

EPA is a Federal agency that regulates both the gaseous and diesel particulate matter emissions from nonroad diesel engines sold in the United States. The EPA standards in 40 CFR part 89, Control of Emissions from New and In-Use Nonroad Compression-Ignition Engines, establish laboratory testing procedures and application requirements for nonroad engines. Diesel engine manufacturers are redesigning their engines to meet new EPA emission standards. Manufacturers must apply for our approval for each new engine design if they are to be used in underground coal mines. Manufacturers would benefit if they were able to streamline engine testing so they could solicit approval from us as well as EPA using the same set of results.

We are asking for public input concerning our intent to review certain EPA Nonroad Diesel Engine standards published under part 89, Title 40, CFR to determine whether these standards provide, or could be modified to provide, at least the same degree of protection as our existing applicable requirements. We intend to limit our review to the following EPA standards:

- 89.2, Definitions,
- 89.6, Reference materials,
- 89.115, Application for certificate,
- 89.119, Emission tests,
- Subpart D, Emission Test

Equipment Provisions,

- Appendix A, to Subpart D,
- Appendix B, to Subpart D, and
- Subpart E, Exhaust Emission Test

Procedures.

We intend to review these specific EPA standards to determine whether the EPA requirements provide adequate testing procedures and technical information needed for the issuance of our approval under part 7, subpart E. The requirements in our part 7 apply to certain equipment and materials whose product testing and evaluation does not involve subjective analysis. We have reviewed the applicable EPA requirements and have determined that they do not involve subjective analysis.

If we determine the specified sections of 40 CFR part 89 would provide at least the same degree of protection in their original form or could be modified to demonstrate equivalency to 30 CFR part 7, subpart E, Category B diesel engines, then we would amend 30 CFR part 7 accordingly. If modifications are required, they would also be specified in our part 7.

We welcome comments on whether the EPA requirements provide testing procedures and technical information equivalent to the approval requirements set out in part 7 subpart E. If you feel

the specified sections of 40 CFR part 89 do not provide the same degree of protection in their original form, but could be modified to do so, specify what modifications are necessary to demonstrate equivalency. After the comment period closes, we will perform an evaluation of the EPA standards. At the conclusion of the evaluation, we will publish our determination in the **Federal Register** accompanied by a summary of the findings and a list of required modifications, if necessary.

Dated: March 20, 2006.

**David G. Dye,**

*Acting Assistant Secretary for Mine Safety and Health.*

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Parts 18 and 75

**RIN 1219-AB34**

#### High-Voltage Continuous Mining Machine Standard for Underground Coal Mines

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

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** We (the Mine Safety and Health Administration (MSHA)) are repositing provisions involving two issues included in the notice of proposed rulemaking that was published in the **Federal Register** on July 16, 2004. These issues involve the following: Types of trailing cables that can be used with high-voltage continuous mining machines; and a requirement to use high-voltage insulating gloves or insulated cable handling tools when handling energized high-voltage trailing cables. In connection with the second issue, we are also addressing the availability requirement for high-voltage insulating gloves and insulated cable handling tools, and the safety requirements for these tools. We are repositing these provisions after consideration of the oral and written pre- and post-hearing comments that we received.

**DATES:** Comments must be received by May 30, 2006.

**ADDRESSES:** Comments must be clearly identified as such and transmitted electronically to <http://www.regulations.gov> or to [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov). Include "RIN 1219-AB34" in the subject line of the

message. Persons unable to file comments electronically should submit their comments to us by regular mail or hand delivery to MSHA, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209-3939, or by facsimile at 202-693-9441. You may contact us with any format questions.

**Instructions:** All comments, including any personal information contained therein, will be posted without change at <http://www.msha.gov/currentcomments.asp>.

**Docket:** The entire rulemaking record may be viewed in MSHA's public reading room at 1100 Wilson Boulevard, Room 2349, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Robert Stone, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Arlington, Virginia 22209-3939. Mr. Stone can be reached at (202) 693-9440.

We maintain a listserve on our Web site that enables subscribers to receive e-mail notification when we publish rulemaking documents in the **Federal Register**. To subscribe to the listserve, visit our site at <http://www.msha.gov/subscriptions/subscribe.aspx>.

You may obtain copies of this proposed rule in an alternative format by accessing the Internet at <http://www.msha.gov/REGSINFO.HTM>. The document is also available by calling 202-693-9440.

### I. Rulemaking Background

On July 16, 2004, we published a proposed rule in the **Federal Register** (69 FR 42812) to establish design requirements for approval of high-voltage continuous mining machines operating in face areas of coal underground mines. The rule also proposed to establish new mandatory electrical safety standards for the installation, use, and maintenance of high-voltage continuous mining machines used in underground coal mines. The proposed rule would enable mines to safely utilize high-voltage continuous mining machines with enhanced safety protection from fire, explosion, and shock hazards without the need for mine operators to file petitions for modification (PFM) to use them.

In the July 16, 2004 **Federal Register** notice we also announced that four public hearings would be held in September 2004. The post-hearing comment period was scheduled to close on October 14, 2004. However, on August 23, 2004, we published a notice changing the public hearing dates to November 2004, and the close of the post-hearing comment period to

December 10, 2004 (69 FR 51787). Hearings were held accordingly. We then reviewed all oral and written comments received.

Based on that review, we have decided to repropose provisions that relate to the types of trailing cables that can be used with high-voltage continuous mining machines and the types of cable handling equipment that must be used when handling energized high-voltage trailing cables. We are requesting comments on these provisions. All submissions to us concerning these provisions will be placed in the record and made available for public review. Any submissions concerning other provisions of the July 16, 2004 proposed rule submitted at this time are beyond the scope of this regulatory action and will not be considered.

## II. Section-by-Section Discussion

The following section-by-section analysis explains how the provisions proposed today compare with the associated provisions as proposed on July 16, 2004. We also discuss the public comments received on the associated July 16, 2004 provisions.

### *Section-by-Section Analysis*

#### Section 18.54(f)(4) High-Voltage Trailing Cable(s) Jackets

The July 16, 2004 proposed rule incorporated by reference the current carrying capacity (ampacity) ratings and outside diameter requirements for trailing cables listed in the Insulated Cable Engineers Association Standards (ICEA) S-75-381/National Electrical Manufacturer's Association (NEMA) Standard NEMA WC 58-1997. However, the proposed rule failed to include an incorporation by reference of the physical properties for the double-jacketed cable listed in the ICEA S-75-381/NEMA WC 58-1997 standard. We are correcting this oversight by proposing to incorporate by reference the physical properties of the double-jacketed trailing cable specified in the ICEA/NEMA document referenced above. The proposed incorporation does not include additional requirements and is being proposed only to clarify that double-jacketed trailing cables will be required to meet the ampacity ratings, the outside diameter requirements, as well as the physical properties listed in ICEA S-75-381/NEMA WC 58-1997, as do all the double-jacketed trailing cables accepted in granted PFMs.

Accordingly, proposed paragraph (f) notes that the incorporation of the ICEA S-75-381/NEMA WC 58-1997 standard was approved by the Director of the

Federal Register, and includes details regarding where the public may inspect or purchase a copy of such standard.

Single-jacketed trailing cables will need to meet the ampacity ratings and outside diameter requirements listed in the referenced ICEA/NEMA standard. Proposed paragraph (f)(4)(ii) includes the physical properties (minimum tear and tensile) requirements as discussed below.

Proposed § 18.54(f)(4) addresses the design and construction of high-voltage trailing cable jackets. As originally proposed on July 16, 2004, paragraph (f)(4) would have required trailing cables to have two reinforced layers of jacket material. With this type of construction, the inner-most layer of the two-layered protective cable jacket would have been required to be a color distinctive from the outer jacket color so that the damaged jacket would be easily identifiable, and the color black was not permitted to be used for either layer.

We received several comments on § 18.54(f)(4) as it was proposed in July 2004. Some commenters were in favor of using single-jacketed cables made of thermoplastic polyurethane (TPU). A commenter stated that the TPU jacket is stronger than a two-layer jacket and it should be allowed as an option to the two-layered jacket. This commenter further stated that the TPU jacket material has a very high tensile strength and is extremely resistant to abrasion and tear. This commenter reported that the minimum tensile strength and tear strength of extra heavy duty rubber jackets were 2400 pounds per square inch and 40 pounds per inch, while the values for the TPU jackets were 5000 pounds per square inch and 120 pounds per inch, respectively. The commenter indicated that the TPU material can be made in a color other than black, and is so rugged that it can only be successfully manufactured in a single layer. This commenter stated that TPU-jacketed trailing cables have been in use in the mining industry for 11 or 12 years and have also been used successfully as shearer power cables and trailing cables on some medium-voltage continuous mining machines and other pieces of mining equipment.

