

DEPARTMENT OF LABOR**Mine Safety and Health Administration****DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Disease Control and Prevention****30 CFR Part 72****RIN 1219-AB18****Determination of Concentration of Respirable Coal Mine Dust**

AGENCIES: Mine Safety and Health Administration (MSHA), Department of Labor, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services (DHHS).

ACTION: Proposed rule; reopening of record; request for comments; notice of public hearings; correction; close of record.

SUMMARY: The Secretary of Labor and the Secretary of Health and Human Services (the Secretaries) are reopening the rulemaking record on a joint proposed rule that would determine that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift. The Secretaries proposed to rescind a previous 1972 finding by the Secretary of the Interior and the Secretary of Health, Education and Welfare, on the accuracy of single shift sampling.

The Secretaries are reopening the rulemaking record to provide interested parties an additional opportunity to comment on any issue relevant to the July 2000 proposed rule; and to solicit comment on new data and information added to the record.

DATES: We must receive your comments on or before June 4, 2003.

The Agencies are also announcing that they will hold public hearings on this reopening notice. The hearing dates and times will be announced by a separate document in the **Federal Register**.

ADDRESSES: Comments must be clearly identified as such and transmitted either electronically to comments@msha.gov, by facsimile to (202) 693-9441, or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209-3939. You may contact MSHA with any format questions. Comments are posted

for public viewing at <http://www.msha.gov/currentcomments.htm>.

FOR FURTHER INFORMATION CONTACT:

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This document is also available on MSHA's webpage at <http://www.msha.gov>, under Statutory and Regulatory Information; **Federal Register** Documents; Proposed Rules. You can view comments filed on this rulemaking at <http://www.msha.gov/currentcomments.htm>.

SUPPLEMENTARY INFORMATION: In accordance with sections 101 and 202(f) of the Federal Mine Safety and Health Act of 1977 (Mine Act), this document is published jointly by the Secretary of the Department of Labor, and the Secretary of Health and Human Services.

This document should be read in conjunction with: (1) The July 7, 2000 notice of proposed rulemaking (63 FR 42068) addressing "Determination of Concentration of Respirable Coal Mine Dust, "Single Sample"; and (2) the notice of proposed rulemaking addressing Verification of Underground Coal Mine Operator's Dust Control Plans, "Plan Verification," 1219-AB14, published in today's **Federal Register**, and (3) the associated Preliminary Regulatory Economic Analysis (PREA) available on MSHA's webpage. The plan verification rule would require operators to verify that the dust controls specified in the ventilation plan protect miners from overexposure during normal operations.

In addition to this rulemaking, today's **Federal Register** contains the Plan Verification notice of proposed rulemaking, (NPRM). In combination, these rules represent MSHA's revised program to meet the Mine Act's requirement that a miners' exposure to respirable coal mine dust be maintained at or below the applicable standard on each shift.

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- II. Background
- III. MSHA's Current Enforcement Policy
- IV. Revisions to Update Data for Rulemaking Record
 - (a) Health Effects
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I. Introduction

This reopening notice includes supplemental information which updates the preamble of the July 7, 2002 notice of proposed rulemaking. This information concerns the background, MSHA's current enforcement policy, health effects, quantitative risk assessment, technological feasibility, economic feasibility, compliance costs and benefits, and the list of references and supporting documentation.

The Agencies organized the July 2000 proposed rule (65 FR 42068) to allow interested persons to first consider pertinent material on the Agencies' 1972 notice followed by an overview of the NIOSH mission and assessment of the proposed rule, as well as those aspects of MSHA's coal mine respirable dust program relevant to this proposed rule. Following the introductory material is a discussion of the "measurement objective," or what the Secretaries intend to measure with a single sample measurement, and the application of the NIOSH Accuracy Criterion for determining whether a single sample measurement will "accurately represent" the full-shift atmospheric dust concentration. Next, the validity of the sampling process is addressed, including the performance of the approved sampler unit, sample collection procedures, and sample processing. The concept of measurement uncertainty is then addressed, and why sources of dust concentration variability and various other factors are not relevant to the proposed rule. In addition, the 2000 proposed rule summarized the health effects of occupational exposure to respirable coal mine dust and presented MSHA's quantitative risk assessment. Finally, the 2000 proposed rule explained how the total measurement uncertainty is quantified, and how the accuracy of a single sample measurement meets the NIOSH Accuracy Criterion. Several Appendices, which contain relevant technical information, are attached and incorporated in the preamble to the 2000 proposed rule.

The Secretaries are interested in further comment on all issues relevant to the July 7, 2000 NPRM. The July 7, 2000 NPRM is available on MSHA's webpage at <http://www.msha.gov>, under Statutory and Regulatory Information, **Federal Register** Documents, Proposed Rules; or you may contact MSHA at 202-693-9440 for a copy.