

(2) Those statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records, regardless of form or format, which have been released to any person under this subpart and which, because of the nature of their subject matter, the Commission has determined have become or are likely to become the subject of subsequent requests for substantially the same records; and

(5) A general index of records referred to under this paragraph (a).

(b) *E-FOIA Reading Room*. Materials created on or after November 1, 1996, under paragraphs (a)(1) through (5) of this section may also be accessed electronically through the Commission's Web site at <http://www.fmshrc.gov>.

■ 5. Revise § 2702.6 to read as follows:

§ 2702.6 Fee schedule.

(a) *Search fee*. The fee for searching for information and records shall be the salary rate (that is, basic pay plus 16%) of the employee making the search. This hourly rate is listed on the Commission's Web site at <http://www.fmshrc.gov>. Fees for searches of computerized records shall be the actual cost to the Commission, but shall not exceed \$300 per hour. This fee includes machine time and that of the operator and clerical personnel. If search charges are likely to exceed \$50, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Fees may be charged even if the documents are not located or if they are located but withheld on the basis of an exemption.

(b) *Review fee*. The review fee shall be charged for the Chief FOIA Officer's initial examination of documents located in response to a request in order to determine if they may be withheld from disclosure, and for the deletion of portions that are exempt from disclosure, but shall not be charged for review by the Chairman or the Commissioners. See § 2702.3. The review fee is the salary rate (that is, basic pay plus 16%) of the Chief FOIA Officer or the employee designated to perform the review. This hourly rate is listed on the Commission's Web site at <http://www.fmshrc.gov>.

(c) *Duplicating fee*. The copy fee for each page of paper up to 8½" × 14" shall be \$.15 per copy per page. Any private sector services required, including the fee for copying photographs and

nonstandard documents, will be the actual direct cost incurred by the Commission. For copies prepared by computer, such as tapes or printouts, the Commission shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, the Commission will charge the actual direct costs of producing the document(s). If duplication charges are likely to exceed \$50, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated.

■ 6. In § 2702.7, revise paragraph (a) and paragraph (b)(2) to read as follows:

§ 2702.7 No fees; waiver or reduction of fees.

(a) No fees shall be charged to any requester, including commercial use requesters, if the anticipated cost of processing and collecting the fee would be equal or greater than the fee itself. Accordingly, the Commission has determined that fees of less than \$20 shall be waived.

(b) * * *

(2) The Chief FOIA Officer, upon request, shall determine whether a waiver or reduction of fees is warranted. Requests shall be made concurrently with requests for information under § 2702.3. In accordance with the procedures set forth in § 2702.3, appeals of adverse decisions may be made to the Commission within 5 working days. Determination of appeals will be made by the Commission within 10 working days of receipt.

Dated: December 14, 2007.

Michael F. Duffy,
Chairman, Federal Mine Safety and Health Review Commission.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AB52

Sealing of Abandoned Areas

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule; limited reopening of comment period; availability; notice of public hearing; close of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is reopening

the comment period for the Emergency Temporary Standard (ETS) on sealing of abandoned areas of underground coal mines to provide commenters time to review and submit comments on the U.S. Army Corps of Engineers' Draft Report "CFD [Computational Fluid Dynamics] Study and Structural Analysis of the Sago Mine Accident" (Report).

DATES: All comments on the ETS published at 72 FR 28796, May 22, 2007, and other appropriate data must be received by midnight, January 18, 2008, Eastern Standard Time. MSHA will hold a public hearing on January 15, 2008. Details about the public hearing are addressed in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Comments must be clearly identified and may be submitted by any of the following methods:

1. *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

2. *Electronic mail:* zzMSHA-Comments@dol.gov. Include "RIN 1219-AB52" in the subject line of the message.

3. *Telefax:* (202) 693-9441. Include "RIN 1219-AB52" in the subject.

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

5. *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209-3939. Sign in at the receptionist's desk on the 21st floor.

6. *Docket:* Comments can be accessed electronically at <http://www.msha.gov> under the "Rules and Regs" link. MSHA will post all comments on the Internet without change, including any personal information provided. Comments may also be reviewed at the Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

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

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939. Ms. Silvey can be reached at Silvey.Patricia@dol.gov (Internet E-mail), (202) 693-9440 (voice), or (202)

693-9441 (facsimile). This notice is available on the Internet at <http://www.msha.gov/REGSINFO.HTM>.

SUPPLEMENTARY INFORMATION:

I. Background

MSHA issued an Emergency Temporary Standard (ETS) on May 22, 2007, (72 FR 28796), and extended the comment period to September 17, 2007. MSHA is seeking additional public comment on the Report. The Report summarizes the preliminary results of a study performed under contract (MSHA NO 1A-AR 6000012) for MSHA's Technical Support Directorate

(Technical Support) by the U.S. Army Corps of Engineers (USACE). The USACE conducted research and testing from August 2006 to April 2007. The USACE provided a draft of the Report of their findings to Technical Support in May of 2007. The Report details the USACE's efforts to mathematically model the methane explosion at the Sago Mine and potentially establish the seal overpressures. The Report was not finalized.

MSHA is expressly limiting comments to those which address the Report as it relates to the regulatory provisions in the ETS. The Report is

available on the Internet at: <http://www.msha.gov/CFDSagoReport.pdf>. This notice allows commenters sufficient time to review the Report and submit comments. All comments and other appropriate data must be received by midnight, January 18, 2008, Eastern Standard Time.

II. Public Hearing

In addition to accepting written comments, MSHA will hold a public hearing on the Report. The hearing will begin at 9 a.m. and will end after the last speaker speaks, on the following date and location:

| Date | Location | Phone |
|---------------------|---|--------------|
| January 15, 2008 .. | Mine Safety and Health Administration, 1100 Wilson Blvd., 25th Floor, Conference Room, Arlington, Virginia 22209. | 202-693-9440 |

Requests to speak should be made at least 5 days prior to the hearing date. Requests to speak may be made by telephone (202-693-9440), facsimile (202-693-9441), or mail (MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939). Any unallocated time at the end of the hearing will be made available to persons making same-day requests to speak.

The hearing will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations to the hearing panel. Speakers will be assigned in the order in which their requests are received. Speakers and attendees may present written information or other articles to the MSHA panel for inclusion in the rulemaking record.

The hearing will be conducted in an informal manner. Formal rules of evidence and cross examination will not apply. The presiding official may limit presentations and exclude irrelevant or unduly repetitious material and questions to ensure the orderly progress of the hearing. The hearing panelists may ask questions of speakers. Speakers and other attendees may present written information to the MSHA panel for inclusion in the rulemaking record.

MSHA will make the transcript available and will also post the transcript of the hearing on MSHA's Web site at <http://www.msha.gov>, and include it in the rulemaking record.

MSHA will accept comments and data for the record from any interested party, including those not presenting oral statements at the hearing.

Dated: December 17, 2007.

Richard E. Stickler,

Assistant Secretary for Mine Safety and Health.

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DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD-2007-OS-0117; RIN 0790-AH70]

32 CFR Part 57

Provision of Early Intervention and Special Education Services to Eligible DoD Dependents

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD) school systems [DoD Dependents Schools (DoDDS) and the Defense Dependents Elementary and Secondary Schools (DDESS)] are required by law to provide services and safeguards to children with disabilities consistent with the "Individuals With Disabilities Education Act" (IDEA). This will bring the DoDDS and DDESS under a single rule codified at 32 CFR part 57. The rule integrates previous DoD policy memoranda.

DATES: *Effective Date:* This rule is effective December 19, 2007.

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Posante, 703-602-4949 x114.

SUPPLEMENTARY INFORMATION: On June 10, 2004 (69 FR 32662), the Department of Defense published an interim final rule. No comments were received. The final rule had not been published sooner

due to legal constraints. This rule adopts the rule as published.

See 20 U.S.C. 927(c) (concerning DoDDS) and 10 U.S.C. 2164(f) (concerning DDESS). This final rule updates and amends the DoD implementation of the IDEA within the DoD school systems, as follows: Requires the DoD Education Activity to report annually on the rate special education students (a) participate in system-wide or alternative testing, (b) are disciplined, (c) are suspended, or (d) are expelled; and requires the DoD Education Activity to compare these rates with students who are not disabled; clarifies requirements for three year re-evaluation of special education students; requires individualized education programs (IEPs) to consider special circumstances in the IEP; strengthens the requirement for the school system notice to parents about change of placement or refusal for change of placement; strengthens the protections for students with a disability when facing disciplinary action that might result in suspension or expulsion; requires the schools to provide special education in an interim alternative educational setting for special education students who have been suspended or expelled from school; strengthens requirements for documenting behavioral intervention when disciplining special education students; clarifies the students who must be treated as students with a disability when considering disciplinary action that may result in suspension or expulsion; allows the use of paraprofessionals and assistants (e.g., Certified Occupational Therapy Assistants, Physical Therapy Assistants) to assist in the provision of early