

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 11—Tentative

Thursday, April 14

11:00 a.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of April 18—Tentative

Thursday, April 14

10:00 a.m.

Briefing on Status of Program for Performance Indicators (Public Meeting)

2:00 p.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Proposed Final Rule Revising Agency Procedures Governing Ex Parte Communications and Separation of Functions" (Public Meeting) was held on March 23.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: William Hill (202) 634-1410.

William M. Hill, Jr.,
Office of the Secretary,
March 24, 1988.

[FR Doc. 88-6971 Filed 3-28-88; 8:49 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION
"FEDERAL REGISTER" CITATION OF
PREVIOUS ANNOUNCEMENT: (53 FR 9450
March 22, 1988).

STATUS: Closed meeting.

PLACE: 450 5th Street NW., Washington, DC

DATE PREVIOUSLY ANNOUNCED:
Wednesday, March 16, 1988.

CHANGES IN THE MEETING: Additional items.

The following additional items were considered at a closed meeting scheduled on Tuesday, March 22, 1988, at 2:30 p.m.

Dismiss institution of injunctive action
Regulatory matter regarding financial institutions.

Litigation matter.

Commissioner Grundfest, as duty officer, determined that Commission business required the above changes.

At time changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Amy Kroll at (202) 272-2092.

Jonathan G. Katz,

Secretary.

March 23, 1988.

[FR Doc. 88-7059 Filed 3-28-88; 2:15 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of March 28, 1988:

A closed meeting will be held on Monday, March 28, 1988, at 9:00 a.m. and on Tuesday, March 29, 1988, at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Monday, March 28, 1988, at 9:00 a.m., will be:

Consideration of *amicus* participation.
Institution of administrative proceeding of an enforcement nature.

Settlement of administrative proceeding of an enforcement nature.

The subject matter of the closed meeting scheduled for Tuesday, March 29, 1988, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceeding of an enforcement nature.

Formal orders of investigation.

Consideration of *amicus* participation.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Andrew Feldman at (202) 272-2091.

Jonathan G. Katz,

Secretary.

March 25, 1988.

[FR Doc. 88-7060 Filed 3-28-88; 2:15 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register

Vol. 53, No. 61

Wednesday, March 30, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

Correction

In notice document 88-5366 beginning on page 7961 in the issue of Friday,

March 11, 1988, make the following correction:

On page 7962, in the first column, in the table, in the right-hand column, the 11th line should read "2,500,000 pounds."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6659

[ES-960-07-4220-10; ES-11592]

Withdrawal of Public Land for Buffalo National River, Arkansas

Correction

In rule document 87-22451 appearing on page 36577 in the issue of Wednesday, September 30, 1987, make the following correction:

In the third column, under "T. 16 N., R. 22 W.," in Sec. 7, "SW $\frac{1}{2}$ NE $\frac{1}{4}$ " should read "SW $\frac{1}{4}$ NE $\frac{1}{4}$ ".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-940-08-4220-10; Sacramento 054898]

California; Notice of Partial Termination and Reservation of Land

Correction

Notice document 88-5328 appearing on page 9152 in the issue of Monday, March 21, 1988, was published in error and should be disregarded. March 28, 1988 is the correct date for the relief of segregative effect in notice document 88-4056 on page 5654 in the issue of February 25, 1988.

BILLING CODE 1505-01-D

39 Federal Register

Wednesday
March 30, 1988

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 48 and 75

Self-Contained Self-Rescue Devices; Final
Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 48 and 75

Self-Contained Self-Rescue Devices

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is revising its existing training standards to require that persons be trained in complete donning procedures for the use of self-contained self-rescue (SCSR) units. The required training includes each person assuming a donning position, opening and activating the device, inserting the mouthpiece or simulating this task while explaining proper insertion of the mouthpiece and putting on the nose clip. This training in the proper use of SCSR units, commonly referred to as "hands-on" training, is necessary to prepare underground miners to protect themselves from suffocation or poisoning from toxic products of combustion in the event of a mine fire or explosion.

On June 30, 1987, MSHA published an emergency temporary standard (ETS) (52 FR 24374) which required "hands-on" training in the use of SCSR units for all persons entering an underground coal mine after September 28, 1987. In accordance with the Federal Mine Safety and Health Act of 1977 (Mine Act), the ETS must be replaced by final standards within 9 months after the ETS has been issued. This final rule replaces the ETS.

EFFECTIVE DATE: April 29, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203; phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: The Mine Safety and Health Administration is revising its existing training requirements for use of self-contained self-rescue units. These revisions are promulgated pursuant to section 101 of the Federal Mine Safety and Health Act of 1977 (Mine Act), (30 U.S.C. 811).

