

DEPARTMENT OF LABOR**Mine Safety and Health Administration****30 CFR Part 57**

RIN 1219-AB11

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.**ACTION:** Final rule; partial delay of effective date; clarification of effective dates; and correction amendments.

SUMMARY: This document gives notice of a delay of the effective date of 30 CFR 57.5066(b) of the final rule addressing "Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners," published in the **Federal Register** on January 19, 2001 (66 FR 5706). The delayed provision concerns tagging equipment for maintenance purposes. This document also clarifies the applicability dates of other final rule provisions and makes corrections to the preamble and regulatory text.

DATES: The final rule as published on January 19, 2001 (66 FR 5706), and delayed on March 15, 2001 (66 FR 15033) and on May 21, 2001 (66 FR 27863), will become effective July 5, 2001 except for § 57.5066(b) which is delayed pending disposition of current litigation challenging the rule.

The corrections in this document are effective July 5, 2001.

MSHA also clarifies that, under the terms of the rule, § 57.5061, § 57.5062, and § 57.5071, do not apply until § 57.5060 applies. As stated in the final rule published on January 19, 2001, § 57.5060(a) will not apply until after July 19, 2002; and § 57.5060(b) will not apply until after January 19, 2006. Sections 57.5067, 57.5070, and 57.5075 apply insofar as they relate to requirements of the rule that are in effect.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On January 19, 2001, MSHA published a final rule addressing the exposure of underground metal and nonmetal miners to diesel particulate matter (66 FR 5706). The rule establishes new health standards for underground metal and nonmetal miners working at mines

that use equipment powered by diesel engines. The rule is designed to reduce the risk to these miners of serious health hazards that are associated with exposure to high concentrations of dpm.

The effective date of the rule was listed as March 20, 2001 (66 FR 5706). Section 57.5060 of the rule establishes an interim concentration limit of 400 micrograms of dpm per cubic meter of air to become applicable after July 19, 2002, and a final concentration limit of 160 micrograms of dpm per cubic meter of air to become applicable after January 19, 2006 (66 FR 5706, 5708, 5907). The rule also includes provisions on how the Secretary of Labor determines compliance with the concentration limits (§ 57.5061), what operators must do when they exceed the applicable concentration limit (§ 57.5062), and what operators must do to determine the concentration of dpm in their mines (§ 57.5071). The summary section of the preamble of the rule did not clearly specify the applicable date of these provisions on concentration limits, or of the associated recordkeeping requirements (§ 57.5075).

On January 29, 2001, AngloGold (Jerritt Canyon) Corp. and Kennecott Greens Creek Mining Company filed a petition for review of the rule in the District of Columbia Circuit. On February 7, 2001, the Georgia Mining Association, the National Mining Association, the Salt Institute, and MARG Diesel Coalition filed a similar petition in the Eleventh Circuit. On March 14, 2001, Getchell Gold Corporation petitioned for review of the rule in the District of Columbia Circuit. The three petitions have been consolidated and are pending in the District of Columbia Circuit. The United Steelworkers of America (USWA) has intervened in the AngloGold case.

While these challenges were pending, the AngloGold petitioners filed with MSHA an application for reconsideration and amendment of the final rule and to postpone the effective date of the final rule pending judicial review. The Georgia Mining petitioners similarly filed with MSHA a request for an administrative stay or postponement of the effective date of the rule. On March 15, 2001, MSHA delayed the effective date of the rule until May 21, 2001, in accordance with a January 20, 2001 memorandum from the President's Chief of Staff (66 FR 15032). This delay was necessary to give Department of Labor officials the opportunity for further review and consideration of these new regulations. *Ibid.* On May 21, 2001 (66 FR 27863), MSHA published a notice in the **Federal Register** delaying

the effective date of the final rule until July 5, 2001.

After review of the rule, consideration of the applications filed with MSHA, and discussions with the affected parties, MSHA has determined to take the following actions:

I. Delay of Effective Date of 30 CFR 57.5066(b)

MSHA grants the applications insofar as they request a delay of the effective date of 30 CFR 57.5066(b), Maintenance standards, relating to "tagging" requirements. See 5 U.S.C. 705 ("When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review"). MSHA has determined that § 57.5066(b) as written, may give rise to confusion and thereby may prove costly to mine operators without effectively furthering the rule's goal of protecting miners from dpm exposure. MSHA believes that a delay of this provision may assist the parties in negotiating an acceptable disposition of the current pending litigation. For these reasons, MSHA hereby delays the effective date of § 57.5066(b). By separate notice published in today's **Federal Register**, MSHA will be initiating rulemaking on this delayed provision.

II. Clarification to the Final Rule Preamble

In the preamble to the final rule, MSHA specified under the "dates" caption that § 57.5060(a), addressing the interim concentration limit of diesel particulate matter, will not apply until after July 19, 2002, and that § 57.5060(b), addressing the final concentration limit of diesel particulate matter, will not apply until after January 19, 2006. MSHA clarifies that the applicable date of § 57.5061, Compliance determinations, § 57.5062, Diesel particulate matter control plan, and § 57.5071, Environmental monitoring, will also apply after July 19, 2002, because these provisions are directly related to § 57.5060(a). Section 57.5067, Engines; § 57.5070, Miner training; and § 57.5075, Diesel particulate records, apply insofar as they relate to the requirements of the rule that are in effect.

III. Corrections to Final Rule Preamble and Regulatory Text of 66 FR 5706

As discussed in the preamble to the final rule (66 FR 5706), proposed paragraph (c) of § 57.5065 would have prohibited idling of mobile diesel powered equipment, except as required for normal mining operations. Although commenters generally agreed with MSHA's statement in the proposed rule,

that this requirement will aid in the reduction of dpm concentrations at the mine, they noted that the total amount of dpm emitted from this single source might have little effect on the levels of dpm in the overall mining environment. They also questioned the need for an idling restriction in light of the proposed concentration limits established in the regulation. Also, a commenter indicated that the provision was not necessary because mine operators, in an effort to comply with the applicable concentration limits, would be forced to institute work rules to this effect anyway. Moreover, as pointed out by commenters, nothing in the regulatory language prohibits operators from voluntarily restricting idling at the mine, eliminating the need to include this provision. The preamble further indicates that although MSHA is deleting this requirement from the final regulation, MSHA recommends as a best practice that mine operators do not allow miners to idle diesel-powered equipment unnecessarily.

After consideration of comments received during the comment period, as well as testimony presented at the public hearings, MSHA decided to delete the idling requirement from the final rule. However, MSHA inadvertently included this requirement in the final regulation. This document corrects this error, as well as other errors made in the preamble at the time of publication. These corrections are effective on July 5, 2001.

Procedural Requirements

MSHA is of the view that these corrections to an inadvertent error in the final rule are not a rule to which the procedural requirements of 5 U.S.C. 553 apply, or the various statutes and executive orders relating to rules apply. If these corrections are a rule, however, notice and comment is not required based on the good cause exceptions in 5 U.S.C. 553(b)(B) and 553(d)(3). MSHA finds good cause not to provide further notice and comment in that additional notice and comment is unnecessary and contrary to the public interest because the public was advised in the preamble to the final rule of MSHA's intention to delete the idling requirement from the regulation. Consequently, unnecessary confusion may result if this correction is not made immediately. This document corrects this error, as well as other errors made in the preamble at the time of publication. These corrections are effective on July 5, 2001, the effective date of the final rule.

These corrections contain no paperwork requirements to which the Paperwork Reduction Act applies. In

addition, this action, if a rule, is not a "significant regulatory action" within the meaning of Executive Order 12866. Furthermore, this action is not a "major rule" within the meaning of the Small Business Regulatory Enforcement Fairness Act, or an "unfunded mandate" within the meaning of Title II of the Unfunded Mandates Reform Act of 1995. The action also will not have federalism implications within the meaning of Executive Order 13132, and a regulatory flexibility analysis is not required by the Regulatory Flexibility Act. Additionally, in accordance with Executive Order 13211 regarding the energy effects of Federal regulations, MSHA has determined that this action does not have any adverse effects on energy supply, distribution, or use.

Accordingly, MSHA makes the following corrections to the final rule published on January 19, 2001:

I. Printing Errors in the Preamble

The following corrections to the preamble in the **Federal Register** issue of January 19, 2001 (66 FR 5706), are made:

1. On page 5776, columns 7–8, line 7, change "SMR = 0.86 for taxi drivers (*)" to "SMR = 0.86 for taxi drivers".

2. On page 5776, columns 7–8, line 11, change "SMR = 1.59 for truck drivers" to "SMR = 1.59 for truck drivers (*)".

3. On page 5776, columns 7–8, line 16, change "SMR = 1.59 for (*)" to "SMR = 1.59 for".

4. On page 5776, columns 7–8, line 17, change "railroad work- (*)" to "railroad work-".

5. On page 5776, columns 7–8, line 19, change "RR = 2.60 for" to "RR = 2.60 for (*)".

6. On page 5776, columns 7–8, line 21, change "RR = 2.67 for" to "RR = 2.67 for (*)".

7. On page 5776, columns 7–8, line 39, change "RR = 1.40 for 15" to "RR = 1.40 for 15 (*)".

8. On page 5778, columns 7–8, line 1, change "SMR = 1.01 for (*)" to "SMR = 1.01 for".

9. On page 5779, columns 9–10, line 22, change "any occupa- (*)" to "any occupa-".

10. On page 5779, columns 9–10, line 23, change "tional diesel (*)" to "tonal diesel".

11. On page 5779, columns 9–10, line 24, change "exposure dur- (*)" to "exposure dur-".

12. On page 5779, columns 9–10, line 25, change "ing lifetime. (*)" to "ing lifetime."

13. On page 5779, columns 9–10, line 26, change "OR = 1.56 for" to "OR = 1.56 for (*)".

14. On page 5779, columns 9–10, line 31, change "OR = 2.88 for >" to "OR = 2.88 for > (*)".

15. On page 5779, columns 9–10, line 36, change "OR = 6.81 for >" to "OR = 6.81 for > (*)".

16. On page 5779, columns 9–10, line 40, change "OR = 4.30 for >" to "OR = 4.30 for > (*)".

17. On page 5779, columns 9–10, line 52, change "RR = 1.9 for non- (*)" to "RR = 1.9 for non-".

18. On page 5779, columns 9–10, line 56, change "RR = 4.5 for non-" to "RR = 4.5 for non- (*)".

19. On page 5781, columns 9–10, line 1, change "OR = 3.5 for (*)" to "OR = 3.5 for".

20. On page 5781, columns 9–10, line 3, change "OR = 1.6 for" to "OR = 1.6 for (*)".

21. On page 5781, columns 9–10, line 19, change "OR = 1.27 for (*)" to "OR = 1.27 for".

22. On page 5781, columns 9–10, line 29, change "OR = 1.89 for" to "OR = 1.89 (*)".

23. On page 5804, in the second table, "Main Results from Saverin, et al.," column 1, line 4, change " ≈ 6.1 " to " ≈ 6.1 ".

24. On page 5806, column 1, first paragraph, line 4, change " ≈ 6.1 " to " ≈ 6.1 ".

II. Additional Corrections to the Preamble

The following additional corrections to the preamble in the final rule published on January 19, 2001 (66 FR 5706), are made:

1. On page 5718, column 1, second paragraph, line 8, insert a quotation mark after the word "engines".

2. On page 5729, column 2, second paragraph, line 14, change "0.45 mg/3" to "0.45 $\mu\text{g}/\text{m}^3$ ".

3. On page 5747, column 2, first paragraph, line 12, delete sentence, "To further reduce miners' exposure to diesel exhaust, the final rule prohibits operators from unnecessary idling diesel-powered equipment."

4. On page 5755, change the title of the figure from "Figure 1" to "Figure III-1".

5. On page 5757, change the title of the figure from "Figure 2" to "Figure III-2".

6. On page 5760, change the title from "Figure 3" to "Figure III-3".

7. On page 5778, Footnote (a), change "a RR = Relative Risk; SMR =

Standardized Mortality Ratio. Values greater than 1.0 indicate excess prevalence of lung cancer associated with diesel exposure.” to “a RR = Relative Risk; SMR = Standardized Mortality Ratio; SMOR = Standardized Mortality Odds Ratio. Values greater than 1.0 indicate excess prevalence of lung cancer associated with diesel exposure.”

8. On page 5827, change the title of the figure from “Figure” to “Figure III–5”.

9. On page 5827, at the end of the figure caption insert “(Cohen and Higgins, 1995)”.

10. On page 5828, change title of the figure from “Figure” to “Figure III–6”.

11. On page 5860, column 1, third paragraph, line 10, delete the phrase, “limits on unnecessary idling of diesel engines,”

12. On page 5871, column 1, first paragraph, delete the following sentence: “As noted in Part II, the necessary sampling equipment is commercially available.”

13. On page 5874, column 3, second paragraph, change “\$ 57.5021” to read “\$ 57.5065”.

14. On page 5886, column 1, lines 6 and 7, remove “3/4”.

15. On page 5887, column 3, second paragraph, line 7, change “\$17.8 billion” to “\$10.5 billion”.

16. On page 5887, column 3, second paragraph, line 9, change “22.2 billion” to “29.5 billion”.

17. On page, 5887, column 3, second paragraph, line 11, change “\$8 billion” to “\$15.3 billion”.

18. On page 5887, column 3, Footnote 7, replace “U.S. Department of Energy, Energy Information Administration, Annual Energy Review 1998, July 1999, pp. 3, 6, 142, 158, and 160,” with “U.S. Department of the Interior, U.S. Geological Survey, Mineral Commodity Summaries 1999, pp. 6, 146, 148, 162, and 164.”

19. On page 5890, column 1, fifth paragraph, line 9, delete the word “proposed”.

20. On page 5890, column 2, fourth paragraph, line 4, change “number 7).” to “number 2(C)).”

21. On page 5890, column 2, fifth paragraph, line 5, change “1219-AA74” to “1219-AB11”.

22. On page 5890, column 3, fourth paragraph, line 4, change “employees 3/4 those” to “employees—those”.

23. On page 5899, column 2, fourth paragraph, line 2, change “3,571” to “6,047.”

24. On page 5899, column 2, fourth paragraph, line 3, change “\$171,926” to “\$223,982.”

25. On page 5899, column 2, fourth paragraph, line 5, change “526” to “2,929.”

26. On page 5899, column 2, fourth paragraph, line 6, change “\$21,871” to “\$87,569.”

PART 57—[CORRECTED]

III. Corrections to the Regulatory Text

The following corrections to the regulatory text of 30 CFR Part 57, the final rule published on January 19, 2001, (66 FR 5706), are made:

1. On page 5907, column 1, Table of Contents, correct the entry “57.5065 Fueling and idling practices.” to “57.5065 Fueling practices.”

2. On page 5908, column 3, § 57.5065, correct the section title to read, “Fueling practices;” and remove paragraph (c).

Signed at Arlington, VA, this 29th day of June 2001.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

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