

DEPARTMENT OF LABOR**Mine Safety and Health Administration****30 CFR Parts 26, 29, 57, and 75**

RIN 1219-AA98

Improving and Eliminating Regulations; Lighting Equipment, Coal Dust/Rock Dust Analyzers, and Methane Detectors

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

ACTION: Proposed rule; technical amendments.

SUMMARY: MSHA is proposing to remove approval regulations for lighting equipment for illuminating underground workings; portable coal dust/rock dust analyzers; and continuous duty, warning light, portable methane detectors. These regulations are unnecessary because they address equipment that can be addressed by other MSHA regulations. Removal of these parts would not reduce protection for miners. This proposal would also make conforming amendments to safety regulations that require the use of this approved equipment in underground coal mines and in gassy underground metal and nonmetal mines.

DATES: Submit written comments on or before November 2, 1998.

ADDRESSES: Send comments by mail to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203; by facsimile to MSHA, Office of Standards, Regulations, and Variances at 703-235-5551; or by E-mail to comments@msha.gov. MSHA encourages commenters sending written comments by mail or facsimile to also send a computer disk of the comments.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director; Office of Standards, Regulations, and Variances, MSHA; 703-235-1910.

SUPPLEMENTARY INFORMATION:**I. Regulatory Background**

In response to the Administration's regulatory reinvention initiative, MSHA conducted a review of its existing regulations to identify obsolete, outdated, redundant, or unnecessary provisions that could be removed or revised without reducing protection afforded miners. This proposed rule is part of MSHA's ongoing plan to improve its regulations. The removal of parts 26 and 29, from title 30 of the Code of Federal Regulations (30 CFR), would not reduce protection to miners. These

provisions are covered by other MSHA regulations. Conforming amendments to other 30 CFR parts would be made, as appropriate.

To increase awareness of this regulatory action, MSHA will mail a copy of this proposed rule to all mine operators and miners' representatives and post it on MSHA's Website.

II. Discussion of Proposed Rule**A. 30 CFR 26—Lighting Equipment for Illuminating Underground Workings**

In 1958, MSHA developed the regulations in 30 CFR 26 to establish specifications for the approval of mine lighting systems that are used independently, i.e., not connected to an approved machine. These specifications contain permissibility requirements to ensure that the electric system and components do not pose an explosion hazard, and design requirements to address the adequacy of the light intensity. MSHA has received only one application for approval of mine lighting systems under 30 CFR 26 since 1978.

Even though MSHA is proposing to remove 30 CFR 26, lighting systems approved under this part could continue to be manufactured and distributed for use in mines, as long as this was done in accordance with the drawings and specifications upon which the approval was based and there were no changes in the approved systems. No changes in approved systems could be made under 30 CFR 26 once it was deleted. Any future changes to lighting systems approved under 30 CFR 26 would require a new application for approval under 30 CFR 18.

Currently, approvals of lighting systems which are used independently, as well as those which are part of MSHA-approved equipment, can be requested under the requirements of 30 CFR 18, Electric Motor Driven Mine Equipment and Accessories. The general requirement in 30 CFR 18, subpart A; certain design and construction requirements in subpart B (i.e. §§ 18.20, 18.23, 18.24, 18.25, 18.30 18.35, 18.41, 18.48, 18.50, and 18.51); and certain inspections and tests in subpart C (i.e. §§ 18.62, 18.66, 19.67, and 18.68), as well as any other provisions necessary to address the design and performance of the systems, are applicable to the approval of independent mine lighting systems. For example, an evaluation for intrinsic safety under 30 CFR 18 includes a "Lamp Bulb Breakage" test which consists of breaking the bulb in the presence of an explosive mixture of methane-in-air. In addition to the permissibility and intrinsic safety

requirements in 30 CFR 18, provisions in 30 CFR 75.1719-1 through 75.1719-3 contain voltage limitations, specify the amount of light required in mine workings, and address other safety requirements applicable to mine lighting systems.

For these reasons, MSHA believes that the approval regulations in 30 CFR 26 are redundant and is proposing to remove them.

B. 30 CFR 29—Portable Coal Dust/Rock Dust Analyzers, and Continuous Duty, Warning Light, Portable Methane Detectors for Use in Coal Mines

MSHA originally developed the regulations in 30 CFR 29 in the early 1970's to provide performance requirements for the approval of portable coal dust/rock dust analyzers for use in measuring the incombustible content of mine dusts; and for the approval of continuous duty, warning light, portable methane detectors for use in providing a visual signal of the presence of methane. At that time, MSHA anticipated that there would be a need for the approval of these types of instruments. MSHA has now determined, however, that the approval requirements in 30 CFR 29 for both portable coal dust/rock dust analyzers and continuous duty, warning light, portable methane detectors are unnecessary and is proposing to remove this part.

