

337(f)(2) of the Tariff Act of 1930) to recover for the United States the civil penalty accruing to the United States under that section for the breach of a cease and desist order or a consent order, and to obtain a mandatory injunction incorporating the relief the Commission deems appropriate for enforcement of the cease and desist order or consent order; or

\* \* \* \* \*

(c) *Court enforcement.* To obtain judicial enforcement of an exclusion order, a cease and desist order, a consent order, or a sanctions order, the Commission may initiate a civil action in the U.S. district court. In a civil action under section 337(f)(2) of the Tariff Act of 1930, the Commission may seek to recover for the United States the civil penalty accruing to the United States under that section for the breach

of a cease and desist order or a consent order, and may ask the court to issue a mandatory injunction incorporating the relief the Commission deems appropriate for enforcement of the cease and desist order or consent order. The Commission may initiate a proceeding to obtain judicial enforcement without any other type of proceeding otherwise available under section 337 or this subpart or without prior notice to any person, except as required by the court in which the civil action is initiated.

40. Amend § 210.79 by revising paragraph (a) to read as follows:

**§ 210.79 Advisory Opinions.**

(a) *Advisory opinions.* Upon request of any person, the Commission may, upon such investigation as it deems necessary, issue an advisory opinion as to whether any person's proposed

course of action or conduct would violate a Commission exclusion order, cease and desist order, or consent order. The Commission will consider whether the issuance of such an advisory opinion would facilitate the enforcement of section 337 of the Tariff Act of 1930, would be in the public interest, and would benefit consumers and competitive conditions in the United States, and whether the person has a compelling business need for the advice and has framed his request as fully and accurately as possible. Advisory opinion proceedings are not subject to sections 554, 555, 556, 557, and 702 of title 5 of the United States Code.

\* \* \* \* \*

41. Amend part 210 by adding Appendix A to read as follows:

**APPENDIX A TO PART 210.—ADJUDICATION AND ENFORCEMENT**

Initial determination concerning	Petitions for review due	Response to petitions due	Commission deadline for determining whether to review the initial determination
Violation §210.42(a)(1) .....	12 days from service of the initial determination.	8 days from service of any petition.	60 days from service of the initial determination.
Forfeiture of respondent's bond §210.50(d)(3).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination.
Forfeiture of complainant's temporary relief bond §210.70(c).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination.
Summary initial determination that would terminate the investigation if it became the Commission's final determination §210.42(c).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination.
Other matters §210.42(c) .....	5 business days from service of the initial determination.	5 business days from service of any petition.	30 days from service of the initial determination on private parties.
Formal enforcement proceedings §210.75(b).	By order of the Commission .....	By order of the Commission .....	90 days from service of the initial determination on private parties.

Issued: December 14, 2007.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E7-24591 Filed 12-19-07; 8:45 am]

BILLING CODE 7020-02-P

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Part 75**

**RIN 1219-AB40**

**Fire Extinguishers in Underground Coal Mines**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Proposed rule; close of comment period.

**SUMMARY:** The Mine Safety and Health Administration (MSHA), is proposing to amend the current standard for the quantity and location of firefighting equipment and materials underground to ensure that they are readily available to quickly extinguish a fire. In lieu of the current requirements for rock dust and other firefighting materials, this proposed rule would allow the use of portable fire extinguishers in working sections of underground anthracite coal mines that have no electrical equipment at the face and produce less than 300 tons of coal per shift. The rule also would require an additional fire extinguisher in lieu of rock dust at temporary electrical installations in all underground coal mines.

**DATES:** All comments must be received at MSHA no later than midnight Eastern Standard Time on February 4, 2008.

**ADDRESSES:** (1) Identify all comments by "RIN 1219-AB40" and send them to MSHA as follows:

- Electronically through the Federal e-Rulemaking portal at <http://www.regulations.gov> or by e-mail to [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov).

- By facsimile to 202-693-9441.
- By mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939. If comments are hand-delivered, please stop by the 21st floor first to check in with the receptionist.

(2) MSHA will post all comments on the internet without change, including any personal information they may contain. Rulemaking comments can be accessed via the internet at <http://www.msha.gov/regsinfo.htm> or in person at MSHA's public reading room

at 1100 Wilson Boulevard, Room 2349, Arlington, Virginia.

(3) Subscribe to MSHA's *list serve* at <http://www.msha.gov/subscriptions/subscribe.aspx> to receive an e-mail notification when MSHA publishes rulemaking documents in the **Federal Register**.

*Hearings:* Public hearings will be scheduled if requested.

*Information Collection Requirements.* Comments concerning the information collection requirements must be clearly identified as such and sent to both the Office of Management and Budget (OMB) and MSHA as follows:

(1) *To OMB:* All comments may be sent by mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, *Attn:* Desk Officer for MSHA; and

(2) *To MSHA:* Comments must be clearly identified by RIN: 1219-AB40 as comments on the information collection requirements and transmitted to MSHA as indicated above under **ADDRESSES**.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey at 202-693-9440 (Voice), 202-693-9441 (Fax), or [Silvey.Patricia@dol.gov](mailto:Silvey.Patricia@dol.gov) (E-mail).

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

The existing safety standards under 30 CFR part 75, subpart L—Fire Protection, are designed to ensure that firefighting equipment and materials are readily available to quickly extinguish a fire and prevent its spread. Because of the explosive nature of coal dust and the possible presence of methane gas, there is great potential for a fire to spread to other areas of the underground coal mine. Historical records demonstrate that the consequences of a fire in an underground coal mine can be disastrous.

**II. Background**

The Bureau of Mines in the U.S. Department of the Interior (Bureau) promulgated and enforced fire protection standards under the Federal Coal Mine Safety Act (30 U.S.C. 451-483). These standards continued in effect under the Federal Coal Mine Health and Safety Act of 1969 (Coal Act) through a transfer provision in the law. On November 20, 1970 (35 FR 17890), the Bureau revised its standards addressing fire protection in underground coal mines. The revised standards continued in effect under the Federal Mine Safety and Health Act of 1977 (Mine Act) through a transfer provision in the law when the

enforcement of mine safety and health standards was moved from the Department of the Interior to the Department of Labor. The standard addressed in this rule has not changed since that time.

*A. Petition for Modification of a Mandatory Safety Standard*

Section 101(c) of the Mine Act allows a mine operator or the representative of miners to petition MSHA for a modification of an existing safety standard. After investigating each petition, MSHA may grant a modification from the application of a safety standard when MSHA determines that—

(1) The alternative method for achieving the desired result will at all times guarantee no less than the same measure of protection as the existing standard, or

(2) The application of the existing standard will result in a diminution of safety to miners at that mine.

This proposed rule would eliminate the need for a mine operator to file a petition for modification of an existing standard in order to permit the use of portable fire extinguishers in lieu of rock dust and other firefighting materials in the working sections of underground anthracite coal mines that produce less than 300 tons of coal per shift and use no electrical equipment at the face.

Also, many underground coal mine operators have filed petitions for modification to use portable fire extinguishers at temporary electrical installations. This proposed rule would eliminate the requirement for rock dust and instead would require portable fire extinguishers at underground temporary electrical installations. Adding this requirement would eliminate the need to petition for permission to use fire extinguishers at these locations.

*B. Rock Dust for Fire Protection*

Rock dust is an inorganic, non-combustible dust, such as crushed limestone, that the mine operator spreads on coal surfaces to reduce the chance of stirring up an explosive suspension of coal dust. The rock dust also can work as a fire suppressant by smothering or quenching the flame. It is widely used in coal mining to reduce the likelihood of coal dust explosions or flame propagation. A single bag of rock dust weighs about 40 pounds when dry. In damp environments, a bag of rock dust will absorb water, rendering it unusable for fire prevention or suppression purposes. Damp rock dust becomes somewhat plastic in consistency and dries into a hard, brick-

like mass. The presence of bags of rock dust can give a false sense of security for firefighting purposes because the rock dust can absorb water even through a sealed bag. The miner or mine operator can be unaware that the rock dust is useless as a fire suppressant until trying to use it. Bags of rock dust must be protected from moisture, checked frequently, and replaced if wet or hardened. This lifting and moving of heavy bags of rock dust increases the risk of personal injury for miners.

*C. Requirements for Portable Fire Extinguishers*

Existing standard § 75.1100-1 sets minimum requirements for the type and quality of firefighting equipment required in 30 CFR part 75, subpart L—Fire Protection. Paragraph (e) of § 75.1100-1 describes the criteria for a portable fire extinguisher as follows:

(e) *Portable fire extinguisher:* A portable fire extinguisher shall be either (1) a multipurpose dry chemical type containing a nominal weight of 5 pounds of dry powder and enough expellant to apply the powder or (2) a foam-producing type containing at least 2½ gallons of foam-producing liquids and enough expellant to supply the foam. Only fire extinguishers approved by the Underwriters Laboratories, Inc., or Factory Mutual Research Corp., carrying appropriate labels as to type and purpose, shall be used. After March 30, 1971, all new portable fire extinguishers acquired for use in a coal mine shall have a 2A 10 BC or higher rating.

