

periods of limitations remain suspended for the period during which a proceeding is pending, regardless of compliance (or partial compliance) with the summons during that period.

(iii) *Examples.* The rules of paragraph (e)(2) are illustrated by the following examples:

*Example 1.* A revenue agent issues a summons to A, an accountant for B, requiring production of records relating to B's income tax liabilities for 1998. The summons is served on A on March 1, 2000. B files a petition to quash the summons in district court on March 15, 2000. The district court dismisses B's petition on July 1, 2000. B fails to appeal this decision by filing a notice of appeal within 60 days from the date of the district court's order of dismissal. The revenue agent notifies A that B did not appeal the district court's order. A turns over all of the records requested in the summons. The periods of limitations applicable to B for 1998 under sections 6501 and 6531 are suspended under section 7609(e)(1) from March 15, 2000, the date B filed a petition to quash, until August 30, 2000, the last day on which B could have filed a notice of appeal.

*Example 2.* A revenue agent issues a summons to A, an accountant for B, requiring production of records relating to B's income tax liabilities for 1999. The summons is served on A on June 1, 2001. B files an untimely petition to quash the summons in district court on June 30, 2001. The district court dismisses B's petition on July 31, 2001. B does not file an appeal of the district court's order. The periods of limitations applicable to B for 1999 under sections 6501 and 6531 are suspended under section 7609(e)(1) from June 30, 2001, the date B filed an untimely petition to quash, until September 29, 2001, the last day on which B could have filed a notice of appeal.

(3) *Final resolution of the summoned third party's response to a summons.* For purposes of section 7609(e)(2)(B), final resolution with respect to a summoned party's response to a third-party summons occurs when the summons or any order enforcing any part of the summons is fully complied with and all appeals are disposed of or the period in which an appeal may be taken or a request for further review may be made has expired. The determination of whether there has been full compliance will be made within a reasonable time, given the volume and complexity of the records produced, after the later of the giving of all testimony or the production of all records requested by the summons. If, following an enforcement order, collateral proceedings are brought challenging whether the production made by the summoned party fully satisfied the court order and whether sanctions should be imposed against the summoned party for a failing to do so, the suspension of the periods of

limitations shall continue until the summons or any order enforcing any part of the summons is fully complied with and the decision in the collateral proceeding becomes final. A decision in a collateral proceeding becomes final when all appeals are disposed of or when the period in which an appeal may be taken or a request for further review may be made has expired.

(f) *Effective date.* This section is applicable on the date the final regulations are published in the **Federal Register**.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

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**BILLING CODE 4830-01-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:** Notice of proposed rulemaking.

**SUMMARY:** The Occupational Safety and Health Review Commission (OSHRC) is proposing to revise its regulations implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. The proposed regulations contain new provisions to comply with Executive Order 13392. In addition, the proposed regulations have been updated to reflect changes in OSHRC's policies and procedures. As a result of these proposed amendments, the public will have a clearer understanding of OSHRC's policies and procedures implementing the FOIA.

**DATES:** Submit comments on or before August 21, 2006.

**ADDRESSES:** You may submit comments by any of the following methods:

- E-mail: [regsdocket@oshrc.gov](mailto:regsdocket@oshrc.gov). Include "FOIA PROPOSED RULEMAKING" in the subject line of the message.
- Fax: (202) 606-5417.
- Mail: 1120 20th Street, NW., Ninth Floor, Washington, DC 20036-3457.
- Hand Delivery/Courier: Same as mailing address.

*Instructions:* All submissions must include your name, return address and e-mail address, if applicable. Please clearly label submissions as "FOIA PROPOSED RULEMAKING." If you submit comments by e-mail, you will receive an automatic confirmation e-

mail from the system indicating that we have received your submission. If, in response to your comments submitted via e-mail, you do not receive a confirmation e-mail within five working days, please contact us directly at (202) 606-5410.

**FOR FURTHER INFORMATION CONTACT:** Jin H. Kim, Attorney-Advisor, Office of the General Counsel, via telephone: (202) 606-5410, or via e-mail: [jkim@oshrc.gov](mailto:jkim@oshrc.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The Occupational Safety and Health Review Commission (OSHRC) proposes several substantive and technical revisions governing its regulations implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. OSHRC proposes revising its FOIA regulations, including the addition of new provisions and the modification of existing provisions, to comply with Executive Order 13392 (E.O. 13392), 70 FR 75373, December 19, 2005. In E.O. 13392, the President directs each agency to ensure that its FOIA operations treat FOIA requesters courteously and appropriately and to provide requesters with prompt information regarding the status of their FOIA requests, as well as appropriate information regarding the agency's response. In addition, each agency is to provide FOIA requesters and the public in general with "citizen-centered" ways to learn about the agency's FOIA process and how to receive agency records that are publicly available. By ensuring that its FOIA operations are "citizen-centered" and "results-oriented," each agency will improve service and performance, thereby strengthening compliance with the FOIA.

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. As part of the FOIA Requester Service Center, E.O. 13392 further requires an agency to designate its own FOIA Public Liaison(s) to serve as the supervisory official(s) 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. Based upon these new requirements, OSHRC therefore proposes to revise its regulations implementing the FOIA to comply fully with E.O. 13392.

Further, as a result of the Chief FOIA Officer's review of OSHRC's FOIA operations, OSHRC proposes to amend its rules to reflect recent changes in OSHRC's policies and procedures as they relate to the processing of FOIA requests. At the beginning of this fiscal year, OSHRC moved all FOIA processing from its Office of Administration to the Office of the General Counsel, where paralegals and attorneys have received training in the handling of FOIA requests. Moreover, OSHRC has identified several areas for improvement in its processing of FOIA requests that are addressed by these proposed rules, such as establishing a recordkeeping log, standardizing forms for processing FOIA requests, adding definitions to clarify the use of terms, and establishing a streamlined appeals process that covers fee waiver denials. These changes in OSHRC's policies and procedures will make the processing of FOIA requests more efficient and responsive. Lastly, OSHRC proposes several minor revisions that are purely technical or clarifying in nature which relate to changes in phrasing and nomenclature.

Accordingly, OSHRC proposes to revise its regulations implementing the FOIA and put them out for public comment pursuant to 5 U.S.C. 552(a)(4)(A)(i), (a)(6)(B)(iv), (a)(6)(D)(i), and (a)(6)(E)(i). For the convenience of the reader, OSHRC reproduces proposed 29 CFR part 2201 in its entirety. The specific amendments that OSHRC proposes to each section of 29 CFR part 2201 are discussed hereafter in regulatory sequence.

## II. Proposed Regulatory Revisions

The President's issuance of E.O. 13392 on December 14, 2005 created new requirements and duties for improving agency disclosure of information under the FOIA which are implemented in these proposed rules. Consequently, OSHRC proposes to amend the authority citation in 29 CFR part 2201 to add a reference to E.O. 13392.

In 29 CFR 2201.1, OSHRC would make changes to correct a grammatical error in the section heading and to add abbreviations for "Occupational Safety and Health Review Commission" and "Freedom of Information Act" to the

regulatory text. Accordingly, the proposed rules in part 2201 are revised throughout to refer to the "Occupational Safety and Health Review Commission" as "OSHRC" or "Commission," and the "Freedom of Information Act" as "FOIA."

In § 2201.2, OSHRC proposes adding a sentence to the end of the section that provides additional details about the designation of one of the Commissioners as the Chairman and his responsibilities for the administrative operations of the Commission, consistent with section 12(e) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 661(e). Also, to conform to the abbreviations noted above in § 2201.1, OSHRC would substitute "OSHRC" in place of "The Occupational Safety and Health Review Commission (OSHRC or Commission)" in new § 2201.2.

In § 2201.3, OSHRC proposes revising the delegation of FOIA-related duties to reflect the changes required by E.O. 13392 and break them out into new paragraphs (a) through (d). In order to comport with E.O. 13392, OSHRC would eliminate the current language regarding the Chairman's delegation of authority to the Freedom of Information Act Officer. In its place, OSHRC proposes adding a delegation of authority to the Chief FOIA Officer under new paragraph (a). In addition, OSHRC would eliminate the alternate designation of another OSHRC officer or employee, such as the General Counsel or the Executive Secretary, by the Chairman or the Executive Director in the absence of the Freedom of Information Act Officer. Instead, under new paragraph (b) of proposed § 2201.3, the Chief FOIA Officer would designate the agency's FOIA Disclosure Officer(s) to process all FOIA requests. Under paragraph (c), the Chief FOIA Officer would designate the FOIA Public Liaison(s) to address any concerns about the service a FOIA requester has received following an initial response by the agency. Under new paragraph (d), OSHRC's proposal identifies the FOIA Disclosure Officer(s) and FOIA Public Liaison(s) as serving in the agency's FOIA Requester Service Center and provides the address and telephone number to contact the FOIA Requester Service Center. This new language reflects changes in the delegation of authority and designation of personnel in compliance with E.O. 13392.

