

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219-AB29

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

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

**ACTION:** Proposed rule; notice of public hearings; close of comment period; request for data.

**SUMMARY:** This proposed rule would: Revise the existing diesel particulate matter (DPM) interim concentration limit measured by total carbon (TC) to a comparable permissible exposure limit (PEL) measured by elemental carbon (EC) which renders a more accurate DPM exposure measurement; increase flexibility of compliance by requiring MSHA's longstanding hierarchy of controls for its other exposure-based health standards at metal and nonmetal mines, but prohibit rotation of miners for compliance; allow MSHA to consider economic as well as technological feasibility in determining if operators qualify for an extension of time in which to meet the DPM limits; and simplify requirements for a DPM control plan. The proposed rule would also make conforming changes to existing provisions concerning compliance determinations, environmental monitoring and recordkeeping.

The existing final rule pertaining to "Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners," was published in the **Federal Register** on January 19, 2001 (66 FR 5706, RIN 1219-AB11) and amended on February 27, 2002 (67 FR 9180). This rulemaking is part of a settlement agreement reached in response to a legal challenge to the January 19, 2001 diesel particulate matter (DPM) standard.

Specifically in this proposal, MSHA intends to revise existing § 57.5060(a), limit on concentration of DPM; including designating elemental carbon as an appropriate surrogate for measuring the interim DPM limit; § 57.5060(c), addressing application and approval requirements for an extension of time in which to reduce the concentration of DPM; § 57.5060(d),

addressing certain exceptions to the concentration limits; § 57.5060(e), prohibiting use of personal protective equipment to comply with the concentration limits; § 57.5060(f) prohibiting use of administrative controls to comply with the concentration limits, and § 57.5062, addressing the diesel particulate control plan. Also, MSHA intends to make conforming changes in this rulemaking to existing § 57.5061, addressing compliance determinations; § 57.5071, addressing exposure monitoring; and § 57.5075, addressing recordkeeping requirements.

MSHA has incorporated into the record of this rulemaking the existing rulemaking record, including the risk assessment to the January 19, 2001 standard. Commenters are encouraged to submit additional evidence of new scientific data related to the health risk to underground metal and nonmetal miners from exposure to DPM.

MSHA encourages mine operators to submit information in response to these provisions, including their current experiences with controlling miners' exposures to DPM.

In addition, under the terms of the settlement agreement, MSHA agreed to propose to change the existing DPM surrogate from total carbon to elemental carbon for both the interim DPM limit currently in effect and the final DPM limit that is applicable after January 19, 2006. In the Agency's Advance Notice of Proposed Rulemaking published on September 25, 2002 (67 FR 60199), MSHA notified the mining community that this rulemaking would revise both the interim concentration limit of 400 micrograms per cubic meter of air and the final concentration limit of 160 micrograms per cubic meter of air under § 57.5060 (a) and (b) of the existing standard. Some commenters to the ANPRM recommended that MSHA propose separate rulemakings for revising the interim and final DPM limits to give MSHA an opportunity to gather further information to establish a final DPM limit. The Agency agrees, and solicits information that would lead to an appropriate final DPM standard. The Agency will propose a separate rulemaking to amend the existing final concentration limit in the near future. With regard to the final DPM limit of 160 micrograms, MSHA requests comments on an appropriate final DPM limit.

**DATES:** All comments on the proposed rule, including post-hearing comments, must be received by October 14, 2003. The public hearing dates and locations are listed in the Public Hearings section under **SUPPLEMENTARY INFORMATION**. Individuals or organizations wishing to make oral presentations for the record should submit a request at least 5 days prior to the hearing dates.

**ADDRESSES:** Comments must be clearly identified as such and may be transmitted electronically to [comments@msha.gov](mailto:comments@msha.gov), 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 2313, Arlington, Virginia 22209-3939. We intend to post comments on our website shortly after they are received.

**Information Collection Requirements:** Comments concerning information collection requirements must be clearly identified as such and sent to both MSHA and the Office of Management and Budget (OMB) as follows:

- (1) Send information collection comments to MSHA at the addresses above.
- (2) Send comments to OMB by regular mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for MSHA.

**FOR FURTHER INFORMATION CONTACT:** Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209-3939, [Nichols-Marvin@msha.gov](mailto:Nichols-Marvin@msha.gov), (202) 693-9440 (telephone), or (202) 693-9441 (facsimile).

You can access this proposed rule and the Preliminary Regulatory Economic Analysis (PREA) at <http://www.msha.gov>. You can obtain these documents in alternative formats, such as large print and electronic files, by contacting MSHA.

SUPPLEMENTARY INFORMATION:

I. Public Hearings

The public hearings will begin at 9 a.m. and will end after the last scheduled speaker testifies. The hearings will be held on the following dates at the locations indicated:

Date	Location	Telephone
September 16, 2003 .....	University Park Marriott, 480 Wakara Way, Salt Lake City, UT 84108.	(801) 581-1000