

respirable dust would not, after applying valid statistical techniques, accurately represent the atmospheric conditions to which the miner is continuously exposed (37 FR 3833).

In 1994, the Secretary of Labor and the Secretary of Health and Human Services tentatively concluded that the 1972 joint finding was incorrect. Therefore, on February 18, 1994, the Secretary of Labor and the Secretary of Health and Human Services published a proposed Joint Notice of Finding in the **Federal Register** (59 FR 8537). That Joint Notice proposed to find that a single, full-shift exposure measurement will accurately represent the atmospheric conditions with regard to the respirable coal mine dust concentration during the shift on which it was taken, and to rescind the 1972 finding by the Secretary of the Interior and the Secretary of Health, Education and Welfare. Also on February 18, 1994, MSHA published in the **Federal Register** (59 FR 8356) a separate notice announcing how MSHA intended to implement its new enforcement procedure utilizing single samples, and to solicit public comment on this procedure.

On February 3, 1998, after a notice and comment procedure extending over three and one-half years, including three public hearings (in Salt Lake City, Utah; Washington, District of Columbia, and Morgantown, West Virginia), MSHA and NIOSH published a final Notice of Finding, and MSHA published an enforcement policy for the Notice of Finding in the **Federal Register** (63 FR 5664 and 5687, respectively).

In May 1998, The National Mining Association (NMA) and the Alabama Coal Association petitioned the United States Court of Appeals for the 11th Circuit to review the 1998 Notice of Finding. On September 4, 1998, the United States Court of Appeals for the 11th Circuit issued a decision based on procedural grounds to vacate the Notice of Finding in the case of *National Mining Association v. Secretary of Labor*, (153 F.3d 1264).

In response to the 11th Circuit Court's decision, the Department of Labor and the Department of Health and Human Services published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM), Determination of Concentration of Respirable Coal Mine Dust (65 FR 42068) on July 7, 2000.

In that document, the Secretaries proposed a new mandatory health standard in 30 CFR part 72 that stated that a single, full-shift measurement would accurately represent atmospheric conditions to which a miner is exposed during such shift. The proposed rule

would rescind the 1972 Joint Finding. The record of the 1998 final Joint Finding was incorporated into the record for this rulemaking along with new data and information. Those items and all additional data and information were added to the rulemaking docket and made available to the public. A notice of public hearing and close of record was also published in the **Federal Register** (65 FR 42185) on July 7, 2000.

During August 2000, three public hearings were conducted in Morgantown, West Virginia; Prestonsburg, Kentucky; and Salt Lake City, Utah. Transcripts of those proceedings were made available to the public. The close of the rulemaking record was originally scheduled for August 24, 2000. In response to requests from commenters, the comment period was extended until September 8, 2000 (65 FR 49215).

On March 6, 2003 (68 FR 10940), the Secretaries published a notice of reopening addressing the July 7, 2000 proposed rule, (65 FR 42068), Determination of Concentration of Respirable Coal Mine Dust. The Secretaries reopened the rulemaking record to provide interested parties an additional opportunity to comment on any issue relevant to the July 2000 proposed rule; and to solicit comment on new data and information added to the record. The reopening addressed the background, MSHA's current enforcement policy, health effects, quantitative risk assessment, technological feasibility, economic feasibility, compliance costs and benefits, references and supporting documentations.

In May 2003, the Agencies held six public hearings in Washington, Pennsylvania; Charleston, West Virginia; Evansville, Indiana; Lexington, Kentucky; Birmingham, Alabama; and Grand Junction, Colorado. The hearings were attended by over 500 members of the public. In response to requests from the mining community the Agencies extended the post-hearing comment period from June 4, 2003 to July 3, 2003 (68 FR 32005, May 29, 2003). This notice reopens the rulemaking record and extends the comment period until further notice is published in the **Federal Register**.

## II. Reasons for Reopening the Rulemaking Record

The Agencies decided to reopen the rulemaking record and extend the comment period on the proposed rule after careful consideration of comments during the May 2003 public hearings concerning the preliminary success of

in-mine tests on a prototype of the Personal Dust Monitor (PDM).

The rulemaking record and comment period will remain open during which time:

- The in-mine testing of the pre-production prototype PDMs at mines in Pennsylvania, West Virginia, Alabama, and Utah is completed;

- NIOSH and MSHA commit \$150,000 each for further testing contingent upon completion and positive assessment of the in-mine testing; and

- Information is obtained to assist in controlling and monitoring respirable coal mine dust and preventing Black Lung disease.

For all the reasons stated herein, the rulemaking record and comment period for the proposed rule is hereby reopened until further notice is published in the **Federal Register**.

A notice extending the comment period on the proposed rule Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust, (68 FR 10784, 68 FR 32005), was published in the **Federal Register** on July 3, 2003.

Dated: August 6, 2003.

**Elaine L. Chao,**

*Secretary, Department of Labor.*

Dated: August 6, 2003.

**Tommy G. Thompson,**

*Secretary, Department of Health and Human Services.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 194

[FRL-7543-1]

### Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Idaho National Engineering and Environmental Laboratory Advanced Mixed Waste Treatment Project for Disposal at the Waste Isolation Pilot Plant

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability; opening of public comment period.

**SUMMARY:** The Environmental Protection Agency (EPA, or "we") is announcing an inspection for the week of August 18, 2003, at the Idaho National Engineering and Environmental Laboratory (INEEL) Advanced Mixed Waste Treatment Project (AMWTP). With this notice, we