

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.

In addition, we have revised 30 CFR 75.800-4 to clarify that the records must be retained for one year. We consider this additional requirement to be a non-substantive clarification of the existing standard because mine operators already are required to make these records available to an authorized representative of the Secretary, which implies that they be retained.

III. Executive Order 12866 and Regulatory Flexibility Act

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 Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. The analysis contained in this preamble meets our responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

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 jurisdiction 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.

Factual Basis for Certification

Based on the fact that there is no substantive change in the recordkeeping requirements, we have determined that there would be no impact on small businesses. No small governmental jurisdictions or nonprofit organizations are affected. 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.

IV. Paperwork Reduction Act

No new or additional paperwork burdens are included in this amendment. Test records are required in existing 30 CFR 75.800-3 and 75.800-4 and are approved under OMB control

number 1219-0067. The Paperwork Reduction Act of 1995 (PRA 95), however, requires that regulations specify a time period for the retention of records. Existing 30 CFR 75.800-3 and 75.800-4 do not specify a retention period for maintaining these required test records. We are requiring, consistent with other MSHA recordkeeping requirements, that these records be kept for at least one year.

V. 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.

VI. Executive Order 13045

In accordance with Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, we have evaluated the environmental health and safety risks of the final rule on children. We have determined that the final rule would have no effects on children.

VII. 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.

VIII. 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.

IX. 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.

X. 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 in 30 CFR Part 75

Mine safety and health, Reporting and recordkeeping requirements, Underground coal mines.

Dated: August 3, 1999.

Marvin W. Nichols, Jr.,

Deputy Assistant Secretary for Mine Safety and Health.

For the reasons discussed in the preamble, MSHA proposes to amend part 75, subchapter O, chapter I, title 30 of the Code of Federal Regulations as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

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

Authority: 30 U.S.C. 811.

2. Section 75.800-4 is revised to read as follows:

§ 75.800-4 Testing, examination, and maintenance of circuit breakers; record.

(a) *Recordkeeping.* The operator shall make a record of each test, examination, repair, or adjustment of all circuit breakers protecting high-voltage circuits which enter any underground area of the mine.

(b) *Record security.* These records shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

(c) *Retention and access.* These records shall be retained at a surface location at the mine for at least one year and shall be made available to authorized representatives of the Secretary, the representative of miners, and other interested persons.

Subpart S—[Removed]

3. Part 75 subpart S—Approved Books and Records, consisting of §§ 75.1800, 75.1806, and 75.1808, is removed and reserved.

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