

insured by the Administration to the maximum of \$100,000 for each member or shareholder;

(12) Advertisements that do not relate to member accounts, including but not limited to advertisements relating to loans by the credit union, safekeeping box business or services, traveler's checks on which the credit union is not primarily liable, and credit life or disability insurance.

(d) The non-English equivalent of the official advertising statement may be used in any advertisement provided that the Regional Director gives prior approval to the translation.

[FR Doc. 02-24289 Filed 9-25-02; 8:45 am]

BILLING CODE 7535-01-P

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 741

#### Requirements for Insurance

**AGENCY:** National Credit Union Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The National Credit Union Administration (NCUA) is proposing a regulation on the requirements for federally-insured credit unions that wish to branch outside the United States. The proposed rule requires a credit union to develop a business plan and receive foreign government and NCUA approval before establishing a branch outside the United States.

**DATES:** The NCUA must receive comments on or before December 26, 2002.

**ADDRESSES:** Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428, or you may fax comments to (703) 518-6319 or e-mail comments to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Please send comments by one method only.

**FOR FURTHER INFORMATION CONTACT:** Michael J. McKenna, Senior Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518-6540 or Lynn Markgraf, Program Officer, Office of Examination and Insurance, at the above address or telephone: (703) 518-6360.

**SUPPLEMENTARY INFORMATION:** On September 7, 2000, the Board issued an advance notice of proposed rulemaking (ANPR) on whether NCUA should insure state-chartered credit unions that branch outside the United States. 65 FR 55464 (September 14, 2000). The

comment period ended on November 14, 2000. The key issues raised in the ANPR included NCUA Board policy considerations, legal concerns, supervision and examination considerations, options for insuring foreign branches of state-chartered credit unions and options for restricting insurance coverage for state-chartered credit unions operating foreign branches.

The NCUA Board stated in the ANPR that it was considering numerous options to address the issues raised by state-chartered credit unions branching outside the United States. One option discussed was to permit federally-insured, state-chartered credit unions to serve foreign nationals in their fields of membership on the same terms currently permitted for federal credit unions. That is, foreign nationals in the field of membership could be served pursuant to an approved business plan, with branches being limited to U.S. embassies and U.S. military installations. A second option discussed insuring state-chartered credit unions that operate foreign branches, but with regulatory limitations designed to mitigate risk to the National Credit Union Share Insurance Fund (NCUSIF). The following were the limitations, among others, that the Board stated it might consider:

- Allow foreign branches for the purpose of serving employees of U.S. or international organizations in a credit union's field of membership, but prohibit select employee group expansions or other expansion based on the foreign branch;
- Provide that accounts at foreign branches are not insured or give credit unions the option to insure those accounts;
- Require a separate application for insurance for foreign branch operations with the factors to be considered enumerated in NCUA's regulations;
- Limit the amount of total loans, issued at a foreign branch, in relation to insured and uninsured shares at the foreign branch;
- Require specific, minimum capital amounts based on the size of the loan portfolio and require mandatory charge-offs of loans more than 120 days past due; and
- Limit the amount of loans to foreign nationals outside the United States to the uninsured deposits at the foreign branch. Uninsured shares would act as the primary offset for loan losses after capital reserved for the branch is depleted.

The NCUA Board has decided not to propose any of these regulatory limitations but rather to propose a more

streamlined and less intrusive approach that still maintains safety and soundness. As discussed below, the NCUA Board is proposing a simple approval process that requires a credit union to obtain host country approval and develop a comprehensive business plan in order to obtain NCUA approval to establish a branch in a foreign country.

#### Legal Background

The Federal Deposit Insurance Corporation (FDIC) reviews the insurance application for each branch located outside the United States. When reviewing an insurance application for foreign banks or foreign branches, FDIC must consider:

- (1) The financial history and condition of the bank,
- (2) The adequacy of its capital structure,
- (3) Its future earnings prospects,
- (4) The general character and fitness of its management, including but not limited to the management of the branch proposed to be insured,
- (5) The risk presented to the Bank Insurance Fund or the Savings Association Insurance Fund,
- (6) The convenience and needs of the community to be served by the branch,
- (7) Whether or not its corporate powers, insofar as they will be exercised through the proposed insured branch, are consistent with the purposes of [the FDIC] Act, and
- (8) The probable adequacy and reliability of information supplied and to be supplied by the bank to the Corporation to enable it to carry out its functions under [the FDIC] Act.

12 U.S.C. 1815(b). This review is similar to NCUA's review of an insurance application under the Federal Credit Union Act (Act). 12 U.S.C. 1781(c)(1).

Bank and thrift deposits held outside the United States are not insured unless the financial institution has an express agreement with the depositor. The term "deposit" is defined to exclude:

[A]ny obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State, unless—

(i) such obligation would be a deposit if it were carried on the books and records of the depository institution, and would be payable at, an office located in any State; and

(ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State.

12 U.S.C. 1813(l)(5)(A). An account in a foreign branch of an FDIC-insured branch is a "deposit" and insured only if it meets the above exception to the

exclusion. The general practice in the banking industry is to establish accounts in foreign branches as uninsured accounts.

There is no comparable definition of deposit or share account in the Act or NCUA's regulations that provides a credit union with the ability to choose whether a foreign share account is federally-insured. Therefore, without a regulatory change, if a federally-insured, state-chartered credit union opens a branch office outside the United States, the member share accounts at that branch would be federally-insured.

Section 201(c)(1) of the Act authorizes NCUA to determine insurability of accounts of federally-insured, state-chartered credit unions. 12 U.S.C. 1781(c)(1). It states, in part, that the NCUA Board must disapprove the application of any credit union for insurance of its member accounts if it finds that:

[I]nsurance of its member accounts would otherwise involve undue risk to the fund, or that its powers and purposes are inconsistent with the promotion of thrift among its members and the creation of a source of credit for provident or productive purposes.

#### Comments

Nineteen comments were received. Comments were received from four federal credit unions, three state-chartered credit unions, seven state leagues, four credit union trade associations, and one research institute. In general, the commenters believed NCUA needs to address the multitude of issues raised by foreign branching. Some commenters addressed the safety and soundness concerns raised in the ANPR, with most of these commenters stating that the safety and soundness issues are not insurmountable. Three commenters stated that NCUA should not encroach upon the authority of state regulators to oversee the operations of state-chartered credit unions. Some commenters recommended that NCUA work with state regulators to develop insurance requirements that mitigate risks associated with foreign branching while preserving the ability for qualified credit unions to operate foreign branches.

#### Previously Discussed Options

*Only Permit Federally-Insured State-Chartered Credit Unions To Serve Foreign Nationals in Their Fields of Membership on the Same Terms Currently Permitted for Federal Credit Unions*

Eight commenters opposed any provision imposing field of membership limits upon state credit unions, either inside or outside the United States.

Most of these commenters believe that a state-chartered credit union should have the authority to establish branches outside of the United States consistent with the laws enacted by its state legislature. Five commenters stated that select group expansions around a state-chartered credit union's foreign branch should not be permitted.

Two commenters approved of this restrictive field of membership option because of the risks described in the ANPR. One of these commenters also stated that, if this option is not accepted by NCUA, the agency should consider imposing additional requirements similar to those of the Federal Reserve's Regulation K.

#### Other Regulatory Limitations

Eleven commenters stated that NCUA should adopt policies and procedures similar to those established by the Federal Reserve Act and FDIC deposit insurance requirements, with regulatory limitations designed to mitigate risk to the NCUSIF. Two commenters proposed minimum capital requirements that were significantly less than one million dollars. One commenter believes there should be specific, minimum capital amounts based on the size of the loan portfolio. One commenter would require foreign branches to adhere to a perceived international standard "of a minimum capital base (excluding ownership shares) of ten percent of total assets." One commenter stated that NCUA should establish minimum capital levels in relation to total assets and loans and receivables from foreign nationals. Four commenters opposed minimum capital standards for foreign branches.

Seven commenters specifically stated that NCUA should approve any branch that is to be operated outside the United States. One commenter disapproved of prior NCUA approval since this commenter believes this is the state regulator's responsibility.

Four commenters opposed mandatory charge-offs beyond 120 days. Six commenters opposed limiting the aggregate loan amount to the amount of uninsured deposits at the foreign branch.

One commenter stated that only well capitalized, adequately insured credit unions with the ability to audit foreign operations should be allowed to branch outside the United States. One commenter supports the use of opinion audits for all credit unions, regardless of size, that have foreign branches not located on a U.S. military installation or in a U.S. territory. One commenter believes that, instead of an opinion

audit, a good internal audit should suffice.

One commenter believes NCUA should require a specific plan for addressing foreign currency risk to be enumerated in an NCUA-approved business plan. One commenter stated that NCUA should impose additional regulatory requirements if the NCUA Board decides to insure shares held by the foreign branches of state-chartered credit unions. One commenter stated that the agency should not mandate any specific regulatory requirements for credit unions with foreign branches that do not currently exist for domestic credit unions. One commenter stated that, as the costs of regulation increase, state-chartered credit unions with foreign branches should pay incrementally higher percentages of their assets to the NCUSIF to cover the additional risks associated with these ventures.

#### Deposit Insurance

One commenter stated that the Board should adopt the FDIC definition of "deposit" for defining "share" and provide that only shares are eligible for insurance coverage. Two commenters believe that NCUA has the authority to permit deposits outside the U.S. to be either insured or not insured. These commenters urged NCUA to permit state-chartered credit unions to offer foreign accounts that are not insured. Another commenter stated that member accounts in foreign branches should not be insured by the NCUSIF. Five commenters stated that NCUA should either not insure foreign deposits or provide an option for insurance. One commenter would oppose any requirement that share deposits from members outside the U.S. be insured by the NCUSIF and encouraged NCUA to adopt flexible regulatory language allowing federally-insured, state-chartered credit unions to open insured and uninsured accounts at foreign branches.

One commenter favors NCUSIF insuring deposits in overseas branches of credit unions given appropriate safeguards. One commenter believes that credit unions should maintain deposit insurance although this commenter is not sure it would be prudent for the NCUA to refrain from requiring insurance through the NCUSIF. One commenter stated that member shares, regardless of the location of the branch in which transactions occur, should be insured.

Two commenters would require a separate application for foreign branch insurance coverage. One commenter did not approve of an application for

separate insurance coverage. One commenter stated that, for occupational or employee credit unions, insurance coverage should be limited to deposits of foreign national members closely associated with the credit union's sponsor or sponsors. One commenter believes state-chartered credit unions should have the option to federally insure accounts pursuant to the requirements of each foreign nation in which they operate branches. This commenter also stated that credit unions utilizing the NCUSIF should bear the additional costs associated with providing federal insurance in a foreign nation to compensate NCUA.

#### Proposed Rule

After carefully considering the comments and discussing the issues with state regulators, the NCUA Board has decided to propose a rule that is similar to Regulation K but is tailored to the unique nature of credit unions. NCUA is proposing a three-step process.

First, the credit union needs to receive written approval from the host country to establish the branch that explicitly recognizes NCUA's authority to examine and take any enforcement action with regard to that branch office, including conservatorship and liquidation actions. If a credit union is state-chartered, it must also obtain written approval from the state supervisory agency and submit it with the application.

Second, a credit union must develop a detailed business plan that addresses the following: (1) Analysis of market conditions in the area the branch is to be established; (2) the credit union's plan for addressing foreign currency risk; (3) operating facilities, including office space, equipment and supplies; (4) safeguarding of assets, insurance coverage, and records preservation; (5) written policies regarding the branch (shares, lending, capital, charge-offs, collections); (6) the field of membership or portion of the field of membership to be served through the foreign branch and the financial needs of the members to be served and services and products to be provided; (7) detailed *pro forma* financial statements for branch operations (balance sheet and income and expense projections) for the first and second year, including assumptions; (8) internal controls, including cash disbursement procedures for shares and loans at the branch; (9) accounting procedures used to identify branch activity and performance; and (10) foreign income taxation.

Third, the credit union must submit documentation showing host country approval, state regulator approval if

applicable, and the business plan to NCUA and receive NCUA approval before establishing the branch office.

The regional director has 60 days to approve the application but may extend the time period for good cause. The regional director may revoke approval of the branch office for failure to follow the business plan in any material respect or for substantive and documented safety and soundness reasons. If the credit union wants to make a material deviation from its previously approved business plan, it should submit a new business plan for approval. If the regional director revokes the approval, the credit union will have six months from the date of the revocation letter to terminate the operations of the branch. The credit union can appeal this revocation directly to the NCUA Board.

The NCUA Board has decided not to propose any field of membership restrictions on the foreign branch or capital requirements above those required by the Prompt Corrective Action rule. 12 CFR Part 702. However, the business plan must specifically address the field of membership to be served by the foreign branch. The NCUA Board believes this proposal will minimize risk without interfering with the operations of a credit union or its plans to serve its membership. The Board reviewed all of the available options and believes this course of action is the least burdensome to credit unions while still maintaining safety and soundness. If this proposal is adopted in final, the NCUA Board will monitor the performance and safeguards of foreign branches through its examination functions to ensure this approach continues to minimize risk and maintains safety and soundness, without unduly hindering the business decisions of credit unions.

The Board wishes to clarify that a representation office or a liaison office is not a branch office as defined by NCUA. It is the Board's understanding that such offices do not engage in processing loan applications and do not disburse loans. Rather loan documents are transferred from the liaison office to the credit union's main office in the United States where loan decisions are made and loan disbursements are made in U.S. dollars. For purpose of this regulation, such liaison or representation offices are not considered a branch.

On the issue of insurance, if there are no changes to NCUA's insurance regulation, a federally-insured credit union that opens a branch office outside the United States would have its member share accounts at that branch federally-insured. However, the NCUA

Board is still reviewing this issue. In some cases, host-country laws may require that accounts opened and payable at the foreign branch be denominated in local currency and insured by the host country's insurance system. It would be unnecessary and inappropriate for these accounts to be NCUSIF insured as well. The NCUA Board is considering following a modified version of the FDIC rule on insurance coverage. Specifically, the credit union's business plan would be required to address the insured status of member accounts and, in any event, accounts would be NCUSIF insured only if denominated in U.S. dollars and only payable, by the term of the account agreement, at a U.S. office of the credit union. If the host country requires insurance from its own system, such accounts will not be insured by the NCUSIF. The NCUA Board seeks comment, on this proposal or any other alternative for addressing NCUSIF coverage related to foreign branching and accounts opened and maintained at a foreign branch.

#### Miscellaneous

Six commenters requested that federal credit unions be able to establish foreign branches on foreign soil for the purpose of serving foreign nationals. They request that NCUA reevaluate its policy on foreign branching by federal credit unions. Some of these commenters want to open branches to serve employees of their select employee groups. Although federal credit unions can now serve these foreign nationals of their sponsors overseas, they are limited in the location of their foreign branches.

The Board is seeking comment on whether to apply the same requirements for federal credit unions as it does for state credit unions regarding foreign branching. That is, whether the Board should remove the limitation on the location of foreign branches imposed by NCUA's Chartering and Field of Membership Manual and, instead, require federal credit unions to follow the requirements of this proposed rule. If the NCUA Board decides to apply this rule to federal credit unions in the final rule, it will simultaneously amend Interpretive Ruling and Policy Statement 99-1 to conform it to this rule.

Finally, the Board is aware if it allows this activity that NCUA's current investment rule (Part 703) may not authorize sufficient investment tools to manage currency risk. For example, the Board is sensitive to the risk of currency fluctuations in making Euro denominated loans. The Board is reviewing the investment rule and will

address the issue of currency risk when a revised investment rule is proposed in the next few months.

#### Regulatory Procedures

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (those under \$1 million in assets). The NCUA Board has determined and certifies that the proposed rule will not have a significant economic impact on a substantial number of small credit unions. The reason for this determination is that small credit unions do not have the financial capability and experience to establish a branch in a foreign country. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

##### *Paperwork Reduction Act*

The proposed regulation contains a voluntary application. As part of that application, a credit union must develop a detailed business plan regarding the establishment of a foreign branch.

The Board estimates that it will take an average of sixteen hours for a credit union to prepare a voluntary application and business plan. The Board also estimates ten credit unions may apply annually for approval under the rule. The cumulative total annual paperwork burden is estimated to be approximately 160 hours.

NCUA will submit the collection of information requirements contained in the regulation to the OMB in accordance with the Paperwork Reduction Act of 1995. 44 U.S.C. 3507. The NCUA will use any comments received to develop its new burden estimates. Comments on the collection of information should be sent to: Office of Management and Budget, Reports Management Branch, New Executive Office Building, Room 10235, Washington, DC 20503; Attention: Joseph F. Lackey, Jr., Desk Officer for NCUA. Please send NCUA a copy of any comments submitted to OMB.

##### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The executive order states that:

“National action limiting the policymaking discretion of the states shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.” The risk of loss to federally-insured credit unions and the NCUSIF caused by the establishment of foreign branches is a concern of national scope. The proposed rule, if adopted, will help assure that proper safeguards are in place to ensure the safety and soundness of federally-insured credit unions that establish branches in foreign countries.

The proposed rule, if adopted, applies to all federally-insured credit unions. NCUA believes that the protection of those credit unions, and ultimately the NCUSIF, warrants application of the proposed rule to all federally-insured credit unions. The proposed rule does not impose additional costs or burdens on the states or affect the states' ability to discharge traditional state government functions. NCUA has determined that this proposal may have an occasional direct effect 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. However, the potential risk to the NCUSIF without the proposed rule justifies this action.

##### *The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

##### Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

##### List of Subjects in 12 CFR Part 741

Bank deposit insurance, Credit unions.

By the National Credit Union Administration Board on September 19, 2002.

**Becky Baker,**

*Secretary of the Board.*

For the reasons set forth in the preamble, the National Credit Union Administration proposes to amend 12 CFR part 741 as follows:

## PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 continues to read as follows:

**Authority:** 12 U.S.C. 1757, 1766(a), and 1781–1790; Pub. L. 101–73.

2. Add § 741.11 to subpart A to read as follows:

### **§ 741.11 Foreign branching.**

(a) *Application and prior NCUA approval required.* Any credit union insured pursuant to Title II of the Act must apply for and receive approval from the regional director before establishing a credit union branch outside the United States unless the foreign branch is located on a United States military institution or embassy outside the United States. The regional director will have 60 days to take action on the request.

(b) *Contents of application.* The application must include a business plan, written approval by the state supervisory agency if the applicant is a state-chartered credit union, and documentation evidencing written permission from the host country to establish the branch that explicitly recognizes NCUA's authority to examine and take any enforcement action, to include conservatorship and liquidation actions.

(c) *Contents of business plan.* The written business plan must address the following:

(1) Analysis of market conditions in the area the branch is to be established;

(2) The credit union's plan for addressing foreign currency risk;

(3) Operating facilities, including office space/equipment and supplies;

(4) Safeguarding of assets, insurance coverage, and records preservation;

(5) Written policies regarding the branch (shares, lending, capital, charge-offs, collections);

(6) The field of membership or portion of the field of membership to be served through the foreign branch and the financial needs of the members to be served and services and products to be provided;

(7) Detailed *pro forma* financial statements for branch operations (balance sheet and income and expense projections) for the first and second year including assumptions;

(8) Internal controls including cash disbursement procedures for shares and loans at the branch;

(9) Accounting procedures used to identify branch activity and performance; and

(10) Foreign income taxation.

(d) *Revocation of approval.* The regional director may revoke approval of

the branch office for failure to follow the business plan in a material respect or for substantive and documented safety and soundness reasons. If the regional director revokes the approval, the credit union will have six months from the date of the revocation letter to terminate the operations of the branch. The credit union can appeal this revocation directly to the NCUA Board within 30 days of the date of the revocation letter.

[FR Doc. 02-24290 Filed 9-25-02; 8:45 am]

BILLING CODE 7535-01-P

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Parts 56, 57, 58, 70, 71, 72, 75 and 90

RIN 1219-AA48

#### Air Quality, Chemical Substances, and Respiratory Protection Standards

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

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** This document withdraws a proposed rule that would have amended existing health standards for coal and metal and nonmetal mines to address hazardous substances, permissible exposure limits for certain substances, exposure monitoring, carcinogens, and respiratory protection programs. MSHA developed this proposed rule in 1989, and published a final rule addressing only abrasive blasting and drill dust control, on February 18, 1994. MSHA's decision to withdraw the remaining portions of this proposed rule was the result of changes in agency priorities and the possible adverse effects of unfavorable case law on the proposed rule.

**DATES:** With the exception of the final rule amendments published on February 18, 1994 (59 FR 8318), the proposed rule published on August 29, 1989 (54 FR 35760), is withdrawn as of September 26, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2313, Arlington, Virginia 22209-3939, *Nichols-Marvin@msha.gov*, (202)693-9440 (telephone) or (202)693-9441 (facsimile). This document is available in alternative formats, such as large print and electronic format, and can be accessed on MSHA's internet site, <http://www.msha.gov>, at the "Statutory and Regulatory Information" link.

## SUPPLEMENTARY INFORMATION:

### A. Background

On August 29, 1989, MSHA published, at 54 FR 35760, the proposed rule which would have become final in three phases. The rulemaking used a comprehensive, integrated approach that addressed a variety of complex occupational health issues. On October 19, 1989, MSHA extended the comment period to March 2, 1990 (54 FR 43026) and received extensive public comment.

On February 18, 1994, MSHA completed, at 59 FR 8318, the first phase of this proposal as a final rule addressing abrasive blasting and drill dust control. This rule became effective on April 19, 1994.

### B. Reasons for Withdrawal

MSHA's decision to withdraw this proposed rule was the result of changes in agency priorities and the possible adverse effect on this proposed rule of the decision in *AFL-CIO et. al. v. OSHA*, 965 F.2d (11th Cir. 1992).

It has been more than 13 years since the proposal was published and more than 12 years since the comments were received.

MSHA acknowledges that the TLVs are more than 25 years old. However, at this point, MSHA cannot proceed without reevaluating its approach to the complex issues that this proposed rule addresses and developing alternatives using more current scientific and technical information.

The proposal was structured to resolve a number of potential health hazards. Such a comprehensive approach to rulemaking is no longer a viable means to address such concerns, especially in light of the Eleventh Circuit decision in *AFL-CIO* vacating a similar OSHA standard. The *AFL-CIO* court vacated OSHA's entire air contaminants rulemaking, finding that the agency had not met its statutory burden in establishing the PELs for each of the 428 contaminants regulated by the standard.

For the reasons stated herein, with the exception of provisions published at 59 FR 8318, the proposed rule is withdrawn. This document does not preclude any agency action that MSHA may find to be appropriate in the future.

Dated: September 17, 2002.

**Dave D. Lauriski,**

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

[FR Doc. 02-24388 Filed 9-25-02; 8:45 am]

BILLING CODE 4510-43-P

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Part 75

RIN 1219-AA98

#### Improving and Eliminating Regulations, Phase 5, Miscellaneous Technology Improvements (Methane Testing)

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would provide an alternate method of compliance with the requirement for qualified persons to make periodic methane tests at face areas from under permanent roof support, using extendable probes or other acceptable means.

The proposed alternative would apply during roof bolting activities in room and pillar mining operations using continuous mining machines or conventional equipment. It would allow methane tests to be made by sweeping a probe in by the last roof support, provided that a number of requirements for roof support, ventilation and continuous methane monitoring at the roof bolting machine are met to protect the miners. The proposed rule would result in increased mining efficiency and would provide an equivalent level of safety to miners.

**DATES:** Comments on the proposed rule must be received on or before November 25, 2002.

**ADDRESSES:** Comments must be clearly identified as such and transmitted electronically to *comments@msha.gov*, by facsimile to (202)693-9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209-3939.

**FOR FURTHER INFORMATION CONTACT:**

Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209-3939, *Nichols-Marvin@msha.gov*, (202) 693-9440 (telephone), (202) 693-9441 (facsimile). This proposed rule is available in alternate formats, such as a large print version, an electronic file or a file on a disk, and is also available on MSHA's internet site, <http://www.msha.gov>, at the "Statutory and Regulatory Information" icon.