American Road & Transportation Builders Association

REGULATORY SUMMARY
US Mine Safety and Health Administration
Respirable Silica Rulemaking
April 2024

On April 18, 2024, the US Mine Safety and Health Administration (MSHA) finalized a rule amending safety standards concerning respirable crystalline silica. These amendments are set to become effective on June 17, 2024. Further details can be found on MSHA's website.

ARTBA and industry allies filed comments on the proposed rule on Sept. 11, 2023. These comments outlined suggested modifications to ensure the rule's effectiveness, prevent duplication, and ensure miner safety. Despite this input, MSHA largely disregarded the recommendations in their final rule.

The regulation imposes stringent new mandates on mine operators, including a lower Permissible Exposure Limit (PEL) of 50 µg/m³, mandatory sampling, regular written assessments of operations (even when there are no changes to processes, equipment, or minerals mined), implementation of respiratory protection programs, and establishment of tailored medical surveillance programs for Metal/Nonmetal mines. The rule takes effect on June 17, 2024. Coal mine operators must comply by April 14, 2025, while Metal/Nonmetal operators have until April 8, 2026.

Key provisions of the rule include:

- A Permissible Exposure Limit (PEL) of 50 µg/m³ for all miners, calculated as an 8-hour Time-Weighted Average, signifying a 50% reduction from the current Metal/Nonmetal (MNM) PEL of around 100 µg/m³.
- An Action Level (AL) set at 25 µg/m³ as an 8-hour Time-Weighted Average, triggering quarterly sampling until two consecutive samples, taken more than 7 days apart, fall below the AL.
- Revised sampling requirements mandating operators to obtain two consecutive samples below the Action Level (AL) for each silica-exposed position.
- A notable change requires immediate reporting of any operator samples surpassing the Permissible Exposure Limit (PEL) to MSHA.
- Mine operators must sample silica exposure levels for all potentially exposed miners, including follow-up sampling if initial samples fall below the Action Level (AL).
- Sampling methods must conform to the ISO 7708:1995 standard, employing personal breathing-zone air samples for Metal/Nonmetal (MNM) miners and occupational environmental samples for coal miners.
- Periodic evaluations of processes and equipment for silica exposure are required every six months or after any significant changes, with detailed records of evaluations and follow-up actions if exposures may increase above the AL.
- Mine operators must regularly assess processes and equipment for silica exposure, documenting changes and their impact, with required follow-up sampling if exposure levels may surpass the AL.
- Corrective actions, centered on engineering controls, are mandatory upon any sample above the PEL, with documented implementation and follow-up sampling for effectiveness.
- Requiring the use of engineering controls, such as ventilation systems and dust suppression devices. MSHA deemed administrative controls like worker rotation ineffective.

- Respirators are not acceptable for compliance, but can be used temporarily under specific conditions, with a respiratory protection program meeting ASTM F3387-19 required for compliance.
- If any sampling exceeds the PEL, mine operators must provide NIOSH-approved respirators for affected miners before the next shift, ensure correct usage, take immediate corrective action beyond respirator use, and notify the MSHA District Manager.
- Metal/nonmetal operators must establish and implement a medical surveillance program for miners, with voluntary participation for existing miners and mandatory initial examinations for new miners.
- Medical examinations, provided at no cost to the miner, must be conducted by licensed healthcare professionals, including pulmonary function tests administered by qualified technologists.
- New Metal/Nonmetal miners must undergo an initial examination within 60 days of employment, with follow-up exams mandated based on findings from chest X-rays or spirometry tests.
- Existing miners have access to voluntary examinations initially, then at least every 5 years, with operator-mandated participation possible.
- Mine operators must ensure timely dissemination of examination results to miners and relevant authorities, including NIOSH for chest X-ray classifications.
- Mine operators must retain evaluation, sampling, corrective action, written determination, and written medical opinion records for specific durations, ensuring access to the Secretary, miners, and authorized representatives.
- Contractors, portable mines, and seasonal operations must comply with the new rule.
- Contractors must assess employee exposure to silica and ensure compliance, with communication between production operators and contractors crucial for compliance planning.
- Portable and seasonal operations are also required to comply, with periodic evaluations essential for portable operations and sampling or evaluations expected to resume immediately upon resuming operations for seasonal operations.

For more information please contact ARTBA's Brad Sant or Prianka Sharma.

REGULATORY TEXT REDLINE

Subchapter K—Metal and Nonmetal Mine Safety and Health

PART 56—SAFETY AND HEALTH STANDARDS—SURFACE METAL AND NONMETAL MINES

Subpart D—Air Quality and Physical Agents

Amend § 56.5001 by revising the introductory text to read as follows:

§ 56.5001 Exposure limits for airborne contaminants.

The following is required until April 7, 2026. Except as permitted by § 56.5005—

Add § 56.5001T to read as follows:

§ 56.5001T Exposure limits for airborne contaminants.

As of April 8, 2026 the following is required, except as permitted by § 56.5005—

(a) *TLVs standard.* Except as provided in paragraph (b) of this section and in part 60 of this chapter, the exposure to airborne contaminants shall not exceed, on the basis of a time weighted average, the threshold limit values adopted by the American Conference of Governmental Industrial Hygienists, as set forth and explained in the 1973 edition of the Conference's publication, entitled *TLV's Threshold Limit Values for Chemical Substances in Workroom Air Adopted by ACGIH for 1973,* pages 1 through 54. This publication is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the Mine Safety and Health Administration (MSHA) and at the National Archives and Records Administration (NARA). Contact MSHA at: MSHA's Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, VA 22202-5450; (202) 693-9440; or at any Mine Safety and Health Enforcement District Office. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from American Conference of Governmental Industrial Hygienists, 1330 Kemper Meadow Drive, Attn: Customer Service, Cincinnati, OH 45240; *www.acgih.org*.

(b) *Asbestos standard* —(1) *Definitions.* Asbestos is a generic term for a number of asbestiform hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils.

Asbestos means chrysotile, cummingtonite-grunerite asbestos (amosite), crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos.

Asbestos fiber means a fiber of asbestos that meets the criteria of a fiber.

Fiber means a particle longer than 5 micrometers (μm) with a length-to-diameter ratio of at least 3-to-1.

(2) *Permissible Exposure Limits (PELs)*— (i) *Full-shift limit.* A miner's personal exposure to asbestos shall not exceed an 8-hour time-weighted average full-shift airborne concentration of 0.1 fiber per cubic centimeter of air (f/cc).

(ii) *Excursion limit.* No miner shall be exposed at any time to airborne concentrations of asbestos in excess of 1 fiber per cubic centimeter of air (f/cc) as averaged over a sampling period of 30 minutes.

(3) *Measurement of airborne asbestos fiber concentration.* Potential asbestos fiber concentration shall be determined by phase contrast microscopy (PCM) using the OSHA Reference Method in OSHA's asbestos standard found in 29 CFR 1910.1001, Appendix A, or a method at least equivalent to that method in identifying a potential asbestos exposure exceeding the 0.1 f/cc full-shift limit or the 1 f/cc excursion limit. When PCM results indicate a potential exposure exceeding

the 0.1 f/cc full-shift limit or the 1 f/cc excursion limit, samples shall be further analyzed using transmission electron microscopy according to NIOSH Method 7402 or a method at least equivalent to that method.

(c) *Required action.* Employees shall be withdrawn from areas where there is present an airborne contaminant given a "C" designation by the Conference and the concentration exceeds the threshold limit value listed for that contaminant.

Effective April 8, 2026, remove § 56.5001.

Effective April 8, 2026, redesignate § 56.5001T as § 56.5001.

Amend § 56.5005 by revising the introductory text to read as follows:

§ 56.5005 Control of exposure to airborne contaminants.

The following is required until April 7, 2026. Control of employee exposure to harmful airborne contaminants shall be, insofar as feasible, by prevention of contamination, removal by exhaust ventilation, or by dilution with uncontaminated air. However, where accepted, engineering control measures have not been developed or when necessary by the nature of work involved (for example, while establishing controls or occasional entry into hazardous atmospheres to perform maintenance or investigation), employees may work for reasonable periods of time in concentrations of airborne contaminants exceeding permissible levels if they are protected by appropriate respiratory protective equipment. Whenever respiratory protective equipment is used a program for selection, maintenance, training, fitting, supervision, cleaning, and use shall meet the following minimum requirements:

Add § 56.5005T to read as follows:

§ 56.5005T Control of exposure to airborne contaminants.

As of April 8, 2026, the following is required. Control of employee exposure to harmful airborne contaminants shall be, insofar as feasible, by prevention of contamination, removal by exhaust ventilation, or by dilution with uncontaminated air. However, where accepted engineering control measures have not been developed or when necessary by the nature of work involved (for example, while establishing controls or occasional entry into hazardous atmospheres to perform maintenance or investigation), employees may work for reasonable periods of time in concentrations of airborne contaminants exceeding permissible levels if they are protected by appropriate respiratory protective equipment. Whenever respiratory protective equipment is used, its selection, fitting, maintenance, cleaning, training, supervision, and use shall meet the following minimum requirements:

(a) Respirators approved by NIOSH under 42 CFR part 84 which are applicable and suitable for the purpose intended shall be furnished and miners shall use the protective equipment in accordance with training and instruction.

(b) A written respiratory protection program consistent with the requirements of ASTM F3387-19, *Standard Practice for Respiratory Protection,* approved August 1, 2019, which is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the Mine Safety and Health Administration (MSHA) and at the National Archives and Records Administration (NARA). Contact MSHA at: MSHA's Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, VA 22202-5450; (202) 693-9440; or any Mine Safety and Health Enforcement District Office. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959; *www.astm.org.*

(c) When respiratory protection is used in atmospheres immediately dangerous to life or health (IDLH), the presence of at least one other person with backup equipment and rescue capability shall be required in the event of failure of the respiratory equipment.

Effective April 8, 2026, remove § 56.5005.

Effective April 8, 2026, redesignate § 56.5005T as § 56.5005.

PART 57—SAFETY AND HEALTH STANDARDS—UNDERGROUND METAL AND NONMETAL MINES

Subpart D—Air Quality, Radiation, Physical Agents, and Diesel Particulate Matter

Amend § 57.5001 by revising the introductory text to read as follows:

§ 57.5001 Exposure limits for airborne contaminants.

The following is required until April 7, 2026. Except as permitted by § 57.5005—

Add § 57.5001T to read as follows:

§ 57.5001T Exposure limits for airborne contaminants.

As of April 8, 2026, except as permitted by § 57.5005—

(a) *TLVs standard.* Except as provided in paragraph (b) of this section and in part 60 of this chapter, the exposure to airborne contaminants shall not exceed, on the basis of a time weighted average, the threshold limit values adopted by the American Conference of Governmental Industrial Hygienists, as set forth and explained in the 1973 edition of the Conference's publication, entitled *TLV's Threshold Limit Values for Chemical Substances in Workroom Air Adopted by ACGIH for 1973,* pages 1 through 54. This publication is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the Mine Safety and Health Administration (MSHA) and at the National Archives and Records Administration (NARA). Contact MSHA at: MSHA's Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, VA 22202-5450; (202) 693-9440; or at any Mine Safety and Health Enforcement District Office. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from American Conference of Governmental Industrial Hygienists, 1330 Kemper Meadow Drive, Attn: Customer Service, Cincinnati, OH 45240; *www.acgih.org.*

(b) *Asbestos standard* —(1) *Definitions.* Asbestos is a generic term for a number of asbestiform hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils.

Asbestos means chrysotile, cummingtonite-grunerite asbestos (amosite), crocidolite, anthophylite asbestos, tremolite asbestos, and actinolite asbestos.

Asbestos fiber means a fiber of asbestos that meets the criteria of a fiber.

Fiber means a particle longer than 5 micrometers (µm) with a length-to-diameter ratio of at least 3-to-1.

(2) *Permissible Exposure Limits (PELs)* —(i) *Full-shift limit.* A miner's personal exposure to asbestos shall not exceed an 8-hour time-weighted average full-shift airborne concentration of 0.1 fiber per cubic centimeter of air (f/cc).

(ii) *Excursion limit.* No miner shall be exposed at any time to airborne concentrations of asbestos in excess of 1 fiber per cubic centimeter of air (f/cc) as averaged over a sampling period of 30 minutes.

(3) *Measurement of airborne asbestos fiber concentration.* Potential asbestos fiber concentration shall be determined by phase contrast microscopy (PCM) using the OSHA Reference Method in OSHA's asbestos standard found in 29 CFR 1910.1001, Appendix A, or a method at least equivalent to that method in identifying a potential asbestos exposure exceeding the 0.1 f/cc full-shift limit or the 1 f/cc excursion limit. When PCM results indicate a potential exposure exceeding the 0.1 f/cc full-shift limit or the 1 f/cc excursion limit, samples shall be further analyzed using transmission electron microscopy according to NIOSH Method 7402 or a method at least equivalent to that method.

(c) *Required action.* Employees shall be withdrawn from areas where there is present an airborne contaminant given a "C" designation by the Conference and the concentration exceeds the threshold limit value listed for that contaminant.

Effective April 8, 2026, redesignate § 57.5001T as § 57.5001.

Amend § 57.5005 by revising the introductory text to read as follows:

§ 57.5005 Control of exposure to for airborne contaminants.

The following is required until April 7, 2026. Control of employee exposure to harmful airborne contaminants shall be, insofar as feasible, by prevention of contamination, removal by exhaust ventilation, or by dilution with uncontaminated air. However, where accepted engineering control measures have not been developed or when necessary by the nature of work involved (for example, while establishing controls or occasional entry into hazardous atmospheres to perform maintenance or investigation), employees may work for reasonable periods of time in concentrations of airborne contaminants exceeding permissible levels if they are protected by appropriate respiratory protective equipment. Whenever respiratory protective equipment is used a program for selection, maintenance, training, fitting, supervision, cleaning, and use shall meet the following minimum requirements:

Add § 57.5005T to read as follows:

§ 57.5005T Control of exposure to airborne contaminants.

As of April 8, 2026, the following is required. Control of employee exposure to harmful airborne contaminants shall be, insofar as feasible, by prevention of contamination, removal by exhaust ventilation, or by dilution with uncontaminated air. However, where accepted engineering control measures have not been developed or when necessary by the nature of work involved (for example, while establishing controls or occasional entry into hazardous atmospheres to perform maintenance or investigation), employees may work for reasonable periods of time in concentrations of airborne contaminants exceeding permissible levels if they are protected by appropriate respiratory protective equipment. Whenever respiratory protective equipment is used, its selection, fitting, maintenance, cleaning, training, supervision, and use shall meet the following minimum requirements:

(a) Respirators approved by NIOSH under 42 CFR part 84 which are applicable and suitable for the purpose intended shall be furnished and miners shall use the protective equipment in accordance with training and instruction.

(b) A written respiratory protection program consistent with the requirements of ASTM F3387-19, *Standard Practice for Respiratory Protection,* approved August 1, 2019, which is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the Mine Safety and Health Administration (MSHA) and at the National Archives and Records Administration (NARA). Contact MSHA at: MSHA's Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, VA 22202-5450; (202) 693-9440; or any Mine Safety and Health Enforcement District Office. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959; *www.astm.org.*

(c) When respiratory protection is used in atmospheres immediately dangerous to life or health (IDLH), the presence of at least one other person with backup equipment and rescue capability shall be required in the event of failure of the respiratory equipment.

Effective April 8, 2026, remove § 57.5005.

Effective April 8, 2026, redesignate § 57.5005T as § 57.5005.

Subchapter M—Uniform Mine Health Regulations

Add part 60 to subchapter M to read as follows:

PART 60—RESPIRABLE CRYSTALLINE SILICA

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

§ 60.1 Scope; compliance dates.

(a) This part sets forth mandatory health standards for each surface and underground metal, nonmetal, and coal mine subject to the Federal Mine Safety and Health Act of 1977, as amended. Requirements regarding medical surveillance for metal and nonmetal mines are also included.

(b) The compliance dates for the provisions of this part are as follows:

(1) For coal mine operators, April 14, 2025.

(2) For metal and nonmetal mine operators, April 8, 2026.

§ 60.2 Definitions.

The following definitions apply in this part:

Action level means an airborne concentration of respirable crystalline silica of 25 micrograms per cubic meter of air ($\mu g/m^3$) for a full-shift exposure, calculated as an 8-hour time-weighted average (TWA).

Respirable crystalline silica means quartz, cristobalite, and/or tridymite contained in airborne particles that are determined to be respirable by a sampling device designed to meet the characteristics for respirable-particle-size-selective samplers that conform to the International Organization for Standardization (ISO) 7708:1995: Air Quality—Particle Size Fraction Definitions for Health-Related Sampling.

Specialist means an American Board-Certified Specialist in Pulmonary Disease or an American Board-Certified Specialist in Occupational Medicine.

§ 60.10 Permissible exposure limit (PEL).

The mine operator shall ensure that no miner is exposed to an airborne concentration of respirable crystalline silica in excess of 50 $\mu g/m^3$ for a full-shift exposure, calculated as an 8-hour TWA.

§ 60.11 Methods of compliance.

(a) The mine operator shall install, use, and maintain feasible engineering controls, supplemented by administrative controls when necessary, to keep each miner's exposure at or below the PEL, except as specified in § 60.14.

(b) Rotation of miners shall not be considered an acceptable administrative control used for compliance with this part.

§ 60.12 Exposure monitoring.

(a) *Sampling.* (1) Mine operators shall commence sampling by the compliance date in § 60.1 to assess the full shift, 8-hour TWA exposure of respirable crystalline silica for each miner who is or may reasonably be expected to be exposed to respirable crystalline silica.

(2) If the sampling under paragraph (a)(1) of this section is:

(i) Below the action level, the mine operator shall take at least one additional sampling within 3 months.

(ii) At or above the action level but at or below the PEL, the mine operator shall take another sampling within 3 months.

(iii) Above the PEL, the mine operator shall take corrective actions and sample pursuant to § 60.12(b).

(3) Where the most recent sampling indicates that miner exposures are at or above the action level but at or below the PEL, the mine operator shall continue to sample within 3 months of the previous sampling.

(4) The mine operator may discontinue sampling when two consecutive samplings indicate that miner exposures are below the action level. The second of these samplings must be taken after the operator receives the results of the prior sampling but no sooner than 7 days after the prior sampling was conducted.

(b) *Corrective actions sampling.* Where the most recent sampling indicates that miner exposures are above the PEL, the mine operator shall sample after corrective actions are taken pursuant to § 60.13 until the sampling indicates that miner exposures are at or below the PEL. The mine operator shall immediately report all operator samples above the PEL to the MSHA District Manager or to any other MSHA office designated by the District Manager.

(c) *Periodic evaluation.* At least every 6 months after commencing sampling under 60.12(a)(1) or whenever there is a change in: production; processes; installation or maintenance of engineering controls; installation or maintenance of equipment; administrative controls; or geological conditions; mine operators shall evaluate whether the change may reasonably be expected to result in new or increased respirable crystalline silica exposures. Once the evaluation is completed, the mine operator shall:

(1) Make a record of the evaluation, including the evaluated change, the impact on respirable crystalline silica exposure, and the date of the evaluation; and

(2) Post the record on the mine bulletin board and, if applicable, by electronic means, for the next 31 days.

(d) *Post-evaluation sampling.* If the mine operator determines as a result of the periodic evaluation under paragraph (c) of this section that miners may be exposed to respirable crystalline silica at or above the action level, the mine operator shall perform sampling to assess the full shift, 8-hour TWA exposure of respirable crystalline silica for each miner who is or may reasonably be expected to be at or above the action level.

(e) *Sampling requirements.* (1) Sampling shall be performed for the duration of a miner's regular full shift and during typical mining activities, including shaft and slope sinking, construction, and removal of overburden.

(2) The full-shift, 8-hour TWA exposure for such miners shall be measured based on:

(i) Personal breathing-zone air samples for metal and nonmetal operations; or

(ii) Occupational environmental samples collected in accordance with § 70.201(c), § 71.201(b), or § 90.201(b) of this chapter for coal operations.

(3) Where several miners perform the same tasks on the same shift and in the same work area, the mine operator may sample a representative fraction (at least two) of these miners to meet the requirements in paragraphs (a) through (e) of this section. In sampling a representative fraction of miners, the mine operator shall select the miners who are expected to have the highest exposure to respirable crystalline silica.

(4) The mine operator shall use respirable-particle-size-selective samplers that conform to ISO 7708:1995(E) to determine compliance with the PEL. ISO 7708:1995(E), *Air quality—Particle size fraction definitions for health-related sampling,* First Edition, 1995-04-01, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the Mine Safety and Health Administration (MSHA) and at the National Archives and Records Administration (NARA). Contact MSHA at: MSHA's Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, VA 22202-5450; (202) 693-9440; or any Mine Safety and Health Enforcement District Office. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from the International Organization for Standardization (ISO), CP 56, CH-1211 Geneva 20, Switzerland; phone: + 41 22 749 01 11; fax: + 41 22 733 34 30; website: *www.iso.org*.

(f) *Methods of sample analysis.* (1) The mine operator shall use a laboratory that is accredited to ISO/IEC 17025 "General requirements for the competence of testing and calibration laboratories" with respect to respirable crystalline silica analyses, where the accreditation has been issued by a body that is compliant with ISO/IEC 17011 "Conformity assessment—Requirements for accreditation bodies accrediting conformity assessment bodies."

(2) The mine operator shall ensure that the laboratory evaluates all samples using respirable crystalline silica analytical methods specified by MSHA, the National Institute for Occupational Safety and Health (NIOSH), or the Occupational Safety and Health Administration (OSHA).

(g) *Sampling records.* For each sample taken pursuant to paragraphs (a) through (e) of this section, the mine operator shall make a record of the sample date, the occupations sampled, and the concentrations of respirable crystalline silica and respirable dust and post the record and the laboratory report on the mine bulletin board and, if applicable, by electronic means, for the next 31 days, upon receipt.

§ 60.13 Corrective actions.

(a) If any sampling indicates that a miner's exposure exceeds the PEL, the mine operator shall:

(1) Make approved respirators available to affected miners before the start of the next work shift in accordance with § 60.14(b) and (c);

(2) Ensure that affected miners wear respirators properly for the full shift or during the period of overexposure until miner exposures are at or below the PEL; and

(3) Immediately take corrective actions to lower the concentration of respirable crystalline silica to at or below the PEL.

(b) Once corrective actions have been taken, the mine operator shall:

(1) Conduct sampling pursuant to § 60.12(b); and

(2) Take additional or new corrective actions until sampling indicates miner exposures are at or below the PEL.

(c) The mine operator shall make a record of corrective actions and the dates of the corrective actions under paragraph (a) of this section.

§ 60.14 Respiratory protection.

(a) *Temporary use of respirators at metal and nonmetal mines.* The metal and nonmetal mine operator shall use respiratory protection as a temporary measure in accordance with paragraph (c) of this section when miners must work in concentrations of respirable crystalline silica above the PEL while:

(1) Engineering control measures are being developed and implemented; or

(2) It is necessary by the nature of work involved (for example, occasional entry into hazardous atmospheres to perform maintenance or investigation).

(b) *Miners unable to wear respirators at all mines.* Upon written determination by a physician or other licensed health care professional (PLHCP) that an affected miner is unable to wear a respirator, the miner shall be temporarily transferred either to work in a separate area of the same mine or to an occupation at the same mine where respiratory protection is not required.

(1) The affected miner shall continue to receive compensation at no less than the regular rate of pay in the occupation held by that miner immediately prior to the transfer.

(2) The affected miner may be transferred back to the miner's initial work area or occupation when temporary use of respirators under paragraph (a) of this section or section 60.13 is no longer required.

(c) *Respiratory protection requirements at all mines.* (1) Affected miners shall be provided with a NIOSH-approved atmosphere-supplying respirator or NIOSH-approved air-purifying respirator equipped with the following:

(i) Particulate protection classified as 100 series under 42 CFR part 84; or

(ii) Particulate protection classified as High Efficiency “HE” under 42 CFR part 84.

(2) When approved respirators are used, the mine operator must have a written respiratory protection program that meets the following requirements in accordance with ASTM F3387-19: program administration; written standard operating procedures; medical evaluation; respirator selection; training; fit testing; maintenance, inspection, and storage. ASTM F3387-19, *Standard Practice for Respiratory Protection,* approved August 1, 2019, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the Mine Safety and Health Administration (MSHA) and at the National Archives and Records Administration (NARA). Contact MSHA at: MSHA's Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, VA 22202-5450; (202) 693-9440; or any Mine Safety and Health Enforcement District Office. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959; *www.astm.org.*

§ 60.15 Medical surveillance for metal and nonmetal mines.

(a) *Medical surveillance.* Each operator of a metal and nonmetal mine shall provide to each miner periodic medical examinations performed by a physician or other licensed health care professional (PLHCP) or specialist, as defined in § 60.2, at no cost to the miner.

(1) Medical examinations shall be provided at frequencies specified in this section.

(2) Medical examinations shall include:

(i) A medical and work history, with emphasis on: past and present exposure to respirable crystalline silica, dust, and other agents affecting the respiratory system; any history of respiratory system dysfunction, including diagnoses and symptoms of respiratory disease (*e.g.,* shortness of breath, cough, wheezing); history of tuberculosis; and smoking status and history;

(ii) A physical examination with special emphasis on the respiratory system;

(iii) A chest X-ray (a single posteroanterior radiographic projection or radiograph of the chest at full inspiration recorded on either film (no less than 14 x 17 inches and no more than 16 x 17 inches) or digital radiography systems), classified according to the International Labour Office (ILO) International Classification of Radiographs of Pneumoconioses by a NIOSH-certified B Reader; and

(iv) A pulmonary function test to include forced vital capacity (FVC) and forced expiratory volume in one second (FEV_1) and FEV_1 /FVC ratio, administered by a spirometry technician with a current certificate from a NIOSH-approved Spirometry Program Sponsor or by a pulmonary function technologist with a current credential from the National Board for Respiratory Care.

(b) *Voluntary medical examinations.* Each mine operator shall provide the opportunity to all miners employed at the mine to have the medical examinations specified in paragraph (a) of this section as follows:

(1) During an initial 12-month period; and

(2) At least every 5 years after the end of the period in paragraph (b)(1). The medical 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 medical examinations.* For each miner who begins work in the mining industry for the first time, the mine operator shall provide medical examinations specified in paragraph (a) of this section as follows:

(1) An initial medical examination no later than 60 days after beginning employment;

(2) A follow-up medical examination no later than 3 years after the initial examination in paragraph (c)(1) of this section; and

(3) A follow-up medical examination conducted by a specialist 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.

(d) *Medical examinations results.* (1) The mine operator shall ensure that the results of medical examinations or tests made pursuant to this section shall be provided from the PLHCP or specialist within 30 days of the medical examination to the miner, and at the request of the miner, to the miner's designated physician or another designee identified by the miner.

(2) The mine operator shall ensure that, within 30 days of the medical examination, the PLHCP or specialist provides the results of chest X-ray classifications to the National Institute for Occupational Safety and Health (NIOSH), once NIOSH establishes a reporting system.

(e) *Written medical opinion.* The mine operator shall obtain a written medical opinion from the PLHCP or specialist within 30 days of the medical examination. The written opinion shall contain only the following:

(1) The date of the medical examination;

(2) A statement that the examination has met the requirements of this section; and

(3) Any recommended limitations on the miner's use of respirators.

(f) *Written medical opinion records.* The mine operator shall maintain a record of the written medical opinions received from the PLHCP or specialist under paragraph (e) of this section.

§ 60.16 Recordkeeping requirements.

(a) Table 1 to this paragraph (a) lists the records the mine operator shall retain and their retention period.

(1) Evaluation records made under § 60.12(c) shall be retained for at least 5 years from the date of each evaluation.

(2) Sampling records made under § 60.12(g) shall be retained for at least 5 years from the sample date.

(3) Corrective actions records made under § 60.13(c) shall be retained for at least 5 years from the date of each corrective action. These records must be stored with the records of related sampling under § 60.12(g).

(4) Written determination records received from a PLHCP under § 60.14(b) shall be retained for the duration of the miner's employment plus 6 months.

(5) Written medical opinion records received from a PLHCP or specialist under § 60.15(f) shall be retained for the duration of the miner's employment plus 6 months.

Table 1 to Paragraph (a)—Recordkeeping Requirements

Record	Section references	Retention period
1. Evaluation records	§ 60.12(c)	At least 5 years from date of each evaluation.
2. Sampling records	§ 60.12(g)	At least 5 years from sample date.
3. Corrective actions records	§ 60.13(c)	At least 5 years from date of each corrective action.
4. Written determination records received from a PLHCP	§ 60.14(b)	Duration of miner's employment plus 6 months.
5. Written medical opinion records received from a PLHCP or specialist	§ 60.15(f)	Duration of miner's employment plus 6 months.

(b) Upon request from an authorized representative of the Secretary, from an authorized representative of miners, or from miners, mine operators shall promptly provide access to any record listed in this section.

§ 60.17 Severability.

Each section of this part, as well as sections in 30 CFR parts 56, 57, 70, 71, 72, 75, and 90 that address respirable crystalline silica or respiratory protection, is separate and severable from the other sections and provisions. If any provision of this subpart is held to be invalid or unenforceable by its terms, or as applied to any person, entity, or circumstance, or is stayed or enjoined, that provision shall be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from these sections and shall not affect the remainder thereof.

Subchapter O—Coal Mine Safety and Health

PART 70—MANDATORY HEALTH STANDARDS—UNDERGROUND COAL MINES

Subpart A—General

§70.2

Effective April 14, 2025, amend § 70.2 by removing the definition of “Quartz”.

Subpart B—Dust Standards

§ 70.101

Effective April 14, 2025, remove and reserve § 70.101.

Subpart C—Sampling Procedures

Amend § 70.205 by adding introductory text to read as follows:

§ 70.205 Approved sampling devices; operation; air flowrate.

The following is required until April 14, 2025:

Add § 70.205T to read as follows:

§ 70.205T Approved sampling devices; operation; air flowrate.

As of April 14, 2025:

(a) Approved sampling devices shall be operated at the flowrate of 2.0 L/min if using a CMDPSU; at 2.2 L/min if using a CPDM; or at a different flowrate recommended by the manufacturer.

(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 an anthracite coal mine using the full box, open breast, or slant breast mining method.

(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 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 of the dust data card.

(c) If using a CPDM, the person certified in sampling shall monitor the dust concentrations and the sampling status conditions being reported by the sampling device at mid-shift or more frequently as specified in the approved mine ventilation plan to assure: The sampling device is in the proper location and operating properly; and the work environment of the occupation or DA being sampled remains in compliance with the standard at the end of the shift. This monitoring is not required if the sampling device is being operated in an anthracite coal mine using the full box, open breast, or slant breast mining method.

Effective April 14, 2025, remove § 70.205.

Effective April 14, 2025, redesignate § 70.205T as § 70.205.

Effective April 14, 2025, remove and reserve §§ 70.206 and 70.207.

Amend § 70.208 by revising the introductory text to read as follows:

§ 70.208 Quarterly sampling; mechanized mining units.

The following is required from February 1, 2016, until April 14, 2025:

Add § 70.208T to read as follows:

§ 70.208T Quarterly sampling; mechanized mining units.

As of April 14, 2025:

(a) The operator shall sample each calendar quarter:

(1) The designated occupation (DO) in each MMU on consecutive normal production shifts until 15 valid representative samples are taken. The District Manager may require additional groups of 15 valid representative samples when information indicates the operator has not followed the approved ventilation plan for any MMU.

(2) Each other designated occupation (ODO) specified in paragraphs (b)(1) through (10) of this section in each MMU or specified by the District Manager and identified in the approved mine ventilation plan on consecutive normal production shifts until 15 valid representative samples are taken. Sampling of each ODO type shall begin after fulfilling the sampling requirements of paragraph (a)(1) of this section. When required to sample more than one ODO type, each ODO type must be sampled over separate time periods during the calendar quarter.

(3) The quarterly periods are:

(i) January 1-March 31

(ii) April 1-June 30

(iii) July 1-September 30

(iv) October 1-December 31.

(b) Unless otherwise directed by the District Manager, the approved sampling device shall be worn by the miner assigned to perform the duties of the DO or ODO specified in paragraphs (b)(1) through (10) of this section or by the District Manager for each type of MMU.

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

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

(3) *Continuous mining section other than auger-type.* DO—The continuous mining (CM) machine operator or mobile bridge operator when using continuous haulage; ODO—The roof bolting machine operator who works nearest the working face on the return air side of the continuous mining machine; the face haulage operators on MMUs using blowing face ventilation; the face haulage operators on MMUs ventilated by split intake air ("fishtail ventilation") as part of a super-section; and face haulage operators where two continuous mining machines are operated on an MMU.

(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, blasting 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; ODO—The jacksetter who works nearest the return air side of the longwall working face, and the mechanic;

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

(9) *Hand loading section blasting 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.

I [Reserved]

(d) If a normal production shift is not achieved, the DO or ODO sample for that shift may be voided by MSHA. However, any sample, regardless of production, that exceeds the standard by at least 0.1 mg/m^3 shall be used in the determination of the equivalent concentration for that occupatioI(e) When a valid representative sample taken in accordance with this section meets or exceeds the ECV in table 1 to this section that corresponds to the particular sampling device used, the operator shall:

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

(2) Immediately take corrective action to lower the concentration of respirable dust to at or below the respirable dust standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine f'reman's or equivalent of'icial'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. Such 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.

(f) Noncompliance with the standard is demonstrated during the sampling period when:

(1) Three or more valid representative samples meet or exceed the ECV in table 1 to this section that corresponds to the particular sampling device used; or

(2) The average for all valid representative samples meets or exceeds the ECV in table 1 to this section that corresponds to the particular sampling device used.

(g)(1) Unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the standard involving a DO in an MMU, paragraph (a)(1) of this section shall not apply to the DO in that MMU until the violation is abated and the citation is terminated in accordance with paragraphs (h) and (i) of this section.

(2) Unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the standard involving a type of ODO in an MMU, paragraph (a)(2) of this section shall not apply to that ODO type in that MMU until the violation is abated and the citation is terminated in accordance with paragraphs (g) and (h) of this section.

(h) Upon issuance of a citation for violation of the standard, the operator shall take the following actions sequentially:

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

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine f'reman's or equivalent of'icial'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. Such 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.

(4) Begin sampling, within 8 calendar days after the date the citation is issued, the environment of the affected occupation in the MMU on consecutive normal production shifts until five valid representative samples are taken.

(i) A citation for a violation of the standard shall be terminated by MSHA when:

(1) Each of the five valid representative samples is at or below the standard; and

(2) 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 the changes have been approved by the District Manager. The revised parameters shall reflect the control measures used by the operator to abate the violation.

Table 1 to § 70.208T—Excessive Concentration Values (ECV) Based on a Single Sample, Three Samples, or the Average of Five or Fifteen Full-Shift CMDPSU/CPDM Concentration Measurements

Section	Samples	ECV (mg/m^3)	
		CMDPSU	CPDM
70.208 (e)	70.1-0(a)—Single sample	1.79	1.70
	70.1-0(b)—Single sample	0.74	0.57
70.208(f)(1)	70.1-0(a)—3 or more samples	1.79	1.70
	70.1-0(b)—3 or more samples	0.74	0.57
70.208(f)(2)	70.1-0(a)—5 sample average	1.63	1.59
	70.1-0(b)—5 sample average	0.61	0.53
70.208(f)(2)	70.1-0(a)—15 sample average	1.58	1.56
	70.1-0(b)—15 sample average	0.57	0.52
70.208(i)(1)	70.1-0(a)—Each of 5 samples	1.79	1.70
	70.1-0(b)—Each of 5 samples	0.74	0.57

Effective April 14, 2025, remove § 70.208.

Effective April 14, 2025, redesignate § 70.208T as § 70.208 and redesignate table 1 to § 70.208T as table 1 to § 70.208.

Amend § 70.209 by revising the introductory text to read as follows:

§ 70.209 Quarterly sampling; designated areas.

The following is required until April 14, 2025:

Add § 70.209T to read as follows:

§ 70.209T Quarterly sampling; designated areas.

As of April 14, 2025:

(a) The operator shall sample quarterly each designated area (DA) on consecutive production shifts until five valid representative samples are taken. The quarterly periods are:

(1) January 1-March 31

(2) April 1-June 30

(3) July 1-September 30

(4) October 1-December 31.

(b) [Reserved].

(c) When a valid representative sample taken in accordance with this section meets or exceeds the ECV in table 1 to this section that corresponds to the particular sampling device used, the operator shall:

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

(2) Immediately take corrective action to lower the concentration of respirable dust to at or below the respirable dust standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent 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. Such 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.

(d) Noncompliance with the standard is demonstrated during the sampling period when:

(1) Two or more valid representative samples meet or exceed the ECV in table 1 to this section that corresponds to the particular sampling device used; or

(2) The average for all valid representative samples meets or exceeds the ECV in table 1 to this section that corresponds to the particular sampling device used.

(e) Unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the standard, paragraph (a) of this section shall not apply to that DA until the violation is abated and the citation is terminated in accordance with paragraphs (e) and (f) of this section.

(f) Upon issuance of a citation for a violation of the standard, the operator shall take the following actions sequentially:

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

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent 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. Such 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.

(4) Begin sampling, within 8 calendar days after the date the citation is issued, the environment of the affected DA on consecutive normal production shifts until five valid representative samples are taken.

(g) A citation for a violation of the standard shall be terminated by MSHA when:

(1) Each of the five valid representative samples is at or below the standard; and

(2) 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 the changes have been approved by the District Manager. The revised parameters shall reflect the control measures used by the operator to abate the violation.

Table 1 to § 70.209T—Excessive Concentration Values (ECV) Based on a Single Sample, Two Samples, or the Average of Five or Fifteen Full-Shift CMDPSU/CPDM Concentration Measurements

Section	Samples	ECV (mg/m^3)	
		CMDPSU	CPDM
70.209 (c)	70.100(a)—Single sample	1.79	1.70
	70.100(b)—Single sample	0.74	0.57
70.209(d)(1)	70.100(a)—2 or more samples	1.79	1.70
	70.100(b)—2 or more samples	0.74	0.57
70.209(d)(2)	70.100(a)—5 sample average	1.63	1.59
	70.100(b)—5 sample average	0.61	0.53
70.209(d)(2)	70.100(a)—15 sample average	1.58	1.56
	70.100(b)—15 sample average	0.57	0.52
70.209(g)(1)	70.100(a)—Each of 5 samples	1.79	1.70
	70.100(b)—Each of 5 samples	0.74	0.57

Effective April 14, 2025, remove § 70.209.

Effective April 14, 2025, redesignate § 70.209T as § 70.209 and redesignate table 1 to § 70.209T as table 1 to § 70.209.

Effective April 14, 2025, remove tables 70-1 and 70-2 to subpart C of part 70.

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

Subpart A—General

Effective April 14, 2025, amend § 71.2 by removing the definition of "Quartz".

Subpart B—Dust Standards

Effective April 14, 2025, remove and reserve § 71.101.

Subpart C—Sampling Procedures

Amend § 71.205 by adding introductory text to read as follows:

§ 71.205 Approved sampling devices; operation; air flowrate.

The following is required until April 14, 2025:

Add § 71.205T to read as follows:

§ 71.205T Approved sampling devices; operation; air flowrate.

As of April 14, 2025:

(a) Approved sampling devices shall be operated at the flowrate of 2.0 L/min, if using a CMDPSU; at 2.2 L/min, if using a CPDM; or at a different flowrate recommended by the manufacturer.

(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 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 of the dust data card.

(c) If using a CPDM, the person certified in sampling shall monitor the dust concentrations and the sampling status conditions being reported by the sampling device at mid-shift or more frequently as specified in the approved respirable dust control plan, if applicable, to assure: The sampling device is in the proper location and operating properly; and the work environment of the occupation being sampled remains in compliance with the standard at the end of the shift.

Effective April 14, 2025, remove § 71.205.

Effective April 14, 2025, redesignate § 71.205T as § 71.205.

Amend § 71.206 by adding introductory text to read as follows:

§ 71.206 Quarterly sampling; designated work positions.

The following is required until April 14, 2025:

Add § 71.206T to read as follows:

§ 71.206T Quarterly sampling; designated work positions.

As of April 14, 2025:

(a) Each operator shall take one valid representative sample from the DWP during each quarterly period. The quarterly periods are:

(1) January 1-March 31

(2) April 1-June 30

(3) July 1-September 30

(4) October 1-December 31.

(b) [Reserved].

(c) Designated work position samples shall be collected at locations to measure respirable dust generation sources in the active workings. The specific 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 § 71.206(m).

(d) Operators with multiple work positions specified in paragraphs (b)(2) and (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 October 1, 2014.

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

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

(e) 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 person certified in sampling on the back 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 standard by at least 0.1 mg/m^3 shall be used in the determination of the equivalent concentration for that occupation.

(f) 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.

(g) Upon notification from MSHA that any valid representative sample taken from a DWP to meet the requirements of paragraph (a) of this section exceeds the standard, 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.

(h) When a valid representative sample taken in accordance with this section meets or exceeds the excessive concentration value (ECV) in table 1 to this section that corresponds to the particular sampling device used, the mine operator shall:

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

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent 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. Such 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.

(i) Noncompliance with the standard is demonstrated during the sampling period when:

(1) Two or more valid representative samples meet or exceed the ECV in table 1 to this section that corresponds to the particular sampling device used; or

(2) The average for all valid representative samples meets or exceeds the ECV in table 1 to this section that corresponds to the particular sampling device used.

(j) Unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the standard, paragraph (a) of this section shall not apply to that DWP until the violation is abated and the citation is terminated in accordance with paragraphs (j) and (k) of this section.

(k) Upon issuance of a citation for violation of the standard, the operator shall take the following actions sequentially:

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

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to at or below the standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent 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. Such 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.

(4) Begin sampling, within 8 calendar days after the date the citation is issued, the environment of the affected DWP on consecutive normal work shifts until five valid representative samples are taken.

(l) A citation for violation of the standard shall be terminated by MSHA when the equivalent concentration of each of the five valid representative samples is at or below the standard.

(m) 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 standard has been measured by one or more MSHA valid representative samples.

(n) The District Manager may withdraw from sampling any DWP designated for sampling under paragraph (m) of this section upon finding that the operator is able to maintain continuing compliance with the standard. This finding shall be based on the results of MSHA and operator valid representative samples taken during at least a 12-month period.

Table 1 to § 71.206T—Excessive Concentration Values (ECV) Based on a Single Sample, Two Samples, or the Average of Five Full-Shift CMDPSU/CPDM Concentration Measurements

Section	Samples	ECV (mg/m^3)	
		CMDPSU	CPDM
71.206(h)	Single sample	1.79	1.70
71.206(i)(1)	2 or more samples	1.79	1.70
71.206(i)(2)	5 sample average	1.63	1.59

Table 1 to § 71.206T—Excessive Concentration Values (ECV) Based on a Single Sample, Two Samples, or the Average of Five Full-Shift CMDPSU/CPDM Concentration Measurements			
Section	**Samples**	**ECV (mg/m^3)**	
		CMDPSU	**CPDM**
71.206(l)	Each of 5 samples	1.79	1.70

Effective April 14, 2025, remove § 71.206.

Effective April 14, 2025, redesignate § 71.206T as § 71.206 and redesignate table 1 to § 71.206T as table 1 to § 71.206.

Subpart D—Respirable Dust Control Plans

Amend § 71.300 by adding introductory text to read as follows:

§ 71.300 Respirable dust control plan; filing requirements.

The following is required until April 14, 2025:

Add § 71.300T to read as follows:

§ 71.300T Respirable dust control plan; filing requirements.

As of April 14, 2025:

(a) Within 15 calendar days after the termination date of a citation for violation of the standard, 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 to at or below the standard at the DWP identified in the citation.

(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.

Effective April 14, 2025, remove § 71.300.

Effective April 14, 2025, redesignate § 71.300T as § 71.300.

Amend § 71.301 by adding introductory text to read as follows:

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

The following is required until April 14, 2025:

Add § 71.301T to read as follows:

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

As of April 8, 2026:

(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 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.

Effective April 14, 2025, remove § 71.301.

Effective April 14, 2025, redesignate § 71.301T as § 71.301.

PART 72—HEALTH STANDARDS FOR COAL MINES

Subpart E—Miscellaneous

Revise § 72.710 to read as follows:

§ 72.710 Selection, fit, use, and maintenance of approved respirators.

The following is required until April 14, 2025. In order to ensure the maximum amount of respiratory protection, approved respirators shall be selected, fitted, used, and maintained in accordance with the provisions of the American National Standards Institute's "*Practices for Respiratory Protection* ANSI Z88.2-1969," which is ~~hereby~~ incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the Mine Safety and Health Administration (MSHA) and at the National Archives and Records Administration (NARA). Contact MSHA at: MSHA's Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, VA 22202-5450; (202) 693-9440; or any Mine Safety and Health Enforcement District Office. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov*. ~~This publication may be obtained from the American National Standards Institute, Inc., 25 W. 43rd Street, 4th Floor, New York, NY 10036; *http://www.ansi.org,* and may be inspected at any MSHA Coal Mine Safety and Health District Office, or at MSHA's Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, VA 22202-5452; 202-693-9440; or 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*. 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.~~

Add § 72.710T to read as follows:

§ 72.710T Selection, fit, use, and maintenance of approved respirators.

As of April 14, 2025: Approved respirators shall be selected, fitted, used, and maintained in accordance with the provisions of a written respiratory protection program consistent with the requirements of ASTM F3387-19. ASTM F3387-19, *Standard Practice for Respiratory Protection,* approved August 1, 2019, is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at the Mine Safety and Health Administration (MSHA) and at the National Archives and Records Administration (NARA). Contact MSHA at: MSHA's Office of Standards, Regulations, and Variances, 201 12th Street South, Arlington, VA 22202-5450; (202) 693-9440; or any Mine Safety and Health Enforcement District Office. For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.* The material may be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959; *www.astm.org.*

Effective April 14, 2025, remove § 72.710.

Effective April 14, 2025, redesignate § 72.710T as § 72.710.

Revise § 72.800 to read as follows:

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

The Secretary will use a single, full-shift measurement of respirable coal mine dust to determine the average concentration on a shift since that measurement accurately represents atmospheric conditions to which a miner is exposed during such shift. Until April 14, 2025, noncompliance with the ~~applicable~~ respirable dust standard ~~or the applicable respirable dust~~

~~standard when quartz is present,~~ in accordance with ~~subchapter O of~~ this subchapter, is demonstrated when a single, full-shift measurement taken by MSHA meets or exceeds the applicable ECV in Table ~~70-1, 71-1, or 90-1~~ 1 to § 70.208, table 1 to § 70.209, table 1 to § 71.206, or table 1 to § 90.207 of this chapter that corresponds to the ~~applicable standard and the~~ particular sampling device used. Upon issuance of a citation for a violation of the ~~applicable~~ standard, and for MSHA to terminate the citation, the operator shall take the specified actions in ~~subchapter O of~~ this subchapter.

Add § 72.800T to read as follows:

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

The Secretary will use a single, full-shift measurement of respirable coal mine dust to determine the average concentration on a shift since that measurement accurately represents atmospheric conditions to which a miner is exposed during such shift. As of April 14, 2025, noncompliance with the respirable dust standard, in accordance with this subchapter, is demonstrated when a single, full-shift measurement taken by MSHA meets or exceeds the applicable ECV in table 1 to § 70.208, table 1 to § 70.209, table 1 to § 71.206, or table 1 to § 90.207 of this chapter that corresponds to the particular sampling device used. Upon issuance of a citation for a violation of the standard, and for MSHA to terminate the citation, the mine operator shall take the specified actions in this subchapter.

Effective April 14, 2025, remove § 72.800.

Effective April 14, 2025, redesignate § 72.800T as § 72.800.

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

Subpart D—Ventilation

Amend § 75.350 by adding introductory text to read as follows:

§ 75.350 Belt air course ventilation.

The following is required until April 14, 2025:

Add § 75.350T to read as follows:

§ 75.350T Belt air course ventilation.

As of April 14, 2025:

(a) The belt air course must not be used as a return air course; and except as provided in paragraph (b) of this section, the belt air course must not be used to provide air to working sections or to areas where mechanized mining equipment is being installed or removed.

(1) The belt air course must be separated with permanent ventilation controls from return air courses and from other intake air courses except as provided in paragraph (c) of this section.

(2) Effective December 31, 2009, the air velocity in the belt entry must be at least 50 feet per minute. When requested by the mine operator, the district manager may approve lower velocities in the ventilation plan based on specific mine conditions. Air velocities must be compatible with all fire detection systems and fire suppression systems used in the belt entry.

(b) The use of air from a belt air course to ventilate a working section, or an area where mechanized mining equipment is being installed or removed, shall be permitted only when evaluated and approved by the district manager in the mine ventilation plan. The mine operator must provide justification in the plan that the use of air from a belt entry would afford at

least the same measure of protection as where belt haulage entries are not used to ventilate working places. In addition, the following requirements must be met:

(1) The belt entry must be equipped with an AMS that is installed, operated, examined, and maintained as specified in § 75.351.

(2) All miners must be trained annually in the basic operating principles of the AMS, including the actions required in the event of activation of any AMS alert or alarm signal. This training must be conducted prior to working underground in a mine that uses belt air to ventilate working sections or areas where mechanized mining equipment is installed or removed. It must be conducted as part of a miner's 30 CFR part 48 new miner training (§ 48.5), experienced miner training (§ 48.6), or annual refresher training (§ 48.8).

(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 0.5 milligrams per cubic meter of air (mg/m^3).

(ii) A permanent designated area (DA) for dust measurements must be established at a point no greater than 50 feet upwind from the section loading point in the belt entry when the belt air flows over the loading point or no greater than 50 feet upwind from the point where belt air is mixed with air from another intake air course near the loading point. The DA must be specified and approved in the ventilation plan.

(4) The primary escapeway must be monitored for carbon monoxide or smoke as specified in § 75.351(f).

(5) The area of the mine with a belt air course must be developed with three or more entries.

(6) In areas of the mine developed after the effective date of this rule, unless approved by the district manager, no more than 50% of the total intake air, delivered to the working section or to areas where mechanized mining equipment is being installed or removed, can be supplied from the belt air course. The locations for measuring these air quantities must be approved in the mine ventilation plan.

(7) The air velocity in the belt entry must be at least 100 feet per minute. When requested by the mine operator, the district manager may approve lower velocities in the ventilation plan based on specific mine conditions.

(8) The air velocity in the belt entry must not exceed 1,000 feet per minute. When requested by the mine operator, the district manager may approve higher velocities in the ventilation plan based on specific mine conditions.

(c) Notwithstanding the provisions of § 75.380(g), additional intake air may be added to the belt air course through a point-feed regulator. The location and use of point feeds must be approved in the mine ventilation plan.

(d) If the air through the point-feed regulator enters a belt air course which is used to ventilate a working section or an area where mechanized mining equipment is being installed or removed, the following conditions must be met:

(1) The air current that will pass through the point-feed regulator must be monitored for carbon monoxide or smoke at a point within 50 feet upwind of the point-feed regulator. A second point must be monitored 1,000 feet upwind of the point-feed regulator unless the mine operator requests that a lesser distance be approved by the district manager in the mine ventilation plan based on mine specific conditions;

(2) The air in the belt air course must be monitored for carbon monoxide or smoke upwind of the point-feed regulator. This sensor must be in the belt air course within 50 feet of the mixing point where air flowing through the point-feed regulator mixes with the belt air;

(3) The point-feed regulator must be provided with a means to close the regulator from the intake air course without requiring a person to enter the crosscut where the point-feed regulator is located. The point-feed regulator must also be provided with a means to close the regulator from a location in the belt air course immediately upwind of the crosscut containing the point-feed regulator;

(4) A minimum air velocity of 300 feet per minute must be maintained through the point-feed regulator;

(5) The location(s) and use of a point-feed regulator(s) must be approved in the mine ventilation plan and shown on the mine ventilation map; and

(6) An AMS must be installed, operated, examined, and maintained as specified in § 75.351.

Effective April 14, 2025, remove § 75.350.

Effective April 14, 2025, redesignate § 75.350T as § 75.350.

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

Subpart A—General

Revise § 90.2 to read as follows:

§ 90.2 Definitions.

Until April 14, 2025, the following definitions apply in this part:

Add § 90.2T to read as follows:

§ 90.2T Definitions.

As April 14, 2025, the following definitions apply in this part:

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

Active workings. Any place in a coal mine where miners are normally required to work or travel.

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

Certified person. An individual certified by the Secretary in accordance with § 90.202 to take respirable dust samples required by this part or certified in accordance with § 90.203 to perform the maintenance and calibration of respirable dust sampling equipment as required by this part.

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

Concentration. A measure of the amount of a substance contained per unit volume of air.

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

District Manager. The manager of the Coal Mine Safety and Health District in which the mine is located.

Equivalent concentration. The concentration of respirable coal mine dust, including quartz, expressed in milligrams per cubic meter of air (mg/m^3) as measured with an approved sampling device, 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 filter (sampling time in minutes (t) times the sampling airflow rate in cubic meters per minute), and then converting that concentration to an equivalent concentration as measured by the Mining Research Establishment (MRE) instrument. When the approved sampling device is:

(1) The CMDPSU, the equivalent concentration is determined by multiplying the concentration of respirable coal mine dust by the constant factor prescribed by the Secretary.

(2) The CPDM, the device shall be programmed to automatically report end-of-shift concentration measurements as equivalent concentrations.

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 § 70.206(b) or in § 70.208(b) of this subchapter. Each MMU will be assigned a four-digit identification number by MSHA, which is retained by the MMU regardless of where the unit relocates within the mine. 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 at any given time on either set of mining equipment, the two sets of equipment shall be identified as a single MMU.

(2) Two or more sets of mining equipment are simultaneously engaged in cutting, mining, or loading coal or rock from working places within the same working section, each set of mining equipment shall be identified as a separate MMU.

MRE instrument. The gravimetric dust sampler with a four channel horizontal elutriator developed by the Mining Research Establishment of the National Coal Board, London, England.

MSHA. The Mine Safety and Health Administration of the U.S. Department of Labor.

Normal work duties. Duties which the part 90 miner performs on a routine day-to-day basis in his or her job classification at a mine.

Part 90 miner. A miner employed at a coal mine who has exercised the option under the old section 203(b) program (30 CFR part 90, effective as of July 1, 1972), or under § 90.3 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 standard, and who has not waived these rights.

Representative sample. A respirable dust sample, expressed as an equivalent concentration, that reflects typical dust concentration levels in the working environment of the part 90 miner when performing normal work duties.

Respirable dust. Dust collected with a sampling device approved by the Secretary and the Secretary of HHS in accordance with part 74 (Coal Mine Dust Sampling Devices) of this subchapter.

Secretary. The Secretary of Labor or a delegate.

Secretary of Health and Human Services. The Secretary of Health and Human Services (HHS) or the Secretary of Health, Education, and Welfare.

Transfer. Any change in the work assignment of a part 90 miner by the operator and includes:

(1) Any change in occupation code of a part 90 miner;

(2) any movement of a part 90 miner to or from an MMU; or

(3) any assignment of a part 90 miner to the same occupation in a different location at a mine.

Valid respirable dust sample. A respirable dust sample collected and submitted as required by this part, including any sample for which the data were electronically transmitted to MSHA, and not voided by MSHA.

Effective April 14, 2025, remove § 90.2.

Effective April 14, 2025, redesignate § 90.2T as § 90.2.

Amend § 90.3 by adding the introductory text to read as follows:

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

The following is required until April 14, 2025:

Add § 90.3T to read as follows:

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

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

Effective April 14, 2025:

(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 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 (*www.msha.gov/REGSTECHAMEND.htm*), or is eligible for the option under this part by sending a written request to the Chief, Division of Health, Mine Safety and Health Enforcement, MSHA, 201 12th Street South, Arlington, VA 22202-5452.

(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 (*www.msha.gov/REGSTECHAMEND.htm*) or exercised the option under this part by sending a written request to the Chief, Division of Health, Mine Safety and Health Enforcement, MSHA, 201 12th Street South, Arlington, VA 22202-5452. 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.

Effective April 14, 2025, remove § 90.3.

Effective April 14, 2025, redesignate § 90.3T as § 90.3.

Subpart B—Dust Standards, Rights of Part 90 Miners

Amend § 90.100 by adding introductory text to read as follows:

§ 90.100 Respirable dust standard.

The following is required until April 14, 2025.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 expressed in terms of an equivalent concentration, at or below:

Add § 90.100T to read as follows:

§ 90.100T Respirable dust standard.

The following is required as of April 14, 2025. 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 expressed in terms of an equivalent concentration, at or below 0.5 mg/m^3 .

Effective April 14, 2025, remove § 90.100.

Effective April 14, 2025, redesignate § 90.100T as § 90.100.

Effective April 14, 2025, remove and reserve § 90.101.

Amend § 90.102 by adding introductory text to read as follows:

§ 90.102 Transfer; notice.

The following is required until April 14, 2025:

Add § 90.102T to read as follows:

§ 90.102T Transfer; notice.

As of April 14, 2025:

(a) Whenever a part 90 miner is transferred in order to meet the 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 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.

Effective April 14, 2025, remove § 90.102.

Effective April 14, 2025, redesignate § 90.102T as § 90.102.

Revise § 90.104 to read as follows:

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

The following is required until April 14, 2025:

(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 Enforcement, 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.

Add § 90.104T to read as follows:

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

As of April 14, 2025:

(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, Mine Safety and Health Enforcement, 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 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.

Effective April 14, 2025, remove § 90.104.

Effective April 14, 2025, redesignate § 90.104T as § 90.104.

Subpart C—Sampling Procedures

Amend § 90.205 by adding introductory text to read as follows:

§ 90.205 Approved sampling devices; operation; air flowrate.

The following is required until April 14, 2025:

Add § 90.205T to read as follows:

§ 90.205T Approved sampling devices; operation; air flowrate.

As of April 14, 2025:

(a) Approved sampling devices shall be operated at the flowrate of 2.0 L/min if using a CMDPSU; at 2.2 L/min if using a CPDM; or at a different flowrate recommended by the manufacturer.

(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 an anthracite coal mine using the full box, open breast, or slant breast mining method.

(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 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 of the dust data card.

(c) If using a CPDM, the person certified in sampling shall monitor the dust concentrations and the sampling status conditions being reported by the sampling device at mid-shift or more frequently as specified in the approved respirable dust control plan, if applicable, to assure: The sampling device is in the proper location and operating properly; and the work environment of the Part 90 miner being sampled remains in compliance with the standard at the end of the shift. This monitoring is not required if the sampling device is being operated in an anthracite coal mine using the full box, open breast, or slant breast mining method.

Effective April 14, 2025, remove § 90.205.

Effective April 14, 2025, redesignate § 90.205T as § 90.205.

Amend § 90.206 by adding introductory text to read as follows:

§ 90.206 Exercise of option or transfer sampling.

The following is required until April 14, 2025:

Add § 90.206T to read as follows:

§ 90.206T Exercise of option or transfer sampling.

(a) The operator shall take five valid representative dust samples for each part 90 miner within 15 calendar days after:

(1) The 20-day period specified for each part 90 miner in § 90.100; and

(2) Implementing any transfer after the 20th calendar day following receipt of notification from MSHA that a part 90 miner is employed at the mine.

(b) Noncompliance with the standard shall be determined in accordance with § 90.207(d).

(c) Upon issuance of a citation for a violation of the standard, the operator shall comply with § 90.207(f).

Effective April 14, 2025, remove § 90.206.

Effective April 14, 2025, redesignate § 90.206T as § 90.206.

Amend § 90.207 by adding introductory text to read as follows:

§ 90.207 Quarterly sampling.

The following is required until April 14, 2025:

Add § 90.207T to read as follows:

§ 90.207T Quarterly sampling.

As of April 14, 2025:

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

(1) January 1-March 31

(2) April 1-June 30

(3) July 1-September 30

(4) October 1-December 31.

(b) [Reserved]

(c) When a valid representative sample taken in accordance with this section meets or exceeds the ECV in table 1 to this section corresponding to the particular sampling device used, the mine operator shall:

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

(2) Immediately take corrective action to lower the concentration of respirable coal mine dust to below the standard; and

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent 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. Such 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 part 90 miner.

(d) Noncompliance with the standard is demonstrated during the sampling period when:

(1) Two or more valid representative samples meet or exceed the ECV in table 1 to this section that corresponds to the particular sampling device used; or

(2) The average for all valid representative samples meets or exceeds the ECV in table 1 to this section that corresponds to the particular sampling device used.

(e) Unless otherwise directed by the District Manager, upon issuance of a citation for a violation of the standard, paragraph (a) of this section shall not apply to that Part 90 miner until the violation is abated and the citation is terminated in accordance with paragraphs (e) and (f) of this section.

(f) Upon issuance of a citation for a violation of the standard, the operator shall take the following actions sequentially:

(1) Make approved respiratory equipment available to the affected part 90 miner in accordance with § 72.700 of this subchapter.

(2) Immediately take corrective action to lower the concentration of respirable dust to below the standard. If the corrective action involves:

(i) Reducing the respirable dust levels in the work position of the part 90 miner identified in the citation, the operator shall implement the proposed corrective actions and begin sampling the affected miner within 8 calendar days after the date the citation is issued, until five valid representative samples are taken.

(ii) Transferring the Part 90 miner to another work position at the mine to meet the standard, the operator shall comply with § 90.102 and then sample the affected miner in accordance with § 90.206(a).

(3) Make a record of the corrective actions taken. The record shall be certified by the mine foreman or equivalent mine official, no later than the end of the mine foreman's or equivalent 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. Such 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 part 90 miner.

(g) A citation for a violation of the standard shall be terminated by MSHA when the equivalent concentration of each of the five valid representative samples is below the standard.

Table 1 to § 90.207T—Excessive Concentration Values (ECV) Based on a Single Sample, Two Samples, or the Average of Five Full-Shift CMDPSU/CPDM Concentration Measurements

Section	Samples	ECV (mg/m^3)	
		CMDPSU	CPDM
90.207(c)	Single sample	0.74	0.57
90.207(d)(1)	2 or more samples	0.74	0.57
90.207(d)(2)	5 sample average	0.61	0.53
90.207(g)	Each of 5 samples	0.74	0.57

Effective April 14, 2025, remove § 90.207.

Effective April 14, 2025], redesignate § 90.207T as § 90.207.

Subpart D—Respirable Dust Control Plans

Amend § 90.300 by adding introductory text to read as follows:

§ 90.300 Respirable dust control plan; filing requirements.

The following is required until April 14, 2025:

Add § 90.300T to read as follows:

§ 90.300T Respirable dust control plan; filing requirements.

As of April 14, 2025:

(a) If an operator abates a violation of the standard by reducing the respirable dust level in the position of the Part 90 miner, 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 within 15 calendar days after the citation is terminated. 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 below the 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 how each of the respirable dust control measures used to continuously maintain concentrations of respirable coal mine dust below the 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.

Effective April 14, 2025, remove § 90.300.

Effective April 14, 2025, redesignate § 90.300T as § 90.300.

Amend § 90.301 by adding introductory text to read as follows:

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

The following is required until April 14, 2025:

Add § 90.301T to read as follows:

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

As of April 14, 2025:

(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 below the 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 below the 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.

Effective April 14, 2025, remove § 90.301.

Effective April 14, 2025, redesignate § 90.301T as § 90.301.