

The net cost savings of \$0.66 million, for applicants employing 500 or fewer workers, consists of cost savings of \$0.68 million and compliance costs of \$0.02 million. The net cost savings of \$0.86 million, for applicants employing more than 500 workers, consists of cost savings of \$0.88 million and compliance costs of \$0.02 million.

#### B. Benefits

This final rule should encourage non-mining manufacturers with products that could be applicable to mining to apply for approvals. The modification of the approval process will expedite the introduction of technologically-advanced products into the mine, thus improving miner safety. Finally, the rule will reduce applicants' costs by eliminating repeat testing and evaluation and the need for multiple product lines. For a more complete discussion of the Benefits of this final rule, see chapter III of the REA.

#### V. Regulatory Flexibility Act (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's economic impact on small entities. Under the RFA, MSHA must use the Small Business Administration's (SBA's) criterion for a small entity in determining a rule's economic impact unless, after consultation with the SBA Office of Advocacy, MSHA establishes an alternative definition for a small entity and publishes that definition in the **Federal Register** for notice and comment.

For the mining industry, SBA defines "small" as a mine with 500 or fewer workers. In addition, most applicants (manufacturers) that file for an MSHA approval for their products operate in industries such as those involved in measurement, analysis, controlling instruments, photographic instruments, commercial and industrial lighting fixtures, and conveyors. SBA considers the small business size standard for such industries to be 500 or fewer employees. To ensure that this final rule conforms to the RFA, MSHA analyzed the economic impact of the final rule on small entities that are defined as those employing 500 or fewer workers.

#### A. Factual Basis for Certification

Based on its analysis, MSHA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. MSHA has so certified this finding to the SBA. The factual basis for this certification is discussed in chapter V of the REA.

#### B. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, the final rule does not include any Federal mandate that will result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private sector of more than \$100 million. MSHA is not aware of any State, local, or tribal governments which manufacture products applicable to mining.

#### C. Executive Order 13132 (Federalism)

MSHA has reviewed this final rule in accordance with Executive Order 13132 regarding federalism, and has determined that it will not have "federalism implications." The final rule will not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." MSHA is not aware of any State or local governments which manufacture products applicable to mining.

#### D. Executive Order 13045 (Health and Safety Effect on Children)

In accordance with Executive Order 13045, MSHA has evaluated the environmental health and safety effect of this final rule on children. The Agency has determined that the final rule will not have an adverse impact on children.

#### E. Executive Order 13175 (Indian Tribal Governments)

MSHA certifies that this final rule will not impose substantial direct compliance costs on Indian tribal governments. MSHA is not aware of any tribal governments which manufacture products applicable to mining.

#### F. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

This final rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it will not involve implementation of a policy with takings implications.

#### G. Executive Order 12988 (Civil Justice Reform)

The Agency has reviewed Executive Order 12988, Civil Justice Reform, and determined that this final rule will not unduly burden the Federal court system. The final rule has been written so as to provide a clear legal standard

for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

#### H. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

In accordance with Executive Order 13211, MSHA has reviewed this final rule for its energy impacts. MSHA has determined that this final rule will not have any adverse effects on energy supply, distribution, or use.

#### List of Subjects in 30 CFR Parts 6, 7, 18, 19, 20, 22, 23, 27, 33, 35, and 36

Mine Safety and Health, Reporting and Recordkeeping Requirements, Research

Signed in Arlington, Virginia, this 9th day of June, 2003.

**Dave D. Lauriski,**

*Assistant Secretary of Labor for Mine Safety and Health.*

■ For the reasons set out in the preamble, chapter I of title 30 of the Code of Federal Regulations is amended as follows:

■ 1. Part 6 is added to read as follows:

#### PART 6—TESTING AND EVALUATION BY INDEPENDENT LABORATORIES AND NON-MSHA PRODUCT SAFETY STANDARDS

Sec.

6.1 Purpose and effective date.

6.2 Definitions.

6.10 Use of independent laboratories.

6.20 MSHA acceptance of equivalent non-MSHA product safety standards.

**Authority:** 30 U.S.C. 957.

#### § 6.1 Purpose and effective date.

This part sets out alternate requirements for testing and evaluation of products MSHA approves for use in gassy underground mines. It permits manufacturers of certain products who seek MSHA approval to use an independent laboratory to perform, in whole or part, the necessary testing and evaluation for approval. It also permits manufacturers to have their products approved based on non-MSHA product safety standards once MSHA has determined that the non-MSHA standards are equivalent to MSHA's applicable product approval requirements or can be modified to provide at least the same degree of protection as those MSHA requirements. The provisions of this part may be used by applicants for product approval under parts 18, 19, 20, 22, 23, 27, 33, 35, and 36. This rule is effective August 18, 2003.