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November 25, 2005

**Regulation Identifier Number (RIN) 1219-AB41**

**David G. Dye**  
Acting Assistant Secretary for Mine Safety and Health  
MSHA  
Office of Standards, Regulations, and Variances  
1100 Wilson Blvd., Room 2350  
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**VIA E-mail: [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov)**

Dear Acting Assistant Secretary Dye:

The Substance Abuse Program Administrators Association (SAPAA) is a non-profit trade association whose members represent all of the alcohol and drug testing service agents including third party administrators (TPAs), in-house administrators, medical review officers (MROs), Substance Abuse Professionals (SAPs), manufacturers of testing devices, and collection sites/collectors. Our membership includes representation from all 50 states and Canada in all the above professions. We appreciate this opportunity to respond to your advanced notice of proposed rulemaking RIN 12219-AB41, Use of or Impairment from Alcohol and Other Drugs on Mine Property, dated October 4, 2005, published in the Federal Register.

In item IV. "Issues" of the ANPR, you are seeking supporting information or data that will help you evaluate whether there is a need for additional federal action to address safety risks stemming from alcohol and other drug use by miners, and if so, whether this should involve rulemaking and what that regulation should include. In the introduction of the ANPR it states:

**"The Department of Health and Human Services, Substance Abuse and Mental Health Services Administration's (SAMHSA) 2003 National Survey on Drug Use and Health (formerly the National Household Survey on Drug Abuse) shows that these community problems are also found in the labor force. The survey reports that of 16.7 million illicit drug users age 18 or older, 12.4 million (74.3 percent) were employed either full or part time. In addition, 14.9 million (77 percent) of the 19.4 million adults, age 18 or older, characterized with abuse of or dependence on alcohol or drugs were employed. The Bureau of Labor Statistics analyzed 1998 data from its Census of Fatal Occupational Injuries and estimated that 19 percent of the nation's workforce who die on the job test positive for alcohol and other drugs. \1\ Similarly, a 1993 analysis of toxicology data on injured workers' blood alcohol concentration estimated that ten percent of fatal work injuries and five percent of non-fatal work injuries overall involved acute alcohol impairment.\2\ "**

We submit that there is no reason to expect miners to be any different than the rest of the workforce. Therefore, the need for a regulatory approach is warranted. Further, the ANPR states "A number of mine operators recognize this problem, and require applicants for employment to pass a pre-employment drug screening. At a summit held on December 18, 2004, some mine operators stated that a **substantial** number of job applicants are unable to pass the initial drug screen. It is apparent that the miners do support a drug free work environment. The Joseph A. Holmes Safety Association established the Professional Miner

Program. This is a safety program to recognize miners who have worked injury-free for at least three years. Miners who have been recognized as Professional Miners sign a pledge which includes a commitment to “work to ensure a safe, healthy, and alcohol and drug-free workplace.” To date, approximately 15,500 miners have taken this pledge.

#### **Section A. Nature, Extent, and Impact of the Problem**

A1. *What specific substances are most prevalent and pose the greatest threats to mine safety and health? Please include comments on “controlled substances,” illegal or illicit drugs, alcohol, inhalants, prescription and over-the-counter drugs, and any other substances you believe may create safety hazards when used or misused by miners.*

The most abused controlled substances are marijuana, cocaine, phencyclidine, opiates, and amphetamines. Prescription drug abuse is increasing, and with its international shipping availability from less regulated countries will continue to do so. Inhalant abuse has typically not been a workplace issue and is traditionally abused more by adolescents of non working age. Alcohol however is the number one abused drug in our country, and a fitness for duty program that does not include its monitoring would be fruitless in its efforts.

A2. *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?*

SAPAA’s experience and knowledge as an association covers many different industries, not just mining. No specific information has been compiled by SAPAA for the mining industry.

A3. *How severe a risk does the use or misuse of alcohol and other drugs pose to miners’ safety?*

There is an absolute risk to miners due to substance abuse.

A4. *What accidents or injuries at your mine in the last five years have involved alcohol or other drugs?*

SAPAA is an association and cannot respond specifically to one individual mine.

