

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.

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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.

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

Coal Mine Safety and Health district and subdistrict office; and on MSHA's Home Page at www.msha.gov.

III. Paperwork Reduction Act

This final rule, like the existing rule, contains information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA 95). MSHA submitted the proposed information collection request to OMB for its review and approval under § 3507(o) of PRA 95. OMB reviewed and approved the collection of information under OMB Control Number 1219-0128. This section contains a description of the information collection requirement, the respondent categories, and the annual information collection burden.

Description

Final 30 CFR 70.204, 71.204, and 90.204 require that approved respirable dust sampling devices be calibrated in accordance with IR 1240 "Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers." Calibration of sampling units requires data to be recorded as part of the calibration procedure. Most mines that calibrate their own pumps now use instantaneous flow meters for this purpose; and almost all but the largest underground mines send their pumps out to be calibrated, rather than calibrating them themselves.

Respondents

The respondents are mine operators. We estimate that this information collection requirement affects about 900 coal mines and that these mines calibrate about 1,850 pumps per year. Further, MSHA estimates that 897 of these mines calibrate 1814 pumps with a fast response calibrator; that three mines calibrate 36 pumps using the bubble tube method of pump calibration; and that no mines use the wet test meter method of pump calibration.

Information Collection Burden

The recording of calibration data is considered an information collection burden under PRA 95. MSHA estimates that it takes about 30 minutes (0.5 hour) to calibrate a pump using the bubble tube method, including recording calibration-related information and marking the pump flowmeter, and that it takes about 3 minutes (0.05 hour) to calibrate each pump with a fast-response calibrator and mark the pump flowmeter. The average time for pump calibration is 0.059 hour. The mine's technical staff usually does the pump calibration, if it's done at the mine, at a cost of about \$42 per hour.

The total estimated annual information collection burden for pump calibration and marking the pump flowmeter is about 109 hours with an associated cost of about \$4,580.

We estimate that most mine operators incurred the capital and start-up costs associated with pump calibration prior to October 1, 1995. Fast-response calibrators cost about \$900 and have a useful life of about 10 years. The annualization factor for an equipment life of 10 years is 0.142. The annualized cost for calibrators, therefore, is about \$128 per calibrator. For the purpose of this analysis, we estimate that about five new mines per year would purchase a fast-response calibrator resulting in a total annualized capital cost of about \$640.

We estimate that about 2010 mines send about 2040 pumps per year to an outside contractor for calibration and maintenance. This service includes pump calibration and marking the flowmeter; certification of pump calibration; cleaning and checking pump function; replacing worn or damaged parts; and shipping and handling. MSHA estimates that the average cost for this service is about \$100 per pump. Fast-response calibrators also require routine calibration and maintenance each year at a cost of about \$100. The cost for calibration and maintenance of 2040 pumps and five calibrators, therefore, is \$204,500.

The following chart summarizes MSHA's estimates for compliance with PRA 95.

Provision	Number of respondents	Number of responses	Number of responses per respondent (average)	Hours per response (average)	Total hours
Calibration records	900	1849	2	0.059	109
Annual Cost of calibration for 2040 pumps @ \$100 ea.			Annual cost of calibration for 5 fast-response calibrators @ \$100 ea.	Annual cost of 5 new mines acquiring fast-response calibrators @ \$128 ea. annualized	Total annual cost
\$204,000		\$500	\$640		\$205,140

The burden hours and costs associated with pump calibration and marking the flowmeter do not represent any license for the mining industry because MSHA regulations currently require operators to perform these activities.

IV. Executive Order 12866

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of regulations. We estimate that the cost impact of the final rule is the same as under the existing rule. The primary benefit of the final rule is that it provides mine operators alternatives in maintaining and calibrating dust

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. MSHA has determined that this final rule does not meet the criteria for a significant regulatory action and, therefore, has not prepared a separate analysis of costs and benefits. The analysis contained in this preamble meets MSHA's responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. Under the RFA, MSHA 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 MSHA traditionally has considered small mines to be those with fewer than 20

employees, MSHA has analyzed the impact of the final rule on mines with 500 or fewer employees for the purposes of the RFA.

