

responsibility and authority to ensure that the hearing progresses at a reasonable pace and in an orderly manner.

To ensure that interested parties receive a full and fair informal hearing as specified by 29 CFR part 1911, the ALJ has the authority and power to: Regulate the course of the proceedings; dispose of procedural requests, objections, and comparable matters; confine the presentations to matters pertinent to the issues raised; use appropriate means to regulate the conduct of the parties who are present at the hearing; question witnesses, and permit others to question witnesses; and limit the time for such questions. At the close of the hearing, the ALJ will establish a post-hearing comment period for parties who participated in the hearing. During the first part of this period, the participants may submit additional data and information to OSHA, while during the second part of this period, they may submit briefs, arguments, and summations.

*Notice of Intention to Appear to Provide Testimony at the Informal Public Hearings.* Interested parties who intend to provide oral testimony at the informal public hearings must file a notice of intention to appear by using the procedures specified above in the sections titled **DATES** and **ADDRESSES**. This notice must provide the: Name, address, and telephone number of each individual who will provide testimony; capacity (e.g., name of the establishment/organization the individual is representing; the individual's occupational title and position) in which each individual will testify; approximate amount of time required for each individual's testimony; specific issues each individual will address, including a brief statement of the position that the individual will take with respect to each of these issues; and any documentary evidence the individual will present, including a brief summary of the evidence.

OSHA emphasizes that the hearings are open to the public, and that interested parties are welcome to attend. However, only a party who files a proper notice of intention to appear may ask questions and participate fully in the proceedings. While a party who did not file a notice of intention to appear may be allowed to testify at the hearing if time permits, this determination is at the discretion of the presiding ALJ.

*Hearing Testimony and Documentary Evidence.* Any party requesting more than 10 minutes to testify at the informal public hearing, or who intends to submit documentary evidence at the

hearing, must, unless already having done so, provide the complete text of the testimony and the documentary evidence as specified above in the sections titled **DATE** and **ADDRESSES**. The Agency will review each submission and determine if the information it contains warrants the amount of time requested. If OSHA believes the requested time is excessive, it will allocate an appropriate amount of time to the presentation, and will notify the participant of this action, and the reasons for the action, prior to the hearing. The Agency may limit to 10 minutes the presentation of any participant who fails to comply substantially with these procedural requirements; in such instances, OSHA may request the participant to return for questions at a later time.

Please note that you may not attach materials such as studies or journal articles to testimony or documentary evidence faxes if they are more than 10 pages long. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, you must clearly identify your comments by name, date, Docket Number, and subject so that we can attach the materials to your faxed or mailed comments.

*Certification of the Record and Final Determination After the Informal Public Hearing.* Following the close of the hearing and post-hearing comment period, the presiding ALJ will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health; the record will consist of all of the written comments, oral testimony, and documentary evidence received during the proceeding. However, the ALJ does not make or recommend any decisions as to the content of the final standard. Following certification of the record, OSHA will review the proposed provisions in light of all the evidence received as part of the record, and then will issue the final determinations based on the entire record.

#### Authority

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this document. It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 5-2002 (67 FR 65008) and 29 CFR part 1911.

Signed in Washington, DC on April 16, 2003.

**John L. Henshaw,**

*Assistant Secretary of Labor.*

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## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Parts 56 and 57

RIN: 1219-AA98 (Phase 6)

#### Seat Belts for Off-Road Work Machines and Wheeled Agricultural Tractors at Metal and Nonmetal Mines

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** MSHA is issuing a proposed rule that would update the Agency's requirements for operator restraint systems (seat belts) for off-road work machines and wheeled agricultural tractors at metal and nonmetal mines. The existing standards require seat belts for off-road work machines to meet the requirements of the Society of Automotive Engineers' (SAE) consensus standard SAE J386-1985, and seat belts for wheeled agricultural tractors to meet the requirements of SAE J1194-1983. Since MSHA promulgated these standards, however, the SAE has revised them to reflect technological advances in seat belt design and materials. Seat belts meeting the specifications of earlier versions of these SAE standards are no longer routinely installed by manufacturers. The proposed rule would permit seat belts to meet the requirements of the more recent revisions of the SAE J386 and SAE J1194 standards.

**DATES:** Submit comments by May 21, 2003.

The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of the effective date of the final rule.

