the branch office for failure to follow the business plan in a material respect or for substantive and documented safety and soundness reasons. If the regional director revokes the approval, the credit union will have six months from the date of the revocation letter to terminate the operations of the branch. The credit union can appeal this revocation directly to the NCUA Board within 30 days of the date of the revocation letter.

[FR Doc. 02–24290 Filed 9–25–02; 8:45 am]
BILLING CODE 7535–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 58, 70, 71, 72, 75 and 90

RIN 1219–AA48

Air Quality, Chemical Substances, and Respiratory Protection Standards

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

ACTION: Withdrawal of proposed rule.

SUMMARY: This document withdraws a proposed rule that would have amended existing health standards for coal and metal and nonmetal mines to address hazardous substances, permissible exposure limits for certain substances, exposure monitoring, carcinogens, and respiratory protection programs. MSHA developed this proposed rule in 1989, and published a final rule addressing only abrasive blasting and drill dust control, on February 18, 1994. MSHA's decision to withdraw the remaining portions of this proposed rule was the result of changes in agency priorities and the possible adverse effects of unfavorable case law on the proposed rule.

DATES: With the exception of the final rule amendments published on February 18, 1994 (59 FR 8318), the proposed rule published on August 29, 1989 (54 FR 35760), is withdrawn as of September 26, 2002.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2313, Arlington, Virginia 22209–3939, *Nichols-Marvin@msha.gov,* (202)693–9440 (telephone) or (202)693–9441 (facsimile). This document is available in alternative formats, such as large print and electronic format, and can be accessed on MSHA's internet site, *http://www.msha.gov,* at the ''Statutory and Regulatory Information'' link.

SUPPLEMENTARY INFORMATION:

A. Background

On August 29, 1989, MSHA published, at 54 FR 35760, the proposed rule which would have become final in three phases. The rulemaking used a comprehensive, integrated approach that addressed a variety of complex occupational health issues. On October 19, 1989, MSHA extended the comment period to March 2, 1990 (54 FR 43026) and received extensive public comment.

On February 18, 1994, MSHA completed, at 59 FR 8318, the first phase of this proposal as a final rule addressing abrasive blasting and drill dust control. This rule became effective on April 19, 1994.

B. Reasons for Withdrawal

MSHA's decision to withdraw this proposed rule was the result of changes in agency priorities and the possible adverse effect on this proposed rule of the decision in *AFL–CIO et. al.* v. *OSHA,* 965 F.2d (11th Cir. 1992).

It has been more than 13 years since the proposal was published and more than 12 years since the comments were received.

MSHA acknowledges that the TLVs are more than 25 years old. However, at this point, MSHA cannot proceed without reevaluating its approach to the complex issues that this proposed rule addresses and developing alternatives using more current scientific and technical information.

The proposal was structured to resolve a number of potential health hazards. Such a comprehensive approach to rulemaking is no longer a viable means to address such concerns, especially in light of the Eleventh Circuit decision in *AFL–CIO* vacating a similar OSHA standard. The *AFL–CIO* court vacated OSHA's entire air contaminants rulemaking, finding that the agency had not met its statutory burden in establishing the PELs for each of the 428 contaminants regulated by the standard.

For the reasons stated herein, with the exception of provisions published at 59 FR 8318, the proposed rule is withdrawn. This document does not preclude any agency action that MSHA may find to be appropriate in the future.

Dated: September 17, 2002.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 02–24388 Filed 9–25–02; 8:45 am]
BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AA98

Improving and Eliminating Regulations, Phase 5, Miscellaneous Technology Improvements (Methane Testing)

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would provide an alternate method of compliance with the requirement for qualified persons to make periodic methane tests at face areas from under permanent roof support, using extendable probes or other acceptable means.

The proposed alternative would apply during roof bolting activities in room and pillar mining operations using continuous mining machines or conventional equipment. It would allow methane tests to be made by sweeping a probe inby the last roof support, provided that a number of requirements for roof support, ventilation and continuous methane monitoring at the roof bolting machine are met to protect the miners. The proposed rule would result in increased mining efficiency and would provide an equivalent level of safety to miners.

DATES: Comments on the proposed rule must be received on or before November 25, 2002.

