Sunshine Act Meetings

Federal Register
Vol. 54, No. 138
Thursday, July 20, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, July 25, 1989 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Tuesday, July 25, 1989, at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings.
Correction and Approval of Minutes.
Draft Advisory Opinion 1989-11
Messrs. Mac Asbill, Jr. and Wright H. Andrews, Jr. on behalf of Sutherland, Asbill & Brennan.
Draft Advisory Opinion 1989-12
Edward D. Feigenbaum regarding an Indiana statute that prohibits political contributions by and the awarding of contracts to certain vendors.
Regulations—Explanation and Justification of the Affiliation and Earmarking Regulations (11 CFR 110.3-110.6).
ADP Project Status Report
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer. Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 89-17167 Filed 7-18-89; 2:50 pm]
BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 2:00 p.m.-July 25, 1989.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573-0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Service Contract Docket No. 89-13 North Europe-U.S. Atlantic Conference Correction of Clerical Errors in Service Contract S.C. No. 541/89
2. Docket No. 89-07—Inquiry Into Laws, Regulations, and Policies of the Government of Ecuador Affecting Shipping in the United States/Ecuador Trade

CONTACT PERSON FOR MORE INFORMATION: Ronald D. Murphy, Assistant Secretary, (202) 523-5725.

Ronald D. Murphy,
Assistant Secretary.

[FR Doc. 89-17102 Filed 7-17-89; 5:06 pm]
BILLING CODE 6730-01-M

NATIONAL LABOR RELATIONS BOARD

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: Immediately following a 9:30 a.m. case-adjudicatory meeting, Tuesday, July 18, 1989.

PLACE: Board Conference Room, Sixth Floor 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. 552b(c)(2) (internal personnel rules and practices and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS CONSIDER: Personnel matter.

CONTACT PERSON FOR MORE INFORMATION: Joseph E. Moore, Acting Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254-9430.

Dated, Washington DC, July 14, 1989.
By direction of the Board.

Joseph E. Moore,
Acting Executive Secretary, National labor Relations Board.

[FR Doc. 89-17121 Filed 7-18-89; 11:06 am]
BILLING CODE 7445-01-M

POSTAL RATE COMMISSION

AGENCY HOLDING THE MEETING: Postal Rate Commission.

TIME AND DATE: 10:30 a.m., Tuesday, July 25, 1989.

PLACE: Commission Conference Room, 1333 H Street, NW., Washington, DC 20268-0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: To discuss and vote on the Postal Rate Commission Budget for FY 1990.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,
Secretary.

[FR Doc. 89-17140 Filed 7-18-89; 12:05 pm]
BILLING CODE 7715-01-M

Corrections

Federal Register
Vol. 54, No. 138
Thursday, July 20, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. 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.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-021]

Cell-Site Transceivers and Related Subassemblies From Japan; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke

Correction

In notice document 89-16133 beginning on page 29077 in the issue of Tuesday, July 11, 1989, make the following correction:

On page 29079, in the second column, in the last paragraph, in the eighth and ninth lines "[insert date 90 days prior to date of publication]" should read "April 12, 1989."

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

Correction

In notice document 89-16033 beginning on page 28832 in the issue of Monday, July 10, 1989, make the following correction:

On page 28833, in the first column, under **FOR FURTHER INFORMATION CONTACT:**, in the last line, "(212)" should read "(202)".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP89-1340-000, et. al.]

Sabine Pipe Line Co., et al.; Natural Gas Certificate Filings

Correction

In notice document 89-16156 beginning on page 29093 in the issue of Tuesday, July 11, 1989, make the following corrections:

On page 29093, in the first column, in the heading, the docket number was incorrect and should appear as set forth above.

On page 29094, in the third column, under **8. Panhandle Eastern Pipe Line Co.**, in the first line, the docket number should read "CP89-1686-000".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10690-000]

Utah Power and Light Co.; Availability of Environmental Assessment

Correction

In notice document 89-16152 appearing on page 29097 in the issue of Tuesday, July 11, 1989, make the following correction:

On page 29097, in the first column, in the fourth line, the date should read "July 5, 1989."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-920-09-4212-12 & 15; AZA-23700]

Arizona; Realty Action; Transfer of Public Land to State of Arizona

Correction

In notice document 89-15257 beginning on page 27214, in the issue of Wednesday, June 28, 1989, make the following correction:

On page 27215, in the second column, in the second line, "NE¼" should read "NW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-943-09-4214-10; GP9-247; OR-42920(Wash)]

Partial Termination of Proposed Withdrawal; Washington

Correction

In notice document 89-15260 beginning on page 27217 in the issue of Wednesday, June 28, 1989, make the following correction:

On page 27217, in the second column, under "Okanogan National Forest", in the third line, "southeasterly" should read "northeasterly".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 70

RIN 1290-AA08

Department of Labor Regulations Implementing Freedom of Information Act and Executive Order 12600

Correction

In the issue of Tuesday, June 13, 1989, on page 25204, in the third column, a correction to FR Doc. 89-12716 appeared. The sixth item was inaccurately printed and should have appeared as follows:

6. On page 23149, in the second column, § 70.40(b)(4) should appear as a paragraph.

BILLING CODE 1505-01-D

federal register

Thursday
July 20, 1989

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Part 57

Safety Standards for Methane in Metal and Nonmetal Mines; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219-AA52

Safety Standards for Methane in Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: MSHA is revising two sections of its safety standards for methane in metal and nonmetal mines to conform the standards to recently issued approval requirements for brattice cloth and ventilation tubing. The methane standards currently require that those materials have a flame spread rating of 25 or less if used in underground metal and nonmetal mines with a history of, or a potential for methane liberation. The reference to flame spread rating is replaced with a requirement that brattice cloth and ventilation tubing be approved by MSHA in accordance with 30 CFR Part 7.

