

consolidated group to make an election to accelerate the inclusion of deferred COD income under section 108(i). The likely recordkeepers are corporations filing consolidated income tax returns (electing members). The IRS and Treasury Department believe that an electing member's election under § 1.108(i)-1(b)(3) reduces the member's overall reporting burden under section 108(i).

*Estimated total annual reporting burden:* 0 hours.

*Estimated average annual burden per respondent:* 0 hours.

*Estimated number of respondents:* 5,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Background and Explanation of Provisions

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR parts 1 and 602) relating to section 108(i). The temporary regulations set forth rules for applying section 108(i) to C corporations. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

#### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations merely provide more specific guidance for the timing of the inclusion of deferred COD income that is otherwise includible under the Code. Therefore, a Regulatory Flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for

Advocacy of the Small Business Administration for comment on its impact on small business.

#### Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. In addition to the specific requests for comments made elsewhere in this preamble or the preamble to the temporary regulations, the IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

#### Drafting Information

The principal authors of these proposed regulations are Robert M. Rhyne and Rubin B. Ranat of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

Section 1.108(i)-0T also issued under 26 U.S.C. 108(i)(7). \* \* \*

Section 1.108(i)-1T also issued under 26 U.S.C. 108(i)(7) and 1502. \* \* \*

Section 1.108(i)-3T also issued under 26 U.S.C. 108(i)(7) and 1502. \* \* \*

**Par. 2.** Section 1.108(i)-0 is added to read as follows:

#### § 1.108(i)-0 Definitions.

[The text of proposed § 1.108(i)-0 is the same as the text of § 1.108(i)-0T published elsewhere in this issue of the **Federal Register**].

**Par. 3.** Section 1.108(i)-1 is added to read as follows:

#### § 1.108(i)-1 Deferred discharge of indebtedness income and deferred original issue discount deductions of C corporations.

[The text of proposed § 1.108(i)-1 is the same as the text of § 1.108(i)-1T published elsewhere in this issue of the **Federal Register**].

**Par. 4.** Section 1.108(i)-3 is added to read as follows:

#### § 1.108(i)-3 Rules for the deduction of OID.

[The text of proposed § 1.108(i)-3 is the same as the text of § 1.108(i)-3T published elsewhere in this issue of the **Federal Register**].

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 2010-20059 Filed 8-11-10; 11:15 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Parts 56 and 57

RIN 1219-AB70

#### Metal and Nonmetal Dams

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Advance Notice of Proposed Rulemaking (ANPRM).

**SUMMARY:** Dam failures at metal and nonmetal mines have exposed miners to life-threatening hazards. The Mine Safety and Health Administration (MSHA) is reviewing its existing metal and nonmetal standards for dams. The Agency is concerned that some dams pose hazards because they are not designed, constructed, operated, and maintained to accepted dam safety practices. MSHA is considering approaches to better protect miners from the hazards of dam failures and is soliciting information to help determine how best to proceed.

**DATES:** Comments must be received by midnight Eastern Daylight Saving Time on October 12, 2010.

**ADDRESSES:** Comments must be identified with "RIN 1219-AB70" and may be sent to MSHA by any of the following methods:

(1) *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

(2) *Electronic mail:* [zzMSHA-Comments@dol.gov](mailto:zzMSHA-Comments@dol.gov). Include "RIN 1219-AB70" in the subject line of the message.

(3) *Facsimile:* 202-693-9441. Include "RIN 1219-AB70" in the subject line of the message.

(4) *Regular Mail*: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939.

(5) *Hand Delivery or Courier*: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA will post all comments on the Internet without change, including any personal information provided.

Comments can be accessed electronically at <http://www.msha.gov> under the "Rules and Regs" link. Comments may also be reviewed in person at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA maintains a list that enables subscribers to receive e-mail notification when the Agency publishes rulemaking documents in the **Federal Register**. To subscribe, go to <http://www.msha.gov/subscriptions/subscribe.aspx>.

**FOR FURTHER INFORMATION CONTACT:**

Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at [silvey.patricia@dol.gov](mailto:silvey.patricia@dol.gov) (E-mail), 202-693-9440 (Voice), or 202-693-9441 (Fax).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

MSHA's database contains information on nearly 2000 dams at metal and nonmetal mines. Mine operators have constructed these structures for various purposes, such as disposing of tailings or mine waste, processing minerals, treating or supplying water, and controlling run-off and sediment. Although many of these dams are designed, constructed, operated, and maintained according to accepted dam safety practices, others are not and dam failures and near failures continue to occur.

Since 1990 to the present, MSHA investigated dam failures at metal and nonmetal mines in virtually every region of the country and at small and large operations. Failures or near failures have occurred at copper, phosphate, sand and gravel, trona, gypsum, and limestone mines, among others.

Failures have damaged property and equipment, but no deaths or serious injuries have occurred. Examples of dam failures include:

- A 1990 failure of a 100-foot high dam at a limestone mine in Puerto Rico released over 10 million gallons of water and tailings. The failure flooded eight

lanes of a major highway, depositing tailings up to eight feet thick. The dam failed about 2 a.m. when no miners were present. The mine operator did not use an engineer to design the dam; several design and construction deficiencies, such as poor compaction, steep slopes, and absence of internal drains, contributed to the failure.

- A 70-foot high tailings dam failed at an andesite quarry in Wisconsin in 1992, tearing apart a railroad track and leveling a power line at the mine. The dam failed at 3 a.m. when no miners were present. The dam was not designed by an engineer. After a slope failure in 1987, the mine operator installed instruments in the dam to monitor internal water pressures. Pressures beyond a certain level would lead to structural instability. In the 18 months before the 1992 failure, however, the operator checked the instruments only twice. A combination of steep slopes and high internal water pressure contributed to the failure.

- In 1997, a dam at an Arizona copper mine released tailings for over a half mile downstream and to depths of 30 feet. Four miners, one in a haul truck, one in a bulldozer, and two in a pickup truck, were carried down-slope with the slide. One miner injured his back running from the pickup but the others were not injured. The dam was designed by an engineer; however, the mine operator's rate of placement of waste rock on top of the tailings created pressures that contributed to the failure.

- In August 2002, a 450-foot section of dam failed at a sand and gravel mine in Georgia, sending a wave of water and tailings through the shop area. The 30-foot high dam failed shortly after 8 p.m. The wave of water and tailings moved a scraper, backhoe and front-end loader, which were parked in the area. Three miners, near the shop, saw the dam failing and escaped in a pickup truck. The dam, built without being designed by an engineer, had a weak foundation, among other deficiencies.

- In 2004, a dam failure at a sand and gravel mine in California released over 200 million gallons of water and tailings, inundating a hydraulic excavator in an adjacent pit. The failure occurred shortly after 6 p.m., at the start of the maintenance shift. About 15 minutes before the failure, the excavator operator had gone home and a bulldozer operator had parked his machine on the top of the dam. A miner who lubricated the equipment was driving into the pit when he noticed the rising water, halted his truck, and backed up the access road. The dam was not properly designed. The investigation revealed that the design of the dam failed to

include an evaluation of the foundation and embankment material strengths, and stability analyses to verify that the slopes of the dam would have adequate factors of safety.

MSHA investigators have found that design, construction, operation, or maintenance deficiencies have contributed to failures of dams at metal and nonmetal mines and exposed miners to hazards.

Since the early 1970's, Congress has enacted laws to create a national program to reduce the risks of dam failures. The Federal Emergency Management Agency (FEMA) is charged with administering the national dam safety program and has issued a series of Federal Guidelines for Dam Safety (Guidelines) (<http://www.fema.gov/library/viewRecord.do?id=1578>).

The Guidelines address, among other things, practices and procedures for the design, construction, operation, and maintenance of all types of dams. In the Guidelines, FEMA recommends that dams:

- Be designed by a competent engineer;
- Be constructed under the general supervision of a competent engineer knowledgeable about dam construction;
- Be inspected and monitored at frequent intervals by a person trained to recognize unusual conditions; be inspected by a competent engineer with knowledge of dam safety at a frequency consistent with the dam's hazard potential; and
- Have an emergency action plan, if dams are classified as having high or significant hazard potential in the event of failure.

Every two years, MSHA reports on the status of its dam safety program to FEMA, which then sends Congress an evaluation of each Federal agency's program and how it complies with the Guidelines. FEMA has recommended, in biennial reports to Congress and in meetings of the Interagency Committee on Dam Safety, that MSHA promulgate standards to encompass all aspects of design, construction, and inspection for dams at metal and nonmetal mines.

The existing requirements for dams at metal and nonmetal mines, 30 CFR 56.20010 and 57.20010, are derived from the Metal and Nonmetallic Mine Safety Act of 1966. The standards state: "If failure of a water or silt retaining dam will create a hazard, it shall be of substantial construction and inspected at regular intervals." The standards promulgated for coal mines under the Federal Coal Mine Health and Safety Act of 1969 were similar, but specified that the mine operator inspect the dams

at least once per week and record inspection findings.

The requirements for coal mines were revised in 1975 after the Buffalo Creek dam failure. For dams which can present a hazard or are of a certain size, the existing standards require a coal mine operator to:

- Have a registered professional engineer certify the dam's design;
- Develop plans for the design, construction, maintenance, and abandonment of the dam and have the plans approved by MSHA;
- Have a qualified person inspect the dam weekly;
- Have instrumentation monitored weekly;
- Correct any hazardous conditions and make required notifications; and
- Submit an annual report with a registered, professional engineer's certification that construction, operation, and maintenance of the dam have been in accordance with approved plans.

## II. Key Issues on Which Comment Is Requested

MSHA is asking interested parties to comment on measures to assure that mine operators design, construct, operate and maintain dams to protect miners against the hazards of a dam failure.

MSHA seeks comments on the questions below. If a commenter refers to a particular dam as an example, please identify the mine, or provide the number of miners and the mine's commodity. Also, include the dam's storage capacity, height, and hazard potential and characterize its complexity. Provide enough detail with the comments that the Agency can understand the issues raised and give them the fullest consideration. Comments should include alternatives, rationales, benefits to miners, technological and economic feasibility, impact on small mines, and supporting data. Please include any information that supports your conclusions and recommendations: Experiences, data, analyses, studies and articles, and standard professional practices.

### General Questions

1. MSHA is seeking information concerning current dam safety practices at metal and nonmetal mines. What measures do mine operators currently take to design, construct, operate, and maintain safe and effective dams? What measures do mine operators currently take to safely abandon their dams? For mine operators with dams, please provide your experiences.

2. MSHA is required to inspect every mine in its entirety, which includes dams of all sizes and hazard potential. A common approach for dam safety is to have tiered requirements based on a dam's size and hazard potential. How should MSHA determine safety requirements based on a dam's size and hazard potential? Please include specific recommendations and explain your reasoning.

3. What non-Federal authority regulates the safety of dams at metal and nonmetal mines in your state, territory, or local jurisdiction? Please discuss the specific requirements, including the principles that they address. If possible, please provide information about relevant non-federal dam safety requirements through a hyperlink or other means.

4. What records should be kept of activities related to the safety of dams? Please be specific and include your rationale. What records should be provided to miners if hazardous conditions are found?

### Design and Construction of Dams

MSHA's existing standards do not include specific requirements for design of dams. MSHA found that inadequate design contributed to some of the metal and nonmetal dam failures. In responding to the following questions, please discuss how any requirements should vary according to the size or hazard potential of a dam, and why.

5. How should mine operators assure that dams are safely and effectively designed? Please suggest requirements that MSHA should consider for safe design of dams. Please be specific and include your rationale.

6. Please suggest requirements for review of dam designs by mine operators and MSHA and include your rationale for specific recommendations and alternatives.

7. With new standards, operators may need to evaluate and upgrade existing dams. Please elaborate on how the safety of existing dams should be addressed.

8. MSHA's existing standards for dams at metal and nonmetal mines do not address whether a dam is constructed as designed. What measures are necessary to ensure that mine operators construct dams as designed?

9. How should MSHA verify that dams have been constructed as designed? Please explain your rationale.

### Operation and Maintenance of Dams

MSHA's existing standards do not contain specific requirements addressing the operation and maintenance of dams.

10. What should a mine operator do to operate and maintain a safe dam? How should MSHA verify that dams are safely operated and maintained? Please be specific.

MSHA's existing standards require dams to be inspected at regular intervals if failure would create a hazard. Inspections can identify hazardous conditions, allowing a mine operator to take corrective action to prevent a failure. The Agency will be referring to two types of inspections in this document, "routine" and "detailed." Mine operators should perform frequent, routine dam inspections, which may include monitoring instrumentation, to identify unusual conditions and signs of instability. Personnel with more specialized knowledge of dam safety should conduct detailed inspections to identify less obvious problems and evaluate the safety of the dam. Detailed inspections, occurring less often, would include an examination of the dam and a review of the routine inspections and monitoring data. The Guidelines recommend that inspection personnel be qualified for their level of responsibility and trained in inspection procedures.

11. What measures should mine operators take to assure that dams are adequately inspected for unusual conditions and signs of instability?

12. How often are routine inspections of dams conducted? How often should they be conducted? What determines the frequency? Who conducts the routine inspections? Please be specific and include your rationale.

13. Instruments, such as weirs, provide information on the performance of a dam. How frequently should mine operators monitor dam instrumentation? Please provide your rationale.

14. What information should be documented during routine dam inspections? Please provide your rationale.

15. Does a competent engineer inspect your mine's dam? If so, at what frequency? Please explain the rationale for these inspections and what is evaluated.

16. How often should detailed inspections be conducted? Please include your rationale.

17. What information and findings should be documented during detailed dam inspections? Please be specific and include your rationale.

18. How should MSHA verify that mine operators conduct routine and detailed inspections? Please explain how your suggestion would work.

### Qualifications of Personnel

A mine operator is responsible for the design, construction, operation, and maintenance of dams. For an effective dam safety program, an operator must use personnel who are knowledgeable about dam safety.

19. What qualifications do mine operators currently require of persons who design, inspect, operate, and manage dams? In what capacities are engineers used? Please be specific in your response.

20. The Guidelines recommend that dams be designed by competent engineers. What specific qualifications or credentials should persons who design dams possess? Please include your rationale.

21. The Guidelines recommend that a dam be constructed under the general supervision of a competent engineer knowledgeable about dam construction. What specific qualifications or credentials should a person have who verifies that a dam is being constructed as designed? Please provide your rationale.

22. What training should personnel receive who perform frequent, routine inspections and who monitor instrumentation at dams? In your response, please suggest course content and the frequency of the training, including the rationale for your recommendations.

23. What qualifications or credentials should be required of persons who perform detailed inspections to evaluate the safety of a dam? Please be specific and include your rationale.

### Abandonment of Dams

24. Some regulatory authorities require that dam owners obtain approval of a plan to cap, breach, or otherwise safely abandon dams. What actions should mine operators take to safely abandon dams? Please include specific suggestions and rationale.

25. How can MSHA verify that a mine operator has safely abandoned a dam?

### Economic Impact

MSHA seeks information to assist the Agency in deriving the costs and benefits of any regulatory changes for dams at metal and nonmetal mines. In answering the following questions, please indicate the dam's storage capacity, height, and hazard potential and characterize the complexity of each dam referenced. Also, please include the state where each dam is located, and the number of employees at the mine.

26. What are the costs of designing a new dam? Please provide details such as hours, rates of pay, job titles, and any

contractual services necessary. How often is the design of an existing dam changed? What are the costs of a redesign?

27. What are the costs of constructing a dam? Please provide details based on: Size of dam; labor costs, including hours, rates of pay, job titles; costs of equipment and materials; and any contractual services necessary.

28. Please describe the oversight you provide during dam construction to assure it complies with the design plan. How much does it cost per year per dam for oversight and quality control? What special knowledge, qualifications, or credentials do you require of those who provide oversight?

29. How often do you add height to an existing dam or modify it in some other way? Who supervises the design and construction of these modifications, for example, a professional engineer, competent engineer, contractor, etc? Please be specific and provide rationale for your answer. How much does it cost? Please provide details such as labor costs, including hours, rates of pay, job titles, and costs of equipment and materials and any contractual services necessary.

30. How much does it cost per year per dam for routine inspections? If you incur separate costs for monitoring instrumentation, how much is that cost? How often do you have a detailed inspection conducted? How much does it cost per year for these inspections?

31. Does the state or local jurisdiction in which you operate require you to use a professional engineer? If so, when is a professional engineer specifically required? (If you have dams in more than one state please identify which states require a professional engineer and which do not).

32. What are the costs associated with training personnel who conduct frequent, routine inspections and monitor instrumentation at dams?

33. What costs are involved in capping, breaching, or otherwise properly abandoning a dam? Please provide details of your experience and what was involved when you properly abandoned a dam. Describe any impact of a properly abandoned dam.

34. What are the costs to a mine operator if a dam fails? Please characterize other impacts such as loss of life, environmental damage, etc.

35. Do you have insurance against a dam failure? If so, please specify cost and coverage. Does the insurance carrier require the use of a professional engineer for specific dam activities? If a professional engineer is not required, does the insurance carrier give a discount if one is used? Does your

insurance company have any other requirements related to dam safety?

36. What quantifiable and non-quantifiable costs and benefits for the downstream community are involved when a dam is properly designed and constructed? In addition, MSHA welcomes comments on other relevant indirect costs and benefits.

Dated: August 9, 2010.

**Joseph A. Main,**

*Assistant Secretary of Labor for Mine Safety and Health.*

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**BILLING CODE 4510-43-P**

## DEPARTMENT OF EDUCATION

### 34 CFR Part 222

[Docket ID ED-2010-OESE-0013]

RIN 1810-AB11

### Impact Aid Programs

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing the Impact Aid Discretionary Construction Program, which is authorized under section 8007(b) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). Through this program, the Department provides competitive grants for emergency repairs and modernization of school facilities to certain eligible local educational agencies (LEAs) that receive Impact Aid formula funds. The proposed regulations amend a provision regarding the submission of applications for these Federal funds, which the Department believes will improve the administration and distribution of funds under this program. The proposed regulations would apply to the grant competitions after the competition for fiscal year (FY) 2009 funds.

**DATES:** We must receive your comments on or before September 13, 2010.

**ADDRESSES:** Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> to submit your comments electronically.