U.M.W.A - Local 2397
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United States Department of Labor
Mine Safety and Health Administration
Office of Standards, Regulations and Variances
1100 Wilson Blvd, Rm. 2313
Arlington, VA 22208-3939

Dear Sir or Madam,

The Health and Safety Committee of the United Mine Workers Local 2397 appreciate the opportunity to submit comments to the Agency regarding the proposed determination of concentration of respirable coal mine dust rule.

The Local 2397 Health and Safety committee also regrets having to comment on a rule that will be devastating to working miners if implemented as written. This proposed rule will expose miners to greater concentration of respirable coal dust. This rule will also allow mine operators to manipulate the dust sampling process.

I would also like to inform you of the financial burden that this rule making process has put on our local. This is the third proposed rule that the Health and Safety committee has reviewed in the last five months. This process takes time away from our job while we are reviewing and writing comments. I assure you that we do not have the finances that the coal operators have. I have been on the Health and Safety Committee for 17 years and I have never seen as many new regulations come down in such a short period of time. I am appalled and it appears that MSHA is trying to push new regulations on us.

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I am requesting that these proposed rules be withdrawn and some more time be put in drafting new regulations.

It is very evident that the new rules caters to the mine operators and does not do anything to guarantee miners a healthy environment in which to work

As Mr. Lauriski has stated, the UMWA has proposed that MSHA take over the dust sampling process but at no time have we requested that MSHA should sample less than the operator is required to sample.

We have recommended that MSHA do more sampling than the operator is required to do

This new rule does replace the operator sampling but MSHAs own compliance sampling would be reduced up to 50 percent and that the sampling is only by policy not regulation. I have been involved in mining long enough to know that MSHA policies change on a regular basis. Not only should MSHA sample more frequently but it should be mandated by regulations not policy. MSHA should be sampling at least once a month.

The proposed rule addresses a single sample and on the surface this seems good until you read into how MSHA defines a shift, a single sample. I have testified at the public hearing before stating that miners should be sampled for the entire time that they are working underground. Most miners work a minimum of 10 to 12 hours a day and the only way to truly know what dust concentration they are exposed to is for them to wear the pump the entire time. The new rule would only require the miner to wear the pump 8 hours. The new rule proposes that the sample to start when the miner enters the section and turn it off 8 hours later, this is ridiculous. This new rule would not measure the miners true exposure. The mines that I presently work in has high velocity of air on the track entries and can become very dusty from track equipment traveling, therefore it exposes the miner to dust concentrations. The only way that a true sample can be taken is for the miner to be sampled the entire 10 to 12 hours and from portal to portal. I must remind you that the mine act does define how long a shift is.

The new rule proposes to take samples on several miners on a shift, but if more than one miner is exposed over the standard then MSHA would issue only one citation. The only way the miner can be assured that the operator

The Dust Advisory Committee recommended that miners be given the right to participate in sampling activities that would be done by the employer for verification of dust controls at no loss of pay and that miners representatives should receive training to conduct respirable dust sampling paid by the employer. By including this into the rule would have addressed two major issues that miners have raised for years, more sampling and greater participation by miners. The Agency did not put either into the proposed rule. NIOSH also urged a greater role in the sampling program for miners.

Requiring the operator to notify the miner or representative of their plan to conduct sampling is of little significance unless they suffer no loss of pay as prescribed in Section 103 F of the Mine Act. The financial loss alone represents a hurdle to large for miners to become involved in any meaningful way. The full participation miners have demanded in the dust sampling process at countless hearings is not achieved by this proposed regulation

In section 70,204 of the proposed regulations it states that the operator will do the dust sampling for plan verification. This represents a complete change from MSHAs 2000 proposals which required MSHA to conduct the sampling to verify the dust control parameters with paid miners representatives traveling during the verification. This is totally ridiculous to think that operators will not manipulate the sampling process. Miners have been testifying at hearings for years that operators can and will manipulate the process.

By allowing the operators to do plan verification sampling would be the same thing as me or you all stopping a state trooper and telling him that we were speeding so write us a ticket.

I must remind the committee that several operators have been convicted for fraudulent dust sampling in the past. Despite this fact, the agency has entrusted a key component of the dust control program to the same cast of operators. The ability to manipulate the controls to alter the results of the samples still exists today as it did in the 1980's. MSHA has built a flaw in the proposed regulations. These new regulations could allow the operator up to 12 months to verify their plan by my calculation. If MSHA would require the use of personal continuos dust monitors it could speed up the

process and they would help eliminate major dust problems in the Nations mines.

The personal dust monitor technology to my understanding is in the final test phase and they should be permitted to be completed so an adequate respirable dust rule can be built around that device. Plan verification and compliance could be built into the system.

Section 70.209 of the proposed rule contains provisions that allows mine operators to replace environmental/engineering controls with respirators which miners call Air Stream Helmets. Section 70.209 a states that if the verification limit is exceeded and the operator believes that the MMU is using all feasible engineering or environmental controls, during the operator sampling under 70.206 they can request supplement controls in the form of PAPR Air Stream Helmets. Depending on the circumstances, that would allow the operator to increase dust levels above the 2.0 milligram in active workings. Miners representative would be notified of the operators plan and be allowed to send comments to MSHA but, would have no legal right to stop the plan.

Once the plan is approved by the operator miners would be mandated by the operator to wear the PAPR(Air Stream Helmets) respirators. It is impossible for miners to wear these bulky respirators especially on a longwall face where the height can be as low as 58 inches and consider that miners are required to wear a self contained rescuer, battery light and methane detectors. There is no way that these respirators can seal up enough to prevent miners from breathing in the respirable coal dust that is still killing miners today.

Section 202H of the Mine Act states in part that respirators shall be made available to all persons exposed to concentration of respirable dust in excess of the levels required to be maintained under the Act. The Mine Act also stated that respirators shall not be substituted for environmental control measures in active workings. So by allowing operators to require miners to wear respirators so they can be in compliance and to be allowed the levels of dust to be increased above 2.0 milligrams is a direct violation of the Mine Act.

These MSHA proposals are not only in conflict with the Mine Act, title 30 of the CFR and numerous studies and findings, they would diminish miners protections. Instead of throwing miners into unhealthy dust levels that have not been permitted since prior to the 1969 Mine Act, the dust standards need to be lowered and miners need to be equipped with continuos dust monitors to keep them out of unhealthy dust.

Section 70.213 Administrative Controls; Requirements for Approval states that the operator is required to submit a revision to the ventilation plan in order to use supplementary controls,(PAPR's) Powered Air Purifying Respirator. The revision must state the controls, environmental and administrative, being employed and how the operator intends to assure they **are complied with. The revised plan must then be verified by the operator** within **30 days** of submission.

Operators have stated historically once they came out of compliance that they have exhausted all engineering controls available to reduce the respirable dust and protect the health and safety of miners. These arguments are raised to allow many of them to use the most expedient or cheapest fixes available. They are not necessarily based on sound science or worker protections. The Union has recognized that fact for many years. I have been involved in countless cases where operators have argued that all feasible controls has been made. In all of these cases it has been proven that additional engineering controls were available to correct the problem and they still are today.

Section 75.215(C) states that if any valid sample exceeds the citation threshold value formula listed on Table 70-2 the district manager may or may not require the operator to revise the dust control plan and verify its adequacy. The rule allows MSHA to accept the operators word that changes were made - there is no requirement for MSHA to check out the dust control or plan changes.

Section 70.209 and Section 70.212 of the new proposed rules states that MSHA will consider all comments from representatives of miners and provide copies of these comments to the operator upon request. This is in direct conflict with the intent of the Mine Act in that miners should not have to be concerned with reprisal from operators. The intent of the Mine Act was

for miners to be protected from retaliation of operators for speaking up for health and safety.

Section 75.370B also states that any comments that miners submit to MSHA concerning the operators ventilation would be given to the mine operator upon request.

It is evident that MSHA has constantly been trying to intimidate miners from commenting to any plans that the operator submits.

I strongly oppose any language that would allow the operator to receive miners comments without them being sanitized first.

The proposed rules in Part 90 would revise the current standard. The proposed rule not only fails to adequately increase protections for these miners who are afflicted with the Black Lung disease, such as increased sampling, it reduces protections they currently have. Mandatory bi-monthly respirable dust sampling of Part 90 miners were eliminated and would be controlled by ever changing MSHA policy. We have seen how MSHA is constantly changing their policy on how they currently sample and other safety inspections of the mine. Continuos dust monitors are needed to adequately protect these miners each shift, each day, but they are not required by this proposed rule.

These new rules are very complicated and confusing to say the least and they will lead to more cases of Black Lung disease.

In closing let me say again that MSHA should withdraw these regulations if they are concerned with protecting miners health.

Sincerely,

Keith Plylar, Chairman
Local 2397, Health and
Safety Committee