

wheeled agricultural tractors, as well as those installed on new off-road machines or tractors, meet the specifications in the most recent SAE consensus standards. The immediate availability of replacement seat belts "off-the-shelf," as opposed to those requiring a special order, speeds replacement, minimizing equipment down time and the enticement to use off-road work machines without compliant seat belts. Also, allowing the use of seat belts meeting other revisions of the SAE standards, rather than only the most recent, allows mine operators to use the supply of replacement seat belts they already have on hand.

**Enhanced Safety.** The direct final rule improves safety by updating MSHA's standards to allow the use of advances in seat belt technology addressed in the newer industry consensus standards. Many safeguards and improved engineering are integral design features on new products. For example, these revisions address developments, such as tether straps and three and four point systems, which are not included in the 1983 or 1985 revisions. Up-to-date standards are consistent with the goals of the Federal Mine Safety and Health Act of 1977, Executive Order 12866, and the Regulatory Flexibility Act.

### **III. The Regulatory Flexibility Act, Executive Order 12866, and the Small Business Regulatory Enforcement Fairness Act**

In accordance with Executive Order (E.O.) 12866, we have analyzed the estimated costs and benefits associated with this direct final rule, and have included our Regulatory Economic Analysis (REA) in this preamble. This direct final rule is not an economically significant regulatory action under § 3(f)(1) of E.O. 12866.

In accordance with § 605 of the Regulatory Flexibility Act (RFA), we certify that this direct final rule does not have a significant economic impact on a substantial number of small entities. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, we must include the factual basis for this certification in the direct final rule. Accordingly, we are publishing the factual basis for our regulatory flexibility certification statement in the **Federal Register**, as part of this preamble, and are providing a copy to the Small Business Administration (SBA), Office of Advocacy. We also will mail a copy of the direct final rule, including the preamble and certification statement, to metal and nonmetal mine operators and miners' representatives

and post it on our Internet Home Page at [www.msha.gov](http://www.msha.gov).

**Factual basis for certification.** This direct final rule provides at least the same level of protection for miners at a lower cost for mine operators. It affects all 11,641 metal and nonmetal mines, 85.3% (9,928) of which employ fewer than 20 miners and 99.8% (11,618) of which employ 500 or fewer miners (PEIR, CY 2001). It includes no additional costs and has no adverse economic impact on the metal and nonmetal mining industry. To the contrary, there are cost savings associated with not having to special order discontinued, older seat belts and not having to replace those seat belts already installed. The direct final rule also eliminates the burden of preparing and responding to petitions for modification. The advantage of being able to obtain seat belts "off-the-shelf" allows mine operators to replace damaged seat belts more quickly, thus reducing machinery and equipment down time which could result in lost production.

### **IV. Other Regulatory Considerations**

#### **A. Paperwork Reduction Act**

This direct final rule contains no information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Although the SAE requires seat belts to have a label indicating compliance with a specific SAE consensus standard, these labels are prepared and attached by the seat belt manufacturer. Both mine operators and MSHA use these labels to determine whether the seat belts comply with the appropriate SAE consensus standard.

#### **B. Unfunded Mandates Reform Act of 1995**

This direct final rule affects about 220 small metal and nonmetal mines operated by governmental jurisdictions mostly to provide aggregates for the construction and repair of highways and roads. We have determined, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, that this direct 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. We also determined, for purposes of § 203, that this direct final rule does not significantly or uniquely affect these entities.

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

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

#### **D. Executive Order 12988: Civil Justice Reform**

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

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

In accordance with Executive Order 13045, we have evaluated the environmental health and safety effects of this direct final rule and have determined that it has no adverse effects on children.

#### **F. Executive Order 13132: Federalism**

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

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

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

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

In accordance with Executive Order 13211, we have reviewed this direct final rule and have determined that it has no significant adverse effect on the supply, distribution, or use of energy, and no reasonable alternatives to this action are necessary.

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

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the direct final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed previously in this preamble, MSHA has determined