EFFECTIVE DATE: This final rule is effective August 22, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background and Effect of Rule

A final rule updating MSHA's standards for methane in metal and nonmetal mines was published as a new Subpart T of Part 57 on July 1, 1987 (52 FR 24924). Sections 57.22215 and 57.22222 of these standards specify the use of brattice cloth and ventilation tubing with a flame spread rating of 25 or less as determined by American Society of Testing Materials (ASTM) test method E-162. Under § 57.22215, rigid ventilation tubing is required to be constructed of noncombustible material. The July 1, 1987 preamble noted that MSHA was engaged in development of an improved test method to evaluate the flame resistance of brattice cloth and ventilation tubing. The preamble further stated that upon promulgation of Part 7, §§ 57.22215 and 57.22222 would be revised to require the use of approved brattice cloth and ventilation tubing. On June 22, 1988 the new test method was issued as part of new approval regulations in 30 CFR Part 7 (53 FR 23466). MSHA published a proposed rule to revise §§ 57.22215 and 57.22222 on December 5, 1988 (53 FR 48934). No comments were received on these two sections as proposed and the final rule retains the proposed language. These revisions will become effective on August 22, 1989. As of that date, brattice cloth and ventilation tubing newly installed in a mine will be required to be approved by MSHA in accordance with 30 CFR Part 7. This delayed effective date coincides with the phase-in of new approval requirements under Part 7 and will provide sufficient time for mine operators to obtain approved ventilation materials. To the extent that ventilation materials approved under Part 7 become available sooner, they may be installed and will be considered in compliance with current §§ 57.22215 and 57.22222. Operators may also continue to install currently acceptable ventilation materials until the effective date of this rule. The approval status of those products previously tested and accepted by MSHA's Approval and Certification Center and issued an MSHA BC or VT acceptance number will remain unaffected allowing those products to be manufactured and used as MSHA approved.

II. Executive Order 12291 and the Regulatory Flexibility Act

This rule revises two previously issued standards to update technical performance requirements for brattice cloth and ventilation tubing. The cost impact of the new requirements on mine operators will be negligible. Many operators already use brattice cloth and ventilation tubing meeting the new requirements. The cost impact of the test requirements of the ventilation materials has been analyzed in the context of the Part 7 rulemaking. Accordingly, the Agency has determined that this rule will not result in a major cost increase or have an incremental effect of $100 million or more on the economy. Therefore, a regulatory impact analysis is not required. The Agency has also determined that the final rule will not have a significant impact on a substantial number of small entities.

III. Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 30 CFR Part 57

Mine safety and health, Metal and nonmetal mining, safety standards for methane.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Date: July 14, 1989.

Accordingly, Subpart T, Part 57, Subchapter N, Chapter I, Title 30 of the Code of Federal Regulations is amended as follows:

PART 57—[AMENDED]

1. The authority citation for Subpart T continues to read as follows:

Authority: 30 U.S.C. 811.

2. Section 57.22215(b)(1) is revised to read as follows:

§ 57.22215 Separation of intake and return air (I-A, II-A, III, and V-A mines).

* * * * *

(b) * * *

(1) Ventilation tubing approved by MSHA in accordance with 30 CFR Part 7 or previously issued a BC or VT acceptance number by the MSHA Approval and Certification Center may be used for separation of main air currents in the same opening. Flexible ventilation tubing shall not exceed 250 feet in length.

* * * * *

3. Section 57.22222 is revised to read as follows:

§ 57.22222 Ventilation materials (I-A, I-B, I-C, II-A, III, V-A, and V-B mines).

Brattice cloth and ventilation tubing shall be approved by MSHA in accordance with 30 CFR Part 7, or shall bear a BC or VT acceptance number issued by the MSHA Approval and Certification Center.

[FR Doc. 89-16966 Filed 7-19-89; 8:45 am]

BILLING CODE 4510-43-M

federal register

Thursday
July 20, 1989

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Roof, Face and Rib Support; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA58

Safety Standards for Roof, Face and Rib Support

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add an exception applicable to anthracite coal mines to 30 CFR 75.206(a). This rule was promulgated on January 27, 1988. Section 75.206(a) contains requirements for the use of conventional roof support but does not address the specific mining conditions unique to anthracite mining. This section would remain in effect for mines other than anthracite mines.

DATE: Written comments must be submitted on or before September 18, 1989.

ADDRESS: Send written comments to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of Proposed Rule

The Mine Safety and Health Administration (MSHA) is proposing to revise its existing safety standard for roof support in underground coal mines.

On January 27, 1988 (53 FR 2354) MSHA published final rules revising its safety standards for roof, face and rib support in underground coal mines. This proposal affects § 75.206 which sets out requirements for the use of conventional roof supports. Paragraph (a) of § 75.206 addresses mines that only use conventional supports and limits the width of entries in these mines to 20 feet. In addition, this paragraph also contains standards that address the spacing and number of supports in and around roadways. After further review of these requirements and the unique ground control conditions in near vertical seams, MSHA determined that this provision is not appropriate for anthracite mines, and exempting anthracite mines would not result in a diminution of safety.

