Fontaine, Roslyn B - MSHA

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Sent: Monday, June 20, 2011 7:32 PM
To: zzMSHA-Standards - Comments to Fed Reg Group
Cc: 'Dennis ODell'; umwarbowersox@yahoo.com; 'Judy Rivlin'; 'Ron Airhart'
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Subject: RIN 1219-AB64
Attachments: UMWA Comments on the Proposed Rule for Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors.pdf

Dear Sir/Madam,

Attached are the United Mine Workers of America's comments on the Proposed Rule for Lowering Miners' Exposure to Respirable Coal Mine Dust, Including Continuous Personal Dust Monitors. We thank you for the opportunity to participate in this rulemaking and ask that you forward a copy of these comments to the appropriate person(s) in your Agency for consideration.

Thank you,

Linda Raisovich-Parsons
United Mine Workers of America

AB64-COMM-83

Comments of the United Mine Workers of America
On the Proposed Rule for
Lowering Miners' Exposure to Respirable Coal Mine Dust Including Continuous Personal Dust Monitors

The United Mine Workers of America has reviewed the Proposed Rule for Lowering Miners' Exposure to Respirable Coal Mine Dust Including Continuous Personal Dust Monitors and submits comments as follows:

§ 70.1 Scope.
This part 70 sets forth mandatory health standards for each underground coal mine subject to the Federal Mine Safety and Health Act of 1977, as amended. 3. Amend § 70.2 by:
a. Removing the alphabetical paragraph designations and arranging existing definitions in alphabetical order;
b. Adding definitions for "Approved sampling device," "Coal mine dust personal sampler unit (CMDPSU)," "Continuous personal dust monitor (CPDM)," "Equivalent concentration," "Other designated occupation (ODO)," "Representative samples," "Weekly accumulated exposure (WAE) ," and "Weekly permissible accumulated exposure (WPAE) ;" and
c. Revising definitions for "Act," "Designated area (DA) ," "Mechanized mining unit (MMU) ," "Normal production shift," and "Quartz."
The additions and revisions are revised to read as follows:

§ 70.2 Definitions.
Act. The Federal Mine Safety and Health Act of 1977, Pub. L. 91-173, as amended by Pub. L. 95-164 and Pub. L.109-236.
* * * * *
Approved sampling device. A sampling device approved by the Secretary and Secretary of Health and Human Services (HHS) under part 74 of this title.
* * * * *
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.
* * * * *
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.
(2) The CPDM, the device shall be programmed to directly report the end-of-shift equivalent concentration as an MRE 8-hour equivalent concentration.
(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. 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:
(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 equipmentare identified as a single MMU.
(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.
* * * * *

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.

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.
* * * * *

Quartz. Crystalline silicon dioxide (Si02) 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.
* * * * *

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.
* * * * *

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.

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.

COMMENTS

The only issue the UMWA would take issue with in the definition section is the Equivalent Concentration. The UMWA understands that the CPDM will do the equivalent concentration calculations for shifts longer than 8 hours. Miners should not be expected to calculate their exposure limits since the CPDM has the ability to do this for them. We would recommend that the Agency spell out the miner's permitted dust exposure limits for the number of hours he is expected to work for the entire shift. This should be sufficient for a miner to look at the planned length of work shift and determine what his/her exposure limit will be.

§ 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] .

(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] .

COMMENTS

The UMWA agrees that dust concentrations must be lowered and that this should be done with a phased-in reduction in concentrations of respirable dust. The UMWA has historically supported the NIOSH recommendation of lowering respirable dust concentration limits to 1.0 mg/m3 over a ten hour shift but realizes that the NIOSH study is dated and should be updated using the new Continuous Personal Dust Monitor. As the UMWA has testified at several of the public hearings, we suggest there be a study conducted by MSHA, NIOSH, Industry and Labor to evaluate what dust concentrations are protective and achievable. We recommend that study be conducted over a twenty-four month period using the Continuous Personal Dust Monitor, and making sure that all MSHA required dust control parameters are in place. A study of this nature would have to include

multiple mines with varying conditions, such as seam of coal mined, whether rock is cut, and other factors that reflect the range of coal mining conditions. We agree that the respirable dust limits must be reduced, but are open to a closer look to see if compliance with a 1.0mg/m3 over an eight hour shift is achievable and would be willing to accept the outcome of such a study to set the dust concentrations in the rule.

§ 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 ~g/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 ~g/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 ~g/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).*

COMMENTS

As the UMWA comments on 70.100 above, we support a twenty-four month study to determine what dust concentrations are achievable in the industry that would be protective and greatly reduce and/or eliminate black lung. Parameters of the study would include mines with quartz to see what reductions in dust concentrations are achievable when quartz is present. Such a study would include the involvement of labor, government and industry and include mines from different coal seams, those that cut rock and other variation which may be necessary to achieve thorough study results that would have a broad range providing a fair representation of all the industry conditions. NIOSH should be in charge of collecting the data but all parties would be involved throughout the process.

§ 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.
(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)
© 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.
(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.
(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:
(1) A CMDPSU, the operator shall switch-out the unit's sampling pump prior to the 13th-hour of operation.
(2) A CPDM, the operator shall switch-out the CPDM with a fully charged device prior to the 13th-hour of operation.
(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.
(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.
(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.
(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.
(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.

COMMENTS

The UMWA has historically demanded that MSHA take over this sampling program. A recap of what the UMWA has had to say about this issue in the past is as follows: The sampling program continues to be placed in the hands of the coal operators. The Government's regulatory program intending to protect miners from exposure to unhealthy coal mine dust, has failed to protect miners through the years. Since passage of the Federal Mine Health and Safety Act of 1969, the coal mine dust sampling program has been the subject of much criticism. Reports of cheating and fraud in the coal mine dust program, with miners exposed to unhealthy levels of mine dust, has been common place over the years. In 1971 and 1975, US General Accounting Office and National Bureau of Standards reports document serious problems with the mine operator-controlled coal mine dust sampling program. The reports identified widespread fraud in the program. Since 1990, over 160 companies and individuals have been criminally prosecuted for fraudulent coal mine dust sampling in the nation's coal mines. An in-depth investigative report published by the Louisville Courier Journal in 1998 cited widespread corruption with the coal mine dust sampling program. Miners and their representatives on numerous occasions have also provided evidence on the flawed coal dust program.

For decades, miners and the UMWA have demanded that the respirable coal mine dust program be reformed. As far back as 1977 and 1978 miners testified at public regulatory hearings demanding major changes in the program. Among the changes miners sought were: full miner participation to oversee the coal mine dust sampling, a government take over of the sampling program, and devices installed in the mines to constantly record coal mine dust levels. We applaud the Agency's requirement of the use of the Continuous Personal Dust Monitor in response to one of those concerns, but the UMWA still believes the sampling program should not be left in the operators' hands. We expect that most coal companies will do the right thing to comply with the new standards. However, even with the use of the CPDM we know that there are the renegades of the coal industry who will find a way to cheat the system and cause miners to get sick and die from black lung.

The UMWA wants to see the Agency play a bigger role in the sampling program and to at least adopt the Dust Advisory Committee recommendation for government funding of such a program, giving MSHA a bigger role in the dust sampling process. Paragraphs b and c of Recommendation No. 16 of the Dust Advisory Committee recommended:

b. The Committee believes that any MSHA resource constraints should be overcome by mine operator support for MSHA compliance sampling. The Committee recommends that to the degree that MSHA's resources cannot alone serve the objective identified, resource constraints should be over come by mine operator funding for such incremental MSHA compliance sampling. One means for obtaining this support could be a reasonable and fair operator fee, based on hours worked, or other equivalent means designed to cover the costs of compliance sampling. Any operator fee program should include an accountability system to ensure the uniform applicability of the program throughout the industry. The fee should only be utilized for the specific purposes of required compliance sampling.

c. The Committee considers it a high priority that MSHA take full responsibility for all compliance sampling at a level which assures representative samples of respirable dust exposures under usual condition of work. In this regard, MSHA should explore all possible means to secure adequate resources to achieve this end without adverse impact on the remainder of the Agency's resources and responsibilities. Compliance sampling should be carried out at a number and frequency at least at the level currently required of the operators and MSHA. The miner's representative would be afforded the opportunity to participate in these inspection activities as provided in Section 103(f) of the Mine Act.

The UMWA believes that one of MSHA's highest priorities must be to restore the confidence of miners and mine operators in the respirable coal mine dust sampling program. To accomplish this, we believe that MSHA must take full responsibility for the tasks of compliance sampling in lieu of the proposed system under which operators will still be primarily responsible for carrying out such compliance sampling.

§ 70.202 Certified person; sampling.

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

(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.

© To maintain certification, a person must pass the MSHA examination demonstrating competency

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

COMMENTS

The UMWA supports this proposed rule, except for paragraph (d) in which MSHA "may" revoke a person's certification. We believe this revocation should be mandatory and the word "may" should be changed to "shall." We agree that the certified person must pass a course of instruction to demonstrate competency in sampling procedures. Once the person is certified and does the job on a continuing basis, it would not be necessary to retrain the person. Since the person is doing the job every day he/she should be proficient in the job. Consequently, passing the examination demonstrating competency in sampling procedures every three years would be sufficient to ascertain whether the person is qualified. The only reason a person should be retrained is if he cannot pass the three year re-examination, or to upgrade training for equipment or procedure changes. See answer to Question 16 for further information.

§ 70.203 Certified person; maintenance and calibration.

(a) Approved sampling devices shall be maintained and calibrated by a certified person.
(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.
© To maintain certification, a person must pass the MSHA examination demonstrating competency in maintenance and calibration procedures every three years.
(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.

COMMENTS

The UMWA comments on this proposed standard would be the same as comments on 70.202 above.

§ 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.
(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.
© 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:
(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.
(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.

COMMENTS

The UMWA supports this proposed standard.

§ 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.
(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.
(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.
(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.

COMMENTS

The UMWA supports this proposed standard.

§ 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.
(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 who are designated by the operator and the following information:
(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 setup 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.
© 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.

COMMENTS

The UMWA recommends that the CPDM Performance Plan be provided to the miners' representative at least ten days prior to the plan's submission for approval. As pointed out in answers to Questions 21 and 27 as proposed, the miners' representative will not be provided sufficient time in advance of the plan submission to review it. Further, the miners' representative will only be provided a copy of the plan if it is requested. The miners' representative should not be required to request a copy of the plan and furthermore should be provided sufficient time for review and comment. Those employers that are signatory to the National Bituminous Coal Wage Agreement have an obligation under Article III Section (h) to provide the plan to the miners' representative at least ten days prior to submission for their review and comment. That experience proves that it is feasible for operators to provide a ten-day miners' review. We would recommend the proposed rule mirror our established procedure. For additional information see our answer to Questions No. 21 and 27.

§ 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 I-February 28 (29)
March I-April 30
May I-June 30
July I-August 31
September I-October 31
November I-December 31.
(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.
(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.
© 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.
(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.
(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.
(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;
(2) Submit to the District Manager for approval proposed corrective actions to lower the concentration of respirable dust to within the applicable standard; and

(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.

(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.

(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:

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

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

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

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
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

COMMENTS

The UMWA recommends that paragraph (d) require the sample to be voided if the normal production shift is not achieved. The word "may" should be changed to "shall." As the UMWA points out throughout our comments, we vigorously oppose the use of respirators as a regular means of dust control. Paragraphs (g)(1) and (i)(1) of this section require that respiratory equipment be made available to affected miners when a violation exists. Although we support as a mandate that operators shall be required to make respiratory equipment available upon the miner's request, we insist that a respirator shall not be used to achieve compliance with the standard.

