

United Mine Workers of America



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August 24, 2012

Mr. Greg Moxness, Chief
Economic Analysis Division
Office of Standards, Regulations, and Variances
Mine Safety and Health Administration
1100 Wilson Boulevard
Arlington, VA 22209-3939

Re: OMB Control Number 1219-0011

Dear Mr. Moxness:

Attached are the comments of the United Mine Workers of America on the above-named Proposed Extension of Existing Information Collection; Respirable Coal Mine Dust Sampling. I ask that you forward a copy of our comments to the appropriate persons in your Agency for consideration.

Should you have any questions concerning this matter, please feel free to contact me.

Sincerely,

Dennis O'Dell, Administrator
Department of Occupational Health & Safety

**Comments of the United Mine Workers of America
On the Proposed Extension of Existing Information Collection;
Respirable Coal Mine Dust Sampling
August 27, 2012**

MSHA indicates that this proposal is part of the Department of Labor's continuing effort to reduce paperwork and respondent burden in accordance with the requirements of the Paperwork Reduction Act of 1995. This proposal provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information to ensure that requested data can be provided in the desired format, reporting burden is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. MSHA indicates it is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses, to minimize the burden of the collection of information on those who are to respond.

GENERAL COMMENT

The UMWA does not think the Agency should be entertaining reduction of information collection requirements for any standard relating to Black Lung disease. All evidence points to a continued failure of the industry and government to protect our nation's miners from this preventable disease. Incidence of Black Lung has doubled in the last decade according to data analyzed by NIOSH. Cases of the worst stage of the disease have quadrupled since the 1980s in a triangular region of Appalachia stretching from Kentucky through southern West Virginia and into southwestern Virginia. In the mid-1990's medical experts began noticing an increase in diagnoses, along with disease in younger miners and rapid progression to severe stages of sickness. These are the miners who passage of the Mine Act was designated to protect, who should show no signs of Black Lung instead of more rapid progression. The UMWA has historically advocated that the Mine Safety and Health Administration should take over the entire dust monitoring program. Fraud, cheating and manipulation of dust sampling in the past have proven that mine operators cannot be trusted to monitor themselves. With the current evidence that Black Lung disease is on the rise, one must question why the Agency would entertain

elimination of "burdensome recordkeeping" the purpose for which the Paperwork Reduction Act was created. Maybe in other industries recordkeeping such as this could be reduced or eliminated, but not where our nation's miner's health is concerned.

The UMWA's comments will follow each standard affected by this proposal as follows;

§70.201(c); §90.201(c); and §71.201 (c) & (e) Sampling; general requirements

70.201 (c) Upon request from the District Manager, the operator shall submit the date on which collecting any respirable dust samples required by this part will begin.

90.201 (c) Upon request from the District Manager, the operator shall submit the date on which collecting any respirable dust samples required by this part will begin.

71.201 (c) Upon request from the District Manager, the operator shall submit the date on which collecting any respirable dust samples required by this part will begin.

COMMENT – These three rules are basically the same and required the operator to submit the date on which respirable dust sampling will begin to the MSHA District Manager. The purpose of this rule is to make the operator alert MSHA when they are going to begin dust sampling so MSHA can monitor or be involved with the sampling if desired. This requirement is necessary so MSHA will have the advantage of being informed to be a part of the dust monitoring program if necessary or so desired. This standard is not a burden and must not be changed.

§ 70.205 (c); §71.205(c); and §90.205(c) Approved Sampling devices; operation; air flowrate

70.205 (c) Each sampling device shall be examined each shift by a person certified in accordance with §70.202 (Certified person; sampling) during the last hour of operation to assure that the sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, the respirable dust sample shall be transmitted to MSHA with a notation by the certified person on the dust data card stating that the proper flowrate was not maintained.

71.205 (c) Each sampling device shall be examined each shift by a person certified in accordance with §71.202 (Certified person; sampling) during the last hour of operation to assure that the sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, the respirable dust sample shall be transmitted to MSHA with a notation by the certified person on the dust data card stating that the proper flowrate was not maintained.

90.205 (c) Each sampling device shall be examined each shift by a person certified in accordance with §90.202 (Certified person; sampling) during the last hour of operation to assure that the sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, the respirable dust sample shall be transmitted to MSHA with a notation by the certified person on the dust data card stating that the proper flowrate was not maintained.

COMMENT – These three standards require the certified person doing the dust sampling to send a notice on the dust data card to MSHA if the proper flowrate was not maintained on the dust pump during sampling. This is only common sense that MSHA must be notified if the dust pump was not maintained at the proper flowrate during its operation. If the dust pump was not operated properly at the designated flowrate, the sample could easily be contaminated and should be voided. The only way MSHA can gain knowledge of this is if the certified person monitoring the sampling provides this information to MSHA. Therefore, this is necessary recordkeeping and must not be changed. The information does have practical utility and must continue to be reported.

§70.209(a); (c), and (d); §71.209(a), (c), and (d); and §90.209(a), (c) and (d) Respirable dust samples; transmission by operator Mine Operator Dust Data Card

70.209 (a) The operator shall transmit within 24 hours after the end of the sampling shift all samples collected to fulfill the requirements of this part in containers provided by the manufacturer of the filter cassette to: Respirable Dust Processing Laboratory, Pittsburgh Safety and Health Technology Center, Cochran's Mill Road, Building 38, P.O. Box 18179, Pittsburgh, Pennsylvania 15236-0179, or to any other address designated by the District Manager.

70.209 (c) A person certified in accordance with §70.202 (Certified person; sampling) shall properly complete the dust data card that is provided by the manufacturer for each filter cassette. The card shall have an identification number identical to that on the cassette used to take the sample and be submitted to MSHA with the sample. Each card shall be signed by the certified person and shall include that person's certification number. Respirable dust samples with data cards not properly completed will be voided by MSHA.

70.209 (d) All respirable dust samples collected by the operator shall be considered taken to fulfill the sampling requirements of part 70, 71 or 90 of this title, unless the sample has been identified in writing by the operator to the District Manager, prior to the intended sampling shift, as a sample to be used for purposes other than required by part 70, 71 or 90 of this title. (c) A person certified in accordance with §70.202 (Certified person; sampling) shall properly complete the dust data card that is provided by the manufacturer for each filter cassette. The card shall have an identification number identical to that on the cassette used to take the sample and be submitted to MSHA with the sample. Each card shall be signed by the certified person and shall include that person's certification number. Respirable dust samples with data cards not properly completed will be voided by MSHA.

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71.209 (d) All respirable dust samples collected by the operator shall be considered taken to fulfill the sampling requirements of part 70, 71 or 90 of this title, unless the sample has been identified in writing by the operator to the District Manager, prior to the intended sampling shift, as a sample to be used for purposes other than required by part 70, 71 or 90 of this title.

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90.209 (d) All respirable dust samples collected by the operator shall be considered taken to fulfill the sampling requirements of part 70, 71 or 90 of this title, unless the sample has been identified in writing by the operator to the District Manager, prior to the intended sampling shift, as a sample to be used for purposes other than required by part 70, 71 or 90 of this title.

COMMENT – These standards provides guidance to the certified person doing the dust sampling as to how those samples shall be handled; where they should be sent; and how to complete the dust data card. These are all essential parts of the dust sampling program and should not be changed. These requirements are not a burden to the industry and are a critical part of the overall dust sampling process. The standards must remain unchanged.

**§70.210(b); §71.210 (b) Respirable dust samples; report to operator; posting §90.210 (b)
Respirable dust samples; report to operator**

70.210 (b) Upon receipt, the operator shall post this data for at least 31 days on the mine bulletin board.

71.210 (b) Upon receipt, the operator shall post this data for at least 31 days on the mine bulletin board.

90.210 (b) Upon receipt, the operator shall provide a copy of this report to the part 90 miner. The operator shall not post the original or a copy of this report on the mine bulletin board.

COMMENT – These three standards requires the mine operator to post the results of dust samples on the mine bulletin board for 31 days. This reporting requirement is necessary and does have practical utility. The posting on the mine bulletin board is the means by which coal miners determine what is happening at their mine and the results of studies/testing, etc. in which they have participated. Some miners track their dust samples and would be interested to see their outcome or whether they have been voided. Consequently, posting this information on the mine bulletin board is the means of sharing information with the miners who work at the mine. To eliminate this practice would be denying this information to the miners involved. This standard should not be changed.

§ 70.220(a); §71.220(a); §90.220 Status change reports

70.220 (a) If there is a change in operational status that affects the respirable dust sampling requirements of this part, the operator shall report the change in operational status of the mine, mechanized mining unit, or designated area to the MSHA District Office or to any other MSHA office designated by the District Manager. Status changes shall be reported in writing within 3 working days after the status change has occurred.

71.220 (a) If there is a change in operational status that affects the respirable dust sampling requirements of this part, the operator shall report the change in operational status of the mine or designated work position to the MSHA District Office or to any other MSHA office designated by the District Manager. Status changes shall be reported in writing within 3 working days after the status change has occurred.

COMMENT- These two regulations requires the mine operator to report any operational status changes to a mine or area of the mine that is doing respirable dust sampling. These requirements are only logical that MSHA should know if a mining section has been idled due to mechanical problems, geological problems or otherwise. The Agency would expect to be kept informed if designated areas for sampling are interrupted for any reason. This is basically what the standards require and must not be changed.

§71.300(a); §90.300(a) Respirable dust control plan; filing requirements

71.300 (a) Within 15 calendar days after the termination date of a citation for violation of §71.100 (Respirable dust standard) or §71.101 (Respirable dust standard when quartz is present), the operator shall submit to the District Manager for approval a written respirable dust control plan applicable to the work position identified in the citation. The respirable dust control plan and revisions thereof shall be suitable to the conditions and the mining system of the coal mine and shall be adequate to continuously maintain respirable dust within the permissible concentration at the surface work position identified in the citation.

90.300 (a) If an operator abates a violation of §90.100 (Respirable dust standard) or §90.101 (Respirable dust standard when quartz is present) by reducing the respirable dust level in the position of the part 90 miner, the operator shall submit a written respirable dust control plan for that part 90 miner in that position within 15 calendar days after the citation is terminated to the District Manager for approval. The respirable dust control plan and revisions thereof shall be suitable to the conditions and the mining system of the coal mine and shall be adequate to continuously maintain respirable dust within the permissible concentration for the part 90 miner in the position identified in the citation.

COMMENT – These two standards require the mine operator to submit a revision to their dust control plan whenever they receive a citation for violation of excessive dust; when quartz is present or when a Part 90 miner is out of compliance. The operator must submit a new plan to indicate how they plan to fix the problem for the position involved that created the violation. This requirement is only logical and is not one that can be changed or eliminated. If the operator is found out of compliance, they must take some corrective course of action to lower the respirable dust level. This is not a standard that creates a burden to the industry and must not be changed.

§71.301(d) and (e) Respirable dust control plan; approval by District Manager and posting

71.301 (d) The operator shall post on the mine bulletin board a copy of each current respirable dust control plan approved by the District Manager.

71.301 (e) The operator may review respirable dust control plans and submit proposed revisions to such plans to the District Manager for approval.

COMMENT- These standards requires the mine operator to post the current respirable dust control plan on the mine bulletin board. This requirement is necessary and does have practical utility. The posting on the mine bulletin board is the means by which coal miners keep themselves informed as to what is happening at their mine. Consequently, posting this information on the mine bulletin board is the means of sharing information with the miners who work at the mine. To eliminate this practice would be denying this information to the miners involved. This standard should not be changed.

§90.301(d) and (e) Respirable dust control plan; approval by District Manager; copy to part 90 Miner

90.301 (d) The operator shall provide a copy of the current respirable dust control plan required under this part to the part 90 miner. The operator shall not post the original or a copy of the plan on the mine bulletin board.

COMMENT - Because Part 90 miners are treated with confidentiality, it is only practical that they would be provided copies of their dust samples and the respirable dust control plan so they can keep themselves informed as to current conditions at the mine affecting their health. After all, a Part 90 miner is one who has been identified with developing Black Lung Disease. It is their health at stake and they have the most to lose in this situation. It is only logical that the mine operator would be required to keep the Part 90 miners informed and do so in a confidential manner. This is a standard that does not create a burden to the industry and is a civil means of keeping those who have the most to lose informed. This standard must not be changed.