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Order Modifying Capacity Release Data Sets

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

On June 29, 1995, the Electronic Bulletin Board (EBB) Working Group submitted a consensus proposal to modify the capacity release data sets adopted by the Commission in Order No. 563.¹ The filing also contained proposed revisions to the Electronic Data Interchange (EDI) implementation guide relating to these changes. The approved data sets and implementation guide are included in a document entitled "Standardized Data Sets and Communication Protocols," available at the Commission's Public Reference and Files Maintenance Branch.

The Working Group requests that the changes become effective 90 days after a Commission order to provide sufficient implementation time. The Working Group, through a filing made on May 11, 1995, also provided notification that, by consensus agreement, it intends to transfer future responsibility for maintenance of the capacity release data sets and for the PI GRID™ Common Code Database to the Gas Industry Standards Board.

Pursuant to the process adopted by the Commission to make modifications to the data sets,² public notice of the June 29, 1995 filing was issued on July 3, 1995, with comments due by July 12, 1995.

Natural Gas Clearinghouse (NGC), a member of the Working Group, filed a

comment stating that the field entitled discount indicator needs to be clarified. The discount indicator is a mandatory "yes/no" field where:

"Y" signifies that the rates associated with the capacity being released include rates discounted by transporter which could result in additional charges to the bidder if other than the Gas transaction points used to describe the capacity are utilized, and "N" or blank, signifies that no discounts apply.

NGC states that this field was accepted at its behest to reflect the Commission's decision in ANR,³ under which a replacement shipper may be assessed charges in excess of its bid if it uses alternate receipt or delivery points.

NGC contends that, after the Working Group filed the data sets, an ambiguity became apparent. It is concerned that parties that were not a part of the Working Group process may interpret this provision to mean that the field would be coded as "yes" whenever a shipper is releasing capacity on which it pays discounted rates. NGC maintains that it and the Working Group's intent was that the field be coded "yes" only when the replacement shipper would be exposed to a higher rate for the use of alternate points. NGC requests clarification of this point and also recommends revision to the description of the field to better reflect this intent.⁴

The Commission accepts the data sets and EDI implementation guide, and will grant the clarification and accept the proposed language revision requested by NGC. This clarification will help ensure that the discount indicator field is coded in a consistent manner so that replacement shippers can rely on the information provided.

In *El Paso*⁵ and *ANR*,⁶ the Commission explained that when a replacement shipper obtains capacity that the pipeline sold to the releasing shipper at a discount rate, the replacement shipper may be subject to additional charges for using alternate

receipt or delivery points.⁷ The replacement shipper is subject to additional charges only when the releasing shipper includes a specific condition in the release obligating the replacement shipper to pay the additional charges resulting from its use of alternate points. Absent an express condition, the replacement shipper pays the rate established by its bid and the releasing shipper is required to pay the differential between the discount rate and the maximum rate.

In line with this policy, the Commission clarifies that the discount indicator is to be coded "yes" only when the replacement shipper could be subject to additional charges for changing points. This clarification will ensure that replacement shippers receive consistent and correct information about their potential exposure to additional charges. The language revision suggested by NGC provides a better reflection of this intent than the version proposed by the Working Group and, therefore, will be adopted.

Pipelines will be required to implement the new fields within 90 days of the date of this order. The "Standardized Data Sets and Communication Protocols" will be modified to include the new fields and will be made available at the Commission's Public Reference and Files Maintenance Branch.

The Commission Orders

(A) The data sets and implementation guide are accepted with the revision discussed in the body of this order.

(B) Pipelines must implement the requirements of this order within 90 days of the date of the order.

By the Commission.

Lois D. Cashell,

Secretary.

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³ ANR Pipeline Company, 66 FERC ¶ 61,340, at 62,130-32 (1994).

⁴ Specifically, NGC recommends the field be reworded to state:

"Y" signifies that the rates associated with the capacity being released include rates discounted by transporter which *that* could result in additional charges to the bidder if other than the Gas transaction points used to describe the capacity are utilized, and "N" or blank, signifies that no discounts *such additional charges could* apply.

NGC states the revised definition should be included in both the "description of field" and the "data type and explanation" columns.

⁵ *El Paso Natural Gas Company*, 62 FERC ¶ 61,311, at 62,991 (1993).

⁶ ANR Pipeline Company, 66 FERC ¶ 61,340, at 62,130-32 (1994).

⁷ In general, when the pipeline has sold capacity at a discount, the pipeline is entitled to collect the maximum rate when shippers change to alternate points (unless the pipeline has agreed by contract that the discounted rate applies to all points).

¹ Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations, Order No. 563, 59 FR 516 (Jan. 5, 1994), III FERC Stats. & Regs. Preambles ¶ 30,988 (Dec. 23, 1993), *order on reh'g*, Order No. 563-A, 59 FR 23624 (May 6, 1994), III FERC Stats. & Regs. Preambles ¶ 30,994 (May 2, 1994), *reh'g denied*, Order No. 563-B, 68 FERC ¶ 61,002 (1994).

² Order No. 563-A, III FERC Stats. & Regs. Preambles at 31,036-37.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-206B]

Safety Standards for Fall Protection in the Construction Industry

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; correcting amendment.

SUMMARY: Negotiated rulemaking is currently underway to develop a proposed revision of OSHA's standards for steel erection in subpart R of part 1926. That proposal is expected to include fall protection requirements for employees performing steel erection work. OSHA has concluded that the Agency's recently revised general requirements for fall protection (subpart M of part 1926) should be amended at this time to clarify that they do not apply to any steel erection activities. Therefore, OSHA is withdrawing amendments to subpart E which have not yet become effective and is amending certain provisions of subpart M of part 1926 in order to maintain the fall protection requirements for steel erection that were in effect before the issuance of revised subpart M.

EFFECTIVE DATE: This document is effective on August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Liblong, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219-8151.

SUPPLEMENTARY INFORMATION:**I. Background**

On August 9, 1994, the Occupational Safety and Health Administration (OSHA) issued a final rule on Fall Protection in the Construction Industry, 29 CFR part 1926, subpart M (59 FR 40672), which became effective, except as described below, on February 6, 1995. With respect to steel erection activities, the new subpart M established the duty to provide fall protection for employees engaged in steel erection in structures other than buildings (revised §§ 1926.500(a)(2)(iii), and 1926.501(b)) and established the fall protection systems criteria and training requirements for employees engaged in all steel erection work (revised §§ 1926.500(a)(2)(iii), (a)(3), (a)(4), 1926.502, and 1926.503).

On October 7, 1994, five steel erection companies petitioned OSHA for an administrative stay of final subpart M to the extent the standard applies to steel erection activities. They argued that OSHA had not given fair notice that subpart M would apply to the steel erection industry at all, and that, in consequence, they did not have the opportunity to comment on this issue.

After reviewing the rulemaking record in light of petitioner's fair notice claims, OSHA agreed that the petitioners and other interested persons did not receive adequate notice of OSHA's intention that some steel erection activities would be covered by revised subpart M. Because of the notice deficiency, OSHA recognized that the rulemaking record was incomplete with respect to steel erection and that revised subpart M was not a final rule to the extent it applied to steel erection.

Accordingly, OSHA granted the request for an administrative stay and delayed the effective date of revisions to subpart M and subpart E, to the extent they applied to steel erection, until August 6, 1995 (60 FR 5131, January 26, 1995). OSHA explained in the January 1995 notice that it intended to reopen the subpart M record for supplemental comments concerning subpart M coverage of certain steel erection work. See 60 FR 5131.

For construction activity other than steel erection, revised subpart M and supporting amendments to subparts E, H, N, P, Q, and V became effective on February 6, 1995.

At the time OSHA granted the petitioners' request for an administrative stay and delayed the effective date of revised subpart M, a negotiated rulemaking committee was in the process of developing a proposal to revise 29 CFR part 1926, subpart R. Subpart R currently applies to steel erection of buildings. The Steel Erection Negotiated Rulemaking Advisory Committee, SENRAC, was expected to issue a proposal in June 1995 which would, among other things, expand subpart R's scope. In order to avoid overlap or conflict between two rulemakings concerning steel erection fall hazards, OSHA decided to wait to reopen subpart M for additional comment concerning coverage of steel erection until after SENRAC's June proposal made clear which steel erection activities would remain unregulated by subpart R. Accordingly, OSHA delayed the effective date of revisions to subpart E and subpart M purporting to apply to steel erection for six months, or until August 6, 1995 (60 FR 5131, January 26, 1995).

To date, SENRAC has not decided which steel structures will be subject to subpart R's fall protection requirements. Accordingly, OSHA has granted SENRAC additional time to develop a proposal to revise subpart R. In light of these developments, further extending the administrative stay of subpart M would prolong indefinitely the time in which the text of the standard does not reflect the standard's actual scope. OSHA has decided therefore that subpart M should be amended at this time to accurately reflect that it does not cover steel erection and that subpart E should be amended so that the generic fall protection provisions that have applied to steel erection continue in effect.

OSHA intends, after the SENRAC proposal is issued and the scope of the subpart R revision rulemaking is definite, to formally propose to amend subpart M to include any steel erection activity omitted from the subpart R revision process.

Until subparts M and R are finally revised, the Agency's enforcement policy on fall protection during steel erection is the policy outlined in Deputy Assistant Secretary Stanley's July 10, 1995 memorandum to the Office of Field Programs, "Fall Protection in Steel Erection." The memorandum provides that the term "steel erection activities" means the movement and erection of skeleton steel members (structural steel) in or on buildings or non-building structures. It includes the initial connecting of steel, employees moving point-to-point, installing metal floor or roof decking, welding, bolting and similar activities.

The memorandum further provides that steel erection does not include the erection of steel members such as lintels, stairs, railings, curtainwalls, windows, architectural metalwork, column covers, catwalks, and similar non-skeletal items or the placement of reinforcing rods in concrete structures.

Accordingly, OSHA is amending subpart M and subpart E in order to maintain, until such time as further rulemaking procedures may be initiated and completed, the fall protection requirements for steel erection that were in effect before the issuance of revised subpart M.

II. Summary and Explanation**A. Personal Protective Equipment—Subpart E**

OSHA is amending subpart E to withdraw the actions whereby the Agency removed §§ 1926.104, Safety belts, lifelines and lanyards; 1926.105, safety nets; and 1926.107 (b), (c) and (f)

(definitions for the terms "lanyard", "lifeline" and "safety belt", respectively), insofar as those provisions relate to steel erection. Through this amendment, OSHA will maintain the existing fall protection requirements for steel erection activities pending rulemaking that addresses the steel erection industry.

B. Scope and Application—Subpart M

OSHA is amending § 1926.500(a), Scope and application, of subpart M to indicate clearly that the provisions of revised §§ 1926.501, Duty to have fall protection; 1926.502, Fall protection systems criteria and practices; and 1926.503, Training requirements, do not apply to steel erection activities. The revised provision clearly indicates that subpart R and specified provisions of subpart E cover steel erection.

Exemption From Delayed Effective Date Requirement

Under 5 U.S.C. 553, OSHA finds that there is good cause for making this amendment effective upon publication in the **Federal Register**. This amendment simply maintains the fall protection requirements which have applied to the steel erection industry, notwithstanding the promulgation of subpart M, Fall protection, so it does not increase the existing regulatory burden.

Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

List of Subjects in 29 CFR Part 1926

Construction industry, Construction safety, Excavations, Fall protection, Hoisting safety, Occupational safety and Health, Protective equipment, Safety, Tools.

Accordingly, pursuant to sections 4, 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333); section 4 of the Administrative Procedure Act (5 U.S.C. 553); Secretary of Labor's Order No. 1-90 (55 FR 35736); and 29 CFR part 1911, the amendment to 29 CFR part 1926 made in the **Federal Register** on August 9, 1994 (59 FR 40672) is further amended as set forth below.

Signed at Washington, D.C. this 28th day of July 1995.

Joseph A. Dear,
Assistant Secretary of Labor.

PART 1926—[AMENDED]

Subpart E—[Amended]

1. The authority citation for subpart E of part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), or 1-90 (55 FR 9033), as applicable.

2. Amendatory items 4, 5, 6, and 7 to subpart E, published in the **Federal Register** issue of August 9, 1994 (59 FR 40729) and stayed in the issue of January 26, 1995 (60 FR 5131), are withdrawn.

Subpart M—Fall Protection

3. The authority citation for subpart M of part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1-90 (55 FR 9033); and 29 CFR Part 1911.

4. Paragraphs (a)(2)(iii), (a)(3)(iv) and (a)(4) of § 1926.500 are revised to read as follows:

§ 1926.500 Scope, application, and definitions applicable to this subpart.

(a) * * *
(2) * * *
(iii) Requirements relating to fall protection for employees performing steel erection work are provided in § 1926.105 and in subpart R of this part.
* * * * *

(3) * * *
(iv) Section 1926.502 does not apply to steel erection activities. (Note: Section 1926.104 sets the criteria for body belts, lanyards and lifelines used for fall protection in steel erection activities. Paragraphs (b), (c) and (f) of § 1926.107 provide definitions for the pertinent terms).

(4) Section 1926.503 sets forth requirements for training in the installation and use of fall protection systems, except in relation to steel erection activities.
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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations; Information and Informational Materials

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Treasury Department is amending the Cuban Assets Control Regulations (the "Regulations") to bring the Regulations into conformity with amendments to the Trading with the Enemy Act concerning information and informational materials included in the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing, tel.: 202/622-2480, or William B. Hoffman, Chief Counsel, tel.: 202/622-2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

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Background

Section 525 (b) of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Pub. L. 103-236, 108 Stat. 474, amended section 5(b)(4) of the Trading with the Enemy Act, 50 U.S.C. App. 1-44 ("TWEA"), to expand the list of items considered to be information or informational materials to include compact discs, CD ROMs, artworks, and news wire feeds. In addition, section 5(b)(4) of TWEA, as