

September 5, 2008

Mine Safety and Health Administration  
Office of Standards, Regulations and Variances  
1100 Wilson Boulevard  
Room 2350  
Arlington, VA 22209-3939

Office of Information and Regulatory Affairs  
Office of Management and Budget  
New Executive Office Building,  
725 17<sup>th</sup> Street, NW.  
Washington, DC 20503,  
**Attn:** Desk Officer for MSHA

**RE: Paperwork Reduction Act Comments: RIN 1219-AB59**

Dear MSHA and OMB:

Veyance Technologies, Inc. (Veyance), the primary American company manufacturing conveyor belting approved for use in underground coal mines, is the world leader in conveyor belt quality and technology. Veyance vigorously competes against major foreign manufacturers in the United States and in markets around the world. Substantial investments in research and development have helped contribute to our successes in the highly competitive conveyor belt industry. We are proud of our ongoing accomplishments but deeply concerned that a proposed change in federal information collection requirements contained the above-captioned rulemaking could potentially compromise our Confidential Business Information (CBI). The additional information the Mine Safety and Health Administration (MSHA) seeks to collect, while competitively sensitive, has no “practical utility” to the agency.

Specifically, in the proposed revision to Information Collection Request (ICR) “1219-0066 - *Testing, Evaluation, and Approval of Mining Equipment*” MSHA stated, “Applications would consist of specifications describing the belt or proposed changes to the belt and formulation information about the compounds in the conveyor belt. This information and the test results would be evaluated by MSHA staff to determine if the conveyor belt met the flame resistant requirements and whether or not an approval should be granted. The information required under this proposed rule is similar to the information required from manufacturers seeking ‘acceptance’ of conveyor belts under existing Part 18.”<sup>1</sup>

Veyance has three specific concerns with the above statement that was submitted to the Office of Management and Budget (OMB):

AB59-COMM-17

<sup>1</sup> MSHA, 1219-AB59, “Supporting Statement,” pp. 2-3.

1. **New CBI Data Required.** The actual formulation data, detailed in the proposed rule, that would be submitted to MSHA is more extensive than currently required and includes additional competitively sensitive information. We understand that MSHA intends to protect the confidentiality of the information but there can be no guarantee about the protection of our CBI data. MSHA's statement that the "information required under this proposed rule is similar to..." existing information submission requirements, does not appropriately characterize the more in-depth nature of the revised requirements.

An example of the type of more detailed information that would be required by the ICR is with respect to our base rubber. Currently, for a hypothetical belt, we would inform MSHA that we use "Polymer (may contain Styrene Butadiene, Polyisoprene, Polybutadiene, or Isoprene Butadiene polymers)" Under the MSHA proposal, for the same hypothetical belt we would state that we use "SBR 1502, SXR 20, and BR 1208." While the above letters and numbers mean little to the layman, they could assist competitors in reverse-engineering our products.

2. **Expanded CBI Data Collection Has NO Practical Utility.** The additional detail MSHA is seeking permission to collect has no "practical utility." Section 3506 of the Paperwork Reduction Act (PRA), "Federal agency responsibilities," states that agencies "for any proposed collection of information contained in a proposed rule.... (3) certify (and provide a record supporting such certification, including public comments received by the agency) that each collection of information submitted to the Director for review under section 3507— (A) is necessary for the proper performance of the functions of the agency, including that the information has practical utility;"

The Definition section of the PRA states that "the term 'practical utility' means the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion;"

There is no indication that MSHA has or could have the ability to use or process the information in a "useful fashion." The more detailed compounding data, while potentially interesting from a competitive business standpoint, does not provide any safety-related information not available from the data currently provided to the agency about conveyor belt formulations. We also note that, in the proposed rule, MSHA would have substantial authority to conduct audits of conveyor belting we manufacture to ensure it continues meet all standards.

In that: 1) all belts approved by MSHA for use in underground coal mines would need to meet the rigorous Belt Evaluation Laboratory Test for flame-resistance; and 2) MSHA has the ability at any point in time to verify that approved belts we manufacture do meet the test, the agency has no use for the expanded information collection and cannot accurately "certify" and provide a supporting record that the data "is necessary for the proper performance" of agency functions.

Veyance requests that OMB not approve the proposed change to the existing ICR which would allow MSHA to collect additional conveyor belt formulation data.

3. **MSHA Intent to Use Formulation Data In Belt Approval Determinations**

MSHA's statement that formulation information, in addition to test results, "would be evaluated by MSHA staff to determine if the conveyor belt met the flame resistant requirements and whether or not an approval should be granted" is perplexing.

The text of the proposed rule does not provide any indication of how the agency would use the formulation information, along with test results, in making an approval decision. Our understanding is that the successfully meeting the performance criteria specified in the flame resistance test is the only technical criteria for belt approval. The technical requirements section of the proposed regulation does not mention use of formulation data and instead only states that,

"Subpart B--Technical Requirements

§ 14.20 Flame resistance.

Conveyor belts for use in underground coal mines must be flame-resistant and:

- (a) Tested in accordance with § 14.22 of this part; or
- (b) Tested in accordance with an alternate test determined by MSHA to be equivalent under 30 CFR §§ 6.20 and 14.4(e)."

If the agency is going to use formulation information as part of their approval decision-making process, should they not explain this in the proposed rule? Should not the agency propose for public comment the specific algorithm or other methodology that would be applied to the formulation information in the approval determination process? By including unstated formulation criteria as part of the MSHA's evaluation of whether or not to approve a belt, is not the agency making the entire approval process arbitrary and capricious?

Veyance requests that OMB prohibit MSHA from evaluating formulation data collected from manufacturers in deciding whether or not to approve a conveyor belt. Instead, the approval determination should be based solely on meeting specified performance requirements, just as stated in the proposed rule.

**Veyance Recommendation**

- 1. OMB should prohibit MSHA from collecting additional conveyor belt formulation data. Instead, the existing information collection requirements should remain in place.
- 2. OMB should prohibit MSHA from using compounding or formulation information in determining whether or not to approve a belt.

Sincerely,



Dave Maguire

Vice President, Global Technology

Veyance Technologies, Inc.