

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, 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.

#### *Factual Basis for Certification*

Based on the fact that there is no substantive change in the recordkeeping requirements, MSHA has determined that there would be no impact on small businesses. No small governmental jurisdictions or nonprofit organizations are affected. 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. In addition, MSHA will mail a copy of the proposed rule, including the preamble and regulatory flexibility certification statement, to all affected mines and miners' representatives.

#### **IV. Paperwork Reduction Act**

No new or additional paperwork burdens are included in this proposed amendment. Test records are required in existing 30 CFR 75.800-3 and 75.800-4 and are approved under OMB control number 1219-0067. The Paperwork Reduction Act of 1995 (PRA 95), however, requires that regulations specify a time period for the retention of records. Existing 30 CFR 75.800-3 and 75.800-4 do not specify a retention period for maintaining these required test records. MSHA, consistent with other MSHA recordkeeping requirements, is proposing that these records be kept for at least one year.

#### **V. 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.

#### **VI. 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 effects on children.

#### **List of Subjects in 30 CFR Part 75**

Mine safety and health, Reporting and recordkeeping requirements, Underground coal mines.

Dated: August 24, 1998.

**J. Davitt McAteer,**

*Assistant Secretary for Mine Safety and Health.*

For the reasons discussed in the preamble, MSHA proposes to amend part 75, subchapter O, chapter I, title 30 of the Code of Federal Regulations as follows:

#### **PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES**

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

**Authority:** 30 U.S.C. 811.

2. Section 75.800-4 is revised to read as follows:

#### **§ 75.800-4 Testing, examination, and maintenance of circuit breakers; record.**

(a) *Recordkeeping.* The operator shall make a record of each test, examination, repair, or adjustment of all circuit breakers protecting high-voltage circuits which enter any underground area of the mine.

(b) *Record security.* These records shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

(c) *Retention and access.* These records shall be retained at a surface location at the mine for at least one year and shall be made available to authorized representatives of the Secretary, the representative of miners, and other interested persons.

#### **Subpart S of Part 74—[Removed and reserved]**

3. Part 75 subpart S—Approved Books and Records, consisting of §§ 75.1800, 75.1806, and 75.1808, is removed and reserved.

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#### **DEPARTMENT OF LABOR**

#### **Mine Safety and Health Administration**

#### **30 CFR Parts 70, 71, and 90**

RIN 1219-AA98

#### **Improving and Eliminating Regulations; Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers**

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

**ACTION:** Proposed rule; technical amendment.

**SUMMARY:** MSHA has revised and updated its Informational Report No. 1121 (IR 1121) to include currently approved sampling equipment and to permit the use of fast-response calibrators having a volumetric tube. The updated document is Informational Report No. 1240 (IR 1240). This proposed rule would update the existing incorporation by reference of IR 1121 in MSHA's coal mine respirable dust standards to reference IR 1240.

**DATES:** Submit all comments by 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](mailto:comments@msha.gov). MSHA encourages commenters sending written comments by mail or facsimile to also send a computer disk of the comments. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for MSHA, 725 17th Street NW., Room 10235, Washington, DC 20503.

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

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Discussion of Proposal**

Existing coal mining regulations §§ 70.204, 71.204, and 90.204 in title 30 of the Code of Federal Regulations (30 CFR) require that approved respirable dust sampling devices be calibrated in accordance with MSHA Informational Report No. 1121 (IR 1121) "Standard Calibration and Maintenance Procedures for Wet Test Meters and Coal Mine Respirable Dust Samplers (Supersedes IR 1073)." These

regulations state that amendments to IR 1121 will be announced in the **Federal Register**. This proposed rule would update the incorporation by reference of MSHA IR 1121, with the most recent revision "IR 1240" entitled, "Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers." This proposed rule, like the existing rule, contains information collection requirements subject to the Paperwork Reduction Act of 1995. MSHA has submitted the information collection request to OMB for approval.

IR 1240 addresses improved technology and describes the standard procedures currently used by MSHA for calibration of approved personal samplers and associated equipment and for maintenance of this equipment. IR 1240 continues to require operators to record calibration parameters and results. 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.

IR 1240 includes the calibration and maintenance procedures for the newest approved sampling unit for collecting respirable coal mine dust which uses constant flow technology and a power source which is different from other approved sampling units. The constant flow technology permits the calibration of this unit without concern for flow fluctuations. IR 1240 notifies mine operators, and other interested parties, that such units are to be maintained as approved to ensure the accurate collection of respirable coal mine dust samples as required in 30 CFR 70, 71, and 90.

IR 1240 also permits the use of fast-response calibrators for calibrating all approved sampling units. It takes only 1 to 2 minutes per unit to calibrate a sampling unit using this newer technology, as opposed to 30 minutes using the traditional calibration systems addressed in IR 1121.

Copies of IR 1240 are available at MSHA, Coal Mine Safety and Health, Room 816, 4015 Wilson Boulevard, Arlington, VA 22203 and at each MSHA Coal Mine Safety and Health district and subdistrict office.

**II. Paperwork Reduction Act**

The collection of information contained in this proposal is subject to review by OMB under the Paperwork Reduction Act of 1995 (PRA 95). The title, description, and respondent categories are discussed below with an estimate of the annual information collection burden.

With respect to the following collection of information, MSHA invites comments on: (1) whether the proposed collection of information is necessary for proper performance of MSHA's functions, including whether the information would have practical utility; (2) the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

*Description:* Proposed 30 CFR 70.204, 71.204, and 90.204 would require that approved respirable dust sampling devices be calibrated in accordance with MSHA Informational Report No. 1240 (IR 1240) "Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers." The calibration procedures for wet test meters and the bubble tube method which are described in IR 1240 both require data to be recorded as part of the calibration procedure. These two calibration methods are rarely used in the mining industry because (1) most mines that calibrate their own pumps now use instantaneous flow meters for this purpose; and (2) almost all but the largest underground mines send their pumps out to be calibrated, rather than calibrating them themselves.

*Description of Respondents:* The respondents are mine operators. MSHA estimates that this information collection requirement affects about 900 coal mines and that these mines calibrate about 1,850 pumps per year.

*Information Collection Burden:* The recording of calibration data is considered an information collection burden under PRA 95. MSHA estimates

that it takes about 30 minutes to calibrate each pump using the bubble tube method, including recording calibration-related information and marking the pump flowmeter; that it takes about 3 minutes (0.05 hour) to calibrate each pump with a fast-response calibrator and mark the pump flowmeter; and that pump calibration is done by the mine's technical staff at a cost of about \$42 per hour. Further, MSHA estimates that 897 mines calibrate 1814 pumps with a fast response calibrator and three mines calibrate 36 pumps using the bubble tube method of pump calibration. The average time for pump calibration is 0.059 hour. MSHA anticipates that no mine operators use the wet test meter method of pump calibration.

The total estimated annual information collection burden for pump calibration and marking the pump flowmeter is about 109 hours. The estimated annual cost for this information collection burden is about \$4,580.

MSHA estimates that most mine operators incurred the capital and start-up costs associated with pump calibration prior to October 1, 1995. For the purpose of this analysis, however, MSHA estimates that about five new mines per year would purchase a fast-response calibrator. Fast-response calibrators cost about \$900 and have a useful life of about 10 years. The annualization factor for an equipment life of 10 years is 0.142. The annual cost for calibrators is about \$640.

MSHA estimates that about 2010 mines send about 2040 pumps per year to an outside contractor for calibration and maintenance. This service includes pump calibration and marking the flowmeter; certification of pump calibration; cleaning and checking pump function; replacing worn or damaged parts; and shipping and handling. MSHA estimates that the average cost for this service is about \$100 per pump. Fast-response calibrators also would require routine calibration and maintenance each year at a cost of about \$100. The cost for these services is \$204,500.

The following chart summarizes MSHA's estimates for compliance with PRA 95.

Provision	Number of respondents	Hours per response	Number of responses	Number of responses per respondent	Annual cost	Total hours
70.204(a), 71.204(a), 90.204(a).	900	0.059 (average)	1849	2 (average) .....	\$204,500 + \$639 = \$205,139	109

The burden hours and costs associated with pump calibration and marking the flowmeter do not represent any increase for the mining industry because mine operators currently are required to perform these activities.

Under section 3507(o) of PRA 95, the Agency has submitted a copy of this proposed rule to OMB for its review and approval of this information collection. Interested persons are requested to send comments regarding the burden estimates or any other aspect of the collection of information, including suggestions for reducing the burden, (1) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for MSHA; 725 17th Street NW., Room 10235; Washington, DC 20503, and (2) to Patricia W. Silvey, Director; Office of Standards, Regulations, and Variances, MSHA; 4015 Wilson Boulevard, Room 631; Arlington, VA 22203.

### III. Executive Order 12866

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of regulations. MSHA estimates that the cost impact of the proposed rule is the same as under the existing rule. The primary benefit of the proposed rule is that it provides mine operators alternatives in maintaining and calibrating dust sampling units. It takes only 1 to 2 minutes per unit to calibrate a sampling unit using this newer technology, as opposed to 30 minutes using the traditional calibration systems addressed in IR 1121. 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. In addition, MSHA will mail a copy of the proposed rule, including the preamble and regulatory flexibility certification statement, to all affected mines and miners' representatives.

### 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 updates the regulations to incorporate by reference the latest revision of an MSHA informational report describing the calibration and maintenance procedures for coal mine respirable dust sampling units. The benefit of updating provisions is that MSHA regulations would be clearer and reflect advances in technology. This proposed rule would have no economic impact on the mining industry. The cost impact on mines employing fewer than 20 miners or those employing 500 or fewer miners would be the same as under the existing rule.

### 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.

### V. 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.

### VI. National Environmental Policy Act

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) requires each Federal agency to consider the environmental effects of proposed actions and to prepare an Environmental Impact Statement on major actions significantly affecting the quality of the human environment. MSHA has reviewed the proposed standards in accordance with the requirements of NEPA, the regulations of the Council on Environmental Policy (40 CFR 1500), and the NEPA procedures of the Department of Labor (29 CFR 11). As a result of this review, MSHA has determined that this proposed rule would have no environmental impact.

### List of Subjects in 30 CFR Parts 70, 71, and 90

Coal mines, Incorporation by reference, Scientific equipment, Mine safety and health.

Dated: August 24, 1998.

**J. Davitt McAteer,**

*Assistant Secretary for Mine Safety and Health.*

Accordingly, under the authority of 30 U.S.C. 811 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 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

**Authority:** 30 U.S.C. 811, 813(h), 957, 961.

2. The authority citation for subpart C is revised to read as follows:

**Authority:** 30 U.S.C. 811, 813(h), 957, 961.

3. Section 70.204 is amended by revising paragraphs (a) and (e) to read as follows:

#### § 70.204 Approved sampling devices; maintenance and calibration.

(a) Approved sampling devices shall be maintained as approved under part 74 (Coal Mine Dust Personal Sampler Units) of this chapter and calibrated in accordance with MSHA Informational Report IR 1240 "Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers (supersedes IR 1121)" by a person certified in accordance with § 70.203 (Certified person; maintenance and calibration).

\* \* \* \* \*

(e) MSHA Informational Report IR 1240 referenced in paragraph (a) of this section is incorporated by reference.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected or obtained at MSHA, Coal Mine Safety and Health, 4015 Wilson Boulevard, Room 816, Arlington, VA 22203 and at each MSHA Coal Mine Safety and Health district and subdistrict office. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

**PART 71—[AMENDED]**

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

**Authority:** 30 U.S.C. 811, 951, 957, 961.

5. The authority citation for subpart C is revised to read as follows:

**Authority:** 30 U.S.C. 811, 951, 957, 961.

6. Section 71.204 is amended by revising paragraphs (a) and (e) to read as follows:

**§ 71.204 Approved sampling devices; maintenance and calibration.**

(a) Approved sampling devices shall be maintained as approved under part 74 (Coal Mine Dust Personal Sampler Units) of this chapter and calibrated in accordance with MSHA Informational Report IR 1240 "Calibration and

Maintenance Procedures for Coal Mine Respirable Dust Samplers (supersedes IR 1121)" by a person certified in accordance with § 71.203 (Certified person; maintenance and calibration).

\* \* \* \* \*

(e) MSHA Informational Report IR 1240 referenced in paragraph (a) of this section is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected or obtained at MSHA, Coal Mine Safety and Health, 4015 Wilson Boulevard, Room 816, Arlington, VA 22203 and at each MSHA Coal Mine Safety and Health district and subdistrict office. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

**PART 90—[AMENDED]**

7. The authority citation for part 90 continues to read as follows:

**Authority:** 30 U.S.C. 811, 813(h).

8. The authority citation for subpart C is revised to read as follows:

**Authority:** 30 U.S.C. 811, 813(h), 957.

9. Section 90.204 is amended by revising paragraphs (a) and (e) to read as follows:

**§ 90.204 Approved sampling devices; maintenance and calibration.**

(a) Approved sampling devices shall be maintained as approved under part 74 (Coal Mine Dust Personal Sampler Units) of this chapter and calibrated in accordance with MSHA Informational Report IR 1240 "Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers "(supersedes IR 1121)" by a person certified in accordance with § 90.203 (Certified person; maintenance and calibration).

\* \* \* \* \*

(e) MSHA Informational Report IR 1240 referenced in paragraph (a) of this section is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected or obtained at MSHA, Coal Mine Safety and Health, 4015 Wilson Boulevard, Room 816, Arlington, VA 22203 and at each MSHA Coal Mine Safety and Health district and subdistrict office. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

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