



# News Release

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## **U.S. Department of Labor's MSHA Praises Court Ruling on Diesel Particulate Matter Rule**

**ARLINGTON, Va.** – The recent court decision denying a petition for review of the Mine Safety and Health Administration's (MSHA's) rule on diesel particulate matter (DPM) is a major victory for the nation's metal and nonmetal underground miners, the agency noted today. On Feb. 9, the U.S. Court of Appeals for the District of Columbia Circuit determined that MSHA adequately demonstrated that DPM presents a significant risk to the health and safety of miners, and provided more than enough evidence that mine operators can feasibly comply with the new standards.

"We applaud the U.S. Court of Appeals' decision rejecting these challenges by the mining industry," said Richard E. Stickler, assistant secretary of labor for mine safety and health. "Exposure to diesel particulate matter is a significant public health concern, and the court determined that all aspects of MSHA's standard were supported. This decision ensures that we can move forward with enhanced protection for miners who work with diesel equipment underground."

The DPM rule, first promulgated in 2001, set an interim limit of 400 micrograms per cubic meter of air that was to become effective in July 2002 and a final limit of 160 micrograms per cubic meter of air to become effective in January 2006. The rule was challenged by mining companies and trade associations, and MSHA further examined the rule and agreed to undertake further rulemaking. In 2005 MSHA changed the surrogate metric used to measure DPM from "total carbon" to "elemental carbon" for the interim limit. Secondly, the rule was amended to allow the use of respirators when engineering controls could not feasibly meet the DPM limits.

The 2006 rule retained the final limit set in 2001, and gave the mining industry until May 20, 2008 to comply with that limit. Additionally, the 2006 rule provided medical evaluations for miners required to wear respirators and transfer rights to other existing jobs for miners unable to wear a respirator. MSHA also stated that it would change the surrogate metric from total carbon to elemental carbon for the final limit.

Several mining industry members and trade associations brought suit against MSHA, but the court of appeals found no procedural flaws in the rulemaking and determined that MSHA had adequate support for its conclusion that DPM is a significant health risk to miners. The court upheld MSHA's use of both "total carbon" and "elemental carbon" as surrogates to measure DPM, and concluded that industry could feasibly meet the rules' limits based on MSHA's assessment of technologies for controlling DPM, MSHA's enforcement experience, and the rules' flexibility in allowing individual operators to seek extensions of time to meet the limits. The medical evaluation and transfer provisions also were deemed appropriate by the court.

Current limits are now in place and are being enforced. Work is underway by MSHA to convert the surrogate for the final limit from total carbon to elemental carbon. ###

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