposed revisions to 5 CFR 1303.92 to track the FOIA statute with respect to the fees OMB charges requesters. See 5 U.S.C. 552(a)(4)(A)(ii); see also *id.* 552(a)(4)(iv). The statute specifies different categories of fees for different categories of requesters: commercial use requesters are to be

charged “for document search, duplication, and review,” *id.* 552(a)(4)(A)(ii)(I); certain educational or noncommercial scientific institutions and representatives of the news media are to be charged “for document duplication,” *id.* 552(a)(4)(A)(ii)(II); and all other requesters are to be charged “for document search and duplication,” *id.* 552(a)(4)(A)(ii)(III). Consistent with the statutory standard, and as relevant here, OMB proposed that commercial use requesters be charged fees “that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought” (proposed § 1303.92(a)); that certain educational and noncommercial scientific institution requesters and representatives of the media be charged “the cost of duplication alone” (proposed § 1303.92(b), (c)); and that all other requesters be charged “the full reasonable direct cost of searching for and producing records” (proposed § 1303.92(d)).

The commenter pointed out that fees for document review are not to be charged under the statute’s third category—all other requesters—and suggested that OMB make that explicit, asserting that some other agencies improperly charge review fees to such requesters.

OMB agrees that the category of all other requesters, *see* 5 U.S.C. 552(a)(4)(A)(ii)(III), should not be charged fees for document review, and as proposed and finalized § 1303.92(d) of OMB’s regulations reflects that approach, intentionally omitting reference to review fees. The commenter’s observation and suggestion have prompted OMB to clarify the language in § 1303.92 in certain respects. Proposed paragraphs (a) through (c) used the term “duplicating” or “duplication,” whereas proposed paragraph (d) used the term “producing,” to refer to the same process. Additionally, proposed paragraphs (b) and (c) stated that OMB would provide records “for the cost of duplication alone,” and the term “alone” or a similar term did not appear in proposed paragraph (d) in a parallel way. OMB has therefore revised § 1303.92 to eliminate any ambiguities and ensure consistency, including with the statutory language in 5 U.S.C. 552(a)(4)(A). OMB has also made a few other clarifying revisions to § 1303.92.

Second, the commenter observed that a “presumption of openness is a principle that guides the administration of FOIA” and “an integral part of the statute,” and suggested that OMB include a statement about the presumption in its rules. Third, and

relatedly, the commenter observed that the FOIA authorizes certain withholdings only when “the agency reasonably foresees that disclosure would harm an interest protected by” a FOIA exemption, 5 U.S.C. 552(a)(8)(A)(i), and suggested that OMB include a statement about this foreseeable harm standard in its rules. OMB acknowledges the importance of the presumption of openness, *see, e.g.*, Department of Justice, Freedom of Information Act Guidelines at 1–2 (Mar. 15, 2022), <https://www.justice.gov/ag/file/1208711-0/dl?inline>, and the foreseeable harm standard, *see* 5 U.S.C. 552(a)(8)(A)(i), and will continue to apply both as OMB implements the FOIA. Because OMB’s FOIA “rules” prescribe “the time, place, fees (if any), and procedures to be followed” with respect to FOIA requests, consistent with the statute, 5 U.S.C. 552(a)(3)(A), and are not intended to address other topics, OMB declines the commenter’s suggestion to further revise its rules.

III. Additional Revisions

OMB’s proposed rule specifically requested comments regarding OMB’s proposal, with respect to its Privacy Act regulations, to require verification of identity through approved OMB processes that will be described on OMB’s privacy program web page. 88 FR 87962. While OMB received no comments on this issue, OMB has given further consideration to it generally and, in order to better protect personal identifiable information, has modified §§ 1302.2 and 1302.5 to specify that Privacy Act requests should be submitted consistent with instructions on OMB’s now operational web page for the agency’s privacy program, www.whitehouse.gov/omb/privacy.

IV. Regulatory Certifications

This rule is not a significant rule for purposes of Executive Order 12866, as amended by Executive Order 14094. The Director of OMB, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and certifies that it will not have a significant economic impact on a substantial number of small entities. This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no written statement is necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

List of Subjects in 5 CFR Parts 1302 and 1303

Administrative practices and procedures, Archives and records, Freedom of information, Privacy.

For the reasons set forth in the preamble, the Office of Management and Budget amends parts 1302 and 1303 of title 5 of the Code of Federal Regulations as follows:

- 1. Revise part 1302 to read as follows:

PART 1302—PRIVACY ACT PROCEDURES

Sec.

- 1302.1 General provisions.
- 1302.2 Requirements for making requests for access.
- 1302.3 Responsibility for responding to requests.
- 1302.4 Requests for an accounting.
- 1302.5 Requests for an amendment or correction.
- 1302.6 Appeals.
- 1302.7 Fees.

Authority: 5 U.S.C. 552a.

§ 1302.1 General provisions.

(a) *Purpose and scope.* This part implements the rules that the Office of Management and Budget (OMB) follows under the Privacy Act of 1974, codified as amended at 5 U.S.C. 552a (Privacy Act). This part applies to all records in systems of records maintained by OMB that are retrieved by an individual’s name or personal identifier. This part describes the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by OMB.

(b) *Definitions.* As used in this part:

Request for access to a record means a request made under 5 U.S.C. 552a(d)(1).

Request for amendment or correction of a record means a request made under 5 U.S.C. 552a(d)(2).

Request for an accounting means a request made under 5 U.S.C. 552a(c)(3).

Requester means an individual who makes a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act. An *individual* is a citizen of the United States or an alien lawfully admitted for permanent residence.

System manager means the OMB official identified in a system of records notice as the manager of a system of records; and for Government-wide systems of records, the individual designated by the agency to act on behalf of the system manager.

(c) *Providing written consent to disclose records protected under the*

Privacy Act. OMB may disclose any record contained in a system of records by any means of communication to any person, or to another agency, pursuant to a written request by, or with the prior written consent of, the individual about whom the record pertains. An individual must verify the individual's identity in the same manner as required by § 1302.2(d) when providing written consent to disclose a record protected under the Privacy Act and pertaining to the individual.

§ 1302.2 Requirements for making requests for access.

(a) *How made and addressed.* You may make a Privacy Act request for access to an OMB record by mail or delivery service, to Privacy Officer, Office of Management and Budget, 725 17th Street NW, Room 9204, Washington, DC 20503 or by electronic means as described on OMB's privacy program web page: www.whitehouse.gov/omb/privacy.

(b) *Description of the records sought.* In making a request for access, you must describe the records that you want in enough detail to enable OMB to locate the system of records containing them with a reasonable amount of effort. Your access request should name the system of records or contain a concise description of such system of records. OMB publishes notices of OMB systems of records subject to the Privacy Act in the **Federal Register**.

(c) *Information about yourself.* Your access request should also contain sufficient information to identify yourself in order to allow OMB to determine if there is a record pertaining to you in a particular system of records.

(d) *Verification of identity.* To ensure that information about you is disclosed only to you or your authorized representative, you are required to verify your identity when making a Privacy Act request for access, as detailed in paragraphs (d)(1) through (3) of this section. If OMB cannot verify your identity, disclosure will be limited to information that would be required to be made available if requested under 5 U.S.C. 552 by any person.

(1) You must state your name, current address, and date and place of birth and provide either a notarized statement of identity or a signed submission under 28 U.S.C. 1746; or

(2) When available, verify your identity through remote identity-proofing and authentication using digital processes.

(3) OMB may require you to supply additional information as necessary in order to verify your identity.

(e) *Verification of guardianship.*

When making a request for access as the parent or guardian of a minor or as the guardian of someone determined by a court of competent jurisdiction to be incompetent, for access to records about that individual, you must establish the criteria listed in paragraphs (e)(1) through (4) of this section. If OMB cannot verify your identity, disclosure will be limited to information that would be required to be made available if requested under 5 U.S.C. 552 by any person.

(1) The identity of the individual who is the subject of the record, by stating the name, current address, and date and place of birth;

(2) Your own identity, as required in this paragraph (e);

(3) That you are the parent or guardian of that individual, which you may prove by providing a copy of the individual's birth certificate showing your parentage or by providing a court order establishing your guardianship; and

(4) That you are acting on behalf of that individual in making the request.

(f) *Submit identifying information only using approved OMB processes.* In order to safeguard information you submit in making a request for access for purposes of verifying your identity or verifying guardianship, or any information about yourself that may assist in the rapid identification of the record to which you are requesting access (e.g., prior names, dates of employment, etc.) as well as any other identifying information contained in an OMB system of records, you must use one of OMB's approved processes as described on OMB's privacy program web page. Failure to submit identifying information through an OMB approved process may result in the failure to expunge your information in accordance with approved OMB records schedules after your access request has been processed.

