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e: 4520-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition 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 a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

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

ADDRESSES: You may submit comments identified by Docket No. MSHA-2022-0068 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA-2022-0068.

2. *Fax:* 202-693-9441.

3. *Email*: petitioncomments@dol.gov.

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202-5452.

Attention: S. Aromie Noe, 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. Before visiting MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202-693-9440 (voice), Petitionsformodification@dol.gov (email), or 202-693-9441 (fax). [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 (CFR) 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, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M-2022-032-C.

Petitioner: Century Mining, LLC, 7004 Buckhannon Road, Volga, West Virginia, 26238.

Mine: Longview Mine, MSHA ID No. 46-09447, located in Barbour County, West Virginia.

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

Modification Request: The petitioner requests a modification of 30 CFR 75.500 (d) to permit the use of the CleanSpace EX Powered Respirator, a battery powered respirable protection unit, in or inby the last open crosscut as an alternative method of respirable dust protection.

The petitioner states that:

(a) They are seeking an alternative to the 3M Airstream helmet to provide miners with respirable protection against coal mine dust, a protection that can provide long-term health benefits.

(b) The 3M Airstream helmet has been used in mines for over 40 years. 3M faced component disruptions for the Airstream product, causing 3M to discontinue, globally, the Airstream on June 1, 2020. The ability to order an Airstream system and components ended in February 2020, with components available through June 2020. Currently, there are no replacement powered air purifying respirators (PAPRs) that meet the MSHA standard for permissibility. PAPRs provide a constant flow of filtered air and offer respiratory protection and comfort in hot working environments.

(c) The CleanSpace EX Powered Respirator (CleanSpace EX) is UL certified to the ANSI/UL 60079-11 standard and can be used in hazardous locations because it meets the intrinsic safety protection level. It is acceptable in other jurisdictions for use in mines with the potential for methane accumulation. The product is not MSHA approved, and the manufacturer is not pursuing approval. The standards for the approval of these respirators are an accepted alternative to MSHA's standards and provide the same level of protection.

(d) The CleanSpace EX uses a lithium-ion polymer battery that is neither accessible nor removable. The lithium-ion polymer battery and motor/blower assembly are both contained within the sealed power pack assembly. It charges as a complete unit.

(e) The CleanSpace EX can be easily disassembled and cleaned.

(f) The CleanSpace EX is designed to utilize either a half or full facemask and NIOSH-approved particulate filters. It does not impair vision nor communication. The CleanSpace EX provides more comfort, as it allows the miner to simultaneously wear the issued hardhat with a headlamp. The PAPR’s filter housing and fan assembly are above the shoulders, reducing ergonomic restrictions, freeing the miner from wearing the fan and filter unit around the waist, and eliminating hose attachments to the unit, which could create added hazards.

The petitioner proposes the following alternative method:

(a) Affected mine employees shall be trained in the proper use and maintenance of the CleanSpace EX in accordance with the established manufacturer guidelines. Mine employees shall also be trained to inspect the unit before each use to determine if there is any damage or defects to the unit that would negatively impact intrinsic safety. This inspection shall include all associated wiring and connections and shall take place prior to the equipment being taken underground.

(b) If it is determined that there is damage that may negatively impact the intrinsic safety, the PAPR shall be immediately removed from service.

(c) The CleanSpace EX user shall conduct daily examinations of the filter and replace as needed.

(d) When fitting a new filter on the CleanSpace EX, the Blocked Filter Alarm shall be tested by the user before the PAPR is put back into service.

(e) CleanSpace EX units shall be charged outby the last open crosscut and shall utilize the manufacturer approved battery charger. CleanSpace EX charging stations located underground shall be enclosed in a properly constructed steel box designed for such purpose.

(f) A qualified person under 30 CFR 75.151 shall monitor for methane as is required by the standard in the affected areas of the mine.

(g) The operator shall comply with all requirements of 30 CFR 75.323. The CleanSpace EX shall not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more methane is detected while the CleanSpace EX is being used, the equipment shall be deenergized immediately. When 1.5 percent or more methane is detected, the CleanSpace EX shall be withdrawn from the affected area outby the last open crosscut.

(h) Employees shall be trained on how to properly use and take care of the CleanSpace EX according to manufacturer guidelines as well as all stipulations of the Decision and Order. Qualified miners shall 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 shall be kept and made available upon request.

(i) Within 60 days of the Decision and Order becoming finalized, the petitioner shall submit proposed revisions to the mine ventilation plan per 30 CFR 75.370, to be approved under the 30 CFR part 48 training plan by the Coal Mine Safety and Health District Manager. The revisions shall specify initial and refresher training. When the training is conducted, a MSHA Certificate of Training (Form 5000-23) shall be completed, with comments on the certificate noting non-permissible testing equipment training.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director,

Office of Standards, Regulations, and Variances.

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