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#### List of Subjects in 30 CFR Part 57

Diesel particulate matter, Metals, Mine safety and health, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, MSHA proposes to amend Chapter I of Title 30 as follows:

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

**Authority:** 30 U.S.C. 811 and 813.

2. Section 57.5060 is amended by revising paragraphs (a), (c)(1), (c)(2), (c)(3), (c)(4), (d), and (e) and removing paragraphs (c)(5) and (f) to read as follows:

#### § 57.5060 Limit on concentration of diesel particulate matter.

(a) A miner's personal exposure to diesel particulate matter (DPM) in an underground mine shall not exceed an average eight-hour equivalent full shift airborne concentration of 308 micrograms of elemental carbon per cubic meter of air (308<sub>EC</sub> µg/m<sup>3</sup>). [This interim permissible exposure limit (PEL) shall remain in effect until the final DPM exposure limit becomes effective.]

\* \* \* \* \*

(c)(1) If a mine requires additional time to come into compliance with the applicable limits established in paragraphs (a) and (b) of this section due to technological or economic constraints, the operator of the mine may file an application with the district manager for a special extension.

(2) The mine operator must certify on the application that the operator has posted one copy of the application at the mine site for at least 30 days prior to the date of application, and has provided another copy to the authorized representative of miners.

(3) No approval of a special extension shall exceed a period of one year from the date of approval. Mine operators may file for additional special extensions provided each extension does not exceed a period of one year. An application must include the following information:

(i) A statement that diesel-powered equipment was used in the mine prior to October 29, 1998;

(ii) Documentation supporting that controls are technologically or economically infeasible at this time to reduce the miner's exposure to the DPM limit.

(iii) The most recent DPM monitoring results.

(iv) The actions the operator will take during the extension to minimize exposure of miners to DPM.

(4) A mine operator must comply with the terms of any approved application for a special extension, post a copy of the approved application for a special extension at the mine site for the duration of the special extension period, and provide a copy of the approved application to the authorized representative of miners.

(d) The mine operator shall install, use, and maintain feasible engineering

and administrative controls to reduce a miner's exposure to or below the DPM limit established in this section. When controls do not reduce a miner's DPM exposure to the limit, controls are infeasible, or controls do not produce significant reductions in DPM exposures, controls shall be used to reduce the miner's exposure to as low a level as feasible and shall be supplemented with respiratory protection in accordance with § 57.5005(a), (b), and paragraphs (d)(1) and (d)(2) of this section.

(1) Air purifying respirators shall be equipped with the following:

(i) Filters certified by NIOSH under 30 CFR part 11 (appearing in the July 1, 1994 edition of 30 CFR, parts 1 to 199) as a high efficiency particulate air (HEPA) filter;

(ii) Filters certified by NIOSH under 42 CFR part 84 as 99.97% efficient; or

(iii) Filters certified by NIOSH for diesel particulate matter.

(2) Nonpowered, negative-pressure, air purifying, particulate-filter respirators shall use an R- or P-series filter or any filter certified by NIOSH for diesel particulate matter. An R-series filter shall not be used for longer than one work shift.

(e) Rotation of miners shall not be considered an acceptable administrative control used for compliance with this section.

3. Section 57.5061 is revised to read as follows:

#### § 57.5061 Compliance determinations.

(a) MSHA shall use a single sample collected and analyzed by the Secretary in accordance with the requirements of this section as an adequate basis for a determination of noncompliance with the DPM limit.

(b) The Secretary will collect samples of diesel particulate matter by using a respirable dust sampler equipped with a submicrometer impactor and analyze the samples for the amount of elemental carbon using the method described in NIOSH Analytical Method 5040, except that the Secretary also may use any methods of collection and analysis subsequently determined by NIOSH to provide equal or improved accuracy for the measurement of diesel particulate matter.

(c) The Secretary will use full-shift personal sampling for compliance determinations.

4. Section 57.5062 is revised to read as follows:

#### § 57.5062 Diesel particulate matter control plan.

(a) When it will take the operator more than 90 calendar days from the