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June 10, 2003

Honorable Elaine Chao
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

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Dear Secretary Chao:

On March 6th the Department of Labor published two proposed rules regarding respirable dust in underground coal mines. While I commend your commitment to mine safety and applaud the stated goals of the proposed rules, many of my constituents have raised concerns with the rules as drafted.

As you know the Mine Health and Safety Administration (MSHA), has held six field hearings including one in my home Charleston, West Virginia, to solicit comments on these proposed rules. During these hearings, concerns have been raised that the rules, if implemented, could harm the health of our nation's coal miners and that there may be a conflict between the proposed rules and the 1969 Federal Coal Mine Health and Safety Act.

With the passage of the 1969 Coal Mine Health and Safety Act and the 1977 Amendments, Congress established a maximum level of respirable dust of 2.0 mg per cubic meter in our nation's coal mines. The 1969 Act went on to say that respirable dust is to be controlled by environmental/engineer controls and not by use of respirators. It would appear however, that these proposed rules would permit a company to mine coal with respirable dust levels above the statutorily imposed 2.0 mg limit by use of an Airstream helmet or other such air purifying respirators. I have concerns have been raised that this proposed change is in direct conflict with the Mine Act.

Also, although MSHA will take over the respirable coal dust sampling program under the proposal, at the same time the proposed regulations will reduce the amount of dust sampling by as much as 90 percent. Just recently the National Institute for Occupational Safety and Health and MSHA issued a report which found that existing coal dust limits at mining operations are failing to prevent new cases of black lung. In light of these findings, one would expect an increase in respirable dust inspections and monitoring.

Finally, new technologies may soon be available which could address the monitoring issue. According to statements by industry, labor and miners, such a personal monitoring system (PDM-1) is in the final stages of development and is expected to be available in the very near future. The PDM-1 will have the capability to tell the miner, company and MSHA the level of dust each individual miner was exposed to at all times they were in the mine. Because of the benefits of such a system, it may be best to postpone the new regulations until this technology can be tested and evaluated for inclusion in a redesigned dust regulation.

I would appreciate the opportunity to meet with you on this matter at your earliest possible convenience.

Again, thank you for your commitment to our nation's workforce. I hope these comments on the proposed respirable dust rules will be useful as you continue your review.

Sincerely



Shelley Moore Capito, M.C.

cc: OMB
MSHA

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