

(a) All students must be physically accounted for four times daily;

(b) Each count must be at least two hours apart;

(c) If students are on an off-campus activity, physical accounts of students must be made at least once every two hours or at other reasonable times depending on the activity;

(d) At night all student rooms should be physically checked at least once every hour;

(e) If a student is unaccounted for, the homeliving program must follow its established search procedures; and

(f) When homeliving staff is aware of a student who is going to be absent from school, the homeliving program is required to notify the school.

**§ 36.101 How often must students who have been separated for emergency health or behavioral reasons be supervised?**

Students who have been separated for emergency behavioral or health reasons must be supervised as frequently and as closely as the circumstances and protocols require. No student will be left unsupervised for any period until such factors as the student's health based on a medical assessment, the safety of the student, and any other applicable guidance for dealing with behavior or health emergencies are considered.

**§ 36.102 What student resources must be provided by a homeliving program?**

The following minimum resources must be available at all homeliving programs:

(a) Library resources such as access to books and resource materials, including school libraries and public libraries which are conveniently available;

(b) A copy of each textbook used by the academic program or the equivalent for peripheral dorms; and

(c) Reasonable access to a computer with Internet access to facilitate homework and study.

**§ 36.103 What are the requirements for multi-purpose spaces in homeliving programs?**

Homeliving programs must provide adequate areas for sleeping, study, recreation, and related activities.

**Privacy**

**§ 36.110 Must programs provide space for storing personal effects?**

Yes, students are entitled to private personal spaces for storing their own personal effects, including at least one lockable closet, dresser drawer, or storage space. However, all drawers, dressers, storage space, or lockable space are the property of the homeliving program and are subject to random search.

**Waivers and Accountability**

**§ 36.111 Can a tribe, tribal governing body, or local school board waive the homeliving standards?**

A tribal governing body or local school board may waive some or all of the standards established by this part if the body or board determines that the standards are inappropriate for the needs of the tribe's students.

(a) If a tribal governing body or school board waives standards under this section, it must, within 60 days, submit proposed alternative standards to the Director, BIE.

(b) Within 90 days of receiving a waiver and proposal under paragraph (a) of this section, the Director must either:

(1) Approve the submission; or

(2) Deliver to the governing body or school board a written explanation of the good cause for rejecting the submission.

(c) If the Director rejects a submission under paragraph (c) of this section, the governing body or school board may submit another waiver and proposal for approval. The standards in this part remain in effect until the Director approves alternative standards.

**§ 36.112 Can a homeliving program be closed, transferred, consolidated, or substantially curtailed for failure to meet these standards?**

No, a homeliving program cannot be closed, transferred to any other authority, consolidated, or its programs substantially curtailed for failure to meet these standards.

**§ 36.120 What type of reporting is required to ensure accountability?**

The homeliving program must provide to the appropriate local school board or alternative board such as a homeliving board, the tribal governing body, BIE, and the Secretary of the Interior, an annual accountability report within 45 days following the end of the school year consisting of:

(a) Enrollment figures identified by the homeliving count period;

(b) A brief description of programs offered;

(c) A statement of compliance with the requirements of this part and, if the program is not in compliance, recommendations for achieving compliance; and

(d) Recommendations to improve the homeliving program including identification of issues and needs.

[FR Doc. E7-23330 Filed 12-4-07; 8:45 am]

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**NATIONAL LABOR RELATIONS BOARD**

**29 CFR Part 102**

**Revisions of Regulations Concerning Procedures for Filing Appeals to Denial in Whole or Part of Initial FOIA Requests**

**AGENCY:** National Labor Relations Board (NLRB).

**ACTION:** Final Rule.

**SUMMARY:** The National Labor Relations Board (NLRB) is amending regulations concerning the procedures for filing an appeal to adverse FOIA determinations. The revisions require that appeals be filed within 28 calendar days of the service of the notification of the adverse determination.

**EFFECTIVE DATE:** December 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Lester A. Heltzer, Executive Secretary, National Labor Relations Board, Room 11600, 1099 14th Street NW., Washington, DC 20570-0001, Telephone (202) 273-1067, e-mail address [Lester.Heltzer@nlrb.gov](mailto:Lester.Heltzer@nlrb.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Current regulation**

Section 102.117(c)(2)(v) provides in part that "An appeal from an adverse determination made pursuant to paragraph (c)(2)(iii) of this section must be filed within 20 working days of the receipt by the person making the request of the notification of the adverse determination where the request is denied in its entirety; or, in the case of a partial denial, within 20 working days of the receipt of any records being made available pursuant to the request."

**II. Proposed revision**

Since the Agency does not send such determinations on initial requests by certified mail, it has no objective means of determining when a requestor receives an adverse determination. Therefore, it is impossible to know from which date to compute time periods from adverse FOIA determinations.

Other agencies' practices support using the date of service rather than date of receipt as the appropriate date for computing timeliness of FOIA appeals. Under 28 CFR Ch. 1, Sec. 16.9, appeals from adverse Department of Justice FOIA determinations must be filed "within 60 days of the date of the letter denying" the request. See also, *Center for Biological Diversity v. Gutierrez*, 451 F. Supp.2d 57 (D.D.C. 2006)(Department of Commerce regulations provide that appeals from adverse determinations must be received by 5 p.m. EST on the

“thirtieth day after issuance of initial FOIA determination \* \* \*” 15 CFR Sec. 410(a)); *Wilbur v. Central Intelligence Agency*, 355 F.3rd 675 (DC. Cir. 2004) (The CIA’s FOIA regulations require that any administrative appeal “be received within 45 days of the agency’s initial decision.” 32 CFR Sec. 1900.42.)

**III. Administrative Procedures Act**

Because the change involves rules of agency organization, procedure or practice, the Agency is not required to publish it for comment under Section 553 of the Administrative Procedure Act (5 U.S.C. 553).

**IV. Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for procedural rules, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) pertaining to regulatory flexibility analysis do not apply to these rules. However, even if the Regulatory Flexibility Act were to apply, the NLRB certifies that these changes will not have a significant economic impact on small business entities since the changes merely codify the actual practice under the existing rules.

**V. Small Business Regulatory Enforcement Fairness Act**

Because the rule relates to Agency procedure and practice and merely modifies the agency’s existing filing procedures, the Board has determined that the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801) do not apply.

**VI. Paperwork Reduction Act**

This revision does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

**Lists of Subjects in 29 CFR Part 102**

Administrative practice and procedure, Labor Management relations.

■ For the reasons set forth above, the NLRB proposes to amend 29 CFR part 102 as follows:

**PART 102—RULES AND REGULATIONS**

■ 1. The authority citation for 29 CFR part 102 continues to read as follows:

**Authority:** Section 6, National Labor Relations Act, as amended ((29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

■ 2. Section 102.117(c)(2)(v) is revised to read as follows:

**§ 102.117 Freedom of Information Act Regulations: Board materials and formal documents available for public inspection and copying; requests for described records; time limit for response; appeal from denial of request; fees for document search and duplication; files and records not subject to inspection.**

- \* \* \* \* \*
- (c) \* \* \*
- (2) \* \* \*
- (v) An appeal from an adverse

determination made pursuant to paragraph (c)(2)(iii) of this section must be filed within 28 calendar days of the service of the notification of the adverse determination, in whole or in part. If the adverse determination was made in a Regional Office, a Subregional Office, or by the Freedom of Information Officer, Office of the General Counsel, the appeal shall be filed with the General Counsel in Washington, DC. If the adverse determination was made by the Executive Secretary of the Board or the Inspector General, the appeal shall be filed with the Chairman of the Board in Washington, DC. Within 20 working days after receipt of an appeal the General Counsel or the Chairman of the Board, as the case may be, shall make a determination with respect to such appeal and shall notify the person making the request in writing. If the determination is to comply with the request, the record shall be made promptly available to the person making the request upon receipt of payment of any charges due in accordance with the provisions of paragraph (d)(2) of this section. If on appeal the denial of the request for records is upheld in whole or in part, the person making the request shall be notified of the reasons for the determination, the name and title or position of each person responsible for the denial, and the provisions for judicial review of that determination under the provisions of 5 U.S.C. 552(4)(B). Even though no appeal is filed from a denial in whole or in part of a request for records by the person making the request, the General Counsel or the Chairman of the Board may, without regard to the time limit for filing of an appeal, sua sponte initiate consideration of an adverse determination under this appeal procedure by written notification to the person making the request. In such event the time limit for making the determination shall commence with the issuance of such notification. An adverse determination by the General Counsel or the Chairman of the Board, as the case may be, will be the final action of the Agency. If the requester

wishes to seek review by a court of any adverse determination, the requester must first appeal it under this section.

\* \* \* \* \*

Dated: Washington, DC, November 29, 2007.

By Direction of the Board.

**Lester A. Heltzer,**

*Executive Secretary.*

[FR Doc. E7–23521 Filed 12–4–07; 8:45 am]

**BILLING CODE 7545–01–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

**[CGD01–07–158]**

**Drawbridge Operation Regulations; Cheesequake Creek, Morgan, NJ**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the New Jersey Transit Rail Operation (NJTRO) Railroad Bridge across Cheesequake Creek, mile 0.2, at Morgan, New Jersey. Under this temporary deviation, the bridge may remain in the closed position from January 2, 2008 through March 31, 2008. Vessels that can pass under the draw without a bridge opening may do so at all times. This deviation is necessary to facilitate scheduled bridge maintenance. **DATES:** This deviation is effective from January 2, 2008 through March 31, 2008. **ADDRESSES:** Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7069.

**SUPPLEMENTARY INFORMATION:** The NJTRO railroad bridge has a vertical clearance of 3 feet at mean high water, and 8 feet at mean low water in the closed position. The existing drawbridge operating regulations, listed at 33 CFR 117.709(b), require the bridge to open on signal; except that, at least