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SUPPLEMENTARY INFORMATION:

I. Introduction

Copies of the SAE publications incorporated by reference may be examined at any Metal and Nonmetal Mine Safety and Health District Office; at MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209-3939; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096-0001.

This proposed rule would only update §§ 56/57.14130, paragraph (h), *Seat belts construction*. MSHA is not updating §§ 56/57.14130, paragraph (b)(2), which also incorporates by reference SAE J1194-1983, because paragraph (b)(2) addresses the construction of roll-over protective structures (ROPS), not seat belts. The construction of ROPS is beyond the scope of this rulemaking.

A. Proposed Rule, Direct Final Rule, and Significant Adverse Comments

Elsewhere in this issue of the **Federal Register**, we are publishing a direct final rule that is substantively identical to this proposed rule. We are publishing this companion proposed rule under § 553 of the Administrative Procedure Act to speed notice and comment rulemaking should we withdraw the direct final rule.

MSHA has determined that this rulemaking is suitable for a direct final rule because we do not expect that updating the metal and nonmetal seat belt standards, to include the revised SAE consensus standards, will elicit any significant adverse comments. A significant adverse comment is one that explains (1) why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach, or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of the direct final rule, we would consider whether the comment warrants a substantive response in a notice and comment process.

All interested parties should comment by May 21, 2003, because we will not initiate an additional comment period.

B. Regulatory History

Existing standards §§ 56/57.14130 derived from standards promulgated by MSHA's predecessor, the Mining Enforcement and Safety Administration (MESA) in 1977. Like these existing standards, the standards under MESA required seat belts to meet specific SAE requirements that were incorporated by reference. MSHA's requirements for seat belts at metal and nonmetal mines remained substantively unchanged until 1988.

In 1984, MSHA issued a proposed rule (49 FR 49201) revising the loading, hauling, and dumping standards at metal and nonmetal mines. MSHA had considered removing the incorporation by reference provisions relating to seat belts and accompanying roll-over protective structures (ROPS) on equipment and replace them with performance criteria (49 FR 49201 and 49203). At that time, however, commenters urged MSHA to retain the incorporation by reference and update it.

In 1988, MSHA promulgated final §§ 56/57.14130 for ROPS and seat belts for certain off-road work machines. The final rule (53 FR 32496 and 32524) updated the references to SAE J386-1985 and SAE J1194-1983 to reflect the most current revision. The final rule also added a provision, §§ 56/57.14131, requiring that seat belts on haulage trucks meet the same SAE requirements as MSHA required for seat belts on off-road work machines.

II. Discussion of Seat Belt Requirements

Existing standards §§ 56/57.14130(h) and 56/57.14131(c) require that seat belts for off-road work machines meet the requirements set forth in the Society of Automotive Engineers' (SAE) consensus standard J386-1985. Existing standards §§ 56/57.14130(h) also require that seat belts for agricultural tractors meet SAE consensus standard J1194-1983. These SAE consensus standards are incorporated by reference. Paragraphs §§ 56/57.14130(j) and 56/57.14131(d) contain the required information about the Federal Register's approval of the incorporation by reference and the addresses for examining or obtaining copies.

Compliance Difficulties. MSHA enforcement of its seat belt standards relies on the labeling of seat belts in accordance with the SAE standards. For example, SAE J386-1985 states

4.1.5 Marking (Labeling) Each seat belt assembly and/or each section of belt assembly shall be permanently and legibly labeled with year of manufacture, model or style number, and name or trademark of

manufacturer or importer, and shall state compliance with SAE J386 JUN85, Part II.

Since 1988, however, SAE has updated SAE J386 twice and SAE J1194 three times, each time reaffirming the previous version or incorporating advances in safety technology. Seat belts and assemblies currently manufactured for off-road work machines and haulage trucks comply with SAE J386-1997 and those currently manufactured for tractors comply with SAE J1194-1999. Seat belts meeting the superceded SAE J386-1985 or SAE J1194-1983 standards are no longer available, except through special orders at considerable cost. Consequently, because manufacturers no longer construct or label seat belts in accordance with the outdated SAE standards, mine operators have difficulty complying with MSHA's existing standards.

Equivalent Protection. MSHA bases its requirements for roll-over protective structures (ROPS) and operator restraint systems (seat belts) on technical documents developed by the SAE, a nationally and internationally recognized consensus standards setting organization. ROPS and seat belts provide a predictable level of performance when their construction meets the specifications of SAE's consensus standards. For example, SAE's testing of seat belt assemblies verifies that the strength and construction under the 1993 and 1997 revisions of SAE J386 meet the minimum requirements set forth by the society. Engineers and safety professionals agree that SAE J386 performance and test requirements provide a safe operator restraint system for off-road work machines commonly used in mining. This proposed rule would expand compliance alternatives to accommodate advances in seat belt technology without reducing protection for miners.

Expanded Compliance Alternatives. Newly manufactured replacement seat belts for off-road work machines and wheeled agricultural tractors, as well as those installed on new off-road machines or tractors, meet the specifications in the most recent SAE consensus standards. The immediate availability of replacement seat belts "off-the-shelf," as opposed to those requiring a special order, speeds replacement, minimizing equipment down time and the enticement to use off-road work machines without compliant seat belts. Also, allowing the use of seat belts meeting other revisions of the SAE standards, rather than only the most recent, would allow mine operators to use the supply of