

Agency Proposing Release, it was mindful of its prior proposals under Regulation MC.<sup>21</sup> However, the Commission recognizes that commenters who provided their views and suggestions on proposed Regulation MC did not have the benefit of considering the proposals in the SB SEF Proposing Release and the Clearing Agency Proposing Release, which also seek to address some potential conflicts of interest affecting these entities, when they submitted their comments.

The Commission therefore is reopening the comment period to invite further comment on proposed Regulation MC, particularly in light of the additional proposals relating to mitigation of conflicts for security-based swap clearing agencies and SB SEFs that are contained in the Clearing Agency Proposing Release and SB SEF Proposing Release, respectively.

## II. Request for Comment

Commenters are asked to consider the provisions designed to address conflicts of interest in the Regulation MC Proposing Release and in the Clearing Agency Proposing Release and the SB SEF Proposing Release, in the aggregate, when providing further comment on how the Commission should address potential conflicts of interest at security-based swap clearing agencies and SB SEFs, respectively. Are some or all of the proposed requirements in the SB SEF Proposing Release and the Clearing Agency Proposing Release and the requirements in the Regulation MC Proposing Release mutually supportive? Why or why not? Should any of the proposed requirements discussed in the SB SEF Proposing Release, the Clearing Agency Proposing Release, or the Regulation MC Proposing Release relating to conflicts of interest be revised in light of the proposed requirements relating to conflicts of interests in the other releases? If so, which requirements should be revised and how? Are the proposed requirements discussed in the SB SEF Proposing Release, the Clearing Agency Proposing Release, or the Regulation MC Proposing Release relating to conflicts of interest, when considered together, sufficient to mitigate conflicts of interest for SB SEFs, SBS exchanges or security-based swap clearing agencies, or should the Commission consider additional, or alternative, measures? Are any of the proposed requirements discussed in the

SB SEF Proposing Release, the Clearing Agency Proposing Release, or the Regulation MC Proposing Release relating to conflicts of interest unnecessary in light of proposed requirements relating to conflicts of interest in the other releases? Why or why not?

Comments may provide the Commission with further insights regarding what mechanisms, if any, may be necessary or appropriate to mitigate conflicts of interest and how the proposed requirements in the three proposals should be evaluated. Commenters should provide specific reasons and information to support their views and recommendations, including an analysis of why a recommendation would satisfy the statutory mandate contained in Section 765 of the Dodd-Frank Act regarding mitigation of conflicts of interest. The Commission asks that commenters, when possible, provide the Commission with empirical data to support their views.

By the Commission.

Dated: March 3, 2011.

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. 2011-5183 Filed 3-7-11; 8:45 am]

**BILLING CODE 8011-01-P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Parts 70, 71, 72, 75, and 90

#### RIN 1219-AB64

#### Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Proposed rule; request for comment.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) is requesting comments on the proposed rule published in the **Federal Register** on October 19, 2010, addressing Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors. The proposed rule would improve health protections for coal miners by reducing their occupational exposure to respirable coal mine dust and lowering the risk that they will suffer material impairment of health or functional capacity over their working lives.

**DATES:** All comments must be received or postmarked by midnight Eastern Daylight Saving Time on May 2, 2011.

**ADDRESSES:** Comments must be identified with "RIN 1219-AB64" and may be sent by any of the following methods:

(1) *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

(2) *Electronic mail:* [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov). Include "RIN 1219-AB64" in the subject line of the message.

(3) *Facsimile:* 202-693-9441. Include "RIN 1219-AB64" in the subject line of the message.

(4) *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939.

(5) *Hand Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA will post all comments on the Internet without change, including any personal information provided.

Comments can be accessed electronically at <http://www.msha.gov> under the "Rules & Regs" link.

Comments may also be reviewed in person at the Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia. Sign in at the receptionist's desk on the 21st floor.

MSHA will accept written comments and other appropriate information for the record from any interested party. All comments must be received or postmarked by midnight Eastern Daylight Saving Time on May 2, 2011.

MSHA maintains a list that enables subscribers to receive e-mail notification when the Agency publishes rulemaking documents in the **Federal Register**. To subscribe, go to <http://www.msha.gov/subscriptions/subscribe.aspx>.

#### FOR FURTHER INFORMATION CONTACT:

April E. Nelson, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at [nelson.april@dol.gov](mailto:nelson.april@dol.gov) (e-mail); 202-693-9440 (voice); or 202-693-9441 (facsimile).

#### SUPPLEMENTARY INFORMATION:

##### I. Public Hearings

On October 19, 2010 (75 FR 64412), MSHA published a proposed rule, Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors. On February 15, 2011, MSHA concluded the last of seven public hearings on the proposed rule. Hearings were held on December 7, 2010, January 11, 13, and 25, 2011, and February 8, 10, and 15, 2011, in Beckley, West Virginia;

<sup>21</sup> See SB SEF Proposing Release, *supra* note 12, at notes 82, 97, 127, 128, 134, 139, 141, 147, 172, 208, 269 and 570 and accompanying text, and 76 FR at 10979 and 10983-10986. See also Clearing Agency Proposing Release, *supra* note 15, at notes 45 and 107 and accompanying text.

Evansville, Indiana; Birmingham, Alabama; Salt Lake City, Utah; Washington, PA; Prestonsburg, Kentucky; and Arlington, VA. Verbatim transcripts of the hearings will be part of the rulemaking record. Transcripts will be available to the public on MSHA's Web site at <http://www.msha.gov> under the "Rules & Regs" link.

## II. Request for Comments

The key provisions of the proposed rule would lower the existing concentration limits for respirable coal mine dust, provide for full-shift sampling, redefine the term "normal production shift," provide for use of single shift compliance sampling under the mine operator and MSHA's inspector sampling programs, establish sampling requirements for use of the Continuous Personal Dust Monitor (CPDM), and expand requirements for medical surveillance. The proposed rule is available on MSHA's Web site at <http://www.msha.gov/REGS/FEDREG/PROPOSED/2010Prop/2010-25249.pdf>.

In developing the proposed rule, MSHA relied on the NIOSH Criteria Document (Criteria for a Recommended Standard: Occupational Exposure to Respirable Coal Mine Dust (September 1995)), the Secretary of Labor's Advisory Committee (Report of the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers (October 1996)), MSHA'S Quantitative Risk Assessment (QRA), studies in the Health Effects section of the proposed rule, and information and data included in the Preliminary Regulatory Economic Analysis (PREA) in support of the proposal.

MSHA solicits comments on all aspects of the proposed rule and encourages the mining community to review the proposal, including the preamble to the proposed rule, the QRA, and the PREA. The QRA and the PREA are available on MSHA's Web site at <http://www.msha.gov/regsqra.asp> and <http://www.msha.gov/rea.htm>, respectively.

As MSHA has stated throughout the rulemaking, the Agency is interested in information on (1) requests for comments and information that were included in the preamble to the proposed rule, and (2) issues that developed from the proposed rule which were raised during the public hearings. The Agency requests that comments and any alternatives suggested be as specific as possible, and include any technological and economic feasibility data, detailed rationale and supporting documentation, and health

benefits to coal miners. Specific and complete information submitted by commenters will enable MSHA to better evaluate the provisions of the proposed rule and produce a final rule that responds to the needs and concerns of the mining community.

1. The proposed rule presents an integrated comprehensive approach for lowering miners' exposure to respirable coal mine dust. The Agency is interested in alternatives to the proposal which would be effective in reducing miners' respirable dust exposure and invites comments on any alternatives.

2. MSHA solicits comments on the proposed respirable dust concentration limits. Please provide alternatives to the proposed limits to be considered in developing the final rule, including specific suggested limits and your rationale.

3. The proposed rule bases the proposed respirable dust standards on an 8-hour work shift and a 40-hour workweek. In its 1995 *Criteria Document on Occupational Exposure to Respirable Coal Mine Dust*, the National Institute for Occupational Safety and Health (NIOSH) recommended lowering exposure to 1.0 mg/m<sup>3</sup> for each miner for up to a 10-hour work shift during a 40-hour workweek. MSHA solicits comments on the NIOSH recommendation.

4. MSHA included the proposed phase-in periods for the proposed lower respirable dust standards to provide sufficient time for mine operators to implement or upgrade engineering or environmental controls. MSHA solicits comments on alternative timeframes and factors that the Agency should consider. Please include any information and detailed rationale.

5. In the proposal, MSHA also plans to phase in the use of Continuous Personal Dust Monitors (CPDMs) to sample production areas of underground mines and Part 90 miners. MSHA solicits comments on the proposed phasing in of CPDMs, including time periods and any information with respect to their availability. If shorter or longer timeframes are recommended, please provide the rationale.

6. MSHA has received a number of comments about the use of the CPDM. For operators who have used this device, MSHA is interested in receiving information related to its use. For example, MSHA is interested in information related to the durability of the unit, whether and how often the unit had to be repaired, type of repair, cost of repair, whether the repair was covered under warranty, how long the

unit was unavailable, and any additional relevant information.

7. MSHA understands that some work shifts are longer than 12 hours, and that dust sampling devices generally last for approximately 12 hours. MSHA solicits comments on appropriate timeframes to switch out sampling devices, Coal Mine Dust Personal Sampler Units (CMDPSUs, *i.e.*, gravimetric samplers) or CPDMs, to ensure continued operation and uninterrupted protection for miners for the entire shift.

8. The proposed single sample provision is based on improvements in sampling technology, MSHA experience, updated data, and comments and testimony from earlier notices and proposals that addressed the accuracy of single sample measurements. The Agency is particularly interested in comments on new information added to the record since October 2003 concerning MSHA's Quantitative Risk Assessment, technological and economic feasibility, compliance costs, and benefits.

9. MSHA is interested in commenters' views on what actions should be taken by MSHA and the mine operator when a single shift respirable dust sample meets or exceeds the Excessive Concentration Value (ECV). In this situation, if operators use a CPDM, what alternative actions to those contained in the proposed rule would you suggest that MSHA and the operator take? MSHA is particularly interested in alternatives to those in the proposal and how such alternatives would be protective of miners.

10. A commenter at a public hearing requested clarification on whether there would be more than one violation of the respirable dust limit if a single, full-shift sample exceeded the ECV during the same week that the weekly permissible accumulated exposure (WPAE) limit were exceeded. Under the proposed rule, it would be a violation for each occurrence that the ECV or WPAE is exceeded. MSHA is interested in comments and alternatives to the proposed rule. Comments should be specific, and include a detailed rationale and how any recommendations and alternatives would protect miners.

11. The proposal includes a revised definition of normal production shift so that sampling is taken during shifts that reasonably represent typical production and normal mining conditions on the MMU. The Agency requests comments on whether the average of the most recent 30 production shifts specified in the proposed definition would be representative of dust levels to which miners are typically exposed.

12. The proposed sampling provisions address interim use of supplementary controls when all feasible engineering or environmental controls have been used but the mine operator is unable to maintain compliance with the dust standard. With MSHA approval, operators could use supplementary controls, such as rotation of miners, or alteration of mining or of production schedules, in conjunction with CPDMs to monitor miners' exposures. MSHA solicits comments on this proposed approach and any suggested alternatives, as well as the types of supplementary controls that would be appropriate to use on a short-term basis.

13. The proposed rule addresses (1) which occupations must be sampled using CPDMs, and (2) which work positions and areas could be sampled using either CPDMs or CMDPSUs. MSHA solicits comments on the proposed sampling occupations and locations. For example, please comment on whether there are other positions or areas where it may be appropriate to require the use of CPDMs. Also, comment on whether the proposed CPDM sampling of ODOs on the MMU is sufficient to address different mining techniques, potential overexposures, and ineffective use of approved dust controls.

14. Some commenters have suggested that, for compliance purposes, respirable dust samples should be taken only on individual miners in underground coal mines. Under the existing rule, MSHA enforces an environmental standard, that is, the Agency samples the average concentration of respirable dust in the mine atmosphere. The proposed rule would continue the existing practice that samples be collected from designated high-risk occupations associated with respirable dust exposure and from designated areas associated with dust generation sources in underground mines. MSHA solicits comments on the sampling strategy in the proposed rule, any specific alternatives, supporting rationale, and how such alternatives would protect miners' health.

15. The proposed rule addresses the frequency of respirable dust sampling when using a CPDM. MSHA solicits comments on the proposed sampling frequencies and any suggested alternatives. For example, if sampling of DOs were less frequent than proposed, what alternative sampling frequency would be appropriate? Please address a sampling strategy in case of noncompliance with the respirable dust standard and provide rationale. Also, should CPDM sampling of ODOs be

more or less frequent than 14 calendar days each quarter? Please be specific in suggesting alternatives and include supporting rationale.

16. The proposal would require that persons certified in dust sampling or maintenance and calibration retake the applicable MSHA examination every 3 years to maintain certification. Under the proposal, these certified persons would not have to retake the proposed MSHA course of instruction. MSHA solicits comments on this approach to certification; please include specific rationale for any suggested alternatives.

17. In the proposal, MSHA would require that the CPDM daily sample and error data file information be submitted electronically to the Agency on a weekly basis. MSHA solicits comments on suggested alternative timeframes, particularly in light of the CPDM's limited memory capacity of about 20 shifts.

18. The proposal contains requirements for posting information on sampling results and miners' exposures on the mine bulletin board. MSHA solicits comments on the lengths of time proposed for posting data. If a standard format for reporting and posting data were developed, what should it include?

19. The periodic medical surveillance provisions in the proposed rule would require operators to provide an initial examination to each miner who begins work at a coal mine for the first time and then at least one follow-up examination after the initial examination. MSHA solicits comments on the proposed requirements and time periods specified for these examinations.

20. The proposed respirator training requirements are performance-based and the time required for respirator training would be in addition to that required under part 48. Under the proposal, mine operators could, however, integrate respirator training into their part 48 training schedules. The proposal would require that operators keep records of training for 2 years. Please comment on the Agency's proposed approach.

21. The proposed rule specifies procedures and information to be included in CPDM plans to ensure miners are not exposed to respirable dust concentrations that exceed proposed standards. For example, the proposed plan would include pre-operational examination, testing and set-up procedures to verify the operational readiness of the CPDM before each shift. It would also include procedures for scheduled maintenance, downloading and transmission of

sampling information, and posting of reported results. Please comment on the proposed plan provisions and include supporting rationale.

22. MSHA has received comments that some aspects of the proposed rule may not be feasible for particular mining applications. MSHA is interested in receiving comments on the specific mining methods that may be impacted and alternative technologies and controls that would protect miners.

23. MSHA has received comments on proposed section 75.332(a)(1) concerning the use of "fishtail" ventilation to provide intake air to multiple MMUs. Commenters were concerned that, under the proposed rule, the practice of using fishtail ventilation with temporary ventilation controls would not be allowed. MSHA solicits comments on any specific impact of the proposed rule on current mining operations, any suggested alternatives, and how the alternatives would be protective of miners.

24. The Agency has prepared a PREA, which contains supporting cost and benefit data for the proposed rule. MSHA has included a discussion of the costs and benefits in the preamble. MSHA requests comments on all estimates of costs and benefits presented in the preamble and the PREA, including compliance costs, net benefits, and approaches used and assumptions made in the PREA. The PREA is available on MSHA's Web site at <http://www.msha.gov/rea.htm>.

25. Commenters have discussed epidemiological studies and data on coal mine dust exposure presented in the preamble to the proposed rule. MSHA solicits comments regarding studies and data, and requests that commenters be as specific as possible. Please identify the studies and data commented upon, provide detailed rationales for the comments, and include any relevant information and data that will help MSHA evaluate the comments.

26. MSHA has received comments that the proposed rule should not require mine operators to record corrective actions or excessive dust concentrations as section 75.363 hazardous conditions. MSHA would like to clarify that the proposal would require that operators record both excessive dust concentrations and corrective actions in the same manner as conditions are recorded under section 75.363. However, MSHA would not consider excessive dust concentrations or corrective actions to be hazardous conditions, since the proposed requirement is not a section 75.363 required record.

27. A commenter at the first public hearing suggested that the timeframe for miners' review of the CPDM Performance Plan be expanded. For clarification, in developing the proposed rule, MSHA relied on the timeframe and process in the existing requirements for mine ventilation plans. In the proposal, MSHA did not intend to change the existing timeframe and process and stated that the proposed rule is consistent with ventilation plan requirements and would allow miners' representatives the opportunity to meaningfully participate in the process.

Dated: March 2, 2011.

**Joseph A. Main,**

*Assistant Secretary of Labor for Mine Safety and Health.*

[FR Doc. 2011-5127 Filed 3-7-11; 8:45 am]

**BILLING CODE 4510-43-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2011-0035, FRL-9276-6]

#### Approval and Promulgation of Implementation Plans; State of Oregon; Regional Haze State Implementation Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision, submitted by the State of Oregon on December 20, 2010, with supplemental information submitted February 1, 2011, as meeting the requirements of Clean Air Act (CAA) section 110(a)(2)(D)(i)(II) as it applies to visibility for the 1997 8-hour ozone and 1997 particulate matter (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS). EPA is also proposing to approve a portion of the SIP submittal, as meeting certain requirements of the regional haze program, including the Federal regulations for best available retrofit technology (BART).

**DATES:** Written comments must be received at the address below on or before April 7, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R10-OAR-2011-0035, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* Keith Rose at [R10-Public\\_Comments@epa.gov](mailto:R10-Public_Comments@epa.gov).

- *Mail:* Keith Rose, EPA Region 10, Office of Air, Waste and Toxics, AWT-107, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. *Attention:* Keith Rose, Office of Air, Waste and Toxics, AWT-107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-R10-OAR-2011-0035. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available (e.g., CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. EPA requests that if at all possible, you contact the individual listed below to view the hard copy of the docket.

**FOR FURTHER INFORMATION CONTACT:** Mr. Keith Rose at telephone number (206) 553-1949, [rose.keith@epa.gov](mailto:rose.keith@epa.gov) or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean the EPA. Information is organized as follows:

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**FOR FURTHER INFORMATION CONTACT:** Mr. Keith Rose at telephone number (206) 553-1949, [rose.keith@epa.gov](mailto:rose.keith@epa.gov) or the above EPA, Region 10 address.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean the EPA. Information is organized as follows:

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#### I. Background for EPA's Proposed Action

In the CAA Amendments of 1977, Congress established a program to protect and improve visibility in the national parks and wilderness areas. See CAA section 169(A). Congress amended the visibility provisions in the CAA in 1990 to focus attention on the problem of regional haze. See CAA section 169(B). EPA promulgated regulations in 1999 to implement sections 169A and 169B of the Act. These regulations require States to develop and implement plans to ensure reasonable progress toward improving visibility in mandatory Class I Federal areas<sup>1</sup> (Class

<sup>1</sup> Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks