DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 62, 70, and 71 RIN 1219-AA53

Health Standards for Occupational Noise Exposure

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

ACTION: Supplemental proposed rule; close of comment period; notice of public hearing; close of record.

SUMMARY: This proposed rule would supplement MSHA's proposed rule for occupational noise exposure in coal mines and in metal and nonmetal mines, which was published on December 17, 1996, by adding a new provision addressing the right of miners and miners' representatives to observe required operator monitoring under the proposed noise exposure standards. MSHA is also announcing the close of the comment period, notice of public hearing, and close of the rulemaking record.

DATES: Written comments must be received on or before February 17, 1998. Written comments on the information collection requirements must be received on or before March 2, 1998.

MSHA will hold a public hearing. The hearing will be held on January 21, 1998. The hearing will begin at 9:00 a.m. All requests to make oral presentations for the record should be submitted at least 5 days prior to the hearing date. A written request is not required for an opportunity to speak. The record for the rulemaking will close on January 30, 1998 to allow for the submission of post-hearing comments.

ADDRESSES: Comments on this supplemental proposed rule must be clearly identified as such and may be transmitted by electronic mail to noise@msha.gov; by fax to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or by mail to MSHA, Office of Standards, Regulations, and Variances, 4015

Wilson Boulevard, Room 631, Arlington, VA 22203. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any format questions.

Written comments on the information collection requirements may be submitted directly to the Office of Information and Regulatory Affairs, Attention: Desk Officer for MSHA, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Room 10235, Washington, DC 20503.

The hearing will be held at the following location: Department of Labor, Frances Perkins Building, C-5515 Seminar Room 3, 200 Constitution Avenue NW., Washington, DC 20210. Send requests to make oral presentations to MSHA, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203.

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

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This supplemental proposed rule would require mine operators to provide affected miners and miners' representatives with an opportunity to observe operator monitoring required under § 62.120(f) of MSHA's proposed rule for occupational noise exposure in coal and metal and nonmetal mines, published December 17, 1996 (61 FR 66348). It also would require mine operators to inform miners and miners' representatives of the dates and times of planned operator noise monitoring so that miners and miners' representatives would have an opportunity to exercise the right to observe monitoring. This collection of information is subject to review by OMB under the Paperwork Reduction Act of 1995 (PRA 95).

Description: MSHA estimates that each mine operator would notify miners and miners' representatives of planned noise monitoring in one of three ways:

oral notification, posted notice, or individually distributed written notices. The Agency estimates that 45 percent of mine operators would notify miners orally, 35 percent would notify miners via posted notices, and 20 percent would notify miners by distributing individual written notices.

The Agency estimates that it would take a supervisor, earning \$36 per hour at a metal/nonmetal mine or \$42 per hour at a coal mine, about 2 minutes (0.033 hour) to notify miners and miners' representatives orally of monitoring activities and that it would take a supervisor approximately 6 minutes (0.10 hour) to instruct a clerical worker to prepare a written notice or a posted notification. A clerical worker would take about 5 minutes (0.08 hour) to prepare a notice. Metal/nonmetal miners earn \$23 per hour on average and coal miner wages average \$26 per hour. A clerical worker earns about \$16 per hour.

Description of Respondents: The respondents are mine operators. MSHA estimates that this provision would annually affect 7,241 metal/nonmetal mines and 2,146 coal mines.

Information Collection Burden: MSHA estimates that, in addition to the information collection burden of the comprehensive proposed noise rule, the supplemental proposed rule on observation of monitoring would increase the mining industry's information collection burden by approximately \$166,915. For this supplemental proposed rule, the total estimated annual information collection burden for metal and nonmetal mines is about 4,624 hours at an estimated annual cost of about \$103,355 which consists entirely of labor and photocopying costs. The total estimated annual information collection burden for coal mines is about 2,740 hours at an estimated annual cost of about \$63,560 in labor and photocopying costs.

The following chart summarizes MSHA's estimates for metal and nonmetal mines and for coal mines.

§ 62.120(g)	Number of respondents	Average hours per response	Number of responses	Number of re- sponses per re- spondent	Annual costs for materials	Total hours per regula-tion		
	Oral Notice							
Metal/Nonmetal	3,258 966	0.033 0.033	49,950 34,060	1 1	\$0 0	1,756 1,156		
	Indiv	idual Notices						
Metal/Nonmetal	1,449 429	0.08 0.08	22,200 15,138	1	0.25 0.25	1,920 1,254		

§ 62.120(g)	Number of respondents	Average hours per response	Number of responses	Number of responses per respondent	Annual costs for materials	Total hours per regula-tion
Posted Notices						
Metal/Nonmetal	2,534 751	0.08 0.08	2,534 751	3/sm; 6/lg 3/sm; 6/lg	0.25 0.25	948 330
Total	9,387		124,633			7,364

Note: MSHA has prepared a detailed description of the burden calculation in Appendix A.

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

II. Introduction and Rulemaking Background

On December 17, 1996, MSHA published in the **Federal Register** a proposed rule to revise the Agency's existing health standards for exposure to occupational noise (61 FR 66348). The proposal would retain the current permissible exposure level of 90 dBA and would establish a new 8-hour time-weighted average of 85 dBA as an action level. Emphasis would be placed on the use of feasible engineering and administrative control measures, audiometric examinations, training, and properly fitted hearing protection.

The comment period for the proposed rule closed on April 21, 1997. MSHA received and reviewed comments from various sectors of the mining community, including mine operators, industry trade associations, organized labor, health associations, colleges and universities, and equipment manufacturers. The Agency began a series of public hearings on the proposed rule on May 6, 1997.

In the December 17, 1996 proposal, § 62.120(f) would require operators to establish a system of monitoring which effectively evaluates each miner's noise exposure. In response to this proposed provision, some commenters were concerned about the need to include requirements providing miners and

their representatives with the right to observe monitoring. These commenters prompted MSHA to reconsider its responsibilities under the Federal Mine Safety and Health Act of 1977 (Mine Act). Section 103(c) of the Mine Act requires, among other things, that when the Secretary issues regulations requiring operator monitoring, "[s]uch regulations shall provide miners or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof." As a result of this review, MSHA is supplementing its proposed noise standard to include the requirement of observation of monitoring for miners and their representatives.

MSHA believes that miners who observe the monitoring of their exposures will be aided in their understanding of the nature and extent of the noise hazard. The supplemental proposed rule would result in improved miner protection because involvement in the process of monitoring should increase the miner's awareness of noise exposure levels in their workplace.

III. Discussion and Summary of Proposed Rule

This proposed rule would supplement MSHA's proposed noise standard by including a new provision at § 62.120(g), Observation of Monitoring, which would require that mine operators provide both affected miners and their representatives with an opportunity to observe any monitoring required under the proposed noise rule. This provision would implement Section 103(c) of the Mine Act. Consistent with the underlying purposes of the Mine Act, MSHA broadly interprets the opportunity for observation of monitoring to extend to both miners and their representatives.

The proposed comprehensive noise standard would require mine operators to institute feasible engineering and administrative controls to prevent or reduce miner overexposures to noise. Therefore, MSHA intends for miners and miners' representatives to have an opportunity to observe personal and

area operator monitoring conducted for the purposes of evaluating the need for and effectiveness of these control measures.

In addition, the proposal would require mine operators to inform affected miners and miners' representatives of the dates and times they intend to conduct required monitoring relating to this section. MSHA believes that it is important for miners and miners' representatives to have advance knowledge of operator monitoring so that they may exercise the opportunity to observe the monitoring. Furthermore, the proposed supplemental rule does not specify a required method of notification. Under the proposal, the operator may use any method of notification including oral, written, or posting, which effectively informs miners and their representatives.

MSHA views operator monitoring to be an important component in the mine operator's overall noise protection program. The primary purpose of operator monitoring is protection of the miners. Monitoring provides operators with an awareness of the noise exposure levels to which miners are exposed. In addition, it informs operators of their obligations to reduce noise levels, as applicable under the proposal, to ensure protection of the miners.

IV. Executive Order 12866 and the Regulatory Flexibility Act

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of proposed regulations. MSHA has determined that this proposed supplemental rule, together with the comprehensive proposed noise rule, does not meet the criteria of a significant regulatory action and, therefore, has not prepared a separate analysis of costs and benefits. The analysis contained in this preamble meets MSHA's responsibilities under E.O. 12866 and the Regulatory Flexibility Act.

