

replacement seat belts they already have on hand.

*Enhanced Safety.* The proposed rule would improve 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, the more recent revisions of the SAE consensus standards 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 proposed rule, and have included our Preliminary Regulatory Economic Analysis (PREA) in this preamble. This proposed rule would not be 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 proposed rule would 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 proposed rule. Accordingly, we are publishing the factual basis for our preliminary 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 proposed 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 proposed rule would provide at least the same level of protection for miners at a lower cost for mine operators. It would affect 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 would not include any additional costs and would

have no adverse economic impact on the metal and nonmetal mining industry. To the contrary, cost savings would be associated with not having to special order discontinued, older seat belts and not having to replace those seat belts already installed. The proposed rule also would eliminate the burden of preparing and responding to petitions for modification. The advantage of being able to obtain seat belts "off-the-shelf" would allow 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 proposed rule would not contain any 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 proposed rule would affect 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 proposed rule would 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 proposed rule would not significantly or uniquely affect these entities.

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

This proposed rule would not be 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

proposed rule would not unduly burden the Federal court system. We wrote the proposed 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 proposed rule and have determined that it would have no adverse effects on children.

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

In accordance with Executive Order 13132, we have reviewed this proposed rule and have determined that it would 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 proposed rule would 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 proposed rule and have determined that it would not have a significant adverse effect on the supply, distribution, or use of energy, and no reasonable alternatives to this action would be necessary.

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

In accordance with Executive Order 13272, 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. As discussed previously in this preamble, MSHA has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

### **List of Subjects**

#### *30 CFR Part 56*

Incorporation by reference, Mine safety and health, Surface mining.

#### *30 CFR Part 57*

Incorporation by reference, Mine safety and health, Underground mining.