

properly completed dust data card. All dust data cards submitted must be signed by a person certified to collect samples and must include that person's certification number. By signing the card, that person certifies that the sample was collected in accordance with the requirements of this part.

To maintain program integrity, all samples collected by an operator would be considered by this proposed rule to fulfill the sampling requirements of this part. Samples to be used by operators for other purposes would have to be identified in writing or by electronic mail to the district manager, by each filter cassette identification number, prior to their intended use.

Operators that use PCDMs under proposed § 70.220 are exempt from the requirements of this section, except when transmitting samples for quartz analysis required by proposed § 70.220(c).

Information To Be Posted on the Mine Bulletin Board

Section 70.217 Respirable Dust Samples; Report to Operator; and Posting

Under the proposed rule, existing § 70.210 would be revised and redesignated as § 70.217. It specifies the type of sampling and other related information the operator would post on the mine bulletin board. The proposed posting requirements are intended to serve in the best interest of miners without being overly burdensome to operators. The continuation of posting requirements is intended to promote miner awareness of process of verifying the adequacy of the dust control parameters for each MMU specified in the mine ventilation plan and of the respirable dust conditions in the mine. This is consistent with the statutory intent that miners play a role in preventing unhealthy conditions and practices where they work. This approach is consistent with the recommendations of the Dust Advisory Committee regarding miner participation in the sampling process.

Paragraph (a)(1) through (6) of the proposed rule retains the existing requirement regarding the types of data MSHA would report on samples submitted by the operator. The results of all MSHA sampling would be reported to the operator. The data report would include the identification of the MMU or DA in the mine where each sample was collected; the equivalent concentration of respirable dust for each valid sample; the occupation code, where applicable; and the reason for voiding any sample. In addition to

providing data on individual samples, the Agency would also furnish information on the dust control parameters that were in effect during MSHA sampling by providing a copy of completed MSHA Form 2000–86 (Revised), *Respirable Dust Sampling and Monitoring Data*.

Paragraph (b)(1) of the proposed rule retains the existing requirement that the operator post on the mine bulletin board the respirable dust sample data report provided by MSHA. The operator must post the end-of-shift exposure information if using a PCDM in accordance with § 70.220. The results of all respirable dust samples collected by federal mine personnel that MSHA would provide under revised paragraph (a) must be posted. Additionally, the operator would post a copy of MSHA Form 2000–86 for each MMU sampled by federal mine personnel. This requirement would ensure that miners and their representative(s) are provided information concerning the quality of the mine air where they work and the dust control parameters under which MSHA sampling was conducted.

MSHA recognizes the importance of input from the miners and their representatives in the plan approval process. To assure miners understand the verification process, proposed paragraph (b)(3) would require the posting of all written notifications received from the district manager pertaining to verifying the adequacy of the dust control parameters under this part. This includes all correspondence submitted in accordance with proposed §§ 70.209 and 70.212. The district manager would be available to discuss with the representative of miners as well as individual miners all aspects of the plan parameter verification process.

Proposed paragraph (c) specifies the length of time the information provided under paragraph (b) would be posted on the mine bulletin board. Results of operator verification sampling and all written notifications received from the district manager that pertain to the plan verification procedures could be removed immediately following notification of approval of the plan parameters for a particular MMU. Correspondence required under proposed § 70.212(c)(1) regarding the occurrence of special circumstances requiring the use of PAPRs must remain posted for the period of time that PAPRs are in use. The respirable dust sample data report provided by MSHA on operator sampling in accordance with proposed § 70.215 and MSHA sampling results, including the information specified in proposed paragraph (b)(2) of this section, must be posted for at

least 31 calendar days following receipt. If using a PCDM, the end-of-shift exposure data along with the information specified in paragraph (b)(2) must be posted for at least 7 calendar days following the end of the sampling shift.

Section 70.218 Violation of Respirable Dust Standard; Issuance of Citation; Action Required by Operator; and Termination of Citation

Proposed § 70.218 addresses the circumstances under which MSHA would issue a citation for excessive dust and establishes the specific actions that an operator would be required to take within the time for abatement fixed in the notice. It also sets forth the conditions under which MSHA would terminate such citations.

Under proposed paragraph (a), the operator would be cited for a violation of either § 70.100(a) and (b), or § 70.101 when a valid equivalent concentration measurement for any occupation sampled by MSHA exceeds the citation threshold value (CTV) listed in Table 70–2 that corresponds to the applicable dust standard in effect. As discussed in section III.A.4. of the preamble, these measurements will be based on single-shift samples collected with approved sampling devices that will be operated portal-to-portal. The devices will remain operational, during the entire shift or for 8 hours, whichever time is less, as has been the long-standing practice.

The CTVs and an explanation of how they were derived was originally published in **Federal Register** notice of February 3, 1998 (63 FR 5687), entitled “Coal Mine Respirable Dust Standard Noncompliance Determinations.” As explained in that notice and in Appendix C of the current notice of proposed rulemaking, each CTV was calculated so that citations would be issued only when a single-shift measurement demonstrates noncompliance at least at a 95 percent confidence level. Under this proposed rule, MSHA would issue no more than one citation based on the result of single shift samples from the same MMU, unless separate citations are warranted for occupations exposed to different dust-generating sources. The following examples illustrate how MSHA would apply the CTVs to make noncompliance determinations. Suppose that a measurement of 2.41 mg/m³ is obtained for the DO, and measurements of 2.34, 1.54, 2.00, and 1.56 mg/m³, are obtained for four other occupations exposed to the same dust-generating source as the DO during a single shift on a MMU required to comply with an applicable dust standard of 2.0 mg/m³. Because at