Executive Order 12866

MSHA estimates that this supplemental proposed rule would result in an additional annual cost

increase of \$844,665 (bringing the total costs of the comprehensive proposed rule, including this supplemental proposal, to slightly less than \$9.2 million annually). The supplemental proposed rule would result in improved miner protection under the proposed comprehensive noise standard by increasing the miner's awareness of noise exposure levels in their workplace.

Observation of Monitoring

The proposed rule would require mine operators to permit affected miners and miners' representatives to observe the operator's monitoring conducted to determine the noise exposures of miners. MSHA anticipates that approximately 25 percent of mines performing monitoring under the proposal would have a non-duty miner and miner's representative exercising the right to observe these activities. For the remainder of mines, MSHA expects that miners and miner's representatives would either forego their observation rights, have an off-duty miner observe,

or have an off-duty miners' representative observe. For the latter category of miners and their representatives, MSHA assumes that there are no costs associated with lost production.

MSHA estimates that about 7,241 metal/nonmetal mine operators (6,218 small; 1,023 large) and 2,145 coal mine operators (1,255 small; 890 large) would perform exposure evaluations sufficient to determine the noise doses of miners. The scope of observation could include activities such as calibrating equipment, placing equipment, actual sampling, and recording results. The Agency anticipates that the time required for observation of monitoring would take about 2 hours at small mines and about 5 hours at large mines annually. Included in these estimates are 0.25 hour per miner to hook up the dosimeter at the beginning of the work day and to read the dosimeter at the end of the day. The Agency notes that it is using an annual basis for the sole purpose of this cost analysis and that this should not be confused with the

frequency in which operator monitoring would have to be performed at a particular mine site to establish an effective system of monitoring under proposed § 62.120(f).

For the purpose of this analysis, MSHA estimates that the cost to the mine operator for a miner's observation of monitoring is the cost of lost production. Production from metal/ nonmetal mines was valued at about \$38 billion and the production from coal mines was valued at about \$20 billion in 1995. Based on the preliminary employee' hours reported to MSHA for metal/nonmetal mines and coal mines for 1996, MSHA estimates the value of production per hour, as an industry-wide average, to be slightly less than \$112 per hour for a metal/ nonmetal miner and about \$107 per hour for a coal miner. MSHA estimates that lost production resulting from miners observing the operator's noise monitoring activities would cost the mining industry about \$677,750 annually. This cost is attributable as shown in the following table.

Mine type		Value of lost production
LG M/NMSM Coal	6,218 mines * 25% * 2 hr/mine * \$111.90/hr	\$347,940 \$143,110 \$67,330 \$119,370

Notification of Miners and Miners' Representatives of Operator Monitoring

MSHA would require that mine operators notify affected miners and miners' representatives of plans to conduct noise monitoring so that the miners and miners' representatives would have the opportunity to exercise the right to observe. For purposes of this

cost analysis, MSHA presumes that 45 percent of those mine operators who plan to conduct noise monitoring would inform miners and miners' representatives orally, for example, during a daily meeting; 35 percent of those mine operators would inform miners by posting a notice; and 20 percent of those mine operators would inform miners by distributing a written

notice to each affected miner. These estimates do not address other effective means of notifying miners and their representatives.

MSHA estimates that notifying miners of planned operator noise monitoring activities would cost the mining industry about \$167,415 annually. This cost is attributable as shown in the following table.

Notification costs	SM M/NM	LG M/NM	SM coal	LG coal	Total
Oral Notice	\$15,380 15,280 17,820	\$26,400 23,900 4,575	\$4,265 3,815 3,860	\$26,295 21,150 4,175	\$72,340 64,145 30,430
Totals	48,480	54,875	11,940	51,620	166,915

The following provides a detailed description of these cost calculations. MSHA examined the costs by mine size and by type of mining operation (coal or metal/nonmetal).

