



**Billing Code: 4520-43-P**

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**Petitions for Modification of Application of Existing Mandatory Safety Standards**

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

**ACTION:** Notice.

**SUMMARY:** This notice is a summary of 4 petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

**DATES:** All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. Electronic Mail: [zzMSHA-comments@dol.gov](mailto:zzMSHA-comments@dol.gov). Include the docket number of the petition in the subject line of the message.

2. Facsimile: 202-693-9441.

3. Regular Mail or Hand Delivery: MSHA, Office of Standards, Regulations, and Variances, 201 12<sup>th</sup> Street South, Suite 4E401, Arlington, Virginia 22202-5452, Attention: Roslyn B. Fontaine, Deputy Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

**FOR FURTHER INFORMATION CONTACT:** Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9557 (voice), Noe.Song-Ae.A@dol.gov (email), or 202-693-9441 (facsimile). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification.

## **I. Background**

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements for filing petitions for modification.

## **II. Petitions for Modification**

Docket Number: M-2020-018-C.

Petitioner: Peabody Southeast Mining, LLC, 654 Camp Creek Portal Rd., Oakman, AL 35579

Mine: Shoal Creek Mine, MSHA I.D. No. 01-02901, located in Jefferson County, AL.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.500(d), as it relates to the use of an alternative method of respirable dust protection at the Shoal Creek Mine. The petitioner is applying to use a battery powered respirable protection unit called *CleanSpace EX Powered Respirator* in or inby the last open crosscut.

The petitioner states that:

- a) Peabody currently uses the 3M Airstream helmet to provide miners with respirable protection against coal mine dust, a protection with long-term health benefits.
- b) 3M has discontinued the Airstream helmet but it will offer the *Versaflo™ TR-800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)*, which is lighter and has certain additional features.
- c) The 3M Airstream helmet has been used in mines for over 40 years, in that time technology has advanced and 3M has recently faced component disruptions for the Airstream product. This caused 3M to discontinue the Airstream on June 1, 2020 globally.
- d) The last time to order an Airstream system and components was February 2020 and components were available until June 2020.
- e) There are currently no replacement 3M PAPRs that meet the MSHA standard for permissibility. 3M does not offer an alternative product that meets the MSHA 30 CFR standard for electronic equipment used in underground mining environments that are potentially explosive.
- f) Mines using the Airstream do not have an alternative to offer miners. PAPRs are

beneficial due to the constant airflow provided, which offers respiratory protection and comfort in hot working environments.

The petitioner proposes the following alternative method:

- a) The petitioner is applying to use the *CleanSpace EX Powered Respirator* in or inby the last open crosscut.
- b) The product is not MSHA approved and is not pursuing approval.
- c) The petitioner states that the standards for the approval of these respirators are an accepted alternative to MSHA's standards and they provide the same level of protection.
- d) The petitioner states that the ANSI/ISA standards are an accepted alternative to ACRI2001 and provide the same level of protection.
- e) The equipment will be examined at least weekly by a qualified person according to 30 CFR 75.512-2 and examination results will be recorded weekly and may be expunged after one year.
- f) The petitioner will comply with 30 CFR 75.323.
- g) A qualified person under 30 CFR 75.151 will monitor for methane as is required by the standard in the affected areas of the mine.
- h) Qualified miners will receive training regarding the information in the Decision and Order before using equipment in the relevant part of the mine. A record of the training will be kept and available upon request.
- i) Within 60 days of the Decision and Order becoming finalized, the petitioner will submit proposed revisions to 30 CFR 75.370, mine ventilation, to be approved under the 30 CFR Part 48 training plan by the Coal Mine Safety and Health District Manager. The revisions will specify initial and refresher training and when the revisions are conducted, the MSHA Certificate of

Training (Form 5000-23) will be completed. Comments will be made on the certificate to note non-permissible testing equipment training.

j) The petitioner is responsible for making sure that all people, including contractors, are using the equipment in accordance with the final decision and order. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

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Docket Number: M-2020-019-C.

Petitioner: Peabody Southeast Mining, LLC, 654 Camp Creek Portal Rd., Oakman, AL 35579

Mine: Shoal Creek Mine, MSHA I.D. No. 01-02901, located in Jefferson County, AL.

Regulation Affected: 30 CFR 75.507-1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.507-1(a), as it relates to the use of an alternative method of respirable dust protection at the Shoal Creek Mine. The petitioner is applying to use a battery powered respirable protection unit called *CleanSpace EX Powered Respirator* in return airways.

The petitioner states that:

a) Peabody currently uses the 3M Airstream helmet to provide miners with respirable protection against coal mine dust, a protection with long-term health benefits.

b) 3M has discontinued the Airstream helmet but it will offer the *Versaflo™ TR-800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)*, which is lighter and has certain additional features.

c) The 3M Airstream helmet has been used by mines for over 40 years, in that time

technology has advanced and 3M has recently faced component disruptions for the Airstream product. This caused 3M to discontinue the Airstream on June 1, 2020 globally.

d) The last time to order an Airstream system and components was February 2020 and components were available until June 2020.

e) There are currently no replacement 3M PAPRs that meet the MSHA standard for permissibility. 3M does not offer an alternative product that meets the MSHA 30 CFR standard for electronic equipment used in underground mining environments that are potentially explosive.

f) Mines using the Airstream do not have an alternative to offer miners. PAPRs are beneficial due to the constant airflow provided, which offers respiratory protection and comfort in hot working environments.

The petitioner proposes the following alternative method:

a) The petitioner is applying to use the *CleanSpace EX Powered Respirator* in return airways.

b) The product is not MSHA approved and is not pursuing approval.

c) The petitioner states that the standards for the approval of these respirators are an accepted alternative to MSHA's standards and they provide the same level of protection.

d) The petitioner states that the ANSI/ISA standards are an accepted alternative to ACRI2001 and provide the same level of protection.

e) The equipment will be examined at least weekly by a qualified person according to 30 CFR 75.512-2 and examination results will be recorded weekly and may be expunged after one year.

f) The petitioner will comply with 30 CFR 75.323.

g) A qualified person under 30 CFR 75.151 will monitor for methane as is required by the standard in the affected area of the mine.

h) Qualified miners will receive training regarding the information in the Decision and Order before using equipment in the relevant part of the mine. A record of the training will be kept and available upon request.

i) Within 60 days of the Decision and Order becoming finalized, the petitioner will submit proposed revisions to 30 CFR 75.370, mine ventilation, to be approved under the 30 CFR Part 48 training plan by the Coal Mine Safety and Health District Manager. The revisions will specify initial and refresher training and when the revisions are conducted, the MSHA Certificate of Training (Form 5000-23) will be completed. Comments will be made on the certificate to note non-permissible testing equipment training.

j) The petitioner is responsible for making sure that all people, including contractors, are using the equipment in accordance with the final decision and order. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

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Docket Number: M-2020-020-C.

Petitioner: Peabody Southeast Mining, LLC, 654 Camp Creek Portal Rd., Oakman, AL 35579

Mine: Shoal Creek Mine, MSHA I.D. No. 01-02901, located in Jefferson County, AL.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.1002(a), as it relates to the use of an alternative method of respirable dust protection at the

Shoal Creek Mine. The petitioner is applying to use a battery powered respirable protection unit called *CleanSpace EX Powered Respirator* within 150 feet of pillar workings and longwall faces.

The petitioner states that:

- a) Peabody currently uses the 3M Airstream helmet to provide miners with respirable protection against coal mine dust, a protection with long-term health benefits.
- b) 3M has discontinued the Airstream helmet but it will offer the *Versaflo™ TR-800 Intrinsically Safe Powered Air Purifying Respirator (PAPR)*, which is lighter and has certain additional features.
- c) The 3M Airstream helmet has been used in mines for over 40 years, in that time technology has advanced and 3M has recently faced component disruptions for the Airstream product. This caused 3M to discontinue the Airstream on June 1, 2020 globally.
- d) The last time to order an Airstream system and components was February 2020 and components were available until June 2020.
- e) There are currently no replacement 3M PAPRs that meet the MSHA standard for permissibility. 3M does not offer an alternative product that meets the MSHA 30 CFR standard for electronic equipment used in underground mining environments that are potentially explosive.
- f) Mines using the Airstream do not have an alternative to offer miners. PAPRs are beneficial due to the constant airflow provided, which offers respiratory protection and comfort in hot working environments.

The petitioner proposes the following alternative method:

- a) The petitioner is applying to use the *CleanSpace EX Powered Respirator* within 150 feet of pillar workings and longwall faces.

- b) The product is not MSHA approved and is not pursuing approval.
- c) The petitioner states that the standards for the approval of these respirators are an accepted alternative to MSHA's standards and they provide the same level of protection.
- d) The petitioner states that the ANSI/ISA standards are an accepted alternative to ACRI2001 and provide the same level of protection.
- e) The equipment will be examined at least weekly by a qualified person according to 30 CFR 75.512-2 and examination results will be recorded weekly and may be expunged after one year.
- f) The petitioner will comply with 30 CFR 75.323.
- g) A qualified person under 30 CFR 75.151 will monitor for methane as is required by the standard in the affected area of the mine.
- h) Qualified miners will receive training regarding the information in the Decision and Order before using equipment in the relevant part of the mine. A record of the training will be kept and available upon request.
- i) Within 60 days of the Decision and Order becoming finalized, the petitioner will submit proposed revisions to 30 CFR 75.370, mine ventilation, to be approved under the 30 CFR Part 48 training plan by the Coal Mine Safety and Health District Manager. The revisions will specify initial and refresher training and when the revisions are conducted, the MSHA Certificate of Training (Form 5000-23) will be completed. Comments will be made on the certificate to note non-permissible testing equipment training.
- j) The petitioner is responsible for making sure that all people, including contractors, are

using the equipment in accordance with the final decision and order. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

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Docket Number: M-2020-003-M.

Petitioner: Solvay Chemicals, Inc., P.O. Box 1167, Green River, WY 82935

Mine: Solvay Chemicals, Inc., MSHA I.D. No. 48-01295, located in Sweetwater County, WY.

Regulation Affected: 30 CFR 57.22305 (Approved equipment (III mines)).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance for the respiratory protection of miners. The petitioner proposes to use a non-MSHA approved, intrinsically safe battery-powered air purifying respirator (PAPR) product called a CleanSpace EX to protect miners from potential exposure to respirable dust and ammonia gas during normal mining conditions in or in by the last open crosscut and where methane may be present.

The petitioner states that:

a) There are currently two MSHA-approved PAPRs: the 3M Airstream and the Kasco K80 ET8. The 3M Airstream was discontinued by the manufacturer and the Kasco K80 ET8 (now the only available MSHA-approved model) poses safety and health deficiencies. It is difficult to use, restricts communication, restricts peripheral vision, and requires removing the hood to speak or listen. The Kasco model additionally only protects against organic vapor and is not suitable for protecting against respirable dust.

b) The petitioner currently intends to use the TR-800 PAPR but is also petitioning to use

the CleanSpace EX, which is equal in safety to the TR-800 model but has added enhancements. The CleanSpace EX model is also utilized for different tasks that miners are required to do.

The petitioner proposes the following alternative method:

a) The petitioner is applying to use the CleanSpace EX PAPR at this mine location. The CleanSpace EX is UL certified to the ANSI/UL 60079-11 standard and can be used in hazardous locations; it meets the intrinsic safety protection level and is acceptable to use in mines with the potential for firedamp.

b) The product uses a lithium polymer battery that is not detachable from the electrical circuit. It charges as a complete unit.

c) The product has a NIOSH approved high capacity high efficiency (HEPA) particulate/vapor filter for a half mask and a HEPA particulate filter for the full facemask.

d) The product does not impair vision or communication.

e) The product allows for the miner to simultaneously wear the issued hardhat with a headlamp, unlike the TR-800 model, which does not account for the headlamp.

f) The product uses technology placing the filter housing and fan assembly above the shoulders to reduce ergonomic restrictions, freeing the miner from having to wear the fan and filter unit around the waist. There are also no hose attachments to the unit, which could create added hazards.

g) Using the CleanSpace EX PAPR allows the petitioner to quantitatively fit test employees.

h) The CleanSpace EX allows for more comfort and it can be easily disassembled and cleaned.

i) CleanSpace EX units will be charged out-by the last open crosscut and will utilize the

manufacturer approved battery charger.

j) Employees will be trained on how to properly use and take care of the CleanSpace EX PAPR, according to manufacturer guidelines.

k) 30 CFR 57.22234 will be adhered to if 1.0 percent or more methane is detected.

l) This petition will achieve the same level of safety that is provided by 30 CFR 57.22305.

**Roslyn Fontaine,**

*Deputy Director,*

*Office of Standards, Regulations, and Variances.*

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