

Dated: April 14, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, MSHA is proposing to amend chapter I, parts 56 and 57 of title 30 of the Code of Federal Regulations as follows:

PART 56—[AMENDED]

1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

2. Section 56.14130 is amended by revising paragraphs (h) and (j) to read as follows:

§ 56.14130 Roll-over protective structures (ROPS) and seat belts.

* * * * *

(h) *Seat belts construction.* Seat belts required under this section shall meet the requirement of SAE J386, "Operator Restraint System for Off-Road Work Machines" (1985, 1993, or 1997), or SAE J1194, "Roll-Over Protective Structures (ROPS) for Wheeled Agricultural Tractors" (1983, 1989, 1994, or 1999), as applicable, which are incorporated by reference.

* * * * *

(j) *Publications.* The incorporation by reference of these publications is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications may be examined at any Metal and Nonmetal Mine Safety and Health District Office; at MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209-3939; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096-0001.

3. Section 56.14131 as amended by revising paragraphs (c) and (d) to read as follows:

§ 56.14131 Seat belts for haulage trucks.

* * * * *

(c) Seat belts required under this section shall meet the requirements of SAE J386, "Operator Restraint System for Off-Road Work Machines" (1985, 1993, or 1997), which are incorporated by reference.

(d) The incorporation by reference of these publications is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1

CFR part 51. Copies of these may be examined at any Metal and Nonmetal Mine Safety and Health District Office; at MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209-3939; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096-0001.

PART 57—[AMENDED]

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

Authority: 30 U.S.C. 811.

5. Section 57.14130 is amended by revising paragraphs (h) and (j) to read as follows:

§ 57.14130 Roll-over protective structures (ROPS) and seat belts for surface equipment.

* * * * *

(h) *Seat belts construction.* Seat belts required under this section shall meet the requirement of SAE J386, "Operator Restraint System for Off-Road Work Machines" (1985, 1993, or 1997), or SAE J1194, "Roll-Over Protective Structure (ROPS) for Wheeled Agricultural Tractors" (1983, 1989, 1994, or 1999), as applicable, which are incorporated by reference.

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(j) *Publications.* The incorporation by reference of these publications is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications may be examined at any Metal and Nonmetal Mine Safety and Health District Office; at MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209-3939; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096-0001.

6. Section 57.14131 is amended by revising paragraphs (c) and (d) to read as follows:

§ 57.14131 Seat belts for surface haulage trucks.

* * * * *

(c) Seat belts required under this section shall meet the requirements of SAE J386, "Operator Restraint System for Off-Road Work Machines" (1985,

1993, or 1997), which are incorporated by reference.

(d) The incorporation by reference of these publications is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications may be examined at any Metal and Nonmetal Mine Safety and Health District Office; at MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209-3939; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096-0001.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 71 and 75

RIN 1219-AA98 (Phase 9)

Standards for Sanitary Toilets in Coal Mines

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

ACTION: Proposed rule; request for comments.

SUMMARY: MSHA is proposing to remove an application and approval requirement from existing mandatory standards. Currently, MSHA must approve sanitary toilets for use in underground coal mines, and MSHA and the National Institute for Occupational Safety and Health (NIOSH) must jointly approve sanitary toilets for use in surface coal mines. MSHA and NIOSH base their approval on criteria drawn from the American National Standard Institute's (ANSI's) *American National Standard for Sanitation—Nonsewered Waste-Disposal Systems—Minimum Requirements*. MSHA is proposing to amend its standards to state which sanitary toilets meet the standard in order to eliminate the need for an application for approval and its associated paperwork burden. This action would also directly inform manufacturers, mine operators, miners, and miners' representatives about which sanitary toilets meet the standard. Removing the application requirements would have no substantive effect on the sanitation standards.

DATES: Submit comments by May 21, 2003.

