areas where methane could be present; (i) the non-permissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition; and (j) submit proposed revisions for the part 48 training plan to the District Manager, which will include specified initial and refresher training regarding the terms and conditions stated in the Proposed Decision and Order. The petitioner asserts that application of the existing standard will result in a diminution of safety to the miners and the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners by the standard.

Dated: December 15, 2009.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. E9–30158 Filed 12–18–09; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before January 20, 2010.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: Standards-Petitions@dol.gov*.
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, *Attention:* Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2009–042–C.

Petitioner: Bledsoe Coal Corporation, Route 2008, Box 351 A, Big Laurel, Kentucky 40808.

Mine: Abner Branch Mine, MSHA I. D No. 15–19132 Leslie County, Kentucky.

Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance).

Modification Request: The petitioner requests a modification of the existing standard to permit the maximum length of trailing cables to be increased for supplying power to permissible pumps in the mine. The petitioner states that: (1) This petition will apply only to trailing cables supplying three-phase, 480-volt power for permissible pumps; (2) the maximum length of the 480-volt power for permissible pump will be 4000 feet: (3) the 480-volt power to permissible pump trailing cables will not be smaller than #6 American Wire Gauge (AWG); (4) all circuit breakers used to protect trailing cables exceeding the pump approval length or Table 9 of Part 18 will have an instantaneous trip unit calibrated to trip at 75 percent of phase to phase short circuit current. The trip setting of these circuit breakers will be sealed or locked, the circuit breakers will have permanent, legible labels, each label will identify the circuit breaker as being suitable for protecting the trailing cables, and the labels will be maintained legible. In instances where a 75 percent instantaneous set point will not allow a pump to start due to motor inrush, a thermal magnetic breaker will be furnished. The thermal rating of the circuit breaker will be no greater than 75 percent of the available short circuit current and the instantaneous setting will be adjusted 1 setting above the motor inrush trip point. This setting will be sealed or locked; (5) replacement instantaneous trip units used to protect pump trailing cables exceeding the length of item #4 will be calibrated to trip at 75 percent of the available phase to phase short circuit current and this setting will be sealed or locked; (6) permanent warning labels will be installed and maintained on the cover(s) of the power center to identify the location of each sealed or locked short-circuit protection device. The labels will warn miners not to change or alter the short circuit settings; (7) the mines current pump circuits that have greater lengths than approved or in Table 9 are attached to the petition. All future pump installation with excessive cable lengths will have a short circuit survey conducted and item 1–6 will be implemented. A copy of each pumps short circuit survey will be available at the mine site for inspection; (8) the alternative method will not be implemented until miners who have been designated to examine the integrity of seals or locks, have received the elements of training to verify the short-circuit settings and the proper procedures for examining trailing cables for defects and damage. The petitioner further states that: (1) Within 60 days after the Proposed Decision and Order becomes final, proposed revisions for approved 30 CFR part 48 training plans at any of the listed mines will be submitted to the Coal Mine Safety and Health District Manager. The training plan will include: (a) Training in the mining methods and operating

procedures for protecting the trailing cables against damage; (b) training in proper procedures for examining the trailing cables to ensure they are in safe operating condition; (c) training in hazards of setting the instantaneous circuit breakers too high to adequately protect the trailing cables; (d) training in how to verify that the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained; and (e) the procedures of 30 CFR 48.3 for approval of proposed revisions to already approved training plans will apply. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners at the Bledsoe Coal Company provided by the existing standard.

Docket Number: M–2009–043–C.

Petitioner: Nelson Brothers, LLC, 901 Chase Tower, 707 Virginia Street, East, P.O. Box 913, Charleston, West Virginia 25323.

Mine: Independent Coal Company, Edwight Surface Mine, MSHA I.D. No. 46–08977, located in Raleigh County, West Virginia; Alex Energy, Inc., No. 1 Surface Mine, MSHA I.D. No. 46–06870, located in Nicholas County, West Virginia; Elk Run Coal, Republic Energy Mine, MSHA I.D. No. 46–09054, located in Fayette County, West Virginia; and Elk Run Coal Company, Black Castle Mining Company Mine, MSHA I.D. No. 46–07938 and Independent Coal Company, Twilight Mtr Surface Mine, MSHA I.D. No. 46–08645, located in Boone County, West Virginia.

Regulation Affected: 30 CFR 77.1302(k) (Vehicles used to transport explosives).

Modification Request: The petitioner requests a modification of the existing standard to permit repair and maintenance to be performed on its explosives trucks within the protection of non-permanent shelters that it constructs for such purposes in lieu of purging and steam-cleaning each truck's tank and taking it to a garage every time such is in need of repair or maintenance. The petitioner states that: (1) The structures are comprised of a roof constructed over a concrete pad with two sides closed off from the wind, rain, and snow; (2) construction materials include sheet metal, plywood, or two box trailers parked alongside the pad; (3) the purpose and intent of the existing standard would not be frustrated by allowing the petitioner to perform routine repair and maintenance work on its explosives trucks under the cover of these non-permanent shelters; (4) these shelters do not fit the commonly understood definition of ''repair garage or shop,'' and do not present the same concerns, for example, while performing work on explosives trucks in a ''repair garage or shop'' may expose a number of people to the risk of harm, the petitioner's arrangement involves one or two mechanics in a remote location; (5) affording the mechanics the cover of the non-permanent shelters puts them at no greater risk of injury than if such mechanics were working out in the open. The cover of these non-permanent shelters provide an alternative to working out in the open and protection from extreme weather, and provide a flat, dry surface for employees to work and allows lifting equipment to be used during vehicle repair and maintenance work; (6) workers performing routine repairs and maintenance are provided a safer place at which to work, in contrast to performing the work in the open and on the ground, for example, the non-permanent shelters facilitate protection against back injuries as well as slips and falls; (7) all high explosives and detonators are removed from vehicles prior to entering the non-permanent structures; (8) no hot work or open flames will be permitted within 50 feet of a loaded vehicle; (9) a hot work permit will be required and the vehicle will be emptied and the bed or tank washed in conformity with the existing standard when it is necessary to weld or cut; and (10) application of the existing standard would result in a diminution of safety to the workers because they will be exposed to varying and frequently harsh weather when conducting repairs, and will be at an increased risk of injury from heavy lifting and/or slipping and falling. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded the miners by the existing standard.

Docket Number: M–2009–044–C.

Petitioner: Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444.

Mine: Mine No. 4, MSHA I.D. No. 01–01247 and Mine No. 7, MSHA I.D. No. 01–01401, located in Tuscaloosa County, Alabama.

Regulation Affected: 30 CFR 75.507 (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of one or more three-phase 2,400 volt or 4,160 volt alternating current submersible pumps installed in return and bleeder entries in the No. 4 Mine and in the No. 7 Mine. The petitioner states that: (1) The three-phase 2,200-volt or 4,160-volt alternating current electric power circuit for each pump will be designed and installed to: (a) Contain either a direct or derived neutral, which will be grounded through a suitable resistor at the source transformer or power center; (b) contain a grounding resistor that limits the ground-fault current to not more than 6.5 amperes. (2) The following protections for each pump power circuit will be provided by suitable circuit interrupting device of adequate interrupting capacity with devices to provide protection against undervoltage, grounded phase, short-circuit, and overload as follows: (a) The undervoltage protection device will operate on a loss of voltage to prevent automatic re-starting of the equipment; (b) the grounded phase protection device will be set not to exceed fifty percent (50%) of the current rating of the neutral grounding resistor; (c) the short circuit protection device will not be set to exceed the required short circuit protection for the power cable or seventy-five percent (75%) of the minimum available phase-to-phase short circuit current, whichever is less; (d) each power circuit will contain a disconnecting device located on the surface and installed in conjunction with the circuit breaker(s) to provide visual evidence that the power is disconnected; (e) each disconnecting device will include a means to visually determine the relevant pump power circuit is disconnected and be provided with a means to lock, tag-out, and ground the system; (f) each disconnecting device will be designed to prevent entry unless the disconnect handle is in the ''off'' position and the circuit is grounded; and (g) each disconnecting device will be clearly identified and provided with a warning sign stating, ''Danger. Do not enter unless the circuit is opened, locked, tagged-out, and grounded;'' (3) Each three-phase alternating current system will be provided with a low resistance grounding medium for the grounding of the lightning/surge arrestors for the high-voltage pump power circuit that is separated from the neutral grounding medium by a distance of not less than twenty-five (25) feet; (4) The electric control circuit(s) for each pump will meet the following requirements: (a) the control circuit will be equipped with a probe circuit that determines a high and low water level; (b) when the water level is reached, the pump will cease operation and will not start in either the manual or automatic mode; (c) when the water level is reached, the pump will be capable of operation; (d) the high and

low water levels will be determined by a differential pressure switch located at the surface; (e) the grounded-phase protective circuit for each pump will be able to be tested by injecting a test current through the grounded-phase current transformer; (f) a remote control and monitoring system can be used with a pump system for condition monitoring and for remote startup and shutdown control of the pump. The remote control and monitoring system will not allow remote reset of the pump power system when any fault condition (*e.g.,* grounded phase, short circuit, or overload) exists on the system; (g) splices and connections made in submersible pump cables will be made in a workmanlike manner and will meet the requirements of 30 CFR 75.604; (h) the specifications for each pump installation are generally described in an attachment labeled ''Exhibit A'' and incorporated herein by reference. The proposed pump equipment or its equivalent will be used to implement the schematics; (5) Each surface pump control and power circuit will be examined as required by 30 CFR 77.502; (6) The power cable to each submersible pump motor must be suitable for this application and have a current carrying capacity not less than one-hundred twenty-five percent (125%) of the full load motor current of the submersible pump motor, and have an outer jacket suitable for a wet location. The power cable must be supported at the entrance to the borehole and throughout its length by securing tit with clamps, spaced approximately twenty-five (25) feet apart, and affixed to the discharge pipe casing; (7) Each pump installation must comply with all other applicable requirements of 30 CFR; and (8) within sixty (60) days after the petition is granted, proposed revisions for approved 30 CFR, Part 48 training plan will be submitted to the District Manager. These revisions will specify task training for all qualified mine electricians who perform electric work and monthly examinations as required by 30 CFR 77.502, and refresher training regarding the alternative method outlined in this petition. The procedures of 30 CFR 48.3 for approval of proposed revisions to already approved training plans will apply. The petitioner asserts that the proposed alternative method would at all times guarantee at least the same measure of safety as the existing standard.

Docket Number: M–2009–045–C.

Petitioner: Newtown Energy, Inc., P.O. Box 189, Comfort, West Virginia 25049.

Mine: Coalburg No. 1 Mine, MSHA I.D. No. 46–08993, Coalburg No. 3 Mine, MSHA I.D. No. 46–09259, Eagle No. 2 Mine, MSHA I.D. No. 46–09310, and Peerless No. 1 Mine, MSHA I.D. No. 46–09258, located in Boone County, West Virginia; and Coalburg No. 2 Mine, MSHA I.D. No. 46–09231; Eagle Mine, MSHA I.D. No. 46–08759, located in Kanawha County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard to permit in lieu of blow-off dust covers for nozzles on deluge-type water spray systems installed at belt-conveyor drives the following term and conditions will be used: (1) A person trained in the testing procedures specific to the deluge-type water spray fire suppression systems utilized at each belt drive will once every 7 days: (a) Conduct a visual examination of each deluge-type water spray fire suppression system; (b) conduct a functional test of the deluge-type water spray fire suppression systems by actuating the system and observing its performance; and (c) record the results of the examination and functional test in a book maintained on the surface for that purpose. The record will be made available to the authorized representative of the Secretary and retained at the mine for one year; (2) Any malfunction or clogged nozzle detected as a result of the weekly examination or functional test will be corrected immediately; and (3) The procedure used to perform the functional test will be posted at or near each belt drive which utilizes a deluge-type water spray fire suppression system. The petitioner asserts that the proposed alternative method will at all times provide the same measure of protection to the miners as afforded under the existing standard.

Docket Number: M–2009–046–C.

Petitioner: FKZ Coal, Inc., P.O. Box 62, Locust Gap, Pennsylvania 17840.

Mine: No. 1 Slope Mine, MSHA I.D. No. 36–08637, located in Northumberland County, Pennsylvania.

Regulation Affected: 30 CFR 75.1400 (Hoisting equipment; general).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of the slope conveyance (gunboat) in transporting persons without installation of safety catches or other no less effective devices but instead using an increased rope strength/safety factor and secondary safety rope connection in place of such devices. The petitioner states that: (1) The haulage slope of the anthracite mine is of a relatively high angle and frequently changing pitches, typical of those in the anthracite region; (2) a functional safety catch capable of working in slopes with knuckles and curves is not commercially available. A make shift device would be activated on or by knuckles or curves when no emergency exists. The activation of a safety catch can or will damage the haulage system and subject persons being transported to hazards from dislodged timbering, roof material or guide rails and to being battered about within the conveyance; and (3) a safer alternative is to provide secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main termination, and using a hoisting rope with a factor of safety greater than that recommended in the American Standards Specifications for the Use of Wire Rope in Mines or at least three times greater than the strength required under 30 CFR 75.1431(a). The petitioner asserts that the proposed alternative method will in no way provide less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M–2009–047–C.

Petitioner: Nufac Mining Company, Inc., P.O. Box 1085, Beckley, West Virginia 25801.

Mine: Buckey Mine, MSHA I.D. No. 46–08769 located in McDowell County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Type and quality of firefighting equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit weekly inspection and functional testing of its complete deluge-type water spray system and removal of blow-off dust cover from the nozzles. The petitioner states that the results of the examination and functional test and any malfunction or clogged nozzle detected, will be recorded in a book and maintained on the surface for that purpose. The petitioner states that the record will be retained at the mine for one year. The petitioner further states that: (1) Blow-off dust covers are currently provided for each nozzle; (2) in view of frequent inspections and functional testing of the system, the dust covers are not necessary because nozzles can be maintained in an unclogged condition through weekly use; and (3) it is burdensome to recap the large number of covers weekly after each inspection and functional test. The petitioner asserts that the alternative method will at all times guarantee no less than the same measure of protection afforded the miners employed at Buckey Mine by the existing standard.

Docket Number: M–2009–048–C.

Petitioner: Pay Car Mining, Inc., P.O. Box 1085, Beckley, West Virginia 25801.

Mine: No. 58 Mine, MSHA I.D. No. 46–08884, located in McDowell County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Type and quality of firefighting equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit weekly inspection and functional testing of its complete deluge-type water spray system and removal of blow-off dust cover from the nozzles. The petitioner states that the results of the examination and functional test and any malfunction or clogged nozzle detected, will be recorded in a book and maintained on the surface for that purpose. The petitioner states that the record will be retained at the mine for one year. The petitioner further states that: (1) Blow-off dust covers are currently provided for each nozzle; (2) in view of frequent inspections and functional testing of the system, the dust covers are not necessary because nozzles can be maintained in an unclogged condition through weekly use; and (3) it is burdensome to recap the large number of covers weekly after each inspection and functional test. The petitioner asserts that the alternative method will at all times guarantee no less than the same measure of protection afforded the miners employed at the No. 58 Mine by the existing standard.

Dated: December 15, 2009.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. E9–30159 Filed 12–18–09; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions and Grant of Individual Exemptions Involving: 2009–33, Cotter Merchandise Storage Company Defined Benefit Pension Plan (the Plan), D–11423; and 2009–34, Unaka Company Incorporated Employees Profit Sharing Plan (the Plan), D–11445

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Exemption

The restrictions of sections 406(a), 406(b) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the proposed sale by the Plan to the Cotter Merchandise Storage Company (Cotter or the Applicant), the Plan sponsor and a party in interest with respect to the Plan, of certain promissory notes (the Notes) which are currently held by the Plan; and (2) the assignment, by the Plan to Cotter, of a civil judgment (the Judgment) against the Plan's former trustee, Robert Geib (Mr. Geib).

This exemption is subject to the following conditions:

(a) The terms and conditions of the proposed sale transaction are at least as favorable to the Plan as those that the Plan could obtain in an arm's length transaction with an unrelated party;

(b) As consideration for the Notes, the Plan receives either (1) the greater of $372,197 or (2) the fair market of the Notes (based upon the value of the Plan's proportionate share of Mr. Geib's ownership interest in Cotter common stock), as determined by a qualified, independent appraiser on the date of the sale transaction;

(c) The proposed sale is a one-time transaction for cash;

(d) The Plan pays no fees, commissions, costs or other expenses in connection with the proposed sale;

(e) Cotter pays the Plan all future recoveries resulting from the Judgment; and

(f) An independent fiduciary (1) determines that the sale is an appropriate transaction for the Plan and is in the best interests of the Plan and its participants and beneficiaries; (2) monitors the sale on behalf of the Plan; and (3) ensures that the Plan receives all future recoveries resulting from the Judgment.

Written Comments

In the notice of proposed exemption (the Notice), the Department invited all interested persons to submit written comments and requests for a hearing within 35 days from the date of publication of the Notice in the **Federal Register.** All comments and requests for a hearing were due by October 30, 2009.

During the comment period, the Department received no requests for a hearing. The Department did, however, receive a comment letter from the Applicant, dated October 6, 2009, concerning Conditions (e) and (f)(3) of the Notice. Condition (e) requires that Cotter pay the Plan all future recoveries resulting from the Judgment. Condition (f)(3) requires the independent fiduciary to ensure that the Plan receives all future recoveries from the Judgment. The Applicant explains that once it obtains the Notes from the Plan, it will seize the underlying common stock collateralizing the Notes that is currently owned by Mr. Geib. The Applicant represents that the seized Cotter stock will be retired as Treasury stock. As a result, the retirement of the seized Cotter stock will not give rise to any cash recoveries.