

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

2011 APR -8 A 10: 43

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

March 25, 2011

Perry County Coal Corporation
1845 S. KY Hwy 15
Hazard, KY 41701

**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.

First, I would like to comments on the availability of the technology to provide continuous monitoring of the atmosphere by the Coal Mine Dust Personal Sampler Unit (CMDPSU). I am lead to believe there are only one company with the technology to produce a CMDPSU. This could be a stumbling block to the operators availability and ability to meet the MSHA deadline set at 12 months. Should the purposed standard be adopted, the conversion period should be set at no less than 5 years for new technology to be developed and corrections of field discovered flaws in the present technologies be corrected. The industry has experienced unnecessary financial burden due to the unobtainable, unproven technologies to meet MSHA requirements. As evident in the recent issues in tracking, communications and regulations for refuges .

In addition to the issues stated in the first paragraph the cost that MSHA has applied to this proposal is almost certainly undervalued. My company currently operates a preparation plant facilities,, and three large underground mines with ten underground

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**

miner sections. I am estimating that I would need to maintain a fleet of thirty personal samplers at a cost of \$12,000 each to acquire (\$360,000), require two additional personnel at \$118,000 (base salary + 65% benefit package) (\$236,000), estimated \$30,000 in repair costs and replacement parts for the personal samplers, and \$15,000 in additional administrative costs (clerical, filing of reports, and miscellaneous office expenses. And with the discretion by the district manager to set the number of ODOs to be sampled this cost could skyrocket. The basics would total an economic impact of \$641,000 for my company which mines approximately 4 million tons of coal per year.

If quartz is to be measured in the work place a reasonable quartz sampling protocol should calculate the percentage based upon the quartz as a percentage of the legal standard not as a percentage of the sample total 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.

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**

The proposed regulations opens doors for the opportunity to improve current sampling to fully determine the quality of the miners environment. The protocol should be changed to require the miner to wear the sampler the entire time of his shift. Let's say "Joe" is a miner operator, he starts his shift on a miner, but a circumstance evolves that requires him to run a car for 2 hours that shift. He should not leave the pump at the miner, but should wear it the 2 hours on the car also. This would be a sample of the respirable dust that he would be exposed to on a shift basics. This same protocol should be for DA operators, e.g. roof bolter operators. If you want a true sample of the respirable dust a person is exposed to, he must wear the sampler the entire time he is in his work environment.

The WPAE and WPA proposal provides potential for many problems. Calculating WPAE on a simple 40 hr week has the potential to give unrealistic results when samples have been collected across shifts which are greater than 8 hours. A single unacceptable reading may disqualify a worker for a shift or multiple shifts of work. If an operator is even close to exceeding the limit during a shift the operator will be forced to withdraw him for the remainder of the shift rather than chance overexposure for the week. 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 heavy financial burdens on miners. This would also create problems for the operators to fill those partial shift positions.

The posting of "end of shift sampling result"s within 1 hour after the end of shift will not benefit anyone. Under the proposed rule the wearer of the sampler would know the

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**

readings for himself and the on coming shift would be inside the mine before the posting would be available This proposal is of no value. Under current regulation operators are required to post results after receiving the data. The same criteria should continue to be utilized relating to posting of dust sample information.

MSHA states that the wearer must be trained in all functions of the CDPSU. This has no value, as the certified dust sampling person will preshift and monitor the CDPUS before and during the shift. Training all persons in all the functions may only result in uncertified person activating functions that that require certification to activate.

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 definition these are the same. There would be no safety gained by this change. Does this mean that all miners in ODO will be sampled? If so this would be a great burden on the operators and a great increase in work load. Example, under the proposed regulations, if one roof bolter sample results are above the 1.0 standard, then all roof bolters would require sampling. If this is not what the ODO means then clarification needs to be implanted in the reg.

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.

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**

The requirement to train persons wearing the CMDPSU is appropriate in paragraph (j)(1-5). Personnel have a right to know the basic information reading of the unit. However it is not necessary to train a miner who simply is going to wear the unit for sampling purposes on how to start, stop, reset or to do any function that is required to be performed by a certified person. All this will do is invite samples to be manipulated by the machines functions or sample cycles to be altered. Training every 12 months for a miner who is simply going to be required to wear a monitor has no safety value for the wearer. Certified sampler persons are required to test each CMDPSU before each use and the certified sampler person will be recertified every 3 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 recertification of persons certified in sampling and maintenance/calibration of sampling equipment every three years seems particularly burdensome. The commenter does not object to recertification, but 5 years would be a more appropriate span of time. Recertification should not only be for the maintenance and calibration of the machines but for introduction to new technologies for sampling and dust controls.

.70.206

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

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 the "representative sampling" must be defined to allow for malfunction of equipment, suspected tampering and changes to usual environmental conditions. (i.g. rock roll, dips in coal height where rock must be cut, etc.) Vent plans should be set for the long terms of the mining conditions and not for a short or unusual condition of mining that may never occur again or at least very very infrequently. The term Representative should be defined as the average for the usual mine conditions, not a short term condition that would affect the vent plan during "normal" conditions.

70.208

The requirement to post the excessive dust conditions 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. There is no safety value gained by this.

70.209

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**

. DA sampling should not be required to use CMDPSU sampling equipment but use current gravimetric sampling devices approved by MSHA. The current approved sampling devices are fully capable of collecting the necessary samples.

70.210

Paragraph f should be modified. The requirement to transmit the data within 12 hours of the last shift of the week would require certified sampling persons to work weekend hours. Daily data transmission have already taken place as required in section (a) which has a 24 hour time limit for transmission to MSHA, which in itself is a contradiction. Why allow 24 hours for the daily and 12 for the last day of the week, when the data would still be new if it was transmitted 60 hours after the last sample.

70.211

Para (c)(1) requires results of sampling be posted within one hour of the end of the sampling shift. This has no safety value. Under this proposal the wearer of the CMPSDU would be trained to read the data, he would know his exposure level. If posted within one hour of the end of the sampling shift, the data would be of no value to the oncoming shift, which would be producing coal by that time. The one hour time limit for posting needs to be extended to twenty-four hours, the same as the time as set forth for transmission to MSHA.

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

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.

71.100

MSHA seeks to impose an impossible and financially burdensome standard on many thin seam coal mines in the Central Appalachia. MSHA has imposed regulation for refuge chambers, SCSR storages which require sufficient entry heights to provide fast escape routes. Providing this requires thin seam mines to cut top or bottom or both. The best of dust collection technologies are used to maintain the 2.0mg/m³ standards. Achieving and maintaining a 1.0 milligram standard is practically impossible. This also will be a burden for the operator, as well as, the workers as a 6 hour shift may be required to achieve this standard. A 36 hour work week will create a great financial burden for the worker and his family. Also the operator will need to hire more crews to meet the demands of the coal market. Overall this regulation will have significant impact on the ability of many operators to remain in business and provide much needed capitol for many of our mountain communities.

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

72.100

I, personally object to the requirement of the spirometry examinations, symptom assessments, and occupational history of myself. I object to being subjected to radiation and medical testing of any kind by a regulation to do such. If on voluntary bases, I decided to have such examinations, there are in place opportunities for examination by NIOSH facilities and physicians.