Another commenter stated that at least one PFM permitted the use of a TPU jacket as an alternative to the double-jacket requirement. This commenter further noted that this type of single-jacketed cable had been used at a mine on two high-voltage continuous mining machines and on shuttle cars for over two years, both successfully. Another commenter suggested that § 18.54(f)(4) (as proposed in July 2004) use the same PFM language to allow

both the single-jacketed and double-jacketed trailing cables. However, this commenter later stated that a single-jacketed trailing cable should not be included in the regulation, and offered no explanation for the basis of his comment.

Based on the information provided by commenters, we are proposing to revise § 18.54(f)(4) of the July 16, 2004 proposed rule to permit the use of a single-jacketed cable. Proposed § 18.54(f)(4)(ii) would require that a single-jacketed cable have a tear strength of more than 100 pounds per inch thickness and a tensile strength exceeding 4000 pounds per square inch. Proposed § 18.54(f)(4)(i) would require a double-jacketed trailing cable to have two reinforced layers of jacket material. ICEA Publication S-75-381 specifies requirements for double-jacketed cables. The publication lists a number of physical properties (including tear and tensile strengths) for four different jacket materials. ICEA also cites minimum values for tear and tensile strengths. The ICEA requirements have applied to all of our PFMs. However, since the TPU jacket material is not covered by this ICEA standard, we are proposing to set requirements for the TPU jacket as discussed above. Proposed paragraph (f)(4) results from wording we used in granted PFMs which permit the use of double-jacketed trailing cables and a granted PFM that permits the option of using a single-jacketed trailing cable for high-voltage continuous mining machines. The granted PFM for the single-jacketed trailing cable specified that the jacket must have a tear-strength of more than 100 pounds per inch thickness and a tensile strength exceeding 4000 pounds per square inch.

Our experience with the granted PFM permitting the use of a single-jacketed cable, suggests that the proposed tear and tensile strength values specified above will protect the cable from damage, thereby protecting miners from shock hazards. A single-jacketed cable that meets the proposed tear and tensile strength values would be in compliance with the proposed provision. The single jacketed cable would be permitted to be used for a trailing cable on high-voltage continuous mining machines provided it also meets the other applicable provisions of this part.

We are also proposing to remove the extraneous language in § 18.54(f)(4)(i) which states, "to allow easy recognition of damaged jacket areas." This language, although helpful in understanding why we are requiring that the innermost layer of the double-jacketed cable be a different color than the outermost layer,

is not needed as rule text. This section was also rewritten for clarity. These proposed rule changes would not reduce the protection afforded by existing 30 CFR part 18 standards.

We are requesting comments on proposed § 18.54(f)(4), including the minimum tear and tensile strength values for single-jacketed cables.

#### Section 75.828 Trailing Cable Handling and Pulling

##### (a) Handling

Section 75.828(a), as proposed on July 16, 2004, addressed the types of personal protective equipment (PPE) required to be used when it is necessary to handle energized cables. Section 75.828(a) would have prohibited handling energized high-voltage trailing cables without wearing properly tested and rated insulating gloves. The provision would have required that testing and rating of the insulating gloves be in accordance with § 75.833 as proposed on July 16, 2004. Furthermore, § 75.828(a) would have required the use of high-voltage insulating gloves even if mitts, hooks, tongs, slings, aprons, or other PPE was used. Many comments were received on § 75.828(a) as proposed on July 16, 2004. Several commenters stated that the high-voltage trailing cable would be the safest cable in the mine because of the proposed cable design and sensitive ground-fault protection required. These commenters indicated that the energized cable could be safely handled without the use of high-voltage gloves. A commenter submitted a safety analysis concluding that, "handling cable used on a 2400-V continuous miner in the same fashion as on low- and medium-voltage continuous miners would not present an increased shock hazard." Another commenter referred to the above analysis and stated, "This cable is as safe or safer than low- and medium-voltage cables and should not be treated differently than any other trailing cable on the section."

Some commenters supported the use of gloves as providing the safest method for handling energized trailing cables. A few commenters suggested the use of additional protection such as chest protectors and face shields. Other commenters suggested the use of a cable handling system as an alternative to insulating gloves.

Some commenters discussed how cumbersome it is to use high-voltage insulating gloves for handling high-voltage cables. These commenters stated that the gloves are so uncomfortable that many miners would have them at hand but probably would not use them. A few

commenters suggested that the hygiene concerns of some miners would require mine operators to purchase many sets of gloves and leather protectors. These commenters suggested the use of slings, tongs, hooks, etc., as an alternative to high-voltage insulating gloves.

