

## 1. Technological Feasibility

MSHA believes that the rule would be technologically feasible for the mining industry. An agency must show that modern technology has at least conceived some industrial strategies or devices that are likely to be capable of meeting the standard, and which industry is generally capable of adopting. *American Iron and Steel Institute v. OSHA*, (AISI-II) 939 F.2d 975, 980 (D.C. Cir. 1991); *American Iron and Steel Institute v. OSHA*, (AISI-I) 577 F.2d 825 (3d Cir. 1978) at 832–835; and *Industrial Union Dept., AFL-CIO v. Hodgson*, 499 F.2d 467, 478 (D.C. Cir. 1974).

This rule addresses revisions of mine emergency evacuation plans and associated training. This rule neither requires underground coal mines to procure any additional equipment nor use any new technology. This is not a technology-forcing standard and does not involve activities on the frontiers of science. We conclude, therefore, that this rule is technologically feasible.

## 2. Economic Feasibility

Underground coal mines will incur costs of approximately \$0.23 million yearly to comply with this rule. That these compliance costs represent well under 1 percent (about 0.003 percent) of annual underground coal mine revenue is sufficient evidence, MSHA believes, to conclude that this rule is economically feasible for underground coal mines.

## II. Executive Order 12291 and the Regulatory Flexibility Act

Based on its analysis, MSHA has determined that this rule would not have a significant economic impact on a substantial number of small entities. MSHA has so certified this finding to the Small Business Administration. The factual basis for this certification is discussed in chapter V of the Regulatory Economic Analysis (REA).

## III. Paperwork Reduction Act

This final rule has no new or revised collections of information as defined by the Paperwork Reduction Act of 1995 (P.L. 104–13). Section 75.1101–23 was redesignated as § 75.1502. Section 75.1101–23 was approved under OMB control number 1210–0054, with an expiration date of September 30, 2003. The existing paperwork requirements including § 75.1502 are approved under OMB control number 1219–0137, with an expiration date of June 30, 2006.

During the first year the final rule is in effect, and every year thereafter, the rule will impose 354 burden hours, and related burden hour costs of \$19,456.

Comments were solicited in the proposed rule for the following issues:

1. Evaluate whether the collection of information is necessary for the proper performance of the functions of MSHA, including whether the information would have practical utility;
2. Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

In response to the solicitation, several commenters requested that documents be made available to the miner's representatives. This issue is addressed in the section by section discussion.

Our paperwork submission summarized above is explained in detail in the REA that accompanies the rule. The REA includes the estimated costs and assumptions for the paperwork requirement related to the rule. A copy of the REA is available on our Web site at <http://www.msha.gov/regsinfo.htm> and can also be obtained in hardcopy from us. This paperwork requirement has 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. The OMB control number for this rule is 1219–0137.

## IV. Executive Order 12866

The final rule contains all costs from the effective date. These economic statistics have been revised, as compared with the ETS and proposed rules, to reflect this change. This change excludes costs during the period between the effective date of the ETS and the effective date of this final rule. Also these statistics have been revised to reflect 2001 data and any new assumptions.

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended standards and regulations. We have fulfilled this requirement for this rule and determined that it would not have an annual effect of \$100 million or more on the economy. Therefore, we do not consider this rule to be economically

significant under section 3(f)(1) of Executive Order 12866.

In the REA, MSHA has developed estimates of the safety benefits of this rule, which ensures that operators and miners have a clear understanding of actions and procedures to be followed in the event of a mine emergency. MSHA has concluded that the two fatalities at the Willow Creek Mine and nine of the 13 fatalities at the Jim Walter No. 5 Mine might have been prevented had this rule been in place. The Agency has reviewed its coal accident investigation database and has not identified any other fatalities during the past 10 years that might have been prevented by this rule. In summary, based on its experience over the past ten years, MSHA believes it is reasonable to estimate that this rule could prevent 11 miners' lives from being lost every ten years, or an average benefit of the rule of 1.1 miners' lives saved every year. The actual number of mine fatalities prevented could be much larger.

## V. The Unfunded Mandates Reform Act of 1995 and Other Regulatory Considerations

### A. Unfunded Mandates Reform Act

MSHA has determined that, for purposes of section 202 of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than \$100 million, or increased expenditures by the private sector of more than \$100 million. Moreover, the Agency has determined that for purposes of section 203 of that Act, this rule would not significantly or uniquely affect small governments.

### Background

The Unfunded Mandates Reform Act was enacted in 1995. While much of the Act is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments, the Act also includes requirements to assist Federal Agencies to make this same determination with respect to regulatory actions.

### Analysis

Based on the analysis in this REA, compliance with this rule by coal mine operators and contractors covered within this rulemaking would result in a compliance cost of approximately \$0.23 million per year. Accordingly, there is no need for further analysis under section 202 of the Unfunded Mandates Reform Act.