



BILLING CODE 7600-01-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) is amending its regulations implementing the Freedom of Information Act (FOIA). The amendments to the FOIA regulations concern minor issues that have arisen since the regulations were last revised in 2016.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Ron Bailey, Attorney Advisor, Office of General Counsel, by telephone at (202) 606-5410 or by email at rbailey@oshrc.gov.

SUPPLEMENTARY INFORMATION:

I. Revisions to Part 2201

OSHRC's regulations implementing FOIA, 29 CFR part 2201, were last revised on December 27, 2016, 81 FR 95035. OSHRC is making several minor revisions to these regulations.

In 29 CFR 2201.5, OSHRC is revising the reference to its Privacy Act regulation—from § 2400.6 to § 2400.4—based on the re-designation of section numbers in 29 CFR part 2400, 85 FR 65221.

In 29 CFR 2201.6(a)(1), the regulation presently states that the 20-day period for granting or denying a FOIA request can be tolled under two different circumstances: “(1) The agency may toll the 20-day period once while awaiting information that it has reasonably requested from the requester under this section . . . ; or (2) The agency may toll the 20-day period as many times as are necessary to clarify any issue regarding fee assessment.” OSHRC is revising the word “or” to “and,” because guidance from the Department of Justice’s Office of Information Policy (OIP) indicates that tolling under one circumstance does not preclude the agency from subsequently tolling based on the other circumstance. This guidance, from November 18, 2008, is available at <https://www.justice.gov/oip/oip-guidance>.

In 29 CFR 2201.8(e), the third sentence of that paragraph states: “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.” OSHRC is revising the phrase, “the request shall not be considered received,” to read, “the time period for responding to the request shall be tolled in accordance with 2201.6(a)(2).” OSHRC considers it more accurate, pursuant to the 5 U.S.C. 552(a)(6)(A), to treat this as a fee clarification that can be tolled under 29 CFR 2201.6(a), rather than a request that has not been received.

II. 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.*

Regulatory Flexibility Act: The Chairman of OSHRC certifies under the Regulatory Flexibility Act, 5 U.S.C. 605(b), that these rules will not have a significant economic impact on a substantial number of small entities. The revisions to part 2201 merely clarify existing procedures and, therefore, would have no economic impact on small entities. For this reason, a regulatory flexibility analysis is not required.

Paperwork Reduction Act of 1995: 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.

Congressional Review Act: These revisions do not constitute a “rule,” as defined by the Congressional Review Act, 5 U.S.C. 804(3)(C), because they involve changes to agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

List of Subjects in 29 CFR Part 2201

Freedom of information.

James J. Sullivan, Jr.,

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 continues to read as follows:

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

§ 2201.5 [Amended]

2. Amend § 2201.5 by removing the reference “29 CFR 2400.6” in paragraph (b) and adding, in its place, the reference “29 CFR 2400.4”.

§ 2201.6 [Amended]

3. Amend § 2201.6 by removing the word “or” at the end of paragraph (a)(1) and adding, in its place, the word “and”.

4. Amend § 2201.8 by revising the third sentence of paragraph (e) to read as follows:

§ 2201.8 Fees for copying, searching, and review.

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(e) * * * In cases in which a requester has been notified that actual or estimated fees amount to more than \$25, the time period for responding to the request shall be tolled in accordance with § 2201.6(a)(2) and further work shall not be done on it until the requester agrees to pay the actual or estimated total fee. * * *

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