List of Subjects in 29 CFR Part 1610

Freedom of information.

Accordingly, for the reasons set forth in the preamble, the Equal Employment Opportunity Commission is adopting the interim rule amending 29 CFR part 1610, which was published at 63 FR 1339–1342, on January 9, 1998, as a final rule without change.

For the Equal Employment Opportunity Commission.

Dated at Washington, DC, this 10th day of August, 1999.

Ida L. Castro,

Chairwoman.

[FR Doc. 99–21567 Filed 8–18–99; 8:45 am]

BILLING CODE 6570–01–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AB10

Safety Standard for Preshift Examinations in Underground Coal Mines

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

ACTION: Final rule.

SUMMARY: We (MSHA) are amending the examination interval for preshift examinations of underground coal mines by requiring that mine operators conduct preshift examinations at 8-hour intervals. The rule clarifies when a preshift examination is required and the length of the shift covered by the preshift examination.

EFFECTIVE DATES: This final rule is effective on October 18, 1999. Submit all written comments on the information collection burden no later than October 18, 1999.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director; Office of Standards, Regulations, and Variances; telephone 703/235–1910; fax 703/235–5551.

SUPPLEMENTARY INFORMATION:

I. Background

The preshift examination is the mine operator's fundamental tool for assessing the overall safety condition of the mine. During the preshift examination, which includes all areas where miners are scheduled to work or travel during the shift, the examiner focuses on discovering both existing and developing hazards, such as methane accumulation, bad roof and water accumulation, and determining the effectiveness of the mine ventilation system. The examination has proven to be particularly effective in the discovery and correction of hazardous conditions and practices before they lead to injuries or fatalities. Because conditions in the underground mining environment can change rapidly, recurring examinations are necessary to assure safety of the miners underground. A timely preshift examination assures the safety of the environment on a routine basis.

The Federal Mine Safety and Health Act of 1977 (Mine Act) contains interim mandatory safety standards that address preshift examinations. The interim standards in the Mine Act that relate to preshift examinations, §§ 303(d)(1) and 303(d)(2), appear as interim mandatory safety standards in the Federal Coal Mine Health and Safety Act of 1969. In 1970, the Bureau of Mines of the United States Department of the Interior, a predecessor of the Mine Safety and Health Administration at that time, adopted these interim standards as safety standards in Title 30 of the Code of Federal Regulations (CFR). Interim standard § 75.303(d)(1) required that preshift examinations be conducted ''[w]ithin three hours immediately preceding the beginning of any shift.'' We adopted this provision as a mandatory safety standard in our regulations for underground coal mines, promulgating it in 1978 as former 30 CFR 75.303(a).

Section 303(d)(2) of the Mine Act, the other interim standard addressing preshift examinations, provided that no person, other than certified persons designated to conduct the examination, is permitted to enter any underground area, except during any shift, unless a preshift examination of such area has been made within 8 hours prior to the person entering the area. Under this provision, miners already working on a shift where a preshift examination has been completed may remain working underground during the subsequent preshift examination being conducted for the oncoming shift. In 1978, MSHA adopted this provision as a mandatory safety standard in its regulations for underground coal mines as former 30 CFR § 75.303(b).

At the time the Mine Act was enacted, coal miners worked in shifts of 8 hours as a general practice. The effect of the preshift examination requirement in this environment was for examiners to conduct preshift examinations every 8 hours. Since the Mine Act was enacted, overlapping work shifts and work shifts of various lengths (novel work shifts) have become common, making it necessary for MSHA to address the frequency of preshift examinations. Currently, a number of mines work shifts of up to 12 hours in length.

In 1992, we revised our preshift examination requirements as part of our final rule for ventilation standards. We retained the requirement that preshift examinations must be conducted ''within 3 hours preceding the beginning of any shift.'' However, in our preamble discussion to the 1992 final ventilation rule, we interpreted this language to mean that if the mine used regular shifts longer than 8 hours, the preshift examination applied to the entire length of the shift (57 FR 20893).

In 1994, we proposed a new preshift examination rule in an attempt to clarify and standardize the application of certain provisions of the 1992 preshift examination rule (59 FR 26356). In the comments submitted to us during the 1994 rulemaking, a segment of the mining community expressed concern that because of novel work schedules, preshift examinations were not being conducted frequently enough to assure safe working conditions. A commenter expressed concern that conducting preshift examinations at intervals longer than 8 hours would reduce the protection afforded miners under the Mine Act. The commenter also stated that MSHA introduced confusion into the preshift examination requirements in interpreting the acceptable intervals for preshift examinations.

Another segment of the public argued that the language of § 303(d)(2) of the Mine Act indicates that Congress tacitly accepted shifts longer than 8 hours with only one preshift examination required. The same segment of the public argued that we allowed a practice to evolve over a period of time which permitted not only longer shifts but also ''excursions'' over 8 hours under specific conditions. During these so-called excursions, miners would remain underground for short periods to handle unplanned situations that developed during the shift. As an example, an excursion might be used to perform mechanical repairs or install roof support. Finally, commenters representing both labor and industry recommended that we adopt a final rule requiring preshift examinations for each 8-hour period that miners are underground.

When we promulgated the 1994 proposed rule as a final rule in 1996, (61 FR 9764) we addressed the comments and revised the existing standard. We substituted the phrase ''8-hour interval'' for the phrase ''beginning of any shift.'' The 1996 rule required a preshift examination, ''* * * within 3 hours preceding the beginning of any 8-hour interval during which any person is

scheduled to work or travel underground. * * *'' We also acknowledged in the preamble to the final rule that, in accordance with longstanding practice, unplanned short excursions past the 8-hour period that occur infrequently are accepted without an additional preshift examination (61 FR 9791).

In the preamble to the 1996 final rule, we discussed our rationale for adopting an 8-hour preshift examination rule. We stated that:

> Underground working schedules of three 8-hour shifts per day were virtually standard when the previous rule was implemented. Currently a substantial number of mining operations have work shifts of more than 8 hours. Other operations stagger or overlap shifts providing for continuous underground mining activities. Some mines that operate around the clock schedule persons to begin shifts at one-or two-hour intervals. In such cases, controversies and misunderstandings have developed regarding application of the current standard. . . . MSHA agrees with commenters that evolution within the industry in shift scheduling has presented a number of questions and controversies regarding the standard which must be resolved to assure that proper preshift examinations are conducted within suitable time frames. Based on comments, the final rule adopts a modification to clarify and standardize the application of the preshift examination in recognition of the use of novel shifts while maintaining the protection of the existing standard. (61 FR 9791).

In adopting an 8-hour preshift examination requirement, we agreed with comments suggesting that the original legislation of the Mine Act envisioned that preshift examinations would be conducted for each 8-hour interval that persons worked underground'' (61 FR 9791). We reached this conclusion both from the traditional practice at the time of the legislation and from the language of § 303(d)(2) of the Mine Act.

On June 17, 1997, the United States Court of Appeals for the District of Columbia Circuit, in *National Mining Association* v. *Mine Safety and Health Administration and Secretary of Labor (MSHA),* 116 F.3d 520 (D.C. Cir. 1997), acknowledged that the approach used by MSHA in adopting the 8-hour interval for the preshift examination was a reasonable one. The Court stated, ''At the least, 30 CFR § 75.360(a)(1) is a reasonable interpretation of open-ended statutory language.* * * We see no reason why we should not think of 30 CFR § 75.360(a)(1) as just such an ''improved mandatory safety standard'' issued in light of changed circumstances in the mining industry.'' (116 F.3d 520, 530). However, the Court invalidated the provision on the procedural ground that we failed to provide sufficient notice to the parties in the rulemaking that we were contemplating requiring a preshift examination every 8 hours. The effect of the decision was to reinstate the portion of the previous standard that requires a preshift examination to be conducted prior to the beginning of any shift. We published a **Federal Register** notice on June 30, 1997 (62 FR 35085) conforming the language of the existing standard to the Court's order.

On July 14, 1998, in response to the Court's *National Mining Association* decision, we published a proposed rule addressing the existing preshift examination requirements (63 FR 38066). Instead of requiring a preshift examination at the beginning of each shift, the Agency proposed that a preshift examination be conducted at 8-hour intervals. Specifically, we proposed:

> *§ 75.360 Preshift examination at fixed intervals.*
>
> (a)(1) Except as provided in paragraph (a)(2) of this section, a certified person designated by the operator shall make a preshift examination within 3 hours preceding the beginning of any 8-hour interval during which any person is scheduled to work or travel underground. No person other than certified examiners may enter or remain in any underground area unless a preshift examination has been completed for the established 8-hour interval. The operator shall establish 8-hour intervals of time subject to the required preshift examinations. (63 FR 38071).

In the preamble to the proposed rule, we stated, ''MSHA continues to believe that it is necessary to address the issues surrounding the preshift examination interval. The standard must provide for sufficient protection, be clear in its recommendations, and be properly implemented to ensure safe working conditions in underground coal mines'' (63 FR 38068).

II. Discussion of § 75.360(a)(1)

The final rule modifies existing § 75.360(a)(1) to require preshift examinations at fixed 8-hour intervals. The final rule is substantively identical to the proposed rule. The word ''shall'' is changed to ''must'' in the final rule in accordance with the style advocated by the President's Memorandum on Plain Language. Existing § 75.360(a)(1) provides:

> Except as provided in paragraph (a)(2) of this section, a certified person designated by the operator shall make a preshift examination within 3 hours preceding the beginning of any shift during which any person is scheduled to work or travel underground. No person other than certified examiners may enter or remain in any underground area unless a preshift examination has been completed for the shift.

The rule replaces the word ''shift'' with the phrase ''8-hour interval''. In addition, the rule adds the sentence, ''The operator must establish the 8-hour intervals of time subject to the required preshift examinations.'' The final rule advances the overall safety at underground coal mines and does not reduce the protection afforded by the existing standard.

Considering the speed at which underground conditions can change, preshift examinations are necessary after a reasonable but defined period of time. As an example, methane, an explosive gas naturally occurring in coal mines, commonly builds up over time, especially in newly mined areas. Methane may also accumulate in other areas, such as where water accumulation interferes with mine ventilation. A preshift examination should result in the detection of this explosive gas, if present, and the timely correction of the condition before it reaches a hazardous level. Also, the roof and ribs tend to deteriorate over time throughout the mine, including outby entries used as travelways and on the sections of a mine where miners are assigned to work. Roof pressures and subsequent falls can damage ventilation controls, resulting in hazardous conditions. Equipment damaged by a roof fall, including belt haulage systems or trolley wire systems, can lead to mine fires or explosions. A preshift examination provides a mechanism to detect these developing hazards.

We have reviewed the history of fatalities that have occurred at underground coal mines since 1990 to determine if any of the fatalities occurred more than 8 hours after the start of the shift and, therefore, may have been prevented had the proposed rule been in place. We placed in the rulemaking record 32 fatal accident reports of MSHA investigations conducted since 1990. In each report the accident was identified as occurring more than 8 hours into the shift. At least 6 of the reports, representing 7 fatalities, address instances where an additional preshift examination might have identified the hazards that resulted in the fatalities and allowed an opportunity for corrective action. The accidents are: Linda Enterprise, Inc., #31–A mine, March 23, 1990, 1 fatality; Miller Branch Enterprises, Inc., No. 1 mine, December 4, 1991, 1 fatality; M.A.G. Incorporated, Alloy Deep Mine ι2, October 2, 1993, 1 fatality; Day Branch Coal Co., Inc., No. 9 mine, May 11, 1994, 2 fatalities; Waco Limited

Partnership No. 1, No. 2 mine, December 18, 1995, 1 fatality; and M&D Coal Co., Inc., No. 3 mine, August 15, 1996, 1 fatality. We note that the rule being finalized was in effect between June 1996 and July 1997. However, the rule was not being followed at the M&D No. 3 mine at the time of the August 15, 1996, accident.

The final rule applies to all underground coal mines, including those that operate with only one 8-hour shift per day. If the mine uses regular shifts that are longer than 8 hours in length, the preshift examination would cover an 8-hour interval; an additional examination is required for over 8 hours. The rule requires three preshift examinations where persons are underground for more than 16 hours per day. As an example, at a mine operating two 10-hour shifts per day, the final rule requires three examinations per day. As with the existing standard, the final rule does not require examinations for designated 8-hour periods when no one enters the mine. Also consistent with the existing standard, no one, except other designated preshift examiners, may accompany preshift examiners during an examination before miners reenter the mine.

Once a preshift examination has been conducted, an additional preshift examination is not necessary during the 8-hour interval covered by the preshift examination simply because persons start to work after the beginning of the normal shift start time. Under the final rule persons can enter or leave the mine, regardless of their shift schedule, during any established 8-hour period for which a preshift examination has been conducted. However, another preshift examination must be completed prior to the beginning of the next 8-hour interval if any persons, other than examiners, remain in the mine during the next 8-hour interval or are scheduled to enter the mine during the oncoming interval. As with the existing standard, no person other than examiners may enter any underground area that is subject to a preshift examination prior to the completion of the preshift examination for that area. Also, supplemental examinations continue to be required under § 75.361 before anyone enters areas of the mine that have not had a preshift examination. In accordance with prior practice, miners already working on a shift for which a preshift examination has been completed may remain working underground during the subsequent preshift examination being conducted for the oncoming shift.

We recognize that the final rule may cause some of the mine operators to perform additional examinations that are not currently required. As an example, some small mines operate 1 shift per day. Many of these mines plan to work 8 hours at the face. Allowing for travel time and lunch, the mines may work a single 8½ or 9 hour shift on a regular basis. Under the final rule, 2 preshift examinations are required.

In the preamble to the proposed rule, we encouraged all parties to express their views fully on the proposal and submit comments on the proposed preshift examination rule. Also, we specifically solicited comments in a number of areas, such as whether excursions should be permitted, and the safety benefits gained by requiring a mine that operates a single 8½ or 9 hour shift per day to conduct 2 preshift examinations.

We received comments from a total of 4 commenters: 2 mining associations, 1 mining company, and 1 labor organization. One commenter advocated MSHA's approach of conducting a preshift examination at 8-hour intervals, stating that Congress intended preshift examinations to be conducted at 8-hour intervals, that it is essential that the requirements for preshift examinations be clear and unambiguous, and that the issue of the frequency of preshift examinations is vitally important for safety and health. This commenter opposed any excursions beyond the 8-hour interval except for life threatening situations. The other 3 commenters stated that we must be more flexible in our approach to determining preshift examination intervals. Two commenters stated that mine plans should incorporate preshift examination requirements specific to each mine. Three commenters pointed out that because of State laws, there are instances where additional and unnecessary preshift examinations are required. These commenters favored a preshift examination that covered an entire shift, regardless of its duration. Two of the commenters pointed out that technological advances, such as mine-wide monitoring systems used in some mines, have made mines safer than they were at the time Congress passed the Mine Act. Two commenters stated that many examinations occur during a shift. Consequently, these commenters felt that preshift examinations that lasted the duration of the shift, whether 8, 10, or 12 hours, should be acceptable in mines using technological advances such as mine-wide monitoring systems.

We have carefully considered each of the comments and have determined that, with minor non-substantive changes, it is appropriate to adopt and publish the proposed rule as the final rule. The Agency has concluded that, considering the speed at which the underground conditions can change, there must be a defined, reasonable period after which another examination is necessary. The history of fatalities at underground mines since 1990 demonstrates that as many as 7 lives could have been saved if the 8 hour interval rule had been in place. As one commenter stated, repeating language from the preamble to the proposed rule:

> [t]he preshift examination is a critically important, fundamental safety practice in the mining industry. It has historically been a primary means of determining the effectiveness of an underground coal mining operation, and of detecting hazardous conditions and practices. The preshift examination has proven to be particularly effective because it provides a thorough safety check before work commences underground on the shift for which the examination is conducted. A preshift examination can detect developing hazards as well as existing hazards.

The preshift examination at 8-hour intervals is a clear and easily understood requirement that has an historical basis in legislative history. We are not persuaded by commenters that, due to technological improvements in modern mining as well as the training that modern miners receive, there is a need to deviate from the frequency of preshift examinations envisioned by Congress. The fact that mines may be somewhat safer today than they were in the past does not change the fact that the hazards still exist. Miners and operators must be vigilant in dealing with methane accumulation, roof and rib deterioration and water accumulation, as well as other hazards. Progress in safety due to modern mining and monitoring systems has not lessened the need for preshift examinations at 8-hour intervals, which we believe will result in increased miner safety. As we have noted previously, we have identified 7 fatalities that might have been prevented if preshift examinations had occurred at 8-hour intervals. Technological advances that enhance safety, such as atmospheric monitoring systems, should supplement the proper use of preshift examinations rather than change the frequency of the examination.

Through a longstanding practice, we have permitted excursions beyond the normal scheduled shift for preshift examinations. In this final rule, we will permit miners to stay on the section or in the work area for up to an additional 15 minutes beyond an 8-hour shift to conclude the mining cycle at an appropriate point, perform mechanical repairs, install roof support, or as a

result of a mantrip delay. We will continue to interpret the final rule to allow such excursions. One commenter addressed this issue. The commenter to the proposed rule objected to any excursion except for life-threatening situations. The commenter added that, to prevent abuse, if other excursions are permitted, the rule should be specific in defining the circumstances under which excursions are permitted. We agree with the commenter that an excursion for a life-threatening situation does not require an additional preshift examination. We also believe that there are good reasons for excursions for other circumstances: a machinery breakdown which requires miners to walk from the mine, or a roof control problem requiring immediate attention before the miners leave the mine. Some flexibility is appropriate to account for unanticipated circumstances. We continue to believe that short excursions of up to 15 minutes should be permitted. Also, an infrequent excursion of up to 30 minutes is acceptable under an unanticipated circumstance such as a mechanical breakdown. While, by their nature, these infrequent excursions are unpredictable, we expect that excursions would be necessary on the average of no more than once a week.

Two commenters recommended that the rule should provide enough flexibility to improve safety and provide a better utilization of resources. The commenters gave an example of an operator who has established 3-hour intervals spaced 8 hours apart to preshift examine the face areas of the mine. According to these commenters, the same operator at the same mine should be able to examine belts, travelways, and other areas during another, different series of 3-hour intervals spaced 8 hours apart. We agree that this is an acceptable flexible approach that does not diminish safety. The final rule permits this approach. However, we note that after an idle period, a full preshift examination must be completed before miners reenter the area.

We received 2 comments which suggested that the mine ventilation plan could be used to provide for flexibility in scheduling preshift examinations, particularly in cases where an inconsistency might exist with State requirements for examinations. These commenters favored a preshift examination that covered an entire shift regardless of its duration. We believe that a uniform requirement for an examination every 8 hours best serves the purposes of miner safety and health. Use of the plan approval process to essentially adopt a longer preshift examination interval would not be appropriate.

A commenter pointed out that the Pennsylvania Bituminous Coal Mine Act requires a preshift examination in a gassy mine within the 3 hours immediately preceding the beginning of a coal-producing shift. The commenter stated that there are currently 2 mines in Pennsylvania that work 2 shifts of 12 hours, and these only on weekends. Considering the interaction of the MSHA and the Pennsylvania rules, these mines and possibly several others in Pennsylvania, may be required to conduct 4 preshift examinations instead of the 3 examinations otherwise conducted during a 24 hour period. We believe that the requirement for preshift examinations at 8 hour intervals is appropriate and do not believe that the hazardous environment in underground coal mines allows for an exemption in this case. In addition, the history of fatalities that have occurred since 1990 in shifts longer than 8 hours does not support a preshift examination at 12 hour intervals.

Another commenter stated that the proposed preshift requirement would adversely impact safety by requiring the section foreman, supervising a production crew, to examine outby areas during production shifts in excess of 8 hours. The safety of the production crew at the face would be unmonitored during this time. This situation might arise in a 1-shift mine with a single certified person onsite. We agree that in this circumstance, having the foreman on the section and available to supervise the production crew provides a safety benefit. However, we also believe that an examination of outby areas is necessary to assure that any hazardous conditions are identified and corrected in a timely manner. When an additional preshift examination is necessary, the on-section portion of the examination can be conducted concurrently with the on-shift examination. Any certified person designated by the operator may conduct the examination of the outby areas and a vehicle can be used to expedite the examination and to minimize any absence from the section. Also, in such a circumstance, we will accept an examination of outby areas by the certified person during egress from the mine where the examiner travels ahead of the crew, examining while traveling. If a hazard is encountered, the examiner must be able to stop the crew before they reach the hazard. This approach preserves the certified person's presence on the section during the work period and provides for the outby portion of the examination before miners travel through the area. We note that this is only applicable before an idle period. If a crew is scheduled to enter the area, a preshift examination must be completed before the next 8-hour interval begins.

For accuracy, we are changing the title of § 75.360 from ''Preshift examination'' to ''Preshift examination at fixed intervals.'' The text of the final rule and the preamble discussion of the standard continue to refer to the examination as the ''preshift examination.'' Because of the history of the term and the widespread understanding in the industry of the safety checks required by a preshift examination, we are continuing to use the term ''preshift examination'' in the body of the standard and to refer to the examination as the preshift examination.

III. Paperwork Reduction Act

This final rule contains an information collection requirement which is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA 95). It is identical to the information collection requirement in our proposed rule. We did not receive any comments on the proposed information collection requirement. OMB has approved the information collection requirement and assigned to it OMB control number 1219–0125. The approval expiration date is October 31, 2001.

IV. Executive Order 12866 Regulatory Planning and Review

Executive Order (EO) 12866 requires that agencies assess both the costs and benefits of intended regulations. We have determined that this rule would not have an annual effect of $100 million or more on the economy and, therefore, that this rulemaking is not a significant regulatory action for purposes of this EO. Although the final rule applies to all underground coal mines, it will cause 127 underground coal mines to incur compliance costs (or approximately 13 percent of all underground coal mines). Of the 127 mines, 75 are small mines (mines with fewer than 20 employees), and 52 are large mines (mines with 20 or more employees). The total estimated annual compliance cost of the final rule is $2,218,731. Small and large underground coal mines will have annual compliance costs of $377,192 and $1,841,539, respectively.

The total 1997 revenues for the underground coal mine industry are estimated to be about $7.6 billion. The final rule's estimated annual cost is less than 0.03 percent of annual estimated

revenues for all mines (all underground coal mines) which are covered by the rule. We do not expect this rule to have a significant economic impact on the underground coal mining industry.

V. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act (SBREFA)

Under SBREFA, in analyzing the impact of a final 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. We have not taken such an action and, therefore, are required to use the SBA definition. MSHA traditionally has considered small mines to be those with fewer than 20 employees. The SBA defines a small mining entity as an establishment with 500 or fewer employees (13 CFR 121.201). Almost all underground coal mines fall into this category. For these small underground coal mines, as defined by SBA, we conducted a screening analysis by comparing their estimated cost of complying with the final rule to their estimated revenues. When estimated compliance costs are less than 1 percent of estimated revenues, we believe it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed 1 percent of estimated revenues, it tends to indicate that further analysis may be warranted. We estimate compliance costs for small underground coal mines covered under this rule (using the SBA definition) to be $2,182,721 and their revenues to be approximately $6.916 billion (as shown on Table 1). Therefore, the costs of complying with the final rule for small underground coal mines are approximately 0.03 percent of their estimated revenues.

With respect to this final rule, 126 of the 127 underground coal mines that will incur compliance costs fall under SBA's definition. When the 126 underground coal mines that are immediately affected by this rule are separately considered, the costs of complying with the final rule for such mines are 0.3 percent of their revenues (as shown on Table 2).

In either case, the rule's costs as a percentage of estimated revenues are well below the 1 percent level. Accordingly, we certify that the final rule will not have a significant impact on a substantial number of small entities (mines with 500 or fewer employees).

TABLE 1.—ESTIMATED REVENUES OF UNDERGROUND COAL MINES COVERED BY THE RULE

Mine size (employees)	Number of mines [a]	Average production per mine (tons) [a]	Total estimated revenues (in millions) [b]
≤ 500	959	398,221	$6,916
> 500	9	4,196,324	684
Total	968		7,600

[a] Sources: Based on MSHA's database and MSHA's CM441 Coal Report 1997 cycle 1997/184.
[b] Total revenues = n x t x p, where n is the number of mines in that size class; t is the average tons of coal produced annually by a mine in that size class; and p is the price per ton of coal. The 1997 price per ton of coal was $18.11 (Source: DOE/EIA *Annual Energy Review,* p. 203).

TABLE 2.—ESTIMATED REVENUES FOR UNDERGROUND COAL MINES AFFECTED BY THE RULE

Mine size (employees)	Number of mines [a]	Average production per mine (tons) [a]	Total estimated revenues (in millions) [b]
< 20	75	33,304	$45
> 20 & < 500	51	689,881	637
Total	126		682

[a] Based on MSHA's CM441 Coal Report 1997 cycle 1997/184.
[b] Total revenues n x t x p, where n is the number of mines in that size class; t is the average tons of coal produced annually by a mine in that size class; and p is the price per ton of coal. The 1997 price per ton of Coal was $18.11 (Source: DOE/EIA *Annual Energy Review,* p. 203).

VI. Executive Order 12875 Enhancing the Intergovernmental Partnership; and the Unfunded Mandates Reform Act of 1975

Executive Order (EO) 12875 requires executive agencies and departments to reduce unfunded mandates on State, local, and tribal governments; to consult with these governments prior to promulgation of any unfunded mandate; and to develop a process that permits meaningful and timely input by State, local, and tribal governments in the development of regulatory proposals containing a significant unfunded mandate. EO 12875 also requires executive agencies and departments to increase flexibility for State, local, and tribal governments to obtain a waiver from Federal statutory or regulatory requirements.

We offered governments an opportunity to provide meaningful and timely input, at the proposed rule stage, through the promulgation of the proposal for notice and comment. No state, local government or tribal government commented or requested a waiver of regulatory requirements.

Much of the Unfunded Mandates Reform Act of 1995 is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments. It also includes requirements to assist Federal agencies to make this same determination with respect to regulatory actions.

We have determined that, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, this final rule does 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. Moreover, we have determined that for purposes of § 203 of that Act, this final rule does not significantly or uniquely affect these entities.

We have prepared an estimate of the cost of the rule in our submission to OMB for approval of the information collection requirements in the rule. We will furnish a copy of this estimate to you upon request. A summary of the cost is contained in the preamble to this rule.

VII. 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 or safety effect of the rule on children. We have determined that the rule will have no effect on children.

VIII. Executive Order 13084 Consultation and Coordination with Indian Tribal Governments

We certify that the final rule does not impose substantial direct compliance costs on Indian tribal governments. Further, we provided the public, including Indian tribal governments which operated mines, the opportunity to comment during the proposed rule's comment period. No Indian tribal government applied for a waiver or commented on the proposal.

IX. Executive Order 12612 Federalism

Executive Order 12612 requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any action which would restrict state policy options, and take such actions only when there is a clear constitutional authority and the presence of a problem of a national scope. Since this rule does not limit state policy options, it complies with the principles of federalism and with Executive Order 12612.

X. Executive Order 12630 Government Actions and Interference with Constitutionally Protected Property Rights

This rule is not subject to Executive Order 12630 because it does not involve implementation of a policy with taking implications.

XI. Executive Order 12988 Civil Justice Reform

The Agency has reviewed Executive Order 12988 and determined that this rulemaking will not unduly burden the Federal court system. The regulation has been written to so as to provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

List of Subjects

30 CFR Part 75

Mine safety and health, underground coal mining, ventilation.

Dated: August 11, 1999.

Marvin W. Nichols Jr.,

Deputy Assistant Secretary for Mine Safety and Health.

Accordingly, 30 CFR, chapter I, is amended 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. In subpart D of Part 75, the section heading of § 75.360 and paragraph (a)(1) are revised to read as follows:

§ 75.360 Preshift examination at fixed intervals.

(a)(1) Except as provided in paragraph (a)(2) of this section, a certified person designated by the operator must make a preshift examination within 3 hours preceding the beginning of any 8-hour interval during which any person is scheduled to work or travel underground. No person other than certified examiners may enter or remain in any underground area unless a preshift examination has been completed for the established 8-hour interval. The operator must establish 8-hour intervals of time subject to the required preshift examinations.

* * * * *

[FR Doc. 99–21448 Filed 8–18–99; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 009–0143a; FRL–6420–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revisions for Six California Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP) which concern the control of particulate matter (PM) emissions from open burning, incinerator burning, and orchard heater sources in the Kern County Air Pollution Control District (KCAPCD), Northern Sierra Air Quality Management District (NSAQMD), San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), Siskiyou County Air Pollution Control District (SCAPCD), Tehama County Air Pollution Control District (THCAPCD), and Tuolumne County Air Pollution Control District (TOCAPCD). This approval action will incorporate these rules into the federally-approved SIP. The intended effect of this action is to regulate emissions of PM in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA). Thus, EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for attainment and nonattainment areas.

DATES: This rule is effective on October 18, 1999 without further notice, unless EPA receives relevant adverse comments by September 20, 1999. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 290, Bakersfield, CA 93301.

Northern Sierra Air Quality Management District, 540 Searles Avenue, Nevada City, CA 95959.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

Siskiyou County Air Pollution Control District, 525 South Foothill Drive, Yreka, CA 96097.

Tehama County Air Pollution Control District, 1760 Walnut Street, Red Bluff, CA 96080.