Indeed, in order to ensure appropriate communication with FOIA requesters, E.O. 13392 requires agencies to "establish one or more FOIA Requester Service Centers" to receive and respond to inquiries from FOIA requesters. To comply with this requirement, OSHRC

proposes to establish a FOIA Requester Service Center at its national office in Washington, DC OSHRC's FOIA Requester Service Center, which will handle all FOIA requests and inquiries about FOIA requests, will consist of FOIA Disclosure Officer(s) and FOIA Public Liaison(s). Under OSHRC's new procedures, the FOIA Disclosure Officer(s) will handle all initial responses to FOIA requests. The FOIA Public Liaison(s) will ensure appropriate communication between FOIA requesters and FOIA Disclosure Officer(s) and will be supervisory employee(s). This change will help ensure that OSHRC's FOIA operations are "citizen-centered" and "results-oriented" as directed in E.O. 13392. OSHRC also would update references to the FOIA Officer and Information Office throughout 29 CFR part 2201 to reflect this change.

OSHRC proposes to eliminate the second to last sentence of current § 2201.3 that refers 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, Public Law 104-231, 110 Stat. 3048 (codified as amended in 5 U.S.C. 552) (e-FOIA). OSHRC would further eliminate the last sentence of current § 2201.3 which refers to the handling of "all other information requests" because this information will be covered under new § 2201.5(a) of the regulations; thus, its inclusion in § 2201.3 is redundant.

In § 2201.4, OSHRC first proposes to change the heading to include the phrase "and definitions." Second, OSHRC would update regulatory cross-references and make minor nomenclature changes throughout the section, such as deleting "Review" from "Review Commission" and replacing "Freedom of Information Act Officer" with "FOIA Disclosure Officer." Third, OSHRC would make other minor changes in phrasing to paragraph (a) by combining the last two sentences of the existing regulations for clarity without changing the meaning of the provision. Fourth, in paragraph (c), OSHRC would edit the paragraph heading to update the nomenclature, as well as the introductory text to describe more precisely the location of the reading room. Fifth, OSHRC would also add new paragraphs (c)(3) and (c)(4) to reflect the language of the FOIA, and renumber current paragraphs (c)(3) and (c)(4) as new paragraphs (c)(5) and (c)(6). Sixth, in paragraph (d), OSHRC would add a new paragraph heading noting record availability at the OSHRC

e-FOIA reading room, as well as language clarifying the availability of electronic records. Finally, OSHRC would add a new paragraph (e) to § 2201.4 to provide definitions relevant to 29 CFR part 2201 that are consistent with other agencies' FOIA regulations. These nine definitions clarify certain FOIA terminology but in no way change how OSHRC processes FOIA requests. 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 proposes to define "working day," which is not defined in other government agencies' FOIA regulations, in order to clarify the FOIA's calculation of time.

OSHC would remove current § 2201.5 altogether 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 proposes to remove § 2201.5 in its entirety and renumber subsequent sections accordingly.

OSHC then proposes to redesignate current § 2201.6 as new § 2201.5. In new § 2201.5 (old § 2201.6), OSHRC would eliminate paragraph (a) of the current regulations in its entirety. Pursuant to e-FOIA, OSHRC has placed most of this information on its Web site for the public's convenience. OSHRC also proposes to make minor technical changes throughout this section to update cross-references and to reflect changes made to other sections in part 2201, as well as to clarify language which would not change the meaning of the provision. For example, OSHRC would remove "Review" from "Review Commission," replace "Freedom of Information Act Officer" with "FOIA Disclosure Officer" and change references to other provisions. Further, OSHRC would redesignate the old paragraph (b) as paragraph (a) with a new paragraph heading, "Requests for information" and modify the language within new paragraph (a) to clearly delineate the procedures for making

FOIA requests. The new paragraph (a) provides that 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. The new language states that 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 would redesignate current paragraph (c) as new paragraph (b), and would rephrase new paragraph (b) for clarity regarding the date of receipt of a FOIA request. OSHRC would also delete paragraph (d) (Specificity required) (old § 2201.6) because the information requested in paragraph (d) is now incorporated in new paragraph (a) of proposed § 2201.5.

OSHC proposes to redesignate current § 2201.7 as new § 2201.6. In new § 2201.6 (old § 2201.7), OSHRC would first update cross-references to other sections changed in part 2201 and then make minor technical and grammatical changes throughout this section. For example, OSHRC would remove "Review" from "Review Commission" and replace "Freedom of Information Act Officer" with "FOIA Disclosure Officer" throughout this section. OSHRC also proposes to rephrase paragraph (b) for clarity without changing the meaning of the provision by directly stating that the FOIA Disclosure Officer(s) shall notify the requester in writing about extensions of time. Also in the introductory text to paragraph (b), OSHRC would delete 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 would modify the language of paragraph (b)(1) to reflect in a more precise manner the location of OSHRC records. OSHRC records are currently located in OSHRC's national office, regional offices and an off-site storage location. In paragraph (b)(3), OSHRC would delete 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,

OSHC proposes requiring written notice in paragraph (c) for additional extensions of time, as well as in paragraph (d)(3) for when the estimated time to process a FOIA request substantially changes. By providing written notice to requesters for these circumstances, OSHRC believes that it would improve OSHRC's communication with requesters.

In paragraph (d) of § 2201.6 (old § 2201.7), OSHRC would rename 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 proposes deleting paragraph (e)(4), as well as paragraph (g) of current § 2201.7 and incorporate 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 proposes to consolidate 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 would further revise the language in 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.

Due to the movement of paragraph (g) to new § 2201.9 (Appeal of denials), OSHRC proposes redesignating paragraph (h) as new paragraph (g). OSHRC would edit the language in new paragraph (g) 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" as required under 5 U.S.C. 552(a).

OSHC proposes to redesignate current § 2201.8 as new § 2201.7. In new § 2201.7 (old § 2201.8), OSHRC would revise this section to reflect changes in OSHRC's calculation of fees, and create an appendix that reflects OSHRC's fee schedule. In paragraph (a), OSHRC proposes to make several nomenclature changes and update a cross-reference to the section on fee waivers. In addition,

OSHC proposes eliminating the specified dollar amount (\$10) and changing it to “the threshold amount as provided in OSHRC’s schedule of fees.” Further, in new § 2201.7 (old § 2201.8), OSHRC proposes deleting paragraphs (a)(2) and (a)(3) and incorporating that definitional information in paragraph § 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 proposes revising 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, March 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 proposes to revise the language in paragraphs (b)(1), (b)(2) and (b)(3) of new § 2201.7 (old § 2201.8) to reflect the new calculation of fees.

OSHC proposes to add a new paragraph (c) in new § 2201.7 (old § 2201.8) requiring 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 would 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 would also redesignate old paragraph (c) as new paragraph (d) to reflect the addition of the new paragraph (c). New paragraph (d) will be updated to include changes in nomenclature. OSHRC also would delete the current paragraph (d) (Certification or authentication), and include such certification or

authentication service 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.

Paragraph (e) will remain essentially the same, except that OSHRC would make changes in wording that are technical in nature, such as replacing “Freedom of Information Act Officer” with “FOIA Disclosure Officer” and using gender neutral language. OSHRC would also change “copying or search” to “the total fee” to reflect the true cost of satisfying the request. OSHRC in this proposal has left in place the \$25 total fee threshold, above which the agency is required to contact the requester about cost. OSHRC is considering, however, whether to raise that threshold amount. OSHRC requests comments specifically on whether, and by how much, this threshold should be raised.

In paragraph (f) of new § 2201.7 (old § 2201.8), OSHRC would make some changes in nomenclature to insert the term “FOIA Disclosure Officer” and insert gender neutral language. OSHRC would also modify the language in 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 proposes to create 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 is not in OSHRC’s current regulation. OSHRC also would revise the language in paragraph (h), as well as paragraph (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 paragraph (i), OSHRC would further revise the language to more precisely reflect the statutory provisions relating to the Federal government’s collection of debts under the Debt Collection Act of 1982 and its administrative procedures.

