

portion of the record, unless including that indication would harm an interest protected by the exemption in paragraph (a) of this section under which the deletion is made. If technically feasible, the amount of the information deleted shall be indicated at the place in the record where such deletion is made.

§ 2004.14 Annual report to Congress.

(a) USTR shall compile FOIA statistics on a fiscal year basis beginning on October 1, 1997, and will submit this report to the Attorney General of the United States. The report will include:

- (1) Number of requests received;
- (2) Number of requests processed;
- (3) The number of requests for records pending before USTR as of September 30 of the preceding year, and the median number of days that such requests had been pending before USTR as of that date;

- (4) The number of appeals made by persons under the Act, the results of such appeals, and the reason for the action by USTR upon each appeal that results in a denial of information;

- (5) A complete list of all statutes that USTR relies upon to authorize it to withhold information under the Act, a description of whether a court has upheld the decision of USTR to withhold information under each such statute, and a concise description of the scope of any information withheld;

- (6) The total amount of fees collected by USTR for processing requests; and

- (7) The number of full-time staff of USTR devoted to processing requests for records, and the total amount expended in terms of time and dollars by that staff in processing requests.

(b) USTR shall make the above report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by USTR, by other electronic means.

Susan Esserman,

General Counsel.

[FR Doc. 98-4046 Filed 2-27-98; 8:45 am]

BILLING CODE 3190-01-M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Occupational Safety and Health Review Commission proposes to

supplement its existing rule establishing a Settlement Judge procedure, with a new procedure to be known as the Settlement Part which is intended to facilitate the settlement process in large and complex cases. This procedure would be instituted as a pilot program for a one-year trial period.

DATES: Comments must be received by April 16, 1998.

ADDRESSES: All comments concerning these proposed rules should be addressed to Earl R. Ohman, Jr., General Counsel, One Lafayette Center, 1120 20th St., NW., 9th Floor, Washington, DC 20036-3419.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, 202-606-5410.

SUPPLEMENTARY INFORMATION: The Occupational Safety and Health Review Commission proposes to supplement its existing rule establishing a Settlement Judge procedure, 29 CFR § 2200.101, with a new procedure to be known as the Settlement Part which is intended to facilitate the settlement process in large and complex cases. This procedure would be instituted as a pilot program for a one year trial period. However, as the Commission currently is without a quorum, it will wait for a second Commission member before acting to put the pilot program into effect. Before commencing the pilot program, the Commission also intends to give several judges specialized training in settlement negotiation techniques and procedures. After the trial period, the Commission would evaluate the results and determine whether it should continue the Settlement Part procedure and, if so, what modifications should be made. The Settlement Part process is intended to provide a more structured and formal setting in which the possibility of settlement would be enhanced by requiring the parties at a preliminary stage in the proceedings to meet and confer with a judge who has full authority both to guide and assist the parties to a complete or partial resolution of the case and to assure the parties the confidentiality which is a necessary component of any successful settlement procedure. Unlike the existing Settlement Judge procedure, which requires the consent of the parties, proceedings under the Settlement Part will be compulsory in certain cases. For purposes of the pilot program, the Settlement Part procedure will be mandated for cases where the amount of the proposed penalties is at least \$200,000 and in other cases where the Chief Administrative Law Judge deems the Settlement Part procedure to be appropriate. A settlement process

which may be prescribed for the parties without a requirement for their prior consent has ample precedent. For example, the Courts of Appeals for the Third Circuit and the Eleventh Circuit have, respectively, an "Appellate Mediation Program" and an "Appellate Conference Program" under which the selection of cases for settlement negotiations is controlled by the court. An independent unit of the court in the Ninth Circuit staffed by mediators conducts settlement conferences as directed by the court (9th Cir. R. 33-1). In the Fourth (4th Cir. R. 33) Sixth (6th Cir. R. 18), and Tenth (10th Cir. R. 33.1) Circuits, the court determines whether a pre-argument settlement conference should be conducted. In the Eighth Circuit, such conferences are mandatory in most civil appeals (8th Cir. R. 33A). The Federal Energy Regulatory Commission or its Chief Administrative Law Judge may mandatorily assign a settlement judge even absent the consent of or a motion by any of the parties. 18 CFR § 385.603. The provisions of the Settlement Part are set forth here as a separate and distinct rule for purposes of clarity in the notice and comment process. The Commission will consider combining these provisions with those of the existing settlement rule so as to create a single rule governing settlement practice.

Development of the Proposed Rules

The Commission's experience has shown that, generally speaking, parties have not been able to agree to use the existing consensual Settlement Judge procedure except in relatively simple cases which do not raise novel or complex issues of law or fact. While the Commission appreciates that the parties in such cases may have found the Settlement Judge system to be helpful in resolving their dispute, the Commission is concerned about the increasing volume of cases which for complexity or other reasons demand a great deal of trial time and impose an appreciable burden on Commission resources. The proposed Settlement Part is designed to make available to the parties a mechanism for addressing the potential for settlement, either in full or in part, of issues arising under these cases.

Since this procedure is to be a pilot program, the number of cases processed under the Settlement Part must be controlled so as to provide a sample large enough for an accurate and thorough evaluation of the program but not so large as to overtax the number of judges that can be made available to serve in the Settlement Part. Based on the Commission's analysis of its existing and anticipated docket, the Commission

has concluded that mandating the Settlement Part procedure in all cases where the potential penalty liability is \$200,000 or greater should be adequate to provide most of the cases needed for a successful test of the Settlement Part during this trial period.

Structure of the Settlement Part Procedure

With a few differences, proceedings under the Settlement Part parallel those prescribed by section 2200.101 for proceedings before settlement judges. During the settlement period, which is 60 days with one enlargement of 30 days permitted, parties and their representatives may meet privately with the Judge, and they or their agents with authority to settle on their behalf will be required to attend a settlement conference. If a full settlement is not achieved within the 60-day period or 30-day enlargement, the Settlement Part Judge will so inform the Chief Administrative Law Judge and will include in the case file any partial settlement that the parties may have been able to achieve. At this point, the Chief Administrative Law Judge will assign the case to a different Administrative Law Judge for further proceedings on all remaining issues. Unions, other representatives of employees, or employees who have elected party status are considered to be parties for purposes of proceedings under the Settlement Part.

Authority of the Settlement Part Judge

The Settlement Part Judge shall have full authority over the processing of the case including discovery and consideration of any motions which may be filed. All settlement negotiations and meetings with the parties, both jointly and individually, will be at the discretion of the Settlement Part Judge. The Settlement Part Judge will determine the best manner in which to facilitate settlement of the case, except for the settlement conference itself, which is mandatory.

Confidentiality

The Commission is aware that in order for settlement discussions to be fruitful, the parties must be assured of confidentiality with regard to matters that may be disclosed during settlement negotiations. The existing Settlement Judge rule, section 2200.101(c)(2), incorporates the requirement of Rule 408 of the Federal Rules of Evidence that evidence of conduct or statements made in settlement negotiations is not admissible and also prohibits the use in litigation of documents disclosed in the settlement process unless obtained by

appropriate discovery or subpoena. It also precludes the Settlement Judge from discussing the merits of the case and being called as a witness. Paragraph (d)(3) of the proposed Settlement Judge Part contains an even stronger and more comprehensive confidentiality provision. Not only are evidence of conduct or statements and documents revealed during settlement negotiations protected from subsequent disclosure except with the consent of the parties, but the confidentiality provision also extends to any information which the parties wish to protect including information revealed during private meetings with the Settlement Part Judge as well as any material prepared by the Judge or in his possession and communications between the Settlement Part Judge and the Chief Administrative Law Judge. Furthermore, in addition to prohibiting the Settlement Part Judge from discussing the merits of the case outside of the settlement negotiations and appearing as a witness, the proposed Settlement Part rule would also protect from disclosure the final report of the Settlement Part Judge to the Chief Administrative Law Judge. The only exception to nondisclosure absent the consent of the parties is any settlement agreement, full or partial, which the parties achieve, which will be embodied in an appropriate order entered upon the record by the Settlement Part Judge.

Record of Proceedings

Consistent with the broad confidentiality and nondisclosure provisions, the Settlement Part rule further provides that no material protected from disclosure will be entered in the official case file maintained by the Executive Secretary and therefore will not be available for public inspection. The only exception to this requirement is that any order approving a full or partial settlement agreement will be considered part of the official case record.

Non-reviewability

Paragraph (g) of the proposed rule generally provides that interlocutory review will not be available in proceedings under this section.

List of Subject in 29 CFR Part 2200

Administrative practice and procedure, Hearing and appeal procedures.

For the reasons set forth in the preamble, the Occupational Safety and Health Review Commission proposes to amend Title 29, Chapter XX, Part 2200, Subpart M of the Code of Federal Regulations as follows:

PART 2200—RULES OF PROCEDURE

1. The authority citation continues to read as follows:

Authority: 29 U.S.C. 661(g)

2. Subpart G—Miscellaneous Provisions is amended by adding section 2200.109 to read as follows:

§ 2200.109 Settlement Part.

(a) *Applicability.* This section applies only to notices of contest by employers in which the aggregate amount of the penalties sought by the Secretary is \$200,000 or greater and notices of contest by employers which are determined to be suitable for assignment under this section for reasons deemed appropriate by the Chief Administrative Law Judge.

(b) *Proceedings under this Part.* (1) Notwithstanding any other provision of these rules, following the filing of the pleadings the Chief Administrative Law Judge shall assign to the Settlement Part any case which satisfies the criteria set forth in paragraph (a) of this section. The Chief Administrative Law Judge shall either act as or appoint a Settlement Part Judge, who shall be a Judge other than the one assigned to hear and decide the case, to conduct proceedings under the Settlement Part as set forth in this section.

(2) The proceedings under the Settlement Part shall be for an initial period not to exceed 60 days but may be extended in accordance with paragraph (f)(1) of this section.

(c) *Powers and duties of Settlement Part Judges.* (1) The Judge shall confer with the parties on subjects and issues of whole or partial settlement of the case.

(2) The Judge shall seek resolution of as many of the issues in the case as is feasible.

(3) The Judge may require the parties to provide statements of the issues in controversy and the factual predicate for each party's position on each issue or may enter other orders as appropriate to facilitate the proceedings.

(4) The Judge may allow or suspend discovery during the time of assignment.

(5) The Judge may suggest privately to each attorney or other representative of a party what concessions his or her client should consider, and assess privately with each attorney or other representative the reasonableness of the party's case or settlement position.

(d) *Settlement conference*—(1) *General.* The Settlement Part Judge shall convene and preside over conferences between the parties. All settlement conferences shall be held in person. The

Judge shall designate a place and time of conference.

(2) *Participation in conference.* The Settlement Part Judge shall require that any attorney or other representative who is expected to try the case for each party be present. The Settlement Part Judge shall also require that the party's representative be accompanied by an official of the party having full settlement authority on behalf of the party. The parties and their representatives or attorneys are expected to be completely candid with the Settlement Judge so that he may properly guide settlement discussions. The failure to be present at a settlement conference or otherwise to comply with the orders of the Settlement Part Judge or the refusal to cooperate fully within the spirit of this rule may result in the imposition of sanctions under § 2200.41.

(3) *Confidentiality.* All statements made, and all information presented, during the course of proceedings under this section shall be regarded as confidential and shall not be divulged outside of these proceedings except with the consent of the parties. The Settlement Part Judge shall if necessary issue appropriate orders in accordance with § 2200.11 to protect confidentiality. The Settlement Part Judge shall not divulge any statements or information presented during private negotiations with a party or his representative except with the consent of that party. No evidence of statements or conduct in proceedings under this section within the scope of Federal Rule of Evidence 408, no notes or other material prepared by or maintained by the Settlement Part Judge, and no communications between the Settlement Part Judge and the Chief Administrative Law Judge including the report of the Settlement Part Judge under paragraph (e) of this section, will be admissible in any subsequent hearing except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless obtained through appropriate discovery or subpoena. The Settlement Part Judge shall not discuss the merits of the case with any other person, nor appear as a witness in any hearing of the case.

(e) *Record of proceedings.* No material of any form required to be held confidential under paragraph (d)(3) of this section shall be considered part of the official case record required to be maintained under 29 U.S.C. § 661(g), nor shall any such material be open to public inspection as required by section 661(g), unless the parties otherwise stipulate. With the exception of an order approving the terms of any partial

settlement agreed to between the parties as set forth in paragraph (f)(2) of this section, the Settlement Part Judge shall not file or cause to be filed in the official case record any material in his possession relating to these proceedings, including but not limited to communications with the Chief Administrative Law Judge and his report under paragraph (f) of this section, unless the parties otherwise stipulate.

(f) *Report of Settlement Part Judge.* (1) The Settlement Part Judge may request from the Chief Administrative Law Judge one enlargement of the time of the settlement period not exceeding 30 days if the Settlement Part Judge finds that the additional time may be helpful in achieving a settlement of all or part of the issues in the case. This request, and any action of the Chief Administrative Law Judge in response thereto, may be written or oral.

(2) The Settlement Part Judge, following the expiration of the settlement period or at such earlier date that he determines further negotiations would be fruitless, shall promptly notify the Chief Administrative Law Judge in writing of the status of the case. If the Settlement Judge has not approved a full settlement pursuant to § 2200.100, such report shall include copies of any written stipulations and orders embodying the terms of such partial settlement as has been achieved during the assignment.

(3) At the termination of the settlement period without a full settlement, the Chief Administrative Law Judge shall promptly assign the case to an Administrative Law Judge other than the Settlement Part Judge or Chief Administrative Law Judge for appropriate action on the remaining issues.

(g) *Non-reviewability.* Notwithstanding the provisions of § 2200.73 regarding interlocutory review, any decision concerning the assignment of a Settlement Part Judge or a particular Judge, any decision to request or to grant an enlargement of time under paragraph (e)(1) of this section, and any decision by the Settlement Part Judge to terminate proceedings under this section is not subject to review by, appeal to, or rehearing by any subsequent presiding officer, the Chief Administrative Law Judge, or the Commission.

Dated: February 24, 1998.

Stuart E. Weisberg,
Chairman.

[FR Doc. 98-5248 Filed 2-27-98; 8:45 am]

BILLING CODE 7600-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7238]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646-2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to