

Definitions (ANSI Z4.3 Section 2)	Types of toilet facilities (ANSI Z4.3 Section 7)
Water-Flush Toilet	
2.1.1—A water-flush-toilet facility is one wherein the waste is carried from the bowl and the bowl cleansed by water, and the combined water and waste is deposited into a container or receptacle, or recirculated by a closed system for flushing purposes; such facilities include, but are not limited to, vacuum-toilet facilities.	7.6.1. All materials such as bowl, piping, and fittings that are in contact with waste and chemicals shall be nonabsorbent and corrosion-resistant. 7.6.2. Waste passages shall have smooth surfaces and shall be free of obstructions, recesses, or chambers that would permit fouling. 7.6.3. Flushing shall be accomplished by controls operable without special knowledge. 7.6.4. Chemicals, if used, shall be in accordance with applicable local, state, and federal provisions.

Source: American National Standard Institute (ANSI), *American National Standard for Sanitation—Nonsewered Waste-Disposal Systems—Minimum Requirements*, (ANSI Z4.3–1987 (Reaffirmed 1995)).

III. Section-by-Section Discussion

The following section-by-section discussion explains the proposed rule's revisions to the existing standards. The proposed rule would provide the same level of protection for miners as the existing standards because it would guarantee that sanitary toilets meet the same requirements as those which were approved through the existing application process. The proposed rule would have 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 proposed rule would eliminate the application for approval requirement and its associated paperwork burden, and provide notice of which types of sanitary toilets may be used by listing them directly in the standard. The proposed rule also would require 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 would prohibit the use of privies.

NIOSH has reviewed this regulatory action and concurs that the application for approval requirements can be removed without reducing protection for miners. NIOSH also agrees that the regulatory action would 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.

The proposed rule would eliminate the application requirement and its associated paperwork burden, and provide notice of which types of sanitary toilets may be used by listing them directly in the standard. The proposed rule also would require 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); would prohibit privies and combustion or incinerating toilets underground; and would remove 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 proposed rule, and has included its Preliminary Regulatory Economic Analysis (PREA) in this preamble. This proposed rule would not include any additional costs for the mining industry and would eliminate the costs associated with filing an application for approval. 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), MSHA certifies 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, the Agency must include the factual basis for this certification in the proposed

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 proposed 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 www.msha.gov.

Factual Basis for Certification.

MSHA is issuing a proposed 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 last four years is representative of future applications in the absence of this proposed rule. MSHA therefore estimates that, on average, in the absence of the proposed rule, portable toilet manufacturers would file 1.75 applications each year, and mine operators would 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