On June 30, 1987, MSHA published an emergency temporary standard (ETS) (52 FR 24374) which required all persons who enter an underground coal mine after September 28, 1987, to have had "hands-on" training in the use of SCSR units. This training included properly opening the device, activating it, inserting the mouthpiece or simulating this task while explaining proper

insertion of the mouthpiece, and putting on the nose clip. The ETS was issued in accordance with section 101(b) of the Mine Act. The ETS was effective immediately upon publication and revised the existing safety standards for SCSR units at 30 CFR 75.1714. Under the Mine Act, publication of an ETS requires MSHA to commence rulemaking under section 101(a) of the statute, and to replace the ETS with final standards within 9 months. Consistent with this requirement, on June 30, 1987, MSHA also published a proposed rule (52 FR 24378). The proposed approach was to integrate the safety protection afforded by the training required by the ETS into the framework of existing Agency training standards. Under the proposal this was to be accomplished by codifying "hands-on" SCSR training in MSHA's training regulations, 30 CFR Part 48, and also by amending the training requirements for "certified persons" in 30 CFR 75.160-1.

The mining community did not request a public hearing and therefore none was held.

The Agency's final rule addresses the relevant comments received on the proposed rule and is consistent with the goals of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

I. Discussion of the Final Rule

A. Background

Diligent compliance with mining safety standards and safety-conscious work practices provide a substantial measure of protection against toxic atmospheres associated with fires and explosions in underground coal mines. However, in the high-hazard work environment of underground coal mines, the danger of a fire or explosion is ever-present. Electricity or other sources of power can ignite coal dust or methane gas resulting in an explosion. Equipment can also be the source of a fire, which may involve fuel, lubricants and the surrounding coal. In caved and mined-out areas which contain coal and accumulated gas, explosions can be caused by rock falls and in some instances fires are started by spontaneous combustion. When active mine areas are connected into previously mined-out areas, there is also the risk of exposure to an oxygen-deficient atmosphere.

MSHA standards are designed to protect miners from these hazards, but if an emergency occurs because other measures have failed, SCSR units are the last protection available that facilitates escape. SCSR units are closed-circuit breathing apparatuses

that provide a source of oxygen and greatly increase a person's chance of surviving a mine emergency involving an irrespirable atmosphere. Rapid and proper donning of an SCSR unit under such extreme adverse circumstances is essential to survival.

Existing standards at 30 CFR 75.1714 require that underground coal mine operators make SCSR devices available to the miners employed at their mine who go underground, as well as to the visitors who the operators authorize to go underground. The standard also specifies that mine operators must instruct and train miners and visitors in the use and location of the self-rescue devices made available to them. Subjects included in miner training which must be conducted in accordance with MSHA training regulations in 30 CFR Part 48 include use, care and maintenance of the units. Until the ETS, however, the standard did not specifically require "hands-on training" with SCSR units.

The death of 27 miners in a mine fire on December 19, 1984, raised serious questions about the adequacy of miner training in the use of SCSR devices. MSHA's investigation into the accident was complicated by problems relating to extinguishing the fire, and later by the hazardous conditions created by the fire damage.

However, evidence gathered during the investigation (*Report of Investigation, Underground Coal Mine Fire, Wilberg Mine*, issued August 7, 1987) indicated that some of the 27 victims did not have basic knowledge about activating or using the SCSR devices available to them. They were also unaware of the critical need to protect their lungs from the smoke and carbon monoxide contaminated atmosphere created by the fire.

MSHA is aware that miners have in several instances successfully used SCSR devices to escape from mines following a mine fire or explosion. However, in November 1986, MSHA completed a nationwide evaluation of the effectiveness of SCSR training covering 1,174 underground coal mines. At each mine, a representative number of miners and supervisors were asked to respond to a series of questions concerning SCSR use and storage at the mine. The same miners and supervisors were then asked to don a SCSR unit provided by MSHA. When the evaluation was completed, a total of 8,904 persons had been interviewed and tested. Of this group nearly 20 percent, or 1,780 persons were graded as failing. At 243 mines where the evaluation indicated ineffective SCSR training,

additional retraining was required for all underground personnel.

