

metal and non-metal mines that would be affected by this proposed rule. Of these 182 mines, 65 have fewer than 20

workers, 113 have 20 to 500 workers; and 4 have more than 500 workers. The average cost per mine for mines in these

three size classes would be – \$34 (a cost savings), \$58, and \$58, respectively.

TABLE X-1.—TOTAL YEARLY COMPLIANCE COSTS

Provision	Mine size			Total
	<20	20–500	>500	
Special Extensions 57.5060(c) .....	\$6,179	\$21,117	\$748	\$28,044
Respirator Protection 57.5060(d) .....	– 2,569	– 4,466	– 158	– 7,192
DPM Control Plan 57.5062 .....	– 5,826	– 10,128	– 359	– 16,313
Total .....	– 2,215	6,523	231	4,539

### B. Regulatory Flexibility Act Certification

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 Act definition of a small business concern in determining a rule's economic impact unless, after consultation with the SBA Office of Advocacy, and after opportunity for public comment, MSHA establishes a definition which is appropriate to the activities of the agency and publishes that definition in the **Federal Register**. For the mining industry, SBA defines "small" as having 500 or fewer workers. MSHA has traditionally considered small mines to be those with fewer than 20 workers. To ensure that the rule conforms with the RFA, MSHA analyzed the economic impact on mines with 500 or fewer workers and also on mines with fewer than 20 workers. MSHA concluded that the rule will not have a significant economic impact on a substantial number of small entities under either definition.

### C. Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, the rule does not include any Federal mandate that may result in increased expenditures of more than \$100 million incurred by state, local, or tribal governments, or by the private sector.

### D. Paperwork Reduction Act of 1995 (PRA)

This proposed rule contains changes to two information collection requirements, both of which were approved by the Office of Management and Budget (OMB) as part of Information Collection No. 1219–0135, which expires on September 30, 2004.

The proposed changes were submitted to OMB for review pursuant to the PRA, as codified at 44 U.S.C. 3501–3520 and implemented by OMB in regulations at

5 CFR part 1320. The PRA defines collection of information as "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format."

The proposed paperwork requirement changes are contained in §§ 57.5060 and 57.5062. There are burden hours and associated costs that will occur only in the first year that the provision is in effect, and there are burden hours and associated costs that will occur every year the rule is in effect, starting with the first year ("annual" burden hours and costs). Due to different requirements in these provisions for the interim and final limits, the effective dates vary. In the first year, mine operators will incur a net of 1,047.78 burden hours and associated costs of \$2,479. in year one.

In year two only, mine operators will incur 613.17 burden hours and associated annualized costs of \$1,776. There is a reduction of 931.96 burden hours occurring only in year three. The present value of the cost savings associated with these burden hours is \$6,343. Starting in year three, there is a reduction in annual burden hours of 103.55. The discounted value of the cost savings associated with these burden hours is \$3,738 annually. Mine operators will incur 613.17 annual burden hours starting in year four. The discounted value of the cost associated with these burden hours is \$22,161 annually.

Included in these estimates are the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. MSHA invites comments on: (1) Whether any proposed collection of information presented here (and further detailed in the Agency's PREA) is necessary for proper performance of MSHA's functions, including whether the information will have practical utility; (2) the accuracy of MSHA's estimate of

the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

The Agency has submitted a copy of this proposed rule to OMB for its review and approval of these information collections. The complete paperwork submission is contained in the Preliminary Regulatory Economic Analysis and Preliminary Regulatory Flexibility Analysis (PREA/PRFA) and includes the estimated costs and assumptions for each proposed paperwork requirement (these costs are also included in the Agency's cost and benefit analyses for the proposed rule). A copy of the PREA/PRFA is available at <http://www.msha.gov/regsinfo.htm>. These paperwork requirements have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1995. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number.

### F. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This proposed rule is not subject to Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights, because it does 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 the proposed DPM rule