ADDRESSES: Comments must be clearly identified as such and transmitted electronically to *comments@msha.gov,* by facsimile to (202)693–9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939, *Nichols-Marvin@msha.gov,* (202) 693–9440 (telephone), (202) 693–9441 (facsimile). This proposed rule is available in alternate formats, such as a large print version, an electronic file or a file on a disk, and is also available on MSHA's internet site, *http://www.msha.gov,* at the ''Statutory and Regulatory Information'' icon.

I. Supplementary Information

A. Background

As part of a comprehensive revision of ventilation standards, MSHA published the existing rule, § 75.362, On-shift Examination, on March 11, 1996 (61 R 9764). This provision requires that methane tests be made at the face from under permanent roof support, using extendable probes or other acceptable means. Section 75.362(d)(1) requires that a qualified person test for methane in each working place at the start of each shift, before electrically powered equipment is energized, taken into a workplace or operated, and at least every 20 minutes while equipment is being operated.

On-shift examinations of working sections have long been accepted as a standard safety practice in coal mining due to the variable nature of mining conditions and the potential for hazards to develop quickly. These examinations ensure that the environment is safe while miners work during the shift by identifying existing or developing hazards, and permitting rapid correction of hazardous conditions before miners are endangered. Methane tests are a key part of the on-shift examination.

Methane is an invisible, odorless, and highly flammable product of coal off-gassing. Ignition of methane by a spark or other source can result in a fire or an explosion. A five percent level of methane in the air is capable of igniting. Frictional methane ignitions in mining can occur when sparks or hot metal fragments from the drill bits on mining equipment or roof bolting machines contact the liberated methane. Methane liberates from the coal at the face, roof, ribs and floor, as well as from pieces of broken coal that have been crushed by the mining machine. Ventilation, as provided by an approved ventilation plan, dilutes and removes the liberated methane.

Over the years, the coal mining industry has expanded its use of a number of mining methods that increase production. One such method is deep cut mining, also called extended cut mining, where a continuous mining machine makes cuts greater than 20 feet into the coal seam. Formerly, when most continuous mining machines were operated by an on-board miner positioned in the cab at the rear of the machine, the cut was limited to the distance between the cutting head and the cab, or about 20 feet, to protect the miner in the cab from hazards associated with unsupported roof. Today, most continuous mining machines are manufactured to operate with remote control devices, which allow the machines to cut well beyond 20 feet into the coal seam while the miner stands under supported roof and in an area of reduced coal dust.

Most of the mining operations today use continuous mining machines that make deep cuts. These longer distances to the face make monitoring and ventilating methane more difficult. The devices used to test for methane often consist of a methane detector attached to either a pole which may be held by the miner or an extension device which the miner slides forward to the face. In mining sections with deep cuts, the longer probe arrangements can telescope 40 feet or more. The comments and testimony from the 1996 rulemaking include suggestions that back injuries could result from holding the longer probes, although some miners testified that the arrangements are practicable without causing injuries. MSHA is not aware of any empirical testing concerning injuries from the use of these probe arrangements, however, we are mindful of the importance of seeking compliance alternatives that will ensure safe working practices.

Generally, a deep cut mining operation begins by directing the ventilation to the face, usually by positioning tubes or curtains. After that, a qualified person makes a methane test, and the continuous mining machine is moved into the area. The continuous mining machine cuts from 20 to 40 feet into the coal seam, or even deeper, if approved by the mining plan. When the cut is finished, the continuous mining machine is backed out, and the ventilation may be adjusted to redirect more air to the next face area.

Following the cut, the roof bolting machine moves into the working place. Virtually every roof bolting machine in operation today is equipped with an automated temporary roof support (ATRS) system. When the ATRS is deployed, the roof is supported by a hydraulically powered mechanism. This configuration provides the protection of temporary roof support for the miners who are positioned at the drill head control to install the roof bolts. After the ATRS is fully deployed, the miner installs a row of four or more roof bolts across the width of the cut, releases the ATRS, and advances the roof bolting machine to the next position. This process is repeated at approximately four-foot intervals, depending on the roof bolting plan and machine design, until the entire roof is supported up to the face.

During this entire process, a qualified person, as defined in § 75.151, makes a methane test at the face before electrically powered equipment is energized, taken into the workplace or operated, and at least at 20 minute intervals during the operation of this equipment.

In 1997 MSHA tested an arrangement for conducting methane tests at the face by magnetically attaching a portable methane detector to the head of the continuous mining machine, which would be trammed forward by remote control to the face for the test. However, similar arrangements for making methane tests from roof bolting machines are not practicable because roof bolting machines do not operate by remote control.

The National Institute for Occupational Safety and Health (NIOSH) conducted a study (''Comparison of Methane Concentrations at a Simulated Coal Mine Face During Bolting'') which examined issues related to methane in working places during roof bolting. In 1999, NIOSH presented the study at the 8th U.S. Mine Ventilation Symposium, sponsored by the Society of Mining Engineers' Underground Ventilation Committee. The testing consisted of gallery simulations using a model roof bolting machine fitted with instrumentation to record methane levels at various locations in the simulated working place under different methane release conditions. A part of this study examined MSHA's 38 accident investigation reports from 1981 to 1994 which involved methane ignitions at roof bolting machines. The ignition source was at the bolting machine in 37 of these accidents, and no ignition source was identified in the remaining accident. The report shows that a combination of continuous monitoring near the drill head together with methane tests inby the roof bolting machine would be effective in identifying methane hazards when the primary source of methane liberation is the drill hole.

During the period 1994 through 2001, MSHA investigated 16 accidents which involved methane ignitions at roof bolting machines. Twelve of these accidents directly involved roof drilling or bolt installation. Consistent with the ignitions studied by NIOSH, the accidents involving roof drilling or bolt installation occurred when a hot drill bit being pulled out of the drill hole ignited a flammable methane-air mixture, or when the miner inadvertently drilled through metal roof straps or encountered harder than normal substance in the mine roof.

In November, 1998, the United Mine Workers of America (UMWA) and the Bituminous Coal Operators Association (BCOA) jointly recommended that

MSHA amend the current rule to allow the option of taking methane tests by sweeping a short probe inby from under supported roof, provided that a number of mandatory precautions are taken, such as providing the roof bolting machine with both an integral ATRS and a continuous methane monitor. The joint recommendation cited the draft NIOSH study, and UMWA and BCOA further stated that the suggested compliance option would promote greater safety. MSHA believes that this optional method for methane testing would provide an equivalent level of safety, and therefore proposes this rule which is largely based on the NIOSH research and the joint recommendation of labor and industry.

This proposed rule is designed to protect the miner and to be easily integrated into the mining cycle. MSHA encourages all parties to fully express their viewpoints during this rulemaking to assist the agency in promulgating a final rule that best addresses the safety of our nation's underground coal miners.

II. Discussion of the Proposed Rule

A. Subparagraph 75.362(d)(2)

This proposed rule would add a new subparagraph after the existing § 75.362(d)(2) to allow an optional method for making methane tests during roof bolting operations. Thus the phrase ''Except as provided in subparagraph 75.362(d)(3)'' would be added to the beginning of § 75.362(d)(2) to clearly show that this option follows.

B. Proposed Subparagraph 75.362(d)(3)

This proposed subparagraph would allow an alternative method of compliance with subparagraph (d)(2) during roof bolting. The required methane tests could be made by using a probe to sweep not less than 16 feet inby the last area of permanently supported roof, provided certain requirements are met, as outlined in proposed subparagraphs 75.362(d)(3)(i) through (vi). MSHA believes that the 16 foot inby minimum provides protection equivalent to the current requirement whether there are four rows of bolts on a four foot pattern or three rows of bolts on a five foot pattern. The probe would go sufficiently beyond the unsupported roof to check for the presence of methane.

Certain difficulties exist in actually making the tests under the current standard. The longer probes required to reach the face of a deep cut can be unwieldy, and therefore difficult to position accurately at the face. Methane tests at the face currently must be made with the detector positioned at least 12 inches from the roof, rib and face.

The NIOSH study determined that:

> Compliance with the methane standard would be easier if there were alternative sampling locations outby the face. Outby sampling locations closer to the bolting operation could also provide better measurements of methane when the primary liberation is the drill hole.

The study further determined that:

> The primary way to assure that methane concentrations are not ignitable is to monitor methane levels near the drill hole. Measurements must also be taken during bolting to determine methane concentrations at the face.

Prior to the 1996 rulemaking, methane tests were taken at the last permanent roof support, unless the approved ventilation plan required tests be made closer to the working face by using extendable probes or other acceptable means. When MSHA published the proposed revisions in 1994, some commenters expressed concerns about possible higher accumulations of methane in the deep cuts, and wanted the methane tests to be performed as close to the working face as practicable without endangering the miner. Based on data from research done by MSHA and the former Bureau of Mines during the prior 25 years, such as Bureau of Mines Report of Investigation 7223, ''Face Ventilation in Underground Bituminous Coal Mines,'' published in 1969, MSHA agreed with these comments. The final rule published in 1996 required that methane tests be made at the face area.

The existing requirement to make all methane tests at the face area was intended to provide adequate testing in extended cuts. However, as stated above, the ignition hazard during roof bolting is not necessarily at the same location as during cutting, that is, the face area. The conditions required for an ignition may be present at the drill head when the miner drills into the roof. Testing for methane at a minimum distance of 16 feet inby the last area of permanently supported roof would provide adequate assurance that methane is not present or accumulating around the roof bolting machine at the time the roof bolter is drilling. The proposed alternative provides at least equivalent protection by supplementing methane tests in by the area where roof bolting takes place with continuous monitoring at the roof bolting machine where methane ignitions have occurred at the time that drilling is occurring. The alternative compliance option provided under § 75.362(d)(3) can only be used if the conditions of subparagraphs § 75.362(d)(3)(i) through (vi) are met, as discussed below.

C. Proposed Subparagraph 75.362(d)(3)(i)

This proposed subparagraph would require the roof bolting machine to be equipped with an integral automated temporary roof support (ATRS) system if the alternative testing method is used, and would further require the ATRS to meet the requirements of § 75.209. Section 75.209 provides technical requirements for ATRS systems, which are installed on virtually all roof bolting machines. The ATRS provides the miner with an additional level of protection during roof bolting operations.

D. Proposed Subparagraph 75.362(d)(3)(ii)

This proposed subparagraph would require the roof bolting machine to have a permanently mounted methane monitor. MSHA believes that a methane monitor on the roof bolting machine is an effective method of testing for methane at a potential principal ignition source during roof bolting operations, and is consistent with the NIOSH study determinations.

The proposed subparagraph would further require that the methane monitor comply with the requirements of §§ 75.342(a)(4), 75.342(b) and 75.342(c). Section 75.342(a)(4) establishes maintenance and calibration requirements for the monitors, requires training for miners who perform the maintenance and calibration, and establishes record keeping and records retention requirements for the calibration tests. While this proposed rule would allow an alternative method for making methane tests, it would also require that the methane monitors on the roof bolting machines be properly maintained at all times, and thus would not allow the use of a methane detector and probe in lieu of a poorly maintained or inoperative monitor on the roof bolting machine.

Section 75.342(b) requires that the methane monitor give a warning signal when the air-methane concentration reaches 1.0 per cent, and that this warning signal be visible to someone who is able to de-energize the machine to which the monitor is mounted. Section 75.342(c) requires that the methane monitor be able to automatically de-energize the machine to which it is mounted when the methane-air mixture reaches 2.0 per cent or when the monitor is not operating properly. The warning signal and automatic de-energization provide

an additional measure of protection to miners.

Although methane monitors can be magnetically mounted to roof bolting machines, this proposed subparagraph would require that they be permanently mounted for reliable operation and assure that the sensor remains in an effective location. MSHA does not anticipate that permanently mounting the sensor on the ATRS would require recertification of the ATRS. However, 30 CFR part 18 requires an electrical field modification, which can be filed either by the mine operator or the ATRS manufacturer. The electrical field modification is required before changes are made to an approved machine to ensure that permissibility of the machine to operate in a gassy atmosphere has not been compromised. The manufacturer can apply for approval of an ATRS system produced with an integral methane monitor.

E. Proposed Subparagraph 75.362(d)(3)(iii)

This subparagraph sets requirements for the position of the methane monitor sensor on the ATRS. First, the sensor must be mounted on the inby end of the ATRS, second, it must be within 18 inches of the longitudinal center of the ATRS, and third, it must be positioned at least 12 inches from the roof when the ATRS is deployed.

