

(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 designated work position or at a location that represents the maximum concentration of dust to which the miner is exposed.

(h) Each designated work position 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 person certified in accordance with § 71.202 (Certified person; sampling) 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, with a respirable dust concentration greater than 2.5 milligrams per cubic meter of air will be used to determine the average concentration for that designated work position.

§ 71.209 Respirable dust samples; transmission by operator.

(a) 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, Cochran 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 accordance with § 71.202 (Certified person; 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 and shall include that person's certification number. Respirable dust samples with data cards not properly completed will 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.

(Pub. L. No. 96-511, 94 Stat. 2812 (44 U.S.C. 3501 et seq.))

[45 FR 80756, Dec. 5, 1980, as amended at 47 FR 14696, Apr. 6, 1982; 58 FR 63529, Dec. 2, 1993; 60 FR 33723, June 29, 1995; 60 FR 35695, July 11, 1995]

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

(a) The Secretary shall provide the operator with a report of the following data on respirable dust samples as soon as practicable:

- (1) The mine identification number;
- (2) The designated work position at the mine from which the samples were taken;
- (3) The concentration of respirable dust, expressed in milligrams per cubic meter of air, for each valid sample;
- (4) The average concentration of respirable dust, expressed in milligrams per cubic meter of air, for all valid samples; and
- (5) The reason for voiding any samples.

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

§ 71.220 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 designated work position to the MSHA District Office or to any other MSHA office designated by the District Manager. Status changes shall be reported

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in writing 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 or 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) Designated work position:

(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.

Subpart D—Respirable Dust Control Plans

AUTHORITY: Secs. 101 and 103(h), Federal Mine Safety and Health Act of 1977, Pub. L. 91-173 as amended by Pub. L. 95-164, 91 Stat. 1291 and 1299 (30 U.S.C. 811 and 813(h)).

SOURCE: 45 FR 80759, Dec. 5, 1980, unless otherwise noted.

§ 71.300 Respirable dust control plan; filing requirements.

(a) Within 15 calendar days after the termination date of a citation for violation of § 71.100 (Respirable dust standard) or § 71.101 (Respirable dust standard when quartz is present), the operator shall submit to the District Manager for approval a written respirable dust control plan applicable to the work 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 ade-

quate to continuously maintain respirable dust within the permissible concentration at the surface work position identified in the citation.

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

(1) The mine identification number and designated work position 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 designated work position at the mine to which the plan applies;

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

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

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

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

(1) The respirable dust control measures would be likely to maintain compliance with the respirable dust 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 compliance with the respirable dust 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.