

FOR FURTHER INFORMATION CONTACT: Paul Handleman or Lauren Ross Taylor, (202) 622-3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 199 of the Internal Revenue Code.

Need for Correction

As published, the correction notice (TD 9262) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (TD 9262), which was the subject of FR Doc. 06-4828, is corrected as follows:

1. On page 31075, column 1, in the preamble, under the paragraph heading “*Qualified Production Activities Income*,” first paragraph of the column, line 3, the language “mean: (A) Tangible personal property;” is corrected to read “mean: (A) tangible personal property;”.

2. On page 31075, column 1, in the preamble, under the paragraph heading “Summary of Comments”, last paragraph of the column, line 16, the language “include: (1) Whether an agreement” is corrected to read “include: (1) whether an agreement”.

3. On page 31075, column 3, in the preamble, under the paragraph heading “Explanation of Provisions”, first paragraph of the column, line 11, the language “applies if a taxpayer that derives gross” is corrected to read “applies if a taxpayer derives gross”.

4. On page 31076, column 1, in the preamble, under the paragraph heading “Effective Date”, first paragraph of the column, line 4, the language “regulations expires on or before May 25,” is corrected to read “regulations expires on or before May 22,”.

5. On page 31077, column 2, in the signature block, the language “Mark E. Mathews,” is corrected to read “Mark E. Matthews,”.

Guy R. Traynor,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E6-10248 Filed 6-28-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Occupational Safety and Health of Contractor Employees at Certain Energy Department Sites; Jurisdiction and Enforcement Responsibilities; Clarification Regarding State Plans—Arizona, California, Iowa, Kentucky, Minnesota, Nevada, New Mexico, North Carolina, Oregon, South Carolina, Utah, Virginia, Washington, and Wyoming

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: This notice provides further clarification as to the jurisdiction and enforcement responsibilities of the Occupational Safety and Health Administration and 14 of its approved State Plans at various Department of Energy (DOE) sites which are not subject to the Atomic Energy Act (AEA). OSHA’s regulations in 29 CFR 1952 are amended to reflect this jurisdiction, as appropriate.

DATES: Effective Date: June 29, 2006.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Kevin Ropp, Director, Office of Communications, Room N-3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999. For technical inquiries, contact Barbara Bryant, Director, Office of State Programs, Room N-3700, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2244. An electronic copy of this **Federal Register** notice is available on OSHA’s website at www.osha.gov.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Labor (DOL) and the U.S. Department of Energy (DOE) previously clarified their regulatory authority over the occupational safety and health of private-sector contractor employees at a number of DOE government-owned or leased facilities that are not subject to the Atomic Energy Act (AEA). (65 FR 41492, July 5, 2000) Some of these facilities are either government-owned and government-operated (GOGO) or government-owned and contractor-operated (GOCO).

The Atomic Energy Act provides statutory authority to DOE to regulate occupational safety and health matters relating to private sector employees at facilities subject to the AEA. Section 4(b)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. (the Act), Section 653(b)(1), precludes OSHA coverage of working conditions over which other federal agencies have exercised statutory authority to prescribe or enforce standards for occupational safety or health. A 1992 Interagency Memorandum of Understanding provides that the Occupational Safety and Health Act shall not apply to government owned-contractor operated (GOCO) sites or other facilities with private sector employees for which DOE, pursuant to the AEA, has exercised its authority to regulate occupational safety and health.

By letter of June 18, 1999, and further clarified by letter on March 31, 2000, DOE provided OSHA with a list of DOE sites that were not covered by the AEA and requested OSHA’s concurrence with DOE’s views that the facilities and operations in question were subject to OSHA’s jurisdiction. These sites are primarily involved in fossil fuel energy research and power marketing administration. OSHA responded by letter on July 13, 1999, agreeing with DOE that OSHA has jurisdiction over the working conditions of private sector employers and employees at such facilities.

On July 5, 2000, OSHA published a notice in the **Federal Register** (65 FR 41492), listing these sites and stating that private sector employers and employees at these DOE facilities are subject to all standards, rules and requirements issued under the Occupational Safety and Health Act. The sites are:

Department of Energy (DOE) Non-Atomic Energy Act (AEA) Sites and Facilities

Western Area Power Administration
Headquarters, P.O. Box 3402, Golden, CO 80401-0098, Covers all or part of the following States: AZ*, CA*, CO, IA*, KS, MN*, MT, NE, ND, NM*, NV*, SD, TX, UT*, WY*

Southwestern Power Administration,
Headquarters, P.O. Box 1619, Tulsa, OK 74101, Covers all or part of the following States: AR, KS, LA, MO, OK, TX

Southeastern Power Administration,
Headquarters, 2 South Public Square, Elberton, GA 30635, Covers all or part of the following States: AL, FL, GA, IL, KY*, MS, NC*, SC*, VA*, WV

Bonneville Power Administration, 905 NE 11th Ave., P.O. Box 3621,

Portland, OR 97208–3621, Covers all or part of the following States: CA*, ID, MT, NV*, OR*, UT*, WA*, WY* National Energy Technology Laboratory (NETL), 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880

National Energy Technology Laboratory (NETL), 626 Cochran Mill Road, Pittsburgh, PA 15236–0940 Strategic Petroleum Reserves (SPR), Project Office, 900 Commerce Road East, New Orleans, LA 70123 National Petroleum Technology Office, Williams Center Tower 1, 1 West Third St., Suite 1400, Tulsa, OK 74103

Albany Research Center, 1450 Queen Ave., SW, Albany, OR* 97321–2198 Naval Petroleum & Oil Shale Reserves in CO, UT*, & WY*, 907 N. Poplar St., Suite 150, Casper, WY 82601 Naval Petroleum Reserves in California, 28590 Highway 119, P.O. Box 11, Tupman, CA* 93276

OSHA noted that a number of the non-AEA facilities are located in states which operate OSHA-approved state plans under Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C 667 (noted with asterisk above), and which have primary authority for private sector occupational safety and health coverage in their states. However, pending a final determination, the state plan non-AEA sites were deemed “issues not covered by the state plan” and thus subject to federal enforcement jurisdiction. Federal OSHA would exercise enforcement jurisdiction over private sector employers and employees at the non-AEA sites located in state plan states, until it was determined whether a state would exercise jurisdiction. These determinations have now been made and this document provides notice that the affected states will assume occupational safety and health regulatory responsibility for all except five of the non-AEA sites in their states.

The following State Plans intend to exercise jurisdiction over private contractors performing work at these non-AEA facilities and operations located in their states, except that federal employees and employees of private sector companies responsible for operating an entire facility under contract to DOE (contractor-operated facility) remain subject to federal OSHA jurisdiction. (Under the provisions of the Act and various interpretations by the courts, states with OSHA-approved state plans are precluded from exercising jurisdiction over federal employees or over federal instrumentalities such as government owned-contractor operated (GOCO)

facilities.) To the extent that a state should be unable to exercise jurisdiction over other private contractors at these sites, for whatever reason, OSHA will assume responsibility for coverage.

Arizona—Western Area Power Administration¹ (Phoenix, AZ, *et al*)

California—Western Area Power Administration, Bonneville Power Administration, Naval Petroleum Reserve (Tupman, CA)

Iowa—Western Area Power Administration

Kentucky—Southeastern Power Administration

Minnesota—Western Area Power Administration

Nevada—Western Area Power Administration, Bonneville Power Administration

New Mexico—Western Area Power Administration (except Elephant Butte)

North Carolina—Southeastern Power Administration

Oregon—Bonneville Power Administration (Portland, OR, *et al*)

South Carolina—Southeastern Power Administration

Utah—Western Area Power Administration, Bonneville Power Administration, activities at the site of the Naval Petroleum and Oil Shale Reserve in Utah where divested by the Department of Energy

Virginia—Southeastern Power Administration (except the Kerr-Philpott System)

Washington—Bonneville Power Administration (Vancouver, WA, *et al*) (except in controlled areas of the Hanford Reservation)

Wyoming—Western Area Power Administration, Bonneville Power Administration

The following State Plans do not intend to exercise jurisdiction over private sector workers at the following non-AEA sites in their states. All employees at these DOE sites, both federal and private sector, remain subject to federal OSHA jurisdiction, so long as they remain facilities operated by the Department of Energy. If a site is divested by DOE, or otherwise transferred, private sector employees are subject to State Plan jurisdiction absent a further determination.

¹ The Power Marketing Administrations operate in multiple states, with headquarters in Lakewood, Colorado (Western Area Power Administration), Portland, Oregon (Bonneville Power Administration), and Elberton, Georgia (Southeastern Power Administration). Power authority site locations in these state plan states are noted where available; in some states, Power Marketing Administration activity may be limited to power lines traversing the state with no site locations—but there may still be employee exposure to hazards during construction and maintenance operations.

