

corresponding changes to the technical specifications.

The NRC also published a companion proposed rule on May 7, 2010 (75 FR 25120). A correction notice was published on May 17, 2010 (75 FR 27401), to correctly specify an effective date of July 21, 2010. The direct final rulemaking and the companion proposed rulemaking were published in the **Federal Register** on different dates instead of being published concurrently on the same date.

The rulemaking is being withdrawn because the applicant identified that a certain TS for Boral characterization was not written precisely and in a manner that could be readily and demonstrably implemented. Specifically, the requirements for meeting TS 4.3.1, "Neutron Absorber Tests," which references Section 9.1.7.3 of the SAR, are not precisely quantified in that it requires that "the average size of the boron carbide particles in the finished product is approximately 50 microns after rolling." Use of language such as "average" and "approximately" is imprecise, and no ranges or statistical variations are specified.

The NRC will publish a revised direct final rule along with its companion proposed rule after the necessary revisions to the TS are made.

Dated at Rockville, Maryland, this 8th day of July, 2010.

For the Nuclear Regulatory Commission.

**R.W. Borchardt,**

*Executive Director for Operations.*

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**BILLING CODE 7590-01-P**

## OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

### 29 CFR Part 2201

#### Regulations Implementing the Freedom of Information Act

**AGENCY:** Occupational Safety and Health Review Commission.

**ACTION:** Final rule.

**SUMMARY:** The Occupational Safety and Health Review Commission (OSHRC) revises its regulations implementing the Freedom of Information Act (FOIA). The regulations have been updated to reflect the amendments to the FOIA from the Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act), as well as changes in OSHRC's own policies and procedures.

**DATES:** This rule is effective on August 16, 2010.

#### FOR FURTHER INFORMATION CONTACT:

Jennifer D. Marr, FOIA Public Liaison, or Robert M. Kahn, Office of the General Counsel, *via telephone:* (202) 606-5410, or *via e-mail:* [jmarr@oshrc.gov](mailto:jmarr@oshrc.gov) or [rkahn@oshrc.gov](mailto:rkahn@oshrc.gov).

**SUPPLEMENTARY INFORMATION:** OSHRC is publishing a final rule revising its regulations implementing the FOIA. On April 28, 2010, OSHRC published for comment a notice of proposed rulemaking (NPRM) in the **Federal Register** that proposed revisions to OSHRC's regulations at 29 CFR part 2201, implementing the FOIA, 5 U.S.C. 552, as amended. 75 FR 22320, Apr. 28, 2010. Interested persons were afforded an opportunity to participate in the rulemaking process through submission of written comments on the NPRM. OSHRC received no public comments. OSHRC has reviewed the proposed regulations and adopts them in this final rule.

#### I. Background

OSHRC makes several substantive and technical revisions to its regulations implementing the FOIA (5 U.S.C. 552, as amended) that fall within two general categories. First, OSHRC modifies its existing FOIA regulations to reflect the amendments to the FOIA contained in the OPEN Government Act, Public Law 110-175, 121 Stat. 2524. The OPEN Government Act amended various FOIA administrative procedures, such as when an agency may toll the statutory time for responding to FOIA requests and how to indicate exemptions authorizing deletion of materials under the FOIA on the responsive record.

Second, as a result of the Chief FOIA Officer's review of OSHRC's FOIA operations, OSHRC revises its regulations to further clarify its policies and procedures relating to the processing of FOIA requests and the administration of its FOIA operations. These revisions include changes to the description of the OSHRC reading rooms and to OSHRC fee policies.

#### II. Section-by-Section Analysis

In 29 CFR 2201.3, OSHRC revises the description of the Chief FOIA Officer's duties in paragraph (a) to reflect the more detailed description of those duties set forth under the OPEN Government Act. 5 U.S.C. 552(k). Additionally, OSHRC adds a description of the FOIA Public Liaison's duties in paragraph (c) to reflect the responsibilities described in the OPEN Government Act. 5 U.S.C. 552(a)(6)(B)(ii), (l). In paragraph (d) OSHRC revises the FOIA Service Center's contact information. OSHRC

also revises paragraph (d) to add information about status requests provided by the FOIA Service Center. 5 U.S.C. 552(a)(7)(B).

In 29 CFR 2201.4, OSHRC revises paragraph (c) to clarify the type of records publicly available in the e-FOIA Reading Room and where to access them. OSHRC changes paragraph (d) to explain the procedures for using OSHRC's on-site e-FOIA Reading Room. OSHRC also revises its definition of "Representative of the news media, or news media requester" in paragraph (e) to reflect the definition provided in the OPEN Government Act. 5 U.S.C. 552(a)(4)(A)(ii). OSHRC also adds definitions of "Exceptional circumstances" and "Record" to paragraph (e), based on the description of these terms in the OPEN Government Act. 5 U.S.C. 552(a)(4)(A)(viii), (f)(2).

In 29 CFR 2201.6, OSHRC revises paragraph (a) to add the tolling requirements set forth in the OPEN Government Act. 5 U.S.C. 552(a)(6)(A)(ii). Following the new requirement in the OPEN Government Act, OSHRC revises its procedure for making deletions within records as set forth in paragraph (g) to include, where technically feasible, marking the exemption under which each deletion is made. 5 U.S.C. 552(b). OSHRC also creates a new paragraph (h) describing how OSHRC assigns tracking numbers to incoming FOIA requests and notifies a requester of the tracking number assigned to the request. 5 U.S.C. 552(a)(7)(A). In addition, OSHRC creates a new paragraph (i) to indicate that when searching for responsive records, OSHRC will ordinarily consider only records in its possession as of the date it begins its search. Finally, OSHRC makes minor grammatical corrections to paragraphs (c) and (d)(3).

In 29 CFR 2201.7, OSHRC revises the copying fee provision in paragraph (b)(1) and the search fee provision in paragraph (b)(2) to reflect the new requirements for each in the OPEN Government Act. 5 U.S.C. 552(a)(4)(A)(viii). OSHRC revises paragraph (e) to consider requests for which fees are likely to exceed \$25 received only after the requester agrees to pay the actual or estimated fee.

In 29 CFR 2201.10, OSHRC updates paragraph (a) to reflect the new maintenance of statistics requirements in the OPEN Government Act. 5 U.S.C. 552(e).

#### III. Analysis of Comments Received

OSHRC received no comments to the proposed rules.

#### IV. Statutory and Executive Order Reviews

*Executive Orders 12866 and 13132, and the Unfunded Mandates Reform Act of 1995:* OSHRC is an independent regulatory agency and, as such, is not subject to the requirements of E.O. 12866, E.O. 13132, or the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

##### *Paperwork Reduction Act*

OSHRC has determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, does not apply because these rules do not contain any information collection requirements that require the approval of OMB.

##### *Regulatory Flexibility Act*

The Commission has determined under the Regulatory Flexibility Act, 5 U.S.C. 606(b), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2), and has certified to the Chief Counsel for Advocacy of the Small Business Administration, that these rules will not have a significant economic impact on a substantial number of small entities. The Commission makes a large amount of information available to the public, including small entities, on its Web site pursuant to the FOIA and other public disclosure requirements. In this regard, the Commission has available on its Web site copies of the Commission's procedural rules, final Commission decisions since 1972, final administrative law judges' decisions since 1993, administrative law judges' decisions pending Commission review, strategic plans, performance reports, budget reports, as well as other information that may be of interest to the public. Small entities, like any other individual or entity, may request under the FOIA other information from the Commission's files that has not been generally made available to the public. The FOIA establishes a fee structure to cover the direct costs of the government in searching for, reviewing, and duplicating requested records. The Commission's final rule is fully consistent with the FOIA's requirements. For these reasons, a Regulatory Flexibility Statement and Analysis has not been prepared.

##### *Congressional Review Act*

In compliance with the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), this rule has been transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804,

because it is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

##### List of Subjects in 29 CFR Part 2201

Freedom of information.

Signed at Washington, DC, on July 9, 2010.

**Thomasina V. Rogers,**  
Chairman.

■ For the reasons set forth in the preamble, OSHRC amends 29 CFR part 2201 as follows:

#### **PART 2201—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT**

■ 1. The authority citation for part 2201 is revised to read as follows:

**Authority:** 29 U.S.C. 661(g); 5 U.S.C. 552.

■ 2. Section 2201.3 is amended by revising paragraphs (a), (c), and (d) to read as follows:

##### **§ 2201.3 Delegation of authority and responsibilities.**

(a) The Chairman delegates to the Chief FOIA Officer the authority to act upon all requests for agency records. The Chief FOIA Officer shall, subject to the authority of the Chairman:

(1) Have agency-wide responsibility for efficient and appropriate compliance with this section;

(2) Monitor implementation of the FOIA throughout the agency and keep the Chairman and the Attorney General appropriately informed of the agency's performance in implementing this section;

(3) Recommend to the Chairman such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve implementation of this section;

(4) Review and report to the Attorney General, through the Chairman, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing this section; and

(5) Facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency's FOIA handbook, and the agency's annual report on this section, and by providing an overview,

where appropriate, of certain general categories of agency records to which those exemptions apply.

\* \* \* \* \*

(c) The Chief FOIA Officer shall designate the FOIA Public Liaison(s), who shall serve as the supervisory official(s) to whom a FOIA requester can raise concerns about the service the FOIA requester has received following an initial response. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

(d) OSHRC establishes a FOIA Requester Service Center that shall be staffed by the FOIA Disclosure Officer(s) and FOIA Public Liaison(s). The address and telephone number of the FOIA Requester Service Center is 1120 20th Street, NW., 9th Floor, Washington, DC 20036-3457, (202) 606-5700. The FOIA Requester Service Center is available to provide information about the status of a request to the person making the request using the assigned tracking number (as described in § 2201.6(h)), including:

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

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

■ 3. Section 2201.4 is amended:

■ a. By revising paragraphs (c) introductory text, (c)(1), (3), (4), and (5);

■ b. By revising paragraph (d); and

■ c. In paragraph (e) by revising the definition of "Representative of the news media, or news media requester" and adding, in alphabetical order, the definitions "Exceptional circumstances" and "Record".

The revisions and additions read as follows:

##### **§ 2201.4 General policy and definitions.**

\* \* \* \* \*

(c) *Record availability at the OSHRC e-FOIA Reading Room.* The records of Commission activities are publicly available for inspection and copying, and may be accessed electronically through the Commission's Web site at [http://www.oshrc.gov/foia/foia\\_reading\\_room.html](http://www.oshrc.gov/foia/foia_reading_room.html). These records include:

(1) Final decisions, including concurring and dissenting opinions, remand orders, as well as Administrative Law Judge decisions pending OSHRC review, issued as a result of adjudication of cases;

\* \* \* \* \*

(3) Agency policy statements and interpretations adopted by OSHRC and

not published in the **Federal Register**, if any;

(4) Administrative staff manuals that affect a member of the public, if any;

(5) Copies of records that have been released to a person under the FOIA that, because of the subject matter, the Commission determines have become or are likely to become the subject of subsequent requests for substantially the same records; and

\* \* \* \* \*

(d) *Record availability at the OSHRC on-site e-FOIA Reading Room.* Any member of the public may, upon request, access OSHRC's e-FOIA Reading Room via a computer terminal at the OSHRC National Office, located at 1120 20th St., NW., 9th Floor, Washington, DC 20036-3457. Such a request must be made in writing to the FOIA Requester Service Center, and indicate a preferred date and time for the requested access. OSHRC reserves the right to arrange a different date and time with the requester, if necessary.

(e) \* \* \*

*Exceptional circumstances* does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

\* \* \* \* \*

*Record* means any information that would be an OSHRC record subject to the requirements of the FOIA when maintained by OSHRC in any format, including an electronic format, and any such OSHRC record that is maintained for OSHRC by an entity under Government contract, for the purposes of records management.

*Representative of the news media, or news media requester* is 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. For purposes of this definition, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by, or free distribution to, the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example the adoption of the electronic dissemination of newspapers

through telecommunications services), such alternative media shall be considered to be news-media entities. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but OSHRC shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

\* \* \* \* \*

■ 4. Section 2201.6 is amended by revising paragraphs (a), (c), (d)(3), and (g), and adding paragraphs (h) and (i) to read as follows:

**§ 2201.6 Responses to requests.**

(a) *Responses within 20 working days.* The FOIA Disclosure Officer will either grant or deny a request for records within 20 working days after receiving the request. The 20-day period shall not be tolled by the agency except in the following cases. In these cases, the agency's receipt of the requester's response to the agency's request for information or clarification ends the tolling period.

(1) The agency may toll the 20-day period once while awaiting information that it has reasonably requested from the requester under this section. The agency may make more than one request to the requester for information not related to issues regarding fee assessment, but can only toll the 20-day period once; or

(2) The agency may toll the 20-day period as many times as are necessary to clarify any issues regarding fee assessment.

\* \* \* \* \*

(c) *Additional extension.* The FOIA Disclosure Officer shall notify the requester in writing when it appears that a request cannot be completed within the allowable time (20 working days plus a 10-working-day extension). In such instances, the requester will be provided an opportunity to limit the scope of the request so that it may be processed in the time limit, or to agree to a reasonable alternative time frame for processing.

(d) \* \* \*

(3) A requester should assume, unless otherwise notified by the Commission, that its request is in the first track of processing. The Commission will notify a requester when its request is placed in

the second track for processing and that notification will include the estimated time for completion. Should subsequent information substantially change the estimated time to process a request, the requester will be notified in writing. In the case of a request expected to take more than 30 working days for action, a requester may modify the request to allow it to be processed faster or to reduce the cost of processing. Partial responses may be sent to a requester as documents are obtained by the FOIA Disclosure Officer from the supplying offices.

\* \* \* \* \*

(g) *Deletions.* The FOIA Disclosure Officer shall provide to the requester in writing a justification for deletions within records. The amount of information deleted from records shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption under which the deletion is made. If technically feasible, the place in the record where the deletion is made, and the exemption under which the deletion is made, shall be marked.

(h) *Tracking numbers.* The FOIA Disclosure Officer shall assign an individualized tracking number to each request received for processing and provide to each person making a request the tracking number assigned to the request. For any response that will take ten or more days to process, OSHRC will send the requester a postcard indicating the request's receipt date and its assigned tracking number.

(i) *Determining responsive records.* In determining which records are responsive to a request, OSHRC ordinarily will include only records in its possession as of the date it begins its search for them. If any other date is used, OSHRC shall inform the requester of that date.

■ 5. Section 2201.7 is amended by  
■ a. Revising paragraphs (b)(1) and (b)(2) introductory text;  
■ b. Adding paragraph (b)(2)(v); and  
■ c. Revising paragraph (e).

The revisions and addition read as follows:

**§ 2201.7 Fees for copying, searching, and review.**

\* \* \* \* \*

(b) \* \* \*

(1) *Copying fee.* The fee per copy of each page shall be calculated in accordance with the per-page amount established in OSHRC's fee schedule. See Appendix A to this part. For other forms of duplication, direct costs of producing the copy, including operator time, shall be calculated and assessed.

Copying fees shall not be charged for the first 100 pages of copies unless the copies are requested for a commercial use. No copying fee shall be charged for educational, scientific, or news media requests if the agency fails to comply with any time limit in § 2201.6, provided that no unusual or exceptional circumstances (as those terms are defined in § 2201.6(b) and § 2201.4(e), respectively) apply to the processing of the request.

(2) *Search fee.* Search fees shall be calculated in accordance with the amounts established in OSHRC's fee schedule. See Appendix A to this part. Commercial requesters shall be charged for all search time, except as described below. Search fees shall be charged even if the responsive documents are not located or if they are located but withheld on the basis of an exemption. However, search fees shall be limited or not charged as follows:

\* \* \* \* \*

(v) *Failure to comply with time limits.* No search fee shall be charged if the agency fails to comply with any time limit in § 2201.6, provided that no unusual or exceptional circumstances (as those terms are defined in § 2201.6(b) and § 2201.4(e), respectively) apply to the processing of the request.

\* \* \* \* \*

(e) *Fees likely to exceed \$25.* If the total fee charges are likely to exceed \$25, the FOIA Disclosure Officer shall notify the requester of the estimated amount of the charges, unless the requester has indicated a willingness to pay fees up to the estimated amount. The notification shall offer the requester an opportunity to confer with the FOIA Disclosure Officer to reformulate the request to meet the requester's needs at a lower cost. In cases in which a requester has been notified that actual or estimated fees amount to more than \$25, the request shall not be considered received and further work shall not be done on it until the requester agrees to pay the actual or estimated total fee. Any such agreement shall be memorialized in writing.

\* \* \* \* \*

- 6. Section 2201.10 is amended by:
  - a. Revising paragraphs (a)(3), (5), and (7);
  - b. Redesignating paragraphs (a)(8), (10), and (11) as paragraphs (a)(16) through (a)(18);
  - c. Removing paragraph (a)(9); and
  - d. Adding new paragraphs (a)(8) through (a)(15).

The revisions and additions read as follows:

**§ 2201.10 Maintenance of statistics.**

(a) \* \* \*

(3) A complete list of all statutes that the agency used to authorize the withholding of information under 5 U.S.C. 552(b)(3), which exempts information that is specifically exempted from disclosure by other statutes and the number of occasions on which each statute was relied upon;

\* \* \* \* \*

(5) The number of requests for records pending before the agency as of September 30 of the preceding year, and the median and average number of days that these requests had been pending before the agency as of that date;

\* \* \* \* \*

(7) The median number of days taken by the agency to process different types of requests, based on the date on which the requests were received by the agency;

(8) The average number of days for the agency to respond to a request beginning on the date on which the request was received by the agency, the median number of days for the agency to respond to such requests, and the range in number of days for the agency to respond to such requests;

(9) Based on the number of business days that have elapsed since each request was originally received by the agency—

(i) The number of requests for records to which the agency has responded with a determination within a period up to and including 20 days, and in 20-day increments up to and including 200 days;

(ii) The number of requests for records to which the agency has responded with a determination within a period greater than 200 days and less than 301 days;

(iii) The number of requests for records to which the agency has responded with a determination within a period greater than 300 days and less than 401 days; and

(iv) The number of requests for records to which the agency has responded with a determination within a period greater than 400 days;

(10) The average number of days for the agency to provide the granted information beginning on the date on which the request was originally filed, the median number of days for the agency to provide the granted information, and the range in number of days for the agency to provide the granted information;

(11) The median and average number of days for the agency to respond to administrative appeals based on the date on which the appeals originally were received by the agency, the highest number of business days taken by the agency to respond to an administrative

appeal, and the lowest number of business days taken by the agency to respond to an administrative appeal;

(12) Data on the 10 active requests with the earliest filing dates pending at the agency, including the amount of time that has elapsed since each request was originally received by the agency;

(13) Data on the 10 active administrative appeals with the earliest filing dates pending before the agency as of September 30 of the preceding year, including the number of business days that have elapsed since the requests were originally received by the agency;

(14) The number of expedited review requests that are granted and denied, the average and median number of days for adjudicating expedited review requests, and the number adjudicated within the required 10 days;

(15) The number of fee waiver requests that are granted and denied, and the average and median number of days for adjudicating fee waiver determinations;

\* \* \* \* \*

[FR Doc. 2010-17369 Filed 7-15-10; 8:45 am]

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[Docket No. USCG-2010-0621]

RIN 1625-AA08

**Special Local Regulations for Marine Events; Port Huron to Mackinac Island Sail Race**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard will enforce a special local regulation for the annual Port Huron to Mackinac Island Sail Race. This action is necessary to safely control vessel movements in the vicinity of the race starting point and provide for the safety of the general boating public and commercial shipping. During this period, no person or vessel may enter the regulated area without the permission of the Coast Guard Patrol Commander (PATCOM).

**DATES:** This rule is effective from 9 a.m. through 4 p.m. on July 17, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-XXXX and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting