

daily feed ration; administer concentrate solution or soluble powder as a drench or in drinking water as follows:

(i) *Indications for use and amounts*—(A) As an aid in the prevention of coccidiosis caused by *Eimeria bovis* and *E. zuernii*, administer 5 mg per kilogram (mg/kg) body weight in drinking water for 21 days during periods of exposure or when experience indicates that coccidiosis is likely to be a hazard.

(B) As an aid in the treatment of coccidiosis caused by *E. bovis* and *E. zuernii*, administer 10 mg/kg body weight in drinking water for 5 days.

(ii) *Limitations*. Withdraw 24 hours before slaughter. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Use as the sole source of amprolium.

**§ 520.100a [Removed]**

■ 3. Remove § 520.100a.

**§ 520.100b [Removed]**

■ 4. Remove § 520.100b.

**§ 520.100c [Removed]**

■ 5. Remove § 520.100c.

Dated: September 18, 2006.

**Bernadette A. Dunham,**

*Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 06–8275 Filed 9–26–06; 8:45 am]

**BILLING CODE 4160–01–S**

## 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), 5 U.S.C. 552, as amended. The regulations contain new provisions to comply with Executive Order 13392. In addition, the regulations have been updated to reflect changes in OSHRC's policies and procedures. As a result of these revisions, the public will have a clearer understanding of OSHRC's policies and procedures implementing the FOIA.

**DATES:** This rule is effective on October 27, 2006.

**FOR FURTHER INFORMATION CONTACT:** Jin H. Kim, Attorney-Advisor, Office of the General Counsel, 1120 20th Street, NW.,

Ninth Floor, Washington, DC 20036–3457. Telephone: (202) 606–5410. Fax: (202) 606–5417. E-mail: [jkim@oshrc.gov](mailto:jkim@oshrc.gov).

**SUPPLEMENTARY INFORMATION:** OSHRC is publishing a final rule for regulations implementing the FOIA. On July 21, 2006, 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. 71 FR 41384, Jul. 21, 2006. 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 has only changed the regulatory text in this final rule to update the contact information in 29 CFR 2201.3(d), correct the cross-references in 29 CFR 2201.4(c) and (d), and add cross-references to Appendix A in 29 CFR 2201.7. All other provisions in the regulatory text are the same as in the NPRM, and OSHRC adopts them in this final rule.

#### I. Background

As mentioned in the preamble to the proposed regulations, OSHRC is making several substantive and technical revisions to its regulations to (1) Comply with Executive Order 13392 (E.O. 13392), 70 FR 75373, Dec. 19, 2005, (2) reflect recent changes in OSHRC's policies and procedures as they relate to the processing of FOIA requests, and (3) make purely technical or clarifying changes in phrasing and nomenclature. 71 FR 41384, Jul. 21, 2006.

OSHRC's revisions to its FOIA regulations, including the addition of new provisions and the modification of existing provisions, comply with the requirements of E.O. 13392. See 70 FR at 41384–85. In issuing E.O. 13392, the President directed each agency to ensure that its FOIA operations are “citizen-centered” and “results-oriented.” In order to achieve these goals, E.O. 13392 requires each agency head to designate a Chief FOIA Officer, who has agency-wide responsibility for the efficient and appropriate compliance with the FOIA. As part of his or her duties under E.O. 13392, the Chief FOIA Officer must review the agency's FOIA operations and identify any areas for improvement. In addition, E.O. 13392 requires agencies to establish FOIA Requester Service Centers to enable any FOIA requester to seek information concerning the status of his or her FOIA request, as well as appropriate information about the agency's FOIA response. E.O. 13392

further requires agencies to designate, as part of the FOIA Requester Service Center, FOIA Public Liaisons to serve as the supervisory officials to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the FOIA Requester Service Center, following an initial response to the FOIA request. Therefore, OSHRC revises its regulations implementing the FOIA to comply fully with E.O. 13392.

Furthermore, based on the Chief FOIA Officer's review of OSHRC's FOIA operations, OSHRC also proposed revisions to its rule to reflect recent changes in OSHRC's policies and procedures as they relate to the processing of FOIA requests. As mentioned in the preamble to the NPRM, OSHRC moved all FOIA processing from its Office of Administration to the Office of the General Counsel at the beginning of this fiscal year (FY 2006). 71 FR at 41385. Currently, paralegals and attorneys, who have received specialized FOIA training, are now handling all FOIA requests. These revised regulations reflect changes in OSHRC's policies and procedures, which will make the processing of FOIA requests more efficient and responsive.

Finally, as specified in the preamble to the NPRM, OSHRC revises its regulations to correct grammatical errors, change nomenclature, renumber sections and paragraphs as a result of deleting and adding sections and paragraphs to the regulations, update regulatory cross-references, and clarify sentences. 71 FR at 41384–87.

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

OSHRC revises § 2201.1 to correct a grammatical error in the section heading and to add abbreviations for OSHRC and FOIA. OSHRC has also made similar changes throughout the regulations and corrected other grammatical errors, as well as changed nomenclature, such as FOIA Disclosure Officer, and updated regulatory cross-references. 71 FR at 41384–88.

In § 2201.2, OSHRC adds a sentence to the end of the section to provide additional details about the designation of one of the Commissioners as the Chairman and his responsibilities for the administrative operations of the Commission. This is consistent with section 12(e) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 661(e).

OSHRC revises the delegation of FOIA-related duties in § 2201.3 to reflect the changes required by E.O. 13392. First, in paragraph (a), the Chairman delegates to the Chief FOIA

Officer the authority to act on all requests for agency records. Further, reference to the alternate designations is removed. Second, in paragraph (b), the Chief FOIA Officer designates the agency's FOIA Disclosure Officer(s) to process all FOIA requests. Third, in paragraph (c), the Chief FOIA Officer designates the FOIA Public Liaison(s) to address any concerns about the service a FOIA requester has received following an initial response by the agency. Finally, in paragraph (d), OSHRC identifies the FOIA Disclosure Officer(s) and FOIA Public Liaison(s) as serving in the agency's FOIA Requester Service Center located at OSHRC's national office in Washington, DC, and provides the address and telephone number to contact the FOIA Requester Service Center. Since publishing the NPRM, OSHRC decided to add the specific room number of the FOIA Requester Service Center in paragraph (d) to provide FOIA requesters more specific information about the location of the FOIA Requester Service Center. In addition, OSHRC is changing the telephone number of the FOIA Requester Service Center to (202) 606-5700, which will be dedicated only to FOIA-related matters. Under OSHRC's new procedures, the FOIA Disclosure Officer(s) will handle all initial responses to FOIA requests. The FOIA Public Liaison(s), who must function in a supervisory capacity, will ensure appropriate communication between FOIA requesters and FOIA Disclosure Officer(s). These changes will help ensure that OSHRC's FOIA operations are "citizen-centered" and "results-oriented" as directed in E.O. 13392.

In addition to the changes discussed above, OSHRC eliminates the language in § 2201.3 that referred to the handling of requests for copies of individual decisions because copies of Commission decisions have been placed on OSHRC's Web site for the public's convenience, pursuant to the Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104-231, 110 Stat. 3048 (codified as amended in 5 U.S.C. 552) (e-FOIA). OSHRC further eliminates the language in § 2201.3 that referred to the handling of "all other information requests" because this information is covered under revised § 2201.5(a); thus, its inclusion in § 2201.3 is redundant.

In § 2201.4, OSHRC adds new paragraphs (c)(3) and (c)(4) to reflect the language of the FOIA and corrects cross-references within the section consistent with the statute. See 5 U.S.C. 552(a)(2). OSHRC also adds a new paragraph (e) to provide definitions relevant to 29 CFR part 2201 that are consistent with other agencies' FOIA regulations. As

noted in the preamble to the NPRM, these nine definitions clarify certain FOIA terminology but in no way change how OSHRC processes FOIA requests. 71 FR at 41385. The terms include: "commercial use request," "direct costs," "duplication," "education institution," "noncommercial scientific institution," "representative of the news media, or media requester," "review," "search," and "working day." The terms have been defined using standard language consistent with the statute, including the incorporation of minor technical modifications from the FOIA regulations of several other government agencies, including the Department of Justice (28 CFR part 16) and the Office of Management and Budget (OMB) (5 CFR part 1303). OSHRC also includes a definition for "working day," which is not defined in other government agencies' FOIA regulations, in order to clarify the FOIA's calculation of time.

OSHRC removes the text of § 2201.5 in its entirety because it is no longer necessary. OSHRC had a policy of providing a hard copy of a single decision before the advent of the Internet and e-FOIA. Pursuant to e-FOIA, OSHRC has placed Commission decisions on OSHRC's Web site, <http://www.oshrc.gov>, for the public's convenience. Therefore, OSHRC removes § 2201.5 in its entirety.

