implementing section 252(i) which requires local exchange carriers (LECs) to make available to other telecommunications carriers interconnection agreements approved under section 252.

DATES: Comments are due on October 2, 2003 and Reply Comments are due on November 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, (202) 418–1580.

In rule FR Doc. 03–22194 published September 2, 2003 (68 FR 52307) make the following correction.

1. On page 52307, in the first column, in the dates section remove ''Reply Comments are due October 23, 2003'' and add ''Reply Comments are due November 3, 2003'' in its place.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22970 Filed 9–9–03; 8:45 am]

BILLING CODE 6712–01–P

OFFICE OF MANAGEMENT AND BUDGET

48 CFR Part 9904

Cost Accounting Standards Board; Accounting for the Costs of Post-Retirement Benefit Plans Sponsored by Government Contractors

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Notice of withdrawal of Advance Notice of Proposed Rulemaking.

SUMMARY: The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards (CAS) Board, is providing public notification of the decision to discontinue the development of a Cost Accounting Standard (CAS) addressing the recognition of costs of post-retirement benefit plans under government cost-based contracts and subcontracts.

FOR FURTHER INFORMATION CONTACT: Robert Burton, Office of Federal Procurement Policy (telephone: 202–395–3302).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The Cost Accounting Standards Board's rules, regulations and Standards are codified at 48 CFR Chapter 99. The Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires the Board, prior to the establishment of any new or revised Cost Accounting Standard, to complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages, and improvements anticipated in the pricing and administration of government contracts as a result of the adoption of a proposed Standard.
2. Promulgate an Advance Notice of Proposed Rulemaking (ANPRM).
3. Promulgate a Notice of Proposed Rulemaking (NPRM).
4. Promulgate a Final Rule.

This notice announces the discontinuation of a case after completing steps one and two of the four-step process in accordance with the requirements of 41 U.S.C. 422(g)(1)(B) and (C).

B. Background and Summary

Prior Promulgations

Post-retirement benefit plans have existed for many years, but received little attention until the Financial Accounting Standards Board (FASB) examined the potential liabilities and costs of these plans and issued Statement No. 106, ''Employers' Accounting for Post-Retirement Benefits Other Than Pensions'' (SFAS 106), in December of 1990. In response to numerous public comments recommending that the CAS Board establish a case concerning the measurement, assignment, and allocation of the costs of post-retirement benefit plans, at a February 24, 1995 meeting, the CAS Board directed the staff to begin work on a Staff Discussion Paper (SDP).

On September 20, 1996, the Board published an SDP, ''Post-Retirement Benefit Plans Other Than Pension Plans Sponsored by Government Contractors' (61 FR 49533), identifying the cost accounting issues related to post-retirement benefit plans. On January 12, 1999, the Board sent a letter to all the respondents to the SDP. This letter was also made widely available for public comment on February 18, 1999 (64 FR 8141).

The Board published an ANPRM (65 FR 59503), ''Accounting for the Costs of Post-Retirement Benefit Plans Sponsored by Government Contractors,'' on October 5, 2000.

Public Comments

The Board received twenty-three (23) sets of public comments in response to the ANPRM. Most respondents believed that accrual accounting following the provisions of SFAS 106 was the most appropriate basis for measuring and assigning the costs of a post-retirement benefit plan that created a firm liability. However, many respondents believed that the imposition of any nonforfeitability criteria, as proposed, could lock a contractor into providing explicit benefits with no ability to control the employer-paid portion of the cost or to switch to alternative benefit delivery arrangements. Moreover, the continuing high level of medical inflation coupled with various economic factors, and global competition, raises the question whether any contractor could risk the adverse effects of providing any level of nonforfeitable benefits. The argument has been made that the only prudent way of providing some assurance that some level of benefit will be available in the future, is for a contractor to currently fund the accrued cost as permitted by existing procurement regulations. Many commenters did not believe the Board should proceed with this project.

Continuing Research

Subsequent to the publication of the ANPRM, the General Accounting Office (GAO) issued a report to the Chairman, Committee on Health, Education, Labor, and Pensions, U.S. Senate, entitled ''RETIREE HEALTH BENEFITS—Employer-Sponsored Benefits May Be Vulnerable to Further Erosion'' (GAO–01–374) in May 2001. The GAO summarized its findings as follows:

> Despite a sustained strong economy and several years of relatively low rates of increase in health insurance premiums, the decline in the availability of employer-sponsored retiree health benefits has not reversed since 1997—the last year for which we had reported previously—and several indicators suggest that there may be further erosion in these benefits. Employer benefit consultants we contacted generally indicated that retiree health benefits were continuing to decline. Two widely cited employer benefit surveys, however, provide conflicting data as to whether the proportion of employers sponsoring retiree health insurance remained stable or declined slightly from 1997 through 2000. In some cases, employers provide retiree health benefits to current retirees or long-term employees, but newly hired employees are not eligible. To date, however, the percentage of retirees with employer-sponsored coverage has remained relatively stable over the past several years, with about 37 percent of early retirees and 26 percent of Medicare-eligible retirees receiving retiree health coverage from a former employer. This stability may also be linked to employers' tendency to reduce coverage for future rather than current retirees. In some cases, employers that continue to offer retiree health benefits have reduced the terms of these benefits by increasing the share of premiums that retirees pay for health benefits, increasing co-payments and

deductibles, or capping the employers' expenditures for coverage.

