

be announced in advance in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N-4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219-4600; fax (202) 219-7346). This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Minutes of all public meetings and other documents made available to the Committee will be available for public inspection and copying in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 4:30 p.m. Any written comments on these minutes should be directed to Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N-4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219-4600; fax (202) 219-7346). This is not a toll-free number.

Agenda

The Committee will continue to discuss the possible elements of a process and potential criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA (29 U.S.C. 1001 *et seq.*). Discussion of these issues is intended to help the Committee members define the scope of a possible proposed rule.

Members of the public may file a written statement pertaining to the subject of this meeting by submitting 15 copies on or before Tuesday, April 13, 1999, to Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N-4611, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives wishing to address the Committee should forward their request to Ms. Arzuaga or telephone (202) 219-4600. During each day of the negotiation session, time permitting, there shall be time for oral public comment. Members of the public are encouraged to keep oral statements brief, but extended written statements may be submitted for the record.

Organizations or individuals may also submit written statements for the record without presenting an oral statement. 15 copies of such statements should be sent to Ms. Arzuaga at the address above. Papers will be accepted and included in the record of the meeting if received on or before April 13, 1999.

Signed at Washington, DC, this 22nd day of March, 1999.

Richard McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99-7709 Filed 3-29-99; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration 30 CFR Parts 56, 57, 77, and 120

RIN 1219-AA47

Hazard Communication

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

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This document concerns the factual basis for our (MSHA's) certification that the proposed rule on hazard communication (hazcom proposal) for the mining industry would have no significant impact on small businesses; a preliminary determination that the hazcom proposal would not significantly or adversely impact the environment; the health of children; or State, local, and tribal governments; and an updated analysis of the information collection and paperwork burden under the Paperwork Reduction Act of 1995 (PRA 95). We are reopening the rulemaking record for the limited purpose of receiving comments on these items.

DATES: We must receive your comments by June 1, 1999.

ADDRESSES: You may use mail, facsimile (fax), or electronic mail to send your comments to MSHA. Clearly identify comments as such and send them—

(1) By mail to Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203;

(2) By fax to MSHA, Office of Standards, Regulations, and Variances, 703-235-5551; or

(3) By electronic mail to comments@msha.gov.

In addition, send your comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for MSHA, 725 17th Street NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, 703-235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 1987, the United Mine Workers of America (UMWA) and the United Steelworkers of America (USWA) jointly petitioned MSHA to adapt the Occupational Safety and Health Administration's (OSHA's) Hazard Communication Standard (HCS) to both coal and metal/nonmetal (M/NM) mines and to propose it for the mining industry. They based their petition on the need for miners to be better informed about the chemical hazards in their workplace.

In response to this petition, we published an advance notice of proposed rulemaking (ANPRM) on hazard communication for the mining industry on March 30, 1988 (53 FR 10256); published the hazcom proposal on November 2, 1990 (55 FR 46400); and held three public hearings in 1991. The record closed on January 31, 1992.

The hazcom proposal would require an operator to develop and implement a hazcom program which includes—

- (1) Evaluating the hazards of chemicals present at the mine and maintaining a list of those determined to be hazardous;

- (2) Labeling containers of hazardous chemicals;

- (3) Preparing or obtaining material safety data sheets (MSDS's) for each hazardous chemical;

- (4) Training miners; and

- (5) Providing access to the written materials.

An effective hazcom program increases both awareness and knowledge of the hazards of chemicals in the workplace. Awareness and knowledge of chemical hazards present in the workplace increase the likelihood that a miner will take appropriate precautions when working with or around chemicals. We believe that the use of these precautions will help reduce the incidence of chemically-related, occupational injuries and illnesses among miners.

Our hazcom proposal would integrate our existing labeling requirements into a new, comprehensive, hazcom program. We based the hazcom proposal on comments received in response to the ANPRM, as well as on our experience in the mining industry. We also considered relevant standards of other Federal agencies, including OSHA's experience with its HCS, and applicable legislation. MSHA's hazcom proposal is generally consistent with OSHA's HCS.

Although we are preparing the final rule, we first need to address several regulatory mandates, some of which were not in existence when we

published our hazcom proposal in 1990. These statutory mandates and Executive Orders require us to evaluate the impact of a regulatory action on small mines; State, local, and tribal governments; and the environment.

We recognize that the mining industry has changed since 1990 when we developed the Preliminary Regulatory Impact Analysis (PRIA) and published the hazcom proposal. Most of the changes, however, would decrease the total impact of the hazcom proposal on the mining industry. For example, the number of mines and miners has decreased while the number of independent contractors has increased. We believe that this change would decrease the impact of the hazcom proposal because fewer mines and miners generally mean fewer total compliance costs.

Additionally, independent contractors are more likely to have a hazcom program because they are more likely to work in operations under OSHA jurisdiction, as well as in mines under MSHA jurisdiction. Similarly, some mine operators already have a hazcom program as company policy, because the parent company also has operations in industries subject to OSHA's HCS, or the mine is located in a State with an individual State right-to-know law. We believe that these existing hazcom programs decrease the economic impact of MSHA's hazcom proposal on the mining industry.

Another change that affects the hazard communication environment is increased public awareness due to the length of time that the OSHA HCS has been in effect. There is an abundance of hazard communication information, supplies, training, and training aids

readily available to the public off-the-shelf or through the Internet.

II. Specific Issues

A. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA) requires a regulatory agency to evaluate each proposed rule and to consider alternatives so as to minimize the rule's impact on small entities (businesses and local governments). In the preamble to our hazcom proposal, we certified that the hazcom proposal would not have a significant economic impact on a substantial number of small mining operations. The preamble also included a full discussion of our preliminary conclusions about regulatory alternatives and invited the public to comment. The preamble and PRIA, however, did not use the Small Business Administration's (SBA's) definition of a small entity. Under the RFA, we must use SBA's definition of a small entity in determining a rule's economic impact unless, after consultation with SBA and an opportunity for public comment, we establish another definition and publish the definition in the **Federal Register**. For the mining industry, SBA defines "small" as a business with 500 or fewer employees. To ensure that we comply with the RFA requirements, this notice informs you of the hazcom proposal's impact on "small" mines, using the SBA definition of a small entity, and provides you with an opportunity to comment.

In 1996, Congress enacted the Small Business Regulatory Enforcement Fairness Act (SBREFA) amending the RFA. SBREFA requires a regulatory

agency to include in the preamble to a rule the factual basis for that agency's certification that the rule has no significant impact on a substantial number of small entities. The agency then must publish the factual basis in the **Federal Register**, followed by an opportunity for public comment. Although SBREFA did not exist when we published the hazcom proposal, we are now publishing the factual basis for our previous certification that the hazcom proposal poses "no significant impact," to give you an opportunity to comment on it.

Factual Basis for Certification of "No Significant Impact"

At the time we published the hazcom proposal, we defined a small mine to be one that employed fewer than 20 miners. To determine the costs for mines with 500 or fewer employees, we applied the same basic methodology that we had used in the PRIA to estimate the costs for mines with fewer than 20 employees. We used 1997 closeout data for numbers of mines and miners and current data for the cost of materials and labor.

Table I indicates the number of operations with 500 or fewer employees and the total number of employees at these operations. We substituted these figures for those that we had used in the original 1990 PRIA to estimate the impact on operations with fewer than 20 employees. We estimate that the annual cost of complying with the 1990 hazcom proposal for operations with 500 or fewer employees would be about \$5.54 million annually: \$1.20 million for coal operations and \$4.34 million for M/NM operations.

TABLE I.—ANNUAL COMPLIANCE COSTS BY MINE SIZE*

Mine size (employment)	No. of mines		No. of miners		Annual compliance cost	
	Coal	M/NM	Coal	M/NM	Coal	M/NM
Small (1–500)	6,558	14,306	112,864	178,303	\$1,197,241	\$4,344,381
Large (>500)	11	35	6,179	28,190	32,033	195,775
All Operations	6,569	14,341	119,043	206,493	1,229,274	4,540,156

*Includes independent contractors and their employees.

Whether these compliance costs impose a "significant" impact on small entities depends on their effect on the profits, market share, and financial viability of small mines. To address these issues, we had to determine whether compliance with the hazcom proposal would place small mines at a significant competitive disadvantage relative to large mines or impose a significant cost burden on small mines.

The first step in this determination is to establish whether compliance with the hazcom proposal would impose substantial capital or first-year, start-up costs on small mines. Because financing is typically more difficult or more expensive to obtain for small mines than for large mines, initial costs may impose a greater burden on small mines than on large mines. The hazcom proposal, however, does not require engineering

controls or other items requiring substantial initial capital expenditure that would place small mines at a competitive disadvantage relative to large mines.

The initial costs associated with the hazcom proposal are those necessary to develop and implement a hazard communication program. Based on our updated estimate of this cost on mines employing 500 or fewer employees, we

projected that the first-year, start-up costs would be about \$900 to \$1,200 per operation. Because this cost is less than one percent of the revenue for these mines, we believe that the hazcom proposal would not impose substantial capital or first-year, start-up costs on small mines.

The second step in this determination is to establish whether there are significant economies of scale in compliance that would place small mines at a competitive disadvantage relative to large mines. In the PRIA, we

investigated economies of scale by calculating whether compliance costs are proportional to mine employment. As shown in Table II, the annual compliance cost per miner would be about \$11 for small coal mines, \$5 for large coal mines, \$24 for small M/NM mines, and \$7 for large M/NM mines. These compliance costs would be about twice as great per miner for small coal mines than for large coal mines and over three times greater per miner for small M/NM mines than for large M/NM mines. Although we believe that this

difference may be significant, it is unlikely to provide strategic leverage because, as shown in Table II, both small coal mines and small M/NM mines generate over 95 percent of the revenues in their respective markets. Furthermore, as shown in Table II, total compliance costs would be about 18 times larger, on average, for a large coal mine than for a small coal mine and about 22 times larger, on average, for a large M/NM mine than for a small M/NM mine.

TABLE II.—COMPLIANCE COST PER MINER AND PER MINE*

Mine size (employment)	Average compliance cost per miner		Average compliance cost per mine		Total revenues (in millions)	
	Coal	M/NM	Coal	M/NM	Coal	M/NM
Small (1-500)	\$11	\$24	\$183	\$304	\$18,680	\$22,370
Large (>500)	5	7	2,912	5,594	1,980	2,630
All Operations	10	22	187	317	20,660	25,000

*Includes independent contractors and their employees.

The third step in this determination is to establish whether the compliance costs impose a significant burden on small mines in absolute terms. For this purpose, we examined compliance costs relative to revenues per small mine (or, equivalently, for all small mines). As

shown in Table III, compliance costs represent only about 0.006 percent of the value of coal mine production and only about 0.019 percent of the value of M/NM mine production. Because the cost of the rule as a percentage of revenue would be considerably less

than one percent, we believe that this result, in conjunction with the previous analysis, provides a reasonable basis for the certification of "no significant impact" in this case.

TABLE III.—COMPLIANCE COSTS COMPARED TO REVENUE*

Small mines (employing 1-500)	Average cost per mine	Revenue per mine (millions)	Total cost (millions)	Total revenue (millions)	Cost as % of revenue
Coal	\$183	\$2.848	\$1.197	\$18,680	0.006
M/NM	304	1.564	4.344	22,370	0.019

*Includes independent contractors and their employees.

B. Paperwork Reduction Act

When we published our hazcom proposal, the information collection and paperwork requirements were not an information collection burden under the 1980 Paperwork Reduction Act (PRA 80) because they were third-party disclosures. On August 29, 1995, the Office of Management and Budget (OMB) published a final rule in the **Federal Register** (60 FR 44978) implementing the new Paperwork Reduction Act of 1995 (PRA 95). These OMB rules expanded the definition of "information" to clarify that PRA 95 also covered Agency rules that required businesses or individuals to maintain information for the benefit of a third-party or the public, rather than the government. The requirements for information collection and dissemination in the hazcom proposal are now an information collection

burden because of the expanded definition of "information" under PRA 95.

The collection of information contained in the hazcom proposal is subject to review by OMB under PRA 95. We will submit the proposed paperwork package to OMB for its review and approval under section 3507(o) of PRA 95. We describe the respondents and information collection requirements below with an estimate of the annual information collection burden. This estimate includes the time to inventory chemicals, determine the hazards of chemicals present, prepare or obtain labels or MSDS's as necessary, prepare training materials and train miners, and provide copies of written materials.

We further invite comment on—

- (1) Whether this collection of information is necessary to protect miners;
- (2) The accuracy of our estimate of the burden, including the validity of our methodology and assumptions;
- (3) Ways to enhance the quality, usefulness, and clarity of the information; and
- (4) Ways to minimize the burden on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology.

Description of requirements: The hazcom proposal is primarily an information collection and dissemination rule. The information collection and paperwork burden encompasses each section of this proposed part. These requirements are summarized in Table IV below.

TABLE IV.—DESCRIPTION OF INFORMATION COLLECTION PROVISIONS

Provision	Information collection burden
Written Hazard Communication Program	Preparation, administration, and annual review determine hazardous chemicals distribute written program when requested.
Training Program	Develop or obtain training courses and materials conduct initial training for miners administer re: training miners about changing hazards.
Material Safety Data Sheets	Develop for hazardous chemicals produced maintain availability and accuracy distribute to miners and reps, employers, and customers.
Labeling Containers	Prepare for chemicals produced maintain legibility and accuracy provide information to customers.
Trade Secrets	Provide confidential information when needed.

Description of respondents: The respondents are operators, including independent contractors. We estimate that this provision affects those operators who do not already have a hazcom program at their mines. For the purpose of the hazcom proposal, we estimated that 5 percent of small mines and 10 percent of large mines voluntarily have implemented all of the requirements in MSHA's hazcom proposal. In addition, some mines have implemented all or part of the requirements contained in the hazcom proposal to comply with State hazard communication or right-to-know laws.

The percentage of mines complying with these State laws varies depending on the type of mine and the specific provision. For example, some mines

may keep MSDS's and label containers, but do not have a written program or conduct hazcom training for miners. Also, we assumed that all independent contractors conduct some work at locations under OSHA jurisdiction and would have an existing hazcom program. The contractor's hazcom program, however, may need modification for a particular mine. The magnitude of the burden for any individual mine operator or independent contractor, therefore, will vary greatly by the size, type, and location of the operation.

Information Collection Burden: The burden of the hazcom proposal is greater initially, when developing and implementing the program. Subsequent years, the burden is primarily for

maintaining and administering the program. Because this hazcom proposal would not require any capital expenditures, we did not annualize these initial costs. The total estimated first-year, start-up information collection burden for the hazcom proposal is about 789,500 hours (\$20.3 million labor cost) plus an associated cost of about \$3,757,000. The total estimated annually recurring information collection burden for the second year and each year thereafter is about 230,700 hours (\$5.2 million labor cost) plus an associated annual cost of about \$578,000. Table V and Table VI summarize MSHA's estimate, by provision, of the information collection burden on the mining industry for the first year and annually thereafter.

TABLE V.—FIRST-YEAR INFORMATION COLLECTION BURDEN*

Provision	Number of respondents	Number of responses	Number of responses per respondent	Hours per response	Total hours	Associated costs**
Written Program	17,042	24,365	1.4	3.76	91,595	\$397,748
Training	20,910	57,775	2.8	4.54	262,229	2,718,403
Hazard Determination and MSDS's	20,910	1,441,459	69	0.23	334,216	578,095
Labels	20,910	596,042	29	0.17	100,919	63,093
Trade Secrets	147	147	1.0	4.00	586	0
Total	20,910	2,119,787	101	0.37	789,544	3,757,339

* Discrepancies due to rounding.

** The cost associated with the information collection is for material, supplies, and copying expenses; it does not include the labor cost for the burden hours.

TABLE VI.—ANNUAL INFORMATION COLLECTION BURDEN*

Provision	Number of respondents	Number of responses	Number of responses per respondent	Hours per response	Total hours	Associated costs**
Written Program	4,364	4,364	1.0	3.79	16,544	\$38,573
Training	4,440	11,113	2.5	4.61	51,282	7,502
Hazard Determination and MSDS's	20,910	952,722	46	0.13	125,517	339,631
Labels	2,267	60,693	27	0.61	36,768	192,257
Trade Secrets	147	147	1.0	4.00	586	0
Total	20,910	1,029,038	49	0.22	230,697	577,963

* Discrepancies due to rounding.

** The cost associated with the information collection is for material, supplies, and copying expenses; it does not include the labor cost for the burden hours.

C. Environmental Assessment

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) requires each Federal agency to consider the environmental effects of certain proposed actions. It requires further that these agencies prepare an Environmental Impact Statement for major actions significantly affecting the quality of the human environment. We have reviewed the hazcom proposal in accordance with the requirements of NEPA, the regulations of the Council on Environmental Quality (40 CFR part 1500), and the Department of Labor's NEPA regulations (29 CFR part 11). As a result of this review, we determined that this hazcom proposal would have no significant environmental impact.

D. Protection of Children From Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, we have evaluated the hazcom proposal for any potential environmental health and safety effects on children and have determined that it would have no adverse effects on children.

E. Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13084, we certify that the hazcom proposal would not impose substantial direct compliance costs on Indian tribal governments. We provided the public, including Indian tribal governments which operate mines, the opportunity to comment on the hazcom proposal and to participate in the public hearings.

F. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires Federal agencies to consider the impact of proposed actions on State, local, and tribal governments. The hazcom proposal would impact about 200 sand and gravel or crushed stone operations that are run by State, local, or tribal governments. We have determined that the hazcom proposal does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments of more than \$100 million in the aggregate, or increased expenditures by the private sector of more than \$100 million. Moreover, we have determined that the hazcom proposal does not significantly or uniquely affect small governments.

III. Request for Comments

Since we published our hazcom proposal in 1990, Congress has passed

several legislative mandates and the President has issued several Executive Orders affecting the promulgation of regulations. In addition, we did not address a mandate that existed in 1990. With this in mind, we are reopening the rulemaking record for a limited time to provide the public an opportunity to comment on the hazcom proposal's economic and environmental impact and paperwork burden. Allowing time for additional public comments will not delay the promulgation of the final rule.

I encourage all interested parties to take advantage of this opportunity to provide information and express your concerns on the specific issues discussed here. If not responding by electronic mail, we would appreciate receiving your comments on a computer disk along with the original hard copy. Contact us with any questions about format.

You can obtain a copy of our hazcom proposal or PRIA by contacting us at the address or telephone number provided at the beginning of this notice.

Dated: March 23, 1999.

Marvin W. Nichols, Jr.,
Deputy Assistant Secretary for Mine Safety
and Health.

[FR Doc. 99-7683 Filed 3-29-99; 8:45 am]

BILLING CODE 4510-43-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211-0127b; FRL-6313-5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of oxides of nitrogen (NO_x) emissions from natural gas-fired residential water heaters within the El Dorado County Air Pollution Control District.

The intended effect of proposing approval of this rule is to regulate NO_x emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the final rules Section of this **Federal Register**, the EPA is approving the

state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by April 29, 1999.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board,
Stationary Source Division, Rule
Evaluation Section, 2020 "L" Street,
Sacramento, CA 95812

El Dorado County Environmental
Management Department, Air
Pollution Control District, 2850
Fairlane Court, Placerville, CA 95667

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office, AIR-4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901 Telephone: (415) 744-1160.

SUPPLEMENTARY INFORMATION: This document concerns El Dorado County Air Pollution Control District's Rule 239, Natural Gas-fired Residential Water Heaters, submitted by the California Air Resources Board to EPA on June 23, 1998. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 11, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.
[FR Doc. 99-7669 Filed 3-29-99; 8:45 am]

BILLING CODE 6560-50-P