New Mexico—Western Area Power Administration site at Elephant Butte

Oregon—Albany Research Center in Albany, OR

Utah—Naval Petroleum and Oil Shale Reserve (if divested by DOE, coverage reverts to the state)

Virginia—Southeastern Power Administration's Kerr-Philpott System

Wyoming—Naval Petroleum and Oil Shale Reserve

Decision

29 CFR Part 1953 sets forth the procedures by which the Assistant Secretary will review changes to State Plans approved in accordance with Section 18(c) of the Act and Part 1902. Upon review of the 14 State Plan decisions to assert or decline jurisdiction, and in accordance with these procedures, OSHA hereby approves these actions and amends the subparts in 29 CFR Part 1952 for New Mexico (Western Area Power Administration at Elephant Butte), Oregon (Albany Research Center), Utah (Naval Petroleum and Oil Shale Reserve), Virginia (Southeastern Power Administration's Kerr-Philpott System) and Wyoming (Naval Petroleum and Oil Shale Reserve) to reflect the formal exclusion of these entities from the State Plan and continuation of federal jurisdiction over private sector contractor employees at these sites so long as they remain DOE sites not subject to the Atomic Energy Act. For all other listed facilities in states with OSHA-approved State Plans, this document provides notification to affected private sector employers and employees of these non-AEA sites that they will be subject to State Plan occupational safety and health jurisdiction like most other private sector employers in those States. Those States assuming jurisdiction over these private sector employers and employees will make available to them detailed information on the State's standards, regulations, procedures and practices, including differences from the Federal.

Public Participation

Under Section 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. As these changes in jurisdiction generally impose no new responsibilities or requirements on employers or employees, no opportunity for public comment is required.

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that this action will not have a significant economic impact on a substantial number of small entities. The change from federal to state jurisdiction for private contractors at these DOE non-AEA sites would not place small contractors at these sites under any significant new or different requirements. No additional burden will be placed upon the state governments beyond the responsibilities already assumed as part of the approved state plans.

Federalism

Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), emphasizes consultation between federal agencies and the states and establishes specific review procedures the federal government must follow as it carries out policies which affect state or local governments. OSHA has included in the Supplementary Information section of today's notice a general explanation of the relationship between federal OSHA and the state plan states under the Occupational Safety and Health Act. Although it appears that the specific consultation procedures provided under Section 6 of Executive Order 13132 are not mandatory for state plan jurisdiction changes because they neither impose a burden upon the state nor involve preemption of any state law, OSHA has nonetheless consulted extensively with these states on their individual decisions on these issues. OSHA has reviewed the decisions approved today and believes they are consistent with the principles and criteria set forth in the Executive Order.

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the Occupational Safety and Health Act of 1970, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR Part 1902; and Secretary of Labor's Order No. 5-2002 (67 FR 65008, Oct. 22, 2002).

List of Subjects in 29 CFR Part 1952

Intergovernmental relations, Law enforcement, Occupational safety and health, Occupational Safety and Health Administration.

Signed at Washington, DC, this 30th day of May, 2006.

Edwin G. Foulke, Jr.,
Assistant Secretary.

■ Part 1952 of 29 CFR is hereby amended as follows:

PART 1952—[AMENDED]

■ 1. The authority section for part 1952 continues to read as follows:

Authority: Section 18 of the OSH Act (29 U.S.C. 667), 29 CFR part 1902, and Secretary of Labor's Order No. 5-2002 (67 FR 65008).

Subpart D—Oregon

■ 2. Amend § 1952.104 by revising the second sentence of paragraph (b) to read as follows:

§ 1952.104 Final approval determination.

* * * * *

(b) * * * The plan does not cover private sector establishments on Indian reservations and tribal trust lands, including tribal and Indian-owned enterprises; employment at Crater Lake National Park; employment at the U.S. Department of Energy's Albany Research Center (ARC); Federal agencies; the U.S. Postal Service and its contractors; contractors on U.S. military reservations, except those working on U.S. Army Corps of Engineers dam construction projects; and private sector maritime employment on or adjacent to navigable waters, including shipyard operations and marine terminals.

* * * * *

■ 3. Amend § 1952.105 by redesignating paragraph (b)(1)(v) as (b)(1)(vi) and adding a new paragraph (b)(1)(v), to read as follows:

§ 1952.105 Level of Federal enforcement.

* * * * *

(b)(1) * * *

(v) Enforcement of occupational safety and health standards with regard to employment at the U.S. Department of Energy's Albany Research Center (ARC);

* * * * *

Subpart E—Utah

■ 4. Amend § 1952.114 by revising the second sentence of paragraph (b) to read as follows:

§ 1952.114 Final approval determination.

* * * * *

(b) * * * The plan does not cover private sector maritime employment; employment on Hill Air Force Base; employment at the U.S. Department of Energy's Naval Petroleum and Oil Shale Reserve, to the extent that it remains a U.S. DOE facility; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29

CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Utah retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

■ 5. Amend § 1952.115 by revising the fifth sentence of paragraph (b) to read as follows:

§ 1952.115 Level of Federal enforcement.

* * * * *

(b) * * * Federal jurisdiction is also retained with regard to: all employment on the Hill Air Force Base; all employment at the U.S. Department of Energy's Naval Petroleum and Oil Shale Reserve, to the extent that it remains a U.S. DOE facility; Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations. * * *

* * * * *

Subpart BB—Wyoming

■ 6. Amend § 1952.344 by revising the second sentence of paragraph (b) to read as follows:

§ 1952.344 Final approval determination.

* * * * *

(b) * * * The plan does not cover private sector maritime employment; employment on the Warren Air Force Base; employment at the U.S. Department of Energy's Naval Petroleum and Oil Shale Reserve; Federal government employers and employees; the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations; the enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including

employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Wyoming retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

* * * * *

■ 7. Amend § 1952.345 by revising the last sentence of paragraph (b)(1) to read as follows:

§ 1952.345 Level of Federal enforcement.

* * * * *

(b)(1) * * * Federal jurisdiction is also retained for employment at Warren Air Force Base; employment at the U.S. Department of Energy's Naval Petroleum and Oil Shale Reserve; Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

* * * * *

Subpart DD—New Mexico

■ 8. Amend § 1952.365 by revising paragraph (a)(9) to read as follows:

§ 1952.365 Level of Federal enforcement.

* * * * *

(a) * * *

(9) Enforcement of occupational safety and health standards with regard to employment at the U.S. Department of Energy's Western Area Power Administration site at Elephant Butte; Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees and contract employees and contractor-operated facilities engaged in USPS mail operations; and

* * * * *

Subpart EE—Virginia

■ 9. Amend § 1952.374 by revising the second sentence of paragraph (b) to read as follows:

§ 1952.374 Final approval determination.

* * * * *

(b) * * * The plan does not cover private sector maritime employment; worksites located within Federal military facilities as well as on other Federal enclaves where civil jurisdiction has been ceded by the State to the Federal government; employment at the U.S. Department of Energy's Southeastern Power Administration

Kerr-Philpott System; Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

* * * * *

■ 10. Amend § 1952.375 by revising the last sentence of paragraph (b)(1) to read as follows:

§ 1952.375 Level of Federal enforcement.

* * * * *

(b)(1) * * * Federal jurisdiction is also retained with respect to employment at the U.S. Department of Energy's Southeastern Power Administration Kerr-Philpott System; Federal government employers and employees; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

* * * * *

[FR Doc. 06-5789 Filed 6-28-06; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05-06-025]

RIN 1625-AA08

Special Local Regulations for Marine Events; Mill Creek, Fort Monroe, Hampton, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the "Hampton Cup Regatta," a power boat race to be held on the waters of Mill Creek, near Fort Monroe, Hampton, Virginia. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Mill Creek adjacent to Fort Monroe during the power boat race.

DATES: This rule is effective from 7:30 a.m. on August 18, 2006 to 6:30 p.m. on August 20, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05-06-025 and are available for inspection or copying at Commander (dpi), Fifth

Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Dennis Sens, Project Manager, Inspections and Investigations Branch, at (757) 398-6204.

SUPPLEMENTARY INFORMATION

Regulatory Information

On April 17, 2006, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Mill Creek, Fort Monroe, Hampton, VA in the **Federal Register** (71 FR 19672). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

On August 18, 19 and 20, 2006, the Virginia Boat Racing Association will sponsor the "Hampton Cup Regatta," on the waters of Mill Creek adjacent to Fort Monroe, Hampton, Virginia. The event will consist of approximately 100 inboard hydroplanes racing in heats counter-clockwise around an oval racecourse. A fleet of spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on specified waters of Mill Creek, Fort Monroe, Hampton, Virginia.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of Mill Creek, near Fort Monroe, Hampton,