We agree that it is appropriate to provide an alternative to requiring high-voltage insulating gloves to handle energized cables, and believe that insulated cable handling tools would provide such a suitable option. Examples of insulated cable handling tools are hooks, slings, and tongs when designed and manufactured for cable handling. Consequently, we would not consider aprons, face shields, and chest protectors to be insulated cable handling tools because they are not designed and manufactured for cable handling. However, this proposed rule would not prohibit the use of these other personal protective equipment when they are used in conjunction with insulating gloves or insulated cable handling tools.

Also, in the July 16, 2004 proposed rule, we had implied in error that mitts (or mittens) are different than gloves and the proposed rule would have required that they be used in conjunction with gloves. Since high-voltage insulating gloves may be finger gloves or mittens, this proposed rule does not make a distinction between them. Therefore, any reference in this proposed rule to insulating gloves would also include mittens.

Based on the above comments, we are now proposing to revise § 75.828(a) of the July 16, 2004 proposed rule to allow the option of either using high-voltage insulating gloves, which includes both the rubber gloves and the leather outer protector gloves, or insulated cable handling tools when handling energized high-voltage trailing cables. We are proposing to add the words "including both the rubber gloves and the leather outer protector gloves" to clarify that both gloves must be worn to satisfy the glove requirement. In addition, we are proposing to redesignate revised § 75.828(a) as § 75.833(a) to consolidate all the cable handling requirements under one standard. Consequently, we are proposing to revise the section heading of § 75.828 to read, "Trailing cable pulling," and the provision would be renumbered and redesignated as proposed § 75.833, as discussed below. This proposed rule would not reduce the protection afforded by existing 30 CFR part 75 standards.

We are requesting comments on the revision of this provision to allow the option of using insulated cable handling tools. We also request comments on the

revision and redesignation of this provision as proposed § 75.833(a).

#### Section 75.833 Handling High-Voltage Trailing Cables

Section 75.833, as proposed on July 16, 2004, addressed the ratings, tests required, and frequency of examination and testing of high-voltage insulating gloves. Section 75.833(a) would have required mine operators to provide high-voltage insulating gloves to miners for handling energized high-voltage trailing cables. Section 75.833(b) would have required high-voltage insulating gloves to have a Class 1 (7,500 maximum use volts) or higher voltage rating in accordance with ASTM F496-02a. Section 75.833(c) would have required the rubber portion of the insulating gloves to be air-tested at the beginning of each shift. Section 75.833(d) would have required the leather and rubber insulating gloves to be visually examined before each use for signs of damage. Section 75.833(e) would have required the damaged rubber gloves to be removed from underground or destroyed. Section 75.833(f) would have required that rubber insulating gloves be electrically tested every 30 days in accordance with ASTM F496-02a.

Based on the comments received on § 75.828(a) of the July 16, 2004 proposed rule, and as discussed above, we are proposing to add revised § 75.828(a) to proposed § 75.833, changing the section heading for § 75.833, and redesignating it as proposed § 75.833(a). This proposed rule would not reduce the protection afforded by existing 30 CFR part 75 standards. We request comments on proposed § 75.833(a). We are also repropounding § 75.833(a) of the July 16, 2004 proposed rule to require that mine operators provide high-voltage insulating gloves or insulated cable handling tools to miners who handle energized high-voltage trailing cables. This provision would be redesignated as paragraph (b) of proposed § 75.833. We request comments on proposed § 75.833(b), formerly § 75.833(a).

Additionally, we are repropounding §§ 75.833(b) and 75.833(f) of the July 16, 2004 proposed rule to consolidate in one paragraph the voltage rating and testing requirements for the rubber portion of the high-voltage insulating gloves. This consolidation does not include additional requirements, but simplifies the document because it would contain a single incorporation by reference of the ASTM F496-02a "Standard Specification for In-Service Care of Insulating Gloves and Sleeves (2002)." The new paragraph would be codified as proposed § 75.833(c)(1). We

request comments on proposed § 75.833(c)(1), formerly §§ 75.833(b) and 75.833(f).

Finally, we are proposing to add a new paragraph to § 75.833 of the July 16, 2004 proposed rule to specify requirements for insulated cable handling tools. This new paragraph would be codified as proposed § 75.833(d).

Proposed § 75.833(d)(1) would require that insulated cable handling tools be rated and maintained to withstand at least 7,500 volts. We are proposing to require 7,500 volts rating to ensure that the insulated cable handling tools provide at least the same level of protection to miners as the insulating high-voltage gloves.

Proposed § 75.833(d)(2) would require that an insulated cable handling tool be designed and manufactured for cable handling in order to protect miners against shock hazards. This proposed requirement is also intended to ensure that miners use cable handling tools that are an effective substitute for high-voltage insulating gloves. As discussed under § 75.828(a), examples of insulated cable handling tools are hooks, slings, and tongs, when designed and manufactured for cable handling. While face shields and chest protectors protect miners against shock hazards, we do not consider them to be insulated cable handling tools because they are not designed and manufactured for cable handling. However, under the proposed rule such personal protective equipment may be used in conjunction with high-voltage insulating gloves or insulated cable handling tools.

Proposed § 75.833(d)(3) would require that the insulated cable handling tools be visually examined before each use for signs of damage or defects. This proposed requirement would help identify damaged or defective insulated cable handling tools before they present a hazard to miners.

Proposed § 75.833(d)(4) would require that damaged or defective insulated cable handling tools be removed from the underground area of the mine or destroyed. This proposed requirement is intended to ensure that the insulated cable handling tools available to miners who handle energized high-voltage cables are safe to use.

This proposed rule would not reduce the protection afforded by existing 30 CFR part 75 standards. We specifically request comments on all of the proposed provisions of § 75.833(d).

Sections 75.833(c), (d), and (e) of the July 16, 2004 proposed rule are not being repropoed. These sections have been redesignated as §§ 75.833(c)(2), (c)(3), and (c)(4), and any comments

received on these sections would be beyond the scope of the rulemaking and would not be considered. For the reader's convenience, we are publishing, in this notice, proposed § 75.833 in its entirety, including those sections that are not being repropoed.

### III. Executive Order 12866 (Regulatory Planning and Review and Regulatory Flexibility Act)

Executive Order (E.O.) 12866 as amended by E.O. 13258 requires that regulatory agencies assess both the costs and benefits of proposed regulations. We have fulfilled this requirement for the proposed rule, and have determined that it would not have an annual effect of \$100 million or more on the economy. Therefore, the proposed rule is not an economically significant regulatory action pursuant to section 3(f)(1) of E.O. 12866.

#### *Mining Sectors Affected*

As of the end of 2003, this proposed rule would apply to 640 underground coal mines in the United States (and the approximately 36,100 underground coal miners employed in those mines).

#### *Benefits*

The proposed rule would reduce the potential for electrical-related fatalities and injuries. This risk reduction is derived from proposed §§ 18.54(f)(4) and 75.833. Proposed § 75.833 would require miners to use either high-voltage insulating gloves or insulated cable handling tools while handling energized high-voltage trailing cable. The proposed rule would ensure the safety of miners from electrical shock by requiring the insulated cable handling tools to be designed and maintained to withstand a voltage of at least 7,500 volts. This is the same voltage requirement as Class 1 high-voltage insulating gloves required in the proposed rule of July 16, 2004.

Proposed § 18.54(f)(4) retains the July 16, 2004 requirement in proposed § 18.54(f)(4) for the use of double-jacketed high-voltage trailing cables used on high-voltage continuous mining machines, and adds technical specifications for the use of single-jacketed high-voltage trailing cables on such machines. We propose that single-jacketed high voltage trailing cables would have a tear strength of more than 100 pounds per inch and a tensile strength of more than 4000 pounds per square inch. These values exceed the minimum cable industry standard values cited for typical extra-heavy-duty double-jacketed cables. The single-jacketed cables that would be permitted under proposed § 18.54(f)(4) would

produce trailing cables that are much more durable than the double-jacketed trailing cables currently used on the majority of high-voltage continuous mining machines in underground coal mines. Our experience with single-jacketed cables has shown that the strength and durability of the single jacketed cables reduce the potential for cable damage. Damaged trailing cables must be immediately repaired in order to be safe to use or removed from service. Cable repairs take time away from production, and damaged cables can pose serious fire and shock hazards to miners if not repaired in a timely manner. A durable trailing cable that is less prone to physical damage would benefit the industry and improve miner safety.

#### *Compliance Cost Savings*

Proposed § 75.833 would result in annual net cost savings of \$33,920 to underground coal mine operators. The derivation of the annual cost savings is described below.

Proposed § 75.833(a) would require miners to use insulating gloves or insulated cable handling tools while handling energized high-voltage trailing cables. Proposed paragraph (a) would not require that insulated cable handling tools be used in conjunction with high-voltage insulating gloves. Proposed § 75.833(b) would require that each mine operator make available to miners handling energized high-voltage trailing cables, high-voltage insulating gloves or insulated cable handling tools. We do not expect that mine operators, under the proposed rule, would stop purchasing gloves altogether, but rather that they would decrease the quantity of gloves they now purchase and increase their use of insulated cable handling tools. When rubber gloves are used, proposed § 75.833(c) would require that they be tested every 30 days.

The PREA that accompanied the proposed rule issued on July 16, 2004, noted that the proper type of gloves to handle high-voltage trailing cables includes a pair of rubber and a pair of leather gloves. The rubber gloves are put on first; then the leather gloves are put over the rubber gloves in order to provide protection. We estimated that, on average, a pair of rubber gloves would cost approximately \$70 and would last for about six months. We also estimated that, on average, the cost of a pair of leather gloves was approximately \$30 and the life of the gloves would be one month. Thus, one person would need two pairs of rubber gloves and 12 pairs of leather gloves per year, costing \$500 [(\$70 × 2) + (\$30 × 12)]. Based on a testing cost of \$10 per

pair of rubber gloves, the annual cost to test a pair of gloves is estimated to be \$120 (\$10 × 12). Operators that use some type of insulated cable handling tool are assumed to use a hook that, on average, costs approximately \$90 per hook.

Since the proposed rule issued on July 16, 2004 would have required mine operators to purchase gloves, we estimated in the PREA that accompanied the July 16, 2004 proposed

rule that there would be five persons, each needing a pair of rubber and leather gloves, for every section where a high-voltage continuous mining machine operated. Since proposed § 75.833(b) would not require that mine operators purchase gloves, we estimate that for each section where a high-voltage continuous mining machine operates, the mine operator would decrease the purchase and testing of

gloves from 5 to 3 pairs and would increase the use of insulated cable handling tools. In addition, for every section where a high-voltage continuous mining machine operates, we also estimate that the mine operator would purchase 2 hooks per year. Table IV–1 shows estimated annual net cost savings for mine operators under the requirements of proposed § 75.833.

TABLE IV–1.—§ 75.833 ANNUAL NET COST SAVINGS RELATED TO USE OF INSULATED CABLE HANDLING EQUIPMENT

Emp. size category	Number of sections per HVCM	Net cost savings per section <sup>a</sup>	Annual net cost savings
20 to 500 .....	30	\$1,060	\$31,800
>500 .....	2	1,060	2,120
Total .....			33,920

<sup>a</sup> Net Cost Savings of \$1,060 per section = [(((\$500 annual gloves cost per person × 2 pairs) + (\$120 to test rubber gloves/yr. × 2 pairs))—(\$90 cost per hook × 2 hooks per year)].

We have preliminarily determined that underground coal mine operators would not incur any costs to comply with proposed § 18.54(f)(4). Although the cost of the single-jacketed TPU cable is approximately 15 percent higher than the double-jacketed cable, there are no compliance costs associated with proposed § 18.54(f)(4) because mine operators would have the option of using either a double-jacketed trailing cable or a single-jacketed trailing cable. Thus, after the rule becomes effective, mine operators currently using a double-jacketed trailing cable can continue to do so, and those operators that intend to purchase high-voltage continuous mining machines in the future will have the choice of what type of high-voltage trailing cable they want to use.

*Feasibility*

We have concluded that the requirements of the proposed rule are both technologically and economically feasible.

This proposed rule is not a technology-forcing standard and does not involve activities on the frontiers of scientific knowledge. Insulated cable handling tools are available for purchase that could be used in place of high-voltage insulating gloves. Thus, we believe that this proposed rule is technologically feasible.

This rulemaking would provide an annual net cost savings of \$33,920 to underground coal mine operators whose 2003 annual revenues are estimated at \$9 billion. Therefore, this rulemaking is economically feasible.

**IV. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act (SBREFA)**

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), we have analyzed the impact of the proposed rule on small businesses. Further, we have made a determination with respect to whether or not we can certify that the proposed rule would not have a significant economic impact on a substantial number of small entities that are covered by this rulemaking. Under the SBREFA amendments to the RFA, we must include in the rule a factual basis for this certification. If the proposed rule would have a significant economic impact on a substantial number of small entities, we must develop a regulatory flexibility analysis.

*Definition of a Small Mine*

Under the RFA, in analyzing the impact of a rule on small entities, we must use the Small Business Administration (SBA) definition for a small entity 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. We have not taken such an action and hence are required to use the SBA definition.

The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees. All mines affected by this rulemaking fall into this category and hence can be viewed as sharing the special regulatory concerns which the RFA was designed to address.

We have looked at the impacts of our rules on a subset of mines with 500 or fewer employees—those with fewer than 20 employees, which we and the mining community have traditionally referred to as “small mines.” These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. Therefore, their costs of complying with our rules and the impact of our rules on them will also tend to be different. It is for this reason that “small mines,” as traditionally defined by our agency, are of special concern to us.

No underground coal mine operator having fewer than 20 employees has applied for a PFM to use a high-voltage continuous mining machine. In addition, in the future, we do not expect mine operators in this size class to use a high-voltage continuous mining machine. Therefore, we conclude that the proposed rule would have no economic impact on mine operators in this size class. We limit the remainder of the analysis to impacts on “small entities” with respect to SBA’s definition of a small mine (those employing 500 or fewer workers). We conclude that we can certify that the proposed rule would not have a significant economic impact on a substantial number of these small entities that are covered by this rulemaking.

*Factual Basis for Certification*

Our analysis of impacts on “small entities” begins with a “screening” analysis. The screening compares the

estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for those small entities. When estimated compliance costs or savings are less than one percent of the estimated revenues, we believe it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs or savings exceed one percent of revenues, it tends to indicate that further analysis may be warranted.

The 2003 production for underground coal mine operators that employ 500 or fewer employees was 299,300,775 tons. Using a 2003 price of underground coal of \$26.71 per ton, the 2003 underground coal revenues for these mine operators is estimated to be approximately \$8 billion.<sup>1</sup> Based on SBA's definition of a small mine the proposed rule cost savings of \$33,920 are substantially less than 1 percent (less than 0.0001 percent) of estimated revenues of underground coal mine operators.

#### V. Paperwork Reduction Act of 1995

The repropounded provisions do not contain any information collection requirements.

#### VI. Other Regulatory Considerations

##### A. The Unfunded Mandates Reform Act of 1995

This proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments, nor would it increase private sector expenditures by more than \$100 million annually, nor would it significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires no further agency action or analysis.

##### B. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

This proposed rule would have no affect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

<sup>1</sup> The 2003 underground coal price of \$26.71 can be found in Table 28 of the Department of Energy/ Energy Information Agency, Annual Coal Report 2003.

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

This proposed rule would not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further agency action or analysis.

##### D. Executive Order 12988: Civil Justice Reform

This proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, this proposed rule would meet the applicable standards provided in section 3 of Executive Order 12988, Civil Justice Reform.

##### E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This proposed rule would have no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis.

##### F. Executive Order 13132: Federalism

This proposed rule would not have "federalism implications" because it would not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Accordingly, Executive Order 13132, Federalism, requires no further agency action or analysis.

##### G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule would not have "tribal implications" because it would not "have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

##### H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

We have reviewed this proposed rule for its impact on the supply, distribution, and use of energy because it applies to the underground coal mining sector. Because this proposed rule would result in yearly net cost savings to the coal mining industry, this proposed rule would neither reduce the supply of coal nor increase its price. This proposed rule is not a "significant energy action" because it would not be "likely to have a significant adverse effect on the supply, distribution, or use of energy \* \* \* (including a shortfall in supply, price increases, and increased use of foreign supplies)." Accordingly, Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, requires no further agency action or analysis.

##### I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

We have thoroughly reviewed this proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in Chapter V of this PREA, we have determined and certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, requires no further agency action or analysis.

#### List of Subjects

##### 30 CFR Part 18

Approval regulations, Electric motor-driven mine equipment and accessories, Mine safety and health, Reporting and recordkeeping requirements.

##### 30 CFR Part 75

Electric power, Fire prevention, High-voltage continuous mining machines, Incorporation by reference, Mandatory safety standards, Mine safety and health, Reporting and recordkeeping requirements, Underground coal mines.

Dated: March 20, 2006.

**David G. Dye,**

*Acting Assistant Secretary for Mine Safety and Health.*

For the reasons discussed in the preamble, the Mine Safety and Health Administration proposes to further amend the proposed rule published at 69 FR 42812, July 16, 2004, as follows:

## PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

1. The authority citation for part 18 continues to read as follows:

**Authority:** 30 U.S.C. 957 and 961.

2. In proposed § 18.54, revise paragraphs (f) introductory text and (f)(4) to read as follows:

### § 18.54 High-voltage continuous mining machines.

\* \* \* \* \*

(f) *High-Voltage Trailing Cable(s)*. High-voltage trailing cable(s) must conform to the ampacity and outer dimensions in accordance with the Insulated Cable Engineers Association (ICEA) Standard ICEA S-75-381/ National Electrical Manufacturer's Association (NEMA) Standard NEMA WC 58-1997. The physical properties of the double-jacketed cable required in (f)(4)(i), must also be in accordance with ICEA S-75-381/NEMA WC 58-1997. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy of these incorporated documents at any of the following locations: MSHA Coal Mine Safety and Health District Office, MSHA Approval and Certification Center, the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Arlington, VA; or at the National Archives and Records Administration (NARA). For more information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). You may also purchase a copy from Global Engineering Documents, 15 Inverness Way East, Englewood, Colorado 80112. In addition, the cable must be constructed with:

(4) Either a double-jacketed or single-jacketed cable as follows:

(i) *Double jacket*. A double-jacketed cable consisting of reinforced outer and inner protective layers. The inner layer must be a distinctive color from the outer layer. The color black must not be used for either protective layer.

(ii) *Single jacket*. A single layer jacketed cable with a tear strength of more than 100 pounds per inch thickness, and a tensile strength of more than 4000 pounds per square inch. The cable jacket must not be black in color.

\* \* \* \* \*

## 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. Revise proposed § 75.828 to read as follows:

### § 75.828 Trailing cable pulling.

The trailing cable must be de-energized prior to being pulled by any equipment other than the continuous mining machine. Cable manufacturers' recommended pulling procedures must be followed when pulling the trailing cable with such equipment.

3. Revise proposed § 75.833 to read as follows:

### § 75.833 Handling high-voltage trailing cables.

(a) *Cable Handling*. Miners must not handle energized trailing cables unless they are wearing high-voltage insulating gloves, which include the rubber gloves and leather outer protector gloves, or are using insulated cable handling tools that meet the requirements of paragraphs (c) or (d) of this section.

(b) *Availability*. Each mine operator must make high-voltage insulating gloves or insulated cable handling tools available to miners handling energized high-voltage trailing cables.

(c) *High-voltage insulating gloves*. High-voltage insulating gloves provided under paragraph (b) of this section must meet the following requirements:

(1) The rubber gloves must be designed and maintained to have a voltage rating of at least Class 1 (7,500 volts) and electrically tested every 30 days in accordance with publication ASTM F496-02a, "Standard Specification for In-Service Care of Insulating Gloves and Sleeves" (2002) which is incorporated by reference. You may inspect a copy at any MSHA Coal Mine Safety and Health District office, at the MSHA Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Arlington, VA, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. You may also purchase a copy from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959. The Director of the Federal Register has approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The rubber glove portion must be air-tested at the beginning of each shift to ensure its effectiveness.

(3) Both the leather protector and rubber insulating gloves must be visually examined before each use for signs of damage or defects.

(4) Damaged rubber gloves must be removed from the underground area of the mine or destroyed. Leather protectors must be maintained in good condition or replaced.

(d) *Insulated cable handling tools*. Insulated cable handling tools provided under paragraph (b) of this section must be:

(1) Rated and properly maintained to withstand at least 7,500 volts;

(2) Designed and manufactured for cable handling;

(3) Visually examined before each use for signs of damage or defects; and

(4) Removed from the underground area of the mine or destroyed if damaged or defective.

[FR Doc. E6-4359 Filed 3-27-06; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[CGD13-06-009]

RIN 1625-AA00

### Safety Zones: Fireworks Displays in the Captain of the Port Portland Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to amend and revise 33 CFR 165.1315 to establish additional safety zones on the waters of the Suislaw, Willamette, Columbia, Coos, and Chehalis Rivers, located in the Area of Responsibility (AOR) of the Captain of the Port, Portland, Oregon, during annual fireworks displays. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with these displays. Entry into these safety zones is prohibited unless authorized by the Captain of the Port.

**DATES:** Comments and related material must reach the Coast Guard on or before April 27, 2006.

**ADDRESSES:** You will mail comments and related material to Petty Officer Keuter at Sector Portland 6767 N. Basin Ave, Portland OR 97217. Sector Portland maintains the public docket for this rulemaking. Comments and material received from the public, as