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 Exposure of Underground Miners to Diesel Exhaust

Comment On: MSHA-2014-0031-0076
 Exposure of Underground Miners to Diesel Exhaust: Request for Information; Reopening of Rulemaking Record; Extension of Comment Period

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 Comment from t r, NA

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General Comment

In 1980, Congress enacted the RFA after finding that Federal regulations imposed disproportionate economic hardship on small entities. The RFA required agencies to consider ways to reduce regulatory burdens on small entities. This laudable goal was accomplished by requiring Federal agencies to consider the potential economic impact of federal regulations on small entities and to examine regulatory alternatives that achieve the agencies' public policy goals while minimizing small entity impacts. avoiding its purposes by improperly certifying rules as not requiring a regulatory flexibility analysis, claiming the rules did not have a significant economic impact on a substantial number of small entities.

In 1996, Congress amended the RFA with the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Importantly, SBREFA established the right of small businesses to seek judicial review for Federal agencies' failure to comply with the RFA. Federal government to compliance with the RFA with E.O. 13272 signed on August 13, 2002.

E.O. 13272 requires agencies to implement policies protecting small entities when writing new rules and regulations. In addition, E.O. 13272 instructs agencies and Advocacy to work closely together as early as possible in the regulation writing process to address disproportionate impacts on small entities and reduce their regulatory burden. E.O. 13272 directs agencies to consider the Office of Advocacy's written comments on rules and compelling them to publish a response in the Federal Register.

Executive Order 13272 also requires the Office of Advocacy to provide training to agencies on compliance with the RFA. RFA requires regulatory agencies to estimate the impacts of

AB86-COMM-115

proposed rules on small entities

the RFA asks agencies to be aware of the economic structure of the entities they regulate and the effect their regulations may have on small entities. To this end, the RFA requires agencies to analyze the economic impact of proposed regulations when there is likely to be a significant economic impact on a substantial number of small entities, and to consider regulatory alternatives that will achieve the agency's goal while minimizing the burden on small entities. The concept underlying this analytical requirement is that agencies will revise their decision-making processes to take account of small entity concerns in the same manner that agency decision-making processes were modified subsequent to the enactment of the National Environmental Policy Act (NEPA). The RFA then acts as a statutorily mandated analytical tool to further assist agencies in meeting the rational rulemaking standard set forth in the APA through a regulatory flexibility analyses, just as NEPA was intended to rationalize decisions concerning major federal actions that would affect the environment through the required environmental impact statement.

It was the designed purpose of the RFA over twenty years Ago to help government base decisions on a full and open understanding of how regulations will affect small business. The Office of Advocacy stands ready to assist the Subcommittee and Assistant Secretary Manson to achieve these goals.

Shortcomings in the Service's past RFA agencies compliance, namely, (1) the Agency failure to conduct meaningful outreach to potentially affected small farmers and ranchers and incorporating this outreach into its actions prior to proposing rules, and (2) the Service's recent imposition of critical habitat requirements on small farmers and ranchers without affording them the right to participate in the rulemaking process as provided by law. The certify under the RFA's Section 605(b) needs to be updated. So the agencies publish an IRFA or FRFA even if the rule would not have "a significant economic impact on a substantial number of small entities,. And explain the findings. President Bush delivered on his commitment to small business when he signed his Executive Order requiring agencies to incorporate small business concerns into rules. Unfortunately, small businesses have expressed the concern that the extensive amount of litigation over critical habitat designations has discouraged the Service from conducting small business outreach, therefore, the litigation regulation needs to be changed so that it does not benefit the environmental activists. the agency should seek input from the small business community during initial policy discussions, just as other Federal agencies do. Most importantly, this input must be taken into account when the Agency develops rules that impact small businesses.

Development of public resources, selling timber, mining, farming, fishing, oil and gas, is a win for all Americans.