ADDRESSES: Clearly identify comments as such and submit them either electronically to comments@msha.gov; by facsimile to (202) 693-9441; or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209-3939. Comments are posted for public viewing at <http://www.msha.gov/currentcomments.htm>.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances, MSHA; Phone: 202-693-9442; FAX: 202-693-9441; E-mail: nichols-marvin@msha.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction.

The Office of Management and Budget's (OMB's) current approval for §§ 71.500 and 75.1712-6 under control number 1219-0101 expires on November 30, 2003. OMB approval was contingent on MSHA initiating rulemaking "to update and simplify this standard with the goal of eliminating unnecessary requirements and reducing the unnecessary burdens." In response to OMB concerns, MSHA developed this proposed rule to eliminate the need for applications for approval of sanitary toilets and their associated paperwork burden. This proposed rule would not address any other aspect of MSHA's standards for sanitary facilities at coal mines. Sanitary toilet facilities for surface work areas of underground mines would remain subject to the provisions of 30 CFR 75.1712-3, which is unchanged.

Proposed Rule, Direct Final Rule, and Significant Adverse Comments

Elsewhere in this issue of the **Federal Register**, we are publishing a direct final rule which is substantively identical to this companion proposed rule. MSHA has determined that this rulemaking is suitable for a direct final rule because we do not expect to receive any significant adverse comments. A significant adverse comment is one that explains (1) why the direct final rule is inappropriate, including challenges to the rule's underlying premise or

approach, or (2) why the direct final rule would be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of the direct final rule, MSHA would consider whether it warrants a substantive response in a notice and comment process.

We are publishing this companion proposed rule under section 553 of the Administrative Procedure Act to speed notice and comment rulemaking should we withdraw the direct final rule. All interested parties should comment by May 21, 2003 because we will not initiate an additional comment period.

II. Background Discussion of Existing Standards

A. Regulatory History

MSHA originally promulgated sanitation standards under the Federal Coal Mine Health and Safety Act of 1969. The Mining Enforcement and Safety Administration (MESA), MSHA's predecessor, promulgated 30 CFR 75.1712-6 on November 20, 1970 (35 FR 17890) and 30 CFR 71.500 on March 28, 1972 (37 FR 6368). No substantive changes have been made to either provision since that time.

Under existing standards, MSHA approves sanitary toilets for installation and use on an industry-wide basis, not on a mine-by-mine basis. MSHA issues three types of approvals: for surface work sites only, for underground work sites only, or for both surface and underground work sites. Once granted, the approval does not expire. Although some of the manufacturers and distributors of approved sanitary toilets are no longer in business, MSHA accepts these approved sanitary toilets as long as they are properly maintained.

B. Existing Application for Approval Process

The existing standards' requirements for an application for approval of a sanitary toilet can pose an unnecessary burden on manufacturers and mine operators. To effectively evaluate a sanitary toilet for use at a coal mine, MSHA requires that the application for approval contain—

- Information about the unit and its manufacturer;

- Instructions for operation and maintenance;
- Technical or performance test data; and
- Other information that may help in evaluating the unit's practicality for use in coal mining, such as information about the appropriateness and durability of the sanitary toilet for use underground.

C. MSHA and MSHA/NIOSH Approval Criteria

When reviewing the application for approval, MSHA and NIOSH review and evaluate the sanitary features of each toilet for the use intended. Currently, MSHA and NIOSH use portions of the American National Standard Institute's (ANSI's) *American National Standard for Sanitation—Nonsewered Waste-Disposal Systems—Minimum Requirements*, ANSI Z4.3-1987 (Reaffirmed 1995), as the criteria for evaluating these sanitary features. At a minimum, MSHA and NIOSH use the definitions for the various types of toilets and components of the toilet facility in Section 2; the general requirements for auxiliary features in Sections 3.7, 3.8, and 3.9; and the specific design criteria in Section 7.

Exceptions. Although a privy is listed in ANSI Z4.3-1987 (Reaffirmed 1995), MSHA does not approve the use of a privy at any coal mine because sewage could seep through the earth walls and contaminate ground water, earth walls could fail under the harsh conditions at a coal mine, and rain and run-off could flood the privy causing it to overflow and contaminate the mine. MSHA does not approve combustion or incinerating toilets underground because they can create a fire hazard by introducing an ignition source. MSHA does not require a toilet paper holder on unenclosed sanitary toilets underground because it is impractical.

D. Types of Approved Sanitary Toilets

The following table contains excerpts from ANSI Z4.3-1987 (Reaffirmed 1995) for those types of sanitary toilets that are approved for use in coal mines. MSHA will consider any toilet facility that is one of the types of toilets listed in the Agency's revised standards and meets these same criteria, to be in compliance.

Definitions (ANSI Z4.3 Section 2)	Types of toilet facilities (ANSI Z4.3 Section 7)
Vault Toilet	
2.2.2—A vault toilet facility is one wherein the waste is deposited without flushing in a permanently installed, watertight, below-ground container.	<p>7.1.1. The vault-toilet tank shall be durable and corrosion-resistant and shall provide a minimum capacity of 378 L (100 gal) per seat.</p> <p>7.1.2. Where a caustic chemical issued, the charge per seat shall be a minimum of 11.3 kg (25 lbs.) of caustic dissolved in 37.5 L (10 gal) of water.</p> <p>7.1.3. The chemical shall be drained and the receptacle recharged every 6 months when in continuous use, or at least at the beginning of each season of operation when in intermittent use, or when three-fourths full, whichever occurs first.</p> <p>7.1.4. Tanks shall be vented to the outside with a minimum nominal venting area of 45 cm² (7 in²).</p> <p>7.1.5. The tank shall be equipped with a manhole external to the structure for cleaning and for removal of caustic chemicals. The manhole shall be covered so as to prevent escape of gases and odors.</p>
Sealed-Bag Toilet	
2.2.3—A sealed-bag toilet facility is one wherein the waste of each user is deposited, without flushing, into a bag, generally plastic, which is then sealed for later disposal. The structure housing a sealed-bag-toilet facility may be permanent or portable.	<p>7.2.1. All materials and fittings shall be corrosion resistant.</p> <p>7.2.2. The bag shall be made of material of sufficient strength so as not to leak and, once sealed, so as to retain the waste until such time as the bag is removed from the toilet for disposal.</p>
Combustion or Incinerating Toilet	
2.3—A combustion- or incinerating-toilet facility is one wherein the waste is deposited, with or without flushing, into a combustion chamber, where it is incinerated. The structure housing a combustion- or incinerating-toilet facility may be permanent or portable.	<p>7.3.1. All external surfaces, including bowl and hopper, shall be easy to clean.</p> <p>7.3.2. The residue of combustion or incineration shall be sterile and inert.</p> <p>7.3.3. The flue effluents shall be free of viable bacteria.</p> <p>7.3.4. The combustion system and all fuel and electrical parts shall be safe and in compliance with applicable gas and electrical codes of local authorities. Where such codes do not exist, the installation shall comply with American National Standard National Electrical Code, ANSI/NFPA 70–1987, or with American National Standard for Gas-Fired Toilets, ANSI Z21.61–1983, and American National Standard National Fuel Gas Code, ANSI Z223.1–1984 and ANSI Z223.1a–1987.</p>
Chemical Toilet and Biological Toilet	
<p>2.2.1—A chemical-toilet facility is a nonflush-toilet facility wherein the waste is deposited directly into a container containing a solution of water and chemical. It may be housed in a permanent or portable structure..</p> <p>2.4—A biological-toilet facility is one wherein the waste is deposited, with or without flushing, into a waste container integral to the toilet facility, where it is treated by means of biological agents or aeration.</p>	<p>7.4.1. Waste containers shall be fabricated from nonabsorbent, watertight materials.</p> <p>7.4.2. Portable chemical and biological toilets and urinals that are free-standing and not installed in a toilet room do not require a ventilation system.</p> <p>7.4.3. Chemicals or biological agents, if used in the waste container, shall be in accordance with applicable federal, state, and local provisions.</p>
Nonwater-Flush Toilet	
2.1.2—A nonwater-flush-toilet facility is one wherein the waste is flushed from the bowl and the bowl cleansed by a fluid other than water, with the fluid deposited in a container or receptacle, or treated and recirculated as in 2.1.1; such facilities include, but are not limited to, oil-flush-toilet facilities.	<p>7.5.1. All materials such as bowl, piping, and fittings that are in contact with waste and chemicals shall be nonabsorbent and corrosion-resistant.</p> <p>7.5.2. Waste passages shall have smooth surfaces and shall be free of obstructions, recesses, or chambers that would permit fouling.</p> <p>7.5.3. Flushing shall be accomplished by controls operable without special knowledge. Upon flushing, fluid shall enter the bowl and pass through with a vigorous flow sufficient to carry the waste from the bowl into the waste container.</p> <p>7.5.4. Chemicals, if used in the waste container, shall be in accordance with applicable local, state, and federal provisions.</p>

Definitions (ANSI Z4.3 Section 2)	Types of toilet facilities (ANSI Z4.3 Section 7)
Water-Flush Toilet	
2.1.1—A water-flush-toilet facility is one wherein the waste is carried from the bowl and the bowl cleansed by water, and the combined water and waste is deposited into a container or receptacle, or recirculated by a closed system for flushing purposes; such facilities include, but are not limited to, vacuum-toilet facilities.	<p>7.6.1. All materials such as bowl, piping, and fittings that are in contact with waste and chemicals shall be nonabsorbent and corrosion-resistant.</p> <p>7.6.2. Waste passages shall have smooth surfaces and shall be free of obstructions, recesses, or chambers that would permit fouling.</p> <p>7.6.3. Flushing shall be accomplished by controls operable without special knowledge.</p> <p>7.6.4. Chemicals, if used, shall be in accordance with applicable local, state, and federal provisions.</p>

Source: American National Standard Institute (ANSI), *American National Standard for Sanitation—Nonsewered Waste-Disposal Systems—Minimum Requirements*, (ANSI Z4.3–1987 (Reaffirmed 1995)).

III. Section-by-Section Discussion

The following section-by-section discussion explains the proposed rule's revisions to the existing standards. The proposed rule would provide the same level of protection for miners as the existing standards because it would guarantee that sanitary toilets meet the same requirements as those which were approved through the existing application process. The proposed rule would have no substantive effect on the sanitation standards at coal mines.

A. 30 CFR 71.500 for Surface Coal Mines

Existing § 71.500 requires all surface coal mine operators to provide at least one approved sanitary toilet at a location convenient to each surface work site and one additional approved sanitary toilet for each 10 miners working at a location. MSHA and NIOSH jointly approve sanitary toilets for use at surface mines.

The proposed rule would eliminate the application for approval requirement and its associated paperwork burden, and provide notice of which types of sanitary toilets may be used by listing them directly in the standard. The proposed rule also would require sanitary toilets to have a toilet paper holder with an adequate supply of toilet paper and a toilet seat with a hinged lid, as is required in Section 3 of ANSI Z4.3–1987 (Reaffirmed 1995); and would prohibit the use of privies.

NIOSH has reviewed this regulatory action and concurs that the application for approval requirements can be removed without reducing protection for miners. NIOSH also agrees that the regulatory action would not change the criteria for the sanitary toilets. MSHA has incorporated NIOSH's comments in this regulatory action.

B. 30 CFR 75.1712–6 for Underground Coal Mines

Existing § 75.1712–6 requires all underground coal mine operators to

provide and maintain one approved sanitary toilet in a dry location under protected roof within 500 feet of each working place where miners regularly work. Under the existing standard, MSHA must approve sanitary toilets for use at underground locations.

The proposed rule would eliminate the application requirement and its associated paperwork burden, and provide notice of which types of sanitary toilets may be used by listing them directly in the standard. The proposed rule also would require sanitary toilets to have a toilet paper holder with an adequate supply of toilet paper and a toilet seat with a hinged lid, as is required in Section 3 of ANSI Z4.3–1987 (Reaffirmed 1995); would prohibit privies and combustion or incinerating toilets underground; and would remove the obsolete December 30, 1970, effective date.

IV. The Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and Executive Order 12866

In accordance with Executive Order (E.O.) 12866, MSHA has analyzed the estimated costs and benefits associated with this proposed rule, and has included its Preliminary Regulatory Economic Analysis (PREA) in this preamble. This proposed rule would not include any additional costs for the mining industry and would eliminate the costs associated with filing an application for approval. This proposed rule would not be an economically significant regulatory action under § 3(f)(1) of E.O. 12866.

In accordance with § 605 of the Regulatory Flexibility Act (RFA), MSHA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, the Agency must include the factual basis for this certification in the proposed

rule. Accordingly, the Agency is publishing the factual basis for its regulatory flexibility certification statement in the **Federal Register**, as part of this preamble, and is providing a copy to the Small Business Administration (SBA), Office of Advocacy. MSHA also will mail a copy of the proposed rule, including the preamble and certification statement, to coal mine operators and miners' representatives and post it on the Agency's Internet Home Page at www.msha.gov.

Factual Basis for Certification.

MSHA is issuing a proposed rule amending 30 CFR parts 71 and 75, concerning applications for approval of sanitary toilets. The Agency is amending its regulations to state which sanitary toilets meet the standard in order to eliminate the need for underground and surface coal mines to file an application for approval and to avoid the associated cost and paperwork burden.

Manufacturers are the primary applicants for MSHA or MSHA/NIOSH approval of sanitary toilets. In the last four years, seven manufacturers of portable toilets filed applications to request approval of sanitary toilets. During this same period, only one mine operator filed an application to request approval of sanitary toilets. MSHA expects that the number and distribution of applications over the last four years is representative of future applications in the absence of this proposed rule. MSHA therefore estimates that, on average, in the absence of the proposed rule, portable toilet manufacturers would file 1.75 applications each year, and mine operators would file 0.25 applications each year.

Traditionally, MSHA has considered a small mine to be one with fewer than 20 employees. Based on MSHA's definition, the mine operator is considered large because it employs 20

or more workers. The Small Business Administration (SBA) definition for a small business in the mining industry is one with 500 or fewer employees. The mine operator that filed the application is considered a small business by SBA's definition in that it employs fewer than 500 workers. Based on SBA's definition, manufacturers of portable toilets (plastics), NAICS Code 326191 (SIC Code 3088), are defined as small if they have fewer than 500 employees. All of the portable toilet manufacturers are small businesses, according to SBA, because each employs fewer than 500 workers.¹

Compliance Costs

Cost savings from this proposed rule would accrue to sanitary toilet manufacturers and mine operators because they would no longer have to file an application for approval of sanitary toilets. Cost savings from this rule are estimated at \$407 annually. The cost savings are based upon the elimination of the filing of an average of 1.75 applications per year by manufacturers and 0.25 applications per year by mine operators. For the manufacturers, cost savings would be \$296 annually. For the mine operator, cost savings would be \$111 annually.

The annual cost savings of \$296 for manufacturers is derived in the following manner. On average, a first-line supervisor at a toilet manufacturing facility, earning \$20.82 per hour,² takes 8 hours to prepare an application (1.75 applications \times 8 hours \times \$20.82 per hour = \$291.48). In addition, a clerical worker, earning \$12.66 per hour,³ takes 0.1 hour to copy and mail an application (1.75 applications \times 0.1 hour \times \$12.66 per hour = \$2.22). Furthermore, MSHA estimates that, on average, each application is two pages long, photocopying costs are \$0.15 per page, and postage is \$1 [1.75 applications \times ((2 pages \times \$0.15 per page) \times \$1) = \$2.28].

The annual cost savings of \$111 for the mine operator is derived in the following manner. On average, a mine supervisor, earning \$54.92 per hour, takes 8 hours to prepare an application

(0.25 application \times 8 hours \times \$54.92 per hour = \$109.84). In addition, a clerical worker, earning \$19.58 per hour, takes 0.1 hour to copy and mail an application (0.25 application \times 0.1 hour \times \$19.58 per hour = \$0.49). Furthermore, MSHA estimates that, on average, each application is two pages long, photocopying costs are \$0.15 per page, and postage is \$1 [0.25 application \times ((2 pages \times \$0.15 per page) \times \$1) = \$0.33].

This proposed rule would eliminate the application process and provide simple compliance information directly to the public, thus eliminating the annual cost burden.

V. Paperwork Reduction Act

This proposed rule would not contain any additional information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Consequently, the information collection currently approved by OMB under control number 1219-0101 would no longer be necessary and would be withdrawn.

This proposed rule would result in 16 annual burden hour savings and associated annual burden cost savings of \$404 related to elimination of 2 applications annually for sanitary toilets. Of this total, for the 1.75 portable toilet manufacturers, there would be 14 burden hours savings annually and associated annual burden costs savings of \$294. For the 0.25 mine operators, there would be 2 burden hours savings annually and associated annual burden cost savings of \$110.

The annual reduction of 14 burden hours and the \$294 annual burden costs savings for the 1.75 portable sanitary toilet manufacturers are derived in the following manner. On average, a first-line supervisor at a toilet manufacturing facility, takes 8 hours to prepare an application (1.75 applications \times 8 hours = 14 hours). In addition, a clerical worker takes 0.1 hour (or 6 minutes) to copy and mail an application (1.75 applications \times 0.1 hour = 0.18 hours). The hourly wage rate for a first-line supervisor at a portable toilet manufacturing facility is \$20.82 (\$20.82 \times 14 burden hours = \$291.48). The hourly wage rate for a clerical worker (billing and posting clerks) is \$12.66 (\$12.66 \times 0.18 burden hours = \$2.28).

The annual reduction of 2 burden hours and the \$110 annual burden costs savings for the 0.25 mines are derived in the following manner. On average, a mine supervisor takes 8 hours to prepare an application (0.25 applications \times 8 hours = 2 hours). In addition, a clerical worker takes 0.1

hour (or 6 minutes) to copy and mail an application (0.25 applications \times 0.1 hour = 0.03 hour). The hourly wage rate for a mine supervisor is \$54.92 (\$54.92 \times 2 hours = \$109.84). The hourly wage rate for a clerical worker is \$19.58 (\$19.58 \times 0.03 hours = \$0.58).

This proposed rule would remove this burden by eliminating the application process and providing information directly to the public.

VI. Other Regulatory Considerations

A. The National Environmental Policy Act of 1969

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires each Federal agency to consider the environmental effects of its actions. This proposed rule would have no adverse environmental impact because it has no substantive effect on the existing standards.

B. Unfunded Mandates Reform Act of 1995

We have determined, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, that this proposed rule would not include any Federal mandate that may result in increased expenditures by state, local, or tribal governments in the aggregate of more than \$100 million, or increased expenditures by the private sector of more than \$100 million. We also determined, for purposes of § 203, that this proposed rule would not significantly or uniquely affect these entities.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This proposed rule would not be subject to Executive Order 12630 because it would not involve implementation of a policy with "takings" implications.

D. Executive Order 12988: Civil Justice Reform

In accordance with Executive Order 12988, we have determined that this proposed rule would not unduly burden the Federal court system. We wrote the proposed rule to provide a clear legal standard for affected conduct and have reviewed it to eliminate drafting errors and ambiguities.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, we have evaluated the environmental health and safety effects of this proposed rule and have

¹ Small Business Administration, Small Business Size Standards Matched to North American Industry Classification System (NAICS), Effective July 1, 2002. (<http://www.sba.gov/size/sizetable.html>).

² U.S. Department of Labor, Bureau of Labor Statistics, Career Guide to Industries—Chemicals Manufacturing, Except Drugs. (<http://www.bls.gov/oco/cgs/008.htm>).

³ U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics—2001 National Occupational Employment and Wage Estimates. (<http://www.bls.gov/oes/2001/oes433021.htm>).

determined that it would have no adverse effects on children.

F. Executive Order 13132: Federalism

In accordance with Executive Order 13132, we have reviewed this proposed rule and have determined that it would not have "federalism" implications.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175, we certify that this proposed rule would not impose substantial direct compliance costs on Indian tribal governments.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, we have reviewed this proposed rule and have determined that it would have no effect on the production or price of coal. Consequently, it would have no significant adverse effect on the supply, distribution, or use of energy, and no reasonable alternatives to this action would be necessary.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed previously in this preamble, MSHA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects

30 CFR Part 71

Coal mines, Mine safety and health, Surface mining.

30 CFR Part 75

Coal mines, Mine safety and health, Underground mining.

Dated: April 15, 2003.

John R. Correll,

Deputy Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, MSHA is amending chapter I, parts 71 and 75, of title 30 of the Code of Federal Regulations as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 30 U.S.C. 811, 951, 957.

2. Section 71.500 is revised to read as follows:

§ 71.500 Sanitary toilet facilities at surface work sites; installation requirements.

(a) Each operator of a surface coal mine shall provide and install at least one sanitary toilet in a location convenient to each surface work site. A single sanitary toilet may serve two or more surface work sites in the same surface mine where the sanitary toilet is convenient to each such work site.

(b) Where 10 or more miners use such toilet facilities, sufficient toilets shall be furnished to provide approximately one sanitary toilet for each 10 miners.

(c) Sanitary toilets shall have an attached toilet seat with a hinged lid and a toilet paper holder together with an adequate supply of toilet tissue.

(d) Only flush or nonflush chemical or biological toilets, combustion or incinerating toilets, sealed bag toilets, and vault toilets meet the requirements of this section. Privies are prohibited.

Note to § 71.500: Sanitary toilet facilities for surface work areas of underground mines are subject to the provisions of § 75.1712–3 of this chapter.)

PART 75—[AMENDED]

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

Authority: 30 U.S.C. 811.

4. Section 75.1712–6 is revised to read as follows:

§ 75.1712–6 Underground sanitary facilities; installation and maintenance.

(a) Except as provided in § 75.1712–7, each operator of an underground coal mine shall provide and maintain one sanitary toilet in a dry location under protected roof, within 500 feet of each working place in the mine where miners are regularly employed during the mining cycle. A single sanitary toilet may serve two or more working places in the same mine, if it is located within 500 feet of each such working place.

(b) Sanitary toilets shall have an attached toilet seat with a hinged lid and a toilet paper holder together with an adequate supply of toilet tissue, except that a toilet paper holder is not required for an unenclosed toilet facility.

(c) Only flush or nonflush chemical or biological toilets, sealed bag toilets, and vault toilets meet the requirements of this section. Privies and combustion or

incinerating toilets are prohibited underground.

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Copyright Office

37 CFR Part 260

[Docket No. 96–5 CARP DSTR A]

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office is publishing for public comment proposed rules that will govern SoundExchange, an unincorporated division of the Recording Industry Association of America, Inc., when it functions as the designated agent for the purpose of receiving royalty payments and statements of accounts from nonexempt subscription digital transmission services which make digital transmissions of sound recordings under a statutory license.

DATES: Comments are due no later than May 21, 2003.

ADDRESSES: An original and five copies of any comment shall be delivered by hand to: Office of the General Counsel, Copyright Office, James Madison Building, Room LM–403, First and Independence Avenue, SE., Washington, DC; or mailed to: Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, DC 20024–0977.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Section 106(6) of the Copyright Act, title 17 of the United States Code, gives copyright owners of sound recordings an exclusive right to perform their copyrighted work publicly by means of a digital audio transmission. This right is limited by section 114(d), which allows certain noninteractive digital audio services to transmit sound recordings under a compulsory license,