

interpretation would be codified as a part of CFR part 1450, where § 1450.1 would describe the scope of part 1450 and § 1450.2(a) would contain the definition of “public accommodations facility.” Thus, this rule adds the new CFR part 1450, defines “unblockable drain” at 1450.2(b) and indicates that 1450.1 and 1450.2(a) are reserved.

#### D. Effective Date

Section 1405 of the VGB Act directs the Commission to establish a grant program to provide assistance to eligible States for specific uses related to pool and spa safety. The Commission has entered into an interagency agreement with the Centers for Disease Control and Prevention (CDC)/National Center for Injury Control and Prevention (NCIPC) to administer the grant program. CDC will be publishing the Funding Opportunity Announcement related to the grant program in early April. Because potential State applicants need a definitive understanding of the law in order to qualify for grant monies, and because CDC intends to publish the Funding Opportunity Announcement in April, this final rule resulting is effective upon publication. The rule does not impose obligations on regulated parties beyond those imposed by the VGB Act. In addition, as mentioned in the **DATES** section of this preamble, the Commission has already received and considered comments and/or presentations with regard to this issue on two separate occasions: (1) In response to the “July 2009 Staff Draft Technical Guidance on Unblockable Drains” and (2) during the November 4, 2009 Commission public hearing. Therefore, there is no need to provide a delayed effective date in order to allow for regulated parties to prepare for the rule.

#### List of Subjects in 16 CFR Part 1450

Consumer protection, Incorporation by reference, Infants and children, Law enforcement.

■ For the reasons stated above, the Commission adds part 1450 to subchapter B of title 16 of the Code of Federal Regulations to read as follows:

#### PART 1450—VIRGINIA GRAEME BAKER POOL AND SPA SAFETY ACT REGULATIONS

Sec.

1450.1 [Reserved]  
1450.2 Definitions.

**Authority:** 15 U.S.C. 2051–2089, 86 Stat. 1207; 15 U.S.C. 8001–8008, 121 Stat. 1794.

#### § 1450.1 [Reserved]

#### § 1450.2 Definitions.

(a) [Reserved]

(b) *Unblockable drain* includes a suction outlet defined as all components, including the sump and/or body, cover/grate, and hardware such that its perforated (open) area cannot be shadowed by the area of the 18” x 23” Body Blocking Element of ASME/ANSI A112.19.8–2007 and that the rated flow through the remaining open area (beyond the shadowed portion) cannot create a suction force in excess of the removal force values in Table 1 of that Standard. All suction outlet covers, manufactured or field-fabricated, shall be certified as meeting the applicable requirements of the ASME/ANSI A112.19.8 standard. You must proceed in accordance with ASME/ANSI A112.19.8–2007 (issued March 30, 2007), including Addenda A112.19.8a–2008 (August 11, 2008) and A112.19.8b–2009 (approved October 22, 2009), Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs. ASME/ANSI A112.19.8–2007, including Addenda A112.19.8a–2008 and A112.19.8b–2009 are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from American Society of Mechanical Engineers (ASME), ATTN: Secretary, A112 Standards Committee, Three Park Avenue, New York, New York 10016–5990; [www.asme.org](http://www.asme.org), telephone 800–843–2763. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Dated: April 6, 2010.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 2010–8160 Filed 4–26–10; 8:45 am]

**BILLING CODE 6355–01–P**

#### FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

#### 29 CFR Part 2700

#### Penalty Settlement Procedure

**AGENCY:** Federal Mine Safety and Health Review Commission.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Federal Mine Safety and Health Review Commission (the “Commission”) is an independent adjudicatory agency that provides hearings and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977, or Mine Act. Hearings are held before the Commission’s Administrative Law Judges, and appellate review is provided by a five-member Review Commission appointed by the President and confirmed by the Senate. The Commission is adopting an interim rule to streamline the process for settling civil penalties assessed under the Mine Act.

**DATES:** The interim rule takes effect on May 27, 2010. The Commission will accept written and electronic comments received on or before June 28, 2010.

**ADDRESSES:** Written comments should be mailed to Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001, or sent via facsimile to 202–434–9944. Persons mailing written comments shall provide an original and three copies of their comments. Electronic comments should state “Comments on Penalty Settlement Rule” in the subject line and be sent to [mmccord@fmshr.com](mailto:mmccord@fmshr.com).

**FOR FURTHER INFORMATION CONTACT:** Michael A. McCord, General Counsel, Office of the General Counsel, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001; telephone 202–434–9935; fax 202–434–9944.

#### SUPPLEMENTARY INFORMATION:

#### Background

Since 2006, the number of new cases filed with the Commission has dramatically increased. From 2000 through 2005, an average of approximately 2300 cases were filed with the Commission per year. In 2006 and 2007, between approximately 3000 and 4000 new cases were filed each year, while in 2008 and 2009, approximately 9000 cases were filed each year.

In order to deal with its burgeoning caseload, the Commission is considering

various ways to streamline its processing of cases. One approach the Commission has explored is to simplify how it processes civil penalty settlements.

Under section 110(k) of the Mine Act, 30 U.S.C. 820(k), a proposed civil penalty that has been contested before the Commission may be settled only with the approval of the Commission. Under the Commission's current practice, a party submits to a Commission Administrative Law Judge a motion to approve a penalty settlement that includes for each violation the amount of the penalty proposed by the Department of Labor's Mine Safety and Health Administration, the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties. 29 CFR 2700.31(b). A Commission Judge considers the motion and evaluates the penalty agreed to by the parties based on the criteria set forth in section 110(i) of the Mine Act, 30 U.S.C. 820(i). If the Judge concludes that the settlement is consistent with the statutory criteria, the Judge issues a decision approving the settlement and setting forth the reasons for approval.

In all penalty proceedings, except for discrimination proceedings arising under section 105(c) of the Mine Act, 30 U.S.C. 815(c), or proceedings against individuals pursuant to section 110(c) of the Mine Act, 30 U.S.C. 820(c), the interim rule sets forth several new requirements regarding how parties file settlement motions with the agency. First, it requires that a party filing a motion to approve a penalty settlement submit a proposed decision approving settlement ("proposed order") with the motion. Second, it requires the filing party to submit the motion and proposed order electronically. The basic requirements for content of a motion to approve settlement still apply in that a movant must include in a motion for each violation the amount of the proposed penalty, the amount of the penalty agreed to in settlement, and facts that support the penalty agreed to by the parties. A filing party may set forth this information in the proposed order and incorporate the proposed order by reference in the motion. The interim rule includes a new requirement that the party filing the motion certify that the opposing party has reviewed the motion and has authorized the filing party to represent that the opposing party consents to the granting of the motion and the entry of the proposed order approving settlement. The interim rule also requires that, if a motion has been filed by a Conference and Litigation Representative ("CLR") on

behalf of the Secretary of Labor, the accompanying proposed order must include a provision in which the Judge accepts the CLR to represent the Secretary in accordance with the notice of either limited or unlimited appearance previously filed with the Commission.

The content of orders approving settlement will vary depending upon the particular facts and circumstances of each case. The Commission will make sample forms for proposed orders approving settlement available on the Commission's Web site (<http://www.fmshrc.gov>).

In all penalty proceedings, except discrimination and section 110(c) proceedings, parties will file any settlement motion electronically by attaching electronic copies of the motion and proposed order to an e-mail to the Commission. The e-mail address to which settlement motions must be sent and instructions for filing are set forth on the Commission's Web site (<http://www.fmshrc.gov>). The Commission expects that the electronic submission of such settlement motions with proposed orders will significantly reduce the amount of time it takes for the Commission to dispose of settlement motions.

Electronic filing is effective upon the date of transmission. The transmitting party has the responsibility of retaining records showing the date of transmission, including receipts. Filers should request a delivery receipt when filing electronically with the Commission using the option for a delivery receipt, if available on the filer's e-mail program. This receipt is automatically generated when the e-mail is delivered to the Commission's e-mail server. Parties may also use the option of a read receipt, which is generated when the e-mail is opened.

Any signature line set forth within a motion to approve settlement submitted electronically must include the notation "/s/" followed by the typewritten name of the party or representative of the party filing the document. The Commission shall consider such a representation of the signature to be the original signature of the representative for all purposes unless the party representative shows that such representation of the signature was unauthorized. See 29 CFR 2700.6. Although the interim rule requires electronic filing, the Commission may allow a party to file non-electronically with the permission of the Judge.

The interim rule requires that a copy of a motion and proposed order be served on the opposing party as expeditiously as possible. The

Commission recognizes that some parties may not have the capability of being served with the motion and proposed order by e-mail, facsimile transmission, or commercial delivery. Under such circumstances, the filing party may serve the motion and proposed order on the opposing party by mail. Permission of the Judge is unnecessary for service by non-electronic means.

Currently, there are instances in which the Secretary files a motion to approve settlement before the Secretary has filed a petition for assessment of penalty. Some of those instances occur when the Commission has granted the Secretary an extension of time to file the petition, and the case settles before the petition is due under the extension. When a case settles before the Secretary has filed a petition, the Commission requires the filing party to file a copy of the proposed penalty assessment and copies of the citations and/or orders with the motion to approve settlement and does not require the Secretary to file the petition. The interim rule continues this practice. Thus, under the interim rule, if the filing party electronically files a motion to approve settlement and proposed order before the Secretary has filed a petition for assessment of penalty, the filing party must also file as attachments electronic copies of the proposed penalty assessment and citations and orders at issue. Under such circumstances, the Secretary need not file a petition for assessment of penalty.

The interim rule also provides that if a party filing a motion to approve settlement and proposed order fails to include in the motion and proposed order information required by this rule and the Commission's instructions on its Web site, the Commission will not accept for filing the motion and proposed order. Rather, the Commission will inform the filing party of the need for correction and resubmission.

Discrimination proceedings and section 110(c) proceedings are specifically excepted from paragraph (b) of the Commission's new interim rule. The Commission's current practice shall continue to apply to such proceedings. Thus, in discrimination or section 110(c) proceedings, a party will submit a hard paper copy of a motion to approve settlement to the Judge that includes for each violation the amount of the proposed penalty, the amount of the penalty agreed to in settlement, and the supporting facts. Filing and service in such proceedings shall be accomplished in accordance with the provisions of 29 CFR 2700.5 and 2700.7.

## Notice and Public Procedure

Although notice-and-comment rulemaking requirements under the Administrative Procedure Act (“APA”) do not apply to rules of agency procedure (see 5 U.S.C. 553(b)(3)(A)), the Commission invites members of the interested public to submit comments on the interim rule in order to assist the Commission in its deliberations regarding the adoption of a permanent rule. The Commission will accept public comments until June 28, 2010.

The Commission is an independent regulatory agency and, as such, is not subject to the requirements of E.O. 12866, E.O. 13132, or the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule 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.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because this rule does not contain any information collection requirements that require the approval of the OMB.

The Commission has determined that the Congressional Review Act, 5 U.S.C. 801, is not applicable here because, pursuant to 5 U.S.C. 804(3)(C), this rule “does not substantially affect the rights or obligations of non-agency parties.”

### List of Subjects in 29 CFR Part 2700

Administrative practice and procedure, Mine safety and health, Penalties, Whistleblowing.

■ For the reasons stated in the preamble, the Federal Mine Safety and Health Review Commission amends 29 CFR part 2700 as follows:

### PART 2700—PROCEDURAL RULES

■ 1. The authority citation for part 2700 continues to read as follows:

**Authority:** 30 U.S.C. 815, 820, 823, and 876.

■ 2. Section 2700.5 is amended by revising paragraph (b) to read as follows:

#### § 2700.5 General requirements for pleadings and other documents; status or informational requests.

\* \* \* \* \*

(b) *Where to file.* Unless otherwise provided for in the Act, these rules, or by order:

(1) Until a Judge has been assigned to a case, all documents shall be filed with the Commission. Documents filed with the Commission shall be addressed to

the Executive Director and mailed or delivered to the Docket Office, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001; facsimile delivery as allowed by these rules (see section 2700.5(e)), shall be transmitted to (202) 434–9954.

(2) After a Judge has been assigned, and before a decision has been issued, documents shall be filed with the Judge at the address set forth on the notice of the assignment.

(3) Documents filed in connection with interlocutory review shall be filed with the Commission in accordance with section 2700.76.

(4) After the Judge has issued a final decision, documents shall be filed with the Commission as described in paragraph (b)(1) of this section.

■ 3. Revise § 2700.31 to read as follows:

#### § 2700.31 Penalty settlement.

(a) *General.* A proposed penalty that has been contested before the Commission may be settled only with the approval of the Commission upon motion. A motion to approve a penalty settlement shall include for each violation the amount of the penalty proposed by the Secretary, the amount of the penalty agreed to in settlement, and facts in support of the penalty agreed to by the parties.

(b) *Motion accompanied by proposed order.* In all penalty proceedings, except for discrimination proceedings arising under section 105(c) of the Mine Act, 30 U.S.C. 815(c), or proceedings against individuals pursuant to section 110(c) of the Mine Act, 30 U.S.C. 820(c), a settlement motion must be accompanied by a proposed order approving settlement. Forms for proposed orders approving settlement are available on the Commission’s Web site (<http://www.fmshrc.gov>).

(1) *Certification.* The party filing a motion must certify that the opposing party has reviewed the motion, and has authorized the filing party to represent that the opposing party consents to the granting of the motion and the entry of the proposed order approving settlement.

(2) *Appearance by CLR.* If a motion has been filed by a Conference and Litigation Representative (“CLR”) on behalf of the Secretary, the proposed order approving settlement accompanying the motion shall include a provision in which the Judge accepts the CLR to represent the Secretary in accordance with the notice of either limited or unlimited appearance previously filed with the Commission.

(3) *Filing and service of motion accompanied by proposed order.*

(i) *Electronic filing.* A motion and proposed order shall be filed electronically according to the requirements set forth in this rule and instructions on the Commission’s Web site (<http://www.fmshrc.gov>). Filing is effective upon the date of the electronic transmission of the motion and proposed order. The transmitting party is responsible for retaining records showing the date of transmission, including receipts. Any signature line set forth within a motion to approve settlement submitted electronically shall include the notation “/s/” followed by the typewritten name of the party or representative of the party filing the document. Such representation of the signature shall be deemed to be the original signature of the representative for all purposes unless the party representative shows that such representation of the signature was unauthorized. See 29 CFR 2700.6. A motion and proposed order filed electronically constitute written documents for the purpose of applying the Commission’s procedural rules (29 CFR part 2700), and such rules apply unless an exception to those rules is specifically set forth in this rule. Any copies of the motion and proposed order which have been printed and placed in the official case file by the Commission shall have the same force and effect as original documents.

(ii) *Filing by non-electronic means.* A party may file a motion to approve settlement and an accompanying proposed order by non-electronic means only with the permission of the Judge.

(iii) *Service.* A settlement motion and proposed order shall be served on all parties or their representatives as expeditiously as possible. If a party cannot be served by e-mail, facsimile transmission, or commercial delivery, a copy of the motion and proposed order may be served by mail. A certificate of service shall accompany the motion and proposed order setting forth the date and manner of service.

(4) *Filing of motion and proposed order prior to filing of petition.* If a motion to approve settlement and proposed order is filed with the Commission before the Secretary has filed a petition for assessment of penalty, the filing party must also submit as attachments electronic copies of the proposed penalty assessment and citations and orders at issue. If such attachments are filed, the Secretary need not file a petition for assessment of penalty.

(5) *Non-acceptance of motion and proposed order.* If a party filing a motion to approve settlement and a proposed order fails to include in the

motion and proposed order information required by this rule and the Commission's instructions posted on the Commission's Web site, the Commission will not accept for filing the motion and proposed order. Rather, the Commission will inform the filing party of the need for correction and resubmission.

(c) *Final order.* Any order by the Judge approving a settlement shall set forth the reasons for approval and shall be supported by the record. Such order shall become the final order of the Commission 40 days after issuance unless the Commission has directed that the order be reviewed. A Judge may correct clerical errors in an order approving settlement in accordance with the provisions of 29 CFR 2700.69(c).

Dated: April 21, 2010.

**Mary Lu Jordan,**

*Chairman, Federal Mine Safety and Health Review Commission.*

[FR Doc. 2010-9689 Filed 4-26-10; 8:45 am]

**BILLING CODE 6735-01-P**

---

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Parts 50 and 100

RIN 1219-AB63

#### Criteria and Procedures for Proposed Assessment of Civil Penalties/ Reporting and Recordkeeping: Immediate Notification of Accidents

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** MSHA published a direct final rule for parts 50 and 100 on December 29, 2009. MSHA stated that the Agency would withdraw the direct final rule if the Agency received significant adverse comments. Because the Agency did not receive any significant adverse comment, the direct final rule became effective. This notice confirms the effective date.

**DATES:** *Effective Date:* March 29, 2010.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at [silvey.patricia@dol.gov](mailto:silvey.patricia@dol.gov) (e-mail), 202-693-9440 (voice), or 202-693-9441 (facsimile).

**SUPPLEMENTARY INFORMATION:** MSHA received comments on the direct final rule indicating that some members of the mining industry misunderstood the Agency's intent. For clarification, the

Agency intends that the phrase, "Any other accident," as used in paragraph (d) of MSHA's standard at § 50.10 refers to:

- An entrapment of an individual for more than 30 minutes; and
- Any other accident as defined in § 50.2(h)(4)-(12).

After reviewing the comments, MSHA determined that they were not "significant adverse comments." Therefore, the Agency did not withdraw the direct final rule.

The comments can be viewed on MSHA's Web site at <http://www.msha.gov/REGS/Comments/E9-30608/immediatenotify.asp>.

Dated: April 21, 2010.

**Joseph A. Main,**

*Assistant Secretary of Labor for Mine Safety and Health.*

[FR Doc. 2010-9675 Filed 4-26-10; 8:45 am]

**BILLING CODE 4510-43-P**

---

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0271]

RIN 1625-AA00

#### Safety Zone; Extended Debris Removal in the Lake Champlain Bridge Construction Zone (Between Vermont and New York), Crown Point, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the navigable waters immediately surrounding the Lake Champlain Bridge construction zone between Chimney Point, VT and Crown Point, NY. This rule re-establishes a safety zone that was scheduled to expire prior to the completion of the removal of debris from the old Crown Point bridge demolition. The debris must be cleared from the navigable waterway prior to opening the channel to vessel traffic. This rule is necessary to provide safety of life on the navigable waters within this area during the demolition and debris removal of the bridge piers within this construction zone.

**DATES:** This rule is effective in the CFR on April 27, 2010. This rule is effective with actual notice for purposes of enforcement from 12:01 a.m. on Friday, April 16, 2010 through 11:59 p.m. on Saturday, May 15, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the

docket are part of docket USCG-2010-0271 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0271 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Lieutenant Junior Grade Laura van der Pol, Coast Guard Sector Northern New England, Waterways Management Division; telephone 207-741-5421, e-mail [Laura.K.vanderPol1@uscg.mil](mailto:Laura.K.vanderPol1@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The New York State Department of Transportation recently requested an extension to deadline for removing the concrete piers (6 and 7) which line the main channel in Crown Point, NY. These piers can only be effectively removed by explosive charges, and both the piers and subsequent debris must be removed before the Coast Guard can reopen the channel to all vessel traffic. The Coast Guard did not receive notification of delays in the debris removal operations in sufficient time to complete a comment period prior to the expiration of the existing safety zone. As delaying the demolition and debris removal process is contrary to public interest, and there is continued need to protect waterway users from hazardous debris in the navigational channel, a comment period is both impractical and unnecessary.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for