

a warning tag that states: "DO NOT DISENGAGE UNDER LOAD."

This subparagraph allows for the use of other locking devices that may become available in the future. The Agency has included this language to allow for acceptance of equally effective devices. Devices not explicitly defined in this rulemaking must be equally effective and provide at least the same measure of protection as those incorporated under this section.

Neither of the alternatives in subparagraphs 18.41(f)(2) or (f)(3) imposes additional requirements to the 1987 MSHA policy or the granted petitions for modification.

IV. Executive Order 12866 (Regulatory Planning and Review and Regulatory Flexibility Act)

Introduction

MSHA is issuing a direct final rule amending 30 CFR 18.41(f), concerning plug and receptacle-type connectors for mobile battery-powered equipment. This direct final rule revises and updates the existing regulation by allowing the use of alternate locking devices to secure battery plugs to receptacles. Two alternate locking devices are addressed in this direct final rule.

(1) Captive locking devices requiring use of a special tool. These devices have been accepted since 1987 under an MSHA policy allowing their usage.

(2) Spring loaded or other locking devices. Spring-loaded locking devices have been accepted by MSHA under the 101(c) Petition for Modification process.

The direct final rule eliminates the need to file petitions for modification (PFM) to use spring-loaded locking devices to secure battery plugs to receptacles. It also codifies the 1987 MSHA policy of allowing acceptance of captive locking devices.

Executive Order (E.O.) 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations. MSHA has fulfilled this requirement for the direct final rule, and based upon its economic analysis, has determined that the direct final rule will not have an annual effect of \$100 million or more on the economy. Therefore, it is not an economically significant regulatory action pursuant to § 3(f)(1) of E.O. 12866.

The direct final rule will eliminate the need for mine operators of underground gassy mines, who choose to use plug and receptacle-type connectors for mobile battery-powered equipment, to file PFMs, and thereby generate cost savings.

From 1999 to 2001, 66 petitions were filed and granted to modify the

application of 30 CFR 75.503 (permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (plug and receptacle-type connectors). Through November 20, 2002, 23 petitions have been filed, for a total of 89 petitions filed from 1999 to 2002. On average, 22 petitions were filed during each of the past 4 years.

Mining Sectors Affected

This direct final rule applies to all underground gassy mines. All underground coal mines are considered gassy mines and are affected by this rule. Gassy metal and nonmetal (M/NM) mines can also be affected by this direct final rule. Currently there are no battery-powered machines of the type covered by this rule in any of the gassy M/NM mines. Since these devices have not been used in M/NM mines, for purposes of this economic analysis, MSHA assumes that M/NM mines will not be affected by this rule. MSHA estimates that, on average, 22 underground coal mines per year will be affected by this rule.

Benefits

MSHA has qualitatively determined that the direct final rule, which permits use of alternate locking devices on mobile battery-powered equipment instead of using padlocks, will yield safety benefits relative to the existing rule, which does not permit use of alternate locking devices on mobile battery-powered equipment. The use of alternate locking devices in lieu of padlocks on mobile battery-powered equipment eliminates the problems associated with difficult removal of padlocks.

Compliance Costs

Cost savings from the direct final rule will accrue to underground coal mines that choose to use spring-loaded locking devices on mobile battery-powered equipment since they will no longer have to file a PFM. Cost savings from this rule are estimated at \$9,747 per year. The cost savings are based upon the elimination of the filing of an average of 22 petitions per year. It is projected that of the 22 mines, 19 would employ 20 to 500 workers, and 3 would employ fewer than 20 workers. For 3 mines that employ fewer than 20 workers these cost savings will be \$1,329. For the remaining 19 mines that employ 20 to 500 workers the cost savings will be \$8,418.

Mines Employing Fewer Than 20 Workers

The cost savings of \$1,329 for mines employing fewer than 20 workers are

derived in the following manner. On average, a mine supervisor, earning \$54.92 per hour, takes 8 hours to prepare a petition (3 petitions \times 8 hours \times \$54.92 per hour = \$1,318). In addition, a clerical worker, earning \$19.58 per hour, takes 0.1 hours to copy and mail a petition (3 petitions \times 0.1 hours \times \$19.58 per hour = \$6). Furthermore, MSHA estimates that, on average, each petition is 5 pages long, photocopying costs are \$0.15 per page, and postage is \$1 [3 petitions \times ((5 pages \times \$0.15 per page) + \$1) = \$5].

Mines Employing 20 to 500 Workers

The cost savings of \$8,418 for mines that employ 20 to 500 workers are derived in the following manner. On average, a mine supervisor, earning \$54.92 per hour, takes 8 hours to prepare a petition (19 petitions \times 8 hours \times \$54.92 per hour = \$8,348). In addition, a clerical worker, earning \$19.58 per hour, takes 0.1 hours to copy and mail a petition (19 petitions \times 0.1 hours \times \$19.58 per hour = \$37). Furthermore, MSHA estimates that, on average, each petition is 5 pages long, photocopying costs are \$0.15 per page, and postage is \$1 [19 petitions \times ((5 pages \times \$0.15 per page) + \$1) = \$33].

There are no substantive changes in the direct final rule that apply to any mine that chooses not to use alternate locking devices on mobile battery-powered equipment. Thus, these mines would not incur costs nor generate cost savings as a result of the direct final rule. Accordingly, we are publishing the factual basis for our regulatory flexibility certification statement in the **Federal Register**, as a part of this preamble, and are providing a copy to the Small Business Administration, Office of Advocacy. We also will mail a copy of the direct final rule, including the preamble and certification statement, to mine operators and miners' representatives and post it on our Internet Home page at <http://www.msha.gov>.

V. Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), MSHA has analyzed the impact of the direct final rule on small businesses. Further, MSHA has made a determination with respect to whether or not the Agency can certify that the direct final rule will not have a significant economic impact on a substantial number of small entities that are covered by these rulemakings. Under the SBREFA amendments to the RFA, MSHA must include in the rule a