

Comments submitted by the West Virginia Coal Association to the Emergency Rule Governing the Operation of Diesel Equipment in Underground Mines (56-23) filed with the Secretary of State's Office on June 22, 2017 by the WV Office of Miners' Health, Safety & Training, Submitted on July 24, 2017

The West Virginia Coal Association (WVCA) is a trade association representing coal producing companies that mine approximately 95% of the state's surface and underground coal production. WVCA also represents mine equipment and land companies, mine reclamation contractors and mine vendors.

WVCA appreciates the opportunity to comment on the proposed Emergency Rules Governing the Operation of Diesel Powered Equipment in Underground Coal Mines (56-23).

As a general comment, we would recommend the "Rule" proposed by West Virginia Office of Miners' Health, Safety & Training serve as an interim rule until a more complete, comprehensive review and assessment of the requirements contained therein can occur and a subsequent rule proposed for public comment.

The proposed rule was initially promulgated by the WV Diesel Commission in 2004 which was abolished in 2015. The rules have not been updated nor have they undergone a serious review or evaluation.

The proposed changes contained in the emergency rule were mandated by the Legislature through passage of SB 687 which was enacted during the 2017 Regular Legislative session. SB 687 directed WVOMHST to promulgate Emergency Rules to implement several changes which were specified in the legislation.

These include the following provisions that appear to be incorporated into the proposed rule.

(1) to reflect that a mine operator shall be permitted to replace a filter or catalyst of the same make and model without contacting the Office of Miners' Health, Safety and Training;

(2) to reflect that ASE certified diesel mechanics shall make repairs and adjustments to diesel fuel injection systems, engine timing or exhaust emissions control and conditioning systems;

(3) to permit a mine operator to dispose of used intake air filters, exhaust diesel particulate matter filters and engine oil filters in their original containers or other suitable enclosed containers and to remove them from the underground mine to the surface no less than once in a twenty-four hour period;

(4) to require that records of emissions tests, 200-hour maintenance tests and repairs shall be countersigned once each week by the certified mine electrician or mine foreman, that scheduled maintenance and an independent analysis of engine oil occur at two hundred hours of engine operation, and that diagnostic testing of engine operation occur at two hundred hours;

(5) to remove the requirement that a portable carbon monoxide (CO) sampling device be installed into the untreated exhaust gas coupling provided in the operator's cab;

(6) to modify the time and duration for which the CO sampler must be started to measure and record CO levels from every minute for five minutes to every thirty seconds for ninety seconds;

(7) to modify the alternative condition by which equipment fails under 196 C. S. R. §1-21, to omit the reference to the average CO reading for untreated exhaust gas is greater than twice the baseline; and

(8) to remove the requirement for eight hours of annual diesel equipment operator refresher training separate from that required by MSHA regulations.

WVCA observes that most of these legislative changes are beneficial, however, we would recommend a few additional amendments to these provisions.

Concerning # 2 above and 7.5.a of the proposed rule, we question whether mine mechanics who work on diesel units must be "ASE Certified". Diesel mechanics working within the industry have amassed many years of hands on experience, are extremely competent and qualified and should be permitted to work on diesel units within the mine. The ASE Certified requirement is excessive and unnecessary.

Concerning # 6 above and 20.2.l of the proposed rule, we recommend revising every thirty seconds for ninety seconds to every minute for two minutes.

It's important to note, that a more complete assessment of the rule is due while the rule is opened for comment so other technical or operational changes can be incorporated into this rulemaking to ensure the rules are more workable, appropriate and up-to-date.

Importantly, the initial rules were the product of an ill-conceived rule-making process which basically required a unanimous consensus of all commissioners serving on the WV Diesel Equipment Commission at the time. Several Commissioners had reservations about diesels being used in underground applications and wanted to ensure the safety and health protections for working miners. The industry shared this goal but maintains that many of the added protections were unnecessary and excessive and served to severely impede equipment efficiencies and overall benefit.

The Legislature attempted to address several onerous provisions which led to potential to equipment damage and the discard of machine oil and lubricants in relatively good condition but the need for a more thorough review and update remains. We recommend the WV Office of Miners' Health Safety & Training accept this responsibility and opportunity.

For instance, a policy statement was issued by the former diesel commission and enforced by WVOMHST to address a situation where equipment traveling into a track spur on track entries or passing through airlock doors. The policy, which in essence, modifies the application and enforcement actions of certain provisions within the rule, should be incorporated into these rules.

The state rules are silent on the use of diesel compressors which are allowed in other states and under the federal diesel standards. WVOMST should adopt the federal standard for diesel compressors and be guided by federal requirements in other areas where the state rule is silent. Comprehensive National Diesel Standards are enforced by the Mine Safety & Health Administration under the US Department of Labor.

We offer the following recommendations to be considered by WVOMHST for inclusion in the current rulemaking:

Section 10.14

Transportation of fuel should not be excluded to emergency usage only. Transportation of fuel should be allowed so long as the fuel is transported in an approved container. Mobile fuel containers would be filled, delivered to their destination, emptied and promptly returned to the appropriate storage area.

Section 10.3

We recommend the following revision: No more than two safety cans (an increase of one), conspicuously marked, shall be transported on a vehicle at any time.

Section 17.2

In some cases, it is not practical for the person doing the inspection to promptly enter the data in the book. We recommend the following: a person underground is to communicate the required information to a supervisor outside. The supervisor is to enter the aforementioned information into a record book. The person who originally communicated the record is required to countersign the records by the end of the week (Saturday 11:59 pm).

Section 18.1 and 18.2

We recommend the following change: Pre-operational checks will be divided into two (2) types. Type 1 is a check that is required every 8 hours and type 2 is a check that is required every 24 hours. They will be referred to as an 8 hour pre-operational check and a 24 hour pre-operational check respectively. A 24 hour pre-operational check will include all items currently required under 18.1 and 18.2. An 8 hour pre-operational check will include the following items:

- Assure that the equipment is clean and free of accumulations of combustibles
- Check for loose, unsecured materials stored or hauled on equipment
- Check for loose, leaking, or missing filter on exhaust conditioning system
- Check fire suppression system status panel (power light should blink)
- Check guards
- Check lifting jack and bar
- Check fire extinguisher
- Check lights and horn
- Check fuel level
- Check brakes

Section 19.1.e

Engine oil is to be replaced based solely on the results of the required 200 hour oil sample / analysis.

Section 7.1

- a. We recommend a change whereas we are no longer required to monitor nitric oxide (NO). This would match federal regulations. and
- b. Addition of the following revision: The reading known as the “downwind ambient” shall be taken in-line with the equipment operator’s position or in the middle of the entry. In no case shall the reading be taken in-line with the exhaust system.

Section 7.4

Regarding the concentrations of gasses and placing a unit back in service after it has been out of compliance, we recommend that the threshold of seventy five percent (75%) be increased to one hundred percent (100%). This would match federal regulations.

In conclusion, we support the proposed changes in administrative rule 56-23 but would recommend a more comprehensive review and updating of the requirements governing the operation of diesel equipment in underground instate coal mines.



MURRAY AMERICAN ENERGY, INC.

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ST. CLAIRSVILLE, OHIO 43950

July 24, 2017

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Mr. William Tucker, Administrator
West Virginia Office of Miners' Health Safety and Training
7 Players Club Drive, Suite 2
Charleston, West Virginia 25311-1626

Dear Mr. Tucker:

The following are comments submitted by Murray American Energy, Inc. to the Emergency Rule Governing the Operation of Diesel Equipment in Underground Mines (56-23) filed with the Secretary of State's Office on June 22, 2017 by the WV Office of Miners' Health, Safety & Training, Submitted on July 24, 20

Murray American Energy, Inc. ("MAEI") is a Subsidiary Company of Murray Energy Corporation that employs approximately 6,000 Americans and currently operating thirteen active coal mines, consisting of eleven underground longwall mining systems and forty-six continuous mining units in Ohio, Illinois, Kentucky, Utah, and West Virginia.

Murray Energy is positioned to produce about sixty-five million tons of coal per year. Further, Murray Energy holds approximately three billion salable tons of coal in reserves.

This production and reserve base allows Murray Energy to provide electric utility customers with low cost, reliable, and high-quality coal supplies.

MAEI appreciates the opportunity to comment on the proposed Emergency Rules Governing the Operation of Diesel Powered Equipment in Underground Coal Mines (56-23).

As a general comment, we would recommend the "Rule" proposed by West Virginia Office of Miners' Health, Safety & Training (WVOMHST) serve as an interim rule until a more complete, comprehensive review and assessment of the requirements contained therein can occur and a subsequent rule proposed for public comment.

The proposed rule was initially promulgated by the West Virginia Diesel Commission in 2000 which was abolished in 2015, and has never undergone a serious review or evaluation.

The proposed changes contained in the emergency rule were mandated by the Legislature through passage of SB 687 which was enacted during the 2017 Regular Legislative session. SB 687 directed WVOMHST to promulgate Emergency Rules to implement several changes which were specified in the legislation.

These include the following provisions that appear to be incorporated into the proposed rule.

(1) To reflect that a mine operator shall be permitted to replace a filter or catalyst of the same make and model without contacting the Office of Miners' Health, Safety and Training;

(2) To reflect that ASE certified diesel mechanics shall make repairs and adjustments to diesel fuel injection systems, engine timing or exhaust emissions control and conditioning systems.

We recommend this be changed to:

To reflect that ASE certified diesel mechanics or a miner who has received OEM Engine Supplier training shall make repairs and adjustments to diesel fuel injection systems, engine timing or exhaust emissions control and conditioning systems;

(3) To permit a mine operator to dispose of used intake air filters, exhaust diesel particulate matter filters and engine oil filters in their original containers or other suitable enclosed containers and to remove them from the underground mine to the surface no less than once in a twenty-four-hour period;

(4) To require that records of emissions tests, 200-hour maintenance tests and repairs shall be countersigned once each week by the certified mine electrician or mine foreman, that scheduled maintenance and an independent analysis of engine oil occur at two hundred hours of engine operation, and that diagnostic testing of engine operation occur at two hundred hours;

(5) To remove the requirement that a portable carbon monoxide (CO) sampling device be installed into the untreated exhaust gas coupling provided in the operator's cab;

(6) To modify the time and duration for which the CO sampler must be started to measure and record CO levels from every minute for five minutes to every thirty seconds for ninety seconds.

We recommend this be changed to:

To modify the time and duration for which the CO sampler must be started to measure and record CO levels from every minute for five minutes to every minute for two minutes;

(7) To modify the alternative condition by which equipment fails under 196 C. S. R. §1-21, to omit the reference to the average CO reading for untreated exhaust gas is greater than twice the baseline; and

(8) To remove the requirement for eight hours of annual diesel equipment operator refresher training separate from that required by MSHA regulations.

We recommend the additional modifications:

(1) Modification of 10.14: Transportation of fuel should not be excluded to emergency usage only. Transportation of fuel should be allowed so long as the fuel is transported in an approved container. Mobile fuel containers would be filled, delivered to their destination, emptied and promptly returned to the appropriate storage area.

(2) Modification of 10.3: We recommend a change stating the following: No more than two safety cans (an increase of one), conspicuously marked, shall be transported on a vehicle at any time.

(3) Modification of 17.2: In some cases, it is not practical for the person doing the inspection to promptly enter the data in the book. We recommend the following: a person underground is to communicate the required information to a supervisor outside. The supervisor is to enter the information into a record book. The person who originally communicated the record is required to countersign the records by the end of the week (Saturday 11:59 pm).

(4) Modification of 18.1 and 18.2: We recommend the following change: Pre-operational checks will be divided into two (2) types. Type 1 is a check that is required every 8 hours and type 2 is a check that is required every 24 hours. The checks will be referred to as an 8-hour pre-operational check and a 24-hour pre-operational check respectively. A 24-hour pre-operational check will include all items currently required under 18.1 and 18.2. An 8-hour pre-operational check will include the following items:

- Assure that the equipment is clean and free of accumulations of combustibles
- Check for loose, unsecured materials stored or hauled on equipment
- Check for loose, leaking, or missing filter on exhaust conditioning system
- Check fire suppression system status panel (power light should blink)
- Check guards
- Check lifting jack and bar
- Check fire extinguisher
- Check lights and horn
- Check fuel level
- Check brakes

(5) Modification of 19.1.e: Engine oil is to be replaced based solely on the results of the required 200-hour oil sample / analysis.

(6) Modification of 7.1: We recommend a change whereas we are no longer required to monitor nitric oxide (NO). This would match federal regulations

(7) Modification of 7.4: Regarding the concentrations of gasses and placing a unit back in service after it has been out of compliance, we recommend that the threshold of seventy five percent (75%) be increased to one hundred percent (100%). This would match federal regulations.

We recommend the following addition to the proposed regulation:

- The reading known as the "downwind ambient" shall be taken in-line with the equipment operator's position or in the middle of the entry. In no case shall the reading be taken in-line with the exhaust system.
- An employee who is considered a competent mechanic (not a state certified diesel mechanic) shall be permitted to work on underground diesel equipment so long as the work performed does not include work on the diesel engine or emissions. Examples of allowable duties would include, but not limited to: Brake adjustment / changing, servicing of wheeling bearings, maintenance of lighting system, changing batteries, and general non-engine / emission maintenance.
- We are recommending clarification on who is permitted to repair, service, and perform semi-annual fire suppression inspections on diesel equipment fire suppression systems.

MAEI observes that most of the above changes are beneficial, however, it's important to note, that a more complete assessment of the rules in their entirety is due and while the rule is opened for comment, there may be other technical or operational changes that can be incorporated to ensure the rules are more workable, appropriate and up-to-date.

Importantly, the initial rules were the product of an ill-conceived rule-making process which basically required a unanimous consensus of all Commissioners serving on the Commission at the time. Several Commissioners had reservations about diesels being used in underground applications and wanted to ensure the safety and health protections for working miners. The industry shared this goal but maintains that many of the added protections were unnecessary and served to severely impede equipment efficiencies and overall benefit.

The Legislature attempted to address several onerous provisions which led to potential damage to equipment and the discard of machine oil and lubricants in relatively good condition but the need for a more thorough review and update remains. We recommend the West Virginia Office of Miners' Health Safety & Training accept this opportunity and responsibility.

Mr. William Tucker
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For instance, a policy statement was issued by the former diesel commission and enforced by WVOMHST to address a situation where equipment traveling into a track spur on track entries or passing through airlock doors. This policy should be incorporated into the rules.

The state rules are silent on the use of diesel compressors which are allowed in other states and under the federal diesel standards. WVOMST should adopt the federal standard for diesel compressors and be guided by federal requirements in other areas where the state rule is silent. Comprehensive National Diesel Standards are enforced by the Mine Safety & Health Administration under the US Department of Labor.

In conclusion, we support the proposed changes in administrative rule 56-23 but would recommend a more comprehensive review and updating of the requirements governing the operation of diesel equipment in underground instate coal mines.

Sincerely,

MURRAY AMERICAN ENERGY, INC.



E. Patrick Brady
Director of Safety

cc: Robert E. Murray
Robert D. Moore
Ryan M. Murray
Michael O. McKown, Esq.
Michael T. W. Carey
Ernie Martin
Timothy J. Eddy
Christopher Hamilton

RESPONSE TO COMMENTS

TITLE 56 SERIES 23

RULES FOR OPERATING DIESEL EQUIPMENT IN UNDERGROUND MINES IN WEST VIRGINIA

The West Virginia Office of Miners' Health, Safety and Training (OMHST) responds to the comments received as follows:

COMMENTS RECEIVED FROM THE WEST VIRGINIA COAL ASSOCIATION

West Virginia Coal Association's Introduction

The proposed changes contained in the emergency rule were mandated by the Legislature through passage of SB 687 which was enacted during the 2017 Regular Legislative session. SB 687 directed WVOMHST to promulgate Emergency Rules to implement several changes which were specified in the legislation.

These include the following provisions that appear to be incorporated into the proposed rule.

(1) to reflect that a mine operator shall be permitted to replace a filter or catalyst of the same make and model without contacting the Office of Miners' Health, Safety and Training;

(2) to reflect that ASE certified diesel mechanics shall make repairs and adjustments to diesel fuel injection systems, engine timing or exhaust emissions control and conditioning systems;

(3) to permit a mine operator to dispose of used intake air filters, exhaust diesel particulate matter filters and engine oil filters in their original containers or other suitable enclosed containers and to remove them from the underground mine to the surface no less than once in a twenty-four hour period;

(4) to require that records of emissions tests, 200-hour maintenance tests and repairs shall be countersigned once each week by the certified mine electrician or mine foreman, that scheduled

maintenance and an independent analysis of engine oil occur at two hundred hours of engine operation, and that diagnostic testing of engine operation occur at two hundred hours;

(5) to remove the requirement that a portable carbon monoxide (CO) sampling device be installed into the untreated exhaust gas coupling provided in the operator's cab;

(6) to modify the time and duration for which the CO sampler must be started to measure and record CO levels from every minute for five minutes to every thirty seconds for ninety seconds;

(7) to modify the alternative condition by which equipment fails under 196 C. S. R. §1-21, to omit the reference to the average CO reading for untreated exhaust gas is greater than twice the baseline; and

(8) to remove the requirement for eight hours of annual diesel equipment operator refresher training separate from that required by MSHA regulations.

WVCA observes that most of these legislative changes are beneficial, however, we would recommend a few additional amendments to these provisions.

Comment No. 1: Concerning #2 above and 7.5.a of the proposed rule, we question whether mine mechanics who work on diesel units must be "ASE Certified". Diesel mechanics working within the industry have amassed many years of hands on experience, are extremely competent and qualified and should be permitted to work on diesel units within the mine. The ASE Certified requirement is excessive and unnecessary.

Response to Comment No. 1: The Office of Miners' Health, Safety and Training (hereafter "OMHST") rejects this comment. S.B. 687 mandated the Director of the Office of Miners' Health, Safety and Training (hereafter "Director") to revise the Rules for Operating Diesel Equipment in Underground Mines in West Virginia (hereinafter "Diesel Rule") "to reflect that ASE certified diesel mechanics shall make repairs and adjustments to diesel fuel injection systems, engine timing or

exhaust emissions control and conditioning systems.” The Legislature mandated that only ASE certified diesel mechanics make these repairs and adjustments and OMHST will not deviate from the Legislature’s mandate.

Comment No. 2: Concerning #6 above and 20.2.1 of the proposed rule, we recommend revising every thirty seconds for ninety seconds to every minute for two minutes.

Response to Comment No. 2: OMHST rejects this comment. S.B. 687 mandated the Director to revise the Diesel Rule “to modify the time and duration for which the CO sampler must be started to measure and record CO levels from every minute for five minutes to every thirty seconds for ninety seconds.” The Legislature mandated the time to be every thirty seconds for ninety seconds and OMHST will not deviate from the Legislature’s mandate.

Comment No. 3: The Legislature attempted to address several onerous provisions which led to potential to equipment damage and the discard of machine oil and lubricants in relatively good condition but the need for a more thorough review and update remains. We recommend the WV Office of Miners’ Health Safety & Training accept this responsibility and opportunity.

For instance, a policy statement was issued by the former diesel commission and enforced by WVOMHST to address a situation where equipment traveling into a track spur on track entries or passing through airlock doors. The policy, which in essence, modifies the application and enforcement actions of certain provisions within the rule, should be incorporated into these rules.

The state rules are silent on the use of diesel compressors which are allowed in other states and under the federal diesel standards. WVOMST should adopt the federal standard for diesel compressors and be guided by federal requirements in other areas where the state rule is silent. Comprehensive National Diesel Standards are enforced by the Mine Safety & Health Administration under the US Department of Labor.

Response to Comment No. 3: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.

Comment No. 4: Section 10.14 Transportation of fuel should not be excluded to emergency usage only. Transportation of fuel should be allowed so long as the fuel is transported in an approved container. Mobile fuel containers would be filled, delivered to their destination, emptied and promptly returned to the appropriate storage area.

Response to Comment No. 4: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.

Comment No. 5: Section 10.3 We recommend the following revision: No more than two safety cans (an increase of one), conspicuously marked, shall be transported on a vehicle at any time.

Response to Comment No. 5: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.

Comment No. 6: Section 17.2 In some cases, it is not practical for the person doing the inspection to promptly enter the data in the book. We recommend the following: a person underground is to communicate the required information to a supervisor outside. The supervisor is to enter the

aforementioned information into a record book. The person who originally communicated the record is required to countersign the records by the end of the week (Saturday 11:59 pm).

Response to Comment No. 6: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.

Comment No. 7: Section 18.1 and 18.2 We recommend the following change: Pre-operational checks will be divided into two (2) types. Type 1 is a check that is required every 8 hours and type 2 is a check that is required every 24 hours. They will be referred to as an 8 hour pre-operational check and a 24 hour pre-operational check respectively. A 24 hour pre-operational check will include all items currently required under 18.1 and 18.2. An 8 hour pre-operational check will include the following items:

- Assure that the equipment is clean and free of accumulations of combustibles
- Check for loose, unsecured materials stored or hauled on equipment
- Check for loose, leaking, or missing filter on exhaust conditioning system
- Check fire suppression system status panel (power light should blink)
- Check guards
- Check lifting jack and bar
- Check fire extinguisher
- Check lights and horn
- Check fuel level
- Check brakes

Response to Comment No. 7: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.

Comment No. 8: Section 19.1.e Engine oil is to be replaced based solely on the results of the required 200 hour oil sample/analysis.

Response to Comment No. 8: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.

Comment No. 9: Section 7.1

- a. We recommend a change whereas we are no longer required to monitor nitric oxide (NO). This would match federal regulations. and
- b. Addition of the following revision: The reading known as the “downwind ambient” shall be taken in-line with the equipment operator’s position or in the middle of the entry. In no case shall the reading be taken in-line with the exhaust system.

Response to Comment No. 9: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.

Comment No. 10: Section 7.4 Regarding the concentrations of gasses and placing a unit back in service after it has been out of compliance, we recommend that the threshold of seventy five percent (75%) be increased to one hundred percent (100%). This would match federal regulations.

Response to Comment No. 10: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this

review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.

COMMENTS RECEIVED FROM MURRAY AMERICAN ENERGY, INC.

Murray American Energy, Inc.'s Introduction

The proposed changes contained in the emergency rule were mandated by the Legislature through passage of SB 687 which was enacted during the 2017 Regular Legislative session. SB 687 directed WVOMHST to promulgate Emergency Rules to implement several changes which were specified in the legislation.

These include the following provisions that appear to be incorporated into the proposed rule.

(1) To reflect that a mine operator shall be permitted to replace a filter or catalyst of the same make and model without contacting the Office of Miners' Health, Safety and Training;

(2) To reflect that ASE certified diesel mechanics shall make repairs and adjustments to diesel fuel injection systems, engine timing or exhaust emissions control and conditioning systems.

(3) To permit a mine operator to dispose of used intake air filters, exhaust diesel particulate matter filters and engine oil filters in their original containers or other suitable enclosed containers and to remove them from the underground mine to the surface no less than once in a twenty-four hour period;

(4) To require that records of emissions tests, 200-hour maintenance tests and repairs shall be countersigned once each week by the certified mine electrician or mine foreman, that scheduled maintenance and an independent analysis of engine oil occur at two hundred hours of engine operation, and that diagnostic testing of engine operation occur at two hundred hours;

(5) To remove the requirement that a portable carbon monoxide (CO) sampling device be installed into the untreated exhaust gas coupling provided in the operator's cab;

(6) To modify the time and duration for which the CO sampler must be started to measure and record CO levels from every minute for five minutes to every thirty seconds for ninety seconds.

(7) To modify the alternative condition by which equipment fails under 196 C. S. R. §1-21, to omit the reference to the average CO reading for untreated exhaust gas is greater than twice the baseline; and

(8) To remove the requirement for eight hours of annual diesel equipment operator refresher training separate from that required by MSHA regulations.

Comment No. 1: Murray American Energy, Inc. (hereafter "MAEI"), recommends that Number 2, above, be changed to reflect that ASE certified diesel mechanics *or a miner who has received OEM Engine Supplier training* shall make repairs and adjustments to diesel fuel injection systems, engine timing or exhaust emissions control and conditioning systems;

Response to Comment No. 1: The Office of Miners' Health, Safety and Training (hereafter "OMHST") rejects this comment. S.B. 687 mandated the Director of the Office of Miners' Health, Safety and Training (hereafter "Director") to revise the Rules for Operating Diesel Equipment in Underground Mines in West Virginia (hereinafter "Diesel Rule") "to reflect that ASE certified diesel mechanics shall make repairs and adjustments to diesel fuel injection systems, engine timing or exhaust emissions control and conditioning systems." The Legislature mandated that only ASE certified diesel mechanics make these repairs and adjustments and OMHST will not deviate from the Legislature's mandate.

Comment No. 2: MAEI recommends that Number 6, above, be changed to modify the time and duration for which the CO sampler must be started to measure and record CO levels from every minute for five minutes *to every minute for two minutes;*

Response to Comment No. 2: OMHST rejects this comment. S.B. 687 mandated the Director to revise the Diesel Rule “to modify the time and duration for which the CO sampler must be started to measure and record CO levels from every minute for five minutes to every thirty seconds for ninety seconds.” The Legislature mandated the time to be every thirty seconds for ninety seconds and OMHST will not deviate from the Legislature’s mandate.

Comment No. 3: Modification of 10.14: Transportation of fuel should not be excluded to emergency usage only. Transportation of fuel should be allowed so long as the fuel is transported in an approved container. Mobile fuel containers would be filled, delivered to their destination, emptied and promptly returned to the appropriate storage area.

Response to Comment No. 3: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.

Comment No. 4: Modification of 10.3: We recommend a change stating the following: No more than two safety cans (an increase of one), conspicuously marked, shall be transported on a vehicle at any time.

Response to Comment No. 4: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this

review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.

Comment No. 5: Modification of 17.2: In some cases, it is not practical for the person doing the inspection to promptly enter the data in the book. We recommend the following: a person underground is to communicate the required information to a supervisor outside. The supervisor is to enter the information into a record book. The person who originally communicated the record is required to countersign the records by the end of the week (Saturday 11:59 pm).

Response to Comment No. 5: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.

Comment No. 6: Modification of 18.1 and 18.2: We recommend the following change: Pre-operational checks will be divided into two (2) types. Type 1 is a check that is required every 8 hours and type 2 is a check that is required every 24 hours. The checks will be referred to as an 8-hour pre-operational check and a 24-hour pre-operational check respectively. A 24-hour pre-operational check will include all items currently required under 18.1 and 18.2. An 8-hour pre-operational check will include the following items:

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- Check fire extinguisher
- Check lights and horn
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Response to Comment No. 6: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.

Comment No. 7: Modification of 19.1.e: Engine oil is to be replaced based solely on the results of the required 200-hour oil sample/analysis.

Response to Comment No. 7: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.

Comment No. 8: Modification of 7.1: We recommend a change whereas we are no longer required to monitor nitric oxide (NO). This would match federal regulations.

Response to Comment No. 8: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.

Comment No. 9: Modification of 7.4: Regarding the concentrations of gasses and placing a unit back in service after it has been out of compliance, we recommend that the threshold of seventy five percent (75%) be increased to one hundred percent (100%). This would match federal regulations.

Response to Comment No. 9: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this

review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.

Comment No. 10: We recommend the following addition to the proposed regulation: The reading known as the “downwind ambient” shall be taken in-line with the equipment operator’s position or in the middle of the entry. In no case shall the reading be taken in-line with the exhaust system.

Response to Comment No. 10: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.

Comment No. 11: We recommend the following addition to the proposed regulation: An employee who is considered a competent mechanic (not a state certified diesel mechanic) shall be permitted to work on underground diesel equipment so long as the work performed does not include work on the diesel engine or emissions. Examples of allowable duties would include, but not limited to: Brake adjustment / changing, servicing of wheeling bearings, maintenance of lighting system, changing batteries, and general non-engine / emission maintenance.

Response to Comment No. 11: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.

Comment No. 12: We are recommending clarification on who is permitted to repair, service, and perform semi-annual fire suppression inspections on diesel equipment fire suppression systems.

Response to Comment No. 12: OMHST rejects this comment. Comment No. 12 is not a comment but rather is a request for an interpretation of law. OMHST's Response to Comments is not the appropriate forum for an interpretation of law.

Comment No. 13: For instance, a policy statement was issued by the former diesel commission and enforced by WVOMHST to address a situation where equipment traveling into a track spur on tract entries or passing through airlock doors. This policy should be incorporated into the rules.

Response to Comment No. 13: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.

Comment No. 14: The state rules are silent on the use of diesel compressors which are allowed in other states and under the federal diesel standards. WVOMST should adopt the federal standard for diesel compressors and be guided by federal requirements in other areas where the state rule is silent. Comprehensive National Diesel Standards are enforced by the Mine Safety & Health Administration under the US Department of Labor.

Response to Comment No. 14: At the present time, OMHST rejects this comment. OMHST would gladly accept the responsibility to thoroughly review and update the Diesel Rule. However, this review and update must include the input and agreement of not only OMHST, but also the Board of Coal Mine Health and Safety. Additionally, all stakeholders should have input.