§ 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
(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.
(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.
(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;
(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 jack setter 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.
(e) No weekly accumulated exposure shall exceed the weekly permissible accumulated exposure.
(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:
(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;
(2) Implement corrective actions to assure compliance with the applicable standard on the next and other subsequent production 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;
(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
(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.
(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:
(1) Make approved respiratory equipment available to affected miners in accordance with § 72.700 of this chapter;
(2) Implement corrective actions to assure compliance with the applicable standard on the next and subsequent production shifts;
(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
(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.

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.

COMMENTS

The UMWA recommends that the ODO's be sampled the same as a DO, which requires sampling 7 days a week, 52 weeks a year. The ODO's are occupations which have been identified as being dusty occupations and therefore should be treated the same for sampling purposes as the DO's.

Paragraph (h) of this section provides that for the first 24 month period following the effective date of the final rule, if an operator is unable to maintain compliance with the applicable standard for an MMU and the operator determines 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, for a period not to exceed 6 months, the use of supplementary controls, <u>including worker rotation</u>, in conjunction with monitoring miners' exposures with CPDMs to reduce affected miners' dust exposure. The UMWA understands that the intent of this proposal is to remove the affected miner from the dusty environment, however, this practice would violate the requirements and spirit of the collective bargaining agreements in effect at all UMWA represented mines. Under the UMWA collective bargaining agreements, jobs are

posted and awarded based on the miners' seniority at that mine. The miners' seniority and job bidding right is a cherished, revered and sacred right of all miners working at unionized operations. Article XIX Section (a), Working in Classification, of the contract provides that an employee "shall normally be assigned to duties customarily involved with his regular classified job." An employee who has bid to and been awarded a particular job expects that he will work in that position. The wage agreement permits the employee to be assigned to other work on a temporary basis, but he/she must be returned to the classified recognized occupation within a reasonable period. The temporary assignments are limited in the number of times the employee can be reassigned and the length of time he/she is permitted to be temporarily assigned to another position. To rotate a miner from their job classification for 6 months or more is totally unacceptable. It would also be extremely disruptive to the well-established procedures at UMWA mines. The UMWA has historically stood firm with the position that respirable dust can and must be controlled through engineering and environmental measures. Rotating a miner is not an appropriate solution.

Another problem with this provision is that it gives the operator the explicit right to determine "that all feasible engineering or environmental controls are being used." When the operator determines that he has done all he can to control dust through engineering or environmental controls he then simply asks the MSHA District Manager to approve a plan that permits worker rotation. The proposal fails to specify what role miners' representatives may play, or any appeal rights they could exercise to challenge an operator's claim that all feasible controls are already in use. The UMWA questions what role MSHA would play in making the determination that all "feasible and engineering or environmental controls" have been exhausted. That decision must not be left entirely up to the operator. MSHA and the miners' representative must play a role in exploring additional engineering or environmental controls. Worker rotation is not the answer to controlling respirable dust. Simply rotating workers would only increase the number of exposed miners, not remove the problem. All shearer operators, shield operators, and miner operators are the prime candidates who could expect to be rotated from their job classification to another position under this proposal. MSHA must take a more active role in determining the engineering or environmental control the operator should use and provide expert advice to the operator on how to achieve the goal.

Permitting workers to be rotated out of their normal job does not solve the problem, but simply exposes additional miners to the dust. Furthermore, rotating a different miner into the rotated miner's position will create additional hazards in that the re-assigned miner may not be familiar with the equipment or job duties. Mine operators complain that absenteeism and having to substitute workers leads to mine accidents because their replacement miners are not familiar with the position and do not normally do the job for which they are filling in. Likewise, this is not an acceptable solution to control dust and the UMWA opposes this part of the proposed rule. In summary UMWA maintains the position that the dust in the mine environment must be

controlled through environmental and engineering control, as Section 202 of the Federal Mine Safety and Health Act of 1977 requires and as Congress intended.

§ 70.209 Sampling of designated areas.

(a) The operator shall sample each DA for five consecutive production shifts every calendar quarter using «0 a CMDPSU or CPDM. 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.
(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.
(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 inTable 70-2.
(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;
(2) Submit to the District Manager for approval proposed corrective actions to lower the concentration of respirable dust to within the applicable standard; and
(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.
(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;
(2) Implement corrective actions to assure compliance with the applicable standard on the next and other subsequent production shifts; and
(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 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.
(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.

COMMENTS

Again this proposed standard requires that a respirator be the first line of defense when a violation exists. As stated throughout our comments, the UMWA does not agree that a respirator should be used to achieve compliance or tolerate noncompliance. In the Legislative History of the Mine Act, Congress clearly stated that respirable dust in the mine atmosphere shall be controlled through environmental and engineering controls and not through the use of respirators. See response to question 9.

§ 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: 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

The UMWA believes that weekly reporting of the CPDM data to MSHA is sufficient and supports this proposed standard. We understand that there will be a transition period for converting from the gravimetric sampling to the CPDM and the operators transmission of this data. It will take a period for all operators and certified dust samplers to become familiar with the CPDM and procedures for transmission of data to MSHA. However, the transition period should not exceed six months from the effective date of the rule. Insofar as the proposed rule would require the use of CPDM 12 months after the effective date for DO sampling, there is a built-in transition period, that we support..

§ 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:
(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;
(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:
(i) The mine identification number;
(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;
(v) The occupation code, where applicable;
(vi) The reason for voiding any sample;
(vii) The shift length; and
(viii) Any other information required by the District Manager.
(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.
(3) This information shall be posted for at least 15 calendar days.

COMMENT

The UMWA would recommend that all information required to be posted under this standard be for a minimum of 31 days to make sure all interested parties have the opportunity to look at the data.

§ 70.212 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, 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 3working 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 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:
(i) Producing--activity is occurring.
(ii) Nonproducing--activity has ceased.
(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

The UMWA supports this proposed standard.

PART 71 - MANDATORY HEALTH STANDARDS FOR SURFACE COAL MINES AND SURFACE WORK AREAS OF UNDERGROUND COAL MINES

§ 71.2 Definitions.

Act. The Federal Mine Safety and Health Act of 1977, Pub. L. 91-173, as amended by Pub. L. 95-164 and Pub. L. 109-236.
* * * * *
Approved sampling device. A sampling device approved by the Secretary and Secretary of Health and Human Services (HHS) under part 74 of this title.
* * * * *
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 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.
* * * * *

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 multiplyingthe MRE-equivalent concentration by the factor *t/480,* where t is the sampling time in minutes if longer than 8 hours.
(2) The CPDM, the device shall be programmed to directly report the end-of-shift equivalent concentration as an MRE 8-hour equivalent concentration.
(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.
* * * * *

Quartz. Crystalline silicon dioxide (Si02) 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.

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

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

As pointed out in our comments on Part 70, the UMWA is concerned that the calculation required to reach an Equivalent Concentration is needlessly complicated. The UMWA understands that the CPDM will make the equivalent concentration calculations for shifts longer than 8 hours.

Miners should not be expected to calculate their exposure limits since the CPDM has the ability to do this for them. We would recommend that the Agency spell out the miner's permitted dust exposure limits for the number of hours they are expected to work for the entire shift. This should be sufficient for a miner to look at the planned length of work shift and determine what his/her maximum permitted exposure limit will be.

§ 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

The UMWA takes the same position for surface work areas as we do for the underground on Section 70.100. Our comments on that section are repeated here:
The UMWA agrees that dust concentrations must be lowered and that this should be done with a phased-in reduction in concentrations of respirable dust. The UMWA has historically supported the NIOSH recommendation of lowering respirable dust concentration limits to 1.0 mg/m3 over a ten hour shift but realizes that the NIOSH study is dated and should be updated using the new Continuous Personal Dust Monitor. As the UMWA has testified at several of the public hearings, we suggest there be a study conducted by MSHA, NIOSH, Industry and Labor to evaluate what dust concentrations are protective and achievable. We recommend that study be conducted over a twenty-four month period using the Continuous Personal Dust Monitor, and making sure that all MSHA required dust control parameters are in place. A study of this nature would have to include multiple mines with varying conditions, such as seam of coal mined, whether rock is cut, and other factors that reflect the range of coal mining conditions. We agree that the respirable dust limits must be reduced, but are open to a closer look to see if compliance with a 1.0mg/m3 over an eight hour shift is achievable and would be willing to accept the outcome of such a study to set the dust concentrations in the rule.

§ 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 ~g/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 ~g/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/m3contains* 16.7% of *quartz dust, which corresponds* to a *quartz concentration* of 167 ~g/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

As the UMWA comments on 71.100 above, we support a twenty-four month study to determine what dust concentrations are protective to the miners to eliminate black lung. Parameters of the study would include mines with quartz problems to measure dust concentrations when quartz is present. Such a study would include the involvement of labor, government and industry and include mines from different coal seams, those that cut rock and other variation which may be necessary to achieve thorough study results that would have a broad range providing a fair representation of all the industry conditions.

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

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

The UMWA repeats its comments on 70.201 here. The UMWA has always maintained the position that the dust sampling should be administered by MSHA, not the mine operator.

§ 71.202 Certified person; sampling.

(a) The respirable dust sampling required by this part shall be performed by a certified person.
(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.
(c) To maintain certification, a person must pass the MSHA examination demonstrating competency in sampling procedures every three years.
(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

The UMWA supports this proposed rule. We agree that the certified person must pass a course of instruction to demonstrate competency in sampling procedures. Once the person is certified and does the job on a continuing basis, it would not be necessary to retrain the person. Since the person is doing the job every day he/she should be proficient in the job. Consequently, passing the examination demonstrating competency in sampling procedures every three years would be sufficient to ascertain whether the person is qualified. The only reason a person should be retrained is if he fails the three-year re-examination or to upgrade training for equipment or procedure changes. See answer to Question 16 for further information.

§ 71.203 Certified person; maintenance and calibration.

(a) Approved sampling devices shall be maintained and calibrated by a certified person.
(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.
(c) To maintain certification, a person must pass the MSHA examination demonstrating competency in maintenance and calibration procedures every three years.

(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

The UMWA comments on this proposed standard are the same as our comments on 71.202, above.

§ 71.204 Approved sampling devices; maintenance and calibration.

(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.
(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.
(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:
(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.
(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.

COMMENT

The UMWA supports this proposal.

§ 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.
(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

The UMWA supports this proposal.

§ 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.

(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 setup procedures to verify the operational readiness of the sampling device before each sampling shift;

(3) Procedures that address downloading of end-ofshift 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.
(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 UMWA recommends that the CPDM Performance Plan be provided to the miners' representative at least ten days prior to the plan's submission for approval. As pointed out in answers to Questions 21 and 27 as proposed, the miners' representative will not be provided sufficient time in advance of the plan submission to review it. Further, the miners' representative will only be provided a copy of the plan if it is requested. The miners' representative should not be required to request a copy of the plan and furthermore should be provided sufficient time for review and comment. Those employers that are signatory to the National Bituminous Coal Wage Agreement have an obligation under Article III Section (h) to provide the plan to the miners' representative at least ten days prior to submission for their review and comment. That experience proves that it is feasible for operators to provide a ten-day miners' review. We would recommend the proposed rule mirror our established procedure. For additional information see our answer to Questions No. 21 and 27.

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

TABLE 71-1-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
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
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;

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

(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.
(1) 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 § 71.300. 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.

COMMENT

Other work positions designated by the District Manager for sampling in accordance with Section 71.207 (f) should include any work sites where miners are exposed to dust such as preparation plants, load out facilities, stockpiles, barges and other areas at surface mines and surface areas of underground coal mines.

In addition, any plan revisions required by this Section must be provided to the miners' representative as we have set forth in our answers to Questions 21 and 27.

§ 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.
(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.

COMMENT

The UMWA supports this proposal.

§ 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.

COMMENT

The UMWA supports this proposal and believe this information must be made available to all interested parties at any time.

§ 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.
(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

The UMWA supports this proposal.

§ 71.300 Respirable dust control plan; filing requirements.

(a) As required by § 71.207(1), 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.
(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.
(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.

COMMENT

As the UMWA recommends that the CPDM Performance Plan be provided to the miners' representative at least ten days prior to the plan's submission for approval, so would we expect the same with a respirable dust control plan. As pointed out in answers to Questions 21 and 27, as proposed, the miners' representative will not be provided sufficient time in advance of the plan submission to review it. Further, the miners' representative will only be provided a copy of the plan if it is requested. The miners representative should not be required to request a copy of the plan and furthermore should be provided sufficient time for review and comment. Those employers that are signatory to the National Bituminous Coal Wage Agreement have an obligation under Article III Section (h) to provide the plan to the miners' representative at least ten days prior to submission for their review and comment. That experience proves that it is feasible for operators to provide a ten-day miners' review. We recommend the proposed rule mirror our established procedure. For additional information see our answer to Questions No. 21 and 27.

§ 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:
(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.
(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.

COMMENT

As pointed out in comments throughout this rule, the UMWA asks that the plans be made available to the miners' representative at least ten days prior to submission for review and comment. For the UMWA's comments on this issue see comments on 70.206; 71.300 and Questions 21 and 27.

PART 72 - [AMENDED]

§ 72.100 Periodic examinations.

(a) Each operator of a coal mine shall provide to each miner periodic examinations including chest x-rays, spirometry, symptom assessment, and occupational history at a frequency specified in this section and at no cost to the miner.
(1) Each operator shall use facilities approved by the National Institute for Occupational Safety and Health (NIOSH) to provide examinations specified in paragraph (a) of this section.
(b) *Voluntary examinations.* Each operator shall provide the opportunity to have the examinations specified in § 72.100(a) at least every 5 years to all miners employed at a coal mine. The examinations shall be available during a 6-month period that begins no less than 3.5 years and not more than 4.5 years from the end of the last 6-month period.
(c) *Mandatory examinations.* For each miner who begins work at a coal mine for the first time, the operator shall provide examinations specified in § 72.100(a) as follows:
(1) An initial examination no later than 30 days after beginning employment;
(2) A follow-up examination no later than 3 years after the initial examination in paragraph (c) (1) of this section; and
(3) A follow-up examination no later than 2 years after the examinations in paragraph (c) (2) of this section if the chest x-ray shows evidence of pneumoconiosis or the spirometry examination indicates evidence of decreased lung function. For this purpose, evidential criteria will be defined by NIOSH.
(d) Each mine operator shall develop and submit for approval to NIOSH a plan for providing miners with the examinations specified in § 72 . 100(a) and a roster specifying the name and current address of each miner covered by the plan.
(e) Each mine operator shall post on the mine bulletin board at all times the approved plan for providing the examinations specified in § 72.100(a).

COMMENT

The UMWA supports this proposal, however we demand that the result of such medical examinations and x-rays shall be provided only to the affected miners and <u>not</u> to their employer or any other parties. The only exception should be that MSHA and NIOSH should be given access to information showing medical results on anonymous basis so MSHA can target enforcement and

NIOSH can track black lung disease.

§ 72.700 Respiratory equipment; respirable dust.

(a) Respiratory equipment approved by NIOSH under 42 CFR Part 84 shall be made available to all persons as required under parts 70, 71, and 90 of this chapter. Use of respirators shall not be substituted for environmental control measures in the active workings. Each operator shall maintain an adequate supply of respiratory equipment.
(b) When required to make respirators available, the operator shall provide training prior to the miner's next scheduled work shift, unless the miner received training within the previous 12 months on the types of respirators made available. The training shall include: the care, fit, use, and limitations of each type of respirator.
(c) An operator shall keep a record of the 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

As the UMWA has maintained throughout these comments, we oppose the use of respirators to replace engineering and environmental controls as was spelled out in the Legislative History of the Mine Act. While we do not advocate their use, we agree that an operator should make them available when miners want one.

§ 72.701 Respiratory equipment; gas, dusts, fumes, or mists.

Respiratory equipment approved by NIOSH under 42 CFR part 84 shall be provided to persons exposed for short periods to inhalation hazards from gas, dusts, fumes, or mists. When the exposure is for prolonged periods, other measures to protect such persons or to reduce the hazard shall be taken.

COMMENT

We would repeat the same comment here as on 72.700.

§ 72.800 Single, full-shift measurement of respirable coal mine dust.

The Secretary may use a single, full-shift measurement of respirable coal mine dust to determine average concentration on a shift if that measurement accurately represents atmospheric conditions to which a miner is exposed during such shift.

COMMENT

Historically, the UMWA has gone on record supporting the concept of "Single Shift Sampling". This was based on the current system in place with the use of the gravimetric. The proposed rule outlines the Secretary's litigation history concerning single shift sampling.

To date, MSHA has continued to monitor miner's exposures based on the accumulated dose. Although in the years following the courts Excel Decision, we continued to support the use of a single shift sample, to our knowledge research cannot prove that a single shift sample with a concentration above 2.0 milligrams per cubic meter can cause black lung disease. Considering that along with the new technology whereby the PDM will be replacing the old gravimetric, we are now prepared to take a different approach towards protecting miners from being exposed to excessive respirable dust.

Because the PDM has the capability to monitor a miner's real time exposure 24/7, we have proposed a study (with the outcome of the results being applied to the final rule), using the dose concept that measures actual exposures, considering all hours worked on each production shift for each calendar week of the year. With this new technology, miners and mine operators will be able to control and reduce miners' excessive exposures on the spot if and when overexposures start to occur. With this new technology, the single shift sample will no longer be needed to serve as the stick as we originally thought was required with the use of the gravimetric sampling system. Each actual exposure will be available on a shift-by-shift basis on an ongoing basis under the new PDM sampling protocol.

PART 75 - MANDATORY SAFETY STANDARDS-UNDERGROUND COAL MINES

§ 75.325 Air quantity.

(a) * * *

(2) The quantity of air reaching the working face shall be determined at or near the face end of the line curtain, ventilation tubing, or other ventilation control device. If the curtain, tubing, or device extends beyond the last row of permanent roof supports, the quantity of air reaching the working face shall be determined behind the line curtain or in the ventilation tubing at or near the last row of permanent supports. When machine mounted dust collectors are used in conjunction with blowing

face ventilation systems, the quantity of air reaching the working face shall be determined with the dust collector turned off.
* * * * *

COMMENT

The UMWA supports the proposed change to this standard. The proposed change to this standard simply adds language to require machine mounted dust collectors to be turned off when making air measurements. The UMWA agrees that such devices should be disengaged when taking an air measurement to assure they do not interfere with the movement of air or the volume of air being measured.

§ 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

The UMWA would support this change to the standard. The proposed change to this section simply requires a separate split of air for each MMU which will require "super sections" to have a separate split of air for each set of mining equipment.

§ 75.350 Belt air course ventilation.

(b) * * *
(3) (i) The average concentration of respirable dust in the belt air course, when used as a section intake air course, shall be maintained at or below:
(A) 1.0 mg/m3
(B) 0.5 mg/m3 as of [date 6 months after the effective date of the final rule] .
(ii) Where miners on the working section are on a reduced standard below that specified in § 75.350(b) (3) (I), the average concentration of respirable dust in the belt entry must be at or below the lowest applicable standard on that section.
* * * * *

COMMENT

The UMWA supports this change to the rule. The proposed change will reduce the permissible concentration of respirable dust in the belt entry to 0.5 mg/m3. While the UMWA

supports a reduction in respirable dust concentration in the belt entry, we believe the study we recommended should set these parameters.

§ 75.362 On-shift examinations.

(a) * * *

(2) A person designated by the operator shall conduct an examination and record the results and the corrective actions taken to assure compliance with the respirable dust control parameters specified in the approved mine ventilation plan. In those instances when a shift change is accomplished without an interruption in production on a section, the examination shall be made anytime within 1 hour of the shift change. In those instances when there is an interruption in production during the shift change, the examination shall be made before production begins on a section. Deficiencies in dust controls shall be corrected before production begins or resumes. The examination shall include: air quantities and velocities; water pressures and flow rates; excessive leakage in the water delivery system; water spray numbers and orientations; section ventilation and control device placement and any other dust suppression measures; specific measurements like roof bolter dust collector vacuum levels and scrubber air flow rate; and work practices required by the ventilation plan . Measurements of the air velocity and quantity, water pressure and flow rates are not required if continuous monitoring of these controls is used and indicates that the dust controls are functioning properly.

* * * * *

(g) (2) The certified person directing the on-shift examination to assure compliance with the respirable dust control parameters specified in the approved mine ventilation plan shall:

(i) Certify by initials, date, and time on a board maintained at the section load-out or similar location showing that the examination was made prior to resuming production; and

(ii) Verify, by initials and date, the record of the results of the examination required under paragraph (a) (2) of this section to assure compliance with the respirable dust control parameters specified in the mine ventilation plan. The verification shall be made no later than the end of the shift for which the examination was made.

(3) The mine foreman or equivalent mine official shall countersign each examination record required under paragraph (a) (2) of this section after it is verified by the certified person under paragraph (g) (2) (ii)of this section, and no later than 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.

(4) 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.

COMMENT

The changes made to this section will specify the locations where the on-shift examiner must certify by date and initial to show he actually examined the respirable dust control parameters. It further requires the countersign of the mine foreman or equivalent mine official to assure that all responsible officials are aware of the results of such examination. The UMWA supports these changes and believes that requiring these mine management officials to sign off, it will help emphasize the seriousness of these protections. In the past we have learned of too many instances when mine managers turned a blind eye, or affirmatively disregarded the regulations and legal requirements. We believe that it is time to hold them accountable including penalties for perjury for critical health and safety protections.

23. Amend § 75.371 by revising paragraphs (f), (j) and (t) to read as follows:

§ 75.371 Mine ventilation plan; contents.

* * * * *

(f) Section and face ventilation systems used and the minimum quantity of air that will be delivered to the working section for each mechanized mining unit, including drawings illustrating how each system is used, and a description of each different dust suppression system used on equipment, identified by make and model, on each working section, including:

(1) The number, types, location, orientation, operating pressure, and flow rate of operating water sprays;

(2) The maximum distance that ventilation control devices will be installed from each working face when mining or installing roof bolts in entries and crosscuts;

(3) Procedures for maintaining the roof bolter dust collection system in approved condition; and

(4) Recommended best work practices for equipment operators to minimize dust exposure.

* * * * *

(j) The operating volume of machine mounted dust collectors or diffuser fans, if used (see § 75.325 (a) (3)) , including the type and size of dust collector screen used, and a description of the procedures to maintain dust collectors used on equipment.

* * * * *

(t) The locations where samples for "designated areas" will be collected, including the specific location of each sampling device, and the respirable dust control measures used at the dust generating sources for these locations (see § 70.209 of this chapter).

* * * * *

COMMENT

This proposed rule would add additional information to be required in the mine ventilation plan to include specifics regarding the dust control parameters in use at the mine. The UMWA

supports this change.

PART 90 - MANDATORY HEALTH STANDARDS FOR COAL MINERS WHO HAVE EVIDENCE OF THE DEVELOPMENT OF PNEUMOCONIOSIS

24. The authority citation for part 90 is revised to read as follows:

Authority: 30 U.S.C. 811, 813(h) and 957.

25. Section 90.1 is revised to read as follows:

§ 90.1 Scope.

This part 90 establishes the option of miners who are employed at coal mines and who have evidence of the development of pneumoconiosis to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift is continuously maintained at or below the applicable standard as specified in § 90.100. The rule sets forth procedures for miners to exercise this option, and establishes the right of miners to retain their regular rate of pay and receive wage increases. The rule also sets forth the operator's obligations, including respirable dust sampling for part 90 miners. This part 90 is promulgated pursuant to section 101 of the Act and supersedes section 203(b) of the Federal Mine Safety and Health Act of 1977, as amended.

COMMENT

The UMWA supports this proposal. We believe it is important to include surface miners as they, too, have suffered black lung disease from coal dust exposure.

26. Amend § 90.2 by:
a. Adding definitions for "Approved sampling device," "Coal mine dust personal sampler unit (CMDPSU)," "Continuous personal dust monitor (CPDM) ," "Equivalent concentration," "Representative samples," "Weekly accumulated exposure (WAE) ," and "Weekly permissible accumulated exposure (WPAE);" and
b. Revising definitions for "Act," "Mechanized mining unit (MMU) ," and "Part 90 Miner."
The additions and revisions are revised to read as follows:

§ 90.2 Definitions.

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

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

* * * * *

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.

* * * * *

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.

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

(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.

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) of this chapter. Each MMU is assigned a four-digit identification number by MSHA, which is retained by the MMU. However, when:

(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.

(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.

* * * * *

Part 90 miner. A miner employed at a coal mine who has exercised the option under the old section 203(b) program, or under § 90.3 of this part to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below the applicable standard, and who has not waived

these rights.

Quartz. Crystalline silicon dioxide (Si02) 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.
Representative samples . Respirable dust samples that
reflect typical dust concentration levels in the working environment of the part 90 miner when performing normal work duties.
* * * * *
Weekly accumulated exposure (WAE). The total amount of exposure to respirable coal mine dust, expressed in mg*hr/m3* , accumulated by a part 90 miner when performing normal work duties during a work week (Sunday through 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.
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 a part 90 miner when performing normal work duties during a 40-hour work week (Sunday through Saturday),determined by multiplying the applicable standard by 40 hours.

COMMENT

The UMWA supports this proposal.

27. Section 90.3 is revised to read as follows:

§ 90.3 Part 90 option; notice of eligibility; exercise of option.

(a) Any miner employed at a coal mine who, in the judgment of the Secretary of HHS, has evidence of the development of pneumoconiosis based on a chest X-ray, read and classified in the manner prescribed by the Secretary of HHS, or based on other medical examinations shall be afforded the option to work in an area of a mine where the average concentration of respirable dust in the mine atmosphere during each shift to which that miner is exposed is continuously maintained at or below the applicable standard. Each of these miners shall be notified in writing of eligibility to exercise the option.
(b) Any miner who is a section 203(b) miner on January 31, 1981, shall be a part 90 miner on February 1, 1981, entitled to full rights under this part to retention of pay rate, future actual wage increases, and future work assignment, shift and respirable dust protection.

(c) Any part 90 miner who is transferred to a position at the same or another coal mine shall remain a part 90 miner entitled to full rights under this part at the new work assignment.
(d) The option to work in a low dust area of the mine may be exercised for the first time by any miner employed at a coal mine who was eligible for the option under the old section 203(b) program, or is eligible for the option under this part by signing and dating the Exercise of Option Form and mailing the form to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 1100 Wilson Boulevard, Arlington, Virginia 22209.
(e) The option to work in a low dust area of the mine may be re-exercised by any miner employed at a coal mine who exercised the option under the old section 203(b) program, or exercised the option under this part by sending a written request to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, 1100 Wilson Boulevard, Arlington, Virginia 22209. The request should include the name and address of the mine and operator where the miner is employed.
(f) No operator shall require from a miner a copy of the medical information received from the Secretary or Secretary of HHS.

COMMENT

The UMWA supports this proposal.

§ 90.100 Respirable dust standard.

After the 20th calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which the part 90 miner in the active workings of the mine is exposed, as measured with an approved sampling device and in terms of an equivalent concentration, at or below:
(a) 1.0 milligrams of respirable dust per cubic meter of air (mg/m3).
(b) 0.5 mg/m3 as of [date 6 months after the effective date of the final rule]

COMMENT

This proposed rule would lower the permissible concentration of respirable dust in the mine atmosphere for Part 90 miners from 1.0 mg/m3 down to 0.5mg/m3 six months after the effective date of the final rule. Part 90 miners must be removed from a dusty environment to prevent further disability from pneumoconiosis. A 0.5mg/m3 is not unreasonable in this instance. The UMWA supports this change.

§ 90.101 Respirable dust standard when guartz is present.
(a) Each operator shall continuously maintain the average concentration of respirable quartz dust in

the mine atmosphere during each shift to which a part 90 miner in the active workings of each mine is exposed at or below 0.1 mg/m3 (100 micrograms per cubic meter or pg/m3) as measured with an approved sampling device and in terms of an equivalent concentration.
(b) When the mine atmosphere of the active workings where the part 90 miner performs his or her normal work duties exceeds 100 pg/m3 of respirable quartz dust, the operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which a part 90 miner 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 an applicable standard that exceeds the standards specified in 90.100.
Example: Assume the part 90 *miner is* on a *0.5-mg/m3 dust standard. Suppose* a *valid respirable dust sample with* an *equivalent concentration* of *0.5 mg/m3 contains* 25.6% of *quartz dust, which corresponds* to a *quartz concentration* of 128 ~g/m3 . *Therefore, the average concentration* of *respirable dust in the mine atmosphere associated with that part* 90 *miner shall be maintained* on *each shift* at or *below 0 . 4 mg/m3 (10/25.6% = 0.4 mg/m3).*

COMMENT

This proposed rule would account for the concentration of respirable quartz dust in the mine atmosphere to which a Part 90 miner is exposed and reduces the respirable dust concentration to compensate for the quartz in the atmosphere. The UMWA supports this proposal.

§ 90.102 Transfer; notice.

(a) Whenever a part 90 miner is transferred in order to meet the applicable standard, the operator shall transfer the miner to an existing position at the same coal mine on the same shift or shift rotation on which the miner was employed immediately before the transfer. The operator may transfer a part 90 miner to a different coal mine, a newly-created position or a position on a different shift or shift rotation if the miner agrees in writing to the transfer. The requirements of this paragraph do not apply when the respirable dust concentration in a part 90 miner's work position complies with the applicable standard but circumstances, such as reductions in workforce or changes in operational status, require a change in the miner's job or shift assignment.
(b) On or before the 20th calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine, the operator shall give the District Manager written notice of the occupation and, if applicable, the MMU unit to which the part 90 miner shall be assigned on the 21st calendar day following receipt of the notification from MSHA.
(c) After the 20th calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine, the operator shall give the District Manager written notice before any transfer of a part 90 miner. This notice shall include the scheduled date of the transfer.

COMMENT

This proposed rule has little change from the current standard which provides for the Part 90 miner's transfer to a less dusty job, and the UMWA supports this proposal.

§ 90.103 Compensation.

(a) The operator shall compensate each part 90 miner at not less than the regular rate of pay received by that miner immediately before exercising the option under § 90.3.
(b) Whenever a part 90 miner is transferred, the operator shall compensate the miner at not less than the regular rate of pay received by that miner immediately before the transfer.
(c) Once a miner has been placed in a position in compliance with the provisions of part 90, paragraphs (a)and (b) of this section do not apply when the part 90 miner initiates and accepts a change in work assignment for reasons of job preference.
(d) The operator shall compensate each miner who is a section 203(b) miner on January 31, 1981, at not less than the regular rate of pay that the miner is required to receive under section 203(b) of the Act immediately before the effective date of this part.
(e) In addition to the compensation required to be paid under paragraphs (a), (b) and (d) of this section, the operator shall pay each part 90 miner the actual wage increases that accrue to the classification to which the miner is assigned.
(f) If a miner is temporarily employed in an occupation other than his or her regular work classification for two months or more before exercising the option under § 90.3, the miner's regular rate of pay for purposes of paragraph (a) and (b) of this section is the higher of the temporary or regular rates of pay. If the temporary assignment is for less than two months, the operator may pay the part 90 miner at his or her regular work classification rate regardless of the temporary wage rate.
(g) If a part 90 miner is transferred, and the Secretary subsequently notifies the miner that notice of the miner's eligibility to exercise the part 90 option was incorrect, the operator shall retain the affected miner in the current position to which the miner is assigned and continue to pay the affected miner the applicable rate of pay provided in paragraphs (a), (b), (d) and *(e)* of this section, until:
(1) The affected miner and operator agree in writing to a position with pay at not less than the regular rate of pay for that occupation; or
(2) A position is available at the same coal mine in both the same occupation and on the same shift on which the miner was employed immediately before exercising the option under § 90.3 or under the old section 203(b) program.
(i) When such a position is available, the operator shall offer the available position in writing to the affected miner with pay at not less than the regular rate of pay for that occupation.
(ii) If the affected miner accepts the available position in writing, the operator shall implement the miner's reassignment upon notice of the miner's acceptance. If the miner does not accept the

available position in writing, the miner may be reassigned and protections underpart 90 shall not apply. Failure by the miner to act on the written offer of the available position within 15 days after notice of the offer is received from the operator shall operate as an election not to accept the available position.

COMMENT

The UMWA supports this proposed rule. Under the rule, compensation protection for a Part 90 miner will not apply if he/she chooses to bid to another position with less pay. If the miner initiates and accepts a change in work assignment for reasons of job preference, the miner will be paid the wage of that position even if it is less than his current position. The UMWA understands that the wage protection will only apply when the miner exercises his option under Part 90 to be removed to a less dusty area. That protection will not follow him/her should they bid to another job based on a desire for another position.

§ 90.104 Waiver of rights; re-exercise of option.

(a) A part 90 miner may waive his or her rights and be removed from MSHA's active list of miners who have rights under part 90 by:
(1) Giving written notification to the Chief, Division of Health, Coal Mine Safety and Health, MSHA, that the miner waives all rights under this part;
(2) Applying for and accepting a position in an area of a mine which the miner knows has an average respirable dust concentration exceeding the applicable standard; or
(3) Refusing to accept another position offered by the operator at the same coal mine that meets the requirements of §§ 90.100, 90.101 and 90.102(a) after dust sampling shows that the present position exceeds the applicable standard.
(b) If rights under part 90 are waived, the miner gives up all rights under part 90 until the miner re-exercises the option in accordance with § 90.3(e) (Part 90 option; notice of eligibility; exercise of option) .
(c) If rights under part 90 are waived, the miner may re-exercise the option under this part in accordance with § 90.3(e) (Part 90 option; notice of eligibility; exercise of option) at any time.

COMMENT

The UMWA supports this proposed rule so long as the Part 90 miner retains the right to re-exercise his/her option under this part.

§ 90.201 Sampling; general and technical requirements.

(a) CMDPSUs shall be used to take samples of the concentration of respirable coal mine dust in the working environment of each part 90 miner as required by this part until replaced by CPDMs. After [date 12 months after the effective date of the final rule] / only approved CPDMs shall be used to sample part 90 miners unless notified by the Secretary.
(b) If using CMDPSUs, the sampling device shall be worn or carried to and from each part 90 miner. If using CPDMs, the sampling device shall be worn by the part 90 miner at all times. Approved sampling devices shall be operated portal to portal and shall be operational during the part 90 miner's entire shift, which includes the time spent performing normal work duties and while travelling to and from the assigned work location. If the work shift to be sampled is longer than 12 hours and the sampling device is:
(1) A CMDPSU, the operator shall switch-out the unit's sampling pump prior to the 13th-hour of operation.
(2) A CPDM, the operator shall switch-out the CPDM with a fully charged device prior to the 13th-hour of operation.
(c) Unless otherwise directed by the District Manager, the respirable dust samples required under this part using a CMDPSU shall be taken by placing the sampling device as follows:
(1) On the part 90 miner;
(2) On the piece of equipment which the part 90 miner operates within 36 inches of the normal working position; or
(3) At a location that represents the maximum concentration of dust to which the part 90 miner is exposed.
(d) 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 filter used for sampling;
(2) Remain plugged at all times;
(3) Be exposed to the same time, temperature, and handling conditions as the filter used for sampling; and
(4) Be kept with the exposed samples after sampling.
(e) The respirable dust samples required by this part and taken with a CMDPSU shall be collected while the part 90 miner is performing normal work duties.
(f) Records showing the length of each shift for each part 90 miner shall be made and retained for at least six months, and shall be made available for inspection by authorized representatives of the Secretary and submitted to the District Manager when requested in writing.
(g) 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.
(h) Operators using CPDMs shall provide training to all part 90 miners. The training shall be completed prior to a part 90 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.
(i) 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 or Secretary of HHS, the operator shall promptly provide access to any such training records.

COMMENT

The UMWA supports this proposal.

§ 90.202 Certified person; sampling.

(a) The respirable dust sampling required by this part shall be performed by a certified person.
(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 § 90.203(b) are not permitted to collect respirable dust samples required by this part or handle approved sampling devices when being used in sampling.
(c) To maintain certification, a person must pass the MSHA examination demonstrating competency in sampling procedures every three years.
(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

The UMWA repeats its comments on 70.202 and Question 16. We support this proposal and believe that an initial MSHA approved course of instruction with testing every three years to demonstrate competency is sufficient to establish whether the certified person is proficient in their duties. The only reason a person may need additional training is if they fail the three year re-examination or to upgrade training on new equipment or procedure changes.

§ 90.203 Certified person; maintenance and calibration.

(a) Approved sampling devices shall be maintained and calibrated by a certified person.
(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.
(c) To maintain certification, a person must pass the MSHA examination demonstrating competency in maintenance and calibration procedures every three years.
(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

The UMWA supports this proposed rule. We repeat our comment on 90.202 here.

§ 90.204 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 on the pump unit of approved sampling devices.
(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.
(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:
(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.
(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, Virginia22209-3939 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.

COMMENT

The UMWA supports this proposal.

§ 90.205 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.
(b) Except as provided in paragraph (c) of this section, 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.
(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.
(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 to assure sampling devices are operating properly.

COMMENT

The UMWA supports this proposal.

§ 90.206 CPDM Performance Plan.

(a) If using a CPDM, the operator shall have a CPDM Performance Plan approved by the District Manager to ensure that no part 90 miner is exposed to concentrations of respirable coal mine dust in excess of the applicable standard when performing normal work duties. An operator shall not implement a proposed CPDM Performance Plan until approved by the District Manager.
(b) The proposed CPDM Performance Plan and any proposed revision to the plan shall be submitted in writing to the District Manager, and shall be reviewed and approved in accordance with §§ 90.300 and 90.301 of this chapter.
(c) 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 specific part 90 miner who will be sampled, identified by the miner's unique 8-digit MSHA Individual Identification Number (MIIN).
(2) The pre-operational examinations, testing and setup procedures to verify the operational readiness of the sampling device before each sampling shift;
(3) Procedures that address downloading of end-ofshift sampling information, and validation and certification 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
(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.
(d) A copy of the approved CPDM Performance Plan and any revisions pertaining to a part 90 miner shall be provided to the affected part 90 miner. The operator shall not post a copy of the plan or any revisions on the mine bulletin board.

(e) 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 the part 90 miner from exposure to concentrations of respirable dust in excess of the applicable standard.

COMMENT

The UMWA recommends that the CPDM Performance Plan be provided to the miners' representative at least ten days prior to the plan's submission for approval. As pointed out in answers to Questions 21 and 27 as proposed, the miners' representative will not be provided sufficient time in advance of the plan submission to review it. Further, the miners' representative will only be provided a copy of the plan if it is requested. The miners' representative should not be required to request a copy of the plan and furthermore should be provided sufficient time for review and comment. Those employers that are signatory to the National Bituminous Coal Wage Agreement have an obligation under Article III Section (h) to provide the plan to the miners' representative at least ten days prior to submission for their review and comment. That experience proves that it is feasible for operators to provide a ten-day miners' review. We would recommend the proposed rule mirror our established procedure. For additional information see our answer to Questions No. 21 and 27.

§ 90.207 Exercise of option or transfer sampling.

(a) The operator shall take five valid respirable dust samples for each part 90 miner within 1S calendar days after:
(1) The 20-day period specified for each part 90 miner in § 90.100;
(2) Receipt of notification from MSHA that any respirable dust sample taken in accordance with § 90.208 exceeds the applicable standard.
(3) Implementing any transfer after the 20th calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine.

COMMENT

The UMWA supports this proposal.

§ 90.208 Compliance sampling; procedures for sampling with CMDPSUs.

(a) Each operator shall take five valid representative samples every calendar quarter from the environment of the part 90 miner while performing normal work duties. Part 90 miner samples shall be collected on consecutive work days.

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 § 90.101, the new applicable standard shall become effective on the first shift on which the part 90 miner is performing normal work duties following receipt of 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 part 90 miner shall begin on the first shift on which the miner is performing normal work duties during the next quarterly period following notification of such change.
(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 samples from the affected part 90 miner on consecutive work days until five valid representative samples are collected. The samples collected will be treated as normal quarterly samples under this part.
(c) No valid single-shift equivalent concentration shall meet or exceed the excessive concentration value (ECV) that corresponds to the applicable standard in Table 90-1.
(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 part 90 miner 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 the affected part 90 miner in accordance with § 72.700 of this chapter;
(2) Submit to the District Manager for approval proposed corrective actions to lower the concentration of respirable dust to within the applicable standard. If the corrective action involves:
(i) Reducing the respirable dust levels in the work environment of the part 90 miner identified in the citation, the operator shall implement the proposed corrective actions following receipt of approval by the District Manager and then sample the affected miner until five valid representative samples are taken.
(ii) Transferring the part 90 miner to another work position at the mine to meet the applicable standard, the operator shall comply with § 90.102 and then sample the affected miner in accordance with § 90.207(a).
(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 and, within 15 calendar days after receipt of sampling results from MSHA indicating the concentration has been reduced to or below the applicable standard, the operator has submitted to the District Manager for approval a proposed dust control plan for that part

90 miner or proposed changes to the approved dust control plan as prescribed in § 90.300. The revised parameters shall reflect the control measures used to maintain the concentration of respirable dust to or below the applicable standard.
(g) 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 90-1, the operator shall:
(1) Make approved respiratory equipment available to the affected part 90 miner in accordance with § 72.700 of this chapter;
(2) Take corrective action to lower the concentration of respirable dust to or below the applicable standard.
(3) Record the corrective actions taken in the same manner as the records for hazardous conditions required by § 75.363 of this chapter.

TABLE 90-1-EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON SINGLE-SHIFT CMDPSU EQUIVALENT CONCENTRATION MEASUREMENTS

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

COMMENT

As the UMWA points out throughout our comments, we oppose the use of respirators as a regular means of dust control. A Part 90 miner would already have impaired breathing and to suggest that a miner exhibiting development of pneumoconiosis should be required to wear a

respirator is unreasonable. A respirator would restrict his respiration even further. A Part 90 miner should be removed from the environment when any sample exceeds applicable limits. When the miner is removed, his/her pay should not be adversely affected in any manner.

§ 90.209 Compliance sampling; procedures for sampling with CPDMs.

(a) Each operator shall sample the working environment of the part 90 miner during each shift, seven days per week (Sunday through Saturday), if applicable, 52 weeks per year.
(b) When the respirable dust standard is changed in accordance with § 90.101, the new applicable standard shall become effective on the first shift on which the part 90 miner is performing normal work duties following receipt of notification of such change from MSHA.
(c) No valid end-of-shift equivalent concentration shall meet or exceed the excessive concentration value (ECV) that corresponds to the applicable standard in Table 90-2.
(d) No weekly accumulated exposure shall exceed the weekly permissible accumulated exposure.
(e) When a valid end-of-shift equivalent concentration meets or exceeds the applicable ECV or a weekly accumulated exposure exceeds the weekly permissible accumulated exposure, the operator shall take the following actions before the part 90 miner's next work shift:
(1) Make approved respiratory equipment available to affected part 90 miners in accordance with § 72.700 of this chapter;
(2) Implement corrective actions to assure compliance with the applicable standard on the next and other subsequent work shifts;
(3) If the corrective actions implemented to lower the concentration of respirable dust to within the applicable standard involve implementation of dust control measures, the operator shall submit to the District Manager for approval, within 3 days of determining that the applicable standard has been exceeded, the corrective actions as a proposed dust control plan for the part 90 miner or proposed changes to the approved part 90 dust control plan as prescribed in § 90.300;
(4) Review the adequacy of the approved CPDM
Performance Plan applicable to the part 90 miner. The operator shall submit any plan revisions to the District Manager for approval within 7 calendar days after the operator provides the end-of-shift equivalent concentration or the weekly accumulated exposure to the affected part 90
miner; and
(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 the weekly permissible accumulated exposure; and
(v) Corrective actions taken to reduce the concentration of respirable coal mine dust to or below the

applicable standard.
(6) If the corrective action involves transferring the part 90 miner to another position at the mine to meet the applicable standard, the operator shall comply with § 90.102(c) and then sample the affected miner in accordance with § 90.207(a).
(f) When any valid end-of-shift equivalent concentration exceeds the applicable standard but is less than the applicable ECV in Table 90-2, the operator shall take the following actions:
(1) Make approved respiratory equipment available to affected part 90 miners in accordance with § 72.700 of this chapter;
(2) Implement corrective actions to assure compliance with the applicable standard on the next and other subsequent work shifts; and
(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
(4) Review the adequacy of the approved CPDM Performance Plan applicable to part 90 miners. The operator shall submit any plan revisions to the District Manager for approval within 7 calendar days after the operator provides the end-of-shift equivalent concentration to the affected part 90 miner.

TABLE 90-2-EXCESSIVE CONCENTRATION VALUES (ECV) BASED ON SINGLE-SHIFT CPDM EQUIVALENT CONCENTRATION MEASUREMENTS

Applicable Standard (mg/m^3)	ECV (mg/m^3)
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

COMMENT

The UMWA's comments here mirror those on 90.208 above with regard to the use of respirators. Based on the results of the study we propose, the ECV's in this table may need to be adjusted.

§ 90.210 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: 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

The UMWA insists that all CPDM data files be maintained by the operator for at least 24

months and be made available to all interested parties. The UMWA has no problem with this part of the proposed rule and would support it.

§ 90.211 Respirable dust samples; report to operator.

(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 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;
(4) The average concentration of respirable dust, expressed as an equivalent concentration in milligrams per cubic meter of air, for all valid samples;5~
(5) The occupation code;
(6) The reason for voiding any sample; and
(7) The part 90 miner's MSHA Individual Identification Number (MIIN).
(b) Upon receipt, the operator shall provide a copy of this report to the part 90 miner. The operator shall not post the original or a copy of this report on the mine bulletin board.
(c) If using a CPDM, the designated mine official shall validate, certify and provide to each part 90 miner:
(1) Within the first hour of the part 90 miner's next work shift, the daily end-of-shift sampling results applicable to that part 90 miner. The daily report shall include:
(i) The mine identification number;
(ii) The location 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 part 90 miner;
(v) The occupation code;
(vi) The reason for voiding any sample;
(vii) The part 90 miner's MSHA Individual Identification Number (MIIN).
(viii) The shift length; and
(ix) Any other information required by the District Manager.
(2) Within 1 hour after the start of the part 90 miner's next work shift of a new work week (Sunday through Saturday), the weekly accumulated exposure and the weekly permissible accumulated exposure applicable to that part 90 miner.
(d) The operator shall not post data on respirable dust samples for part 90 miners on the mine bulletin board.

COMMENT

This proposed rule dictates parameters for information reported back to the mine operator from MSHA after the sample results have been determined. We agree that a Part 90 miner's sample results must be kept confidential, but shared with the Part 90 miner himself. We support this proposal.

§ 90.212 Status change reports.

(a) If there is a change in the status of a part 90 miner (such as entering a terminated, injured or ill status, or returning to work), the operator shall report the change in the status of the part 90 miner to the MSHA District Office or to any other MSHA office designated by the District Manager. Status changes shall be reported in writing or by electronic means within 3 working days after the status change has occurred.
(b) 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

The UMWA supports this proposed rule which requires the mine operator to report status changes of a Part 90 miner and the operational readiness of any CPDM.

§ 90.300 Respirable dust control plan; filing requirements.

(a) As required by § 90.208(f) and § 90.209(e) (3), the operator shall submit to the District Manager for approval a written respirable dust control plan for the part 90 miner in the position 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 for that part 90 miner.
(b) Each respirable dust control plan shall include at least the following:
(1) The mine identification 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 name and MSHA Individual Identification Number of the part 90 miner and the position at the mine to which the plan applies;
(3) A detailed description of the specific respirable dust control measures used to continuously

maintain concentrations of respirable coal mine dust at or below the applicable 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.

COMMENT

The UMWA supports this proposed rule. This rule would dictate the filing requirements for a dust control plan governing a Part 90 miners' working conditions and measures to control the dust in his/her work environment. This plan should be made available to the representative of the miners. The plan only dictates measures required to control the dust in the Part 90 miners' environment and does not identify the Part 90 miner so this should not be a problem. Aside from that one recommended change, we would support this proposal.

§ 90.301 Respirable dust control plan; approval by District Manager; copy to part 90 miner.

(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:
(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.
(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 operator shall provide a copy of the current respirable dust control plan required under this part to the part 90 miner. The operator shall not post the original or a copy of the plan on the mine bulletin board.
(e) The operator may review respirable dust control plans and submit proposed revisions to such plans to the District Manager for approval.

COMMENT

This proposed rule would require the approved respirable dust control plan for Part 90 miners be provided to the Part 90 miner but not posted on the mine bulletin board. The UMWA recommends that a copy of the plan be made available to the representative of the miners if

requested. The plan will simply dictate the parameters of the respirable dust control measures required where a Part 90 miner is working and would not identify the Part 90 miner. Such information should be made available to the miners' representative if there is an interest or need to know. Otherwise, the UMWA can support this proposed rule.

On March 8, 2011 MSHA published in the Federal Register a request for comment on 27 key provisions of the proposed rule in response to issues raised during the public hearings. The UMWA's comments on each of these issues are as follows:

1. The proposed rule presents an integrated comprehensive approach for lowering miners' exposure to respirable coal mine dust. The Agency is interested in alternatives to the proposal which would be effective in reducing miners' respirable dust exposure and invites comments on any alternatives.

Comments

The UMWA interprets this issue to request information regarding alternatives such as respirators and air stream helmets as an approach to lowering miners' exposure to respirable coal mine dust. The UMWA opposes relying on such devices to lower exposure to respirable coal mine dust. The legislative history of the Mine Act makes clear that Congress expressly prohibited the use of personal protective devices such as respirators or air stream helmets. The Legislative History of the Mine Act provides explicit insight to the recommendations and reasoning of the Subcommittee on Labor. On February 27, 1969, the Subcommittee on Labor began its hearings on coal mine health and safety legislation. The Subcommittee devoted 3 days to executive consideration of the legislation before reporting its recommendations to the full Committee on Labor and Public Welfare. After 10 additional days of executive consideration, on July 31, 1969, the full committee, by a unanimous roll call vote, ordered this legislation reported to the Senate. The Committee's discussions on this issue were as follows:

The Use of Respirators

The committee bill expressly prohibits, as a general policy, the use of personal protective devices, including respirators, as a substitute for environmental controls measures. Both the Public Health Service and the Bureau of Mines consider such devices to be neither desirable nor practical for the rigorous physical operations involved in coal mining. Admittedly, certain types of respirators(such as those with built-in air supplies or attached to a source of filtered fresh air, commonly called supplied air respirators) can provide virtually 100 percent protection of the respiratory tract. But these types of devices present weight and other problems which limit the user's working efficiency, and may

cause increased accident hazards in the confined environment of a coal mine.

Use of this equipment has been for emergency situations where personnel are exposed to contaminants which have a rapid effect on life or health after comparatively short periods, and for non-emergency situations in which engineering control measures or other means of minimizing the exposure are not practical.

The mechanical filter respirators-the more common type of devices which might be used in a coal mine situation-present special problems. First, the weight of medical testimony raised serious doubt as to the ability of these filters to trap the fine particles of the respirable coal dust which cause pneumoconiosis. Secondly, the Department of the Interior reported that the use of such devices significantly reduces the ability of miners afflicted with pneumoconiosis to breathe.

The ability of air to pass through the filter decreases with the increase of contaminants trapped. There is a resulting possibility that the worker will remove the filter and not replace it, thereby negating the protection provided. In the case of supplied air respirators, the possibility of carbon monoxide being drawn into the supply line also cannot be overlooked.

The record demonstrates that there are extreme difficulties in obtaining cooperation from workers asked to utilize personal protective equipment. It also should be noted with regard to respirators and similar devices, that a comprehensive maintenance program is necessary to keep them effective. Unlike the miner's helmet and his safety goggles, respiratory protective equipment may be defective, although there is no fitting, and there must be a continuous technical effort for cleaning, inspection, and maintenance.

Accordingly, it was the view of the committee that this type of equipment cannot be used as a substitute for environmental control measures, but rather should be used only in those specialized occasional situations specifically authorized in the bill.

Congress made clear that the use of such alternative means of lowering miners' exposure to respirable dust should not include respirators or air stream helmets. The Committee clearly expressed concern that "these types of devices present weight and other problems which limit the user's working efficiency, and may cause increased accident hazards in the confined environment of a coal mine." The concern Congress expressed still pertain decades later.

Air stream helmets have been the subject of complaints for many years. The units fog up creating vision obstructions and they are uncomfortable to miners. Today's miner has much more equipment to carry on their person than they did in 1969. The CPDM itself will add considerable weight for the miner to carry. Neither the air stream helmets nor respirators should be considered, as Congress directed. Mine operators have long argued that they could not develop engineering controls, and have sought to replace such controls with respiratory

protection. However, mine operators have developed an array of engineering controls to contain the respirable dust when they had to. If the final rule permits the use of respiratory protection in lieu of engineering controls to contain coal dust, it will halt future development of respirable mine dust control technology because the incentive to develop these technologies will not be there. The Union would submit that technology needs to continue to improve for engineering and environmental controls and expects MSHA to abide by the intent of Congress that dust be controlled through these means.

Furthermore, the use of respirators would limit the miners' ability to communicate with one another, besides being uncomfortable and interfering with the miners' ability to do his/her job. The UMWA vehemently opposes the use of respirators or air stream helmets to achieve compliance. In the Legislative History of the Mine Act, Congress clearly stated that respirable dust in the mine atmosphere shall be controlled through environmental and engineering controls and not through the use of respirators.

2. MSHA solicits comments on the proposed respirable dust concentration limits. Please provide alternatives to the proposed limits to be considered in developing the final rule, including specific suggested limits and your rationale.

Comments

The UMWA agrees that dust concentrations must be lowered and that this should be done with a phased-in reduction in concentrations of respirable dust. The UMWA has historically supported the NIOSH recommendation of lowering respirable dust concentration limits to 1.0 mg/m3 over a ten hour shift but realizes that the NIOSH study is dated and should be updated using the new Continuous Personal Dust Monitor. As the UMWA has testified at several of the public hearings, we suggest there be a study conducted by MSHA, NIOSH Industry and Labor to evaluate what dust concentrations are achievable. We recommend that a study would be conducted over a twenty-four month period using the Continuous Personal Dust Monitor, and making sure that MSHA required dust control parameters are in place to see what dust standard is achievable with the use of the new technology of the CPDM. A study of this nature would have to include multiple mines with varying conditions, such as type of coal mined, whether rock is cut, and other factors that reflect the range of coal mining conditions. We agree that the respirable dust limits must be reduced, but the data used by the 1995 NIOSH recommendation does not give a true reflection of today's work schedules and seams of coal being mined. A study with the CPDM with its capability to collect realtime data 24/7 will give a true reflection of setting a standard that will best protect the miners and mine environment.

3. The proposed rule bases the proposed respirable dust standards on an 8-hour work shift and a 40-hour workweek. In its 1995 Criteria Document on Occupational Exposure to Respirable Coal Mine Dust, the National Institute for Occupational Safety and Health (NIOSH) recommended lowering exposure to 1.0 mg/m\3\ for each miner for up to a 10-hour work shift during a 40-hour workweek. MSHA solicits comments on the NIOSH recommendation.

Comments

The UMWA agrees that dust concentrations must be lowered and that this should be done with a phased-in reduction in concentrations of respirable dust. The UMWA has historically supported the NIOSH recommendation of lowering respirable dust concentration limits to 1.0 mg/m3 over a ten hour shift but realizes that the NIOSH study is dated and should be updated using the new Continuous Personal Dust Monitor. As the UMWA has testified at several of the public hearings, we suggest there be a study conducted by MSHA, NIOSH, Industry and Labor to evaluate what dust concentrations are achievable. We recommend that such a study would be conducted over a twenty-four month period using the Continuous Personal Dust Monitor, and making sure that all MSHA required dust control parameters are in place to see what standard is protective and achievable. A study of this nature would have to include multiple mines with varying conditions, such as type of coal mined, whether rock is cut, and other factors that reflect the range of coal mining conditions. We agree that the respirable dust limits must be reduced, but are open to a closer look with new data collected from a study with the use of the CPDM and would be willing to accept the outcome of such a study to set the dust concentrations in the rule.

4. MSHA included the proposed phase-in periods for the proposed lower respirable dust standards to provide sufficient time for mine operators to implement or upgrade engineering or environmental controls. MSHA solicits comments on alternative time frames and factors that the Agency should consider. Please include any information and detailed rationale.

Comments

The UMWA supports a phase-in period for mine operators to implement the new dust rule. We understand that the necessary equipment is not yet available in the numbers needed and therefore compliance with the new standards will take time to bring all of industry into compliance with the new respirable dust limits. The Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers also recognized that a phase-in period would be necessary. The Advisory Committee addressed this issue in their Recommendation No. 1 - MSHA should consider lowering the level of allowable exposure to coal mine dust. Any

reduction in the level should include a phase-in period to allow allocation of sufficient resources to the compliance effort. The Advisory Committee stated further - In the interim, the operators, MSHA and miners should develop a comprehensive program to assure compliance with the current permissible exposure level. This effort should include at least targeted compliance efforts, sharing of documented exposure reduction approaches (e.g., increased water sprays, scrubbers on continuous miners, dust control plan parameters), and increased "good faith effort" consideration in enforcement actions. The UMWA would agree with this statement and realizes that the new rule and lower dust levels will take time to be phased-in and industry compliance achieved.

5. In the proposal, MSHA also plans to phase in the use of Continuous Personal Dust Monitors (CPDMs) to sample production areas of underground mines and Part 90 miners. MSHA solicits comments on the proposed phasing in of CPDMs, including time periods and any information with respect to their availability. If shorter or longer time frames are recommended, please provide the rationale.

Comments

The UMWA understands that there will be a phase-in period for the CPDM. Because there is only one manufacturer of the CPDM the demand for this product will likely exceed the manufacturer's ability to produce enough units to supply the entire industry at once. The twenty-four month study will determine the implementation dates but not to exceed the twenty-four months of the study itself..

6. MSHA has received a number of comments about the use of the CPDM. For operators who have used this device, MSHA is interested in receiving information related to its use. For example, MSHA is interested in information related to the durability of the unit, whether and how often the unit had to be repaired, type of repair, cost of repair, whether the repair was covered under warranty, how long the unit was unavailable, and any additional relevant information.

Comments

One suggestion we would offer is that the CPDM be redesigned to include a visual signal when the miners exposure levels have been reached. Testimony at the Arlington, VA public hearing complained that the miners did not have the ability to focus on their jobs and keep an

eye on their exposure limit on the CPDM. For this reason, the UMWA would like to see a visual signal on the device to warn the miner when these limits have been reached. We would also like to see the manufacturer make the unit more lightweight to make it more user-friendly for the miners.

7. MSHA understands that some work shifts are longer than 12 hours, and that dust sampling devices generally last for approximately 12 hours. MSHA solicits comments on appropriate time frames to switch out sampling devices, Coal Mine Dust Personal Sampler Units (CMDPSUs, i.e., gravimetric samplers) or CPDMs, to ensure continued operation and uninterrupted protection for miners for the entire shift.

Comments

The UMWA/BCOA National Bituminous Coal Wage Agreement provides for alternative work schedules which require a miner to work shifts that exceed eight hours. The "weekend warrior" schedule specifically requires a miner to work two twelve-hour shifts and one ten hour shift over weekends and on holidays. Further, it is not uncommon for miners to "double back" and work two shifts which would equal sixteen hours at work. There are miners who work as long as an eighteen hour shift. Even though a CPDM will last approximately twelve hours, it would probably be best to change the sampling device after the end of an eight hour shift to make certain the unit has enough battery life to cover the number of hours a miner works. The results of the samples could then be combined.

8. The proposed single sample provision is based on improvements in sampling technology, MSHA experience, updated data, and comments and testimony from earlier notices and proposals that addressed the accuracy of single sample measurements. The Agency is particularly interested in comments on new information added to the record since October 2003 concerning MSHA's Quantitative Risk Assessment, technological and economic feasibility, compliance costs, and benefits.

Comments

Historically, the UMWA has gone on record supporting the concept of "Single Shift Sampling". This was based on the current system in place with the use of the gravimetric. The proposed rule outlines the Secretary's litigation history concerning single shift sampling.

To date, MSHA has continued to monitor miner's exposures based on the accumulated dose. Although in the years following the courts Excel Decision, we continued to support the use of a single shift sample, to our knowledge research cannot prove that a single shift sample with a concentration above 2.0 milligrams per cubic meter can cause black lung disease. Considering that along with the new technology whereby the PDM will be replacing the old gravimetric, we are now prepared to take a different approach towards protecting miners from being exposed to excessive respirable dust.

Because the PDM has the capability to monitor a miner's real time exposure 24/7, we have proposed a study (with the outcome of the results being applied to the final rule), using the dose concept that measures actual exposures, considering all hours worked on each production shift for each calendar week of the year. With this new technology, miners and mine operators will be able to control and reduce miners' excessive exposures on the spot if and when overexposures start to occur. With this new technology, the single shift sample will no longer be needed to serve as the stick as we originally thought was required with the use of the gravimetric sampling system. Each actual exposure will be available on a shift-by-shift basis on an ongoing basis under the new PDM sampling protocol.

9. MSHA is interested in commenters' views on what actions should be taken by MSHA and the mine operator when a single shift respirable dust sample meets or exceeds the Excessive Concentration Value (ECV). In this situation, if operators use a CPDM, what alternative actions to those contained in the proposed rule would you suggest that MSHA and the operator take? MSHA is particularly interested in alternatives to those in the proposal and how such alternatives would be protective of miners.

Comments

Historically, the UMWA has gone on record supporting the concept of "Single Shift Sampling". This was based on the current system in place with the use of the gravimetric. The proposed rule outlines the Secretary's litigation history concerning single shift sampling.

To date, MSHA has continued to monitor miner's exposures based on the accumulated dose. Although in the years following the courts Excel Decision, we continued to support the use of a single shift sample, to our knowledge research cannot prove that a single shift sample with a concentration above 2.0 milligrams per cubic meter can cause black lung disease. Considering that along with the new technology whereby the PDM will be replacing the old gravimetric, we are now prepared to take a different approach towards protecting miners from being exposed to

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10. A commenter at a public hearing requested clarification on whether there would be more than one violation of the respirable dust limit if a single, full-shift sample exceeded the ECV during the same week that the weekly permissible accumulated exposure (WPAE) limit were exceeded. Under the proposed rule, it would be a violation for each occurrence that the ECV or WPAE is exceeded. MSHA is interested in comments and alternatives to the proposed rule. Comments should be specific, and include a detailed rationale and how any recommendations and alternatives would protect miners.

Comments

See the UMWA comments above in Questions 8 and 9.

11. The proposal includes a revised definition of normal production shift so that sampling is taken during shifts that reasonably represent typical production and normal mining conditions on the MMU. The Agency requests comments on whether the average of the most recent 30 production shifts specified in the proposed definition would be representative of dust levels to which miners are typically exposed.

Comments

The UMWA agrees with MSHA's definition of a normal production shift. However, MSHA must periodically re-evaluate the production levels of each MMU to define its "normal production shift". Sections will produce coal at varying rates which will redefine a

"normal production shift" as the section advances, therefore because of the variation, production levels must be periodically re-evaluated.

12. The proposed sampling provisions address interim use of supplementary controls when all feasible engineering or environmental controls have been used but the mine operator is unable to maintain compliance with the dust standard. With MSHA approval, operators could use supplementary controls, such as rotation of miners, or alteration of mining or of production schedules, in conjunction with CPDMs to monitor miners' exposures. MSHA solicits comments on this proposed approach and any suggested alternatives, as well as the types of supplementary controls that would be appropriate to use on a short-term basis.

Comments

The UMWA addressed this issue in testimony provided at the February 15, 2011 public hearing in Arlington, VA. The Union's argument on this issue was as follows: Under this section, when an operator is unable to maintain compliance with the applicable standard for an MMU and makes the determination that all feasible engineering or environmental controls are being used, it may request approval through the District Manager to use supplementary controls, including worker rotation, to reduce affected miners' dust exposure. The UMWA understands that the intent of this proposal is to protect the affected miner from the dusty environment, however, this practice would be completely contrary to the requirements and spirit of the collective bargaining agreements in place at all UMWA represented mines. Under the UMWA collective bargaining agreement, all jobs are posted and awarded based on each miner's seniority at that mine. The miners' seniority, and job bidding right, are cherished, revered and held as a sacred right of all miners working at unionized operations. An employee who has bid for and been awarded a particular job expects that he will work in that position. To rotate a miner from their job classification for six months is totally unacceptable. The UMWA has historically agreed that respirable dust must be controlled through engineering and environmental measures. Rotating a miner out of their normal job is not an adequate solution.

Another problem with this provision is that it gives the operator the explicit right to determine "that all feasible engineering or environmental controls are being used" or have been exhausted. When the operator determines that it has done all it can to control dust through engineering or environmental controls it then simply asks the MSHA District Manager to approve a plan that permits worker rotation. The UMWA questions what role MSHA plays in

making the determination that all "feasible and engineering or environmental controls" have been exhausted. That decision must not be left entirely up to the operator, and MSHA must play an affirmative role in determining that all such measures have actually been exhausted to control the dust through engineering or environmental means. Miners' representatives must also be involved in this process. Worker rotation is not the answer to controlling respirable dust. Simply rotating workers would only expand the number of miners exposed to inappropriate levels of coal dust instead of addressing the problem by reducing the dust. All shearer operators, shield operators, and miner operators are the prime candidates who would likely be rotated from their job classification to another position. MSHA must take a more substantial role in requiring operators to implement all feasible means of engineering or environmental controls and provide expert advice to the operator on how to achieve this goal rather than simply reviewing requests to rotate miners. Permitting workers to be rotated out of their normal job will not solve the problem, but simply exposes additional miners to excessive dust, and allow the mine atmosphere to remain too dusty. Furthermore, rotating a different miner into the rotated miner's position will create a hazard in that the new miner may not be familiar with the equipment or job duties. Mine operators often complain about absenteeism and having to replace workers leading to mine accidents because their replacement miners are not familiar with the position and do not normally do the job for which they are filling in. This is not an acceptable solution to control dust and the UMWA opposes this part of the proposed rule. The UMWA maintains the position that the dust in the mine environment must be controlled through environmental and engineering control as Section 202 of the Federal Mine Safety and Health Act of 1977 requires and as Congress intended.

13. The proposed rule addresses (1) which occupations must be sampled using CPDMs, and (2) which work positions and areas could be sampled using either CPDMs or CMDPSUs. MSHA solicits comments on the proposed sampling occupations and locations. For example, please comment on whether there are other positions or areas where it may be appropriate to require the use of CPDMs. Also, comment on whether the proposed CPDM sampling of ODOs on the MMU is sufficient to address different mining techniques, potential overexposures, and ineffective use of approved dust controls.

Comments

The UMWA believes that other positions which should be sampled include the conveyor belt entry, belt head and dumping point. It is a continuing problem in the industry with water sprays being shut off at these locations, making it a very dusty environment. In addition, the proposed rule for surface areas only requires samples for drill operators and dozer operators.

The District Manager has the complete discretion to designate other sampling areas. Other work positions designated by the District Manager for sampling should include any work sites where miners are exposed to dust such as preparation plants, load out facilities, stockpiles, barges and other areas at surface mines and surface areas of underground coal mines. Preparation plants are notoriously dusty environments and should be included in the sampling requirements.

14. Some commenters have suggested that, for compliance purposes, respirable dust samples should be taken only on individual miners in underground coal mines. Under the existing rule, MSHA enforces an environmental standard, that is, the Agency samples the average concentration of respirable dust in the mine atmosphere. The proposed rule would continue the existing practice that samples be collected from designated high-risk occupations associated with respirable dust exposure and from designated areas associated with dust generation sources in underground mines. MSHA solicits comments on the sampling strategy in the proposed rule, any specific alternatives, supporting rationale, and how such alternatives would protect miners' health.

Comments

The UMWA supports the standard as proposed. When sampling with a CMDPSU, the proposed rule permits the sampling device to be located withing 36 inches of the working position in many of the DO samples. When the CPDM is used to sample, the unit must be worn by the miner. We would not oppose placing CMDPSU within 36 inches of the miner being sampled. If this question is suggesting that an individual miner be sampled as opposed to DO and ODO, we would oppose that. If it is being suggested that an individual miner is sampled and his personal history tracked through such sampling, the Union would oppose.

