

Definitions (ANSI Z4.3 Section 2)	Types of toilet facilities (ANSI Z4.3 Section 7)
Nonwater-Flush Toilet	
2.1.2 * * * A nonwater flush-toilet facility is one wherein the waste is flushed from the bowl and the bowl cleansed by a fluid other than water, with the fluid deposited in a container or receptacle, or treated and recirculated as in 2.1.1; such facilities include, but are not limited to, oil-flush-toilet facilities.	<p>7.5.1. All materials such as bowl, piping, and fittings that are in contact with waste and chemicals shall be nonabsorbent and corrosion-resistant.</p> <p>7.5.2. Waste passages shall have smooth surfaces and shall be free of obstructions, recesses, or chambers that would permit fouling.</p> <p>7.5.3. Flushing shall be accomplished by controls operable without special knowledge. Upon flushing, fluid shall enter the bowl and pass through with a vigorous flow sufficient to carry the waste from the bowl into the waste container.</p> <p>7.5.4. Chemicals, if used in the waste container, shall be in accordance with applicable local, state, and federal provisions.</p>
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.	<p>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.</p> <p>7.6.2. Waste passages shall have smooth surfaces and shall be free of obstructions, recesses, or chambers that would permit fouling.</p> <p>7.6.3. Flushing shall be accomplished by controls operable without special knowledge.</p> <p>7.6.4. Chemicals, if used, shall be in accordance with applicable local, state, and federal provisions.</p>

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

IV. Section-by-Section Discussion

The following discussion explains the final rule's provisions.

A. 30 CFR 71.500 for Surface Coal Mines

Section 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. Only those types of toilets listed in this section are approved. Sanitary toilets must 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). Use of privies is prohibited.

B. 30 CFR 75.1712–6 for Underground Coal Mines

Section 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. Only those types of toilets listed in this section are approved. Sanitary toilets, except for unenclosed toilet facilities provided in accordance with § 75.1712–6(b), must 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). Privies

and combustion or incinerating toilets are prohibited underground.

V. 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 final rule, and has included its Regulatory Economic Analysis (REA) in this preamble. This final rule includes no additional costs for the mining industry and eliminates the costs associated with filing an application for approval. This final rule is not 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 final rule does 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 final 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 final 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 <http://www.msha.gov>.

Factual basis for certification

MSHA is issuing a final 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 manufacturers or mine operators 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 past four years is representative of future applications in the absence of this final rule. MSHA estimates that, on average, in the absence of the final rule, portable toilet manufacturers will file 1.75 applications each year, and mine operators will 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