Several current and developing market, legal, and demographic factors may contribute to a further decline in employer-sponsored retiree health benefits. These factors include—

- A resumption of health insurance premiums rising at a rate faster than general inflation;
- Proposed changes in Medicare coverage, such as adding a new prescription drug benefit, that could affect the costs and design of employers supplemental health benefits for Medicare-eligible retirees;
- A recent circuit court ruling allowing claims of violations of federal age discrimination law when employers make distinctions in health benefits they offer retirees on the basis of Medicare eligibility; and
- The movement of the baby boom generation into retirement age, leading some employers to have a growing number of retirees relative to active workers.

Retirees whose former employers reduce or eliminate health benefits often face limited or unaffordable alternatives to obtaining coverage. Retirees may purchase coverage on their own—either individual insurance policies for these under age 65 or Medicare supplemental plans for those age 65 or older. However, despite federal laws that guarantee access to some individual insurance policies to certain individuals who lose group coverage, retirees' ages and often poorer health status combine to make individually purchased health insurance expensive. For example, the majority of states do not restrict the price of premiums that carriers may charge individuals who purchase individual insurance policies. Thus, carriers in these states may charge 60-year-old males a monthly premium close to 4 times higher than what they charge 30-year-old males, and there may be an even bigger difference if the older individual is not healthy. Similarly, the number of Medicare supplemental plans that federal law guarantees to retirees over 65 whose employers eliminate coverage is limited, and they do not include coverage for benefits such as prescription drugs. Thus, retirees seeking alternative coverage could receive less comprehensive coverage and pay more for it than they had previously.

The findings of the GAO report were supported and expanded upon by the Employee Benefit Research Institute (EBRI) Issue Brief Number 236, ''Retiree Health Benefits: Trends and Outlook,'' authored by Paul Fronstin in August 2001. The Issue Brief reported that employers had taken various actions in response to SFAS 106, including placing caps on the employers' expenditures, changing age and service requirements, and moving to ''defined contribution'' health benefits. Some employers dropped all retiree health benefits for future retirees and other employers dropped benefits for current retirees' coverage, though this action occurred less often than did other changes. Regarding future trends, EBRI found the following:

> While the changes employers have made to retiree health benefits do not appear to be having much impact on current retirees, they are likely to be felt most by future retirees who have not yet or may never become eligible for retiree health benefits because the courts have ruled that an employer has a right to terminate or amend retiree health benefits only if it has proved that such a right has been reserved or stated in specific language and on a widely known basis.

The EBRI Issue Brief also remarked that many early retirees, ages 55–64, who were not covered by employment-based retiree health insurance, had difficulty finding affordable insurance. This observation helped to explain the report's finding that—

> By law, employers are under no obligation to provide retiree health benefits, except to current retirees who can prove that they were previously promised a specific benefit. Between 1994 and 1999, retirees ages 55–64 experienced an increase in the likelihood of being uninsured, but, as mentioned above, the percentage of retirees covered by health benefits through a former employer or union was unchanged (although as is shown below, current retirees have seen increases in their share of health insurance premiums). In addition, the likelihood of an early retiree having health insurance through his or her own spouse increased. An erosion of public health insurance and health insurance purchased directly from an insurer accounts for the increase in the uninsured.

The courts continue to find that an employer has a right to terminate or amend retiree health benefits if such a right has been reserved or stated in specific language and on a widely known basis. In *Hughes* v. *3M Retiree Medical Plan* (2002 CA8), 2002 WL 276767, the Eighth Circuit held that an employee booklet describing a retiree health plan did not create a ''lifetime'' benefit because the summary plan description was silent as to vesting. The Court also noted that the benefit booklet contained the statement that ''[t]he company hopes and expects to continue these plans indefinitely, but reserves the right to amend or discontinue them, subject to collective bargaining as required.''

A recent study by a joint project of the Kaiser Family Foundation, the Commonwealth Fund, and the Health Research & Education Trust found not only that the number of employers who sponsor retiree health plans is continuing to decline, but that those plan sponsors who are continuing their retiree health plans are considering shifting more of the cost to the retirees. Mark A. Hoffmann, writing for ''Business Insurance'' on April 17, 2002, reported the following:

> The percentage of employers offering retiree health care coverage is continuing to drop, according to a survey released earlier this week.
>
> Only 34% of U.S. companies with 200 or more employees offered health care coverage to Medicare-eligible retirees in 2001, down from 37% in 2000 and 41% in 1999, according to the study, titled ''Erosion of Private Health Care Insurance Coverage for Retirees.''
>
> The study. . . also found that Medicare-age retirees, on average, pay 26% of the total cost of their health care premiums, compared with 13% paid by active workers in the same firms.
>
> ''By 2001, numerous warning signs indicate that, although few employers are dropping coverage altogether, many say they plan to make changes that shift a greater share of costs to retirees, by raising premium contributions and imposing greater cost-sharing requirements for benefits such as prescription drugs,'' the report states.

As did the EBRI Issue Brief, the study found that while retiree health coverage will probably continue to be provided for current retirees, the prospect of retiree health coverage for future retirees is less certain. The survey made the following observation:

> Yet, just 4% of companies offering retiree coverage say they are likely to eliminate that coverage entirely in the next two years. Seven percent of firms say it's likely they will eliminate retiree benefits for new employees or for existing workers who have not yet retired.
>
> However, while no jumbo firms indicate they would eliminate retiree health coverage entirely, 11% say they are likely to eliminate them for new employees or existing workers who have not yet retired.

The staff reviewed copies of post-retirement benefit documents and plan descriptions of several defense contractors. At the request of the CAS Board staff, the Defense Contract Audit Agency (DCAA) provided these copies from their contract files after obtaining permission from the contractors to release these proprietary materials for review by the Board and its staff in their deliberation on this case. While the details and the benefits provided by these plans were quite varied among the plan documents, the provisions of these plans were consistent with the general description of post-retirement benefit

plans found in most articles and literature on the subject. In particular, attainment of an age close to retirement and significant service—*e.g.*, age 50 and 20 years of service—were usually required for eligibility. All the plans contained reference to the contractor's unrestricted right to amend or terminate the plan.

There have also been a number of news stories in the print and broadcast media concerning retirees from large private companies who have lost their employer-based retiree health insurance and have been unable to purchase health insurance coverage on their own due to pre-existing conditions or cost. As the general public has become increasing aware of this issue, some members of Congress have begun considering how the protections of the Employee Retirement Income Security Act of 1974 (ERISA) or other statutes might be extended to protect these retirees.

In response to a request from Representative Carolyn McCarthy, the GAO did a survey of three major defense contractors. In a letter to the Congresswoman dated February 27, 2003, which reported on ''Retiree Health Benefits at Selected Government Contractors,'' the GAO wrote:

DCMA and DCAA closely monitored postretirement health benefits to ensure charges to the government were made in compliance with federal regulations. As part of their oversight efforts, the two agencies performed risk assessments and conducted regular reviews of the contractors' actual and projected postretirement health benefits costs and the assumptions underlying future projections. For the 2 years covered in our review, neither DCAA nor DCMA found any significant problems with the contractors' actual or projected postretirement health benefit costs. For example, DCAA took no exceptions to the projected costs reflected in the contractors' pricing proposals and took exception to less than 1 percent of the $756 million in postretirement health benefits costs incurred by the contractors over the 2-year period.

Conclusions

Because contractors need the flexibility to modify, reduce, or even eliminate post-retirement benefits in the future in response to the pressures of medical inflation, an aging population, and global competition, the Board finds that the liability for post-retirement benefits cannot be made sufficiently firm to be recognized for government cost accounting purposes without undue financial risk to both the contractor and the government. Therefore, the Board has decided to discontinue further development of the rule proposed in the ANPRM and the project (CASB Docket No. 96–02A) to develop a separate Cost Accounting Standard (CAS) that addresses the recognition of costs of post-retirement benefit plans under government cost-based contracts and subcontracts.

Angela B. Styles,

Chair, Cost Accounting Standards Board.

[FR Doc. 03–23053 Filed 9–9–03; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173 and 180

[Docket No. RSPA–03–14405 (HM–220F)]

RIN 2137–AD78

Hazardous Materials Regulations: Aluminum Cylinders Manufactured of Aluminum Alloy 6351–T6 Used in SCUBA, SCBA, and Oxygen Service—Revised Requalification and Use Criteria

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA proposes to amend requirements in the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) pertaining to aluminum cylinders manufactured using aluminum alloy 6351–T6. The purpose of this rulemaking initiative is to enhance safety, minimize the potential for personal injury and property damage during the cylinder filling process, and adopt a standard for early detection of sustained load cracking (SLC) to reduce the risk of a cylinder rupture.

DATES: Comments must be received by November 10, 2003.

ADDRESSES: You may submit comments by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9:00 am and 5:00 pm, Monday through Friday, except Federal Holidays.

Instructions: You must include the agency name and docket number RSPA -03–14405 (HM–220F) or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act section of this document.

Docket: You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Mark Toughiry, Office of Hazardous Materials Technology, (202) 366–4545, or Charles E. Betts, Office of Hazardous Materials Standards, (202) 366–8553; RSPA, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Contents

I. Background

Cylinders made of aluminum alloy 6351–T6 are known to be susceptible to sustained load cracking (SLC) in the neck and shoulder area of the cylinder. The majority of the SLC-related ruptures have occurred in self-contained underwater breathing apparatus (SCUBA), self-contained breathing apparatus (SCBA), and oxygen services. Since 1994, the Research and Special Programs Administration (RSPA, we) has been notified of twelve suspected SLC ruptures of cylinders manufactured of aluminum alloy 6351–T6. Five of the twelve ruptures resulted in serious injuries. RSPA's review of manufacturers' data revealed that there have been several thousand cylinders