



Received 11/23/05
MSHA/OSRV

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November 23, 2005

Rebecca J. Smith
Acting Director
Office of Standards, Regulations and Variances
Mine Safety and Health Administration
U.S. Department of Labor
1100 Wilson Blvd., Room 2350
Arlington, Virginia 22209-3939

RE: RIN 1219-AB41

Dear Ms. Smith:

The American Society of Safety Engineers (“ASSE”) joins with the Mine Safety and Health Administration (MSHA) in recognizing the profound impact that substance abuse represents to the safety and health of American workers. As such, we believe that employers need to take prudent measures to establish and maintain a drug free workplace for their employees.

Founded in 1911, ASSE is the oldest and largest professional safety organization. Its more than 30,000 members manage, supervise and consult on safety, health, and environmental issues in industry, insurance, government and education. Our “Mining Practice Specialty”, comprised of 300 mining safety professionals, provides a forum for advancing issues such as the one raised in this ANPRM. Together, those professionals have drawn on their experiences and expertise to gather the information included in these comments.

While differences of opinion invariably will surround issues as profound as substance abuse, our members who contributed to the following comments steadfastly agreed on three clear fundamental ideas upon which this regulatory action must be based.

AB41-COMM-16

First, any regulation action promulgated in this rulemaking should be applied equally and without prejudice. All mining industries and all groups of miners are susceptible to the same challenges posed by alcohol and drug abuse throughout our society. Additionally, in light of the fact that a miner's safety is not solely dependent on his actions but also on the actions of others, it is imperative that contracted employees working on mine property should be included in these regulations as well. However, because contractors are considered mine operators under the Mine Act, and in light of the highly company-specific approach likely to be taken to EAPS, discipline and testing, each company should be solely held liable for any failures to conform to MSHA requirements regarding drug and alcohol issues at mine sites.

Second, MSHA should strive to achieve conformity and consistency in its regulatory approach to help encourage compliance and avoid needless regulatory costs on those affected. In this case, ASSE urges MSHA to look to the example set by the Department of Transportation (DoT) in determining appropriate testing protocols in the event that testing requirements ever become a component of future regulatory action. Many operators already have designed and implemented programs that are based on DoT requirements, and all testing facilities are familiar with this sampling protocol. This will aid in both the ease with which operations can come into compliance as well as the cost and availability of laboratory services. It will also avoid disrupting existing effective programs and will avoid the potential for conflicts between applicable laws covering certain classes of miners, for example those who hold commercial drivers licenses.

Third, MSHA should respect the value that education and training provide to proactively addressing the problems of substance abuse. Training on substance abuse prevention, detection and safety-related issues should be included under existing Part 46/48 requirements. At this time, we do not see a need to expand the 24/40 hours of new miner training or the 8 hour annual refresher training requirement. To expedite inclusion of substance abuse curricula into existing Part 46/48 frameworks, mine operators should not be required to resubmit their plans to MSHA for approval but should be permitted to include an addendum listing substance abuse training under "other subjects." Further, MSHA should continue to make resources available through the Small Mines office and Educational Field Services.

ASSE's members are dedicated to the advancement of the safety, health and environmental profession. Unfortunately, dealing with the safety and health risks posed by substance abuse in the workplace is an integral part of their experience and accomplished expertise throughout every industry. Based on the experience and of the members of our Mining Practice Specialty, the following is information addressing the specific questions raised in the ANPRM.

Nature, Extent, and Impact of the Problem	
A.1	<p>What specific substances are most prevalent and pose the greatest threats to mine safety and health?</p> <p>This has generally proven to be a regional issue. Alcohol, marijuana and crystal meth are widely used but, in some areas, oxycontin is prevalent.</p>

A.2	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?	Once again, responses will vary regionally. On the whole, larger and more proactive operators will only have a fraction of the problems that less active producers will. On the whole, most responders estimated around 4%
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A.3	How severe a risk does the use or misuse of alcohol or other drugs pose to miners' safety?	Totally unchecked, the problem could be significant.
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A.4	What accidents or injuries at your mine in the last five years have involved alcohol or other drugs?	No data is available to support or reject definitively.
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Prohibited Substances and Impaired Miners