MSHA's proposal to require mounting the sensor on the inby side of the ATRS is based on the NIOSH study. In that study, NIOSH found the highest statistical correlation to be between face methane concentration and a point which would be near the downwind end of the ATRS. The proposed requirement to position the methane sensor near the center of the ATRS is intended to protect the methane sensor from damage. Finally, the proposed requirement for the methane sensor to rest at least 12 inches below the roof when the ATRS is deployed reflects the standard practice of measuring methane at least 12 inches from the surface to obtain a result representative of the general environment being measured. MSHA believes this distance achieves a balance between effectiveness and practicality.

The continuous methane monitor mounted to the roof bolting machine, together with the probe used to sweep inby for methane, comprise a two-element system for methane detection. MSHA believes this two element system would be effective in detecting methane in the zone containing the most likely ignition source.

F. Proposed Subparagraph 75.362(d)(3)(iv)

This proposed subparagraph specifies the frequency of manual methane tests, and is consistent with existing § 75.362(d)(1)(iii), which in turn is derived from the statutory provision requiring methane tests to be made at least every 20 minutes while electrically powered equipment is operated (Mine Act, Section 303(h)(1)).

Existing § 362(d)(1), in part, requires a methane test before the roof bolting machine enters or is operated in the working place. Proposed subparagraph (d)(3)(iv) would clarify this provision for roof bolting machines to require a qualified person to make a methane test before the roof bolting machine enters the working place, unless the last test was made within 20 minutes, and would additionally require a methane test at least every 20 minutes during roof bolting operations. In many instances, a methane test is made immediately before the continuous mining machine is withdrawn from a completed cut. Under these circumstances, the methane test essentially remains valid for any equipment that would enter the working place during the 20 minutes following the methane check. Thus, the methane test made before the continuous mining machine is withdrawn also meets the requirement for the methane check before the roof bolting machine enters the working place, provided that 20 minutes have not elapsed since the test was made.

G. Proposed Subparagraph 75.362(d)(3)(v)

Proposed subparagraph 75.362(d)(3)(v) would require that, once a methane test is taken at the face, all subsequent methane tests be made at the face. As the roof bolting machine advances toward the face, the probe used for the methane test will eventually reach the face. A number of rows of roof bolts will then be installed before the roof bolting machine reaches the face area and the cut is completely bolted. Methane testing would be done at the face while these final rows of roof bolts are installed.

H. Proposed Subparagraph 75.362(d)(3)(vi)

Proposed subparagraph 75.362(d)(3)(vi) would allow the district manager to require that the ventilation plan include a minimum air quantity and the position and placement of ventilation controls to be maintained during roof bolting operations. The NIOSH study, as well as MSHA's experience, shows that ventilation is effective and appropriate during roof bolting operations under certain mining conditions. Currently, some mine ventilation plans require minimum air quantities to be maintained at the roof bolting machines. Typically, these mines liberate substantial quantities of methane, or have a history of ignitions or noncompliance with respirable dust standards for bolting machine operators. In evaluating ventilation plans, district managers will continue to assess these factors and others to determine the appropriate plan parameters for air quantities and ventilation control devices.

The NIOSH study was conducted using ventilating air quantities of 4,000 cfm and 7,000 cfm with methane released at various points at a rate of five cubic feet per minute. The study shows that ventilation is effective in removing methane from working areas around roof bolting machines where significant quantities of methane are liberated in the working place and at the face. In these conditions, mine ventilation plans could specify minimum ventilation quantities and the position of the ventilation control devices.

After the NIOSH study was completed, MSHA reviewed the accident reports for all of the 41 reported methane ignitions that occurred at roof bolting machines between 1994 and 1998. The MSHA report, ''Methane Ignitions On Roof Bolters In Underground Coal Mines'' found that all these ignitions occurred in mines that are considered to have the highest methane liberation. Each of these mines liberated over 850,000 cubic feet of methane per day. Section 103(i) of the Mine Act requires MSHA to conduct spot inspections at least every ten working days at mines liberating over 500,000 cubic feet of methane during a 24-hour period, and at least every five working days at mines liberating over one million cubic feet of methane during a 24-hour period.

The MSHA report, as well as MSHA's experience, indicates that most ignitions at roof bolting machines in mines that liberate significant quantities of methane can be avoided by maintaining adequate ventilation during roof bolting. The proposed rule ensures at least an equivalent level of safety as the existing rule, and at the same time provides flexibility by permitting MSHA to set mine-specific requirements through the ventilation plan.

III. Impact Analyses

A. Cost and Benefits: Executive Order 12866

Executive Order 12866 requires that regulatory agencies assess both the cost and the benefits of intended regulations. MSHA has determined that the proposed rule is not an economically significant regulatory action under Executive Order 12866.

MSHA estimates that the proposed rule would generate a net annual cost savings of approximately $6.6 million, and would provide no diminution of safety to miners. In addition, the proposed alternative testing method would provide an additional benefit by adding continuous methane detection at the area where roof bolting occurs. Methane ignitions at the roof bolting site usually occur because sparks or hot metal fragments from the drill bits ignite the liberated methane. The methane monitoring system would warn miners when methane levels reach one per cent and would automatically shut down the roof bolting machine when methane levels reach two per cent.

The proposed rule would allow the required methane tests to be made by sweeping a probe at least 16 feet inby the last permanent roof support. MSHA anticipates that a probe not longer than 20 feet would be sufficient to make this test. The current rule requires a qualified person positioned under permanently supported roof to test for methane at the face by using an extendable probe or other permissible means. Testing in a deep cut can require the probe to extend 40 feet or more to reach the face area. These longer probes often bend and can be difficult to guide. MSHA believes that periodic methane testing with the shorter probe, in conjunction with continuous monitoring of the area near the roof bolting machine, where drilling occurs, would provide a reliable determination of the methane levels at the face and in the inby mine atmosphere where the miners are working.

B. Regulatory Flexibility Certification

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's economic impact on small entities. Under the RFA, MSHA must use the Small Business Administration (SBA) criterion for a small entity in determining a rule's economic impact unless, after consultation with the SBA Office of Advocacy, MSHA establishes an alternative definition for a small mine and publishes that definition in the **Federal Register** for notice and comment. For the mining industry, SBA defines ''small'' as having 500 or fewer workers. MSHA has traditionally considered small mines to be those with fewer than 20 workers. To ensure that the proposed rule conforms with the RFA, MSHA analyzed the economic impact on mines with 500 or fewer workers and also on mines with fewer than 20 workers. MSHA concluded that the proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

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

D. Paperwork Reduction Act of 1995 (PRA)

Proposed section 75.362(d)(3)(ii) would impose paperwork requirements for preparing applications for field modification of the roof bolting machines and for recording monthly calibration of methane monitors.

MSHA's Approval and Certification Center must approve all proposed modifications to permissible equipment (including roof bolting machines). Each machine model at a mine requires a separate application for approval. We estimate that mines employing fewer than 20 workers will submit a total of 67 applications, mines employing 20 to 500 workers will submit a total of 321 applications, and mines employing more than 500 workers will submit a total of seven applications. A mine supervisor earning $54.53 per hour could complete an application in 30 minutes. Using a factor of 0.07 to annualize the cost, we conclude that the total annualized cost to the industry for this requirement is $754.

TABLE I.—PAPERWORK REQUIREMENT FOR FILING APPLICATIONS FOR FIELD MODIFICATION UNDER § 75.362(d)(3)(II)

Mine size	No. of field modification application [a]	Total first year burden hours [b]	Total first year burden costs [c]	Total annualized costs [d]
Small (<20)	67	34	$1,827	$128
Large (20–500)	321	160	8,743	612
Large (>500)	7	4	200	14
Total	395	198	$10,770	$754

[a] Total number of field modification applications comes from Table IV–4 of MSHA's July, 2002 Preliminary Regulatory Economic Analysis (PREA) for this proposed rule.

[b] Total burden hours = ($N \times T$), where N is the total number of field modifications required and T is the number of hours required for a coal mine supervisor to prepare a field modification application (T = 0.5 hours).

[c] Total first year burden costs = ($B \times W_s$), where B is the total burden hours, and W_s is the hourly wage for underground coal mine supervisors (W_s = $54.53).

[d] Total annualized costs = total first year burden costs × 0.07, where 0.07 is the annualization factor.

Table II below summarizes the annual burden hours and costs of compliance with the calibration requirements of § 75.362(d)(3)(ii). MSHA estimates that 67 small mines (fewer than 20 workers) with a total of 67 roof bolting machines, 295 large mines (20 to 500 workers) with a total of 481 roof bolting machines, and three large mines (over 500 workers) with a total of 22 roof bolting machines would need to comply with this requirement. A miner earning $27.56 per hour could record each calibration in one minute. Thus the coal mining industry would incur an estimated 114 annual burden hours and associated costs of $3,412 for recording monthly calibrations of the methane monitors required on the roof bolting machines.

TABLE II.—PAPERWORK REQUIREMENT FOR MAINTAINING CALIBRATION RECORDS UNDER § 75.362 (d)(3)(II)

Mine size	No. of mines affected [a]	No. of roof bolting machines in affected mines [a]	Total annual burden hours [b]	Total annual burden costs [c]
Small (<20)	67	67	13	$369
Large (20–500)	295	481	96	2,651
Large (<500)	3	22	4	121
Total	365	570	114	$3,142

[a] Number of mines affected and number of roof bolting machines in affected mines come from Table IV–2 of MSHA's July, 2002 Preliminary Regulatory Economic Analysis (PREA) for this proposed rule.

[b] Total annual burden hours = ($N \times T \times 12$), where N is the number of roof bolting machines in the affected mines, T is the number of hours required to record the calibration (T = 0.01667 hours, or 1 minute), and 12 is the yearly number of calibrations.

[c] Total annual burden costs = ($B \times W_m$), where B is the total burden hours and W is the hourly wage rate for underground coal miners (W_m = $27.56).

E. Executive Order 12630 Governmental Actions and Interference with Constitutionally Protected Property Rights

This proposed rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. That is, this proposed rule does not involve implementation of any policy with takings implications.

F. Executive Order 13045 Protection of Children From Environmental Health Risks

In accordance with Executive Order 13045, Protection of Children from Environmental Health Risks, MSHA has evaluated the environmental health and safety effects that this proposed rule could have on children. MSHA has determined that the rule will not have an adverse impact on children.

G. Executive Order 12988 Civil Justice Reform

MSHA has reviewed Executive Order 12988, Civil Justice Reform, and determined that the proposed rule will not unduly burden the Federal court system. The rule 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.

H. Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

MSHA certifies that this proposed rule will not impose any substantial direct compliance costs on Indian tribal governments.

I. Executive Order 13132 Federalism

MSHA has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and has determined that the proposed rule has no ''federalism implications.'' In other words, the proposed rule does not have any 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.

J. Executive Order 13211 Energy

MSHA has reviewed this proposed rule in accordance with Executive Order 13211 regarding the energy effects of Federal regulations, and has determined that the proposed rule does not have any adverse effects on energy supply, distribution, or use. Therefore, no reasonable alternatives to this action are necessary.

List of Subjects in 30 CFR Part 75

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

Accordingly, it is proposed to amend Chapter I of 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 75.362 is amended by adding at the beginning of paragraph (d)(2) the phrase ''Except as provided for in paragraph (d)(3) of this section,'' and by adding paragraph (d)(3) to read as follows:

§ 75.362 On-shift examination.

* * * * *

(d) * * *

(3) As an alternative method of compliance with paragraph (d)(2) of this section during roof bolting, methane tests may be made by sweeping an area not less than 16 feet inby the last area of permanently supported roof, using a probe or other acceptable means. This method of testing is conditioned on meeting the following requirements:

(i) The roof bolting machine must be equipped with an integral automated temporary roof support (ATRS) system that meets the requirements of § 75.209.

(ii) The roof bolting machine must have a permanently mounted, MSHA-approved methane monitor which meets the maintenance and calibration requirements of § 75.342(a)(4), the warning signal requirements of § 75.342(b), and the automatic de-energization requirements of § 75.342(c).

(iii) The methane monitor sensor must be mounted on the inby end and within 18 inches of the longitudinal center of the ATRS, and positioned at least 12 inches from the roof when the ATRS is fully deployed.

(iv) The manual methane test must be made immediately before the roof bolting machine enters the working place unless the last test was made within 20 minutes. During roof bolting, methane tests are also required at intervals not exceeding 20 minutes. The test may be made either from under the last permanent roof support or from the roof bolter's work position protected by the deployed ATRS.

(v) Once a methane test is made at the face, all subsequent methane tests in the same area of unsupported roof must also be made at the face, from under permanent roof support, using extendable probes or other acceptable means at intervals not exceeding 20 minutes.

(vi) The district manager may require that the ventilation plan include the minimum air quantity and the position and placement of ventilation controls to be maintained during roof bolting.

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Dated: September 20, 2002.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

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