

paperwork burden. The rule was restricted to the approval application requirement and did not address other aspects of MSHA's standards for sanitary facilities at coal mines. Sanitary toilet facilities for surface work areas of underground mines remain subject to the provisions of 30 CFR 75.1712-3, which is unchanged.

II. Response to Significant Adverse Comments

As a result of comments received, MSHA has withdrawn the direct final rule (68 FR 19347) by a document publishing in the **Federal Register** on June 20, 2003. MSHA received significant adverse comments. As stated in the direct final rule:

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 will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, MSHA will consider whether it warrants a substantive response in a notice and comment process.

Most comments addressed sanitation issues that are outside the scope of this limited rule; however, MSHA has fully considered and responded below to two issues that warrant a substantive response.

A. Use of Combustion or Incinerating Toilets Underground

Section 75.1712-6(c) of the direct final rule specifically prohibited use of combustion or incinerating toilets underground. Certain comments challenged this prohibition. These comments contend that electronic incinerating toilets can be safely installed underground in areas where MSHA allows non-permissible electrical equipment.

MSHA has fully considered this comment. Incineration, by definition, is disposal by burning. MSHA has never approved an application for this method of waste disposal in an underground coal mine. Although the ignition source is electric, and the toilets could be located in areas where non-permissible electric equipment may be allowed underground, incineration involves combustion of an organic compound and would introduce an ignition source.

The comments suggest that MSHA address the hazards of incinerator toilets underground in the following ways. The toilets should be located in "well rock-dusted" areas. Fire extinguishers should be provided. The toilets should be located in areas other than the return air course. The toilets should be inspected

during pre-shift and on-shift exams. And finally, electrical breakers and ground fault monitoring systems should be required.

MSHA has fully considered and rejected these suggestions. Under the approval application process replaced by this rule, MSHA never imposed requirements concerning the location and examination of toilets, or made approval contingent upon use of supplemental equipment. Consequently, the final rule retains the prohibition against combustion and incinerating toilets in underground coal mines.

MSHA recognizes that further developments in waste-disposal technology could preclude the need for these supplemental requirements. Technological developments will be guided by the need to avoid the introduction of ignition sources underground. Technological advances in non-sewered waste disposal for underground coal mines should not be restricted by the broad categories of approved toilets in the final rule. Future technology can be addressed in subsequent rulemaking.

B. Elimination of Approval Process

Comments opposed the elimination of the MSHA and MSHA and NIOSH approval processes for underground and surface coal mines, respectively. One of these comments stated that sanitary toilets approved by MSHA are "stamped" or "marked" as approved upon completion of the application process. Although certain mine operators and manufacturers may have chosen to affix such labels, MSHA has never imposed such a requirement for sanitary toilets nor provided such labels.

The approval criteria used by MSHA (underground) and MSHA and NIOSH (surface) remains the same under the final rule. Under the final rule, the mining community will have notice of the types of toilets which are permitted. This information will provide better protection by notifying miners, miners' representatives, MSHA compliance specialists, mine operators, and manufacturers of which types of toilets are approved and by referring directly to the ANSI standard from which the criteria were drawn. The final rule does not change any other sanitation standards. For these reasons, we have rejected these comments.

C. Other Comments.

Other comments addressed sanitation issues unrelated to the toilet application approval process. The comments include discussions of the biological hazards of human feces, the Hazard

Communication standard and Material Safety Data Sheets, labeling requirements, issuance of an Emergency Temporary Standard concerning sanitary toilets, and amendment of other sanitation standards not the subject of this rule.

None of these comments addressed the underlying premise or approach of the rule, or explained why eliminating the application requirement would be ineffective or unacceptable without a change. Consequently, these are not significant adverse comments and no changes to the final rule were considered based upon these comments.

III. Background.

A. Regulatory History.

The United States Department of the Interior, Mining Enforcement and Safety Administration (MESA), MSHA's predecessor, originally promulgated sanitation standards requiring approval of sanitary toilets under the Federal Coal Mine Health and Safety Act of 1969. MESA 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). MSHA retained these regulations under the authority of the Federal Mine Safety and Health Act of 1977, which became effective on March 9, 1978. No substantive changes have been made to either provision since they were promulgated.

Under those standards, MSHA approved sanitary toilets for use in underground coal mines, and MSHA and the National Institute for Occupational Safety and Health (NIOSH) jointly approved sanitary toilets for use in surface coal mines. MSHA and NIOSH based their approval on criteria drawn from the American National Standard Institute's (ANSI's) *American National Standard for Sanitation—Nonsewered Waste-Disposal Systems—Minimum Requirements*.

This final rule removes the application requirement while retaining the same criteria for the sanitary toilets permitted at coal mines. By stating which sanitary toilets meet the standard, the rule eliminates the need for manufacturers or mine operators to file an individual application for approval. Removing the application requirements has no substantive effect on the sanitation standards.

B. MSHA and MSHA/NIOSH Approved Toilets Criteria.

MSHA and NIOSH approval criteria are drawn from the American National Standard Institute's (ANSI's) *American National Standard for Sanitation—*