

principles and requirements of this section.

(2) *Risk-based analysis.* The STAs (or other direct grantees) may employ a risk-based oversight process to provide reasonable assurance of consultant compliance with Federal cost principles on FAHP funded contracts administered by the grantee or its subgrantees. If employed, this risk-based oversight process shall be incorporated into STA (or other direct grantee) written policies and procedures (as specified in § 172.5(c)). In addition to ensuring allowability of direct contract costs, the risk-based oversight process shall address the evaluation and acceptance of consultant and subconsultant indirect cost rates for application to contracts. A risk-based oversight process shall consist of the following:

(i) *Risk assessments.* Conducting and documenting an annual assessment of risks of noncompliance with the Federal cost principles per consultant doing business with the agency, considering the following factors:

(A) Consultant's contract volume within the State;

(B) Number of States in which the consultant operates;

(C) Experience of consultant with FAHP contracts;

(D) History and professional reputation of consultant;

(E) Audit history of consultant;

(F) Type and complexity of consultant accounting system;

(G) Size (number of employees and/or annual revenues) of consultant;

(H) Relevant experience of certified public accountant performing audit of consultant;

(I) Assessment of consultant's internal controls;

(J) Changes in consultant organizational structure; and

(K) Other factors as appropriate.

(ii) *Risk mitigation and evaluation procedures.* Allocating resources, as considered necessary based on the results of the annual risk assessment, to provide reasonable assurance of compliance with the Federal cost principles through application of the following types of risk mitigation and evaluation procedures appropriate to the consultant and circumstances:

(A) Audits performed in accordance with generally accepted government audit standards to test compliance with the requirements of the Federal cost principles;

(B) Certified public accountant or other STA workpaper reviews;

(C) Desk reviews;

(D) Other analytical procedures;

(E) Consultant cost certifications in accordance with subparagraph (c)(3) herein; and

(F) Training on the Federal cost principles.

(iii) *Documentation.* Maintaining adequate documentation of the risk-based analysis procedures performed to support the allowability and acceptance of consultant costs on FAHP funded contracts.

(3) *Consultant cost certification.* (i) Indirect cost rate proposals for the consultant's 1-year applicable accounting period shall not be accepted and no agreement shall be made by a contracting agency to establish final indirect cost rates, unless the costs have been certified by an official of the consultant as being allowable in accordance with the Federal cost principles. The certification requirement shall apply to all indirect cost rate proposals submitted by prime and subconsultants for acceptance by a STA (or other direct grantee).

(ii) Consultant official shall be an individual executive or financial officer of the consultant's organization at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has the authority to represent the financial information utilized to establish the indirect cost rate proposal submitted for acceptance.

(iii) The certification of final indirect costs shall read as follows:

**Certificate of Final Indirect Costs**

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) of title 48, Code of Federal Regulations (CFR), part 31; and

2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR of 48 CFR part 31.

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Certifying Official: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

(4) *Sanctions and penalties.*

Contracting agency written policies, procedures, and contract documents (as specified in § 172.5(c) and § 172.9(c)) shall address the range of administrative, contractual, or legal remedies that may be assessed in accordance with Federal and State laws and regulations where consultants violate or breach contract terms and conditions. Where consultants

knowingly charge unallowable costs to a FAHP funded contract:

(i) Contracting agencies shall pursue administrative, contractual, or legal remedies and provide for such sanctions and penalties as may be appropriate; and

(ii) Consultants are subject to suspension and debarment actions (as specified in 2 CFR part 180), potential cause of action under the False Claims Act (as specified in 32 U.S.C. 3729–3733), and prosecution for making a false statement (as specified in 18 U.S.C. 1020).

(d) *Prenotification; confidentiality of data.* The FHWA, grantees, and subgrantees of FAHP funds may share audit information in complying with the grantee's or subgrantee's acceptance of a consultant's indirect cost rates pursuant to 23 U.S.C. 112 and this part provided that the consultant is given notice of each use and transfer. Audit information shall not be provided to other consultants or any other government agency not sharing the cost data, or to any firm or government agency for purposes other than complying with the grantee's or subgrantee's acceptance of a consultant's indirect cost rates pursuant to 23 U.S.C. 112 and this part without the written permission of the affected consultants. If prohibited by law, such cost and rate data shall not be disclosed under any circumstance; however, should a release be required by law or court order, such release shall make note of the confidential nature of the data.

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**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**29 CFR Part 1610**

**RIN 3046–AA90**

**Availability of Records**

**AGENCY:** Equal Employment Opportunity Commission

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Equal Employment Opportunity Commission (“EEOC” or “Commission”) proposes to revise its Freedom of Information Act (FOIA) regulations in order to implement the Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act) and the Electronic FOIA Act of 1996 (E-FOIA Act); to reflect the reassignment of FOIA responsibilities in the Commission's field offices from the Regional Attorneys

to the District Directors; and to consolidate Commission public reading areas in offices where there are adequate FOIA personnel to provide satisfactory service.

**DATES:** Written comments must be received on or before November 5, 2012.

**ADDRESSES:** Written comments should be submitted to Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street NE., Suite 6NE03F, Washington, DC 20507. As a convenience to commenters, the Executive Secretariat will accept comments by facsimile (“FAX”) machine. The telephone number of the FAX receiver is (202) 663-4114. (This is not a toll-free FAX number). Only comments of six or fewer pages will be accepted via FAX transmittal to ensure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4070 (voice) or (202) 663-4074 (TTY). (These are not toll-free telephone numbers.) You may also submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. Copies of comments submitted by the public will be available for review at the Commission’s library, 131 M Street NE., Suite 4NW08R, Washington, DC 20507, between the hours of 9:30 a.m. and 5:00 p.m. or can be reviewed at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Stephanie D. Garner, Assistant Legal Counsel, Gary J. Hozempa, Senior Attorney, or Draga G. Anthony, Attorney Advisor, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission at (202) 663-4640 (voice) or (202) 663-7026 (TTY). These are not toll-free telephone numbers. This notice is also available in the following formats: large print, Braille, audiotape, and electronic file on computer disk. Requests for this document in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663-4191 (voice) or (202) 663-4494 (TTY), or to the Publications Information Center at 1-800-669-3362.

**SUPPLEMENTARY INFORMATION:** The proposed rule updates the Commission’s FOIA regulations to reflect current Commission practice in responding to FOIA requests as reflected in the OPEN Government Act and the E-FOIA Act, and the Commission’s transfer of FOIA responsibilities from its

Regional Attorneys to its District Directors. The proposed rule also consolidates Commission public reading rooms in offices where there are adequate FOIA personnel and streamlines the Commission’s FOIA regulations by removing excess verbiage.

#### The OPEN Government Act

The OPEN Government Act, Public Law 110-175, 121 Stat. 2524, was enacted into law on December 31, 2007 to make it easier for a requester to access agency records, and to require agencies to be more responsive, transparent, and accountable to the public in responding to FOIA requests. The Act addresses many aspects of agency FOIA administration, including:

- Time limits for agencies to act on FOIA requests;
- Recovery of attorney’s fees and litigation costs in FOIA-related lawsuits;
- Disciplinary actions for arbitrary and capricious rejection of FOIA requests;
- Use of individualized identification numbers to track FOIA requests;
- Proper fee charges for FOIA requests from news media;
- Enhanced requirements for agencies’ annual FOIA reports to Congress;
- Appointment of a Chief FOIA Officer in an agency;
- Appointment of a FOIA Public Liaison in an agency;
- Disclosure of records maintained for an agency by a private entity pursuant to a records management contract; and
- A new requirement that the amount of material deleted from a document produced pursuant to FOIA must be specifically identified at the site of the deletion, together with the exemption authorizing that deletion.

To conform the Commission’s FOIA regulations to the requirements of the Act, the proposed rule revises the following sections of 29 CFR part 1610:

- Section 1610.1 (adds definitions for “agency record,” “news,” and “representative of the news media” based on the Act);
- Section 1610.5 (identifies the acceptable methods of submitting a FOIA request to the Commission [in person or via mail, email, Internet, or facsimile machine] including the required identification of the submission as a FOIA request and other content required for efficient processing);
- Section 1610.6 (provides that FOIA requests which seek documents in the Commission’s custody, but that originated in another agency, will be

- referred to the originating agency for its decision, and that the requester will be informed of the referral);
- Section 1610.7 (lists the proper Commission offices to receive FOIA requests);
- Section 1610.9 (explains the prospective processing time for FOIA requests and the period for which the time schedule for responding to a FOIA request is delayed when the Commission requires clarification by the requester, and provides that requests misdirected to the wrong EEOC-FOIA office shall be forwarded to the correct EEOC-FOIA office within 10 business days);
- Section 1610.10 (clarifies that the Commission will provide a written response to a FOIA request regardless of whether the request is granted or denied and regardless of whether there are documents responsive to the request);
- Section 1610.11 (provides that FOIA appeals misdirected to Commission District Offices shall be forwarded from those offices to the Legal Counsel within 10 business days);
- Section 1610.15 (states that the Commission will not charge search fees if the Commission’s response to the FOIA is untimely, absent unusual or exceptional circumstances);
- Section 1610.18 (states that data underlying annual FOIA reports shall be available to the public);
- Section 1610.21 (specifies the content of the Commission’s annual FOIA report to Congress).

#### The E-FOIA ACT

The Electronic FOIA Act of 1996 (E-FOIA) specifies that, after November 1996, information made available to the public for inspection and copying pursuant to FOIA must also be made available in electronic format. To coordinate the Commission’s FOIA regulations with the E-FOIA, the proposed rule revises §§ 1610.18 and 1610.21 to state that the information identified therein shall be available in electronic as well as paper form. The E-FOIA Act also allows an agency to adopt a multi-track system for processing FOIA requests. EEOC therefore proposes to revise § 1610.9(a) in order to implement a multi-track system.

#### EEOC FOIA Transfer of Responsibility

The Commission transferred FOIA responsibility from EEOC Regional Attorneys to EEOC District Directors in 2007. To coordinate the Commission’s FOIA regulations with the EEOC’s current delegation of responsibility for FOIA processing as reflected in EEOC Order 150.001, the proposed rule revises

the following sections of 29 CFR part 1610:

—Sections 1610.7, 1610.8, 1610.9, 1610.10, 1610.11, 1610.13 and 1610.14 (revise all prior references to EEOC Regional Attorneys so that those references now are to EEOC District Directors).

In order to consolidate the Commission's public reading area functions in offices with adequate personnel to service the public, the proposed rule revises § 1610.04 by requiring the Commission's Headquarters library and District Offices to maintain public reading areas.

#### Editorial Revisions

The Commission also wishes to update and clarify its FOIA regulations. To accomplish these goals, the proposed rule removes or revises the following sections of 29 CFR part 1610:

- Section 1610.4 (updates the addresses of Commission offices, deletes references to materials no longer published, and deletes unnecessary verbiage);
- Sections 1610.6, 1610.7, 1610.10, 1610.13 and 1610.19 (delete unnecessary verbiage);
- Section 1610.20 (removed because its language was duplicative of other Commission FOIA regulations).

#### Regulatory Procedures

##### *Executive Order 12866*

The proposed rule has been drafted and reviewed in accordance with Executive Order 12866, 58 FR 51735 (Sept. 30, 2003), section 1(b), Principles of Regulation, and Executive Order 13563, 76 FR 3821 (January 1, 2011), Improving Regulation and Regulatory Review. The rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866.

#### Paperwork Reduction Act

The proposed rule contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

#### Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that the proposed rule will not have a significant economic impact on a substantial number of small entities because the proposed revisions do not impose any burdens upon FOIA requestors, including those that might be small entities. Therefore, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

#### Unfunded Mandates Reform Act of 1995

The proposed rule will not result in the expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### List of Subjects in 29 CFR Part 1610

Freedom of information.

Dated: August 23, 2012.

For the Commission.

**Jacqueline A. Berrien,**  
*Chair.*

Accordingly, part 1610 is proposed to be amended as follows:

#### PART 1610—AVAILABILITY OF RECORDS

1. The authority citation for 29 CFR part 1610 continues to read as follows:

**Authority:** 42 U.S.C. 2000e–12(a), 5 U.S.C. 552 as amended by Pub. L. 93–502, Pub. L. 99–570, and Pub. L. 105–231; for § 1610.15, non-search or copy portions are issued under 31 U.S.C. 9701.

2. Amend § 1610.1 by adding new paragraphs (j), (k), and (l) to read as follows:

##### § 1610.1 Definitions.

\* \* \* \* \*

(j) *Agency record* includes any information maintained for an agency by an entity under Government contract, for the purposes of records management.

(k) *News* refers to information about current events that would be of current interest to the public.

(l) *Representative of the news media* refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. Examples of news media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by, subscription by, or free distribution to, the general public. As methods of news delivery evolve (for example, the implementation of electronic dissemination of newspapers through telecommunication services), such alternative media shall be considered to be news-media services. A freelance journalist shall be regarded as working for a news-media entity if the journalist

can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Commission may also consider the past publication record of the requester in making such a determination.

3. Revise § 1610.4 to read as follows:

##### § 1610.4 Public reference facilities and current index.

(a) The Commission will maintain in a public reading area located in the Commission's library at 131 M Street NE., Washington, DC 20507, the materials which are required by 5 U.S.C. 552(a)(2) and 552(a)(5) to be made available for public inspection and copying. Any such materials created on or after November 1, 1996 may also be accessed through the Internet at <http://www.eeoc.gov>. The Commission will maintain and make available for public inspection and copying in this public reading area a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated after July 4, 1967, and which is required to be indexed by 5 U.S.C. 552(a)(2). The Commission in its discretion may, however, include precedential materials issued, adopted, or promulgated prior to July 4, 1967. The Commission will also maintain on file in this public reading area all material published by the Commission in the **Federal Register** and currently in effect.

(b) The Commission offices designated in § 1610.4(c) shall maintain and make available for public inspection and copying a copy of:

- (1) The Commission's notices and regulatory amendments which are not yet published in the Code of Federal Regulations;
- (2) The Commission's annual reports;
- (3) The Commission's Compliance Manual;
- (4) Blank forms relating to the Commission's procedures as they affect the public;
- (5) The Commission's Orders (agency directives);
- (6) "CCH Equal Employment Opportunity Commission Decisions" (1973 and 1983); and
- (7) Commission awarded contracts.

(c) The Commission's District Offices with public reading areas are:

Atlanta District Office, 100 Alabama Street SW., Suite 4R30, Atlanta, GA 30303 (includes the Savannah Local Office).  
Birmingham District Office, Ridge Park Place, 1130 22nd Street South, Suite 2000, Birmingham, AL 35205–2397

(includes the Jackson Area Office and the Mobile Local Office).  
 Charlotte District Office, 129 West Trade Street, Suite 400, Charlotte, NC 28202 (includes the Raleigh Area Office, the Greensboro Local Office, the Greenville Local Office, the Norfolk Local Office, and the Richmond Local Office).  
 Chicago District Office, 500 West Madison Street, Suite 2000, Chicago, IL 60661 (includes the Milwaukee Area Office and the Minneapolis Area Office).  
 Dallas District Office, 207 S. Houston Street, 3rd Floor, Dallas, TX 75202–4726 (includes the San Antonio Field Office and the El Paso Area Office).  
 Houston District Office, 1201 Louisiana Street, 6th Floor, Houston, TX 77002 (includes the New Orleans Field Office).  
 Indianapolis District Office, 101 West Ohio Street, Suite 1900, Indianapolis, IN 46204–4203 (includes the Detroit Field Office, the Cincinnati Area Office, and the Louisville Area Office).  
 Los Angeles District Office, 255 E. Temple Street, 4th Floor, Los Angeles, CA 90012 (includes the Fresno Local Office, the Honolulu Local Office, the Las Vegas Local Office, and the San Diego Local Office).  
 Memphis District Office, 1407 Union Avenue, 9th Floor, Memphis, TN 38104 (includes the Little Rock Area Office, and the Nashville Area Office).  
 Miami District Office, Miami Tower, 100 SE 2nd Street, Suite 1500, Miami, FL 33131 (includes the Tampa Field Office and the San Juan Local Office).  
 New York District Office, 33 Whitehall Street, 5th Floor, New York, NY 10004 (includes the Boston Area Office, the Newark Area Office, and the Buffalo Local Office).  
 Philadelphia District Office, 801 Market Street, 13th Floor, Philadelphia, PA 19107–3127 (includes the Baltimore Field Office, the Cleveland Field Office, and the Pittsburgh Area Office).  
 Phoenix District Office, 3300 N. Central Avenue, Suite 690, Phoenix, AZ 85012–2504 (includes the Denver Field Office, and the Albuquerque Area Office).  
 San Francisco District Office, 350 Embarcadero, Suite 500, San Francisco, CA 94105–1687 (includes the Seattle Field Office, the Oakland Local Office, and the San Jose Local Office).  
 St. Louis District Office, Robert A. Young Building, 1222 Spruce Street, Room 8100, St. Louis, MO 63103 (includes the Kansas City Area Office, and the Oklahoma City Area Office).

4. Amend § 1610.5 by revising paragraph (a), redesignating paragraphs (b) and (c) as (d) and (e), and adding new paragraphs (b) and (c) to read as follows:

**§ 1610.5 Request for records.**

(a) A written request for inspection or copying of a record of the Commission may be presented in person, or by mail, or by fax, or by email, or through <https://egov.eeoc.gov/foia/> to the Commission employee designated in § 1610.7. Every request, regardless of format, must contain the requester's name and may identify a non-electronic mailing address. In-person requests must be presented during business hours on any business day.

(b) A request must be clearly and prominently identified as a request for information under the "Freedom of Information Act." If submitted by mail, or otherwise submitted under any cover, the envelope or other cover must be similarly identified.

(c) A respondent must always provide a copy of the "Filed" stamped court complaint when requesting a copy of a charge file. The charging party must provide a copy of the "Filed" stamped court complaint when requesting a copy of the charge file if the Notice of Right to Sue has expired.

\* \* \* \* \*

5. Revise § 1610.6 to read as follows:

**§ 1610.6 Records of other agencies.**

Requests for records that originated in another Agency and are in the custody of the Commission will be referred to that Agency and the person submitting the request shall be so notified. The decision made by that Agency with respect to such records will be honored by the Commission.

6. Amend § 1610.7 by revising the introductory sentence of paragraph (a), revising paragraphs (b) and (c), and removing paragraphs (d) and (e) to read as follows:

**§ 1610.7 Where to make request; form.**

(a) Requests for the following types of records shall be submitted to the District Director for the pertinent district, field, area, or local office, at the district office address listed in § 1610.4(c) or, in the case of the Washington Field Office, shall be submitted to the Field Office Director at 131 M Street NE., Fourth Floor, Washington, DC 20507.

