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**Sent:** Thursday, March 10, 2011 10:46 AM  
**To:** zzMSHA-Standards - Comments to Fed Reg Group  
**Cc:** Shackelford, Jim J.; Meece, David B.; Zik, Bob J.; Taylor, Clark  
**Subject:** RIN 1219-AB64 Comments on Proposed Rule for Respirable Dust

2011 MAR 10 A 11:12

I would like to respectfully submit the attached comments.

Thnak you,  
John D. Blankenship

AB64-COMM-17

**Department of Labor, Mine Safety and Health Administration**  
**30 CFR Parts 70, 71, 72, 75, and 90**  
**RIN 1219-AB64**  
**Lowering Miner's Exposure to Respirable Coal Mine Dust, Including Continuous**  
**Personal Dust Monitors**

TO: Patricia W. Silvey  
Director, Office of Standards,  
Regulations, and Variances  
MSHA  
1100 Wilson Blvd  
Room 2350  
Arlington, Virginia 22209-3939

March 9, 2011

**RE: RIN 1219-AB64 Lowering Miner's Exposure to Respirable Coal Mine Dust,  
Including Continuous Personal Dust Monitors**

I would like to submit the following comments on the proposed changes to 30 CFR parts 70, 71, 72, 75, and 90 as proposed in the rulemaking contained within RIN 1219-AB64.

Some general comments concerning the regulation have to do with the availability of the technology to provide continuous monitoring of the atmosphere by the Coal Mine Dust Personal Sampler Unit (CMDPSU). To my knowledge there are no other manufacturers with an approved CMDPSU unit for industry to acquire. This would seem to lead into a potential supply problem with a short conversion time frame (12 months) from current technology.

This would place operators within the industry in a position of not being able to acquire sufficient numbers of CMDPSU units to meet the needs of the mines they operate. Should the proposed standard be adopted a minimum of five year conversion to the new technology should be accommodated. Industry has been hampered over past changes with the shortages of required equipment or total lack of approved equipment as has been evidenced by recent issues with refuge chambers and communications/tracking equipment. MSHA must ensure there is sufficient numbers of suppliers with adequate

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supplies of equipment to meet any newly imposed requirements on industry prior to imposing those requirements.

In addition to the issues stated in the first paragraph the cost that MSHA has applied to this proposal is almost certainly undervalued by many magnitudes. I am projecting that my company alone will spend in excess of one million dollars to comply after the first year. My company currently operates four preparation plant facilities; eleven surface mine sites, and three large underground mines with ten underground miner sections. I am estimating that I would need to maintain a fleet of fifty personal samplers at a cost of \$12,000 each to acquire (\$600,000), require two additional personnel at \$118,000 (base salary + 65% benefit package) (\$236,000), estimated \$50,000 in repair costs and replacement parts for the personal samplers, and \$25,000 in additional administrative costs (clerical, filing of reports, and miscellaneous office expenses. This would total to an economic impact of \$911,000 for my company which mines approximately five million tons of coal per year

Secondly, concerning the quartz standard in current regulations as well as the proposed changes in the standard there should be an adjustment for the density of the materials being weighed or measured. Quartz is considerably more dense than coal particles and the simplistic method used by MSHA to determine percentage of quartz as a part of a sample of respirable coal dust does not seem logical. For example a single particle of quartz and a single particle of coal of exactly the same dimensions the quartz will have a weight in excess of three times the coal. That same sample of two total particles

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comprising the sample measured by volume would have the quartz percentage greater than fifty percent.

If quartz is to be measured in the workplace standards should be set and a dedicated periodic quartz sampling procedure should be promulgated. Dedicated equipment and methods for sampling quartz should be designated and a sampling protocol set in place based upon the amount of material in the atmosphere rather than the amount as a percentage of weight in a sample of respirable particles. In lieu of a reasonable quartz sampling protocol the percentage of quartz should be based upon the quartz as a percentage of the legal standard not as a percentage of the sample total weight. If this rule does indeed only determine a change in permissible after the 100 microgram limit has been met then any amount of quartz should be measured in relation to the set standard of either  $1.0\text{mg}/\text{m}^3$  or  $2.0\text{mg}/\text{m}^3$  whatever the standard is rather than taking the 100+microgram weight as a percentage of a  $0.50\text{mg}/\text{m}^3$  actual sample weight.

In proposed 70.201 the requirement that all sampling must eventually be conducted using only CMDPSUs should be changed to permit the use of existing technology and new technology or new equipment to meet the proposed standard(s) to be issued by the agency now and perhaps in the future. The limiting of types of equipment can be problematic for industry as has been evidenced by several rules changes in past history as in remote gas determinations with ventilation changes in the 1990's, SCSR technologies, and more recently the changes brought about by the Miner Act of 2006 changes for post accident requirements.

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The proposed regulatory changes also provide an opportunity to improve current sampling protocols to fully determine the actual quality of the miner's environment. Heretofore the sampling protocol for Designated Occupations (DO) and MMUs have required the occupation to be sampled rather than the miner. Any new standards should address this issue by sampling the miner individually by requiring the miner that is wearing the sampling device to wear the device the entire shift they work. This would mean that should a miner begin the shift working as a miner operator wearing the sampling device. Should that miner be required to go operate a scoop that miner should continue to wear the dust sampling unit to the new work location the miner has been assigned to work. Should that miner then be required to move again in order to operate a roof bolter that same sampling device would then also be worn by the miner while operating the roof bolter. This protocol would give an accurate measurement of the *"miner's exposure"* during the miner's working shift.

Most underground mines have established DAs on roof bolters and various other occupations throughout the working sections. The same system as described in the above paragraph should also apply to those personnel should they shift to another occupation within the section. This would ensure a true sample of what the actual exposure of the miner was over the work day rather than what the potential exposure was at a single work station which is accomplished when different operators rotate onto a piece of equipment but the sampling equipment is only sampling the work location rather than the miner's true atmospheric exposure.

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The WPAE and WPA proposal provides potential for many problems. Calculating WPAE on a simple 40hr week has the potential to give unrealistic results when samples have been collected across shifts which are greater than 8 hours. A single aberrant reading may disqualify a worker for a shift or multiple shifts of work. If an operator is even close to going out during a shift the operator will be forced to withdraw from that shift rather than risk overexposure on the weekly calculation. If any changes are made I would recommend that a permissible exposure level of an amount certain be maintained at all times while a miner is working.

If the WPAE standard is imposed as described a miner exposed to  $1.0\text{mg}/\text{m}^3$  would be required to leave the mine after 8 hours of exposure at the proposed maximum level. This will place a heavy burden on miners as well as mine operators to find competent personnel to staff mines which is increasingly hard to do. I also believe this standard can not be fully explained by MSHA based upon the fact that so much of the data has been shielded from industry's eyes. The new standard as proposed in my opinion is unachievable on a day-to-day basis. I see this regulation generating more in penalties than benefiting the miners.

The posting of end of shift sampling within 1 hr after the end of shift is too burdensome. Under current regulation operators are required to post after receiving the data. The same criteria should continue to be utilized relating to posting of dust sample information.

Keeping the sampler on DO's or DA's seems contrary to the goal of determining and reducing individual exposure. If the goal is to protect the individual, then the sampler

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should stay with the individual during his entire shift rather than be handed off to the person who may relieve out that person. This severely limits the operator's ability to rotate individuals to reduce their exposure, such as is allowed under noise regulations. If the goal is to protect the individual this is very contrary to the individual's best interest. If the goal is to determine dust at a certain area, then remote equipment should be used to provide data only and not for compliance. There are several areas of the new proposal that seem to get away from individual exposure and measuring the individual.

The quartz sampling under the reduced standard has the opportunity to become a nightmare. I would think that a better way to address this would be, that if a quartz weight gain in excess of 5% is seen in an dust sample that that individual, not DO or DWP, would be sampled specifically for quartz concentration to ensure he was not overexposed. A proper quartz sampling protocol would be helpful as the goal is to reduce exposure.

In one paragraph MSHA is adamant that training is the responsibility of the operator and in another they are adamant that they, not the operator, must train dust samplers and M&C personnel to ensure that individuals receive adequate training. I wonder which one is true?

**70.201**

70.201(b) requiring current Designated Areas (DA) to be re-designated as Other Designated Occupations (ODO) should be dropped from the proposed regulation. By

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definition these two acronyms are identical in meaning. To change would cause confusion at the least with no gain in safety achieved by the change.

This change could/would also cause a considerable increase in work load and cost. Currently a location or occupation is designated as a DA when evidence has indicated a dust exposure of  $1.0\text{mg}/\text{m}^3$  or greater. When this occurs the DA is established and a sampling regimen ensues. This may be a single roof bolter or other “*single*” piece of equipment or location within the MMU area. The change requested within the proposed 70.201 from DA to ODO would mean that all miners in the “*Other Designated Occupation*” would be sampled. In this case rather than sampling a single roof bolter that has been determined to be exposed to greater than  $1.0\text{mg}/\text{m}^3$  all roof bolters on the section would be required to be sampled. If this is not what the new proposed standard is providing for then there is clearly no need for the change. This additional sampling burden and cost can be very detrimental to operators, especially small operators, who are struggling under the enormous work and cost burdens placed upon them by regulatory actions taken within the last five years.

70.201(h) should include language that does not prohibit operators from making changes to this schedule at less than 48 hours if there are legitimate reasons for changes to the sampling schedules provided notice is given to the District Manager prior to the changes either by phone or other means.

The requirement to train persons wearing the CMDPSU is appropriate in paragraph (j)(1-5). Personnel have a right to know the basic features of the equipment and the capabilities



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of the equipment as well as what the information means that is being collected and why that information is important.

However it is not necessary to train a miner who simply is going to wear the unit for sampling purposes on how to set up the machine for operation or how to start and stop the machine. The training of non-certified individuals in this type of training can lead to non-certified personnel performing functions that require certification to perform, and provides an opportunity for sabotage of the equipment and the sampling cycle. To do this extensive training every 12 months for a miner who is simply going to be required to wear a monitor does not seem to achieve any safety benefit for the miner especially when the certified samplers are required to be re-tested and re-certified every three years to maintain sampling certification under 70.202(a-d)

**70.202 and 70.203**

The requirements of 70.202 and 70.203 pertaining to maintenance of certification for persons certified in sampling and maintenance/calibration of sampling equipment to be re-certified every three years seems particularly onerous. A five year time frame would seem appropriate.

This commenter does not object to the requirements to re-certify periodically but to the means of re-certifying identified within the proposed regulation. The requirement to re-take a test given for initial certification seems disingenuous. The commenter would recommend that MSHA provide for the re-certification be obtained through the

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acquisition of CEU's as many other certifications require. MSHA and other industrial hygiene training sources provide opportunities for persons requiring certification to attend and gain CEU credits to maintain certification. This would provide unique opportunities for fresh information and ideas and a wide range of areas in dust control to become available to the persons seeking certification renewals and would provide a forum for presenting cutting edge technology to those persons sampling the atmospheres.

**70.206**

70.206(b)(8) describes actions that should or are already is a part of the mine's approved ventilation and dust control plan. This proposed provision of 70.206 should be removed from this proposed regulation.

**70.207**

This section must contain language addressing malfunctions of equipment, suspected tampering, environmental conditions of an unexpected nature (e.g. rock intrusions etc.) which could affect the respirable dust levels. Mines should not be required to commit to long-term ventilation plan approvals for short-term issues faced due to environmental conditions encountered when these condition are not representative of the normal mining conditions used in the development of ventilation plans. Short-term changes to ventilation plans to accommodate environmental conditions changes may be instituted and the operations permitted to return to the normal ventilation plan requirements when the out-of-normal environmental conditions have improved.

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**70.208**

The requirement to post the excessive dust conditions in records required under 75.363 is redundant and should be removed from this section of the proposed standard. Posting of records of dust sampling is required currently under this proposed standard within the scope of section 71.209.

**70.209**

The requirement to sample DA positions is unreasonable since if the accepted standard becomes using ODOs for occupations rather than DAs the sheer volume of additional sampling data to be collected, reported, posted, and sent is overly burdensome when existing technology may be fully capable of reporting air quality at fixed locations for DAs. DA sampling should not be required to use CMDPSU sampling equipment but use current gravimetric sampling devices approved by MSHA.

**70.210**

Paragraph f should be modified to permit electronic transmission of all data file information held by the CPDM stored information within a twelve hour period after the end of the last sampling shift of the work week. The twelve hour time limit will impose unnecessary additional work a\hours on persons responsible for dust sampling activities. If the person spends all week (Monday through Friday sampling and must report all data collected within twelve hours after the end of the last shift sampled weekend work will be required almost every week in large underground mines with multiple sections. Daily information has already been sent as required in para (a) of this section which curiously

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has a twenty-four hour time limit for transmission to MSHA. This in itself is a contradiction in that if the last sample data is not transmitted to MSHA within twelve hours the certified person has violated para (f) of this very same section. The data would still be fresh if it were to be permitted to be sent within seventy hours of being gathered.

**70.211**

Para (c)(1) requires results of sampling be posted within one hour of the end of the sampling shift. This is simply insufficient time to post information. The information should be gathered analyzed, time permitted for this person to maintenance the sampling equipment and get batteries on charge in preparation for the next use. The one hour time limit for posting needs to be extended to twenty-four hours or to the end of the next regularly scheduled work day for the person responsible for sampling.

**70.212**

This new proposed section should be deleted as the mine status notification requirement is fully covered in the requirements of 30 CFR Part 41.12. Any changes MSHA may desire to make to mine status and mine status notification should be directed to modifications of 41.12.

**71.100**

MSHA seeks to impose an impossible standard to achieve on many of the mines of Central Appalachia. In today's highly regulated environment Appalachian producers are mining coal from ever thinner coal reserves. To facilitate newly mandated requirements of refuge chambers, SCSR storage caches, and provide for travel-ways of sufficient

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heights to facilitate faster evacuation routes from mines more and more roof and bottom rock is being removed in the mining cycle through the use of scrubber technology and innovative ventilation systems and techniques mines have been able to maintain the 2.0mg/m<sup>3</sup> standard. Achieving and maintaining a one milligram standard will be practically impossible to attain.

Many in industry would welcome the ability to review the entire storehouse of reports, studies, and other information MSHA has relied upon to make the determination that the one milligram standard is needed in order to protect the miner's. The sum total of the information as well as the methodologies used in the studies and surveys relied upon should be supplied to all interested parties and fully reviewed prior to implementing a standard which is possibly unachievable and undoubtedly will have a significant impact on the ability of many operations to remain in business, especially in the Appalachian coalfields.

**72.100**

Many people have fears of being subjected to radiation of any sort. Until the promulgation of this regulation there were no *“mandatory”* requirements for miners to subject themselves to radiation or medical testing of any kind. Under this proposed standard should a miner who is a prospective employee refuse to submit to testing mandated in 72.100(c) and its associated subparagraphs is the company required to not hire the prospective miner? Mandates should be removed from the standard. Should a miner feel that they been exposed to excessive dust current programs provide adequate

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opportunities for examination by NIOSH approved facilities and physicians to protect the miner.