As noted in the preamble, the requirement that the width of openings be limited to 20 feet when using only conventional support was derived from previous criteria provisions (53 FR 2359). A review of the history of application of these provisions in roof control plans indicates that they have never been applied to anthracite mines. In fact, most entry widths in anthracite mines are ten feet or less and the areas where widths extend beyond 20 feet have been successfully addressed in plans on an individual basis.

Discussions in the preamble to the final rule also consistently make reference to use of roof bolts as a means to achieve compliance with the requirements of paragraph (a). For example, the preamble states that the Agency concluded that a combination of roof bolts and conventional support is necessary to support openings wider than 20 feet (53 FR 2359). Use of roof bolts would not be a practical or even safe option in most anthracite mines which contain pitching seams that preclude the use of roof bolting equipment. The requirements in the standard and discussions in the preamble also consistently make reference to roadway widths which are relevant to bituminous coal mines using conventional supports and not to anthracite mines where roadways are not used and entries are often fully supported. In addition, heavy equipment, for which roadways are necessary, is not used in anthracite mines.

The preamble to the final rule also makes reference to 71 mining sections that the Agency estimated to be mining openings greater than 20 feet in width and only using conventional supports. The text goes on to state that to continue mining, these mines would be required to use roof bolts in conjunction with conventional supports. The preamble makes no mention of the impact of this standard on anthracite mines. However, because the use of roof bolts is considered the only means of compliance with the standard it seems clear that this impact was not taken into account.

II. Executive Order 12291 and the Regulatory Flexibility Act

This proposed rule would make a modification to a previously issued rule. MSHA has determined that the rule would not result in major cost increases nor have an incremental effect of $100 million or more on the economy. The Agency also determined that the proposed rule will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

III. Paperwork Reduction Act

There are no information collection requirements contained in this proposal.

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground coal mines, Roof, face and rib support.

Date: July 14, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Therefore, Part 75, Subchapter O, Chapter I, Title 30 of the Code of Federal Regulations is proposed to be amended under 30 U.S.C. 811 as follows:

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 75.206(a) is revised to read as follows:

§ 75.206 Conventional roof supports.

(a) Except in anthracite mines, when conventional roof support materials are used as the only means of support—

* * * * *

[FR Doc. 89-16967 Filed 7-19-89; 8:45 am]

BILLING CODE 4510-43-M

federal register

Thursday
July 20, 1989

Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 20, 75, and 77

Electric Mine Lamps Other Than Standard Cap Lamps, Certified and Qualified Persons, and Mobile Equipment; Automatic Warning Devices; Revisions of Existing Procedures and Requirements; Final Rules

DEPARTMENT OF LABOR

30 CFR Part 20

RIN 1219-AA40

Electric Mine Lamps Other Than Standard Cap Lamps

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule amends 30 CFR Part 20 by revising the requirements for the testing and approval of electric mine lamps, other than standard cap lamps, used in underground mines. These amendments allow MSHA to approve lamps with different designs that are as safe as lamps approved under the existing rules. This final rule does not affect lamps which have been or could be approved under the existing rules.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 2203, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

Under the existing rules, MSHA investigates and approves lamps which meet the design, construction and test requirements in Part 20 of Title 30 of the Code of Federal Regulations (CFR). These rules do not recognize lamps and flashlights that incorporate new or newly-applied technology. As a result, MSHA has not approved lamps and flashlights with innovative improvements.

This final rule amends Part 20 to enable MSHA to issue approvals for electric lamps and flashlights incorporating new designs if, after testing, they are found to be safe for their intended use and provide, at a minimum, the same degree of safety as lamps currently approved under the existing rules.

On April 13, 1988, MSHA published a proposed rule in the **Federal Register** (53 FR 12250) which would allow MSHA to approve lamps with different designs that would be as safe as lamps approved under the existing rules.

On August 11, 1988 (53 FR 30312), MSHA published a notice of public hearing which outlined the major issues raised during the comment period. A public hearing was held on August 30, 1988, in Pittsburgh, Pennsylvania, during which further comment was received. A transcript of the proceeding was taken and made available for public inspection. Following the public hearing, interested persons were allowed to submit supplementary statements and data until the record closed on September 30, 1988.

MSHA reviewed all written and oral statements submitted in response to the proposed rule and public hearing. This final rule was developed after a full evaluation of the rulemaking record.

II. Discussion and Summary of the Final Rule

This final rule permits MSHA to approve electric lamps and flashlights that incorporate technology for which the requirements of Part 20 are not applicable if the Agency determines by testing that the electric lamps or flashlights are as safe as those that meet the requirements of Part 20. Under this provision, MSHA can modify design, construction or test requirements as necessary to investigate and approve lamps or flashlights which incorporate technological improvements that were not available or not applied when Pact 20 was originally promulgated.

One commenter suggested that the regulation specifically reference "design features" as a component of MSHA's determination that the product is as safe as others approved by MSHA. The commenter reasoned that new mine lamps should be tested for rigid construction appropriate for the mining environment and be designed to prevent easy removal of devices which are included for protection. However, the existing requirements adequately address these concerns without further reference in the final rule to design features. Existing § 20.6(a) requires that lamps are durable in construction, practical in operation, and suitable for the service for which they are designed and approved. Existing § 20.8(a)(3) requires that for lamps other than flashlights, all parts, such as the bulb housing and battery container, through which access may be had to live terminals or contacts must be adequately sealed or equipped with magnetic or other equally reliable locks to prevent opening by unauthorized persons. For flashlights, provision must be made for sealing the battery container.

Consistent with this amendment, this final rule revises § 20.8(a)(1) to allow MSHA to investigate and approve lamps that are designed and constructed to prevent bulb breakage, thus preventing exposure of the filament and possible ignition of an explosive atmosphere. Under this rule, this design is an alternative to the existing requirement for a safety device to prevent exposure of the filament. Typically, the safety device used in approved electric mine lamps ejects the bulb automatically when the lamp lens is broken. MSHA is aware of lamps currently being designed and constructed with breakage-resistant material that prevents exposure of the filament by protecting the bulb from breakage. This final rule authorizes MSHA to approve these types of lamps, provided that they are as safe as currently approved lamps. One commenter suggested that § 20.8(a)(1) include the requirement that alternative designs be constructed "of rigid material maintainable for the work environment." This requirement is addressed by design features in existing § 20.6(a). Another commenter suggested that § 20.8(a)(1) specify specific performance and test criteria. MSHA agrees and the final rule has been modified to clarify that alternative designs will be evaluated by mechanical impact tests, temperature tests and thermal shock tests. However, the final rule does not contain detailed test requirements because the specific requirements will vary according to the technology used by the applicant. Section 20.1(c)(2) of the final rule provides that MSHA determine by testing that the electric lamps or flashlights are as safe as those which meet the requirements of this part. Since it is impossible to foresee all of the possible designs that will meet this requirement, it is impossible to specify detailed test requirements.

At a future date, and under a separate rulemaking, MSHA will review Part 20 to determine the appropriateness of incorporating it into the Agency's program which allows product testing by the applicant or third party, under 30 CFR Part 7. One commenter was opposed to the concept of third party testing for products approved under Part 20. Products will only be included under Part 7 when the technical and test requirements can be specified in detail. New technology will only be evaluated by MSHA.

III. Executive Order 12291 and the Regulatory Flexibility Act

This rulemaking does not result in major cost increases nor have an incremental effect of $100 million or more on the industry. Therefore, this final rule is not a major rule under Executive Order 12291, and a Regulatory Impact Analysis is not required. This rule removes restrictions in MSHA's Approval and Certification requirements for electric mine lamps, other than standard cap lamps. It does not include any new requirements nor result in

additional costs. For these reasons the Agency has not conducted a regulatory flexibility analysis and, in accordance with section 605(b) of the Regulatory Flexibility Act, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

This final rule does not contain information collection requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 30 CFR Part 20

Mine safety and health, Electric mine lamps.

Date: July 14, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Accordingly, Part 20, Subchapter O, Chapter I, Title 30 of the Code of Federal Regulations is amended under 30 U.S.C. 957.

PART 20—ELECTRIC MINE LAMPS OTHER THAN STANDARD CAP LAMPS

1. The authority citation to Part 20 continues to read as follows:

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

2. Section 20.1 is amended by redesignating paragraph (c) as (c)(1) and adding a new paragraph (c)(2) to read as follows:

§ 20.1 Purpose.

* * * * *

(c) * * *

(2) MSHA May approve electric lamps and flashlights that incorporate technology for which the requirements of this part are not applicable if MSHA determines by testing that the electric lamps or flashlights are as safe as those which meet the requirements of this part.

* * * * *

3. Section 20.8 is amended by revising paragraph (a)(1) to read as follows:

§ 20.8 Class 1 lamps.

(a) * * *

(1) *Safety device or design.* The lighting unit shall have a safety device to prevent the ignition of explosive mixtures of methane and air if the bulb glass surrounding the filament is broken. Alternatively, if the lamp is designed and constructed of materials that will prevent the ignition of explosive mixtures of methane and air by protecting the bulb from breakage and preventing exposure of the hot filament, no separate safety device is required. Alternative designs will be evaluated by mechanical impact tests, temperature tests and thermal shock tests to determine that the protection provided is no less effective than a safety device.

* * * * *

FR Doc. 89–16963 Filed 7–19–89; 8:45 am]

BILLING CODE 4510–43–M

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30 CFR Parts 75 and 77

RIN 1219–AA36

Certified and Qualified Persons

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule revises certain provisions of the Mine Safety and Health Administration's (MSHA) existing procedures concerning temporary qualification and certification of persons who work at coal mines. Existing procedures limit temporary qualifications and certifications to six months, after which time reapplication must be made. This final rule permits persons to be qualified or certified for as long as they continue to satisfy the requirements needed to obtain the certification or qualification, fulfill any applicable retraining requirements, and remain employed at the same coal mine or by the same independent contractor. This eliminates the six-month recertification requirement, thereby eliminating the unnecessary paperwork involved in the routine reapplication for certification and qualification of persons.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Background

MSHA requires that persons who perform certain examinations, tasks and duties related to safety and health at coal mines and involving specialized expertise be either "certified" or "qualified" to do so. This final rule primarily affects mine foremen; assistant mine foremen; and preshift examiners who must be certified or qualified to perform certain duties such as testing for methane and oxygen deficiency. Additionally, this final rule affects qualified persons who operate hoists.

The existing procedures and requirements for certified and qualified persons affected by this rulemaking are set forth in §§ 75.100, 75.155, 77.100 and 77.105 of Title 30 of the Code of Federal Regulations (CFR). These existing standards recognize state certification and qualification programs. Thus, persons certified or qualified by the State in which they work are authorized to perform the duties prescribed. However, where state programs are not available, the existing standards allow MSHA to temporarily certify or qualify miners.

To be determined qualified and certified under MSHA's existing standards, persons must initially meet certain minimum experience requirements. Depending on the applicable certification or qualification, one to two years of general employment experience at a coal mine is required. For certified and qualified persons at underground mines, six months of that experience must have been in a specific job category and that experience must have immediately preceded the filing of the application. Persons applying for temporary certification and qualification must do so in writing and must certify that the experience requirements have been satisfied. After initial certification or qualification, reapplication must be made twice a year in order for certified and qualified persons to continue to be authorized to perform their duties.

On April 13, 1988, MSHA published a proposed rule in the **Federal Register** (53 FR 12251) to eliminate the six-month recertification requirement.

On August 11, 1988 (53 FR 30312), MSHA published notice of a public hearing which outlined the major issues raised during the comment period. A public hearing was held on August 30, 1988, in Pittsburgh, Pennsylvania, during which further comment was received. A transcript of the proceeding was taken and made available for public inspection. Following the public hearing, interested persons were allowed to submit supplementary statements and data until the record closed on September 30, 1988.

MSHA reviewed all written and oral statements submitted in response to the proposed rule and public hearing. The final rule was developed after a full evaluation of the entire public record.

II. Discussion and Summary of Final Rule

In developing this final rule, MSHA has been responsive, to the extent possible, to the many comments received from the mining community. However, some of the comments, as discussed more fully below, were

beyond the limited scope of the proposal.

This final rule eliminates the six-month limitation and permits persons to be certified or qualified for as long as they continue to satisfy the requirements needed to obtain the certification or qualification, fulfill any applicable retraining requirements, and remain employed at the same coal mine or by the same independent contractor. This change eliminates repetitive and unnecessary paperwork, which had no safety purpose, involved with reapplication. When employment at a particular mine or with a particular independent contractor ends, the person's certification or qualification lapses. In order to be reinstated as a certified or qualified person, reapplication must be made. Reapplication will ensure that the experience requirements for certified and qualified persons, contained in §§ 75.100(c)(1), 75.155 (a)(2) and (b)(2), 77.100(b)(2) and 77.105(a)(2), are met.

The purpose of this rulemaking, to address the six-month recertification process, was clearly stated by the Agency in the proposal and during the public hearing. Therefore, this final rule does not adopt suggestions made by commenters for other changes in the rule ranging from a restructuring of the certification and qualification procedures to allowing certifications to be valid from State-to-State.

Several commenters felt that since the final rule permits employees of independent contractors to transfer from one mine to another without having to be recertified MSHA should provide mine operators the same privilege. The final rule retains the existing requirement that miners be recertified when transferring from one mine to another. The final rule also incorporates the existing policy that employees of independent contractors are employed by the same employer regardless of their location and therefore are not required to be recertified or requalified when assigned to a new work location. Mine operators are responsible for the compliance of their employees with MSHA's standards and regulations at their specific mines. Independent contractors are also responsible for the compliance of their employees with MSHA's standards and regulations. However, the independent contractor's employees move from mine-to-mine with the contractor, making the status of the employee more determinant on the contractor than the mine site.

Under existing rule § 77.100(b)(2), persons are required to test for oxygen deficiency with a permissible flame safety lamp. Several commenters suggested that persons be allowed to test for oxygen deficiency with any device that has been approved by the Bureau of Mines, MESA, or MSHA. MSHA agrees and in keeping with advancing technology, the final rule allows persons to test for oxygen deficiency with either a permissible flame safety lamp, or any other device approved by the Secretary.

III. Executive Order 12291 and the Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has considered the potential costs and benefits associated with this final rule in general and as they specifically impact small entities as required by the Regulatory Flexibility Act. This final rule makes no substantive change to the requirements for certification or qualification, and MSHA has determined that the final rule is not a major rule and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, wherever possible, compliance alternatives that minimize adverse impact on small businesses when developing regulatory proposals. This final rule revises current reporting requirements which eliminates cumulative and burdensome paperwork concerning qualified and certified persons, and also directly benefits small as well as large coal mining operations while maintaining miner safety. For these reasons the Agency has not conducted a regulatory flexibility analysis and, in accordance with section 605(b) of the Regulatory Flexibility Act, certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

This final rule contains information collection requirements subject to the Paperwork Reduction Act of 1980. Under the existing requirements MSHA is receiving approximately 2,800 applications from mine operators annually. The cost of the government is approximately $4,160 annually to process these applications. Mine operators spend approximately 1,400 hours annually preparing these applications.

Annual burden hours for mine opeator compliance will be reduced by approximately 1,025 hours, under this final rule. As a result of this reduction, costs to the government for processing applications will also be substantially reduced.

The collection of information requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) in accordance with section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 35).

List of Subjects in 30 CFR Parts 75 and 77

Mine safety and health, Qualified and certified persons, Coal mines.

Date: July 14, 1989.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Parts 75 and 77 Subchapter O, Chapter I of Title 30 of the Code of Federal Regulations are amended under 30 U.S.C. 811 as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

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

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

2. Section 75.100 paragraph (c) is revised to read as follows:

Subpart B—Qualified and Certified Persons

§ 75.100 Certified person.

* * * * *

(c)(1) The Secretary may certify persons in the categories of mine foreman, assistant mine foreman, and preshift examiner whenever the State in which persons are presently employed in these categories does not provide for such certification. A person's initial certification by MSHA is valid for as long as the person continues to satisfy the requirements necessary to obtain the certification and is employed at the same coal mine or by the same independent contractor. The mine operator or independent contractor shall make an application which satisfactorily shows that each such person has had at least 2 years underground experience in a coal mine, and has held the position of mine foreman, assistant mine foreman, or preshift examiner for a period of 6 months immediately preceding the filing of the application, and is qualified to test for methane and for oxygen deficiency. Applications for Secretarial certification should be submitted in writing to the Health and Safety Activity, Mine Safety and Health Administration, Certification and Qualification Center, P.O. Box 25367, Denver Federal Center, Denver, Colorado 80225.

(2) A person certified by the Secretary under this paragraph will be a certified person, within the meaning of the

provisions for Subpart D of this part and § 75.1106 referred to in paragraph (a) of this section, as long as that person continues to satisfy the requirements for qualification or certification and is employed at the same coal mine or by the same independent contractor.

* * * * *

3. Section 75.155 paragraphs (a)(2) and (b)(2) are revised to read as follows:

§ 75.155 Qualified hoisting engineer; qualifications.

(a) * * *

(2) If a State has no program for qualifying persons as steam-hoisting engineers, the Secretary may qualify persons for this purpose if the operator of the coal mine in which such persons are employed, or the independent contractor, makes an application and a satisfactory showing that each such person has had 1 year experience in operating steam-driven hoists and has held the position of hoisting engineer for a periond of 6 months immediately preceding the application. A person's qualification is valid for as long as this person continues to satisfy the requirements necessary for qualification and is employed at the same coal mine or by the same independent contractor.

(b) * * *

(2) If a State has no program for qualifying persons as electric-hoisting engineers, the Secretary may qualify persons for this purpose if the operator of the coal mine in which such persons are employed, or the independent contractor, makes an application and a satisfactory showing that each such person has had 1 year experience in operating electric-driven hoists and has held the position of hoisting engineer for a period of 6 months immediately preceding the application. A person's qualification is valid for as long as this person continues to satisfy the requirements for qualification and is employed at the same coal mine or by the same independent contractor.

PART 77—MANDATORY SAFETY STANDARDS, SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

1. The authority citation for Part 77 is revised to read as follows:

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

2. Section 77.100 paragraph (b)(2) is revised to read as follows:

Subpart B—Qualified and Certified Persons

§ 77.100 Certified person.

* * * * *

(b) * * *

(2) If this person has been certified for such purpose by the Secretary. A person's initial certification is valid for as long as the person continues to satisfy the requirements necessary to obtain the certification and is employed at the same coal mine or by the same independent contractor. The mine operator or independent contractor shall make an application which satisfactorily shows that each such person has had at least 2 years experience at a coal mine or equivalent experience, and that each such person demonstrates to the satisfaction of an authorized representative of the Secretary that such person is able and competent to test for oxygen deficiency with a permissible flame safety lamp, or any other device approved by the Secretary and to test for methane with a portable methane detector approved by the Bureau of Mines, MESA, or MSHA, under Part 22 of this Chapter (Bureau of Mines Schedule 8C), and to perform such other duties for which application for certification is made. Applications for certification by the Secretary should be submitted in writing to the Mine Safety and Health Administration, Certification and Qualification Center, P.O. Box 25367, Denver Federal Center, Denver, Colorado 80225.

* * * * *

3. Section 77.105 paragraph (a)(2) is revised to read as follows:

§ 77.105 Qualified hoistman; slope or shaft-sinking operation; qualifications.

(a) * * *

(2) If a State has no program for qualifying persons as hoistmen, the Secretary may qualify persons if the operator of the slope or shaft-sinking operation makes an application and a satisfactory showing that the person has had 1 year of experience operating hoists. A person's qualification is valid for as long as the person continues to satisfy the requirements for qualification and is employed at the same coal mine or by the same independent contractor.

[FR Doc. 89-16964 Filed 7-19-89; 8:45 am]
BILLING CODE 4510-43-M

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30 CFR Part 77

RIN 1219-AA38

Mobile Equipment; Automatic Warning Devices

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule revises and updates the Mine Safety and Health Administration's (MSHA) existing safety rule requiring devices on mobile equipment at surface coal mines and surface work areas of underground coal mines to automatically sound an audible warning (backup alarm) when the equipment is operated in reverse. This final rule also clarifies MSHA's current policy that the standard does not apply to pickup trucks, provided that the driver of the vehicle has an unobstructed rear view. This final rule upgrades provisions consistent with advances in mining technology, and permits the use of strobe lights as an alternative to audible automatic warning devices when the equipment is operated at night. It also permits the use of infrared light, ultrasonic waves, radar, or other effective devices as an alternative to conventional backup alarms presently in use.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203, phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

The existing rule, 30 CFR 77.410, was promulgated on May 22, 1971 (36 FR 9364). It requires that mobile equipment, such as front-end loaders, forklifts, tractors, and graders be equipped with an automatic warning device which gives an audible (backup) alarm when the equipment is operated in reverse. The existing rule includes "trucks" but makes no mention of how the standard applies to pickup trucks. However, MSHA has consistently applied the backup alarm requirement to pickup trucks only when the operator has an obstructed rear view. The existing rule does not allow for alternative methods of achieving compliance using new technology.

On April 13, 1988, MSHA published a proposed rule in the **Federal Register** (53 FR 12253) to revise and update MSHA's existing safety standard requiring devices on mobile equipment at surface coal mines and surface work areas of underground coal mines to automatically sound an audible warning when the equipment is put in reverse; to clarify the Agency's policy that the standard does not apply to pickup trucks, provided that the driver of the vehicle has an unobstructed rear view; to permit the use of strobe lights as an alternative to audible automatic warning devices when the equipment is operated at night; and to allow for

alternatives to the conventional backup alarms presently in use.

On August 11, 1988 (53 FR 30312), MSHA published a notice of public hearing which outlined major issues raised during the comment period. A public hearing was held on August 30, 1988 in Pittsburgh, Pennsylvania, during which further comment was received. A transcript of the proceeding was taken and made available for public inspection. Following the public hearing, interested persons were allowed to submit supplementary statements and data until the record closed on September 30, 1988.

MSHA reviewed all written and oral statements submitted in response to the proposed rule and public hearing. This final rule was developed after a full evaluation of the rulemaking record.

II. Discussion and Summary of Final Rule

MSHA's review of the existing standards and comments received has resulted in revisions to reflect both the Agency's experience and the concerns of commenters. In developing this final rule, MSHA has been responsive, to the extent possible, to the comments received from the mining public. These changes are consistent with the goals of the Federal Mine Safety and Health Act of 1977, Executive Order 12291, the Paperwork Reduction Act, and the Regulatory Flexibility Act in that the final rule provides new compliance alternatives to accommodate advances in mining technology while offering effective protection for persons working at mines.

This final rule modifies the existing rule for backup alarms by allowing an exception for pickup trucks where the driver has an unobstructed rear view. MSHA has consistently applied the existing rule to large mobile equipment commonly used at mine sites. Most earth-moving haulage equipment used at coal mines has a large area to the rear of the equipment that cannot be seen from the equipment operator's position. A primary function of backup alarms is to compensate for this "blind spot" by warning persons who may be in that area that the operator is preparing to move the equipment in reverse. Normal operation of this equipment involves frequent backup maneuvers creating an environment in which the sound of backup alarms is regularly heard.

Unloaded pickup trucks have only a small area immediately behind the tailgate that cannot be seen from the driver's seat. Normally, pickup trucks are not operated in revese gear as part of the mining cycle as frequently as other mobile mining equipment. Under these conditions, MSHA's policy has consistently been to apply the backup alarm requirement to pickup trucks only when the driver has an obstructed rear view. This policy will continue to apply when an obstruction such as a large tool chest or other fixture is mounted on the pickup truck in a manner that blocks the driver's rear view. One commenter suggested that pickup trucks with an unobstructed rear view be excepted from the automatic warning device provisions only if they are equipped with functioning backup lights. MSHA's existing standard § 77.1605(d) requires that mobile equipment be provided with audible warning devices and that lights be provided on both ends when required.

One commenter objected to the exclusion of pickup trucks because at any given time, the view could become obstructed while the pickup is hauling supplies and parts. MSHA recognizes that this may occur; however, the mine operator is responsible for providing the unobstructed view to the rear or providing the backup alarm.

Under the existing rule, the warning device is required to give an audible alarm (backup alarm) when the equipment is operated in reverse. Several commenters suggested that the standard read "an automatic warning device which gives an audible alarm when the equipment is put in reverse and/or begins to move in the reverse direction". MSHA did not adopt the suggestion because it may not warn persons who may be in the area that the operator is preparing to move the equipment in reverse.

Another commenter reasoned that some equipment may move in a rearward direction while the shifting lever remains in a forward gear. MSHA believes that the equipment operator should maintain control of the equipment at all times. Intentional movement in a rearward direction with the transmission in neutral or a forward gear is generally considered as an unsafe practice.

Recent advances in backup alarm technology have resulted in the development of discriminating backup alarms, commonly referred to as proximity devices. These devices are an acceptable compliance alternative under this final rule provided that they offer sufficient coverage of the operator's obstructed view area to ensure that persons who enter the sensing area have adequate time to get out of the danger zone. These discriminating backup alarm systems use infrared light, ultrasonics or radar, and the alarm is activated only when a person or object is detected in the sensing area. These new systems feature an alarm that sounds both inside and outside the operator's compartment and only sounds when a hazard exists in the sensing area.

When deciding on whether to install either a conventional backup alarm or a discriminating backup alarm, mine operators and equipment manufacturers should evaluate the equipment size, speed and other operating parameters including noise in the surrounding area. Additional information on discriminating backup alarms is available from the U.S. Department of the Interior, Bureau of Mines, 2401 E Street NW., Washington, DC 20241 (see Technology News Bulletin No. 255, August 1986, and Information Circular No. 9079).

Workers exposed to the constant sounding of a conventional backup alarm system may become accustomed to the sound. Therefore, the sound can become less noticeable and effective as a warning. One of the principal advantages of the discriminating alarm is that this habituation is less likely to occur.

The conventional backup alarm gives an audible alarm outside of the compartment when the equipment is operated in reverse. This makes the persons in the danger zone solely responsible for getting out of the danger area. Another advantage of these new systems is that they feature an annunciator which gives an audible and visual alarm inside of the compartment and at least a one time audible alarm outside of the compartment. This causes both the operator and the person in the danger zone to be aware of the potential danger and to work cooperatively to avoid a collision. The annunciator can also serve as a fail-safe type system for the operator to know whether the unit is functioning.

Several commenters suggested that the proposal needed performance criteria to better define the conditions under which discriminating alarms would be an effective alternative. MSHA agrees and the final rule includes performance requirements addressing the detection zone, the audible alarm, and means to ensure that the device is working.

Some commenters questioned the reliability of the discriminating backup alarms in the day-to-day use, especially in wet and muddy conditions. MSHA recognizes that all equipment requires a measure of maintenance in order to perform within its design capabilities. The equipment should be checked frequently and on a regular basis to ensure the system works as designed.

The final rule requires the alarms to be maintained in functional condition.

Another commenter was concerned with the possibility of blasting caps being set off or detonated by the radio waves coming from a microwave unit. According to testimony and a publication by the Institute of Makers of Explosives (ANSI No. C95.4), there is virtually no chance of this ever occurring. MSHA recommends that discriminating backup alarm manufacturers consult the Institute of Makers of Explosives when developing their systems.

MSHA has received numerous petitions for modification of the audible backup alarm requirement from both coal and metal and nonmetal mining operations. The majority of these operations are located near residential areas and operate on multiple shifts, and have requested that they be allowed to use reverse-activated strobe lights in order to comply with local noise ordinances. Strobe lights are effective as warning devices at night. Therefore, paragraph (d) of the final rule permits the use of a strobe light instead of an audible alarm when mobile equipment is operated at night. One commenter, agreed that the use of strobe lights as backup warning devices could provide a valuable margin of protection, but also recommended that the strobe lights be a distinct color, easily distinguished from other strobe lights, capable of warning for at least 100 feet from the equipment and used in conjunction with an audible alarm. MSHA believes that strobe lights are effective warning devices instead of audible warning devices at night.

Although MSHA recommends the use of distinct color strobe lights to distinguish the backup strobe light from other strobe lights in use in the area, the Agency does not believe that such a distinction is always necessary and has not included this recommendation in the regulation. MSHA considers an effective strobe light to be one that can be seen from a reasonable distance.

III. Executive Order 12291 and the Regulatory Flexibility Act

This rulemaking does not result in major cost increases or have an incremental effect of $100 million or more on the industry. Therefore, this final rule is not a major rule under Executive Order 12291, and a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act requires that agencies evaluate and include, whenever possible, compliance alternatives that minimize adverse impact on small businesses when developing regulatory proposals. The final rule incorporates alternatives to assist small mines. The Agency estimates that about 200 pieces of mobile surface mining equipment at small mines and 500 pieces at large mines annually would require installation or replacement of a backup warning device to maintain compliance with the existing and final rules. The annual cost for industry compliance, therefore, is $13,600 at small mines and $34,000 at large mines, totalling $47,600 industry wide. MSHA concludes that this final rule will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

This final rule does not contain collection of information requirements subject to the Paperwork Reduction Act of 1980.

List of Subjects in 30 CFR Part 77

Mine safety and health; Automatic warning devices; Mobile equipment.

David C. O'Neal,

Assistant Secretary for Mine Safety and Health.

Date: July 14, 1989.

Accordingly, Part 77, Subchapter O, Chapter I, Title 30 of the Code of Federal Regulations is amended under 30 U.S.C. 811 as follows:

PART 77—MANDATORY SAFETY STANDARDS, SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

1. The authority citation to Part 77 is revised to read as follows:

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

2. Section 77.410 is revised to read as follows:

§ 77.410 Mobile equipment; automatic warning devices.

(a) Mobile equipment such as front-end loaders, forklifts, tractors, graders, and trucks, except pickup trucks with an unobstructed rear view, shall be equipped with a warning device that—

(1) Gives an audible alarm when the equipment is put in reverse; or

(2) Uses infrared light, ultrasonic waves, radar, or other effective devices to detect objects or persons at the rear of the equipment, and sounds an audible alarm when a person or object is detected. This type of discriminating warning device shall—

(i) Have a sensing area of a sufficient size that would allow endangered persons adequate time to get out of the danger zone.

(ii) Give audible and visual alarms inside the operator's compartment and a audible alarm outside of the operator's compartment when a person or object is detected in the sensing area; and

(iii) When the equipment is put in reverse, activate and give a one-time audible and visual alarm inside the operator's compartment and a one-time audible alarm outside the operator's compartment.

(b) Alarms shall be audible above the surrounding noise levels.

(c) Warning devices shall be maintained in functional condition.

(d) An automatic reverse-activated strobe light may be substituted for an audible alarm when mobile equipment is operated at night.

[FR Doc. 89-16965 Filed 7-19-89; 8:45 am]

BILLING CODE 4510-43-M