OSHC proposes to redesignate current § 2201.9 as new § 2201.8. In new § 2201.8 (old § 2201.9), OSHRC would make several minor changes that are technical in nature, such as replacing references to the “Freedom of Information Act Officer” with “FOIA Disclosure Officer” and using gender neutral language. As mentioned in the

discussion of new § 2201.7 (old § 2201.8), OSHRC would include some of the procedural language from paragraph (a)(3) of old § 2201.8 in paragraph (a) of new § 2201.8 (old § 2201.9).

As previously mentioned, OSHRC proposes adding 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 would also change 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). In addition, OSHRC would add appeals of denial of fee waivers in this section because OSHRC’s current rule does not specifically provide for appeals of denial of fee waivers.

In § 2201.10, OSHRC would make minor technical changes, such as replacing “Freedom of Information Act Officer” with “FOIA Disclosure Officer.”

Finally, OSHRC would update the cross-references to the various sections and paragraphs throughout the rules in 29 CFR part 2201 to reflect changes in section numbers and paragraphs due to the reorganization of these proposed regulations.

#### **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), that these rules, if adopted, would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

### 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.*

### Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). The proposed 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 July 17, 2006.

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

For the reasons set forth in the preamble, the Commission proposes that Chapter XX, part 2201 of Title 29, Code of Federal Regulations, be revised 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., Washington, DC 20036–3457, (202) 606–5410.

#### § 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)(3) 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) and (4) 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 person 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. 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. 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. 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. 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 LABOR**

**Employee Benefits Security Administration**

**29 CFR Part 2520**  
**RIN 1210-AB06**

**Annual Reporting and Disclosure**

**AGENCY:** Employee Benefits Security Administration, Labor.  
**ACTION:** Proposed rule.

**SUMMARY:** This document contains proposed amendments to Department of Labor (Department) regulations relating to annual reporting and disclosure requirements under Part 1 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA or Act). The proposed amendments contained in this document are necessary to conform the annual reporting and disclosure regulations to proposed revisions to the Form 5500 Annual Return/Report of Employee Benefit Plan forms and instructions. The proposed changes to the Form 5500 and implementing regulatory amendments are intended to facilitate the transition to an electronic filing system, separately proposed at 70 FR 51542 (August 30, 2005), reduce and streamline annual reporting burdens, especially for small businesses, and

update the annual reporting forms to reflect current issues and agency priorities. The regulatory amendments thus would, upon adoption, apply for the reporting year for which the electronic filing requirement is implemented. The proposed regulatory amendments will affect the financial and other information required to be reported and disclosed by employee benefit plans filing the Form 5500 Annual Return/Report of Employee Benefit Plan under Part 1 of Subtitle B of Title I of ERISA.

**DATES:** Written comments must be received by the Department of Labor on or before September 19, 2006.

**ADDRESSES:** Comments should be addressed to the Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attn: Form 5500 Regulation Revisions (RIN 1210-AB06). Comments also may be submitted electronically to [e-ori@dol.gov](mailto:e-ori@dol.gov) or by using the Federal eRulingmaking Portal <http://www.regulations.gov> (follow instructions for submission of comments). EBSA will make all comments available to the public on its Web site at <http://www.dol.gov/ebsa>. The comments also will be available for public inspection at the Public Disclosure Room, N-1513, EBSA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. Goodman or Michael Baird, Office of Regulations and Interpretations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693-8523 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Under Titles I and IV of ERISA, and the Internal Revenue Code (Code), as amended, pension and other employee benefit plans are generally required to file annual returns/reports concerning, among other things, the financial condition and operations of the plan. Filing the Form 5500 "Annual Return/Report of Employee Benefit Plan," together with any required attachments and schedules (Form 5500 Annual Return/Report) generally satisfies these annual reporting requirements. The Form 5500 Annual Return/Report is the primary source of information concerning the operation, funding, assets, and investments of pension and other employee benefit plans. In addition to being an important disclosure document for plan participants and beneficiaries, the Form 5500 Annual Return/Report is a compliance and research tool for the Department and a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies.