

Chapter 21

MSHA’s Proposed Rules to Lower the Exposure of Coal Miners to Respirable Dust and “End Black Lung Now”

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§ 21.01. Introduction.

The Mine Safety and Health Administration (MSHA) published in the Federal Register on October 19, 2010, its proposed rule for “Lowering Miners’ Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors.”² The proposed rule would regulate miners’ exposure to respirable coal mine dust by revising the Agency’s existing standards. The proposal is complex and detailed, but its major provisions would (1) lower the existing exposure limits of miners to respirable coal mine dust from 2.0 milligrams per cubic meter (mg/m³) to 1.0 mg/m³; (2) provide for the use of a single full-shift sample to determine compliance under the mine operator’s and MSHA’s inspector sampling programs (rather than the current requirements for the average of a series of samples); and (3) mandate the use of a new technology,

² 75 Fed. Reg. 64,412-64,506.

the Continuous Personal Dust Monitor (CPDM) for exposure monitoring. MSHA held seven public hearings on the proposed rules around the coal mining regions of the country, including a marathon 13-hour hearing at the Agency's headquarters in Arlington, Virginia, on February 15, 2011.³ The comment period on the proposal closed on June 20, 2011.⁴

Importantly, a broad consensus exists among the coal mining industry, organized labor, and the involved federal agencies (MSHA and the National Institute for Occupational Safety and Health (NIOSH)) that MSHA's current rules designed to prevent coal workers' pneumoconiosis, while effective in their day, are badly in need of reform.⁵ This belief is grounded in experience gained from the implementation of the Federal Mine Safety and Health Act of 1977, as amended,⁶ and other health and safety laws. The proposal is aimed at carrying out these reforms. However, as the MSHA rulemaking docket demonstrates, the coal mining industry is bitterly opposed to this proposal and believes that it is not the answer to the problems that exist under current rules and regulations.⁷ Furthermore, the proposal would present consequences, likely unintended, that could impose enormous burdens on the industry as it struggles with the economic and technological feasibility of the proposal — this, at a time when the use of coal to generate electricity is under increasingly severe pressure from an abundance of inexpensive natural gas and ever more stringent environmental restrictions on the emissions of coal

³ The transcript of this hearing can be found at <http://www.msha.gov/REGS/Comments/2010-25249/Transcripts/20110215ArlingtonVA.pdf>.

⁴ 76 Fed. Reg. 30,878 (Fri., May 27, 2011).

⁵ The original rules are contained in 30 C.F.R. Part 70, for underground coal miners, Part 71, for surface coal miners, and Part 90, regarding procedures for transfer of miners with evidence of pneumoconiosis. Part 70 was originally promulgated on April 3, 1970. 35 Fed. Reg. 5,544. Part 71 was originally promulgated on March 28, 1972. 37 Fed. Reg. 6,368. Part 90 was originally promulgated on October 27, 1971. 36 Fed. Reg. 20,601. The proposed rule covers all coal mines — both underground and surface. This chapter, however, focuses on the proposed rules for underground coal mines.

⁶ The Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. §§ 801, *et seq.*, (the "1977 Mine Act").

⁷ See generally MSHA eDocket, RIN 1219-AB at <http://www.mshagov/REGS/Comments/2010-25249/CoalMineDust>.