(12) Any other criteria the Administrator determines to be applicable to the particular case.

* * * * *

(f) RUS shall consider the following criteria for any provider of a specialized telecommunications service in determining whether such service is reasonably adequate:

(1) The provider of a specialized telecommunications service is providing area coverage as described in § 1735.11.

(2) An adequate signal strength is provided throughout the largest practical portion of the service area.

(3) There is an absence of frequent service interruptions.

(4) The quality and variety of service provided is comparable to that provided in nonrural areas.

(5) The service provided complies with industry standards.

(6) No Federal, State, or local regulatory commission having jurisdiction has determined that the quality, availability, or reliability of the service provided is inadequate.

(7) Services are provided at reasonably affordable rates.

(8) Any other criteria the Administrator determines to be applicable to the particular case.

5. In § 1735.14, as proposed to be amended at 65 FR 6924, remove "and" at the end of paragraph (c)(1), remove the period at the end of paragraph (c)(2) and add "; and" in its place, and add new paragraph (c)(3) to read as follows:

**§ 1735.14 Borrower eligibility.**

* * * * *

(c) * * *

(3) If a local exchange carrier, must be either an eligible telecommunications carrier (ETC) within the State or tribal jurisdiction in which the RUS-financed facilities are to be located, a LEC that has made a commitment, satisfactory to RUS, to become an ETC within the State or tribal jurisdiction in which the financed facilities are to be located, or a LEC that commits to act as an ETC in such a manner as to meet the area coverage requirements as described in § 1735.11.

Dated: May 12, 2000.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

[FR Doc. 00–12657 Filed 5–24–00; 8:45 am]

BILLING CODE 3410–15–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## Office of Federal Housing Enterprise Oversight

## 12 CFR Part 1710

**RIN 2550–AA09**

## Releasing Information; Electronic Freedom of Information Amendment

**AGENCY:** Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight (OFHEO) is proposing to amend its regulations to reflect the changes to the Freedom of Information Act (FOIA) made by the Electronic Freedom of Information Act Amendments Act of 1996 (1996 Act) and to revise the method of computing fees. The proposal provides for: electronic FOIA requests; access to records published or released under FOIA in electronic format; expedited processing of FOIA requests upon a showing of compelling need; publication of responses to FOIA requests that are likely to become repeat requests; aggregation of clearly related requests by a single requester or group of requesters acting in concert; informing the requester of the volume of requested material withheld and the extent of deletions both in publicly available records and records released in response to a FOIA request; and a method for computing fees that is based upon the classification of the employee performing the work as executive, professional, or clerical.

**DATES:** Written comments regarding the proposed rulemaking must be received by July 24, 2000.

**ADDRESSES:** All comments concerning the proposed rule should be addressed to Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Fourth Floor, Washington, DC 20552. Alternatively, comments may be submitted via electronic mail to: *RegComments@ofheo.gov*. Copies of all communications received will be available for public inspection and copying at the address above.

**FOR FURTHER INFORMATION CONTACT:** Dorothy J. Acosta, Associate General Counsel, 1700 G Street NW, Fourth Floor, Washington, DC 20552, telephone (202) 414–6924 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** On December 23, 1998, OFHEO issued a final rule governing the release of information to the public, which, among other things, implemented the requirements of the Freedom of Information Act (FOIA). 63 FR 70998, Dec. 23, 1998. At the time of the publication of the final regulation, OFHEO noted that Congress had enacted the Electronic Freedom of Information Act Amendments of 1996 (1996 Act)[1] to provide for public access to information in an electronic format and for other purposes and announced that these amendments would be implemented by a separate rulemaking. Although certain of the 1996 Act's amendments that did not involve access to records in an electronic format were included in the final regulation, such as the extension of the time limit for the initial agency response from ten (10) to 20 days, this proposed regulation implements the remainder of the amendments and proposes a new method for computing fees. The 1996 Act amendments that are reflected in this proposal are: (1) The requirement to make requested documents available in the form or format specified by the requester, provided the document is readily reproducible in that form or format; (2) the requirement to make publicly available copies of records released in response to FOIA requests that are likely to become the subject of subsequent requests for substantially the same records; (3) the requirement for electronic access to records required to be made public by 5 U.S.C. 552(a)(2) that were created after November 1, 1996; (4) the requirement to provide expedited processing of FOIA requests upon a showing of compelling need by the requester and in such other cases as the agency may determine; (5) the requirement to indicate the extent of any deletion made in released records and publicly available records; (6) the requirement to inform the requester of the estimated volume of material withheld; and (7) the provision for aggregating clearly related requests as a single request when such a request would constitute an "unusual circumstance" justifying an extension of the response time. Although the 1996 Act authorized agencies to promulgate regulations providing for multi-tracking of FOIA requests based on the amount of time or work (or both) involved in processing requests, OFHEO has elected not to propose such regulations at this time. Thus far, the volume of FOIA requests has not been so great that a multi-tracking system is needed.

[1] Pub. L. 104–231, 110 Stat. 3048.

Although not required by the 1996 Act, the proposed regulation would allow requests to be made electronically.

The proposal would also revise the way fees are determined for personnel costs involved in processing a request. Currently, an hourly rate for actual time spent searching, reviewing, and duplicating is determined by the salary of the particular employee performing the work plus 16% of that amount to reflect the cost of benefits. In order to simplify the calculation of fees and provide a more transparent and predictable fee schedule for requesters, OFHEO proposes a method for computing fees that would charge one of three hourly rates for personnel costs associated with responding to a request, depending on whether the employee performing the work is classified as executive, professional, or clerical. An average of the actual compensation (salary and benefits) of all employees of OFHEO in a particular classification would determine the actual hourly fee for that classification. These fees would be adjusted periodically to reflect significant changes in average compensation. The current fee schedule would be available on OFHEO's website (*http://www.ofheo.gov/docs/*) and by mail.

**Section-by-Section Analysis**

*Subpart A—General Definitions*

The definition of "record" in § 1710.2(j) would be amended by inserting the phrase "regardless of form or format," to clarify that a record may be electronic in form.

*Subpart B—Documents and Information Generally*

Subpart B contains general provisions relating to disclosure of documents and information in the possession of OFHEO. Section 1710.7(c) provides that if a requested record is available through routine distribution procedures, OFHEO will first refer the requester to those sources, and only if the requester is not satisfied will OFHEO treat the request as a FOIA request. The proposed regulation adds the OFHEO website, (*http://www.ofheo.gov*) to the list of routine distribution procedures.

*Subpart C—Availability of Records of OFHEO*

Section 1710.11 of subpart C provides, generally, for the release of OFHEO records. Paragraph (a) of this section addresses the release of records in response to requests and paragraph (b) addresses records required to be made publicly available, including current indexes to such records. The proposed regulation separates the provisions of existing § 1710.11 that relate to records required to be made publicly available pursuant to 5 U.S.C. 552(a)(2) from those that relate to the release of records upon request and relocates provisions related to records required to be made publicly available to § 1710.12. The existing provisions of § 1710.12 would be deleted, because they are made unnecessary by other amendments to the regulation. Specific changes to the existing text of §§ 1710.11 and 1710.12 are explained more fully below.

Section 1710.11(a) would be amended to incorporate the substance of § 1710.11(c), which addresses copying costs, and to state that records will be made available in the form or format requested provided they are readily reproducible in that form or format with reasonable effort. "Readily reproducible" is defined to mean, with respect to electronic format, that the requested record or records can be downloaded or transferred intact to a computer disk, or other electronic medium using equipment currently in use by OFHEO.

Section 1710.11(b), which addresses records required to be made publicly available under 5 U.S.C. 552(a)(2), would be redesignated as § 1710.12(a) and amended to: (1) Incorporate the substance of § 1710.11(c) addressing copying costs; (2) state that all publicly available documents are available by mail; (3) state that records created after November 1, 1996, including current indexes to all publicly available records regardless of when created, will be available on OFHEO's website; and (4) add to the list of records publicly available, copies of records that have been released under the FOIA that OFHEO believes are likely to become the subject of subsequent requests for substantially the same records.

Section 1710.11(c), which relates to copying charges, would be deleted and its substance incorporated in §§ 1710.11(a) and 1710.12(a).

Section 1710.11(d), which sets forth FOIA exemptions, would then be redesignated as § 1710.11(b). This allows the regulatory designation for exemptions to be consistent with the statutory designation (*i.e.*, (b)(1), (b)(2), (b)(3), etc. instead of (d)(1), (d)(2), (d)(3), *etc.*) and avoids potential confusion arising from different statutory and regulatory designations.

Section 1710.11(e) would be redesignated as § 1710.1(c).

Section 1710.11(f) would be redesignated as § 1710.11(d) and would be amended to require that the amount of any information deleted from a record released under FOIA be indicated on the released portion of the record (at the place the deletion is made, if technically feasible).

Section 1710.11(g), which relates to permissible deletions in publicly available records, would be redesignated as § 1710.12(b) and amended to state that the extent of any deletions necessary to protect personal privacy will be indicated on the records that are publicly available under redesignated § 1710.12(a), at the place where the deletion is made if technically feasible, unless including the indication would harm an interest protected by the exemption on which the deletion is based.

Section (h) would be redesignated as § 1710.11(e).

Section 1710.12(a) currently states that the indexes that are required to be made available for public inspection and copying under 5 U.S.C. 552(a)(2) are available for inspection and copying at OFHEO's offices during regular business hours. This existing provision would be deleted because it is duplicative of the introductory language of existing § 1710.11(b), which would be redesignated as § 1710.12(a) and amended as described above. The heading of § 1710.12 would be revised to read "Publicly Available Records."

Section 1710.12(b) currently contains the Director's determination that, because of the lack of requests to date for records required to be indexed, such indexes do not need to be published quarterly. It states, however, that the indexes will be provided by mail upon request. Because OFHEO proposes to publish current indexes on its website, this finding is unnecessary and would be deleted. The statement that current indexes are available by mail would be relocated to § 1710.12(a).

Section 1710.13 would be amended to permit requests to be made by facsimile or electronic mail and to require that the request include the submitter's name, address and telephone number, to enable the FOIA Officer to contact the requester about the request in the event that clarification is needed.

Section 1710.14(c) would be amended to state that OFHEO is not required to create a record to respond to a request, replacing a statement that OFHEO will not create a record. While normally OFHEO will not create a record to respond to a request, there may be some circumstances in which it is easier to create a record than to redact a record or records in which the requested information is contained.

Section 1710.15, which prescribes the form and content of FOIA responses, would be amended by adding a

requirement that a notice of denial of a FOIA request (in whole or in part) include an estimate of the volume of requested material withheld, unless providing it would harm an interest protected by the exemption on which the denial is based.

Section 1710.16 sets forth the process for appeal of denials. Paragraph (a) would be amended to clarify that the appeal procedures also apply to denials of requests for expedited processing. Paragraph (b) would be amended to permit appeals to be submitted electronically or by facsimile. Paragraph (g), which sets forth the right to judicial review, currently states that a requester will be deemed to have exhausted his or her administrative remedies if an administrative appeal has been denied or has not been acted on within 20 days of receipt. This paragraph would be amended to state that if OFHEO provides the requester an opportunity to limit the scope of the request or arrange an alternate time for processing the request, the requester's refusal to do either will be considered a factor in determining whether "exceptional circumstances" exist. A showing of exceptional circumstances and due diligence on the part of the agency allows a court in which judicial review is sought to grant a stay to allow the agency additional time to complete its review of the records.

Section 1710.17 of the existing rule describes the time limits within which OFHEO will respond to initial requests and appeals of denials of requests. Paragraph (b) would be amended to state that appeals of denials of expedited processing will be acted on as expeditiously as practicable. Paragraph (c) would be amended by providing that if OFHEO extends the time limit stated in that paragraph and is unable to process the request by the date specified in the notice, OFHEO will offer the requester an opportunity to limit the scope of the request or arrange an alternate time frame for processing the request or a modified request. A new paragraph (d) would be added that provides for aggregating multiple requests involving clearly related matters made by a single requester, or group of requesters acting in concert, when such requests would, if considered as a single request, constitute an "unusual circumstance" justifying an extension of the response time. A new paragraph (e) would be added that provides for expedited processing upon a showing of compelling need by the requester and in such other cases as OFHEO may determine. A request for expedited processing must be accompanied by a statement, certified to be true and correct by the requester, that demonstrates compelling need. To show compelling need, the requester's statement must demonstrate that failure to obtain the requested records could reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or, in the case of a requester whose main professional occupation or activity is the dissemination of information, that there is urgency to inform the public of the government activity involved in the request beyond the public's right to know of government activity generally. The requester must be notified within 10 working days of the disposition of the request, and any appeal of the denial must be acted on expeditiously.

*Subpart D—Fees for Provision of Information*

Subpart D sets forth the fees that will be assessed for services rendered in responding to and processing requests for records under the FOIA. The definition of "direct costs" in § 1710.21(b) would be amended to include the costs of any automated searches and the cost of securing any contract services that may be necessary to respond to a FOIA request. To reflect the revised fee schedule set forth in the amended section 1710.22(b), a reference to that section is substituted for the reference to the actual salary of the person performing the work as a basis for the fees charged.

Section 1710.21(f) would be amended by adding a requirement that the copy of the requested record be provided in the form or format requested, provided it is readily reproducible in that form or format with reasonable effort.

Section 1710.22 would be revised to reflect a new method for computing fees and to make minor technical changes to better accommodate the changes made in response to the 1996 Act. Instead of basing the fee on the actual salary rate of the employee performing the work plus 16% for benefits, OFHEO proposes to charge one of three hourly fees determined by whether the employee performing the work is classified as executive, professional, or clerical. The fee for each category would be determined by the average of the actual salaries and benefits of the employees in that category and would be adjusted periodically to reflect significant changes in average compensation of the class. The "executive" category refers to the senior management of the agency (*i.e.* Director, Deputy Director, Associate Directors, and Deputy Associate Directors). The "clerical" category includes employees performing primarily secretarial, clerical or ministerial tasks. The "professional" category includes all other employees. A current fee schedule would be available on OFHEO's website or by mail. Conforming changes are made in paragraph (b)(1)(ii) of this section, § 1710.23(g), and § 1710.38(a) of this part.

Technical changes to § 1710.22 include substituting "computer equipment" for "central processing unit" and changing the heading in § 1710.22(b)(2) from "Duplication" to "Reproduction" to clarify that the paragraph applies both to duplicating a record in the same format and to reproducing a record in a different format, and by changing the word "reproduction" to "photocopied" in the first sentence to clarify that the per page charge applies only to photocopies of records. Conforming changes are made in § 1710.23.

Throughout the regulation, minor, nonsubstantive syntactical changes are made in the revised sections and citations to sections of the Freedom of Information Act are replaced with citations to the sections of the regulation containing the relevant statutory provisions. Citations to 5 U.S.C. 552 are replaced with "the Freedom of Information Act." These changes will allow the reader to understand the regulatory provisions without referring to the statute.

**Regulatory Impact**

*Executive Order 13132, Federalism*

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the States, on the relationship or distribution of power between the Federal Government and the States, or on the distribution of power and responsibilities among various levels of Government. OFHEO has determined that this rule has no federalism implications that warrant the preparation of a Federalism Assessment in accordance with Executive Order 13132.

*Executive Order 12866, Regulatory Planning and Review*

OMB has determined that rulemakings that amend FOIA regulations to implement the requirements of the Electronic Freedom of Information Act Amendments of 1996 are not "significant" regulations for the purposes of Executive Order 12866.

*Executive Order 12988, Civil Justice Reform*

Executive Order 12988 sets forth guidelines to promote the just and efficient resolution of civil claims and to reduce the risk of litigation to the Federal Government. This final rule meets the applicable standards of sections 3(a) and (b) of Executive Order 12988.

*Unfunded Mandates Reform Act of 1995*

This rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. Consequently, the rule does not warrant the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

OFHEO has considered the impact of the regulation under the Regulatory Flexibility Act. The General Counsel has certified that this final rule will not have significant economic impact on a substantial number of small entities.

*Paperwork Reduction Act*

The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, requires that regulations involving the collection of information receive clearance from OMB. This rule contains no such collection of information requiring OMB approval under the Paperwork Reduction Act. Consequently, no information has been submitted to OMB for review under the Paperwork Reduction Act.

**List of Subjects in 12 CFR Part 1710**

Administrative practice and procedure, Confidential business information, Electronic products, Freedom of information.

Accordingly, for reasons set forth in the preamble, OFHEO proposes to amend 12 CFR part 1710 as follows:

## PART 1710—RELEASING INFORMATION

1. The authority citation for part 1710 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552; 12 U.S.C. 4513, 4522, 4526, 4639; E.O. 12600; 3 CFR, 1987 Comp., p. 235.

### Subpart A—General Definitions

**§ 1710.2 [Amended]**

2. Amend § 1710.2(j) by adding ", regardless of form or format," after "document".

### Subpart B—Documents and Information Generally

**§ 1710.7 [Amended]**

3. Amend the first sentence of § 1710.7(c) by adding "or material offered on OFHEO's website (*http://www.ofheo.gov*)," after the comma following the parenthetical.

### Subpart C—Availability of Records of OFHEO

4. Revise § 1710.11 to read as follows:

**§ 1710.11 Official records of OFHEO.**

(a) OFHEO shall, upon a written request for records that reasonably describes the information or records and is made in accordance with the provisions of this subpart, make the records available as promptly as practicable to any person for inspection and/or copying, except as provided in paragraph (b) of this section. OFHEO may charge a fee determined in accordance with subpart D of this part. OFHEO will make the record available in the form or format requested if the record is readily reproducible in that form or format with reasonable effort. "Readily reproducible" means, with respect to electronic format, that the requested record or records can be downloaded or transferred intact to a computer disk, tape, or other electronic medium using equipment currently in use by OFHEO.

(b) *Records not available.* Except as otherwise provided in this part, or as may be specifically authorized by the Director, the following information and records, or portions thereof, are not available to requesters:

(1) Any record, or portion thereof, that is—

(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy, and

(ii) Is in fact properly classified pursuant to such Executive order.

(2) Any record, or portion thereof, related solely to the internal personnel rules and practices of OFHEO.

(3) Any record, or portion thereof that is specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute—

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Any matter that is a trade secret or that constitutes commercial or financial information obtained from a person and that is privileged or confidential.

(5) Any matter contained in inter-agency or intra-agency memoranda or letters that would not be available by law to a private party in litigation with OFHEO.

(6) Any information contained in personnel and medical files and similar files (including financial files) the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Any records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution or an Enterprise regulated and examined by OFHEO that furnished information on a confidential basis, and, in the case of a record of information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(8) Any matter that is contained in or related to examination, operating, or condition reports that are prepared by, on behalf of, or for the use of OFHEO.

(9) Any geological and geophysical information and data, including maps, concerning wells.

(c) Even if an exemption described in paragraph (b) of this section may be reasonably applicable to a requested record, or portion thereof, OFHEO may elect under the circumstances of any particular request not to apply the exemption to such requested record, or portion thereof. The fact that the exemption is not applied by OFHEO to any requested record, or portion thereof, has no precedential significance as to the application or nonapplication of the exemption to any other requested record, or portion thereof, no matter when the request is received.

(d) Any reasonably segregable portion of a record shall be provided to any person properly requesting such record after deletion of the portions which are exempt under this subpart. The amount of the information deleted shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in paragraph (b) of this section pursuant to which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where the deletion is made.

(e) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

5. Revise § 1710.12 to read as follows:

**§ 1710.12 Publicly available records**

(a) The records described in this paragraph are available for public inspection and copying, for a fee determined in accordance with subpart D of this part, at OFHEO's offices located at 1700 G Street, NW, Fourth Floor, Washington, DC 20552. Records created on or after November 1, 1996, and current indexes to all records described in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this section, including those created before November 1, 1996, are available electronically at *http://www.ofheo.gov/docs/*. The publicly available records include—

(1) Any final opinions issued by OFHEO, as well as orders made in adjudication of cases as set forth in § 1710.9 of subpart B of this part;

(2) Any statements of policy and interpretation that have been adopted by OFHEO and have not been published in the **Federal Register**;

(3) Any OFHEO administrative staff manuals and instructions to staff that affect a member of the public, and that are not exempt from disclosure under the Freedom of Information Act;

(4) Copies of all records released pursuant to this subpart that OFHEO determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

(5) Current indexes to the records described in this paragraph.

(b) To the extent necessary to prevent an invasion of personal privacy, the Director may delete identifying details from a record described in paragraph (a) of this section. In each case of such deletion, the justification will be clearly explained in writing and the extent of such deletion indicated (at the place in the record where the deletion is made if technically feasible), unless including that indication would harm an interest protected by the exemption in § 1710.11(b) pursuant to which the deletion is made.

6. Revise § 1710.13(a) to read as follows:

**§ 1710.13 Requests for records.**

(a) *Addressing requests.* Requests for records in the possession of OFHEO shall be made in writing but may be submitted by regular mail, electronic mail, or facsimile. If the request is sent by regular mail, the request shall be addressed to FOIA Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street NW., Fourth Floor, Washington, DC 20552, with both the envelope and the letter marked "FOIA Request." Electronic mail requests shall be addressed to *foia_office@ofheo.gov*, with "FOIA Request" in the subject line. Requests submitted by fax shall be sent to FOIA Officer at (202) 414–8917 and shall be clearly marked "FOIA Request." All requests shall include the requester's name, address, and telephone number. An improperly addressed request will be deemed not to have been received for purposes of the 20-day time period set forth in § 1710.17(a) of this subpart until it is received, or would have been received with the exercise of due diligence, by the FOIA Officer. Records requested in conformance with this subpart that are not exempt records may be obtained in person, by regular mail, or by electronic mail, as specified in the request, provided the records are readily reproducible in the requested form or format with reasonable effort. Records to be obtained in person will be available for inspection or copying during business hours on a regular business day in the office of OFHEO.

* * * * *

**§ 1710.14 [Amended]**

7. Amend § 1710.14(c) by removing "will not" and adding "is not required to" in its place in the last sentence.

8. Amend § 1710.15(b) by redesignating paragraphs (b)(2) and (b)(3) as (b)(3) and (b)(4) respectively, and adding a new paragraph (b)(2) to read as follows:

**§ 1710.15 Form and content of responses.**

* * * * *

(b) * * *

(2) An estimate of the volume of any requested matter that is withheld, unless providing the estimate would harm an interest protected by the exemption in § 1710.11 (b) pursuant to which the denial was made;

* * * * *

9. Amend § 1710.16 by revising paragraphs (a), (b), and (d) to read as follows:

**§ 1710.16 Appeals of denials.**

(a) *Right of appeal.* If a request, including a request for expedited processing, has been denied in whole or in part, the requester may appeal the denial to: FOIA Appeals Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW, Fourth Floor, Washington DC 20552. Electronic appeals shall be submitted to *foia_appeals_office@ofheo.gov* with "FOIA Appeal_ in the subject line.

(b) *Letter of appeal.* The appeal must be in writing and submitted within 30 days of receipt of the denial letter. The appeal shall be submitted in the manner described in § 1710.13, except that it shall be clearly marked "FOIA Appeal" instead of "FOIA Request." An appeal shall include a copy of the initial request, a copy of the letter denying the request in whole or in part, and a statement of the circumstances, reasons, or arguments advanced in support of disclosure of the requested record. An improperly addressed appeal shall be deemed not to have been received for the purposes of the 20-day time period set forth in § 1710.17(b) until it is received, or would have been received with the exercise of due diligence, by the Appeals Officer.

* * * * *

(d) *Judicial review.* If the denial of the request for records is upheld in whole or in part, or, if a determination on the appeal has not been mailed at the end of the 20-day period or the last extension thereof, the requester is deemed to have exhausted his or her administrative remedies, giving rise to a right of judicial review under 5 U.S.C. 552(a)(4). However, a requester's refusal of OFHEO's offer of an opportunity to limit the scope of the request or arrange

an alternate time frame for processing the request shall be considered as a factor in determining whether "exceptional circumstances" exist, which permits a court in which a requester has sought judicial review, to grant a stay to allow OFHEO to complete its review of the records.

10. Revise § 1710.17 to read as follows:

**§ 1710.17 Time limits.**

(a) *Initial request.* Following receipt of a request for records, the FOIA Officer will determine whether to comply with the request and will notify the requester in writing of his or her determination within 20 days (excluding Saturdays, Sundays, and legal holidays) after receipt of the request.

(b) *Appeal.* A written determination on an appeal submitted in accordance with § 1710.16 of this subpart will be issued within 20 days (excluding Saturdays, Sundays, and legal holidays) after receipt of the appeal. However, determination of an appeal of a denial of expedited processing will be issued as expeditiously as practicable. When a determination cannot be mailed within the applicable time limit, the appeal will nevertheless be processed. In such case, upon the expiration of the time limit, the requester will be informed of the reason for the delay, of the date on which a determination may be expected to be mailed, and of that person's right to seek judicial review. The requester may be asked to forego judicial review until determination of the appeal.

(c) *Extension of time limits.* The time limits specified in either paragraph (a) or (b) of this section may be extended in unusual circumstances after written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be made. If the date specified for the extension is more than 10 days after the initial time allowed for response, OFHEO will provide the requester an opportunity to limit the scope of the request or arrange for an alternate time frame for processing the request. As used in this paragraph, *unusual circumstances* means that there is a need to—

(1) Search for and collect the requested records from facilities that are separate from the office processing the request;

(2) Search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) Consult with another agency having a substantial interest in the determination of the request, or consult with various offices within OFHEO that have a substantial interest in the records requested.

(d) *Related requests.* OFHEO may aggregate multiple requests involving clearly related matters made by a single requester, or a group of requesters acting in concert, if OFHEO reasonably believes that such requests actually constitute a single request that would qualify as an "unusual circumstance."

(e) *Expedited processing.* (1) Upon a demonstration of compelling need by the requester, OFHEO will grant a request for expedited processing of a FOIA request. If a request for expedited processing is granted, OFHEO will give the request priority and process it as soon as practicable.

(2) To show a compelling need for expedited processing, the requester shall provide a statement demonstrating that:

(i) The failure to obtain the requested records could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The requester's main professional occupation or activity is information dissemination and there is a particular urgency to inform the public of government activity involved in the request beyond the public's right to know about government activity generally.

(3) The requester's statement of compelling need must be certified to be true and correct to the best of his or her knowledge and belief and must explain in detail the basis for requesting expedited processing. The formality of the certification required to obtain expedited treatment may be waived by OFHEO in its discretion.

(4) A requester seeking expedited processing will be notified within ten (10) working days of the receipt of the request whether expedited processing has been granted. If the request for expedited processing is denied, OFHEO will act on any appeal expeditiously.

**§ 1710.18 [Amended]**

11. Amend § 1710.18 as follows:

a. In paragraph (b)(1), remove "Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4)" and add in its place "§ 1710.11(b)(4)".

b. In paragraph (c), remove "Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4)" and add in its place "§ 1710.11(b)(4)".

c. In paragraph (d)(2), remove "5 U.S.C. 552(b)(4)" and add in its place "§ 1710.11(b)(4)".

d. In paragraph (e)(1), remove "5 U.S.C. 552(b)(4)" and add in its place "§ 1710.11(b)(4)".

e. In paragraph (i)(3), remove "5 U.S.C. 552" and add in its place "the Freedom of Information Act".

## Subpart D—Fees for Provision of Information

12. Amend § 1710.21 by revising paragraphs (b) and (f) to read as follows:

**§ 1710.21 Fees.**

* * * * *

(b) *Direct costs* means the expenditures actually incurred by OFHEO in searching for and reproducing records to respond to a request for information. In the case of a commercial use request, the term also means those expenditures OFHEO actually incurs in reviewing records to respond to the request. The direct costs shall include the cost of the time of the employee performing the work, determined in accordance with § 1710.22(b)(1)(i), the cost of any computer searches, determined in accordance with § 1710.22(b)(1)(ii), and the cost of operating duplication equipment. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored. Direct costs also include the costs incurred by OFHEO for any contract services that may be needed to respond to a request.

* * * * *

(f) *Reproduce* and *reproduction* means the process of making a copy of a record necessary to respond to a request for information. Such copies take the form of paper copy, microfilm, audio-visual materials, or machine readable documentation, *e.g.*, magnetic tape or disk. The copy provided shall be in the form or format requested, provided the record is readily reproducible in that form or format with reasonable effort, and shall be in a form reasonably usable by the requesters.

* * * * *

13. Revise § 1710.22 to read as follows:

**§ 1710.22 Fees to be charged—general.**

(a) Generally, the fees charged for requests for records pursuant to the Freedom of Information Act will cover the full allowable direct costs of searching for, reproducing, and reviewing records that are responsive to a request for information. Fees will be assessed according to the schedule contained in paragraph (b) of this section and the category of requesters described in § 1710.23 of this subpart for services rendered by OFHEO staff in responding to, and processing requests for, records under this part. Fees

assessed shall be paid by check or money order payable to the Office of Federal Housing Enterprise Oversight.

(b) *Types of charges.* The types of charges that may be assessed in connection with the production of records in response to a FOIA request are as follows:

(1) *Searches.* (i) *Manual searches for records.* OFHEO will charge for actual search time, billed in 15-minute segments, at a rate determined by whether the employee performing the work is classified as clerical, professional, or executive. The hourly fee for each classification is based on the average of the actual compensation (salary and benefits) of employees in the classification and is adjusted periodically to reflect significant changes in the average compensation of the class. The "executive" classification includes the senior management of OFHEO, *i.e.* Director, Deputy Director, Associate Directors and Deputy Associate Directors. The "clerical" classification includes employees performing primarily secretarial, clerical, or ministerial tasks. The "professional" classification includes all positions not classified as "executive" or "clerical." A current fee schedule is available on electronically at http://www.ofheo.gov/docs/ or by regular mail.

(ii) *Computer searches for records.* Requesters will be charged at the actual direct costs of conducting a search using existing programming. These direct costs will include the cost of operating the computer equipment for that portion of operating time that is directly attributable to searching for records and the cost of the time of the employee performing the work, determined as described in paragraph (b)(1)(i) of this section. A charge will also be made for any substantial amounts of special supplies or materials used to contain, present, or make available the output of computers, based upon the prevailing levels of costs to OFHEO for the type and amount of such supplies of materials that are used. Nothing in this paragraph shall be construed to entitle any person or entity, as of right, to any services in connection with computerized records, other than services to which such person or entity may be entitled under the provisions of this subpart.

(iii) *Unproductive searches.* OFHEO may charge search fees even if no records are found that are responsive to the request or if the records found are exempt from disclosure.

(2) *Reproduction.* Records will be photocopied at a rate of $.15 per page. For copies prepared by computer, such as tapes or printouts, the requester will be charged the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction, the actual direct costs of reproducing the record(s) will be charged.

(3) *Review.* Only requesters who are seeking records for commercial use may be charged for time spent reviewing records to determine whether they are exempt from mandatory disclosure. Charges may be assessed only for initial review, *i.e.,* the review undertaken the first time OFHEO analyzes the applicability of a specific exemption to a particular record or portion of a record. Records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a review are properly assessable.

(4) *Other services and materials.* Where OFHEO elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending records by special methods, the actual direct costs of providing the service or materials will be charged.

14. Amend § 1710.23 by revising paragraph (g) to read as follows:

**§ 1710.23 Fees to be charged-categories of requesters.**

* * * * *

(g) For purposes of paragraph (e) of this section, the term "search time" has as its basis, manual search. To apply this term to searches made by computer, OFHEO will determine the hourly cost of operating the computer equipment and the operator's time determined as described in paragraph (b)(1)(i) of § 1710.22. When the cost of the search (including the operator's time and the cost of operating the computer equipment to process a request) equals the equivalent dollar amount of two hours of the time of the person performing the work, *i.e.,* the operator, OFHEO will begin assessing charges for the computer.

## Subpart E—Testimony and Production of Documents in Legal Proceedings in Which OFHEO Is Not a Named Party

15. Amend § 1710.38 by revising paragraph (a) to read as follows:

**§ 1710.38 Fees.**

* * * * *

(a) *Searches for documents.* OFHEO will charge for the actual search time of the employee performing the work, billed in 15-minute segments, as described in § 1710.22(b)(i).

* * * * *

Dated: May 22, 2000.

**Armando Falcon, Jr.,**

*Director, Office of Federal Housing Enterprise Oversight.*

[FR Doc. 00–13194 Filed 5–24–00; 8:45 am]

BILLING CODE 4220–01–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 00–ANM–07]**

## Proposed Modification of Class E Airspace, Wenatchee, WA

**AGENCY:** Federal Aviation Administration (FAA), DOT

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to modify the Wenatchee, WA, Class E airspace to remove the Fancher Field airspace exclusion at the Panghorn Memorial Airport, Wenatchee, WA.

**DATES:** Comments must be received on or before July 10, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manger, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 00–ANM–07, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the Office of the Regional Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manger, Air Traffic Division, Airspace Branch, at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–07, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall