

investment company (as defined in section 1297). FC makes a gratuitous transfer of 100X to a foreign trust, FT, on January 1, 2001. FT has no other assets on January 1, 2001. Several years later, FT makes a gratuitous transfer of 1000X to A's daughter, B, who is a United States resident. Assume that the section 668 interest charge on accumulation distributions will apply if the transfer is treated as a distribution from FT. Under the alternative rule of paragraph (c)(2) of this section, B must treat the transfer as an accumulation distribution from FT, because the resulting United States tax liability is greater than the United States tax that would be due if the transfer were treated as a transfer from FC that is subject to the rules of paragraph (a) of this section.

*Example 4. Transfer from trust that is treated as owned by United States citizen.* Assume the same facts as in *Example 3*, except that A is a United States citizen. Assume that A treats and reports the transfer to FT as a constructive distribution to himself, followed by a gratuitous transfer to FT, and that A is properly treated as the grantor of FT within the meaning of § 1.671-2T(e). A is treated as the owner of FT under section 679 and, as required by section 671 and the regulations thereunder, A includes all of FT's items of income, deductions, and credit in computing his taxable income and credits. Neither paragraph (c)(1) nor paragraph (c)(2) of this section is applicable, because the exception in paragraph (c)(3) of this section applies.

*Example 5. Transfer for less than fair market value.* FC is a foreign corporation that is wholly owned by A, a nonresident alien. On January 15, 2001, FC transfers property directly to A's daughter, B, a resident alien, in exchange for 90X. The Commissioner later determines that the fair market value of the property at the time of the transfer was 100X. Under paragraph (d)(2)(i) of this section, 10X will be treated as a purported gift to B on January 15, 2001.

(h) *Effective date.* The rules of this section are generally applicable to any transfer after August 10, 1999, by a partnership or foreign corporation, or by a trust to which a partnership or foreign corporation makes a gratuitous transfer after August 10, 1999.

#### **1.672(f)-5 Special rules.**

(a) *Transfers by certain beneficiaries to foreign grantor—(1) In general.* If, but for section 672(f)(5), a foreign person would be treated as the owner of any portion of a trust, any United States beneficiary of the trust is treated as the grantor of a portion of the trust to the extent the United States beneficiary directly or indirectly made transfers of property to such foreign person (without regard to whether the United States beneficiary was a United States beneficiary at the time of any transfer) in excess of transfers to the United States beneficiary from the foreign person. The rule of this paragraph (a) does not apply to the extent the United

States beneficiary can demonstrate to the satisfaction of the Commissioner that the transfer by the United States beneficiary to the foreign person was wholly unrelated to any transaction involving the trust. For purposes of this paragraph (a), the term property includes cash, and a transfer of property does not include a transfer that is not a gratuitous transfer (within the meaning of § 1.671-2T(e)(2)). In addition, a gift is not taken into account to the extent such gift would not be characterized as a taxable gift under section 2503(b). For a definition of United States beneficiary, see section 679.

(2) *Examples.* The following examples illustrate the rules of this section:

*Example 1.* A, a nonresident alien, contributes property to FC, a foreign corporation that is wholly owned by A. FC creates a foreign trust, FT, for the benefit of A and A's children. FT is revocable by FC without the approval or consent of any other person. FC funds FT with the property received from A. A and A's family move to the United States. Under paragraph (a)(1) of this section, A is treated as a grantor of FT. (A may also be treated as an owner of FT under section 679(a)(4).)

*Example 2.* B, a United States citizen, makes a gratuitous transfer of \$1 million to B's uncle, C, a nonresident alien. C creates a foreign trust, FT, for the benefit of B and B's children. FT is revocable by C without the approval or consent of any other person. C funds FT with the property received from B. Under paragraph (a)(1) of this section, B is treated as a grantor of FT. (B also would be treated as an owner of FT as a result of section 679.)

(b) *Entity characterization.* Entities generally are characterized under United States tax principles for purposes of §§ 1.672(f)-1 through 1.672(f)-5. See §§ 301.7701-1 through 301.7701-4 of this chapter. However, solely for purposes of § 1.672(f)-4, a transferor that is a wholly owned business entity is treated as a corporation, separate from its single owner.

(c) *Effective date.* The rules in paragraph (a) of this section are applicable to transfers to trusts on or after August 10, 1999. The rules in paragraph (b) of this section are applicable August 10, 1999.

**John M. Dalrymple,**

*Acting Deputy Commissioner of Internal Revenue.*

Approved: July 23, 1999.

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

[FR Doc. 99-19928 Filed 8-5-99; 2:09 pm]

BILLING CODE 4830-01-P

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Parts 26, 29, 57, and 75

RIN 1219-AA98

### Improving and Eliminating Regulations; Lighting Equipment, Coal Dust/Rock Dust Analyzers, and Methane Detectors

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** We are removing approval regulations for lighting equipment for illuminating underground workings; portable coal dust/rock dust analyzers; and continuous duty, warning light, portable methane detectors. These regulations are unnecessary because they address equipment that is addressed by other MSHA regulations. Removal of these parts will not reduce protection for miners. This final rule will also make conforming amendments to safety regulations that require the use of this approved equipment in underground coal mines and in gassy underground metal and nonmetal mines.

**EFFECTIVE DATE:** This regulation is effective October 12, 1999.

**FOR FURTHER INFORMATION CONTACT:** Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA; 703-235-1910.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Regulatory Background**

In response to the Administration's regulatory reinvention initiative, we conducted a review of our existing regulations to identify obsolete, outdated, redundant, or unnecessary provisions that can be removed or revised without reducing protection afforded miners. This final rule is part of our ongoing plan to improve our regulations. The removal of parts 26 and 29, from title 30 of the Code of Federal Regulations (30 CFR), will not reduce protection to miners. These provisions are covered by other MSHA regulations. Conforming amendments to other 30 CFR parts will be made, as appropriate. To increase awareness of this regulatory action, we will mail a copy of this final rule to all mine operators and miners' representatives and post it on MSHA's Website at [www.msha.gov](http://www.msha.gov).

Even though we are removing 30 CFR parts 26 and 29, lighting equipment for illuminating underground workings and continuous duty, warning light, portable methane detectors approved by MSHA

under these parts can continue to be manufactured and distributed for use in mines as long as this is done in accordance with the drawings and specifications upon which such approvals were based and there are no changes in the approved devices.

On September 3, 1998, we published a proposed rule in the **Federal Register** (63 FR 47120) requesting public comments on our intention to remove 30 CFR parts 26 and 29 and make conforming changes to 30 CFR parts 57 and 75. We allowed 60 days for public comment and received no comments, no requests for an extension of the comment period, and no requests for a public hearing on the proposal.

## II. Discussion of Final Rule

### A. 30 CFR 26—Lighting Equipment for Illuminating Underground Workings

In 1958, we developed the regulations in 30 CFR 26 to establish specifications for the approval of mine lighting systems that are used independently, *i.e.*, not connected to an approved machine. These specifications contain permissibility requirements to ensure that the electric system and components do not pose an explosion hazard, and design requirements to address the adequacy of the light intensity. MSHA has received only one application for approval of mine lighting systems under 30 CFR 26 since 1978.

Even though we are removing 30 CFR 26, lighting systems approved under this part can continue to be manufactured and distributed for use in mines as long as done in accordance with the drawings and specifications upon which the approval is based and provided there are no changes in the approved systems. We will not permit changes in the approved systems under 30 CFR 26 once it is deleted. Any future changes to lighting systems approved under 30 CFR 26 will require a new application for approval under 30 CFR 18.

Currently, approvals of lighting systems which are used independently, as well as those which are part of MSHA-approved equipment, can be requested under the requirements of 30 CFR 18, Electric Motor Driven Mine Equipment and Accessories. The general requirements in 30 CFR 18, subpart A; certain design and construction requirements in subpart B (e.g., 18.20, 18.23, 18.24, 18.25, 18.30, 18.35, 18.41, 18.48, 18.50, and 18.51); and certain inspections and tests in subpart C (e.g., 18.62, 18.66, 18.67, and 18.68), as well as any other provisions necessary to address the design and performance of the system, are applicable to the

approval of independent mine lighting systems. For example, an evaluation for intrinsic safety under 30 CFR 18 includes a "Lamp Bulb Breakage" test which consists of breaking the bulb in the presence of an explosive mixture of methane-in-air. In addition to the permissibility and intrinsic safety requirements in 30 CFR 18, provisions in 30 CFR 75.1719-1 through 75.1719-3 contain voltage limitations, specify the amount of light required in mine workings, and address other safety requirements applicable to mine lighting systems.

For these reasons, we believe that the approval regulations in 30 CFR 26 are unnecessary. Therefore, we are removing part 26. This final rule will not reduce the protection afforded to miners.

### B. 30 CFR 29—Portable Coal Dust/Rock Dust Analyzers, and Continuous Duty, Warning Light, Portable Methane Detectors for Use in Coal Mines

We originally developed the regulations in 30 CFR 29 in the early 1970's to provide performance requirements for the approval of portable coal dust/rock dust analyzers for use in measuring the incombustible content of mine dust; and for the approval of continuous duty, warning light, portable methane detectors for use in providing a visual signal of the presence of methane. At that time, we anticipated that there would be a need for the approval of these types of instruments. We have now determined, however, that the approval requirements in 30 CFR 29 for both portable coal dust/rock dust analyzers and continuous duty, warning light, portable methane detectors are unnecessary. Therefore, we are removing part 29.

Although we are removing 30 CFR 29, any devices approved under this part can continue to be manufactured and distributed for use in mines as long as done in accordance with the drawings and specifications upon which the approval is based and provided there are no changes in the approved devices. To clarify this point, MSHA has modified the conforming amendments in parts 57 and 75 to indicate that devices approved under part 29 prior to its removal (30 CFR part 29 contained in the 30 CFR, parts 1-199, edition, revised as of July 1, 1999), may continue to be used. We will not permit changes in these approved devices under 30 CFR 29 once it is deleted. Any future changes to such devices approved under 30 CFR 29 will require a new application for approval under 30 CFR 18 or 22, as discussed below.

*Portable coal dust/rock dust analyzers.* We have never issued an approval for a portable coal dust/rock dust analyzer under 30 CFR 29. An experimental approval was granted in the late 1980's; however, the project was never completed. We believe that 30 CFR 29 is no longer necessary or viable for approval of a portable coal dust/rock dust analyzer because there has been negligible interest in approval of such an instrument. Furthermore, the performance requirements in 30 CFR 29 for portable coal dust/rock dust analyzers are now outdated. The elimination of 30 CFR 29, therefore, will not reduce protection afforded miners by the existing standards.

Although no such request is anticipated, should portable coal dust/rock dust analyzers be developed in the future, they can be approved under 30 CFR 18, Electric Motor Driven Mine Equipment and Accessories. Approvals are routinely issued under 30 CFR 18 for instruments that are not required by regulation, but are to be used in underground mines, provided that they meet the intrinsic safety requirements in 30 CFR 18.68 and are safe for their intended use as required by 30 CFR 18.20(b). In addition, the general requirements in 30 CFR 18, subpart A, as well as any other provisions necessary to address the design and performance of the instrument, are appropriate for the approval of portable coal dust/rock dust analyzers.

*Continuous duty, warning light, portable methane detectors.* We have not issued a new approval for a continuous duty, warning light, portable methane detector under 30 CFR 29 since 1981. When 30 CFR 29 was developed, portable methane detectors approved under 30 CFR 22 did not have continuous monitoring, warning, or alarm capability. Since 1981, however, advancements in technology have resulted in instruments that are suitable for approval both as portable methane detectors under 30 CFR 22 and which also have the capability to be used for continuous monitoring and warning or alarm. Portable methane detectors in use in mines now routinely have the capabilities specified in 30 CFR 29, and we have approved them for the past 16 years under 30 CFR 22, Portable Methane Detectors.

If we were to receive a new request under 30 CFR 29 for approval of a methane detector that is portable, operates continuously, and provides a warning to the user, we could conduct an equivalent evaluation of the instrument using the approval requirements in 30 CFR 22. For these reasons, we believe that 30 CFR 29 is

unnecessary and that its removal will not reduce protection afforded miners by the existing standards.

### III. Executive Order 12866

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of regulations. We have determined that this final rule does not meet the criteria for a significant regulatory action and, therefore, have not prepared a separate analysis of costs and benefits. The analysis contained in this preamble meets our responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

### IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. Under the RFA, we must use the Small Business Administration (SBA) definition for a small mine of 500 or fewer employees or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. Although we traditionally have considered small mines to be those with fewer than 20 employees, we have analyzed the impact of the final rule on mines with 500 or fewer employees for the purposes of the RFA. We have also evaluated the impact of the rule on small manufacturers of lighting equipment for illuminating underground workings and small manufacturers of continuous duty, warning light, portable methane detectors using the appropriate SBA definition of 500 or fewer employees.

#### *Regulatory Flexibility Certification*

In accordance with § 605 of the RFA, MSHA certifies that this final rule will not have a significant economic impact on a substantial number of small entities, either small mines or small manufacturers. No small governmental jurisdictions or nonprofit organizations are affected.

Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, we must include in the final rule a factual basis for this certification. We also must publish the regulatory flexibility certification in the **Federal Register**, along with its factual basis. We believe that this analysis provides a reasonable basis for the certification in this case.

We have provided a copy of this final rule and regulatory flexibility certification statement to the SBA Office of Advocacy. In addition, MSHA will mail a copy of the final rule including the preamble and regulatory flexibility

certification statement to all affected mines and miners' representatives and approval holders.

#### *Factual Basis for Certification*

MSHA used a qualitative approach in concluding that the final rule will not have a significant economic impact on a substantial number of small entities, either small mines or small manufacturers. This final rule removes approval regulations for equipment that can be approved under other existing MSHA regulations. The benefit of removing unnecessary provisions is that MSHA regulations will be more concise, clearer, easier to use, and reflect advances in technology. This final rule will have no economic impact on the mining industry.

### V. Paperwork Reduction Act

This final rule contains no information collection requirements subject to the Paperwork Reduction Act of 1995.

### VI. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this final rule does not include any Federal mandate and, therefore, results in no increased expenditures by State, local, and tribal governments, or by the private sector.

### VII. Executive Order 13045

In accordance with Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, MSHA has evaluated the environmental health and safety risks of the final rule on children. The Agency has determined that the final rule will have no effect on children.

### VIII. Executive Order 13084 Consultation and Coordination With Indian Tribal Governments

The Agency has reviewed this final rule in accordance with Executive Order 13084, and certifies that the final rule does not impose substantial direct compliance costs on Indian tribal governments, because they neither manufacture products covered by parts 26 and 29 nor operate any underground coal or gassy metal/nonmetal mines.

### IX. Executive Order 12612 Federalism

Executive Order 12612, regarding federalism, requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions which would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope.

This rule does not limit state policy options, because they neither manufacture products covered by parts 26 and 29 nor operate any underground coal or gassy metal/nonmetal mines, it complies with the principles of federalism and with Executive Order 12612.

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

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

### XI. Executive Order 12988 Civil Justice Reform

The Agency has reviewed Executive Order 12988, Civil Justice Reform, and determined that this rulemaking will not unduly burden the Federal court system. The regulation 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.

#### **List of Subjects**

*30 CFR Parts 26 and 29*

Mine safety and health.

*30 CFR Parts 57 and 75*

Mine safety and health, Underground mining.

Dated: August 3, 1999.

**Marvin W. Nichols, Jr.,**

*Deputy Assistant Secretary for Mine Safety and Health.*

Accordingly, under the authority of 30 U.S.C. 957 and 961 and for the reasons set out in the preamble, 30 CFR, chapter I, is amended as follows:

#### **PART 26—LIGHTING EQUIPMENT FOR ILLUMINATING UNDERGROUND WORKINGS**

1. Part 26 is removed.

#### **PART 29—PORTABLE COAL DUST/ROCK DUST ANALYZERS, AND CONTINUOUS DUTY, WARNING LIGHT, PORTABLE METHANE DETECTORS FOR USE IN COAL MINES**

2. Part 29 is removed.

#### **PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES**

3. The authority citation for part 57 continues to read as follows:

**Authority:** 30 U.S.C. 811.

4. Section 57.22303 is revised to read as follows:

**§ 57.22303 Approved equipment (I–C mines).**

Only electrical equipment that is approved by MSHA under the applicable requirements of 30 CFR parts 18 through 28 or approved under 30 CFR part 29 contained in the 30 CFR, parts 1–199, edition, revised as of July 1, 1999, shall be used underground, except for submersible sump pumps.

**PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES**

5. The authority citation for part 75 continues to read as follows:

**Authority:** 30 U.S.C. 811.

6. Section 75.506 is amended by revising paragraph (d) to read as follows:

**§ 75.506 Electric face equipment; requirements for permissibility.**

\* \* \* \* \*

(d) The following equipment will be permissible electric face equipment only if it is approved under the appropriate parts of this chapter, or former Bureau of Mines' approval schedules, and if it is in permissible condition:

- (1) Multiple-Shot Blasting Units, part 7 subpart D;
- (2) Electric Cap Lamps, part 19;
- (3) Electric Mine Lamps Other than Standard Cap Lamps, part 20;
- (4) Flame Safety Lamps;
- (5) Portable Methane Detectors, part 22;
- (6) Telephone and Signaling Devices, part 23;
- (7) Single-Shot Blasting Units;
- (8) Lighting Equipment for Illuminating Underground Workings;
- (9) Methane-Monitoring Systems, part 27; and
- (10) Continuous Duty, Warning Light, Portable Methane Detectors, 30 CFR part 29 contained in the 30 CFR, parts 1–199, edition, revised as of July 1, 1999.

[FR Doc. 99–20408 Filed 8–9–99; 8:45 am]

BILLING CODE 4510–43–P

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Parts 70, 71, and 90**

**RIN 1219–AA98**

**Improving and Eliminating Regulations; Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers**

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** We (MSHA) have revised and updated our Informational Report No. 1121 (IR 1121) to include currently approved sampling equipment and to permit the use of fast-response calibrators having a volumetric tube. The updated document is Informational Report No. 1240 (IR 1240) entitled, "Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers." This final rule updates the existing incorporation-by-reference of IR 1121 in MSHA's coal mine respirable dust standards to reference IR 1240.

**EFFECTIVE DATE:** This regulation is effective October 12, 1999. The incorporation-by-reference of the publication listed in the rule is approved by the Director of the **Federal Register** as of October 12, 1999.

**FOR FURTHER INFORMATION CONTACT:** Carol J. Jones, Acting Director; Office of Standards, Regulations, and Variances, MSHA; 703–235–1910.

**SUPPLEMENTARY INFORMATION:**

**I. Regulatory Background**

In response to the Administration's regulatory reinvention initiative, we conducted a review of existing regulations to identify obsolete, outdated, redundant, or unnecessary provisions that could be removed or revised without reducing protection afforded miners. This final rule is part of our ongoing plan to improve our regulations. It updates the incorporation-by-reference of IR 1121, with the most recent revision, IR 1240. IR 1240 allows mine operators to use advanced technology without reducing protection to miners.

On September 3, 1998, we published a proposed rule in the **Federal Register** (63 FR 47123) requesting public comment on our intention to update the incorporation-by-reference in title 30 of the Code of Federal Regulations (30 CFR) §§ 70.204, 71.204, and 90.204. We allowed 60 days for public comment and received no comments, no requests

for an extension of the comment period, and no requests for a public hearing.

To increase awareness of this regulatory action, MSHA will mail a copy of this final rule to all operators and miners' representatives and will post it and IR 1240 on MSHA's Website at [www.msha.gov](http://www.msha.gov).

**II. Discussion of Final Rule**

Existing coal mining regulations §§ 70.204, 71.204, and 90.204 require that approved respirable dust sampling devices be calibrated in accordance with MSHA Informational Report No. 1121 (IR 1121) "Standard Calibration and Maintenance Procedures for Wet Test Meters and Coal Mine Respirable Dust Samplers (Supersedes IR 1073)." These regulations further state that amendments to IR 1121 will be announced in the **Federal Register**. This final rule updates the incorporation-by-reference of IR 1121, with the most recent revision, IR 1240, which is entitled "Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers."

IR 1240 addresses improved technology and describes the standard procedures that MSHA currently uses for calibration of approved personal samplers and associated equipment and for maintenance of this equipment. IR 1240 continues to require operators to record calibration parameters and results. MSHA encourages mine operators who store records electronically to provide a mechanism which will allow the continued storage and retrieval of records in the year 2000 and thereafter.

IR 1240 includes the calibration and maintenance procedures for the newest approved sampling unit for collecting respirable coal mine dust. This sampling unit uses constant flow technology and a power source which is different from other approved sampling units. The constant flow technology permits the calibration of this unit without concern for flow fluctuations. In addition, IR 1240 cautions mine operators and other interested parties to maintain such units as approved so as to ensure the accurate collection of respirable coal mine dust samples. IR 1240 also permits the use of fast-response calibrators for calibrating all approved sampling units. It takes only 1 to 2 minutes per unit to calibrate a sampling unit using this newer technology, as opposed to 30 minutes using the traditional calibration systems addressed in IR 1121.

Copies of IR 1240 are available at MSHA, Coal Mine Safety and Health, Room 816, 4015 Wilson Boulevard, Arlington, VA 22203; at each MSHA