

corrected to read “communications income. The source of income”.

**Cynthia Grigsby,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

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**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Parts 46, 48, 50, 56, 57, 75, and 77**

**RIN 1219-AB41**

**Use of or Impairment From Alcohol and Other Drugs on Mine Property**

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

**ACTION:** Advance notice of proposed rulemaking; notice of public meetings; close of record.

**SUMMARY:** Because of the inherent dangers present in all mining environments, we are considering regulatory and non-regulatory approaches to address the risks and hazards to miner safety from the use of or impairment from alcohol and other drugs, and are soliciting information from the public to help determine how to proceed.

**DATES:** Comments to this advance notice of proposed rulemaking must be received by November 27, 2005.

We will hold seven public meetings to gather additional information. The dates and locations are listed in the Public Meetings section under **SUPPLEMENTARY INFORMATION**. Individuals or organizations wishing to make presentations for the record are asked to submit a request to us at least five days prior to the meeting date; however, those who do not submit a request in advance will be given an opportunity to speak.

**ADDRESSES:** Comments must include Regulation Identifier Number (RIN) 1219-AB41 and may be submitted by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail to [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov). Include RIN 1219-AB41 in the subject line of the message.
- Fax: (202) 693-9441.
- Regular Mail or Hand Delivery: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209-3939.
- Access to Docket: We post all comments received without change, including any personal information provided, at <http://www.msha.gov> under the “Rules & Regs” link. The public docket may be viewed at our Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2349, Arlington, Virginia.

- We maintain a listserve on our Web site that enables subscribers to receive e-mail notification when we publish rulemaking documents in the **Federal Register**. To subscribe to the listserve, visit our site at <http://www.msha.gov/subscriptions/subscribe.aspx>.

**FOR FURTHER INFORMATION CONTACT:** Rebecca J. Smith, Acting Director, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), 202-693-9441 (fax), or [smith.rebecca@dol.gov](mailto:smith.rebecca@dol.gov) (e-mail).

**Outline of ANPRM**

This outline will assist you in finding information in the **SUPPLEMENTARY INFORMATION** section of this document.

**Supplementary Information**

- I. Public Meetings
- II. Introduction
- III. Background
- IV. Issues
  - A. Nature, Extent, and Impact of the Problem
  - B. Prohibited Substances and Impaired Miners
  - C. Training
  - D. Inquiries Following Accidents
  - E. Drug-Free Workplace Programs
  - F. Costs and Benefits

**SUPPLEMENTARY INFORMATION:**

**I. Public Meetings**

The public meetings will begin at 9 a.m. and end after the last speaker testifies (in any event not later than 5 p.m.) on the following dates:

Date	Location	Phone
October 24, 2005 .....	Little America Hotel, 500 S Main Street, Salt Lake City, UT 84101 .....	801-363-6781
October 26, 2005 .....	Hyatt Regency St. Louis, 1 St. Louis Union Station, St. Louis, MO 63103 .....	800-233-1234
October 28, 2005 .....	Sheraton Birmingham, 2101 Richard Arrington Jr. Blvd. North, Birmingham, AL 35203 .....	205-324-5000
October 31, 2005 .....	Sheraton Suites Lexington, 2601 Richmond Rd., Lexington, KY 40506 .....	859-268-0060
November 2, 2005 .....	Marriott Town Center, 200 Lee St. East, Charleston, WV 25301 .....	304-345-6500
November 4, 2005 .....	Hyatt Regency Pittsburgh Int'l Airport, 1111 Airport Blvd., Pittsburgh, PA 15231 .....	800 233-1234
November 8, 2005 .....	MSHA Conference Room 25th Floor, 1100 Wilson Blvd., Arlington, VA 22209 .....	202 693-9440

The meetings will begin with an opening statement from us, followed by an opportunity for members of the public to make oral presentations to our panel. You do not have to make a written request to speak. You will speak in the order that you sign in. Any unallotted time will be made available for persons making same-day requests. At the discretion of our presiding official, the time allocated to speakers for your presentation may be limited. We will accept written comments and data for the record from any interested party, including those not presenting oral statements. The comment period will close on November 27, 2005.

The meetings will be conducted in an informal manner. We may ask questions of you. Although formal rules of evidence or cross examination will not apply, we may exercise discretion to ensure the orderly progress of the meeting and may exclude irrelevant or unduly repetitious material and questions.

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

**II. Introduction**

Given that our accident investigations do not routinely include an inquiry into the use of alcohol or other drugs as a contributing factor, there may be many instances in which alcohol or other drugs were involved in accidents and are not reported to us or that we do not uncover during investigations. Our preliminary review of our fatal and non-fatal mine accident records revealed a number of instances in which alcohol or other drugs or drug paraphernalia were found or reported, or in which the post-accident toxicology screen revealed the presence of alcohol or other drugs.

We are concerned that miners' use of and impairment from alcohol and other drugs can create considerable (but preventable) risks to miner safety. To the extent that use and abuse of alcohol and other drugs by miners is prevalent, it reflects problems in the community in general and the labor force as a whole.

The Department of Health and Human Services, Substance Abuse and Mental Health Services Administration's (SAMHSA) 2003 National Survey on Drug Use and Health (formerly the National Household Survey on Drug Abuse) shows that these community problems are also found in the labor force. The survey reports that of 16.7 million illicit drug users age 18 or older, 12.4 million (74.3 percent) were employed either full or part time. In addition, 14.9 million (77 percent) of the 19.4 million adults, age 18 or older, characterized with abuse of or dependence on alcohol or drugs were employed. The Bureau of Labor Statistics analyzed 1998 data from its Census of Fatal Occupational Injuries and estimated that 19 percent of the nation's workforce who die on the job test positive for alcohol and other drugs.<sup>1</sup> Similarly, a 1993 analysis of toxicology data on injured workers' blood alcohol concentration estimated that ten percent of fatal work injuries and five percent of non-fatal work injuries overall involved acute alcohol impairment.<sup>2</sup>

SAMHSA's 2000 National Household Survey on Drug Abuse analyzes alcohol and other drug use and abuse by industry sector. Notably, the construction and mining industries have the highest percentage of workers who reported current illicit drug use<sup>3</sup> or have an alcohol dependence disorder or alcohol abuse disorder. Nearly one in seven workers in these industries report having a serious alcohol problem. The report shows the following rates of use for the mining and construction industries: 15.7% past month heavy alcohol use; 12.3% past month any illicit drug use; 10.9% past year dependence or abuse of alcohol; and 3.6% past year dependence or abuse of illicit drugs.

Using drugs or alcohol can impair a miner's coordination and judgment significantly at a time when he or she

needs to be alert, aware, and capable of performing complicated tasks. Even prescription medications may affect a miner's perceptions and reaction time. Mining is a complicated and hazardous occupation, and a clear focus on the work at hand is a crucial component of workplace safety. Alcohol- or drug-impaired miners endanger themselves as well as their co-workers.

A number of mine operators recognize this problem, and require applicants for employment to pass a pre-employment drug screening. At a summit held on December 18, 2004, some mine operators stated that a substantial number of job applicants are unable to pass the initial drug screen.

### III. Background

Since the late 1980s, the federal government has implemented a number of programs aimed at reducing the use of alcohol and other drugs in the workplace. The Anti-Drug Abuse Act of 1986 (Pub. L. 99-570), among other things, directed the Secretary of Labor to initiate efforts to address the issue. Subsequently, Executive Order 12564, Drug-Free Federal Workplace, established federal drug-free workplaces, making it a condition of employment for all federal employees to refrain from using illegal drugs. The Drug-Free Workplace Act of 1988, 41 U.S.C. 701, *et seq.*, requires Federal contractors and grantees to have drug-free workplaces, and the Drug-Free Workplace Act of 1998, 15 U.S.C. 654, established grant programs that assist small businesses in developing drug-free workplace programs. To protect public safety, the Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, requires transportation industry employers to conduct drug and alcohol testing for employees in "safety-sensitive" positions, creating a model that many non-regulated employers follow.

In support of the President's goal of lowering the rate of illegal drug use, the Department of Labor's (DOL) Working Partners for an Alcohol- and Drug-Free Workplace (Working Partners) public outreach campaign raises awareness about the impact of alcohol and other drug use on businesses and encourages and assists employers to implement drug-free workplace programs that protect worker safety and health and respect worker rights. DOL's Occupational Safety and Health Administration (OSHA) recognizes that drug and alcohol impaired workers constitute a safety hazard and strongly supports comprehensive drug-free workforce programs, especially in certain workplace environments, such

as those involving safety-sensitive duties like operating machinery.<sup>4</sup> Over the past year and a half, OSHA has implemented a number of strategies in support of this statement. For example, OSHA along with MSHA and DOL's Working Partners program, formed an alliance with four international labor unions<sup>5</sup> focused exclusively on improving worker health and safety through drug-free workplace programs, and an OSHA/National Federation of Independent Business alliance agreement specifically includes promoting drug-free workplaces as a goal. OSHA also developed a Web page on workplace substance abuse, and OSHA and DOL staff have presented at conferences and written articles for publications attracting occupational safety and health professionals.

We currently address the presence and use of intoxicating beverages and narcotics at metal and nonmetal mines. Sections 56.20001 and 57.20001 of 30 CFR state:

Intoxicating beverages and narcotics shall not be permitted or used in or around mines. Persons under the influence of alcohol or narcotics shall not be permitted on the job.

Between January 1, 2000 and June 30, 2005, penalties were assessed for 75 violations of § 56.20001 and for three violations of § 57.20001. Our regulations contain no similar requirement for coal mines.

We have initiated a number of education and outreach efforts to raise awareness in the mining industry of the safety hazards stemming from the use of alcohol and other drugs. We, in partnership with the Joseph A. Holmes Safety Association, established the Professional Miner Program to recognize miners who have worked injury-free for at least three years. Miners who have been recognized as Professional Miners sign a pledge which includes a commitment to "work to ensure a safe, healthy, and alcohol and drug-free workplace." To date, approximately 15,500 miners have taken this pledge.

We participate in the drug-free workplace alliance mentioned above to provide union members and the construction industry with information, guidance and access to training resources that will help them understand the benefits of drug-free

<sup>1</sup> Weber, W., and Cox, C. "Work-Related Fatal Injuries in 1998." *Compensations and Working Conditions*, Spring 2001, pp. 27-29.

<sup>2</sup> Zwerling, C. "Current practice and Experience in Drug and Alcohol Testing." *Bulletin on Narcotics*, vol. 45 (1993), pp. 155-196.

<sup>3</sup> The survey defined current illicit drug use as the use of marijuana, cocaine, heroin, hallucinogens, inhalants or non-medical use of prescription-type pain relievers, tranquilizers, stimulants, or sedatives in the past 30 days.

<sup>4</sup> OSHA, "Safety and Health Topics, Workplace Substance Abuse," <http://www.osha.gov/SLTC/substanceabuse>.

<sup>5</sup> International Union of Operating Engineers; United Brotherhood of Carpenters and Joiners of America; International Association of Bridge, Structural Steel, Ornamental and Reinforcing Iron Workers; and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers.

workplace programs and protect employee health and safety. Although this alliance focuses on the construction industry, a substantial number of the union members work on mine property.

On December 8, 2004, we co-sponsored with the states of Kentucky, Virginia and West Virginia, a one-day summit for individuals involved with coal mining operations and activities in the Southern Appalachian region. The summit brought together industry, labor, state and federal government officials, and public health experts to share information, expertise, and experience in dealing with the use of or impairment from alcohol and other drugs on mine property. At the summit, industry representatives expressed concerns about the problems related to the use of drugs and alcohol in mines. Several coal mine operators described the effectiveness of their drug-free workplace programs and expressed their concern that such programs were not universal in the industry.

Along with Virginia and West Virginia, we are participating in Kentucky's Mine Substance Abuse Task Force. The task force currently meets monthly to examine options for eliminating the use of or impairment from alcohol and other drugs on mine property.

During the first four months of 2005, in our annual Spring Thaw meetings held by each of the 51 field offices of our metal and nonmetal program area, we included presentations and discussion of drug and alcohol abuse to raise awareness and provide information to mine operators.

Our State Grants Program awards federal grants to 49 states and the Navajo Nation. Our 2006 Solicitation for Grant Applications, sent out in July, 2005, requests that applicants include substance abuse training as part of new miner and annual refresher training curriculum. With assistance from DOL's Working Partners program, we will be developing materials to assist in conducting this training. Further, our National Mine Health and Safety Academy is producing an awareness video on the hazards of alcohol and other drugs. This video will be used for new miner and annual refresher training.

A number of mine operators have voluntarily implemented drug-free workplace programs, and many report that these programs have improved workplace safety and reduced workers' compensation costs. Additionally, some of these operators have told us that miners at their mines are supportive of these programs. However, the adoption of these programs is far from being an

industry-wide practice. Many miners, particularly those working in small mines are not likely to have access to these programs.

#### IV. Issues

We are seeking supporting information or data that will help us evaluate whether there is a need for additional federal action to address safety risks stemming from alcohol and other drug use by miners, and if so, whether this should involve rulemaking and what that regulation should include. In general, we are seeking information and comment on the extent of alcohol and other drug use problems in the mining industry and the impact on safety and health, and the types of programs currently in place and their effectiveness. Additionally, we need to assess both the costs and benefits of any intended federal action. We encourage the public to respond to the questions posed below. We also invite suggestions on alternatives or supplements to rulemaking that we should pursue. Please be as specific as possible in your responses to the questions and in suggesting alternatives. Providing specific examples, as well as cost and benefit estimates where possible, will help us evaluate and analyze your comments.

##### A. Nature, Extent, and Impact of the Problem

We believe that the use and misuse of alcohol and other drugs in the mining community and mining workplace create a preventable risk to the safety of miners. We are concerned that impaired miners can jeopardize their own safety and the safety of their fellow miners. Please provide examples and data to support your answers to the following questions:

A1. What specific substances are most prevalent and pose the greatest threats to mine safety and health? Please include comments on "controlled substances," illegal or illicit drugs, alcohol, inhalants, prescription and over-the-counter drugs, and any other substances you believe may create safety hazards when used or misused by miners.

A2. Based on your experience and knowledge of the industry, how widespread is the use or misuse of alcohol or other drugs in the mining workplace?

A3. How severe a risk does the use or misuse of alcohol and other drugs pose to miners' safety?

A4. What accidents or injuries at your mine in the last five years have involved alcohol or other drugs?

##### B. Prohibited Substances and Impaired Miners

Our existing metal and non-metal standards [30 CFR 56/57.20001], as stated above, require:

Intoxicating beverages and narcotics shall not be permitted or used in or around mines. Persons under the influence of alcohol or narcotics shall not be permitted on the job.

No similar standard applies to coal mines. Please provide examples and data to support your answers to the following questions:

B1. Should we revise this existing metal and non-metal standard and establish a standard for coal mines? If so, how?

B2. What substances should be prohibited? Please include comments on controlled substances, alcohol, misuse of prescription and over the counter drugs, and inhalants.

B3. How should impairment be determined, and who should make the determination?

B4. What actions should operators be required to take once an impaired miner is identified (e.g., remove from site, send home for the day, refer to the Employee Assistance Program or elsewhere for assessment, send for drug test, terminate, fine, or other actions)?

B5. What policy or procedures do you have regarding employees who are using legally and properly prescribed drugs that may cause impairment?

##### C. Training

Parts 46 and 48 of 30 CFR specify training requirements for supervisors and miners. Our regulations currently do not require training in the prevention of alcohol and other drug misuse. Please provide examples and data to support your answers to the following questions:

C1. Should our regulations address training in the prevention of alcohol and other drug misuse? If so, how?

C2. Who should receive this training (e.g., supervisors, managers, foremen, miners, miners' representatives?)

C3. What topics should be included?

C4. What training do you provide to address alcohol and other drug misuse?

##### D. Inquiries Following Accidents

Section 50.11 of 30 CFR (Investigation of accidents) requires mine operators to report and investigate accidents, and establishes criteria for the investigation and the report. Please provide examples and data to support your answers to the following questions:

D1. Should we revise 30 CFR 50.11 to address alcohol and other drug use inquiries by mine operators during accident investigations? Section 50.11 provides as follows:

**§ 50.11 Investigation.**

(a) After notification of an accident by an operator, the MSHA District Manager will promptly decide whether to conduct an accident investigation and will promptly inform the operator of his decision. If MSHA decides to investigate an accident, it will initiate the investigation within 24 hours of notification.

(b) Each operator of a mine shall investigate each accident and each occupational injury at the mine. Each operator of a mine shall develop a report of each investigation. No operator may use Form 7000-1 as a report, except that an operator of a mine at which fewer than twenty miners are employed may, with respect to that mine, use Form 7000-1 as an investigation report respecting an occupational injury not related to an accident. No operator may use an investigation or an investigation report conducted or prepared by MSHA to comply with this paragraph. An operator shall submit a copy of any investigation report to MSHA at its request. Each report prepared by the operator shall include,

- (1) The date and hour of occurrence;
- (2) The date the investigation began;
- (3) The names of individuals participating in the investigation;
- (4) A description of the site;
- (5) An explanation of the accident or injury, including a description of any equipment involved and relevant events before and after the occurrence, and any explanation of the cause of any injury, the cause of any accident or cause of any other event which caused an injury;
- (6) The name, occupation, and experience of any miner involved;
- (7) A sketch, where pertinent, including dimensions depicting the occurrence;
- (8) A description of steps taken to prevent a similar occurrence in the future; and
- (9) Identification of any report submitted under § 50.20 of this part.

D2. What type of alcohol and other drug use inquiries should be made after accidents (*e.g.*, questioning, drug testing)?

D3. What degree of accident or injury should trigger an inquiry (all, fatal, lost-time, others)?

D4. How should the information collected in the inquiry be used, and by whom?

D5. What actions should be required if it is determined that the use of alcohol or other drugs was a contributing factor or cause of the accident?

**E. Drug-Free Workplace Programs**

Although our regulations currently do not require programs to address the safety hazards that the presence of alcohol and other drugs in the workplace may cause, some mine operators have voluntarily put these programs in place. Typically, such a program, often called a drug-free workplace program, includes at least one of the following five components:

drug-free workplace policy; employee education; supervisory training; drug testing; and an employee assistance program. Please provide examples and data to support your answers to the following questions:

E1. Do you have a drug-free workplace program at your mine, or have you instituted any of the above mentioned components, even if not referred to as a drug-free workplace? Please provide a copy of your program policy and procedures. Is this program part of a broader program?

E2. If you have a drug-free workplace policy or program:

E2-a. What prompted you to initiate your program?

E2-b. What components does your program have?

E2-c. Which of your program's components do you feel are most critical and/or effective, and why?

E2-d. Have you been able to document any improvement as a result of your program?

E2-e. Please provide any data that demonstrate the extent of the problem at your mine and the effectiveness of your program in improving safety at your mine.

E2-f. What issues/problems have you encountered in implementing your program and how have you resolved them?

E2-g. What actions are taken for miners who violate the terms of the policy?

E3. If you previously had a drug-free workplace program, what did it include? Why was it discontinued?

E4. If you conduct supervisory training on drug issues, how are supervisors taught to recognize and handle employees who may have alcohol and/or other drug problems? Please elaborate on how supervisors make these determinations.

E5. Do you have an employee assistance program, and if so, how many employees have accessed the EAP for problems related to alcohol and drug use? How many of these employees have had their problems resolved successfully?

**F. Costs and Benefits**

We are particularly interested in the costs and benefits you have experienced in planning and implementing a drug-free workplace program. In addition, we are interested in knowing what you estimate the costs to be of designing and implementing other elements of a drug-free workplace program. Please provide examples and data to support your answers to the following questions:

F1. What costs have you incurred from your efforts to reduce or eliminate

drugs or alcohol from the workplace? Please provide the costs by type (*e.g.*, personnel, training, equipment).

F2-a. What costs would be associated with having a drug-free workplace program (*e.g.*, program implementation, training, drug testing, EAP, restricted work programs, personnel effects)?

F2-b. Would these costs be borne disproportionately by small mines? If so, please explain how and by how much the costs would vary.

F3. What benefits have you derived from your efforts to reduce or eliminate alcohol or drugs from the workplace (*e.g.*, lower workers compensation costs, reduced absenteeism, employee morale, reduction in turnover, accident and injury reduction and related cost savings)?

Dated: September 29, 2005.

**David G. Dye,**

*Acting Assistant Secretary for Mine Safety and Health.*

[FR Doc. 05-19846 Filed 9-29-05; 3:11 pm]

**BILLING CODE 4510-43-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 62**

[R06-OAR-2004-NM-0002; FRL-7979-4]

**Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Bernalillo County, NM; Negative Declaration**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is approving three negative declarations submitted by the City of Albuquerque (Bernalillo County) certifying that there are no existing sources subject to the requirements of sections 111(d) and 129 of the Clean Air Act under their jurisdiction. These three negative declarations are for Sulfuric Acid Mist Emissions from Sulfuric Acid Plants, Fluoride Emissions from Phosphate Fertilizer Plants, and Total Reduced Sulfur Emissions from Kraft Pulp Mills. This is a direct final rule action without prior notice and comment because this action is deemed noncontroversial.

**DATES:** Written comments must be received by November 3, 2005.

**ADDRESSES:** Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier by following the detailed instructions provided under the "Public Participation" heading in the Supplemental Information section of