Title 30—Mineral Resources

CHAPTER I—MINING ENFORCEMENT AND SAFETY ADMINISTRATION, DEPARTMENT OF THE INTERIOR

SUBCHAPTER O—COAL MINE HEALTH AND SAFETY

PART 71—SURFACE WORK AREAS OF UNDERGROUND COAL MINES AND SURFACE COAL MINES

Exposure to Asbestos

Pursuant to the authority vested in the Secretary of the Interior under section 101 of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 811), to promulgate mandatory health standards transmitted to him by the Secretary of Health, Education, and Welfare, there was published in the FEDERAL REGISTER for November 7, 1972 (37 FR 23645) a proposed standard for occupational exposure to asbestos in surface coal mines and surface work areas of underground coal mines.

Interested persons were afforded a period of 45 days within which to submit written comments, suggestions, or objections to the proposed standard and a number of comments were received by the Bureau of Mines (now the Mining Enforcement and Safety Administration) and transmitted to the Department of Health, Education, and Welfare for consideration. On April 10, 1974, the Acting Deputy Assistant Secretary of the Interior, in accordance with section 101 (f) of the Act, published a notice (39 FR 13003) that objections to the proposed asbestos standard had been filed stating the grounds for such objections with sufficient particularity and that a public hearing had been requested. The Department of Health, Education, and Welfare notice of hearing (39 FR 16913) afforded interested persons an opportunity to be heard at the hearing which was conducted by the National Institute for Occupational Safety and Health at that Department on June 5, 1974.

On the basis of the evidence presented at the hearing and on other information available to the Department of Health, Education, and Welfare concerning the asbestos standard, findings of fact were made public in accordance with section 101(g) of the Act on August 5, 1974 (39 FR 28176) with the result that the only change in the standard as proposed has been the addition of a definition for "asbestos" to clarify that nonfibrous or nonasbestiform minerals are not intended to be within the scope of the standard.

In accordance with section 101(h) of the Act, the amendments to Part 71 as set forth below are effective on March 10, 1976.

Dated: March 4, 1976.

WILLIAM L. FISHER,
Deputy Assistant Secretary of the Interior.

Part 71 is amended as set forth below:

1. In Subpart C, the first sentence of § 71.200(a) is amended to read as follows:

§ 71.200 Inhalation hazards; threshold limit values for gases, dusts, fumes, mists, and vapors.

(a) No operator of an underground coal mine and no operator of a surface coal mine may permit any person working at a surface installation or surface worksite to be exposed to airborne contaminants (other than respirable coal mine dust, respirable dust containing quartz, and asbestos dust) in excess of, on the basis of a time-weighted average, the threshold limit values adopted by the American Conference of Governmental Industrial Hygienists "in "Threshold Limit Values of Airborne Contaminants" (1972) which is hereby incorporated by reference and made a part hereof. * * *

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2. In Subpart C, a new § 71.202 is added to read as follows:

§ 71.202 Asbestos dust standard; measurement.

(a) The 8-hour average airborne concentration of asbestos dust to which miners are exposed shall not exceed two fibers per cubic centimeter of air. Exposure to a concentration greater than two fibers per cubic centimeter of air, but not to exceed 10 fibers per cubic centimeter of air, may be permitted for a total of 1 hour each 8-hour day. As used in this Subpart, the term asbestos means chrysotile, amosite, crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos but does not include nonfibrous or nonasbestiform minerals.

(b) The determination of fiber concentration shall be made by counting all fibers longer than 5 micrometers in length and with a length-to-width ratio of at least 3 to 1 in at least 20 randomly selected fields using phase contrast microscopy at 400–450 magnification.

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Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[FRL 499-6]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Announcement of Removal of Court Suspension of Transportation Control Plan Regulations and Postponement of Final Compliance Date for Stage I Vapor Recovery—Boston, Massachusetts

The Environmental Protection Agency is hereby publishing notice that on February 23, 1976, the United States Court of Appeals for the First Circuit ordered the removal of its earlier suspension of certain transportation control plan regulations for the Metropolitan Boston Intrastate Air Quality Control Region (the "Boston Intrastate Region"). Accordingly, the following regulations are in effect as of the date of publication of this FEDERAL REGISTER notice:

1. 40 CFR 52.1135. Regulation for Parking Freeze;

2. 40 CFR 52.1144. Regulation on Evaporative Emissions from Retail Gasoline Outlets (except for paragraph 52.1144 (d), as discussed below); and

3. 40 CFR 52.1161 Incentives for Reduction in Single-Passenger Commuter Vehicle Use.

Paragraph 52.1144(d), containing the so-called "Stage II Vapor Recovery Regulations" remains suspended by the Court pending the promulgation of final Agency regulations and further order of the court.

The above regulations were originally promulgated by the Agency on November 8, 1973 (38 FR 30960) and the suspension was ordered by the Court on September 27, 1974, in the case of *South Terminal Corporation* v. *EPA* (6 ERC 2025, 504 F. 2d 646) and eight related cases arising out of nine separate petitions for review of the original regulations. The Agency promulgated revised regulations on June 12, 1975 (40 FR 25151) but postponed the effectiveness of the above-mentioned regulations pending removal of the court's suspension.

The result of the February 23, 1976, court order is that all of the Agency's transportation control plan regulations for the Boston Intrastate Region are now in effect with the sole exception of the Stage II vapor recovery regulations.

POSTPONEMENT OF MARCH 1, 1976, DEADLINE FOR INSTALLATION OF STAGE I VAPOR RECOVERY EQUIPMENT

Due to the court suspension there has been substantial uncertainty in the public mind about the status of the Agency's Stage I vapor recovery regulations in the Boston Intrastate Region. Due to this uncertainty a number of sources subject to the Stage I requirements have not yet installed the equipment which was originally required by § 52.1147(a)(5) to be in place by March 1, 1976. In order to allow these sources an opportunity to install the equipment now that the suspension is removed, the Agency has decided to extend the March 1 deadline to June 1, 1976. The Agency anticipates that this additional period of time will lead to substantial compliance by the affected sources and will therefore minimize the need for Agency enforcement action.

The Administrator does not consider today's schedule revision to be a significant change in the June 12, 1975, promulgation. The Stage I requirements were previously subject to public hearing and comments, and the change in the compliance deadline will not prejudice those subject to the requirements. For these reasons and those discussed previously, the Administrator finds that notice and public procedure on the change are unnecessary and would be contrary to the public interest, and that there is good cause for the time extension to be effective immediately. Therefore, this change will become effective immediately upon publication in the FEDERAL REGISTER. This action is being taken pursuant to sections 110(c) and 301 of the Clean Air Act (42 U.S.C. 1857c-5(c) and § 1857(g)).

Dated: March 4, 1976.

RUSSELL E. TRAIN,
Administrator.

PLAINTIFF'S EXHIBIT AL-1289

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