MSHA must however consider the miner's normal work duties and activities - for example rather than switching out the sampling device as practiced under the current standard when a miner goes to lunch, takes a break or makes a bathroom run, these activities should be considered as part of his normal activity and count as normal exposure.

15. The proposed rule addresses the frequency of respirable dust sampling when using a CPDM. MSHA solicits comments on the proposed sampling frequencies and any suggested alternatives. For example, if sampling of DOs were less frequent than proposed, what alternative sampling frequency would be appropriate? Please address a sampling strategy in case of noncompliance with the respirable dust standard and provide rationale. Also, should CPDM sampling of ODOs

be more or less frequent than 14 calendar days each quarter? Please be specific in suggesting alternatives and include supporting rationale.

Comments

The UMWA would recommend that the ODO's be sampled the same as a DO which requires sampling 7 days a week, 52 weeks a year. The ODO's are occupations which have been identified as being dusty occupations and therefore should be treated the same for sampling purposes as the DO's.

16. The proposal would require that persons certified in dust sampling or maintenance and calibration retake the applicable MSHA examination every 3 years to maintain certification. Under the proposal, these certified persons would not have to retake the proposed MSHA course of instruction. MSHA solicits comments on this approach to certification; please include specific rationale for any suggested alternatives.

Comments

The UMWA supports this proposal. The proposal would require that persons certified in dust sampling or maintenance and calibration retake the applicable MSHA examination every 3 years to maintain their certification. The certified person would not have to retake the MSHA course of instruction. Requiring the person to pass the certification test every 3 years should be sufficient to prove that they are proficient in their job. The certified person is required to perform the job of dust sampling, maintenance and calibration on a day to day basis at the mine and should be proficient in this task. Passing the MSHA examination should be proof enough that they are qualified to perform this task. The only reason a person should be retrained is if they are not able to pass any re-certification tests or to upgrade training for equipment or procedure changes.

17. In the proposal, MSHA would require that the CPDM daily sample and error data file information be submitted electronically to the Agency on a weekly basis. MSHA solicits comments on suggested alternative time frames, particularly in light of the CPDM's limited memory capacity of about 20 shifts.

Comments

The UMWA would agree with MSHA's position on this issue that the information from the CPDM should be submitted on a weekly basis. Because the CPDM has a limited memory capacity of 20 shifts, it makes sense to require weekly submissions of this data. Further how could MSHA expect to enforce the rule if the CPDM data is not reported to the Agency in a timely fashion? If the information is not downloaded from the CPDM as a regular routine, it is more likely that mistakes will be made or data will be lost. It is best to get those responsible for this function to be on a regular routine of downloading and transmitting the CPDM data once a week as proposed.

Because daily maintenance will be required of the CPDM, the operator should download this information at the end of each shift. This information will allow the operator and miners to track their daily exposures and avoid violating the Weekly Accumulated Exposure. This daily information shall be make available to all miners and other interested parties on request so they can easily track exposures.

18. The proposal contains requirements for posting information on sampling results and miners' exposures on the mine bulletin board. MSHA solicits comments on the lengths of time proposed for posting data. If a standard format for reporting and posting data were developed, what should it include?

Comments

The UMWA would recommend that this information be posted for a minimum of 31 days to make sure all interested parties have the opportunity to look at the data. The standard format would include the DO sampled and the sample results. This way, although miners will not be able to identify the section where the sample was taken or the person sampled, they will be able to get a picture of which DOs are the dustiest, how their mine is fairing for compliance and use this information for their own purposes such as whether they want to bid on a certain job that is more dusty than others, etc.

19. The periodic medical surveillance provisions in the proposed rule would require operators to provide an initial examination to each miner who begins work at a coal mine for the first time and then at least one follow-up examination after the initial examination. MSHA solicits comments on the proposed requirements and time periods specified for these examinations.

Comments

The UMWA supports the proposal that operators offer an initial examination to each miner who begins work at a coal mine for the first time and then at least one follow-up examination after the initial one. The UMWA supports the language of the proposed rule for medical surveillance requirements however, we demand that the result of such medical examinations and x-rays shall be provided only to the affected miners and not to their employer or any other parties. The only exception should be that MSHA and NIOSH should be given access to information showing medical results on an anonymous basis so MSHA can traget enforcement and NIOSH can track black lung disease .

20. The proposed respirator training requirements are performance- based and the time required for respirator training would be in addition to that required under part 48. Under the proposal, mine operators could, however, integrate respirator training into their part 48 training schedules. The proposal would require that operators keep records of training for 2 years. Please comment on the Agency's proposed approach.

Comments

First and foremost, the UMWA does not agree that using respirators is an appropriate method for controlling respirable dust and is not what Congress intended as discussed in our answer to question No. 1. The UMWA must ask "How many more training requirements is the Agency going to permit to be squeezed into the eight hour annual refresher training? There are so many topics required to be covered by the standard now, that the time devoted to each subject is already minimal. If effective training is to be conducted, any training required by this new standard must stand alone with time devoted to it as special training.

21. The proposed rule specifies procedures and information to be included in CPDM plans to ensure miners are not exposed to respirable dust concentrations that exceed proposed standards. For example, the proposed plan would include pre-operational examination, testing and set-up procedures to verify the operational readiness of the CPDM before each shift. It would also include procedures for scheduled maintenance, downloading and transmission of sampling information, and posting of reported results. Please comment on the proposed plan provisions and include supporting rationale.

Comments

The proposed rule only requires the mine operator to notify the representative of miners at least 5 days prior to submission of a proposed CPDM Performance Plan, and does not require a copy to be provided unless specifically requested by the miners' representative. The UMWA insists that this standard require a copy of the CPDM Performance Plan to be provided to the miners' representative at least 10 days prior to its submission for approval. The requirement for 10 days to review plans is a longstanding requirement of the National Bituminous Coal Wage Agreement and we would insist that the standard duplicate that provision. Article III, Section (h) of the NBCWA requires:

Section (h) Cooperation in Development of Mining Plans

During development, modification or revision of any mining plan pertaining to health and safety which must be submitted for approval in accordance with the Federal Mine Safety and Health Act of 1977 covering the following subjects - roof control, ventilation, dust control, noise, maintenance, permissible equipment, escapeways, emergency procedures, emergency transport and haulage - the Mine Health and Safety Committee shall be afforded the oportunity to submit comments or recommendations to the operator concerning such plans. At the request of the Committee, a representative of the UMWA Safety Division shall participate in such comments and recommendations.

The Employer shall provide an opportunity for review prior to the required submittal date and ten (10) days shall be allowed for written comments by the Mine Health and Safety Committee. Upon request of the Mine Health and Safety Committee, given within said ten (10) day period, the Employer shall provide to the Committee one (1) copy of any such plan, revision or modification.

Our experience shows that 10 days' notice can and does work well to allow the miners to have adequate time to review the proposed plan and to work with the operators to resolve any potential problems before MSHA receives it, thereby reducing some issues. For this reason we would insist that the miners representative be provided a copy of the plan at least ten days prior to submission for their review and comment.

22. MSHA has received comments that some aspects of the proposed rule may not be feasible for particular mining applications. MSHA is interested in receiving comments on the specific mining methods that may be impacted and alternative technologies and controls that would protect miners.

Comments

The UMWA is not aware of any mining methods that should not be able to comply with the standard. Considering that the DOs specified for sampling includes all types of mining from longwalls down to and including handloading, we are not aware of any types of mining methods that would not be capable of taking dust samples or complying with this proposed rule.

23. MSHA has received comments on proposed section 75.332(a)(1) concerning the use of "fishtail" ventilation to provide intake air to multiple MMUs. Commenters were concerned that, under the proposed rule, the practice of using fishtail ventilation with temporary ventilation controls would not be allowed. MSHA solicits comments on any specific impact of the proposed rule on current mining operations, any suggested alternatives, and how the alternatives would be protective of miners.

Comments

The UMWA agrees with MSHA that a separate split of intake air should be provided to each MMU being used. The concern obviously is that "supersections" which use two sets of mining equipment simultaneously on a single section with one split of "fishtail" ventilation will no longer be permitted under this proposed standard. The UMWA agrees with MSHA that for each MMU a separate split of intake ventilation should be provided and controlled with permanent ventilation controls.

24. The Agency has prepared a PREA, which contains supporting cost and benefit data for the proposed rule. MSHA has included a discussion of the costs and benefits in the preamble. MSHA requests comments on all estimates of costs and benefits presented in the preamble and the PREA, including compliance costs, net benefits, and approaches used and assumptions made in the PREA. The PREA is available on MSHA's Web site at http://www.msha.gov/rea.htm.

Comments

The UMWA has no data to dispute MSHA's costs and benefit analysis and offers no comment on this question.

25. Commenters have discussed epidemiological studies and data on coal mine dust exposure presented in the preamble to the proposed rule. MSHA solicits comments regarding studies and data, and requests that commenters be as specific as possible. Please identify the studies and data commented upon, provide detailed rationales for the comments, and include any relevant information and data that will help MSHA evaluate the comments.

Comments

The UMWA has no comment on this question other than to support a new study using the CPDM which will provide real time data to determine protective and achievable dust concentrations for the current time period and today's mining practices.

26. MSHA has received comments that the proposed rule should not require mine operators to record corrective actions or excessive dust concentrations as section 75.363 hazardous conditions. MSHA would like to clarify that the proposal would require that operators record both excessive dust concentrations and corrective actions in the same manner as conditions are recorded under section 75.363. However, MSHA would not consider excessive dust concentrations or corrective actions to be hazardous conditions, since the proposed requirement is not a section 75.363 required record.

Comments

The UMWA agrees with MSHA that a record should be kept of excessive dust concentrations and the corrective actions taken the same way hazardous conditions are required to be recorded under 75.363. Dust not only contributes to black lung disease, but also contributes to mine explosions and therefore must be treated as a hazardous condition. The Agency makes clear that this is not a 75.363 requirement, but such records must be kept in the same manner involving corrective actions and excessive dust concentrations. The UMWA supports MSHA in this position.

27. A commenter at the first public hearing suggested that the timeframe for miners' review of the CPDM Performance Plan be expanded. For clarification, in developing the proposed rule, MSHA relied on the timeframe and process in the existing requirements for mine ventilation plans. In the proposal, MSHA did not intend to change the existing timeframe and process and stated that the proposed rule is consistent with ventilation plan requirements and would allow

miners' representatives the opportunity to meaningfully participate in the process.

Comments

The UMWA addressed this issue in the answer to Question Number 21 above and repeats that answer here:

The proposed rule only requires the mine operator to notify the representative of miners at least 5 days prior to submission of a proposed CPDM Performance Plan, and does not require a copy to be provided unless specifically requested by the miners' representative. The UMWA insists that this standard require a copy of the CPDM Performance Plan to be provided to the miners' representative at least 10 days prior to its submission for approval. The requirement for 10 days to review plans is a longstanding requirement of the National Bituminous Coal Wage Agreement and we would insist that the standard duplicate that provision. Article III, Section (h) of the NBCWA requires:

Section (h) Cooperation in Development of Mining Plans

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The Employer shall provide an opportunity for review prior to the required submittal date and ten (10) days shall be allowed for written comments by the Mine Health and Safety Committee. Upon request of the Mine Health and Safety Committee, given within said ten (10) day period, the Employer shall provide to the Committee one (1) copy of any such plan, revision or modification.

For this reason we would insist that the miners representative be provided a copy of the plan at least ten days prior to their submission for review and comment.