

Date	Location	Telephone
September 18, 2003	Renaissance St. Louis Hotel Airport, 9801 Natural Bridge Road, St. Louis, MO 63134.	(314) 429-1100
September 23, 2003	Hilton Pittsburgh, 600 Commonwealth Place, Pittsburgh, PA 15222.	(412) 391-4600

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. You do not have to make a written request to speak. Speakers will speak in the order that they sign in. Any unallotted time will be made available for persons making same-day requests. At the discretion of the presiding official, the time allocated to speakers for their presentation may be limited. Speakers and other attendees may also present information to the MSHA panel for inclusion in the rulemaking record.

The hearings will be conducted in an informal manner. The hearing panel may ask questions of speakers. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

A verbatim transcript of the proceedings will be included in the rulemaking record. Copies of this transcript will be available to the public, and can be viewed at <http://www.msha.gov>.

MSHA will accept post-hearing written comments and other appropriate data for the record from any interested party, including those not presenting oral statements, prior to the close of the comment period on October 7, 2003.

II. Background

On January 19, 2001, MSHA published a final rule addressing diesel particulate matter exposure in underground metal and nonmetal mines (66 FR 5706, amended on February 27, 2002 at 67 FR 9180). 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 the Methane Awareness Resource Group (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 were consolidated and are pending in the District of Columbia Circuit. The United Steelworkers of America (USWA) 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.

First Partial Settlement Agreement

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 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) regarding maintenance and to add a new subparagraph (b)(3) to § 57.5067 regarding the transfer of existing equipment between underground mines. MSHA published these changes as a final rule on February 27, 2002 (67 FR 9180), with an effective date of March 29, 2002.

Under the first partial settlement agreement, MSHA also conducted 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. The final report was issued on January 6, 2003.

Second Partial Settlement Agreement

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 proposed rule. On July 18, 2002, MSHA published a notice in the **Federal Register** (67 FR 47296) announcing that the following provisions of the January 19, 2001 rule 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, compliance determinations; and

(c) § 57.5071, environmental monitoring.

The notice also announced that the following provisions of the rule would continue in effect:

(a) § 57.5065, Fueling 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.

The notice also stayed the effectiveness of the following provisions pending completion of rulemaking:

(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;