B.1	Should MSHA revise the existing metal/non-metal standard and establish a standard for coal?	MSHA should retain the Metal/Non-Metal standard and should bring the coal side up to that level of protection.
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B.2	What substances should be prohibited? Please include comments on controlled substances, alcohol, misuse of prescription and over-the-counter drugs and inhalants.	Alcohol and the DoT 5-panel screen (alcohol, methamphetamines, marijuana, cocaine, THC, opiates and PCP).
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B.3	How should impairments be determined and who should make the determination?	DOT protocol should be adopted.
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B.4	What actions should operators be required to take once an impaired miner is identified?	Employers should be given the option of implementing an Employee Assistance Program (EAP).
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B.5	What policy or procedures do you have regarding employees who are using legally and properly prescribed drugs that may cause impairment?	DoT protocol should be adopted -- legal/ prescribed drugs that result in impairment will result in the employee not being allowed to work. An employee must be 100% physically capable to perform all his or her normal job tasks safely.
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Training		
C.1	Should MSHA regulations address training in the prevention of alcohol and other drug misuse? (if so how?)	Training requirements should be flexible due to regional and cultural implications of the issue, including under existing Part 46/48 training, without requiring additional time beyond the 24/40 hour new miner and 8 hour annual refresher mandates.
C.2	Who should receive this training (e.g., supervisors, managers, foremen, miners, miners representatives)?	Everyone - the standard should be applied without discrimination.
C.3	What topics should be included?	Hazards associated with drug or alcohol use in the workplace, reasonable suspicion training, education on the dangers of misuse, where to seek help.
C.4	What training do you provide to address alcohol and other drug misuse?	This will vary greatly by mine depending on the sophistication of the program.
Inquiries Following Accidents		
D.1	Should MSHA revise 30 CFR 50.11 to address alcohol and other drug use inquiries by Mine Operators during accident investigations?	No.
D.2	What type of alcohol or other drug use inquiries should be made after an accident (e.g., questioning, drug testing)?	DoT protocol should be adopted
D.3	What degree of accident or injury should trigger an inquiry? (all, falls, lost time, others)	Reportable injuries
D.4	How should the information be collected in the inquiry be used, and by whom?	DoT policy regarding handling of sensitive information and worker policy

	<p>What action should be required if it is determined that the use of alcohol or other drugs was a contributing factor or cause of an accident?</p>	<p>Mine operators who exercise due diligence to monitor worker compliance with a drug and alcohol-free workplace policy, and who conduct testing of workers under the DoT scheme, should be permitted to offer this as an affirmative defense to the fact of violation and should not be held strictly liable for the presence of an impaired worker at the mine site under such circumstances.</p>
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Drug-Free Workplace Programs

E.1	<p>Do you have a drug free workplace program at your mine, or have you instituted any of the components of a drug free workplace program even if it is not referred to as a drug free workplace? Please provide a copy of your program policy and procedures. Is this program part of a broader program?</p>	<p>ASSE cannot collectively respond to this topic because it relates specifically to Individual company programs.</p>
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E.2	<p>If you have a drug-free workplace policy or program:</p>	
E.2a	<p>What prompted you to initiate your program?</p>	
E.2b	<p>What components does your program have?</p>	
E.2c	<p>Which of your program's components do you feel are most critical and/or effective, and why?</p>	
E.2d	<p>Have you been able to document any improvement as a result of your program?</p>	
E.2e	<p>Please provide any data that demonstrate the extent of the problem at your mine and the effectiveness of your program in improving safety at your mine.</p>	
E.2f	<p>What issues/problems have you encountered in implementing your program and how have you resolved them?</p>	
E.2g	<p>What actions are taken for miners who violate the terms of the policy?</p>	

E.3	If you previously had a drug-free workplace program, what did it include? Why was it discontinued?	
E.4	If you conduct supervisory training on drug issues, how are supervisors taught to recognize and handle employees who may have alcohol and/or other drug problems? Please elaborate on how supervisors make these determinations.	
E.5	Do you have an employee assistance program, and if so, how many employees have accessed the EAP for problems related to alcohol and drug use? How many of these employees have had their problems resolved successfully?	
Costs and Benefits		
F.1	What costs have you incurred from your efforts to reduce or eliminate drugs or alcohol from the workplace? Please provide the costs by type (e.g., personnel, training, equipment).	ASSE cannot collectively respond to this topic because it relates specifically to Individual company programs.
F.2a	What costs would be associated with having a drug-free workplace program (e.g., program implementation, training, drug testing, EAP, restricted work programs, personnel effects)?	
F.2b	Would these costs be borne disproportionately by small mines? If so, please explain how and by how much the costs would vary.	

F.3	What benefits have you derived from your efforts to reduce or eliminate alcohol or drugs from the workplace (e.g., lower workers compensation costs, reduced absenteeism, employee morale, reduction in turnover, accident and injury reduction and related cost savings)?	
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As always, ASSE's members stand ready to assist MSHA in any way possible as it moves forward with this vitally important rulemaking. We appreciate this opportunity to comment and look forward to continually enhancing our relationship with MSHA through the Alliance agreement ASSE and MSHA signed in 2003.

Sincerely,



Jack H. Dobson, Jr., CSP
President