

III. Section-by-Section Discussion

The following section-by-section discussion explains the direct final rule's revisions to the existing standards. The direct final rule provides the same level of protection for miners as the existing standards because it guarantees that sanitary toilets meet the same requirements as those which were approved through the existing application process. It has no substantive effect on the sanitation standards at coal mines.

A. 30 CFR 71.500 for Surface Coal Mines

Existing § 71.500 requires all surface coal mine operators' to provide at least one approved sanitary toilet at a location convenient to each surface work site and one additional approved sanitary toilet for each 10 miners working at a location. MSHA and NIOSH jointly approve sanitary toilets for use at surface mines.

The direct final rule eliminates the application for approval requirement and its associated paperwork burden, and provides notice of which types of sanitary toilets may be used by listing them directly in the standard. The direct final rule also requires sanitary toilets to have a toilet paper holder with an adequate supply of toilet paper and a toilet seat with a hinged lid, as is required in Section 3 of ANSI Z4.3–1987 (Reaffirmed 1995); and prohibits the use of privies.

NIOSH has reviewed this direct final rule and concurs that the application for approval requirements can be removed without reducing protection for miners. NIOSH also agrees that the direct final rule does not change the criteria for the sanitary toilets. MSHA has incorporated NIOSH's comments in this regulatory action.

B. 30 CFR 75.1712–6 for Underground Coal Mines

Existing § 75.1712–6 requires all underground coal mine operators to provide and maintain one approved sanitary toilet in a dry location under protected roof within 500 feet of each working place where miners regularly work. Under the existing standard, MSHA must approve sanitary toilets for use at underground locations.

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toilet seat with a hinged lid, as is required in Section 3 of ANSI Z4.3–1987 (Reaffirmed 1995); prohibits privies and combustion or incinerating toilets underground; and removes the obsolete December 30, 1970, effective date.

IV. The Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and Executive Order 12866

In accordance with Executive Order (E.O.) 12866, MSHA has analyzed the estimated costs and benefits associated with this direct final rule, and has included its Regulatory Economic Analysis (REA) in this preamble. This direct final rule includes no additional costs for the mining industry and eliminates the costs associated with filing an application for approval. 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), MSHA certifies 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, the Agency must include the factual basis for this certification in the direct final rule. Accordingly, the Agency is publishing the factual basis for its regulatory flexibility certification statement in the **Federal Register**, as part of this preamble, and is providing a copy to the Small Business Administration (SBA), Office of Advocacy. MSHA also will mail a copy of the direct final rule, including the preamble and certification statement, to coal mine operators and miners' representatives and post it on the Agency's Internet Home Page at <http://www.msha.gov>.

Factual basis for certification.

MSHA is issuing a direct final rule amending 30 CFR parts 71 and 75, concerning applications for approval of sanitary toilets. The Agency is amending its regulations to state which sanitary toilets meet the standard in order to eliminate the need for underground and surface coal mines to file an application for approval and to avoid the associated cost and paperwork burden.

Manufacturers are the primary applicants for MSHA or MSHA/NIOSH approval of sanitary toilets. In the last four years, seven manufacturers of portable toilets filed applications to request approval of sanitary toilets. During this same period, only one mine

operator filed an application to request approval of sanitary toilets. MSHA expects that the number and distribution of applications over the past four years is representative of future applications in the absence of this direct final rule. MSHA therefore estimates that, on average, in the absence of the direct final rule, portable toilet manufacturers will file 1.75 applications each year, and mine operators will file 0.25 applications each year.

Traditionally, MSHA has considered a small mine to be one with fewer than 20 employees. Based on MSHA's definition, the mine operator is considered large because it employs 20 or more workers. The Small Business Administration (SBA) definition for a small business in the mining industry is one with 500 or fewer employees. The mine operator that filed the application is considered a small business by SBA's definition in that it employs fewer than 500 workers. Based on SBA's definition, manufacturers of portable toilets (plastics), NAICS Code 326191 (SIC Code 3088), are defined as small if they have fewer than 500 employees. All of the portable toilet manufacturers are small businesses, according to SBA, because each employs fewer than 500 workers.¹

Compliance Costs

Cost savings from this direct final rule accrue to sanitary toilet manufacturers and mine operators because they will no longer have to file an application for approval of sanitary toilets. Cost savings from this rule are estimated at \$407 annually. The cost savings are based upon the elimination of the filing of an average of 1.75 applications per year by manufacturers and 0.25 applications per year by mine operators. For the manufacturers, cost savings will be \$296 annually. For the mine operator, cost savings will be \$111 annually.

The annual cost savings of \$296 for manufacturers is derived in the following manner. On average, a first-line supervisor at a toilet manufacturing facility, earning \$20.82 per hour,² takes 8 hours to prepare an application (1.75 applications × 8 hours × \$20.82 per hour = \$291.48). In addition, a clerical worker, earning \$12.66 per hour,³ takes

¹ Small Business Administration, Small Business Size Standards Matched to North American Industry Classification System (NAICS), Effective July 1, 2002. (<http://www.sba.gov/size/sizetable.html>).

² U.S. Department of Labor, Bureau of Labor Statistics, Career Guide to Industries—Chemicals Manufacturing, Except Drugs. (<http://www.bls.gov/oco/cgs/cgs008.htm>).

³ U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics—