

MEMORANDUM FOR: ALL REGIONAL ADMINISTRATION

THROUGH: LEO CAREY, DIRECTOR
OFFICE OF FIELD PROGRAMS

FROM: PATRICIA K. CLARK
DIRECTOR DESIGNATE
DIRECTORATE OF COMPLIANCE PROGRAMS

SUBJECT: Limitation of Enforcement of Certain Subsections of the
Excavation Standard Against Employers Engaged in Natural Gas
Transmission and Distribution

The new OSHA excavation standard generally applies to all excavations made in the earth's surface. The natural gas transmission and distribution industry has pointer out that certain working conditions in excavations in its industry are regulated by the Department of Transportation's office of Pipeline Safety and has argued that such working conditions are therefore not subject to the OSHA standard due to section 4(b)(1) of the Occupational Safety and Health Act. We have concluded that two subsections of the OSHA standard, 29 CFR 1926.651(g)(1)(iii), and .651(g)(2)(i) address working conditions that are covered by DOT standards and cannot be enforced by OSHA.

Subsection 1926, 651(g)(1)(iii), which requires that the concentration of flammable gas be maintained below 20 percent of the lower explosive limit, is preempted by the DOT regulation at 49 CFR 192.751. Subsection 1925.651(g)(2)(i), which requires the presence of emergency rescue equipment, is preempted by the DOT regulation at 49 CFR 192.615. The attached letter to the American Gas Association explains the extent to which DOT regulations preempt the enforcement of these two subsections of the OSHA excavation standard. This letter shall govern the enforcement of the two subsections against employers in the natural gas transmission and distribution industry.