

COMMENTS

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UNDERGROUND HEALTH STANDARDS FOR UNDERGROUND COAL MINES

RIN 1219-AB64

By

Thomas E. McNider

For

Walter Energy

I would like to thank the panel for giving me the opportunity to comment on the proposed regulation as presented in the Federal Register RIN 1219-AB64. The focus of my comments will be on Parts 70 & 75. Walter Energy through Jim Walter Resources has been an active participant in this rule making process by working with MSHA and NIOSH in the development and testing of the PDM in our mines on numerous occasions. We were one of the first companies to work with MSHA in testing the machine mounted continuous dust monitor that later was miniaturized into the personal wearable that we are talking about today. We have taken an active role through regulatory review and comment on proposed rules and policies prior to the publishing of this rule. We have worked through both the National Mining Association and the Bituminous Coal Operators Association in an effort to help direct MSHA in the formation of this proposed rule. It is disturbing to us that MSHA will not move toward a performance based regulation and embrace new technology such as the CPDM that will allow them to do that. Rather than "Sample the Person" so that you know what his exposure is and the miner take ownership in maintaining as dust free an environment as possible MSHA elects to sample the occupation. I started in this profession thirty five years ago when operators sampled the individual through the use of the gravimetric sampler. The operator was required to take five samples and then mail them off to get the results analyzed by MSHA's lab which could take weeks. Realizing that a miner could be overexposed for this time MSHA elected to sample the occupation which MSHA defined as multiple people. There was some rational in this, by being conservative and if the group occupation was in compliance then there was a very good chance the individual would be in compliance. In a sense this builds in a safety factor in an effort to better protect the person. Today with the CPDM the miner can get his dust exposure as he performs his job and immediately correct his work position or engineering tool that may have caused him to be overexposed. The miner can track his exposure in real time and

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immediately know if he is being over exposed, this is what we thought was the primary reason for the development of a CPDM. The way this proposal is written it is not a "Personal Dust Monitor". Industry has repeatedly stated that they want to sample the person and monitor his or her exposure.

This proposed regulation is even more burdensome to the operator. Just by the very nature of how this regulation is written there is a high probability that the operator will continually be out of compliance and MSHA continually requiring more ventilation plan revisions. MSHA is able to require the operator to resubmit his dust control plan that may or may not help. We are repeating the mistakes of the past not utilizing technology to make it better.

MSHA has missed the mark of not allowing for personal sampling. We believe that the focus should be to sample the person, administer his exposure, and in effect immediately lower his exposure. After the CPDM is in place in the workplace then MSHA should phase into a lower standard. MSHA should start out with a 2mg/m³ standard that is reduced for extended shifts over 8 hours and more than 40 hours per week. In effect a miner will not be exposed to more than 10mg of exposure per week no matter what his work schedule and hours of exposure are. Compared to the way a miner is sampled today for 8 hours and no consideration for extended shifts this would be an immediate reduction to what he is exposed. As experience is gained with the use of the CPDM, the standard can be effectively reduced to the extent necessary by limiting a person's exposure through added people and rotation in certain work sites such as the longwall or even possibly by the elimination of a person's exposure through automation.

We are also concerned that MSHA has taken a 2mg/m³ standard and reduced it to 1mg/m³ over a two year period. This in itself is concerning, but the impact of the regulation does not stop there. MSHA takes the 1mg/m³ standard and reduces it for any time worked over an 8 hour shift. For instance if a miner is underground for 10 hours his exposure limit is reduced from 1mg/m³ to .8mg/m³. His exposure limit can be reduced again if he works more than a forty hour week. Shifts over 8 hours and more than 5 shifts per week are routine in the industry and is a major shift from today's way of determining compliance. Exposure will also be reduced for silica over 100 micrograms per cubic meter. Therefore, if silica is present and there are extended shifts an exposure limit as low as .5mg/m³ or lower is possible. Maintaining compliance at this level utilizing occupational sampling and today's technology is virtually impossible.

If the operator cannot maintain compliance MSHA has allowed for the temporary use of supplemental controls which include worker rotation and monitoring of miner's exposures with CPDMs to reduce affected miners dust exposures. This is what the operators are asking for on a permanent basis to determine a miner's true exposure. MSHA has missed the mark by 1) not allowing for personal sampling and 2) by rapidly phasing-in a reduced standard of more than

50% reduction. A slower phase- in of the reduced standard for any time worked over 8 hours per day or forty hours per week would give the operator a legitimate chance to properly administer this regulation.

The following are specific regulations that we are concerned about:

70.2 Definitions - Normal Production Shift - A production shift during which the amount of material produced by an MMU is at least equal to the average production recorded by the operator for the most recent 30 production shifts.

Just by the very nature of how an average is determined means there will be shifts that are less than the average and will be cited.

70.2 Definitions - Weekly accumulated exposure (WAE) and Weekly permissible accumulated exposure (WPAE).

Not clear how these are calculated or how they will be used.

70.100 (4)- Respirable dust standard – 1.0mg/m³ within 24 months of effective date of rule.

We feel like with occupational samples together with reductions for extended shifts and silica this is too aggressive and cannot be achieved.

70.101- Respirable dust standard when quartz is present. Reduced standard when 100 micrograms per cubic meter is exceeded.

We believe there should be a separate standard for silica and not a reduction to the respirable dust standard.

70.201(e) – Sampling devices shall remain with the occupation or DA being sampled and shall be operational during the entire shift.

This provision is contrary to what industry has envisioned for the CPDM since its conception. We believe it should be used to sample the person and should stay with the individual for the entire shift.

70.206 (a) & (d)- CPDM Performance Plan

The way the regulation is written there is a good chance the operator will struggle to maintain compliance. Should the operator get out of compliance MSHA can require a change to the plan. This is one of the primary problems with the way dust compliance is administered today. We

would prefer a performance based regulation that relies heavily on an individual's exposure and less on a plan.

75.332 (a)(1) – Each MMU on each working section and each area where mechanized mining equipment is being installed or removed, shall be ventilated by a separate split of intake air directed by overcasts, undercasts or other permanent ventilation controls.

We don't see the logic in this. MSHA is prohibiting more than one MMU being ventilated by a single intake. Each MMU is on a single split of air and would be monitored for dust, why the automatic prohibition to this. This will have a major negative economic impact to the industry. It will eliminate supersections, setting up longwalls while the section completes the bleeders, or any construction project that may have its own MMU.

The Bituminous Coal Operators' Associations' Health and Safety Committee of which Walter Energy is a member met to take a critical look at the impact of the newly developed CPDM on sampling respirable coal mine dust. From that meeting came a plan to revise the regulations. We would like to offer this as a basis for MSHA to consider as an alternative to their proposed regulation.

1. Representatives of the UMWA and many operators made it clear in public testimony related to MSHA's failed 2003 dust proposal, that the Agency, not the operator should be responsible for compliance sampling. There is a strong perception that an operator-controlled system is not credible with regard to compliance sampling. Therefore, mine operators are willing to cede compliance sampling to MSHA as long as sufficient safeguards are put in place. (Such as CPDM daily data being available to operators and representatives of the miners)
2. The Personal Respirable Dust Program (PRDM) must be considered in its entirety and not by its individual parts. The PRDM would be applicable to all underground coal mines. MSHA will designate which individuals are to be sampled for compliance from those occupations that have the highest potential for (an individual) miner to be overexposed. We recommend that (the individual miners in) the current designated occupations be utilized as PDM wearers. After MSHA performs an evaluation at each operation it will be able to determine if (additional individual miners) need to be sampled.
3. MSHA will do all compliance sampling for quartz, Part 90 miners, and intake air and it will audit the compliance-sampling program to verify that valid procedures are being used. Any additional monitoring of mine personnel by MSHA will require MSHA to download the data electronically at the mine so that the mine operator and miners have access to that data. MSHA will be responsible for all aspects of the deployment and maintenance of all sampling devices under this section.