In new § 2201.5, formerly § 2201.6, OSHRC eliminates paragraph (a) in its entirety because OSHRC has placed most of this information on its Web site for the public's convenience pursuant to e-FOIA. In new paragraph (a), formerly paragraph (b), which also has a new paragraph heading, "Requests for information," OSHRC modifies the language to clearly delineate the procedures for making FOIA requests. All requests for information must be made in writing with "Freedom of Information Act Request" printed on the request's envelope or cover as well as the request itself, and addressed to the FOIA Disclosure Officer. In addition, FOIA requests must describe the record requested to the fullest extent possible and specify the preferred form or format of the response. As provided in the revised regulation, OSHRC shall try to accommodate requesters as to form or format when possible, and if no form or format is specified, OSHRC shall respond in the form or format that is most accessible to OSHRC. This new language is easier to understand and clarifies the procedures for requesting records. Further, OSHRC deletes paragraph (d) (Specificity required) because information in this deleted paragraph is now incorporated in paragraph (a) of this section.

In new § 2201.6, formerly § 2201.7, OSHRC deletes in the introductory text of paragraph (b) the phrase "telephonic notice" when discussing "extensions of response time in usual circumstances" beyond the allowable time because the FOIA requires written notice under 5 U.S.C. 552(a)(6)(B). Further, OSHRC modifies paragraph (b)(1) to reflect the precise locations of OSHRC records—OSHRC's national office, regional offices and an off-site storage. In paragraph (b)(3), OSHRC deletes the phrase "or among two or more components within the Commission having substantial subject-matter interest in the request" because this phrase is unnecessary to OSHRC's FOIA operations. For consistency purposes, OSHRC will now require the FOIA Disclosure Officer(s) to provide written notice to FOIA requesters for additional extensions of time and whenever the estimated time to process a FOIA request substantially changes in paragraphs (c) and (d)(3), respectively. By providing written notice to requesters in these circumstances, OSHRC believes it would improve OSHRC's communication with requesters.

In paragraph (d) of § 2201.6, formerly § 2201.7, OSHRC renames the heading from "multitrack processing" to "two-track processing" to describe more accurately OSHRC's processing of FOIA requests. Further, in order to streamline the FOIA rules and make them more user-friendly, OSHRC deletes paragraph (e)(4), as well as paragraph (g) and incorporates that information in new § 2201.9 (Appeal of denials). New § 2201.9 will apply to all appeals of denials related to FOIA requests (*i.e.*, requests for records, requests for expedited processing, and/or requests for fee waiver).

In paragraph (f), OSHRC consolidates all denials related to FOIA requests (*i.e.*, requests for records, requests for expedited processing, and/or requests for fee waiver) to streamline the rules and make them more user-friendly. Finally, OSHRC revises paragraph (f) to closely track the language of the FOIA, 5 U.S.C. 552(a)(6)(C)(i) and (F), by requiring the FOIA Disclosure Officer(s) to provide the reason for a denial, a reasonable estimate of the volume of matter denied (unless doing so would harm an interest protected by the exemption(s) under which the request was denied), the name and title or position of the person responsible for the denial of the request, and also notify the requester of the right to appeal the determination in the written notice of denial.

OSHRC modifies paragraph (g), formerly paragraph (h), to require

written justification for deletions within a record because the FOIA states that “the justification for the deletion shall be explained fully in writing.” 5 U.S.C. 552(a).

In new § 2201.7, formerly § 2201.8, OSHRC revises this section to reflect changes in OSHRC’s calculation of fees, and to add references to a new appendix containing OSHRC’s revised fee schedule. OSHRC creates a new paragraph (a) out of former § 2201.8(a)(1) and also eliminates the specified dollar amount (\$10) and changes it to “the threshold amount as provided in OSHRC’s schedule of fees.” Further, OSHRC deletes paragraphs (a)(2) and (a)(3) because that information is now incorporated in § 2201.4(e). In addition, the procedural information in paragraph (a)(3) is duplicated in new § 2201.8(a) discussed below. In paragraph (b), OSHRC revises the copying, searching and reviewing fees so they are based on the direct costs of these services as provided in the FOIA under 5 U.S.C. 552(a)(4)(A)(iv). The FOIA provides that the Director of OMB shall promulgate guidelines for a uniform schedule of fees for all agencies under 5 U.S.C. 552(a)(4)(A)(i). OSHRC calculates its fees in accordance with OMB’s “Uniform Freedom of Information Act Fee Schedule and Guidelines,” 52 FR 10012, Mar. 27, 1987. Under OMB’s guidelines, these fees are to be based on the average hourly salary (base plus DC locality payment) of employees performing the services plus 16 percent for benefits. In addition, the fees for clerical employees are to be based on an average of all employees at the GS–9 level and below; the fees for professional employees are to be based on all employees at the GS–10 through GS–14 level; and the fees for managerial employees are to be based on an average of all employees at the GS–15 level and above. OSHRC’s Office of Administration has calculated and updated the fees, which appear in the attached Appendix A. The FOIA Requester Service Center also will provide a hard copy of the schedule of fees upon request. OSHRC revises the language in paragraphs (b)(1), (b)(2) and (b)(3) of § 2201.7, formerly § 2201.8, to reflect the new calculation of fees and to reference OSHRC’s schedule of fees in Appendix A.

OSHRC adds a new paragraph (c) in § 2201.7, formerly § 2201.8, which will require the FOIA Disclosure Officer to provide requesters an itemized invoice for fees related to FOIA requests. Although the FOIA does not require an itemized invoice, OSHRC will provide an itemized invoice for the convenience of the requester as part of OSHRC’s

effort to be citizen-centered pursuant to E.O. 13392. OSHRC also deletes paragraph (d) (Certification or authentication) and includes such certification or authentication services in a new paragraph (g) (Fees for services not required by the Freedom of Information Act), which is more inclusive of other services, such as express mail, that are not required by the FOIA.

In paragraph (e), OSHRC changes “copying or search” to “the total fee” to reflect the true cost of satisfying the request. OSHRC will continue to use the \$25 total fee as the threshold above which the agency is required to contact the requester about cost. Although OSHRC contemplated raising the threshold amount and requested comments specifically on whether, and by how much, this threshold should be raised in its proposed regulations, no comments were received. Therefore, OSHRC has decided to continue using the \$25 total fee as the threshold amount.

In paragraph (f) of § 2201.7, formerly § 2201.8, OSHRC modifies the third sentence to require full payment when a requester has previously failed to pay within 30 days. This revision is more consistent with the other sentences in the paragraph addressing advance payment. As noted above, OSHRC adds a new paragraph (g) on fees for services not required by the FOIA. This new paragraph is more inclusive of the types of services, such as express mail, that are not in OSHRC’s current regulation. OSHRC also revises paragraphs (h) and (i) to reflect changes in OSHRC’s procedures for transferring the bill collection responsibilities related to FOIA requests to OSHRC’s Office of Administration. OSHRC believes that this change in bill collection procedures will improve efficiency because the FOIA Requester Service Center will not have to devote resources to bill collection and can focus on responding to FOIA requests. In addition, OSHRC revises paragraph (i) to reflect the Federal government’s collection of debts under the Debt Collection Act of 1982 and its administrative procedures.

In paragraph (a) of § 2201.8, formerly § 2201.9, OSHRC includes some of the procedural language from paragraph (a)(3) of former § 2201.8.

As previously mentioned, OSHRC adds a new section, § 2201.9 (Appeal of denials), to consolidate all appeals in one section. This change is intended to make the FOIA rules more user-friendly. OSHRC also changes the time the requester may appeal a denial from 30 working days after the requester receives notice of the appeal to 20

working days. This change is based on a survey of various smaller agencies, including the Federal Mine Safety and Health Review Commission (20 working days). OSHRC also adds appeals of denial of fee waivers in this section because OSHRC’s old rule did not specifically provide for appeals of denial of fee waivers.

Finally, as discussed in the section-by-section analysis of § 2201.7 above, OSHRC adds a new appendix with a schedule of fees it will charge for searching, reviewing and duplicating documents in response to a FOIA request.

### III. Analysis of Comments Received

As noted above, OSHRC received no comments to the proposed rules.

#### *Executive Order 12866*

The Commission is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 12866.

#### *Paperwork Reduction Act*

The Commission 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.

#### *Executive Order 13132*

The Commission is an independent regulatory agency, and as such, is not subject to the requirements of E.O. 13132.

#### *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. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

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, 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 these requirements.

#### *Unfunded Mandates Reform Act of 1995*

The Commission is an independent regulatory agency, and, as such, is not subject to the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

#### *Congressional Review Act*

Consistent with the Congressional Review Act (Section 804 of the Small Business Regulatory Enforcement Fairness Act), 5 U.S.C. 804 *et seq.*, the Commission will submit to Congress and to the Comptroller General of the United States, a report regarding the issues of this Final Rule prior to the effective date set forth at the outset of this document. This rule is not a major rule under the Congressional Review Act. The rule will not result in an annual effect on the economy of more than \$100 million per year; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based companies in domestic and export markets.

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

Freedom of Information.

Signed at Washington, DC on September 22, 2006.

**W. Scott Railton,**  
*Chairman.*

■ For the reasons set forth in the preamble, the Commission revises Chapter XX, Part 2201 of Title 29, Code of Federal Regulations, as follows:

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

Sec.

- 2201.1 Purpose and scope.
- 2201.2 Description of agency.
- 2201.3 Delegation of authority and responsibilities.
- 2201.4 General policy and definitions.
- 2201.5 Procedure for requesting records.
- 2201.6 Responses to requests.
- 2201.7 Fees for copying, searching, and review.
- 2201.8 Waiver of fees.
- 2201.9 Appeal of denials.

2201.10 Maintenance of statistics.  
Appendix A to Part 2201—Schedule of Fees

**Authority:** 29 U.S.C. 661(g); 5 U.S.C. 552; E.O. 13392, 70 FR 75373, 3 CFR, 2005 Comp., p. 216.

#### **§ 2201.1 Purpose and scope.**

This part prescribes procedures to obtain information and records of the Occupational Safety and Health Review Commission (OSHRC or Commission) under the Freedom of Information Act (FOIA), 5 U.S.C. 552. It applies only to records or information of the Commission or in the Commission's custody. This part does not affect discovery in adversary proceedings before the Commission. Discovery is governed by the Commission's Rules of Procedure in 29 CFR part 2200, subpart D.

#### **§ 2201.2 Description of agency.**

OSHRC adjudicates contested enforcement actions under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651–678. The Commission decides cases after the parties are given an opportunity for a hearing. All hearings are open to the public and are conducted at a place convenient to the parties by an Administrative Law Judge. Any Commissioner may direct that a decision of a Judge be reviewed by the full Commission. The President designates one of the Commissioners as Chairman, who is responsible on behalf of the Commission for the administrative operations of the Commission.

#### **§ 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.

(b) The Chief FOIA Officer shall designate the FOIA Disclosure Officer(s), who shall be responsible for processing FOIA requests.

(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.

(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., Room 941, Washington, DC 20036–3457, (202) 606–5700.

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

(a) *Non-exempt records available to public.* Except for records and

information exempted from disclosure by 5 U.S.C. 552(b) or published in the **Federal Register** under 5 U.S.C. 552(a)(1), all records of the Commission or in its custody are available to any person who requests them in accordance with § 2201.5(a). Records include any information that would be a record subject to the requirements of 5 U.S.C. 552 when maintained by the Commission in any format, including electronic format. In response to FOIA requests, the Commission will search for records manually or by automated means, except when an automated search would significantly interfere with the operation of the Commission's automated information system.

(b) *Examination of records in cases appealed to courts.* A final order of the Commission may be appealed to a United States Court of Appeals. When this occurs, the Commission may send part or all of the official case file to the court and may retain other parts of the file. Thus, a document in a case may not be available from the Commission but only from the court of appeals. In such a case, the FOIA Disclosure Officer may inform the requester that the request for a particular document should be directed to the court.

(c) *Record availability at the OSHRC on-site FOIA Reading Room.* The records of Commission activities are publicly available for inspection and copying at the OSHRC on-site FOIA Reading Room, 1120 20th St., NW., Ninth Floor, Washington, DC 20036–3457. These records include:

(1) Final decisions including concurring and dissenting opinions as well as orders issued as a result of adjudication of cases;

(2) OSHRC Rules of Procedure and Guides to those procedures;

(3) Specific agency policy statements adopted by OSHRC and not published in the **Federal Register**;

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

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

(6) A general index of records referred to under paragraph (c)(5) of this section.

(d) *Record availability at the OSHRC e-FOIA Reading Room.* Materials created on or after November 1, 1996 under paragraphs (c)(1), (2), (3), (4), (5) and (6) of this section may also be accessed electronically through the Commission's Web site at <http://www.oshrc.gov>.

(e) *Definitions.* For purposes of this part:

*Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. The FOIA Disclosure Officer shall determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because the FOIA Disclosure Officer has reasonable cause to doubt a requester's stated use, the FOIA Disclosure Officer shall provide the requester a reasonable opportunity to submit further clarification.

*Direct costs* means those expenses that the Commission actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA 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 duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

*Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. The FOIA Disclosure Officer shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

*Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

*Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis, as that term is defined in this paragraph, and that is

operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

*Representative of the news media, or news media requester* is any entity actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. 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 the general public. 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 the FOIA Disclosure Officer 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.

*Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure—for example, doing all that is necessary to redact it and prepare it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

*Search* means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The FOIA Disclosure Officer shall ensure that searches are done in the most efficient and least expensive manner reasonably possible. For

example, the FOIA Disclosure Officer shall not search line-by-line where duplicating an entire document would be quicker and less expensive.

*Working day* means a regular Federal working day. It does not include Saturdays, Sundays, or Federal legal public holidays.

#### § 2201.5 Procedure for requesting records.

(a) *Requests for information.* All requests for information must be made in writing and must be mailed or delivered to the FOIA Disclosure Officer at the address in § 2201.3(d). The words "Freedom of Information Act Request" must be printed on the face of the request's envelope or covering as well as the request itself. Requests for information must describe the particular record requested to the fullest extent possible and specify the preferred form or format (including electronic formats) of the response. The Commission shall accommodate requesters as to form or format if the record is readily reproducible in the requested form or format. When requesters do not specify the preferred form or format of the response, the Commission shall respond in the form or format in which the record is most accessible to the Commission.

(b) *Date of receipt.* A request that complies with paragraph (a) of this section is deemed received on the actual date it is received by the Commission. A request that does not comply with paragraph (a) of this section is deemed received when it is actually received by the FOIA Disclosure Officer. For requests that are expected to result in fees exceeding \$250, the request shall not be deemed to have been received until the requester is advised of the anticipated costs and the Commission has received full payment or satisfactory assurance of full payment as provided under § 2201.7(f).

#### § 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.

(b) *Extensions of response time in unusual circumstances.* In unusual circumstances, the Commission may extend the time limit prescribed in paragraph (a) of this section by not more than 10 working days. The FOIA Disclosure Officer shall notify the requester in writing of the extension, the reasons for the extension and the date on which a determination is expected. "Unusual circumstances" exists, but only to the extent reasonably necessary to the proper processing of the

particular request, when there is a need to:

(1) Search for and collect the requested records from one of OSHRC's regional offices or off-site storage facilities;

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

(3) Consult, with all practicable speed, with another agency having a substantial interest in the determination of the request.

(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) *Two-track processing.* To ensure the most equitable treatment possible for all requesters, the Commission will process requests on a first-in, first-out basis using a two-track processing system based upon the estimated time it will take to process the request.

(1) The first track is for requests of simple to moderate complexity that are expected to be completed within 20 working days.

(2) The second track is for requests involving "unusual circumstances" that are expected to take between 21 to 30 working days to complete and those that, because of their unusual volume or other complexity, are expected to take more than 30 working days to complete.

(3) Requesters should assume, unless otherwise notified by the Commission, that their request is in the first track. The Commission will notify requesters when their 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 requesters as documents are obtained by the FOIA Disclosure Officer from the supplying offices.

(e) *Expedited processing.* (1) The Commission may place a person's request at the front of the queue for the appropriate track for that request upon

receipt of a written request that clearly demonstrates a compelling need for expedited processing. Requesters must provide detailed explanations to support their expedited requests. For purposes of determining expedited processing, the term *compelling need* means:

(i) That a failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of any individual; or

(ii) That a request is made by a person primarily engaged in disseminating information, and that person establishes that there is an urgency to inform the public concerning actual or alleged Federal Government activity.

(2) A person requesting expedited processing must include a statement certifying the compelling need given to be true and correct to the best of his or her knowledge and belief. The certification requirement may be waived by the Commission as a matter of agency discretion.

(3) The FOIA Disclosure Officer will make the initial determination whether to grant or deny a request for expedited processing and will notify a requester within 10 calendar days after receiving the request whether processing will be expedited.

(f) *Content of denial.* When the FOIA Disclosure Officer denies a request for records, either in whole or in part, a request for expedited processing, and/or a request for fee waivers (see § 2201.8), the written notice of the denial shall state the reason for denial, give a reasonable estimate of the volume of matter denied (unless doing so would harm an interest protected by the exemption(s) under which the request was denied), set forth the name and title or position of the person responsible for the denial of the request, and notify the requester of the right to appeal the determination as specified in § 2201.9. A refusal by the FOIA Disclosure Officer to process the request because the requester has not made advance payment or given a satisfactory assurance of full payment required under § 2201.7(f) may be treated as a denial of the request and appealed under § 2201.9.

(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 shall be marked.

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

(a) *Fees required unless waived.* The FOIA Disclosure Officer shall charge the fees in paragraph (b) of this section unless the fees for a request are less than the threshold amount as provided in OSHRC's fee schedule, in which case no fees shall be charged. See Appendix A. The FOIA Disclosure Officer shall, however, waive the fees in the circumstances stated in § 2201.8.

(b) *Calculation of fees.* Fees for copying, searching and reviewing will be based on the direct costs of these services, including the average hourly salary (base plus DC locality payment), plus 16 percent for benefits, of the following three categories of employees involved in responding to FOIA requests: clerical—based on an average of all employees at GS-9 and below; professional—based on an average of all employees at GS-10 through GS-14; and managerial—based on an average of all employees at GS-15 and above. OSHRC will calculate a schedule of fees based on these direct costs. The schedule of fees under this section appears in Appendix A to this part 2201. A copy of the schedule of fees may also be obtained at no charge from the FOIA Disclosure Officer. See § 2201.3(d).

(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. 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.

(2) *Search fee.* Search fees shall be calculated in accordance with the amounts established in OSHRC's fee schedule. See Appendix A. Commercial requesters shall be charged for all search time. 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:

(i) *Easily identifiable decisions.* Search fees shall not be charged for searching for decisions that the requester identifies by name and date, or by docket number, or that are otherwise easily identifiable.

(ii) *Educational, scientific or news media requests.* No fee shall be charged if the request is not for a commercial use and is by an educational or scientific

institution, whose purpose is scholarly or scientific research, or by a representative of the news media.

(iii) *Other non-commercial requests.* No fee shall be charged for the first two hours of searching if the request is not for a commercial use and is not by an educational or scientific institution, or a representative of the news media.

(iv) *Requests for records about self.* No fee shall be charged to search for records filed in the Commission's systems of records if the requester is the subject of the requested records. See the Privacy Act of 1974, 5 U.S.C. 552a(f)(5) (fees to be charged only for copying).

(3) *Review fee.* A review fee shall be charged only for commercial requests. Review fees shall be calculated in accordance with the amounts established in OSHRC's schedule of fees. See Appendix A. A review fee shall be charged for the initial examination of documents located in response to a request to determine if it may be withheld from disclosure, and for the excision of withholdable portions. However, a review fee shall not be charged for review by the Chairman under § 2201.9 (Appeal of denials).

(c) *Invoices.* The FOIA Disclosure Officer shall provide the requester with an invoice containing an itemization of assessed fees.

(d) *Aggregation of requests.* When the FOIA Disclosure Officer reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the FOIA Disclosure Officer may aggregate any such requests and charge accordingly.

(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. 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.

(f) *Advance payments.* Advance payment of fees will generally not be required. If, however, charges are likely to exceed \$250, the FOIA Disclosure Officer shall notify the requester of the likely cost and: if the requester has a history of prompt payment of FOIA charges, obtain satisfactory assurance of full payment; or if the requester has no history of payment, require an advance payment of an amount up to the full estimated charge. If the requester has previously failed to pay a fee within 30 days of the date of billing, the FOIA

Disclosure Officer shall require the requester to pay the full amount owed plus any interest owed as provided in paragraph (h) of this section or demonstrate that he or she has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated charges before the FOIA Disclosure Officer begins to process the new request or a pending request from that requester.

(g) *Fees for services not required by the Freedom of Information Act.* The Commission has discretion regarding its response to requests for services not required by the FOIA. For example, the FOIA does not require agencies to certify or authenticate responsive documents, nor does it require responsive documents to be sent by express mail. If these services are requested, the FOIA Disclosure Officer shall assess the direct costs of such services.

(h) *Interest on unpaid bills.* The Commission's Office of Administration shall begin assessing interest charges on unpaid bills starting on the thirty-first day after the date the bill was sent. Interest will accrue from the date of billing until the Commission receives full payment. Interest will be at the rate described in 31 U.S.C. 3717.

(i) *Debt collection procedures.* If bills are unpaid 60 days after the mailing of a written notice to the requester, the Commission's Office of Administration may resort to the debt collection procedures set out in the Debt Collection Act of 1982 (Pub. L. 97-365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

#### § 2201.8 Waiver of fees.

(a) *General.* The FOIA Disclosure Officer shall waive part or all of the fees assessed under § 2201.7(b) if two conditions are satisfied: 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 disclosure is not primarily in the commercial interest of the requester. Where the FOIA Disclosure Officer has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the FOIA Disclosure Officer may seek clarification from the requester before assigning the request to a specific category for fee assessment purposes. The FOIA Disclosure Officer shall afford the requester the opportunity to show that the requester comes within these two conditions. The following factors

may be considered in determining whether the two conditions are satisfied:

(1) Whether the subject of the requested records concerns the operations or activities of the government;

(2) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities;

(3) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so, whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(b) *Partial waiver of fees.* If the two conditions stated in paragraph (a) of this section are met, the FOIA Disclosure Officer will ordinarily waive all fees. In exceptional cases, however, only a partial waiver may be granted if the request for records would impose an exceptional burden or require an exceptional expenditure of Commission resources, and the request for a waiver minimally satisfies the "public interest" requirement in paragraph (a) of this section.

#### § 2201.9 Appeal of denials.

A denial of a request for records, either in whole or in part, a request for expedited processing, or a request for fee waivers, may be appealed in writing to the Chairman of the Commission within 20 working days of the date of the letter denying an initial request. The Chairman shall act on the appeal under 5 U.S.C. 552(a)(6)(A)(ii) within 20 working days after the receipt of the appeal. If the Chairman wholly or partially upholds the denial of the request, the Chairman shall notify the requesting person that the requester may obtain judicial review of the Chairman's action under 5 U.S.C. 552(a)(4)(B)-(G).

#### § 2201.10 Maintenance of statistics.

(a) The FOIA Disclosure Officer shall maintain records of:

(1) The number of determinations made by the agency not to comply with the requests for records made to the agency and the reasons for those determinations;

(2) The number of appeals made by persons, the results of those appeals, and the reason for the action upon each appeal that results in a denial of information;

(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;

(4) A description of whether a court has upheld the decision of the agency to withhold information under each of those statutes cited, and a concise description of the scope of any information upheld;

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

(6) The number of requests for records received by the agency and the number of requests the agency processed;

(7) The median number of days taken by the agency to process different types of requests;

(8) The total amount of fees collected by the agency for processing requests;

(9) The average amount of time that the agency estimates as necessary, based on the past experience of the agency, to comply with different types of requests;

(10) The number of full-time staff of the agency devoted to the processing of requests for records under this section; and

(11) The total amount expended by the agency for processing these requests.

(b) The FOIA Disclosure Officer shall annually, on or before February 1 of each year, prepare and submit to the Attorney General an annual report covering each of the categories of records to be maintained in accordance with paragraph (a) of this section, for the previous fiscal year. A copy of the report will be available for public inspection and copying at the OSHRC FOIA Reading Room, and a copy will be accessible through OSHRC's Web site at <http://www.oshrc.gov>.

**Appendix A to Part 2201—Schedule of Fees**

Type of fee	Amount of fee
Threshold Amount (Amount below which fees will not be assessed).	\$10
Search and Review Hourly Fees:	
Clerical (GS-9 and below) .....	23
Professional (GS-10 through GS 14) .....	46
Managerial (GS-15 and above) .....	76
Duplication cost per page .....	0.25
Computer printout copying fee .....	0.40
Searches of computerized records .....	Actual cost to the Commission, but shall not exceed \$300 per hour, including machine time and the cost of the operator and clerical personnel.
Certification Fee .....	\$35 per authenticating affidavit or declaration. (Note: Search and review charges may be assessed in accordance with the rates listed above.)

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[CGD13-06-044]

RIN 1625-AA08

**Special Local Regulations, Strait Thunder Hydroplane Races, Port Angeles, WA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations for the Strait Thunder Hydroplane Races held on the waters of Port Angeles Harbor, Port Angeles, Washington. These special local regulations limit the movement of non-participating vessels in the regulated race area and provide for a viewing area for spectator craft. This temporary rule is needed to provide for the safety of life on navigable waters during the event.

**DATES:** This temporary rule is effective from 9 a.m. on September 29 until 5 p.m. on October 1, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD13-06-044 and are available for inspection or copying at the U.S. Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, Washington 98134 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade Jes Hagen, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217-6200.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The Coast Guard did not receive sufficient notice of the date change for this year's event. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of to provide for the safety of spectators and participants during the event. If normal notice and comment procedures were followed, this temporary rule would not become effective until after the date of the event. For similar reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists

for making this rule effective less than 30 days after publication in the **Federal Register**.

**Background and Purpose**

The hydroplane race poses several dangers to the public including excessive noise, objects falling from any accidents, and hydroplanes racing at high speeds in proximity to other vessels. Accordingly, a safety zone is needed in order to provide for the safety of spectators and participants during the event.

**Discussion of Rule**

This temporary rule will create two regulated areas, a race area and a spectator area. These regulated areas assist in minimizing the inherent dangers associated with hydroplane races. These dangers include, but are not limited to, excessive noise, race craft traveling at high speed in close proximity to one another and to spectator craft, and the risk of airborne objects from any accidents associated with hydroplanes. In the event that hydroplanes require emergency assistance, rescuers must have immediate and unencumbered access to the craft. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Due to these concerns, public