Oral Notices

MSHA estimates that about 3,258 metal/nonmetal mine operators (2,798

small; 460 large) and 966 coal mine operators (565 small; 401 large) would notify miners and miners' representatives of planned operator noise monitoring activities orally once a year. Small metal/nonmetal mines would inform about 15,885 miners; large metal and nonmetal mines would inform about 34,065 miners; small coal

mines would inform about 4,059 miners; and large coal mines would inform about 30,001 miners. MSHA estimates that it takes a supervisor about 2 minutes (0.033 hour) to orally notify miners during a daily meeting. The following table shows the cost calculations for oral notice.

Mine type	Miners' labor cost	Supervisor's labor cost	Total
LG M/NM SM Coal	34,065 miners * 0.033 hr * \$23/hr	2,798 mines * 0.033 hr * \$36/hr	4,265

Written Notices

For the metal/nonmetal industry, MSHA estimates that 1,449 mine operators (1,244 small; 205 large) would prepare notices informing 22,200 miners of their right to observe operator monitoring (7,060 for small mines;

15,140 for large mines). In addition, MSHA estimates that 429 coal mine operators (251 small; 178 large) would notify about 15,138 miners (1,804 for small mines; 13,334 for large mines). MSHA estimates an average of 0.08 hour of clerical time to be spent per miner for

a notice to be prepared and distributed, \$0.25 per miner for photocopying, and 0.1 hour of supervisory time per mine to be spent giving instructions to a clerical worker. The following table shows the cost calculations for written notices.

	Miners' labor cost	Supervisor's labor cost	Total
LG M/NMSM Coal		205 mines * (0.10 hr * \$36/hr)	

Posted Notices

For the metal/nonmetal industry, MSHA estimates that 2,534 mine operators (2,176 small; 358 large) would post written notices. For coal mines, 439 small mines and 312 large mines would post written notices. MSHA estimates an average of 0.08 hour of clerical time to be used to have the notice prepared and posted, \$0.25 per notice for photocopying, and 0.1 hour of supervisory time per mine to be spent giving instructions to a clerical worker. A small mine would post about 3 notices and a large mine would post approximately 6 notices throughout the mine property. The following table shows the cost calculations for posting.

	Clerical labor cost	Supervisor's labor cost	Total
SM M/NM	3 posting sites/sm mine * 2,176 mines * (\$0.25/copy + 0.08 hr * \$16/hr).	2,176 mines * (0.10 hr * \$36/hr)	\$17,820
LG M/NM	6 posting sites/lg mine * 358 mines * (\$0.25/copy + 0.08 hr * \$16/hr).	358 mines * (0.10 hr * \$36/hr)	4,575
SM Coal	3 posting sites/sm mine * 439 mines * (\$0.25/copy + 0.08 hr * \$16/hr).	439 mines * (0.10 hr * \$42/hr)	3,860
LG Coal	6 posting sites/lg mine * 312 mines (\$0.25/copy + 0.08 hr * \$16/hr).	312 mines * (0.10 hr * \$42/hr)	4,175

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

The Regulatory Flexibility Act (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 mines with fewer than 500 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 § 605 of the RFA, MSHA certifies that this proposed supplemental rule together with the comprehensive proposed noise 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 Agency has used a quantitative approach in concluding that the supplemental proposed rule does not have a significant impact on a substantial number of small entities. The Agency performed its analysis separately for two groups of mines: the coal mining sector as a whole, and the metal and nonmetal mining sectors as a whole. Based on a review of available sources of public data on the mining industry, the Agency believes that a quantitative analysis of the impacts on various mining subsectors (i.e., beyond the 4-digit SIC level) may not be feasible. The Agency requests comments, however, on whether there are special circumstances that warrant separate quantification of the impact of this proposal on any mining subsector, and information on how it might readily obtain the data necessary to conduct such a quantitative analysis. The Agency is fully cognizant of the diversity of mining operations in each sector, and has applied that knowledge as it developed the proposal.

As reflected in the certification, MSHA analyzed the costs of this proposal for small and large mines using both the traditional Agency definition of a small mine and, as required by the RFA, SBA's definition. The Agency compared the costs of the proposal for small mines in each sector to the revenues for each sector for every size category analyzed. In each case, the results indicated that the costs as a percent of revenue are substantially less than 1 percent.

