

DATES: Submit comments by May 21, 2003.

ADDRESSES: Clearly identify comments as such and submit them either electronically to comments@msha.gov; by facsimile to (202) 693-9441; or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209-3939. Comments are posted for public viewing at <http://www.msha.gov/currentcomments.htm>.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances, MSHA; Phone: 202-693-9442; FAX: 202-693-9441; E-mail: nichols-marvin@msha.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction.

The Office of Management and Budget's (OMB's) current approval for §§ 71.500 and 75.1712-6 under control number 1219-0101 expires on November 30, 2003. OMB approval was contingent on MSHA initiating rulemaking "to update and simplify this standard with the goal of eliminating unnecessary requirements and reducing the unnecessary burdens." In response to OMB concerns, MSHA developed this proposed rule to eliminate the need for applications for approval of sanitary toilets and their associated paperwork burden. This proposed rule would not address any other aspect of MSHA's standards for sanitary facilities at coal mines. Sanitary toilet facilities for surface work areas of underground mines would remain subject to the provisions of 30 CFR 75.1712-3, which is unchanged.

Proposed Rule, Direct Final Rule, and Significant Adverse Comments

Elsewhere in this issue of the **Federal Register**, we are publishing a direct final rule which is substantively identical to this companion proposed rule. MSHA has determined that this rulemaking is suitable for a direct final rule because we do not expect to receive any significant adverse comments. A significant adverse comment is one that explains (1) why the direct final rule is inappropriate, including challenges to the rule's underlying premise or

approach, or (2) why the direct final rule would be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of the direct final rule, MSHA would consider whether it warrants a substantive response in a notice and comment process.

We are publishing this companion proposed rule under section 553 of the Administrative Procedure Act to speed notice and comment rulemaking should we withdraw the direct final rule. All interested parties should comment by May 21, 2003 because we will not initiate an additional comment period.

II. Background Discussion of Existing Standards

A. Regulatory History

MSHA originally promulgated sanitation standards under the Federal Coal Mine Health and Safety Act of 1969. The Mining Enforcement and Safety Administration (MESA), MSHA's predecessor, promulgated 30 CFR 75.1712-6 on November 20, 1970 (35 FR 17890) and 30 CFR 71.500 on March 28, 1972 (37 FR 6368). No substantive changes have been made to either provision since that time.

Under existing standards, MSHA approves sanitary toilets for installation and use on an industry-wide basis, not on a mine-by-mine basis. MSHA issues three types of approvals: for surface work sites only, for underground work sites only, or for both surface and underground work sites. Once granted, the approval does not expire. Although some of the manufacturers and distributors of approved sanitary toilets are no longer in business, MSHA accepts these approved sanitary toilets as long as they are properly maintained.

B. Existing Application for Approval Process

The existing standards' requirements for an application for approval of a sanitary toilet can pose an unnecessary burden on manufacturers and mine operators. To effectively evaluate a sanitary toilet for use at a coal mine, MSHA requires that the application for approval contain—

- Information about the unit and its manufacturer;

- Instructions for operation and maintenance;
- Technical or performance test data; and
- Other information that may help in evaluating the unit's practicality for use in coal mining, such as information about the appropriateness and durability of the sanitary toilet for use underground.

C. MSHA and MSHA/NIOSH Approval Criteria

When reviewing the application for approval, MSHA and NIOSH review and evaluate the sanitary features of each toilet for the use intended. Currently, MSHA and NIOSH use portions of the American National Standard Institute's (ANSI's) *American National Standard for Sanitation—Nonsewered Waste-Disposal Systems—Minimum Requirements*, ANSI Z4.3-1987 (Reaffirmed 1995), as the criteria for evaluating these sanitary features. At a minimum, MSHA and NIOSH use the definitions for the various types of toilets and components of the toilet facility in Section 2; the general requirements for auxiliary features in Sections 3.7, 3.8, and 3.9; and the specific design criteria in Section 7.

Exceptions. Although a privy is listed in ANSI Z4.3-1987 (Reaffirmed 1995), MSHA does not approve the use of a privy at any coal mine because sewage could seep through the earth walls and contaminate ground water, earth walls could fail under the harsh conditions at a coal mine, and rain and run-off could flood the privy causing it to overflow and contaminate the mine. MSHA does not approve combustion or incinerating toilets underground because they can create a fire hazard by introducing an ignition source. MSHA does not require a toilet paper holder on unenclosed sanitary toilets underground because it is impractical.

D. Types of Approved Sanitary Toilets

The following table contains excerpts from ANSI Z4.3-1987 (Reaffirmed 1995) for those types of sanitary toilets that are approved for use in coal mines. MSHA will consider any toilet facility that is one of the types of toilets listed in the Agency's revised standards and meets these same criteria, to be in compliance.