

General Counsel. OPIC will charge you a certification fee of \$5.00 per document.

(e) *Waiver of fees.* A waiver or reduction of any fees in connection with the testimony, production, or certification or authentication of records may be granted in the discretion of the Vice-President/General Counsel. Waivers will not be granted routinely. If you request a waiver, your request for records or testimony must state the reasons why a waiver should be granted.

§ 713.9 If my request is granted, what restrictions may apply?

(a) *Records.* The Vice-President/General Counsel may impose conditions or restrictions on the release of nonpublic records, including a requirement that you obtain a protective order or execute a confidentiality agreement with the other parties in the legal proceeding that limits access to and any further disclosure of the nonpublic records. The terms of a confidentiality agreement or protective order must be acceptable to the Vice-President/General Counsel. In cases where protective orders or confidentiality agreements have already been executed, OPIC may condition the release of nonpublic records on an amendment to the existing protective order or confidentiality agreement.

(b) *Testimony.* The Vice-President/General Counsel may impose conditions or restrictions on the testimony of OPIC employees, including, for example, limiting the areas of testimony or requiring you and the other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal or will only be used or made available in the particular legal proceeding for which you requested the testimony. The Vice-President/General Counsel may also require you to provide a copy of the transcript of the testimony to OPIC at your expense.

§ 713.10 Definitions.

For purposes of this part:

Legal proceedings means any matter before any federal, state or foreign administrative or judicial authority, including courts, agencies, commissions, boards, grand juries, or other tribunals, involving such proceedings as lawsuits, licensing matters, hearings, trials, discovery, investigations, mediation or arbitration. When OPIC is a party to a legal proceeding, it will be subject to the applicable rules of civil procedure governing production of documents and witnesses; however testimony and/or production of documents by OPIC

employees, as defined, will still be subject to this part.

Nonpublic records means any OPIC records which are exempt from disclosure by statute or under Part 706, OPIC's regulations implementing the provisions of the Freedom of Information Act. For example, this may include records created in connection with OPIC's receipt, evaluation and action on actual and proposed OPIC finance projects and insurance policies (whether such projects or policies were cancelled or not), including all reports, internal memoranda, opinions, interpretations, and correspondence, whether prepared by OPIC employees or by persons under contract, as well as confidential business information submitted by parties seeking to do business with OPIC. Whether OPIC has actually chosen in practice to apply any exemption to specific documents is irrelevant to the question of whether they are "nonpublic" for the purposes of this Part.

OPIC employee means current and former officials, members of the Board of Directors, officers, directors, employees and agents of the Overseas Private Investment Corporation, including contract employees, consultants and their employees. This definition does not include persons who are no longer employed by OPIC and are retained or hired as expert witnesses or agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment.

Subpoena means any order, subpoena for records or other tangible things or for testimony, summons, notice or legal process issued in a legal proceeding.

Testimony means any written or oral statements made by an individual in connection with a legal proceeding, including personal appearances in court or at depositions, interviews in person or by telephone, responses to written interrogatories or other written statements such as reports, declarations, affidavits, or certifications or any response involving more than the delivery of records.

Dated: February 9, 1999.

Michael C. Cushing,

Managing Director for Administration.

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OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2200

Rules of Procedure

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Review Commission has concluded that it is in the public interest to supplement the voluntary settlement judge procedure prescribed at 29 C.F.R. 2200.101 with an additional settlement process that would be mandatory for cases where the penalty proposed by the Secretary of Labor is \$200,000 or greater or other cases deemed appropriate by the Chief Administrative Law Judge. This additional procedure, to be known as the Settlement Part, would be instituted as a pilot program for a one-year trial period to ascertain whether requiring the parties to appear before a settlement judge facilitates the settlement process with respect to large and complex cases.

During and after the trial period, the Commission will evaluate the results in order to decide whether it should continue the Settlement Part procedure and, if so, what modifications should be made. The evaluation will take into account data on the rate at which settlements are achieved in large and complex cases and the length of time those cases remain on the Commission's docket before a settlement agreement is reached. The Commission will also consider the views of its judges and the parties regarding how well the process is working and how it might be improved.

DATES: This rule is effective from February 19, 1999 until February 22, 2000 unless extended by the Commission by publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Earl R. Ohman, Jr., General Counsel, One Lafayette Center, 1120 20th St., N.W. 9th Floor, Washington, D.C. 20036-3419, phone 202-606-5410.

SUPPLEMENTARY INFORMATION:

Development of the Final Rule

On March 2, 1998 the Occupational Safety and Health Review Commission published in the **Federal Register** a proposal to institute, as a pilot program for a one year trial period, a new procedure to be known as the Settlement Part for the purpose of facilitating the settlement process in large and complex cases. 63 FR 10166. The notice explained the reasons why

the Commission developed this proposal and the basis and purpose of each particular provision. The notice included a request for public comment.

In response, the Office of the Solicitor of Labor, which represents the Secretary of Labor in all adjudicative proceedings before the Commission, filed comments on behalf of the Secretary of Labor. Matthew J. Rieder, an attorney in a regional office of the Solicitor of Labor, filed comments setting forth his personal views based on his many years of experience in Commission proceedings. Comments were also received from two law firms, Gibson, Dunn & Crutcher (on behalf of United Parcel Service, the Anheuser-Busch Companies, Inc., and Champion International Corporation) and McDermott, Will & Emery, which is a frequent practitioner before the Commission. The Synthetic Organic Chemical Manufacturers Association, Inc. ("SOCMA"), Alabama Power, and Southern Company also filed comments. The Commission gratefully acknowledges these comments and has made several modifications and clarifications in response to the comments received. After careful consideration, the Commission issues this final rule establishing a mandatory settlement procedure to be evaluated after a one-year trial period.

Need for a Mandatory Procedure

Alabama Power, Southern Company, and SOCMA were strongly supportive of the proposed Settlement Part. All three were in agreement that a mandatory settlement procedure would strongly enhance the possibility that the parties would achieve significant savings in cost and time by reaching a mutually satisfactory resolution of the case.

On the other hand, two commentators, the Secretary and Gibson, Dunn & Crutcher, explicitly took exception to the mandatory nature of the proposed procedure. Gibson, Dunn & Crutcher expressed the view that mandating formal procedures at the outset of the case will obstruct rather than encourage settlements because the procedural requirements—preparing for and attending a conference or conferences and developing a written statement of the issues and the party's position on those issues—would cause the parties' positions to become hardened rather than more flexible and therefore would be unproductive and inefficient. The Secretary stated that her own statistical analysis demonstrates that even in cases in which substantial penalties are in issue the parties are able to achieve settlement within a relatively expeditious period of time under the

Commission's existing procedures. Thus, the Secretary concluded that parties who are inclined to settle have sufficient opportunity to do so under the present procedures and imposing a mandatory and structured process would be costly and time-consuming.

At the outset, the Commission believes that the Secretary's estimates of the length of time in which cases achieve settlement may not accurately reflect the Commission's experience. The Secretary notes that "many cases" with penalties in excess of \$100,000 settle informally before a notice of contest is filed. However, such cases do not become docketed with the Commission and therefore do not affect the Commission's caseload. In addition, the Commission conducted an analysis of the narrower range of cases in which the penalties sought are \$200,000 or greater. There were eleven such cases that became final orders through settlement agreements in fiscal year 1997. With the exception of one case which settled before the pleadings were filed, the time between the date the case was assigned to the judge and the date the settlement agreement was reached ranged from 81 to 280 days, with a median time of 190 days, or over six months. Even more significant, in accordance with the Commission's usual practice, these cases were not even assigned to a judge until after the parties filed their pleadings and any preliminary matters were resolved. In almost half of these cases, the time consumed awaiting assignment of a judge added at least four months to the overall case disposition time; one case was not assigned to a judge until almost nine months after docketing and another was not assigned for over a year after docketing. The total time between date of docketing with the Commission and the date the settlement was reached ranged between 135 to 583 days, with a median of 261 days, or almost nine months. Three of these ten cases required over a year to achieve a settlement and one took almost a year. Moreover, of those cases having penalties between \$100,000 and \$200,000 to which the Secretary refers, most did not settle within 120 days. Rather, the median time between docketing and final disposition was 226 days for those cases in the \$100,000–\$200,000 range which became final by settlement in fiscal year 1997. The statistics with respect to fiscal year 1998 cases are similar. Of the 25 cases having penalties of at least \$200,000 that became final orders through settlement agreements in fiscal year 1998, three took over a year to achieve settlement,

two took approximately one year, and two others required approximately 11 months. The total time between date of docketing with the Commission and the date the settlement was reached ranged from 100 to 527 days, with a median of 261 days, for cases having penalties of at least \$200,000, and the median time between docketing and final disposition was 238 days for those cases in the \$100,000–\$200,000 range which became final by settlement in fiscal year 1998. Thus, the Commission's experience does not support the Secretary's contention that high penalty cases generally settle within a relatively short time frame.

The Commission also notes that through the pilot program it seeks to determine whether a mandatory settlement procedure not only would bring large and complex cases to settlement in a shorter period of time but also whether such a procedure would increase the proportion of such cases that settle rather than go to trial. Trials in large cases are always expensive both for the parties and the Commission. In addition, cases that the parties settle voluntarily rarely, if ever, come before the Commission for review of the judge's decision, and therefore settlement reduces costs and conserves resources at the appellate level as well as at the hearing stage of the proceeding. The Commission appreciates the concerns of the commentators that the settlement procedures not be so structured as to ultimately reduce the likelihood of a settlement or impose additional costs and burdens on the parties, and the Commission emphasizes that it is precisely those issues on which it intends to gather information and evaluate as part of the pilot program. The Commission intends to carefully review the pilot program. The Commission will particularly review the relative benefits to and burdens on participants of a mandatory settlement process.

Applicability

Alabama Power and Southern Company suggested that the pilot program include smaller employers by lowering the penalty threshold to \$60,000 and that it also be expanded to include all citations for willful violations and any case in which the employer requests that a judge be appointed under the Settlement Part. As explained in the preamble to the proposed rule, the Commission deliberately chose the \$200,000 threshold to ensure a sufficiently large sample of cases without overtaxing the resources the Commission could justifiably devote to a pilot program.

Moreover, under the proposed pilot program, the Chief Administrative Law Judge retains discretion to assign other cases to the Settlement Part, and, as discussed more fully below, the settlement judge procedures prescribed in § 2200.101 and the authority of the trial judge to convene settlement conferences under § 2200.67(g), remain in effect for all cases.

The Secretary suggested that the Commission prescribe guidelines for the Chief Administrative Law Judge in selecting the cases which he may assign to the Settlement Part at his discretion. The Commission emphasizes that the Settlement Part is a trial program for one year, and the discretion accorded the Chief Administrative Law Judge was intended to permit some exploration of different criteria and some flexibility in selecting cases for proceeding under the Settlement Part in the event the Commission's caseload warrants including other cases in the pilot program in addition to those cases meeting the \$200,000 mandatory threshold.

Assignment of the Settlement Part Judge

Commentator McDermott, Will & Emery expressed the view that while a tentative evaluation of the merits of the case from an impartial third party early in the proceedings can potentially be an effective catalyst for a settlement where negotiation and discussion between the parties has been unsuccessful, that "first impression" is best given by the same judge who will be deciding the case. Accordingly, McDermott, Will & Emery suggested that the Commission amend § 2200.67(g) to explicitly provide that the case judge is authorized to conduct settlement conferences regardless of whether settlement has been discussed under the Settlement Part structure or under the voluntary settlement judge procedure at § 2200.101. Alternatively, McDermott, Will & Emery requested that the Commission invite additional public comment on the use of settlement conferences by the case judge after a case has been processed through the Settlement Part or settlement judge procedure.

The Commission does not believe that either of these courses is necessary. The Settlement Part rule merely supplements the existing settlement judge procedure by making essentially the same mechanism available in certain cases which otherwise could have proceeded under the settlement judge process if the parties had so agreed. The Commission's existing rules specifically provide that "settlement is permitted and encouraged * * * at any stage of the proceedings." § 2200.100(a).

Nothing in either the proposed Settlement Part or the existing settlement judge rule precludes either party from seeking the assistance of the case judge in facilitating settlement under § 2200.100 after proceedings under § 2200.101 or the Settlement Part have terminated. Under proposed § 2200.109(f)(2) (codified as § 2200.120(f)(1) by this final rule) the Settlement Part Judge may at any time make a determination that further negotiations would be unlikely to achieve settlement. Upon that determination, the case would be assigned to a hearing judge, and the possibility of settlement could be raised at any time during those subsequent proceedings.

Commencement of Settlement Part Proceedings

Both the Secretary and Gibson, Dunn & Crutcher urge that the involvement of the Settlement Part Judge not commence until after the parties have had an opportunity to discuss settlement among themselves without the formal intervention of the judge. The Secretary suggests that because high penalty cases have already shown themselves to be susceptible to settlement at an early stage of the proceedings, the mandatory involvement of the judge should be deferred until after the completion of discovery, at which point the parties would be better able to identify to the judge those areas in which disagreements remain, and the judge would be better able to assist the parties in addressing those areas of disagreement.

The Commission recognizes that in order for a settlement judge to assist the parties, there must be some initial contact between the parties and some development of the parties' positions, whether by some exchange of discovery or by other means. As noted above, however, the Commission's concern relates not only to the proportion of complex or large cases that are resolved by settlement but also to the length of time required to achieve settlement. A primary purpose of the Settlement Part pilot program is to determine whether the settlement process can be expedited if the settlement judge is assigned at an early stage in the proceedings. It is the Commission's hope that as the parties engage in their initial discussions and development of the issues and their positions on those issues the settlement judge will be able to assist and guide the parties toward the objective of a settlement. Accordingly, the Commission does not believe that assignment of the Settlement Part Judge

should be deferred until after discovery is underway.

Moreover, the Commission remains concerned as well about the length of time the filing of pleadings or other preliminary matters contributes to the delay in reaching a final disposition in cases where the parties are able to come to an agreement. The Commission therefore amends the proposed rule to authorize the Chief Administrative Law Judge to assign a judge as early as the docketing of the notice of contest under § 2200.33. The Commission expects that the judge will act in his discretion to manage the case with the objective of advancing the case toward a voluntary settlement in a prompt and expeditious manner. The Commission emphasizes that the final rule empowers the judge to issue any orders that in his judgment would facilitate the proceedings, including at the pleading stage.

Duration of Settlement Part Procedures

McDermott, Will & Emery contended that the maximum period of 90 days prescribed under the proposed rule is overly short. Particularly considering that the Commission is amending the proposed rule to allow the proceedings under the Settlement Part to commence as early as the date of docketing, the Commission agrees. Accordingly, by this final rule the Commission is increasing the time allowed for settlement proceedings to 120 days, with an additional period, not to exceed 30 days, permitted at the discretion of the judge. The Commission is cognizant of the fact that it may be necessary for the parties to engage in at least some discovery in order to be in a position to conduct meaningful settlement negotiations. However, the Commission is hopeful that any such discovery can be expedited, and as part of the pilot program the Commission intends to evaluate how effectively the parties are able to use discovery under the Settlement Part procedures. At the same time, while the Commission strongly believes that the cycle time for voluntary dispositions by settlement can be reduced, the Commission also recognizes that the parties must have some degree of flexibility in the length of time needed to achieve a settlement. Furthermore, it clearly would be counterproductive to terminate proceedings under this rule where the parties have been actively pursuing settlement but have been unable to come to a final agreement prior to the expiration of a fixed time period. Therefore, the final rule provides that with the concurrence of the Chief Administrative Law Judge the parties may be granted an extension of no more

than 30 days in which to complete ongoing settlement negotiations. The Commission reiterates its expectation that the parties and the Settlement Part Judge will work together to achieve effective and timely completion of proceedings under § 2200.120.

Attendance at the Settlement Conference

Several commentators expressed opposition to the requirement of proposed § 2200.109(d)(2) that an official of the party having full settlement authority attend settlement conferences along with the party's representative. The Commission does not agree that the requirement is unduly burdensome. The Commission believes that the personal presence of a representative having full settlement authority may be essential for the efficacy of a settlement conference with the judge and will minimize the potential for further drawn-out negotiations. In the Commission's view, the savings in time, effort, and potential further negotiations outweighs any inconvenience to the parties that may ensue by requiring the presence of an individual authorized to make a final commitment for that party. The Commission notes, in that regard, that this provision for personal presence is patterned after the practice in courts of requiring the presence of a responsible official of each party at settlement conferences.

Commentator Matthew Rieder expressed the concern that § 2200.109(d)(2) may be impractical because it could require the attendance of high-level officials both from the Office of the Solicitor and the Office of the Assistant Secretary for Occupational Safety and Health ("OSHA"). Mr. Rieder noted that in general the individuals having settlement authority for the Secretary are the Regional Solicitor and the OSHA Regional Administrator and that the Secretary's internal operating procedures vest final authority for the conduct of certain cases at the level of Deputy Solicitor and Deputy Assistant Secretary or above. See, e.g., OSHA Instruction CPL 2.80, *Handling of Cases to be Proposed for Violation-By-Violation Penalties*, sections H.4.c & H.6.d (Oct. 21, 1990). Nevertheless, the Commission does not agree that § 2200.109(d)(2) is impractical or would impose an undue burden on the Secretary. The individual having authority for cases under the Secretary's procedures would necessarily be familiar with the cases under their purview. Involving these individuals in settlement discussions and negotiations merely continues their case

responsibility and would occur under the Commission's existing settlement rules in any event. To the extent that the personal presence of the Regional Solicitor or other officials either of the Solicitor's office or of OSHA might not be practical in any particular case, any such difficulties could be avoided by an appropriate delegation of authority. For example, the Justice Department has prescribed regulations setting forth the authority to accept settlement offers at various levels within that agency. 28 CFR §§ 0.160–0.172 and directives issued pursuant thereto. Indeed, the Secretary presently delegates settlement authority in certain cases, OSHA Instruction CPL 2.90, *Guidelines for Administering of Corporate-Wide Settlement Agreements*, sections F.4.a & G.3 (June 3, 1991), and, as Mr. Rieder himself noted in his comment, Regional Solicitors in certain cases may now delegate settlement authority to counsel.

In any event, although the Commission does not expect that the proposed rule will prove unduly burdensome for any party, the practicality of the requirement for attendance of a representative having full settlement authority will be evaluated during the course of the pilot program. While the Commission appreciates the concerns voiced by the commentators, the Commission does not regard those concerns as sufficient grounds to modify the Settlement Part rule at this time insofar as the rule permits the judge to require the attendance of individuals having full settlement authority when the judge deems it appropriate and mandates compliance by the parties with any such order issued by the judge.

Confidentiality

The Commission gave a great deal of thought and consideration to the issue of preserving the confidentiality of settlement negotiations and discussions. The Commission received no comments regarding § 2200.109(d)(3) with one exception. The rule as proposed precludes the Settlement Part Judge from disclosing any information revealed in private discussions with a party absent that party's consent. The Secretary, however, expressed concern that the judge might require the Secretary to divulge to other parties privileged information, principally the identity of informers. While it is conceivable, the Commission does not consider it very likely that a party would be compelled to disclose the identity of informants during the settlement process or that an agreement to settle would be made conditional on release of the identity of informers. It is

the expectation that the identity of confidential informants will be treated consistent with Commission precedent—that is, protected from disclosure. In any event, the Commission assures the Secretary that protection of the identity of informers as well as the other issues addressed in this preamble have been and will continue to be included within the training the Commission is conducting for its judges assigned to the Settlement Part. Indeed, the Commission views training of settlement judges as critical and is committed to continue to conduct appropriate training.

Other Issues

In the preamble to the proposed rule, 63 FR 10166, the Commission did not expressly make clear what would happen to cases assigned to the Settlement Part and still pending when the pilot program is concluded. Any case assigned to the Settlement Part during the pendency of this rule will continue to be processed under the provisions of the rule until the termination of proceedings in accordance with § 2200.120(f) of the final rule even if the rule itself is no longer in effect at that time.

List of Subjects 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 amends Title 29, Chapter XX, Part 2200 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 H is added to Part 2200 to read as follows:

Subpart H—Settlement Part

§ 2200.120 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.* Notwithstanding any other provisions of these rules, upon the docketing of the notice of contest or at such other time as he deems appropriate 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.

(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 may require that any attorney or other representative who is expected to try the case for each party be present. The Settlement Part Judge may 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 Part 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 (f) 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 of 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)(1) 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 shall promptly notify the Chief Administrative Law Judge in writing of the status of the case at such time that he determines further negotiations would be fruitless. If the Settlement Part Judge has not made such a determination and a settlement agreement is not achieved within 120 days following assignment of the case to the Settlement Part Judge, the Settlement Part Judge shall then advise the Chief Administrative Law Judge in writing of his assessment of the likelihood that the parties could come to a settlement agreement if they were

afforded additional time for settlement discussions and negotiations. The Chief Administrative Law Judge may then in his discretion allow an additional period of time, not to exceed 30 days, for further proceedings under this section. If at the expiration of the period allotted under this paragraph the Settlement Part Judge has not approved a full settlement pursuant to § 2200.100, he shall furnish to the Chief Administrative Law Judge copies of any written stipulations and orders embodying the terms of any partial settlement the parties have reached.

(2) 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 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 12, 1999.

Stuart E. Weisberg,
Chairman.

Dated: February 12, 1999.

Thomasina V. Rogers,
Commissioner.

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BILLING CODE 7600-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 71

[FRL-6300-9]

RIN 2060-AG90

Federal Operating Permits Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates regulations setting forth EPA's approach for issuing Federal operating permits to covered stationary sources in Indian country, pursuant to title V of the Clean Air Act as amended in 1990 (CAA). Consistent with EPA's Indian Policy, the CAA authorizes the Agency to protect