paragraph (c)(1) of this section, the FS stock held by P is included in the denominator, but not in the numerator of the ownership fraction. Accordingly, the ownership fraction is 15/100. FS is not a surrogate foreign corporation.

Example 5. Internal group restructuring exception not applicable; less than 80 percent owned corporation—(i) *Facts.* The facts are the same as in Example 2, except that P owns 55 shares of USS stock, and A, a person unrelated to P, holds 45 shares of USS stock. P and A exchange their shares of USS stock for 55 shares and 45 shares of FS stock, respectively.

(ii) *Analysis.* FS has acquired substantially all the properties held directly or indirectly by USS pursuant to a plan. P, the common parent of the EAG after the acquisition, did not hold directly or indirectly 80 percent or more of the stock (by vote and value) of USS before the acquisition, and after the acquisition P does not hold directly or indirectly 80 percent or more of the stock (by vote and value) of FS. Thus, the acquisition is not an internal group restructuring described in paragraph (c)(1) of this section, and the general rule of paragraph (b) of this section applies. Under paragraph (b) of this section, the FS stock held by P, a member of the EAG, is not included in either the numerator or the denominator of the ownership fraction. Accordingly, the ownership fraction is 45/45. If the condition in section 7874(a)(2)(B)(iii) is satisfied, FS is a surrogate foreign corporation which is treated as a domestic corporation under section 7874(b).

Example 6. Internal group restructuring; hook stock—(i) *Facts.* USS, a domestic corporation, has 100 shares of stock outstanding. P, a corporation, holds 80 shares of USS stock. The remaining 20 shares of USS stock are held by A, a person unrelated to P. USS owns all 30 outstanding shares of FS, a foreign corporation. Pursuant to a plan, FS forms Merger Sub, a domestic corporation. Under a merger agreement and state law, Merger Sub merges into USS, with USS surviving the merger as a subsidiary of FS. In exchange for their USS stock, P and A, the former shareholders of USS, respectively receive 56 and 14 shares of FS stock. USS continues to hold 30 shares of FS stock.

(ii) *Analysis.* FS has indirectly acquired substantially all the properties held directly or indirectly by USS pursuant to a plan. Under paragraph (b) of this section, the shares of FS stock held by P and USS, both of which are members of the EAG, are not included in either the numerator or denominator of the ownership fraction, unless the acquisition results in an internal group restructuring or loss of control of USS such that the exception of paragraph (c)(1) of this section applies. In determining whether the acquisition of USS is an internal group restructuring, under paragraph (d)(2) of this section, the FS stock held by USS is disregarded. Because P held directly or indirectly 80 percent or more of the stock (by vote and value) of USS before the acquisition, and after the acquisition P holds directly or indirectly 80 percent or more of the stock (by vote and value) of FS (when disregarding the FS stock held by USS), the acquisition is an internal group restructuring and the exception of paragraph (c)(1) of this section applies. Accordingly, when determining whether FS is a surrogate foreign corporation, the FS stock held by P is included in the denominator, but not the numerator of the ownership fraction. However, under paragraph (b) of this section, the FS stock held by USS is not included in either the numerator or denominator of the ownership fraction. Accordingly, the ownership fraction is 14/70, or 20 percent, since only the stock held by A is included in the numerator, and the stock held by both P and A is included in the denominator. Accordingly, FS is not a surrogate foreign corporation.

Example 7. Loss of control—(i) *Facts.* P, a corporation, holds all the outstanding stock of USS, a domestic corporation. B, a corporation unrelated to P, holds all 60 outstanding shares of FS, a foreign corporation. P transfers to FS all the outstanding stock of USS in exchange for 40 newly issued shares of FS.

(ii) *Analysis.* FS has indirectly acquired substantially all the properties held directly or indirectly by USS pursuant to a plan. After the acquisition, B holds 60 percent of the outstanding shares of the FS stock. Accordingly, B, FS and USS are members of an EAG. After the acquisition, P does not hold directly or indirectly more than 50 percent of the stock (by vote or value) of any member of the EAG and, thus, the acquisition results in a loss of control described in paragraph (c)(3) of this section. Accordingly, under paragraph (c)(1) of this section, the FS stock owned by B is included in the denominator, but not in the numerator, of the ownership fraction. Therefore, the ownership fraction is 40/100. FS is not a surrogate foreign corporation.

Example 8. Internal group restructuring; partnership—(i) *Facts.* LLC, a Delaware limited liability company, is engaged in the conduct of a trade or business. P, a corporation, holds 90 percent of the interests of LLC. A, a person unrelated to P, holds 10 percent of the interests of LLC. LLC has not elected to be treated as an association taxable as a corporation. P and A transfer their interests in LLC to FS, a newly formed foreign corporation, in exchange for 90 shares and 10 shares, respectively, of FS's stock, which are all of the outstanding shares of FS. Accordingly, LLC becomes a disregarded entity.

(ii) *Analysis.* Prior to the FS's acquisition of the interests of LLC, LLC was a domestic partnership for Federal income tax purposes. FS has acquired substantially all the properties constituting a trade or business of LLC pursuant to a plan. After the acquisition, P holds 90 percent of FS's stock (by vote and value) by reason of holding a capital and profits interest in LLC, and A holds 10 percent of FS's stock (by vote and value) by reason of holding a capital and profits interest in LLC. The internal group restructuring exception under paragraph (c)(2) of this section applies, because before the acquisition, P held 80 percent or more of the capital and profits interest in LLC, and after the acquisition, P holds 80 percent or more of the stock (by vote and value) of FS. Under paragraph (c)(1) of this section, the FS stock held by P is included in the denominator, but not the numerator, of the ownership fraction. Accordingly, the ownership fraction is 10/100. FS is not a surrogate foreign corporation.

(g) *Effective/applicability date.* Except as otherwise provided in this paragraph, this section shall apply to acquisitions completed on or after May 20, 2008. This section shall not, however, apply to an acquisition that was completed on or after May 20, 2008, provided such acquisition was entered into pursuant to a written agreement which was (subject to customary conditions) binding prior to May 20, 2008, and at all times thereafter (binding commitment). For purposes of the preceding sentence, a binding commitment shall include entering into options and similar interests in connection with one or more written agreements described in the preceding sentence. Notwithstanding the general application of this paragraph, taxpayers may elect to apply this section to prior acquisitions, but must apply it consistently to all acquisitions within its scope.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: May 8, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–11285 Filed 5–19–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219–AB55

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

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

ACTION: Notice of enforcement of DPM final limit; withdrawal of intent to issue a proposed rule.

SUMMARY: This notice informs the public of MSHA's decision to implement the diesel particulate matter (DPM) final permissible exposure limit (PEL) of 160 micrograms of total carbon (TC) per cubic meter of air (160_{TC} g/m^3). MSHA has developed a practical sampling strategy to account for interferences from non-diesel exhaust sources when TC is used as a surrogate for measuring a miner's exposure to DPM. The Agency

will begin enforcement of the 160 TC limit under existing 30 CFR 57.5060(b)(3) on May 20, 2008. MSHA will post details of its sampling strategy on the Agency's DPM Single Source Page prior to enforcement. The sampling strategy is based on the best available scientific evidence and will be specific to each mine.

DATES: *Effective Date:* May 20, 2008.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances at *silvey.patricia@dol.gov* (E-mail), 202–693–9440 (Voice), or 202–693–9441 (Fax).

SUPPLEMENTARY INFORMATION:

A. Background

MSHA measures a miner's personal exposure to DPM by analyzing the sample for a DPM surrogate, TC. TC is the sum of elemental carbon (EC) and organic carbon (OC). The 160 TC limit was promulgated in the 2001 final rule ''Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners'' which was published in the **Federal Register** on January 19, 2001 (66 FR 5706) and amended on June 6, 2005 (70 FR 32868) and May 18, 2006 (71 FR 28924).

When the Agency published the 2006 final rule, MSHA stated its intent to issue a proposed rule to convert the 160 TC PEL to a comparable EC PEL prior to the effective date of May 20, 2008, provided sufficient scientific data were available to support a proposed rule. MSHA is not issuing a proposed rule to uniformly convert the 160 TC limit to a comparable EC limit. Instead, MSHA provides a protocol for calculating a location specific adjustment for situations in which the EC on the miner's personal sample is less than 160 micrograms per cubic meter of air times the error factor (EF) for EC, and TC on the miner's personal sample is greater than 160 micrograms per cubic meter of air times the EF for TC. The decision not to issue a uniform conversion factor is based on MSHA's assessment that there is still insufficient evidence suggesting an appropriate conversion factor, and the latest available scientific evidence regarding the relationship between TC and EC at levels as low as 160 TC. MSHA will continue to monitor and encourage research in this field.

The DPM rulemaking record established that a miner's exposure could not be validated simply by adding the EC and OC of a TC sample due to the potential for non-diesel exhaust sources to deposit on the OC part of the sample and interfere with the MSHA sample analysis. These interferences include environmental tobacco smoke, drill oil mist, and ammonium nitrate/fuel oil (ANFO) vapors. When measuring EC, interferences are not a factor in assuring the accuracy of the sample analysis.

Currently, MSHA determines a miner's exposure to the PEL of 350_{TC} $\mu g/m^3$ (350 TC) by conducting an EC analysis to validate that the miner's overexposure to TC is not the result of interferences. In each analysis, MSHA incorporates an error factor to account for variability in sampling and analysis resulting from such things as pump flow rate, filters, and the NIOSH Analytical Method 5040. If the TC measurement is above 350 TC micrograms times the error factor for TC, MSHA looks at the EC measurement from the sample obtained through the NIOSH Analytical Method 5040, and multiplies EC by a conversion factor of 1.3 to produce a statistically valid estimate of what the TC result is without interferences. MSHA issues a citation when the EC measurement times the multiplier is above 350 micrograms times the error factor for EC. The 1.3 multiplier that MSHA uses to estimate TC (*i.e.*, EC × 1.3 = estimated TC) is the median value of all TC to EC ratios obtained from valid TC samples (*i.e.*, without OC interferences) collected by MSHA during the 31-Mine Study, and it is consistent with NIOSH's determination that TC is 60–80% EC.

In the 2006 final rule (71 FR 28924, May 18, 2006), MSHA retained the 2001 final limit of 160 TC but determined that it should be phased in over a two-year period and stated that:

> Consequently, on May 20, 2006, the initial final limit will be 308 micrograms of EC per cubic meter of air (308_{EC} $\mu g/m^3$), which is the same as the existing interim limit; on January 20, 2007, the final limit will be reduced by 50 micrograms and will be a TC limit of 350_{TC} $\mu g/m^3$; and on May 20, 2008, the final limit of 160_{TC} $\mu g/m^3$ will become effective. Note that the 350_{TC} $\mu g/m^3$ final limit and the 160_{TC} $\mu g/m^3$ final limit are established as TC-based limits in this final rule. (*Id.* at 28934).

Also in the 2006 final rule, MSHA discussed its concerns regarding the relationship between TC, EC and OC at lower concentrations and its intent to conduct a separate rulemaking to determine the most appropriate way to convert the 160 TC PEL to a comparable EC PEL by stating:

> Moreover, we intend to convert the final limits of 350_{TC} $\mu g/m^3$ and 160_{TC} $\mu g/m^3$ in a separate rulemaking by January 2007. As we said in the 2005 NPRM, if we do not complete this rulemaking by that time, we will use the EC equivalent as a check to validate that an overexposure to the 350_{TC} $\mu g/m^3$ final limit is not the result of interferences. This enforcement policy, which is based on the Second Partial Settlement Agreement and data in the rulemaking record, would be the same that we used to implement the 400_{TC} $\mu g/m^3$ interim limit before we converted it to 308_{EC} $\mu g/m^3$ in the June 2005 final rule. Whereas we have evidence that we can obtain an accurate sample analysis of the final limit of 350_{TC} $\mu g/m^3$, there is no evidence in the rulemaking record suggesting that the 1.3 conversion factor is appropriate for substantially lower limits, such as the final limit of 160_{TC} $\mu g/m^3$. (*Id.* at 28976).

Although in the 2006 final rule MSHA acknowledged the limitations of sampling a miner's exposure to TC and preferred EC rather than TC as a DPM surrogate, the Agency did not conclude that TC could not be used as an appropriate surrogate for measuring a miner's exposure to DPM. In addition, the court decision in *Kennecott Greens Creek Mining Company* v. *Mine Safety and Health Administration*, 476 F.3d 946, 956 (DC Cir. 2007), upholding the DPM standard, allows MSHA to enforce either the 160 TC PEL or a converted elemental carbon (EC) PEL. The court upheld MSHA's selection of TC and EC as appropriate surrogates for DPM. See *Id.* at 956.

Subsequent to the DPM court decision, MSHA decided to wait for further scientific evidence regarding whether MSHA could reasonably convert the 160 TC PEL using a fixed conversion factor such as the 1.3 conversion factor currently used. The latest available scientific evidence is the study titled ''Relationship between Elemental Carbon, Total Carbon, and Diesel Particulate Matter in Several Underground Metal/Non-metal Mines'' which was published on February 1, 2007 (J. D. Noll; A. D. Bugarski; L. D. Patts; S. E. Mischler; L. McWilliams, *Environ. Sci. & Technol.*, Vol. 41, No. 3: February 1, 2007, 710–716). The authors concluded that the variability of the TC-to-EC ratio increases below 230 TC and is high at 160 TC. Therefore, MSHA could not identify a single, constant conversion factor for EC at any level below 230 TC.

In March 2007, MSHA hired an outside expert with experience in DPM sampling methodology and analysis to advise the Agency in developing an enforcement strategy for accurately determining a miner's exposure to TC. The expert also reviewed the latest available data to attempt to devise a scientific method for converting the 160 TC PEL to a comparable EC PEL. The expert was unable to recommend such a method. As an alternative to developing a conversion factor, the

expert recommended sampling strategy options for the Agency's consideration in enforcing the DPM final limit in a September 2007 report. MSHA was reviewing the expert's recommendations when it published its December 10, 2007 Semi-Annual Regulatory Agenda in which the Agency continued to state its intent to propose a rule to convert the 160 TC limit. MSHA now has determined that insufficient data exist to proceed with further rulemaking to convert the DPM final limit using a single, constant conversion factor, such as the 1.3 factor currently used for EC for all mines.

B. Notice of Enforcement of DPM Final Limit

MSHA has developed an enforcement strategy for implementation of the DPM 160 TC PEL beginning May 20, 2008. MSHA will continue to determine a miner's exposure to DPM based on a single personal sample taken over the miner's full shift as specified in existing 30 CFR § 57.5061 of the DPM standard. MSHA will use an EC analysis and appropriate sampling methods to ensure that a citation for a miner's overexposure to the 160 TC PEL is valid and not the result of interferences.

C. Reason for Withdrawal of Intent To Issue a Proposed Rule

MSHA is withdrawing its intent to issue a proposed rule to convert the 160 TC PEL because it has determined that insufficient data exist to support such a rule, and because it has determined that the enforcement strategy it will begin to use on May 20, 2008, is an accurate and effective way of enforcing the DPM standard. This enforcement strategy will provide effective health protections for miners at underground metal and nonmetal mines. In light of MSHA's enforcement action, this notice does not reduce health protections for underground metal and nonmetal miners.

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners is withdrawn from the Regulatory Agenda. This document does not preclude future agency action that MSHA may find to be appropriate.

Dated: May 15, 2008.

John P. Pallasch,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. E8–11329 Filed 5–19–08; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 104

46 CFR Parts 10 and 15

[Docket No. USCG–2008–0028]

RIN 1625–AB26

Implementation of Vessel Security Officer Training and Certification Requirements—International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as Amended

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is amending its regulations to implement the vessel security officer training and certification amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended, and the Seafarers' Training, Certification and Watchkeeping Code. These amendments incorporate the training and qualification requirements for vessel security officers into the requirements for the credentialing of United States merchant mariners. The vessel security officer requirements would apply to all vessels subject to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended, under current regulations. This includes all seagoing vessels, as defined in 46 CFR 15.1101, to mean self-propelled vessels engaged in commercial service that operate beyond the Boundary Line established by 46 CFR Part 7, except those vessels which have been determined to be otherwise exempt from STCW as per 46 CFR 15.103(e) and (f).

DATES: This interim rule is effective June 19, 2008. Comments and related material must reach the Docket Management Facility on or before July 21, 2008. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before July 21, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0028 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

For public submission of comments on collection of information, the subject line should reference the docket number and say Attention: Desk Officer for U.S. Coast Guard, DHS. You must also send comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure that the comments are received on time, the preferred method is by e-mail at *oira_submission@omb.eop.gov* or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: If you have questions on this interim rule, contact Ms. Mayte Medina, Maritime Personnel Qualifications Division, Coast Guard, by telephone 202–372–1406 or by e-mail at *Mayte.Medina2@uscg.mil.* If you have questions on viewing or submitting material to the docket, contact Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to the docket located at *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0028), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you