**ADDRESSES:** Clearly identify comments as such and submit them either electronically to ; by facsimile to 202-693-9441; or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209-3939. Comments are posted for public viewing at <http://www.msha.gov/currentcomments>.

**FOR FURTHER INFORMATION CONTACT:** Marvin W. Nichols, Director; Office of

Standards, Regulations, and Variances, MSHA; Phone: 202-693-9442; FAX: 202-693-9441; E-mail: [nichols-marvin@msha.gov](mailto:nichols-marvin@msha.gov).

#### 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

replacement seat belts they already have on hand.

*Enhanced Safety.* The proposed rule would improve safety by updating MSHA's standards to allow the use of advances in seat belt technology addressed in the newer industry consensus standards. Many safeguards and improved engineering are integral design features on new products. For example, the more recent revisions of the SAE consensus standards address developments, such as tether straps and three and four point systems, which are not included in the 1983 or 1985 revisions. Up-to-date standards are consistent with the goals of the Federal Mine Safety and Health Act of 1977, Executive Order 12866, and the Regulatory Flexibility Act.

### **III. The Regulatory Flexibility Act, Executive Order 12866, and the Small Business Regulatory Enforcement Fairness Act**

In accordance with Executive Order (E.O.) 12866, we have analyzed the estimated costs and benefits associated with this proposed rule, and have included our Preliminary Regulatory Economic Analysis (PREA) in this preamble. This proposed rule would not be an economically significant regulatory action under § 3(f)(1) of E.O. 12866.

In accordance with § 605 of the Regulatory Flexibility Act (RFA), we certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, we must include the factual basis for this certification in the proposed rule. Accordingly, we are publishing the factual basis for our preliminary regulatory flexibility certification statement in the **Federal Register**, as part of this preamble, and are providing a copy to the Small Business Administration (SBA), Office of Advocacy. We also will mail a copy of the proposed rule, including the preamble and certification statement, to metal and nonmetal mine operators and miners' representatives and post it on our Internet Home Page at [www.msha.gov](http://www.msha.gov).

*Factual basis for certification.* This proposed rule would provide at least the same level of protection for miners at a lower cost for mine operators. It would affect all 11,641 metal and nonmetal mines, 85.3% (9,928) of which employ fewer than 20 miners and 99.8% (11,618) of which employ 500 or fewer miners (PEIR, CY 2001). It would not include any additional costs and would

have no adverse economic impact on the metal and nonmetal mining industry. To the contrary, cost savings would be associated with not having to special order discontinued, older seat belts and not having to replace those seat belts already installed. The proposed rule also would eliminate the burden of preparing and responding to petitions for modification. The advantage of being able to obtain seat belts "off-the-shelf" would allow mine operators to replace damaged seat belts more quickly, thus reducing machinery and equipment down time which could result in lost production.

### **IV. Other Regulatory Considerations**

#### *A. Paperwork Reduction Act*

This proposed rule would not contain any information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Although the SAE requires seat belts to have a label indicating compliance with a specific SAE consensus standard, these labels are prepared and attached by the seat belt manufacturer. Both mine operators and MSHA use these labels to determine whether the seat belts comply with the appropriate SAE consensus standard.

#### *B. Unfunded Mandates Reform Act of 1995*

This proposed rule would affect about 220 small metal and nonmetal mines operated by governmental jurisdictions mostly to provide aggregates for the construction and repair of highways and roads. We have determined, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, that this proposed rule would not include any Federal mandate that may result in increased expenditures by state, local, or tribal governments in the aggregate of more than \$100 million, or increased expenditures by the private sector of more than \$100 million. We also determined, for purposes of § 203, that this proposed rule would not significantly or uniquely affect these entities.

#### *C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights*

This proposed rule would not be subject to Executive Order 12630 because it would not involve implementation of a policy with "takings" implications.

#### *D. Executive Order 12988: Civil Justice Reform*

In accordance with Executive Order 12988, we have determined that this

proposed rule would not unduly burden the Federal court system. We wrote the proposed rule to provide a clear legal standard for affected conduct and have reviewed it to eliminate drafting errors and ambiguities.

#### *E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

In accordance with Executive Order 13045, we have evaluated the environmental health and safety effects of this proposed rule and have determined that it would have no adverse effects on children.

#### *F. Executive Order 13132: Federalism*

In accordance with Executive Order 13132, we have reviewed this proposed rule and have determined that it would not have "federalism" implications.

#### *G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

In accordance with Executive Order 13175, we certify that this proposed rule would not impose substantial direct compliance costs on Indian tribal governments.

#### *H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

In accordance with Executive Order 13211, we have reviewed this proposed rule and have determined that it would not have a significant adverse effect on the supply, distribution, or use of energy, and no reasonable alternatives to this action would be necessary.

#### *I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking*

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed previously in this preamble, MSHA has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

### **List of Subjects**

#### *30 CFR Part 56*

Incorporation by reference, Mine safety and health, Surface mining.

#### *30 CFR Part 57*

Incorporation by reference, Mine safety and health, Underground mining.

Dated: April 14, 2003.

**Dave D. Lauriski,**

*Assistant Secretary of Labor for Mine Safety and Health.*

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, MSHA is proposing to amend chapter I, parts 56 and 57 of title 30 of the Code of Federal Regulations as follows:

#### **PART 56—[AMENDED]**

1. The authority citation for part 56 continues to read as follows:

**Authority:** 30 U.S.C. 811.

2. Section 56.14130 is amended by revising paragraphs (h) and (j) to read as follows:

##### **§ 56.14130 Roll-over protective structures (ROPS) and seat belts.**

\* \* \* \* \*

(h) *Seat belts construction.* Seat belts required under this section shall meet the requirement of SAE J386, "Operator Restraint System for Off-Road Work Machines" (1985, 1993, or 1997), or SAE J1194, "Roll-Over Protective Structures (ROPS) for Wheeled Agricultural Tractors" (1983, 1989, 1994, or 1999), as applicable, which are incorporated by reference.

\* \* \* \* \*

(j) *Publications.* The incorporation by reference of these publications is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications 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.

3. Section 56.14131 as amended by revising paragraphs (c) and (d) to read as follows:

##### **§ 56.14131 Seat belts for haulage trucks.**

\* \* \* \* \*

(c) Seat belts required under this section shall meet the requirements of SAE J386, "Operator Restraint System for Off-Road Work Machines" (1985, 1993, or 1997), which are incorporated by reference.

(d) The incorporation by reference of these publications is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1

CFR part 51. Copies of these 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.

#### **PART 57—[AMENDED]**

4. The authority citation for part 57 continues to read as follows:

**Authority:** 30 U.S.C. 811.

5. Section 57.14130 is amended by revising paragraphs (h) and (j) to read as follows:

##### **§ 57.14130 Roll-over protective structures (ROPS) and seat belts for surface equipment.**

\* \* \* \* \*

(h) *Seat belts construction.* Seat belts required under this section shall meet the requirement of SAE J386, "Operator Restraint System for Off-Road Work Machines" (1985, 1993, or 1997), or SAE J1194, "Roll-Over Protective Structure (ROPS) for Wheeled Agricultural Tractors" (1983, 1989, 1994, or 1999), as applicable, which are incorporated by reference.

\* \* \* \* \*

(j) *Publications.* The incorporation by reference of these publications is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications 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.

6. Section 57.14131 is amended by revising paragraphs (c) and (d) to read as follows:

##### **§ 57.14131 Seat belts for surface haulage trucks.**

\* \* \* \* \*

(c) Seat belts required under this section shall meet the requirements of SAE J386, "Operator Restraint System for Off-Road Work Machines" (1985,

1993, or 1997), which are incorporated by reference.

(d) The incorporation by reference of these publications is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications 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.

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## **DEPARTMENT OF LABOR**

### **Mine Safety and Health Administration**

#### **30 CFR Parts 71 and 75**

##### **RIN 1219-AA98 (Phase 9)**

#### **Standards for Sanitary Toilets in Coal Mines**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** MSHA is proposing to remove an application and approval requirement from existing mandatory standards. Currently, MSHA must approve sanitary toilets for use in underground coal mines, and MSHA and the National Institute for Occupational Safety and Health (NIOSH) must jointly approve sanitary toilets for use in surface coal mines. MSHA and NIOSH base their approval on criteria drawn from the American National Standard Institute's (ANSI's) *American National Standard for Sanitation—Nonsewered Waste-Disposal Systems—Minimum Requirements*. MSHA is proposing to amend its standards to state which sanitary toilets meet the standard in order to eliminate the need for an application for approval and its associated paperwork burden. This action would also directly inform manufacturers, mine operators, miners, and miners' representatives about which sanitary toilets meet the standard. Removing the application requirements would have no substantive effect on the sanitation standards.