(g) *Subsequent requests for access.* If your request for access follows a prior request under this section, and you already provided appropriate verifications with that prior request, you do not need to include the same verification or identifying information in the subsequent request for access if you reference that prior request or attach a copy of the OMB response to that request.

§ 1302.3 Responsibility for responding to requests.

(a) *Acknowledgment of requests.* OMB will acknowledge your request for access in writing and provide an individualized tracking number. Upon

request, OMB will make information available to you about the status of your request using the assigned tracking number.

(b) *Timing of responses to a Privacy Act request for access.* OMB will respond to Privacy Act requests for access to records according to the order in which OMB receives the requests. Consistent with OMB's FOIA procedures at 5 CFR 1303.40(b), OMB may designate multiple processing tracks that distinguish between simple and more complex Privacy Act requests for access, based on the estimated amount of work or time needed to process the request.

(c) *Additional information.* If, after receiving a request, OMB determines that your request does not reasonably describe the records sought, OMB will inform you what additional information is needed and why the request is otherwise insufficient. If a request does not reasonably describe the records sought, OMB's response to the request may be delayed.

(d) *Grant of request for access.* Once OMB makes a determination to grant a request for access, OMB will provide you a written response, which may include the following:

(1) A statement as to whether OMB will grant access by providing a copy of the record through electronic means or the mail; and

(2) The amount of fees charged, if any (see § 1302.7). (Fees are applicable only to requests for duplicates.)

(e) *Adverse determination of request for access.* OMB will notify you of an adverse determination denying a request for access in writing. Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Privacy Act; a determination on any disputed fee matter; or a denial of a request for expedited treatment. OMB's notification letter to you will include:

(1) The decision of OMB whether to grant in whole, or deny any part of the request;

(2) The reasons for the determination for any portion of the request that is denied; and

(3) A description of the procedure by which the OMB decision to deny your request may be appealed, including the name and address of the official with whom you may lodge such an appeal.

§ 1302.4 Requests for an accounting.

You may request an accounting of disclosures by the same rules governing requests for access, outlined in § 1302.2.

§ 1302.5 Requests for an amendment or correction.

(a) *Requirement for written requests.* If you want to amend a record that pertains to you in a system of records maintained by OMB, you must submit your request in writing following the procedures established in this section unless the system manager waives the requirements in this section. OMB is not required to amend records that are not subject to the Privacy Act of 1974. However, individuals who believe that such records are inaccurate may bring this to the attention of OMB.

(b) *Procedures.* (1) You should address your request to amend a record in a system of records to the system manager. You should include the name of the system and a brief description of the record proposed for amendment. If the request to amend the record is the result of you gaining access to the record in accordance with the provisions concerning access to records as set forth in § 1302.2, you may attach a copy of previous correspondence between you and OMB instead of providing a separate description of the record.

(2) If a requester cannot determine where within OMB to send the Privacy Act request to amend a record, the requester may send by mail or delivery to Privacy Officer, Office of Management and Budget, 725 17th Street NW, Room 9204, Washington, DC 20503 or by electronic means as described on OMB's privacy program web page: www.whitehouse.gov/omb/privacy. OMB will forward the request to the component(s) it believes most likely to have the relevant records. For the quickest possible handling, the requester should specify "Privacy Act Record Amendment Request" on the letter.

(3) You must validate your identity as described in § 1302.2(e). If OMB has previously verified your identity pursuant to § 1302.2(e), further verification of identity is not required as long as the communication does not suggest that a need for verification is present.

(4) You should clearly indicate the exact portion of the record you seek to have amended. If possible, you should also propose alternative language, or at a minimum, identify the facts that you believe are not accurate, relevant, timely, or complete, with such particularity as to permit OMB not only to understand the basis for your request,

but also to make an appropriate amendment to the record.

(5) Your request must also state why you believe your record is not accurate, relevant, timely, or complete. The burden of persuading OMB to amend a record will be upon you. You must furnish sufficient facts to persuade the official in charge of the system of the inaccuracy, irrelevancy, timeliness, or incompleteness of the record.