Even though MSHA is proposing to remove 30 CFR 29, portable coal dust/rock dust analyzers and continuous duty, warning light, portable methane detectors approved under this part could continue to be manufactured and distributed for use in mines, as long as this was done in accordance with the drawings and specifications upon which the approval was based and there were no changes in the approved devices. No changes in these approved devices could be made under 30 CFR 29 once it was deleted. Any future changes to such devices approved under 30 CFR 29 would require a new application for approval under 30 CFR 18 or 22, as discussed below.

Portable coal dust/rock dust analyzers. MSHA has never issued an approval for a portable coal dust/rock dust analyzer under 30 CFR 29. An experimental approval was granted in the late 1980's; however, the project was never completed. Furthermore, the performance requirements in 30 CFR 29 for portable coal dust/rock dust analyzers are now outdated. MSHA believes that 30 CFR 29 is no longer necessary or viable for approval of a portable coal dust/rock dust analyzer because there has been negligible

interest in approval of such an instrument, and the performance requirements are outdated. The elimination of 30 CFR 29, therefore, would not reduce protection afforded miners by the existing standards.

Although no such request is anticipated, should portable coal dust/rock dust analyzers be developed in the future, they could be approved under 30 CFR 18, Electric Motor Driven Mine Equipment and Accessories. Approvals are routinely issued under 30 CFR 18 for instruments that are not required by regulation, but are being used in underground mines, provided that they meet the requirements for intrinsic safety in 30 CFR 18.68 and are determined to be safe for their intended use as required by 30 CFR 18.20(b). In addition, the general requirements in 30 CFR 18, subpart A, as well as any other provisions necessary to address the design and performance of the instrument, are appropriate for the approval of portable coal dust/rock dust analyzers.

Continuous duty, warning light, portable methane detectors. MSHA has not issued a new approval for a continuous duty, warning light, portable methane detector under 30 CFR 29 since 1981. When 30 CFR 29 was developed, portable methane detectors approved under 30 CFR 22 did not have continuous monitoring, nor warning or alarm capability. Since 1981, however, advancements in technology have resulted in instruments that are suitable for approval both as portable methane detectors under 30 CFR 22 and which also have the capability to be used for continuous personal monitoring and warning or alarm. Portable methane detectors in use in mines now routinely have the capabilities specified in 30 CFR 29, and MSHA has approved them for the past 16 years under 30 CFR 22, Portable Methane Detectors.

If MSHA were to receive a new request under 30 CFR 29 for approval of a methane detector that is portable, operates continuously, and provides a warning to the user, the Agency could conduct an equivalent evaluation of the instrument using the approval requirements in 30 CFR 22. For these reasons, MSHA believes that 30 CFR 29 is unnecessary and that its removal would not reduce protection afforded miners by the existing standards.

III. Executive Order 12866

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of regulations. MSHA has determined that this proposed rule does not meet the criteria for a significant regulatory action and, therefore, has not

prepared a separate analysis of costs and benefits. The analysis contained in this preamble meets MSHA's responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. Under the RFA, MSHA must use the Small Business Administration (SBA) definition for a small mine of 500 or fewer employees or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. Although MSHA traditionally has considered small mines to be those with fewer than 20 employees, MSHA has analyzed the impact of the proposed rule on mines with 500 or fewer employees for the purposes of the RFA.

Regulatory Flexibility Certification

In accordance with § 605 of the RFA, MSHA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. No small governmental jurisdictions or nonprofit organizations are affected.

Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, MSHA must include in the proposed rule a factual basis for this certification. The Agency also must publish the regulatory flexibility certification in the **Federal Register**, along with its factual basis. The Agency believes that this analysis provides a reasonable basis for the certification in this case.

The Agency has provided a copy of this proposed rule and regulatory flexibility certification statement to the SBA Office of Advocacy.

Factual Basis for Certification

MSHA used a qualitative approach in concluding that the proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule removes approval regulations for equipment that can be approved under other existing MSHA regulations. The benefit of removing redundant provisions is that MSHA regulations would be more concise, clearer, easier to use, and reflect advances in technology. This proposed rule would have no economic impact on the mining industry.

V. Paperwork Reduction Act

This proposed rule contains no information collection requirements

subject to the Paperwork Reduction Act of 1995.

VI. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or by the private sector.

VII. Executive Order 13045

In accordance with Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, MSHA has evaluated the environmental health and safety risks of the proposed rule on children. The Agency has determined that the proposed rule would have no effect on children.

List of Subjects

30 CFR parts 26 and 29

Mine safety and health.

30 CFR parts 57 and 75

Mine safety and health, Underground mining.

Dated: August 24, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, under the authority of 30 U.S.C. 957 and 961 and for the reasons set out in the preamble, MSHA proposes to amend chapter I, title 30 of the Code of Federal Regulations as follows:

PART 26—LIGHTING EQUIPMENT FOR ILLUMINATING UNDERGROUND WORKINGS

1. Part 26 is removed.

PART 29—PORTABLE COAL DUST/ROCK DUST ANALYZERS, AND CONTINUOUS DUTY, WARNING LIGHT, PORTABLE METHANE DETECTORS FOR USE IN COAL MINES

2. Part 29 is removed.

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

3. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

4. Section 57.22303 is revised to read as follows:

§ 57.22303 Approved equipment (I-C mines).

Only electric equipment that is approved by MSHA under the

applicable requirements of 30 CFR parts 18 through 28 shall be used underground, except for submersible sump pumps.

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

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

Authority: 30 U.S.C. 811.

6. Section 75.506 is amended by revising paragraph (d) to read as follows:

§ 75.506 Electric face equipment; requirements for permissibility.

* * * * *

(d) The following equipment will be permissible electric face equipment only if it is approved under the appropriate parts of this chapter, or former Bureau of Mines' approval schedules, and it is in permissible condition:

- (1) Multiple-Shot Blasting Units, part 7, subpart D;
- (2) Electric Cap Lamps, part 19;
- (3) Electric Mine Lamps Other than Standard Cap Lamps, part 20;
- (4) Flame Safety Lamps;
- (5) Portable Methane Detectors, part 22;
- (6) Telephone and Signaling Devices, part 23;
- (7) Single-Shot Blasting Units;
- (8) Lighting Equipment for Illuminating Underground Workings; and
- (9) Methane-Monitoring Systems, part 27.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA98

Improving and Eliminating Regulations; Approved Books and Records

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

ACTION: Proposed rule; technical amendment.

SUMMARY: MSHA is proposing to remove certain regulations on Approved Books and Records. Forms required by these regulations are obsolete. In addition, the requirements are either redundant or can be easily included in other existing standards for greater clarity. MSHA would make conforming amendments to other safety regulations, as necessary.

DATES: Submit written comments on or before November 2, 1998.

ADDRESSES: Send comments by mail to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203; by facsimile to MSHA, Office of Standards, Regulations, and Variances at 703-235-5551; or by E-mail to comments@msha.gov. MSHA encourages commenters sending written comments by mail or facsimile to also send a computer disk of the comments.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances: 703-235-1910.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

In response to the Administration's regulatory reinvention initiative, MSHA conducted a review of its existing regulations to identify obsolete, outdated, redundant, or unnecessary provisions that could be removed or revised without reducing protection afforded miners. This proposed rule is part of MSHA's ongoing plan to improve its regulations. The removal of part 75, subpart S, from title 30 of the Code of Federal Regulations (30 CFR), would not reduce protection to miners because these provisions are covered by other MSHA standards. Conforming amendments to these other MSHA standards would be made, as appropriate. This proposed rule would streamline 30 CFR 75 by improving consistency and clarity in MSHA requirements for approved books and records for underground coal mines.

II. Discussion of Proposed Rule

Existing MSHA standards in 30 CFR 75, subpart S, Approved Books and Records, contains recordkeeping requirements for certain tests and examinations conducted in underground mines. Approved books for recording test results are specified, as well as the manner in which the books are to be maintained.

Existing 30 CFR 75.1800(b) specifies approved forms on which mine operators are to record results for provisions in 30 CFR 75.1801 through 75.1808. Of these, however, only 30 CFR 75.1806 and 75.1808 remain in 30 CFR 75, subpart S. In addition, all the forms listed are obsolete and are no longer in use.

Existing 30 CFR 75.1800(c) allows mine operators to use record books kept to comply with State requirements, in lieu of the books required in 30 CFR 75, subpart S, if the MSHA district manager

determines that those books provide the information specified in any record book required by the MSHA regulation.

The only records specified in 30 CFR 75, subpart S, are those in 30 CFR 75.1806 which require that the results of monthly examinations of high voltage circuit breakers, required by 30 CFR 75.800-3 and 75.800-4, be recorded in a book entitled "Monthly Examinations of Surface High Voltage Circuit Breakers", Form 6-1293. This form is no longer in use and MSHA no longer approves record books.

Existing 30 CFR 75.1808 requires that all approved books and records maintained under the provisions of 30 CFR 75.1801 through 75.1807 be stored in a fireproof repository on the surface of the mine, in a location chosen by the mine operator, and be made available to interested persons. This provision now applies only to 30 CFR 75.1806. To be consistent with other MSHA recordkeeping requirements, and to accommodate the electronic storage of data, MSHA proposes to delete this requirement.

The proposal recognizes the increasing use of electronic storage and retrieval of information and would revise 30 CFR 75.800-4 to accommodate this technology. MSHA encourages mine operators who store records electronically to provide a mechanism which will allow the continued storage and retrieval of records in the year 2000.

In addition, MSHA proposes to add a requirement to 30 CFR 75.800-4 that clarifies that the records be retained for one year. MSHA considers this additional requirement as a non-substantive clarification of the existing standard because mine operators already are required to make these records available to an authorized representative of the Secretary, which implies that they be retained.

III. Executive Order 12866 and Regulatory Flexibility Act

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of regulations. MSHA has determined that this proposed rule does not meet the criteria for a significant regulatory action and, therefore, has not prepared a separate analysis of costs and benefits. The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. The analysis contained in this preamble meets MSHA's responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

Regulatory Flexibility Certification

In accordance with § 605 of the RFA, MSHA certifies that this proposed rule