(1) \* \* \*

(b) A request for any record which does not fall within the ambit of subparagraph (a) of this section, or a request for any record the location of which is unknown to the person making the request, shall be submitted in

writing to the Assistant Legal Counsel, FOIA Programs, U.S. Equal Employment Opportunity Commission, by mail to 131 M Street NE., Suite 5NW02E, Washington, DC 20507, or by fax to (202) 663–4679, or by email to [FOIA@eeoc.gov](mailto:FOIA@eeoc.gov), or by Internet to <https://egov.eeoc.gov/foia/>.

(c) Any Commission officer or employee who receives a written Freedom of Information Act request shall promptly forward it to the appropriate official specified in paragraph (a) or (b) of this section. Any Commission officer or employee who receives an oral request under the Freedom of Information Act shall inform the person making the request that it must be in writing and also inform such person of the provisions of this subpart.

7. Revise § 1610.8 to read as follows:

**§ 1610.8 Authority to determine.**

The Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee, when receiving a request pursuant to these regulations, shall grant or deny such request. That decision shall be final, subject only to administrative review as provided in § 1610.11 of this subpart.

8. Amend § 1610.9 by redesignating paragraphs (a) through (c) as paragraphs (d) through (f), adding new paragraphs (a), (b), (c), and (g), and revising newly redesignated paragraphs (d) through (f) to read as follows:

**§ 1610.9 Responses: timing.**

(a) The EEOC utilizes a multi track system for responding to FOIA requests. After review, a FOIA request is placed on one of three tracks: the simple track, the complex track, or the expedited track. A FOIA request is assigned to the simple track if it will be processed in fewer than 10 business days. A FOIA request requiring more than 10 business days to process will be assigned to the complex track. A FOIA request which has been granted expedited processing will be assigned to the expedited track.

(b) The Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee shall, within 10 days from receipt of a request, notify the requester in writing of the date EEOC received the request, the expected date of issuance of the determination, the individualized FOIA tracking number assigned to the request, and the telephone number or Internet site where requesters may inquire about the status of their request.

(c) If a FOIA request is submitted to the incorrect EEOC–FOIA office, that office shall forward the misdirected request to the appropriate EEOC–FOIA

office within 10 business days. If a misdirected request is forwarded to the correct EEOC-FOIA office more than 10 business days after its receipt by the EEOC, then, pursuant to 5 U.S.C. § 552(a)(6)(A), the statutory 20 business days to respond to the request is reduced by the number of days in excess of 10 that it took the EEOC to forward the request to the correct EEOC-FOIA office.

(d) Within 20 business days after receipt of the request, the Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee shall either grant or deny the request for agency records, unless additional time is required for one of the following reasons:

(1) It is necessary to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) It is necessary to search for, collect, and appropriately examine a voluminous number of separate and distinct records which are demanded in a single request; or

(3) It is necessary to consult with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial interest therein.

(e) When additional time is required for one of the reasons stated in paragraph (d) of this Section, the Assistant Legal Counsel, FOIA Programs, District Director, or the District Director's designee shall, within the statutory 20 business day period, issue to the requester a brief written statement of the reason for the delay and an indication of the date on which it is expected that a determination as to disclosure will be forthcoming. If more than 10 additional business days are needed, the requester shall be notified and provided an opportunity to limit the scope of the request or to arrange for an alternate time frame for processing the request.

(f)(1) A request for records may be eligible for expedited processing if the requester demonstrates a compelling need. For the purposes of this section, compelling need means:

(i) That the failure to obtain the 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) That the requester is a representative of the news media as described in § 1610.1(l) and there is an urgency to inform the public concerning actual or alleged Federal government activity.

(2) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. A determination on the request for expedited processing will be made and the requester notified within 10 calendar days. The Legal Counsel or designee, or the Assistant Legal Counsel, FOIA Programs, as appropriate, shall promptly respond to any appeal of the denial of a request for expedited processing.

(g) The Commission may toll the statutory time period to issue its determination on a FOIA request one time during the processing of the request to obtain clarification from the requester. The statutory time period to issue the determination on disclosure is tolled until EEOC receives the information reasonably requested from the requester. The agency may also toll the statutory time period to issue the determination to clarify with the requester issues regarding fees. There is no limit on the number of times the agency may request clarifying fee information from the requester.

9. Amend § 1610.10 by revising paragraphs (b) and (c) to read as follows:

**§ 1610.10 Responses: form and content.**

\* \* \* \* \*

(b) A reply either granting or denying a written request for a record shall be in writing, signed by the Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee, and shall include:

(1) His or her name and title;

(2) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld, or a statement that, after diligent effort, the requested records have not been found or have not been adequately examined during the time allowed under § 1610.9 (d), and that the denial will be reconsidered as soon as the search or examination is complete; and

(3) A written statement that the denial may be appealed to the Legal Counsel, or Assistant Legal Counsel, FOIA Programs, as appropriate, within 30 calendar days of receipt of the denial or partial denial.

(c) When a request for records is denied, the Commission shall provide to the requester a written statement identifying the estimated volume of denied material unless providing such estimate would harm an interest protected by the exemptions in 5 U.S.C.

522(b). When a reasonably segregable portion of a record is provided, the amount of information deleted from the released portion and, to the extent technically feasible, the place in the record where such deletion was made, and the exemption upon which the deletion was based, shall be indicated on the record provided to the requester.

\* \* \* \* \*

10. Revise § 1610.11 to read as follows:

**§ 1610.11 Appeals to the Legal Counsel from initial denials.**

(a) When the Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee has denied a request for records in whole or in part, the requester may appeal within 30 calendar days of receipt of the determination letter. The appeal must be in writing addressed to the Legal Counsel, or the Assistant Legal Counsel, FOIA Programs, as appropriate, Equal Employment Opportunity Commission, 131 M Street NE., Suite 5NW02E, Washington, DC 20507, and clearly labeled as a "Freedom of Information Act Appeal." Any appeal of a determination issued by a District Director or the District Director's designee must include a copy of the District Director's or the District Director's designee's determination. If a FOIA appeal is misdirected to a District Office, the District Office shall forward the appeal to the Legal Counsel, or the Assistant Legal Counsel, FOIA Programs, as appropriate, within 10 business days.

(b) The Legal Counsel or designee, or the Assistant Legal Counsel, FOIA Programs, as appropriate, shall act upon the appeal within 20 business days of its receipt, and more rapidly if practicable. If the decision is in favor of the person making the request, the decision shall order that records be promptly made available to the person making the request. The Legal Counsel or designee, or the Assistant Legal Counsel, FOIA Programs, as appropriate, may extend the 20 business day period in which to render a decision on an appeal for that period of time which could have been claimed and used by the Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee under § 1610.9, but which was not in fact used in making the original determination.

(c) The decision on appeal shall be in writing and signed by the Legal Counsel or designee, or the Assistant Legal Counsel, FOIA Programs, as appropriate. A denial in whole or in part of a request on appeal shall set forth the exemption relied on, a brief

explanation of how the exemption applies to the records withheld, and the reasons for asserting it, if different from those described by the Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee under § 1610.9. The decision on appeal shall indicate that the person making the request may, if dissatisfied with the decision, file a civil action in the United States District Court for the district in which the person resides or has his principal place of business, for the district where the records reside, or for the District of Columbia.

(d) No personal appearance, oral argument or hearing will ordinarily be permitted in connection with an appeal to the Legal Counsel or the Assistant Legal Counsel, FOIA Programs.

(e) On appeal, the Legal Counsel or designee, or the Assistant Legal Counsel, FOIA Programs, as appropriate, may reduce any fees previously assessed.

(f) In the event that the Commission terminates its proceedings on a charge after the District Director or the District Director's designee denies a request, in whole or in part, for the charge file but during consideration of the requester's appeal from that denial, the request may be remanded for redetermination. The requester retains a right to appeal to the Assistant Legal Counsel, FOIA Programs, from the decision on remand.

11. Revise § 1610.13 to read as follows:

**§ 1610.13 Maintenance of files.**

The Legal Counsel or designee, the Assistant Legal Counsel, FOIA Programs, and the District Directors or designees shall maintain files containing all material required to be retained by or furnished to them under this subpart. The material shall be filed by individual request.

12. Amend § 1610.14 by revising paragraph (a) to read as follows:

**§ 1610.14 Waiver of user charges.**

(a) Except as provided in paragraph (b) of this section, the Legal Counsel or designee, the Assistant Legal Counsel, FOIA Programs, and the District Directors or designees shall assess fees where applicable in accordance with § 1610.15 for search, review, and duplication of records requested. They shall also have authority to furnish documents without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the

government and is not primarily in the commercial interest of the requester.

\* \* \* \* \*

13. Amend § 1610.15 by adding paragraph (g) to read as follows:

**§ 1610.15 Schedule of fees and method of payment for services rendered.**

\* \* \* \* \*

(g) A search fee will not be charged to requesters specified in paragraphs (a)(1) and (a)(3) of this section, and a duplication fee will not be charged to requesters specified in paragraph (a)(2) of this section, if the Commission issues an untimely determination and the untimeliness is not due to unusual or exceptional circumstances.

14. Amend § 1610.18 by revising the introductory text and adding paragraph (h) to read as follows:

**§ 1610.18 Information to be disclosed.**

The Commission will provide the following information to the public. This information will also be made available electronically:

\* \* \* \* \*

(h) Underlying annual FOIA report data.

15. Amend § 1610.19 by removing paragraph (b)(2), redesignating paragraph (b)(3) as paragraph (b)(2), and removing the word "working" wherever it appears in paragraphs (d) and (e) and add in its place the word "business."

16. Remove and reserve § 1610.20.

**§ 1610.20 [Removed and Reserved]**

17. Revise § 1610.21 to read as follows:

**§ 1610.21 Annual report.**

The Legal Counsel shall, on or before February 1, submit individual Freedom of Information Act reports for each principal agency FOIA component and one for the entire agency covering the preceding fiscal year to the Attorney General of the United States. The reports shall include those matters required by 5 U.S.C. 552(e), and shall be made available electronically on the agency Web site.

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**DEPARTMENT OF EDUCATION**

**34 CFR Subtitle A**

[DOCKET ID ED-2012-OII-0013]

RIN 1855-AA08

**Proposed Priorities, Requirements, Definitions, and Selection Criteria—Supporting Effective Educator Development**

[CFDA Number: 84.367D.]

**AGENCY:** Office of Innovation and Improvement, Department of Education.

**ACTION:** Proposed priorities, requirements, definitions, and selection criteria.

**SUMMARY:** The Assistant Deputy Secretary for Innovation and Improvement proposes priorities, requirements, definitions, and selection criteria under the Supporting Effective Educator Development (SEED) Grant program. We may use these priorities, requirements, definitions, and selection criteria for competitions of the SEED Grant program for fiscal year (FY) 2012 and later years. We intend for the priorities, requirements, definitions, and selection criteria to help national not-for-profit organizations to build evidence on how best to recruit, train, and support effective teachers and school leaders; recruit and prepare effective science, technology, engineering, and mathematics teachers; and invest in efforts that enhance the teaching and school leadership professions.

**DATES:** We must receive your comments on or before October 4, 2012.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID and the phrase "Supporting Effective Educator Development" at the top of your comments.

• *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using [Regulations.gov](http://Regulations.gov), including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How To Use This Site." A direct link to the docket page is also available at [www.ed.gov/programs/innovation/index.html](http://www.ed.gov/programs/innovation/index.html).

• *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed