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Sent: Wednesday, June 15, 2011 4:22 PM
To: zzMSHA-Standards - Comments to Fed Reg Group
Subject: MSHA RIN 1219-AB64

Please find attached my comments for MSHA RIN 1219-AB64.

Mark O. Eslinger P.E., General Safety Manager
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MSHA RIN 1219-AB64

Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors; Proposed Rule

The following comments are submitted by:

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General Comments: The rule and preamble use numerous acronyms. Some are SIP, DWP, HHS, CMDPSU, CPDM, DA, MRE, MMU, MSHA, ODO, WAE, WPAE, NIOSH, TWA, QRA, PREA, DHHS, RFI, HD, BMRC, and DO. This makes the study of the rule and preamble difficult. Please limit the use of acronyms.

The preamble designations for sections of the regulations do not stand out. This makes finding the section discussion in the preamble somewhat difficult and time consuming. It would be better if the designations were in a bold font or somehow made to stand out so that they would be easier to find.

PART 70—MANDATORY HEALTH STANDARDS FOR UNDERGROUND COAL MINES

§ 70.2 Definitions.

Act. The Federal Mine Safety and Health Act of 1977, Public Law 91-173, as amended by Public Law 95-164 and Public Law 109-236.

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Approved sampling device. A sampling device approved by the Secretary and Secretary of Health and Human Services (HHS) under part 74 of this title.

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Coal mine dust personal sampler unit (CMDPSU). A personal sampling device approved under part 74, subpart B, of this title.

Continuous personal dust monitor (CPDM). A personal sampling device approved under part 74, subpart C of this title.

Designated area (DA). An area of a mine identified by the operator in the mine ventilation plan, approved by the District Manager, and identified by a four-digit identification number assigned by MSHA.

Comment: The practice of sampling designated areas (DAs) should be stopped. The concern is the respirable dust exposure to the miner not what the concentration is in some area. The sampling of designated areas is a burden and cost to the mine operator and serves to provide little indication as to what a miner is exposed to. The practice of sampling designated areas is costly both to the operator and MSHA and should be discontinued.

* * * * *

Equivalent concentration. The concentration of respirable coal mine dust expressed in milligrams per cubic meter of air (mg/m3), determined by dividing the weight of dust in milligrams collected on the filter of an approved sampling device by the volume of air in cubic meters passing through the collection filter (sampling time in minutes times the sampling airflow rate in cubic meters per minute), and then converting this concentration to an equivalent 8-hour exposure as measured by the Mining Research Establishment (MRE) instrument. When the approved sampling device is:

(1) The CMDPSU, the equivalent concentration is determined by first multiplying the concentration of respirable coal mine dust by the MRE conversion factor prescribed by the Secretary and then normalizing this quantity to an 8-hour exposure measurement by multiplying the MRE equivalent concentration by the factor *t/480*, where *t* is the sampling time in minutes if longer than 8 hours.

Comment: If a 10-hour shift is worked then this proposed rule requires the concentration to be multiplied by 600/480 or 1.25. Thus if the concentration was 1.0 mg/m^3 for 10 hours then the concentration becomes 1.25 mg/m^3. This exaggerates the dust

concentration that a miner is exposed to. The concentration for shifts longer than 8 hours should be the concentration of respirable dust multiplied by the MRE conversion factor only. It should not be "normalized" by multiplying by the factor of t/480. So if the exposure for the above 10-hour example is 1.0 mg/m^3 then it should stay at 1.0 mg/m^3. Under the factor of t/480, if the sample for an 8-hour shift is 1.0 mg/m^3 the concentration stays at 1.0 mg/m^3. If the actual measured concentration for a 10-hour shift is 0.84 mg/m^3 then the concentration becomes 1.05 and with the 1.0 mg/m^3 standard the sample would be deemed overweight.

If the factor of t/480 is not changed, Black Panther Mining, LLC, (Black Panther) and Five Star Mining, Inc., (Five Star) would be forced to change the lengths of their shifts decreasing the efficiency of mining coal. The cost of mining coal would rise significantly. Use of the hot-seat change of shifts would need to be discontinued. Both at Black Panther and Five Star an additional 1.5 units would need to be added to make up for the lost production because miners would only be able to work eight-hour shifts instead of the 10-hour shifts that are currently being worked. The factor of t/480 would make compliance difficult requiring the change to 8-hour shifts. At both Five Star's Prosperity Mine and Black Panther's Oaktown Fuels Mine No. 1, six Mechanized Mining Unit crews work 10 hours per shift or 60 crew hours per shift (6 MMUs x 10 hours/MMU = 60 hours). Losing two hours per Mechanized Mining Unit per shift, (an 8-hour shift versus a 10 hour shift) equals a loss of 12 crew hours per shift (6 MMUs x 2 hours/MMU = 12 hours). To make up the difference, 1.5 Mechanized Mining Units would need to be added (1.5 MMUs x 8 hours/MMU = 12 hours). Since Black Panther and Five Star cannot add a half of a Mechanized Mining Unit they would have to add two Mechanized Mining Units per mine. Additionally, it is two hours of production per MMU that would be lost. Travel time would remain the same whether 10-hour shifts are worked or 8-hour shifts are worked. Therefore, it would be two Mechanized Mining Units that would need to be added.

Each Mechanized Mining Unit has one continuous miner, one roof bolter, three shuttle cars, a scoop, a power center, and a

supply sled to mine the coal. Each unit would need to have a mantrip, a mechanic's vehicle, a self-contained self-rescuer cache, a belt, a feeder, and a rescue chamber. Each unit would need to have an intake air split, a return air split, and intake belt air split. As for personnel, each mine would need to add 18 miners per production shift or 36 miners for each mine for production. The maintenance shift would need to add additional miners to service and maintain equipment, six miners. The total additional miners needed to be added are 42.

Five Star's Prosperity Mine does not have the reserve capacity in its ventilation system to provide the air to put on even one new mechanized mining unit. Prosperity Mine would close if the rule comes into effect. Prosperity Mine would not be able to mine enough coal to meet coal sale contracts with six Mechanized Mining Unit crews working only 8-hour shifts. If the mine could add two Mechanized Mining Units to make up for lost production, the mine would need two new primary intake air splits and two new intake belt air splits (neutrals). Each primary intake split would need about 30,000 cubic feet per minute (cfm) and each additional belt air split would require about 20,000 cubic feet per minute (cfm). This is necessary to comply with the regulations, 50,000 cfm per MMU or about 100,000 cfm total for the two units. The 30,000 cfm air in the primary intake is necessary to provide enough air to maintain the 20,000 cfm per MMU in the last open crosscut. Additionally, the intake belt air split would need to have a minimum 50 feet per minute (fpm) air velocity in the belt entry per § 75.350(a)(2). It would also need to have sufficient intake air to provide for the largest approval plate quantity requirement of the diesel-powered equipment in the travelway entry per § 75.323(f)(3). More air would also be needed because of leakage through the additional stoppings that would need to be constructed. Since the mine would need two new intake splits, it is estimated that a minimum of 5,000 cfm leakage per split would result or 10,000 cfm for the two new splits. This is a total of about 120,000 cfm to add two Mechanized Mining Units assuming that the quantities for the last open crosscuts for each of the mechanized mining units would stay the same.

Adding additional shafts and another main mine fan is not warranted at Prosperity Mine because of the remaining amount of

reserves. The coal would not be mined. Additionally if the units are not added, the cost to mine coal per ton would increase because of the shortened shifts. The outby maintenance costs for such items as belts, examinations, rock dust, pumping, roof control, and roadway maintenance would be spread over about three quarters of the production. It is estimated that the mine operating 8-hour shifts could only produce about three quarters of production of 10-hour shifts (six hours of production versus eight hours production). Two hours of production would be lost. Travel time would remain the same.

Black Panther could add an additional two Mechanized Mining Units to make up for the production lost by changing to 8-hour shifts. The cost to mine coal per ton would increase significantly because of the shortened shifts. The outby maintenance costs for such items as belts, examinations, rock dust, pumping, roof control, and roadway maintenance would increase because additional units would be added. It is estimated that a Mechanized Mining Unit operating 8-hour shifts could only produce about three quarters of production of 10-hour shifts (six hours of production versus eight hours production). Two hours of production would be lost. Ventilation costs would increase to provide five additional intake belt air splits and to overcome the leakage. Travel time would remain the same.

(2) The CPDM, the device shall be programmed to directly report the end-of-shift equivalent concentration as an MRE 8-hour equivalent concentration.

Comment: The MRE equivalent, if more that an 8-hour shift is worked, should be the concentration of respirable dust multiplied by the MRE conversion factor only. It should not be increased by the factor of t/480 as proposed for the CMDPSU. This proposed definition does not explain how the concentration will be computed if the shift is longer than 8 hours. This needs to be done. The mining industry needs to know how the calculation is done. The preamble states on page 64416 that "Dust concentration measurements from a CPDM would be converted to CMDPSU equivalent concentrations because NIOSH researchers have determined that measurements of respirable dust concentrations using the CMDPSU and the CPDM are comparable."

So it appears that the factor of t/480 would be used. This should not be done.

The middle paragraph of the preamble on page 64417 states "Since the existing standard was based on the assumption that exposure occurs over an 8-hour shift." This portion of the statement is correct. However, the statement goes on to add "the 8-hour exposure corresponds to a daily accumulated amount of respirable dust of 16 mg-hr/m^3 (8 hours x 2.0 mg/ m^3) as measured by the MRE." Multiplying the concentration by the number of hours makes no sense. The critical thing is the amount of respirable dust that enters a miner's lungs. This is true whether the exposure time is 6 hours, 8 hours, or 10 hours. The concentration should be whatever the amount of accumulated respirable dust weight gain is. The mathematic logic of multiplying by t/480 does not make sense. If for example assuming the same dust concentration in the atmosphere, a miner works four 10-hour shifts in a week his calculated concentration would be more than if he worked five 8-hour shifts. This punishes a mine that works longer shifts even though the miner may not be exposed to any more dust than the mine that works 8-hour shifts.

If the factor of t/480 is not changed, Black Panther Mining, LLC, (Black Panther) would be forced to change the lengths of their shifts decreasing the efficiency of mining coal. The cost of mining coal would rise significantly. Use of the hot-seat change of shifts would need to be discontinued. At Black Panther an additional 1.5 units would need to be added to make up for the lost production because miners would only be able to work eight-hour days instead of the 10-hour days that are currently being worked. The factor of t/480 would make compliance difficult requiring the change to 8-hour shifts. Six Mechanized Mining Unit crews work 10 hours per shift or 60 hours per shift (6 MMUs x 10 hours/MMU = 60 hours). Losing two hours per Mechanized Mining Unit per shift, an 8-hour shift versus a 10 hour shift) equals a loss of 12 hours per shift (6 MMUs x 2 hours/MMU = 12 hours). To make up the difference, 1.5 Mechanized Mining Units would need to be added (1.5 MMUs x 8 hours/MMU = 12 hours). Since Black Panther cannot add 1.5 Mechanized Mining Units it would have to add two Mechanized Mining Units.

Each Mechanized Mining Unit has one continuous miner, one roof bolter, three shuttle cars, a scoop, a power center, and a supply sled to mine the coal. Each unit would need to have a mantrip, a mechanic's vehicle, a self-contained self-rescuer cache, a belt, a feeder, and a rescue chamber. Each unit would need to have an intake air split, a return air split, and intake belt air split. It is estimated that a Mechanized Mining Unit operating 8-hour shifts could only produce about three quarters of production of 10-hour shifts (six hours of production versus eight hours production). Two hours of production would be lost. Travel time would remain the same.

(3) Either the CMDPSU or CPDM and the sampled work shift is less than 8 hours, the value of *t* used for normalizing the MRE-equivalent concentration to an 8-hour exposure measurement shall be 480 minutes.

Comment: If a sampled work shift is less than 8 hours the concentration should be what was measured for the time that the miner was exposed. This is the respirable dust exposure that the miner was exposed to. In this case if the shift is less than eight hours then the respirable dust weight gain is the actually what was measured multiplied by the MRE equivalent factor. This is exactly what should be done for the over-eight-hour long shift.

Mechanized mining unit (MMU). A unit of mining equipment including hand loading equipment used for the production of material; or a specialized unit which uses mining equipment other than specified in § 70.207(b). Each MMU is assigned a four-digit identification number by MSHA, which is retained by the MMU. However, when:

Comment: The definition states that the identification number "is retained by the MMU." This does not explain what happens to a "unit of mining equipment" when the pieces of equipment are sent to different units or removed from service. If used, this definition needs to be more specific as to what a unit of mining equipment is. It needs to explain what happens for example when

a continuous miner is removed from the mine and is rebuilt. Also, an explanation is needed, for example, when cable shuttle cars are replaced by battery-powered cars. Switching the type of cars should not matter but the definitions uses "unit of mining equipment." For continuous miner sections, the Mechanized Mining Unit identification could be driven by the continuous miner and not by the type or number of shuttle cars, or the type or number of roof bolters. This would solve the problem of what happens as equipment is added or changed on a unit with a continuous miner.

Why should the definition of Mechanized Mining Unit exist? If the ventilation plan parameters are driven by the machine that mines the coal then the definition "Mechanized Mining Unit" does not need to exist. Track the continuous miner, the longwall shearer, etc. Use the manufacturer's serial number and eliminate the definition "Mechanized Mining Unit."

(1) Two sets of mining equipment are used in a series of working places within the same working section and only one production crew is employed, the two sets of equipment are identified as a single MMU.

Comment: In this case it appears that the working section identifies the MMU. Is the same MMU number kept if one continuous miner is removed from the working section?

(2) Two or more sets of mining equipment are used in a series of working places within the same working section and two or more production crews are employed, each set of mining equipment shall be identified as a separate MMU.

Comment: This definition appears to be in conflict with the proposed rewrite of § 75.332(a)(1). How can two sets of equipment with two production crews be used on the same working section when the proposed rule § 75.332(a)(1) requires that each MMU be ventilated by a separate split of intake air?

In this part of the definition, it appears that a crew identifies the MMU, two crews two MMUs. If a crew moves from one continuous miner to the other continuous miner, same intake air split same working section, does the MMU transfer with the

crew or does it stay with the continuous miner? These definitions of MMU make a good argument to sample the person, and the person only. The definition of a Mechanized Mining Unit could be done away with. Sampling could be based solely on the miner assigned to certain occupations. Sample the personnel and do not concern MSHA or the operator whether there are two crews or one crew, whether the continuous miner moves or not. What happens if the mine uses two crews on the day shift and one crew on the evening shift and the evening shift mines with both continuous miners? Are there two MMUs for one shift and one MMU for one shift, same working section?

What is a production crew? If a working section has a single split of intake air, two continuous mining machines, two different miner operators, but the shuttle cars pull coal from both continuous miners, is this two crews or one crew? If the continuous miner operators are sampled then MSHA does not have to worry whether it is one MMU or two MMUs.

A second MMU does not need to be assigned because two sets of equipment have two crews assigned to it. This is a burden to the operator and to MSHA. Only one set of equipment can mine coal at the one time on a split of intake air. The individual miners on a unit with two or more sets of equipment used in series should be sampled. The miners could move from one piece of equipment to another. This will give the true exposure to the miner of whom the standards are aimed to protect. The miner is the concern.

Additionally, shuttle cars may pull coal from both continuous miners from time to time. This definition does not explain what happens with the MMU when this happens. Also the roof bolters could move from one side of the unit to the other. For continuous miner sections, the Mechanized Mining Unit identification should be driven by the continuous miner and not by the type or number of shuttle cars, or the type or number of roof bolters. This would solve the problem of what happens as equipment is added or changed on a unit with a continuous miner.

The best recommendation is to do away with the definition of Mechanized Mining Unit and only sample the personnel assigned to an occupation. Dust parameters for the ventilation plan should

be driven by the type of equipment and seam, not the MMU. Dust control parameters in ventilation plans in District 8 have been driven by the type of equipment and the seam that the mining is taking place in for decades and not the MMU.

* * * * *

Normal production shift. A production shift during which the amount of material produced by an MMU is at least equal to the average production recorded by the operator for the most recent 30 production shifts or for all production shifts if fewer than 30 shifts of production data are available.

Comment: This proposed definition changes the amount material produced from 50% to 80%. This increases the burden to the mine operator. Additional samples will need to be voided because a unit did not make production thus requiring additional sampling. Less than full-production shifts might result in less respirable dust sampled but miner exposure is the concern. The overall exposure, including less than full-production shifts, needs to be considered in the health of the miner.

Other designated occupation (ODO). Other occupation on a mechanized mining unit that is designated for sampling in addition to the Designated Occupation. Each ODO will be identified by a four-digit identification number assigned by MSHA.

Comment: The miner assigned to the occupation needs to be sampled and not the occupation. This will give the true exposure to the miner of whom the standards are aimed to protect. The Federal mine Safety & Health Act of 1977 states "Congress declares that - (a) the first priority and concern of all the coal or other mining industry must be the health and safety of its most precious resource - the miner." Sampling must be done of the individual miner and not the occupation. The "passing of the pump" must not be done. It is not justified. "Passing of the pump" also contributes to errors in measurements.

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Quartz. Crystalline silicon dioxide (SiO2) as measured by: (1) MSHA Analytical Method P-7: Infrared Determination of Quartz in Respirable Coal Mine Dust; or (2) Any method approved by MSHA as providing a measurement of quartz equivalent to that obtained by MSHA Analytical Method P-7.

Comment: MSHA should not be able to "approve a method of measurement of quartz." This practice can change the rule without going through proper rule making procedures. The industry must know the standard that is being used and not be subject to change at any time due to a change in what MSHA approves. The preamble at page 64418, third column, states "The proposed definition would provide notice to interested parties of the analytical procedure that MSHA uses to measure quartz in coal mine dust." The proposed regulation provides no notice.

The rule needs to specify how the quartz level will be analyzed when sampling with a CPDM. The proposed regulations do not indicate how this will be done. This needs to be proposed so that the industry can comment on the proposed rule or the quartz requirement eliminated. The industry cannot comment on "Any method approved my MSHA."

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Representative samples. Respirable dust samples that reflect typical dust concentration levels and normal mining activity in the active workings during which the amount of material produced is equivalent to a normal production shift.

Comment: This definition does not need to exist. The miner needs to be sampled and only the miner. This will give the true exposure to the miner of whom the standards are aimed to protect. The Federal mine Safety & Health Act of 1977 states "Congress declares that - (a) the first priority and concern of all the coal or other mining industry must be the health and safety of its most precious resource - the miner." Sampling must be done of the individual miner and not the "active workings." The definition needs to be eliminated.

* * * * *

Weekly accumulated exposure (WAE).
The total amount of exposure to respirable coal mine dust, expressed in mg-hr/m3, accumulated by an occupation during a work week (Sunday thru Saturday), determined by multiplying the daily individual end-of-shift equivalent concentration measurements by 8 hours, which yields the total amount of exposure accumulated over the course of the particular shift sampled, and then adding together all of the daily accumulated exposures.

Comment: The miner needs to be sampled and only the miner. This will give the true exposure to the miner of whom the standards are aimed to protect. The Federal mine Safety & Health Act of 1977 states "Congress declares that - (a) the first priority and concern of all the coal or other mining industry must be the health and safety of its most precious resource - the miner." Sampling must be done of the individual miner and not the "occupation." Track the miner's exposure not the occupation's exposure.

If MSHA is going to create a new definition "Weekly Accumulated Exposure" it should be the total weight gain of all the samples for the week for an individual miner. Multiplying the daily exposure by the hours worked does not give the proper indication of the exposure when the miner works longer than 8-hour shifts. The weight gain has been multiplied by t/480 which gives a higher exposure than has the miner has actually been exposed to. Why should a miner who works four 10-hour shifts have a higher "Weekly Accumulated Exposure" than a miner who works five 8-hour shifts when the total weight gain measured is the same?

If a mine works six days, the amount of weight gain will 20 percent higher because the end-of-shift weights will be multiplied by eight and added together. The "Weekly Accumulated Exposure" should be the weight gain for the week and the number of hours worked should be left out of the determination. The number of shifts that miners work at Oaktown Fuels Mine No. 1 and Prosperity Mine varies from week to week.

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Weekly permissible accumulated exposure (WPAE). The maximum amount of accumulated exposure to respirable coal mine dust, expressed in mg-hr/m3, permitted to be received by an occupation during a 40-hour work week (Sunday thru Saturday), determined by multiplying the applicable standard by 40 hours.

Comment: If MSHA is going to set a "Weekly Permissible Accumulated Exposure" the permitted exposure should be to the miner and only the miner. This will give the true exposure to the miner of whom the standards are aimed to protect. The Federal mine Safety & Health Act of 1977 states "Congress declares that - (a) the first priority and concern of all the coal or other mining industry must be the health and safety of its most precious resource - the miner." The exposure must be done of the individual miner and not the "occupation." Track the miner's exposure not the occupation's exposure.

It is arbitrary to set the Weekly Permissible Accumulated Exposure to be 40 hours times the daily permitted exposure. What research shows that the "Weekly Permissible Accumulated Exposure" is indicative of the likelihood of a miner getting black lung? A mine that produces coal six days a week will be penalized by producing coal on the sixth day. In essence, the mine will be penalized by 8 times the weight gain for that day. The rule is designed to eliminate producing coal more than five days in a week. Coupled with the penalty for shifts longer than eight hours per day, t/480, production will in essence be limited to five 8-hour shifts per week.

The Weekly Permissible Accumulated Exposure is set to be 40 hours times the daily permitted exposure. What research shows that the "Weekly Permissible Accumulated Exposure" is indicative of the likelihood of a miner getting black lung? Currently, many mines in Illinois and Indiana are producing coal six days a week and the NIOSH study shows that the frequency of black lung in the miners of those states is less than predicted.
http://www.cdc.gov/niosh/topics/surveillance/ORDS/ecwhsp.html

The effect of setting a Weekly Permissible Accumulated Exposure when using a CPDM will limit the number of hours that a miner can work during a week. If a miner works more than eight hours a day the normalization factor will skew the concentration that

the miner was actually exposed to. The t/480 factor should not be used. The exposure to the miner should be tracked. If the miner is approaching the Weekly Permissible Accumulated Exposure then should be able to assign that miner to a less dusty occupation for the remainder of the week. If the miner produces coal more than five days a week the 40 mg-hr/m^3 penalize the operator. The "Weekly Permissible Accumulated Exposure" should be the total weight gain for the week divided by the number of days worked.

4. Subpart B is revised to read as follows:

Subpart B—Dust Standards

Sec.
70.100 Respirable dust standards.
70.101 Respirable dust standard when quartz is present.

§ 70.100 Respirable dust standards.

(a) Each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of each mine is exposed, as measured with an approved sampling device and in terms of an equivalent concentration, at or below:

(1) 2.0 milligrams of respirable dust per cubic meter of air (mg/m3).

(2) 1.7 mg/m3 as of [date 6 months after the effective date of the final rule].

(3) 1.5 mg/m3 as of [date 12 months after the effective date of the final rule].

(4) 1.0 mg/m3 as of [date 24 months after the effective date of the final rule].

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Comment: It is good to see that respirable dust standard references the "miner." The miner only needs to be sampled. This will give the true exposure to the miner. "Designated Occupations", "Other Designated Occupations," or "Designated Areas" must not be sampled. Miners assigned to certain occupations can be sampled but only the miner should be sampled.

The preamble declares on Page 64420, middle column, that "The Committee concluded that 'there is substantial evidence that either a significant number of miners are currently being exposed to coal mine dust at levels well in excess of 2.0 mg/m^3 or that the current exposure limit for coal mine dust is insufficiently protective.'" A study is needed to determine which of these declarations are true. If "a significant number of miners are currently exposed to coal mine dust at levels well in excess of 2.0 mg/m^3" then there is no need to lower the concentration standard. The concentration standard must not be lowered unless MSHA is positive that a significant number of miners are not currently exposed to dust levels in excess of 2.0 mg/m^3. The industry and in particular the mines that are currently in compliance should not be subjected to lower standards and the costs associated with the lower standards if noncompliance is the problem. If some mines do not comply with the 2.0 mg/m^3 what assurance is there that those mines will comply with the 1.0 mg/m^3 standard?

The National Institute for Occupational Safety and Health (NIOSH) report "Enhanced Coal Workers Surveillance Program" showed that coal miners in Indiana and Illinois did not exceed the expectations for the occurrence of black lung. It shows the average dust level at about 1.2 mg/m^3. The following is taken from the report.

http://www.cdc.gov/niosh/topics/surveillance/ords/reps/UnS12000.HTML

"Indiana

> *For the counties included in this report, the average dust level is 1.281 mg/m3. There were 163 miners examined.*

- *1% (1 miner) showed signs of pneumoconiosis (>=1/0 or PMF) while 4% (6 miners) would be expected.*
- *0% (0 miners) showed signs of pneumoconiosis (>=2/1 or PMF) while 1% (2 miners) would be expected.*
- *0% (0 miners) showed signs of PMF while 1% (1 miner) would be expected."*

http://www.cdc.gov/niosh/topics/surveillance/ords/reps/UnS11000.HTML

"Illinois

For the counties included in this report, the average dust level is 1.158 mg/m3. There were 544 miners examined.

- *1% (4 miners) showed signs of pneumoconiosis (>=1/0 or PMF) while 4% (24 miners) would be expected.*
- *0% (0 miners) showed signs of pneumoconiosis (>=2/1 or PMF) while 1% (7 miners) would be expected.*
- *0% (0 miners) showed signs of PMF while 1% (4 miners) would be expected."*

http://www.cdc.gov/niosh/topics/surveillance/ords/reps/UnD00008.HTML

"District 8

For the counties included in this report, the average dust level is 1.185 mg/m3. There were 707 miners examined.

- ***1% (5 miners) showed signs of pneumoconiosis (>=1/0 or PMF) while 4% (29 miners) would be expected.***
- ***0% (0 miners) showed signs of pneumoconiosis (>=2/1 or PMF) while 1% (9 miners) would be expected.***
- ***0% (0 miners) showed signs of PMF while 1% (5 miners) would be expected."***

The preamble page 64426 bottom of the first column MSHA declares "During Section 202 spot inspections conducted in 2009, MSHA

personnel routinely observed certified persons using improper procedures for dust collection and handling of sampling devices, and for maintaining and calibrating approved sampling devices." This indicates that MSHA has not had proper oversight of the respirable dust sampling program. If this problem only came to light in 2009 then maybe the declaration that "a significant number of miners are currently being exposed to coal mine dust at levels well in excess of 2.0 mg/m^3" as stated on Page 64420, middle column of the preamble, is true and the overexposure has gone on for years. The preamble states "In 1996, the Dust Advisory Committee also recognized that overexposure in respirable coal mine dust remained a problem and recommended unanimously that MSHA consider lowering the allowable level of exposure to coal mine dust. The committee reviewed MSHA monitoring data and scientific studies provided my NIOSH, including the 1995 Criteria Document. The Committee concluded that 'there is substantial evidence that either a significant number of miners are currently being exposed to coal mine dust levels well in excess of 2.0 mg/m^3 or that the current exposure limit for coal mine dust is insufficiently protective.'" The committee made their declaration in 1995 yet not till 2009 did MSHA find "improper procedures." These "improper procedures" that may have going on for years could have resulted in inaccurate sampling thus hiding the exposure of "a significant number of miners" "to coal mine dust at levels well in excess of 2.0 mg/m^3." The problem of "improper procedures" has to be corrected before lowering of the standards is considered. The NIOSH data above shows however that Indiana and Illinois did not show a prevalence of black lung in miners and average concentrations were in compliance. If miners in Illinois and Indiana are not contracting the disease in the numbers expected and the average dust levels are in compliance then "improper procedures" must not have been practiced to any significant degree in District 8.

It should be noted that the average dust levels in District 8 would not be incompliance if the standard is lowered to 1.0 mg/m^3. Lowering the standard to 1.0 mg/m^3 is not justified for mines in Illinois and Indiana and would create a hardship on those mines. The 2.0 mg/m^3 is accomplishing the aim of preventing black lung.

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The preamble states on Page 64420, middle column, that "The proposed rule does not adopt this recommendation." This refers to NIOSH's and the Dust Advisory Committee's recommendations to use single full-shift samples to determine compliance. However, the rule uses a single-shift Excessive Concentration Value to determine compliance. A single-shift sample should not be used to determine compliance. A single-shift sample is not "average concentration of respirable dust in the mine atmosphere."

(b) Each operator shall continuously maintain the average concentration of respirable dust within 200 feet outby the working faces of each section in the intake airways as measured with an approved sampling device and in terms of an equivalent concentration at or below:

(1) 1.0 mg/m3.

(2) 0.5 mg/m3 as of [date 6 months after the effective date of the final rule].].

Comment: The intake air course should not have a concentration standard. It is the individual miner that is the concern. Sampling the intake air course is a burden to the operator and to MSHA, an unnecessary burden. The standard should be more performance orientated and it is the miner that is the concern. Sample the miner only. The mine operator should determine the methods needed to lower the amount of respirable dust generated. The mine operator can use the CPDM to study the generation and control of dust. If the air in the intake air course is contributing to a respirable dust problem then the mine operator can take steps to lower the concentration in the intake air.

However, if MSHA believes that the intake air must be sampled; 200 feet outby the working faces is too close of a distance to locate the measurement point. Sometimes the crosscut to crosscut center distance is more than 200 feet. In this example, the sampling point would be in the working place and not give an indication of the concentration in the intake air course. Many mechanized mining units have the loading point more than 200 feet outby the faces. Sampling inby the loading point is not representative of the concentration of respirable dust in the intake air course. The sampling device could be

subject to damage from haulage vehicles. If a point is used, it should be in the intake air course opposite the loading point no more than 50 feet outby the equivalent outby point of the loading point. The primary intake escapeway starts at the loading point. In the intake air course opposite the loading point is the best location to sample the intake air. Again, sampling the intake air is not needed and should not be done.

"Intake airway." It should be noted that Subpart D of 30 CFR defines the term "air course" (See § 75.301 "Air course"). "Airway" is not used or defined. The regulations should be consistent in the terms that are used. Use the term "intake air course." Again, sampling the intake air is not needed and should not be done.

§ 70.101 Respirable dust standard when quartz is present.

(a) Each operator shall continuously maintain the average concentration of respirable quartz dust in the mine atmosphere during each shift to which each miner in the active workings of each mine is exposed at or below 0.1 mg/m3 (100 micrograms per cubic meter or µg/m3) as measured with an approved sampling device and in terms of an equivalent concentration.

Comment: It is good to see that respirable dust standard when quartz is present references the "miner." The miner only needs to be sampled. This will give the true exposure to the miner. "Designated Occupations", "Other Designated Occupations" or "Designated Areas" must not be sampled. Miners assigned to those occupations can be sampled but only the miners need to be sampled.

How will the quartz level be analyzed with a CPDM must be given in the rule. The proposed regulations do not indicate how this will be done. This needs to be in the regulation if quartz is to be sampled with a CPDM. If it is to be done by some other method when sampling with a CPDM then this needs to be proposed for comment. Mine operators must be afforded the opportunity to comment on all requirements of the rule.

(b) When the concentration of respirable quartz dust exceeds 100 µg/m3, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings is exposed as measured with an approved sampling device and in terms of an equivalent concentration at or below the applicable dust standard. The applicable dust standard is computed by dividing the percent of quartz into the number 10. The application of this formula shall not result in an applicable dust standard that exceeds the standard established by § 70.100(a).
Example: Assume the sampled MMU or DA is on a 1.0-mg/m3 dust standard. Suppose a valid respirable dust sample with an equivalent concentration of 1.0 mg/m3 contains 12.3% of quartz dust, which corresponds to a quartz concentration of 123 µg/m3. Therefore, the average concentration of respirable dust in the mine atmosphere associated with that MMU or DA shall be maintained on each shift at or below 0.8 mg/m3 (10/12.3% = 0.8 mg/m3).

Comment: This definition does not explain or the example show when you round up or when you round back. For example, if the weight was 117.6 µg/m3. 10/11.76% = 0.85 Does 0.85 go up to 0.9 or back to 0.8? The method of rounding needs to be specified.

5. Subpart C is revised to read as follows:

Subpart C-Sampling Procedures

Sec.
70.201 Sampling; general and technical requirements.
70.202 Certified person; sampling.
70.203 Certified person; maintenance and calibration.
70.204 Approved sampling devices; maintenance and calibration.
70.205 Approved sampling devices; operation; air flowrate.
70.206 CPDM Performance Plan.
70.207 Sampling of mechanized mining units; requirements when using a CMDPSU.
70.208 Sampling of mechanized mining units; requirements when using a CPDM.
70.209 Sampling of designated areas.

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70.210 Respirable dust samples; transmission by operator.
70.211 Respirable dust samples; report to operator; posting.
70.212 Status change reports.

§ 70.201 Sampling; general and technical requirements.

(a) Approved coal mine dust personal sampler units (CMDPSU) shall be used to take samples of the concentration of respirable coal mine dust for the designated occupation (DO) in each MMU as required by this part until replaced by continuous personal dust monitors (CPDM). After [date 12 months after the effective date of the final rule], only approved CPDMs shall be used to sample DOs in each MMU unless notified by the Secretary.

Comment: The miner only needs to be sampled. This will give the true exposure to the miner. "Designated Occupations", "Other Designated Occupations" or "Designated Areas" must not be sampled. This would not be representative of the concentration that the miner is exposed to. "Passing of the pump" must not be done. "Passing of the pump" causes measurement errors.

The preamble states on Page 64421, middle column, that "The CPDM is a respirable dust sampler and gravimetric analysis device incorporated into the miner's camp lamp battery case as a single package located on the belt." Currently, the Joy remote-controlled continuous miners control device is incorporated into the cap lamp. Can the cap lamp have two devices on the battery? If another camp lamp battery is needed to power the CPDM it will add to the weight on the miner operator's belt coupled with the CPDM. This will significantly add to the weight on the belt of the continuous miner operator. This adds to back strain which increases the likelihood of injury. New cap lamps are coming out without a battery. If the CPDM is used when the cap lamp does not have the standard battery then the miner would have to carry a battery just for the CPDM. Technology advances are eliminating the weight that a miner must carry but MSHA is putting more weight onto the miner.

The preamble states on Page 64421, middle column, that the flow rate will be 2.2L per minute. This is different than the 2.0

liters per minute that the CPMDSU pulls. How can the device pull a different amount of air through the device and still have the same concentration as the CPDMPSU would?

The preamble states on Page 64421, last column, that the CPDM will continuously show the "average respirable dust concentration calculated at distinct 30-minute intervals." When used in the engineering mode the 30-minute time frame is too long. It should be shortened to a minute or less.

(b) Approved CMDPSUs shall be used to take samples of the concentration of respirable coal mine dust in each designated area (DA) associated with an MMU as required by this part until replaced by CPDMs. After [date 18 months after the effective date of the final rule] or upon implementation of the use of CPDMs, DAs associated with an MMU will be redesignated as Other Designated Occupations (ODO).

Comment: The miner only needs to be sampled. This will give the true exposure to the miner. "Designated Areas" should not be sampled. This would not be representative of the concentration that the miner is exposed to.

(c) After [date 18 months after the effective date of the final rule], only approved CPDMs shall be used to take samples of the concentration of respirable coal mine dust for each ODO as required by this part unless notified by the Secretary.

Comment: The miner only needs to be sampled. This will give the true exposure to the miner. "Other Designated Occupations" must not be sampled. This would not be representative of the concentration that the miner is exposed to. "Passing of the pump" must not be done. "Passing of the pump" causes measurement errors.

(d) Approved CMDPSUs or CPDMs shall be used to take samples of the concentration of respirable coal mine dust in each DA that is not associated with an MMU as required by this part.

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Comment: Designated Areas not associated with the MMU should not be sampled. This creates an unnecessary burden to the operator and MSHA. The miner only needs to be sampled. This will give the true exposure to the miner. "Designated Areas" must not be sampled. This would not be representative of the concentration that the miner is exposed to. If miners outby the working sections need to be sampled MSHA should sample them.

The preamble states on Page 64423, first column, that "MSHA does not believe that requiring the CPDM to be used to sample DAs is the best use of the device." As commented before, DAs should be eliminated. The MSHA belief that using the CPDM is not the best use for sampling DAs is another good reason to eliminate DAs. Sample the miner only.

(e) Sampling devices shall be worn or carried directly to and from the MMU or DA to be sampled and shall be operated portal-to-portal. Sampling devices shall remain with the occupation or DA being sampled and shall be operational during the entire shift, which includes the total time spent in the MMU or DA and while travelling to and from the mining section or area being sampled. If the work shift to be sampled is longer than 12 hours and the sampling device is:

Comment: The preamble states on Page 64423, middle column, that "Proposed § 70.201(e) would account for all the time that a miner works and is exposed to respirable coal dust." This implies that the miner only is sampled but the proposed rule does not require that only the miner be sampled. The preamble states on Page 64423, last column, that "Under the proposal, the sampling device must remain with the occupation or DA being sampled during the shift to ensure that respirable dust concentration levels are continuously being monitored." The miner only needs to be sampled. This will give the true exposure to the miner. "Designated Occupations", "Other Designated Occupations", or "Designated Areas" must not be sampled. This would not be representative of the concentration that the miner is exposed to. "Passing of the pump" must not be done. "Passing of the pump" causes measurement errors.

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The preamble states on Page 64423, last column, that "The proposal with respect to extended shifts is consistent with generally accepted industrial hygiene principles today, which take into consideration all of the time a worker is exposed to an airborne contaminant, even if it exceeds 8 hours a day." The proposal does not "take into consideration all of the time a worker is exposed to an airborne contaminant" because the sampling protocol uses "Designated Occupations", "Other Designated Occupations", or "Designated Areas." A worker, the miner in this case, must only be sampled "to be consistent with generally accepted industrial hygiene principles."

Again, the preamble states on Page 64423, last column, that "the sampling device must remain with the occupation or DA being sampled during the entire shift to ensure that the respirable dust concentration levels are continuously being monitored." This must not happen. If as in the example in the paragraph from where the quote came, Miner 1 and Miner 2 should both wear sampling devices. It is extremely important that the miner wear the sampling device all the time and that the sampling device is not passed to another miner. Passing the sampling device from one miner to another is not a true representation of the miner's exposure.

(1) A CMDPSU, the operator shall switch-out the unit's sampling pump prior to the 13th-hour of operation.

Comment: Switching out the CDMPSU prior to the 13th hour necessitates that an additional CDMPSU be available for each miner who will be sampled that will work over 12 hours. This is a financial burden to the mine operator. A mine operator may need to buy additional CMDPSUs for the one year that they can be used. This is impractical. Until the CMPDs are available for use the sampling should only last eight hours. The preamble states on Page 64423, last column, that "the manufacturer of the CMPDSU states in its instructional manual that the typical battery-pack service life varies from a minimum of eight hours to a maximum of 11.5 hours." If the instructional manual states eight to 11.5 hours then the instrument should only be used for eight hours. It cannot be relied on to go longer than eight hours. Other places in the proposed regulations the mine

operators are required to follow the manufacturer's instructional manual so then the manual should also be followed here.

Additionally, if for example, the miner's normal shift is 10 hours long but because of in-the-mine mechanical problems or other problems, non sampling problems, the miner works over 12 hours the mine operator would be in violation if it did not switch the CDMPSU out before the 13th hour. Extra CDMPSUs might not be available or it might be impossible to get it to the miner who is wearing it in a timely manner when a problem occurs. The certified sampler on duty might be underground in the mine and unavailable to quickly obtain another CDMPSU. The proposed regulations require the work to be done by a "certified person, sampler."

(2) A CPDM, the operator shall switch-out the CPDM with a fully charged device prior to the 13th-hour of operation.

Comment: Switching out the CPDM prior to the 13th hour necessitates that an additional CPDM be available for each miner that will work over 12 hours. This is a financial burden to the mine operator. Additionally, if for example, the miner's normal shift is 10 hours long but because of in-the-mine mechanical problems or other problems, not sampling problems, the miner works over 12 hours the mine operator would be in violation if it did not switch the CPDM out before the 13th hour. This is more likely to happen because of the requirement to sample every DO every productions shift all year. Extra CPDMs might not be available or it might be impossible to get it to the miner who is wearing it in a timely manner. The certified sampler on duty might be in the mine and unavailable to quickly obtain another CPDM.

(f) If using a CMDPSU, one control filter shall be used for each shift of sampling. Each control filter shall:

(1) Have the same pre-weight date (noted on the dust data card) as the filters used for sampling;

(2) Remain plugged at all times;

(3) Be exposed to the same time, temperature, and handling conditions as the filters used for sampling;

(4) Be kept with the exposed samples after sampling.

(g) Records showing the length of each production shift for each MMU shall be made and retained for at least six months and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners, and submitted to the District Manager when requested in writing.

Comment: This requirement places an excessive record keeping burden on the operator. When the length of the shift varies from day to day it means that someone needs to be available to record the exact time the shift crews leave the mine. The section crews on each shift at our mines do not reach the surface at the same time. Additionally, it varies from day to day. If MSHA only used the weight gain and did not multiply the concentration by t/480 then the length of the shift would not matter. The record would not be needed. This would be the proper way to sample. Do away with this requirement and just be concerned with the concentration of respirable dust. Do not multiply it by any number for shifts that last over eight hours.

(h) Upon request from the District Manager, the operator shall submit the date and time any respirable dust sampling required by this part will begin. This information shall be submitted at least 48 hours prior to scheduled sampling.

Comment: How the submission of the date and time of sampling can be done needs to be detailed. Can this notification be by phone? Can this notification be by fax? Can it be by email or other electronic transfer of information? Who can this be submitted to? The regulation states "Upon request of the District Manager" but it does not state to whom this must be given. The District Manager is too busy to receive multiple notifications when differing regulations require it. Sections 75.336(c), 75.337(e)(1), and 75.337(e)(2) require notification to the District Manager. It has created a burden to MSHA and a

problem for the operator. If the operator does not notify "the District Manager" then the operator is in violation of that regulation. The mine operator may have notified the "Health Supervisor" but he did not notify the District Manager.

(i) To establish a normal production shift, the operator shall record the amount of run-of-mine material produced by each MMU during each shift to determine the average production for the most recent 30 production shifts or for all production shifts if fewer than 30 shifts of production data are available. Production records shall be retained for at least six months and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners.

Comment: This creates a record keeping burden for the mine operator. If the definition is used for an MMU that states "Two or more sets of mining equipment are used in a series of working places within the same working section and two or more production crews are employed, each set of mining equipment shall be identified as a separate MMU" it will be difficult to separate the production between the two sets of equipment. Shuttle cars may pull coal from different continuous miners. As stated in the comments to the definitions this part of the definition for a Mechanized Mining Unit needs to be eliminated.

Once CPDMs are placed into operation production records should not have to be kept. If MSHA requires that each production shift be sampled, production records are meaningless.

(j) Operators using CPDMs shall provide training to all miners expected to wear a CPDM. The training shall be completed prior to a miner being required to wear a CPDM and then every 12 months thereafter. The training shall include:

(1) Explaining the basic features and capabilities of the CPDM;

(2) How to set-up the CPDM for compliance sampling.

(3) A discussion of the various types of information displayed by the CPDM and how to access that information;

(4) How to start and stop a short-term sample run during compliance sampling; and

(5) The importance of continuously monitoring dust concentrations and properly wearing the CPDM.

Comment: This creates a training burden and record keeping burden for the mine operator. If MSHA requires a certified person for respirable dust sampling and a certified person for maintenance of sampling devices, the wearer of a CPDM should not need to know how to set up a CPDM. Conversely, if MSHA requires the wearer of the device to be trained in the setup, the mine operator should not need to have a certified person for respirable dust sampling and a certified person for maintenance of sampling. Too many records and too much training are required to obtain the samples.

It would be best if MSHA did all the sampling. This would relieve the mine operator of the costly burden of sampling. Additionally, MSHA would fully control the sampling. It would do away with numerous regulations such as certified persons, record keeping, training, and so forth. The preamble states on Page 64426, first column, that "the new proposed requirement would ensure that once persons are certified that, they take the necessary action to maintain their knowledge, skills, and abilities." The discussion goes on to declare that "in 2009, MSHA routinely observed certified person using improper procedures for dust collection and handling of devices, and for maintaining and calibrating approved sampling devices." These sampling errors would be eliminated.

(k) An operator shall keep a record of the CPDM training at the mine site for two years after completion of the training. An operator may keep the record elsewhere if the record is immediately accessible from the mine site by electronic transmission. Upon request from an authorized representative of the Secretary, Secretary of HHS, or representative of miners,

the operator shall promptly provide access to any such training records.

Comment: This creates a record keeping burden for the mine operator. Too many records and too much training are required to obtain the samples.

§ 70.202 Certified person; sampling.

(a) The respirable dust sampling required by this part shall be performed by a certified person.

Comment: Respirable dust sampling by a "certified person" does not ensure that the sampling is any better than by a noncertified person. The requirement to be a "certified person" and to maintain certification is a burden to the operator. It is multiplied by the fact that certified persons have to be recertified every three years. The training, administering tests, and tracking of certifications by MSHA is a burden to MSHA. MSHA instructors would need to be available frequently to teach courses in sampling and maintenance and calibration and to administer tests. This would be especially true if a mine's certified persons left their employment at the mine abruptly. With the required daily sampling this could put the mine operator immediately into a noncompliance situation. Do away with certifications.

Will a currently certified person need to take the training and examination for the sampling with the CDMPDSU?

(b) To be certified, a person shall complete the applicable MSHA course of instruction and pass the MSHA examination demonstrating competency in sampling procedures. Persons not certified in sampling, and those certified only in maintenance and calibration procedures in accordance with § 70.203(b), are not permitted to collect respirable dust samples required by this part or handle approved sampling devices when being used in sampling.

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Comment: The preamble states on Page 64426, first column, that "However, like the existing policy, the proposal would allow persons who are only certified in sampling procedures to perform maintenance of an approved device's sampling head assembly." This is confusing in that persons certified in sampling procedures can do some maintenance. It is best if only one certification is needed if certification is required. A sampling certification and a maintenance certification are burdensome to the mine operator. However, no certification requirement is recommended.

The preamble states on Page 64426, first column, that "the new proposed requirement would ensure that once persons are certified that, they take the necessary action to maintain their knowledge, skills, and abilities." The discussion goes on to declare that "in 2009, MSHA routinely observed certified person using improper procedures for dust collection and handling of devices, and for maintaining and calibrating approved sampling devices." Reexamination would not ensure that the problems identified would be eliminated. The improper procedures could be solved my MSHA taking over all the sampling. Mine operators would not need to purchase, maintain, and calibrate the instruments. They would not have to have certified persons and MSHA would not have to teach candidates for certification and administer tests. The cost of sampling to the mine operator would be significantly reduced.

The sampling requirements of the new rule and in particular the certified person requirements create a burden for the mine operator and MSHA. Black Panther Mining LLC (Black Panther) and Five Star Mining, Inc. (Five Star), estimate that it will need one and a half Health Technicians (new positions) for each production shift because of this rule. This is based on the assumptions that fishtail sections can be used and that shifts can run longer than 8 hours without having the sample weights multiplied by t/480. Black Panther and Five Star currently mine using three fishtail mining sections two shifts per day. A fishtail section consists of two Mechanized Mining Units (continuous miners) per working section with each MMU on its own split of intake air. The mines run two production shifts per day five and six days per week. Black Panther and Five Star hot-seat their crews and a portal-to-portal shift lasts about 10

hours. Therefore, Black Panther and Five Star will need to have three Health Technicians to handle the sampling duties for Oaktown Fuels Mine No 1 and Prosperity Mine.

For the purpose of compliance with this proposed rule, a Health Technician is defined by Black Panther and Black Panther as a miner certified in dust sampling and certified in dust sampling device calibration and maintenance. Black Panther and Five Star believe that their technicians would need to be certified in both sampling and maintenance and calibration. The technician's duties will only be health related. At Black Panther and Five Star the current respirable dust sampling using CMDPSU sampling devices is done by Safety Technicians. Because of the extensive requirements for sampling with CPDMs, Safety Technicians will not be assigned sampling duties. Three new positions will be created at each mine. Additionally, all Safety Technicians, current positions, will obtain certifications in sampling and in maintenance and calibration. This is necessary to be sure backup personnel are available to do those duties.

When CPDMs are used to sample each production shift every day, Black Panther and Five Star estimate that three Health Technicians must work each production day. Health Technician 1 must work part of mine's night shift and most of day shift, the first production shift. Health Technician 2 must work part of the day shift and most of the evening shift, the second production shift. Health Technician 3 must work the part of the evening shift and part of the midnight shift. Health Technician 1 must start work about two hours before the production day shift starts to prepare sampling devices, to distribute the sampling devices, and record the distribution. Health Technician 1 must travel underground shortly after the shift starts and assure that the devices are working properly on each of the Mechanized Mining Units as required by the CPDM Performance Plan requirements. Health Technician 1 will end his shift before the end of the production day shift. Health Technician 1 must have a vehicle to travel to and from the surface and between the different mining units. This will be a vehicle that does not currently exist creating additional cost to Black Panther and Five Star.

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Health Technician 2 must start work about two hours minimum before the evening production shift starts. Health Technician 2 will need to interface with the Health Technician 1 and to prepare sampling devices for the evening production shift, to distribute the sampling devices, and to record the distribution of sampling devices. Health Technician 2 must recover the sampling devices from the production day shift and record production, length of shift, problems, and concerns. Health Technician 2 must travel underground shortly after the shift starts and assure that the sampling devices are working properly on each Mechanized Mining Unit. Health Technician 2 will end his shift before the end of the evening production shift. Health Technician 2 must have a vehicle to travel to and from the surface. This can be the vehicle that the Health Technician 1 used if it is a diesel-powered vehicle but if it is battery-powered the Health Technician 2 will need an additionally vehicle because the Health Technician 1's vehicle will be charging. Currently, the Safety Departments at both mines use battery-powered vehicles for transportation for most of their duties.

Health Technician 3 must start work about three hours minimum before the production evening shift ends. Health Technician 3 will need to interface with the Health Technician 2. Health Technician 3 must recover the sampling devices from the production evening shift and record production, length of shift, problems, and concerns. Health Technician 3's main responsibilities will be to download sampling results, clean the sampling devices, charge the devices, and maintain the devices. Health Technician 3 will prepare the CPDMs for the two production shifts the next day. Health Technician 3 will also substitute for the Health Technician 1 and Health Technician 2 during time of vacations and illnesses.

Black Panther estimates that it will need to install a laboratory at the mine because of this proposed rule. A lab currently does not exist and the mine office will need to be expanded to house a lab. The lab will house the sampling devices, calibration devices, and maintenance equipment. It must have a chemical lab-type sink, compressed air, an ultrasonic cleaner, multiple electric outlets, lab table, and be in a location free of dust. Black Panther estimates that the

lab will also be used for calibration and maintenance of devices such as hand-held methane/oxygen/carbon monoxide detectors but that the main duty will be the maintenance and care of CPDMs. The care, maintenance, and calibration of CMDPSUs are currently done by the Safety Department personnel and others in their offices, in the lamp room, or in rest rooms. Black Panther estimates that the calibration of detectors will continue to be done by Safety Department Personnel using the lab.

Five Star estimates that it will need to install a laboratory at the mine because of this proposed rule. A lab currently does not exist and Five Star has space problems in their mine office. Temporary housing such as a trailer will be needed to house the lab. The lab will house the sampling devices, calibration devices, and maintenance equipment. It must have a chemical lab-type sink, compressed air, an ultrasonic cleaner, multiple electric outlets, lab table, and be in a location free of dust. Five Star estimates that the lab will also be used for calibration and maintenance of devices such as hand-held methane/oxygen/carbon monoxide detectors but that the main duty will be the maintenance and care of CPDMs. The care, maintenance, and calibration of CMDPSUs are currently done by the Safety Department personnel and others in their offices, in the lamp room, or in rest rooms. Five Star estimates that the calibration of detectors will continue to be done by Safety Department Personnel using the lab.

Black Panther and Five Star estimate that each Health Technician will need a laptop computer for downloading sampling results, record keeping, transfer of data to MSHA, and training. Black Panther and Five Star estimate at a minimum that it will need five laptop computers.

If § 75.332(a)(1) remains as proposed, Black Panther would need to split the three fishtail working sections into six single-split working sections. Because of the dividing the three units into six units a Health Technician will not be able to travel to all six units in one shift to check the instruments. Black Panther estimates that one Health Technician would be pressed for time to travel to and check the instruments for three fishtail units but when the fishtail units are split it will be impossible for one Health Technician to travel to all six units.

Therefore, Black Panther would need to hire an additional two Health Technicians to be sure that the instruments are checked as required and that all sampling work is completed. This would be a total of five Health Technicians that would be needed to comply with the proposed § 70.202(b). Also, a second vehicle for travel would be necessary. The requirements for the vehicle would be as previously described. Two more computers would be needed.

If § 75.332(a)(1) remains as proposed, Five Star would need to split the three fishtail working sections into six single-split working sections. Currently, Prosperity Mine has three fishtail working sections, six mechanized mining units. If the proposed regulation, § 75.332(a)(1), becomes final as written, Prosperity Mine will not be able to mine with six mechanized mining units on six single-split working sections. The mine does not have sufficient reserve capacity in the ventilation system to provide the needed additional air. Prosperity Mine would close if the rule comes into effect.

If the t/480 factor for equivalent concentration is not changed then Black Panther would be forced to change the lengths of their shifts decreasing the efficiency of mining coal. Black Panther estimates that an additional 1.5 units would need to be added to make up for the lost production because miners would only be able to work eight-hour days instead of the 10-hour days that are currently being worked. To make up the difference, 1.5 Mechanized Mining Units would need to be added and since Black Panther cannot add a half of a Mechanized Mining Unit it would be necessary to add two Mechanized Mining Units. That would make a total of eight Mechanized Mining Units to mine the coal that three fishtail mining units Black Panther now uses. One Health Technician would definitely not be able to visit each unit on each shift when eight MMUs are used. Two Health Technicians would need to work each production shift and one technician would need to work the third shift, the nonproducing shift. Either the proposed § 75.332(a)(1) or the proposed definition of equivalent concentration in § 70.2 or both proposed rules would necessitate the use of five Health Technicians, new positions necessitated by these regulations. Thus, a total of five Health Technicians would be needed to comply with the proposed regulation § 70.202(b).

If the t/480 factor for equivalent concentration is not changed then Five Star would be forced to change the lengths of their shifts decreasing the efficiency of mining coal. Currently, Prosperity Mine has three fishtail working sections, six mechanized mining units. If the t/480 requirement becomes regulation, Prosperity Mine will not be able to mine with six mechanized mining units and remain competitive. The mine does not have sufficient reserve capacity in the ventilation system to provide the air for additional units. Prosperity Mine would close if the t/480 requirement comes into effect.

If MSHA requires sampling every production shift every day all the certified persons will not be able to take the test on the same day. This will increase the need for MSHA personnel to be available to train and to administer the tests.

(c) To maintain certification, a person must pass the MSHA examination demonstrating competency in sampling procedures every three years.

Comment: Taking a test every three years is unreasonable and a burden to the operator. If the sampling requirements do not change in three years there is no reason to have to retake the certification test. Certifications in other areas do not require that persons be retested. Black Panther estimates that at a minimum 10 persons for each of its mines will need to take the test every three years. MSHA does not currently have the personnel to teach and administer tests for certified persons for respirable dust sampling. MSHA District 8's Health Group cannot do the MSHA required sampling now without help from the regular inspection force or other MSHA Districts. Training and testing should be done at the mine. If not, this is an additional burden to the mine operator for travel expense and time away from the mine. Making an ethics statement could substitute for retaking the tests. Registered Engineers are not required to retake the engineering examinations even though technology is constantly changing. Registered Engineers sign an ethics statement. This is something that could be done to do away with the 3-year recertification requirement. If the technology does not change or the sampling does not change Black

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Panther and Five Star believe that no reason exists for requiring recertification every three years.

If MSHA requires sampling every production shift every day all the certified persons at a mine will not be able to take the test on the same day. This will increase the need for MSHA personnel to be available to administer the tests.

(d) MSHA may revoke a person's certification for failing to pass the MSHA examination or to properly carry out the required sampling procedures.

Comment: How many times can a person take the test? Is this a hands-on test? The training and testing needs be done at the mine. If it is not done at the mine, it would be an additional burden to the mine operator for travel expense and time away from the mine. Revocation of certifications by the states or MSHA has been a difficult and seldom used process. In the preamble page 64426 bottom of column one MSHA declares "During Section 202 spot inspections conducted in 2009, MSHA personnel routinely observed certified persons using improper procedures for dust collection and handling of sampling devices, and for maintaining and calibrating approved sampling devices." Did the MSHA go after certifications when they observed "improper procedures?" This problem can be cured by having MSHA do all the sampling.

§ 70.203 Certified person; maintenance and calibration.

(a) Approved sampling devices shall be maintained and calibrated by a certified person.

Comment: Maintenance and calibration by a "certified person" does not ensure that the maintenance and calibration is done any better than by a noncertified person. The requirement to be a "certified person" and to maintain certification is a burden to the operator. The training, administering tests, and tracking of certifications by MSHA is a burden to MSHA. Do away with certifications.

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(b) To be certified, a person shall complete the applicable MSHA course of instruction and pass the MSHA examination demonstrating competency in maintenance and calibration procedures for approved sampling devices. If using a CMDPSU, necessary maintenance of the sampling head assembly can be performed by persons certified in sampling or in maintenance and calibration.

Comment: Taking a course from MSHA and passing an examination is a burden to the operator. Black Panther and Five Star estimate that at a minimum 10 persons for each of its mines will need to take the training and the test for each type of sampling device. MSHA does not have the personnel to teach and administer tests for certified persons for maintenance and calibration. District 8's Health Group cannot do the required sampling now without help from the regular inspection force or other MSHA Districts. Will the training and testing be done at the mine? If the training is not done at the mine this will create an additional burden to the mine operator for travel expense and time away from the mine. If MSHA requires persons to be certified the certifications should be combined into one certification.

If MSHA requires sampling every production shift every day all the certified persons will not be able to take the test on the same day. This will increase the need for MSHA personnel to be available to train and to administer the tests.

Will a currently certified person need to take the training and examination for the calibration and maintenance of the CDMPDSU?

(c) To maintain certification, a person must pass the MSHA examination demonstrating competency in maintenance and calibration procedures every three years.

Comment: Taking a test every three years is unreasonable. It is a burden to the operator. If the calibration and maintenance requirements do not change in three years there is no reason to have to retake the certification test. Certifications needed for other areas do not require that persons be retested. Black Panther and Five Star estimate that at a minimum 10 persons for

each of its mines will need to take the test every three years. MSHA does not have the personnel to teach and administer tests for certified persons for respirable dust calibration and maintenance. MSHA District 8's Health Group cannot do the required sampling now without help from the regular inspection force or other MSHA Districts.

If MSHA requires sampling every production shift every day all the certified persons will not be able to take the test on the same day. This will increase the need for MSHA personnel to be available to train and to administer the tests.

(d) MSHA may revoke a person's certification for failing to pass the MSHA examination or to properly carry out the required maintenance and calibration procedures.

Comment: How many times can a person take the test? Is this a hands-on test? The training and testing needs be done at the mine. If it is not done at the mine, it would be an additional burden to the mine operator for travel expense and time away from the mine. Revocation of certifications by the states or MSHA has been a difficult and seldom used process. In the preamble page 64426 bottom of column one, MSHA declares "During Section 202 spot inspections conducted in 2009, MSHA personnel routinely observed certified persons using improper procedures for dust collection and handling of sampling devices, and for maintaining and calibrating approved sampling devices." Did the MSHA go after certifications when they observed "improper procedures?"

§ 70.204 Approved sampling devices; maintenance and calibration.

(a) Approved sampling devices shall be maintained as approved under part 74 of this title and calibrated in accordance with MSHA Informational Report IR 1240 (1996) ''Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers'' or in accordance with the manufacturer's recommendations if using a CPDM. Only persons certified in maintenance and calibration can perform maintenance work on the pump unit of approved sampling devices.

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Comment: Requiring that devices be maintained in "accordance with the manufacturer's instructions" is rule making by open-ended incorporation. Any time the manufacturer decides to change its recommendations the rule changes. If a manufacturer decided that a part had to be replaced every year then the part would have to be replaced every year whether warranted or not. The manufacturer could do this out of a profit motive. In this instance MSHA is proposing that the mine operator follow the "manufacturer's instructions." Yet, MSHA chooses to ignore the "manufacturer's instructions" when it comes to running the CMPDSU for up to 12 hours.

(b) Sampling devices shall be calibrated at the flowrate of 2.0 liters of air per minute (L/min), or at a different flowrate recommended by the manufacturer or prescribed by the Secretary or Secretary of HHS for the particular device, before they are put into service and, thereafter, at time intervals recommended by the manufacturer or prescribed by the Secretary or Secretary of HHS.

Comment: If a different flowrate is "recommended by the manufacturer" it is rule making by open-ended incorporation. Any time the manufacturer decides to change its recommendations the rule changes. A change in the flowrate could change the concentration measured. A change in concentration would greatly affect compliance.

(c) If using a CMDPSU, sampling devices shall be examined and tested by a person certified in sampling or in maintenance and calibration within 3 hours before the start of the shift on which the approved sampling devices will be used to collect respirable dust samples. This is to assure that the sampling devices are clean and in proper working condition. This examination and testing shall include the following:

Comment: Examination and testing does not need to be done within three hours before the start of the shift. Previously at the MSHA office, the inspector generally would grab a basket holding many pumps when the inspector arrived at the office in

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the morning. The inspector would load them in the vehicle, drive to the mine, and put them on the miners to be sampled. The sampling inspector did not check calibration and maintenance within three-hour period before the start of the shift except to make a visual check when the pumps were turned on. The five items required below were usually done the day before the pumps were used by a lab technician who was not even in the office when the inspector picked up the pumps to be used for the day. The important thing is that the pumps work properly and pull the proper amount of air. Whether the checks are done within three hours of the shift or 24 hours of the shift is not important. This is not a preshift examination of mining conditions where things can change quickly. The three-hour requirement needs to be eliminated or lengthened. Without the three-hour requirement, a well-trained experienced lab technician can do all the checks of all the instruments once for the next day's work.

(1) Examination of all components of the cyclone assembly to assure that they are clean and free of dust and dirt. This includes examining the interior of the connector barrel (located between the cassette assembly and vortex finder), vortex finder, cyclone body and grit pot;

(2) Examination of the inner surface of the cyclone body to assure that it is free of scoring or scratch marks on the inner surface of the cyclone where the air flow is directed by the vortex finder into the cyclone body;

(3) Examination of the external hose connecting the pump unit to the sampling head assembly to assure that it is clean and free of leaks; and

(4) Examination of the clamping and positioning of the cyclone body, vortex finder and cassette to assure that they are rigid, in alignment, firmly in contact and airtight.

(5) Testing the voltage of each battery while under actual load to assure the battery is fully charged. This requires that a fully assembled and examined sampling head assembly be attached to the pump inlet with the pump unit running when the voltage

check is made. The voltage for nickel cadmium cell batteries shall not be lower than the product of the number of cells in the battery multiplied by 1.25. The voltage for other than nickel cadmium cell batteries shall not be lower than the product of the number of cells in the battery multiplied by the manufacturer's nominal voltage per cell value.

(d) If using a CPDM, the certified person in sampling or in maintenance and calibration shall follow the examination, testing and set-up procedures contained in the approved CPDM Performance Plan.

Comment: It appears that MSHA does not know the maintenance and calibration requirements of the CPDM so it is requiring it to be put in a plan. MSHA District 8 cannot process ventilation plans, roof control plans, etc. in a timely manner now and has not been able to do so for several years. Other MSHA district specialist supervisors have reported the same problem in their districts. District 8 will not be able to process an additional plan, a CPDM plan, in a timely manner without hiring additional help and training present personnel in plan approval procedures. This is a burden to the mine operator and to MSHA. MSHA needs to wait until the CPDM is a proven device that costs a reasonable amount before it is required to be used for compliance sampling. When the CPDM is a proven device MSHA can put the performance requirements into the regulations. MSHA should do their sampling with the CPDM for two years before requiring the operator to sample using the CPDM. This would give MSHA the time to prove that the instrument is accurate and reliable before forcing the mine operator to sample using the device.

(e) MSHA Informational Report IR 1240 (1996) referenced in paragraph (a) of this section is incorporated-by-reference. This incorporation-by-reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected or obtained at MSHA, Coal Mine Safety and Health, 1100 Wilson Blvd., Room 2424, Arlington, Virginia 22209-3939 and at each MSHA Coal Mine Safety and Health district office. Copies may be inspected at the National Archives and Records Administration (NARA). For information on

the availability of this material at NARA, call 202-741-6030, or go to: *http://www.archives.gov/federal register/code of federal regulations/ibr locations.html*.

§ 70.205 Approved sampling devices; operation; air flowrate.

(a) Approved sampling devices shall be operated at the flowrate of 2.0 L/min, or at a different flowrate recommended by the manufacturer or prescribed by the Secretary or Secretary of HHS.

Comment: If a different flowrate is "recommended by the manufacturer" it is rule making by open-ended incorporation. Any time the manufacturer decides to change its recommendations the rule changes. A change in the flowrate could change the concentration measured. A change in concentration would greatly affect compliance.

(b) If using a CMDPSU, each approved sampling device shall be examined each shift by a person certified in sampling during:

(1) The second hour after being put into operation to assure it is in the proper location, operating properly and at the proper flowrate. If the proper flowrate is not maintained, necessary adjustments shall be made by the certified person. This examination is not required if the sampling device is being operated in a breast or chamber of an anthracite coal mine where the full box mining method is used.

Comment: If a check is not required in anthracite mining it should not be required in bituminous coal mining. Either the instrument needs to be checked or it does not. Anthracite mining should not get a special exemption. The checks of the flowrate require that a certified sampler be on the working section for the entire shift.

(2) The last hour of operation to assure that the sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, the respirable dust sample

shall be transmitted to MSHA with a notation by the certified person on the back side of the dust data card stating that the proper flowrate was not maintained. Other events occurring during the collection of respirable dust samples that may affect the validity of the sample, such as dropping of the sampling head assembly onto the mine floor, shall be noted on the back side of the dust data card.

Comment: The checks of the flowrate require that a certified sampler be on the working section for the entire shift.

(c) If using a CPDM, the certified person shall examine the sampling device during the shift in accordance with the procedures contained in the approved CPDM Performance Plan.

Comment: This requires a certified person to make checks every production shift of the year. This necessitates for Black Panther and Five Star that three Health Technicians be hired to just take care of respirable dust sampling. This is based on the assumptions that fishtail sections can be used and that shifts can run longer than 8 hours without having the sample weights multiplied by t/480. A lab technician cannot be used unless he is also an experienced miner because the person has to go underground unaccompanied to check the sampling devices. The cost of compliance with this rule is excessive.

§ 70.206 CPDM Performance Plan.

(a) If using a CPDM, the operator shall have an approved CPDM Performance Plan to ensure that no miner working on an MMU shall be exposed to concentrations of respirable coal mine dust in excess of the applicable standard. The operator shall develop a proposed CPDM Performance Plan and submit it to the District Manager. The proposed CPDM Performance Plan shall not be implemented until approved by the District Manager.

Comment: MSHA District 8 cannot process ventilation plans, roof control plans, etc. in a timely manner now and has not been able to do so for several years. Other MSHA district specialist supervisors have reported the same problem in their districts.

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District 8 will not be able to process an additional plan, a CPDM plan, in a timely manner. The requirement of plan is a burden to the mine operator and to MSHA. The submission of an additional plan is a burden to the mine operator. The ventilation plan currently requires respirable dust control parameters. An additional plan is not warranted.

The preamble at Page 64428 bottom of the first column states "The proposal specifies the information that would be required in the Plan and would establish Plan approval procedures." This is another plan and all the information could be put into the ventilation plan. Requiring an additional plan with respirable dust control measures leads to conflicts with the approved ventilation plan. The only good reason to separate out the dust control parameters is to help the mine operator lower its violation history. Section 75.370(a)(1) makes the list as one of the most violated sections in the regulation. This is because the ventilation plan is so extensive and covers so many varied things. If all the dust control provisions were removed from the ventilation plan and put in another plan it would help the operator with repetitive violations. However, all the dust control provisions would have to be removed so no conflicts would exist. Conflicts could exist between the parameters such as air quantities established for methane control and those set for respirable dust control.

(1) The mine operator shall notify the representative of miners at least 5 days prior to submission of a proposed CPDM Performance Plan and any proposed revision to a CPDM Performance Plan. If requested, the mine operator shall provide a copy to the representative of miners at the time of notification;

(2) A copy of the proposed CPDM Performance Plan, and a copy of any proposed revision, submitted for approval shall be made available for inspection by the representative of miners; and

(3) A copy of the proposed CPDM Performance Plan, and a copy of any proposed revision, submitted for approval shall be posted on the mine bulletin board at the time of submittal. The proposed plan or proposed revision shall remain posted until it is approved, withdrawn, or denied.

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(4) Following receipt of the proposed plan or proposed revision, the representative of miners may submit timely comments to the District Manager, in writing, for consideration during the review process. A copy of these comments shall also be provided to the operator by the District Manager upon request.

(b) The approved CPDM Performance Plan shall include the names or titles of the responsible mine officials who are designated by the operator and the following information:

Comment: The designation of "responsible mine officials" reduces the flexibility of the mine operator to adjust or reassign the duties. This will create the need to submit changes or modifications to the plan which will require approval by MSHA. This is a burden to the mine operator and to MSHA.

(1) The occupations in each MMU that will be sampled using a CPDM. Each sampled occupation shall be assigned a 9-digit identification number as follows:

(i) The first four digits identify the MMU being sampled;

(ii) The next three digits identify the sampled occupation

(iii) The eighth digit identifies the particular shift being sampled (*e.g.*, 1st, 2nd or 3rd); and

(iv) The final digit identifies the particular work crew that the wearer of the sampling device is assigned to at mines employing multiple crews to work the same shift on different days during the same calendar week (*e.g.*, 1st crew, 2nd crew, etc.).

(2) The pre-operational examinations, testing and set-up procedures to verify the operational readiness of the sampling device before each sampling shift;

Comment: The necessity of submitting this information in a plan is dubious. These should be standard procedures that would apply to all the CPDMs. The present cost and limited

availability of CPDMs makes further commenting on these requirements impossible.

(3) Procedures that address downloading of end-of-shift sampling information, and validation, certification and posting of reported results;

Comment: The necessity of submitting this information in a plan is dubious. These should be standard procedures that would apply to all the CPDMs. The present unavailability of CPDMs makes further commenting on these requirements impossible.

(4) Procedures for weekly transmittals of certified sampling data files electronically to MSHA;

Comment: The necessity of submitting this information in a plan is dubious. These should be standard procedures that would apply to all the CPDMs.

(5) The routine daily and other required scheduled maintenance procedures;

Comment: The necessity of submitting this information in a plan is dubious. These should be standard procedures that would apply to all the CPDMs.

(6) Procedures or methods for verifying the calibration of each CPDM; and

Comment: The necessity of submitting this information in a plan is dubious. These should be standard procedures that would apply to all the CPDMs.

(7) The frequency with which dust concentrations being reported by the CPDM shall be monitored by the designated mine official during the shift;

Comment: The necessity of submitting this information in a plan is dubious. These should be standard procedures that would apply to all the CPDMs.

(8) The types of actions permitted to be taken during the shift to ensure the environment of the occupation being sampled remains in compliance at the end of the shift.

Comment: The necessity of submitting this information in a plan is dubious. These should be standard procedures that would apply to all the CPDMs.

(9) Any other information required by the District Manager.

Comment: The bulk of the information required here is material that does not need to be submitted in a plan. For example item 5, the required scheduled maintenance procedures, will come with the instrument. It does not need to be submitted to MSHA. Item 9 is opened ended permitting the District Manager to require anything that MSHA could want. This is unfair to the mine operator. It is rule making without going through the proper procedures. The regulation should specify exactly what the District Manager can require.

(c) The approved CPDM Performance Plan and any revisions shall be:

(1) Provided upon request to the representative of miners by the operator following notification of approval;

(2) Made available for inspection by the representative of miners; and

(3) Posted on the mine bulletin board within 1 working day following notification of approval, and shall remain posted for the period that the plan is in effect.

(d) The District Manager may require an approved CPDM Performance Plan to be revised if the District Manager determines that the plan is inadequate to protect miners from exposure to concentrations of respirable dust in excess of the applicable standard.

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Comment: Page 64431 of the preamble first column states "under the proposal, District Managers would not be required to wait until a miner has been exposed to excessive dust prior to determining that a Plan is inadequate." This statement implies that the District Manager could request a plan revision before the mine operator goes out of compliance. If the mine is in compliance then the plan is adequate. The MSHA District Manager should have to go through the MSHA - Initiated Mine Plan Change process on Page 6 of the Program Policy Manual to require changes to the plan and only after the mine goes out of compliance. Additionally, a one-time over-compliance on a single MMU does not necessarily mean that the plan is inadequate. Proper justification is needed to request a modification to the plan. This standard would permit MSHA to issue a citation before any discussion is had with the mine operator.

The intertwining of the CPDM Performance Plan and the Ventilation Plan is unavoidable with the two plan format. Only one plan should exist, the ventilation plan. One plan would eliminate conflicts. Page 64431 of the preamble second column declares "MSHA believes that such instances of refusal to incorporate revisions into a Plan will rarely, if ever, occur." MSHA always wants more and tougher requirements in plans than the operator wishes to provide. Conflict in inevitable so the statement is incredulous. The ventilation plan has grown in size and specificity for respirable dust control parameters in the last few years.

§ 70.207 Sampling of mechanized mining units; requirements when using a CMDPSU.

(a) Each operator shall take five valid representative samples from the designated occupation (DO) in each MMU during each bimonthly period. DO samples shall be collected on consecutive normal production shifts or normal production shifts each of which is worked on consecutive days. The bimonthly periods are:

January 1-February 28 (29)
March 1-April 30
May 1-June 30

July 1-August 31
September 1-October 31
November 1-December 31.

Comment: The miner assigned to the occupation needs to be sampled and not just the occupation. This will give the true exposure to the miner of whom the standards are aimed to protect. The Federal mine Safety & Health Act of 1977 states "Congress declares that - (a) the first priority and concern of all the coal or other mining industry must be the health and safety of its most precious resource - the miner." Sampling must be done of the individual miner and not the occupation. The "passing of the pump" must not be done. It is not justified and the act of "passing the pump" can create errors in sampling. It can increase the likelihood of dropping the pump or turning the cyclone assembly upside down.

(b) Unless otherwise directed by the District Manager, the DO samples shall be taken by placing the approved sampling device as specified in paragraphs (b)(1) through (b)(10) of this section.

Comment: The miner assigned to the occupation needs to be sampled and not just the occupation. This will give the true exposure to the miner of whom the standards are aimed to protect.

(1) *Conventional section using cutting machine.* On the cutting machine operator or on the cutting machine within 36 inches inby the normal working position;

(2) *Conventional section shooting off the solid.* On the loading machine operator or on the loading machine within 36 inches inby the normal working position;

(3) *Continuous mining section other than auger-type.* On the continuous mining machine operator or on the continuous mining machine within 36 inches inby the normal working position;

(4) *Continuous mining machine; auger-type.* On the jacksetter who works nearest the working face on the return air side of the

continuous mining machine or at a location that represents the maximum concentration of dust to which the miner is exposed;

(5) *Scoop section using cutting machine.* On the cutting machine operator or on the cutting machine within 36 inches inby the normal working position;

(6) *Scoop section, shooting off the solid.* On the coal drill operator or on the coal drill within 36 inches inby the normal working position;

(7) *Longwall section.* On the miner who works nearest the return air side of the longwall working face or along the working face on the return side within 48 inches of the corner;

(8) *Hand loading section with a cutting machine.* On the cutting machine operator or on the cutting machine within 36 inches inby the normal working position;

(9) *Hand loading section shooting off the solid.* On the hand loader exposed to the greatest dust concentration or at a location that represents the maximum concentration of dust to which the miner is exposed;

(10) *Anthracite mine sections.* On the hand loader exposed to the greatest dust concentration or at a location that represents the maximum concentration of dust to which the miner is exposed.

(c) When the respirable dust standard is changed in accordance with § 70.101, the new applicable standard shall become effective on the first production shift following receipt of the notification of such change from MSHA.

(1) If all samples from the most recent bimonthly sampling period do not exceed the new applicable standard, respirable dust sampling of the MMU shall begin on the first production shift during the next bimonthly period following receipt of such change from MSHA.

(2) If any sample from the most recent bimonthly sampling period exceeds the new applicable standard, the operator shall make necessary adjustments to the dust control parameters in the mine

ventilation plan within three days and then collect samples from the affected MMU on consecutive normal production shifts until five valid representative samples are collected. The samples collected will be treated as normal bimonthly samples under this part.

Comment: Nothing should be required until the average of the most recent five samples exceeds the standard. Not until then should the operator need to consider making adjustments to the plan. One overweight sample is not an indication of a problem. The ventilation plan does not need to be changed because one sample is high or necessarily even if the average of five samples is over the concentration standard. The ventilation plan could be more than adequate to take care of the respirable dust. One overweight sample could be an aberration or maybe the excessive weight came from rock dust suspended in the atmosphere. An average of five samples that is slightly over the standard could have resulted from one day's sample when rock dust was suspended in the air.

MSHA District 8 cannot process ventilation plans in a timely manner now and has not been able to do so for several years. Other MSHA district ventilation supervisors have reported the same problem in their districts. District 8 will not be able to process modifications to the plan in a timely manner. The requirement for changing the plan every time there is an over-weight sample is unfair and a burden to the mine operator. It is unjustified. This requirement could result in many revisions to the ventilation plans by the mine operators. Many of these could be needless modifications to the plan.

Three days is too short of a time to resubmit a change to the mine ventilation plan. If the plan does need to be changed, the mine operator needs to study the problem, formulate the change to the plan, draft the plan, review the plan with key personnel, and send the plan to MSHA. MSHA has a minimum of five Monday holidays where the District Office is closed for three days in a row making delivery of plans within three days impossible. Also, key MSHA personnel would be unavailable for consultation during those three-day periods. With an absolute deadline specified by the rule, the District Manager would have no course but to issue a citation if the plan was not received in three

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days. An absolute deadline is a burden to the mine operator. Additionally, the District Manager must permit the submission of plans by electronic means, email or fax. In 2009, District 8 would not accept any plan submitted by electronic means. Operators had to drive many miles to hand deliver plans that needed immediate attention. The acceptable delivery of plans by electronic means must be specified in the regulations when plans are required, especially plans that need to be submitted in three days.

Too often today the Health Supervisor for the District dictates what must be included in the plan any time that the plan needs to be revised. The plan should be the operator's plan and not be what is dictated to the mine operator. Requiring the plan to be modified in three days because a MMU is out of compliance makes the plan approval process more contentious.

(d) If a normal production shift is not achieved, the DO sample for that shift may be voided by MSHA. However, any sample, regardless of production, that exceeds the applicable standard by at least 0.1 mg/m3 shall be used to determine the average concentration for that MMU.

Comment: If a normal production shift is not achieved, MSHA can count the sample if it is over the applicable standard yet if it is under the operator does not get credit for a sample that is below the standard. This is unfair. A shift in which the production is not met and the weight is under the standard is still an indication as to what the miner is exposed. A shift could be only a few tons short of making production and the weight could be half the applicable standard. It would not count. If MSHA can count it when it is over then the operator should be able to count it when it is under. Additionally, a single sample that is only 0.1 mg/m^3 over the applicable standard is small weight to cause a trigger to count the sample.

(e) No valid single-shift equivalent concentration shall meet or exceed the excessive concentration value (ECV) that corresponds to the applicable standard in Table 70-1.

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Comment: The mine operator should not be out of compliance until the average of the most recent five samples exceeds the standard. A single-shift concentration sample should not be used to determine compliance. One overweight sample is not an indication of a compliance issue. To produce meaningful information, the weight on a single-shift sample must faithfully represent that of the atmosphere from which the sample is taken. It only represents the exposure for one shift. A single-shift sample could be in error. One overweight sample could be an aberration or maybe the excessive weight came from rock dust suspended in the atmosphere.

The preamble on page 64432 first column states "MSHA can determine noncompliance with the applicable dust standard with at least 95-percent confidence." Even with a 95-percent confidence level there is a 1 in 20 chance that the sample is in error. A mine operator would be forced to take extreme measures when out of compliance because of the error. It would require submitting a "corrective actions" submission and then sampling. If the sampling showed compliance then the action submission would have to become part of the mine ventilation plan. All this could take place and the original plan could be adequate. It could be a very good ventilation plan.

The Excessive Concentration Values are too low. For example, if the operator is on a 2.0 mg/m^3 standard, the operator could have one 2.33 mg/m^3 sample followed by four 1.90 mg/m^3 samples and be out of compliance the first day because of the 2.33 mg/m^3 sample. Yet the five day average would be below 2.0 mg/m^3 and the highest weight sample is only 0.43 mg/m^3 higher than the lowest weight sample.

An operator could be cited for a single sample that exceeds the Excessive Concentration Value and the operator could be cited for the average of five samples exceeding the standard. The one overweight sample could have caused both the Excessive Concentration Value to be exceeded and the five-sample average to be exceeded. Being cited twice because of one sample is unfair and unjust. The Excessive Concentration Value needs to be removed from the regulations.

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(f) Upon issuance of a citation for a violation of the applicable standard involving a DO in an MMU, paragraphs (a) and (c)(2) of this section shall not apply to that MMU until the violation is abated in accordance with paragraph (g) of this section.

(g) During the time for abatement fixed in a citation for violation of the applicable standard, the operator shall take the following actions:

(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;

Comment: During the period following a violation of the applicable standard MSHA recognizes the use of respiratory equipment but during other times MSHA does not recognize respiratory equipment for the control or respirable dust that enters miners' lungs.

(2) Submit to the District Manager for approval proposed corrective actions to lower the concentration of respirable dust to within the applicable standard; and

Comment: MSHA District 8 cannot process ventilation plans in a timely manner now and has not been able to do so for several years. Other MSHA district ventilation supervisors have reported the same problem in their districts. District 8 will not be able to process "corrective actions" submissions in a timely manner. The requirement for submitting a "corrective actions" submission for a violation of the concentration standard is unfair and a burden to the mine operator. It is unjustified. This requirement could result in many revisions to the ventilation plans by the mine operators. Many of these could be needless modifications to the plan.

(3) Upon approval by the District Manager, implement the proposed corrective actions and then sample the environment of the affected occupation in the MMU in the citation on each normal production shift until five valid representative samples are taken.

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Comment: The approved "corrective actions" could be different than what is approved in the mine ventilation plan. This could put the mine operator in violation of the ventilation plan but in compliance with the "corrective actions" submission.

(h) A citation for violation of the applicable standard shall be terminated by MSHA when the equivalent concentration of each of the five valid operator abatement samples is at or below the applicable standard, the operator has submitted to the District Manager revised dust control parameters as part of the mine ventilation plan applicable to the MMU in the citation, and such changes have been approved by the District Manager. The revised parameters shall reflect the control measures used to abate the violation.

Comment: The mine operator should not have to have all five samples at or below the standard for termination of the citation. It took an average of five samples above the standard or one sample above the excessive concentration level to be out of compliance. The operator should not be required to have all five samples below the standard weight to come into compliance. The operator should be in compliance when the average of the most recent five samples is below the standard. A single-shift concentration sample should not continue the out-of-compliance position of the operator. One overweight sample is not an indication of a compliance issue. One overweight sample could be an aberration or maybe the excessive weight came from rock dust suspended in the atmosphere. If one overweight sample can put a mine operator out of compliance then one sample should be able to put the mine operator in compliance.

The mine operator can be out of compliance because MSHA has not approved the plan. Requiring the submission of a ventilation plan change is unfair and a burden to the mine operator. Approval of the ventilation plan change is unfair and a burden to the operator. This puts the mine operator at disadvantage. MSHA can shut the MMU down because it does not get exactly what it wants. In the plan approval process the mine operator has no recourse but to yield to MSHA. It is almost impossible to get an expedited hearing. The number of citations and orders being

litigated are mounting faster than MSHA and the court system can process them.

The preamble does not discuss the fact that the rule requires that when a citation for violation of the applicable standard is issued it will only be "terminated by MSHA when the equivalent concentration of each of the five valid operator abatement samples is at or below the applicable standard." Some discussion of the necessity of having all the samples below the applicable standard is needed.

MSHA wants the dust control measures to apply to a single MMU. MSHA is beginning to take this approach now when dust compliance problems happen. Requiring differing parameters for each MMU creates a paperwork burden for the mine operator and for MSHA. When MSHA wrote the 1992 Ventilation Rule, one of the driving factors in the rewriting of the rule was the Paperwork Reduction Act. The rewrite committee worked to downsize the Mine Ventilation Plan and eliminate plans such as the fan stoppage plan. Ventilation plans had become cumbersome and it created compliance problems for the mine operator and enforcement problems for MSHA. Now, MSHA wants a ventilation plan for each MMU. Black Panther and Five Star have six MMUs in each of the mines and therefore will have six different plans for the six different MMUs. The size and complexity of the plans will grow. When a section supervisor moves from one MMU to another MMU he or she will need to be trained on the different plan for that MMU. When a miner moves from one MMU to another MMU he or she will need to be trained on the different plan for that MMU. If the mining conditions are the same and the equipment is the same there is no good reason to have differing plans for the different MMUs. District 8 has gone for decades with ventilation plan provisions the same for all the MMUs unless the mining equipment was different. This approach worked well. It kept the amount of paper to a minimum.

Requiring the submission of the "corrective actions" is a paperwork burden. Requiring the "corrective actions" to be submitted in the ventilation plan is a paperwork burden. Having varying plans for the different MMUs is a paperwork burden.

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(i) When the equivalent concentration of one or more valid samples collected by the operator under this section exceeds the applicable standard but is less than the applicable ECV in Table 70-1, the operator shall:

Comment: The mine operator should not have to take any action when a sample exceeds the standard but is below the ECV. A single-shift concentration sample should not cause action to take place. One overweight sample is not an indication of a hazardous condition or is even a non compliance situation. One overweight sample could be an aberration or maybe the excessive weight came from rock dust suspended in the atmosphere.

(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;

Comment: When the equivalent concentration of one or more valid samples collected by the operator under this section exceeds the applicable standard but is less than the applicable ECV in Table 70-1 MSHA recognizes the use of respiratory equipment. During other times MSHA does not recognize respiratory equipment for the control or respirable dust that enters miners' lungs.

(2) Take corrective action to lower the concentration of respirable dust to or below the applicable standard.

Comment: When the equivalent concentration of one or more valid samples collected by the operator under this section exceeds the applicable standard but is less than the applicable ECV in Table 70-1 no corrective action should be necessary. A violation does not exist and a hazard does not exist.

(3) Record the corrective actions taken in the same manner as the records for hazardous conditions required by § 75.363 of this chapter.

Comment: Section 75.363 states "Any hazardous condition found by the mine foreman or equivalent mine official, assistant mine foreman or equivalent mine official, or other certified persons

designated by the operator for the purposes of conducting examinations under this subpart D, shall be posted with a conspicuous danger sign where anyone entering the areas would pass. A hazardous condition shall be corrected immediately or the area shall remain posted until the hazardous condition is corrected. If the condition creates an imminent danger, everyone except those persons referred to in section 104(c) of the Act shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected. Only persons designated by the operator to correct or evaluate the condition may enter the posted area.

(b) A record shall be made of any hazardous condition found. This record shall be kept in a book maintained for this purpose on the surface at the mine. The record shall be made by the completion of the shift on which the hazardous condition is found and shall include the nature and location of the hazardous condition and the corrective action taken. This record shall not be required for shifts when no hazardous conditions are found or for hazardous conditions found during the preshift or weekly examinations inasmuch as these examinations have separate recordkeeping requirements.

(c) The record shall be made by the certified person who conducted the examination or a person designated by the operator. If made by a person other than the certified person, the certified person shall verify the record by initials and date by or at the end of the shift for which the examination was made. Records shall be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

(d) Retention period. Records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners."

Section 75.363 is for hazardous conditions found during the shift by a certified person conducting examinations. It is for

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examinations conducted under Subpart D. The certified person doing respirable dust sampling is not making an examination under § 75.363. The certified person does not get the results of the sampling until after the shift is over so the overweight condition is not found until after the shift is over. Therefore, the record cannot be made at the end of the shift when it occurred.

The hazardous condition found under § 75.363 must be corrected immediately or remain posted. The condition cannot be corrected immediately. The District Manager first must approve "the corrective action" submission before sampling can begin. Then the sampling must be done. Then the samples must be weighed. Any violation of the respirable dust standard cannot be corrected immediately. Additionally, the condition cannot be posted. Section 75.363 does not fit this type of action. Remove any reference to § 75.363.

Regulations require the posting of citations so the conditions cited are available for interested persons. Plans also have to be posted so they are also available for interested persons. Miner's representatives must receive a copy of the plan submitted. The new plans required under this rule must be posted. A need to create a record under §75.363 is not warranted.

TABLE 70-1—EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON SINGLE-SHIFT CMDPSU EQUIVALENT CONCENTRATION MEASUREMENTS

Applicable standard (mg/m3)	ECV (mg/m3)
2.0	2.33
1.9	2.22
1.8	2.12
1.7	2.01
1.6	1.90
1.5	1.79
1.4	1.69
1.3	1.59
1.2	1.47
1.1	1.37
1.0	1.26
0.9	1.16

	1.05
0.8	0.95
0.7	0.85
0.6	0.74
0.5	0.65
0.4	0.54
0.3	0.44
0.2	

§ 70.208 Sampling of mechanized mining units; requirements when using a CPDM.

(a) Each operator shall sample:

(1) The designated occupation (DO) in each MMU during each production shift, seven days per week (Sunday through Saturday), 52 weeks per year; and

Comment: Sampling every Designated Occupation (DO) every production shift is excessive. It is very expensive. A 100 percent sample, sampling every production shift every day, is not needed to objectively determine how much respirable dust a miner is being exposed to. The sampling should be done of the miner not the designated occupation. If the required sampling should stay on an every-day basis, then the justification for sampling the individual is even greater. Mine operators would not be able to relocate a miner during part or all of the sampling period because the miner would be sampled every day every shift. Again, sampling every day is not needed or justified.

Page 64433 of the preamble second column states "The Dust Advisory Committee recommended that MSHA should take full responsibility for compliance sampling at the number and frequency levels required of both the operators and MSHA to ensure reliability with the program." If MSHA wants sampling done every shift every day then MSHA should take over the sampling. The every-day sampling is hugely expensive to the operator. Page 64431 of the preamble third column declares when making an argument for operator sample responsibility "MSHA believes that this is a reasonable statutory requirement and

sound regulatory principle that must be maintained." This is not a reasonable statutory requirement. The cost to the operator is prohibitive.

Black Panther and Five Star have six MMUs in each of their mines. The MMU will have two continuous miner operators making 12 miners working in the Designated Occupations each production shift. With two production shifts per day it will be necessary to have 24 CPDMs available each day to sample the continuous miner operators. If only the DO is sampled and the CPDM is passed then at a minimum 12 CPDMs will be used minimum each day. Again, the CPDM should not be passed. Each continuous miner operator should be sampled. However, because shifts could run over 12 hours and the need for backup CPDMs for failure or malfunction Black Panther and Five Star estimates that it will need 24 CPDMs to sample the continuous miner operators.

(2) The Other Designated Occupations (ODO) specified in paragraphs (b)(1) through (b)(10) of this section in each MMU during each production shift for 14 consecutive days during each quarterly period. The quarterly periods are:

January 1-March 31
April 1-June 30
July 1-September 30
October 1-December 31.

Comment: Sampling should be done of the miner only not the Other Designated Occupation (ODO). The miner who is assigned to the ODO can be sampled but only the individual miner should be sampled. Sampling every Other Designated Occupation 14 consecutive days is excessive. Miners at Black Panther and Five Star do not work 14 consecutive days. Therefore, Other Designated Occupations personnel do not work 14 consecutive days. Does the rule mean 14 consecutive days when production is done? Does the proposed rule mean sampling the ODOs on one shift? This is not clear. Sampling for five consecutive days would give an accurate indication of the exposure level. Shuttle car drivers and roof bolters would be the occupations that could be sampled but again only the individual miner should be sampled.

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(b) Unless otherwise directed by the District Manager, the CPDM shall be worn by the miner assigned to perform the duties of the DO and ODOs specified in paragraphs (b)(1) through (b)(10) or by the District Manager for each type of MMU.

Comment: If the District Manager can direct otherwise the rule changes every time that the District Manager "directs otherwise." This is rule making without going through the proper rule making procedure.

Black Panther and Five Star have double-boom roof bolters so two CPDMs will be needed to sample the roof bolter operators who work nearest the working face on the return air side of the continuous mining machine. Black Panther and Five Star use blowing face ventilation and have three shuttle cars per MMU so it will need three CPDMs to sample the shuttle cars. Therefore it will take five CPDMs when sampling the ODOs on one of its MMUs. Black Panther and Five Star have 6 MMUs each so it will need 12 14-day sampling periods per quarter. Because about 60 production days are available in a three-month sampling period and 12 14-day sampling periods are needed Black Panther and Five Star will need to sample the ODOs on three MMUs for each 14-day period of the sampling cycle. That means that 15 CPDMs per day must be used at a minimum to do the ODO sampling. However, because shifts could run over 12 hours and the need for backup CPDMs for failure or malfunction Black Panther and Five Star believe it will need 30 CPDMs for each mine to sample the ODOs. This assumes that no units will be down on Section 104 (k) orders when no production occurs.

To do both the DOs and ODOs Black Panther and Five Star will need to run 27 CPDMs per day minimum. To account for shifts that could run over 12 hours and the need for backup CPDMs for failure or malfunction Black Panther and Five Star believe it will need 54 CPDMs to do all the sampling. During the MSHA Public Hearing in Evansville, Indiana, MSHA stated that the CPDM will cost about $12,700 each. As reported by MSHA this includes a warranty. So 54 CPDMs multiplied by $12,700 per CPDM equals $685,000. This is the amount of money to buy the instruments for each mine to start sampling.

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(1) *Conventional section using cutting machine.* DO—The cutting machine operator;

(2) *Conventional section shooting off the solid.* DO—The loading machine operator;

(3) *Continuous mining section other than auger-type.* DO—The continuous mining machine operator or mobile bridge operator when using continuous haulage; ODOs—The roof bolter operator who works nearest the working face on the return air side of the continuous mining machine; and the shuttle car operators on MMUs using blowing face ventilation;

Comment: If the shuttle car operators on blowing-type face ventilation systems units must be sampled then shuttle car operators on exhaust-type face ventilation systems should be sampled also. When continuous miners are used with scrubber systems much of the dust generated is scrubbed out by the scrubber. Downwind miners are exposed to much less dust than if the air had not been scrubbed. When using exhaust line curtains for face ventilation for continuous miners not using scrubbers the dust generated will flow downwind. If the shuttle car operators run through the air on the downwind side of the continuous miner the car drivers would be exposed to high concentrations of respirable dust. Downwind roof bolters would also be exposed to greater respirable dust concentrations on working sections using exhaust face ventilation when the air is not scrubbed by the continuous miner. Greater justification exists for sampling car drivers and roof bolters on working sections with exhaust face ventilation systems than for working sections with blowing face ventilation systems were the continuous miners are equipped with a flooded-bed scrubber system.

The rule seems prejudiced against blowing-type face ventilation. Blowing-type face ventilation has been used successfully to control respirable dust in the Midwest since the introduction of flooded-bed scrubbers in the 1970s. According to NIOSH studies, http://www.cdc.gov/niosh/topics/surveillance/ORDS/ecwhsp.html, miners in Indiana and Illinois have the lowest frequency of

contracting black lung compared to the other parts of the country. The miners on working section with all types of face ventilation should be sampled with the same frequency.

(4) *Continuous mining section using auger-type machine.* DO—The jacksetter who works nearest the working face on the return air side of the continuous mining machine;

(5) *Scoop section using cutting machine.* DO—The cutting machine operator;

(6) *Scoop section, shooting off the solid.* DO—The coal drill operator;

(7) *Longwall section.* DO—The longwall operator working on the tailgate side of the longwall mining machine; ODOs—The jacksetter who works nearest the return air side of the longwall working face; and on the mechanic;

(8) *Hand loading section with a cutting machine.* DO—The cutting machine operator;

(9) *Hand loading section shooting off the solid.* DO—The hand loader exposed to the greatest dust concentration; and

(10) *Anthracite mine sections.* DO—The hand loader exposed to the greatest dust concentration.

(c) When the respirable dust standard is changed in accordance with § 70.101, the new applicable standard shall become effective on the first production shift following receipt of notification of such change from MSHA.

(d) No valid end-of-shift equivalent concentration shall meet or exceed the excessive concentration value (ECV) that corresponds to the applicable standard in Table 70-2.

Comment: The mine operator should not be out of compliance until the weekly accumulated exposure is out of compliance. A single-shift concentration sample should not be used to determine compliance. One overweight sample is not an

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indication of a compliance issue. One overweight sample could be an aberration or maybe the excessive weight came from rock dust suspended in the atmosphere.

A mine operator could be cited twice for noncompliance, once for an excessive concentration value and once for the weekly accumulated exposure. It could be caused all by the one overweight sample. Being cited twice because of one sample is unfair. If two citations are issued do two plans have to be submitted?

The Excessive Concentration Values are too low. For example, if the operator is on a 1.0 mg/m^3 standard, the operator could have one 1.13 mg/m^3 sample followed by four 0.96 mg/m^3 samples and be out of compliance the first day because of the 1.13 mg/m^3 sample. Yet the five day average would be below 1.0 mg/m^3 and the highest weight sample is only 0.17 mg/m^3 higher than the lowest weight sample. Additionally, a continuous miner operator could be subjected to five samples each weighing 1.0 mg/m^3. Another continuous miner operator could have one 1.13 mg/m^3 sample followed by four 0.96 mg/m^3 samples and be out of compliance the first day because of the 1.13 mg/m^3 sample. Yet the miner operator's exposure for the week is less than miner who received 1.0 mg/m^3 each day (4.97 mg/m^3 versus 5.0 mg/m^3). Another example could have a continuous miner operator have one 1.13 mg/m^3 sample followed by four 0.5 mg/m^3 samples and be out of compliance the first day because of the 1.13 mg/m^3 sample. In this example the miner operator's exposure for the week is much less than miner who received 1.0 mg/m^3 each day (3.13 mg/m^3 versus 5.0 mg/m^3). Black lung is caused by the accumulation of coal dust in the lungs over a lengthy period of time. A single shift is not an indication of the miner's exposure over time.

(e) No weekly accumulated exposure shall exceed the weekly permissible accumulated exposure.

Comment: The miner needs to be sampled and only the miner. This will give the true exposure to the miner of whom the standards are aimed to protect. Track the miner's exposure not the occupation's exposure. Additionally, the Weekly Accumulated Exposure should be the total weight gain of all the samples for

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the week for an individual miner. Multiplying the daily exposure by the hours worked does not give the proper indication of the exposure when the miner works longer than 8-hour shifts. The weight gain has been multiplied by t/480 which gives a higher exposure than has the miner has actually been exposed to.

The permitted weekly accumulated exposure should be the respirable dust to which the miner is permitted to be exposed to and only the miner. This will give the true exposure to the miner of whom the standards are aimed to protect. The exposure must be done of the individual miner and not the "occupation." What research shows that the "Weekly Permissible Accumulated Exposure" is indicative of the likelihood of a miner contracting black lung?

(f) When a valid end-of-shift equivalent concentration meets or exceeds the applicable ECV in Table 70-2, or a weekly accumulated exposure exceeds the weekly permissible accumulated exposure, the operator shall take the following actions before production begins on the next shift:

Comment: When a mine hot-seats its shift changes it is impossible to "take the following actions before production begins on the next shift." The next production crew goes in before the production crew that is in the mine leaves. The sample weight is not known until the production crew arrives on the surface and the data downloaded. It appears the rule is designed to eliminate the practice of hot-seating. The rule will force mine operators to work only 8-hour shifts. Even if the mine does not hot-seat its shift changes, a good chance exists that the results from one shift will not be available before the next shift goes underground.

A good chance exists that the compliance problem on one shift is because of work practices of the crew on that particular shift. The other crews could have excellent respirable dust control practices and invoking changes on the next shift could be unwarranted. It could even be counterproductive.

(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;

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Comment: During the period following a violation of the applicable standard MSHA recognizes the use of respiratory equipment but during other times MSHA does not recognize respiratory equipment for the control or respirable dust entering miners' lungs.

(2) Implement corrective actions to assure compliance with the applicable standard on the next and other subsequent production shifts;

Comment: Black Panther and Five Star hot-seat their production shift changes. When the day-shift production crew leaves the working section the oncoming production crew will already be on the working section Mine management will not know if the day-shift production crew exceeded the standard so changes cannot be made before the next production crew starts production. Even if a mine does not hot-seat its crew changes it will be difficult to take "corrective actions" before the next shift begins.

A good chance exists that the compliance problem on one shift is because of work practices of the crew on that particular shift. The other crews could have excellent respirable dust control practices and invoking changes on the next shift could be unwarranted.. It could even be counterproductive.

Mine management should be able to study why the compliance problem came to be and then formulate a plan to correct the condition. This cannot be done between shifts.

(3) Submit to the District Manager for approval, within 3 days of determining that the applicable standard was exceeded, the corrective actions implemented to lower the concentration of respirable dust to within the applicable standard as a proposed change to the approved ventilation plan;

Comment: The regulation states "the operator shall take the following actions before production begins on the next shift" but the third item allows three days for the submission of "corrective actions." Does the Mechanized Mining Unit have to be down until the "corrective actions" is submitted and

approved? By the way Item Number 3 is written it does not appear so. Item Number 2 above appears to require only that "corrective actions" be implemented. However, if a ventilation plan change has to be approved before implementation, as it always is, it will mean that MSHA will close the Mechanized Mining Unit without the issuance of an order. Several days of production could be lost from a unit because of the need to submit and gain approval of a "Corrective Actions" submission as a revision to the ventilation plan. This proposed section is very confusing. It implies that it is okay to change the ventilation plan and implement it before it is approved.

MSHA District 8 cannot process ventilation plans in a timely manner now and has not been able to do so for several years. Other MSHA district ventilation supervisors have reported the same problem in their districts. District 8 will not be able to process "corrective actions" submissions or ventilation plan changes in a timely manner. The requirement for submitting a plan for a violation of the concentration standard is unfair and a burden to the mine operator. It is unjustified. This requirement could result in many revisions to the ventilation plans by the mine operators. Many of these could be needless modifications to the plan. What happens if a mine operator failed to follow the approved plan and went out of compliance? The ventilation plan could be adequate but because the operator failed to follow the plan MSHA will require a plan modification.

A mine operator can with the CPDM determine that an occupation is out of compliance and not yet had to send the sampling information into MSHA. The mine operator would be submitting a "Corrective Actions" plan to the District Manager before the District Manager knew that the mine had a compliance issue or issued a citation. Three days is unworkable. A "Corrective Actions" submission is a bad idea. MSHA is tying the operator's hands with more plans. MSHA is creating a need to greatly expand their workforce to handle plans. Additionally, MSHA will write more citations and orders. More plans and more plan provisions mean more potential violations. The number of plans needs to be reduced not increased.

The mine operator could implement "corrective actions" that the District Manager could find unacceptable and not approve. The

actions could have already worked but the District Manager will not approve them. This is unworkable.

Black Panther and Five Star estimate that it will take 10 hours of upper management time to review the current ventilation plan's respirable dust control provisions, propose changes to the plan, and formulate the "Corrective Actions" for submission. Upper management would consist of the General Manger, Mine Superintendent, General Safety Manger, Safety Manger, and Mine Engineer. It will take the Mine Engineer two hours to prepare the "Corrective Actions" and another hour of upper management time to review the material before submission. It will take a secretary an hour to make copies and prepare the material for submission. This totals 13 hours of upper management time to study, prepare, and review the material for submission and an hour of secretarial time for copying and submission to MSHA. It is anticipated that once the submission is reviewed by MSHA changes to the submission will be required before MSHA will grant approval. All ventilation plan submissions made by Black Panther and Five Star in the past 12 months have failed to gain approval on the first submission. To review and correct the deficiencies in the first submission, Black Panther and Five Star estimate that about ½ of the time to prepare the original submission will be needed, 6.5 hours. An additional one hour of secretarial time will be need to copy and prepare the material for submission.

Often when time frames become critical to get submissions approved, it will be necessary for the management team to meet with MSHA district officials to come to agreement on the necessary provisions to the submission. This would require the team about three hours of time, 1.5 hours travel time and 1.5 hours of meeting time. With five management persons attending the meeting this would be an additional 15 hours of upper management personnel time.

It is difficult for Black Panther and Five Star to estimate the number of times that this will occur each year. If the standard goes to 1.0 mg/m^3, Black Panther and Five Star believe that non compliance events would occur especially because of the new ECV provisions and possibly with the Weekly Accumulated Permissible Accumulated Exposure. Black Panther and Five Star will make

every attempt to maintain compliance with the standards, however maintaining compliance with lower standards will be difficult. Black Panther and Five Star believe that the new lower standards will provide little additional protection against black lung.

(4) Review the adequacy of the approved CPDM Performance Plan. Within 7 calendar days following posting of the end-of-shift equivalent concentration or weekly accumulated exposure on the mine bulletin board, the operator shall submit any plan revisions to the District Manager for approval; and

Comment: If the mine operator determines that the plan is adequate no submission should be necessary. The statement about submitting revisions to the District Manager does not make sense. Obviously, if a mine operator wishes to change a plan the revisions have to be submitted to the District Manager. This is another plan that causes a huge additional paperwork burden to the mine operator.

(5) Record the reported excessive dust condition as part of and in the same manner as the records for hazardous conditions required by § 75.363 of this chapter. The record shall include:

(i) Dates of sampling;

(ii) Lengths of sampled shifts;

(iii) Locations within the mine and the occupation where samples were collected;

(iv) The end-of-shift equivalent concentration or weekly accumulated exposure and weekly permissible accumulated exposure; and

(v) Corrective actions taken to reduce the concentration of respirable coal mine dust to or below the applicable standard.

Comment: Section 75.363 states "Any hazardous condition found by the mine foreman or equivalent mine official, assistant mine foreman or equivalent mine official, or other certified persons designated by the operator for the purposes of conducting

examinations under this subpart D, shall be posted with a conspicuous danger sign where anyone entering the areas would pass. A hazardous condition shall be corrected immediately or the area shall remain posted until the hazardous condition is corrected. If the condition creates an imminent danger, everyone except those persons referred to in section 104(c) of the Act shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected. Only persons designated by the operator to correct or evaluate the condition may enter the posted area.

(b) A record shall be made of any hazardous condition found. This record shall be kept in a book maintained for this purpose on the surface at the mine. The record shall be made by the completion of the shift on which the hazardous condition is found and shall include the nature and location of the hazardous condition and the corrective action taken. This record shall not be required for shifts when no hazardous conditions are found or for hazardous conditions found during the preshift or weekly examinations inasmuch as these examinations have separate recordkeeping requirements.

(c) The record shall be made by the certified person who conducted the examination or a person designated by the operator. If made by a person other than the certified person, the certified person shall verify the record by initials and date by or at the end of the shift for which the examination was made. Records shall be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

(d) Retention period. Records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners."

Section 75.363 is for hazardous conditions found during the shift by a certified person conducting examinations. It is for examinations conducted under Subpart D. The certified person

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doing respirable dust sampling is not making an examination under § 75.363. The certified person does not get the results of the sampling until after the shift is over so the overweight condition is not found until after the shift is over. Therefore, the record cannot be made at the end of the shift when it occurred. The hazardous condition found under § 75.363 must be corrected immediately or remain posted. The condition cannot be corrected immediately. The mine operator must first formulate "corrective actions to lower the concentration of respirable dust to within the applicable standard." The "Corrective Actions" must be implemented. "Corrective Actions" must then be submitted to the District Manager within three days. The District Manager must approve the "Corrective Actions" submission. The sampling of respirable dust must be done to determine if the "Corrective Actions" work. Any violation of the respirable dust standard cannot be corrected immediately. Additionally, the condition cannot be posted. Section 75.363 does not fit this type of action. Remove any reference to § 75.363.

Regulations require the posting of citations so the citation is available for interested persons. Plans also have to be posted so they are also available for interested persons. A need does not exist to record excessive dust condition as part of and in the same manner as the records for hazardous conditions required by § 75.363. The information is already posted and available.

(g) When a valid end-of-shift equivalent concentration exceeds the applicable standard but is less than the applicable ECV in Table 70-2, the operator shall take the following actions:

Comment: This section of the rule requires actions even though the standard is not violated. When a valid end-of-shift equivalent concentration exceeds the applicable standard but is less than the applicable ECV in Table 70-2 and the Weekly Accumulated Exposure is less than the Weekly Permissible Accumulated Exposure a violation does not exist. If a mine operator is in compliance no actions should be necessary. The rule requires actions for many differing scenarios. Requiring an action when the mine operator is not out of compliance and a hazardous condition does not exist is extreme and unnecessary.

Mark O. Eslinger, P.E., General Safety Manager, Five Star Mining, Inc., Black Panther Mining, LLC

(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;

Comment: Because the concentration exceeds the applicable standard but is less than the applicable ECV in Table 70-2 MSHA recognizes the use of respiratory equipment. During other times MSHA does not recognize respiratory equipment for the control of respirable dust that enters a miner's lungs. If MSHA recognizes the use of respiratory equipment for some situations then MSHA should recognize the use of respiratory equipment all the time.

This rule requires making respiratory equipment available even though the standard is not violated. When a valid end-of-shift equivalent concentration exceeds the applicable standard but is less than the applicable ECV in Table 70-2 and the Weekly Accumulated Exposure is less than the Weekly Permissible Accumulated Exposure a violation does not exist. If a mine operator is in compliance no actions should be necessary. The rule requires actions for many differing scenarios. Requiring an action when the mine operator is not out of compliance and a hazardous condition does not exist is extreme and unnecessary.

(2) Implement corrective actions to assure compliance with the applicable standard on the next and subsequent production shifts;

Comment: This requires "Corrective Actions" even though the standard is not violated. When a valid end-of-shift equivalent concentration exceeds the applicable standard but is less than the applicable ECV in Table 70-2 and the Weekly Accumulated Exposure is less than the Weekly Permissible Accumulated Exposure a violation does not exist. If a mine operator is in compliance no actions should be necessary. The rule requires actions for many differing scenarios. Requiring an action when the mine operator is not out of compliance and a hazardous condition does not exist is extreme and unnecessary.

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Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors

Mark O. Eslinger, P.E., General Safety Manager, Five Star Mining, Inc., Black Panther Mining, LLC

When a mine hot-seats its shift changes it is impossible to "implement corrective actions to assure compliance with the applicable standard on the next and subsequent shifts." The next production crew goes in before the production crew that is in the mine leaves the working section. The sample weight is not known until the production crew arrives on the surface and the data downloaded. It appears the rule is designed to eliminate the practice of hot-seating. The rule will force mine operators to work only 8-hour shifts. Even if the mine does not hot-seat its shift changes, a good chance exists that the results from one shift will not be available before the next shift goes underground.

A chance exists that the overweight problem on one shift is because of work practices of the crew on that particular shift. The other crews could have excellent respirable dust control practices and invoking changes on the next shift could be unwarranted. It could even be counterproductive.

The "Corrective Actions" could be changes to the mine ventilation plan that would need to be approved before they could be implemented. "Corrective Actions" are required even though the standard is not violated. When a valid end-of-shift equivalent concentration exceeds the applicable standard but is less than the applicable ECV in Table 70-2 and the Weekly Accumulated Exposure is less than the Weekly Permissible Accumulated Exposure a violation does not exist. If a mine operator is in compliance no actions should be necessary.

(3) Record the reported excessive dust condition as part of and in the same manner as the records for hazardous conditions required by § 75.363 of this chapter. The record shall include:

(i) Date of sampling;

(ii) Length of the sampled shift;

(iii) Location within the mine and the occupation where the sample was collected;

(iv) The end-of-shift equivalent concentration; and

(v) Corrective action taken to reduce the concentration of respirable coal mine dust to or below the applicable standard; and

Section 75.363 is for hazardous conditions found during the shift by a certified person conducting examinations. The mine is not in a noncompliance position and yet this is requiring recording the condition as a hazardous condition. Section 75.363 is for examinations conducted under Subpart D. The certified person doing respirable dust sampling is not making an examination under § 75.363. The certified person does not get the results of the sampling until after the shift is over so the overweight condition is not found until after the shift is over. Therefore, the record cannot be made at the end of the shift when it occurred. The hazardous condition found under § 75.363 must be corrected immediately or remain posted. The condition cannot be corrected immediately. The District Manager must approve any change to the ventilation plan. Then the samples must be taken. Any overweight concentration of the respirable dust standard cannot be corrected immediately. Additionally, the condition cannot be posted. Section 75.363 does not fit this type of action. Remove any reference to § 75.363.

(4) Review the adequacy of the approved CPDM Performance Plan. The operator shall submit to the District Manager for approval any plan revisions within 7 calendar days following posting of the end-of-shift equivalent concentration on the mine bulletin board.

Comment: If the mine operator determines that the plan is adequate no submission should be necessary. The statement about submitting revisions to the District Manager does not make sense. Obviously, if a mine operator wishes to change a plan the revisions have to be submitted to the District Manager.

TABLE 70-2—EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON SINGLE-SHIFT CPDM EQUIVALENT CONCENTRATION MEASUREMENTS

Applicable Standard (mg/m3)	ECV (mg/m3)

2.0	2.26
1.9	2.15
1.8	2.04
1.7	1.92
1.6	1.81
1.5	1.70
1.4	1.59
1.3	1.47
1.2	1.36
1.1	1.25
1.0	1.13
0.9	1.02
0.8	0.91
0.7	0.80
0.6	0.68
0.5	0.57
0.4	0.46
0.3	0.34
0.2	0.23

(h) During the period of [effective date of rule] through [effective date plus 24 months], if an operator is unable to maintain compliance with the applicable standard for an MMU and has determined that all feasible engineering or environmental controls are being used on the MMU, the operator may request through the District Manager that the Administrator for Coal Mine Safety and Health approve the use of supplementary controls for a period not to exceed 6 months, including worker rotation, in conjunction with monitoring miners' exposures with CPDMs to reduce affected miners' dust exposures. The operator shall provide a report that evaluates the specific situation in the MMU, outlines all controls that will be used during this time period to prevent miners from being exposed to concentrations exceeding the applicable standard, addresses the actions that will be taken to reduce miners' exposures through the use of engineering and environmental controls, and establishes the time line for the implementation of the engineering and environmental controls. The District Manager will address this request through the approval process associated with the mine ventilation plan.

Comment: This proposed regulation states "If an operator is unable to maintain compliance with the applicable standard for

an MMU and has determined that all feasible engineering or environmental controls are being used on the MMU, the operator may request through the District Manager that the Administrator for Coal Mine Safety and Health approve the use of supplementary controls for a period not to exceed 6 months, including worker rotation, in conjunction with monitoring miners' exposures with CPDMs to reduce affected miners' dust exposures." If MSHA believes that worker rotation is good for 6 months it should be good for much longer time frames than 6 months or 24 months described in the preamble. It is the miner that the rule is protecting. Miners should be able to rotate out of a Designated Occupation and take the sampling device with them. This should be an acceptable form of administrative control. If MSHA requires that sampling occur every production shift every day of the year, the miner should be able to rotate out of the occupation and take the sampling device with him or her.

§ 70.209 Sampling of designated areas.
(a) The operator shall sample each DA for five consecutive production shifts every calendar quarter using a CMDPSU or CPDM.

Comment: The practice of sampling designated areas should be stopped. The concern is the respirable dust exposure to the miner not what the concentration is in some area. The sampling of designated areas is a burden and cost to the mine operator and serves to provide little indication as to what a miner is exposed to. The practice of sampling designated areas is costly both to the operator and MSHA.

The quarterly periods are:
January 1-March 31
April 1-June 30
July 1-September 30
October 1-December 31

(b) When the respirable dust standard is changed in accordance with § 70.101, the new applicable standard shall become effective on the first production shift following receipt of the notification of such change from MSHA.

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(1) If all samples from the most recent quarterly sampling period do not exceed the new applicable standard, respirable dust sampling of the DA shall begin on the first production shift during the next quarterly period following receipt of such change from MSHA.

(2) If any sample from the most recent quarterly sampling period exceeds the new applicable standard, the operator shall make necessary adjustments to the dust control parameters in the mine ventilation plan within three days and then collect samples from the affected DA on consecutive shifts until five valid representative samples are collected. The samples collected will be treated as normal quarterly samples under this part.

Comment: The mine operator cannot make adjustments to the mine ventilation plan without approval from the District Manager.

(c) If using a CMDPSU, no valid single-shift sample equivalent concentration shall meet or exceed the ECV that corresponds to the applicable standard in Table 70-1; or if using a CPDM, no valid end-of-shift equivalent concentration shall meet or exceed the applicable ECV in Table 70-2.

Comment: The mine operator should not be out of compliance until the weekly accumulated exposure is out of compliance. A single-shift concentration sample should not be used to determine compliance. One overweight sample is not an indication of a compliance issue. One overweight sample could be an aberration or maybe the excessive weight came from rock dust suspended in the atmosphere. A mine operator could be cited twice for noncompliance, once for an excessive concentration value and once for the weekly accumulated exposure. It could be caused all by the one overweight sample. Being cited twice because of one sample is unfair. If two citations are issued do two plans have to be submitted?

The Excessive Concentration Values are too low. For example, if the operator is on a 1.0 mg/m^3 standard, the operator could have one 1.13 mg/m^3 sample followed by four 0.96 mg/m^3 samples and be out of compliance the first day because of the 1.13 mg/m^3 sample. Yet the five day average would be below 1.0 mg/m^3 and the highest

weight sample is only 0.17 mg/m^3 higher than the lowest weight sample. Additionally, a continuous miner operator could be subjected to five samples each weighing 1.0 mg/m^3. Another continuous miner operator could have one 1.13 mg/m^3 sample followed by four 0.96 mg/m^3 samples and be out of compliance the first day because of the 1.13 mg/m^3 sample. Yet the miner operator's exposure for the week is less than miner who received 1.0 mg/m^3 each day. Another example could have a continuous miner operator have one 1.13 mg/m^3 sample followed by four 0.5 mg/m^3 samples and be out of compliance the first day because of the 1.13 mg/m^3 sample. In this example the miner operator's exposure for the week is much less than miner who received 1.0 mg/m^3 each day (3.13 mg/m^3 versus 5.0 mg/m^3). Black lung is caused by the accumulation of coal dust in the lungs over a lengthy period of time. A single shift is not an indication of the miner's exposure over time.

(d) Upon issuance of a citation for a violation of the applicable standard, paragraphs (a) and (b)(2) of this section shall not apply to that DA until the violation is abated in accordance with paragraph (e) of this section.

(e) During the time for abatement fixed in a citation for violation of the applicable standard, the operator shall take the following actions:

(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;

Comment: Because the concentration exceeds the applicable standard but is less than the applicable ECV in Table 70-2 MSHA recognizes the use of respiratory equipment. During other times MSHA does not recognize respiratory equipment for the control of respirable dust that enters a miner's lungs. If MSHA recognizes the use of respiratory equipment for some situations then MSHA should recognize the use of respiratory equipment all the time.

(2) Submit to the District Manager for approval proposed corrective actions to lower the concentration of respirable dust to within the applicable standard; and

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Comment: MSHA District 8 cannot process ventilation plans in a timely manner now and has not been able to do so for several years. Other MSHA district ventilation supervisors have reported the same problem in their districts. District 8 will not be able to process "corrective actions" submissions in a timely manner. The requirement for submitting a submission for a violation of the concentration standard is unfair and a burden to the mine operator. It is unjustified. This requirement could result in many revisions to the ventilation plans by the mine operators. Many of these could be needless modifications to the plan. What happens if the mine operator failed to follow the approved ventilation plan and went out of compliance? The ventilation plan could be adequate but because the operator failed to follow the plan MSHA will require a plan modification.

A mine operator can determine that a Designated Area is out of compliance and not yet had to send the sampling information into MSHA. The mine operator would be submitting a "corrective actions" submission to the District Manager before the District Manager knows that the mine had a compliance issue or issued a citation. Three days is unworkable. A "corrective actions" submission is a bad idea. MSHA is tying the operator's hands with plans and more plans. MSHA will be able to write more citations and orders. The number of plans needs to be reduced not increased.

The mine operator could implement "corrective actions" that the District Manager could find unacceptable and not approve. The actions could have already worked but the District Manager will not approve. This is unworkable.

Black Panther and Five Star estimate that it will take 10 hours of upper management time to review the current ventilation plan, propose changes to the plan, and formulate the "Corrective Actions" material for submission. Upper management would consist of the General Manger, Mine Superintendent, General Safety Manger, Safety Manger, and Mine Engineer. It will take the Mine Engineer two hours to prepare the "Corrective Actions" submission and another hour of upper management time to review the material for submission. It will take a secretary an hour to make copies and prepare the material for submission. This totals 13 hours of upper management time to study, prepare, and

review the material for submission and an hour of secretarial time for copying and submission to MSHA. It is anticipated that once the submission is reviewed by MSHA changes to the material will be required before MSHA will grant approval. All ventilation plan submissions in the past 12 months have failed to gain approval on the first submission. To review and correct the deficiencies in the first submission, Black Panther and Five Star estimate that about ½ of the time to prepare the original submission will be needed or 6.5 hours. An additional one hour of secretarial time will be need to copy and prepare the material for submission.

(3) Upon approval by the District Manager, implement the proposed corrective actions and then sample the affected DA on each production shift until five valid representative samples are taken.

(f) A citation for violation of the applicable standard shall be terminated by MSHA when the equivalent concentration of each of the five valid operator abatement samples is at or below the applicable standard, the operator has submitted to the District Manager revised dust control parameters as part of the mine ventilation plan applicable to the DA in the citation, and such changes have been approved by the District Manager. The revised parameters shall reflect the control measures used to abate the violation.

Comment: It is unfair to have to have five valid operator samples all at or below the standard to abate the condition. This means that the operator must go beyond the requirements of the regulations and get all five samples below the standard and not just the average.

(g) If an operator uses a CPDM to meet the requirements in paragraph (a) of this section and a valid end-of-shift equivalent concentration exceeds the applicable standard but is less than the applicable ECV in Table 70-2, the operator shall take the following actions:

(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;

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Comment: During the period following a violation MSHA recognizes the use of respiratory equipment but during other times MSHA does not recognize respiratory equipment for the control or respirable dust.

(2) Implement corrective actions to assure compliance with the applicable standard on the next and other subsequent production shifts; and

Comment: The rule seems to back and forth about implementing corrective actions. Sometimes it appears that the operator can initiate corrective actions immediately and other times the District Manager must approve the "Corrective Actions" before they are implemented.

(3) Record the reported excessive dust condition as part of and in the same manner as the records for hazardous conditions required by § 75.363 of this chapter. The record shall include:

Comment: Section 75.363 states "Any hazardous condition found by the mine foreman or equivalent mine official, assistant mine foreman or equivalent mine official, or other certified persons designated by the operator for the purposes of conducting examinations under this subpart D, shall be posted with a conspicuous danger sign where anyone entering the areas would pass. A hazardous condition shall be corrected immediately or the area shall remain posted until the hazardous condition is corrected. If the condition creates an imminent danger, everyone except those persons referred to in section 104(c) of the Act shall be withdrawn from the area affected to a safe area until the hazardous condition is corrected. Only persons designated by the operator to correct or evaluate the condition may enter the posted area.

(b) A record shall be made of any hazardous condition found. This record shall be kept in a book maintained for this purpose on the surface at the mine. The record shall be made by the completion of the shift on which the hazardous condition is found and shall include the nature and location of the hazardous condition and the corrective action taken. This record shall not

be required for shifts when no hazardous conditions are found or for hazardous conditions found during the preshift or weekly examinations inasmuch as these examinations have separate recordkeeping requirements.

(c) The record shall be made by the certified person who conducted the examination or a person designated by the operator. If made by a person other than the certified person, the certified person shall verify the record by initials and date by or at the end of the shift for which the examination was made. Records shall be countersigned by the mine foreman or equivalent mine official by the end of the mine foreman's or equivalent mine official's next regularly scheduled working shift. The record shall be made in a secure book that is not susceptible to alteration or electronically in a computer system so as to be secure and not susceptible to alteration.

(d) Retention period. Records shall be retained at a surface location at the mine for at least 1 year and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners."

Section 75.363 is for hazardous conditions found during the shift by a certified person conducting examinations. It is for examinations conducted under Subpart D. The certified person doing respirable dust sampling is not making an examination under § 75.363. The certified person does not get the results of the sampling until after the shift is over so the overweight condition is not found until after the shift is over. Therefore, the record cannot be made at the end of the shift when it occurred.

The hazardous condition found under § 75.363 must be corrected immediately or remain posted. The condition cannot be corrected immediately. The District Manager first must approve "the corrective action" submission before sampling can begin. Then the sampling must be done. Then the samples must be weighed. Any violation of the respirable dust standard cannot be corrected immediately. Additionally, the condition cannot be posted. Section 75.363 does not fit this type of action. Remove any reference to § 75.363.

(i) Date of sampling;

(ii) Length of the sampled shift;

(iii) Location within the mine and the occupation where the sample was collected;

(iv) The end-of-shift equivalent concentration; and

(v) Corrective action implemented to reduce the concentration of respirable coal mine dust to or below the applicable standard; and

(4) Review the adequacy of the approved CPDM Performance Plan. The operator shall submit to the District Manager for approval any plan revisions within 7 calendar days following posting of the end-of-shift equivalent concentration on the mine bulletin board.

Comment: If the mine operator determines that the plan is adequate no submission should be necessary.

(h) MSHA approval of the operator's ventilation system and methane and dust control plan may be revoked based on samples taken by MSHA or in accordance with this part 70.

Comment: A sample over the Excessive Concentration Value (ECV) does not mean that the ventilation plan is inadequate. A weekly accumulated exposure exceeding the weekly permissible accumulated exposure does not mean that the ventilation plan is inadequate.

The MSHA District Manager should have to follow the Program Policy Manual Volume V, page 6, MSHA Initiated Plan Changes, to revoke approval of the ventilation plan. Proper justification is needed to revoke the plan. The operator needs to be afforded the opportunity to discuss the deficiencies in the plan before the plan can be revoked. This proposed standard would permit MSHA to revoke approval before any discussion is had with the mine operator.

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§ 70.210 Respirable dust samples; transmission by operator.

(a) If using a CMDPSU, the operator shall transmit within 24 hours after the end of the sampling shift all samples collected to fulfill the requirements of this part in containers provided by the manufacturer of the filter cassette to:

Comment: If a mine operator samples on a Saturday or the day before a Federal Holiday the operator will not be able to transmit the sample within 24 hours after the end of the shift because the post office will not be open.

Respirable Dust Processing Laboratory,
Pittsburgh Safety and Health
Technology Center, Cochrans Mill Road,
Building 38, P.O. Box 18179, Pittsburgh,
Pennsylvania 15236-0179, or to any
other address designated by the District Manager.

(b) The operator shall not open or tamper with the seal of any filter cassette or alter the weight of any filter cassette before or after it is used to fulfill the requirements of this part.

(c) A person certified in sampling shall properly complete the dust data card that is provided by the manufacturer for each filter cassette. The card shall have an identification number identical to that on the cassette used to take the sample and be submitted to MSHA with the sample. Each card shall be signed by the certified person who actually performed the required examinations during the sampling shift and shall include that person's MSHA Individual Identification Number (MIIN). Respirable dust samples with data cards not properly completed shall be voided by MSHA.

(d) All respirable dust samples collected by the operator shall be considered taken to fulfill the sampling requirements of part 70, 71 or 90 of this title, unless the sample has been identified in writing by the operator to the District Manager,

prior to the intended sampling shift, as a sample to be used for purposes other than required by part 70, 71 or 90 of this title.

(e) Respirable dust samples received by MSHA in excess of those required by this part shall be considered invalid samples.

(f) If using a CPDM, the designated mine official shall validate, certify and transmit electronically to MSHA within 12 hours after the end of the last sampling shift of the work week all daily sample and error data file information collected during the previous calendar week (Sunday through Saturday) and stored in the CPDM. All CPDM data files transmitted to MSHA shall be maintained by the operator for at least 12 months.

Comment: Validating, certifying, and transmitting electronically to MSHA within 12 hours after the end of the last sampling shift of the work week is too tight a time frame. Production work weeks generally end Friday or Saturday evening. MSHA personnel who would review the results of the sampling will not be reviewing the results late on Friday night, Saturday, or Sunday. Submission within 24 hours of the end of the last sampling shift or by midnight Sunday would be more reasonable.

§ 70.211 Respirable dust samples; report to operator; posting.

(a) MSHA shall provide the operator a report with the following data on respirable dust samples submitted in accordance with this part:

Comment: Is this a regulation for MSHA?

(1) The mine identification number;

(2) The locations within the mine from which the samples were taken;

(3) The concentration of respirable dust, expressed as an equivalent concentration in milligrams per cubic meter of air, for each valid sample;

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(4) The average concentration of respirable dust, expressed as an equivalent concentration in milligrams per cubic meter of air, for all valid samples;

(5) The occupation code, where applicable;

(6) The reason for voiding any sample.

(b) Upon receipt, the operator shall post this data for at least 31 days on the mine bulletin board.

(c) If using a CPDM, the designated mine official shall validate, certify and post on the mine bulletin board:

(1) Within 1 hour after the end of the sampling shift, the daily end-of-shift sampling results for each monitored occupation and DA, if applicable. The daily posting shall include:

Comment: Doing the required work within one hour after the end of the sampling shift is very restrictive, it is too short of a time frame. If a Health Technician puts CPDMs on the next oncoming shift he or she needs to go underground and check the CPDMs that were put on the next shift's miners. That Health Technician will not be able to retrieve the CPDMs from the shift that is ending and travel underground in a timely manner. The technician would not have enough time to retrieve CPDMs, download the results, post the results, and go underground in a timely manner. Black Panther and Five Star hot-seats its crews and as much time as two hours may lapse from the time one shift's crew goes underground and the ending shift's crews come out. The different unit crews do not arrive of the surface at the same time so retrieving the CPDMs could occur over more than an hour time frame. Retrieving the sampling devices, downloading the results, and then posting the results could easily take more than an hour even if the technician does not go underground for the next shift. If this requirement remains at one hour, additional Health Technicians would be needed to perform the sampling, download the information, and post the results for each production shift. If this rule remains as currently written, then Black Panther and Five Star both estimate that one Health Technician would be needed for each unit crew sampled. The previously estimated need of three new

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Health Technicians would become nine plus a Lab Technician. Black Panther and Five Star run three fishtail units two shifts per day. A Health Technician will be needed for each crew each shift. The certified person doing the sampling would not be able to take care of a whole shift's sampling.

(i) The mine identification number; :

Comment: Why does the operator have to post the mine identification number? The mine would not post some other mine's data on its bulletin board.

(ii) The locations within the mine from which the samples were taken;

(iii) The concentration of respirable dust, expressed as an equivalent concentration in milligrams per cubic meter of air, for each valid sample;

(iv) The total amount of exposure accumulated by the sampled occupation during the shift; :

Comment: The sampling needs to be done of the individual not the occupation. The person assigned to an occupation could be required to be sampled but the sampling device does not need to be passed to another person. If that person also works at the designated occupation then that person should wear a sampling device.

(v) The occupation code, where applicable; :

Comment: Are the persons who might look at the board going to know what the occupation code stands for. Would it not be better to assign an individual miner a number and post the number on the board and that miner's concentration. Then that person could look at his or her sampling results.

(vi) The reason for voiding any sample;

(vii) The shift length; and:

Comment: The length of shift should not matter. The multiplier of T/480 should be eliminated then the requirement to post the length of shift could be eliminated. Requiring recording the length of shifts creates much work and should not need to be done.

(viii) Any other information required by the District Manager.

Comment: If the District Manager can require any other information the rule changes every time that the District Manager requires "other information" to be posted. This is rule making without going through the proper rule making procedure.

(2) Within 2 hours after the end of the last sampling shift of the work week (Sunday through Saturday), the weekly accumulated exposure (WAE) and the weekly permissible accumulated exposure (WPAE) for each occupation sampled in an MMU. If the mine employs multiple crews at an MMU to work the same shift but on different days during the same calendar week, the operator shall post the WAE and WPAE for each crew that was assigned to the occupation being monitored.

Comment: Two hours after the end of the last sampling shift of the work week is very restrictive, too short. Posting WAEs and WPAEs within 2 hours after the end of the last sampling shift of the work week is too tight a time frame. Posting WAEs and WPAEs at least an hour before the start of the next sampling shift or would be more reasonable. The production miners would not be arriving at the mine until then. These are the miners affected.

(3) This information shall be posted for at least 15 calendar days. :

Comment: If the mine operator will be required to sample every production shift every day then much information will be posted on the bulletin board.

§ 70.212 Status change reports.

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(a) If there is a change in operational status that affects the respirable dust sampling requirements of this part, the operator shall report the change in operational status of the mine, mechanized mining unit, or designated area to the MSHA District Office or to any other MSHA office designated by the District Manager. Status changes shall be reported in writing or electronically within 3 working days after the status change has occurred.

Comment: Reporting "to any other office designated by the District Manager" can cause problems and put the mine operator at risk for non compliance. The rule changes any time the District Manager changes the office.

(b) Each specific operational status is defined as follows:

(1) Underground mine:

(i) *Producing*—has at least one MMU unit producing material.

(ii) *Nonproducing*—no material is being produced.

(iii) *Abandoned*—the work of all miners has been terminated and production activity has ceased.

(2) MMU:

(i) *Producing*—producing material from a working section.

(ii) *Nonproducing*—temporarily ceased production of material.

(iii) *Abandoned*—permanently ceased production of material.

(3) DA: :

Comment: Eliminate the sampling of DAs.

(i) *Producing*—activity is occurring.

(ii) *Nonproducing*—activity has ceased.

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(iii) *Abandoned*—the dust generating source has been withdrawn and activity has ceased.

(c) Status changes affecting the operational readiness of any CPDM shall be reported by the designated mine official to the MSHA District Office or to any other MSHA office designated by the District Manager within 24 hours after the status change has occurred. Status changes shall be reported in writing or electronically.

Comment: Does this mean the operational readiness of each CPDM have to be reported? Each time that a CPDM is sent in for repair it must be reported? Each time that a CPDM is returned from repair it must be reported? Each time that a CPDM has maintenance done to it must it be reported if it means that it will not be ready for the next day? If this is correct then much information will be reported. This is excessive record keeping. It is a big burden to the mine operator. Each MSHA district office will need a clerk or clerks just to process the "operational readiness" of CPDMs.

Reporting "to any other office designated by the District Manager" can cause problems and put the mine operator at risk for non compliance. The rule changes any time the District Manager changes the office. The 24-hour requirement is short. A status change could occur on a Saturday and within 24 hours the operator is out of compliance. Does each time a continuous miner break down have to be reported as a status change. The continuous miner would not produce coal for the remainder of the shift and maybe parts or whole upcoming shifts.

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§ 71.2 Definitions.

Act. The Federal Mine Safety and Health Act of 1977, Public Law 91-173, as amended by Public Law 95-164 and Public Law 109-236.

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Approved sampling device. A sampling device approved by the Secretary and Secretary of Health and Human Services (HHS) under part 74 of this title.

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Coal mine dust personal sampler unit (CMDPSU). A personal sampling device approved under part 74, subpart B, of this title.

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Continuous personal dust monitor (CPDM). A personal sampling device approved under part 74, subpart C, of this title.

Designated work position (DWP). A work position at a surface area of a coal mine required to be sampled by this part. The DWP designation consists of a four-digit surface area number assigned by MSHA identifying the specific physical portion of a surface coal mine or surface area of an underground mine that is affected, and a three-digit MSHA coal mining occupation code describing the location to which a miner is assigned in the performance of his or her regular duties.

Comment: The sampling a "designated work position" should not be done. The concern is the respirable dust exposure to the miner not what the concentration is found in some work position. The sampling of work positions would be a burden and cost to the MSHA and it serves to provide an inaccurate indication as to what a miner is exposed to. The practice of sampling work positions is costly to MSHA. A miner may not always be at the "designated work position." Sampling the "designated work

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position" would not give a true indication as to what the miner is exposed to.

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Equivalent concentration. The concentration of respirable coal mine dust expressed in milligrams per cubic meter of air (mg/m3), determined by dividing the weight of dust in milligrams collected on the filter of an approved sampling device by the volume of air in cubic meters passing through the collection filter (sampling time in minutes times the sampling airflow rate in cubic meters per minute), and then converting this concentration to an equivalent 8-hour exposure as measured by the Mining Research Establishment (MRE) instrument. When the approved sampling device is:

(1) The CMDPSU, the equivalent concentration is determined by first multiplying the concentration of respirable coal mine dust by the MRE conversion factor prescribed by the Secretary and then normalizing this quantity to an 8-hour exposure measurement by multiplying the MRE equivalent concentration by the factor *t/480*, where *t* is the sampling time in minutes if longer than 8 hours.

Comment: If a 10 hour shift is worked then this proposed rule requires the concentration to be multiplied by 600/480 or 1.25. Thus if the concentration was 1.0 mg/m3 for 10 hours then the concentration becomes 1.25 mg/m3. This exaggerates the dust concentration that a miner is exposed to. The concentration for shifts longer than 8 hours should be the concentration of respirable dust multiplied by the MRE conversion factor only. So if the exposure for the above 10-hour example is 1.0 mg/m3 then it should stay at 1.0 mg/m3. It should not be "normalized" by multiplying by the factor of t/480. So if the exposure for the above 10-hour example is 1.0 mg/m^3 then it should stay at 1.0 mg/m^3. Under the factor of t/480, if the sample for an 8-hour shift is 1.0 mg/m^3 the concentration stays at 1.0 mg/m^3. If the actual measured concentration for a 10-hour shift is 0.84 mg/m^3 then the concentration becomes 1.05 and with the 1.0 mg/m^3 standard the sample would be deemed overweight.

(2) The CPDM, the device shall be programmed to directly report the end-of-shift equivalent concentration as an MRE 8-hour equivalent concentration.

Comment: The MRE equivalent, if more that an 8 hour shift is worked, should be the concentration of respirable dust multiplied by the MRE conversion factor only. It should not be increased by the factor of t/480 as proposed for the CMDPSU. This proposed definition does not explain how the concentration will be computed if the shift is longer than 8 hours. This needs to be done. The mining industry needs to know how this is done.

(3) Either the CMDPSU or CPDM and the sampled work shift is less than 8 hours, the value of *t* used for normalizing the MRE-equivalent concentration to an 8-hour exposure measurement shall be 480 minutes.

Comment: If a sampled work shift is less than 8 hours the concentration should be what was measured for the time that the miner was exposed. This is the respirable dust exposure that the miner was exposed to.

* * * * *

Quartz. Crystalline silicon dioxide (SiO2) as measured by:

(1) MSHA Analytical Method P-7: Infrared Determination of Quartz in Respirable Coal Mine Dust; or

(2) Any method approved by MSHA as providing a measurement of quartz equivalent to that obtained by MSHA Analytical Method P-7.

Comment: MSHA should not be able to "approve a method of measurement of quartz." This practice can change the rule without going through proper rule making procedures. The industry must know the standard that is being used and not be subject to change at any time due to a change in what MSHA approves.

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The rule needs to specify how the quartz level will be analyzed when sampling with a CPDM. The proposed regulations do not indicate how this will be done. This needs to be proposed so that the industry can comment on the proposed rule.

Representative samples. Respirable dust samples that reflect typical dust concentration levels in the working environment of the DWP when performing normal duties.

Comment: This definition does not need to exist. The miner needs to be sampled and only the miner. This will give the true exposure to the miner of whom the standards are aimed to protect. The Federal mine Safety & Health Act of 1977 states "Congress declares that - (a) the first priority and concern of all the coal or other mining industry must be the health and safety of its most precious resource - the miner." Sampling must be done of the individual miner and not the "working environment." The definition needs to be eliminated.

* * * * *

Work position. An occupation identified by an MSHA three-digit code number describing a location to which a miner is assigned in the performance of his or her normal duties.

Comment: The sampling a "work position" should not be done. The concern is the respirable dust exposure to the miner not what the concentration is found in some work position. The sampling of work positions would be a burden and cost to the MSHA and it serves to provide an inaccurate indication as to what a miner is exposed to. The practice of sampling work positions is costly to MSHA. A miner may not always be at the "work position." Sampling the "work position" would not give a true indication as to what the miner is exposed to.

10. Subpart B is revised to read as follows:

Subpart B—Dust Standards
Sec.

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71.100 Respirable dust standard.
71.101 Respirable dust standard when quartz is present.

§ 71.100 Respirable dust standard.
Each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of each mine is exposed, as measured with an approved sampling device and in terms of an equivalent concentration, at or below:

(a) 2.0 milligrams of respirable dust per cubic meter of air (mg/m3).

(b) 1.7 mg/m3 as of [date 6 months after the effective date of the final rule].

(c) 1.5 mg/m3 as of [date 12 months after the effective date of the final rule].

(d) 1.0 mg/m3 as of [date 24 months after the effective date of the final rule].

Comment: It is good to see that respirable dust standard references the "miner." The miner only needs to be sampled. This will give the true exposure to the miner. "Designated Work Positions" and "Work Positions" must not be sampled. Miners assigned to certain occupations can be sampled but only the miner should be sampled.

§ 71.101 Respirable dust standard when quartz is present.

(a) Each operator shall continuously maintain the average concentration of respirable quartz dust in the mine atmosphere during each shift to which each miner in the active workings of each mine is exposed at or below 0.1 mg/m3 (100 micrograms per cubic meter or µg/m3) as measured with an approved sampling device and in terms of an equivalent concentration.

(b) When the concentration of respirable quartz dust exceeds 100 µg/m3, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during

each shift to which each miner in the active workings is exposed as measured with an approved sampling device and in terms of an equivalent concentration at or below the applicable standard. The applicable standard is computed by dividing the percent of quartz into the number 10. The application of this formula shall not result in the applicable standard that exceeds the standard established by § 71.100(a) of this section.

Example: Assume the sampled DWP is on a 2.0-mg/m3 dust standard. Suppose a valid representative dust sample with an equivalent concentration of 1.0 mg/m3 contains 16.7% of quartz dust, which corresponds to a quartz concentration of 167 µg/m3. Therefore, the average concentration of respirable dust in the mine atmosphere associated with that DWP shall be maintained on each shift at or below 0.6 mg/m3 (10/16.7% = 0.6 mg/m3).

Comment: It is good to see that respirable dust standard when quartz is present references the "miner." The miner only needs to be sampled. This will give the true exposure to the miner. "Designated Work Positions" and "Work Positions" must not be sampled.

How the quartz level will be analyzed with a CPDM must be given in the rule. The proposed regulations do not indicate how this will be done. This needs to be proposed for comments if quartz is to be sampled with a CPDM or by some other means.

11. Subpart C is revised to read as follows:

Subpart C—Sampling Procedures

Sec.

71.201 Sampling; general and technical requirements.

71.202 Certified person; sampling.

71.203 Certified person; maintenance and calibration.

71.204 Approved sampling devices; maintenance and calibration.

71.205 Approved sampling devices; operation; air flowrate.

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71.206 CPDM Performance Plan.

71.207 Sampling of designated work positions.

71.208 Respirable dust samples; transmission by operator.

71.209 Respirable dust samples; report to operator; posting.

71.210 Status change reports.

§ 71.201 Sampling; general and technical requirements.

(a) Each operator shall take representative samples of the concentration of respirable dust in the active workings of the mine as required by this part with an approved sampling device.

Comment: The miner only needs to be sampled. This will give the true exposure to the miner. "Designated Work Positions" and "Work Positions" must not be sampled. This would not be representative of the concentration that the miner is exposed to. "Passing of the pump" must not be done.

(b) Sampling devices shall be worn or carried directly to and from the DWP to be sampled. Sampling devices shall remain with the DWP and shall be operational during the entire shift, which includes the total time spent in the DWP and while travelling to and from the DWP being sampled. If the work shift to be sampled is longer than 12 hours and the sampling device is:

Comment: The miner only needs to be sampled. This will give the true exposure to the miner. "Designated Work Positions" must not be sampled. This would not be representative of the concentration that the miner is exposed to. "Passing of the pump" must not be done.

(1) A CMDPSU, the operator shall switch-out the unit's sampling pump prior to the 13th-hour of operation.

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(2) A CPDM, the operator shall switch-out the CPDM with a fully charged device prior to the 13th-hour of operation.

Comment: The miner only needs to be sampled. This will give the true exposure to the miner. "Designated Work Positions" and "Work Positions" must not be sampled. This would not be representative of the concentration that the miner is exposed to. Switching out the CPDM prior to the 13th hour necessitates that an additional CPDM be available for each miner that will work over 12 hours. This is a financial burden to the mine operator. Additionally, if for example, the miner's normal shift is 10 hours long but because of mechanical problems or other problems the miner works over 12 hours the mine operator would be in violation if the mine operator did not switch the CPDM out before the 13th hour. Extra CPDMs might not be available or it might be impossible to get it to the miner who is wearing it in a timely manner. The certified sampler on duty might be underground in the mine and unavailable to quickly obtain another CPDM.

(c) If using a CMDPSU, one control filter shall be used for each shift of sampling. Each control filter shall:

(1) Have the same pre-weight date (noted on the dust data card) as the ones used for sampling;

(2) Remain plugged at all times;

(3) Be exposed to the same time, temperature, and handling conditions as the ones used for sampling; and

(4) Be kept with the exposed samples after sampling.

(d) Records showing the length of each normal work shift for each DWP shall be made and retained at least six months and shall be made available for inspection by authorized representatives of the Secretary and the representative of miners or submitted to the District Manager when requested in writing.

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Comment: If a "normal work shift" for example is 8 hours, why does a record need to be made of the length of shift? Eight hours is the normal work shift. If the miner works longer or shorter than the "normal work shift" then it is not a "normal work shift" and it would not need to be recorded. This regulation creates a record keeping burden for the operator. Additionally, surface work personnel at Black Panther and Five Star do a multitude of jobs. A worker might only work four hours at a DWP job and then six hours at a non DWP job. The miner should be sampled and not the DWP.

(e) Upon request from the District Manager, the operator shall submit the date and time any respirable dust sampling required by this part will begin. This information shall be submitted at least 48 hours prior to scheduled sampling.

Comment: How the submission of the date and time of sampling can be done needs to be detailed. Can this notification be by phone? Can this notification be by fax? Can it be by email or other electronic transfer of information? Who can this be submitted to? The regulation states "Upon request of the District Manager" but it does not state to whom this must be given. The District Manager is too busy to receive multiple notifications when differing regulations require it. Sections 75.336(c), 75.337(e)(1), and 75.337(e)(2) require notification to the District Manager. It has created a burden to MSHA and a problem to the operator. If the operator does not notify "the District Manager" then the operator is in violation of that regulation.

(f) Upon written request by the operator, the District Manager may waive the rain restriction for a normal work shift as defined in § 71.2 for a period not to exceed two months, if the District Manager determines that:

(1) The operator will not have reasonable opportunity to complete the respirable dust sampling required by this part without the waiver because of the frequency of rain; and

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(2) The operator did not have reasonable opportunity to complete the respirable dust sampling required by this part prior to requesting the waiver.

(g) Operators using CPDMs shall provide training to all miners expected to wear the CPDM. The training shall be completed prior to a miner being required to wear the CPDM and then every 12 months thereafter. The training shall include:

(1) Explaining the basic features and capabilities of the CPDM;

(2) How to set-up the CPDM for compliance sampling;

(3) A discussion of the various types of information displayed by the CPDM and how to access that information;

(4) How to start and stop a short-term sample run during compliance sampling; and

(5) The importance of continuously monitoring dust concentrations and properly wearing the CPDM.

Comment: This creates a training and record keeping burden for the mine operator. If MSHA requires a certified person for respirable dust sampling and a certified person for maintenance of sampling devices, the wearer of a CPDM should not need to know how to set up a CPDM. Conversely, if MSHA requires the wearer of the device to be trained in the setup, the mine operator should not need to have a certified person for respirable dust sampling and a certified person for maintenance of sampling. Too many records and too much training are required to obtain the samples. It would be best if MSHA did all the sampling.

(h) An operator shall keep a record of the CPDM training at the mine site for two years after completion of the training. An operator may keep the record elsewhere if the record is immediately accessible from the mine site by electronic transmission. Upon request from an authorized representative of the Secretary, Secretary of HHS, or representative of miners,

the operator shall promptly provide access to any such training records.

Comment: This creates a record keeping burden for the mine operator. Too many records and too much training are required to obtain the samples.

§ 71.202 Certified person; sampling.

(a) The respirable dust sampling required by this part shall be performed by a certified person.

Comment: Respirable dust sampling by a "certified person" does not ensure that the sampling is any better than by a non certified person. The requirement to be a "certified person" and to maintain certification is a burden to the operator. It is multiplied by the fact that certified persons have to be recertified every three years. The training, administering tests, and tracking of certifications by MSHA is a burden to MSHA. Do away with certifications.

(b) To be certified, a person shall complete the applicable MSHA course of instruction and pass the MSHA examination demonstrating competency in sampling procedures. Persons not certified in sampling, and those certified only in maintenance and calibration procedures in accordance with § 71.203(b), are not permitted to collect respirable dust samples required by this part or handle approved sampling devices when being used in sampling.

Comment: This creates a burden for the mine operator and MSHA. For the purpose of compliance with this proposed rule, a Health Technician is defined by Black Panther and Five Star as miner certified in dust sampling and certified in dust sampling device calibration and maintenance. The technician's duties will only be health related. At Black Panther and Five Star the current respirable dust sampling using CMDPSU sampling devices is done by Safety Technicians. Because of the extensive requirements for underground sampling with CPDMs, Safety Technicians will not

be assigned sampling duties. Three new positions will be created because of the underground sampling requirements. Additionally, all Safety Technicians, current positions, will obtain certifications in sampling and in maintenance and calibration. This is necessary to be sure backup personnel are available to do those duties.

Because when CPDMs are used to sample each production shift every day underground, Black Panther and Five Star estimate that three Health Technicians must work each day. The surface sampling requirements places an additional burden on Black Panther and Five Star.

Black Panther and Five Star estimate that it will need to install a laboratory at the mine because of this proposed rule. The lab will house the sampling devices, calibration devices, and maintenance equipment. Black Panther and Five Star estimate that the lab will also be used for calibration and maintenance of devices such as methane/oxygen/carbon/monoxide detectors. This is currently done by the Safety Department personnel and others in their offices or in the lamp room. Black Panther and Five Star estimate that the calibration of detectors will continue to be done by Safety Department Personnel using the lab.

(c) To maintain certification, a person must pass the MSHA examination demonstrating competency in sampling procedures every three years.

Comment: Taking a test every three years is unreasonable and a burden to the operator. If the sampling requirements do not change in three years there is no reason to have to retake the certification test. Certifications in other areas do not require that persons be retested. Black Panther and Five Star estimate that at a minimum six persons for each of its mines will need to take the test every three years. MSHA does not currently have the personnel to teach and administer tests for certified persons for respirable dust sampling. MSHA District 8's Health Group cannot even do the required sampling now without help from the regular inspection force or other MSHA Districts. Training and testing should be done at the mine. If

not, this is an additional burden to the mine operator for travel expense and time away from the mine.

(d) MSHA may revoke a person's certification for failing to pass the MSHA examination or to properly carry out the required sampling procedures.

Comment: How many times can a person take the test? Is this a hands-on test? Will the testing be done at the mine? If not this is an additional burden to the mine operator for travel expense and time.

§ 71.203 Certified person; maintenance and calibration.

(a) Approved sampling devices shall be maintained and calibrated by a certified person.

Comment: Maintenance and calibration by a "certified person" does not ensure that the maintenance and calibration is done any better than by a non certified person. The requirement to be a "certified person" and to maintain certification is a burden to the operator. The training, administering tests, and tracking of certifications by MSHA is a burden to MSHA. Do away with certifications.

(b) To be certified, a person shall complete the applicable MSHA course of instruction and pass the MSHA examination demonstrating competency in maintenance and calibration procedures for approved sampling devices. If using a CMDPSU, necessary maintenance of the sampling head assembly can be performed by persons certified in sampling or maintenance and calibration.

Comment: Taking a course from MSHA and passing an examination is a burden to the operator. Black Panther and Five Star estimate that at a minimum six persons for each of its mines will need to take the training and the test for each type of sampling device. MSHA does not have the personnel to teach and

administer tests for certified persons for maintenance and calibration. District 8's Health Group cannot do the required sampling now without help from the regular inspection force or other MSHA Districts. Will the training and testing be done at the mine? If not this is an additional burden to the mine operator for travel expense and time away from the mine. If MSHA requires persons to be certified the certifications should be combined into one certification.

(c) To maintain certification, a person must pass the MSHA examination demonstrating competency in maintenance and calibration procedures every three years.

Comment: Taking a test every three years is unreasonable. It is a burden to the operator. If the calibration and maintenance requirements do not change in three years there is no reason to have to retake the certification test. Certifications needed for other areas do not require that persons be retested. Black Panther and Five Star estimate that at a minimum six persons for each of its mines will need to take the test every three years. MSHA does not have the personnel to teach and administer tests for certified persons for respirable dust calibration and maintenance. MSHA District 8's Health Group cannot even do the required sampling now without help from the regular inspection force or other MSHA Districts.

(d) MSHA may revoke a person's certification for failing to pass the MSHA examination or to properly carry out the required maintenance and calibration procedures.

Comment: How many times can a person take the test? Is this a hands-on test? The testing needs to be done at the mine. If not this is an additional burden to the mine operator for travel expense and time away from the mine.

§ 71.204 Approved sampling devices; maintenance and calibration.

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(a) Approved sampling devices shall be maintained as approved under part 74 of this chapter and calibrated in accordance with MSHA Informational Report IR 1240 (1996) ''Calibration and Maintenance Procedures for Coal Mine Respirable Dust Samplers'' or in accordance with the manufacturer's recommendations if using a CPDM. Only persons certified in maintenance and calibration can perform maintenance work on the pump unit of approved sampling devices.

Comment: Requiring that devices be maintained in "accordance with the manufacturer's instructions" is rule making by incorporation. Any time the manufacturer decides to change its recommendations the rule changes. If a manufacturer decided that a part had to be replaced every year then the part would have to be replaced every year whether warranted or not. The manufacturer could do this out of a profit motive.

(b) Approved sampling devices shall be calibrated at the flowrate of 2.0 liters of air per minute (L/min), or at a different flowrate recommended by the manufacturer or prescribed by the Secretary or Secretary of HHS for the particular device, before they are put into service and, thereafter, at time intervals recommended by the manufacturer or prescribed by the Secretary or Secretary of HHS.

Comment: If a different flowrate is "recommended by the manufacturer" it is rule making by incorporation. Any time the manufacturer decides to change its recommendations the rule changes. A change in the flowrate could change the concentration measured. A change in concentration would greatly affect compliance.

(c) If using a CMDPSU, sampling devices shall be examined and tested by a person certified in sampling or in maintenance and calibration within 3 hours before the start of the shift on which the approved sampling devices will be used to collect respirable dust samples. This is to assure that the sampling devices are clean and in proper working condition. This examination and testing shall include the following:

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Comment: Examination and testing does not need to be done within three hours before the start of the shift. In the past at the MSHA office, the inspector would generally grab a basket of pumps when the inspector arrived at the office in the morning, load them in a vehicle, drive to the mine, and put them on the miners to be sampled. The sampling inspector did not check calibration and maintenance within three hours of the start of the shift. The five items required below were usually done the day before the pumps were used by a lab technician who was not even in the office when the inspector picked up the pumps to be used for the day. The important thing is that the pumps work properly and pull the proper amount of air. Whether the checks are done within three hours of the shift or 24 hours of the shift is not important. This is not a preshift examination of mining conditions where things can change quickly. The three-hour requirement needs to be eliminated. Without the three-hour requirement, a well-trained experienced lab technician can do all the checks of all the instruments once for the next day's work.

(1) Examination of all components of the cyclone assembly to assure that they are clean and free of dust and dirt. This includes examining the interior of the connector barrel (located between the cassette assembly and vortex finder), vortex finder, cyclone body and grit pot;

(2) Examination of the inner surface of the cyclone body to assure that it is free of scoring or scratch marks on the inner surface of the cyclone where the air flow is directed by the vortex finder into the cyclone body;

(3) Examination of the external hose connecting the pump unit to the sampling head assembly to assure that it is clean and free of leaks; and

(4) Examination of the clamping and positioning of the cyclone body, vortex finder and cassette to assure that they are rigid, in alignment, firmly in contact and airtight.

(5) Testing the voltage of each battery while under actual load to assure the battery is fully charged. This requires that a

fully assembled and examined sampling head assembly be attached to the pump inlet with the pump unit running when the voltage check is made. The voltage for nickel cadmium cell batteries shall not be lower than the product of the number of cells in the battery multiplied by 1.25. The voltage for other than nickel cadmium cell batteries shall not be lower than the product of the number of cells in the battery multiplied by the manufacturer's nominal voltage per cell value.

(d) If using a CPDM, the certified person in sampling or in maintenance and calibration shall follow the examination, testing and set-up procedures contained in the approved CPDM Performance Plan.

Comment: It appears that MSHA does not know the maintenance and calibration requirements of the CPDM so it is requiring it to be put in a plan. MSHA District 8 cannot process ventilation plans, roof control plans, etc. in a timely manner now and has not been able to do so for several years. Other MSHA district specialist supervisors have reported the same problem in their districts. District 8 will not be able to process an additional plan, a CPDM plan, in a timely manner. This is a burden to the mine operator and to MSHA. MSHA needs to wait until the CPDM is a proven device that costs a reasonable amount before it is required to be used for compliance sampling. When the CPDM is a proven device MSHA can put the performance requirements into the regulations.

(e) MSHA Informational Report IR 1240 (1996) referenced in paragraph (a) of this section is incorporated-by-reference. This incorporation-by-reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected or obtained at MSHA, Coal Mine Safety and Health, 1100 Wilson Blvd., Room 2424, Arlington, Virginia 22209-3939 and at each MSHA Coal Mine Safety and Health district office. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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§ 71.205 Approved sampling devices; operation; air flowrate.

(a) Approved sampling devices shall be operated at the flowrate of 2.0 L/min, or at a different flowrate recommended by the manufacturer or prescribed by the Secretary or Secretary of HHS.

Comment: If a different flowrate is "recommended by the manufacturer" it is rule making by incorporation. Any time the manufacturer decides to change its recommendations the rule changes. A change in the flowrate could change the concentration measured. A change in concentration would greatly affect compliance.

(b) If using a CMDPSU, each sampling device shall be examined each shift by a person certified in sampling during:

(1) The second hour after being put into operation to assure it is in the proper location, operating properly and at the proper flowrate. If the proper flowrate is not maintained, necessary adjustments shall be made by the certified person.

(2) The last hour of operation to assure that it is operating properly and at the proper flowrate. If the proper flowrate is not maintained, the respirable dust sample shall be transmitted to MSHA with a notation by the certified person on the back-side of the dust data card stating that the proper flowrate was not maintained. Other events occurring during the collection of respirable dust samples that may affect the validity of the sample, such as dropping of the sampling head assembly onto the mine floor, shall be noted on the back-side of the dust data card.

(c) If using a CPDM, the certified person shall examine the sampling device during the shift in accordance with the procedures contained in the approved CPDM Performance Plan.

Comment: This necessitates for Black Panther and Five Star that a certified person be available on the surface to examine the device. This Health Technician would not be able to go

underground that day. So when underground dust sampling is being done and surface sampling is done two Health Technicians must be available to take care of respirable dust sampling. A lab technician cannot be used unless he is also an experienced miner. The cost of compliance with this rule is excessive.

§ 71.206 CPDM Performance Plan.

(a) If using a CPDM, the operator shall have an approved CPDM Performance Plan to ensure that the regular duties of the DWP shall not expose miners to concentrations of respirable coal mine dust in excess of the applicable standard. The operator shall develop a proposed CPDM Performance Plan and submit it to the District Manager. The proposed CPDM Performance Plan shall not be implemented until approved by the District Manager.

Comment: MSHA District 8 cannot process ventilation plans, roof control plans, etc. in a timely manner now and has not been able to do so for several years. Other MSHA district specialist supervisors have reported the same problem in their districts. District 8 will not be able to process an additional plan, a CPDM plan, in a timely manner. The requirement of plan is a burden to the mine operator and to MSHA. The submission of an additional plan is a burden to the mine operator. The ventilation plan currently requires respirable dust control parameters. An additional plan is not warranted.

(1) The mine operator shall notify the representative of miners at least 5 days prior to submission of a proposed CPDM Performance Plan and any proposed revision to a CPDM Performance Plan. If requested, the mine operator shall provide a copy to the representative of miners at the time of notification;

(2) A copy of the proposed CPDM Performance Plan, and a copy of any proposed revision, submitted for approval shall be made available for inspection by the representative of miners; and

(3) A copy of the proposed CPDM Performance Plan and a copy of any proposed revision submitted for approval shall be posted on the mine bulletin board at the time of submittal. The proposed

plan or proposed revision shall remain posted until it is approved, withdrawn, or denied.

(4) Following receipt of the proposed plan or proposed revision, the representative of miners may submit timely comments to the District Manager, in writing, for consideration during the review process. A copy of these comments shall also be provided to the operator by the District Manager upon request.

(b) The approved CPDM Performance Plan shall include the names or titles of the responsible mine officials designated by the operator and the following information:

(1) The DWPs that will be sampled using a CPDM. Each DWP shall be assigned a 9-digit identification number as follows:

(i) The first four digits identify the surface work area of the mine;

(ii) The next three digits identify the sampled work position or occupation;

(iii) The eighth digit identifies the particular shift being sampled (*e.g.*, 1st, 2nd or 3rd); and

(iv) The final digit identifies the particular miner assigned to that DWP if the mine employs other miners that perform similar duties in the rest of the mine.

(2) The pre-operational examinations, testing and set-up procedures to verify the operational readiness of the sampling device before each sampling shift;

(3) Procedures that address downloading of end-of-shift sampling information, and validation, certification and posting of reported results;

(4) Procedures for weekly transmittals of certified sampling data files electronically to MSHA;

(5) The routine daily and other required scheduled maintenance procedures;

(6) Procedures or methods for verifying the calibration of each CPDM; and

(7) The frequency with which dust concentrations being reported by the CPDM shall be monitored by the designated mine official during the shift;

(8) The types of actions permitted to be taken during the shift to ensure the environment of the occupation being sampled remains in compliance at the end of the shift.

(9) Any other information required by the District Manager.

Comment: The bulk of the information required here is material that does not need to be submitted in a plan. For example item 5, the required scheduled maintenance procedures, will come with the instrument. It does not need to be submitted to MSHA. Item 9 is opened ended permitting the District Manager to require anything that MSHA could want. This is unfair to the mine operator. It is rule making without going through the proper procedures. The regulation should specify what the District Manager can require.

(c) The approved CPDM Performance Plan and any revisions shall be:

(1) Provided upon request to the representative of miners by the operator following notification of approval;

(2) Made available for inspection by the representative of miners; and

(3) Posted on the mine bulletin board within 1 working day following notification of approval, and shall remain posted for the period that the plan is in effect.

(d) The District Manager may require an approved CPDM Performance Plan to be revised if the District Manager

determines that the plan is inadequate to protect miners from exposure to concentrations of respirable dust in excess of the applicable standard.

Comment: The MSHA District Manager should have to go through the Bishop Process to require changes to the plan. Proper justification is needed to request a modification to the plan. This standard would permit MSHA to issue a citation before any discussion is had with the mine operator.

§ 71.207 Sampling of designated work positions.

(a) Each operator shall take one valid representative sample from each DWP every calendar quarter. The quarterly periods are:

January 1-March 31
April 1-June 30
July 1-September 30
October 1-December 31

Comment: The miner assigned to the designated work position needs to be sampled and not just the designated work position. This will give the true exposure to the miner of whom the standards are aimed to protect. The Federal mine Safety & Health Act of 1977 states "Congress declares that - (a) the first priority and concern of all the coal or other mining industry must be the health and safety of its most precious resource - the miner." Sampling must be done of the individual miner and not the designated work position.

(b) Designated work position samples shall be collected at locations to measure respirable dust generation sources in the active workings. The work positions at each mine where DWP samples shall be collected include:

(1) Each highwall drill operator (MSHA occupation code 384);

(2) Bulldozer operators (MSHA occupation code 368); and

(3) Other work positions designated by the District Manager for sampling in accordance with § 71.207(f).

(c) Operators with multiple work positions specified in paragraph (b)(2) and (b)(3) of this section shall sample the DWP exposed to the greatest respirable dust concentration in each work position performing the same activity or task at the same location at the mine and exposed to the same dust generation source. Each operator shall provide the District Manager with a list identifying the specific work positions where DWP samples will be collected for:

Comment: The miner assigned to the designated work position needs to be sampled and not just the work position. This will give the true exposure to the miner of whom the standards are aimed to protect. The Federal mine Safety & Health Act of 1977 states "Congress declares that - (a) the first priority and concern of all the coal or other mining industry must be the health and safety of its most precious resource - the miner." Sampling must be done of the individual miner and not the designated work position. Submitting a list to the District Manager identifying the specific work locations is a burden to the mine operator.

(1) Active mines—by [date 60 days after date of publication of final rule];

(2) New mines—Within 30 calendar days of mine opening; or

(3) Change in operational status that increases or reduces the number of active DWPs—within 7 calendar days of the change in status.

(d) Each DWP sample shall be taken on a normal work shift. If a normal work shift is not achieved, the respirable dust sample shall be transmitted to MSHA with a notation by the certified person on the back-side of the dust data card stating that the sample was not taken on a normal work shift. When a normal work shift is not achieved, the sample for that shift may be voided by MSHA. However, any sample, regardless of whether a normal work shift was achieved, that exceeds the applicable standard by

at least 0.1 mg/m3 shall be used to determine compliance with this part.

Comment: If a normal shift is not achieved, MSHA can count the weight if it is over yet if it is under the operator does not get credit for a sample that is below the standard. This is unfair. A shift in which the production is not met and the weight is under the standard is still an indication as to what the miner is exposed. If MSHA can count it when it is over then the operator should be able to count it when it is under.

(e) Unless otherwise directed by the District Manager, DWP samples shall be taken by placing the sampling device as follows:

(1) *Equipment operator:* On the equipment operator or on the equipment within 36 inches of the operator's normal working position;

(2) *Non-equipment operators:* On the miner assigned to the DWP or at a location that represents the maximum concentration of dust to which the miner is exposed.

(f) The District Manager may designate for sampling under this section additional work positions at a surface coal mine and at a surface work area of an underground coal mine where a concentration of respirable dust exceeding 50 percent of the applicable standard has been measured by one or more MSHA samples. Where the applicable standard established in accordance with § 71.101 is below the respirable dust standard under § 71.100, the District Manager may designate for sampling additional work positions where a concentration of respirable dust exceeding the applicable standard has been measured by one or more MSHA samples.

Comment: This permits the District Manager to greatly expand the sampling requirements of the regulations.

(g) The District Manager may withdraw from sampling any DWP designated for sampling under paragraph (f) of this section upon

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finding that the operator is able to maintain continuing compliance with the applicable standard. This finding shall be based on the results of MSHA and operator samples taken during at least a one-year period.

(h) When the respirable dust standard is changed in accordance with § 71.101, the new applicable standard shall become effective on the first normal work shift following receipt of the notification of such change from MSHA.

(1) If all samples from the most recent quarterly sampling period do not exceed the new applicable standard, respirable dust sampling of the DWP shall begin on the first normal work shift during the next quarterly period following receipt of such change from MSHA.

(2) If any sample from the most recent quarterly sampling period exceeds the new applicable standard, the operator shall make necessary adjustments to the dust control parameters within three days and then collect a sample from the affected DWP on a normal work shift. The sample collected will be treated as a normal quarterly sample under this part.

(i) If using a CMDPSU, no valid single-shift concentration shall meet or exceed the excessive concentration value (ECV) that corresponds to the applicable standard in Table 71-1; or, if using a CPDM, no valid end-of-shift equivalent concentration shall meet or exceed the applicable ECV in Table 71- 2.

Comment: The mine operator should not be out of compliance with a single-shift concentration sample. One overweight sample is not an indication of a compliance issue. To produce meaningful information, the weight on a single-shift sample must faithfully represent that of the atmosphere from which the sample is taken. It only represents the exposure for one shift. A single-shift sample could be in error. One overweight sample could be an aberration. The Excessive Concentration Values are too low. The Excessive Concentration Value needs to be removed from the regulations.

TABLE 71-1—EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON SINGLE-

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SHIFT CMDPSU EQUIVALENT CONCENTRATION MEASUREMENTS

Applicable standard (mg/m3)	ECV(mg/m3)
2.0	2.33
1.9	2.22
1.8	2.12
1.7	2.01
1.6	1.90
1.5	1.79
1.4	1.69
1.3	1.59
1.2	1.47
1.1	1.37
1.0	1.26
0.9	1.16
0.8	1.05
0.7	0.95
0.6	0.85
0.5	0.74
0.4	0.65
0.3	0.54
0.2	0.44

TABLE 71-2—EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON SINGLE-SHIFT CPDM EQUIVALENT CONCENTRATION MEASUREMENTS

Applicable standard(mg/m3)	ECV(mg/m3)
2.0	2.26
1.9	2.15
1.8	2.04
1.7	1.92
1.6	1.81
1.5	1.70
1.4	1.59
1.3	1.47
1.2	1.36
1.1	1.25
1.0	1.13
0.9	1.02
0.8	0.91
0.7	0.80
0.6	0.68

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0.5 ..... 0.57
0.4 ..... 0.46
0.3 ..... 0.34
0.2 ..... 0.23

(j) Upon issuance of a citation for a violation of the applicable standard, paragraphs (a) and (h)(2) of this section shall not apply to that DWP until the violation is abated in accordance with paragraph (k) of this section.

(k) During the time for abatement fixed in a citation for violation of the applicable standard, the operator shall take the following actions:

(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;

Comment: MSHA recognizes the use of respiratory equipment when a violation exists but does not recognize the use of equipment when a violation does not exist. The respiratory equipment must work if MSHA recognizes the use of it.

(2) Submit to the District Manager for approval proposed corrective actions to lower the concentration of respirable dust to within the applicable standard; and

Comment: MSHA does not have the personnel to process a "Corrective Actions" submission in a timely manner. This is also a burden to the mine operator.

(3) Upon approval by the District Manager, implement the proposed corrective actions and then sample the affected DWP on each normal work shift until five valid representative samples are taken.

(4) If using a CPDM to meet the requirements of paragraph (a) of this section, review the adequacy of the approved CPDM Performance Plan. The operator shall submit any plan revisions to the District Manager for approval within 7 calendar days

following posting of the end-of-shift equivalent concentration on the mine bulletin board.

(l) A citation for violation of the applicable standard shall be terminated by MSHA when the equivalent concentration of each of the five valid operator abatement samples is at or below the applicable standard and, within 15 calendar days after receipt of sampling results from MSHA, the operator has submitted to the District Manager for approval a proposed dust control plan applicable to the DWP in the citation or notice or proposed changes to the approved dust control plan as prescribed in § 1.300. The proposed plan parameters or proposed changes shall reflect the control measures used to abate the violation.

(m) Upon notification from MSHA that any valid representative sample taken with a CMDPSU from a DWP to meet the requirements of paragraph (a) of this section exceeds the applicable standard but is below the applicable ECV in Table 71-1, the operator shall, within 15 calendar days of notification, sample that DWP each normal work shift until five valid representative samples are taken. The operator shall begin sampling on the first normal work shift following receipt of notification. These samples will be evaluated to determine compliance with the applicable standard for this sampling period.

(n) If using a CPDM to meet the requirements in paragraph (a) of this section and a valid end-of-shift equivalent concentration exceeds the applicable standard but is less than the applicable ECV in Table 71-2, the operator shall:

(1) On the first normal work shift after determining that the applicable standard was exceeded, sample that DWP each normal work shift until five valid representative samples are taken. These samples will be evaluated to determine compliance with the applicable standard for this sampling period; and

(2) Review the adequacy of the approved CPDM Performance Plan. The operator shall submit any plan revisions to the District Manager for approval within 7 calendar days following posting of the end-of-shift equivalent concentration on the mine bulletin board.

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§ 71.208 Respirable dust samples; transmission by operator.

(a) If using a CMDPSU, the operator shall transmit within 24 hours after the end of the sampling shift all samples collected to fulfill the requirements of this part in containers provided by the manufacturer of the filter cassette to:

Respirable Dust Processing Laboratory,
Pittsburgh Safety and Health
Technology Center, Cochrans Mill Road,
Building 38, P.O. Box 18179, Pittsburgh,
Pennsylvania 15236-0179,
or to any other address designated by the District Manager.

(b) The operator shall not open or tamper with the seal of any filter cassette or alter the weight of any filter cassette before or after it is used to fulfill the requirements of this part.

(c) A person certified in sampling shall properly complete the dust data card that is provided by the manufacturer for each filter cassette. The card shall have an identification number identical to that on the cassette used to take the sample and be submitted to MSHA with the sample. Each card shall be signed by the certified person who actually performed the required two examinations during the sampling shift and shall include that person's MSHA Individual Identification Number (MIIN). Respirable dust samples with data cards not properly completed shall be voided by MSHA.

(d) All respirable dust samples collected by the operator shall be considered taken to fulfill the sampling requirements of part 70, 71 or 90 of this title, unless the sample has been identified in writing by the operator to the District Manager, prior to the intended sampling shift, as a sample to be used for purposes other than required by part 70, 71 or 90 of this title.

(e) Respirable dust samples received by MSHA in excess of those required by this part shall be considered invalid samples.

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(f) If using a CPDM, the designated mine official shall validate, certify and transmit electronically to MSHA within 12 hours after the end of the last sampling shift for a DWP all sample and error data file information collected during the previous shifts and stored in the CPDM. All CPDM data files transmitted to MSHA shall be maintained by the operator for at least 12 months.

§ 71.209 Respirable dust samples; report to operator; posting.

(a) MSHA shall provide the operator a report with the following data on respirable dust samples submitted in accordance with this part:

(1) The mine identification number;

(2) The DWP at the mine from which the samples were taken;

(3) The concentration of respirable dust, expressed as an equivalent concentration in milligrams per cubic meter of air, for each valid sample; and

(4) The reason for voiding any sample.

(b) Upon receipt, the operator shall post this data for at least 46 days on the mine bulletin board.

(c) If using a CPDM, the designated mine official shall validate, certify and post on the mine bulletin board:

(1) Within 1 hour after the end of the sampling shift, the daily end-of-shift sampling results for each DWP. The daily posting shall include:

(i) The mine identification number;

(ii) The DWP at the mine from which the samples were taken;

(iii) The concentration of respirable dust, expressed as an equivalent concentration in milligrams per cubic meter of air, for each valid sample;
(iv) The reason for voiding any sample;

(v) The shift length; and

(vi) Any other information required by the District Manager.

(2) This information shall be posted at least 46 calendar days.

§ 71.210 Status change reports.

(a) If there is a change in operational status that affects the respirable dust sampling requirements of this part, the operator shall report the change in operational status of the mine or DWP to the MSHA District Office or to any other MSHA office designated by the District Manager. Status changes shall be reported in writing or electronically within 3 working days after the status change has occurred.

(b) Each specific operational status is defined as follows:

(1) Underground mine:

(i) Producing—has at least one mechanized mining unit producing material.

(ii) Nonproducing—no material is being produced.

(iii) Abandoned—the work of all miners has been terminated and production activity has ceased.

(2) Surface mine:

(i) Producing—normal activity is occurring and coal is being produced or processed or other material or equipment is being handled or moved.

(ii) Nonproducing—normal activity is not occurring and coal is not being produced or processed, and other material or equipment is not being handled or moved.

(iii) Abandoned—the work of all miners has been terminated and all activity has ceased.

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(3) DWP:

(i) Producing—normal activity is occurring.

(ii) Nonproducing—normal activity is not occurring.

(iii) Abandoned—the dust generating source has been withdrawn and activity has ceased.

(c) Status changes affecting the operational readiness of any CPDM shall be reported by the designated mine official to the MSHA District Office or to any other MSHA office designated by the District Manager within 24 hours after the status change has occurred. Status changes shall be reported in writing or electronically.

Comment: Does this mean the operational readiness of each CPDM have to be reported? Each time that a CPDM is sent in for repair it must be reported? Each time that a CPDM is returned from repair it must be reported? Each time that a CPDM has maintenance done to it must it be reported if it means that it will not be ready for the next day? If this is correct then much information will be reported. This is excessive record keeping. It is a big burden to the mine operator. Each MSHA district office will need a clerk or clerks just to process the "operational readiness" of CPDMs.

Reporting "to any other office designated by the District Manager" can cause problems and put the mine operator at risk for non compliance. The rule changes any time the District Manager changes the office. The 24-hour requirement is short. A status change could occur on a Saturday and within 24 hours the operator is out of compliance. Does each time a continuous miner break down have to be reported as a status change. The continuous miner would not produce coal for the remainder of the shift and maybe parts or whole upcoming shifts.

12. Subpart D is revised to read as follows:

Subpart D-Respirable Dust Control Plans

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Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors

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Sec.
71.300 Respirable dust control plan; filing requirements.

71.301 Respirable dust control plan; approval by District Manager and posting.

§ 71.300 Respirable dust control plan; filing requirements.

(a) As required by § 71.207(l), the operator shall submit to the District Manager for approval a written respirable dust control plan applicable to the DWP identified in the citation. The respirable dust control plan and revisions thereof shall be suitable to the conditions and the mining system of the coal mine and shall be adequate to continuously maintain respirable dust within the applicable standard at the DWP.

Comment: This is another plan required by MSHA. MSHA requires too many plans.

(1) The mine operator shall notify the representative of miners at least 5 days prior to submission of a respirable dust control plan and any revision to a dust control plan. If requested, the mine operator shall provide a copy to the representative of miners at the time of notification;

(2) A copy of the proposed respirable dust control plan, and a copy of any proposed revision, submitted for approval shall be made available for inspection by the representative of miners; and

(3) A copy of the proposed respirable dust control plan, and a copy of any proposed revision, submitted for approval shall be posted on the mine bulletin board at the time of submittal. The proposed plan or proposed revision shall remain posted until it is approved, withdrawn, or denied.

(4) Following receipt of the proposed plan or proposed revision, the representative of miners may submit timely comments to the District Manager, in writing, for consideration during the review process. Upon request, a copy of these comments shall be provided to the operator by the District Manager.

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(b) Each respirable dust control plan shall include at least the following:

(1) The mine identification number and DWP number assigned by MSHA, the operator's name, mine name, mine address, and mine telephone number and the name, address, and telephone number of the principal officer in charge of health and safety at the mine;

(2) The specific DWP at the mine to which the plan applies;

(3) A detailed description of the specific respirable dust control measures used to abate the violation of the respirable dust standard; and

(4) A detailed description of how each of the respirable dust control measures described in response to paragraph (b)(3) of this section will continue to be used by the operator, including at least the specific time, place and manner the control measures will be used.

§ 71.301 Respirable dust control plan; approval by District Manager and posting.

(a) The District Manager will approve respirable dust control plans on a mine-by-mine basis. When approving respirable dust control plans, the District Manager shall consider whether:

Comment: Why is this not an internal MSHA document or published as a guideline?

(1) The respirable dust control measures would be likely to maintain concentrations of respirable coal mine dust at or below the applicable standard; and

(2) The operator's compliance with all provisions of the respirable dust control plan could be objectively ascertained by MSHA.

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(b) MSHA may take respirable dust samples to determine whether the respirable dust control measures in the operator's plan effectively maintain concentrations of respirable coal mine dust at or below the applicable standard.

(c) The operator shall comply with all provisions of each respirable dust control plan upon notice from MSHA that the respirable dust control plan is approved.

(d) The approved respirable dust control plan and any revisions shall be:

(1) Provided upon request to the representative of miners by the operator following notification of approval;

(2) Made available for inspection by the representative of miners; and

(3) Posted on the mine bulletin board within 1 working day following notification of approval, and shall remain posted for the period that the plan is in effect.

(e) The operator may review respirable dust control plans and submit proposed revisions to such plans to the District Manager for approval.

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§ 75.332 Working sections and working places.

(a)(1) Each MMU on each working section and each area where mechanized mining equipment is being installed or removed, shall be ventilated by a separate split of intake air directed by overcasts, undercasts or other permanent ventilation controls.

Comment: This proposed regulation would effectively end fishtail ventilation. It is impossible to separate the air splits by permanent controls on a working section and haul coal to a single loading point.

The preamble, Page 64449 Middle Column, states "MSHA believes that, together, proposed § 75.332 and the proposed MMU definition, discussed elsewhere in the preamble related to proposed § 70.2, would improve miners' health by reducing their exposure to respirable dust." This statement in the preamble is the only discussion given to explain why the rule is being changed. The whole premise is that "MSHA believes" it would improve miners' health. No proof is offered, only a belief. Studies are need to show that providing a separate split of intake air for each mechanized mining unit versus not separating intake splits by permanent controls as now done on fishtail ventilation working sections "would improve miners" health by reducing their exposure to respirable dust." Before a regulation is written requiring that the splits on the working section be separated by permanent controls a study showing the merits must be done.

District 8 has encouraged the use of fishtail ventilation to lower exposure to respirable coal mine dust. Many District 8 mines previously used single-split ventilation on working sections with two continuous miners. One continuous miner would mine and load coal while the other miner was being repositioned and readied for the next cut. If the mine operator had respirable dust compliance problems using single-split ventilation with two continuous miners District 8 would recommend using fishtail ventilation. The use of fishtail ventilation lowered the respirable dust concentrations versus

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what had been found on single-split ventilation units that had two continuous miners.

Currently, Prosperity Mine has three fishtail working sections, six mechanized mining units. If this proposed regulation becomes final as written, Prosperity Mine will not be able to mine with six mechanized mining units on six single-split working sections. The mine does not have sufficient reserve capacity in the ventilation system to provide the needed additional air. The mine would close. Additionally, Five Star's mining reserves do not permit mining in six different locations. Therefore, even if the ventilation system had sufficient reserve capacity, the mine could not operate six single-split working sections. Prosperity Mine would close if the rule comes into effect.

The mine would need three new intake belt air splits (neutrals) if the three fishtail working sections were separated into six single-split working sections. Each additional belt air split would require about 20,000 cubic feet per minute (cfm) to comply with the regulations, 60,000 cfm total. The additional air is necessary to provide enough air to have 50 feet per minute (fpm) air velocity in the belt entry per § 75.350(a)(2) and to have sufficient air to provide for the largest plate quantity requirement of the diesel-powered equipment in the travelway entry per § 75.323(f)(3). More air would also be needed because of leakage through the additional stoppings that would need to be constructed. Since the mine would need six intake splits instead of three, the six splits double the leakage from the point where the splits leave the main entries and flow to the working sections. It is estimated that a minimum of 5,000 cfm leakage per split would result or 15,000 cfm for the three new splits. This is a total of about 75,000 cfm to split the air assuming that the quantities for the last open crosscuts for each of the mechanized mining units would stay the same. About 75,000 cfm is the volume of air needed currently to operate a fishtail working section and it takes about 45,000 cfm to run a single-split working section. The six mechanized mining units would reduce to four single split units because of the limits of the ventilation system. Prosperity Mine cannot mine enough coal to meet coal sale contracts with four single-split working sections.

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Adding additional shafts and another main mine fan is not warranted because of the remaining amount of reserves. The coal would not be mined. Additionally, the cost to mine coal per ton would also increase because only four mechanized mining units could operate. The outby maintenance costs for such items as belts, examinations, rock dust, pumping, roof control, and roadway maintenance would be spread over about two thirds of the production.

The preamble, Page 64449 Middle Column, states "MSHA is proposing this change to address the situation where operators operate two sets of mechanized mining equipment on a working section ventilated by a single split of intake air, and mining equipment expose miners working downwind to respirable dust and quartz. MSHA believes that, together, proposed § 75.332 and the proposed MMU definition, discussed elsewhere in the preamble related to proposed § 70.2, would improve miners' health by reducing their exposure to respirable dust." The working section, when using fishtail ventilation, is ventilated by a single split of intake air but the two mechanized mining units, the continuous miners, are ventilated by separate splits of intake air. The air splits on the working section inby the tailpiece providing two separate splits of intake air for the two continuous miners. The only time that a continuous miner cuts coal and persons work downwind is when the continuous miner has trammed back to the center of the unit and begins to cut coal while the roof bolting takes place downwind. The preamble does not state where the respirable dust and quartz would come from to "expose miners working downwind." Only one continuous miner would be on a split of air. No more dust and quartz would be generated on one side of a fishtail working section then would be generated on a working section that has one continuous miner.

Section 75.332(a)(1) comes from the Federal Coal Mine Health and Safety Act of 1969 Section 303(r)that required "Each mechanized mining section" to be separated by a separate split of intake air. The purpose was to prevent the smoke and gases if a fire occurred on one working section from flowing to another working section. Additionally, the gas and respirable dust generated from mining coal with one set of mining equipment from flowing

over another set of mining equipment. Fishtail working sections do not permit the contaminants from one set of mining equipment from flowing over another set of equipment.