MSHA estimates that this supplemental proposed rule would result in an additional annual cost

increase of \$844,665 (bringing the total costs of the comprehensive proposed rule, including this supplemental proposal, to approximately \$9.2 million annually).

The following table summarizes the results of the analysis of the supplemental proposed rule for all mines and for those which employ fewer than 20 miners.

Provision	Small mines (<20 min- ers)	Large mines (>=20 min- ers)	Total annual cost
Metal/Nonmetal			
Observation	\$347,940 48,480	\$143,110 54,875	\$491,050 103,355
Coal			
Observation	67,330 11,940	119,370 51,620	186,700 63,560
All Mines			
	475,690	368,975	844,665

The following table summarizes the results of the Agency's analysis of the

supplemental proposed rule's costs and effects on revenue.

SMALL MINES: COSTS COMPARED TO REVENUES

	No. of mines af- fected (> 85 dBA)	Estimated annual costs	Estimated revenue (millions)	Estimated cost per small mine	Cost as % of revenue
Coal	Mines				
Small <20	1,255 891 2,136 9 2,146	\$79,270 170,990 249,210 1,050 250,260	\$855 19,094 19,117 831 20,000	\$63 192 117 117 117	0.009 0.000 0.001 0.000 0.001
M/NM	Mines				
Small <20 Large > 20 Small < 500 Large > 500 All M/NM Mines	6,218 1,023 7,222 19 7,241	396,920 197,985 593,344 1,561 594,905	11,929 26,071 32,134 5,866 38,000	64 194 82 82 82	0.003 0.001 0.002 0.000 0.001

In determining revenues for coal mines, MSHA multiplied coal production data (in tons) for mines in specific size categories (reported to MSHA quarterly) by the average price per ton (from the Department of Energy, Energy Information Administration, Annual Energy Review 1995). For metal and nonmetal mines, the Agency estimated revenues for specific mine size categories as the proportionate share of these mines' contributions to the Gross National Product (from the Department of Interior, formerly known

as the Bureau of Mines, *Mineral Commodities Summaries 1996*).

VI. Unfunded Mandates Reform Act of 1995

MSHA has determined that, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, this supplemental proposal, together with the comprehensive proposed noise rule, does not include any Federal mandate that may result in increased expenditures by state, local, or tribal governments in the aggregate of more than \$100 million, or increased

expenditures by the private sector of more than \$100 million. Moreover, the Agency has determined that for purposes of § 203 of that Act, this supplemental proposal together with the comprehensive proposed noise rule does not significantly or uniquely affect small governments.

List of Subjects in 30 CFR Part 62

Mine safety and health, Noise.

Dated: December 19, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

It is proposed to amend Chapter I of Title 30 of the Code of Federal Regulations as follows:

PART 62—OCCUPATIONAL NOISE EXPOSURE

1. The authority citation for part 62 would read as follows:

Authority: 30 U.S.C. 811, 813.

2. A new paragraph § 62.120(g) is added to part 62 as proposed to be added to the Code of Federal Regulations at 61 FR 66465, December 17, 1996, to read as follows:

§ 62.120 Limitations on noise exposure.

(g) Observation of monitoring. The mine operator shall provide affected miners and their representatives with an

opportunity to observe exposure monitoring required by this section. Mine operators must give prior notice to affected miners and their representatives of the date and time of intended monitoring.

Note: The following appendix will not appear in the Code of Federal Regulations.

NON-MANDATORY APPENDIX A—PAPERWORK BURDEN CALCULATIONS FOR NOTIFICATION

Mine type	Miners' labor	Supervisor's labor	Total hours
	Oral Not	ices	
SM M/NM LG M/NM SM Coal LG Coal	15,885 miners * 0.033 hr 34,065 miners * 0.033 hr 4,059 miners * 0.033 hr 30,001 miners * 0.033 hr	2,798 mines * 0.033 hr	617 1,139 153 1,003
	Written No	otices	
LG M/NM SM Coal	7,060 miners * 0.08 hr	1,244 mines * 0.10 hr	688 1,232 169 1,085
	Posted No	otices	
SM M/NM LG M/NM SM Coal LG Coal	3 posting sites/sm mine * 2,176 mines * 0.08 hr	358 mines * 0.10 hr	740 208 149 181

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