

an insurance company for federal income tax purposes. The IRS believes the issue of what constitutes an insurance company is outside the scope of this regulation, which solely relates to the application of the asset-use test to stock held by foreign insurance companies.

The commentator also expressed concern about the interaction of the proposed regulation with § 1.864-5(a), which provides, generally, that foreign source income, such as a foreign-source dividend or gain, cannot constitute U.S. effectively connected income in circumstances in which a U.S.-source dividend or gain would not constitute U.S. effectively connected income. Accordingly, the commentator is concerned that the rule in the regulations will also expand the category of foreign-source dividends or gains that may constitute effectively connected income. That is true and the Treasury Department and the IRS believe this is the appropriate result.

The IRS invited comments whether the 10 percent threshold provided in the proposed regulation was an appropriate standard for determining whether stock is a portfolio investment. The commentator stated that it was possible for insurance companies to make a strategic investment in a corporation at a level below 10 percent of the vote or value of the corporation, such as by purchasing a special class of shares that conveyed the power to elect directors. The commentator recommended creating a rebuttable presumption of portfolio status.

We do not believe that treating the 10 percent threshold as a rebuttable presumption is appropriate. The 10 percent threshold provides a reasonable method for identifying portfolio stock held by a branch of a foreign life insurance company.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small

Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of this regulation is Sheila Ramaswamy, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Proposed Amendment to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** In § 1.864-4, paragraph (c)(2)(iii)(b) is revised to read as follows:

#### § 1.864-4 U.S. source income effectively connected with U.S. business.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iii) \* \* \*

(b) *Stock held by foreign insurance companies.* This paragraph (c)(2)(iii) shall not apply to stock of a corporation (whether domestic or foreign) held by a foreign insurance company unless the foreign insurance company owns 10 percent or more of the total voting power or value of all classes of stock of such corporation. For purposes of this section, section 318(a) shall be applied in determining ownership, except that in applying section 318(a)(2)(C), the phrase “10 percent” is used instead of the phrase “50 percent.”

\* \* \* \* \*

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: August 9, 2005.

**Eric Solomon,**

*Acting Deputy Assistant Secretary for Tax Policy.*

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## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1610

**RIN 3046-AA75**

### Freedom of Information Act Fee Schedule

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** The Equal Employment Opportunity Commission (EEOC or the Commission) is adopting revisions to its Freedom of Information Act (FOIA) fee schedule. The updated schedule of fees reflects increases in the direct costs incurred by the Commission in responding to requests for records.

**DATES:** October 3, 2005.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Schlageter, Assistant Legal Counsel, or Michelle Zinman, Senior General Attorney at (202) 663-4640 (voice) or (202) 663-7026 (TTY). This notice of final rule is also available in the following formats: large print, Braille, audiotape and electronic file on computer disk. Requests for this notice of final rule in an alternative format should be made to EEOC's Publication Center at 1-800-669-3362.

**SUPPLEMENTARY INFORMATION:** On July 1, 2005, at 70 FR 38060-01, the EEOC published a notice of proposed rulemaking proposing to amend the sections of 29 CFR part 1610 that concern the fees assessed to persons who seek agency records under the FOIA. The changes comply with the Office of Management and Budget's Uniform Freedom of Information Act Fee Schedule and Guidelines, 52 FR 10012 (1987). Comments from the public were due on or before August 31, 2005. No comments were received. Therefore, EEOC is adopting the proposed revisions, without change, as its final rule.

### Regulatory Procedures

#### Executive Order 12866

Pursuant to Executive Order 12866, EEOC has determined that the regulation will not have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State or local tribal governments or communities. Therefore, a detailed cost-benefit assessment of the regulation is not required.

*Paperwork Reduction Act*

This 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, in accordance with the Regulatory Flexibility Act (5 U.S.C. 606(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

*Unfunded Mandates Reform Act of 1995*

This 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 were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

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

Freedom of Information.

For the Commission.

**Cari M. Dominguez,**  
*Chair.*

■ Accordingly, for the reasons set forth in the preamble, EEOC amends 29 CFR part 1610 as follows:

**PART 1610—AVAILABILITY OF RECORDS**

■ 1. The authority citation for 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. Section 1610.1 is amended by adding paragraphs (e) through (i) as follows:

**§ 1610.1 Definitions.**

\* \* \* \* \*

(e) *Direct costs* refers to those expenses that EEOC actually incurs in searching for and duplicating (and, in the case of commercial requesters, reviewing) records to respond to a request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and

heating or lighting of the facility in which the records are stored.

(f) *Search* refers to the time spent looking for and retrieving material that is responsive to a request. It includes page-by-page or line-by-line identification of information within documents and also includes reasonable efforts to locate and retrieve information from records maintained in electronic formats. EEOC employees should ensure that searching for materials is done in the most efficient and least expensive manner reasonably possible. For example, employees shall not search line-by-line when merely duplicating a document would be quicker and less expensive.

(g) *Duplication* refers to the process of making a copy of a record or document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, electronic formats (for example magnetic tape or disk), among others. Employees shall honor a requester's specified preference of format of disclosure if the record is readily reproducible with reasonable efforts in the requested format by the office responding to the request.

(h) *Attestation* refers to the authentication of copies of Commission documents by an affidavit or unsworn declaration from the records custodian without the Commission Seal.

(i) *Certification* refers to the authentication of copies of Commission documents by an affidavit or unsworn declaration from the records custodian under the Commission Seal.

■ 3. Section 1610.15(c) is revised to read as follows:

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

\* \* \* \* \*

(c) Except as otherwise provided, the following specific fees for direct costs shall be applicable with respect to services rendered to members of the public under this subpart:

(1) For manual search and review time:

(i) By clerical personnel—at the rate of \$5.00 per quarter hour.

(ii) By paralegals—at the rate of \$9.00 per quarter hour.

(iii) By professional personnel—at the rate of \$10.00 per quarter hour.

(iv) By managers—at the rate of \$17.50 per quarter hour.

(v) By SES employees—at the rate of \$20.00 per quarter hour.

(2) For computer searches of records, requesters will be charged at the actual direct cost of providing the service. This includes the operator/programmer salary apportionable to the search based

on the rates listed in paragraph (c)(1) of this section.

(3) For copies made by photocopy—\$0.15 per page (maximum of 10 copies). For copies prepared by computer, such as tapes or printouts, EEOC will charge the direct cost incurred by the agency, including operator time. For other forms of duplication, EEOC will charge the actual costs of that duplication.

(4) For attestation of documents—\$25.00 per authenticating affidavit or declaration. Additionally, there may be search and review charges assessed in accordance with the rates listed in paragraph (c)(1) of this section.

(5) For certification of document—\$50.00 per authenticating affidavit or declaration. Additionally, there may be search and review charges assessed in accordance with the rates listed in paragraph (c)(1) of this section.

(6) For each signed statement of negative result of search for record—\$10.00. Additionally, there may be search charges assessed in accordance with the rates listed in paragraph (c)(1) of this section.

(7) For retrieval of records from a Federal Records Center—the amount charged to EEOC for retrieval of such records.

(8) All other direct costs of search, review, duplication or delivery (other than normal mail), shall be charged to the requester as appropriate in the same amount as incurred by the agency.

\* \* \* \* \*

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[Region 2 Docket No. R02-OAR-2005-NY-0003, FRL-7971-5]

**Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency is approving a revision to the New York State Implementation Plan (SIP) concerning New York's permitting program. The SIP revision consists of amendments to Title 6 of the New York Code, Rules and Regulations, Part 201, "Permits and Certificates." The intended effect of this approval is to incorporate administrative changes to New York's permitting program into the SIP.