

TABLE 1.—OMB CONTROL NUMBERS—Continued

30 CFR citation	OMB control No.
77.1101	1219-0051
77.1200	1219-0073
77.1201	1219-0073
77.1202	1219-0073
77.1404	1219-0034
77.1432	1219-0034
77.1433	1219-0034
77.1702	1219-0078
77.1713	1219-0083
77.1900	1219-0019
77.1901	1219-0082
77.1906	1219-0034
77.1909-1	1219-0025
90.201(c)	1219-0011
90.202	1219-0011
90.204	1219-0011
90.209	1219-0011
90.220	1219-0011
90.300	1219-0011
90.301	1219-0011

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA76

Underground Coal Mine Ventilation—Safety Standards for the Use of a Belt Entry as an Intake Air Course To Ventilate Working Sections and Areas Where Mechanized Mining Equipment Is Being Installed or Removed

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule; conforming to the Court's opinion.

SUMMARY: On April 2, 2004, the Mine Safety and Health Administration published a final rule revising underground coal mine ventilation standards to allow the use of air traveling in the belt entry to ventilate working sections or areas where mechanized mining equipment is being installed or removed. The International Union, United Mine Workers of America and Jim Walter Resources, Inc. challenged the rule. On May 24, 2005, the U.S. Court of Appeals for the District of Columbia Circuit issued an opinion denying the Union's petition for review and granting the petition of Jim Walter Resources, Inc. Jim Walter Resources, Inc.'s petition challenged the Secretary of Labor's promulgation of 30 Code of Federal Regulations section 75.350(a)(2), which, under certain circumstances, set

a velocity cap of 500 feet per minute in the belt entry of underground coal mines. This document provides notice of, and effectuates, the Court's opinion to vacate paragraph (a)(2) of section 75.350 and remand the matter to the Secretary of Labor.

DATES: Effective June 29, 2005.

FOR FURTHER INFORMATION CONTACT: Rebecca J. Smith, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939. Ms. Smith can be reached at smith.rebecca@dol.gov (Internet e-mail), (202) 693-9440 (voice), or (202) 693-9441 (facsimile). The document is also available on the Internet at <http://www.msha.gov/regsinfo.htm>. We maintain a listserv on our Web site that enables subscribers to receive e-mail notification when we publish rulemaking documents in the **Federal Register**. To subscribe to the listserv, visit our site at <http://www.msha.gov/subscriptions/subscribe.aspx>.

SUPPLEMENTARY INFORMATION: On April 2, 2004, the Mine Safety and Health Administration (MSHA) published a final rule (69 FR 17480) revising underground coal mine ventilation standards to allow the use of air traveling in the belt entry (belt air) to ventilate working sections or to areas where mechanized mining equipment is being installed or removed. In response to the belt air rule's publication, the International Union, United Mine Workers of America ("the Union") and Jim Walter Resources, Inc. ("JWR") filed petitions with the Court of Appeals for the DC Circuit challenging the rule on separate grounds. The court consolidated both petitions and issued a decision, *International Union, United Mine Workers of America v. Mine Safety and Health Administration*, 407 F.3d 1250 (DC Cir. 2005). The Court denied the Union's petition for review. In the petition of JWR, the coal mining company challenged the Secretary's promulgation of 30 Code of Federal Regulations (CFR) 75.350(a)(2), which states that "[t]he maximum air velocity in the belt entry must be no greater than 500 feet per minute unless otherwise approved in the mine ventilation plan." JWR contended that the 500 feet per minute velocity cap referenced in the section was invalid because the Secretary failed to comply with the notice-and-comment requirements of section 101(a) of the Federal Mine Safety and Health Act of 1977, 30 United States Code (U.S.C.) 811(a), and the Administrative Procedure Act, 5 U.S.C. 553(b).

The Court of Appeals granted JWR's petition; vacated paragraph (a)(2) of § 75.350(a)(2); and remanded the matter to the Secretary of Labor. In compliance with the Court's opinion the provision is removed from 30 CFR and the remaining provision is renumbered.

List of Subjects in 30 CFR Part 75

Mandatory safety standards, Mine safety and health, Underground coal mines, Ventilation.

Dated: June 23, 2005.

David G. Dye,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

■ Chapter I of Title 30, part 75 of the Code of Federal Regulations is amended as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

■ 1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C 811.

■ 2. Amend § 75.350 by removing paragraph (a)(2) and redesignating paragraph (a)(3) as the new (a)(2).

[FR Doc. 05-12813 Filed 6-28-05; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

RIN 0596-AC29

Sale and Disposal of National Forest System Timber; Timber Sale Contracts; Indices To Determine Market-Related Contract Term Additions

AGENCY: Forest Service, USDA.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule amends the current regulation by requiring the use of three alternative Producer Price Indices (PPI) from the Bureau of Labor Statistics in lieu of the four PPI that the Forest Service has monitored for use in timber sale contract market-related contract term additions. After December 2003, the Bureau of Labor Statistics discontinued providing three of the four PPI that the Forest Service has monitored and changed the reference number for the fourth PPI. The Forest Service is issuing an interim final rule implementing the use of the three alternative PPI, prior to

publishing a final rule. By using the three alternative PPI, the Forest Service will be able to continue providing market-related contract term additions during drastic reductions in wood products market prices.

DATES: This interim final rule is effective June 29, 2005. Comments must be received in writing on or before August 29, 2005.

ADDRESSES: Send written comments by mail to USDA Forest Service, Director Forest Management, 1400 Independence Avenue, SW., Mail Stop 1103, Washington, DC 20250-0003; via e-mail to: MRCTA@fs.fed.us; or via facsimile to (202) 205-1045. Comments may also be submitted via the World Wide Web Internet Web site at: <http://www.regulations.gov>. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. Information pertaining to the indices is available for public review on the Forest Service World Wide Web/Internet site at: <http://www.fs.fed.us/forestmanagement/infocenter/index.shtml>. Alternatively, these can be viewed in the office of the Director of Forest Management, Third Floor, Southwest Wing, Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead to (202) 205-1496 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Don Benner, Forest Management Staff, at (202) 205-0855, or Richard Fitzgerald, Forest Management Staff, (202) 205-1753.

SUPPLEMENTARY INFORMATION:

Background

Experience indicates that substantial lumber market declines that would warrant a market-related contract term addition generally coincide with substantial economic distress in the wood products industry. Such economic distress broadly affects community stability, the ability of the wood products industry to supply construction lumber and other wood products from domestic sources, and threatens the existence of wood manufacturing plants needed to meet future demands for wood products.

The softwood lumber market decline in 1980-1982 resulted in large numbers of defaults on timber sale contracts. The market-related contract term addition policy was developed in order to establish procedures under the Federal Timber Contract Payment Modification Act or "Buyout Act" for extending contract termination dates in response to severely declining wood products

markets. The Buyout Act was considered an extraordinary measure to respond to a crisis, but also recognized the need to prevent such a crisis from occurring in the future. Accordingly, on December 7, 1990, the Department published a final rule (55 FR 50643) to establish procedures at 36 CFR 223.52 for extending contract termination dates to avoid another crisis like the crisis which occurred in the early 1980s due to severe adverse conditions in the wood products markets. The rule provides that if the Chief finds that adverse wood products market conditions have resulted in a drastic reduction in wood product prices and the purchaser of a qualifying contract makes a written request, additional time may be added to the contract term.

A finding that a drastic reduction in wood product prices has occurred constitutes a finding that the substantial overriding public interest justifies extension of certain timber sale contracts, in accordance with the National Forest Management Act of 1976 (16 U.S.C. 72a(c)) and existing regulations at 36 CFR 223.115(b).

Since adoption of the rule, a drastic reduction in wood product prices has occurred in 1991, 1995, 1998, and 2000. As a result, the Forest Service notified purchasers and, upon the purchasers' written request, added an additional year to timber sale contract terms for qualifying contracts.

The rule required the use of various wood product Producer Price Indices (PPI), prepared by the Department of Labor, Bureau of Labor Statistics (BLS), to determine whether a drastic reduction in wood product prices has occurred.

Appearing before the House Appropriations Subcommittee on Interior and Related Agencies, on April 28, 1992 (Testimony Report number, T-RCED-92-58), the General Accountability Office (GAO) testified that in implementing the regulation in 1991, the Forest Service used a formula with inappropriate data to reach a determination that prices for wood products from the Pacific Northwest had drastically declined. Specifically, GAO testified that the Forest Service used a formula developed with price data that were not adjusted to account for seasonal fluctuations. GAO noted that if the Forest Service had used the BLS' seasonally adjusted price data, the formula would not have indicated a drastic price reduction and would not have triggered contract extensions on the west side of the Pacific Northwest.

GAO further testified that the BLS advises use of seasonally adjusted data are designed to eliminate the effects of

normal market fluctuations that occur at about the same time, and in about the same magnitude, each year, such as price movements resulting from normal weather patterns and regular production and marketing cycles. GAO recommended that the Secretary of Agriculture direct the Chief of the Forest Service to stop using the BLS' unadjusted indices in reaching determinations that wood product prices have drastically declined.

The Secretary of Agriculture agreed to re-examine the use of the BLS' unadjusted PPI to determine whether wood product prices showed a drastic decline. Subsequently, the Forest Service concurred that seasonally adjusted PPI, adjusted to a constant dollar base, could be used to determine whether a drastic reduction in wood product prices has occurred and, therefore, whether a market-related contract term addition should be granted. However, after December 1994, the BLS stopped applying seasonal adjustments to the monitored PPI, since they found insufficient statistical evidence to demonstrate a need to continue adjusting these indices.

The initial PPI from the BLS used by the Forest Service were from the commodity series and included lumber indices for Douglas Fir, Dressed (081101); Southern Pine, Dressed (081102); Other Species, Dressed (081103); and Hardwood Lumber (0812). However, on May 1, 1998, the Department published a final rule (63 FR 24110) requiring the use of Industry Series PPI from the BLS, rather than the previously required indices in the commodity series. In addition to changing the index series, the final rule made a number of other technical changes. The Industry Series PPI used were Western Softwood (SIC 24214), Eastern Softwood (SIC 24213), and Hardwood Lumber (SIC 24211), which were considered more representative of the sawmill industry than the prior indices in the commodity series. The Forest Service also added the Industry Series Wood Chips (SIC 24215) PPI to measure market changes in the price of chips and to address the volatility of the wood chip market. In order to increase the utilization of small diameter material, many contracts include or consist primarily of chipable material.

However, after December 2003, the BLS discontinued publishing the following three lumber PPI: Western Softwood Lumber (SIC 24214), Eastern Softwood Lumber (SIC 24213), and Hardwood Lumber (SIC 24211), which were used by the Forest Service. The BLS also changed the Wood Chips PPI number from SIC 24215 to NAICS

3211135. In lieu of the three discontinued PPI, the Forest Service plans to use, effective retroactively to January, 2004, the following two lumber PPI: Softwood Lumber (0811) and Hardwood Lumber (0812). The Forest Service will continue to use the Wood Chips PPI (reference number NAICS 3211135).

A review of other readily available indices, such as Random Lengths indices and Western Wood Products Association indices, representing the same wood product markets shows that indices comparable to these PPI do not exist. Some regional indices are available; however, the timing, frequency, and procedure for collection of information for these indices varies. Some index services or associations use previous month invoice prices that are provided by their members, while other services use current month negotiated bid prices or sale prices. Wood product price indices, prepared nationally and consistently, are not available.

The BLS discontinued publishing seasonally adjusted versions of the Softwood Lumber (0811) and Hardwood Lumber (0812) PPI after December 2003. None of the three indices to be implemented in this interim final rule are seasonally adjusted. Each PPI is adjusted to a constant dollar base by dividing it by the PPI for All Commodities (00000000) to eliminate changes due to inflation and deflation.

A drastic reduction in wood product prices has occurred when, for 2 or more consecutive quarters after contract award, the applicable adjusted PPI is less than 85 percent of the average of such adjusted indices for the 4 highest of the 8 calendar quarters immediately prior to the qualifying quarter.

Forest supervisors determine which of the PPI that the Forest Service monitors is used for each contract. The selected PPI is representative of the predominant species and product, by volume, included in the contract.

Good Cause Statement

The Forest Service is issuing this interim final rule implementing the use of three alternative PPI to be able to continue providing contract term additions due to drastic reductions in wood products markets, prior to publishing a final rule. By using the three alternative PPI, the Forest Service will be able to continue providing market-related contract term additions during drastic reductions in wood products market prices.

Regulatory Certifications

Regulatory Impact

This interim final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. OMB has determined that this is not a significant rule. This rule will not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. In short, little or no effect on the national economy will result from this rule change. This action consists of administrative changes to regulations affecting timber sale contract length. The PPI selected reflect the cyclic nature of wood products markets and help the agency determine whether a drastic decline has occurred in these particular markets.

Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this interim final rule is not subject to OMB review under Executive Order 12866.

Moreover, this interim final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 610 *et seq.*), and it is hereby certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that act. Failure to adopt the PPI selected for measuring drastic reductions in wood product prices may result in both small purchasers and large purchasers not getting additional time to complete their contracts. Modifications to timber sale contract price indices have the intended effect of allowing purchasers additional time to complete contracts when severe adverse conditions have occurred in the wood products markets.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, which the President signed into law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of \$100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Environmental Impact

This interim final rule deals with business practices related to timber sale contracts and, as such, has no direct effect on the amount, location, or manner of timber offered for purchase. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The Department's preliminary assessment is that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final rule.

Controlling Paperwork Burdens on the Public

This interim final rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

Comments Invited

The Forest Service invites comments on this interim final rule implementing the use of selected Commodity and Industry Series PPI from the BLS to apply market-related contract term additions to timber sale contracts. Comments received will be considered in the development of the final rule, which will be published in the **Federal Register**.

List of Subjects in 36 CFR Part 223

Administrative practice and procedure, Exports, Forests and forest products, Government contracts, National forests, Reporting and recordkeeping requirements.

■ Therefore, for the reasons set forth in the preamble, part 223 of title 36 of the Code of Federal Regulations is amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213; 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, unless otherwise noted.

■ 2. Amend § 223.52 by revising paragraph (b)(1)(i) to read as follows:

§ 223.52 Market-related contract term additions.

* * * * *

(b)* * *

(1)* * *

(i) The Forest Service shall monitor and use only the following indices:

BLS producer price index	Index series	Index code
Hardwood Lumber.	Commodity	0812
Softwood Lumber	Commodity	0811
Wood Chips	Industry	3211135

* * * * *

Dated: June 17, 2005.

Mark Rey,

Under Secretary, Natural Resources and Environment.

[FR Doc. 05-12811 Filed 6-28-05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket ID No. R10-OAR-2005-WA-0001; FRL-7929-7]

Approval and Promulgation of State Implementation Plans: Washington; Spokane Carbon Monoxide Nonattainment Area; Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 29, 2004, the State of Washington submitted a carbon monoxide (CO) maintenance plan for the Spokane serious nonattainment area to EPA for approval. The State concurrently requested that EPA redesignate the Spokane CO serious nonattainment area to attainment for the National Ambient Air Quality Standard (NAAQS) for CO. In this action, EPA is approving the maintenance plan and redesignating the Spokane serious CO nonattainment area to attainment.

DATES: This direct final rule will be effective on August 29, 2005, without further notice, unless EPA receives comments by July 29, 2005. If comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: You may submit comments, identified by Docket ID No. R10-OAR-

WA-2005-0001, by one of the following methods:

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

- Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

- Fax: (206)-553-0110.
- Mail: Office of Air, Waste, and Toxics (AWT-107), U.S. EPA Region 10, 1200 Sixth Ave., Seattle, Washington 98101-1128.

- Hand Delivery/Courier: EPA Region 10, Service Center, 14th Floor, 1200 Sixth Ave., Seattle, Washington 98101; Attention: Connie Robinson, Office of Air, Waste and Toxics (AWT-107). Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. R10-OAR-2005-WA-0001. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on

submitting comments, go to *I. General Information* of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Office of Air, Waste, and Toxics (AWT-107), U. S. EPA Region 10, 1200 Sixth Ave., Seattle, Washington 98101; open from 8 a.m.-4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number is (206) 553-4273. Copies of the submittal, and other information relevant to this proposal are also available for public inspection during normal business hours at the Washington State Department of Ecology, 300 Desmond Drive SE, Lacey, Washington 98503.

FOR FURTHER INFORMATION CONTACT:

Connie L. Robinson, Office of Air, Waste and Toxics (AWT-107), EPA Region 10, 1200 Sixth Avenue, Seattle WA 98101-1128, telephone number: (206) 553-1086; fax number: 206-553-0110; or e-mail address: robinson.connie@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, wherever "we," "us," or "our" is used, we mean the EPA. Information is organized as follows:

- I. General Information
- II. What Action is EPA taking?
- III. What is the background for this Action?
- IV. What Evaluation Criteria were used for the Maintenance Plan and Redesignation Request Review?
- V. EPA's Evaluation of the Spokane Maintenance Plan and Redesignation Request
 - A. How does the State Show that the Area Has Attained the CO NAAQS?
 - B. Does the Area have a fully approved SIP and has the area met all the relevant requirements under section 110 and part D of the Clean Air Act?
 - C. Are the Improvements in Air Quality Permanent and Enforceable?
 - D. Has the State Submitted a Fully Approved Maintenance Plan pursuant to section 175A of the Clean Air Act?
 - E. Did the State provide adequate base year and maintenance year emissions inventories?

Table 1 Spokane 2002 Attainment/Base Year Actual Emissions, and 2010 and 2015 Projected Emissions (Tons CO/Winter Day)

- F. How will the State continue to verify attainment?