

DEPARTMENT OF LABOR**Mine Safety and Health Administration****30 CFR Part 77**

RIN 1219-AB15

Safety Standards for Reporting Daily Inspections of Surface Coal Mines; Technical Amendment**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.**ACTION:** Final rule; technical amendment.

SUMMARY: MSHA is making a nonsubstantive technical amendment to its safety standard which requires reports of daily inspection for surface coal mines. This technical amendment updates the standard to allow a mine official with authority and responsibility equivalent to the mine officials specified in the existing standard to sign or countersign the daily inspection reports. MSHA is amending the language of the standard to reflect changes in the management structure of the mining industry because traditional management structures, including job titles, have changed at many mines.

EFFECTIVE DATE: December 29, 1998.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA, phone 703-235-1910.

SUPPLEMENTARY INFORMATION:**I. Background**

Paragraph (d) of existing 30 CFR 77.1713 provides that all recorded examination reports of daily inspections for hazardous conditions at surface coal mines shall include the action taken to abate hazardous conditions and shall be signed or countersigned each day by at least one of the following persons: (1) the surface mine foreman; (2) the assistant superintendent of the mine; (3) the superintendent of the mine; or, (4) the person designated by the operator as responsible for health and safety at the mine.

The requirement that the report "be signed or countersigned" helps assure that examination results are maintained and made available, and that the appropriate level of mine management is made aware of hazardous conditions or problems requiring attention. In addition, the signing and countersigning requirement helps assure the integrity of records and enables mine management to review the quality of the examinations.

The persons specified in paragraph (d) are responsible for health and safety in the mine and have the authority and

are in a position to suspend operations and allocate resources to correct health and safety problems as they develop. However, the terms "mine foreman," "superintendent," and "assistant superintendent" may no longer describe the person with the authority and responsibility to correct problems within certain mine management structures in the coal mining industry. Not every operation employs persons with the titles enumerated in the standard.

Given the changing terminology used to describe some mine management titles in certain mining operations, an "equivalent person" can satisfy the requirement of the standard. An "equivalent person" would be a person with the same responsibility for safety and health at the mine as a person specified in paragraphs (d)(1) through (d)(4), and with the authority to suspend production if necessary and allocate resources from various segments of the operation to correct safety or health hazards as they develop.

MSHA has successfully used the term "equivalent person" in other rulemaking contexts in order to allow for alternative mine management titles. In MSHA's rulemaking for improved mandatory safety standards for ventilation in underground coal mines promulgated in 1996, MSHA received comments stating that some mines no longer use the terms "mine foreman," "mine manager," or "superintendent." In order to address those comments and to provide for alternative management titles, the final ventilation rule incorporated the phrase "or equivalent mine official" in several standards which require the reporting and countersigning of the results of certain inspections in underground mines. The standards using the phrase "equivalent mine official" are: paragraph (d) of § 75.311 Main mine fan operation; paragraph (f) of § 75.360 Preshift examination; paragraph (a) of § 75.363 Hazardous conditions; posting, correcting and recording; and, paragraph (h) of § 75.364 Weekly examination.

The final rule published today provides that an official equivalent to an official listed in (d)(1) through (d)(4) of § 77.1713 must sign or countersign the examination report. The purpose of this change is to allow for persons with the functional authority and responsibility equivalent to those persons specified in the standard to sign or countersign the reports. For purposes of this standard, a general manager, mine manager, or business unit manager having the requisite safety responsibility and authority may be equivalent to a

superintendent. Similarly, a production manager, maintenance manager, or operations manager may be equivalent to an assistant superintendent; and a production supervisor, maintenance supervisor, or pit foreman may be equivalent to a mine foreman. This list is not meant to be an exhaustive one, but merely illustrates the range of titles which may be encountered in mine management organizations today. In each case, the equivalent officials must have the authority and responsibility for correcting hazardous conditions or problems. In some mines, officials having these titles may not be equivalent officials and would not have authority to countersign in all instances. Other titles, in addition to those described above, may describe mine management officials with the appropriate authority and responsibility to correct hazards or allocate resources to resolve health and safety problems.

Allowing an "equivalent person" to sign or countersign the examination report does not reduce the protection afforded miners by the existing standard. In all cases, the mine official who signs or countersigns must have the equivalent authority and responsibility for correcting hazards and allocating resources as those persons listed in paragraphs (d)(1) through (d)(4) or the existing rule. This minor revision only recognizes changes in mine management structures and allows for persons equivalent in authority and responsibility to those already specified to sign or countersign the reports.

II. Procedural Matters

Pursuant to 5 U.S.C. 553(b)(3)(B), MSHA finds good cause that the notice and public comment procedures of the Administrative Procedure Act are unnecessary for this technical amendment. The minor revisions contained in this rulemaking are nonsubstantive in nature and do not affect the safety outcome of the rule. With this rulemaking, the Agency is reflecting changes in terminology in the industry to allow for an official equivalent in authority and responsibility to a specified official to sign or countersign the reports. The authority and responsibility of the official remain the same as in the existing standard.

III. Paperwork Reduction Act

This rule does not contain substantive changes to information collection requirements that require approval by OMB under the Paperwork Reduction Act of 1995. The paperwork requirements for § 77.1713 are approved under 1219-0083.

IV. 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 the cost for this rule is the same as under the existing rule. The primary benefit of the final rule is that it reflects changes in terminology in the industry and allows for an official equivalent in authority and responsibility to a specified official to sign or countersign the reports. MSHA has determined that this final rule does not meet the criteria of 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. 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. MSHA traditionally has considered small mines to be those with fewer than 20 employees. For the purposes of the RFA and this certification, MSHA has analyzed the impact of the final rule on all mines, on those with fewer than 20 employees, and on those with 500 or fewer employees, and has concluded that there is no additional cost to the mining industry.

Regulatory Flexibility Certification

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

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 final 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.

Factual Basis for Certification

MSHA has determined that this rule will not have a significant economic impact on a substantial number of small entities. The final rule merely adds language that conforms the standard to terminology currently used in the mining industry. The Agency recognizes that some mine operations no longer use the terms "mine foreman", "mine manager", or "superintendent." To provide for alternative management titles, the final rule incorporates the phrase "a mine official with authority and responsibility equivalent to a person listed in paragraphs (1) through (4) of this section."

V. Unfunded Mandates Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than \$100 million.

VI. Executive Order 13045

In accordance with Executive Order 13045, MSHA has evaluated the

environmental health or safety effects of the rule on children. The Agency has determined that the final rule will have no effect on children.

List of Subjects in 30 CFR Part 77

Mine safety and health, Surface mining.

Dated: October 23, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

For the reasons set forth in the preamble, Subpart R of part 77, subchapter N, title 30 of the Code of Federal Regulations is amended as follows:

PART 77—MANDATORY SAFETY STANDARDS, SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

1. The authority citation for Part 77 is revised to read as follows:

Authority: 30 U.S.C. 811.

2. Section 77.1713 is amended by revising paragraphs (d)(3) and (d)(4) and adding paragraph (d)(5) to read as follows:

§ 77.1713 Daily inspection of surface coal mine; certified person; reports of inspection.

* * * * *

(d) * * *

(3) The superintendent of the mine;

(4) The person designated by the operator as responsible for health and safety at the mine; or,

(5) An equivalent mine official.

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