**III. Section-by-Section Discussion**

Existing standard § 75.1100-2 sets requirements for the quantity and location of firefighting equipment and materials in underground coal mines. At working sections, paragraph (a) requires 240 pounds of rock dust (about six bags), two portable fire extinguishers, and a ready supply of water or dry chemical. At permanent electrical installations, paragraph (e)(1) requires two portable fire extinguishers or one having twice the minimum capacity specified for a portable fire extinguisher in existing § 75.1100-1(e). Rock dust is not required at permanent electrical installations. At temporary electrical installations, however, paragraph (e)(2) requires one portable fire extinguisher and 240 pounds of rock dust.

*A. Section 75.1100-2(a): Working Sections*

Existing § 75.1100-2(a) includes different requirements for readily available firefighting equipment and materials in working sections based on the mine's production. Because anthracite coal mines typically produce only 10 to 20 tons of coal per shift, they

are covered by existing § 75.1100–2(a)(2), which requires—

(2) Each working section of coal mines producing less than 300 tons of coal per shift shall be provided with two portable fire extinguishers, 240 pounds of rock dust in bags or other suitable containers, and at least 500 gallons of water and at least 3 pails of 10 quart capacity. In lieu of the 500 gallon water supply a waterline with sufficient hose to reach the working places, a portable water car (500 gallons capacity) or a portable all-purpose dry powder chemical car of at least 125-pounds capacity may be provided.

These options, however, do not address or accommodate the typical conditions in the working sections of underground anthracite coal mines. This proposed rule would add new paragraph § 75.1100–2(a)(3) to provide an additional compliance option for underground anthracite coal mines and make nonsubstantive format changes to § 75.1100–2(a)(2).

#### 1. Addition of § 75.1100–2(a)(3) for Underground Anthracite Coal Mines

New paragraph § 75.1100–2 would apply only to underground anthracite coal mines. Almost all of these mines still use mining methods that were developed over 150 years ago to suit their unique geological characteristics. Anthracite coal is a hard coal found in undulating, steeply pitched veins, and mined with slow, non-mechanized mining methods. In contrast, bituminous coal is softer and generally found in horizontal veins. Bituminous coal production uses highly mechanized methods and depends on electricity for face equipment.

Anthracite mining uses methods and systems that rely on manual labor with little or no mechanization. Electricity that can cause or contribute to a fire hazard is usually non-existent near the face. Typically, anthracite coal mines operate face equipment using air driven motors for coal drills, air driven fans to supplement face ventilation, and air driven saws and hoists for the cutting and placement of timber.

Mining conditions in underground anthracite coal mines are generally wet and removal of water from the face areas is a major problem. The steep grade permits natural water drainage in open, on-grade ditches from the face area to a slope sump where it is stored and eventually pumped to a suitable water treatment area. Waterlines are seldom installed to the face.

Anthracite coal has a low volatile ratio and the dust does not propagate an explosion. Anthracite coal's ignition temperature is high (925 to 970 degrees Fahrenheit) compared to bituminous coal's ignition temperature (700 to 900

degrees Fahrenheit). Thus, anthracite coal dust is harder to ignite than bituminous coal dust and the risk of a fire is lower in anthracite coal mines than in bituminous coal mines. There has been only one reported fire underground in an anthracite coal mine since implementation of the Mine Act. This fire occurred at a mine that used electrical equipment at the face.

In summary, almost all underground anthracite coal mines are steeply sloped with little space underground for storage of firefighting equipment or materials; they use hand-operated or mechanical equipment, rather than electrical equipment (a potential ignition source), underground at the face where coal is mined; and they are wet, causing rock dust to become hard and unusable for firefighting. In addition, anthracite coal mine dust has low volatility, is difficult to ignite, and does not propagate an explosion.

#### 2. Discussion of Alternative for Underground Anthracite Coal Mines

Because of the uniqueness of the mining methods and conditions in underground anthracite mines, anthracite mine operators have petitioned MSHA to allow the use of only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The mine operators assert that the alternative method will at all times guarantee no less than the same measure of protection as that afforded by the standard. From 1994 through 2004, MSHA received over 60 petitions for modification of existing paragraph (a)(2) of § 75.1100–2 and granted 54 for working sections at underground anthracite coal mines. The rest were dismissed for reasons unrelated to the merits of the proposed alternative method. For example, one petition was dismissed because the mine went out of business. None of the petitions were denied for safety reasons. MSHA granted the petitions for a modification with the following conditions.

1. Fire extinguisher(s) having at least four times the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) shall be located no greater than 500 feet from the working face.

2. Fire extinguisher(s) having at least six times the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e) shall be located at the entrance to the gangway at the bottom of the slope.

There were no significant adverse comments filed on these petitions. Based on MSHA's experience and investigation of these petitions for modification, MSHA concluded that the

use of fire extinguishers in the situations addressed is a safe alternative to existing requirements. The granted alternative method provides for a quick response to any fire on the section and does not reduce protection for miners. In addition, because there are a variety of fire extinguishers currently available, MSHA anticipates no problems in obtaining fire extinguishers.

This proposed rule would incorporate the language from these granted petitions for modification into new paragraph § 75.1100–2(a)(3). The Agency has made changes to the language from these petitions to clarify the mine operator's responsibility regarding the size of fire extinguishers required. Thus, this proposed rule would eliminate the need to file a petition for modification to use only portable fire extinguishers, in lieu of the firefighting equipment and materials required by existing paragraph (a)(2), for fighting fires at working sections of underground anthracite coal mines that have no electrical equipment at the working section. The proposed rule would not apply to the few underground anthracite coal mines that use electrical equipment at the working section.

#### B. Section 75.1100–2(e): Electrical Installations

Existing § 75.1100–2(e) causes unnecessary compliance difficulties for some mines with temporary electrical installations underground. Under the existing standard, permanent and temporary electrical installations have different requirements for firefighting equipment and materials. Existing § 75.1100–2(e) requires that—

(e) *Electrical installations.* (1) Two portable fire extinguishers or one extinguisher having at least twice the minimum capacity specified for a portable fire extinguisher in § 75.1100–1(e) shall be provided at each permanent electrical installation.

(2) One portable fire extinguisher and 240 pounds of rock dust shall be provided at each temporary electrical installation.

#### 1. Characteristics of Underground Electrical Installations

The difference between permanent and temporary underground electrical installations can be negligible in regard to their potential fire hazard. For example, MSHA generally considers electrical installations located outby the working section to be permanent and those on the working section to be temporary. However, MSHA considers a battery charging station to be temporary because it moves, even though it is outby the working section. If the electrical installation is in a fireproof

enclosure, then MSHA considers it to be permanent. If not, MSHA considers it temporary. MSHA considers a power center supplying the belt line to be permanent, but one supplying a portable compressor to be temporary. Typically, temporary electrical installations are unattended pumping stations located in remote areas of the mine, battery charging stations, power installation transformers, and section power centers for operating electrical face equipment.

## 2. Elimination of Separate Requirements for Permanent and Temporary Electrical Installations

From 1994 through 2004, MSHA received 34 petitions for modification of paragraph (e)(2) of § 75.1100-2 and granted all of them. The petitioners asserted that it is difficult to comply with the current standard for temporary electrical installations in wet and damp environments, such as pumping stations, because the rock dust becomes unusable for firefighting purposes. The mine operator must check these locations frequently to assure that the rock dust is kept dry for use in the event of a fire. The petitioners assert that the exclusive use of portable fire extinguishers as an alternative means of extinguishing fires is at least as effective as the existing standard. They also have asserted that, in some cases, portable fire extinguishers may be a safer fire suppressant because lifting the heavy bags of rock dust increases the risk of personal injury.

In granting these petitions, MSHA acknowledged the tendency of rock dust to harden over time and become brick-like when exposed to humidity, which greatly reduces the value of the rock dust as a firefighting tool. MSHA has no evidence of adverse outcomes associated with these granted petitions. Although MSHA did not receive any comments contesting the granted petitions, MSHA received a few comments on the petitions requesting that the Agency require a minimum of two fire extinguishers as the alternative method. Two fire extinguishers may be preferable in some situations to allow two miners to fight the fire simultaneously or to provide a backup should one of the portable fire extinguishers fail.

## 3. Impact of This Proposed Rule

This proposed rule would modify existing § 75.1100-2(e) to eliminate the separate requirements for permanent and temporary electrical installations. It would remove the requirement for rock dust at temporary underground electrical installations and require two portable fire extinguishers, or one

having twice the minimum capacity, at all electrical installations. Essentially, the proposed rule would make the requirements for fire extinguishers at temporary electrical installations identical to the current requirements at permanent electrical installations. The Agency has made changes to the regulatory language to clarify the mine operator's responsibility regarding the size of fire extinguishers required. This revision would not reduce protection for miners.

MSHA believes that all of the proposed revisions offer greater flexibility, provide no less protection to affected miners, and do not result in a diminution of safety to miners.

## IV. Executive Order 12866

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of significant regulatory action. Under the Executive Order, a "significant regulatory action" is one meeting any number of specified conditions, including the following: Having an annual effect on the economy of \$100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients; or raising novel legal or policy issues. MSHA has determined that this proposed rule would not have an annual effect of \$100 million or more on the economy and that, therefore, it is not an economically "significant regulatory action" under section 3(f) of E.O. 12866. MSHA, however, has concluded that the proposed rule is otherwise significant under Executive Order 12866 because it raises novel legal or policy issues.

### A. Population-at-Risk

As of 2006, this proposed rule would apply to 670 underground coal mine operators employing 42,667 miners (excluding office workers).

### B. Costs

This proposed rule potentially would affect all coal mines that have temporary electrical installations underground and about 20 active underground anthracite coal mines. As described below, MSHA estimates that the annual cost savings of this proposed rule would be \$2,366.<sup>1</sup>

#### 1. Costs of Portable Fire Extinguishers and Rock Dust

MSHA experience indicates that a 10- to 20-pound fire extinguisher is the industry standard. In addition, existing

<sup>1</sup> \$2,366 = \$929 (savings to new anthracite coal mines) + \$1,436 (savings to new temporary electrical installations).

standards already require the mine operator to inspect and maintain the fire extinguishers periodically and replace them as necessary. The portable fire extinguishers have a shelf life of about 4 years. The cost to refill an emptied fire extinguisher is about 25 percent of its initial cost of about \$25.00 for an industrial strength 2A:10B:C nominal 5-pound fire extinguisher. MSHA does not require mine operators to report fires lasting less than 10 minutes from time of discovery and, therefore, has no estimate of the frequency with which a portable fire extinguisher is used and refilled. MSHA considers the maintenance of portable fire extinguishers to be an essential business practice for underground coal mines.

The cost for 240 pounds of rock dust (six 40-pound bags) is about \$6.00 (\$1.00 per bag). Although rock dust usually does not require maintenance, it has to be replaced routinely in wet or damp environments, or otherwise protected to prevent it from becoming unusable. The shelf life of rock dust varies considerably in damp or wet environments. In addition to the labor cost for routine checking and replacing bags of rock dust, the cost associated with heavy, re-sealable plastic bags or other methods of prolonging the shelf life of rock dust under these conditions is about \$2 per bag.

#### 2. Cost Savings for New Underground Anthracite Coal Mines

MSHA estimates that this proposed rule would have no cost impact on the 20 active underground anthracite coal mines because, currently, they are operating under an alternative method that allows them to provide and rely solely on portable fire extinguishers for firefighting on the working section. This proposed rule, however, would benefit new underground anthracite coal mines by eliminating the need for the mine operator to file a petition for modification in order to provide and rely solely on portable fire extinguishers in lieu of the water and rock dust required by the existing standard.

MSHA estimates that the average cost of filing a petition for modification is \$465. MSHA estimates that it takes a mine supervisor, earning \$57.82 per hour, 8 hours to prepare the petition for modification and that, on average, it takes a clerical worker, earning \$20.96 per hour, 0.1 hours to copy and mail a petition.<sup>2</sup> On average, two new underground anthracite coal mines open

<sup>2</sup> \$464.66 = (8 hours × \$57.82) + (0.1 hour × \$20.96).

each year.<sup>3</sup> Therefore, the associated annual cost savings for new underground anthracite coal mines would be about \$929.<sup>4</sup>

### 3. Cost Savings for Temporary Electrical Installations at Underground Coal Mines

Existing paragraph (e)(1) of § 75.1100–2 requires two portable fire extinguishers, or one fire extinguisher having at least twice the minimum capacity specified in existing § 75.1100–1(e), at each permanent underground electrical installation. Existing paragraph (e)(2) of § 75.1100–2 requires one portable fire extinguisher and 240 pounds of rock dust at each temporary underground electrical installation. This proposed rule would eliminate the distinction between permanent and temporary electrical installations. It would modify existing § 75.1100–2(e) by removing the sub-paragraph designations (1) and (2) and applying the requirements for permanent electrical installations currently in paragraph (1) to all underground electrical installations. For the purpose of this analysis, MSHA estimates that most existing temporary electrical installations are already in compliance with this proposed rule because they contain two portable fire extinguishers or one having at least twice the minimum capacity.

As previously noted, from 1994 through 2004, MSHA received and granted 34 petitions for modification of existing § 75.1100–2(e)(2). This averages to be about 3.1 petitions per year. Under the proposed rule, it would be unnecessary for a mine operator to file a petition for modification to obtain permission to rely exclusively on fire extinguishers for fighting fires at the mine's temporary electrical installations. Based on 3.1 petitions per year at an average cost of \$465 for filing a petition for modification, MSHA estimates that the annual cost savings would be about \$1,436 for underground coal mines.<sup>5</sup>

### C. Benefits

The proposed rule would allow the exclusive use of portable fire extinguishers in certain locations in the mine without the need for a mine operator to file a petition for modification and wait for MSHA approval.

The most significant benefit is that rock dust, that can quickly be rendered ineffective by dampness, can be

replaced immediately by a more effective and reliable fire suppressant, a portable fire extinguisher. An additional advantage of portable fire extinguishers is that they are easier to transport. A mine operator will usually be able to replace a damaged or spent fire extinguisher more quickly than 240 pounds of rock dust. MSHA also can reasonably anticipate a decreased risk of personal injury related to lifting and moving heavy bags of rock dust that have become hard and unusable.<sup>6</sup>

### D. Feasibility

MSHA has concluded that the requirements of the proposed rule would be both technologically and economically feasible. This proposed rule would be technologically feasible because it would not be technology-forcing nor involve activities on the frontiers of scientific knowledge. This proposed rule would be economically feasible because it provides a cost saving to underground coal mines. Cost savings are based on new underground anthracite coal mine operators not having to file petitions for modification to use portable fire extinguishers in lieu of rock dust and other fire fighting materials at the working sections of underground anthracite coal mines that use no electrical equipment at the face and produce less than 300 tons of coal per shift. Likewise, there would be a cost savings for both existing and new underground coal mine operators not having to file petitions for modification to use portable fire extinguishers in lieu of rock dust at temporary underground electrical installations.

### V. The Regulatory Flexibility Act (RFA) and the Small Business Regulatory Enforcement Fairness Act (SBREFA)

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the proposed rule on small businesses. Further, MSHA has made a determination with respect to whether or not MSHA can certify that the proposed rule would not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking. Under the SBREFA amendments to the RFA, MSHA must include in the rule a factual basis for this certification. If a rule will have a significant economic impact on a substantial number of small

entities, MSHA must develop a regulatory flexibility analysis.

### A. Definition of a Small Mine

Under the RFA, in analyzing the impact of a rule on small entities, MSHA must use the Small Business Administration (SBA) definition for a small entity 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 has not taken such an action and, consequently, must use the SBA definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer miners.

MSHA has also looked at the impacts of MSHA's rules on a different subset of mines that MSHA and the mining community have traditionally referred to as "small mines," those having fewer than 20 miners. In general, these "small mines" differ from mines employing 20 or more miners not only in the number of miners, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, their costs of complying with MSHA's rules and the impact of the rules on them will also tend to be different. It is for this reason that "small mines" employing fewer than 20 miners are of special concern to us.

This analysis complies with the legal requirements of the RFA for an analysis of the impacts on "small entities" while continuing MSHA's traditional definition of "small mines." MSHA concludes that the Agency can certify that the proposed rule would not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking. MSHA has determined that this is the case both for mines affected by this rulemaking with fewer than 20 miners and for mines affected by this rulemaking with 500 or fewer miners.

### B. Factual Basis for Certification

This proposed rule would provide at least the same level of protection for miners as the current standard. It would result in a net cost savings and have no adverse economic impact on the underground coal mining industry.

MSHA estimated that 2006 production for underground coal mines was 7,817,859 tons for mines that had fewer than 20 miners and 277,634,777 tons for mines that had 500 or fewer miners. Using the 2005 price of underground coal of \$36.42 per ton, MSHA estimates the 2006 underground coal revenues to be about \$285 million

<sup>3</sup> This is the average number of underground anthracite coal mines that opened in each year from 1999–2005.

<sup>4</sup> \$929 = 2 petitions × \$464.66 per petition.

<sup>5</sup> \$1,436 = 3.1 petitions × \$464.66 per petition.

<sup>6</sup> MSHA injury data contain 332 injuries between 1999 and September 2005 where the phrase "rock dust" appears in the accident narrative. Of these 332 injuries, 120 (=39%) involved lifting, carrying, or moving rock dust or bags of rock dust.

for mines employing fewer than 20 miners and \$10.1 billion for mines employing 500 or fewer miners. Using either MSHA's traditional definition of a small mine (those having fewer than 20 miners) or SBA's definition of a small mine (those having 500 or fewer miners), MSHA estimates that the proposed rule would result in a savings in the compliance cost for underground coal mines.

#### VI. Paperwork Reduction Act of 1995

Due to this rulemaking, mine operators would no longer have to petition MSHA for a modification of existing paragraphs (a)(2) and (e)(2) of § 75.1100-2 in order to rely exclusively on fire extinguishers for firefighting purposes. Existing Office of Management and Budget (OMB) paperwork package 1219-0065 includes the annual paperwork burden related to the preparation and filing of petitions with MSHA, including petitions for modification to use fire extinguishers. This proposed rule would reduce the paperwork burden in OMB paperwork package 1219-0065 by \$2,366 and 41 hours annually.<sup>7</sup>

Existing OMB paperwork package 1219-0054 includes the annual paperwork burden related to examining fire extinguishers every 6 months and writing the date of the examination on a tag attached to the fire extinguisher. MSHA estimates that the paperwork burden for examining and tagging additional fire extinguishers at temporary electrical installations would be negligible because almost all temporary electrical installations are already in compliance.

#### VII. Other Regulatory Considerations

##### A. *The Unfunded Mandates Reform Act of 1995 and Executive Order 12875: Enhancing the Intergovernmental Partnership (58 FR 58093)*

This proposed rule would not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments; nor would it increase private sector expenditures by more than \$100 million annually; nor would it significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires no further agency action or analysis.

<sup>7</sup> \$2,366 = \$929 (savings for new anthracite coal mines) + \$1,436 (savings for temporary electrical installations) and 41 hours = (8 + 0.1) hours per petition × (2 + 3) petitions.

##### B. *The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families*

This proposed rule would have no effect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

##### C. *Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights (53 FR 8859)*

This proposed rule would not implement a policy with "takings" implications. Accordingly, Executive Order 12630 requires no further agency action or analysis.

##### D. *Executive Order 12988: Civil Justice Reform (61 FR 4729)*

This proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the federal court system. Accordingly, this proposed rule meets the applicable standards provided in section 3 of Executive Order 12988.

##### E. *Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19885)*

This proposed rule would have no adverse impact on children. Accordingly, Executive Order 13045, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis.

##### F. *Executive Order 13132: Federalism (64 FR 43255)*

This proposed rule would not have "federalism implications" because it would not "have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." Accordingly, Executive Order 13132 requires no further agency action or analysis.

##### G. *Executive Order 13175: Consultation and Coordination With Indian Tribal Governments (63 FR 27655)*

This proposed rule would not have "tribal implications" because it would not "have substantial direct effects on one or more Indian tribes, on the relationship between the federal

government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes." Accordingly, Executive Order 13175 requires no further agency action or analysis.

##### H. *Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355)*

This proposed rule would not be a "significant energy action" because it would not be "likely to have a significant adverse effect on the supply, distribution, or use of energy (including a shortfall in supply, price increases, and increased use of foreign supplies)." Accordingly, Executive Order 13211 requires no further agency action or analysis.

##### I. *Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking (67 FR 53461)*

MSHA has thoroughly reviewed this proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in section V of this preamble, MSHA has determined and certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, Executive Order 13272 requires no further agency action or analysis.

#### VIII. Petitions for Modification

On the effective date of a final rule, all existing granted petitions for modification for the use of fire extinguishers in lieu of rock dust and other firefighting materials on working sections in underground anthracite coal mines and at temporary electrical installations in underground coal mines under § 75.1100-2 paragraphs (a)(2) and (e)(2), respectively, would be revoked. Thereafter, mine operators would be required to comply with the provisions of the final rule.

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

Coal mines, Fire prevention, Mine safety and health, Safety, Underground mining.

Dated: December 12, 2007.

**Richard E. Stickler,**  
Assistant Secretary for Mine Safety and Health.

For the reasons discussed in the preamble, the Mine Safety and Health Administration is proposing to amend 30 CFR part 75 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. Amend § 75.1100–2 by revising paragraph (a)(2), adding paragraph (a)(3), and revising paragraph (e) to read as follows:

**§ 75.1100–2 Quantity and location of firefighting equipment.**

(a) \* \* \*

\* \* \* \* \*

(2) Each working section of coal mines producing less than 300 tons of coal per shift shall be provided with the following:

(i) Two portable fire extinguishers; and

(ii) 240 pounds of rock dust in bags or other suitable containers; and

(iii) At least 500 gallons of water and at least three pails of 10-quart capacity; OR a waterline with sufficient hose to reach the working places; OR a portable water car of at least 500-gallon capacity; OR a portable, all-purpose, dry-powder chemical car of at least 125-pound capacity.

(3) As an alternative to paragraph (a)(2) of this section, each working section with no electrical equipment at the face of an anthracite coal mine producing less than 300 tons of coal per shift shall be provided with the following:

(i) Portable fire extinguishers containing a total capacity of at least 30 pounds of dry chemical or 15 gallons of foam and located at the entrance to the gangway at the bottom of the slope; and

(ii) Portable fire extinguishers containing a total capacity of at least 20 pounds of dry chemical or 10 gallons of foam and located within 500 feet from the working face.

\* \* \* \* \*

(e) *Electrical installations.* At each electrical installation, the operator shall provide two portable fire extinguishers or one having at least 10 pounds of dry chemical or 5 gallons of foam.

\* \* \* \* \*

[FR Doc. E7–24747 Filed 12–19–07; 8:45 am]

**BILLING CODE 4510–43–P**

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

[DOD–2007–HA–0010, RIN 0720–AB09]

**32 CFR Part 199**

**TRICARE Program; Overpayments Recovery**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes amendments to the CHAMPUS and TRICARE program regulation that governs the recoupment of erroneous payments. The proposed rule implements changes required by the Debt Collection Improvement Act of 1996 and the revised Federal Claims Collection Standards.

**DATES:** Comments must be received on or before February 19, 2008. Do not submit comments directly to the point of contact or mail your comments to any address other than what is shown below. Doing so will delay the posting of the submission.

**ADDRESSES:** You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Gail L. Jones, (303) 676–3401.

**SUPPLEMENTARY INFORMATION:**

**Background and Purpose**

On December 23, 1985, the Office of the Secretary of Defense published a final rule in the **Federal Register** (50 FR 52315), clarifying specific procedures and criteria in the assertion, collection or compromise of federal claims and the suspension or termination of collection action on such claims arising under the operation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). Section 199.11,

“Overpayments Recovery,” addresses claims in favor of the United States arising under the Federal Claims Collection Act (recoupment claims).

This proposed rule implements changes required by the Debt Collection Improvement Act of 1996 (DCIA) and the revised Federal Claims Collection Standards, which were jointly issued by the Department of the Treasury (Treasury), and the Department of Justice (DOJ). The DCIA centralized the collection of most delinquent non-tax debt at the Department of the Treasury Financial Management Service (Treasury). Agencies are now required to refer debts to Treasury for centralized administrative offset under the Treasury Offset Program (TOP) and to transfer debts to Treasury for collection on the agencies’ behalf, a process known as cross-servicing.

**Section-by-Section Analysis**

Paragraph (a) of this proposed rule provides that it applies to the TRICARE program and the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).

Section (b)(1) of this proposed rule has been updated to include the DCIA and the revised Federal Claims Collection Standards, 31 CFR parts 900–904, as authority for collection, as well as Treasury regulations, found at 31 CFR part 285, subpart A, implementing the DCIA and related statutes governing the offset of Federal salaries (5 U.S.C. 5514, 5 CFR 550, subpart K), administrative offset (31 U.S.C. 3716), administrative offset of tax refunds (31 U.S.C. 3720A) and regulations implementing the offset of military pay under Title 37 U.S.C. 1007(c). The reference to waiver of collection authorized by Section 743 of the National Defense Authorization Act for Fiscal Year 1996 has been deleted. The legislation authorizing waiver has expired.

Paragraph (c) of this proposed rule has been updated to reflect that the Director, TRICARE Management Activity (TMA), or a designee, is responsible for ensuring that timely collection action is pursued. The Office of CHAMPUS (OCHAMPUS) has been disestablished. The functions of OCHAMPUS are now being performed by the TMA. The current regulation reflects that agency authority to compromise, suspend, or terminate collection action was limited to claims that did not exceed \$20,000. The proposed rule increases this amount to \$100,000 at Paragraph (g), the amount authorized by 31 U.S.C. 3711(a)(2).

Paragraph (e) of the proposed rule is updated to reflect that the authority to assert, settle, compromise or to suspend