

the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of landing gear parts, which could lead to landing gear collapse, accomplish the following:

Inspection of Parts and/or Records

(a) Within 10 years from the effective date of this AD, examine records and/or landing gear parts per Boeing Service Bulletin 737-32-1322, Revision 1, dated September 27, 2001, to determine whether parts have serial numbers and whether the number of flight cycles for each part has been tracked. If landing gear parts have serial numbers, as listed in Boeing Service Bulletin 737-32-1322, Revision 1, dated September 27, 2001, and the number of flight cycles has been tracked, no further action is necessary for paragraphs (a), (b), or (c) of this AD.

Assignment of Serial Numbers and Flight Cycles

(b) If any part examined, as mandated in paragraph (a) of this AD, does not have a serial number, within 10 years from the effective date of this AD, do the actions required by paragraphs (b)(1) and (b)(2) of this AD.

(1) Assign a serial number to each part per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(2) Mark the serial number on each part per Boeing Service Bulletin 737-32-1322, Revision 1, dated September 27, 2001.

(c) If flight cycles for any part examined, as mandated in paragraph (a) of this AD, have not been tracked, within 10 years from the effective date of this AD, assign a number of lifetime flight cycles to that part per Part 2.B. of the Accomplishment Instructions of Boeing Service Bulletin 737-32-1322, Revision 1, dated September 27, 2001.

Removal from Service at Life Limit

(d) When any landing gear part has reached its life-limit number of flight cycles, as described in Part 2.B. of the Accomplishment Instructions of Boeing Service Bulletin 737-32-1322, Revision 1, dated September 27, 2001, before further flight, remove that part from service and replace it with a landing gear part having a serial number and a lifetime flight cycle number per the service bulletin.

Spare Parts

(e) As of the effective date of this AD, no person shall install on any airplane a life-limited landing gear part unless it has been assigned a serial number and a lifetime flight cycle number per the requirements of this AD.

(f) As of the effective date of this AD, no person shall install on any airplane a life-limited landing gear part that has reached its life limit of flight cycles, per Boeing Service Bulletin 737-32-1322, Revision 1, dated September 27, 2001.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 16, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219-AB29

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: MSHA is initiating rulemaking to amend certain provisions of its existing health standard entitled, "Diesel Particulate Matter Exposure (DPM) of Underground Metal and Nonmetal Miners," published in the **Federal Register** on January 19, 2001 (66 FR 5706), and amended on February 29, 2002 (67 FR 9180). This rulemaking is part of a settlement agreement reached in response to a legal challenge to the January 19, 2001 DPM standard. Accordingly, the scope of this rulemaking will be limited to the terms of the settlement agreement that MSHA shared with the public in its recent **Federal Register** document (final rule; stay of effectiveness notice) of July 18, 2002 (67 FR 47296). MSHA will propose to revise § 57.5060, limit on concentration of DPM; § 57.5061, compliance determinations; and, § 57.5062, diesel particulate matter

control plan. In addition, MSHA will address technological and economic feasibility for the underground metal and nonmetal mining industry to comply with revised interim and final DPM concentration limits. Some mine operators have begun to implement control technology on their underground diesel-powered equipment as a result of the January 19, 2001 final rule. Therefore, MSHA requests relevant information on current experiences with availability of control technology, installation of control technology, effectiveness of control technology to reduce DPM levels, and cost implications of compliance with the current DPM standard. MSHA emphasizes the significance of obtaining this information from mine operators.

The existing rulemaking record, including the risk assessment for the January 19, 2001 standard, will be incorporated into this new rulemaking record. Commenters may submit evidence of new scientific data related to the health risk to underground metal and nonmetal miners from exposure to DPM.

DATES: Comments, suggestions and information on the advance notice of proposed rulemaking (ANPRM) must be received on or before November 25, 2002.

ADDRESSES: Comments on the ANPRM may be transmitted by electronic mail, fax, or mail.

Comments by electronic mail must be clearly identified as such and sent to comments@msha.gov.

Comments by fax must be clearly identified as such and sent to: MSHA, Office of Standards, Regulations and Variances, 202-693-9441.

Send comments by mail to: MSHA, Office of Standards, Regulations and Variances, Room 2352, 1100 Wilson Boulevard, Arlington, VA 22209-3939.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances; MSHA, 1100 Wilson Boulevard, Room 2313, Arlington, Virginia 22209-3939. Mr. Nichols can be reached at nichols-marvin@MSHA.gov, 202-693-9440, or 202-693-9441 (fax).

SUPPLEMENTARY INFORMATION:

I. Background

On January 19, 2001, MSHA published a final rule addressing diesel particulate matter exposure of underground metal and nonmetal miners (66 FR 5706). The final rule established new health standards for underground metal and nonmetal mines that use equipment powered by diesel

engines. The effective date of the rule was listed as March 20, 2001.

On January 29, 2001, AngloGold (Jerritt Canyon) Corp. and Kennecott Greens Creek Mining Company filed a petition for review of the final rule in the District of Columbia Circuit Court of Appeals. 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 litigation.

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). The delay was necessary to give Department of Labor officials the opportunity for further review and consideration of new regulations. 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. The purpose of this delay was to allow the Department of Labor the opportunity to engage in further negotiations to settle the legal challenges to this rule.

II. Outcome of First Partial Settlement

As a result of a partial settlement agreement with the litigants, MSHA published two documents in the **Federal Register** on July 5, 2001 addressing the January 19, 2001 DPM final rule. One document (66 FR 35518) delayed the effective date of § 57.5066(b) regarding the tagging provision of the maintenance standard; clarified the effective dates of certain provisions of the final rule; and included correction amendments.

The second document (67 FR 35521) proposed a rule to clarify § 57.5066(b)(1) and (b)(2) of the maintenance standards and to add a new paragraph (b)(3) to § 57.5067 regarding the transfer of existing equipment from one underground mine to another underground mine. MSHA finalized

these changes to the January 19, 2001 rule and published them in the **Federal Register** on February 27, 2002, (67 FR 9180). The final rule was effective on March 29, 2002.

As a result of the partial settlement agreement, MSHA also agreed to conduct joint sampling with industry and labor at 31 underground metal and nonmetal mines to determine existing concentration levels of DPM; to assess the performance of the SKC submicron dust sampler with the NIOSH Method 5040; to assess the feasibility of achieving compliance with the standard's concentration limits at the 31 mines; and, to assess the impact of interferences on samples collected in the metal and nonmetal underground mining environment before the limits established in the final rule become effective. Sampling and data analyses are completed, and MSHA is in the process of developing the final report. MSHA will include the final report in this rulemaking record.

III. Outcome of Second Partial Settlement

Settlement negotiations continued on the remaining unresolved issues in the litigation. On July 15, 2002, the parties signed an agreement that is the basis for this advance notice of proposed rulemaking.

On July 18, 2002, MSHA published a notice in the **Federal Register** (67 FR 47296) announcing that the following provisions of the final rule as published on January 19, 2001 (66 FR 5706) would become effective on July 20, 2002:

- (a) § 57.5060(a), addressing the interim concentration limit of 400 micrograms of total carbon per cubic meter of air;
- (b) § 57.5061, addressing compliance determinations; and
- (c) § 57.5071, addressing environmental monitoring. MSHA also announced that the following provisions of the final rule would continue in effect:

- (a) § 57.5065, Fueling and idling practices;
- (b) § 57.5066, Maintenance standards;
- (c) § 57.5067, Engines;
- (d) § 57.5070, Miner training; and
- (e) § 57.5075, Diesel particulate records, as they relate to the requirements of the rule that are in effect on July 20, 2002.

MSHA announced that it was staying the effectiveness of the following provisions pending completion of further rulemaking to address these issues:

- (a) § 57.5060(d), permitting miners to work in areas where the level of diesel particulate matter exceeds the

applicable concentration limit with advance approval from the Secretary;

- (b) § 57.5060(e), prohibiting the use of personal protective equipment to comply with the concentration limits;

- (c) § 57.5060(f) prohibiting the use of administrative controls to comply with the concentration limits; and

- (d) § 57.5062, addressing the control plan.

Finally, MSHA published in the same notice the terms of the DPM settlement agreement and announced its intentions to propose specific changes to the final DPM rule as discussed below.

IV. Summary of Issues To Be Addressed in the Proposed Standard

MSHA is including the following questions to facilitate public comment. The Agency invites comments on all aspects of the following issues:

1. *Section 57.5060(a) and (b), Limit on concentration of diesel particulate matter.*

The existing provisions include an interim concentration limit that restricts total carbon (TC) to 400 micrograms per cubic meter of air, and a final concentration limit of 160 micrograms per cubic meter of air by January 20, 2006. Diesel particulate matter consists of a core of elemental carbon (EC), other carbon-containing compounds, and many other components. There is no appropriate sampling method for diesel particulate matter itself. As a result, a substitute or surrogate must be used for DPM. MSHA agreed to propose to change the surrogate, or indicator of DPM, from (TC) to elemental carbon (EC) for both the interim and final limits. MSHA also agreed to propose that a single personal sample of a miner's exposure would be an adequate basis for all compliance determinations. Furthermore, MSHA agreed to propose the current hierarchy of controls that MSHA applies in its other metal and nonmetal exposure-based health standards for abating violations as further discussed in this notice. MSHA seeks information, data, and comments on the following:

- (a) What are the appropriate interim and final limits if EC is the surrogate?

- (b) What error factor should MSHA use for determining noncompliance on an EC standard?

- (c) Are there any interferences in the environment of an underground metal and nonmetal mine that would preclude personal sampling with the impactor when EC is used as the surrogate for DPM?

- (d) Is a field blank required if EC is used as the surrogate? (A field blank is a control device to account for

background interferences from manufacturing and storage of the filter).

2. *Section 57.5060(c) addresses application and approval requirements for an extension of time in which to reduce the concentration of DPM to the final limit.*

The existing provision allows mine operators to apply for additional time to come into compliance with the final concentration limit of 160 micrograms of TC per cubic meter of air due to technological constraints. MSHA agreed to propose to adapt this provision to the interim concentration limit as well, to include consideration of economic feasibility, and to allow for annual renewals of such special extensions, upon application to and approval by the Secretary.

(a) What circumstances would necessitate an extension of time to come into compliance?

(b) What should be the duration of the extension?

(c) Should MSHA allow more than one extension?

(d) What actions should mine operators be required to take to minimize DPM exposures if they are operating under an extension?

3. *Section 57.5060(d) addresses certain exceptions to the concentration limit.*

The existing provision permits miners engaged in specific activities, such as inspection, maintenance, or repair activities, to work in concentrations of DPM that exceed the interim and final limits, with advance approval from the Secretary.

(a) Would this provision be necessary if MSHA includes in the final rule its current hierarchy of controls for its other exposure-based health standards for metal and nonmetal mines?

(b) What would be the impact of removing this provision?

4. *Section 57.5060(e) prohibits use of personal protective equipment to comply with the concentration limits; and § 57.5060(f) prohibits use of administrative controls to comply with the concentration limits.*

MSHA agreed to propose to amend these provisions to require mine operators to establish, use, and maintain all feasible engineering control methods, consistent with the Agency's long-standing enforcement policy for its other existing exposure-based health standards applicable to metal and nonmetal mines. Therefore, MSHA will propose to require mine operators to supplement feasible engineering and administrative control methods with personal protective equipment, in the event that controls do not reduce the concentration level to the required limit,

or are not feasible, or do not produce significant reductions in DPM exposures. MSHA also agreed to consider the advisability of requiring periodic application to the Secretary before respirators could be used. MSHA will propose to prohibit the practice of rotation of employees as an administrative control for compliance with the DPM standard.

(a) Currently, there is no approved respirator for use in protecting miners exposed to DPM atmospheres. If MSHA includes requirements for some form of respiratory protection, what type of respirators would be protective of miners? What are their specifications?

(b) Should MSHA propose to require mine operators to implement a written respiratory protection program when miners must wear respiratory protection?

(c) Should MSHA require mine operators to apply to the Secretary for approval to use respiratory protection? Should the application be in writing? What conditions should MSHA require mine operators to meet before approval is granted to use respirators?

(d) Should MSHA propose to require mine operators to implement a written administrative control plan when they use administrative controls to reduce miners' exposures to the required limit?

5. *Section 57.5061(b) addresses how MSHA will collect and analyze samples for compliance purposes.*

MSHA agreed to propose to change the DPM surrogate from TC to EC. Therefore, MSHA would propose to delete the reference to analyzing the samples for the amount of "total carbon" included in this paragraph and propose to insert "elemental carbon."

6. *Section 57.5061(c) provides for MSHA to conduct personal, area, and occupational sampling for compliance determinations.*

MSHA agreed to propose a revision to this paragraph to state that the Agency would conduct personal sampling only for compliance determinations for the interim and final DPM standards. As a result, MSHA would propose to revise this paragraph to delete the references to "area" and "occupational sampling" for compliance determinations.

(a) What would be the cost implications for mine operators to conduct personal sampling of miners' DPM exposures if EC is the surrogate?

(b) What experience do mine operators have with DPM sampling and analysis?

(c) Is there experience with DPM sampling in other industries and other countries?

7. *Section 57.5062 addresses the diesel particulate control plan.*

The existing MSHA standard includes requirements for implementing a DPM control plan. MSHA agreed to propose revisions to these requirements. The settlement agreement does not include any specifics on the language of a proposal.

(a) How should the control plan be changed?

(b) What is an appropriate duration for a control plan?

(c) Should a single violation trigger implementation of a control plan? If not, what is an appropriate trigger?

(d) What roles should respiratory protection and administrative controls have under a control plan?

(e) Are there regulatory alternatives to the existing control plan requirement that are at least as protective of miners, such as requiring a written administrative control plan and/or a written respiratory protection plan?

(f) Since MSHA is proposing to include its long-standing hierarchy of controls for compliance with the revised standard, is there any benefit from retaining the control plan?

(g) Should MSHA delete the control plan requirements—why or why not?

8. *Technological and economic feasibility.*

New information on the technological and economic feasibility of current control technology was presented to MSHA following promulgation of the January 19, 2001 standard. MSHA intends to evaluate this new information in conjunction with compliance changes that would result from a proposed standard.

(a) What experience do you have modifying ventilation systems to reduce miners' exposure to DPM?

(b) What were the costs to mine operators for auxiliary fans, booster fans, flexible ducts, or major ventilation upgrades necessary to meet the interim concentration limit?

(c) What has been the experience of mine operators with retrofitting existing diesel-powered equipment, especially in the range with less than 50 hp, as well as equipment that has greater than 250 hp, with DPM control devices? What adjustment did mine operators have to make to DPM control devices before there were reductions in DPM levels?

(d) What are the engineering costs associated with retrofitting?

(e) What technical assistance should MSHA provide to mine operators in retrofitting DPM control devices or evaluating a mine's ventilation system, or filtration systems in environmental cabs?

(f) Are there circumstances where mine operators have had to change an engine model to accommodate DPM

control devices? What were the costs of the engine models?

(g) How much did control devices cost for different horse-powered engines?

(h) Did mine operators have to modify the exhaust system to apply the DPM control? What were the costs for doing so?

(i) What are the advantages, disadvantages, and relative costs of different DPM control devices?

(j) What types of DPM control devices are commercially available and how much do these devices cost?

(k) What are the engineering costs of the DPM control devices?

(l) What current reductions in EC levels are mine operators experiencing from having installed DPM control devices? What is the experience with filtration efficiencies?

(m) What has been the experience of mine operators with the useful life of DPM filters?

(n) Is there any information available with DPM control filters in non-mining industries or in other countries?

(o) What has been the experience of mine operators with DPM filters? Did filters fail or did they perform as the manufacturer predicted? If they failed, what were the causes of filter failure? What could be done to prolong the life of DPM filters?

(p) Do mine operators have any technical data on their experience with using cabs with filtered breathing air?

(q) Have you experienced increases in NO₂ when using any of the following: (1) A base-metal catalyzed filter; (2) a non-catalyzed filter; or (3) platinum-based catalyzed filter?

(r) What effect do high altitudes have on the ability of the DPM control device to reduce DPM exposures?

(s) What costs did mine operators incur for filters that were regenerated off board?

(t) What costs did mine operators incur for filters that were regenerated on board?

(u) Would active regeneration be feasible for your mine; such as off-board filter regeneration in an oven, or on-board electrical regeneration?

(v) What are the costs to mine operators for new engines and venting for filter ovens?

(w) Would fuel additives used to facilitate regeneration be feasible?

(x) Are there any significant technologies for controlling DPM when EC is the surrogate?

9. Paperwork Burden Issues.

What paperwork and other costs will you incur if changes are made to the DPM standard, particularly development of a written program for

use of administrative controls, use of respiratory protection, and for development of a control plan?

Dated: September 20, 2002.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 02-24370 Filed 9-20-02; 4:22 pm]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

RIN 0991-AB16

Medicare and State Health Care Programs: Fraud and Abuse; Safe Harbor Under the Anti-Kickback Statute For Waiver of Beneficiary Coinsurance and Deductible Amounts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would expand the existing safe harbor for certain waivers of beneficiary coinsurance and deductible amounts to benefit the policyholders of Medicare SELECT supplemental insurance. Specifically, the amended safe harbor would protect waivers of coinsurance and deductible amounts under Part A or Part B of the Medicare program owed by beneficiaries covered by a Medicare SELECT supplemental insurance policy issued in accordance with section 1882(t)(1) of the Social Security Act (the Act), if the waiver is in accordance with a price reduction agreement covering such policyholders between the Medicare SELECT issuer and the provider or supplier offering the waiver and the waiver is otherwise permitted under the Medicare program.

DATES: To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on October 25, 2002.

ADDRESSES: Please mail or deliver your written comments to the following address: Department of Health and Human Services, Office of Inspector General, 330 Independence Avenue, SW., Room 5246, Attention: OIG-729-P, Washington, DC 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file OIG-729-P.

FOR FURTHER INFORMATION CONTACT: Vicki L. Robinson, Senior Counsel,

Office of Counsel to the Inspector General, (202) 619-0335.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Anti-Kickback Statute and Safe Harbors

Section 1128B(b) of the Act (42 U.S.C. 1320a-7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit, or receive remuneration (*i.e.*, anything of value, in cash or in kind) in order to induce or reward the referral of business reimbursable by a Federal or State health care program. Violations of the statute may also result in the imposition of a civil money penalty (CMP) under section 1128A(a)(7) of the Act (42 U.S.C. 1320a-7a(a)(7)) or program exclusion under section 1128(b)(7) of the Act (42 U.S.C. 1320a-7(b)(7)).

The statute has been in existence since 1977 and applies broadly to all kinds of health care providers and suppliers. Payments tied to referrals corrupt the health care system, increasing the risks of overutilization of items and services, increased costs to the Federal health care programs, inappropriate steering of patients, and unfair competition.

In response to concerns that the statute technically covered some relatively innocuous commercial arrangements, subjecting them to criminal prosecution, Congress enacted section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100-93, which specifically required the development and promulgation of the "safe harbor" provisions. The safe harbor regulations specify various payment and business practices that, although potentially capable of inducing referrals of business reimbursable under the Federal health care programs, would not be treated as criminal offenses under the anti-kickback statute. Since July 29, 1991, we have published in the **Federal Register** a series of final regulations establishing safe harbors for various business practices.¹

Health care providers and others may voluntarily comply with these provisions to ensure that their business practices are not subject to any enforcement action under the anti-kickback statute, including the CMP provision for anti-kickback violations and the program exclusion authority related to kickbacks. In giving the

¹ 56 FR 35952 (July 29, 1991); 61 FR 2122 (January 25, 1996); 64 FR 63518 (November 19, 1999); 64 FR 63504 (November 19, 1999); and 66 FR 62979 (December 4, 2001).