In addition to this evaluation, researchers from the University of Kentucky and the Bureau of Mines, U.S. Department of the Interior, have recently reported their findings based on a series of SCSR donning studies. (Cole and Vaught, "Training in the Use of Self-Contained Self-Rescuers," and Vaught and Cole, "Problems in Donning the Self-Contained Self-Rescuer" (USBM project H003480040)). In cooperation with two coal companies, studies were made of miners' skill in the correct use of SCSR devices. Problem areas pointed out by the studies included heavy reliance by the industry on teaching methods that do not provide individual performance simulation. MSHA experience, prior to the ETS, confirmed that training in the use of SCSR devices typically consisted of a film, slide or tape presentation, or demonstration by an instructor to either a class or an individual. "Hands-on" training, which would familiarize miners with the skills necessary to successfully use the units in an emergency, was not an industry-wide practice.

B. General Discussion of the Final Rule

Because the effective use of SCSR devices is essential to successful evacuation in an immediately life-threatening situation, the Agency initially addressed the general lack of "hands-on" training through the immediate regulatory action of the ETS. Under the final rule, "hands-on" training requirements are integrated into the framework of existing MSHA standards for initial and annual retraining of miners and supervisors. The final rule codifies the "hands-on" training requirements in the training regulations for 30 CFR Part 48, and also in the training requirements for "certified persons" in 30 CFR 75.161.

With this approach, the majority of MSHA training requirements are maintained within 30 CFR Part 48, which is consistent with MSHA's goal of a comprehensive miner training program. However, in accordance with § 48.2(a)(1)(ii), supervisory personnel, subject to MSHA-approved state certification requirements, are generally not covered by Part 48. The regular training of these individuals is addressed by 30 CFR 75.160-1. Therefore, the final rule also revises § 75.160-1 to include "hands-on" training with SCSR units in the training and retraining requirements for certified persons. This will assure that all miners, including supervisors, receive "hands-on" training as an integral component of their training in the use, care and

maintenance of SCSR's. The final rule also clarifies the existing requirement that visitors going underground must also receive "hands-on" training in the use of the SCSR's they are provided. This clarification and the revisions to Part 48 and § 75.160-1, which are separately discussed below, replace the amendments made by the ETS to § 75.1714.

One commenter recommended that the final rule include provisions which were not within the scope of the proposed rule. The commenter recommended that: (1) The operator make available to each miner an SCSR that can be comfortably worn at all times; (2) storage of SCSRs not be permitted; (3) MSHA establish criteria for the weight and size of SCSR units; (4) training in the use of SCSR units include a review of the mine's emergency evacuation procedures and escapeway routes and a practice drill from the working section to the surface; and (5) mine evacuation exercises be conducted at 6-month intervals to assure that all miners are simultaneously evacuated from the mine.

The suggestions concerning the size and weight of SCSR units which can be comfortably worn are the subject of ongoing research and development. The results of this work, being conducted through the Bureau of Mines, may form the basis for future rulemaking amendments to MSHA's existing SCSR approval regulations at 30 CFR Part 11. Improvements in SCSR technology that would reduce the size and weight of SCSR units could also raise the issue of SCSR units storage as permitted by existing MSHA standards. However, the basis for these revisions is not present in this rulemaking. Likewise, training and drills in emergency evacuation procedures and escapeway routes are addressed by existing Agency standards, and revisions to these requirements are not within the scope of this rulemaking. These issues will, however, be considered in the Agency's future review and revision of the existing standards.

C. Revisions to Part 48—Training and Retraining of Miners

Subpart A of 30 CFR Part 48, prescribes requirements for submitting and obtaining MSHA approval of operator-administered programs for training and retraining underground miners. Each mine must have an approved training program for training new miners and newly-employed experienced miners, as well as training miners for new tasks, providing annual refresher training and giving certain persons hazard training.

The existing training requirements for new miners (§ 48.5), newly-employed experienced miners (§ 48.6), annual refresher training (§ 48.8), and hazard training (§ 48.11) are revised by the final rule to include requirements for "hands-on" training in the use of SCSR devices. The "hands-on" training required includes complete donning procedures in which each person properly assumes a donning position, opens the device, activates the device, inserts the mouthpiece or simulates this task while explaining proper insertion of the mouthpiece and puts on the nose clip. The "hands-on" training will familiarize persons who go into underground coal mines with the skills necessary to successfully use the SCSR unit in an emergency situation.

The requirement that "hands-on" training include "complete donning procedures" was added to the final rule to clarify that comprehensive SCSR donning training is required. For "hands-on" SCSR training to be most effective, commenters and the studies cited above indicate that a start to finish, orderly step-by-step procedure is important to skill building and retention. An example of a complete donning procedure is the "3+3 method" developed as a result of the research conducted by the University of Kentucky and Bureau of Mines previously cited. This procedure directs the person being trained to assume a kneeling position with the neckstrap of the SCSR looped around the neck and to complete a six-step donning sequence: (1) Open and activate the unit; (2) insert mouthpiece; (3) put on nose clip; (4) put on goggles; (5) adjust neck and waist straps, and (6) replace miner's cap. The "3+3 method" can be used with all currently MSHA-approved SCSR units. MSHA has included the "3+3 method" of donning SCSR units in instructor guides and video tapes for the various types of SCSR units. These training aids are available at MSHA District Offices and MSHA's National Mine Health and Safety Academy in Beckley, West Virginia.

Commenters pointed out, and MSHA agrees, that proper body positioning can facilitate correct and prompt SCSR donning. The final rule does not, however, specify the body positioning to be used when donning an SCSR. Instead, this will be addressed in the training plan for each mine so that mining conditions and improved or alternative donning positions can be considered.

The final rule retains the proposed requirements that as part of the "hands-on" SCSR training sequence each person open the SCSR unit and activate it.

These steps familiarize the person with the type of latch or closing device used, its location on the unit and the action necessary to release it. Likewise, activating the unit familiarizes the person with this procedure, which is different between compressed oxygen and chemical-type SCSR units as well as between different models within these two classes.

Consistent with the proposal, the final rule requires that each person receiving "hands on" training insert the mouthpiece or simulate this task while explaining proper insertion of it. The purpose of the final rule is to assure that each person is knowledgeable in proper procedures for inserting the mouthpiece and creating the necessary seal. Several commenters recommended deleting the provision permitting simulation of the mouthpiece. These commenters stated that because proper performance of this step is so essential to isolating the lungs from the outside atmosphere it should be experienced first hand. MSHA agrees that one of the most critical steps in donning a SCSR is quickly and properly creating a seal around the mouthpiece with the lips and gums. The Agency believes that a person can demonstrate this skill either by actual insertion of the mouthpiece or by explaining step-by-step how it is properly inserted. Either method can be effective in evaluating proficiency in performing this task. Maintaining the alternative to simulate proper insertion of the mouthpiece also recognizes some people would prefer not to insert the mouthpiece because of health concerns, even when proper sanitizing procedures are used.

Also retained in the final rule is the proposed requirement that as a part of "hands-on" SCSR training each person put on the nose clip. This is a vital part of isolating the lungs from the outside atmosphere and, therefore, an important element in proper use of SCSR units.

Some commenters recommended that the SCSR units used for "hands-on" training be fully charged. They stated that a fully charged unit would allow each person to experience the sensation of being under oxygen as provided by the unit. MSHA is not aware of any information which indicates that charged SCSR units are necessary for effective "hands-on" training. The Agency recognizes that some SCSR training models, particularly the compressed-oxygen type, are designed to permit the use of oxygen, while others do not. Studies conducted by the Bureau of Mines indicate that both charged and non charged types of training models can be effectively used to provide "hands-on" training. While experiencing

the sensation of being under oxygen may afford some additional measure of preparedness, this is not central to the rule's purpose of teaching people simple, reliable donning skills that can be used in an emergency. Therefore, the final rule does not adopt this recommendation.

One commenter also recommended that "hands-on" training include a timed performance evaluation of the trainee's ability to don an SCSR. This commenter stated because of the high concentration of carbon monoxide resulting from a mine fire or mine explosion, each person should be capable of donning an SCSR in 60 seconds or less. MSHA agrees that because of the irrespirable atmosphere that is present following a mine explosion or fire, persons need to don their SCSR unit as quickly as possible. A review of MSHA's investigative reports on recent mine emergencies in which SCSR units were not successfully used indicates however that inadequate knowledge of how to properly use the SCSR units and of the danger involved was the cause of these failures and not inadequate donning time. Also, studies conducted by the Bureau of Mines indicate that the average time for a person who has received "hands-on" training to don an SCSR is about 60 seconds. The critical tasks necessary to isolate the lungs from the ambient atmosphere took less than 50 percent of the total time needed to don the units. For these reasons, the final rule does not adopt the recommendation for a timed performance evaluation.

D. Revisions to Section 75.161—Plans for Training and Retraining of Qualified and Certified Persons

Section 75.160 requires each operator to provide a program, approved by the Secretary, for training and retraining qualified and certified persons. This standard, published in 1970, addresses the training of persons who perform certain functions in underground coal mines prescribed by the Mine Act and MSHA standards. The Part 48 training regulations, published in 1978, do not apply to supervisors who are subject to MSHA approved state certification requirements, unless they perform non-supervisory tasks. The vast majority of supervisors at underground coal mines are certified persons. As a result, these persons are not subject to the training requirements of Part 48.

