

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AB10

Safety Standards for Underground Coal Mine Ventilation

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

ACTION: Proposed rule.

SUMMARY: MSHA is proposing to amend the examination interval for preshift examinations of underground coal mines by requiring preshift examinations to be conducted at 8-hour intervals. After MSHA promulgated a comprehensive revision of its ventilation standards in March of 1996, the United States Court of Appeals for the District of Columbia Circuit (Court) reviewed the validity of the rule. On June 17, 1997, the Court issued an order invalidating, on procedural grounds only, the provision relating to the interval for preshift examinations. This proposed rule would be essentially the same as the standard that was promulgated in 1996 and invalidated by the Court on procedural grounds. The proposed rule would clarify both when a preshift examination would be required and the length of the shift covered by the preshift examination.

DATES: Comments must be submitted on or before September 14, 1998. Submit written comments on the information collection no later than September 14, 1998.

ADDRESSES: Comments by electronic mail must be clearly identified as such and sent to this e-mail address: comments@msha.gov. Comments by fax must be clearly identified as such and sent to: MSHA, Office of Standards, Regulations, and Variances, 703-235-5551. Send mail comments to: MSHA, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203-1984. Commenters are encouraged to submit comments to MSHA on a computer disk along with their original comments in hard copy. Submit written comments on the information collection requirement to MSHA at the address above and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Bldg., 725 17th St. NW., Rm. 10235, Washington, DC 20503, Attn: Desk Officer for MSHA.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA: 703-235-1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposed rule contains an information collection which is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA 95). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time to conduct an additional preshift examination, the time to make a record, the time to obtain a countersignature from the mine foreman or equivalent mine official, and the time to file the form.

With respect to the following collection of information, MSHA invites comments on: (1) Whether the proposed collection of information is necessary for proper performance of the functions of the Agency, including whether the information will have practical utility; (2) the accuracy of the estimate by MSHA 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.

Description

Section 75.360(a)(1) would require that a certified person designated by the operator make a preshift examination within 3 hours preceding the beginning of any 8-hour interval during which any person is scheduled to work or travel underground. Presently § 75.360(f) requires a record of the results of each preshift examination, including a record of hazardous conditions and their locations found by the examiner during each examination and of the results and locations of air and methane measurements. The record must also include a notation that the hazardous conditions found during the preshift examination were corrected. This record must be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. The mine operator has the option of conducting a portion of the additional preshift examination concurrently with the on-shift examination. In this instance, the additional preshift examination essentially would consist of the examination of outby areas not covered

by an on-shift examination such as travelways, work areas, and electrical installations. Because large mines generally have longer outby travelways and more outby work areas and electrical installations to be examined than small mines, the additional time to perform the preshift examination would take longer in large mines. MSHA estimates that it would take an examiner an additional hour to conduct an additional preshift examination in a large underground coal mine and an additional 45 minutes in a small underground coal mine. An examiner would take about 30 minutes to make the record in a large mine and about 15 minutes in a small mine, and the mine foreman or equivalent mine official would take about 10 minutes to review and countersign the record in a large mine and about 5 minutes in a small mine.

Description of Affected Mines

The affected mines are underground coal mines. MSHA estimates that this provision annually would affect 127 underground coal mines (75 with fewer than 20 employees and 52 with 20 or more employees).

Information Collection Burden

Based on MSHA's traditional definition of "small mine" as one with fewer than 20 employees, the total estimated burden for all affected mines would be 78,001 hours, and compliance costs associated with such hours would be \$2,182,000. Under MSHA's traditional definition, total burden to small mines would be 13,000 hours at a cost of \$361,000. Specifically, small mines' burden hours and costs consist of: 9,000 hours related to conducting the additional preshift examination at a cost of \$243,000; 3,000 hours related to making the record at a cost of \$81,000; and 1,000 hours related to reviewing, countersigning and filing the record at a cost of \$37,000. The total burden to large mines would be 65,001 hours at a cost of \$1,821,000. Large mines' burden hours and costs consist of: 39,000 hours related to conducting the preshift examination at a cost of \$1,053,000; 19,500 hours related to making the record at a cost of \$527,000; and 6,501 hours related to reviewing, countersigning and filing the record at a cost of \$241,000.

Using the SBA definition, when a "small mine" is defined as a mine with 500 or fewer employees, 126 of the 127 affected mines are considered small. Under this definition, 76,751 of the 78,001 burden hours are related to small mines. The costs related to the 76,751 burden hours are \$2,147,000. Of the

76,751 burden hours: 47,250 hours are related to conducting the additional preshift examination at a cost of \$1,276,000; 22,125 hours are related to making a record at a cost of \$598,000; and 7,376 hours are related to reviewing and countersigning the record at a cost of \$273,000. Burden hours to the one large mine affected would be 1,250 hours at a cost of \$35,000.

Under § 3507(o) of PRA 95, the Agency has submitted a copy of this proposed rule to OMB for its review and approval of the information collection. Interested persons are requested to send comments regarding these burden estimates or any other aspect of this information collection, including suggestions for reducing this burden to: (1) the Office of Information and Regulatory Affairs, OMB, Attn: Desk Officer for MSHA, New Executive Office Bldg., 725 17th St. NW., Rm. 10235, Washington, DC 20503; and (2) Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203.

II. Background

The preshift examination is a critically important, fundamental safety practice in the mining industry. It has historically been a primary means of determining the effectiveness of an underground coal mine ventilation system, and of detecting hazardous conditions and practices. The preshift examination has proven to be particularly effective because it provides a thorough safety check before work commences underground on the shift for which the examination is conducted. A preshift examination can detect developing hazards as well as existing hazards.

The Federal Mine Safety and Health Act of 1977 (Mine Act) contains interim mandatory safety standards that address preshift examinations. Interim standard § 303(d)(1) requires that preshift examinations be conducted "within 3 hours immediately preceding the beginning of any shift * * *." MSHA adopted this provision as a permanent safety standard in its regulations for underground coal mines, promulgating it in 1978 as 30 CFR 75.303(a).

Section 303(d)(2) of the Mine Act is another interim standard that addresses preshift examinations. It provides that no person, other than certified persons designated to conduct the examination, is permitted to enter any underground area, except during any shift, unless a preshift examination of such area has been made within 8 hours prior to the person entering the area. Under this provision, miners already working on a

shift for which a preshift has been completed may remain working underground during the subsequent preshift examination being conducted for the oncoming shift. In 1978, MSHA adopted this provision as a permanent safety standard in its regulations for underground coal mines as 30 CFR 75.303(b).

The general practice in the mining industry at the time the Mine Act was enacted was for coal miners to work in shifts of 8 hours. Thus, the effect of the preshift examination requirement was that examiners conducted preshift examinations every 8 hours. Since 1977, overlapping work shifts and work shifts of various lengths (novel work shifts) have become common, making it necessary for MSHA to address this issue in its 1992 revisions to the ventilation standards for underground coal mines.

MSHA revised its preshift examination standards as part of a final rule for ventilation standards and retained the requirement that preshift examinations are to be conducted "within 3 hours preceding the beginning of any shift." However, in its preamble discussion to the 1992 ventilation final rule (57 FR 20893), MSHA interpreted this language to mean that if the mine used regular shifts that were longer than 8 hours in length, the preshift examination would apply to the entire length of the shift. The 1992 revisions continued to allow work to proceed underground during the preshift examination for the oncoming shift.

In 1994, the Agency proposed a new preshift examination rule in an attempt to clarify and standardize the application of certain provisions of the 1992 preshift examination rule. In the comments submitted to MSHA during the 1994 rulemaking, a segment of the mining community expressed concern that because of novel work schedules, preshift examinations were not being conducted frequently enough to assure safe working conditions. A second concern expressed was that conducting preshift examinations at intervals longer than 8 hours would reduce the protection afforded miners under the Mine Act. A final concern expressed was that MSHA introduced confusion into the preshift examination requirements when it interpreted the acceptable intervals for preshift examinations. Another segment of the public argued that by the language of § 303(d)(2) Congress tacitly accepted shifts longer than 8 hours with only one preshift examination required. The same segment of the public argued that a practice had built up over a period of

time allowing not only longer shifts but also "excursions" where miners work over 8 hours under specific conditions. Finally, commenters representing both labor and industry recommended that MSHA adopt a rule requiring preshift examinations for each 8 hour period that miners are underground.

In response to these comments, the Agency substituted the phrase "8-hour interval" for the phrase "beginning of any shift" when it promulgated the 1994 proposed rule as a final rule in 1996. The 1996 standard thus required a preshift examination, "* * * within 3 hours preceding the beginning of any 8-hour interval during which any person is scheduled to work or travel underground * * *". MSHA also acknowledged in the preamble to the final rule (61 FR 9791) that, in accordance with longstanding practice, unplanned short excursions past the 8-hour period that occur infrequently are accepted without an additional preshift examination.

In the preamble to the 1996 final rule (61 FR 9791), MSHA discussed its rationale for adopting an 8-hour preshift examination rule. MSHA stated that:

* * * MSHA agrees with commenters that evolution within the industry in shift scheduling has presented a number of questions and controversies regarding the standard which must be resolved to assure that proper preshift examinations are conducted within suitable time frames. Based on comments, the final rule adopts a modification to clarify and standardize the application of the preshift examination in recognition of the use of novel shifts while maintaining the protection of the existing standard. * * *

Underground working schedules of three 8-hour shifts per day were virtually standard when the previous rule was implemented. Currently a substantial number of mining operations have work shifts of more than 8 hours. Other operations stagger or overlap shifts providing for continuous underground mining activities. Some mines that operate around the clock schedule persons to begin shifts at one- or two-hour intervals. In such cases, controversies and misunderstandings have developed regarding application of the current standard.

In adopting an 8-hour preshift requirement, the Agency also agreed (61 FR 9791) with comments suggesting that "the original legislation of the Mine Act envisioned that preshift examinations would be conducted for each 8-hour interval that persons worked underground." MSHA reached this conclusion both from the traditional practice at the time of the legislation and from the language of § 303(d)(2) of the Mine Act.

On June 17, 1997, the United States Court of Appeals for the District of

Columbia Circuit, in *National Mining Association v. Mine Safety and Health Administration and Secretary of Labor (MSHA)*, 116 F.3d 520, (D.C. Cir. 1997) issued an order granting a petition for review on the National Mining Association's challenge of 30 CFR 75.360(a) relating to preshift examinations. The court acknowledged that the approach used by MSHA in adopting the 8-hour time interval for the preshift examination was a reasonable one,¹ but invalidated the provision on procedural grounds due to lack of sufficient notice to the parties in the rulemaking (supra 116 F.3d 520, 530). The effect of the decision was to reinstate the portion of the previous regulation that requires a preshift examination to be conducted prior to the beginning of any shift. MSHA published a **Federal Register** document on June 30, 1997 (62 FR 35085) conforming the language of the existing standard to the Court's order.

MSHA continues to believe that it is necessary to address the issues surrounding the preshift examination interval. The standard must provide for sufficient protection, be clear in its recommendations, and be properly implemented to ensure safe working conditions in underground coal mines. Accordingly, MSHA encourages all parties to fully express their viewpoints during this rulemaking to assist the Agency in promulgating a final rule that most appropriately addresses the safety of our nation's underground coal miners.

III. Discussion

Section 75.360 Preshift Examination at Fixed Intervals

Existing § 75.360(a)(1) of the MSHA ventilation standards provides

Except as provided in paragraph (a)(2) of this section, a certified person designated by the operator shall make a preshift examination within 3 hours preceding the beginning of any shift during which any person is scheduled to work or travel underground. No person other than certified examiners may enter or remain in any underground area unless a preshift examination has been completed for the shift.

Proposed paragraph (a)(1) would modify the existing language of § 75.360(a)(1) to require preshift examinations at fixed 8-hour intervals. It would replace the word "shift" with the phrase "8-hour interval". In

addition, the proposed rule would add the sentence, "The operator shall establish the 8-hour intervals of time subject to the required preshift examinations."

The Agency believes that, considering the speed at which underground conditions can change, a reasonable period must be identified after which another examination is necessary. For example, methane, an explosive gas naturally occurring in coal mines, commonly builds up over time, especially in newly mined areas. Methane may also accumulate in other areas, such as where water accumulation interferes with mine ventilation. A preshift examination should result in the detection of this explosive gas and the timely correction of the condition before it reaches a hazardous level. Also, the roof and ribs tend to deteriorate over time in outby entries used as travelways and on the sections of a mine where miners are assigned to work. Roof pressures and subsequent falls can damage ventilation controls, resulting in hazardous conditions. Equipment damaged by a roof fall, including belt haulage systems or trolley wire systems, can lead to mine fires or explosions. A preshift examination provides a vehicle to detect these developing hazards.

MSHA has reviewed the history of fatalities that have occurred at underground coal mines since 1990 to determine if any of the fatalities occurred more than 8 hours after the start of the shift, and therefore may have been prevented had the proposed rule been in place. MSHA has placed in the rulemaking record 32 fatal accident reports of MSHA investigations conducted since 1990 in which the accident was identified as occurring more than 8 hours into the shift. At least six of the reports, representing seven fatalities, address instances where an additional preshift examination might have identified the hazards that resulted in the fatalities and allowed an opportunity for corrective action.² This is approximately 3 percent of the total number of fatalities which occurred at underground coal mines during this time period.

In reviewing these accident reports, MSHA recognizes the difficulty in determining whether an additional

preshift examination would have prevented a specific fatality from occurring, particularly since prior examinations had in some cases failed to identify the hazardous conditions or practices. However, MSHA does not concede that subsequent examinations will necessarily fail in their purpose simply because one or more previous examinations may have been inadequate. A preshift examination conducted at 8-hour intervals would provide an opportunity for the examiner to identify hazardous conditions or practices that may have been overlooked in an earlier examination. It should also be noted that the conditions in a mine may have further deteriorated after 8 hours into the shift, and that the same examiner or a different examiner conducting the additional preshift examination might have identified the hazard and caused appropriate actions to be taken to correct the condition and protect the safety of the miners.

It is not the intent of the Agency that the preshift examination be a continuous examination without a beginning or an end. Once a preshift examination has been conducted, an additional preshift examination would not be necessary during the 8-hour interval covered by the preshift examination simply because persons start to work after the beginning of the normal shift start time. Under the proposed rule, persons could enter or leave the mine, regardless of their shift schedule, during any established 8-hour period for which a preshift examination has been conducted. However, another preshift examination must be completed prior to the beginning of the next 8-hour interval if any persons, other than examiners, remain in the mine during the next 8-hour interval or are scheduled to enter the mine during the oncoming interval. For example, if the established time interval for the 8-hour preshift examination covers the period from 8:00 a.m. to 4:00 p.m., no one except mine examiners may enter the mine or remain underground after 4:00 p.m. unless a preshift examination has been conducted for the 8-hour interval beginning at 4:00 p.m. As with the existing standard, no person other than examiners may enter any underground area that is subject to a preshift examination prior to the completion of the preshift examination for that area. Also, supplemental examinations continue to be required under § 75.361 before anyone enters areas of the mine that had not had a preshift examination.

The proposal would require one preshift examination at mines that operate with only one 8-hour shift per day. If the mine uses regular shifts that

¹ The Court stated, "At the least, 30 CFR 75.360(a)(1) is a reasonable interpretation of open-ended statutory language. * * * We see no reason why we should not think of 30 CFR 75.360(a)(1) as just such an 'improved mandatory safety standard[]' issued in light of changed circumstances in the mining industry." (116 F.3d 520, 530)

² The accidents are: Linda Enterprise, Inc., #31-A mine, March 23, 1990, 1 fatality; Waco Limited Partnership No. 1, No. 2 mine, December 18, 1995, 1 fatality; Miller Branch Enterprises, Inc., No. 1 mine, 1 fatality; MAG Inc., Alloy Deep Mine #2, October 2, 1993, 1 fatality; M&D Coal Co., Inc., No. 3 mine, August 15, 1996, 1 fatality; and Day Branch Coal Co., Inc., No. 9 mine, May 11, 1994, 2 fatalities.

are longer than 8 hours in length, the preshift examination would cover an 8-hour interval. The proposal would require three preshift examinations where persons are underground for more than 16 hours per day. For example, at a mine operating two 10-hour shifts per day, the proposed rule would require three examinations per day. As with the existing standard, the proposed rule would not require examinations for designated 8-hour periods when no one enters the mine. Also consistent with the existing standard, no one, except other designated preshift examiners, may accompany a preshift examiner during the examination.

MSHA recognizes that the proposed rule may cause some mine operators to perform additional examinations that are not currently required. For example, some mines operate single or multiple extended shifts of up to 14 hours each. Mines that are not currently conducting preshift examinations at 8-hour intervals during extended shifts would be impacted by the proposed rule. The proposed rule would require additional preshift examinations at these mines. During the 1996 MSHA ventilation rulemaking and subsequent litigation, a segment of the mining community expressed the view that extended and novel work shifts are being used more frequently by mine operators and that the time interval for preshift examinations should not be limited to 8 hours. The Agency solicits comments on the benefits and hazards associated with an alternative approach to preshift examinations that would permit an 8½, 9, or up to a 10-hour interval for preshift examinations. The Agency specifically solicits comments on any benefits and hazards that may be associated with this alternative approach.

Earlier comments suggested that the longstanding MSHA practice of accepting certain excursions beyond the 8-hour preshift examination time interval should be continued. MSHA has permitted excursions in the past when miners are required to stay beyond an 8-hour shift to catch up on production, perform mechanical repairs, install roof support, or as a result of a mantrip delay. The Agency solicits comments on: whether any excursions should be permitted beyond 8 hours without an additional examination; the maximum length of any such excursion; and the safety impact of such an excursion.

A commenter has stated that requiring preshift examinations every 8 hours creates overlaps and confusion with State laws, specifically the laws of West Virginia. While MSHA is not barred

from promulgating otherwise appropriate safety and health standards because they may result in additional responsibilities for operators, neither does the Agency desire to impose requirements that are confusing or unduly burdensome.

A commenter in the 1996 ventilation rulemaking also suggested that the regulation should stipulate specific times for examinations, such as 12:00 midnight, 8:00 a.m., and 4:00 p.m. as the beginning of the 8-hour intervals for which preshift examinations would be required. MSHA believes there is no safety or health benefit to be gained through prohibiting operators from adopting other 8-hour intervals, e.g., 10:00 p.m., 6:00 a.m., and 2:00 p.m., to accommodate their individual operations and the proposed standard would therefore allow operators the flexibility to establish their own shift schedules. For example, an operator may elect a starting time of 11:00 a.m. for a weekend project, provided the preshift examination is conducted within the 3 hours prior to the beginning of the shift.

As proposed, the preshift examination would be conducted within 3 hours preceding the beginning of any 8-hour interval. For accuracy, the title of § 75.360 would be changed from "Preshift examination" to "Preshift examination at fixed intervals." The text of the proposed standard and the preamble discussion of the standard would continue to refer to the examination as the "preshift examination." Because of the history of the term and the widespread understanding in the industry of the safety checks required by a preshift examination, MSHA is proposing to continue the use of the term "preshift examination" in the body of the standard and to continue to refer to the examination as the preshift examination.

IV. Executive Order 12866 and Regulatory Flexibility Act

Executive Order 12866 requires that agencies assess both the costs and benefits of proposed regulations. MSHA has determined that this proposed rule does not meet the criteria of a significant regulatory action and, therefore, has not prepared a separate analysis of costs and benefits. All of the compliance costs of this proposed rule are paperwork related costs. Thus, the derivation of the compliance costs that are summarized in this document are contained in the paperwork package that was submitted to the Office of Management and Budget. Copies of the paperwork package are available upon

request from MSHA, Office of Standards, Regulations, and Variances (703-235-1910).

Benefits

A timely preshift examination in underground coal mines is a primary method of assuring safety to miners. Coal miners rely on the preshift examination to provide protection and often take it for granted that an adequate examination has been conducted.

There is a potential for multiple fatalities in an underground coal mine when explosive quantities of methane exist or when a roof deteriorates and falls. It is extremely difficult to specifically quantify safety benefits related to a particular safety factor such as a preshift examination. Due to the hazardous environment that miners work in, an unsafe condition or work practice could jeopardize the well-being of all miners underground.

As discussed earlier, MSHA has identified seven fatalities, associated with six mining accidents that have occurred since 1990, which could potentially have been prevented if the requirements of the proposed rule were followed. This is approximately 3 percent of the total number of fatalities which occurred at underground coal mines during this time period.

During this same period of time there were 59,000 injuries for all underground coal mines. Although the reports of the accidents do not permit us to make a precise analysis of the causes of all the injuries, if we were to extrapolate using the same 3 percent that we used for fatalities the Agency predicts that 1,770 injuries might have been prevented. MSHA believes that if a preshift examination had been conducted at the intervals that would be established by the proposed rule, it is reasonable to expect that the examiners would have identified at least some of the hazardous conditions or practices resulting in the injuries and fatalities. MSHA realizes that in some cases this assumes that the additional preshift examinations would have identified hazardous conditions or practices that earlier examinations failed to recognize. However, an additional examination would afford the mine operator with another opportunity to identify hazards. MSHA believes that this position is reasonable and that subsequent examinations could discover hazardous conditions or practices, even though earlier examinations may have been inadequate. Furthermore, the requirement that a preshift examination be conducted during every 8-hour interval is not unreasonable in light of the fact that within such a time period it is possible that conditions in a mine

can deteriorate. It was in this spirit that Congress originally enacted the interim preshift examination standards which envisioned such examinations occurring for each 8-hour shift.

Therefore, MSHA has found it prudent to take a conservative approach and propose an 8-hour interval for preshift examinations to provide adequate protection for miners. This proposed rule should decrease the occurrence of fatalities, injuries, and accidents in underground coal mines.

Compliance Costs

MSHA estimates that approximately 127 underground coal mine operators would need to conduct an additional preshift examination. Based on a small mine definition of fewer than 20 employees, about 75 of the mines are small mines and 52 are large mines. The mine operator has the option of conducting a portion of the additional preshift examination concurrently with the on-shift examination. Therefore, the compliance costs of the additional preshift examination essentially consist of the cost of the examination of outby areas not covered by an on-shift examination, such as travelways, work areas, and electrical installations.

The proposed rule is estimated to cost about \$2,182,000 per year, of which small mine operators (those with fewer than 20 employees) would incur about \$361,000 per year and large mine operators would incur \$1,821,000 per year.

V. Regulatory Flexibility Act (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)

The RFA requires regulatory agencies to consider a rule's impact on small entities. Under the SBREFA amendments to 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. MSHA traditionally has considered small mines to be those with fewer than 20 employees. For the purposes of the RFA and this certification, MSHA has analyzed the impact of the proposed rule on all affected mines with 500 or fewer employees, as well as on those with fewer than 20 employees.

The Agency has provided a copy of this proposed rule and regulatory flexibility certification statement to the SBA Office of Advocacy. In addition, MSHA will mail a copy of the proposed rule, including the preamble and regulatory flexibility certification statement, to all mine operators and miners' representatives.

Regulatory Flexibility Certification

In accordance with section 605 of the RFA, MSHA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. No small

governmental jurisdictions or nonprofit organizations are affected.

Under the SBREFA amendments to the RFA, MSHA must include a factual basis in the proposed rule for this certification. The Agency also must publish the regulatory flexibility certification in the **Federal Register**, along with its factual basis, followed by an opportunity for comment by the public.

Factual Basis for Certification

The underlying data in Table I shows that the compliance costs of this proposed rule does not exceed 1 percent of the estimated revenues of the underground coal mines affected by this proposed rule. When small underground coal mines affected by this proposed rule are defined as those that employ fewer than 20 employees, then small mines account for about \$361,000 of the total compliance costs and estimated revenues of such mines are approximately \$50.2 million. Thus compliance costs as a percent of estimated revenues for the affected mines are 0.72 percent. When small underground coal mines affected by this proposed rule are defined as those that employ 500 or fewer employees, then small mines account for \$2,147,000 of the total compliance costs and estimated revenues of such mines are approximately \$641,237,000. In this case compliance costs as a percentage of estimated revenues for the affected mines are 0.33 percent.

TABLE I.—COSTS AND REVENUES FOR AFFECTED UNDERGROUND COAL MINES

Section 75.360(a)(1)	Proposed rule costs (thous.)	Estimated revenues of affected mines (thous.)	Costs as percent of revenues
Small Mines (<20)	\$361	\$50,200	0.72
Small Mines (≤500)	\$2,147	\$641,237	0.33

This proposed rule would not have a significant impact on a substantial number of small entities that are affected by this rule.

VI. Unfunded Mandates and Executive Order 12875

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, this proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than \$100 million.

VII. Executive Order 13045

In accordance with Executive Order 13045, MSHA has evaluated the environmental health or safety effect of the proposed rule on children. The Agency has determined that the proposal will have no effect on children.

List of Subjects in 30 CFR Part 75

Mine safety and health, Reporting and recordkeeping requirements, Underground coal mining, Ventilation.

Dated: July 8, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, it is proposed 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. In subpart D of Part 75, in § 75.360, revise the section heading and paragraph (a)(1) to read as follows:

§ 75.360 Preshift examination at fixed intervals.

(a)(1) Except as provided in paragraph (a)(2) of this section, a certified person

designated by the operator shall make a preshift examination within 3 hours preceding the beginning of any 8-hour interval during which any person is scheduled to work or travel underground. No person other than certified examiners may enter or remain in any underground area unless a

preshift examination has been completed for the established 8-hour interval. The operator shall establish 8-hour intervals of time subject to the required preshift examinations.

* * * * *

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