(6) OMB will not categorically reject incomplete or inaccurate requests. OMB will ask you to clarify the request as needed.

(c) *OMB action on the request.* (1) OMB will acknowledge, in writing, receipt of a request to amend a record within 10 business days (*i.e.*, excluding Saturdays, Sundays, and legal Federal holidays) of OMB's receipt.

(2) OMB will promptly respond to a Privacy Act request for amendment or correction. OMB ordinarily will respond to Privacy Act requests for amendment or correction according to their order of receipt. Consistent with OMB's FOIA procedures at 5 CFR 1303.40(b), OMB may designate multiple processing tracks that distinguish between simple and more complex Privacy Act requests for amendment or correction, based on the estimated amount of work or time needed to process the request. The response reflecting the decision upon a request for amendment will include the following:

(i) The decision of OMB whether to grant in whole, or deny any part of, the request to amend the record;

(ii) The reasons for the determination for any portion of the request which is denied; and

(iii) A description of the procedure by which the OMB decision to deny your request may be appealed, including the name and address of the official with whom you may lodge such an appeal.

§ 1302.6 Appeals.

(a) If you wish to appeal a decision by OMB with regard to your request to access or amend a record in accordance with the provisions of §§ 1302.2 and 1302.5, you should submit the appeal in writing and, to the extent possible, include the information specified in paragraph (b) of this section.

(b) Your appeal should contain a brief description of the record involved or copies of the correspondence from OMB in which the request to access or to amend was denied and also the reasons why you believe that access should be granted or the information amended, as relevant. Your appeal should refer to the information you furnished in support of your claim and the reasons set forth by OMB in its decision denying access or

amendment, as required by §§ 1302.2 and 1302.5. In order to make the appeal process as meaningful as possible, you should set forth your disagreement in an understandable manner. In order to avoid the unnecessary retention of personal information, OMB reserves the right to dispose of the material concerning the request to access or amend a record if OMB receives no appeal in accordance with this section within 180 days of the sending by OMB of its decision upon an initial request. OMB may treat an appeal received after the 180-day period as an initial request to access or amend a record.

(c) You may send your appeal by mail or delivery to the Senior Agency Official for Privacy, Office of Management and Budget, 725 17th Street NW, Room 9204, Washington, DC 20503 or by electronic means as described on OMB's privacy program web page: www.whitehouse.gov/omb/privacy. For the quickest possible handling, the requester should specify "Privacy Act Record Appeal" on the letter.

(d) The Senior Agency Official for Privacy will review a refusal to amend a record within 30 business days (excluding Saturdays, Sundays, and legal Federal holidays) from the date on which the individual requests such review, unless the OMB Director extends the 30-day period for good cause. If the Senior Agency Official for Privacy's decision does not grant in full the request, the notice of the decision will describe the steps you may take to obtain judicial review of such a decision.

§ 1302.7 Fees.

(a) *Prohibitions against charging fees for Privacy Act requests.* OMB will not charge you for:

(1) The search and review of requests for records subject to this part;

(2) Any copies of the record produced as a necessary part of the process of making the record available for access; or

(3) Any copies of the requested record when OMB determines that the only way you can access the record is by providing a copy to you through the mail.

(b) *Waiver.* OMB may at no charge provide copies of a record if it is determined the production of the copies is in the interest of the Government.

(c) *Fee schedule and method of payment.* OMB will charge fees as provided in paragraphs (c)(1) through (5) of this section except as provided in paragraphs (a) and (b) of this section.

(1) OMB will duplicate records at a rate of \$.10 per page for all copying of

4 pages or more. There is no charge for duplication 3 or fewer pages.

(2) Where OMB anticipates that the fees chargeable under this section will amount to more than \$25.00, OMB shall promptly notify you of the amount of the anticipated fee or such portion thereof as can readily be estimated. If the estimated fees will greatly exceed \$25.00, OMB may require an advance deposit. OMB's request for an advance deposit shall extend an offer to the requester to consult with OMB personnel in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of the requester.

(3) You should pay fees in full before the requested copies are issued. If the requester is in arrears for previous requests, OMB will not provide copies for any subsequent request until the arrears have been paid in full.

(4) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Assistant Director for Management and Operations, Office of Management and Budget, Washington, DC 20503.

(5) OMB will provide a receipt for fees paid upon request.

PART 1303—PUBLIC INFORMATION PROVISIONS OF THE ADMINISTRATIVE PROCEDURES ACT

■ 2. The authority citation for part 1303 continues to read as follows:

Authority: 5 U.S.C. 301 and 5 U.S.C. 552, unless otherwise noted.

■ 3. Amend § 1303.3 by revising paragraph (a)(5) to read as follows:

§ 1303.3 Organization.

(a) * * *

(5) Statutory offices include the Office of Federal Financial Management; Office of Federal Procurement Policy; Office of E-government and Information Technology; Made in America Office; and Office of Information and Regulatory Affairs.

* * * * *

■ 4. Revise § 1303.20 to read as follows:

§ 1303.20 Where to send requests.

The FOIA Officer is responsible for acting on all initial requests. Individuals wishing to file a request under the FOIA should address their request in writing to FOIA Officer, Office of Management and Budget, 725 17th Street NW, Room 9272, Washington, DC 20503, via fax to (202) 395-3504, by email at *OMBFOIA@*

omb.eop.gov, or the Government-wide FOIA.gov portal. Requesters must provide contact information sufficient to enable OMB to communicate with the requester. Additionally, OMB's FOIA Public Liaison is available to assist requesters who have questions and can be reached at (202) 395-FOIA or in writing at the address provided in this section.

■ 5. Revise § 1303.21 to read as follows:

§ 1303.21 Requesters making requests about themselves or on behalf of others.

In order to obtain greater access to records, a requester who is making a request for records about the requester or on behalf of another individual must comply with the verification of identity requirements as determined by OMB pursuant to OMB's requirements for making requests for access in 5 CFR part 1302. OMB may require a requester to supply additional information as necessary in order to verify the identity of the requester or to verify that a particular individual has consented to disclosure.

■ 6. Amend § 1303.30 by revising paragraphs (c)(2)(i) and (ii) to read as follows:

§ 1303.30 Responsibility for responding to requests.

* * * * *

(c) * * *

(2) * * *

(i) When OMB believes that a different agency is best able to determine whether to disclose the record, OMB will refer the responsibility for responding to the request regarding that record to that agency, will notify the requester, and will inform them of the agency which will be processing the record, including that agency's FOIA contact information. Ordinarily, the agency that originated the record is best situated to make the disclosure determination. However, if OMB and the originating agency jointly agree that OMB is in the best position to respond regarding the record, then OMB may respond to the requester.

(ii) When OMB believes that a different agency is best able to determine whether to disclose the record, but also believes that disclosure of the identity of the different agency could harm an interest protected by an applicable FOIA exemption, such as the exemptions that protect personal privacy or national security interests, OMB will coordinate with the originating agency to seek its views on the disclosability of the record and convey the release determination for the record that is the subject of the coordination to the requester. For

example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if an agency locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms.

■ 7. Amend § 1303.40 by revising paragraphs (e)(1)(iv) and (e)(4) to read as follows:

§ 1303.40 Timing of responses to requests.

* * * * *

(e) * * *

(1) * * *

(iv) There are possible questions, in a matter of widespread and exceptional public interest, about the Government's integrity which affect public confidence.

* * * * *

(4) OMB will decide whether to grant a request for expedited processing and will notify the requester within 10 calendar days after the date of the request. If a request for expedited treatment is granted, OMB will prioritize the underlying FOIA request, place the request in the processing track for expedited requests, and process the request as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

■ 8. Amend § 1303.50 by revising paragraphs (a), (c) introductory text, and (c)(4) to read as follows:

§ 1303.50 Responses to requests.

(a) *Acknowledgments of requests.* OMB will assign an individualized tracking number to each request received that will take longer than ten days to process; and acknowledge each request, informing the requester of their tracking number if applicable; and, upon request, make available information about the status of a request to the requester using the assigned tracking number, including—

(1) The date on which OMB originally received the request; and

(2) An estimated date on which OMB will complete action on the request.

* * * * *

(c) *Adverse determinations of requests.* Adverse determinations, or denials of requests, include decisions that the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing. In the case of an adverse determination, the FOIA Officer will immediately notify the requester of—

* * * * *

(4) OMB's estimate of the volume of any requested records OMB is withholding, unless providing such estimate would harm an interest protected by the exemption in 5 U.S.C. 552(b) under which the withholding is being made.

■ 9. Amend § 1303.60 by revising paragraphs (a)(2) and (e)(2) to read as follows:

§ 1303.60 Notification procedures for confidential commercial information.

(a) * * *

(2) *Submitter* means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides confidential commercial information, either directly or indirectly, to the Federal Government.

* * * * *

(e) * * *

(2) If a submitter has any objections to disclosure, it should provide OMB a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is privileged or confidential. OMB is not required to consider any information received after the date of any disclosure decision.

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■ 10. Amend § 1303.70 by revising paragraph (a) to read as follows:

§ 1303.70 Appeals.

(a) A requester must appeal to the head of OMB in writing within 90 calendar days after the date of such adverse determination addressed to the FOIA Officer at the address specified in § 1303.20. The appeal must include a

statement explaining the basis for the appeal. Determinations of appeals will be set forth in writing and signed by the Deputy Director, or their designee, within 20 working days. If on appeal the denial is upheld in whole or in part, the written determination will also contain a notification of the provisions for judicial review, the names of the persons who participated in the determination, and notice of the services offered by OGIS as a non-exclusive alternative to litigation.

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■ 11. Amend § 1303.91 by revising the introductory text and paragraph (i) to read as follows:

§ 1303.91 Fees to be charged—general.

OMB will charge fees that recoup the full allowable direct costs it incurs. Moreover, it will use the most efficient and least costly methods to comply with requests for documents made under the FOIA. For example, employees should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. Search should be distinguished, moreover, from review of material in order to determine whether the material is exempt from disclosure. When documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see 5 U.S.C. 552(a)(4)(A)(vi)), such as the National Technical Information Service, OMB will inform requesters of the steps necessary to obtain records from those sources.

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(i) *No Fees under \$25.* No fee will be charged when the total fee, after deducting the first 100 free pages (or its cost equivalent) and the first two hours of search, is equal to or less than \$25. If OMB estimates that the charges are likely to exceed \$25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance their willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel to meet the requester's needs at a lower cost.

■ 12. Amend § 1303.92 by revising paragraphs (a) through (d) to read as follows:

§ 1303.92 Fees to be charged—categories of requesters.

* * * * *

(a) *Commercial use requesters.* When OMB receives a request for documents for commercial use, it will assess

charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Commercial use requesters are entitled to neither two hours of free search time nor 100 free pages of duplication of documents. OMB may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see § 1303.93(b)).

(b) *Educational and noncommercial scientific institution requesters.* OMB will provide documents to educational and noncommercial scientific institution requesters that meet the criteria in § 1303.90(f) or (g) for the cost of duplication alone, excluding charges for the first 100 pages. OMB may seek evidence from the requester that the request is in furtherance of scholarly research and will advise requesters of their determination whether the requester has met the criteria in § 1303.90(f) or (g).

(c) *Requesters who are representatives of the news media.* OMB will provide documents to requesters who are representatives of the news media that meet the criteria in § 1303.90(h) and (i), and that do not make the request for commercial use, for the cost of duplication alone, excluding charges for the first 100 pages.

(d) *All other requesters.* OMB will charge requesters who do not fit into any of the categories described in paragraphs (a) through (c) of this section fees that recover only the full reasonable direct cost of searching for and duplicating records that are responsive to the request, except that the first 100 pages of duplication and the first two hours of search time will be furnished without charge. Moreover, requests for records about the requesters filed in OMB's systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for producing copies of records

■ 13. Amend § 1303.93 by revising paragraph (a), the first sentence of paragraph (c), and paragraph (d)(1) to read as follows:

§ 1303.93 Miscellaneous fee provisions.

(a) *Charging interest—notice and rate.* OMB may begin assessing interest charges on an unpaid bill starting on the 31st day after OMB sends the bill. If OMB receives the fee within the thirty-day grace period, interest will not accrue on the paid portion of the bill, even if the payment is unprocessed. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

* * * * *

(c) * * * When OMB reasonably believes that a requester, or a group of requesters acting in concert, is attempting to divide a single request into a series of requests for the purpose of avoiding fees, OMB may aggregate those requests and charge fees accordingly. * * *

(d) * * *

(1) OMB will not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, unless OMB estimates or determines that allowable charges that a requester may be required to pay will exceed \$250 or the requester has previously failed to make a payment due within 30 days of billing.

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Shraddha A. Upadhyaya,
Associate General Counsel, Office of
Management and Budget.

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DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

31 CFR Part 223

[Docket No. FISCAL-2021-0006]

RIN 1530-AA20

Surety Companies Doing Business With the United States

AGENCY: Fiscal Service, Bureau of the
Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Department of the Treasury, Bureau of the Fiscal Service (Treasury), regarding the corporate Federal surety bond program (the program). Treasury is amending its regulations to allow for recognition of additional companies as reinsurers. Treasury is also amending its regulations to incorporate requirements, previously published in supplemental guidance documents, for surety companies to submit information that Treasury uses to perform financial analysis of these companies. Treasury is also reorganizing the existing regulations to modernize and improve their structure.

DATES: This final rule is effective August 9, 2024.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:

I. Background

Treasury administers the corporate Federal surety bond program, which issues certificates of authority to authorized surety companies, analyzes the financial statements of applicant and authorized companies to ensure compliance, and publishes lists of companies holding a certificate of authority. Treasury also reviews applications by companies to become admitted reinsurers, *i.e.*, companies permitted by Treasury to provide reinsurance to certified sureties except on excess risks that run to the United States. Treasury administers the program pursuant to 31 CFR part 223 (part 223) and publishes supplemental guidance on its website.

Treasury published a request for information (RFI) on December 30, 2019.¹ The RFI sought public input on a variety of topics relating to Treasury's evaluation of surety companies, as well as the operations of the corporate Federal surety bond program. These topics included, among other things, Treasury's financial analysis methodology, its rules regarding credit for reinsurance, and the documentation it requires to perform its review of companies seeking designation and renewal as certified sureties or admitted reinsurers. The public comments informed, in part, Treasury's development of this rulemaking.

On March 3, 2022, Treasury published a notice of proposed rulemaking (NPRM) at 87 FR 12003 to propose amendments to part 223, which implements the provisions of 31 U.S.C. 9304-9308. The NPRM proposed two main amendments to part 223. First, the NPRM proposed to add two new categories of reinsurance companies that can receive recognition from Treasury: complementary reinsurers and alien reinsurers. The proposed amendments would allow Treasury-certified surety companies to receive credit for reinsurance ceded to these companies with reduced or zero collateral, and would also allow complementary or alien reinsurers to reinsure excess risks of certified surety companies not running to the United States. Second, Treasury proposed amending 31 CFR 223.9 to describe in greater detail the financial analysis it performs related to companies applying for a certificate of authority or renewal of a certificate of authority and to incorporate certain requirements previously published in

the program's annual and supplemental guidance. Additionally, Treasury proposed various amendments to part 223 to reorganize and modernize the structure of the regulations.

Treasury received 13 comment letters from a cross-section of entities associated with the surety industry and other stakeholders. Seven of the comment letters were from surety companies or reinsurers, three were from surety or insurance trade associations, one was from a law firm that represents surety companies, one was from a coalition of environmental groups, and one was from an anonymous individual. Treasury has considered the comments and addresses them below.

II. Analysis of Comments

The public comments were generally supportive of the NPRM's proposed changes to add new categories of reinsurers eligible for Treasury recognition, to add more detailed information regarding Treasury's financial analysis, and to update and modernize the structure of the surety regulations. Treasury did not receive any comments expressing disagreement with the key objectives described above. Several of the favorable comments regarding Treasury's proposal to add new categories of reinsurers eligible for Treasury recognition noted that these changes would benefit the surety industry as a whole by lowering the regulatory burden on surety companies and increasing the reinsurance capacity available to Treasury-certified surety companies. Commenters also concurred with the NPRM that these changes would not increase the risk to the Federal Government of surety companies being unable to carry out their obligations.

A surety company commented that smaller and medium-sized surety companies, which typically have a lower underwriting limit than larger firms, might particularly benefit from greater access to international reinsurance without the posting of collateral under the proposal to recognize additional reinsurers. The same commenter also noted that these changes could lower the price of surety bonds in the marketplace, which could not only benefit smaller and medium-sized surety companies but also benefit smaller and minority-owned contractors who frequently obtain surety bonds from smaller or mid-sized surety companies. Thus, in the view of the commenter, the proposed changes could make it easier for small, minority-owned contractors to bid on construction projects for the Federal Government.

¹ 84 FR 72138.