

done “on the record after opportunity for a hearing” conducted pursuant to the provisions of 5 U.S.C. 556 and 557. 21 U.S.C. 811. The regular scheduling process of formal rulemaking affords interested parties with appropriate process and the government with any additional relevant information needed to make a determination. Final decisions that conclude the regular scheduling process of formal rulemaking are subject to judicial review. 21 U.S.C. 877. Temporary scheduling orders are not subject to judicial review. 21 U.S.C. 811(h)(6).

**Regulatory Matters**

Section 201(h) of the CSA, 21 U.S.C. 811(h), provides for an expedited temporary scheduling action where such action is necessary to avoid an imminent hazard to the public safety. As provided in this subsection, the Attorney General may, by order, schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of the proposed temporary scheduling order is transmitted to the Assistant Secretary. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of

section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this notice of intent. In the alternative, even assuming that this notice of intent might be subject to section 553 of the APA, the Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Although the DEA believes this notice of intent to issue a temporary scheduling order is not subject to the notice and comment requirements of section 553 of the APA, the DEA notes that in accordance with 21 U.S.C. 811(h)(4), the Administrator will take into consideration any comments submitted by the Assistant Secretary with regard to the proposed temporary scheduling order.

Further, the DEA believes that this temporary scheduling action is not a “rule” as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking.

Additionally, this action is not a significant regulatory action as defined

by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA proposes to amend 21 CFR part 1308 as follows:

**PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES**

■ 1. The authority citation for part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. In § 1308.11, add paragraph (h)(23) through (28) to read as follows:

**§ 1308.11 Schedule I**

\* \* \* \* \*  
(h) \* \* \*

(23) methyl 2-(1-(5-fluoropentyl)-1 <i>H</i> -indazole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5F-ADB; 5F-MDMB-PINACA) .....	(7034)
(24) methyl 2-(1-(5-fluoropentyl)-1 <i>H</i> -indazole-3-carboxamido)-3-methylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5F-AMB) .....	(7033)
(25) <i>N</i> -(adamantan-1-yl)-1-(5-fluoropentyl)-1 <i>H</i> -indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5F-APINACA, 5F-AKB48) .....	(7049)
(26) <i>N</i> -(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1 <i>H</i> -indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: ADB-FUBINACA) .....	(7010)
(27) methyl 2-(1-(cyclohexylmethyl)-1 <i>H</i> -indole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: MDMB-CHMICA, MMB-CHMINACA) .....	(7042)
(28) methyl 2-(1-(4-fluorobenzyl)-1 <i>H</i> -indazole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: MDMB-FUBINACA) .....	(7020)

\* \* \* \* \*  
Dated: December 13, 2016.  
**Chuck Rosenberg,**  
*Acting Administrator.*  
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**DEPARTMENT OF LABOR**  
**Mine Safety and Health Administration**  
**30 CFR Parts 57, 70, 72, and 75**  
**[Docket No. MSHA-2014-0031]**  
**RIN 1219-AB86**  
**Exposure of Underground Miners to Diesel Exhaust**  
**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for information; reopening of the comment period.  
**SUMMARY:** In response to requests from the public, the Mine Safety and Health Administration (MSHA) is reopening the proposed rulemaking record for public comment on the Agency’s request for information on Exposure of Underground Miners to Diesel Exhaust.  
**DATES:** The comment period for the request for information, published on June 8, 2016 (81 FR 36826), and closed

on November 30, 2016, (81 FR 58424) is reopened. Comments must be received on or before midnight Eastern Standard Time on January 9, 2018.

**ADDRESSES:** Submit comments and informational materials for the rulemaking record, identified by RIN 1219-AB86 or Docket No. MSHA-2014-0031, by one of the following methods:

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

- *E-Mail:* [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov).

- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452.

- *Hand Delivery or Courier:* 201 12th Street South, Suite 4E401, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 4th floor East, Suite 4E401.

- *Fax:* 202-693-9441.

**Instructions:** All submissions must include "RIN 1219-AB86" or "Docket No. MSHA-2014-0031." Do not include personal information that you do not want publicly disclosed; MSHA will post all comments without change to <http://www.regulations.gov> and <http://arlweb.msha.gov/currentcomments.asp>, including any personal information provided.

**Docket:** For access to the docket to read comments received, go to <http://www.regulations.gov> or <http://arlweb.msha.gov/currentcomments.asp>. To read background documents, go to <http://www.regulations.gov>. Review the docket in person at MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal Holidays. Sign in at the receptionist's desk in Suite 4E401.

**E-Mail Notification:** To subscribe to receive an email notification when MSHA publishes rules in the **Federal Register**, go to <http://www.msha.gov>.

**FOR FURTHER INFORMATION CONTACT:** Sheila A. McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at [mcconnell.sheila.a@dol.gov](mailto:mcconnell.sheila.a@dol.gov) (email), 202-693-9440 (voice); or 202-693-9441 (facsimile). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** On June 8, 2016 (81 FR 36826), MSHA published a request for information (RFI) on Exposure of Underground Miners to Diesel Exhaust. The RFI sought input from the public that will help MSHA evaluate the Agency's existing standards

and policy guidance on controlling miners' exposures to diesel exhaust to evaluate the effectiveness of the protection now in place to preserve miners' health.

On June 27, 2016, (81 FR 41486), MSHA published a notice in the **Federal Register** announcing four public meetings on the RFI. Public meetings were held on July 19, 21, and 26 and August 4, 2016. The comment period was scheduled to close on September 6, 2016; however, in response to requests from the public, MSHA extended the comment period until November 30, 2016 (81 FR 58424).

During the comment period, MSHA received requests for MSHA and the National Institute for Occupational Safety and Health (NIOSH) to convene a Diesel Exhaust Health Effects Partnership (Partnership) with the mining industry, diesel engine manufacturers, academia and representatives of organized labor to gather information regarding the complex questions contained in the RFI. In response to these requests, MSHA and NIOSH agreed to form a Partnership that includes all relevant stakeholders from the mining community to come together to understand the health effects from underground miners' exposure to diesel exhaust. The Partnership will also provide stakeholders an opportunity to consider best practices and new technologies including engineering controls that enhance control of diesel exhaust exposures to improve protections for miners.

The first meeting of the Diesel Exhaust Health Effects Partnership was held on December 8, 2016, in Washington, Pennsylvania.

During the comment period and at the Partnership meeting, MSHA received requests from stakeholders to reopen the rulemaking record for comment on the RFI and allow the comment period to remain open during the Partnership proceedings. In response to these requests, MSHA is reopening the record for comment and extending the comment period to January 9, 2018. The reopening of the record for comment will allow all interested parties an additional opportunity to re-evaluate all issues related to miners' exposure to diesel exhaust and to determine if improvements can be made.

**Joseph A. Main,**

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

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Part 75

[Docket No. MSHA-2014-0019]

RIN 1219-AB78

#### Proximity Detection Systems for Mobile Machines in Underground Mines

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

**ACTION:** Proposed rule; reopening the comment period.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) is reopening the rulemaking record and requesting additional comments on the Agency's proposed rule on Proximity Detection Systems for Mobile Machines in Underground Mines which was published in the **Federal Register** on September 2, 2015. The proposed rule would require underground coal mine operators to equip coal hauling machines and scoops with proximity detection systems. Miners working near these machines face pinning, crushing, and striking hazards that result in accidents involving life-threatening injuries and death.

**DATES:** The comment period for the proposed rule published September 2, 2015 (80 FR 53070) is reopened. Comments must be received by midnight Daylight Saving Time on February 8, 2017.

**ADDRESSES:** Submit comments and informational materials, identified by RIN 1219-AB78 or Docket No. MSHA-2014-0019 by one of the following methods:

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

- *E-Mail:* [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov).

- *Mail:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452.

- *Hand Delivery or Courier:* 201 12th Street South, Suite 4E401, Arlington, Virginia, between 9:00 a.m. and 5:00 p.m. Monday through Friday, except Federal holidays. Sign in at the receptionist's desk on the 4th Floor East, Suite 4E401.

- *Fax:* 202-693-9441.

**Instructions:** All submissions must include RIN 1219-AB78 or Docket No. MSHA-2014-0019. Do not include personal information that you do not want publicly disclosed; MSHA will