

paragraph (d) would be removed since MSHA is proposing to revoke operator sampling requirements under existing §§ 70.207 and 70.208, and assume full responsibility for all compliance sampling.

Section 70.202 Approved Sampling Devices; Maintenance and Calibration

In an effort to consolidate the requirements that address maintenance and calibration procedures of approved sampling devices, MSHA is proposing in § 70.202(a) through (e) to retain the requirements in existing § 70.203(a) and (b) and § 70.204(a) through (e), with minor changes. These standards require the sampling device be maintained as approved and calibrated only by a certified person in accordance with MSHA Informational Report IR 1240 (1996).⁸ If using a PCDM under proposed § 70.220, the device would be calibrated to the manufacturer's specifications. The process of certifying an individual for maintenance and calibration would remain unchanged. It would continue to require an individual to successfully complete the applicable MSHA examination. Scheduling information for MSHA training courses and examinations would be available from MSHA District Offices.

These standards require approved sampling devices to be calibrated at a flowrate of 2.0 liters of air per minute. They also establish the flowrate and testing and examination requirements for approved sampling devices. Careful examination and testing of sampling devices would continue to be required immediately prior to the start of a shift during which samples would be collected for purposes of this proposed rule. This would include testing the battery voltage and examining all external components of the sampling devices to be used. Any necessary external maintenance to assure the sampling devices are clean and in proper working condition should be performed at this time by a certified person. Temporary certification of persons provided under existing § 70.203(b) would not be retained under the proposal.

If using a PCDM in accordance with § 70.220, the operator under proposed § 70.202(f) would be exempt from the

examination requirements of paragraphs (d)(1) through (d)(5) of this section. Instead, the operator would be required to follow the examination procedures recommended by the manufacturer or prescribed by MSHA and NIOSH for the particular device.

Section 70.203 Approved Sampling Devices; Operation; Air Flowrate

Proposed § 70.203(a) through (c) retains the operation and flowrate requirements for approved sampling devices in existing § 70.205(a) through (d), with minor changes. Since MSHA has defined an approved sampling device in revised § 70.2 to mean a device approved in accordance with part 74 of this title, proposed paragraph (a) excludes reference to part 74. Similarly, for purposes of simplification, reference to § 70.202 (Certified person; sampling) would be removed and, replaced by certified person as defined in revised § 70.2.

MSHA believes that the two on-shift examinations of sampling devices under proposed paragraphs (b)(1) and (b)(2), which are identical to the examinations required under existing § 70.205(b) and (c), continue to be an important part of a reasonable and prudent sampling program. The first examination would be made by a certified person during the second hour after the sampling devices are placed in operation. This examination would assure that each sampling device is operating properly and at the proper flowrate. If the proper flowrate is not maintained, necessary adjustments in the flowrate would be made at this time by the person certified to collect samples. The second examination would be made during the last hour of operation of the sampling devices. If the proper flowrate is not maintained, the certified person is required to make a notation on the dust data card for that sample stating that the proper flowrate was not maintained. Because it is unclear where on the dust data card such a notation should be made, proposed paragraph (b) would require all notations regarding failure to maintain proper flowrate or other events occurring during sampling that may impact the validity of the sample to be made on the back of the dust data card.

If using a PCDM under proposed § 70.220, the operator would not be required to examine the device during the second and last hour of operation as required under paragraph (b) of this section. Instead, the operator would be required to follow the procedures recommended by the manufacturer or prescribed by MSHA and NIOSH to assure that the PCDM is operating properly and at the proper flowrate.

Section 70.204 Demonstrating the Adequacy of the Dust Control Parameters Specified in a Ventilation Plan; Verification Sampling

Existing § 75.370(a)(1) of this title requires the operator to develop and follow a mine ventilation plan that is designed to control methane and respirable dust. It further requires the plan to be suitable to the conditions and mining systems at the mine. Accordingly, a properly-designed mine ventilation plan continues to be the most reliable means for ensuring that the work environment in each MMU is free of excessive concentrations of respirable dust.

MSHA recognizes that the operator has the legal responsibility for developing a ventilation plan that is designed to control respirable dust. Consequently, the operator has the obligation to demonstrate that the dust control parameters specified in the plan will effectively control respirable dust as required by § 75.370(a)(1). Therefore, within 12 months after the effective date of this rule, each operator of an underground coal mine must have an approved ventilation plan in which the dust control parameters specified for each MMU have been verified to be adequate in controlling respirable dust. Proposed §§ 70.205 through 70.208 set forth the specific steps an operator must follow to verify the adequacy of the plan parameters. To demonstrate adequacy, the operator would be required to collect valid respirable dust samples in accordance with proposed § 70.206 or § 70.220(c) if using a PCDM. Approval of the plan parameters for a particular MMU would be granted when these samples, called verification samples, demonstrate at a high level of confidence, in accordance with the limits specified in Table 70-1, the adequacy of the plan parameters in maintaining the equivalent concentration of respirable dust coal mine dust and quartz dust at or below the verification limits of 2.0 mg/m³ and 100 µg/m³, respectively.

Section 70.205 Verification Sampling; When Required; Time for Completing

Proposed § 70.205 specifies the various ways in which the process of verifying the adequacy of the dust control parameters for a MMU would be initiated. The operator would trigger the process by submitting a new ventilation plan under § 75.370. This process would also be initiated if the district manager requires the operator to amend the plan parameters in a previously approved ventilation plan after determining, based on dust sampling results or other

⁸ On September 3, 1998, MSHA published a proposed rule in the *Federal Register* (63 FR 47123) requesting public comment on our intention to update the incorporation-by-reference in title 30 of the Code of Federal Regulations, Sections 70.204, 71.204, and 90.204. The Agency allowed 60 days for public comment and received no comments, no requests for an extension of the comment period, and no requests for a public hearing. On August 10, 1999 the final rule was published and became effective on October 12, 1999 (64 FR 43283).