

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Part 57**

**RIN 1219-AB11**

**Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners**

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

**ACTION:** Final rule; delay of applicability date.

**SUMMARY:** At the initiation of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) and the National Stone, Sand and Gravel Association (NSSGA), and with the concurrence of other interested parties, we (the Mine Safety and Health Administration) are delaying the applicability date of 30 CFR 57.5060(b) addressing “Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners (DPM)” published in the **Federal Register** on January 19, 2001 (66 FR 5706) from January 20, 2006 to May 20, 2006, to provide sufficient time to complete the September 7, 2005 proposal to amend the 2001 DPM rule. Section 57.5060(b) is also being revised to reflect this new applicability date.

By a separate document published in today’s **Federal Register** we are extending the period for comments on the proposed rule published on September 7, 2005 (70 FR 53280) and rescheduling the public hearings on the proposed rule from September 26, 28, and 30, 2005 to January 5, 9, 11, and 13, 2006. The comment period on that rulemaking will close on January 27, 2006. We find these actions necessary to provide sufficient time and an orderly process for affected parties to comment on that proposed rule.

**DATES:** This final rule is effective September 19, 2005. The applicability date for 30 CFR 57.5060(b) has been delayed from January 20, 2006 to May 20, 2006.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In January 2001, we published a final rule that, among other things, established interim and final limits for diesel particulate matter exposure of underground metal and nonmetal miners (66 FR 5706). Industry groups challenged the rule in the United States Court of Appeals for the District of

Columbia Circuit, and the USW’s predecessor union intervened to defend it. The Court of Appeals has held the challenges in abeyance while the parties attempted to resolve their differences through settlement. In a July 2002 settlement, we agreed to propose revisions to the interim and final DPM limits (67 FR 47296, 47297).

In June 2005, we published a final rule that, among other things, revises the interim DPM limit (70 FR 32868). The USW and six industry petitioners challenged that rule in the United States Court of Appeals for the District of Columbia Circuit. The Court has consolidated the USW’s challenge with three of the industry challenges. We asked the Court to consolidate all challenges to the June 2005 rule. The MARG Diesel Litigation Coalition has asked the Court to consolidate the challenges to the June 2005 rule with challenges to the January 2001 rule that established the final DPM limit in 30 CFR 57.5060(b).

On September 7, 2005, we proposed a rule to phase in the final DPM limit because we are concerned that there may be feasibility issues for some mines to meet that limit by January 20, 2006. Accordingly, we proposed a five-year phase-in period and noted our intent to initiate a separate rulemaking to convert the final DPM limit from a total carbon limit to an elemental carbon limit. We set hearing dates and a deadline for receiving comments on the September 7, 2005 proposed rule with the expectation that we would complete the rulemaking to phase in the final DPM limit before January 20, 2006.

After publication of the September 7, 2005 proposed rule, we received a request from the USW for more time to comment on the proposed rule. The USW explained that Hurricane Katrina had placed demands on their resources that will prevent them from participating effectively in the rulemaking under the current schedule for hearings and comments. We recognize the USW’s need to devote resources to respond to the aftermath of Hurricane Katrina and the impact that would have on their participation under the current timetable. Accordingly, in a separate document in today’s **Federal Register** we are extending the deadline for receiving comments until January 27, 2006, and rescheduling the public hearings to January 5, 9, 11, and 13, 2006. We also received a request from the NSSGA for an extension of the comment period.

These extensions, however, will prevent us from reviewing the comments, drafting a final rule, and

obtaining necessary clearances before January 20, 2006. Accordingly, and due to the requests from the USW’s, and the NSSGA, we have determined that it is necessary to delay the effective date of 30 CFR 57.5060(b) from January 20, 2006 to May 20, 2006. We find that it is in the public interest to provide this delay in light of our concerns over the feasibility issues and industry compliance with 30 CFR 57.5060(b) and the request of the USW and the NSSGA, and with the concurrence of other interested parties for the extension of the comment period of the September 7, 2005 proposed rule. These considerations lead us to conclude that, to the extent notice and comment is required, providing for such notice and comment before issuing this delay would be impracticable and contrary to the public interest. Accordingly, we find good cause pursuant to 5 U.S.C. 553(b)(3)(B), to delay the effective date of 30 CFR 57.5060(b) without notice and comment. Nothing in this delay notice alters the proposed phase-in implementation dates in our September 7, 2005 proposed rule.

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

Diesel particulate matter, Metal and nonmetal, Mine safety and health, Underground miners.

Dated: September 15, 2005.

**David G. Dye,**

*Deputy Assistant Secretary of Labor for Mine Safety and Health.*

■ For reasons set forth in the preamble, we amend Chapter 1 of Title 30 as follows:

■ 1. The authority citation for part 57 reads as follows:

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

**§ 57.5060 [Amended]**

■ 2. Section 57.5060 is amended by revising paragraph (b) to read as follows:

\* \* \* \* \*

(b) After May 19, 2006, any mine operator covered by this part must limit the concentration of diesel particulate matter to which miners are exposed in underground areas of a mine by restricting the average eight-hour equivalent full shift airborne concentration of total carbon, where miners normally work or travel, to 160 micrograms per cubic meter of air (160TC µg/m<sup>3</sup>).

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