All persons working underground need proper training and retraining in the use of SCSR units to maintain the knowledge and skill necessary to effectively use these devices in an emergency. The final rule, therefore, retains the proposal to require "hands-

on" SCSR training for certified persons as part of their regular training and retraining.

Existing § 75.160-1 sets forth the courses that must be included in the training program required by § 75.160 for certified and qualified persons. As a new paragraph (c), the final rule adds the same SCSR "hands-on" training requirements for certified persons as described above for the training and retraining of miners in Part 48. Thus, each certified person must receive training in the use of SCSR devices that includes complete donning procedures in which each person properly assumes a donning position, opens and activates the unit, inserts the mouthpiece or simulates this task while explaining proper insertion of the mouthpiece and puts on the nose clip. This training must be received initially before certified persons go underground and at least annually thereafter. This training is required only for certified persons who go into underground coal mines.

Sections 75.160 and 75.160-1 address both qualified and certified persons and, under the proposal, persons in both of these skill classifications would have been required to receive "hands-on" SCSR unit training. As one commenter recognized, this would be duplicative in that qualified persons are subject to the SCSR training requirements of Part 48. The final rule corrects this by specifying that "hands-on" SCSR training under § 75.161 is required for certified persons only.

The reference in existing § 75.160-1 to December 31, 1970, is no longer applicable and has been deleted in the final rule. That date was the latest date by which operators had to submit the required training plan or program.

The final rule redesignates § 75.160-1 as § 75.161 to conform these standards with the Federal Register format.

E. Revisions to § 75.1714—Availability of Approved Self-Contained Self-Rescue Devices; Instruction in Use and Location

Section 75.1714 requires that underground coal mine operators make SCSR units available to the miners employed at their mines who go underground, and to the visitors who operators authorize to go underground. The existing standards also specify that mine operators instruct and train miners and visitors in the use and location of the self-rescue devices made available to them. This training is required to include use, care and maintenance of the units, and is required to be conducted in accordance with MSHA training regulations in 30 CFR Part 48. To clarify that visitors are to receive the

same type SCSR training as miners, the final rule revises the last sentence in paragraph (b) to include the term "visitors".

The ETS revised this section by adding a new paragraph (c) which required each person going into an underground coal mine after September 28, 1987 to have had "hands-on" training. As previously discussed, the final rule now addresses the "hands-on" training in 30 CFR Part 48 and 30 CFR 75.161. Therefore, the ETS is no longer necessary and is deleted by the final rule.

A commenter recommended that visitors not be subject to the same "hands-on" training that is required for miners. This commenter stated that groups of visitors, sometimes as many as 30 people, tour their mine and it is generally not feasible to provide comprehensive training for a large group of individuals. This commenter further stated that the safety of these individuals would be best served by providing visitors a brief familiarization with the SCSR unit available at the mine, and informing them that if it becomes necessary to don the SCSR unit while they are underground, the person assigned to accompany them underground would provide the necessary assistance.

Consistent with the existing standard and for the reasons stated in this rulemaking, MSHA believes that all persons should be completely trained in the use of the SCSR unit before they go into an underground coal mine. In the event of a mine fire or explosion or an inundation of oxygen-deficient air, it is often necessary to properly don an SCSR unit immediately or in a relatively short time. Relying on experienced persons to instruct visitors how to do this would not recognize the emergency nature of the circumstances. In addition, if the individual who is assigned to accompany the visitors underground became incapacitated, the visitors would not be able to obtain the additional instruction and direction needed to don their SCSR units. The final rule does not, therefore, adopt this suggestion.

II. Drafting Information

The principal persons responsible for preparing this document are: Douglas C. Altizer, Jr., Coal Mine Safety and Health, MSHA; Frank Schwamberger, Education Policy and Development, MSHA; Earnest C. Teaster, Jr., Office of Standards, Regulations and Variances, MSHA; and Robert Snashall and Edward C. Hugler, Office of the Solicitor, Department of Labor.

III. Executive Order 12291 and the Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an analysis to identify potential costs and benefits associated with the final rule. The Agency has incorporated this analysis into the Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. In this analysis, MSHA has determined that the final rule will not result in major cost increases nor have an effect of \$100 million or more on the economy. Therefore, the rule is not within the criteria for a major rule and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, whenever possible, compliance alternatives that minimize any adverse impact on small businesses when developing regulations. MSHA has determined that compliance alternatives are not available for small mines for the "hands-on" training requirement of this final rule.

In the following summary of the Regulatory Flexibility Analysis MSHA addressed the cost impact on industry by factoring in, where applicable, all direct and indirect costs for equipment and labor. MSHA estimates are based primarily upon the expertise of senior MSHA personnel who provided estimates for the time required to perform specific tasks and the compliance level of the industry.

MSHA estimates that the total compliance cost for the final rule is \$252,614 the first year and \$244,979 annually thereafter. The cost for revising training plans (\$21,900) comprises about 9 percent of the first year cost. The cost for SCSR training devices comprises about 6 percent of the recurring cost. The remaining cost (\$230,714) is attributed to labor for the persons taking the training and for the instructors giving the training. A copy of the full analysis is available upon request.

IV. Paperwork Reduction Act

Codification of the "hands-on" training provision in 30 CFR Part 48 and in the training requirements for certified persons specified in 30 CFR 75.161 requires operators of underground coal mines to submit revised training plans and programs to MSHA for approval. MSHA estimates that it would take 30 minutes for each of the 1825 underground coal mines to revise the training plan and program.

The Office of Management and Budget (OMB) has approved this paperwork requirement under the Paperwork Reduction Act of 1980 and has assigned

OMB control number 1219-0009. The requirement is approved through November 11, 1990.

List of Subjects in 30 CFR Part 75

Administrative practice and procedure, Education, Mine safety and health, Self-contained self-rescue devices.

Date: March 24, 1988.

David C. O'Neal,

Deputy Assistant Secretary for Mine Safety and Health.

Accordingly, Parts 48 and 75 of Chapter I, Title 30 of the Code of Federal Regulations are amended as follows:

PART 48—TRAINING AND RETRAINING OF UNDERGROUND MINERS

1. The authority citation to 30 CFR Part 48 is revised to read as follows:

Authority: 30 U.S.C. 811 and 825.

2. Section 48.5 is amended by revising paragraph (b)(2) to read as follows:

§ 48.5 Training of new miners; minimum courses of instruction; hours of instruction.

* * * * *

(b) * * *

(2) *Self-rescue and respiratory devices.* The course shall include instruction and demonstration in the use, care, and maintenance of self-rescue and respiratory devices used at the mine. Training in the use of self-contained self-rescue devices shall include complete donning procedures in which each person assumes a donning position, opens the device, activates the device, inserts the mouthpiece or simulates this task while explaining proper insertion of the mouthpiece, and puts on the nose clip. The course shall be given before the new miner goes underground.

* * * * *

3. Section 48.6 is amended by redesignating paragraph (b)(8) as (b)(9) and adding a new paragraph (b)(8) to read as follows:

§ 48.6 Training of newly employed experienced miners; minimum courses of instruction.

* * * * *

(b)(8) *Self-rescue and respiratory devices.* The course shall include instruction and demonstration in the use, care, and maintenance of self-rescue and respiratory devices and at the mine. Training in the use of self-contained self-rescue devices shall include complete donning procedures in which each person assumes a donning position, opens the device, activates the device, inserts the mouthpiece or

simulates this task while explaining proper insertion of the mouthpiece, and puts on the nose clip.

4. Section 48.8 is amended by revising paragraph (b)(8) to read as follows:

§ 48.8 Annual refresher training of miners; minimum courses of instruction; hours of instruction.

(b)(8) *Self-rescue and respiratory devices.* The course shall include instruction and demonstration in the use, care, and maintenance of self-rescue and respiratory devices used at the mine. Training in the use of self-contained self-rescue devices shall include complete donning procedures in which each person assumes a donning position, opens the device, activates the device, inserts the mouthpiece or simulates this task while explaining proper insertion of the mouthpiece, and puts on the nose clip.

5. Section 48.11 is amended by revising paragraph (a)(4) to read as follows:

§ 48.11 Hazard training.

(a)(4) Use of self-rescue and respiratory devices, with self-contained self-rescue device training that includes

complete donning procedures in which each person assumes a donning position, opens the device, activates the device, inserts the mouthpiece or simulates this task while explaining proper insertion of the mouthpiece, and puts on the nose clip; and

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation to 30 CFR Part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Section 75.160-1 is redesignated as § 75.161 and is revised to read as follows:

§ 75.161 Plans for training programs.

Each mine operator shall submit to the District Manager a program or plan setting forth what, when, how, and where the operator will train and retrain persons whose work assignments require that they be qualified or certified. The program shall provide—

(a) For certified persons, annual training courses in methane measurement and oxygen deficiency testing, roof and rib control, ventilation, first aid, principles of mine rescue, and the provisions of this Part 75;

(b) For qualified persons, annual courses in performance of the tasks which they perform as qualified persons; and

(c) For certified persons, annual training in the use of self-contained self-rescue devices used at the mine. This training shall include complete donning procedures in which each person assumes proper position, opens the device, activates the device, inserts the mouthpiece or simulates this task while explaining proper insertion of the mouthpiece, and puts on the nose clip.

3. Section 75.1714 is amended by revising paragraph (b) to read as follows and removing paragraph (c):

§ 75.1714 Availability of approved self-rescue devices; instruction in use and location.

(b) Before any miner employed by the operator or visitor authorized by the operator goes underground the operator shall instruct and train such person in the use and location of the self-rescue device or devices made available at the mine. Instruction and training of miners and visitors shall be in accordance with provisions set forth in 30 CFR Part 48.

[FR Doc. 88-6898 Filed 3-29-88; 8:45 am]

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Federal Register

Wednesday
March 30, 1988

Part III

Department of Justice

28 CFR Part 44

Unfair Immigration-Related Employment
Practices; Interim Final Rule With
Request for Comments

DEPARTMENT OF JUSTICE

28 CFR Part 44

[Order No. 1264-88]

Unfair Immigration-Related Employment Practices

AGENCY: Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule amends 28 CFR 44.101(c)(2)(ii), which defines who is a citizen or intending citizen protected from citizenship status discrimination under section 102 of the Immigration Reform and Control Act of 1986 (IRCA) (8 U.S.C. 1324b), by adding a new sentence. It provides that aliens, whose applications for temporary residence status pursuant to 8 U.S.C. 1255a are approved, are deemed to have been temporary residents from the date shown on the receipt received when they paid their application fee.

Prompt implementation of this interim rule is required (1) to ensure that rights of aliens otherwise protected under section 102 of IRCA (8 U.S.C. 1324b) are not lost; (2) to make clear that eligible aliens may apply for temporary resident status and be protected from citizenship status discrimination, thus encouraging them to apply for legalization; (3) to make the date temporary resident status begins consistent with that used by the Immigration and Naturalization Service; and (4) and to effect Congressional intent. For these reasons, this rule is published as an interim final rule with a request for comments.

EFFECTIVE DATE: March 30, 1988.

Comments must be submitted on or before May 31, 1988.

ADDRESS: Written comments should be addressed to: Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035-5490.

Comments received will be available for public inspection in suite 800, 1100 Connecticut Avenue, NW., Washington, DC from 9:00 a.m. to 5:30 p.m., Monday through Friday except legal holidays. Copies of this regulation are available on tape for those with impaired vision.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Siskind, Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035-5490; (202) 653-8121 (Voice) or (202) 653-5710 (TDD number for the hearing impaired); or Andrew M. Strojny, Senior Attorney, Office of Special Counsel,

(202) 653-8246 (Voice) or (202) 653-5710 (TDD). These are not toll free numbers.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 1987, a final rule establishing standards and procedures for the enforcement of the antidiscrimination provisions of section 274B of the Immigration and Nationality Act, as amended by section 102 of the Immigration and Control Act of 1986 (IRCA) (8 U.S.C. 1324b) was published in 52 FR 37402 (to be codified at 28 CFR Part 44). Section 102 of IRCA protects aliens authorized to work in the United States from employment discrimination based on their national origin. It protects only U.S. citizens, nationals, and intending citizens from employment discrimination based on their citizenship status.

Subsection 44.101(c) of the existing rule defines the classes of aliens who are intending citizens under the Act. One of these classes consists of aliens who are granted the status of temporary residence under 8 U.S.C. 1255a(a)(1) (28 CFR 44.401(c)(2)(i)). The definition is silent as to whether aliens who have applied for temporary residence under 8 U.S.C. 1255a(a)(1), but who have not yet been granted that status, are intending citizens. Thus, the existing regulation is not clear whether applicants for temporary residence are protected against citizenship status discrimination. This interim final rule makes clear that temporary resident status, once granted, relates back to the time the application fee is paid, *i.e.*, from the time of application. Therefore successful applicants are protected against citizenship status discrimination from the time of application.

Reasons for the Amendment

The interim final rule comports with the language of section 102. Section 102 defines an intending citizen as an alien who "is granted the status of an alien lawfully admitted for temporary residence under section 245A(a)(1) [of the Immigration and Nationality Act, as amended, 8 U.S.C. 1255a(a)(1)]" (8 U.S.C. 1324b(3)(B)(i)). Section 245A(a)(1) is entitled "Timely Application" and only concerns the preliminary step of applying for temporary resident status or legalization, as the program is popularly known. Thus the words of the statute lend support to relating temporary resident status back to the time of application.

This rule makes the time temporary resident status begins for antidiscrimination purposes consistent with that used by the Immigration and Naturalization Service (INS) for

legalization purposes. INS in its regulations implementing the Section 245A temporary resident program treats temporary residence, once granted, as relating back to the time the application fee is paid. This regulation implements the statutory requirement that there be an 18 month waiting period before a temporary resident can apply for permanent residence (8 U.S.C. 1255a(b)(1)(A)). The INS regulation sets forth when temporary resident status begins. It states:

The status of an alien whose application for application for temporary resident status is approved shall be adjusted to that of a lawful temporary resident as of the date indicated on the application fee receipt issued at [the] Service Legalization Office. (8 CFR 245a.2(s)).

The interim final rule tracks this INS regulation. This makes the treatment of when temporary resident status begins the same for legalization and antidiscrimination purposes.

This treatment of temporary resident status is also consistent with the intent of Congress in enacting the antidiscrimination provisions of IRCA. For example, the House Committee on the Judiciary stated in its report:

The Committee does not believe barriers should be placed in the path of permanent residents and other aliens who are authorized to work and who are seeking employment, particularly when such aliens have evidenced an intent to become U.S. citizens. It makes no sense to admit immigrants and refugees to this country, require them to work and then allow employers to refuse to hire them because of their immigration (non-citizenship) status. Since Title VII does not provide any protection against employment discrimination based on alienage or non-citizen status, the Committee is of the view that the instant legislation must do so.

H.R. Rep. No. 99-682, 99th Cong., 2d Sess., pt. 1 at 70. The House Committee on Education and Labor quoted the same passage in its report and stated "the Committee on Education and Labor fully endorses the policy position on the Committee on the Judiciary * * *". *Id.*, pt. 2 at 12.

The reference to those "who are authorized to work and who are seeking employment" embraces applicants for temporary resident status. Those applicants must demonstrate proof of financial responsibility (8 CFR 245a.s(d)(4)). Documents accompanying their applications for temporary residence must "be employment-related if employment-related documents * * * are available to the applicant" (8 U.S.C. 1255a(c)(1)(B)). Permitting discrimination against them creates the very situation that Congress intended to avoid, *i.e.*, the

Government requires them to work and, in many instances, to tell their employer they are legalization applicants, but leaves them exposed to discrimination. Such a situation would discourage eligible aliens from even applying for legalization and would undermine the purpose of the legalization program enacted by Congress. This interim final rule clarifies § 44.101(c) to avoid the possibility of this situation.

Justification for an Interim Final Rule

Good cause exists under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d) for making this amendment effective immediately without prior public comment. This amendment is directed, in part, at those who would apply for legalization if they could be assured that they would be protected from discrimination by section 102 of IRCA. Because the time for applying for temporary resident status expires on May 4, 1988 (8 U.S.C. 1255a(a)(1)(A), 8 CFR 245a.2(a)), the delay in following public comment procedures may deny many potential applicants the opportunity for legalization. Consequently, it is impractical to follow the normal notice and comment procedure. Furthermore, any delay in effectuating this rule could deter victims of citizenship status discrimination from filing discrimination

charges under section 102 because they believed they were not covered. In addition, because section 102 requires that charges be filed within 180 days of the alleged discrimination (8 U.S.C. 1324b(d)(3)), any delay in filing charges could result in the loss of rights.

This rule is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR 1981 Comp., p. 127). Moreover, a regulatory flexibility analysis has not been prepared under the Regulatory Flexibility Act (5 U.S.C. 601-612), because the rule is unlikely to have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 44

Administrative practice and procedure, Aliens, Citizenship and naturalization, Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Investigations, Law enforcement officers, Minority groups, Nationality, Naturalization, Nondiscrimination, Refugees.

For the reasons set forth in the preamble, Chapter I, Part 44 of Title 28 of the Code of Federal Regulations is amended as follows:

PART 44—[AMENDED]

1. The authority citation for Part 44 is revised to read as follows:

Authority: 8 U.S.C. 1324b, 8 U.S.C. 1103(a).

2. In § 44.101, paragraph (c)(2)(ii) is revised to read as follows:

§ 44.101 Definitions.

* * *

(c) * * *

(2) * * *

(ii) Evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen (INS Form N-315, "Declaration of Intention"; or INS Form I-772, "Declaration of Intending Citizen"). The status of an alien whose application for temporary resident status under 8 U.S.C. 1255a is approved shall be adjusted to that of a lawful temporary resident as of the date indicated on the application fee receipt issued at the Immigration and Naturalization Service Legalization Office. As used in this definition, the term citizen or intending citizen does not include an alien who—

* * *

Edwin Meese III,

Attorney General.

[FR Doc. 88-6947 Filed 3-29-88; 8:45 am]

BILLING CODE 4410-01-M