

business.<sup>52</sup> The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.<sup>53</sup> The RFA is not implicated by this proposed rule because the modification discussed herein will not have a significant economic impact on a substantial number of small entities. Moreover, the proposed Reliability Standards reflect a continuation of existing requirements for these reliability entities. Accordingly, no regulatory flexibility analysis is required.

## VI. Comment Procedures

59. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due February 25, 2011. Comments must refer to Docket No. RM09-14-000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

60. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

61. Commenters unable to file comments electronically must mail or hand deliver an original copy of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

62. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

## VII. Document Availability

63. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to

view and/or print the contents of this document via the Internet through the Commission's Home Page (<http://www.ferc.gov>) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426.

64. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

65. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or e-mail at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. E-mail the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

### List of Subjects in 18 CFR Part 40

Electric power, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2010-32357 Filed 12-23-10; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Part 75

#### RIN 1219-AB75

### Examinations of Work Areas in Underground Coal Mines for Violations of Mandatory Health or Safety Standards

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

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

**SUMMARY:** The Mine Safety and Health Administration (MSHA) is proposing to revise its requirements for preshift, supplemental, on-shift, and weekly examinations of underground coal mines. The proposed rule would require operators to identify violations of mandatory health or safety standards. The proposal would also require that the mine operator record and correct violations and review with mine

examiners (e.g., the mine foreman, assistant mine foreman, or other certified persons) on a quarterly basis all citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required. The proposal would assure that underground coal mine operators find and fix violations of mandatory health or safety standards, thereby improving health and safety for miners.

**DATES:** MSHA must receive comments by midnight Eastern Standard Time on February 25, 2011.

**ADDRESSES:** All submissions must reference MSHA and RIN 1219-AB75. Comments may be submitted by any of the following methods:

(1) *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

(2) *Electronic Mail:* [zzMSHA-Comments@dol.gov](mailto:zzMSHA-Comments@dol.gov). Include "RIN 1219-AB75" in the subject line of the message.

(3) *Facsimile:* (202) 693-9441. Include "RIN 1219-AB75" in the subject line of the message.

(4) *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209-3939.

(5) *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209-3939. Sign in at the receptionist's desk on the 21st floor.

*Information Collection Requirements:* Comments concerning the information collection requirements of this proposed rule must be clearly identified with "RIN 1219-AB75" and sent to both the Office of Management and Budget (OMB) and MSHA. Comments to OMB may be sent by mail addressed 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. Comments to MSHA may be transmitted by any of the methods listed above in this section.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, at [silvey.patricia@dol.gov](mailto:silvey.patricia@dol.gov) (e-mail), (202) 693-9440 (voice), or (202) 693-9441 (facsimile).

**SUPPLEMENTARY INFORMATION:** The outline of this proposal is as follows:

- I. Introduction
  - A. Availability of Information
  - B. Statutory and Regulatory History
- II. Background Information
- III. Section-by-Section Analysis
  - A. Section 75.360 Preshift Examination at Fixed Intervals

<sup>52</sup> 13 CFR 121.101

<sup>53</sup> 13 CFR 121.201, Sector 22, Utilities & n. 1.

- B. Section 75.361 Supplemental Examination
- C. Section 75.362 On-Shift Examination
- D. Section 75.363 Hazardous Conditions and Violations of Mandatory Health or Safety Standards; Posting, Correcting, and Recording
- E. Section 75.364 Weekly examination
- F. Rationale for Proposed Changes
- IV. Executive Order 12866: Regulatory Planning and Review
  - A. Population at Risk
  - B. Benefits
  - C. Compliance Costs
  - D. Net Benefits
- V. Feasibility
  - A. Technological Feasibility
  - B. Economic Feasibility
- VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act
  - A. Definition of a Small Mine
  - B. Factual Basis for Certification
- VII. Paperwork Reduction Act of 1995
  - A. Summary
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- VIII. Other Regulatory Considerations
  - A. The Unfunded Mandates Reform Act of 1995
  - B. Executive Order 13132: Federalism
  - C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families
  - D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights
  - E. Executive Order 12988: Civil Justice Reform
  - F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
  - G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking
- IX. References

## I. Introduction

### A. Availability of Information

*Public Comments:* MSHA will post all comments on the Internet without change, including any personal information provided. Access comments electronically at <http://www.msha.gov/regsinfo.htm>. Review comments in person at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

*E-mail notification:* MSHA maintains a list that enables subscribers to receive e-mail notification when the Agency publishes rulemaking documents in the **Federal Register**. To subscribe, go to

<http://www.msha.gov/subscriptions/subscribe.aspx>.

### B. Statutory and Regulatory History

Sections 303(d)(1), (e), and (f) of the Federal Mine Safety and Health Act of 1977 (Mine Act) retained without change the language of the Federal Coal Mine Health and Safety Act of 1969 (Coal Act) setting forth requirements for pre-shift, on-shift, and weekly examinations. The Coal Act required that pre-shift examinations be conducted by certified examiners within three hours prior to the next shift. Section 303(d)(1) of the Mine Act required pre-shift examinations for specified hazards and for such other hazards and violations of the mandatory health or safety standards, as an authorized representative of the Secretary may from time to time require (30 U.S.C. 863(d)(1)). The pre-shift examination generally addressed evaluating the effectiveness of the mine's ventilation system and detecting potential hazards such as methane accumulations, water accumulations, and adverse roof conditions.

Section 303(e) required on-shift examinations for hazardous conditions (30 U.S.C. 863(e)). Like the preshift examination, the on-shift examination was included to identify hazards that developed during the shift. Generally, the on-shift examination included tests for methane and oxygen deficiency, an examination for hazardous conditions such as adverse roof conditions, and air measurements at specified locations.

Section 303(f) required weekly examinations for hazardous conditions, including compliance with the mandatory health or safety standards (30 U.S.C. 863(f)). The weekly examination was directed at hazards that developed in remote and less frequently traveled areas of the mine such as worked-out areas and bleeder entries (areas that carry away methane). For example, methane could accumulate in these areas which could result in an explosion if not discovered and corrected.

On November 20, 1970, MSHA issued a final rule for Preshift Examination, On-Shift Examinations for Hazardous Conditions, and Weekly Examinations for Hazardous Conditions (30 CFR 75.303, 304, and 305 (35 FR 17890)). The final rule restated the statutory provisions of the Coal Act (as retained in the Mine Act).

On January 27, 1988 (53 FR 2382), MSHA issued a proposed rule to revise the requirements for preshift, on-shift, and weekly examinations and add a new requirement for supplemental examinations. After evaluating the

comments, MSHA issued a final rule on May 15, 1992 (57 FR 20868). Neither the proposed rule nor the final rule included a requirement that mine examiners check for violations of mandatory health or safety standards.

On May 19, 1994, MSHA proposed revisions to the preshift examination requirement (59 FR 26356) to require that the examination include violations of mandatory health or safety standards that could result in a hazardous condition. The preamble to the proposed rule stated that by placing the mine operator in a proactive rather than a reactive role, the proposal would have the potential to enhance safety by identifying a condition before a hazard exists.

MSHA published a final rule on March 11, 1996 (61 FR 97640). In response to comments, the final rule did not include the proposed requirement that a preshift examination include examining for violations of mandatory health or safety standards, stating the Agency's intent to focus the attention of the examiner on critical areas so that the examiner could identify conditions that pose a hazard to miners.

## II. Background Information

Underground coal mines are dynamic work environments where the working conditions change rapidly and without warning. Diligent compliance with safety and health standards and safety conscious work practices provide a substantial measure of protection against mine accidents and emergencies.

Examinations are the first line of defense for miners working in underground coal mines and are necessary to protect miners. At the beginning of the shift, miners in an underground coal mine are particularly vulnerable to hazards and conditions in the workplace that developed during the prior shift; the preshift and supplemental examinations are intended to protect them. The proposal would require that pre-shift and supplemental examinations include violations of mandatory health or safety standards. The existing standard requires operators to identify and record hazardous conditions. It further requires that a hazardous condition be corrected immediately or the area remain posted with a conspicuous danger sign where anyone entering the area would pass. Under the proposal, MSHA would continue its practice under the existing standard that operators prioritize and correct violations based on the seriousness of the hazard.

Under the proposed standards, MSHA intends that examiners who conduct on-shift examinations identify and

correct hazardous conditions and violations of mandatory health or safety standards that arise during the miners' shift. MSHA also intends that weekly examiners identify and correct hazardous conditions and violations of mandatory health or safety standards during their required examinations as well. Therefore, MSHA is proposing that all required examinations be conducted in an effective and consistent manner to assure that hazardous conditions and violations of mandatory health or safety standards are timely identified and corrected.

Consistent with the Mine Act, the proposal would add a requirement that examiners conducting preshift, supplemental, on-shift, and weekly examinations identify and correct violations of mandatory health or safety standards. Under the proposal, operators would also have to record these violations, and the actions taken to correct them.

The proposal would also add a new requirement that mine operators review with mine examiners (e.g. the mine foreman, assistant mine foreman, or other certified persons) on a quarterly basis all citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required. The proposal would require that certified mine examiners conduct more complete and thorough examinations, thereby providing a greater level of protection for underground coal miners.

MSHA reviewed accident investigation reports and the Agency's enforcement data on underground coal mines and concluded that the Agency needed to propose changes to the existing examination requirements for underground coal mines. By reviewing records and data over a 5-year period, MSHA determined that the same types of violations of mandatory health or safety standards are found by MSHA inspectors in underground coal mines every year. These repeated violations expose miners to unnecessary safety and health risks that should be found and corrected. Violations for accumulations of combustible materials, ventilation and roof control plans, and maintenance of incombustible content of rock dust are the top ten cited safety standards year after year. These standards accounted for about 40 percent of the total violations at underground coal mines in 2009. Under the proposal, MSHA intends that an examiner looking for violations of mandatory health or safety standards would identify these types of violations. MSHA data reveals that citations are routinely issued for improperly constructed airlock doors or

improperly maintained ventilation controls. Absent other conditions, such as an accumulation of combustible materials and a misaligned conveyor belt, an operator might not consider these to be hazardous conditions. However, conditions in underground coal mines change rapidly—roof that appears adequately supported can quickly deteriorate and fall; stoppings can crush out and short-circuit air currents; conveyor belts can become misaligned or belt roller bearings can fail, resulting in an ignition source; and methane can accumulate in areas where it may not have been detected. To assure optimum safety of miners, it is imperative that operators find violations of health or safety standards, correct them, and record corrective actions taken.

MSHA does not intend that the proposal would significantly change the general scope of examinations under the existing standards. Examiners would not be required to perform additional tests, take additional measurements, or open and examine equipment or boxes. In accordance with the proposed rule, mine examiners would have to note violations and record them in the examination records and the operator would have to assure they are corrected. The top 10 standards cited by MSHA inspectors are the types of violations that well-trained and qualified examiners can observe while conducting effective examinations.

### III. Section-by-Section Analysis

#### A. Section 75.360 Preshift Examination at Fixed Intervals

The proposed rule would revise the existing preshift examination standard to: (1) Add a requirement for operators to check for violations of mandatory health or safety standards; (2) require that examinations the District Manager may require in other areas of the mine include examining for violations of mandatory health or safety standards; and (3) expand the existing recordkeeping requirements to include violations of mandatory health or safety standards. The proposed rule would make conforming changes to the existing requirement that allows pumpers, who are certified persons, to perform the preshift examination for themselves. Under the proposal, examinations conducted by pumpers would include identifying violations of mandatory health or safety standards.

#### B. Section 75.361 Supplemental Examination

The proposal would revise the supplemental examination standard to

require the operator to identify violations of mandatory health or safety standards. Under the existing standard, before any person enters an area that did not have a preshift examination, a certified person must perform a supplemental examination to identify hazardous conditions. This proposed change would require that examiners conducting supplemental examinations identify hazardous conditions and violations of mandatory health or safety standards to provide necessary protection for miners.

#### C. Section 75.362 On-Shift Examination

The proposal would revise the on-shift examination standard to require the operator to identify violations of mandatory health or safety standards during any shift when anyone is assigned to work on the section and where mechanized mining equipment is being installed or removed. The existing standard only requires examinations for hazardous conditions.

#### D. Section 75.363 Hazardous Conditions and Violations of Mandatory Health or Safety Standards; Posting, Correcting, and Recording

The proposal would revise the existing standard for correcting, posting, and recording hazardous conditions. The proposal would require the operator to correct all violations of mandatory health or safety standards found during preshift, supplemental, on-shift, and weekly examinations. Under the proposal, operators would have to correct violations within a reasonable time. For example, during the preshift examination, an operator may determine that it is necessary to purchase a piece of equipment to fix a violation and that it may take two days to get the equipment. Assuming that the violation does not pose a hazard to miners, the two days would generally be considered reasonable. The existing standard only requires the operator to correct hazardous conditions.

The proposal would also require that violations of mandatory health or safety standards found during the examinations, and the corrective actions taken, be recorded. The existing standard only requires a record for hazardous conditions.

The proposal would also add a new provision that would require that the operator review with mine examiners (e.g. the mine foreman, assistant mine foreman, or other certified persons), on a quarterly basis, all citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required. This

proposed requirement is intended so that operators can reinforce with all examiners the types of violations and conditions that they should be identifying during their examinations to determine if there are systemic problems. The proposal would improve the quality of these vital examinations and complement an effective mine safety and health management program.

*E. Section 75.364 Weekly Examination*

The proposal would revise the weekly examination standard to require the weekly examiner to identify violations of mandatory health or safety standards. Under the existing rule, the weekly examiner is required to examine for hazardous conditions. The proposal includes conforming changes to the existing requirements related to correcting and recording hazardous conditions to require correcting and recording violations of mandatory health or safety standards.

*F. Rationale for the Proposed Changes*

The proposed changes to all five standards in this rulemaking provide a more protective approach to conducting examinations in underground coal mines. The proposal would require mine operators to identify, correct, and record violations, and record corrective actions. Under the existing standards, operators observe conditions and only record and note corrective actions for hazardous conditions. The conditions that they do not believe are hazardous do not have to be recorded or corrected at the time of the examination.

MSHA reviewed all of the accident investigation reports involving fatalities from 2005 through 2009 where an inadequate examination of the underground work area was determined to have contributed to the accident. In addition, the agency reviewed citations and orders for non-fatal accidents for the same period where an inadequate examination of the underground work

area contributed to the accident. MSHA determined that in 20 of these accidents, although the examiner did not identify a hazardous condition, the conditions involved a violation of a mandatory health or safety standard. Had the examiner identified these violations and corrected the conditions, the accident could have been prevented. (The details of MSHA’s analysis are presented in the discussion of benefits.) These accident reports and citation and order narratives are included in the rulemaking docket and can be examined at the address listed in the ADDRESSES section of this notice. They may also be viewed at <http://www.msha.gov> or <http://www.regulations.gov>.

The proposal would require operators to be more proactive in their approaches to mine health and safety, and find and fix hazardous conditions and violations of mandatory health or safety standards. As a result, conditions that might have been identified only by MSHA inspectors would now be found and corrected by the operator. Under the existing standards violations may go undetected and uncorrected because operators do not believe that they constitute hazardous conditions.

The proposed rule would require the operator to be more proactive in creating a culture of safety at the mine. It would enhance miners’ safety because violations of health or safety standards would be identified and corrected, removing many of the conditions that could lead to danger in underground coal mines. MSHA solicits comments on other alternatives for assuring that operators examine for violations of mandatory health or safety standards, record and correct violations, and review violations with examiners.

**IV. Executive Order 12866: Regulatory Planning and Review**

Under Executive Order (E.O.) 12866 (58 FR 51735), a significant regulatory action is subject to review by the Office

of Management and Budget (OMB) and the requirements contained in the Executive Order. Section 3(f) of E.O. 12866 defines a “significant regulatory action” as an action that is likely to result in a rule (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as “economically significant”); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel, legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

The proposed rule does not have an annual effect of \$100 million or more on the economy and is not an economically “significant regulatory action” pursuant to section 3(f) of E.O. 12866. The proposed rule raises novel, legal or policy issues and is therefore subject to OMB review. MSHA requests comments on all the estimates of costs and benefits presented in this proposed rule.

MSHA has not prepared a separate preliminary regulatory economic analysis for this rulemaking. Rather, the analysis is presented below.

*A. Population at Risk*

The proposed rule applies to all underground coal mines in the United States. There are approximately 424 active underground coal mines employing 47,204 miners, excluding office workers. Table 1 presents the number of underground coal mines and employment.

TABLE 1—UNDERGROUND COAL MINES AND MINERS, 12 MONTH AVERAGE AS OF JANUARY 2010 BY EMPLOYMENT SIZE

Mine size	Number of UG coal mines	Total employment at underground mines, excluding office workers
1–19 Employees .....	81	1,179
20–500 Employees .....	331	29,432
501+ Employees .....	12	9,708
Contractors .....	.....	6,885
Total .....	424	47,204

Source: MSHA MSIS Data (March 2010).

Underground coal mines produced an estimated 332 million short tons of coal in 2009. The average price of coal in

underground mines in 2008 was \$51.35 per short ton (Department of Energy (DOE), Energy Information

Administration (EIA), *Annual Coal Report 2008*, October 2009, Table 28).

Table 2 presents coal production and estimated revenues for 2009.

TABLE 2—COAL PRODUCTION IN SHORT TONS AND COAL REVENUES IN 2009 FOR UNDERGROUND COAL MINES

Mine size	Coal production (millions of short tons)	Coal revenue (millions of dollars)
1–19 Employees .....	5.0	258.6
20–500 Employees .....	236.6	12,147.7
500+ Employees .....	90.3	4,634.6
Total .....	331.9	17,0401.1

### B. Benefits

One of MSHA's primary goals with this rulemaking is to reduce violations of mandatory health or safety standards that occur in underground coal mines year after year. These violations ultimately lead to accidents, injuries and illnesses. This section presents a summary of the potential benefits resulting from proposed changes to requirements for preshift, supplemental, on-shift, and weekly examinations in underground coal mines. To estimate the potential benefits, as stated earlier, MSHA reviewed all 64 fatal accident investigation reports from 2005 through 2009. In addition, the agency reviewed citations and orders for non-fatal accidents for the same period where an inadequate examination of the underground work area contributed to the accident.

Over the five year review period, there were 91 fatalities in underground coal mines. Of this total, the investigation reports for 15 of the fatalities specifically listed violations of the preshift, supplemental, on-shift, or weekly examinations as contributing factors to the accident. While these fatalities involved hazardous conditions and should have been prevented by a proper examination in accordance with the existing standards, the mine examiners did not identify the conditions as being hazardous prior to the fatal accidents. The proposed rule would require the identification and correction of violations of mandatory health and safety standards, which involves less subjective judgment on the part of mine examiners than determining whether conditions are hazardous. After analysis of the 15 fatalities, MSHA determined that 9 of them involved violations of mandatory health or safety standards and could have been prevented by a proper examination in accordance with the proposed rule. Thus, MSHA estimates that if the violations of mandatory health or safety standards were identified as required by the proposed rule, these 9 fatalities, or approximately

two fatalities per year (9 fatalities/5 years) could have been prevented through necessary corrective actions.

The fatalities reported above specifically listed violations of the preshift, supplemental, on-shift, or weekly examinations as contributing factors to the accident. MSHA also examined the fatal investigation reports that did not list violations of the preshift, supplemental, on-shift or weekly examinations as contributing factors to the accident to determine if a violation of any of the top 10 cited standards were listed as a contributing cause of the accident. MSHA's review included the following 10 health and safety standards that are most cited by MSHA inspectors year after year:

- § 75.202(a). The roof, face, and ribs of areas where persons work or travel shall be supported or otherwise controlled to protect persons from hazards related to falls of the roof, face or ribs and coal or rock bursts.
- § 75.220(a)(1). Each mine operator shall develop and follow a roof control plan, approved by the District Manager, that is suitable to the prevailing geological conditions, and the mining system to be used at the mine. Additional measures shall be taken to protect persons if unusual hazards are encountered.
- § 75.333(h). All ventilation controls, including seals, shall be maintained to serve the purpose for which they were built.
- § 75.370(a)(1). The operator shall develop and follow a ventilation plan approved by the district manager. The plan shall be designed to control methane and respirable dust and shall be suitable to the conditions and mining system at the mine \* \* \*.
- § 75.400. Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall be cleaned up and not be permitted to accumulate in active workings, or on diesel-powered and electric equipment therein.
- § 75.403. Where rock dust is required to be applied, it shall be

distributed upon the top, floor, and sides of all underground areas of a coal mine and maintained in such quantities that the incombustible content of the combined coal dust, rock dust, and other dust shall be not less than 65 per centum \* \* \*.

- § 75.1403. Other safeguards adequate, in the judgment of an authorized representative of the Secretary, to minimize hazards with respect to transportation of men and materials shall be provided.

- § 75.1722(a). Gears; sprockets; chains; drive, head, tail, and take-up pulleys; flywheels; couplings, shafts; saw blades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons shall be guarded.

- § 75.1725(a). Mobile and stationary machinery and equipment shall be maintained in safe operating condition and machinery and equipment in unsafe condition shall be removed from service immediately.

- § 75.1731(a). Damaged rollers, or other damaged belt conveyor components, which pose a fire hazard must be immediately repaired or replaced. All other damaged rollers, or other damaged belt conveyor components, must be repaired or replaced.

Based upon the Agency's review of these reports, MSHA determined that three additional fatalities could have been prevented by the proposed rule by identifying violations of mandatory health or safety standards and making necessary corrective actions. Thus MSHA estimates that the proposed rule could have prevented a total of up to 12 fatalities (nine where an inadequate examination was listed as a contributing factor and three where violations of any of the top 10 cited standards was listed as a contributing factor), or approximately five fatalities every two years. During the five-year review period, there were 91 fatalities in underground coal mines. MSHA estimates the proposed rule could have prevented 13 percent of those fatalities

(12/91 fatalities). The fatal investigation reports for all 12 fatalities are included in the rulemaking docket and can be examined at the address listed in the ADDRESSES section of this notice. They may also be viewed at <http://www.msha.gov> or <http://www.regulations.gov>.

In addition to reducing the number of fatalities, the proposed rule would reduce the number of injuries. To estimate the number of injuries that would be prevented for the period 2005 through 2009, MSHA reviewed the descriptions of 75 accidents involving 90 non-fatal injuries where the citation or order listed some combination of an inadequate examination or one of the top 10 cited standards as a contributing cause of the accident. MSHA determined that the proposed rule would have prevented 32 nonfatal injuries. Thus MSHA estimates that the proposed rule would have prevented approximately 13 non-fatal injuries every two years (32 non-fatal injuries/5 years).

MSHA believes that the proposed rule would also reduce respirable dust exposures in underground coal mines. According to a recent NIOSH report:

Respirable dust exposure has long been known to be a serious health threat to workers in many industries. In coal mining, overexposure to respirable coal mine dust can lead to coal workers' pneumoconiosis (CWP). CWP is a lung disease that can be disabling and fatal in its most severe form. In addition, miners can be exposed to high levels of respirable silica dust, which can cause silicosis, another disabling and/or fatal lung disease. Once contracted, there is no cure for CWP or silicosis. The goal, therefore, is to limit worker exposure to respirable dust to prevent development of these diseases \* \* \*. The tremendous human and financial costs resulting from CWP and silicosis in the U.S. underground coal mine workforce are shown by the following statistics:

- During 1970–2004, CWP was a direct or contributing cause of 69,377 deaths of U.S. underground coal mine workers.
- During 1980–2005, over \$39 billion in CWP benefits were paid to underground coal miners and their families.
- Recent x-ray surveillance data for 2000–2006 show an increase in CWP cases. Nearly 8% of examined underground coal miners with 25 or more years of experience were diagnosed with CWP \* \* \*.

Ventilating air to a \* \* \* mining section, whether blowing or exhausting, is the primary means of protecting workers from overexposure to respirable dust.” (NIOSH 2010)

Mine examinations are critical to ensuring that all of the requirements in the mine ventilation plan, including the dust control plan, are in place and working. Examiners check section and outby ventilation controls and the respirable dust control parameters which are key factors in reducing miners' exposure to respirable coal mine dust. MSHA believes that the proposal could provide better identification and correction of violations of the ventilation standards. This could lower miners' exposure to respirable coal mine dust, thereby lowering the incidence of black lung and other respiratory diseases. However, MSHA is addressing reducing miners' exposure to respirable coal mine dust in a separate rulemaking (RIN 1219–AB64, 75 FR 64412). Due to lack of data, MSHA is unable to incrementally quantify the reduced incidence of disease attributable to this proposed rule alone. The number of fatalities and injuries that may be prevented by this proposed rule may be understated or overstated. MSHA requests comments on the Agency's estimate of benefits, as well as supporting data.

Below MSHA provides estimates monetizing the potential benefits of the proposed rule for informational purposes only. Under the Mine Act, MSHA is not required to use monetized benefits or estimated net benefits as the basis for its decision.

MSHA based its estimates of the monetary values for the benefits associated with the proposed rule on relevant literature. To estimate the monetary values of these reductions in cases, MSHA performed an analysis of the imputed value of fatalities avoided based on a willingness-to-pay approach. This approach relies on the theory of compensating wage differentials (*i.e.*, the wage premium paid to workers to accept the risk associated with various jobs) in the labor market. A number of studies have shown a correlation between higher job risk and higher wages, suggesting that employees demand monetary compensation in

return for incurring a greater risk of injury or fatality.

Viscusi & Aldy (2003) conducted an analysis of studies that use a willingness-to-pay methodology to estimate the imputed value of life-saving programs (*i.e.*, meta-analysis) and found that each fatality avoided was valued at approximately \$7 million and each lost work-day injury was approximately \$50,000 in 2000 dollars. Using the GDP Deflator (U.S. Bureau of Economic Analysis, 2010), this yields an estimate of \$8.7 million for each fatality avoided and \$62,000 for each injury avoided in 2009 dollars. This value of a statistical life (VSL) estimate is within the range of the substantial majority of such estimates in the literature (\$1 million to \$10 million per statistical life), as discussed in OMB Circular A–4 (OMB, 2003).

Although MSHA is using the Viscusi & Aldy (2003) study as the basis for monetizing the expected benefits of the proposed rule, the Agency does so with several reservations, given the methodological difficulties involved in estimating the compensating wage differentials (*see* Hintermann, Alberini and Markandya, 2008). Furthermore, these estimates pooled across different industries may not capture the unique circumstances faced by coal miners. For example, some have suggested that VSL models be disaggregated to account for different levels of risk, as might occur in coal mining (*see* Sunstein, 2004). In addition, coal miners may have few options of alternative employers and in some cases only one employer (near-monopsony or monopsony) that may depress wages below those in a more competitive labor market.

MSHA recognizes that monetizing the VLS is difficult and involves uncertainty and imprecision. In the future, MSHA plans to work with other agencies to refine the approach taken in this proposed rule.

Based upon the estimated prevention of 2.4 fatalities and 6.4 lost-time injuries per year, MSHA estimates that the proposed rule could result in monetized benefits of up to \$21.3 million per year (2.4 × \$8.7 million + 6.4 × \$62,000).

C. Compliance Costs

TABLE 3—SUMMARY OF ANNUAL COSTS TO UNDERGROUND COAL MINE OPERATORS

Requirement	Number of employees			Totals
	1–19	20–500	501+	
75.360 PreShift Exam .....	\$690,000	\$8,410,000	\$530,000	\$9,630,000
75.361 Supplemental Exam .....	3,000	70,000	3,000	76,000
75.362 On-Shift Exam .....	340,000	4,210,000	270,000	4,820,000
75.363(e) Review of Citations and Orders .....	24,000	411,000	92,000	557,000

TABLE 3—SUMMARY OF ANNUAL COSTS TO UNDERGROUND COAL MINE OPERATORS—Continued

Requirement	Number of employees			Totals
	1–19	20–500	501+	
75.364 Weekly Exam .....	36,000	150,000	5,000	191,000
Totals .....	1,093,000	13,281,000	900,000	15,274,000

Based on experience, MSHA estimates the preshift and on-shift examinations would be conducted by a supervisory certified examiner (paid an hourly rate of \$84.70, including benefits). The supplemental and weekly examinations would be conducted by non-supervisory certified examiners (paid an hourly rate of \$35.30, including benefits).

#### Preshift Examination at Fixed Intervals—Proposed § 75.360

Under existing § 75.360, MSHA estimated that it would take an examiner at a typical small mine 2 hours to complete a preshift examination and an examiner at a typical large mine 3 hours to complete the preshift examination. Proposed § 75.360 would require examiners conducting preshift examinations to identify violations of mandatory health or safety standards, and record the violations found along with the corrective actions taken. Based upon Agency data and experience, MSHA estimates that it would take a certified examiner, earning a supervisory wage of \$84.70 an hour (includes benefits), an additional 30 minutes (0.5 hrs) per preshift examination to identify violations and record them along with the corrective actions taken. MSHA estimates that mines with 1–19 employees operate 200 days per year; 20–500 employees, 300 days per year; and 501+ employees, 350 days per year. MSHA also estimates there would be 1 exam per day at mines with 1–19 employees, 2 exams per day at mines with 20–500 employees, and 3 exams per day at mines with 501+ employees.

This would result in estimated costs of \$9.6 million: \$686,100 in mines with 1–19 employees (81 mines × 1 exam per day × 200 days a year × 0.5 hours × \$84.70 per hour); \$8.4 million in mines with 20–500 employees (331 mines × 2 exams per day × 300 days a year × 0.5 hours × \$84.70 per hour); and \$533,600 in mines with 501+ employees (12 mines × 3 exams per day × 350 days a year × 0.5 hours × \$84.70 per hour).

#### Supplemental Examination—Proposed § 75.361

Under existing § 75.361, MSHA estimated that it would take an

examiner at a typical mine 0.5 hours to complete a supplemental examination. Proposed § 75.361 would require examiners conducting supplemental examinations to identify violations of mandatory health or safety standards. Based upon Agency data and experience, MSHA estimates that it would take a certified examiner, earning a non-supervisory wage of \$35.30 an hour (includes benefits), an additional 15 minutes (0.25 hrs.) to identify and record violations of mandatory health or safety standards and the corrective actions taken. Supplemental examinations are only performed in areas where a preshift examination has not been conducted. MSHA estimates that examiners would perform supplemental examinations 4 times per year at mines with 1–19 employees and 24 times per year at mines with 20–500 employees and 501+ employees.

This would result in estimated costs of \$75,500: \$2,900 in mines with 1–19 employees (81 mines × 4 exams per mine × 0.25 hours per exam × \$35.30 per hour); \$70,100 in mines with 20–500 employees (331 mines × 24 exams per mine × 0.25 hours per exam × \$35.30 per hour); and \$2,500 in mines with 501+ employees (12 mines × 24 exams per mine × 0.25 hours per exam × \$35.30 per hour).

#### On-shift Examination—Proposed § 75.362

Under existing § 75.362, MSHA estimated that it would take an examiner at a typical small mine 450 minutes (0.67 hours) to complete an on-shift examination and an examiner at a typical large mine 45 minutes (0.75 hours) to complete the on-shift examination. Proposed § 75.362 would require examiners conducting on-shift examinations to identify violations of mandatory health or safety standards. Based upon Agency data and experience, MSHA estimates that it would take a certified examiner, earning a supervisory wage of \$84.70 an hour (includes benefits), an additional 15 minutes (0.25 hrs.) to identify and record violations of mandatory health or safety standards and the corrective actions taken. On-shift examinations are performed during each working shift.

MSHA estimates that there is 1 shift per day at mines with 1–19 employees; 2 shifts per day at mines with 20–500 employees; and 3 shifts per day at mines with 501+ employees. MSHA estimates that mines with 1–19 employees operate 200 days per year; 20–500 employees, 300 days per year; and 501+ employees, 350 days per year.

This would result in estimated costs of \$4.8 million: \$343,000 in mines with 1–19 employees (81 mines × 1 shift per day × 200 days per year × 0.25 hours per shift × \$84.70 per hour); \$4.2 million in mines with 20–500 employees (331 mines × 2 shifts per day × 300 days per year × 0.25 hours per shift × \$84.70 per hour); and \$266,800 in mines with 501+ employees (12 mines × 3 shifts per day × 350 days per year × 0.25 hours per shift × \$84.70 per hour).

#### Hazardous Conditions and Violations of Mandatory Health or Safety Standards; Posting, Correcting and Recording—Proposed § 75.363(b)

Proposed § 75.363 would require examiners to record violations of mandatory health or safety standards and the corrective actions taken for supplemental and on-shift examinations. The costs associated with this proposed requirement are included in cost estimates for proposed §§ 75.361 and 75.362 above.

#### Review of Citations and Orders—Proposed § 75.363(e)

Proposed § 75.363(e) is a new requirement that would require the operator to review with mine examiners (e.g. the mine foreman, assistant mine foreman, or other certified persons) on a quarterly basis citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required. Based upon Agency data and experience, MSHA estimates that 80 percent of underground coal mine operators currently discuss violations with examiners; therefore, approximately 20 percent (84 agents of the operators, 641 examiners for preshift and on-shift examinations, and 158 examiners for weekly and supplemental examinations) would need to review the citations and orders as follows: 16 agents, 49 preshift

and on-shift examiners, and 16 weekly and supplemental examiners in mines with 1–19 employees; 66 agents, 530 preshift and on-shift examiners, and 132 weekly and supplemental examiners in mines with 20–500 employees; and 2 agents, 62 preshift and on-shift examiners, and 10 weekly and supplemental examiners in mines with 501+ employees. MSHA also estimates that these reviews would take 1 hour in mines with 1–19 employees, 2 hours in mines with 20–500 employees, and 4 hours in mines with 501+ employees.

Examiners on preshift and on-shift exams are supervisors earning an hourly wage of \$84.70 and examiners on weekly and supplemental exams are certified examiners earning an hourly wage of \$35.30. MSHA estimates the operator's agent conducting the review earns an hourly wage of \$84.70.

This would result in estimated costs of \$557,000: \$24,000 in mines with 1–19 employees [(16 agents + 49 examiners) × \$84.70 × (4 meetings × 1 hour)] + [(16 examiners × \$35.30) × (4 meetings × 1 hour)]; \$441,000 in mines with 20–500 employees [(66 agents + 530 examiners) × \$84.70 × (4 meetings × 2 hours)] + [(132 examiners × \$35.30) × (4 meetings × 2 hours)]; and \$92,000 in mines with 501+ employees [(2 agents + 62 examiners) × \$84.70 × (4 meetings × 4 hours)] + [(10 examiners × \$35.30) × (4 meetings × 4 hours)].

#### Weekly Examination—Proposed § 75.364

Under existing § 75.364, MSHA estimated that it would take an examiner at a typical small mine 5.1 hours to complete a weekly examination and an examiner at a typical large mine 10.2 hours to complete the weekly examination. Proposed § 75.364 would require operators to conduct examinations at least every seven days to identify violations of mandatory health or safety standards and record the corrective actions taken. These examinations mainly take place in worked-out areas of the mine where violations of mandatory health or safety standards are less likely to occur. Based upon Agency data and experience, MSHA estimates that it would take a certified examiner, earning a non-supervisory wage of \$35.30 an hour (includes benefits), an additional 15 minutes (0.25 hrs.) to identify and record violations of mandatory health or safety standards and the corrective actions taken. MSHA also estimates that, on average, mines operate for 50 weeks out of the year.

This would result in estimated costs of \$187,100: \$35,700 in mines with 1–19 employees (81 mines × 50 weeks

× 0.25 hours per week × \$35.30 per hour); \$146,100 in mines with 20–500 employees (331 mines × 50 weeks × 0.25 hours per week × \$35.30 per hour); and \$5,300 in mines with 501+ employees (12 mines × 50 weeks × 0.25 hours per week × \$35.30 per hour).

#### Corrective Actions

MSHA's estimates do not include the costs of any corrective actions that would be necessary to come into compliance with the underlying regulatory requirements. These costs were included in MSHA's estimates associated with existing regulations and are not new compliance costs resulting from the proposed rule. Rather than waiting for violations to be either identified by a MSHA inspector or rise to the level of a hazardous condition and be identified by a mine examiner, the proposed rule would require mine operators to identify violations of mandatory health and safety standards during the mine examinations. This would prevent some accidents because mine operators would be required to take corrective actions earlier than under the existing standards, i.e., before a hazardous condition develops. Although the proposed rule would result in operators taking corrective actions sooner, it would not increase the costs of the corrective actions. Under MSHA's requirements, if cited, operators must correct a violation of a mandatory health or safety standard (such as removing coal dust accumulations from conveyor belts or maintaining equipment in safe operating condition) in order to abate the citation.

MSHA requests comments on the Agency's estimate of costs, as well as supporting data.

#### V. Feasibility

MSHA has concluded that the requirements of the proposed rule are technologically and economically feasible. The existing regulations require mine operators to perform the examinations to identify hazardous conditions. The proposed rule would expand the requirement to include identifying violations of mandatory health or safety standards.

##### A. Technological Feasibility

MSHA concludes that the proposed rule is technologically feasible because it would simply require operators to identify, record and correct violations of mandatory health or safety standards. There are no technology issues raised by the proposed rule.

##### B. Economic Feasibility

MSHA concludes that the proposed rule is economically feasible. The U.S. underground coal sector produced an estimated 332 million short tons of coal in 2009. Multiplying the production by the 2008 price of underground coal of \$51.35 per short ton yields estimated 2009 underground coal revenues of approximately \$17 billion. MSHA estimated the yearly compliance cost of the proposed rule to be \$15.3 million, which is 0.09 percent of revenues (\$15.3 million/\$17 billion) for underground coal mines. MSHA has traditionally used a revenue screening test—whether the yearly compliance costs of a regulation are less than 1 percent of revenues—to establish presumptively that compliance with the regulation is economically feasible for the mining community.

#### VI. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

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. Based on that analysis, MSHA has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification under the Regulatory Flexibility Act at 5 U.S.C. 605(b) that the proposed rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is presented below.

##### A. Definition of a Small Mine

Under the RFA, in analyzing the impact of the proposed 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 hence is required to use the SBA definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees.

In addition to examining small entities as defined by SBA, MSHA has also looked at the impact of this proposed rule on underground coal mines with fewer than 20 employees, which MSHA and the mining community have traditionally referred to as "small mines." These small mines differ from larger mines not only in the

number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, the cost of complying with the proposed rule and the impact of the proposed rule on small mines will also be different. It is for this reason that small mines are of special concern to MSHA.

MSHA concludes that it can certify that the proposed rule will not have a significant economic impact on a substantial number of small entities that are covered by this proposed rule. The Agency has determined that this is the case both for mines with fewer than 20 employees and for mines with 500 or fewer employees.

**B. Factual Basis for Certification**

MSHA initially evaluates the impacts on “small entities” by comparing the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for the affected sector. When estimated compliance costs are less than one

percent of the estimated revenues, the Agency believes 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 one percent of revenues, MSHA investigates whether a further analysis is required.

For underground coal mines, the estimated preliminary 2009 production was approximately 5 million tons for mines that had fewer than 20 employees and 242 million tons for mines that had 500 or fewer employees. Using the 2008 price of underground coal of \$51.35 per short ton and total 2009 coal production in short tons, underground coal revenues are estimated to be approximately \$258.6 million for mines employing fewer than 20 employees and \$12.4 billion for mines employing 500 or fewer employees. The annual cost of the proposed rule for mines that have fewer than 20 employees is 0.43 percent (\$1.1 million/\$258.6 million) of annual revenues, and the annual cost of the proposed rule for mines that have 500

or fewer employees is 0.12 percent (\$14.4 million/\$12.4 billion) of annual revenues. Using either MSHA’s traditional definition of a small mine (one having fewer than 20 employees) or SBA’s definition of a small mine (one having 500 or fewer employees), the yearly costs for underground coal mines to comply with the proposed rule will be less than 1 percent of their estimated revenues. Accordingly, MSHA has certified that the proposed rule will not have a significant impact on a substantial number of small entities that are covered by the proposed rule.

**VII. Paperwork Reduction Act of 1995**

**A. Summary**

This proposed rule contains changes that would affect the burden in an existing paperwork package with OMB Control Number 1219–0088. The proposed rule also contains a new burden for collection requirements which is shown in Table 5. The proposed rule would result in 13,257 burden hours and related costs of approximately \$1 million annually.

**TABLE 5—SUMMARY OF BURDEN HOURS AND COSTS**

Requirement	Burden hours	Cost
75.360 PreShift exam .....	11,370	\$963,039
75.363 Record of Hazards .....	827	61,649
75.364 Weekly exam .....	1,060	37,418
<b>Totals .....</b>	<b>13,257</b>	<b>1,062,106</b>

**Proposed § 75.360—Burden to Make a Record of the Preshift Examination**

Proposed § 75.360 would require operators to record any violations of mandatory health or safety standards found along with the corrective actions taken. MSHA estimates that it would take a certified examiner an average of 3 minutes (0.05 hrs.) out of the total time needed to perform the examination to record the violations along with any corrective actions taken. An examiner conducting a preshift exam earns a supervisory wage of \$84.70 an hour (includes benefits). MSHA estimates that mines with 1–19 employees operate 200 days per year, mines with 20–500 employees operate 300 days per year, and mines with 501+ employees operate 350 days per year. MSHA also estimates there will be 1 exam per day at mines with 1–19 employees, 2 exams per day at mines with 20–500 employees, and 3 exams per day at mines with 501+ employees.

MSHA’s estimates of underground coal operators’ annual burden hours and related costs are presented below.

**Burden Hours**

- 81 mines × 1 exam × 200 days × 0.05 hrs. = 810 hrs.
  - 331 mines × 2 exams × 300 days × 0.05 hrs. = 9,930 hrs.
  - 12 mines × 3 exams × 350 days × 0.05 hrs. = 630 hrs.
- Total Hours = 11,370 hrs.

**Burden Costs**

- 11,370 hrs. × \$84.70 per hour = \$963,039.

**Proposed § 75.363—Burden To Make a Record of Violations Found**

Proposed § 75.363 would require operators to record any violations of mandatory health or safety standards found on supplemental and on-shift examinations and any corrective actions taken. The proposed preshift (§ 75.360) and weekly (§ 75.364) examinations have their own recordkeeping requirements. The proposed supplemental (§ 75.361) and on-shift (§ 75.362) standards would contain new recordkeeping requirements if a violation of a mandatory health or safety standard is found. The recordkeeping

for these proposed standards would be recorded under proposed § 75.363.

During FY 2005 through 2009, MSHA inspectors found an annual average of 22,062 violations of the top 10 cited standards MSHA believes are most likely to be identified on preshift, supplemental, on-shift, and weekly examinations (see Section IV.B.). Because conditions resulting in these violations can occur and require corrective action multiple times during the year (e.g., insufficient rock dust), MSHA multiplied the 22,062 violations found by MSHA inspectors by a factor of 1.5 to arrive at an estimated 33,093 violations that could be found by mine examiners. MSHA assumes that half of these violations, 16,547 violations, would be identified on the preshift and weekly examinations and the other half would be identified on supplemental and on-shift examinations.

Thus, MSHA estimates that the supplemental and on-shift examiners would find approximately 39 violations per year per mine (16,547 violations/424 mines). MSHA estimates that 80 percent

of these (31 violations) would be found on the on-shift examinations and 20 percent (8 violations) would be found on the supplemental examinations. MSHA estimates that it would take 3 minutes (0.05 hrs.) to record any violations identified and the corrective actions taken. Supervisors earning \$84.70 an hour perform on-shift exams and certified examiners earning \$35.30 perform weekly exams.

MSHA's estimates of underground coal operators' annual burden hours and related costs are presented below.

#### Burden Hours

- 424 mines × 31 violations × 0.05 hrs. = 657 hrs.
  - 424 mines × 8 violations × 0.05 hrs. = 170 hrs.
- Total Hours = 827 hrs.

#### Burden Costs

- 657 hrs. × \$84.70 wage rate = \$55,648.
  - 170 hrs. × \$35.30 wage rate = \$6,001.
- Total burden cost = \$61,649.

#### Proposed § 75.364—Burden To Make a Record of the Weekly Examinations

Proposed § 75.364 would require operators to conduct examinations every seven days to record violations of mandatory health or safety standards found and the corrective actions taken. MSHA estimates that it would take a certified examiner 3 minutes (0.05 hrs.) out of the total time needed to perform the examinations to record violations and any corrective actions taken. An examiner conducting these examinations earns a non-supervisory wage of \$35.30 an hour (includes benefits). MSHA also estimates that, on average, mines operate for 50 weeks out of the year.

MSHA's estimates of underground coal operators' annual burden hours and related costs are presented below.

#### Burden Hours

- 424 mines × 50 weeks × 0.05 hrs. = 1,060 hrs.

#### Burden Costs

- 1,060 hrs. × \$35.30 wage rate = \$37,418

#### B. Procedural Details

The information collection package for this proposed rule has been submitted to OMB for review under 44 U.S.C. 3504, paragraph (h) of the Paperwork Reduction Act of 1995, as amended.

Comments on the information collection requirements should be sent to both OMB and MSHA. Addresses for both offices can be found in the **ADDRESSES** section of this preamble. The

regulated community is not required to respond to any collection of information unless it displays a current, valid, OMB control number. MSHA displays the OMB control numbers for the information collection requirements in its regulations in 30 CFR part 3.

#### VIII. Other Regulatory Considerations

##### A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the proposed rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). MSHA has determined that this proposed rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments; nor will it increase private sector expenditures by more than \$100 million in any one year or significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires no further agency action or analysis.

##### B. Executive Order 13132: Federalism

This proposed rule does not have "federalism implications" because it will 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, under E.O. 13132, no further Agency action or analysis is required.

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

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Agency action on family well-being. MSHA has determined that this proposed rule will have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. This proposed rule impacts only the underground coal mine industry. Accordingly, MSHA certifies that this proposed rule would not impact family well-being.

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

This proposed rule does not implement a policy with takings implications. Accordingly, under E.O. 12630, no further Agency action or analysis is required.

##### E. Executive Order 12988: Civil Justice Reform

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 will meet the applicable standards provided in section 3 of E.O. 12988, Civil Justice Reform.

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

This proposed rule will have no adverse impact on children. Accordingly, under E.O. 13045, no further Agency action or analysis is required.

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

This proposed rule does not have "tribal implications" because it will 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, under E.O. 13175, no further Agency action or analysis is required.

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

Executive Order 13211 requires agencies to publish a statement of energy effects when a rule has a significant energy action that adversely affects energy supply, distribution or use. MSHA has reviewed this proposed rule for its energy effects because the proposed rule applies to the underground coal mining sector. Because this proposed rule will result in yearly costs of approximately \$15.3 million to the underground coal mining industry, relative to annual revenues of \$17 billion in 2009, MSHA has concluded that it is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, under this analysis, no further Agency action or analysis is required.

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

MSHA has thoroughly reviewed the proposed rule to assess and take appropriate account of its potential

impact on small businesses, small governmental jurisdictions, and small organizations. MSHA has determined and certified that the proposed rule does not have a significant economic impact on a substantial number of small entities.

## IX. References

- Hintermann, B., Alberini, A., and Markandya, A. (2010). "Estimating the Value of Safety with Labor Market Data: Are the Results Trustworthy?" *Applied Economics*, pages 1085–1100. Published electronically in July 2008.
- Sunstein, C. (2004). "Valuing Life: A Plea for Disaggregation." *Duke Law Journal*, 54 (November 2004): 385–445.
- U.S. Bureau of Economic Analysis (2010). "National Income and Product Accounts Table: Table 1.1.9. Implicit Price Deflators for Gross Domestic Product" [Index numbers, 2005 = 100]. Revised May 27, 2010. <http://www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=13&Freq=Qtr&FirstYear=2006&LastYear=2008>
- U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health (NIOSH 2010), "Best Practices for Dust Control in Coal Mining", DHHS (NIOSH) Publication No. 2010–110, Information Circular 9517, Jan 2010:1–76
- Viscusi, W. & Aldy, J. (2003) "The Value of a Statistical Life: A Critical Review of Market Estimates Throughout the World", *Journal of Risk and Uncertainty*, (27:5–76).

### List of Subjects in 30 CFR Part 75

Mine safety and health, Underground coal mines, Ventilation.

Dated: December 21, 2010.

**Joseph A. Main,**

*Assistant Secretary for Mine Safety and Health.*

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977 as amended, Chapter I of Title 30, part 75 of the Code of Federal Regulations is proposed to be amended as follows:

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

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

**Authority:** 30 U.S.C. 811, 863.

#### Subpart D—Ventilation

2. Paragraphs (a)(2), (b) introductory text, (e), and (g) of § 75.360 are revised to read as follows:

#### § 75.360 Preshift examination at fixed intervals.

(a) \* \* \*

(2) Preshift examinations of areas where pumpers are scheduled to work or travel shall not be required prior to the pumper entering the areas if the pumper is a certified person and the pumper conducts an examination for hazardous conditions and violations of mandatory health or safety standards, tests for methane and oxygen deficiency, and determines if the air is moving in its proper direction in the area where the pumper works or travels. The examination of the area must be completed before the pumper performs any other work. A record of all hazardous conditions and violations of mandatory health or safety standards found by the pumper shall be made and retained in accordance with § 75.363 of this part.

(b) The person conducting the preshift examination shall examine for hazardous conditions and violations of mandatory health or safety standards, test for methane and oxygen deficiency, and determine if the air is moving in its proper direction at the following locations:

\* \* \* \* \*

(e) The district manager may require the certified person to examine other areas of the mine or examine for other hazards and violations of mandatory health or safety standards during the preshift examination.

\* \* \* \* \*

(g) *Recordkeeping.* A record of the results of each preshift examination, including a record of hazardous conditions and violations of mandatory health or safety standards and their locations found by the examiner during each examination and of the results and locations of air and methane measurements, shall be made on the surface before any persons, other than certified persons conducting examinations required by this subpart, enter any underground area of the mine. The results of methane tests shall be recorded as the percentage of methane measured by the examiner. The record shall be made by the certified person who made the examination or by a person designated by the operator. If the record is made by someone other than the examiner, the examiner shall verify the record by initials and date by or at the end of the shift for which the examination was made. A record shall also be made by a certified person of the action taken to correct hazardous conditions and violations of mandatory health or safety standards found during the preshift examination. All preshift

and corrective action records shall be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. The records required by this section 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.

\* \* \* \* \*

3. Paragraph (a) of § 75.361 is revised to read as follows:

#### § 75.361 Supplemental examination.

(a) Except for certified persons conducting examinations required by this subpart, within 3 hours before anyone enters an area in which a preshift examination has not been made for that shift, a certified person shall examine the area for hazardous conditions and violations of mandatory health or safety standards, determine whether the air is traveling in its proper direction and at its normal volume, and test for methane and oxygen deficiency.

\* \* \* \* \*

4. Paragraphs (a)(1) and (b) of § 75.362 are revised to read as follows:

#### § 75.362 On-shift examination.

(a)(1) At least once during each shift, or more often if necessary for safety, a certified person designated by the operator shall conduct an on-shift examination of each section where anyone is assigned to work during the shift and any area where mechanized mining equipment is being installed or removed during the shift. The certified person shall check for hazardous conditions and violations of mandatory health or safety standards, test for methane and oxygen deficiency, and determine if the air is moving in its proper direction.

\* \* \* \* \*

(b) During each shift that coal is produced, a certified person shall examine for hazardous conditions and violations of mandatory health or safety standards along each belt conveyor haulageway where a belt conveyor is operated. This examination may be conducted at the same time as the preshift examination of belt conveyors and belt conveyor haulageways, if the examination is conducted within 3 hours before the oncoming shift.

\* \* \* \* \*

5. In § 75.363, new paragraph (e) is added, and the section heading and paragraphs (a) and (b) are revised to read as follows:

**§ 75.363 Hazardous conditions and violations of mandatory health or safety standards; posting, correcting, and recording.**

(a) Any hazardous condition found by the mine foreman or equivalent mine official, assistant mine foreman or equivalent mine official, or other certified persons designated by the operator for the purposes of conducting examinations under this subpart D, shall be posted with a conspicuous danger sign where anyone entering the areas would pass. A hazardous condition shall be corrected immediately or the area shall remain posted until the hazardous condition is corrected. If the condition creates an imminent danger, everyone except those persons referred to in section 104(c) of the Act shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected. Only persons designated by the operator to correct or evaluate the condition may enter the posted area. Any violation of a mandatory health or safety standard found during a preshift examination, a supplemental examination, an on-shift examination, or a weekly examination shall be corrected.

(b) A record shall be made of any hazardous condition and any violation of a mandatory health or safety standard found. This record shall be kept in a book maintained for this purpose on the surface at the mine. The record shall be made by the completion of the shift on which the hazardous condition or violation of a mandatory health or safety standard is found and shall include the nature and location of the hazardous condition or violation of the mandatory health or safety standard and the corrective action taken. This record shall not be required for shifts when no hazardous conditions or violations of mandatory health or safety standards are found, or for hazardous conditions and violations of mandatory health or safety standards found during the preshift or weekly examinations inasmuch as these examinations have separate recordkeeping requirements.

(e) *Review of citations and orders.* The mine operator shall review with mine examiners on a quarterly basis citations and orders issued in areas where preshift, supplemental, on-shift, and weekly examinations are required.

6. The introductory text of paragraph (b) and paragraphs (d) and (h) of § 75.364 are revised to read as follows:

**§ 75.364 Weekly examination.**

\* \* \* \* \*

(b) *Hazardous conditions and violations of mandatory health or safety*

*standards.* At least every 7 days, an examination for hazardous conditions and violations of mandatory health or safety standards at the following locations shall be made by a certified person designated by the operator:

\* \* \* \* \*

(d) Hazardous conditions shall be corrected immediately. If the condition creates an imminent danger, everyone except those persons referred to in section 104(c) of the Act shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected. Any violation of a mandatory health or safety standard found during a weekly examination shall be corrected.

\* \* \* \* \*

(h) *Recordkeeping.* At the completion of any shift during which a portion of a weekly examination is conducted, a record of the results of each weekly examination, including a record of hazardous conditions and violations of mandatory health or safety standards found during each examination and their locations, the corrective action taken, and the results and location of air and methane measurements, shall be made. The results of methane tests shall be recorded as the percentage of methane measured by the examiner. The record shall be made by the person making the examination or a person designated by the operator. If made by a person other than the examiner, the examiner shall verify the record by initials and date by or at the end of the shift for which the examination was made. The record shall be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. The records required by this section 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.

\* \* \* \* \*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG-2010-1055]

RIN 1625-AA09

**Drawbridge Operation Regulation; Rainey River, Rainer, MN**

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish drawbridge operating procedures for the Canadian National Railway Bridge across the Rainey River at Mile 85.0 at Rainer, Minnesota. This proposed rule is intended to establish standard bridge operating conditions for the drawbridge, including dates of operation.

**DATES:** Comments and related material must reach the Coast Guard on or before January 26, 2011.

**ADDRESSES:** You may submit comments identified by docket number USCG-2010-1055 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, U.S. Coast Guard; telephone 216-902-6085, e-mail [lee.d.soule@uscg.mil](mailto:lee.d.soule@uscg.mil), or fax 216-902-6088. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**