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. 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, we will mail a copy of the final rule, including the preamble and regulatory flexibility certification statement, to all affected mines and miners' representatives.

Factual Basis for Certification

We used a qualitative approach in concluding that the final rule would not have a significant economic impact on a substantial number of small entities. This final rule updates the regulations to incorporate by reference the latest revision of an MSHA informational report describing the calibration and maintenance procedures for coal mine respirable dust sampling units. The benefit of updating provisions is that MSHA regulations would be clearer and reflect advances in technology. This final rule will have no economic impact on the mining industry. The cost impact on mines employing fewer than 20 miners or those employing 500 or fewer miners will be the same as under the existing rule.

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 that may result in 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 would 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.

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. Since this rule does not limit state policy options, 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.

XII. National Environmental Policy Act

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) requires each Federal agency to consider the environmental effects of final actions and to prepare an Environmental Impact Statement on major actions significantly affecting the quality of the human environment. We have reviewed the final standards in accordance with the requirements of NEPA, the regulations of the Council on Environmental Policy (40 CFR 1500), and the NEPA procedures of the Department of Labor (29 CFR 11). As a result of this review, MSHA has determined that this final rule will have no environmental impact.

List of Subjects in 30 CFR Parts 70, 71, and 90

Coal mines, Incorporation by reference, Mine safety and health, Scientific equipment.

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. 811 and for the reasons set out in the preamble, MSHA is amending chapter I, title 30 of the Code of Federal Regulations, as follows.

PART 70—[AMENDED]

1. The authority citation for part 70 is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957.

2. The authority citation for subpart C continues to read as follows:

Authority: 30 U.S.C. 811, 813(h), and 957.

3. Section 70.204 is amended by revising paragraphs (a) and (e) to read as follows:

§ 70.204 Approved sampling devices; maintenance and calibration.

(a) Approved sampling devices shall be maintained as approved under part 74 (Coal Mine Dust Personal Sampler Units) of this chapter and calibrated in accordance with MSHA Informational Report IR 1240 (1996) "Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers (supersedes IR 1121)" by a person certified in accordance with § 70.203 (Certified person; maintenance and calibration).

* * * * *

(e) MSHA Informational Report IR 1240 (1996) referenced in paragraph (a) of this section is incorporated-by-reference. This incorporation-by-reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected or obtained at MSHA, Coal Mine Safety and Health, 4015 Wilson Boulevard, Room 816, Arlington, VA 22203 and at each MSHA Coal Mine Safety and Health district and subdistrict office. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

PART 71—[AMENDED]

4. The authority citation for part 71 is revised to read as follows:

Authority: 30 U.S.C. 811, 951, and 957.

5. The authority citation for subpart C continues to read as follows:

Authority: 30 U.S.C. 811, 951, 957.

6. Section 71.204 is amended by revising paragraphs (a) and (e) to read as follows:

§ 71.204 Approved sampling devices; maintenance and calibration.

(a) Approved sampling devices shall be maintained as approved under part 74 (Coal Mine Dust Personal Sampler Units) of this chapter and calibrated in accordance with MSHA Informational Report IR 1240 (1996) "Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers (supersedes IR 1121)" by a person certified in accordance with § 71.203 (Certified person; maintenance and calibration).

* * * * *

(e) MSHA Informational Report IR 1240 (1996) referenced in paragraph (a) of this section is incorporated-by-reference. This incorporation-by-reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected or obtained at MSHA, Coal Mine Safety and Health, 4015 Wilson Boulevard, Room 816, Arlington, VA 22203 and at each MSHA Coal Mine Safety and Health district and subdistrict office. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

PART 90—[AMENDED]

7. The authority citation for part 90 continues to read as follows:

Authority: 30 U.S.C. 811, 813(h).

8. The authority citation for subpart C is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h), 957.

9. Section 90.204 is amended by revising paragraphs (a) and (e) to read as follows:

§ 90.204 Approved sampling devices; maintenance and calibration.

(a) Approved sampling devices shall be maintained as approved under part 74 (Coal Mine Dust Personal Sampler Units) of this chapter and calibrated in accordance with MSHA Informational Report IR 1240 (1996) "Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers "(supersedes IR 1121)" by a person certified in accordance with § 90.203 (Certified person; maintenance and calibration).

* * * * *

(e) MSHA Informational Report IR 1240 (1996) referenced in paragraph (a) of this section is incorporated-by-reference. This incorporation-by-reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Copies may be inspected or obtained at MSHA, Coal Mine Safety and Health, 4015 Wilson Boulevard, Room 816, Arlington, VA 22203 and at each MSHA Coal Mine Safety and Health district and subdistrict office. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA98

Improving and Eliminating Regulations; Approved Books and Records

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

ACTION: Final rule; technical amendment.

SUMMARY: We (MSHA) are revising our regulations to remove certain regulations on Approved Books and Records from the Code of Federal Regulations. Forms required by these regulations are obsolete and some requirements are redundant. In addition, we are revising regulations concerning the records of the testing, examination, and maintenance of circuit breakers to clarify that secure electronic records may be used and that records must be retained for one year.

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

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

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

In response to the Administration's regulatory reinvention initiative, MSHA conducted a review of its existing regulations to identify obsolete, outdated, redundant, or unnecessary provisions that could be removed or revised without reducing protection afforded miners. On September 3, 1998, MSHA published a proposed rule in the **Federal Register** (63 FR 47122) requesting public comment on its intention to remove part 75, subpart S, Approved Books and Records, and revising 30 CFR 75.800-4 concerning the records of the testing, examination, and maintenance of circuit breakers to clarify that secure electronic records

may be used and that the records shall be retained for one year. The Agency 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. Consequently, the final rule is unchanged from the proposal. This final rule will streamline 30 CFR part 75 by improving consistency and clarity in MSHA requirements for approved books and records for underground coal mines without reducing protection to miners.

II. Discussion of Final Rule

Existing MSHA standards in 30 CFR 75, subpart S, Approved Books and Records, contain recordkeeping requirements for certain tests and examinations conducted in underground mines. Subpart S specifies approved books for recording test results, as well as the manner in which the books are to be maintained.

Existing 30 CFR 75.1800(b) specifies approved forms on which mine operators are to record results for provisions in 30 CFR 75.1801 through 75.1808. Of these, however, only 30 CFR 75.1806 and 75.1808 remain in 30 CFR 75, subpart S. In addition, all the forms listed are obsolete and are no longer in use.

Existing 30 CFR 75.1800(c) allows mine operators to use record books kept to comply with State requirements, in lieu of the books required in 30 CFR 75, subpart S, if the MSHA district manager determines that those books provide the information specified in any record book required by the MSHA regulation.

The only records specified in 30 CFR 75, subpart S, are those in 30 CFR 75.1806 which require that the results of monthly examinations of high voltage circuit breakers, required by 30 CFR 75.800-3 and 75.800-4, be recorded in a book entitled "Monthly Examinations of Surface High Voltage Circuit Breakers", Form 6-1293. This form is no longer in use and MSHA no longer approves record books.

Existing 30 CFR 75.1808 requires that all approved books and records maintained under the provisions of 30 CFR 75.1801 through 75.1807 be stored in a fireproof repository on the surface of the mine, in a location chosen by the mine operator, and be made available to interested persons. This provision now applies only to 30 CFR 75.1806. To be consistent with other MSHA recordkeeping requirements, and to accommodate the electronic storage of data, we are deleting this requirement.

The rule recognizes the increasing use of electronic storage and retrieval of information and revises 30 CFR 75.800-4 to accommodate this technology.