



Drug and Alcohol Testing Industry Association

1325 G Street, NW, Suite 500#5001

Washington, DC 20005

Phone: 800-355-1257

Fax: 202-315-3579

Email: datia@wpa.org

Web: www.datia.org

November 28, 2005

Mine Safety and Health Administration
Office of Standards, Regulations, and Variances
1100 Wilson Blvd., Room 2350
Arlington, Virginia 22209-3939

RIN 1219-AB41

To Whom It May Concern:

Following are the comments of the Drug & Alcohol Testing Industry Association (DATIA) on the Mine Safety & Health Administration's advance notice of proposed rulemaking on the Use of or Impairment From Alcohol and Other Drugs on Mine Property.

DATIA is a 1,300+-member national trade association representing the full spectrum of drug and alcohol testing service agents including laboratories, collection sites, C/TPAs, BATs, MROs, SAPs, employers, and testing device manufacturers. DATIA's mission includes working closely with key policy makers in federal agencies and in congress to ensure that the interests of the industry are heard and taken into account when changes in drug and alcohol testing rules are proposed. We appreciate the opportunity to comment on this matter.

We are happy to see MSHA taking steps to protect mine industry workers from the dangers of drugs and alcohol in the workplace. The success of individual mines that have implemented voluntary drug free workplace programs—including improvements in workplace safety and reduced workers' compensation costs—provide a positive example of why the administration should move toward regulating drug free workplaces for mines.

There are numerous examples of successful drug-free workplaces in both regulated and non-regulated industries. The best example is the Department of Transportation's (DOT) stringent drug and alcohol testing regulations for employees in safety-sensitive positions, and the training and education requirements for employers. The DOT implemented these regulations after high-

profile accidents in the transportation industry that were attributed in some part to drug and/or alcohol use.

If MSHA is committed to increasing safety in the mining industry (including metal, non-metal, and coal mines) and reducing the use of drugs and/or alcohol among the industry's workers, then DATIA urges MSHA to implement regulations for drug free workplaces that include drug and alcohol testing.

In the ANPRM, MSHA refers several times to the close relationship between the mining and construction industries, partnerships and alliances between the two, similarities between the estimated drug and alcohol use rates, and the safety-sensitive nature of the work. While DATIA is unaware of any published studies on the efficacy of drug testing in the mining industry, MSHA should refer to the 2000 study *An Evaluation Of Drug Testing In The Workplace--A Study Of The Construction Industry* by Jonathan Gerber. Gerber finds that companies that implement drug-testing programs experienced a 51% reduction in company incident rates within two years of implementation, plus a reduction in workers compensation claims.

Such results could be realized in the mining industry with the implementation of comprehensive drug free workplace programs that include drug testing.

Below please find DATIA's answers to the specific questions posed in the ANPRM. While DATIA refers to the DOT regulations throughout our comments, this should not be taken as an endorsement to adopt the DOT program as a "one size fits all" solution.

Many mining operations already have in place terrific programs that utilize newer, effective methodologies and test for substances that DOT that have not yet been adopted by DOT. These successful mining programs should be looked to for additional guidance. The intent of any regulation in this area should be to encourage more mining operations to adopt testing programs that can be tailored to the specific needs of the mining industry.

A1. What specific substances are most prevalent and pose the greatest threats to mine safety and health? Please include comments on "controlled substances," illegal or illicit drugs, alcohol, inhalants, prescription and over-the-counter drugs, and any other substances you believe may create safety hazards when used or misused by miners.

Many workplaces follow the federal government's lead and use drug tests that screen for five drugs: amphetamines, cocaine, opiates, marijuana, and PCP. However, there are many additional substances that pose serious safety risks to users and those around them. These additional substances include Oxycodone-

Oxycontin®, Percoset®, Hydrocodone-Vicodin®, and Hydromorphone-Dilaudid®, all of which would require expanded testing.

A2. Based on your experience and knowledge of the industry, how widespread is the use or misuse of alcohol or other drugs in the mining workplace?

Again using the construction industry as a similar workplace model, studies have shown that more than 14 percent of workers were current illicit drug users, and almost 13 percent were heavy users of alcohol. These rates are nearly double the national average for all other industries. Other studies and reports suggest that these numbers are low estimates.

A3. How severe a risk does the use or misuse of alcohol and other drugs pose to miner's safety?

The implementation of drug free workplaces that include drug testing has been shown to reduce accidents and injuries by more than 50%, with related reductions in health benefit utilization and workers' compensation claims.

B1. Should we revise this existing metal and nonmetal standard and establish a standard for coal mines? If so, how?

While MSHA's regulatory statement regarding drugs and alcohol found in sections 56.20001 and 57.20001 of 30 CFR ("Intoxicating beverages and narcotics shall not be permitted or used in or around mines. Persons under the influence of alcohol or narcotics shall not be permitted on the job") is well-intentioned, it does not provide any methods for determining drug or alcohol use, education about the dangers of use, or assistance for workers who need help.

DATIA suggests that MSHA take steps to implement comprehensive drug free workplaces—that include drug and alcohol testing—in metal, nonmetal, and coal mines.

B2. What substances should be prohibited? Please include comments on controlled substances, alcohol, misuse of prescription and over the counter drugs, and inhalants.

At the very least, the drug free workplace program should include testing for the typical five drugs mentioned above and alcohol. Additionally, the administration should take note of comments submitted here by workers and managers in the mining industry regarding specific drugs that are a problem in the industry.

B3. How should impairment be determined, and who should make the determination?

The goal of a drug free workplace should not be to “catch” workers only when they are impaired on the job. Rather, the long-term goal of a strong program is to eliminate drug and alcohol use and misuse in the workforce and provide employees with the assistance needed to live a healthy lifestyle.

Furthermore, drug and alcohol testing does not determine impairment. Under DOT regulations, supervisors who are allowed to make reasonable suspicion determinations (i.e., specific signs and symptoms that must be considered before subjecting an employee to testing for suspicion of being under the influence of drugs or alcohol on the job) must first receive training on drugs and alcohol and how to make such determinations. MSHA could follow the DOT model.

B4. What actions should operators be required to take once an impaired miner is identified (e.g. remove from site, send home for the day, refer to the Employee Assistance Program or elsewhere for assessment, send for drug test, terminate, fine, or other actions)?

After a trained supervisor makes the determination that an employee is likely under the influence of drugs or alcohol on the job, that employee should immediately be removed from any safety-sensitive duties and be tested for drugs and alcohol. If the result is reported positive after laboratory confirmation and medical review, the employee should be referred to the Employee Assistance Program. Follow up drug testing should be performed as determined by a Substance Abuse Professional.

Furthermore, company policy should codify these actions and the consequences of positive drug and/or alcohol tests.

B5. What policy or procedures do you have regarding employees who are using legally and properly prescribed drugs that may cause impairment?

In order for an employer to receive complete and medically correct information regarding an employee's use of prescribed drugs as well as over-the-counter medications, each drug test should be reviewed by a certified Medical Review Officer, again following the DOT regulations. The company policy can then require an employer to remove an employee who is using prescription medications that may cause impairment. The Federal Transit Administration has published an excellent guide on the safety effects of prescription medications.

C1. Should our regulations address training the prevention of alcohol and other drug misuse?

Yes, training is an essential part of any comprehensive drug free workplace. The regulations should include training and education for supervisors and employees. The regulations should stipulate the specific type of training, how many hours of training, how often "refresher" training must be completed, and what topics must be covered. Again, the DOT regulations provide a good model.

C2. Who should receive this training?

At the least, all supervisors and employees should receive some sort of training and education.

C3. What topics should be included?

Training and education topics for employees should include basics about the dangers of drug and alcohol use, the negative health effects, and the specific dangers of drug and alcohol use in safety-sensitive positions.

Training and education for supervisors should include the same information, plus training on the company policy, the regulations, the basics of drug and alcohol testing, and dealing with employees who are misusing drugs and alcohol.

If reasonable cause testing will be allowed, then specific training should be required for individuals who are able to make those determinations.

D1. Should we revise 30 CFR 50.11 to address alcohol and other drug use inquiries by mine operators during accident investigations?

Yes, the regulations should be revised to include post-accident drug and alcohol testing. The regulations should also specifically address which accidents qualify for such testing.

D2. What type of alcohol and other drug use inquiries should be made after accidents (e.g., questioning, drug testing)?

The regulations should be revised to include provisions for post-accident drug and alcohol testing.

D3. What degree of accident or injury should trigger an inquiry?

Again, the MSHA should follow the lead of the DOT in that each transportation mode has a definition of "accident" for their industry that would define those incidents or accidents that would trigger required drug and alcohol testing of those employees who may have contributed to the accident. The MSHA should keep in mind that even the "near miss" incidents could signal drug- or alcohol-use

causation. Testing at such a time could pinpoint a drug or alcohol cause and thus prevent a future much more serious accident.

D4. How should the information collected in the inquiry be used, and by whom?

If the regulations are revised to include post-accident drug and alcohol testing, it is imperative that all information relating to drug and alcohol testing should be kept in the strictest of privacy. Strict chains of custody should be kept for the information, and each company should have a designated representative who deals with the results of drug and alcohol testing.

Industry-wide data should be collected on a summary basis so that the statistics generated by the instituting of a new program such as that discussed by the MSHA could assist other industries in creating safer working environments. The data would be summarized in such a way that no individuals or specific mining locations could be identified.

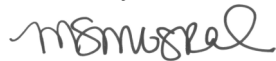
D5. What actions should be required if it is determined that the use of alcohol or other drugs was a contributing factor or cause of the accident?

Consequences of positive post-accident tests must be dealt with in each company's policy. These consequences should be clearly stated and apply equally to all covered employees. Actions taken after an accident may include referral into the Employee Assistance Program, required follow-up testing, or even termination.

DATIA urges MSHA to review the DOT regulations for drug and alcohol testing found in 49 CFR Part 40 for further answers to these questions. We appreciate the ability to comment on this matter, and look forward to working with the administration on improving the safety and health of workers in the mining industry.

If you have questions, please feel free to contact me at 800-355-1257, ex 109, or mmoskal@wpa.org.

Sincerely,



Melissa S. Moskal
Executive Director