SAPAA would suggest using an independent research study of the mining industry to compile questions A2-A4 of this section. Sources are available through SAPAA.

#### **Section B. Prohibited Substances and Impaired Miners**

B1. *Should we revise this existing metal and non-metal standard and establish a standard for coal mines? If so, how?*

Based on the voluminous data already available regarding alcohol and drug abuse use by workers the answer is yes, we should establish a standard for coal mines. How? SAPAA would suggest that we use the existing gold standard format as currently established in U.S. Department of Transportation, 49 CFR Part 40.

B2. *What substances should be prohibited?* The same substances that are tested in 49 CFR Part 40.

B3. *How should impairment be determined, and who should make the determination?*

Impairment should be determined by direct supervisors only after they have completed a mandatory reasonable cause/ signs and symptoms of substance abuse training course. Most of the modes within the U.S. Department of Transportation (FMCSA, PHMSA, etc.) require one hour of drug education and one hour of alcohol education.

B4. *What actions should operators be required to take once an impaired miner is identified (e.g., remove from site, send home for the day, refer to the Employee Assistance Program or elsewhere for assessment, send for drug test, terminate, fine, or other actions)?*

The employee should be immediately removed from his/her safety sensitive duties and then escorted for a reasonable cause drug/alcohol test. Pending the outcome of the test, the employee should be allowed to return to his/her safety sensitive duty. If the employee is confirmed positive by the medical review officer, the employee should be evaluated by a substance abuse professional (SAP), and not allowed to perform his/her safety sensitive duties until the SAP releases the employee back to work with a negative return to duty drug/alcohol test. Again, all of these processes have been in place through 49 CFR Part 40.

#### **Section C. Training**

C1. *Should our regulations address training in the prevention of alcohol and other drug misuse?*

Yes, training is an integral part of any drug-free workplace program.

C2. *Who should receive this training (e.g., supervisors, managers, foremen, miners, miners’ representatives?)*

All employees should receive some form of training in the prevention of drug misuse.

*C3. What topics should be included?*

At a minimum, the topics of discussion should be the identification of drug abuse, parenting training and advice, how a drug/alcohol test is performed, and the company substance abuse policy.

*C4. What training do you provide to address alcohol and other drug misuse?*

Courses offered by SAPAA are designated employer representative (DER), supervisor training, employee training, parenting training, breath alcohol technician training, specimen collector training, substance abuse professional (SAP) training, medical review officer assistant course, and drug testing 101/102.

**Section D. Inquiries Following Accidents**

D1. *Should we revise 30 CFR 50.11 to address alcohol and other drug use inquiries by mine operators during accident investigations?* Yes

D2. *What type of alcohol and other drug use inquiries should be made after accidents (e.g., questioning, drug testing)?*  
Drug and alcohol testing should be required to discount the employee as the contributing factor in the accident.

D3. *What degree of accident or injury should trigger an inquiry (all, fatal, lost-time, others)?*  
All accidents should trigger an inquiry, but a set of guidelines should be established to determine if testing should be required.

D4. *How should the information collected in the inquiry be used, and by whom?*  
It should be kept confidential, and under the control of management.

D5. *What actions should be required if it is determined that the use of alcohol or other drugs was a contributing factor or cause of the accident?*  
Post accident drug/alcohol testing should be required within a two hour period, not to exceed eight hours.

**Section E and F. Drug-Free Workplace Programs and Costs and Benefits**

Questions in both of these sections were directed towards mine operators and not towards outside sources such as SAPAA. SAPAA will not respond to these questions since they do not apply to an association. However, since SAPAA members are considered experts in the field of developing drug-free workplaces for corporations, SAPAA is willing to provide guidance or serve on a task force to help develop a set of drug-free workplace standards in the mining industry.

SAPAA would like to thank you for the opportunity to comment on such an important issue. If you have any questions I can be reached at (800)837-8648, ext 117, or by email at [jpsims@atestinc.com](mailto:jpsims@atestinc.com).

Best regards,



Jeff Sims  
Government Relations/Legislative Committee Chairman  
The Substance Abuse Program Administrators Association