4. MSHA will purchase sufficient numbers of PDMs for use in both compliance and monitoring determinations. MSHA will be responsible for replacement and/or refurbishing of MSHA PDMs, including maintenance, other than cleaning and consumable parts replacement. Mine operators will be responsible for MSHA PDM's operational readiness and deployment. Mine operators will be required to have an adequate number of personnel, certified by MSHA, to administer the mine operators' responsibilities.
5. MSHA PDM compliance sampling will be conducted on all designated occupations, as determined by MSHA, on all shifts on which coal is produced during a calendar week, (Sunday through Saturday). Miners designated to wear the MSHA PDM will wear the device for a full shift.
6. The exposure limit for a week will not be permitted to exceed the dose equivalent to that received as if exposed to 2.0 mg/m³ for forty hours per week. If a miner works for more than forty hours during a week, the exposure limit must be reduced to the level that would equal the dose equivalent to 2.0 mg/m³ for forty hours. For example, if a miner works for sixty hours during a week, the exposure limit for that week would equal $(2.0 \text{ mg/m}^3) \times 40 / 60 = 1.33 \text{ mg/m}^3$. In general, the exposure limit for a week would be equal to $(2.0 \text{ mg/m}^3) \times 40 / H$ where H is the hours worked for that week for $H > 40$ hours. However, under no circumstances could the exposure limit be increased to a level above 2.0 mg/m³ if, for example, $H < 40$ hours.
7. When conditions require reducing the respirable dust standard on a particular Mechanical Mining Unit (MMU) due to quartz, to a level where existing controls are not adequate to keep miners exposure under the permitted limits, the mine operator must implement a plan describing how and under what conditions mining will continue without exposing miners to excessive levels. After all feasible engineering controls to reduce the miners' exposure have been exhausted, MSHA may approve and incorporate in the operators plan the use of NIOSH approved self-contained or powered air respirators. Once the plan has been implemented, MSHA, the operator and the representative of the miners will meet periodically to determine if continued use of the plan is necessary for the protection of the miners.
8. Because of real time capability of the PDM, dust control plans will take on a different role in the program. The "Engineering Control Plans" will identify the major dust control features in use and will be used to assist miners if they detect an unaccounted for increase in their exposure. The initial Engineering Control Plan (ECP) will be submitted to MSHA for approval. Approved control plans will be posted on the mine bulletin board. Based on the real time results of the PDM, if significant increases and / or additions need to be made to the existing ECP, the mine operator, after consultation with the miners' representative, will make those changes. Once the changes have been

determined to be adequate, the operator will notify MSHA and post the changes to the ECP on the mine bulletin board.

9. Mine operators may choose to purchase their own PDMs to help identify dust sources and manage exposures in a timely manner. Operator PDMs will be distinctively marked to readily distinguish them from the MSHA PDMs. The mine operator will be responsible for all cost associated with its PDM. The operator will be responsible for keeping data from the Operator PDMs separate and distinct from data collected from the MSHA PDMs. Maintenance records will be kept on mine property and made available to the representative of the miners.

As a summary, Walter Energy endorses the use of new technology and associated regulations if they are used in the proper way. The CPDM is an instrument that by name implies a personal monitor. We strongly believe that this instrument should be used to sample the person and not a cumulated dust concentration from multiple individuals. Industry has repeatedly commented in this manner from the concept of a personal wearable dust monitor. Walter Energy would like to also endorse the comments related to this regulation by the BCOA and NMA Health and safety committee's of which we are a member. The regulation should be all about protecting the individual through whatever steps are necessary even if this means administrative controls or wearing a powered air filter.